July 1988

FBI Law Enforcement Bulletin

Violent Crime Against the Aging

Contents

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The Cover:
Ms. Patricia Moore (above), a noted gerontologist, appears on the cover in the disguise she wore during her travels throughout the United States and Canada. See article p. 11.

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Law Enforcement and the Social Service System

Handling the Mentally Ill

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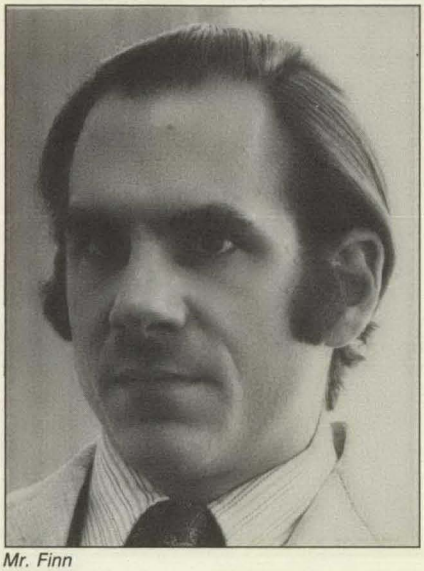
Two police officers respond to a call about a terrified man who is shouting obscenities and throwing rocks at neighbors he says are trying to kill him with ray guns. With some difficulty the officers persuade the man to let them drive him to a hospital for help. However, during the 2-hour wait in an overcrowded emergency ward, the man calms down. When a psychiatrist can take time from more critical cases to examine the man, he appears normal and is told to go home. The officers drive the man back to his neighborhood and drop him off. The incident has taken over 4 hours from start to finish.

This kind of incident happens with frustrating regularity with many police departments. However, today this story would have a different ending if it took place in Los Angeles, CA. There, patrol officers would call the police department's 24-hour Mental Evaluation Unit. Over the phone, one of the unit's nine officers would prescreen the case and suggest how to calm the man and avoid feeding his paranoia. A Mental Evaluation Unit officer would then either go onscene to take over the case, or more likely, tell the patrol officer to bring the man to the unit's office in downtown Los Angeles. Whether in the office or on the scene, the unit officer would assess the man's condition and tell the patrol officers to bring him to a hospital. An emergency ward psychiatrist would evaluate the person quickly, confident that if a Mental Evaluation Unit officer referred him, the man probably needs to be hospitalized. If so, the facility would either



Mr. Finn

Detective De Cuir

admit the patient or find a bed at another facility. The patrol officers would have spent 30 minutes on the case; the Mental Evaluation Unit officer, 15 minutes.

Police Handling of the Mentally Ill

Los Angeles' solution to handling the mentally ill did not come easily—it took many hours of negotiation and discussion between the police and the social service agencies involved. However, the effort has proven worthwhile, because in Los Angeles, as elsewhere, the public repeatedly calls on the police for assistance with mentally ill persons. Citizens know that peace officers alone combine free, around-the-clock service with unique mobility, a legal obligation to respond, and legal authority to detain.

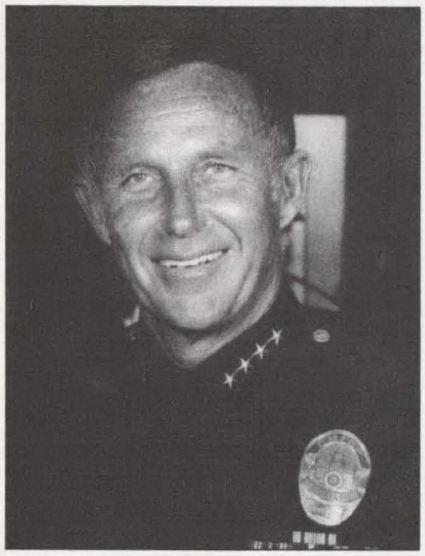
Yet, handling the mentally ill is one of the most perplexing calls most law enforcement officers are asked to handle. Law enforcement officers feel unsure about how to help this population, especially when it is difficult to refer them to social service agencies for assistance. Police are often unfamiliar with what services and facilities are available and how to contact them. Many communities lack needed facilities. Existing agencies often have limited space for police referrals, restrictive admissions criteria, complicated admissions procedures, and prohibitive financial requirements.

Despite these widespread difficulties, some police agencies don't find the mentally ill to be a concern until a crisis occurs, as when a mentally disturbed person kills an officer or an officer kills a mentally ill person when nonlethal means of restraint might have been sufficient. One or the other of these types of tragedies have been occurring with disturbing frequency to law enforcement agencies; police departments in Los Angeles, Erie, Memphis, Dallas, Sacramento, and Indianapolis have all experienced these kinds of incidents. More often, however, police administrators know all too well that they have a problem with this population but are reluctant to bring up the matter publicly for fear that they will get stuck with complete responsibility for solving it.

The brief description above of how Los Angeles handles the mentally ill indicates that it is possible for police departments to develop formal arrangements with the mental health system for *sharing* responsibility for this population. How this particular network came into being and currently operates can serve as a model for other departments that are ready to implement a solution to the daily hazards of dealing with the mentally ill—and possibly prevent an embarrassing tragedy.

The Los Angeles Network

In 1984, the Los Angeles Police Department came under criticism first when a mentally ill person killed 2 children and injured 13 others, and again, shortly thereafter, when a police officer was killed by a mentally ill person. A police board of inquiry warned that unless all agencies responsible for the emergency care of the mentally ill began to cooperate, similar tragedies would occur. As a result, the chief of police invited top-level officials of 10 criminal justice and social service agencies to form a Psychiatric Emergency Coordinating Committee (PECC).



Daryl F. Gates
Chief of Police

The PECC hammered out a comprehensive Memorandum of Agreement that took effect on April 1, 1985. The administrator of each participating agency agreed in writing to a list of specific actions. These steps are designed to divert mentally ill persons involved in minor criminal behavior from the criminal justice system into the health care system, where they can receive more appropriate care.

The two principal cosignatories to the agreement are the chief of the Los Angeles Police Department and the director of the Los Angeles County Department of Mental Health. The core of the agreement is that:

1) The police department will establish a mental health emergency command post staffed by specially trained law enforcement officers. The police department will require all officers to call the unit for assistance in screening mentally ill people before either transporting them to an emergency facility or booking them for a crime.
2) The Department of Mental Health will *maintain* a high-level administrator accessible to the police 24 hours a day with responsibility for immediately resolving special situations of an urgent nature, *conduct* training programs for police and other network agencies concerning appropriate methods for handling psychiatric emergencies, and *develop* pilot programs with the police to meet the psychiatric emergency needs of mentally ill persons requiring police attention.

Legislative Background

Implementation of the Memorandum of Agreement was facilitated by two changes in the California Welfare and Institutions Code. For years, the statute had required county-funded emergency psychiatric facilities to evaluate suspected mentally ill persons referred by law enforcement officers (or referred by anyone). However, due to limited emergency resources, mental health staff personnel were not always able to perform prompt evaluations; furthermore, officers reported they were sometimes told they had to take the person elsewhere because the facility had no bed space.

These delays and brush-offs are no longer a problem because the Los Angeles County sheriff lobbied for two changes in the code. The first amendment forbids mental health personnel from using lack of bed space as a reason to refuse to assess whether a person brought in by a police officer needs to be evaluated and treated. The second amendment says that the officer shall not be kept waiting longer than necessary to complete the necessary paperwork and a "safe and orderly transfer" of physical custody of the person.

The Role of the Department of Mental Health

The Los Angeles County Department of Mental Health faced serious problems in carrying out the changes required by the code amendments and the Memorandum of Agreement because its facilities did not have an adequate supply of beds to handle psychiatric emergencies. As a result,

". . . it is possible for police departments to develop formal arrangements with the mental health system for sharing responsibility for [the mentally ill population]."

the department has had to engage in day-to-day crisis management to find the necessary beds and accelerate its long-term plans to reduce the critical shortage of beds. The department now requires all 24-hour psychiatric emergency service units to call a centralized number each morning to report their occupancy rate and anticipated vacancies for the next 24 hours. With this information, the department's central administration can tell a fully occupied facility where it can transfer a patient for immediate admission. The department also encourages facilities to screen nonemergency admissions more carefully, reduce (where appropriate) the time mental patients are hospitalized, and provide increased aftercare to reduce readmissions. Many facilities have increased their efforts to improvise space on their own by "borrowing" stretchers from other wards, using blankets and chairs, or filling medical beds.

Police Involvement

To establish the mental health emergency command post, the Los Angeles Police Department upgraded its existing one-man Mental Evaluation Detail to a unit, assigned nine additional sworn officers and a secretary, and provided the officers extensive training in the assessment and handling of the mentally ill. All 7,000 Los Angeles police officers have been instructed at roll calls, in continuing education classes, and in their field activities manual to contact the Mental Evaluation Unit before taking an apparently mentally ill person into custody (when the only reason for detention is the person's mental condition) and before transporting the person to any mental health facility or hospital. When someone believed to be mentally ill is taken into custody for a criminal offense, the officer must still contact the unit before booking the person.

The unit receives between 550-600 calls a month from patrol officers requesting advice or assistance. Over the phone, the staff uses the onscene officers' observations to screen for suspected mental illness, instructs the officers to fill out the necessary application for detention, and either gives them the name of the nearest appropriate facility or tells them to bring the subject to the unit's office at police headquarters.

When patrol officers bring the individual to the unit, they wait during the 10-minute evaluation and then transport the person either to the nearest facility (if detention is needed) or back to where he or she was found (unless the person prefers to be released at police headquarters). Of the 211 persons assessed by the Mental Evaluation Unit and referred to a mental health facility between March 29, and April 25, 1987, 208 received treatment at those facilities; the other 3 individuals, who had previous warrants for their arrest, were referred to the criminal justice system.

In the daily situations involving hostages, barricades, suicide threats, and similar crises, one or two unit members go onscene, leaving another unit member in the office to coordinate with the mental health system. For example, when a man threatened to leap from the 11th floor of a building, unit officers dispatched to the scene phoned another unit officer at headquarters to report the man's identity. By phoning the Department of Mental Health, the unit-based officer located the person's psychiatrist, relatives, and priest, who were all notified to go to the scene. The officer also checked the unit's own file for any reported history of violence by the person so he could prepare the officers and mental health workers at the scene for what the person might do. All this was accomplished in 20 minutes.

Training

The Department of Mental Health has provided the Mental Evaluation Unit with a psychologist to coordinate the training of the unit's own officers. Working closely with the officer-in-charge of the Mental Evaluation Unit, the psychologist designed the training plan and arranged for Department of Mental Health staff members and other speakers to deliver the training. Others on the staff participate in training new recruits and inservice training at the police academy.

The training is not one-sided. Mental Evaluation Unit officers familiarize mental health professionals with police policies, procedures, and limitations in dealing with the mentally ill. The district attorney's Psychiatric Section instructs the Department of Mental Health staff and emergency ward personnel on legal aspects of involuntary commitment and confidentiality. Mental health professionals and administrators (as well as police) are told that they do not have to return a weapon to a mentally ill person, that apprehend and detain orders could be used to empower law enforcement officers to return escapees to their wards without a warrant or

detention order, and that it is illegal for hospitals to call the police to evict post-stroke patients who become violent.

Information Sharing

The Memorandum of Agreement requires both the Department of Mental Health and the police to consult with each other, within the limits of confidentiality statutes, regarding mentally ill persons. As part of the new collaboration, the Mental Evaluation Unit files and shares with mental health workers information regarding mentally ill persons who possess or use deadly weapons or have demonstrated special skills related to violence, such as martial art experts.

Confidentiality statutes limit the extent to which mental health professionals believe they can share the same kind of information with the police. However, networking still enables unit officers to sometimes learn whether a suspected mentally ill person they have been called to handle has a history of violence. Some mental health workers will simply tell the unit, "I'd just be *very* careful handling that person." Other health care workers make use of an exception to confidentiality requirements that permits—or even mandates—information sharing when life may be at stake. In a controversial decision in California (*Tarasoff* v. *Regents of the University of California'*) the State supreme court held that when a psychotherapist determines that a patient presents a serious risk of violence to another person, the therapist is required to use reasonable care to protect the potential victim. In the case at hand, a therapist sued by the parents of a murdered daughter was held liable for not having warned the woman that his patient had expressed a desire to kill her.

Hotlines

As part of the Memorandum of Agreement, each agency has provided the other with 24-hour telephone accessibility to a high-level department administrator whenever any two groups disagree concerning a psychiatric emergency. Although the hotline is used infrequently, it has proven particularly effective when a facility has no beds available to accept custody of a suspected mentally ill person from police. On one occasion, the deputy director of the Department of Mental Health was called on a Sunday at 3:45 a.m. to resolve such a crisis. All participants in the network can also use the 24-hour hotline to the Psychiatric Section of the district attorney's office for immediate legal opinions regarding the handling of the mentally ill.

