FBI LAW ENFORCEMENT BULLETIN

MAY 1979

FBI LAW ENFORCEMENT BULLETIN

MAY 1979, VOLUME 48, NUMBER 5

Contents

The Cover: Logging operations in Oregon illustrate a new problem—timber thefts. See article page 1.

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

William H. Webster, Director

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

Published by the Public Affairs Office, Homer A. Boynton, Jr., Inspector in Charge
Editor—Thomas J. Deakin
Associate Editor—William E. Trible
Staff—Kathryn E. Sulewski, Gino Orsini, Jeffrey L. Summers

ISSN 0014-5688 USPS 383-310

Timber Thefts

An Oregon logger brands each log immediately after it is pulled to the landing.

By TERRY D. TURCHIE* and BILLY BOB WILLIAMS
Special Agents
Federal Bureau of Investigation
Portland, Oreg.

In the early 1970's, the theft of U.S. Government timber assumed epidemic proportions. The volume of standing timber in Oregon and Washington is close to 375 million board feet, worth more than $50 billion.

With inflation, the value of this timber, managed by the U.S. Forest Service of the Department of Agriculture and the Bureau of Land Management of the Department of the Interior, is constantly increasing. It has been established that several million dollars worth of timber is stolen annually from Government land in Oregon alone.

For example, a logging contractor pleaded guilty after he was indicted on two charges of Theft of Government Property as a result of FBI and U.S.

*Now assigned to the New York Office

Forest Service investigations into allegations that he had bypassed scaling stations with truckloads of Government-owned timber worth up to $1,000 per load. It is through the scale of logs (scaled by independent scaling bureaus) that the Government receives payment for timber removed.

Investigation into this matter was initiated after it had been reported that one of the contractor's logging trucks had been observed leaving the forest without a U.S. Forest Service trip ticket. FBI Agents, through examination of scale tickets, interviews, and surveillances, determined that the logs involved in this case had never been scaled and thus the Government never paid. The contractor was sentenced to 3 years in a Federal penitentiary and fined $10,000.

In the 6-month period from October 1976, to the Spring of 1977, 55 timber thefts were reported from the Mt. Hood National Forest alone. Of these, 17 involved cutting of cedar into bolts or posts, while the remainder concerned cutting of Douglas fir or hemlock into firewood for commercial sale. Subjects were identified in 35 of these cases. Aggravated incidents included the removal of 37 Douglas-fir and hemlock trees in one ranger district and 35 cedar trees in another. Subjects were identified in both cases and convicted for various violations of applicable Federal laws.

In a ranger district located within the Mt. Hood National Forest, U.S. Forest Service employees discovered three separate theft sites where standing green western red cedar trees had been felled and removed. An excess of 35,000 board feet of cedar, valued at over $12,000, had been converted into cedar shake bolts and cedar fenceposts.

Cedar, which can be hand split into cedar shakes and converted to shingles, can sell for as much as $300 per cord in Oregon, while in the State of Washington it can bring as much as $350 per cord. While many species of trees can be used in reforestation efforts, the cedar is considered a nonrenewable resource. Cedar trees might take 200 to 300 years to grow to maturity, and as yet, no way has been devised to grow them from seedlings.

The individuals responsible for this cutting had attempted to conceal the tree stumps by covering them with broken boughs and stems; however, the area surrounding the stumps was cluttered with empty oil containers, discarded beer cans, and shake bolt debris. Extensive damage was done to dense undergrowth as the thieves cut down skid trails throughout the woods to facilitate the removal of their bounty.

FBI Agents investigating the case soon had traced large scales of cedar shake bolts to several local shake mills. Canceled checks bore the names of those people later developed as subjects. Further investigation determined that rental agencies had leased construction equipment to the subjects to be used in their logging operations. Finally, interviews of close associates of the subjects placed them at the crime scenes on the same weekends that they had rented the construction equipment. After extensive investigation, which took over a year to complete, two individuals were indicted for theft, destruction, and sale of Government property. They pleaded guilty in U.S. District Court, Portland, Oreg.

Law Enforcement Efforts

Traditionally, the U.S. Forest Service and Bureau of Land Management functions have been of a three-fold nature: (1) To insure through their contract administration that the Government receives a fair value for timber sold; (2) to protect the forest reserves through their extensive reforestation efforts; and (3) to stand in constant readiness to fight natural disasters, such as fire, flood, and disease, which could seriously jeopardize this delicate natural resource.

The U.S. Forest Service and Bureau of Land Management have long recognized that law enforcement efforts by employees and special agents assigned to each forest have played an integral part in the administration of public lands.

In order to administer national forests, the forest service throughout the country is divided into various regions, with the regions further divided into specific forests and ranger districts. One of the first regions to have special agents assigned to each forest was Region Six, which encompasses national forests in the States of Oregon, Washington, and California. Agents were hired to provide a law enforcement capacity for every ranger district and to instruct U.S. Forest Service personnel in areas of crime prevention, crime reporting, and protection of crime scenes.

Many of the investigations conducted by the forest service agents are concerned with arson, vandalism, malicious mischief, and various matters of an administrative nature. Forest service agents also instruct ranger district personnel in the issuing of citations for various violations of law and have conducted countless investigations into timber thefts, timber trespass cases, cutting of undesignated timber on sales sites, and related problems on Federal land.

Gradually, the major area of concern to U.S. Forest Service special agents and employees became the theft of Government timber and also the destruction of Government property and resources often caused by the careless removal of the timber. Although forest service personnel and agents had always realized that timber thefts posed complicated and serious problems to law enforcement agents, the issuance of citations to those caught in the act of stealing timber did not seem to act as a sufficient deterrent. As a matter of fact, when the theft of U.S. Government timber mushroomed early in this decade, owing to the increasing value of timber products, the U.S. Forest Service and Bureau of Land Management obtained additional assistance from the FBI.

By statutory authority, the FBI investigations into timber thefts were undertaken if there was evidence

constituting Theft of Government Property, Destruction of Government Property, Fraud Against the Government, Fraud by Mail and Fraud by Wire, Conspiracy to Defraud the United States, or Submitting Fraud Statements to the Government.

In addition, collusive bidding practices were subject to investigation as violations of the antitrust laws, including the Sherman Act, the Clayton Act, and the Robinson-Patman Act. These laws prohibit price fixing, bid rigging, and conspiracy to allocate markets or customers by splitting up a geographic area, leaving to each competitor a section of the area where he is free from competition from the others.

Thus, there began an increased attack on timber pirating characterized by an unsurpassed spirit of cooperation between the FBI, the U.S. Forest Service, the Bureau of Land Management, the U.S. Attorney's Office, as well as other Federal and State agencies. Investigations concentrated on three broad areas:

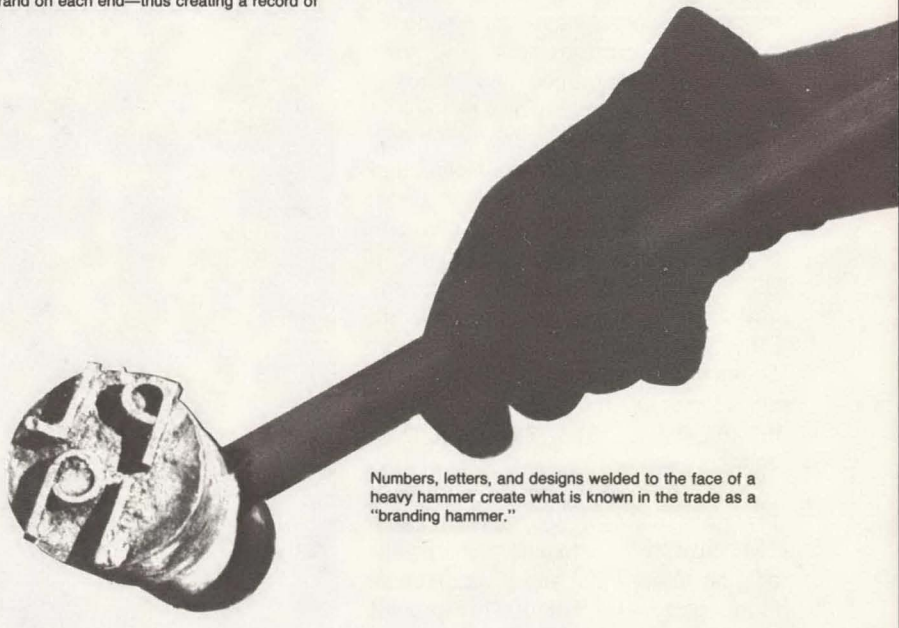
1. The cutting of isolated trees by 1, 2, or perhaps as many as 10 individuals for future commercial sale as firewood, cedar shake bolts, nursery stock, etc.;

2. The removal of entire loads of logs from a national forest for sale with no payment made to the Government; and

3. Practices of timber purchasers which tend to reduce the fair market value of timber through methods of cutting or violations of various antitrust provisions.

When the program began, the Portland Office of the FBI was investigating 35 timber cases, but by the Spring of 1977, 110 cases were under investigation. As a part of the program, from November 1976, to June 1977, over 50 2-hour seminars were conducted throughout the State of Oregon with over 3,000 full-time U.S. Forest Service employees and 1,000 full-time Bureau of Land Management employees attending. During the 2-hour program, FBI Agents explained the techniques of crime scene recognition, preservation of evidence, reporting procedures, suspect confrontation, and other aspects of timber theft investigations.

Each person or organization taking possession of a log places a brand on each end—thus creating a record of ownership.



Numbers, letters, and designs welded to the face of a heavy hammer create what is known in the trade as a "branding hammer."

Investigative Techniques

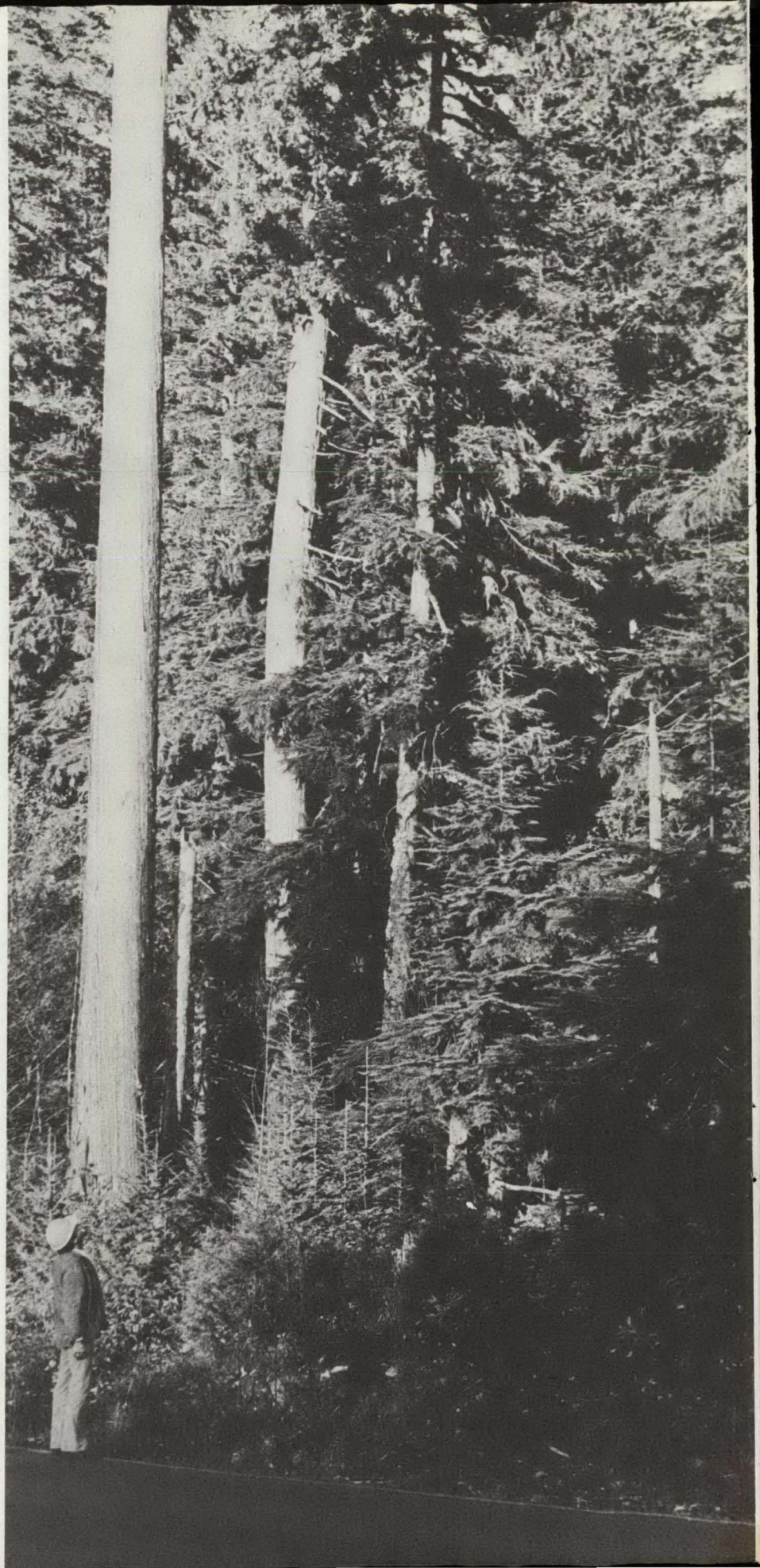
Investigations into illegal cutting of cedar trees to be used for shakes and shingles, Douglas fir and other species of timber for use in the commercial firewood market, and removal of nursery stock material without U.S. Forest Service permits involves the use of a full range of investigative techniques.

Examination of crime scenes continues to result in the discovery of evidence of paint transfers and toolmarks being found on wood or cedar debris left behind by the subject. These marks and paint transfers result from the use of axes, wedges, and splitting malls, and serve to tie a suspect to a crime. Examinations of toolmarks on wood are based on established principles that it is possible to identify a suspect tool with the mark it leaves on a surface, as well as permitting identification of suitably sized wood products, such as cedar bolts or posts with the specific source from which they were cut.

