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# FBI

## ***Law Enforcement Bulletin***

***DECEMBER 1975***

**J. EDGAR HOOVER  
F.B.I. BUILDING**



# FBI

## Law Enforcement Bulletin

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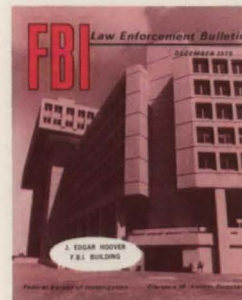
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#### THE COVER

A new home for the Federal Bureau of Investigation: the J. Edgar Hoover F.B.I. Building in Washington, D.C. Dedicated on September 30, 1975, this imposing facility provides the Bureau a more effectively centralized and equipped Headquarters. See article on page 16 relating to the dedication ceremony.





## Message from the Director . . .



ONCE MORE, A TRAGIC NUMBER OF FAMILIES across the land will enter the holiday season mourning their loss of a slain law enforcement officer. Cut down by criminal action, these officers join the lengthy roll of others who have made the supreme sacrifice serving a public plagued by rampant lawlessness. This deplorable loss of life within our ranks continues to call for our grave concern and represents a most critical challenge to our profession.

Without question, we must renew our efforts to counter this succession of brutal slayings and other violent assaults against police officers.

The hazards of death and serious injury overshadow the entire law enforcement community, and the incidence of abusive and violent behavior toward officers is both widespread and frequent. Data compiled by the FBI reveal that in 1974, police assaults occurred at the rate of 15 attacks per 100 officers. Of these assaults, 6 resulted in injury to the victim officers—39 percent of whom sustained injuries of a serious nature.

Experience has clearly shown that the menace of criminal attack is not confined to any particular area nor to any specific form of law enforcement activity. Last June, for example, two Special Agents of the FBI were ambushed and murdered during a fugitive investigation in rural South Dakota. Three months later, in the heart of New York City, two policemen were shot down while conducting a routine automobile inspection, thus raising to six the number of officers slain in that city since the beginning of the year.

The appalling number of law enforcement officers murdered in recent years must surely shroud

this Nation with a grim—and shameful—distinction in the eyes of the world.

While parallels between countries in respect to crime conditions must be drawn with great caution, a comparison of our disgraceful chronicle of police killings with the records of many other nations provides some striking contrasts.

During the 3-year period 1972–74, 372 law enforcement officers, representing all levels of government, were feloniously slain in the United States.

Over the same span of time, only three officers throughout England, Wales, and Scotland fell victim to deadly criminal acts. Although Italy recorded a substantial number (76) of such fatalities, its losses, together with those of the other Western European nations of France, West Germany, Spain, Sweden, and Norway, amounted to little more than a third of our grisly total for the 3 years. It is interesting to note, too, that in 1974, the combined population of these European countries more than equaled that of our own. In further contrast, Japan, whose population in 1974 was more than half as great as our own, recorded only 13 police killings.

It is, of course, earnestly hoped that our extensive experience with police assaults, fatal and otherwise, has taught us some basic lessons in law enforcement survival. As a profession, we have paid a terrible price for this instructive knowledge; yet far too many of us continue to ignore, at our great peril, the lessons to be learned.

With distressing frequency, our fellow officers suffer the tragic consequences of handling in a careless manner so-called routine assignments,



## MESSAGE

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despite amply documented evidence that these situations can be deadly. In 1973 and 1974, more officers were killed responding to disturbance calls than in any other type of activity. We know, too, that arrest attempts have claimed a high number of police lives; yet, in too many instances, officers still approach these potentially dangerous situations in a less-than-alert fashion.

There is obviously much that can be learned and utilized to safeguard ourselves from criminal violence. Additional research and study in this critical area are clearly needed. We must, moreover, endeavor to translate the knowledge developed into improved training and operational procedures. In addition, we must seek to apply

more imaginatively science and technology toward the physical protection of our personnel. Greater efforts must be made to inspire in the individual officer—recruit and veteran alike—a deep and positive commitment to survival safety.

Perhaps we can never totally remove the danger of physical injury from the practice of law enforcement in this Nation. Yet we can strive in many obvious and promising ways to reduce this risk to an absolute minimum, consistent with our role in a free and just society.

Let us, then, look to the new year ahead with a firm resolve to make it a safer year for law enforcement—a year that will begin a steady decline in police killings and assaults.

DECEMBER 1, 1975

  
CLARENCE M. KELLEY  
*Director*



# Coordinated Team Patrol: From Experiment to Implementation

By

SGT. NORMAN R. KNAPP

Police Department  
Rochester, N.Y.

The concept of team policing was first considered in Rochester in 1970. At that time, the department was trying to identify patrol strategies which could improve police service delivery. Among the problems the department faced were a rising crime rate, a low clearance rate, and lack of a working relationship between patrol officers and detectives.

At that time, the term "team policing" was receiving some national attention, although there was widespread confusion about what the concept actually was. Many cities had adopted variations of this new polic-

*"Conceptual information on team policing was limited, and few guidelines existed upon which new structures and policing could be based."*

ing style—each greatly different from each other—as experimental programs, and a multitude of other cities were considering similar structures. Conceptual information on team po-

licing was limited, and few guidelines existed upon which new structures and policing could be based. There had been no evaluations of those team policing programs which were in existence.

As a creative effort, Rochester's planning and research section staff developed five major theoretical concepts upon which a restructuring of patrol services could be based.

1. Responsibility for crime clearance should rest with a decentralized police service unit commander. Without pinpointing



responsibility, and having within the police agency a split responsibility between a patrol division and a detective division for crime clearance, efforts at a coordinated attack on crime occurrence were almost impossible. One commander—the person responsible for police service delivery at the neighborhood level—had to assume responsibility for both patrol and criminal investigative activities.

2. *Detectives should be decentralized, with most assigned directly to area or neighborhood commanders.* When total responsibility for criminal investigations is placed upon neighborhood commanders, it is necessary to provide them with their own investigative resources. Thus, detectives should be decentralized and assigned to neighborhood commands.

3. *The delivery of police service, other than investigations, should not suffer from improvements in*

*the investigative process.* Criminal investigations, while a very important police responsibility, are numerically a minor part of the total police service delivery responsibility. Efforts at improving the investigative process, whether through decentralization or “intercept patrols” (popular in some cities at that time), must not weaken or lessen police delivery of service in the noncriminal functions.