Other Networking Arrangements

The networking arrangement in Los Angeles is not the only way collaboration between law enforcement and the mental health system can be structured for dealing with the mentally ill. There are at least seven other jurisdictions across the country that have established cooperative agreements in a different manner. For example, in contrast to Los Angeles' specially trained sworn officers, the Birmingham, AL, Police Department uses specially trained civilian social workers (CSO) to relieve police officers of having to deal with mental illness cases. Currently, six rotating social workers are available 24 hours a day to go onscene, take over the case, and transport the suspected mentally ill individual to the University Hospital emergency room. Once at the hospital, the social worker, who is familiar with hospital staff and procedures, arranges for an evaluation. In most cases, police officers return to their patrol once the mentally ill person has been restrained at the facility, leaving the social worker as the police department's representative for the rest of the proceeding. The Birmingham chief of police points out that in 1975, the police force handled 900 disturbance calls, mostly involving the mentally ill; in 1985, the CSO's handled 1,000 such calls—an average of nearly 3 per day.

Erie, PA, represents a third network configuration. There, the arrangement was initiated as a result of the murder of a hostage by a mentally ill individual. In a memorandum of agreement signed by the chief of police and addressed to Family Crisis Intervention, a local freestanding mental health emergency service, the police department agreed to staff a cruiser 24 hours a day with officers who would relieve the department's 200 other sworn personnel of difficult cases involving the mentally ill. Family Crisis Intervention staff trained the special officers to screen for mental illness, take people to appropriate facilities for treatment, and adhere to the applicable State civil statutes governing involuntary detention. Family Crisis staff periodically update the officers regarding changes in the civil code and in the availability of referral resources.

The nine-person detail is called the "201" Unit after the provision in the Pennsylvania Civil Code that requires

". . . mutual benefits provide a compelling reason for police departments to work with social service agency and facility administrators. . . ."

each county's Department of Mental Health and Mental Retardation to assure adequate mental health services for all persons in need. However, 201 officers perform normal law enforcement duties, as well as specializing in problem persons.

In most cases, individual patrol officers handle problems involving the mentally ill on their own—perhaps with a call to the 201 Unit or to Family Crisis for advice on what to do or where to take the person. However, when involuntary commitment of a mentally ill person appears to be needed, they normally call the 201 Unit to take over the case, freeing the patrol officers to return to their beat. The unit takes over an average of one or two cases every shift.

Family Crisis Intervention and the 201 Unit also help small town and rural law enforcement agencies in Erie County deal with the mentally ill. Family Crisis staff spend 11 hours a week at each of two outlying police departments helping facilitate admission to local hospitals and prevent problems with social service agencies before they arise. Furthermore, any police department in the county can call Family Crisis for consultation on the phone or an onsite emergency visit. One Sunday, a small town police chief detained a person with a history of alcohol and drug abuse who was suspected of also being mentally ill. The chief called Family Crisis wondering whether to jail the person—and risk a suicide attempt—or go to the trouble of having him hospitalized—and tie up an officer for several hours. Family Crisis looked up the person's previous mental illness history in its file of 20,000 records, determined the person could be released safely, and offered to come evaluate him on Monday.

Mutual Benefits: The Key to Successful Collaboration

A vital feature of the Los Angeles and other networks is that every participating agency benefits from the arrangement. There are three advantages to networking for a law enforcement agency.

First, *saving time*. Police officers spend less time stabilizing the situation at the scene, locating a facility willing to accept the person, waiting at the facility, and making repeat runs—sometimes on the same shift—to handle the same problem all over again. In 1984, the average time spent by field officers in the Los Angeles Police Department in processing a mentally ill person was 4 officer hours. By 1987, this time had been reduced to 2.2 officer hours. With more than 200 mentally ill persons handled every month, this has resulted in a savings of about 260 person-hours each month. The Birmingham, AL, Police Department calculated that during a typical 3-month period in 1986, over 178 hours of patrol officer time—the equivalent of 21 person-shifts—were saved by using the department's social workers to transport 54 suspected mentally ill individuals to the hospital for evaluation and to stand by until the evaluation was completed.

Second, *reducing danger*. In most networks, trained staff either give patrol officers advice on the phone about how to defuse volatile situations or come on-scene and take over the case. The Los Angeles Police Department determined that social workers operating out of four police substations reduced the threat of danger in 15 out of 63 cases they were called to handle. In other networks, social workers inform officers on the way to a scene whether a suspected mentally ill individual has a history of violent behavior.

Third, *increasing job satisfaction*. In several networks, there has been less criticism of the police by the media, public, and politicians for allegedly mishandling or ignoring the mentally ill. As noted, both the Los Angeles and Erie networks were initiated at least in part because of a barrage of unfavorable publicity about homicides involving the mentally ill which the police were accused of failing to prevent.

Networking also benefits the social service system. With a network in place, emergency care staff spend less time unnecessarily evaluating, treating, or transferring inappropriate police referrals, because these people are prescreened and either diverted to outpatient treatment facilities or taken to an appropriate facility. Furthermore, police participating in a network give priority to responding to calls from human service providers for emergency assistance with combative clients. In addition, specially trained officers, like Los Angeles' Mental Evaluation Unit staff who take over cases at the scene, prove to be highly credible witnesses at court commitment hearings.

Understandably, the question of cost will be at the forefront of every police administrator's mind when it comes to instituting a network. In fact, very little additional funding has been needed in Los Angeles, despite an ambitious networking arrangement. The county's Department of Mental Health had to hire consultants to help train the network participants and to perform some of the

work which staff members who were assigned to assist the network had been doing. The Los Angeles Police Department, in turn, transferred nine officers to its expanded Mental Evaluation Unit.

Conclusion

Police officers' options for dealing with the mentally ill are usually limited to arresting and jailing them for minor infractions or trying as best as possible to patch up the situation and leave. Many police officers are frustrated by the time they spend transporting these people to social service agencies, because most facilities have limited bed space and are often unable or unwilling to detain individuals involuntarily.

Los Angeles and a small number of other communities have established formal arrangements for sharing responsibility for handling this population. In every arrangement, police officers and deputy sheriffs spend considerably less time dealing with the mentally ill and those contracts that are made are less stressful than before. Furthermore, in most networks, trained staff either give officers advice on the phone about how to defuse potentially dangerous situations or come to the scene and take over the case. Finally, in several communities, there has been reduced criticism of law enforcement from the media, public, and elected officials for allegedly mishandling or ignoring this population.

Because networking also provides significant benefits to the social service system, county and city departments of mental health have been willing participants in the arrangements. These mutual benefits provide a compelling reason for police departments to work with social service agency and facility administrators to start a network of their own. FBI

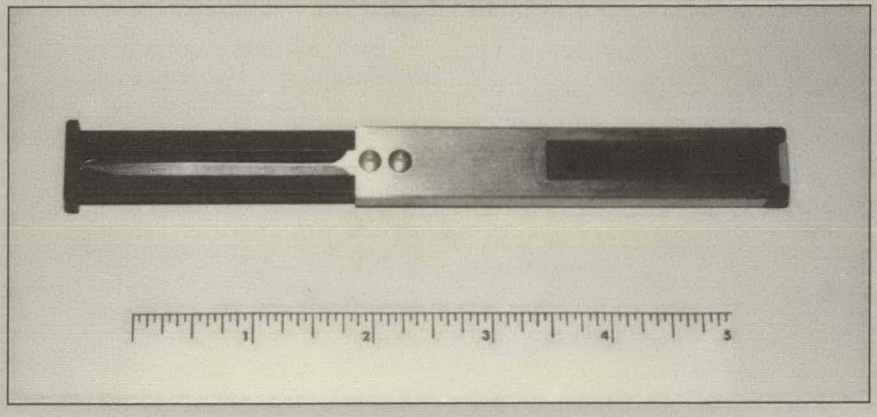
Footnote

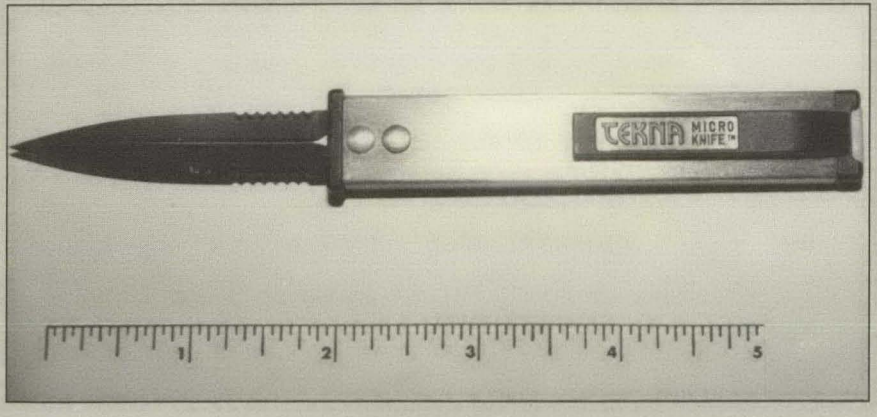
Tarasoff v. *Regents of the University of California*, 17 C.3d 425, 131 Cal. Rptr. 14, 551 P.2d 334.

Tekna Micro Knife

Airport security personnel in the Los Angeles/Burbank area have been discovering this item frequently. The "Tekna Micro Knife" appears at first to be a pen-type personal paging device. Closer examination reveals a double-edged blade that is approximately 2 1/4 inches in length. The blade is hidden by a protective sheath until exposed by pressing a small button at the top of the device. This is a well-made weapon which is available commercially for about $60.

Submitted by the Burbank, CA, Police Department





Inactivation of Human Immunodeficiency Virus (Aids Virus) by Gamma and X-Ray Irradiation in Body Fluids and Forensic Evidence

By
PAUL D. BIGBEE, M.S.
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Forensic Science Research and Training Center
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In the July 1987, issue of the *FBI Law Enforcement Bulletin*, an article entitled "Collecting and Handling Evidence Infected with Human Disease-Causing Organisms" was published. In that article, it was mentioned that the FBI Laboratory, in conjunction with the National Institutes of Health and the National Bureau of Standards, was conducting research into the feasibility of using gamma radiation to inactivate the AIDS virus (HIV) in body fluids and forensic evidence. The research had two goals: (1) To determine the dosage of radiation that was lethal to HIV, and (2) to determine if this dosage was deleterious to the biological substances routinely sought in forensic serology analyses. This research as now been successfully completed.

Previous research has shown that the AIDS virus, in concentrated amounts, can survive in dried stains for several days at room temperature.[1] However, in concentrations which would normally be found in persons with AIDS, leading experts generally agree that the possibility of the virus surviving beyond a maximum of 72 hours in a dried state is highly improbable.[2] But, Resnick and associates reported in the April 1986, *Journal of the American Medical Association* that the virus can survive for prolonged periods of time in liquid body fluids (at least 15 days). Recently, several incidents have occurred where HIV-infected liquid blood has been absorbed through broken skin or through the eyes or mucous membranes of health care workers, transmitting the virus to these individuals.[3] While realizing that the possibility of transmitting HIV to forensic laboratory workers is remote, any available and reasonable means of reducing the risk of possible infection to laboratory workers should be considered.

Our research consisted of first performing all analyses currently conducted in the Serology Unit, FBI Laboratory, on selected samples of liquid and dried blood, semen, and saliva with appropriate controls. These sam-

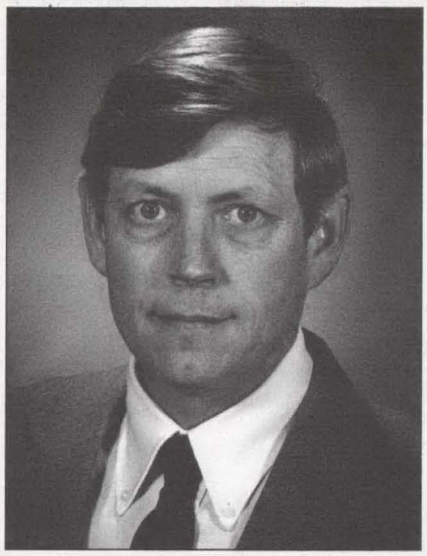
ples were then subjected to varying levels of gamma radiation and reanalyzed. Using extremely high levels of gamma radiation (up to 1,000,000 rads), no detrimental effects of serological testing were observed, with the exception of one liquid blood sample which appeared hemolyzed. This sample, when dried and analyzed the same as any dried stain, showed no damage.

Because most forensic laboratories do not have the capability of using gamma radiation, the National Bureau of Standards calibrated an X-ray instrument at the FBI Laboratory, and usable amounts of gamma radiation were then converted to X-ray radiation. Following the calibration, the Laboratory of Tumor Cell Biology at the National Institutes of Health provided serial dilutions of the AIDS virus, and it was determined that approximately 25,000 rads of X-ray irradiation were required to completely inactivate the virus. It should be noted that this amount of radiation is used to sterilize food products and sera.[4] Samples of liquid and dried blood, semen, and saliva were then subjected to 25,000 rads of X-ray radiation, and no effects were seen in any protein of serological importance.

As a result of the development of this new technique, the FBI Laboratory has altered its policy on accepting evidence from persons with AIDS or exposed to HIV. The FBI Laboratory will accept known AIDS cases; however, the Scientific Analysis Section must be notified telephonically prior to submission when either a suspect or victim has AIDS or is suspected of having AIDS. The Laboratory has implemented a policy wherein liquid blood samples, or any other liquid body fluid from a person known or suspected of having been exposed to HIV, or liquid blood samples from persons in the traditional "high risk categories," such as male homosexuals, prostitutes, and intravenous drug users, will be irradiated by X-ray prior to analyses. Dried blood fluids which are less than 5 days old from either victims or suspects known to have AIDS will be air dried for a total of 5 days in a laminar-flow, biological containment cabinet prior to analyses. Contributors of evidence bearing HIV are reminded that the shipping of this type of evidence must be in accordance with Title 42, Code of Federal Regulations, Part 72, which requires the items to be triple wrapped and appropriate warning label applied.