Greasy oil cans and beverage containers left at the location of a timber theft are collected and sent to FBI Headquarters for examination by fingerprint specialists. Latent prints developed have been helpful in identifying suspects. Plaster casts are made of tire treads and footprints. The theft sites are photographed and sketched for presentation at trial, and trial charts are prepared for use in court.

For example, after an employee of the U.S. Forest Service became suspicious of the peculiar cutting activities of an individual who had obtained a U.S. Forest Service permit to cut several cords of cedar bolts and posts, an FBI investigation was initiated. It was determined that the individual had cut an additional seven cedar trees, removing approximately $5,000 worth of cedar.

Collected at the scene were food wrappers, soda bottles, and oil cans. Two subjects were indicted, one pleaded guilty before trial and a second was found guilty of Theft of Government Property upon completion of trial. This individual became a Federal fugitive after failing to appear for sentencing. Upon his arrest, he was sentenced to 3 years in prison.



Although crime scene examinations are important, they cannot replace the long and tedious process of interviewing numerous witnesses to a crime, conducting neighborhood investigations to develop witnesses in resort-type areas where thefts have occurred, and checking possible outlets where forest products might be sold. In cases involving large timber sales, agents have reviewed Government contracts, documents, letters between the forest service and members of the timber industry, as well as conducting interviews of the U.S. Forest Service employees who can provide insights into the meaning of such contracts and letters.

In order to conduct investigations concerning timber sales, agents have had to familiarize themselves with the variety of terms and techniques pertaining to a timber sale from its inception to its eventual purchase and through completed logging operations.

Before preparing a sale for the actual bidding process, the U.S. Forest Service conducts a study of the proposed sale area. The forest service estimates the volume of timber on a sale through the cruise, which has been defined as an "inventory of a forest stand to determine the quantity of the forest products that can be derived therefrom." [1]

After conducting a cruise, the forest service uses the information to prepare a timber sale prospectus. This prospectus includes a comprehensive report concerning the objectives of the sale; physical features of the sale, such as location, topography and soil; timber on the sale; vegetation information; and any other special features of the sale.

An appraisal summary is also prepared. This summary lists each species to be removed and the total number of board feet volume that the U.S. Forest Service expects to be on the sale in relation to the species. A selling value is placed for that species by the per thousand board feet, which is based upon the average rates of timber currently being sold.

A copy of the appraisal summary, plus the timber sale prospectus, is sent to potential purchasers who have an interest in the sale, and a date is arranged for bidding. Those individuals or companies interested in bidding will then go the forest service, and either through the oral or sealed bidding method, will bid on the timber in a certain area based upon the advertised rate and upon rates that they feel would be fair value for the timber. The highest bidder is then awarded the sale, executes the timber sale contract, and arranges for a logger to conduct the actual logging operation on the sale.

Several major timber companies were convicted in Federal court and fined for conspiracy to arrange low bids on forest service timber sales. These companies were also barred from bidding on Federal timber following their convictions.

Today, FBI investigations center upon the following allegations:

1. Volumes of scale timber coming from the national forest that have been improperly scaled;

2. Cutting practices of some timber purchasers that have affected the prices bid for Government timber;

3. Timber that has been exported in violation of contract provisions and in violation of Title 18, U.S. Code, Section 1001, Submitting False Statements to the Government; and

4. Violations of the various antitrust provisions. These investigations will require more time and manpower as they are inherently more complicated than earlier cases investigated by the Bureau.

However, any time invested by the responsible agencies of Government seems well worth the cost. The national forests in Oregon stand as a lasting symbol of the rugged individualism which American emigrants brought westward during the 1840's. The thousands of acres of timber cresting from the Mt. Hood skyline offered the first friendly greeting to these brave people who accepted wood from the forest to build their home, appreciated the protection the forest provides to vast watersheds, and grew fond of the serenity that could be derived when man found peace with nature.

The forests in Oregon were an integral part of the promise that early emigrants called the American Dream, and we have a responsibility to insure that the national forest fulfill that promise for generations to come. **FBI**

Footnote

[1] "Log Scaling and Timber Cruising," Professor J. R. Dilworth, Oregon State University, copyright 1973.

The combination of an improved road and a remote area makes this ancient cedar grove particularly vulnerable to the weekend forest thief.

Norfolk's Forged Prescription Team

By CAPT. FRED WILLIAMSON

Commanding Officer
Vice and Narcotics Division
Police Department
Norfolk, Va.

Charles D. Grant
Chief of Police

Captain Williamson

The 48-year-old man came into the drugstore limping with a cane. A street-wise snarl crept into his voice as he militantly demanded the pharmacist fill his prescription for the painkiller, Dilaudid.

The addict had stolen a prescription pad from the desk of a careless physician. But the pharmacist knew the doctor's handwriting, spotted the prescription as a forgery, and called the police.

When two uniformed officers arrived with canines straining at the leash, the "cripple" suddenly became a sure-footed racer as he bounded away leaving the police huffing behind. Uniforms and canines had blown the arrest.

It was a frustrating lesson, not only for Norfolk pharmacist Alvin Powell, but for Norfolk's Police Department. And it stressed the need for the special handling of prescription forgers. Like many of the Nation's vice and narcotics officers, Norfolk's had treated the problem of forged prescriptions as secondary to street drugs.

The division had not been aggressive about prosecuting forgers partly because prescription forgery had been considered a misdemeanor. In early 1977, Norfolk prosecutors began to charge suspected forgers under the forgery statute—a felony statute. And effective July 1, 1977, a new law made forging prescriptions a felony, if the passing of a prescription involves fraud, misrepresentation, deceit, subterfuge, change in the prescription, use of false names or addresses, or any other false information.

But the law's change had to be accompanied by a change in police tactics. "When snapping dogs came into the pharmacy," says pharmacist Powell, "well, it just created trauma for the customers, the employees, and for me." Until 1977, the pharmacist got little help when he called a police dispatcher on a suspected forged prescription.

The pharmacist continued, "The dispatcher would send a uniformed officer. I had one actually hold the door for the forger as he raced out of the store. Then, I learned to ask for the vice and narcotics division and to ask for a plainclothes officer. But sometimes, officers carried telltale walkie-talkies which alerted the forger, or they would arrest the forger before the transaction was made, before he or she actually bought the drug so they couldn't charge for possession. Or the police would somehow signal their presence and alert the forger who would leave without the drug or the prescription."

Another Norfolk pharmacist said this sort of incident creates animosity between police and pharmacists. "I'd be surprised if 10 percent of all pharmacists call the police when they have a forged prescription because they don't know whether a uniformed officer will be sent. Even if a plainclothes officer is sent, they don't know the

officer, so they make suspicious gestures from the counter and alert the suspect."

"Catching these people is a matter of timing," says Powell. "It's a subtle, psychological game."

And it's a game that requires specialists. Norfolk formed a team of specialists in July 1977, when two veteran investigators made forged prescriptions their full-time concern. They offer pharmacists necessary personalized service. They are oncall during most hours of the day, and another division officer, known to area pharmacists and trained to handle forgeries, is available when they are not. This year, there is hope that the two-person team may be increased to four officers, so that from early morning until late at night, a team member will be available every hour most drugstores are open.

The two officers now on the forged prescription team were chosen because of their investigative and narcotics undercover experience. One is a veteran of 5 years of detective work and a skilled investigator. He had 9 years on the force when placed on the team. His partner worked for 3 years as a uniformed patrol officer in one of the city's most drug-abused areas before being assigned to vice and narcotics. She spent 18 months as an undercover narcotics investigator before being named to the team. The officers were also chosen for their appearances. One is a tall, muscular black, well-dressed in a casual suit, sporting a mustache, and wearing wire-rim tinted glasses; the other is a 5'2" female, blue-eyed, curlyhaired blonde, who is also a casual dresser.

The pair blend easily into any scene. Their approach to arrests is practiced. They come into the stores, are known by the pharmacists reporting the forgeries, give them a sign of their presence, and come up to the counter only after the suspect has paid for the drug. With one hand on the suspect's belt or around his waist, the officer shows identification and makes the arrest. "With this approach, we haven't lost any cases," says the team. But part of their success is a credit to painstaking investigation. No officer who hates tedium should be assigned to a forged prescription team. These investigators had shown a keen interest in investigating forged prescriptions before the team was created. Once on the team, the pair had to wade through thousands of prescriptions to get leads on forgers. Recently, for example, forged prescriptions were being passed at several pharmacies within a seven-block area. The officers went to every pharmacy in the area and looked at almost 8,000 prescriptions to find the 30 or 40 prescriptions forged by the person we knew was passing them. The team members have to be able to notice small details; they must be observant and available.

"The team members have to be able to notice small details; they must be observant and available."

"They work harder than I do," says Powell, who puts in long hours at his pharmacy. The team had handled 107 forged prescription arrests and 227 charges in the last year, compared to 9 forgery arrests made in 1976 and 80 in 1977.

But, are the painstaking investigations and the full-time use of two officers necessary to curb the forging of prescriptions? Is the problem that serious? Yes. A greater number of forged prescriptions are appearing in more and more pharmacies. The problem forcefully came to the Nation's attention last summer when a high government official falsified a name on a prescription for Quaalude to protect his assistant's identity. The sedative, Quaalude (22d on the list of the 26 most abused drugs) is a drug pharmacists are cautious about.

When this incident occurred, mass-circulation news magazines reported that the illegal and lucrative traffic in prescription drugs now rivals the trade in such hard drugs as heroin and cocaine. Drug experts were also quoted as saying an estimated 250 million doses of painkillers, sedatives, and stimulants have been diverted for improper use in the last year. In Norfolk, forgeries account for nearly a third of all drugs sold illegally. All this generates millions of dollars in illicit profits.

A stolen prescription blank sells for $5 on the street. It goes for $10 filled. A prescription pad swiped from a doctor's desk can be worth up to $500. It is worth even more if the thief takes the prescriptions to pharmacies himself and then sells the pills separately.

The painkiller Dilaudid, which costs pennies at the pharmacists' counters, can bring up to $20 per pill on the streets of Norfolk and up to $50 in some other cities. Its powerful kick has won it the nickname "drugstore heroin."

A Tidewater Drug Enforcement Administration Agent adds, "As hard drugs like heroin, which used to be five percent pure, become only two to three percent pure, people become less happy with street drugs." He says they are switching to another combination of drugs—Benadryl, an antihistamine with strong sedating powers which prolong the effects of Talwin, a narcotic similar to morphine. Both are prescription drugs.

Preliminary government statistics indicate the use of these two drugs has drastically increased in the past 18 months. The drugs are crushed, melted, and then injected with a syringe, giving a euphoric feeling which lasts twice as long as heroin. These drugs are easier to get and less expensive than heroin. In Chicago, recently, Talwin and Pyribenzamine (a similar combination) have been blended for a heroin-like trip at half heroin's price.

"The use of antihistamines and narcotics has been known for many years. But the combination of Talwin

and Pyribenzamine is the newest manifestation of this abuse," says Bill Deac, public information officer for the Drug Enforcement Administration in Washington, D.C. "In the past year, the Drug Enforcement Administration has observed a large increase in the use of these drugs. This requires major attention."

Another popularly abused prescription drug is Expectico, which contains a codeine-like substance called "hydrocodone." "Expectico is mixed with alcohol and drunk in large quantities to get a high," says pharmacist Powell. "Drug companies started putting Ipecac in it to make abusers throw up, but that hasn't seemed to stop them."

Tuinal and Seconal, both sedatives, are also favorites. On the street, Tuinal is called "rainbow"; Seconal is called "red birds." Other favorites in the Norfolk area are Nembutal or "yellow birds," Valium, Dilaudid, the diet pill Preludin, and Demerol. Nationally, the painkiller Perodan is a problem drug as is Ritalin, which is prescribed for hyperactive children.

Forgery is not the only way to get these drugs. Some abuser/addicts feign ailments and con unsuspecting physicians. One local physician, a newcomer to the area, became a target for dozens of addicts when he prescribed a painkiller for a "miner" who feigned pain from a war injury. Others feign insomnia, lower back ache, or root canal problems to get prescriptions.

In a special edition of the Virginia State Board of Medicine "Board Briefs" newsletter, the State's 14,000 physicians were warned that younger addicts try to get Demerol, while older abusers favor Morphine, Percodan, and Dilaudid.

One of their most common tricks is the complaint of kidney stones. The addict/abuser will bring a urine sample into the physician's office with blood in it, or he or she will prick a finger to add blood to a sample obtained in the office. Abusers and addicts exchange tips on which doctors are "easy" and case an office to see how it can be burglarized either for drugs or prescription blanks.

The forged prescription team tries to warn area doctors about the devices addict/abusers use to con them. They work with the State's Board of Medicine investigator to exchange information on any addict rings trying to con physicians.

A less common problem is that of physicians themselves hustling drugs. Drug enforcement officials say that less then 2 percent of the Nation's 500,000 doctors are knowingly involved in abuse of prescription drugs.

Some doctors provide prescriptions for a price, regardless of need, and often with only the most rudimentary examination or none at all. In certain ghetto areas, long lines of addicts and pushers can be seen outside storefront offices where physicians rush them through, charging them $50 or more for each prescription. When a few doctors charge high fees for prescriptions or blank pads, pharmacists may then demand kickbacks from doctors and/or high fees from pushers who present obviously forged prescriptions.

"Forgery is not the only way to get these drugs. Some abuser/addicts feign ailments and con unsuspecting physicians."

To crack down on these cases, Norfolk's Forged Prescription Team visits suspect physicians or pharmacists as patients. Recently, one team member visited a physician claiming she had lower back pain to see how easily she could obtain a prescription and how thoroughly she was questioned and examined. She worked closely with a State Board of Medicine investigator who also gives the team information on prescription abuse.

Under the State's Health Regulatory Commission is the Department of Human Resources which controls the licensing boards for such professional groups as physicians, dentists, and optometrists. Each board can suspend or curtail licenses and bring criminal charges against professionals with evidence gained by their investigators.

The investigator who works with Norfolk's Forged Prescription Team calls the team "one of the best I've seen. They often give me information passed to them by a pharmacist who says he is consistently getting suspect prescriptions from several different patients written by the same physician for perhaps the same narcotic."