4. *The neighborhood police commander responsible for criminal investigations should be permitted to close “dead” cases, so that resources can be redirected into more productive areas.* For years, police agencies had considered cases open until solved, even where there was no evidence or lead available which could result in a solution. By having investigators carry those dead cases as “semiactive,” a great amount of investigative resources was wasted which could



Chief Thomas F. Hastings

be redirected into cases where solution was probable, providing additional investigative effort was made.

5. *The quality of a preliminary investigation would be improved if the patrolman had immediate contact with the followup investigator.* Where there is no contact, the preliminary investigator viewed his role as a report

CTP unit commanders, together with Chief Hastings, attend a weekly conference.





taker, with the resulting report being given to a faceless investigator for further action. With a followup investigator being immediately available, the quality of the preliminary investigation would improve, since a visible chain of investigative effort would be established.

With the statement of these concepts, the department worked to develop a structural format which would best incorporate them. Our objectives for change were not beyond these concepts. While we had other peripheral concerns, such as improved community responsiveness, our central concern always remained improved service delivery through integration of criminal investigations into a revised patrol structure.

### ***The Initial Experiment***

At the time the conceptual design was developed, the Rochester Police Department was divided into four major divisions, each commanded by

a deputy commissioner of police. The Operations Division, the largest unit, consisted of three patrol districts, each under the command of a captain. These patrol districts consisted of only uniform officers; there were no investigators assigned to patrol. At the scene of a crime, each unit commander was only responsible for seeing that his personnel took the crime report. Investigations were the responsibility of the Criminal Investigation Division, another separate unit under the

*"The structure selected within which to try out the new concepts was decentralization of patrol and investigative services in a single coordinated unit."*

command of a deputy commissioner. There was little coordination between the units.

The structure selected within which to try out the new concepts was decentralization of patrol and investiga-

tive services in a single coordinated unit. By assignment of investigative personnel to a small decentralized unit, we expected to provide for case closure accountability resting with the unit commander and for an integrated investigative effort between patrol and investigative personnel.

The new structure, the Coordinated Team Patrol (CTP), was considered experimental, needing thorough testing and evaluation. A decision was made to experiment with the new patrol model in two sections of the city, each consisting of one-ninth of the city's crime, calls for service, and population. The areas selected represented a good ethnological mix of the city's population.

In both experimental areas, we were careful to insure that an equal proportion of total manpower and equipment was assigned. Thus, each experimental unit was assigned one-ninth of the patrol force and one-ninth of the department's investigative personnel. A lieutenant was assigned to each CTP as the unit commander, responsible



Location of a regional Coordinated Team Patrol unit.





Regional CTP office.

for all patrol activities and investigations, including all traffic enforcement and accident investigation. In addition, the commander was responsible for crime clearance in all categories except homicide, rape, and major serious robberies, such as bank holdups, and those crimes for which specialized detective units existed, such as embezzlement and fraud checks.

### Experimental Results

After 2 years of experimenting with the CTP concept, the police department was highly satisfied with its success. Analysis of crime clearance statistics indicated that the experimental units were far more effective than the traditional mode of operation. Discussion began about the possibility of citywide implementation of the CTP concept.

Prior to such implementation, however, the department wanted an evaluation and program audit, so that there would be no question as to the effectiveness of the concept before the commitment to citywide implementation was made. The department felt that either the experiment had to be

adopted as a standard policing style or abandoned. Too often, it seemed, experiments were undertaken for eternity with continual avoidance of the issue of acceptance or rejection of the lessons learned.

As a part of a major grant to study overall investigative effectiveness, the department was funded by the Police

department formed another CTP in a third area of the city as a means for determining optimum implementation strategies.

The institute's evaluation confirmed the success of the teams and the accuracy of the department's statistics. Based upon this evaluation, the department decided to implement the CTP concept citywide.

*"... members of the department came to better understand and finally accept the new structure. There was a feeling of involvement, since they had been given a chance to contribute to its planning."*

Foundation for an independent evaluation of the CTP concept. This evaluation was undertaken by The Urban Institute which analyzed the effectiveness of the various CTP program concepts while auditing the crime clearance rates which had indicated program success. At the time the evaluation was undertaken and as a means for providing guidance for possible citywide implementation, the

### The Expansion: Planning for Change

The planning process for expansion of the CTP concept started with a series of planning meetings among selected command staff and consultants working on investigative effectiveness projects within the department. A project advisory task force was formed consisting primarily of detectives and police officers from line assignments within the department. The task force had responsibility for coming up with program implementation ideas and strategies; it became an important vehicle for providing departmentwide input into the planning process. At the initial meetings of both the task force and the command staff,



discussion centered on alternative organizational structures, manpower needs, and the development of an implementation work plan. This original work plan provided for a March 30, 1975, implementation date.

The original plan for expansion called for eight districts equally dividing the city according to workload. District and car beat designs were developed to support the eight-section concept. Resource needs were identified. Preliminary allocation of manpower was made.

At this stage of the developmental process, 13 meetings were scheduled throughout the department, for 1½ hours each, during which the chief reviewed the progress to date and requested input from the department as a whole. These meetings gave all members of the department the opportunity to view the proposed plans and make recommendations. As a result of these meetings, at the suggestion of the attending personnel, the number of proposed units was reduced to seven. This required a completely new beat and manpower organizational plan. But, the additional effort was worthwhile,

since members of the department came to better understand and finally accept the new structure. There was a feeling of involvement, since they had been given a chance to contribute to its planning. These meetings were held on duty with the tactical squad of the department filling the assignments of those officers attending.