Regardless of whether liquid blood samples have been irradiated or not, the FBI Laboratory's safety policy for handling any liquid body fluid will remain in force. These procedures include the wearing of latex surgical gloves, eye protection, surgical masks, and laboratory coats.

The detailed results of this research project are now being compiled and will be published in a scientific journal in the near future. The use of ionizing radiation is dangerous if not properly managed. Only qualified and trained/certified X-ray technicians may operate these devices with proper shielding, safety and radiation monitoring procedures in effect, and in accordance with Nuclear Regulatory Commission policies. Any other use of this technique may result in a lethal dosage of radiation to personnel (an absorbed dose of 1,000 rads or 1,000 REMS is lethal in humans).[5]



Special Agent Bigbee

Unfortunately, the development of this new technique cannot assist the law enforcement officer in the performance of his or her duties before evidence is sent to the laboratory. All safety precautions and care must always be taken when dealing with body fluids. The officer on the street has no way of knowing if a body fluid is infectious and should treat all body fluids accordingly.

FBI

Footnotes

[1]Centers for Disease Control, "Survival of HIV in the environment," *Morbidity and Mortality Weekly Report*, vol. 36, 1987, supplement 10; L. Resnick et al., "Stability and inactivation of HTLV-III/LAV under clinical and laboratory environments," *Journal of the American Medical Association*, vol. 225, 1986, pp. 1887-1891; B. Spire et al., "Inactivation of lymphadenopathy-associated virus by heat, gamma rays and ultraviolet light, *Lancet*, vol. 1, 1984, pp. 188-189.

[2]Personal communications with W. Bond, F. Chermann, P. Markham, L. Resnick, and P. Sarin.

[3]Centers for Disease Control, update, "Human immunodeficiency virus infections in health care workers exposed to blood of infected patients," *Morbidity and Mortality Weekly Report*, vol. 36, No. 19, 1987, pp. 285-289.

[4]L. Resnick et al, Supra note 1.

[5]N. Tsoulfanidis, *Measurement of Detection of Radiation*, (Washington, DC: Hemisphere Publishing Corporation, 1983, pp. 502-503.

Book Review

Burnout in Blue: Managing the Police Marginal Performer, by Hillary M. Robinette, Praeger Publishers, P.O. Box 5007, Westport, CT 06881, 159 pp. $39.95 (18.95 paperback), 1987.

Winner of the Jefferson Award at the University of Virginia, *Burnout in Blue* was cited by an AFL-CIO police union leader as a text that "could go a long way toward easing labor/management confrontations regarding 'marginal' police performance."

Robinette's book is divided into three parts: Thinking about the problem, deciding what to do, and practice exercises in dealing with the police problem employee. Chapter 1, in the section on thinking about the problem, presents the results of two surveys undertaken five years apart by the FBI Academy at Quantico on this problem. Survey results are cogently and clearly explained in the first chapter, along with the development of the term "burnout."

"Burnout," or laziness/just getting by as these surveys termed it, is the most significant problem facing police supervisors, cited 10 times as often as alcoholism and 3 times as often as the second most common problem, absenteeism/tardiness. Probably the most important sentence in the book comes in Chapter 2 on Problem Analysis: Internal Causes. "Before a supervisor can take effective action with a problem subordinate, he or she must *think*. (Emphasis in original.) Analysis of the problem — thinking — is the key to the solution of the problem employee, or as quoted at the beginning of this chapter, in the words of Thomas Edison, "There is no expedient to which a man will not go to avoid the real labor of thinking."

The supervisor must think out the problem's causes before taking any action, if the action is to have any effect. This, and the next chapter, which begins by quoting the popular song "Take This Job and Shove It" guide the supervisor through this thought process. The next two chapters deal with diagnostic models, performance as a factor of ability and motivation, and the various motivations that govern change.

Part Two of this book consists of four chapters, "What to Do? The Alternatives," "Managerial Coaching," "Managerial Counseling," and "Dealing with the Unresponsive." As the author notes, all supervisors want to know: What can I do about a marginal subordinate? What should I do? Robinette explains that these are two different questions, "but to ask the questions is to begin to manage the problem."

The final section of this work consists of coaching and counseling exercises dealing with specifics rather than generalities. These exercises illustrate how to analyze the problem of the marginal subordinate and how to coach or how to counsel this employee. *Burnout in Blue* presents these examples that can be studied by the individual or small groups of supervisors. In the latter case, group discussions of each problem afford an opportunity to study different reactions to each situation.

As the provost who presented the Jefferson Award to this book noted, Robinette's book "is the first of its kind to combine job-specific research and analysis with the content of a police supervision text and makes a major contribution to the field of criminal justice education." This is the level of sound scholarship and practical criminal justice education that we can expect from the FBI Academy today.

SA Thomas J. Deakin, J.D.

Violent Crime Against The Aging

"The first step in meeting the many challenges of violence against the aging is to recognize that this problem merits immediate attention."

By
CYNTHIA J. LENT
Research Assistant
and
JOSEPH A. HARPOLD, M.S.
Special Agent
National Center for the Analysis of Violent Crime
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The FBI Academy's National Center for the Analysis of Violent Crime (NCAVC) is concerned with the broad spectrum of violence that plagues society. In operation since June 1985, the NCAVC was established to "offer assistance to other agencies investigating . . . violent offenses" and to act as "a law enforcement-oriented behavioral science and computerized resource center" that brings together "research, training, and investigative support functions." [1]

In its longstanding relationship with the American Association of Retired Persons (AARP) and the International Association of Chiefs of Police (IACP), the FBI has shared their mutual regard for the quality of life of America's older citizens. This common concern evolved into a symposium on "Violent Crime Against the Aging," cohosted by the AARP, IACP, and FBI.

AARP's primary purpose is to improve every aspect of living for older people. In surveys over the years, its members have consistently ranked crime as a high priority issue. AARP's Criminal Justice Services has taken the lead in working with the criminal justice system to develop new methods to meet the challenges of crime against the aging.

The law enforcement community also is concerned with this crime problem. The IACP formally declared its interest as an organization by forming a committee on crime and the elderly to address the issue. This function is now a part of the IACP's Crime Prevention Committee.

The FBI's National Center for the Analysis of Violent Crime was created to deal specifically with violent crime issues. As such, its members conceived

Ms. Lent

Special Agent Harpold

of the idea to cosponsor the conference.

However, crime against the aging should not be an issue of concern for only law enforcement and elderly persons; it is a problem that at some point affects everyone. Those who have not yet reached their "golden years" hope they will eventually. One result of aging is increasing vulnerability. Criminals prey on those who are helpless to protect themselves. The indisputable fact is that the proportion of the American population that is 65 years of age or older is increasing rapidly. In 1900, only 4 percent of the population were 65 or older,[2] and in 1950, 8.1 percent were in that age bracket.[3] The Census Bureau estimates that 13 percent of the population will be 65 or over in the year 2000.[4] The real issue here is whether law enforcement and the community will work together to help the elderly now and create a better future for society or ignore the plight of today's aging and hope the problem resolves itself when more citizens become potential victims. This is a rare opportunity to shape destiny, and society should seize this opportunity.

Recognizing the Problem

The first step in meeting the many challenges of violence against the aging is to recognize that this problem merits immediate attention. Perhaps the seriousness of the problem has not been recognized previously because the statistics do not reflect that older people are disproportionately more frequent victims of violent crime. Older citizens (age 65 and over) have the lowest victimization rates in both the violent crime and the property crime classifications of the Bureau of Justice Statistics' (BJS) National Crime Survey.[5] (See fig. 1.)

In fact, according to the National Crime Survey, 34.9 million victimizations were reported in the United States in 1985. Of these, 17 percent, or about 6 million, involved the violent crimes of rape, robbery, or assault. According to the 1985 crime survey, the typical violent crime victim was a nonwhite male in his late teens. He was the victim of an assault by a stranger on the street near his residence in the central city of a large metropolitan area.[6] The cold statistics, however, may be disguising the reality of the crime problem for the elderly.

Looking Beyond Statistics

To understand the problems of violent crimes against the elderly, it is necessary to look beyond the numbers contained in the FBI's Uniform Crime Reports (UCR) or in BJS's National Crime Survey. Not all crimes are reported to police, and police reports are the source of data for the UCR Program. In 1985, the National Crime Survey's information came from interviews with a sample of about 49,000 households, representing 102,000 individuals age 12 or over.[7] The rate of crime as compiled by these two systems generally differs; because of the biases inherent in each system, neither is entirely correct.[8] Some victims report crimes to the police more readily than to an interviewer, while at other times the reverse is true. Sometimes the type of crime influences whether it becomes a statistic. For instance, some older

". . . crime against the aging should not be an issue of concern for only law enforcement and elderly persons; it is a problem that at some point affects everyone."

Figure 1

Personal Crimes, 1985:
Victimization rates for persons age 12 and over,
by type of crime and age of victims

(Rate per 1,000 population in each age group)

Type of Crime	12-15 (14,189,130)	16-19 (14,529,590)	20-24 (20,219,900)	25-34 (41,409,790)	35-49 (43,609,500)	50-64 (32,982,120)	65 and over (27,156,640)
Crimes of Violence	54.1	67.2	60.2	37.4	19.9	9.9	4.5
Completed	20.0	23.2	20.9	13.1	7.0	3.7	1.6
Attempted	34.1	44.0	39.3	24.3	12.8	6.2	2.9
Rape	0.5[a]	2.3	1.9	1.0	0.3[a]	0.0[a]	0.1[a]
Robbery	9.1	9.5	10.4	6.1	3.2	2.2	1.6
Assault	44.6	55.4	47.9	30.2	16.3	7.7	2.9
Crimes of Theft	108.3	122.1	107.6	82.7	62.9	40.0	18.6
Completed	106.1	117.7	101.2	77.5	59.4	37.5	17.2
Attempts	2.2	4.4	6.4	5.1	3.5	2.5	1.4

[a]Estimate is based on about 10 or fewer sample cases

This chart excerpted from Bureau of Justice Statistics publication, *Criminal Victimization in the United States*, 1985.

people cannot discuss sex easily, much less report a sexual assault to anyone.

To further complicate the statistical picture, some deaths of older people may be ruled natural because of the victim's age, the victim's physical infirmities, and the absence of an obvious crime scene or witnesses, when the person actually may have suffered a crime-related death.

To help clarify the significance of the issue of crime against the elderly, one might ask the following questions:

—What is the quality of life for older people now? What will it be in the future?

—What is the true picture of violent criminal victimization of older people?

—What is the relationship between victimization and fear of crime?

—What impact does violent crime and fear have on the lifestyles of older Americans?

To try to find the answers to these and other questions, the AARP, FBI, and IACP cohosted the Violent Crime Against the Aging Symposium at the FBI Academy in Quantico, VA. Approximately 80 professionals from various disciplines were invited to attend this working symposium, which had the two-fold purpose of:

1) Identifying current issues, programs, literature, and resources relevant to violent crimes against the aging, and
2) Identifying future broad-based initiatives pertaining to the violent victimization of the older person.

The symposium participants were assigned to workshop groups to discuss the following topics as they relate to the elderly—homicide, sexual assault, assault/robbery, crime prevention and voluntarism, victim/witness assistance, and research/training. The first half of the symposium involved plenary sessions with presentations of some of the leading authorities in these particular fields. The second half of the symposium was devoted to workshops on each of the topics.

Overview of Aging and the Impact of Victimization

Ms. Patricia Moore, a noted authority on gerontology and product development for older people, began the plenary session presentations by discussing aging in general and what advancing years can mean to a person in

"The key to minimizing the plight of the elderly may be in changing attitudes and helping people become more comfortable with the idea of aging. . . ."

terms of quality of life and treatment from others. Older people must face many challenges just to exist—their health may be declining; their bodies are certainly changing, making them less agile, less able to see or hear well; they may have to cope with living on severely reduced incomes or finding themselves less employable. But, although a person's outward appearance changes as he or she ages, the inner person is still the same.

American culture equates beauty with a youthful face and a slim, smooth body. Society may make those not fitting the mold to believe they have been cast aside and are worthless. Stereotyping and physical changes combine to form an environment hostile to older people, even absent their vulnerability to crime. The key to minimizing the plight of the elderly may be in changing attitudes and helping people become more comfortable with the idea of aging—a natural, lifelong process.

Ms. Moore was able to relate personally to the everyday life of an elderly woman. Over a 3-year period, she traveled to 116 cities in the United States and Canada disguised as a woman in her eighties. In her assumed role, she experienced both great charity and hideous ridicule. She was offered food, money, and a place to sleep. Taxi drivers often gave her extra change when she paid her fares. Police officers coming on duty in the morning gave her food and coffee as she sat on a stoop where she had slept in her role as a bag lady. She was also spat upon, mugged and beaten by teenagers, shortchanged by shopkeepers, and clubbed for no reason by a female police officer.