A good working relationship with those who investigate pharmacists and physicians is important to the sucess of a forged prescription team. Still, since few physicians are actively involved in the drug traffic, the team's work in this area is only part-time; the team concentrates on arresting those who are passing forged prescriptions. To track these people down, they began talking to pharmacists.

"One key to our success," says Investigator J. D. Bullock, "has been our researching the problem before setting up a procedure for detecting forgeries, making arrests, and gathering evidence. First, we decided what our goals were and whom we should contact. After talking to several pharmacists about how they would like to see the problem handled, we drew up our own guidelines."

Those guidelines include offering tips to pharmacists about how to detect a forgery. The team obtained these tips from pharmacists who are veterans at finding forgeries. Says pharmacist Powell, "I watch for questionable handwriting. If it's too good or too bad, it's a sure giveaway. I also watch for edgy behavior. If forgers offer to pay extra to get a prescription filled more quickly, I become suspicious. Strange amounts or directions of a drug are another indication. Sometimes, the directions are too thorough—sometimes, too sketchy.

Prescriptions for sedatives or other strong drugs written on a pediatrician's or a dermatologist's blanks also tip me off. I've also seen a forged prescription for diet pills on an emergency room doctor's blanks. Normally, emergency room doctors wouldn't prescribe diet pills.

"My suspicions are also aroused by the time of day. Most forgers come to you at night or on weekends when it will be harder to verify the prescription with the physician. I also look at the date and then question the suspect about when he or she visited the doctor. Often, the suspect's response conflicts with the prescription date.

"If the address is far away, I get suspicious. You just sort of develop a sixth sense about forgeries. I've been checking for forgeries since 1971, and I can't say for certain I've never filled one."

Pharmacist Martin Freedman has been turning in forgers for 10 years. He says there is no certain method for detecting a forgery. "I know some doctors' handwriting, and I become immediately suspicious if the prescription doesn't match the handwriting of the doctor. I also know the drugs to look for. Recently, a man came in with a legally written prescription from a pediatrician. But at the bottom of the prescription a request for the painkiller, Talwin, was added. When I called the pediatrician, he asked me what Talwin was.

"Unfortunately, more and more physicians are writing multiple prescriptions on a single blank making it easier for forgers to add prescriptions on legally written blanks.

"One of the smartest forgers I ever encountered got away. Only later did I learn he'd been passing prescriptions. He wrote four prescriptions—all of them beautiful jobs. One was for an antibiotic; one, for an antihistamine; one, for a cream. And the one he wanted was for Dilaudid. The innocuous ones threw me off."

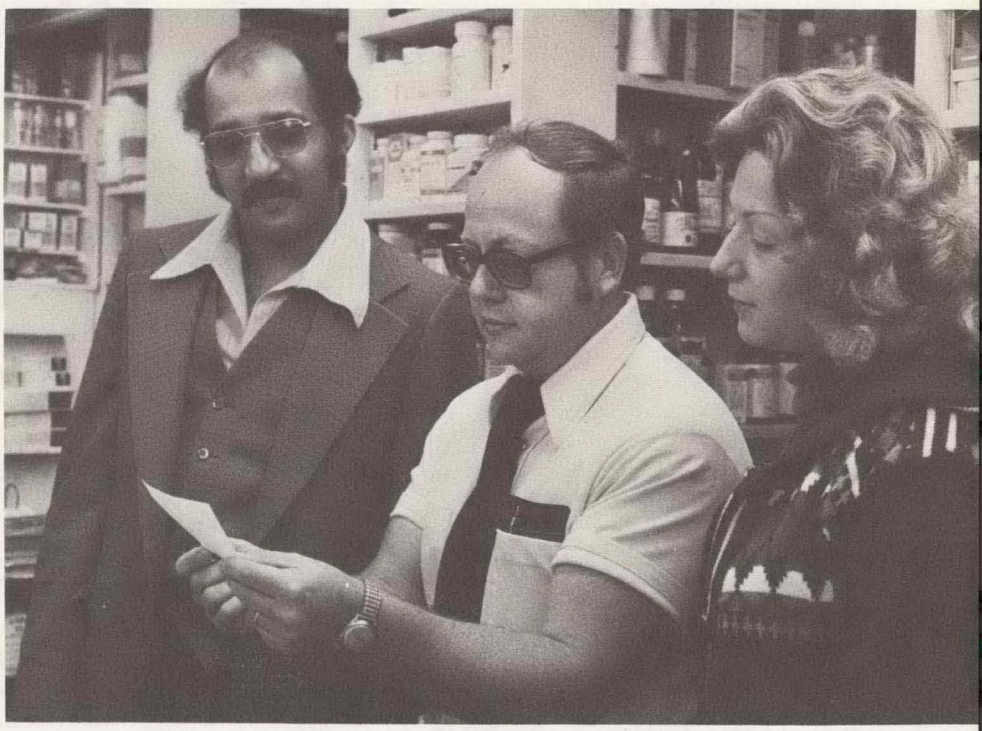
The drug team has gathered the information offered by these and other pharmacists and have gone to dozens of area pharmacists to tell them first, how to detect forgeries and second, how to handle them. The team hands out a sheet describing in detail the procedures pharmacists should use once they have called the doctor and confirmed the prescription is a forgery. First, tell the suspect that it will take 20 to 30 minutes to fill the prescription. Handle it with tweezers to preserve it for fingerprinting. If the suspect says he cannot wait tell him the prescription is a forgery and keep it in an envelope with the date and time of receipt recorded. Then, turn it over to the team. Second, if the suspect leaves, follow him, record his description and that of his car, and if possible, get his license plate number. Third, if the suspect agrees to stay or to return to pick up the prescription, call the physician. If the physician cannot be reached and you are certain the prescription is a forgery, call the police. If you are unsure, refuse to fill it. And fourth, once the physician confirms it is a forgery, call the vice and narcotics division and ask that a team member come to your store. If no team member is available, ask for a plainclothes officer.

Veterans at this game have other techniques. When making phone calls, pharmacist Powell tries to avoid suspicion by having one of his clerks call him to the phone, pretending he's received a phone call. He asks the clerk to give him a description of the suspect so he can give it to police before they arrive.

What happens once the officer arrives also varies from pharmacist to pharmacist, but Powell has the best system—he knows the officers. Powell explains, "I never indicate to the officers that I know they're in the store, even if the suspect has left the store promising to return for the prescription. The suspect could be watching me from a phone booth nearby, so any suspicious move on my part could alert him. I let the team know which one is the suspect by handing him or her the prescription myself. Usually my clerks ring up the prescriptions.

"I also ask the suspects a few questions. I ask whether this is the first they've had the drug. If the suspect

Investigators and pharmacist analyze a suspect prescription.



says it is the first time, and I have five refills recorded, this is something which can be used to shake his or her testimony. I also ask who the prescription is for. If the suspect says it is for personal use, he can't easily claim later that someone paid him to bring it in or that he was having it filled for a friend or relative—a common defense. I also ask questions to give officers time to move in behind the suspect and keep the suspect from looking around the store and noticing the officers' moves."

It is important that these bits of information are established because the crux of the prosecution of the cases often is the pharmacist's testimony. "The pharmacist's testimony is absolutely essential to the success of forgery cases," says an assistant commonwealth attorney. "Prosecutions are also helped by the team, by two individuals knowing what to look for and by their gathering the necessary evidence."

For evidence, the team keeps all prescriptions turned over to them and files them under physicians' names, not under fictitious names which change frequently. Each arrested suspect is carefully questioned about his or her friendships, sources, etc.

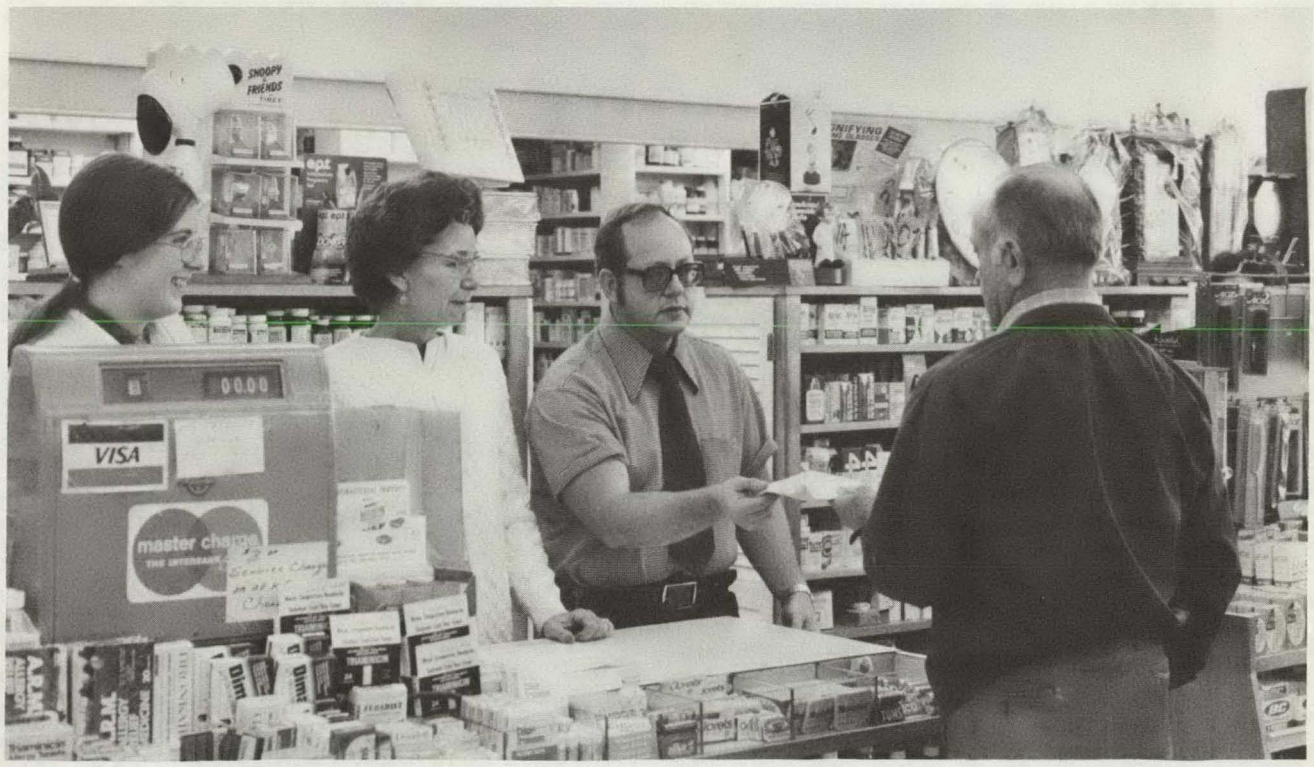
Often a tip helps the team make an arrest. Recently a 19-year-old single woman, who was working in a bar, was passing amphetamine prescriptions on blanks of eight different physicians. She was supplying drugs to a group of associates. One of her customer's roommates called the team, thinking this would help his lover rid himself of his drug habit. At the same time, the woman's license plate number was reported in connection with a forgery. The woman was charged with passing 40 forged prescriptions under the names of friends and with identification she had stolen from friends.

One of the largest rings the team tracked down included 16 young adults who were friends, lovers, and mere acquaintances. They ranged in age from 18 to 30, and some were from affluent backgrounds. They were forging prescriptions for diet pills for their personal use; they melted the pills down and injected them. An anonymous phone call offering an automobile license number led to the arrest of a few, which eventually led to a roundup of the others. Some of those charged had fled to California. Others had gone further south to North Carolina, had stolen hospital prescription forms there, and were passing forgeries in North Carolina drugstores.

Another ring the team cracked centered around a 40-year-old paraplegic who had a legitimate need for painkillers. He was selling Talwin and Benadryl and was caught through a pharmacist reporting his license plate. Again, the team had a file full of his forgeries.

The pair cite other cases where nurses' aides, nurses, receptionists, and secretaries have stolen physicians' prescription pads. "One we know about involves a doctor's receptionist. Her husband is an addict, as are his friends. She is writing prescriptions and selling them to friends," says Clifton. "We know about her through questioning suspects who obtained prescriptions from her. We learned

One sign to the team that the pharmacist has a forged prescription is his handling of the transaction prescription himself.



about a hospital pharmacy worker who is stealing drugs the same way. A former roommate brought in for questioning confirmed that the hospital worker was his source."

The team points out that many of these investigations involve a large web of alliances—a great big tangle of criminality. To untangle the web, the investigators must have the help and cooperation of physicians, hospitals, and pharmacists. The pair have visited hospital administrators to urge better monitoring of prescription pads; they've also talked at pharmaceutical and medical association meetings about the problem.

They have visited the stores of about 60 pharmacists to explain how forgeries can be detected and how forgers can be arrested. "But only about 20 of the area's 175 pharmacists are cooperating with us; only five of those consistently report forgeries. And these few turn up 100 forged prescriptions daily," says Clifton.

Why do so few cooperate? "It's a hell of a bother," says Freedman. "I do it out of personal conviction that these people who are on drugs are a danger to society. It is part of my job. I took an oath when I became a pharmacist to uphold the public trust. I've lost pay going to court to testify, but I think it's my duty. A lot of pharmacists just don't agree with me."

Powell says that in the past pharmacists never had to face this criminal element, and they are not certain how to handle it now. "The team helps. They tell pharmacists what they can do. But turning in forgeries is still a hassle. There's the time spent away from the store in court. And when you find a forgery, you have to interrupt the flow of service to call physicians and police, risking the anger of other customers and your boss. You may be pressured to increase the volume of prescriptions sold, and spending 20 or 30 minutes with a forgery is no way to increase volume."

But both pharmacists realize that if they don't try to stop the flow of narcotics, no one will. "The basic problem lies at the door of doctors and pharmacists," says Powell. "We could lick the problem if physicians were more careful about not leaving their pads around and more careful about whom they wrote prescriptions for. And if we pharmacists controlled employee theft of drugs more and watched refills by checking with physicians more. If we turned in forgers. . . . But so many pharmacists hand the prescription back to the forger and let him spring it on some unsuspecting pharmacist who may be new to the area or new to the profession and so may fill them unknowingly."