The final geographical area boundaries were drawn from Law Enforcement

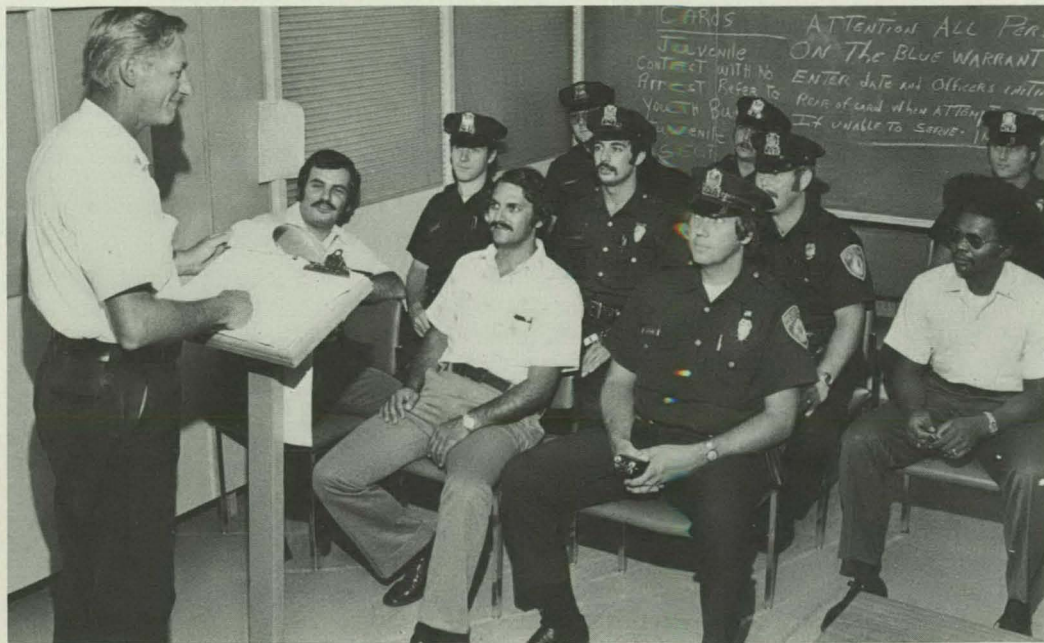
*"Additional planning efforts had to go into the many logistical issues surrounding any massive reorganization . . ."*

ment Manpower Resource Allocation System (LEMRAS) data on crime and calls for service. The appointment of the seven unit commanders, each a captain, was then made, with selection of specific assignment area based upon seniority. The new commanders were given a series of orientation sessions to assist them in fully understanding implementation objectives and administration policies. From this time on, the seven captains became

active in all implementation planning, meeting as a group almost daily.

As planning continued, it was decided to divide the seven sections into five car beats each. Efforts then turned to finding unit office locations for each of the new areas. During the initial brainstorming sessions, it had been suggested that a number of vacant portable classrooms existing throughout the city at various schools might be suitable for office space. After surveying the available locations, agreement was reached with the board of education for the rental of some of these classrooms for a 1-year period.

Additional planning efforts had to go into the many logistical issues surrounding any massive reorganization, such as new street area directories for the communications section, the creation of a new vehicle renumbering system, allocation of required resources, the creation of a unit identification system, and the assignment of personnel to each of the units. Initially, the proposed districts had "planning" names, such as "Deltra," "Edward," "Frank," and "George." After discussion, it was decided to name each unit



Regional CTP rollcall.



after a specific geographical characteristic or landmark within it; e.g., the Atlantic Section was named after a major street that runs the length of the section. It was felt that geographical names would help to identify the area and provide a sense of neighborhood identification so important in urban policing.

Manpower assignments were more complex. Once the manpower requirements had been defined, assignments among lieutenants, sergeants, investigators, and police officers had to be

*"Policing in Rochester has been dramatically changed by the citywide implementation [of the Coordinated Team Patrol concept]."*

made. At the initial informational meetings conducted by the chief, members of the patrol section were instructed to complete a transfer request if they desired reassignment to another area of the city. Many officers, especially those working in the experimental CTP's, requested to stay together as a unit. Three CTP's that were already organized became one of the new decentralized units. In most cases, officers received assignment to areas of their choice.

Before the citywide implementation occurred, weekly newspapers were encouraged to run articles on the new police units in their area. Additionally, meetings with neighborhood organizations were held by the chief and the new unit commander. Each commander was provided data on his neighborhood, including neighborhood organizations, churches, and schools.

It was also necessary to restructure somewhat the Detective Bureau, since much of the manpower assigned there was being assigned to the decentralized

units. Since all responsibility for followup investigation of most crimes was transferred to the field units, it was possible to reassign many of the remaining headquarters investigators to around-the-clock availability status.

Each new field unit designated an "investigative coordinator" to serve as the manager of investigative service delivery, having responsibility for investigative quality, review, and coordination of information among decentralized investigators. In the central investigation section, an experienced lieutenant was assigned as "chief coordinator" to coordinate—citywide—this important activity between the new districts and the remaining centralized detectives.

### **The Results**

On April 6, 1975, the citywide implementation of the CTP mode of police service delivery occurred. It was immediately clear that the planning undertaken by department members was worthwhile and productive. The transition went smoothly with few problems.

Policing in Rochester has been dramatically changed by the citywide implementation. Effectiveness has increased, as has the morale of many employees. But most important, the police department has learned a lot about the change process and how police improvement can be brought about. The involvement of key personnel at all levels of the organization is one important requirement. Another is the willingness to experiment, permit evaluation of experimental efforts, and then boldly proceed on the basis of new knowledge. We are pleased with the new decentralization but remain ready to change again as we learn more about investigative effectiveness. The decentralization provides an equalized base from which we can further judge our progress.

(FBI)

*Annual Report, 1975,*

## **BANK ROBBERIES, BURGLARIES, AND LARCENIES**

Violations of the Federal Bank Robbery and Incidental Crimes Statute soared to a record high of 5,050 during fiscal year 1975, an increase of 1,565 over the previous year. Total violations of this statute consisted of 4,252 robberies, 454 burglaries, and 344 larcenies.

Convictions in cases investigated by the FBI also reached a record high of 2,246 during fiscal year 1975. Many of those convicted were responsible for multiple violations.

This record number of convictions resulted in actual, suspended, and probationary sentences totaling 22,374 years and 11 months. Fines imposed totaled \$84,625, and recoveries of loot exceeded \$10 million. Some 1,186 fugitives were located during these investigations.