Ms. Moore raised the question: Are we creating the environment now that we want for ourselves later? In this visit to her future, she clearly saw the need for a change in attitudes, biases, and cultural stereotypes concerning older people. We need to create services and programs now to facilitate a better future quality of life.

Homicide and the Aging

When NCAVC investigative profilers analyze an unsolved crime to prepare a profile of the unknown offender, they pay close attention to the background and lifestyle of the victim. Special Agent John Douglas, Manager of the Criminal Investigative Analysis Program at the NCAVC, discussed some specific aspects of the victimology of elderly people.

He pointed out that older people often depend on hiring the services of others for chores around their property or for errands. Older people also tend to keep money in their residence to make it easily accessible to them in their limited mobility. Therefore, a potential criminal can provide a needed service to the older person, gain access to the residence to be paid, and observe the location of money or other valuables.

Elderly people, like children, may attract criminal predators because they are perceived to be helpless, hopeless, and very vulnerable. Their vulnerability allows their victimizers to easily manipulate, dominate, and control them. Add to this the fact that they may be in declining health, living alone, already isolated from others who could be witnesses, and have a tendency to keep money in their residences, and they become high-risk victims.

Of the 18,976 homicides committed in the United States in 1985, about 12 percent involved victims 55 years of age and older.[9] SA Douglas acknowledged that any criminal may attack an older person, but based on his experience with cases submitted to the NCAVC, he sees the typical offender as a young (late teens, early twenties) male who has achieved only a low level of education and is unemployed. His crimes generally are intraracial and motivated by the desire for money and the urge to "put the hurt" on someone. Many times, there is more than one offender. One may assault the victim, while the other moves around the house looking for valuables. The young man usually has a criminal history, to include other burglaries in the neighborhood and perhaps even arson. The offender generally is from the same neighborhood as his victim and lives with a dominant female figure. This dominant female figure often may provide the impetus for the assault on the victim. Instead of striking out at the person he believes causes his problems, the youth substitutes another victim. The typical offender often leaves a great deal of physical evidence at the scene of the crime, which often appears disorganized and sloppy. The disorganization may be due to the youthfulness of the offender or to the influence of drugs or alcohol.

The key to preventing violent crime against an older person is education.

The three main sources of education for the elderly are their families, civic or social associations, and religious organizations. Vital information regarding prevention of any crime can be channeled to the older American through these sources. The organizations can develop formal programs for distributing information or for assisting the elderly; families can devise procedures for safety checks and preventive measures, such as security devices.

Sexual Assault and the Aging

Special Agent Robert R. Hazelwood, the NCAVC's Training Program Manager, addressed the plenary session on the topic of sexual assault. SA Hazelwood expressed a special concern for elderly victims of this crime, as they are usually helpless to defend themselves. Like other sexual assault victims, aging people will experience degradation, humiliation, embarrassment, anger, and guilt as a result of the attack. They may also withdraw into isolation, either from these emotions or from fear, which is uppermost in their minds. All this occurs at a time in their lives when they should be honored and respected by younger members of society.

What kind of assailant sexually preys on the aging? Some offenders are psychosexually attracted to the older person. These are males, generally 18-25 years old, who are sexually and emotionally drawn to the older person. Why this is so is unknown. Further research needs to be conducted in this area. Other offenders may set out to commit burglary or robbery, discover an older person on the premises, and take advantage of this "opportunity" to commit a sexual assault. The one assault may not be enough for the criminal, so he goes on to attack other vulnerable victims.

Of course, the ideal solution to the sexual assault problem would be to prevent the crime altogether. Many crime prevention measures are relevant in thwarting would-be assailants. These include actions that may preclude confrontation with a potential attacker—installing deadbolt locks and *using* them, pinning windows, lighting the exterior of the home, traveling in groups, and keeping oneself alert and aware of the surroundings. SA Hazelwood emphasized, however, that no advice can be given as to what a victim should do if actually confronted by an assailant in a sexual assault situation unless the environment of the assault, victim's personality, and type of rapist are known. Naturally, advice given to a woman approached in a crowded shopping mall at 3:00 p.m. would differ considerably from advice given to a woman approached on a deserted road late at night. Each person is unique; the rapist, as well as the victim. No one can predict how an unknown assailant will react in an unknown environment with an unnamed victim.

Law enforcement officers should be especially sensitive in dealing with aging victims of sexual assault, as those individuals sometimes find the whole issue of sex extremely disconcerting. They were brought up in an era when sexuality was not openly discussed. SA Hazelwood described a case involving an 81-year-old victim who refused to discuss the details of her assault with the police because of her embarrassment and shame. Investigating officers provided her with a copy of an article which explained the necessity of obtaining the information they were seeking and how her answers could help them identify and apprehend her assailant.[10] The victim read the article, and when the officers returned a few days later, she not only provided them with the needed information but insisted on keeping the article so she could share the information with her friends in her senior citizens group.

Older people need to be educated about the potential for sexual assault, the necessity for the criminal investigation, and the criminal justice system in general. They need to better understand what will transpire when they report a crime, particularly a sexual assault. Perhaps then they will not be so reluctant to report victimization. Law enforcement officers assume that older people are more hesitant than younger victims to report an assault. This needs to be documented through research. SA Hazelwood shared his hypotheses as to why an older person might be reluctant to report a sexual assault.

1) The victim believes that sex is not a topic to discuss with others.
2) The victim fears she may lose her independence; her family may force her to move in with them or to a nursing home as a safety measure.
3) The victim fears her reputation may be damaged.

"Education can create an awareness that often will prevent victimization."

4) The victim is afraid the offender may seek revenge.
5) The victim is afraid the police will not believe her. Some police officers still believe sexual assaults serve sexual needs and can't understand why an older person would be the target of a youthful offender's sexual urges.

Fear is the overriding emotion experienced by victims of sexual assault. This fear is multiplied and reinforced daily for most aging sexual assault victims, since the crime generally occurs at their residence. The offender has invaded their "safe" domain, which constantly reminds the victims of their vulnerability.

Much research is needed in the area of sexual assault of the older person. Right now, however, aging citizens and law enforcement officers must learn how to respond to the needs of the other in their common goal of bringing this violence to an end.

Assault/Robbery

Sgt. Mike Gerhold from New York City Police Department's Manhattan South Senior Citizens Unit (SCU) discussed the SCU's experiences investigating robberies and assaults of older victims. The SCU was set up in 1974 in the Bronx to investigate particularly vicious crimes of assault and robbery against the elderly. These crimes were not disproportionately numerous, but the fear created by the media accounts of the crimes had effectively paralyzed senior citizens. One of the unit's first major successes was to break up a two-man holdup team that was responsible for well over 100 robberies. In several instances, the two men attempted to bite off the fingers of their victims to get the gold wedding bands. One was arrested and the second was shot as he escaped a stakeout; he subsequently fled to a South American country.

Because of the unit's success, the police department implemented the concept citywide. By January 1, 1977, each command in the city had such a unit. The SCU still focuses on investigating robberies involving older victims. The key to success in robbery cases is the initial contact with the victim. The police officer must create a bond of trust and cooperation with the victim at that time. One unique function of the SCU is ensuring the victim always has a "companion" while involved in any part of the criminal justice procedure. The SCU provides transportation for the victim in case-related travel, and an investigator remains with the victim in court during the court process. The unit has close ties to the prosecutor's office. A competent, sympathetic, and sensitive assistant prosecutor tries cases exclusively involving older people. Through a telephone alert system, the victim/witness is notified when to appear in court and thus is saved unnecessary trips.

When older people are victimized, they tend to isolate themselves even further from society. Most can't afford to move and don't want to leave the familiarity of their neighborhood. Their reluctance to move can make them more vulnerable to attack by predators in their area. The offenders can continue to intimidate the victims after the assault or robbery. To combat the natural withdrawal of the older person after victimization, the SCU gets the victim involved in senior citizen groups wherever possible.

Another very important function of the Senior Citizen Unit is to educate the elderly to reduce their attractiveness as crime victims. Education can create an awareness that often will prevent victimization. The unit distributes a SCAM newsletter (Senior Citizen Alert Message) and conducts education/awareness programs for groups of older people in an effort to reduce their vulnerability. The programs stress the "do's and don't" of crime prevention and the need to report crimes to the police. Instructors caution the audience against displaying their money, or if approached, resisting the assailant. Older people are especially vulnerable to broken bones and even slight resistance might result in serious injuries. They also are advised to look closely at and listen carefully to any assailant to increase their chances of identifying the assailant later.

A community organization called the Education Alliance works closely with Manhattan South's Senior Citizens Unit in programs involving older citizens. The Education Alliance presents information on con games and crime prevention and takes the participants to area schools to visit and interact with young people. The alliance also sponsors a program that familiarizes the participants with the criminal justice system and procedures to follow should they become a victim of a robbery or an assault. The participants visit the po-

lice station, view mock lineups, look at mug shots, and see a trial in progress. The alliance encourages the participants to help monitor cases involving older victims.

The New York City Department of the Aging and the Red Cross assist victims of crimes by providing funds, medical care, hardware installation, meals on wheels, victims advocates, and victim compensation.

As all these agencies and organizations stress, the crucial element leading to successful resolution of victimization of older citizens is reporting the crime to the police. Three major benefits result from reporting crimes. First, it allows for the allocation of manpower to address critical areas. Second, it is crucial in pattern development and leads to quicker response and apprehension by investigators. Each report is like a piece of a jigsaw puzzle. As the picture becomes clearer, the crime series becomes easier to solve. By reporting the offense, the citizen may not only help the police identify that particular offender but also help them establish patterns and trends of the crimes and prevent further victimization. And third, when the senior citizen reports a victimization, the investigator has an opportunity, through observation and interview, to assess the needs of the victim and make proper referrals.

Crime Prevention and Voluntarism

George B. Sunderland, Manager of Criminal Justice Services, American Association of Retired Persons, spoke of how society is now in the third decade of the longest crime wave in the history of the United States. Whole generations have experienced nothing but life in unsafe cities. For instance, from 1960-1970, the population increased about 13 percent, but reported robberies increased 224 percent, reported purse snatchings 332 percent, reported larcenies 245 percent, and reported residential burglaries 337 percent.

The older American does suffer a great deal by vicarious victimization. The publicity of a few crimes can create enough fear to paralyze the community. Many researchers today say no crime against the aging problem exists because the numbers are low. However, Mr. Sunderland pointed out that if all senior citizens were put in a vault where they are not at risk and couldn't be victimized, a problem would still exist. These people have been isolated, and their quality of life has eroded. This aspect of the problem must be considered to get the true picture of the situation.

Mr. Sunderland also illustrated how, in recent years, people in the community haven't taken responsibility for crime management. In fact, the Ad Council conducted a national poll, and the following are some of the results:

—Most people believe crime is inevitable.

—Most people believe nothing can be done about crime.

—Most people believe crime is a police problem.

—Most people believe crime is not "their" problem.

These are all myths—myths and an attitude problem. Real crime management must be in the form of the sanctions that are imposed by religion, school, family, and community. These institutions seem to be failing in this regard, and rehabilitation programs in prisons or penitentiaries are not working. The only alternative left seems to be crime prevention.

When AARP took a look at the crime against the aging problem to see how its members could help solve it, they discovered that the most frequent crimes being committed against the elderly were crimes of opportunity. If the opportunity were reduced, the criminal activity should likewise decrease. Good neighborhood watch programs can reduce crime by involving the community in its own safety and well being. These programs also depend on volunteers. Retired Americans volunteer their expertise in developing, implementing, and maintaining programs that could not otherwise exist. Their wisdom and experience are invaluable. Surveys conducted by law enforcement and by the volunteers show that:

1) The trend is growing to use volunteers in support roles, and the use of volunteers will be institutionalized by the year 2000.
2) There are 44 separate support functions inside the law enforcement agency that older volunteers can provide.
3) Supervisors perceive older volunteers to be dependable and responsible.
4) Neither sex nor age is a barrier to an older volunteer in law enforcement.

". . . aging citizens and law enforcement officers must learn how to respond to the needs of the other in their common goal of bringing this violence to an end."

5) Socio-economic status has no bearing on a person's willingness to volunteer—people simply volunteer in different ways for different tasks.

The National Institute of Justice (NIJ) seeks to spread the message that all law-abiding Americans must help make the criminal justice system work. To do this, they must "Report—Identify—Testify." NIJ has been using public service television broadcasts to help get the word out, to educate people as to their role in the system. Many people don't know how to report crime, don't know what to do when they see a crime in progress, or don't show up in court because they are confused about their role.

Victim/Witness Assistance

Former Assistant Attorney General Lois Haight Herrington spoke to the symposium attendees about the President's Task Force on Victims of Crime and the Attorney General's Task Force on Family Violence. She highlighted the activities of the Department of Justice's Office of Victims of Crime and Office of Justice Programs (OJP).

Both task forces found that nowhere is society's *response* to crime more apparent than in the aging. The Attorney General's task force found widespread fear of crime among the aging—much stronger than the fear of it in the general population. Research by the Office of Justice Programs, National Institute of Justice, confirms this fact. This great fear may be apparent in the aging because they are acutely aware of their vulnerability and of the devastating impact even a "minor" crime can have on their lives.