The team says they haven't the manpower to prosecute pharmacists who send forgers to other stores. "They are aiding and abetting a felony," says Clifton. "We could prosecute them if we had the manpower."

And why more pharmacists fail to cooperate with the team still puzzles Bullock. "These people aren't little old ladies wanting to double their aspirin dosage," he says. "They are dangerous criminals. And pharmacists who fail to help us catch them now may find themselves faced with the barrel of an addict's gun in the future." **FBI**

Police Officers Killed

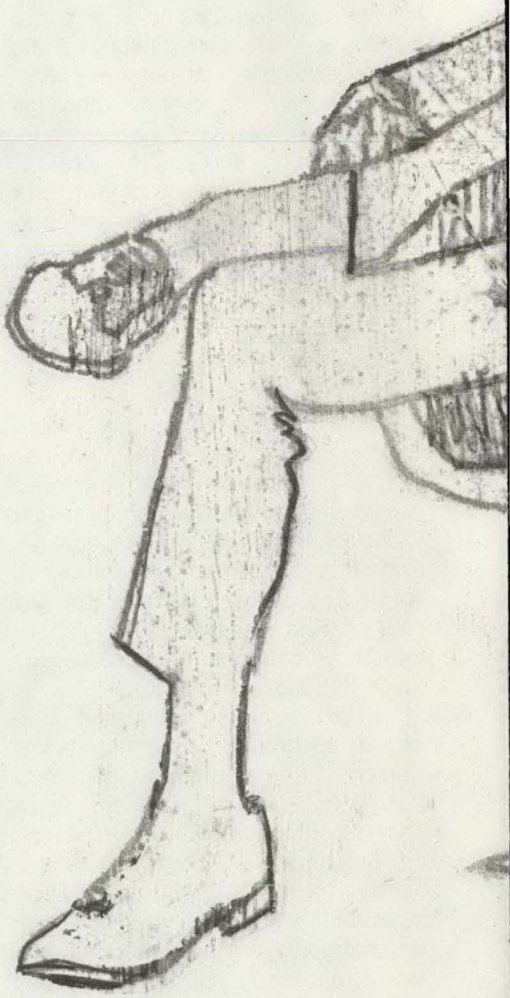
Statistics compiled by the FBI's Uniform Crime Reports revealed that 92 local, county, and State law enforcement officers were killed feloniously in the United States and Puerto Rico during 1978. Ninety-three officers were slain in 1977.

Upon releasing these statistics, FBI Director William H. Webster noted, "Regardless of the seemingly routine nature of certain law enforcement duties, officers must exercise extreme caution in all facets of this work. Utilizing proven safety measures is imperative in the handling of all situations no matter how trivial they may appear."

During 1978, 45 officers were killed in the Southern States; 20 in the Western States; 12 in the North Central States; 11 in the Northeastern States; and 4 in Puerto Rico.

Sixteen officers were slain while enforcing traffic laws. Fourteen were killed while attempting to thwart robberies or in the pursuit of robbery suspects; 3 while attempting to apprehend burglary suspects; and 20 while attempting arrests for crimes other than robbery or burglary. Twelve officers were slain in unprovoked or premeditated ambush-type attacks; 10 while handling disturbance calls; 8 while investigating suspicious persons; 6 while handling or transporting prisoners; and 3 while dealing with mentally deranged persons.

Eighty-nine of the 92 officers were killed with firearms. Handguns were used in 68 of the slayings, and in 14 of these incidents, officers were killed with their own service weapons. **FBI**



Crisis Management

The Challenge of Executive Kidnaping and Extortion Against Corporations

By DANIEL E. SHAFFER
Special Agent
Criminal Investigative Division
Federal Bureau of Investigation
Washington, D.C.

American business executives and their families are becoming an ever increasingly attractive target for kidnapers and extortionists. Terrorist activity directed against executives, corporations, and political leaders, principally in Europe and South America, has made the American business community justifiably apprehensive. As in the case of the Hearst family, U.S. corporations, their executives, and members of the executives' families have been and are expected to continue to be victims of kidnapings and extortions, which could inflict heavy losses on the corporation or the personal wealth of the victim's family.

There are two basic reasons for these executive kidnapings—personal gain and political motivation. These kidnap victims generally possess one or more common elements of money, power, or high public visibility. Individual chances of being kidnaped are low, but the odds increase rapidly if the potential victim is wealthy; controls large amounts of money; is associated with such cash-handling industries as banking, savings and loans, or food marketing; or works in other industries, such as airlines or public utilities. The person's chances of being kidnaped are further increased if his industry is often victimized by terrorists. An executive stationed overseas is also subject to the international spectrum of criminal and political kidnapings.

In order to mount a successful response to kidnapings and other forms of corporate extortion, a plan to deal with such crises must be formulated in advance. Since most executive kidnapings are designed to extort money or action from the executive's employer, rather than from the executive, the major responsibility for advance planning belongs to the organization. Organizational planning is more effective than preparation on an individual basis and is more likely to be implemented than if left to each of the potential targets. Therefore, organizations must develop crisis management skills that are adaptable to all potential extortionate demands made upon it.

Principles of Crisis Management

Crisis management can be addressed advantageously by a Crisis Management Team (CMT). The CMT should consist of a group of senior management personnel who have the authority to make decisions for the entire corporation during a crisis. Because a small unit is generally capable of reaching decisions more quickly, the CMT should consist of the least number of individuals as possible. Each member should have an established communication link with subordinates in their respective area of corporate responsibility to provide needed information in the decisionmaking process.

Because the extortionist often has the ability to inflict heavy losses on the organization, it is imperative that the CMT prepare a readiness plan that will minimize these losses. This plan must fix corporate objectives and limitations, and it must be designed to be effective when the CMT is operating under the emotional strain of responsibility for human life, often with limited data and time for making decisions. The plan must also resolve the fixed elements of a crisis, so as to require the CMT to make only those decisions during the crisis which are affected by immediate variables. It must, however, still have sufficient flexibility to enable the CMT to develop alternative strategies after gathering information and analyzing threats under rapidly changing crisis conditions.

"The CMT is not designed as a substitute for law enforcement or the organization's security department, but rather as a complementary support process."

The CMT is not designed as a substitute for law enforcement or the organization's security department, but rather as a complementary support process. Decisions which affect the company directly and require a corporate decision or response should be handled by the CMT as a partner with law enforcement. The CMT should attempt to avoid direct negotiations with the extortionist, because they place the company in a position of being expected to make immediate decisions and commitments directly to the extortionist. Instead, trained hostage negotiators or other professionally trained law enforcement personnel should act as intermediaries between the extortionist and the victim company. The actual negotiator should be acting only as an intermediary for the company, and the extortionist must clearly understand that the negotiator has neither the authority nor the capacity to make decisions or commitments on behalf of the company. The trained negotiator provides valuable time for the CMT decisionmaking process. He may also be successful in defusing the crisis through his study of and prior experience in handling such crises.

There are several basic areas of concern to be addressed by the CMT in providing corporate leadership during a crisis. Asset protection, which in this case includes personnel, is of primary concern. Experience with a systems approach to asset protection, as well as a knowledge of the types of adversaries, should be provided to the CMT by the organization's security department, which should also assist in liaison with law enforcement during the crisis. The CMT will require the assistance of its legal counsel to examine such issues as employees' and stockholders' rights and the legal standing of the company regarding questions of various strategies and monetary payments to extortionists. Information from the financial arm of the corporation is needed to develop the monetary base for CMT operations and aids in setting the corporate strategy and limitations regarding ransom of any particular corporate employee.

Provisions for gathering personnel data, such as employee and family biographical sketches, as well as medical and other requirements of the employee and/or his family, must be

incorporated into the CMT's plan, along with methods to make this data readily available during the crisis. The CMT must also consider the long-term effect of its present crisis decisions upon employees of the company. Media relations experts should be available to the CMT for a positive, controlled response to media inquiries during the crisis, since one asset to be protected is the public image of the corporation. It is imperative, however, that responses to the media be coordinated with law enforcement officials to avoid the premature release of information which may jeopardize the victim's life.

The CMT must be given autonomous control over decisions the corporation must make during a crisis, consistent with the readiness plan approved by the board of directors in advance. Every action to be taken by the company, not variable upon the nature of the crisis, should be rehearsed, much like a fire drill, so that only the variable decisons will have to be addressed during the crisis. Even those decisions will be addressed from the perspective of preset goals, limitations, and strategies.

A corporate crisis management capability will enable professional law enforcement personnel to respond to the crisis with better initial information and a clear-cut base from which to operate. Also, this capability will lessen considerably the probability of loss through matters growing out of the original crisis, such as stockholder suits, employee negligence suits, wrongful death suits, insurance cancellations, and expropriation of assets by foreign governments, that may have been irritated by the method in which a corporation handled a crisis. A highly trained CMT is capable of handling not only those crises of an extortionate nature, but can also be used in the crises generated by natural disasters and civil disturbances.

Handling The Initial Contact

When an extortionate demand is received, the CMT, the organization's security department, and law enforcement should be advised immediately, and the crisis management program put into action. The actions taken during the first crucial moments after an extortionate demand is received may well determine the eventual outcome of the matter.

The first notice often is received by a subordinate of the management and points to the need of a response capability that will provide the CMT and law enforcement with the most timely, accurate, and complete information regarding the crisis. Since most threats are transmitted by telephone, recording devices and tracing capabilities should be discussed with the local telephone company. Recording an extortionate call may not only preserve the details of the call for later analysis and decisionmaking, but may also provide investigators with background noise and voiceprint characteristics which may lead to the origin of the call and the identity of the extortionist. Before installing such devices, however, local laws restricting such usage should be researched.

"...Organizations must develop crisis management skills that are adaptable to all potential extortionate demands made upon it."

Persons receiving the initial extortionate communication are, in many respects, the most important source of information for the CMT. As such, a training program should be developed to ensure proper implementation of the CMT procedure regarding the handling of this call. Persons most likely to receive such calls should be instructed to remain calm, record or write down all data given by the extortionist, express cooperation, and ask questions to lengthen the time of the call. An attempt should be made to calm the extortionist and secure proof that the hostage is being held. The recipient of the call should also try to talk to the hostage and give the hostage the opportunity to relay critical information through a prearranged code. Above all, persons receiving the initial call should bargain for time, and if possible, should end the conversation in such a manner that additional contacts with the extortionist will be necessary before a ransom is paid. This allows for the opportunity to trace and record a second call from the extortionist, as well as providing time to implement the crisis management program and set the stage for possible negotiation.

Many initial extortionate demands are transmitted in the form of a threatening communication. The letter and its envelope must be immediately protected from unnecessary handling and must be preserved for fingerprints, handwriting, and typewriter examinations. Following receipt of a written threat, steps should be immediately taken to identify the source of the letter if it was not mailed. Constant monitoring cameras on access areas and employee interviews may well lead to the identification of the person who delivered the communication.

During the initial phase of the crisis, it is imperative to determine if the demand is a hoax. In the case of a kidnaping, the whereabouts of the alleged victim must be immediately established. Employee-family biographical fact sheets may be of critical importance at this time. Several notable kidnap hoaxes have involved pretext telephone calls to the executive's family, in which the caller pretends to be a telephone company representative. The caller states that the family telephone is being serviced and requests cooperation in not answering the telephone for the next hour when it rings. The executive is then called at work and told that his family has been kidnaped. Naturally, when he calls home and gets no answer, he panics and complies with the extortionist's demands, believing that his family has been taken hostage. A family fact sheet containing the telephone number of various neighbors who could confirm the whereabouts of the family can provide an easy means of detecting such a scheme.

Ransom Considerations

Payment of ransom is a decision to be made solely by the corporation or the victim's family; however, law enforcement officials will discuss the question of ransom payment with the top officials of the organization and with the family of the victim.

Policy and the limitations on payment of ransom should be developed by the corporation and approved by the board of directors. This way, any director or executive who engages in either course of conduct, however correct he believes it to be, may protect himself from civil liability. For example, a shareholder could allege that the executive approving or making a ransom payment was not acting legally, did not have corporate authorization, and therefore was personally liable to the corporation for the amount diverted. If the payment of the ransom or any other action taken in response to the extortion demands were themselves violations of local criminal law, the civil liability position could be aggravated. Finally, if the executive approving or making the payment failed to consult other executives or directors, but was nonetheless able to obtain the cash or other assets and complete the transaction, shareholders could allege that the other executives and directors were negligent in failing to consider the possibility of such an extortion and in failing to require appropriate controls. In such a case, the liability might be alleged against all of them.

Inadequate action or improper action by the corporation, leading to death or injury of the employee, might result in claims against the corporation for damages by the employee or his family, particularly if there were no contingency plans and the injured employee was exposed chiefly because of his corporate employment.

The above examples are not all inclusive, and corporate counsel should be consulted in all such matters. This is not to suggest that no action be taken to free a kidnap victim merely because of the potential of civil liability. It is to suggest that the way to minimize or avoid such liability involves preplanning and prior authority.

It is not possible to fix any categorical limits to the amount which should be paid for release of a kidnap victim. In most companies, the only financial assessment of the impact caused by the death of an executive or official likely to be found is the amount of "key man" life insurance contracted by the company. While this type of insurance is intended to cover the cost to the firm of replacing a deceased official and the interim expenses or losses likely to result from his sudden absence, and while it does not address the sensitive area of public and employee attitude toward the company, the amount of such insurance is at least a rough standard which can be used as a first step in considering ransom payment amounts.

"In order to prevent and minimize the harm which might result from executive kidnapings and other forms of corporate extortion, the American business community should recognize the need for and take the necessary steps to develop crisis management plans."

One alternative in this situation is to refuse payment altogether. This is the official position of the U.S. State Department (Kissinger Policy, 1973) with respect to official hostages or demands made upon the Government. It is based upon the argument that, in the long term, the general welfare is not served by payment, because it may induce others to try again. The possible individual loss of life is regarded as a necessary cost of this position.

This position may be untenable when applied to private business enterprises. At least as to situations arising within the United States, it is possible that the business community and the general public may not accept the position and the potential cost.