*Annual Report, 1975,*

## **FUGITIVE INVESTIGATIONS**

During fiscal year 1975, 32,403 FBI fugitives were located. Those apprehended included bank robbers, kidnapers, and deserters, as well as felons wanted by local authorities. Some 3,583 were sought at the specific request of State and local authorities for fleeing across State lines in violation of the Fugitive Felon Act.

The FBI's "Ten Most Wanted Fugitives" program marked its 25th year of operation, and six of its listed fugitives were located, during the fiscal year.



# Bank Robbery Reward Program—Stimulating Public Interest and Assistance!



By

**JAMES E. BARRETT\***

Senior Security Officer  
First National Bank of Maryland  
Baltimore, Md.

Spurred by the heavy incidence of bank robberies in our State, members of the Maryland Association for Bank Security (MABS) launched at the outset of 1974 a reward program designed to help combat these crimes. It came as no great surprise to learn several months later that statistics compiled for the fiscal year by the FBI revealed that Maryland ranked fifth in the Nation relative to Federal offenses of this type.

Our reward program, which was first conceived in 1973, had a twofold purpose, to help deter bank robberies and to assist law enforcement agencies, operating in Maryland, in the solution of these crimes. More specifically, it seeks to stimulate public assistance in providing information

leading to the arrest and conviction of persons committing or attempting to commit felonious criminal acts, specifically robberies, burglaries, holdups, or extortion, against any office of a participating financial institution. It is also intended to act as a deterrent to the commission of such criminal acts in the future. Toward these ends, it offers up to \$2,000 to the first person or group of persons giving the information which leads to the arrest and conviction of the offenders.

## Formation

In order to fund the project, each MABS member who agreed to participate in the reward plan was assessed \$50 for its main office and \$25 for each additional branch location. This assessment, coupled with excellent membership response in agreeing to participate in the plan, provided

\*Mr. Barrett is past president of the Maryland Association for Bank Security. He is also a retired Special Agent of the FBI.

*"All concerned have one common goal: to prevent crimes against financial institutions or to solve them and successfully prosecute offenders once they have been committed."*



adequate capital to sustain the first year's budget. Subsequently, in our second year, we were able to reduce the assessment to a flat \$20 per office after careful budgetary considerations.

Until our MABS association began on February 17, 1970, bank security people had no formal group and seldom had regular contact with one another. Since that date, the association has held monthly meetings, and in September 1972, it formally became the Maryland Association for Bank Security. Membership in the association has grown to include 43 financial institutions, comprising the major commercial banks, savings banks, and savings and loan associations, throughout Maryland. Associate members of the organization represent major Federal, State, and local law enforcement agencies in Maryland, as well as private security companies.

All concerned have one common goal: to prevent crimes against financial institutions or to solve them and successfully prosecute offenders once they have been committed.

However, there was a full realization that the organization's purpose could only be achieved with the support and help of the public-at-large. Accordingly, the reward plan was instituted in an effort to stimulate the public's interest and assistance.

### **Administration**

The reward plan is administered by a reward committee of seven members, each of whom is an officer of a different participating financial institution and is appointed annually by the nominating committee of MABS. The committee selects a chairman, a treasurer, and a secretary. In addition, any financial organization involved as a victim in a criminal act for which a reward is being considered is allowed representation on the committee by special appointment.

The reward committee determines the person or persons entitled to a reward and sets the amount to be awarded. If a participating financial institution involved as a victim in a specific criminal act for which a reward is being considered has no representative on the reward committee, then the president of MABS appoints, from that financial institution, a representative as a source of information. All decisions of the reward committee are final and binding upon all participating financial institutions and upon all reward claimants.

In its initial stages of implementation, the association's prime objective was to make its program known to the public. To accomplish this, a substantial budget figure was allocated to advertising. This took the form of advertisements in newspapers with major circulations and the use of large posters for display in all bank branch offices and police stations. A formal for handout flyers that could be given to the public or included in any bank mailouts was also made available. Word-of-mouth communication by the police to known informants was encouraged.

There is, however, reason to believe that the most effective method of communication is to have the reward information attached to news items which are being dispatched through radio and television immediately after a robbery. At that time, the public interest is high and the details very fresh. This technique proved exceptionally successful when photos taken by surveillance cameras during a robbery were used in connection with the news release. At the discretion of the victim bank, these same photos can be effectively displayed in their branch offices with the reward poster.

The reward committee proceeded by advertising its offer of a reward of up to \$2,000 to the first person or group giving information which leads to the arrest and conviction of any person

or group committing a felonious act against any office of a participating financial institution located in the State of Maryland. The committee also may pay a reward of not more than \$500 at its absolute discretion and with or without public advertising.

### **Advancement**

As with all new programs, it takes time to get the message across, and we feel noticeable advancement is being made. In the first year of this operation, five reward payments were made. This figure accelerated to 15 during the first three-quarters of the second year, at which time a total of \$15,450 had been expended in reward money to qualified recipients since the plan began. The percentage of dollar recovery after apprehension in these cases was 46 percent. These results, we feel, are extremely encouraging.

As indicated before, to cover the cost of the plan, each participating financial institution is obligated (a) to contribute a fixed amount for each year during which the institution is a member of the plan, and (b) to pay such special pro rata assessments as may be made from time to time by the reward committee against participating financial institutions, if additional moneys are needed to pay rewards and expenses of the plan.

In administering a program such as this, there are always the problems of determining the size of rewards and deserving recipients. The reward committee has approached this by handling each case on its merits, with the final evaluation based on how important a part the information played in the apprehension. Other factors considered are the amount of money taken, the amount recovered, and the extent of personal involvement by the claimant.

One problem occurred when a claim was made by a customer who was present and witnessed a holdup. The



# \$2,000 REWARD for information leading to conviction for Bank Robbery

Information may be submitted in strictest confidence by calling either of these numbers:

Baltimore City Police . . . . . 396-2605  
Baltimore County Police . . . . . 494-2111  
Maryland State Police . . . . . 486-3101  
Federal Bureau of Investigation 265-8080

Montgomery County Police . .762-1000  
Prince George's County Police 444-1111  
Anne Arundel County Police 987-0101  
Howard County Police . . . .465-7500

America's rising crime rate has, for years, been the constant subject of much daily news, general discussion growing public concern. It is a problem that should effect every citizen, not just our dedicated law enforcement agencies.