One of the terrible ironies is that on top of the cruel burden inflicted by the criminal act itself, the older victim often is the most poorly treated client of the criminal justice system. Time after time both task forces heard the evidence that all victims of crime are victimized twice—by the criminal and by the criminal justice system. But if the victims happen to be a senior citizens, they could be afflicted by any of the infirmities of the aging process—their speech and walk are a little bit slower, their motor reflexes are not quite as quick as somebody of a younger age. They are often treated by the criminal justice system with the same insensitivity that abounds elsewhere in our society. Police, judges, and lawyers may discount the older citizens as witnesses, failing to distinguish between mental capacity and physical infirmity, and remaining coldly oblivious to the steps they might take to ease the hardship on the aging victim.

The result of this treatment is often alienation—to the extent that more than one-half of violent crimes in the United States are not reported, according to the 1985 BJS data.

The Office of Justice Programs has been given the responsibility to implement to the fullest extent possible the recommendations of both the President's Task Force on Victims of Crime and the Attorney General's Task Force on Family Violence. "Four Years Later" is a report discussing what has happened since the President's task force presented its report with 68 recommendations for the criminal justice system, mental health professionals, and others who deal with victims of crime. When "Four Years Later" was published, approximately 75 percent of the recommendations had been addressed.

The Office of Justice Programs works closely with several national criminal justice professional organizations to develop and deliver training to police officers, judges, prosecutors, defense attorneys, and hospitals, training to help people handle victims of violent crime. OJP also has provided support to the Crime Victims Advisory Committee of the American Bar Association, the Center for Women Policy Studies, and the Criminal Justice Section of the National Association of Attorneys General, who developed 10 model laws for States to use to protect the interests of victims of crime. These model statutes cover all crime victims, but implementation will particularly help senior citizens. Ms. Herrington briefly discussed 7 of the 10 statutes:

Privileged Victim/Counselor *Communications:* This provides that any records of counseling session discussions between the victim and a counselor are privileged information and cannot be seized by defense attorneys.

Victim Impact Statements: The victim can make the court aware of the consequences of the crime on the victim and the victim's family before the court passes sentence.

Parole: Legislation should be proposed and enacted to abolish parole and limit judicial discretion in sentencing. Where parole boards do exist, parole hearings should be open to the

public, and the victim should have an opportunity to testify.

Hearsay at Preliminary Hearings: This model statute provides that no victim must appear at the preliminary hearing unless his or her testimony may lead to a finding that no probable cause for prosecution exists. The courts should allow the investigator to tell the victim's story.

Victim Privacy: Addresses and phone numbers of victims and witnesses should not be made public or available to the defense. It has been the practice to allow the defense this information, thus exposing the victim to the possibility of harassment or intimidation.

Bail Reform: The task forces found that in 50 percent of the United States, the criterion for setting bail was whether the criminal would return for court proceedings, not whether the criminal was dangerous to society. This model statute says that courts should be able to deny bail to persons found by clear and convincing evidence to present a danger to the community.

Sentencing Reform: This model statute proposed guidelines for sentencing so offenders would be receiving the same sentence for the same crime throughout the United States.

Ms. Herrington emphasized that all the many programs are striving to restore balance in the criminal justice system and to treat all the innocent victims, including the aging, with the respect and compassion they so need and deserve. The Justice Department is trying to help make the communities safer and less frightening places for everyone to live. The department will continue to do everything possible to represent the interests of the aging victims of crime and to encourage in every way the implementation of the kinds of measures that will provide for the victims of crime what it seeks for all—justice.

Conclusion

The plenary session speakers highlighted issues in the areas of homicide, sexual assault, assault/robbery, crime prevention and voluntarism, and victim/witness assistance. Most of the speakers also mentioned research and training currently in progress or areas that needed improvement or exploration. The symposium participants were divided into six workshop groups to discuss the topics mentioned above.

The 80 professionals invited to attend the Violent Crime Against the Aging Symposium were all familiar with some aspect of the crime against the aging problem. These knowledgeable, dedicted individuals were challenged to take their collective expertise, add the new insights they had gained from the plenary session presentations, be creative in making suggestions on how to fight crime against the aging, and produce innovative ideas to help society triumph over the evil of violent crime against the aging.

Results of workshop deliberations will be the subject of a future article.

FBI

Footnotes:

[1]William H. Webster, "Director's Message," *FBI Law Enforcement Bulletin*, December 1986, p. 1.

[2]U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970, Bicentennial Edition, Part 2*, Washington, DC, 1975, p. 10.

[3]U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 952, *Projections of the Population of the United States by Age, Sex, and Race: 1983 to 2080* (Washington, DC: U.S. Government Printing Office, 1984), p. 8.

[4]Ibid.

[5]Bureau of Justice Statistics, *Criminal Victimization in the United States, 1985*, Washington, DC, 1987, p. 3.

[6]Ibid. , pp. 2-6.

[7]Ibid., p. iii.

[8]James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature* (New York: Simon & Schuster, 1985), p. 34.

[9]Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States, 1985* (Washington, DC: U.S. Government Printing Office, 1986), pp. 7-9.

[10]The article referred to is "Behavior-oriented Interview of Rape Victims: The Key to Profiling," by Robert R. Hazelwood, *FBI Law Enforcement Bulletin*, September 1983, p. 8.

Police Use of Deadly Force to Arrest

A Constitutional Standard

(Conclusion)

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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.

Part I of this article traced the American law governing the use of deadly force by police from its English Common Law origin to the recent Federal constitutional standard established by the Supreme Court in *Tennessee* v. *Garner*.[35] Part II will focus more precisely on the substance and scope of the new standard — as defined by the Supreme Court and relevant lower court decisions — and its practical implications for law enforcement officers and agencies.

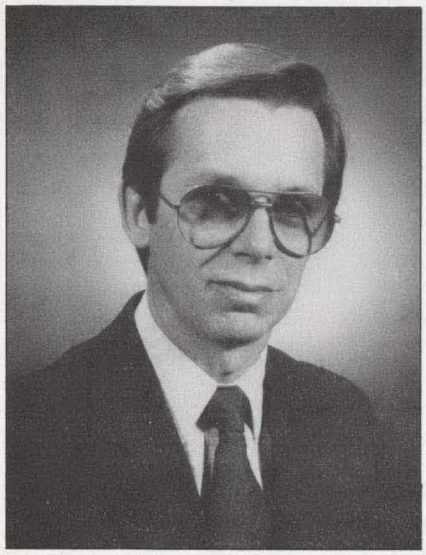
APPLYING THE CONSTITUTIONAL STANDARD

In *Tennessee* v. *Garner*, the Supreme Court ruled that the use of deadly force by police to apprehend a person is a "seizure," subject to the reasonableness standard of the fourth amendment. Moreover, the Court held that it is constitutionally unreasonable to use such force "unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." [36]

As a prerequisite to understanding *when* the use of deadly force is constitutionally permissible, it is necessary to understand *what* is meant by the expression "deadly force." Although the Court did not define the term anywhere in the *Garner* opinion, a workable definition — and one which seems consistent with the *Garner* case — is found in the Model Penal Code, which defines deadly force as "force that the actor uses with the purpose of causing or that he knows to create a substantial risk of causing death or serious bodily harm." [37]

Perhaps the clearest illustration of deadly force is found in the *Garner* case itself, where a fleeing burglary suspect was shot to death. However, does it still constitute the *use* of deadly force if the suspect is only wounded?

Lower courts have generally followed the Model Penal Code definition and construed police action as use of



Special Agent Hall

deadly force even though the suspect is only injured, if the police used force that was either intended, or likely, to cause death or serious injury. A case in point is *Pruitt* v. *The City of Montgomery*,[38] in which an 18-year-old burglary suspect was shot by an officer who testified that he did not intend to kill him. The suspect did not die, but suffered permanent injury to one of his legs. The City of Montgomery contended that the shooting did not, as a matter of law, constitute the *use* of deadly force because the officer shot only to stop the suspect, not to kill him. The court, applying the Model Penal Code definition, noted that the city "does not argue, nor could it, that 'deadly force' occurs only when the victim actually dies. . . . [The officer], at the least, purposely fired his shots at Pruitt's legs, and in doing so used force capable of causing serious physical injury. We find such action a 'use of deadly force' in the constitutional sense, concluding that such finding is consistent with *Garner*." [39]

Notwithstanding the relatively broad language used by the Supreme Court in *Garner*, and by the appellate court in *Pruitt*, it is clear that every *use* of potentially deadly force does not fall within the *Garner* standard. The *Garner* dissent expressed concern on this point, suggesting that the majority opinion "unnecessarily implies that the Fourth Amendment constrains the use of any police practice that is potentially lethal, no matter how remote the risk." As the Model Penal Code definition suggests, the risk of death or serious injury must be substantial.

Furthermore, the use of force must lead to a seizure of the person, because "[a]bsent apprehension of the suspect, there is no 'seizure' for Fourth Amendment purposes." [40] This view has been adopted by lower courts which have held, for example, that the firing of warning shots is not, standing alone, a *use* of deadly force, inasmuch as no seizure has occured.[41]

If the suspect is neither killed, injured, nor seized, it would strain the meaning of the fourth amendment to suggest that he was a victim of unconstitutional deadly force. Otherwise, a criminal suspect who is successful in his flight could conceivably sue the police for using potentially deadly force in their futile efforts to apprehend him.

The "Seizure" Requirement

The *Garner* case is not intended to — and indeed it does not — provide a general constitutional standard to govern the use of force in all contexts. By basing its holding on the fourth amendment, the Court explicitly limited its holding to "seizures" of persons. Thus, *Garner* is distinguishable from those cases where courts have found that the use of excessive force by police "shocks the conscience" of the court in violation of the Due Process Clause of the 5th and 14th amendments[42] or constitutes "cruel and unusual punishment" against prisoners in violation of the 8th amendment.[43] *Garner* addresses only those situations where an officer's use of force "restrains the freedom of a person to walk away."

As the Supreme Court clearly held in *Garner*, it is a "seizure" of a person when police shoot him dead. However, every attempt to apprehend a suspect which results in his death does not necessarily constitute a "seizure." An interesting case in point is *Cameron* v.

"Lower courts have . . . construed police action as use of deadly force even though the suspect is only injured, if the police used force that was either intended, or likely, to cause death or serious injury."

City of Pontiac.[44] Two police officers were dispatched to investigate a possible burglary. They were met at the scene by an elderly woman who ran from a house shouting "they broke in" and "they're trying to kill me." The officers ran to the back of the house where they saw two suspects run from the residence. The officers identified themselves and ordered the two men to halt. When the suspects ignored the command to halt, the officers each fired two shots in their direction, with the apparent intent to hit them. One of the suspects immediately stopped and surrendered, but the other, Cameron, continued to flee. Three more shots were fired in his direction as the pursuit continued. Eventually, when his escape was cut off by officers approaching from the opposite direction, Cameron scaled a fence and ran onto an expressway where he was struck and killed by a motor vehicle. A lawsuit was filed in Federal court by Cameron's mother against the officers and the City of Pontiac, alleging unjustifiable use of deadly force in attempting to apprehend her son. The suit was dismissed by the district court, and that decision was affirmed by the appellate court which concluded that Cameron was not seized within the meaning of the fourth amendment. The court stated:

> "The officers' show of authority by firing their weapons, while designed to apprehend Cameron, did not stop or in any way restrain him . . .. Cameron's freedom of movement was restrained only because he killed himself by electing to run onto a heavily traveled, high speed freeway." [45]

The appellate court then cited, at some length, the language of the district court, which is worth repeating:

> ". . . the manner in which [Cameron] met his death was completely independent of the application of deadly force by [the officers]; the moving vehicle by which Cameron was struck was a distinct, unrelated, unexpected, superseding, but effective medium. . . . It would be unfair, and possibly absurd, to permit a fleeing felon, uninjured by a pursuing police officer, to benefit from his unwise choice of an escape route." [46]

A somewhat different fact situation, but with a similar result, arose in *Galas* v. *McKee*.[47] In that case, a 13-year-old boy, who had taken his father's car without permission, was observed by Nashville police officers driving at estimated speeds of 65-70 miles per hour. Using lights and sirens, the officers gave chase. The pursuit, which reached speeds of 100 miles per hour at one point, ended when the young driver lost control and wrecked his car, sustaining serious and permanent injuries. A lawsuit was filed by the boy's parents against the officers and the city, alleging violations of the 4th, 8th, and 14th amendments. The district court dismissed the suit, holding that the suit did not constitute a seizure and that the conduct of the police did not involve the use of deadly force. The appellate court sustained the dismissal, holding that "the reasonableness of a seizure or method of seizure cannot be challenged under the Fourth Amendment unless there was a completed seizure (that is, a restraint on the individual's freedom to leave), accomplished by means of physical force or show of authority. . . . [The Court observed that] when plaintiff crashed he was tragically not free to walk away. This restraint on plaintiff's freedom to leave, however, was not accomplished by the show of authority but occurred as a result of plaintiff's decision to disregard it." [48]

A seizure may occur when police use a roadblock to halt a fleeing suspect. In *Stanulonis* v. *Marzec*,[49] the court declined to dismiss a lawsuit against one of three police officers who had been engaged in an attempt to stop a speeding motorist. That one officer allegedly parked his vehicle across the road to establish a roadblock, resulting in a collision and severe injuries to the motorcyclist. In declining to dismiss the suit against the one officer, the court held that if proven to be true, the officer's movement of the car to the center of the road when the plaintiff was so close as to create an immediate risk of a collision and significant injury could constitute "unreasonable force in an attempt to apprehend plaintiff." [50] It must be emphasized that the court did not hold that the officer had, in fact, used unreasonable force; only that the facts were sufficiently in dispute to preclude dismissal.