If a decision is made to pay ransom, the net impact on the enterprise may ultimately be much smaller than the amount paid in ransom for two reasons. First, active cooperation with law enforcement from the very beginning will improve chances of capturing the kidnapers and recovering all or part of the ransom. Second, commercial insurance can be purchased to cover a portion of the ransom payment actually made.

If the decision has been made to meet ransom demands, law enforcement authorities will assist in preparing any ransom package. Plans must be made for availability of funds in appropriate denominations. It takes considerable time and effort to record currency used in ransom payments, and this step should be completed as much in advance of the payoff as possible. Large amounts of money in small denominations will turn out to be surprisingly heavy, bulky packages. One million dollars in $10 bills weighs 225 pounds, for example, and this should be kept in mind during negotiations.

Where nonmonetary demands are made, such as supplies, publicity, and charter aircraft, the response must be the result of thoughtful decision on the part of the CMT. In formulating a policy, the possibility of ransom should not be limited to money. Political demands, such as the release of prisoners and the provision of arms, generally cannot, however, be influenced by officials of the kidnap victim's business enterprise.

Preventive Security

Unfortunately, experience in foreign countries has shown that a dedicated group of terrorists can penetrate all but the most sophisticated personal and corporate security systems. However, a company's demonstrated crisis response capability and an awareness

by executives of personal and corporate security practices will likely decrease the chances of a corporation or its executives becoming victims of a kidnaping or extortion attempt. The corporation can seek able assistance in preventive security by contacting any of several established, commercial security consulting organizations. Such organizations can alert the corporation and its executives to the level of danger depending on the country in which the particular executive is residing, the need to avoid patterns or routines in personal behavior, and the increased vulnerability of children, all important factors in forming an appropriate preventive security plan. Some of the more obvious suggestions include taking steps to ensure the physical security of executives' residences, instructing children as to appropriate precautions, limiting the dissemination of personal information to only those deemed capable of protecting the information and in need of such information, and securing automobiles and providing drivers with proper security training. Additional and more detailed security precautions can be developed through consultation with experts and internal planning.

Suggestions For Individuals Kidnaped

Based in part on victim interviews, it is clear that a kidnaped individual should control his or her fear and should realize that professionals are working for a safe release. Problems should be analyzed, and decisions based upon the individual's present condition. A display of anxiety may be contagious and counterproductive. In many instances, actual control of an abductor's actions can be obtained through the dominance of the victim's personality, leadership qualities, and a calm approach to the situation.

If the victim is troublesome or appears to jeopardize the abductor's plan, serious harm to the victim may result. The victim should attempt to convince his captors that the victim's well-being is essential to their success. Those working for release will be simultaneously making every effort to convince the abductors that their goals will not succeed under any circumstances without the victim being set free alive. An effort should also be made to develop a relationship with the abductors in such a manner as to change their perception of the victim from that of an "object" to that of a "person" similar to them. In this respect, attempts to cooperate with the abductors should be made.

If given a chance to communicate with persons working for release, the victim should attempt to give maximum information through prearranged code words, phrases, or verbal mannerisms that have been developed by the CMT. If the victim recognizes his captors or any detail of the kidnaping, it is imperative that this knowledge be kept from his captors, because it may cost the victim his life if he is perceived as a potential witness.

There are almost no circumstances in which an escape attempt is recommended. The key word, however, is "almost." The possibility of escape should not be considered if the victim is goaded by impatience. Escape attempts should be viewed as a last resort, not a timesaving device. By considering his abduction a long-term venture, the victim will be less tempted by impatience. An escape could result in the victim finding himself lost in a remote, inaccessible, alien region, often without transportation, money, food, water, shelter, and perhaps unable even to speak the local language. If not killed or seriously injured in a recapture attempt, the victim will most likely be treated more harshly upon recapture. Thus, escape should only be considered as a lifesaving effort when success is reasonably certain and the likely alternative is death.

Conclusion

In order to prevent and minimize the harm which might result from executive kidnapings and other forms of corporate extortion, the American business community should recognize the need for and take the necessary steps to develop crisis management plans. The responsibility for developing such a plan lies with the corporation itself, and it is only through such planning, both internally and in consultation with experts, that the tragedies inherent in such crises can be avoided or minimized.

FBI

Establishing A Criminalistics Laboratory Information System

The FBI is developing a national computerized index on scientific reference information known as the Criminalistics Laboratory Information System (CLIS). The FBI laboratory will host the data base, and the National Crime Information Center telecommunications lines will provide access to it. This Laboratory teleprocessing operation is designed to improve the efficiency and effectiveness of crime laboratory functions by providing immediate access to scientific reference information in a centralized data base.

CLIS became functional June 1, 1978, on a testing basis with the establishment of the General Rifling Characteristics File. The Infrared Spectrophotometry File is presently being developed. These files will serve as the basis for the prototype system which will consist of 44 local, State, and Federal laboratories.

After a suitable testing period, estimated at this time to be approximately 1 year, the full CLIS will be implemented consisting of several analytical files, and all forensic science laboratories associated with law enforcement agencies will be able to participate in CLIS.

FBI

Designing Inservice Training

A Better Approach

By DR. M. BRENT HALVERSON and JOHN C. LE DOUX

Assistant Professor
Vocational and Adult Education
Auburn University
Auburn, Ala.

Special Agent
Federal Bureau of Investigation
Mobile, Ala.

Dr. M. Brent Halverson

The purpose of police training programs is to help the officer develop the "operational knowledge, physical and communication skills, and habits which relate to the performance" [1] of job-specific tasks. While the importance of well-developed inservice training programs might seem obvious, it must be admitted that training is often a low priority activity. Because there is insufficient time to meet the heavy demands of the public, many police departments do not have the time to conduct the training which should be provided.

One partial answer to this problem is to make the training more efficient. To increase the efficiency of a training program, most approaches would involve adjustments in scheduling. Without minimizing the value of scheduling, emphasis can also be placed in making those hours spent in training more productive.

To increase the productivity of the adult learners in our training sessions, we must examine our basic approach to police inservice training which generally has been based on the traditional methods used to educate children. Most teachers of adults, including police instructors, learned "how" to teach based on their experience as students. However, there are many differences between adult and child learners, with a corresponding contrast in the methods used to teach adults and children. This statement is hardly shocking. But how many police instructors consider these differences when planning or teaching an inservice class? Instructors would not consider speaking to a fellow officer during a normal conversation as if the officer was 9 years old. Therefore, it is not logical to approach the training of police officers as if they were children.

Andragogy v. Pedagogy

Differences between children and adults as learners have been examined by Malcolm S. Knowles, a well-known adult educator. Knowles introduced the term *andragogy* to describe the process of adapting teaching methods to adults.[2] The term is derived from the Greek word "anter," which may be translated as "man." Andragogy is contrasted with "pedagogy," which has traditionally been defined as the art and science of teaching. Pedagogy, which is derived from the Greek word "paeda" meaning "child," usually dealt with teaching children. Thus, Knowles suggests the use of different terms to contrast adult and child learners. Research has corroborated Knowles'

view and has suggested several specific areas in which one may anticipate significant differences between learners who are adults and those who are children.[3]

For example, when children come to a learning situation, they typically have a different self-image than do adults. They tend to be submissive toward the teacher and expect the teacher to be the authority. Adults, however, have usually become less dependent as they matured. Most adults are used to coping with various problems and are neither desirous of, nor comfortable with, a submissive, dependent role.[4]

Also involved in the relationship between instructors and students is the student's general level of knowledge and experience in the subject area.[5] A child usually has had little experience or previous exposure to a subject he is to be taught. The instructor must supply the expertise for the learning experience. An adult, however, has probably experienced a wide variety of situations which are related to the topic being presented. This experience may be used by the instructor as a learning resource to provide additional information and insight into the topic.

Another difference between adults and children is in their time perception. Children generally are not willing to postpone a reward.[6] For example, a child might prefer to be given 25 cents now rather than get $5 next week. Adults conversely are more accustomed to waiting for a reward. For instance, an adult often would be willing to save enough money to purchase a specific make and model of motorcycle rather than buying the first one he could afford. But in rating the value of education or training, the roles are reversed. Children are generally willing to learn material that does not seem the least bit important today. They have faith that someday the importance of the material will seem clear to them. However, most adults look for short term personal value or importance in the material being taught. If the average adult does not see immediate value of the material, he is likely to consider the class a waste of time.

Motivational Differences

Since this discussion suggests that adult learners are unique in terms of self-image, experience, and desire for immediate application, one might surmise the reasons underlying motivation of adult learning are also different. This is true. Children go to school because it is expected of them. Their learning is motivated by a series of external rewards and punishments such as grades, extra TV time, or being "grounded." Adults who learn are primarily motivated by internal factors.

"If the average adult does not see immediate value of the material, he is likely to consider the class a waste of time."

Houle[7] divided adult learners involved in continuing education programs into three major categories based on their motivation for attending class. The categories are not mutually exclusive and it is possible for an adult learner to fall into more than one category. According to Houle, some adult learners are primarily motivated by a desire to reach some goal. Such persons use education as a means of obtaining a specific personal goal, such as a promotion. While this situation has some similarity to activity motivated by external rewards, there is a difference. In the case of an adult, he has set his own goal and determined for himself that the training will help to reach this goal. Whereas the child has both his activity (school) and his reward (grade) established by someone other than himself. Other adults participate in programs for the purpose of increasing their knowledge. They enjoy learning in and of itself. When not engaged in a formal learning experience, such persons are likely to read a wide variety of books. The third group of adult learners participate in classes for the enjoyment of social interaction. The subject matter is not most important to such a person. Rather, it is the opportunity to meet with fellow classmates that is most significant. Police officers would most likely fall into one of the first two categories, since it would be anticipated that they desire to learn more about law enforcement techniques.

The above classification system was based on studies of persons voluntarily involved in an adult learning situation. However, participation in police training is often mandatory. Therefore, motivation may be lacking for officers attending a training class. This problem of possible lack of motivation will be probed later. For now it will suffice to recognize that the *successful* adult learner is primarily interested in learning for his own personal reasons—due not to external rewards or punishments. Accordingly, police trainers should be aware of possible sources of participant motivation in order to help motivate the students.

In pondering the factors underlying internal motivation, Maslow[8] theorized that once the lower order needs, such as food and safety, are sufficiently filled, there remain the needs of esteem and self-actualization. These needs partially center around self-esteem and developing a person's true potential. Therefore, successful adult learners are internally motivated by such higher order needs.

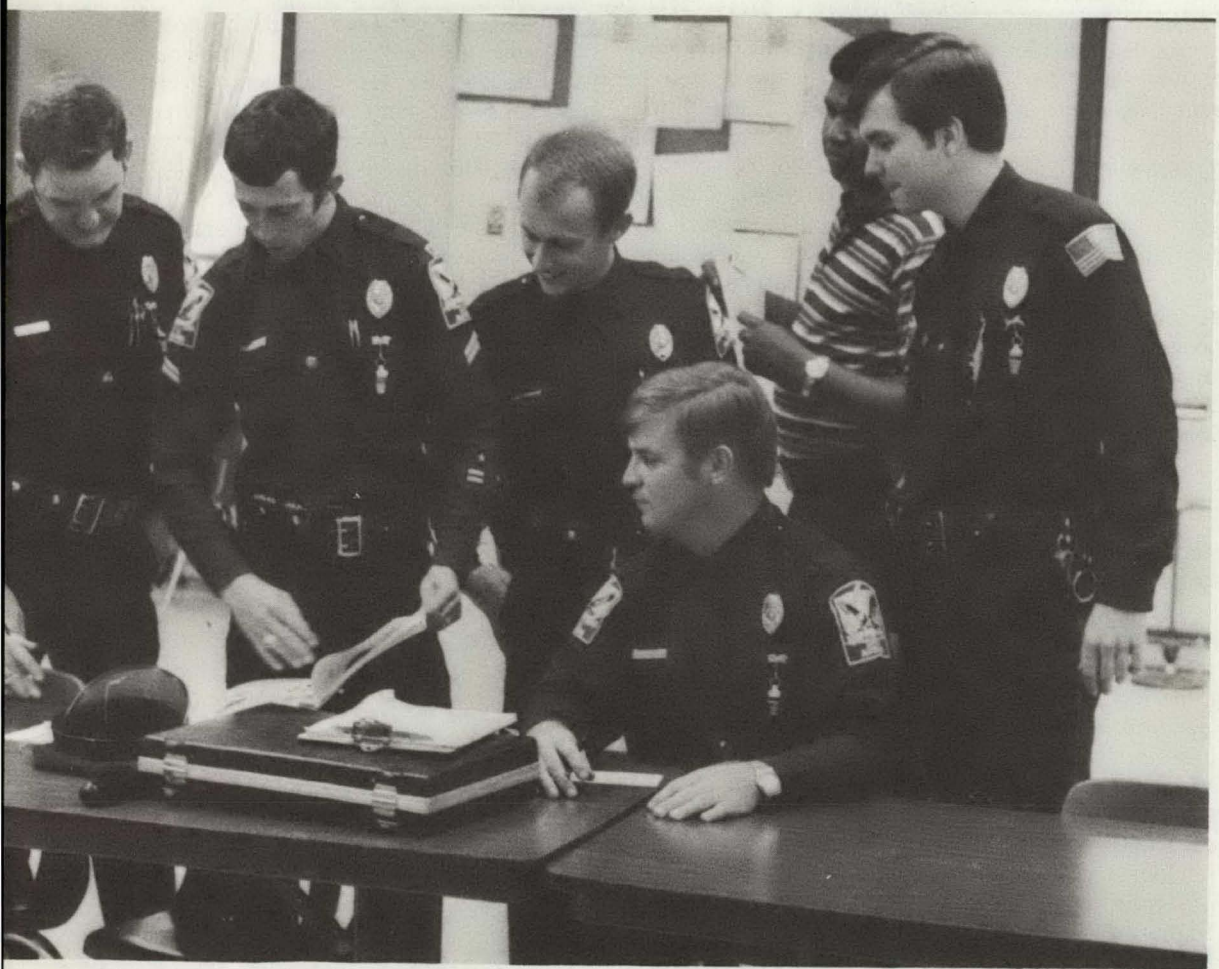
Educational Techniques for Police Training

The above discussion suggests four important considerations which should be taken into account when designing police training. These considerations, in turn, will lead to discussion of several specific methods for implementing andragogical police in-service training.