As one step to encourage greater general awareness and participation in combatting lawlessness, twenty four of Maryland's major financial institutions, in cooperation with police authorities, make this offer effective now: up to \$2,000 will be paid to the first person or group of persons, as a group, giving information leading to the arrest, conviction and sentencing of any person or group of persons, as a group, for committing, after January 1, 1974, the criminal acts of robbing, attempting to rob, or conspiring to rob any office of the financial institutions listed below.

No reward shall be earned or payable until the appeal, if any, has been finally determined affirming the conviction or until the time for appeal has expired.

Recipients of rewards and amounts paid will be determined by, and in the sole judgement of, the Reward Committee, established by the undersigned banks in accordance with the Maryland Association for Bank Security on file at 10 Light Street, Baltimore, Maryland, 21203. However, neither law enforcement officers, officers and employees of participating banks, employees of private protective agencies, nor members of their immediate families, shall be eligible to receive a reward.

Let us remember, the greatest bulwark of public protection is the conscience of the citizen. Every citizen.

## Reward plan poster.

claim for reward was based on the customer's appearance at a lineup and his identification of the suspect. In this case, the claim was denied, since the customer contributed nothing to aid in the apprehension of the suspect but was doing his civic and moral duty in performing the necessary function of a witness.

The program is designed to be totally confidential should those offering information prefer such an approach. Persons can report directly to the police without fear of their identity being revealed. A formal procedure has been devised and documented with

the Baltimore City Police to handle such payments. The procedure has the approval of the police commissioner and is designed to provide adequate safeguards for the police in carrying out this program.

As a completely separate part of the program, there is a reward of not more than \$500 to be paid to the first person or group who provides information leading to the arrest of a suspect who is formally charged. In this instance, conviction is not necessary for payment as is the case of the up-to-\$2,000 reward amount. This type of payout is an added inducement to po-

lice informants who are anxious for quick case settlements.

Neither law enforcement officers, officers and employees of participating financial institutions, employees of private protective agencies, nor members of their immediate families, are eligible to receive a reward.

In 1974, the MABS reward committee presented a special award to the widow and family of a Baltimore City police officer who was shot and killed by a bank robbery suspect.

## Special Plaque

There have been many very interesting cases considered by the committee, but certainly none more interesting than that which resulted from a bank holdup in March 1975. An extensive search for the bank robbers, which entailed the use of police helicopters and K-9 dogs, was undertaken immediately. After a long and fruitless search, the wind shifted and two K-9 dogs picked up a new, fresh scent which led them to the area where the suspects were hiding. The suspects surrendered, and the entire bank loot was recovered.

Because of their outstanding work, the two K-9 dogs particularly responsible for the "apprehensions," and, of course, their handlers, were elected to receive awards in the form of plaques by the committee.

In Maryland, as throughout the Nation, bank robberies continue to pose a major challenge to the law enforcement community and financial institutions. The MABS reward plan represents an innovative and positive response on the part of banking interests to this challenge. The results obtained thus far have been most encouraging, and those supporting the plan are confident that it will continue to be "rewarding" in terms of crime deterrence and greater public assistance in the solution of bank robbery offenses.



# White-Collar Crime Strikes Home: FHA-Related Frauds

**T**he popular sentiment, "Be it ever so humble, there's no place like home," has expressed for generations the deep personal attachment that most of us feel for the place we live, and over the centuries, the privileges and joys of homeownership have been extolled. Today, the acquisition of a home is a cherished and major goal in American life.

Of 63 million housing units occupied in this Nation in 1970, at least 6 out of 10 were owned by their oc-

cupants. Without question, the largest single purchase that most of us will make in our lifetime is a home.

For individuals of modest means, the benefits of homeownership at minimal cost are brought within reach by a number of Federal programs. Several of these programs are administered by the Federal Housing Administration (FHA), which, in 1973, underwrote over \$7½ billion worth of residential loans. This figure includes \$832 million for property

improvement loans and over \$2¼ billion for project-type mortgages. Figures compiled during 1972 revealed that 97.5 percent of FHA-insured mortgages for one-family homes were for amounts of less than \$30,000, over 50 percent for amounts less than \$20,000, and just over 25 percent were for less than \$15,000.

These funds have significantly assisted many of our less affluent citizens to acquire homes. Unfortunately, all has not been bliss—dishonest and



unprincipled elements have preyed on many of these owners and the programs making low-cost housing available to them.

### **National Housing Act**

On June 27, 1934, the National Housing Act was approved by Congress. It authorized the Federal Housing Administration to insure approved lending institutions against losses sustained as a result of loans or advances of credit made to finance the cost of repairing and modernizing homes and commercial or industrial properties. Amended on a number of occasions, this act now insures mortgages on residential properties and certain types of housing projects, including low-cost ones consisting of private homes or apartments. The FHA does not lend money—it only insures funds provided by lending institutions.

Since their inception, FHA programs have been the targets of many fraudulent schemes by individuals and firms.

An example of one ploy utilized over the years is the misuse of Title I, or home improvement loans, which was prevalent in the mid-1950's. During this period, small home improvement companies sprang up in the United States and, through their salesmen, contacted homeowners in poor neighborhoods regarding repairs and improvements to their homes—such as the installation of new bathrooms, the remodeling of kitchens, and the addition of aluminum siding to the house exteriors. In some cases, a glib salesman would point out to the owner that his house would be used as a model home, and, accordingly, for every contract obtained through the showing of his house, the fortunate homeowner would receive a commission. In convincing terms, the salesman would explain that from the number of contracts expected, the homeowner could

anticipate that the commissions would cover the entire cost of his own remodeling. In most cases, however, the homeowner never received any commission money, although other contracts may have been obtained. (The homeowner, of course, was obligated in any instance to pay for the home improvement work for which he had contracted.)

When the salesman had the unsuspecting homeowner convinced that he could afford the additions or repairs to his home, the appropriate forms, such as the contract and credit application, were completed. To facilitate obtaining the loan, the unscrupulous salesman usually would not list all of the homeowner's debts, and in some instances, if he listed a debt, he would lower the amount outstanding. After obtaining approval of the credit, commonly through a confederate in the lending institution, the company

*"The FHA does not lend money—it only insures funds provided by lending institutions."*

would begin the remodeling. Sometime during the early stages of the work, the homeowner or his wife would be induced to sign a completion certificate that all work had been performed. With this action, the loan funds became available to the contractor. The contracting company, in accordance with the contract, might then obtain the loan funds from the lending bank for work which had not actually been completed. The first time the homeowner realized what had happened was when he received the payment book from the lending institution regarding his outstanding loan.