The *Stanulonis* case should not be read to mean that a roadblock is, per se, a fourth amendment seizure. In *Brower* v. *Inyo County*,[51] a roadblock was established to stop a suspected auto thief who was leading the police on a high-speed chase. The roadblock in this case, however, apparently gave the suspect sufficient opportunity to see it and stop. He failed to do so and was killed in the resulting crash. In the en-

suing lawsuit against the police, the appellate court held that no seizure of Bower by the police had occurred. The court explained:

> "Although Brower was stopped in the literal sense by his impact with the roadblock, he was not 'seized' by the police in the constitutional sense. Prior to his failure to stop voluntarily, his freedom of movement was never arrested or restrained. He had a number of opportunities to stop his automobile prior to the impact." [52]

These cases provide ample illustration of the importance of the "seizure" requirement in the *Garner* decision. They also give some meaning to that term as it is to be applied in the deadly force context. If there is no seizure, the fourth amendment does not apply. If there is a seizure, it must be reasonable.

The "Reasonableness" Requirement

Having described in *Garner* when deadly force is unreasonable under the Constitution — i.e., to prevent the escape of nondangerous suspects — the Supreme Court then provided some indications as to when the use of such force would be reasonable:

> "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." [53]

Clearly, the *Garner* decision does not establish a blanket prohibition against the use of deadly force to prevent escape. Rather, the decision requires that the justification for the use of such force be based upon the facts and circumstances which reasonably suggest to an officer that a person may be dangerous, instead of the mere categorization of the suspect as a felon. Furthermore, the Court offered some guidance in assessing those fact situations that would justify an officer's belief that a suspect is dangerous:

> ". . . if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given." [54]

Three elements may be gleaned from this statement:

1) The suspect threatens the officer with a weapon; or
2) The officer has probable cause to believe that the suspect has committed a crime involving infliction or threatened infliction of serious physical harm; and
3) The officer has given some warning, if feasible.

The first two elements are disjunctive, meaning that either of the two would satisfy the first part of the standard — i.e., reason to believe the suspect is dangerous. On the other hand, the third is conjunctive and would apply to the other two.

Each of these elements will now be examined in an effort to determine their meaning and importance in an officer's decision to use deadly force.

Threats With A Weapon

In *Garner*, the Supreme Court obviously attached great significance to a suspect threatening an officer or other person with a weapon. Without question, an officer can use deadly force in the immediate defense of his life or the lives of others. However, the Court also makes it clear that such action by a suspect can justify the use of deadly force *to prevent his escape*, since that individual presents an obvious danger to the community.

A case which illustrates this point is *Crawford* v. *Edmonson*.[55] Edmonson, a police officer, shot and killed two fleeing robbery suspects — brothers, 18 and 17 years old, respectively — when they declined to heed commands to "halt" and disregarded a warning shot. One of the suspects was visibly carrying a gun, and when he turned in the direction of a second officer, Edmonson fired at him twice with his shotgun. The pellets struck both suspects, mortally wounding them. A lawsuit, filed by the suspects' mother against the officers and city, resulted in a verdict for the defendants. The plaintiff filed a motion for a new trial, and when denied, she appealed the denial of her motion.

Affirming the ruling of the lower court, the appellate court discussed the factors that justified the shooting and supported the jury's verdict. First, the suspects had just committed a robbery, and the officers observed that at least one of them was armed; second, the officers yelled "halt" several times before firing any shots; third, a warning shot was fired which the suspects ignored; fourth, the officer who fired the

". . . the justification for the use of [deadly] force [must] be based upon the facts and circumstances which reasonably suggest to an officer that a person may be dangerous. . . ."

fatal shots testified that he was concerned for the safety of his brother officer toward whom the armed suspect was turning, as well as for the safety of some nearby youths who had gathered to watch the excitement.

An ironic twist to the case is that Edmonson was firing at the suspect who was known to be armed, but he struck the second, unarmed, suspect as well. The court reasoned that the unarmed suspect was not an innocent bystander, but rather a person who had just participated in an armed robbery. Although the fact "does not mean that Edmonson was entitled to disregard the possibility that [he] would be injured by the shots intended for [his brother], it does differentiate this case somewhat from the situation that would have been present if Edmonson's conduct had endangered the life of a completely innocent passerby." [56] In conclusion, the court noted that there was sufficient evidence that Edmonson did what a reasonably careful person would have done under the circumstances.

The court's reasoning is similar to that of the trial court in *Amato* v. *United States*,[57] a case where one bank robbery suspect sued the government for wounds received from FBI Agents in a shootout that was triggered by the second suspect's firing the first shot. The court likened the first shot to "the splitting of the atom," because within the next 33 seconds, 11 Agents fired their weapons 39 times, unleashing some 281 bullets and shotgun pellets that killed 1 suspect, wounded Amato 65 times, and put 141 holes in their automobile. Amato, hereinafter referred to as "plaintiff," alleged that he did not fire his weapon and was, in fact, endeavoring to surrender. The court observed:

> ". . . one acting in concert with others may have forfeited his right to effectuate such a surrender. . . . If [one's co-conspirator] has used deadly force against police officers, and they reasonably fear that he will continue to do so, the one inclined to surrender may be unable to dissolve his association where his partner, in close proximity, appears to have plans to carry on the battle. Having determined to enter into an illegal enterprise, the plaintiff may have deprived himself of the right and ability to disassociate himself from the venture under such circumstances. In other words, if the FBI had the right to fire at Mr. Vuono [Amato's partner], plaintiff cannot complain that he was hit because he was nearby, despite his unilateral desire to surrender." [58]

The justification for using deadly force under the prong of the *Garner* decision is not immediate self-defense, but preventing the escape of a person who has demonstrated his dangerous character by threatening the officer or others with a weapon. The distinction may sometimes be fine, but it is nevertheless important as the following case illustrates.

In *O'Neal* v. *DeKalb County*,[59] police officers shot and killed a hospital patient (O'Neal) who had just stabbed six people. The family of the patient sued the officers, their superiors, and the county government, alleging violations of numerous constitutional provisions, including the fourth amendment. Plaintiffs contended, *inter alia*, that O'Neil was not attacking the officers but only trying to get away at the time he was shot. The court did not attempt to resolve the factual dispute, but held that even if O'Neal's intent was to escape, rather than injuring the officers, the use of deadly force to stop him under the circumstances was not unconstitutional. The court noted that it was undisputed that "O'Neal stabbed several people before the police arrived, that the police ordered O'Neal to stop, surrender, and drop the knife thereby giving him several warnings, and that O'Neal moved quickly toward the defendant [officer] with a knife raised. . . ."[60]

These cases illustrate to some degree how the first element of the *Garner* standard has been interpreted by the courts. If a suspect "threatens the officer with a weapon . . . deadly force may be used if necessary to prevent escape. . . ."

It should be recalled that in *Garner*, the officer testified that he did not believe that Garner was armed, a point to which the Court obviously attached significance and noted that "the armed burglar would present a different situation. . . ." [61]

The logical inference to be drawn from the Court's reasoning is that a statistically nonviolent crime does not suggest that its perpetrator is dangerous, but additional factors — such as the presence of a weapon — can support the opposite conclusion.

In *Ryder* v. *City of Topeka*,[62] for example, the court upheld an officer's use of deadly force against a suspect fleeing from an arguably nondangerous crime. Police received a tip that a robbery was going to occur at a particular restaurant. The tip came from an employee of the restaurant who had been

involved in the original plan, but now wanted to back out. Although the robbery was planned as a consensual one — with the employee as the "insider" — the police were told that the suspects would be armed with knives and guns. On the appointed night, the officers staked out the restaurant and waited for the arrival of the "robbers," which was planned for 11:30 p.m. The evening's events were complicated by two members of the original group who decided to go into business for themselves and rob the restaurant before the main group arrived. After they were arrested and taken away, the officers settled back to await the arrival of the main group. At approximately 11:20 p.m., the employee-tipster received a telephone call announcing that the main group was on the way, and at 11:30, three people arrived. Two suspects went inside the restaurant and came out a short time later. The police then emerged from their places of concealment and attempted to place the three suspects under arrest. Notwithstanding commands to "halt," the three ran. Ryder, one of the three, was pursued by an officer who first fired a warning shot, and when that failed, fired a second round which brought the suspect's flight to a halt. The suspect was a 14-year-old girl, now a quadreplegic as a result of her wounds. A lawsuit was filed alleging, *inter alia*, unreasonable force in violation of the fourth amendment. A jury returned a verdict in favor of the officer who fired the shot and the municipality, and the planitiff appealed the trial court's denial of her motion for a new trial.

The appeals court began its analysis of the *Garner* issue by noting that there are basically two situations that would justify an officer's belief that a fleeing suspect poses a threat of serious physical harm:

> "(1) where the suspect has placed the officer in a dangerous, life threatening situation; or
>
> (2) where the suspect is fleeing from the commission of an inherently violent crime." [63]

The court explained that the first situation does not require that a suspect actually be armed, only that the officer have a reasonable belief that it is so. With respect to the second, the court explained:

> "This latter situation does not require that the officer's life actually be threatened by the suspect. Rather, the officer is allowed to infer that the suspect is inherently dangerous by the violent nature of the crime." [64]

Applying these principles to the specific facts of the case, the court held that the officer was aware of the "nonviolent, consensual nature of the crime" and could not suppose therefore that the offense was one which involved the "infliction or threatened infliction" of serious bodily harm. However, the court reasoned, even if the crime is not inherently dangerous so as to automatically justify the officer's use of deadly force in apprehending the suspect, there may nonetheless be other facts that would provide the officer with probable cause to believe that a fleeing suspect presents a danger to himself or the community. For example, the officers had previous information that the suspects would be armed with knives and guns, thus the officer could have reasonably believed that the suspect he was pursuing was both armed and prone to violence. Moreover, at the time the shot was fired which struck Ryder, she had her hands in her pockets and was about to run around a building into a darkened residential area. Deferring to the jury's verdict, the court concluded that it was reasonable to infer that "an ambush situation was created in which [the officer's] life was in danger." [65]

Probable Cause — Nature of Offense

The second element in the *Garner* decision that will justify the use of deadly force by the police to prevent escape of a suspect is when ". . . there is probable cause to believe that he [the suspect] has committed a crime involving the infliction or threatened infliction of serious physical harm. . . ." [66] In *Garner*, the Court used this precise language to explain the meaning of its ruling that "where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." [67] Thus, probable cause to believe that the suspect has committed a crime in which he inflicted or threatened infliction of serious physical injury logically supports the inference that the suspect poses a serious threat to the officers or others. This is generally the way in which the lower courts have been applying this standard.

The Supreme Court provided the first example of the application of the new standard when they held in *Garner* that probable cause to believe that a

"The authority to use deadly force within the constitutional framework is not a luxury . . . it is a responsibility."

person has committed a burglary does not provide the requisite probable cause to believe that the suspect poses a serious threat. Relying primarily on law enforcement classification of burglary as a "property" rather than a "violent" crime, the Court rejected the notion that it is so inherently dangerous as to justify automatically the use of deadly force against a suspect attempting to evade arrest.

A case in which the nature of the offense provided the justification for using deadly force to prevent escape is *Hill* v. *Jenkins*.[68] An off-duty police officer proceeded to a food store in response to a radio dispatch that a burglar alarm was sounding. Upon arrival at the scene, the officer heard a gunshot and saw three men, including Hill, coming from the store. At the time, Hill was apparently armed with two, perhaps three, handguns. Upon seeing a marked police car arriving, the three suspects fled and the officers gave chase. Hill was shot and captured, whereupon he filed suit against the police officers involved in his apprehension and the municipality alleging violation of his fourth amendment rights. After a recitation of the facts, the court granted summary judgment in favor of the defendant officers and city.[69]

In reaching this conclusion, the court noted that the facts were in dispute as to whether Hill ever actually threatened the officer with a gun — thus precluding summary judgment on the first element of the *Garner* standard — but held that the officer had probable cause to believe Hill had committed a crime involving the threat or infliction of serious bodily harm — the second element of the *Garner* standard. The following factors were cited by the court as supplying the necessary probable cause:

1) The radio dispatch announcing the robbery;

2) Upon arrival at the store, the officer heard a shot; and

3) The officer saw a gun in Hill's hand as he ran from the store.

In the opinion of the court, these facts were sufficient to provide Officer Jenkins with probable cause to believe that Hill had committed a crime involving the threat or infliction of serious bodily harm.

In *Ford* v. *Childers*,[70] the court upheld an officer's use of deadly force to apprehend a suspect even though the officer did not see a weapon. Officer Childers responded to a radio dispatch of a bank robbery in progress. Upon arrival at the bank, the officer was able to view the suspect (Ford) through a side window and observe that he was wearing a stocking mask and threatening the bank employees. Although the officer was unable to see a weapon in the suspect's outstretched hand because of an obstruction to his view, he did see several individuals inside the bank holding their hands above their heads. When the suspect left the bank, the officer yelled "Halt, police" at least twice, but Ford did not respond. The officer then fired two shots, striking and wounding Ford who was taken into custody without further resistance. The mask, gun, and money were found nearby.