"... the *successful* adult learner is primarily interested in learning for his own personal reasons– due not to external rewards or punishments."

The first consideration is based on the self-image an adult brings to the learning situation. Since the adult is an adult, he expects to be treated as one. The officer does not want to be treated as if he is still sitting in a third grade classroom. An adult prefers to examine the objectives of a class and then determine for himself his weaknesses in the subject area. Therefore, the learning objectives of a class should be immediately recognizable.[9] In this way the officer is encouraged to be independent and self-directing. He is able to determine the extent of knowledge he should possess based on examination of the learning objectives. Then, he is able to compare himself to the standard and determine the areas in which he needs improvement. This first consideration also suggests that the climate of the class should be fairly informal. This setting is contrasted with a highly formal setting in which the instructor is "the authority." One must avoid treating comments or questions from the class in a negative manner. There is no need to "put down" students in order to build up the ego of the instructor.

At this point, note that there are not necessarily absolute differences between andragogy and pedagogy. For example, an instructor in a formal setting can show respect for the students. Rather, the comments made are to show the extremes which could exist between the two approaches. In fact, some of the methods of andragogy have been a part of good traditional

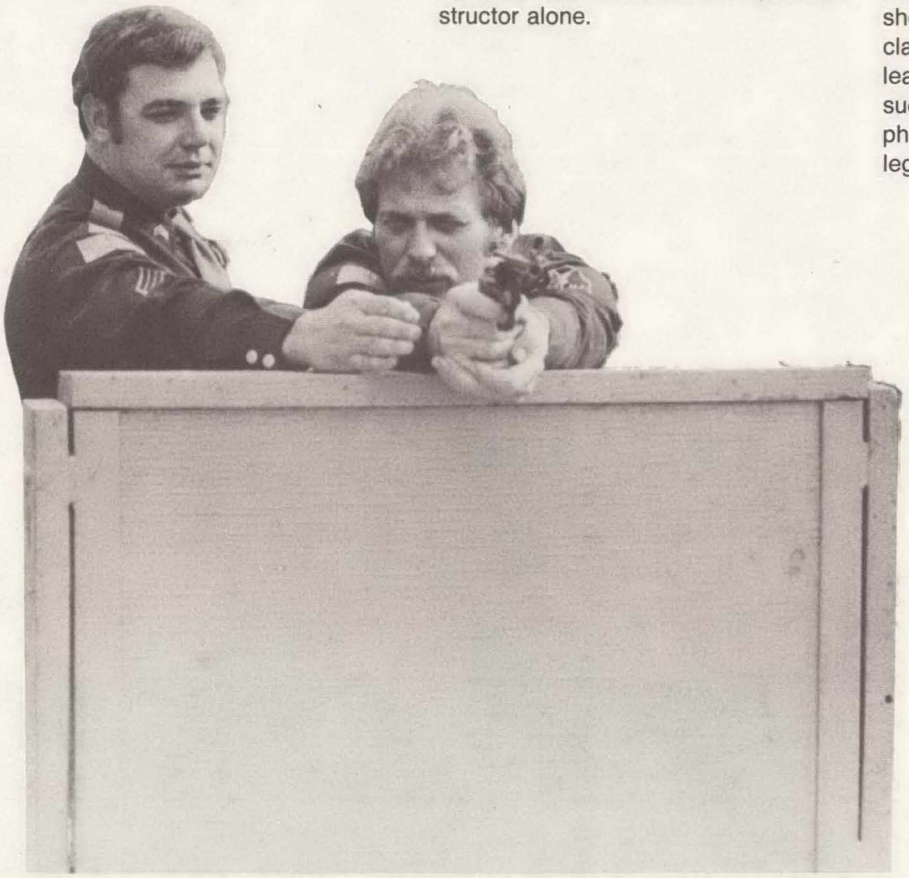


In the problem-solving approach, the officers, either individually or by small groups, decide what actions should be taken.

pedagogical methods when teaching children or adults. Having made this observation, let us examine some additional considerations.

As noted above, adult learners want to make immediate use of the material being presented to them. Police inservice training is not likely to deal in areas that do not have immediate application for the officers. So the most obvious consideration is met. But, one must wonder if there are other topics which the officers feel should be discussed. The officers themselves would be another excellent source from which to determine the training needs of the department. After all, they are acutely aware of problems to be faced on the streets. Classes can be developed which are centered around these problem areas.

The third consideration due to adults' greater personal experience is simply to make use of that experience as a learning resource. This seems especially important to inservice police classes, since such classes often have a number of members knowledgeable of a given topic. In fact, it is a distinct possibility that some of the students may have more firsthand knowledge of the class topic than the instructor. In many cases, the sum total of knowledge held by all the class members may be equal to or greater than the knowledge of the instructor. One might be tempted to feel that if the police officers are so knowledgeable, there is little need for the class or the instructor. This is not true. The significance of the observation regarding the level of officers' knowledge is that in any inservice class there are likely one or two persons who know the topic well, several persons who have some knowledge of the topic, and a group of officers who have had some exposure to it. These persons are able to help provide more thorough coverage of a topic than can be provided by the instructor alone.



Your department is probably using an andragogical approach to teach at least one subject—firearms training.

Using the officers' knowledge, the instructor facilitates the group's learning. In fact, some educators now prefer to use the term facilitator in lieu of instructor.[10] The term "facilitator" implies that the leader of the class is encouraging maximum input from the students and is guiding the class as opposed to dominating it. Thus, the knowledge that a class possesses about a topic does not mean there is no need for an instructor. Such knowledge should merely suggest that the instructor would be wise to adopt a role as a facilitator instead of, or in addition to, the role of an expert.

A fourth consideration is student motivation. The adult learner is not as often motivated by external rewards, such as grades, as by internal incentives, such as the self-satisfaction of accomplishment. Therefore, motivation is most likely higher if the classes are presented as a means of increasing the officers' professional ability. This means, among other things, the learner should be encouraged to view the class as an episode in his continued learning. A list of resource materials, such as books, government pamphlets, or course offerings at local colleges, should be available for officers

who want to improve their knowledge of a subject. It would be desirable if resource material owned by the department were maintained in a single location so the items could be borrowed by the officers.

If law enforcement is to become more professional, the individual officer must be encouraged to expand his knowledge of the field. However, many police departments do not have an organized, comprehensive program to aid officers in professional development. One may find a department that has several classes in a week, but then has no more instruction for a year or more. Such a schedule does not communicate the importance of training to the officers. And, the attending officers are expected to be present for the instruction during off-duty time. Officers required to come to work on an offday or attend class after working for 8 or 10 hours may have less motivation to learn. This lack of motivation is not only unfortunate, it may be disastrous. An officer may be forced to attend class at an inconvenient time, but the officer cannot be forced to be interested or to learn! Holding a class for a group of tired officers who would rather be home with their families is likely to be largely a waste of time and money. The desire for increased professionalism also demands that police managers refrain from wasting resources through a haphazard training program. When management and instructors together provide reasonable learning conditions, the police officers are usually quite interested in training. Most officers are mature individuals who view law enforcement as a serious task and approach training with the same serious outlook.[11]

If a training program is developed which has a supportive class climate, has relevant classes, and seeks officers' input to the planning and training process, the officers' motivation and level of learning should increase. Besides these adjustments to the learning environment, there are several specific methods instructors may employ to increase learning. These methods encourage greater student participation since research has indicated that students actively engaged in a learning activity tend to learn more than students who are sitting waiting to be taught.[12] There are other methods which could be used, but the concept of the active participant can be demonstrated with the following methods.

To make the examples more realistic, assume a particular class deals with the correct manner of conducting a crime scene search. One approach would be the case method. One or more case studies would be provided to the officers. The studies could be written handouts given to each officer or a study could be simultaneously displayed to all officers by an overhead projector or similar device. Each study would deal with a specific hypothetical situation in which police respond to a crime scene. The study would present, without comment, a description of the crime scene and the actions taken by the responding officers. It would then be up to each officer to analyze the data and decide which of the actions taken by the responding officers were appropriate and which were not. The student would draw on personal experience to prepare and discuss his answer. This exercise would serve as a starting point for a group discussion of the case. The instructor's position would not be that of an authority telling the officers they were right or wrong, but would rather be that of a facilitator helping the class to see the strengths and weaknesses of the various answers. Different cases could be written with preplanned "errors or omissions"

By playing the role of the crime victim, the officer develops a greater understanding of how a victim views the police.

to aid the responding officers in contrasting different factors which should be considered when conducting a crime scene search.

One variation of this method would be to divide the class into small groups of five or six officers. Each group would then separately discuss the case, and after about 5 minutes, a spokesman for each group would explain the group's analysis of the case.

Similar is a problem-solving approach. The students would be supplied with background data and a description of the crime scene, but would not be supplied with a list of actions the responding officers took. It would be up to the officers, either individually or by small groups, to decide what actions should be taken. (In addition, the above small group discussions would be an excellent method of determining what classes the officers feel should be taught.)

Yet another approach, which could be used with either the case method or the problem-solving method, would be to divide the class into small groups in which each person in a group is given time, e.g., 3 to 5 minutes, to discuss the situation. No presentation is made to the total class. The instructor circulates from group to group and is available if a group feels a need for his assistance. One advantage of such an approach is that it requires participation of all students without anyone being forced to speak before the whole class.

A different method which might be occasionally employed would be the laboratory experience. For example, officers could actually take plaster casts or conduct a mock crime scene search. If time or money does not permit such an activity, a demonstration could be held in which various class members participate.

The method of role-playing is gaining wider use in law enforcement training. It is difficult to continue with our crime scene example as a likely topic to employ role-playing. However, by playing the role of the crime victim, or a minority group member witness, the officer gains insight into how such persons view the police. This activity may better equip the officer to deal with behavior which he might consider unusual or deviant.

Andragogy and Your Department

Some of the above ideas may not seem practical to your department. At first, an instructor may not feel comfortable using andragogy and may even feel he is not doing the job, since he is not lecturing to the officers. It is suggested the department choose those methods which seem most practical to your situation. Perhaps some adaptions would make the methods even more practical for a department. And remember, one can phase into andragogy. The lecture method may be used to start a class and to supply sufficient information to lay the groundwork. In fact, the lecture is still an excellent method when presenting material about which the officers have little or no knowledge. However, even when using the lecture method, the instructor should remember he is dealing with adults. Participants should feel the instructor is speaking with them not merely speaking to them. Members of the class should be encouraged to raise questions and to provide examples from their experience which illustrate the learning objectives of the class.

One final word about andragogy. Your department is probably using an andragogical approach to teach at least one subject. And, it is probably the officers' favorite inservice training—firearms training. If you analyze your classes on the range, you will find the students are respected and their experience is taken into account. Each officer is actively engaged in trying to determine his own weaknesses and to improve himself. An examination of your firearms program should convince you that teaching police officers as if they are adults is an efficient approach that can be effected without any new cash outlay, and it is the approach your entire training program should take.

FBI

Footnotes

[1] Charles P. Smith, et al., *Role Performance and Criminal Justice System, Vol. I, Summary,* Anderson Publishing Co., Cincinnati, Ohio, 1976, p. 137.

[2] Malcolm S. Knowles, *The Modern Practice of Adult Education,* Association Press, New York City, 1977, p. 305.

[3] Edmund de S. Brunner, et al, *An Overview of Adult Education Research,* Adult Education Association of the U.S.A., Chicago, 1959.

[4] J. Paul Leagans, et al, *Selected Concepts From Educational Psychology and Adult Education for Extension and Continuing Educators,* Syracuse University Press, Syracuse, N.Y., 1971, p. 49.

[5] *Ibid.*

[6] George G. Thompson, *Child Psychology,* Houghton Mifflin Company, Boston, 1952, p. 183

[7] Cyril O. Houle, *The Inquiring Mind,* University of Wisconsin Press, Madison, Wis., 1963.

[8] A. H. Maslow, *Motivation and Personality,* Harper and Brothers, New York City, 1954.

[9] M. Brent Halverson, "Facing the Realities: Some Conference Planning Principles," *Adult Leadership,* June 1974, vol. 23, No. 2, p. 47.

[10] Malcolm S. Knowles, *Self-Directed Learning,* Association Press, New York City, 1975, p. 33.

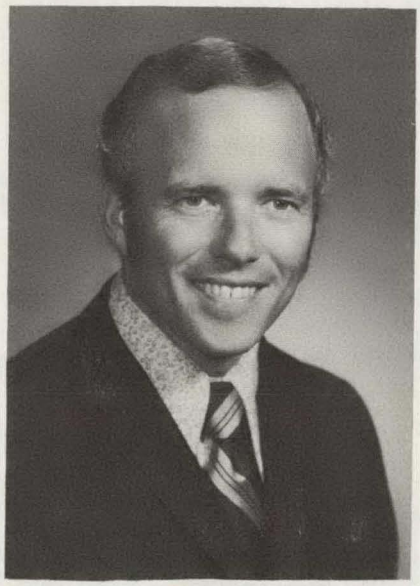
[11] John C. Klotter, *Techniques for Police Instructors,* Charles C. Thomas, Springfield, Ill., 1971, p. 4.

[12] Malcolm S. Knowles, *Informal Adult Education,* Association Press, New York City, 1956, p. 15.

Disaster Victim Identification

An Example of Professional Cooperation

By NORMAN D. SPERBER, D.D.S.
Forensic Odontologist
San Diego County Coroner's Office
San Diego, Calif.



Dr. Sperber

On September 25, 1978, the darkest moment in San Diego's history and the worst domestic air disaster in the United States occurred when a Pacific Southwest Airlines (PSA) Boeing 727 jetliner carrying 135 persons collided in midair with a Cessna 172 with 2 persons aboard. The collision damaged the right wing of the jetliner, causing the aircraft to burst into flames. The Cessna immediately fell to earth and crashed into a street. Both occupants were killed. The jetliner crashed into the North Park area of San Diego, and after initial impact, ricocheted through several homes and exploded, killing all persons aboard. Veteran police and rescue workers described the scene as the worst they had ever seen. Charred, mangled, and dismembered bodies were strewn over the entire area. Seven residents of the area perished after the large jet, which was preparing to land at San Diego's Lindbergh Field, plummeted downward.