FHA frauds continue to be a law enforcement problem today.

Based on information supplied by

various U.S. attorneys throughout the United States, the Department of Justice, in August 1972, undertook a comprehensive program designed to eliminate fraud and corruption in several FHA-administered programs, which may, for the purpose of discussion, be divided into three categories involving (1) single-family dwellings, (2) area management brokers, and (3) multifamily dwellings. In pursuing these cases, the FBI, with primary jurisdiction, is the basic investigative arm, although the Internal Revenue Service (IRS) and the U.S. Department of Housing and Urban Development (HUD) also have investigative interests and participate. At the time this intensified antifraud campaign was instituted, four major cities in the United States were already involved in special efforts to eliminate fraud in FHA housing programs. These were Philadelphia, Pa.; New York, N.Y.; Chicago, Ill.; and Detroit, Mich. Since then, additional cities have been designated as "target" cities, bringing the total to 27.

### **Single-Family Dwelling**

The unscrupulous speculator or real estate dealer who is involved in a fraud relating to the single-family dwelling usually selects a property or group of properties which is in a downgraded condition of such a nature that no conventional real estate dealer would attempt to sell it. Upon acquiring the property, he applies for a conditional commitment for insurance from the FHA. The property is then inspected by either an appraiser for the FHA or an independent appraiser, known as a fee appraiser, to determine what value it is to be assigned at present and what value it will have following repair and upgrading. The appraiser lists all of the repairs necessary to bring the value of the house up to what would be the appropriate restored value.



If the appraiser is "extremely friendly," he may receive a small payment from the dealer to list only minor repairs, keeping the cost for the dealer down. Whether the appraised value is honestly obtained or not, if the dealer does not get the amount that he wants as the restored value, he will usually drop the property and look for other property in which to speculate. If he gets the right amount, he will, of course, undertake restoration. In this latter case, the dishonest dealer, in repairing or upgrading the property, may follow one of two possible courses of action. He can: (1) obtain false certifications for nonexistent repairs from dishonest contractors, who may even furnish blank certification forms for the dealer to fill out as he wishes, or (2) make repairs which are inadequate or of poor quality.

The certifications are then submitted by the dealer to the mortgage company. The mortgage company reviews the forms and, if in order, should, according to FHA regulations, actually inspect the property to insure the work has been satisfactorily completed. Thereafter, the mortgage company submits the application for insurance to the FHA.

Upon finding a qualified buyer, the real estate dealer submits additional forms to the mortgage company, which is responsible for verifying the information pertaining to the buyer. These forms may also be falsified with incorrect credit information to make the prospective buyer look better financially. In some instances, the real estate dealer will furnish the buyer with additional money for a downpayment, a tactic which is illegal under FHA regulations regarding secondary financing.

When these steps are completed and the home purchased, the buyer moves in and, shortly thereafter, notices that the home is rapidly deteriorating. A complaint to FHA usually quickly follows.

The FHA office, in accordance with established procedures, refers the complaint to the mortgage company, which may ignore the complaint or take no action on it. In this event, and if the buyer does not have a large

*"... the Department of Justice . . . undertook a comprehensive program designed to eliminate fraud and corruption in several FHA-administered programs. . . ."*

amount of money invested in a downpayment on the home, he often abandons the dwelling. When the mortgage company discovers the mortgage is not being paid, it requests that this be remedied by calling for insurance payments by the FHA. Eventually, ownership of the property reverts to the FHA.

During FBI investigation of single-family housing violations, the first step taken is to obtain from the various FHA loan files all pertinent documents which have been submitted to FHA. These are reviewed to locate any false statement which may have served as an inducement to insure the loan. These documents consist of the credit application, credit report, deeds of trust, grant deeds, and a deposit receipt. The FHA file will also contain any written statements or affidavits by the mortgagor and may include evidence of a documentary nature essential to the successful prosecution of the real estate dealer or speculator dishonestly involved.

When a real estate dealer or mortgage-lending institution is selected as an investigative target based upon indications of fraudulent activity, a discussion is held with the appropriate assistant U.S. attorney to decide in ad-

vance whether prosecution of the actual home purchasers is contemplated or whether they will be used as witnesses, should they also be determined to be illegally involved.

### *Area Management Broker*

When property has been acquired by FHA, it is turned over to a person known as an area management broker. This individual is appointed by the local FHA insuring office and is responsible for the maintenance, rehabilitation, and/or resale of the property. In connection with these responsibilities, the opportunity for fraud exists.

An area management broker is required to obtain three bids for rehabilitation of the property, and any contract of this nature for over \$2,000 must be submitted to FHA for its approval. The unscrupulous area management broker will therefore often obtain bids for amounts smaller than \$2,000 so that he can handle the rehabilitation without any interference or need for approval from FHA. He may have a number of contractors with whom he can deal dishonestly, and who may fluctuate or inflate bids in a kickback arrangement with him in order to get the work. In some instances, perhaps only one contractor will actually submit bids, but they will be submitted in the names of two or three front companies, all of which he owns. In other instances, a dishonest area management broker will select a contractor and then arrange to have other contractors submit higher bids. Those involved in this arrangement usually do so with the understanding that in turn they will be selected to submit the low rehabilitation bid while the other contractors in the scheme will submit the fictitious bids.

Often, the contractor completes his work on the rehabilitation of property prior to the time the actual contract



is approved, necessitating a delay in the submission of proper forms to the FHA until approval has been granted. During investigation of this type of situation, the funds kicked back to the area management broker by the contractor are easily traced.

The investigation of violations by area management brokers is more complex than those pertaining to real estate dealers. In the former type of investigation, the property disposition file and property listing handled by the area management broker must be obtained. Bids on repair work as well as purchase orders, area management broker contracts, and any other documents which may be in the HUD file pertaining to the property must also be secured. In some instances, these documents will not be in this file and a subpoena must be obtained through the U.S. attorney's office to gain access to them. If the area management broker has a large number of properties, a computer may be utilized as an investigative aid. In pursuing these cases, a listing from the purchase order records of the various contractors who have performed work can be compared with a bid list to see if any contractor is being awarded an unusually high number of contracts. Additionally, analysis of this data can be a basis for identifying "front" companies.