Ford's resulting lawsuit, filed against the officer, the chief of police, and the city, alleged an unreasonable seizure in violation of the fourth amendment. In affirming a directed verdict in favor of the defendants, the court held that although Ford posed no immediate threat to Officer Childers, the facts supported a reasonable belief that Ford had committed a crime involving the threatened infliction of serious physical harm. In the words of the court:

> "Although the officer could not actually see the Plaintiff's gun, this fact becomes immaterial when coupled with the presumption arising from the position of the likely victims. Unquestionably, Officer Childers had probable cause to fire upon the fleeing felon. The threat Ford posed not only to those inside the bank but also to the entire community justified the use of deadly force." [71]

Some Warning — Where Feasible

The third element in the *Garner* standard, which provides a qualification to the first two, requires that some warning be given, where feasible, before an officer uses deadly force to prevent escape of a dangerous suspect. This requirement is consistent with the common law notion that deadly force should only be used when necessary. Obviously, if a suspect heeds a warning to "halt," there is no necessity to use deadly force. As one court stated it:

> ". . . even a criminal in the course of committing a crime has certain rights. If he surrenders upon command, does not resist, and makes no attempt to flee, he cannot and should not be physically

harmed, no matter how serious the crime just committed may be." [72]

In most of the cases described thus far to illustrate the different elements of the *Garner* decision, police officers gave some command or warning prior to firing a shot at a fleeing suspect. In many of those cases, the courts specifically commented on that practice, and in a few, it was actually an issue.

In *Acoff* v. *Abston*,[73] two officers were dispatched in early morning darkness to investigate a possible burglary in progress in a downtown store. One officer walked in the front, the other to the rear of the store. The officer in front saw a man standing beside the building. When the officer shined his light on the suspect and shouted, "Hey, police," the man ran. The officer shouted "halt" and fired a warning shot into the air. Meanwhile, the second officer at the rear of the building had heard his partner shout, followed by a shot and the sounds of running footsteps. He then saw the suspect and observed that he had some objects in his hands but was unable to identify them. Without shouting a warning, the officer fired his shotgun at the suspect, striking him and causing paralysis from the neck down. A lawsuit was filed against the officers and the municipality. The officer testified that he fired to apprehend the suspect because he believed he might have burglarized the store and shot the other officer, and because the suspect was running too fast to be apprehended any other way.

Because the facts of this case preceded the *Garner* decision, the court remanded the case for a determination of whether the officer who fired the shot should benefit from the good faith defense. The court particularly focused on the officer's failure to provide a warning before firing on the suspect and noted that prior to *Garner* that requirement was not a "clearly established" rule of law[74] by which the officer's conduct should be measured — the inference being that now it is clearly established.

Assuming, as seems reasonable, that *Garner* clearly establishes the "warning" requirement as a prerequisite to the use of deadly force, there is nothing in the Supreme Court's opinion to indicate a specific kind of warning is necessary to satisfy the rule. Some litigants have suggested that it requires more than just a command to halt and that it should include some specific warning of the action contemplated by the officer if the order to halt is not obeyed. The courts have not accepted that argument, however, it apparently being assumed that the command to halt carries with it the implication that failure to obey could have unpleasant consequences.

In *Hill* v. *Jenkins*,[75] for example, the plaintiff contended that the *Garner* decision requires an officer to give a specific warning before shooting, apparently suggesting that a shouted command to halt is insufficient. Agreeing that *Garner* requires *some* warning when feasible before deadly force is used, the court rejected the idea that it requires more than that which was given in this case where the officer shouted "stop" or "halt" at least twice before shooting.

It should not be overlooked that the Supreme Court in *Garner* conditioned the "warning" requirement on "feasibility," thus recognizing circumstances can arise which render a warning unnecessary. A case in point is *Trejo* v. *Wattles*,[76] where two plainclothes police officers observed a group of individuals engaged in a fight. The officers got out of their car to break up the fight when they noticed one of the individuals, Trejo, had a gun and was in the act of shooting at others. Without identifying themselves, the officers shot and killed him. Trejo's father filed a lawsuit against the officers, which the court dismissed. On the issue of the failure of the officers to identify themselves and give some warning before using deadly force, the court wrote:

> "[Trejo] was in the act of shooting at others when defendant detectives drew their weapons and opened fired on him. . . . Although the detectives did not identify themselves before fatally shooting [Trejo], such identification was not feasible because of the urgency and danger of the situation." [77]

Some Related Issues

The foregoing discussion examines the major components of the *Garner* decision, which must be satisfied if the use of deadly force by police to prevent the escape of a suspect is to be constitutionally reasonable. Occasionally, lawsuits challenging police use of deadly force raise other issues — not addressed by the *Garner* decision — but which deserve at least some brief comment. Those issues may be generally described as affecting the type or degree of force applied, once deadly

"If there is no seizure, the fourth amendment does not apply. If there is a seizure, it must be reasonable."

force is justified. For example, some lawsuits have challenged police use of certain calibers or types of ammunition, such as hollow point or magnum rounds. In fact, the issue of using hollow point ammunition was raised by the plaintiff in the *Garner* case, but was not decided by the lower courts, and therefore, was not considered by the Supreme Court. Others have questioned the reasonableness of firing multiple shots at a suspect. The theory appears to be that there are different degrees of deadly force, and that even in cases where the police are legally justified in using deadly force — whether in self-defense or to prevent the escape of a dangerous person — any actions on their part to increase the probability of success are "excessive" and therefore unconstitutional.

Fortunately, this theory has not been accepted by the courts, and there are no indications that it will be. Law enforcement experience has indicated that the human body is fully capable of absorbing the shock and damage of several gunshot wounds — even terminal ones — and yet continue to operate efficiently and lethally for an extended period of time. This observation is supported by the consensus of expert opinion in the area of forensic pathology and wound ballistics, which suggests that the only wounds which can reliably be counted upon to immediately incapacitate a person are those which disrupt the brain or upper spinal cord. Otherwise, wounds which may ultimately prove fatal may not suffice to cause the cessation of hostile action.[78]

In light of these realities, law enforcement officers faced with a need, and legal justification, to use deadly force seldom have the luxury of pausing after each shot to see if the criminal suspect has ceased the action that prompted the shot. Likewise, given the demonstrated uncertainty that any particular handgun round will effectively incapacitate a suspect, it seems unwise to suggest that police officers confronted with the need to do so should be condemned to try it with the least effective means.

In a recent case[79] involving a lawsuit against police officers for allegedly using unreasonable force, the plaintiffs focused on the fact that the suspect had already been shot twice, when one of the officers shot him a third time, causing his death. The court noted that even after being struck twice, the suspect still brandished a knife with which he had stabbed six people and that he was still moving — either to attack one of the officers or to escape. In either case, the court found the firing of the third shot justified by the facts and concluded:

> "Contrary to plaintiffs' contentions, the Constitution does not require police officers to use a minimum of violence when attempting to stop a suspect from using deadly force against police officers or others." [80]

A Question of Policy

As observed by the Supreme Court, at the time of the *Garner* decision, most law enforcement agencies had already developed departmental policies that were somewhat more restrictive than the common law "fleeing felon" rule. Whether such policies are within the constitutional boundaries now established by *Garner* is a matter which law enforcement administrators should carefully consider. Obviously, a policy that is more restrictive than the common law may nevertheless permit the unconstitutional use of deadly force. When such use of deadly force results from a policy or custom of a local governmental entity, that entity incurs a risk of liability under 42 U.S.C. §1983.[81]

Conversely, an overly restrictive policy can create increased risks to the lives of police officers and others in the community. Clearly, that was not the intent, and it should not be the result, of the Supreme Court's decision in the *Garner* case. A careful weighing of the issues, in light of the *Garner* decision and its progeny, is essential to striking a proper balance.

CONCLUSION

Tennessee v. *Garner* established a constitutional standard for police use of deadly force in apprehending criminal suspects. That standard, based on the fourth amendment proscription against "unreasonable seizures," demands that there be probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others and that deadly force is necessary to prevent his escape. If an officer uses deadly force to prevent the escape of a suspect, where the officer has no reason to believe the suspect is armed or otherwise dangerous, his action violates the fourth amendment. To the extent that a State statute or departmental policy permits the use of deadly force under these circumstances, they permit action which is unconstitutional.

All of the cases discussed herein — including the *Garner* case itself — are civil suits challenging the constitutionality of law enforcement actions which caused death or injury to criminal suspects. The fact that such suits can be filed in the courts of this country is a measure of the value we attach to the rights of the individual, regardless of the antisocial nature of his actions, and the fact that those actions caused, or contributed to, his plight.

The cases also demonstrate the latitude allowed under the Constitution to law enforcement officers engaged in the pursuit of dangerous suspects. A police officer, unlike the vast majority of other public servants in our society, has the legal authority to take a life. But also unlike his fellow servants, the police officer is daily asked to put his own life at risk in attempting to enforce our laws and protect our lives and property. The authority to use deadly force within the constitutional framework is not a luxury . . . it is a responsibility. One court stated the matter in this way:

> "There is a line over which a law enforcement officer may not cross. . . . However, one must also recognize the risks of this profession and the brief time allotted to evaluate such risk and respond to it. We must not permit or encourage the use of force unless it is reasonable and necessary. On the other hand, we should not condemn the use of force when it is essential to protect the law enforcement officer or the public." [82]

It is difficult to say it better. FBI

Footnotes

[35]471 U. S. 1 (1985).

[36]*Id.* at 4.

[37]Model Penal Code §3.11(2).

[38]771 F.2d 1475 (11th Cir. 1985).

[39]*Id.* at 1479, note 10. *See also, Ryder* v. *City of Topeka*, 814 F.2d 1412, footnote 11 (10th Cir. 1987).

[40]*Supra* note 35, at 22.

[41]*See, e.g., Garcia* v. *United States*, 826 F.2d 806 (9th Cir. 1987); and *Ryder* v. *City of Topeka*, 814 F.2d 1412 (10th Cir. 1987).

[42]*See, e.g., Johnson* v. *Glick*, 481 F.2d 1028 (2d Cir.), *cert. denied*, 414 U.S. 1033 (1973); (". . . quite apart from any 'specific' of the Bill of Rights, application of undue force by law enforcement officers deprives a suspect of liberty without due process of law.") at 1032. *See also, Gumz* v. *Morrissette*, 772 F.2d 1395 (7th Cir. 1985) (Under the Due Process Clause the "primary inquiry in addressing an excessive force claim . . . is whether the conduct of state officials was so egregious or intolerable as to shock the conscience of the court. . . .") at 1400; *cf. Benskin* v. *Addison Township*, 635 F.Supp. 1014 (N.D. Ill. 1986) (Allegations that police deliberately and maliciously crashed police car into motorcyclist to affect an illegal arrest would, if proven, establish a viable claim of excessive force under the Due Process Clause); *Wilson* v. *Beebe*, 770 F.2d 578 (6th Cir. 1985) *en banc*. (Officer was "reasonable" under fourth amendment in drawing weapon to effect arrest of suspect; subsequent *accidental* discharge of weapon and wounding of suspect does not rise to level of due process violation); and *Leber* v. *Smith*, 773 F.2d 101 (6th Cir. 1985).

[43]*See, e.g., Bell* v. *Wolfish*, 441 U.S. 520 (1979).

[44]813 F.2d 782 (6th Cir. 1987).

[45]*Id.* at 785.

[46]*Id.* at 786.

[47]801 F.2d 200 (6th Cir. 1986).

[48]*Id.* at 203; *see also, Jones* v. *Sherrill*, 827 F.2d 1102 (6th Cir. 1987) (Neither the suspect, involved in a high-speed chase with police, nor an innocent third party who was killed when struck by suspect's vehicle were "seized" within meaning of the fourth amendment.)

[49]649 F.Supp. 1536 (D. Conn. 1986).

[50]*Id.* at 1545; *see also, Jamieson By and Through Jamieson* v. *Shaw*, 772 F.2d 1205 (5th Cir. 1985).

[51]817 F.2d 540 (9th Cir. 1987).

[52]*Id.* at 546.

[53]*Supra* note 35, at 10.

[54]*Id.*

[55]764 F.2d 479 (7th Cir. 1985).

[56]*Id.* at 487.

[57]549 F.Supp. 863 (D. N.J. 1982).

[58]*Id.* at 869.

[59]667 F. Supp. 853 (N.D. Ga. 1987).

[60]*Id.* at 857.

[61]*Supra* note 35, at 16.

[62]814 F.2d 1412 (10th Cir. 1987).

[63]*Id.* at 1419.