Smoke was still pouring from the smoldering remains of homes and airplane fragments when the call was received at FBI Headquarters in Washington, D.C. Prompted by the request of the acting San Diego County coroner, the Special Agent in Charge of the FBI's San Diego Office was asking for the assistance of the FBI Disaster Squad to help identify the victims.

The seven-man Disaster Squad arrived late Monday night and immediately conferred with FBI personnel, representatives of the coroner's office,

and members of the pathology and dental teams, all of whom would be involved in the identification process. Also attending the meeting were two experienced investigators from the Los Angeles County coroner's office.

In the meantime, the bodies were numbered, placed in individual bags, and transported from the accident sites in refrigerated trailers to the coroner's facility, where they were placed under security.

The following day, at 8:00 a.m., fingerprint experts, forensic pathologists, and forensic odontologists, along with investigators of the Federal Aviation Administration and the National Transportation Safety Board, started the exacting and difficult task of identifying the deceased. The victims had been badly traumatized and/or burned. None could be visually identified, and many were not intact. Initially, a team of deputy coroners examined the contents of each pouch. Written descriptions were carefully noted before the victim was turned over to the FBI fingerprint team. All available fingerprints were recorded, processed, and compared with incoming fingerprint records of known victims. Known physical information about the passengers and ground victims was listed on large wall charts, as well as the conditions of the unknown traumatized decedents. Charts were also prepared for dental fragments and severed hands.

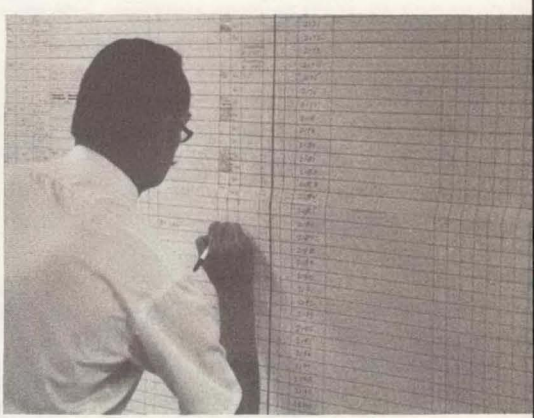
After fingerprinting, the pathology team performed an autopsy on each of the victims. Physical characteristics, such as sex, race, and age, were documented, along with blood type, tatoos, predeath deformities, and scars. This information was also entered on large wall charts. At the conclusion of the autopsy, dental structures attached to the bodies were examined by the dental team, after identifying numbers were compared.

In 1973, in preparation for a mass disaster, the author organized a dental disaster team with Dr. Robert Siegel through the coroner's office. Ten San Diego dentists were given orientation lectures and participated in dental post mortem examinations. They were psychologically prepared for the stress of such an event.

Dr. Siegel and the author, with the assistance of a computer specialist, also developed a computer system which would match dental information of missing persons with that of unknown deceased (or living) individuals.* By its nature, the system lent itself well to the identification of mass disaster victims and was used to identify the victims of the San Diego disaster. As such, it was the first known time that a computer system had been used anywhere in the world for dental identification.

As many as 15 dentists assisted the dental disaster team in this effort. Dr. Siegel assumed responsibility for all incoming ante mortem dental information (x-rays and charts) on the victims. The author supervised the charting and x-raying of the victims (post mortem records) and served as liaison between the fingerprint and pathology teams. In addition, several dental assistants and hygienists helped with the ante mortem and post mortem information which was entered on special forms for input into the computer. As comparisons through the computer were noted, through high correlative values, Dr. Siegel would compare the ante mortem x-rays with the post mortem x-rays. If he could make a positive identification, the comparison was verified by the author and the information entered on the large charts. When a positive identification was made, the FBI team was instantly notified so that the name in question could be removed from the list of possibilities. Similarly, when the

* This system became part of California law in January 1979, and is administered through the Department of Justice.



Deputy coroner records information on wall charts.

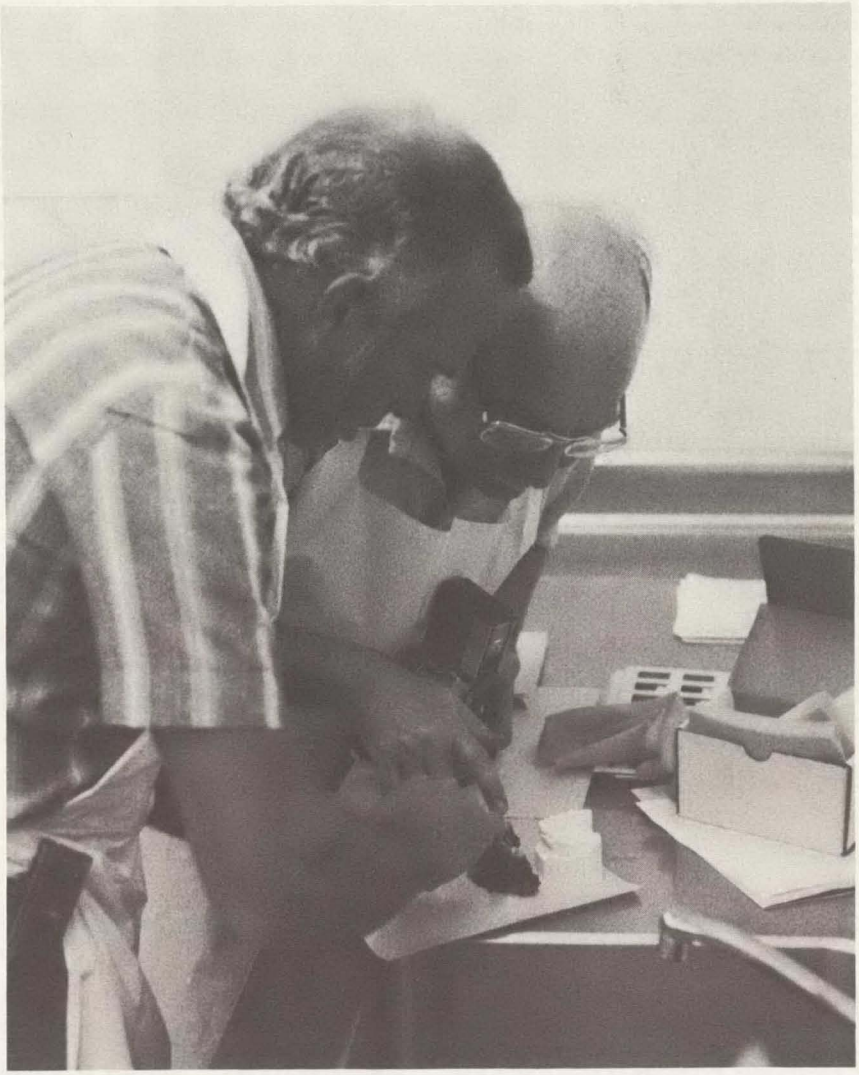
The FBI Disaster Squad helped identify victims of the air disaster.

fingerprint team confirmed an identification, this name was then removed from the dental team's pool of possibilities. Gradually, the pool of unidentified diminished. By the end of the week, nearly 100 victims had been identified, some through fingerprint comparison, some through dental comparison, and some through simultaneous efforts. In addition, several identifications were verified through dental examination when personal property or papers were the first clue. Gradually, the teams turned their attention to identification of fragmented hands and dental structures not attached to bodies (there were almost 90 dental fragments not including dental structures attached to bodies). The challenge here was two-fold: One, to place the fragments with an identified body; and second, to place if possible the fragment with a known victim, at least to certify the death of a victim until such time as the body could be identified.

As the pool of unidentified victims decreased and fingerprint and dental comparisons could not be continued, a number of identifications were completed by using clothing, personal effects, identification papers, and blood types.

Finally on October 22, less than a month from the accident, it was announced that 140 of the 144 victims had been identified. The remaining four victims, including the pilot of the PSA jet, were buried in adjacent graves in a special ceremony at San Diego.

Challenged by a catastrophic event, the San Diego Police Department, coroner's office, PSA representatives, and the fingerprint, pathology and odontology teams, working 12-hour days, completed a momentous task. Working quietly, harmoniously, effectively, and with deliberate speed, the personnel of this task force accomplished their mission under extremely difficult, almost impossible conditions. **FBI**



Dr. Sperber and Dr. Siegel confer on possible victim identification.

A forensic odontologist examines a charred dental fragment.

Comparison of model and fragment leading to identification of a victim.

A forensic odontologist x-rays dental fragment.

Title VII of the Civil Rights Act of 1964

An Overview of Supreme Court Litigation (Conclusion)

By DANIEL L. SCHOFIELD
Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

THE PERMISSIBLE SCOPE OF RELIEF THAT CAN BE GRANTED AS A REMEDY FOR EMPLOYMENT DISCRIMINATION

Introduction

Generally speaking, the remedial structure of title VII is designed to eliminate employment discrimination and "make whole" the victims of prior discrimination. In fashioning remedies, courts are often confronted with the difficult task of equitably balancing the competing interests of incumbent employees, employers, victims of prior discrimination, and the public. While the Supreme Court has approved of the "make whole" objective contained in title VII,[55] several recent cases reflect the tensions that are generated when remedies are structured in such a fashion that the rights of otherwise innocent third parties are affected. Furthermore, the task of identifying specific victims of prior discrimination, as well as those who should benefit from preferential treatment, has been difficult.

The discussion that follows will examine some specific remedial provisions contained in title VII and some of the legal and equitable constraints that limit the scope of relief that can be granted.

"While the Supreme Court has approved the 'make whole' objective contained in title VII, several recent cases reflect the tensions that are generated when remedies are structured in such a fashion that the rights of otherwise innocent third parties are affected."

Attorney's Fees

In section 706(k),[56] title VII provides for a court in its discretion to award reasonable attorney's fees to the prevailing party. In *Christianburg Garment Co.* v. *EEOC,*[57] a unanimous Supreme Court ruled that under section 706(k) a prevailing plaintiff should be awarded attorney's fees in all but a few special circumstances.[58] However, the Court said that a prevailing defendant, while not required to show bad faith, must demonstrate that the plaintiff's action was frivolous, unreasonable, or without foundation before attorney's fees should be awarded.[59] The higher standard for prevailing defendants seems quite consistent with the congressional desire to make plaintiffs the chosen instrument to vindicate the important public policy of exposing employment discrimination. Furthermore, when attorney's fees are awarded to a prevailing plaintiff, the court is actually awarding them against a violator of Federal law.

Injunctions and Back Pay

Section 706(g) specifically provides for the use of injunctions and back pay to remedy a finding of employment discrimination.[60] Injunctions serve to deter future employment discrimination, while back pay "makes whole" victims of prior discrimination. Furthermore, interests of incumbent employees are not substantially affected, and culpable employers bear the economic burden. Although both injunctive and back pay awards equitably compensate the victims of discrimination at the expense of guilty employers, Congress placed a measure of control on an employer's liability by limiting back pay relief to a period of 2 years prior to the date a charge of discrimination is filed.[61]

In *City of Los Angeles* v. *Manhart,*[62] a six-member majority ruled that the nature of equitable relief under title VII should be carefully considered in each case, and that back pay is not always an appropriate remedy.[63] Although finding discriminatory a pension program premised on life expectancy where women were required to contribute more than men, the Court rejected a back pay remedy because of the employer's good faith and reasonable belief in the legality of the pension plan.[64] Moreover, the Court found that a retroactive award would have a devastating impact on similar pension plans and would unfairly interfere with the rights of innocent third parties.[65]

Bona Fide Seniority

One limitation on the scope of relief that can be granted is contained in section 703(h) of title VII which provides a measure of immunity to bona fide seniority systems.[66] This protection of seniority rights was prompted by congressional concern that title VII relief might impact adversely on the rights of otherwise innocent incumbent employees.[67] Many legislators feared that title VII would compel employers to provide minorities and women with fictional seniority for the time they were improperly denied employment, which would in effect jeopardize the relative status of incumbent employees with actual accumulated seniority.

Recent Supreme Court opinions reflect similar concerns and appear to have expanded somewhat the protection previously afforded seniority by section 703(h). In *Franks* v. *Bowman Transportation Co.,*[68] a six-member majority ruled that section 703(h) does not bar the awarding of retroactive seniority to job applicants who seek relief from an employer's postact hiring discrimination.[69] The Court indicated that proof of postact discrimination in a class action suit creates a rebuttable presumption in favor of individualized relief, which can be overcome by an employer who demonstrates that a particular member of that class was not in fact a victim of prior discrimination.[70]

However, the availability of the remedy endorsed by the Court in *Franks* was lessened somewhat in *United Airlines* v. *Evans,*[71] where the Court ruled that an employer's postact discrimination is outside the ambit of title VII's coverage in those instances where a timely charge of discrimination is not filed. In characterizing such a situation as an unfortunate event in history which has no present legal consequences, the Court said an employer could treat postact discrimination, which is not subjected to a timely challenge, as the legal equivalent of a discriminatory act which occurred before the statute was passed.[72]

"While a number of lower courts have approved of remedies affording preferential treatment in the nature of quotas and other forms of affirmative action, the Supreme Court has not ruled directly on the extent to which such remedies can be used under title VII."

Then, in what is arguably the most significant Supreme Court decision vis-a-vis seniority rights, *International Brotherhood of Teamsters* v. *United States,*[73] the Court ruled that section 703(h) can immunize bona fide seniority systems that have a disparate impact by locking in the effects of preact discrimination.[74] In essence, the Court ruled that a system which currently treats all employees equally is bona fide, even though there is no provision for compensation to preact discriminatees.