In both types of investigations, locating and having available corroborative documents and/or quality witnesses are considered essential objectives.

### **Multifamily Dwellings**

The third category of housing frauds being afforded intensive investigative attention deals with multifamily dwellings newly constructed under what is known as the 235-236 Program. This program includes low-income single-family (235) and multifamily (236) dwellings. The single-

family dwelling portion of the program features mortgage assistance in the form of periodic interest payments to the mortgagee on behalf of the mortgagor. The project owner in a 236 Program project must be a nonprofit, limited dividend organization or a cooperative organization. The income of a tenant who participates in this program must be below a certain level which varies for different areas of the United States. As the tenant's income increases, his rent subsidy is decreased.

Where construction of a program project is being considered, the plans and costs are first furnished to HUD. Upon approval, a feasibility letter is issued to the organization sponsoring the proposed project. Then the final contract, drawings, and other necessary documents are prepared and submitted to HUD, along with an application for a final or firm commitment.

Many ways have been found to defraud these program projects. These include driving up the cost of the building, inflating the builder's profit and architect fees, and bribing FHA inspectors to approve shoddy construction work or allow use of cheap materials. Once the project has been looted for as much as it will yield, its sponsor can escape by substantiating that revenue he receives from the project do not support its cost. The sponsor can then default on the mortgage and thereby have the entire project assigned to the FHA following payment of the insured amount.

If a corrupt FHA official is involved, he may earn a kickback by assigning the management contract for the FHA-acquired project to a favored real estate broker.

### **Campaign Against Housing Frauds**

Since the Department of Justice initiated its intensive campaign against housing frauds in August 1972, in-

vestigative attention has been focused on those areas where the most substantial cases were anticipated. With the close of fiscal year 1975, this campaign had resulted in 472 Federal indictments, involving 706 defendants, and a reported total of 470 convictions. The caseload in this type of violation has doubled since the inception of the intensified program.

In one large midwestern city particularly plagued with crimes related to FHA matters, FBI Agents, assisted by IRS and HUD investigators, uncovered evidence in a multimillion-dollar scandal leading to conviction of over 100 persons, including HUD officials, real estate dealers, and contractors, on charges of fraud, bribery, conspiracy, or a combination of related charges.

*"... investigative attention has been focused on those areas where the most substantial [housing fraud] cases were anticipated."*

Although all citizens ultimately share in the loss whenever the Government is defrauded, FHA-related frauds are particularly regrettable since they frequently strike at programs designed to afford our more needy citizens the important benefits of low-cost, adequate housing. To successfully combat such crimes, those involved in all phases of FHA housing programs should be alert for indications of irregularity and promptly report them. Substantial progress in the Government's drive against housing frauds has been achieved through the close cooperation of the public and law enforcement, and the FBI, together with other concerned Federal agencies, is determined to make even greater strides forward in protecting the citizen from these costly crimes. (R)



# Dedication New FBI Head

Editor's Note: A more comprehensive article concerning the new FBI Building is planned for a future issue of the BULLETIN.





# on of Quarters Building

*"The President spoke highly of the FBI today, describing it as 'both a model and a catalyst for the Nation's police....'"*

On the morning of September 30, 1975, following the spirited rendition of the "J. Edgar Hoover March" by the U.S. Marine Band, President Gerald R. Ford arrived for dedication of the J. Edgar Hoover F.B.I. Building in the Nation's Capital. Approximately 7,000 FBI employees, guests, and news media representatives gathered in the courtyard to witness the dedication ceremonies for the new structure, which was characterized by the Honorable Arthur F. Sampson, Administrator of the U.S. General Services Administration (GSA), as the "national nerve center for law enforcement."

During his remarks, FBI Director Clarence M. Kelley expressed, in behalf of all FBI employees, appreciation for "the tremendous effort that





has gone into the erection of this building." "We are fully aware," he stated, "of the difficulties and challenges . . . met and mastered in bringing the project to completion . . . we are truly grateful to be the occupants of this magnificent structure."

Mr. Kelley, emphasizing the many advantages that this greater centralization of Headquarters operations would bring, noted, "We are already benefiting from a smoother flow of paperwork and improved conduct of office procedures so essential to effective management." The FBI Director concluded his remarks by pledging

that the Bureau would be "good stewards of this building as we strive to better serve the American people."

Among distinguished platform guests at the dedication was the Honorable Edward H. Levi, Attorney General of the United States, who observed that this notable event occurred "in a period which again calls for a reaffirmation of the effectiveness, independence, and integrity of law enforcement agencies." The Attorney General stated, "This is a challenging time for the FBI, and I am confident that its dedication to its strong tradition of professionalism and honor will

meet the challenge. This is the heritage we honor today. It is this to which we dedicate ourselves."

President Ford, in his remarks, commented that the impressive building "symbolizes the role of the FBI as the bastion of Federal law enforcement and honors the memory of a pioneering public servant who served as Bureau Director for nearly 48 years." The President spoke highly of the FBI today, describing it as "both a model and a catalyst for the Nation's police—a coordinator of information on crime—a guardian of civil rights—and a protector of law-abiding citizens. It has carried out its limited Federal duties in a dedicated manner respected throughout the world. We are a strong Nation because of the FBI." In conclusion, Mr. Ford remarked, "In dedicating this new FBI Headquarters, whose solid structure is reflective of the rock-hard features of the man for whom it is named, I call for a renewed commitment to the rule of law in America and to the legal system that perpetuates freedom and justice. For without law, we have neither freedom nor justice."

Following the dedication speeches, Mr. Sampson presented President Ford, Attorney General Levi, and Director Kelley with symbolic gold keys to the building. Mr. Kelley designated the President "an honorary Special Agent of the FBI," and Mr. Ford, in accepting the honor, told the audience that at one time he had "a great ambition to be an Agent of the FBI."