[64]*Id.*

[65]*Id.* at 1422. There is some question among the courts as to whether a suspect must *actually* be armed before an officer is justified in believing he poses a serious threat. For example, the 11th Circuit Court of Appeals has implied that such is the case. *See Pruitt* v. *City of Montgomery*, 771 F.2d 1475, n. 14 at 1483 (11th Cir. 1985) and *Acoff* v. *Abston*, 762 F.2d 1543 at 1547 (11th Cir. 1985) ("Probable cause [to believe suspect poses a threat] exists where the suspect *actually threatens* the officer with a weapon. . . ." (emphasis added). But, the 10th Circuit Court of Appeals disagrees. *See Ryder* v. *City of Topeka*, 814 F.2d 1412 at 1419 (10th Cir. 1987) ("There might be numerous situations that would justify a police officer's belief that a suspect was armed and that he posed an immediate threat to the officer, even though the suspect was not in fact armed.") The 10th circuit view is more consistent with the language in the *Garner* decision, which establishes "probable cause" rather than *certainty* as the standard for assessing the existence of a threat. It seems fair to say that a suspect who actually threatens an officer with a weapon has gone well beyond the *probable cause* stage.

[66]*Supra* note 35.

[67]*Id.*

[68]620 F.Supp. 272 (N.D. Ill. 1985).

[69]Under the Federal Rules of Civil Procedure, Rule 56(c), summary judgment may be entered in favor of a party in a lawsuit if there is no genuine issue as to any material fact and if the moving party is entitled to a judgment as a matter of law.

[70]650 F. Supp. 110 (C.D. Ill. 1986).

[71]*Id.* at 113.

[72]*Amato* v. *United States*, 549 F.Supp. 863, at 869 (D. N.J. 1982).

[73]762 F.2d 1543 (11th Cir. 1985).

[74]In *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), the Supreme Court held that government employees, sued for alleged constitutional violations, are shielded from liability if their conduct does not violate "clearly established" law of which a reasonable person should have known, and that in such instances, summary judgment should be granted before pretrial discovery occurs. In *Anderson* v. *Creighton*, 97 L.Ed.2d 523 (1987), the Court extended this protection to circumstances where government employees reasonably believe their conduct is within the bounds of clearly established law in light of the facts known at the time of the action. For example, an officer, who knows that under clearly established *law* deadly force may only be used to prevent the escape of a dangerous felon, may reasonably believe the *facts* confronting him justify the application of that rule.

[75]*Supra* note 70.

[76]654 F.Supp. 1143 (D. Colo. 1987).

[77]*Id.* at 1147.

[78]*E.g., see*, V.J.M. DiMalo, *Gunshot Wounds* (New York, NY: Elsevier Science Publishing Co., 1987); M. L. Fackler, Director, Wound Ballistics Laboratory, Letterman Army Institute of Research; and J. A. Malinowski, "The Wound Profile: A Visual Method for Quantifying Gunshot Wound Components," *Journal of Trauma*, vol. 25, 1985, pp. 522-529.

[79]*O'Neal* v. *DeKalb County*, 667 F.Supp. 853 (N.D. Ga. 1987).

[80]*Id.* at 858.

[81]*Supra* notes 11, 12, and 13.

[82]*Supra* note 72, at 871.

WANTED BY THE FBI

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

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

John Emil List.

W; born 9-17-25; Bay City, MI; 6′; 180 lbs; med bld; black, graying hair; brn eyes; fair comp; occ-accountant, bank vice-president, comptroller, insurance salesman; remarks: Reportedly a neat dresser; scars and marks: Mastoidectomy scar behind right ear, herniotomy scars both sides of abdomen.
Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

23DI1108141762130914

Fingerprint Classification:

23 L 17 W IOI 14 Ref: 17
L 1 R OOI 3

I.O. 4480

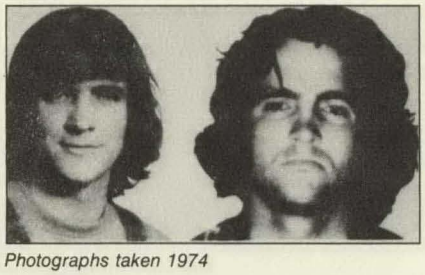
Social Security Number Used: 365-24-4674

FBI No. 215 305 J4

Caution

List, who is charged in New Jersey with multiple murders involving members of his family, may be armed and should be considered very dangerous.

Right index fingerprint



Photographs taken 1974

Stephen Allen Maser,

also known as "Sam," "Steve."
W; born 7-20-49; Raleigh, NC; 5′10″; 165 to 175 lbs; med bld; sandy blond hair; blue eyes; med comp; occ-automobile salesman, operator boutique store; scars and marks: Surgical scar across abdomen from side to side.
Wanted by FBI for BANK ROBBERY; ESCAPED FEDERAL PRISONER

NCIC Classification:

210506141117CO071212

Fingerprint Classification:

21 M 1 U IIO 11
L 3 W OII

I.O. 4669

Social Security Numbers Used: 246-78-8485; 267-82-4929

FBI No. 990 344 G

Caution

Maser, who is being sought for escape, shot at a bank manager and police during commission of a bank robbery. He has been convicted of tampering with an auto and larceny and should be considered armed, dangerous, and an escape risk.

Left middle fingerprint

Photographs taken 1971 and 1968

Ronald Stanley Bridgeforth,

also known as Benjamin Matthew Bryant.
B; born 8-23-44; Berkeley, CA; 6′; 185 to 205 lbs; hvy bld; blk hair; brn eyes; med comp; occ-teacher; scars and marks: 3-inch scar left wrist and forearm, scar right heel.
Wanted by FBI for INTERSTATE FLIGHT-ASSAULT ON A POLICE OFFICER

NCIC Classification:

PMDM08POCM080611CI11

Fingerprint Classification:

8 M 25 W MIO Ref: 29
S 22 U IOI 11 22

I.O. 4515

Social Security Numbers Used: 568-92-3698; 547-64-2939

FBI No. 568 064 G

Caution

Bridgeforth allegedly engaged police officers in gun battle. He should be considered armed and dangerous.

Left ring fingerprint

WANTED BY THE FBI

Photographs taken 1973

Dewey Admiral Daniels, Jr.,

also known as James E. Burns, James W. Burns, Admiral Dewey Daniels, Jr., Lee Johnson, Charles Morgan, Gene Smith, George Tipton, Robert Whitson.
W; born 4-9-29; Washington County, TN; 5'10" to 5'11"; 190 to 220 lbs; hvy bld; brn hair; blue-green eyes; med comp; occ-carpenter's helper, farmer, former police officer, heavy equipment operator, laborer, machinist, salesman.
Wanted by FBI for INTERSTATE FLIGHT-ARMED ROBBERY AND FELONIOUS ASSAULT

NCIC Classification:

DO5407CO14201114CI11

Fingerprint Classification:

4 O 9 R I IO 14
L 18 U OO I

I.O. 4674

Social Security Number Used: 409-56-5976

FBI No. 178 723 H

Caution

Daniels, a reported judo expert who has been indicted for bank robbery by a Federal grand jury, has been heavily armed in the past and allegedly fired on and seriously wounded a law enforcement officer with a sawed-off shotgun. He has been convicted of armed robbery and felonious assault and should be considered armed and dangerous.

Left index fingerprint

Photographs taken 1971

Albert Louis Bradford,

also known as Malik El Assaalam, Albert Louis Bradford, Louis Cable, Malik Hakim, Malik El Saalam, "Al."
B; born 12-11-33, St. Louis, MO; 5'11" to 6'; 170 to 185 lbs; med bld; blk hair; dark brn eyes; dark comp; occ-artist musician, porter, teacher; scars and marks: Scars on back of right hand; tattoos: Insect, teepee, "DEX," "BERNICE," "KENO" on left arm.
Wanted by FBI for INTERSTATE FLIGHT-FORCIBLE RAPE

NCIC Classification:

17PIPOPOPO161314PI12

Fingerprint Classification:

17 L 25 W IOO
M 14 U OOI 12

I.O. 4522

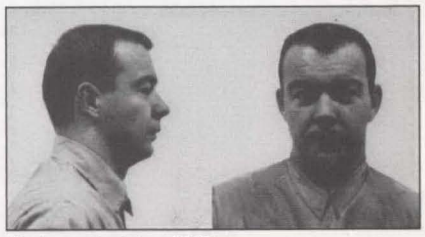
Social Security Number Used: 500-58-7177

FBI No. 683 609 A

Caution

Bradford, who reportedly attempted suicide in the past, is being sought for rape during which the victim was viciously beaten with a hammer and sharp instrument. He has been convicted of rape and robbery and should be considered armed and very dangerous.

Left middle fingerprint



Photographs taken 1967

Richard N. Nickl,

also known as Richard Gleason, Brandon A. Hanck, Jack Johnson, Richard M. Nickel, Richard M. Nickl, Richard Michael Nickl, Richard Nicholas Nickl.
W; born 8-6-34; Chicago, IL; 5'9"; 160 lbs; med bld; dark brn, balding hair; brn eyes; med comp; occ-bartender, construction worker, dog kennel operator, dog trainer, laborer, salesman; remarks: May have mustache, beard, or longer hair, may wear wig or have hair transplant. Reportedly suffers from arthritis and may walk with a slight limp; scars and marks: scar left forehead to scalp, scar over left eyebrow, brown mole right side of face, vaccination scar upper left arm, scar left hand.
Wanted by FBI for INTERSTATE FLIGHT-MURDER

NCIC Classification:

PO67161816DIPO171717

Fingerprint Classification:

17 O 5 R OOO 16
I 19 W OOO

I.O. 4770

FBI No. 849 635 A

Caution

Nickl, who is believed to be armed, is being sought as an escapee from custody. At the time of his escape, Nickl was serving a life sentence for the murder of one police officer and the wounding of another. Consider Nickl armed, dangerous, and an escape risk.

Right index fingerprint

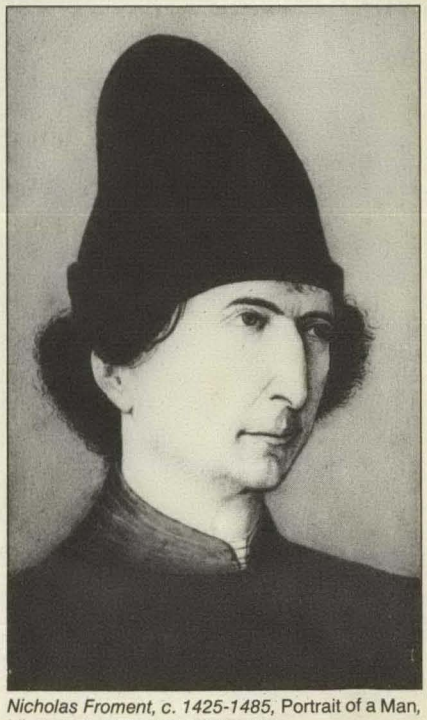
Major Art Theft

On February 8, 1988, numerous paintings were reported as stolen from the Colnaghi Gallery in New York City, NY. Pictured are four of the paintings taken. Any information concerning these paintings should be directed to the FBI, Brooklyn-Queens, NY, telephone (718) 459-3140. Refer to their file number 87A-86857. You may also contact the National Stolen Art File, FBI Laboratory, Washington, DC, telephone (202) 324-4434.

William Wyld, c. 1806-1889, Figures Outside a Country House, *watercolor and gouache over pencil, 291 x 349 centimetres*

Fra Angelico, c 1400-1455, Saints Francis and Nicholas, *52 x 22.2 centimetres*

Giovanni De Biondo, c 1356-1399, An Evanelist Writing, *tempra on triangular panel, 23 x 21 centimetres*



Nicholas Froment, c. 1425-1485, Portrait of a Man, *oil on panel, 38 x 25 centimetres*

☆U.S. Government Printing Office: 1988—202-051/80006

Questionable Pattern

The classification assigned this pattern is whorl, inner tracing, with a reference classification of loop, 14 ridge counts. The whorl type is preferred as central pocket loop whorl with reference classification of accidental whorl. The recurve in front of the inner delta is questionable when the pattern is considered as a recurving/type central pocket loop whorl; thus, the loop reference, inasmuch as the minimum requirements of a whorl, are two deltas and a recurve in front of each. The accidental whorl consideration is due to the possibility of a loop appearing over a tented arch formation.

Change of Address

Not an order form

FBI
Law Enforcement Bulletin

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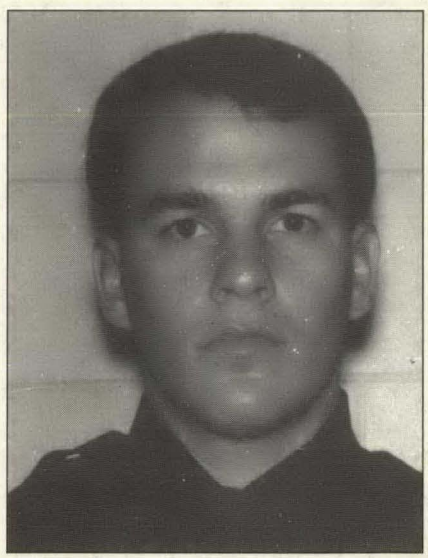
The Bulletin Notes

On October 29, 1987, Officer David Sutton and other members of the Warner Robins, GA, Police Department were attempting to serve a search warrant when the suspect began firing. Officer Sutton was struck in the head and left forearm. Having exhausted his ammunition, the suspect attempted to escape the scene. Despite his serious injuries, Officer Sutton chased after the suspect and apprehended him with no further incident. Officer Sutton required extensive surgery as a result of his injuries, but today he has recovered sufficiently to return to administrative duties and is expected to return to full duty. The Bulletin joins Officer Sutton's superiors in recognizing his exceptional performance of his duties.



Officer Sutton