Taken collectively, these cases reflect a vigorous protection by the Court of bona fide seniority from both preact and time-barred postact claims of discrimination. Furthermore, for those individuals who make a timely charge of postact discrimination, retroactive seniority can only be awarded up to the effective date of the act.[75]

In *Trans World Airlines* v. *Hardison,*[76] the Supreme Court was asked to decide whether a seniority system embodied in a union contract, which provided for shift preference requiring an employee to work on a religious holiday, violated title VII's prohibition against religious discrimination. In finding that the employer had made reasonable efforts to accommodate the employee's religious beliefs, the Court refused to extend title VII's remedial structure to the extent that the rights of otherwise innocent employees under the union contract or legitimate efficiency interests of the employer were adversely affected.[77]

Other Equitable Relief to Remedy Past Discrimination

As previously noted, the Supreme Court has generally approved of the equitable nature of title VII's remedial structure and its "make whole" objective. While a number of lower courts have approved of remedies affording preferential treatment in the nature of quotas and other forms of affirmative action,[78] the Supreme Court has not ruled directly on the extent to which such remedies can be used under title VII. The interplay between several sections of the Civil Rights Act has generated some confusion and also involves the issue of when affirmative relief becomes illegal reverse discrimination. For example, section 706(g) [79] permits a court, upon a finding of intentional discrimination, to fashion any affirmative relief deemed appropriate. Section 703(j) [80] arguably precludes affirmative relief to remedy an imbalance in the work force, unless that imbalance was caused by prior discrimination. Furthermore, as previously discussed, section 703(h) [81] provides a measure of immunity to bona fide seniority systems. A look at several recent cases involving some of these issues seems merited,

and may also provide some insight into how the Court will ultimately decide the reverse discrimination issue.

In *University of California Regents* v. *Bakke,*[82] the Court considered the legality of admission practices wherein a fixed number of places were reserved for minority students at a medical school that had not been guilty of any prior discrimination. In ruling those admission practices illegal, four justices limited their decision to title VI of the Civil Rights Act of 1964 which they said made crystal clear that race cannot be the basis for excluding anyone from participation in a program receiving Federal funds.[83] Four other justices, however, ruled the quota permissible under title VI and the Equal Protection clause of the 14th amendment. They said such racial classifications are legal if they are designed to further remedial purposes and serve important governmental objectives.[84] The swing vote cast by Justice Powell ruled the admission procedures violative of both title VI and the Constitution. Justice Powell contended that while race is a legitimate factor to consider in an admissions process aimed at remedying past discrimination, it could not be the only factor in situations where there had been no finding of prior discrimination at that school.[85] This lack of prior discrimination seemed critical to Justice Powell's strict scrutiny analysis.

In view of the differing opinions that emerged in *Bakke,* it is difficult to predict accurately what effect it will have on affirmative remedies under title VII. First, *Bakke* was heavily influenced by title VI interpretation and that statute has different language and legislative history than title VII. Second, the case seemed narrowly decided on the issue of whether race can be the exclusive determinant in a program which is voluntarily imposed without any prior discrimination. It should be noted, however, that several weeks after *Bakke,* the Supreme Court refused to review the affirmative relief utilized in the case of *EEOC* v. *AT&T,*[86] wherein numerical goals and seniority overrides had been voluntarily imposed by an employer in the absence of any clear judicial finding of prior discrimination.

The Court has recently agreed to review two other cases involving important issues relating to the permissible scope of affirmative type remedies. In the first case, *County of Los Angeles* v. *Davis,*[87] the ninth circuit ordered a ratio hiring system to remedy a finding of disparate impact, which was to remain in effect until the work force achieved parity with the general population. The Supreme Court is being asked to decide whether such a system is permissible even though there were no findings of discriminatory intent and where the discriminatory practices ceased prior to the effective date of title VII.

"In view of the differing opinions that emerged in *Bakke,* it is difficult to predict accurately what effect it will have on affirmative remedies under title VII."

In the second case, *Kaiser Aluminum Corp.* v. *Weber,*[88] the fifth circuit ruled illegal a one-to-one ratio training quota designed to increase the number of minorities in craft-type jobs. This affirmative action plan was voluntarily imposed as part of a collective bargaining agreement, and there had not been any evidence produced to indicate clearly prior discrimination by the employer at the particular job site affected by the quota. The fifth circuit ruled that while quota relief is sometimes permissible, it should be strictly construed and not used merely to obtain a racially balanced work force.[89] While noting that voluntary compliance and private settlements constitute the central theme of title VII, the court said the remedy used by *Kaiser* would be impermissible even if judicially imposed.[90]

Nevertheless, the fifth circuit did not reach the important question of whether employers can voluntarily impose remedies to the same extent as courts and what happens if an employer in good faith attempts voluntary compliance and exceeds permissible limits. Moreover, are employers competent to fit the remedy to the violation? The court also seemed to draw a distinction between affirmative remedies that affect seniority rights as in *Weber* and those that merely provide an extra benefit at the initial hiring stage. Because section 703(h) provides a measure of immunity for seniority rights, conceivably an employer could voluntarily engage in more extensive affirmative action at the hiring stage.

Taken collectively, the foregoing Supreme Court opinions suggest the Court may ultimately rule illegal fixed goals or quotas in instances where there is no evidence that a particular employer has engaged in prior discrimination. However, the extent to which remedial action based on race, sex, or ethnic origin is permissible in the absence of a finding of past discrimination is still an open question which demands attention in future litigation. Moreover, how narrowly a quota remedy must be tailored to the discrimination and the injury it caused is left unclear by *Bakke.* If the ultimate effect of these cases is to require employers to admit prior discrimination before affirmative remedies are permissible, it is arguable the use of such programs will dramatically decrease because of employer reluctance to make such admissions and increase vulnerability for monetary liability.

Conclusion

Attempting to analyze what the title VII litigation in the Supreme Court means vis-a-vis the Burger Court's approach to equality in employment is difficult and requires the consideration of several fundamental questions. First, has there been substantial progress in closing the gap in employment opportunities? Available statistics would indicate that while progress has been made, continuing efforts are essential.[91] Second, to what extent do

affirmative action plans constitute an appropriate remedy? Third, is the goal equality of opportunity or uniformity in numbers? If the Burger Court is particularly sensitive to majoritarian sentiment, the social, political, and equitable answers to those fundamental questions may determine in large measure the outcome of subsequent title VII litigation.

While the Court has continued to make it reasonably easy for a plaintiff to establish a prima facie case of either "disparate treatment" or "disparate impact," the burden of rebuttal for employers has arguably been lightened. Furthermore, the Court has narrowed the number of individuals eligible for relief in some instances by requiring a higher degree of proof of victim status.

With respect to the validation of standards, it could be argued that EEOC's interpretations of title VII's provisions have been to fair employment law what *Miranda* v. *Arizona* [92] was to police interrogation practices. As the Supreme Court evaluates the progress made in eliminating employment discrimination and rethinks prior interpretations and their effectiveness, some modification appears certain. However, if any meaningful change is going to be effected in the area of employment standards, it would most likely come in the form of a more balanced allocation of the burden of proof with respect to the establishment of validity.

Perhaps *Washington* v. *Davis* marks the watershed in a changing judicial attitude toward the job-relatedness standard. But, assuming *Davis* established the proposition that standards are to be subjected to different standards of validity (i.e., constitutional v. statutory), the question emerges of how long the right hand of statutory construction or affirmative relief can be kept separate from the left hand of constitutionalism.

In *Hardison*, *Dothard*, *Teamsters*, *Gilbert*, and *Davis*, the Supreme Court ruled contrary to EEOC guidelines which suggests a shift by the Court in the level of deference that is to be afforded EEOC's interpretations of title VII. In this regard, it is arguable the Court is merely interpreting title VII more closely to constitutional standards which may reflect a judgment by the Court that previous title VII standards were higher than actually required by title VII's legislative history.

The role the Supreme Court will ultimately take in resolving the reverse discrimination issue is unclear. The Court initially energized the political process to racial inequalities by using the equal protection clause of the U.S. Constitution. Now that the political process has produced legislation which seemingly encourages various affirmative action remedies, the question emerges of whether the Court will now use that same equal protection clause to place constitutional limits on the permissible scope of those affirmative remedies. The opinions of some members of the Court suggest they would be willing to interpret title VII in such a way as to remove any vestiges of prior employment discrimination. Others appear inclined to construe the statute more narrowly so as to insure that the interests of incumbent employees and employers are adequately protected. In subsequent cases, the Court is going to be faced with the difficult task of balancing a number of legitimate and competing interests. A balanced approach will insure that the goal of equal opportunity in employment will continue to be worth the cost of its attainment. **FBI**

"Now that the political process has produced legislation which seemingly encourages various affirmative action remedies, the question emerges of whether the Court will now use the equal protection clause to place constitutional limits on the permissible scope of those affirmative remedies."

Footnotes

[55] *Albermale Paper Co.* v. *Moody*, 422 U.S. 405, 418 (1975).

[56] Title VII provides: "In any action or proceeding under this subchapter, the court in its discretion, may allow the prevailing party, other than the Commission, or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person," 42 U.S.C sec. 2000e-5(k).

[57] 54 L. Ed. 2d 648 (1978).

[58] *Id.* at 657.

[59] *Id.*

[60] 42 U.S.C. sec. 2000e-5(g).

[61] *Id.*

[62] 55 L. Ed. 2d 657 (1978).

[63] *Id.* at 673-74.

[64] *Id.* at 672-73.

[65] *Id.*

[66] 42 U.S.C. sec. 2000e-2(h).

[67] See, 1964 U. S. Code and Adm. News, 2355.

[68] 424 U.S. 747 (1976).

[69] *Id.* at 766-67.

[70] *Id.* at 772.

[71] 431 U.S. 553 (1977).

[72] *Id.* at 558.

[73] 431 U.S. 324 (1977).

[74] *Id.* at 353-54.

[75] *Id.* at 363.

[76] 432 U.S. 63 (1977).

[77] The Court adopted the finding of the district court that the employer had made reasonable efforts to accommodate the employees by meeting with him on several occasions and authorizing the union steward to search for someone who would swap shifts. The employer also attempted to find the employee another job. *Id.* at 77.

[78] For example, see *United States* v. *International Union of Elevator Construction Local 5*, 538 F. 2d 1012 (3d Cir. 1976); *Contractor's Ass'n. of Eastern Pennsylvania* v. *Sec. of Labor*, 442 F. 2d 159 (3d Cir. 1971).

[79] 42 U.S.C. sec. 2000e-5(a).

[80] 42 U.S.C. sec. 2000e-2(j).

[81] 42 U.S.C. sec. 2000e-2(h).

[82] 57 L. Ed. 2d 750 (1978).

[83] *Id.* at 851. Section 601 of title VI provides as follows: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C sec. 2000-d.

[84] *Id.* at 814.

[85] *Id.* at 788.

[86] 556 F. 2d 167 (3d Cir. 1977), cert. denied, 98 Sup. Ct. 3145 (1978).

[87] 466 F. 2d 1334 (9th Cir. 1977), cert. granted, 46 LW 3775 (1978).

[88] 563 F. 2d 216 (5th Cir. 1977), cert. granted, 47 LW 3401 (1978).

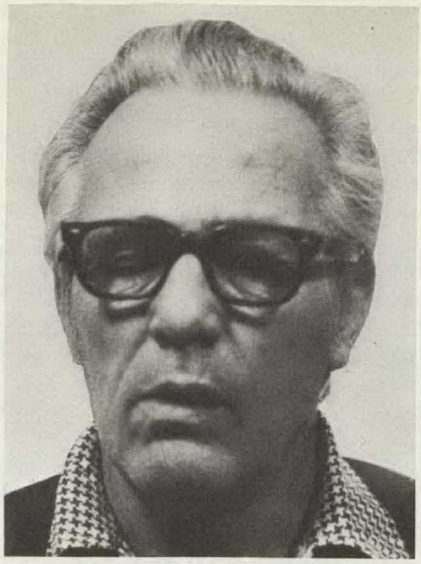
[89] *Id.* at 221.

[90] *Id.* at 223.

[91] U.S. Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1973 (1974).

[92] 384 U.S. 436 (1966).

WANTED BY THE FBI



Salisbury, Henry Cook

Henry Cook Salisbury

Henry Cook Salisbury, also known as Henry Cook, Bill Kerth, Henry Percy, Harold William Price, Paul Rivers, Henry Roberts, Harold Salisbury, Henry Saulsbury, Henry Wadesbury, Henry C. Williams, "Little Henry," and others.

Wanted For:

Unlawful flight to avoid prosecution for the crime of escape.

The Crime

Salisbury has been convicted of assaulting a law enforcement officer and manslaughter. Since his escape, he has been charged by Oklahoma authorities with an armed jewel robbery.

A Federal warrant was issued for his arrest on February 21, 1975, at Atlanta, Ga.

Description

Age	62, born April 9, 1917, Chickasha, Okla. (not supported by birth records).
Height	5'8".
Weight	165 pounds.
Build	Medium.
Hair	Gray (may be dyed brown).
Eyes	Hazel.
Complexion	Ruddy.
Race	White.
Nationality	American.
Occupations	Oil field equipment supplier, saddle maker, self-employed building contractor, used car salesman.
Remarks	Reportedly a gambling enthusiast and gun collector.
Social Security No. Used	463-10-0448.
FBI No.	774 709.

Caution

Salisbury is reportedly armed with a .44-magnum rifle and should be considered armed and dangerous, and an escape risk.

Notify the FBI

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

Classification Data:

NCIC Classification:
23PM1422161713132118

Fingerprint Classification:
23 L 17 W MOO 16
L 1 U OOO

Right Thumb print.

U. S. GOVERNMENT PRINTING OFFICE : 1979 O - 289-171

Change of Address
Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

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

Name

Title

Address

City State Zip

Homemade Handgrenade

Six homemade handgrenades were recently recovered by the Black Diamond, Wash., Police Department. (See photograph.)

These deadly instruments were devised by using a 12-gage shotgun shell as an outer casing, removing the primer and inserting a firecracker (fuse exposed) in its place, and adding gunpowder, .22-caliber slugs, and wadding.

Law enforcement personnel encountering these explosive devices must exercise caution.

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

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS-432

Controlled Circulation Rate

Interesting Pattern

This pattern presents no difficulty as to classification. It is an accidental whorl with an inner tracing. The formation and placement of the three loops is most interesting.