Prior to construction of the new facility, the FBI's Headquarters operations were located in nine different buildings in the Washington, D.C., area. Completion of the building has allowed greatly needed centralization of the Bureau's extensive activities.

The J. Edgar Hoover F.B.I. Building constitutes the first effort by the Federal Government to revitalize Pennsylvania Avenue—the symbolic

President Ford delivers dedication address.







Pictured above is President Ford after being designated "an honorary Special Agent" by Director Kelley.

link between the White House and the U.S. Capitol. The original prospectus for the building was approved by Congress in April of 1962. Excavation work to provide space for three basement levels, was started in 1967 and the substructure was completed in mid-1971. Work on the buff-colored, concrete superstructure commenced shortly thereafter.

This imposing structure, situated directly across the street from the Bu-

*"... the Bureau's vital service to the Nation is materially augmented by a more effectively centralized and equipped Headquarters."*

reau's previous Headquarters in the Department of Justice building, en-

compasses an entire block of Pennsylvania Avenue, NW., between 9th Street on the east and 10th Street on the west. From Pennsylvania Avenue, it extends back to E Street on the north.

The FBI's new home was constructed at a cost of approximately \$126.1 million and covers a net working area of 1,849,500 square feet. The building's height on the Pennsylvania Avenue side is seven stories, and on the north side, the building extends to a full 11 stories.

Housed in the new structure are approximately 7,400 FBI employees and some 300 GSA maintenance and operating personnel. Special features include a 460-seat auditorium, a gymnasium for FBI Agents' physical training during off-duty hours, a small-arms range for tourist demonstrations

and Agents' proficiency training, and various other facilities, including classrooms and a spacious employee cafeteria.

With this prelude, a new era in FBI operations commences—one in which the Bureau's vital service to the Nation is materially augmented by a more effectively centralized and equipped Headquarters.

FBI

## NATIONAL CRIME INFORMATION CENTER (NCIC)

Utilizing a sophisticated telecommunications network involving 87 control terminals, the NCIC made more than 4.9 million records relating to wanted persons and stolen property instantaneously accessible to FBI field offices and other duly constituted criminal justice agencies in the United States, the Royal Canadian Mounted Police, and the Police of the Commonwealth of Puerto Rico during fiscal year 1975. In addition, more than 600 Computerized Criminal History records were maintained in the NCIC computer for criminal justice use.

NCIC member agencies are linked for the common purpose of combating crime. Daily, NCIC handles an average of more than 171,500 transactions involving wanted persons (fugitives), stolen property, and criminal history records. The number of transactions during June 1975 increased more than 15 percent over the same month in 1974. Positive responses, or "hits," on wanted persons and stolen property inquiries averaged approximately 900 per day during fiscal year 1975.

*Annual Report, 1975, p. 24*



The seal of the FBI National Academy is a large, circular emblem in the background. It features a central eagle with spread wings, perched on a shield. Above the eagle is a banner with the letters 'NA'. The words 'FBI NATIONAL ACADEMY' are written in a circular path around the eagle. Below the eagle, the words 'KNOWLEDGE', 'COURAGE', and 'INTEGRITY' are written in a semi-circle.

## A “Spirit of Unity”

At midmorning on September 25, 1975, 11 weeks of intense, executive-level training for 249 select law enforcement officers concluded with commencement proceedings held in the auditorium of the FBI Academy training complex at Quantico, Va. Gathered to observe this notable occasion were many friends and relatives of graduating officers as well as several distinguished guests.

As in past sessions, officers comprising this 102d Session of the FBI National Academy came from agencies of many different national and international jurisdictions. Specifically, 47 States, the District of Columbia, Puerto Rico, and 10 foreign countries were represented. In addition, officers of the U.S. Army, U.S. Air Force, U.S. Marine Corps, and several Fed-

eral agencies were included, as were two women officers.

Attendees of the FBI National Academy are provided a curriculum designed to meet the needs of contemporary law enforcement in such areas of interest as police management, ethics, legal matters, urban police problems, and behavioral sciences.

Graduating members of this session bring the total number of officers successfully completing this course to 9,416 since the first session graduated in October 1935. Of those graduates still active in law enforcement, one of every five occupies the top executive position of his agency.

Following the traditional musical introduction by the U.S. Marine Band, Assistant Director William M. Mooney of the FBI's Training Division called

the proceedings to order. Thereafter, the invocation was delivered by Comdr. Earl L. Boyette of the Chaplain Corps, U.S. Navy. In this prayer, Commander Boyette recalled the honored memory of Det. Norman E. Klefisch of the St. Louis, Mo., Police Department, a member of the class whose untimely death occurred during the session.

Speaking on behalf of his fellow session members, the elected class spokesman, Lt. George C. Nuttall of the California Highway Patrol, Sacramento, elaborated upon the “spirit of unity” pervading all aspects of the FBI National Academy learning experience. He stated, “The ever-present dedication of our fine counselors nourished the development of our fraternal spirit. . . . This spirit will also



help us better serve our societies as we go forth to enhance the cohesion of national and international law enforcement . . . teamwork is essential because of the transient nature of criminal elements and rapid transportation that is available to them. We will succeed in this endeavor because we understand the necessity of unity, which is built on sincerity, trust and respect, which has been displayed in this session."

Lieutenant Nuttall concluded by thanking the Academy administrators and Bureau officials who made it possible for members of this session to at-

tend the Academy. He expressed his deepest admiration for, and appreciation to, the Academy staff "for their outstanding assistance, guidance and dedication to our learning and social achievements."

Following Lieutenant Nuttall's remarks, Mr. Mooney introduced the Honorable Clarence M. Kelley, Director of the Federal Bureau of Investigation.

Mr. Kelley offered his personal congratulations and greetings to the class and commented that the graduates of the 102d Session were joining a "remarkable fellowship"—referring to

the FBI National Academy Associates—which they would "come to value intensely." The FBI Director stated there is "a dimension to the National Academy that goes beyond the traditions of professionalism, performance, and productivity—a dimension that springs from qualities inherent in students who attend the Academy and which is handed down as a legacy from class to class.

"Duty is the foundation of that legacy and dedicated service is its hallmark. Friendship certainly forms a basic part of it. So does the striving for excellence. These are intangibles,

Elected representatives of the five training sections are pictured with FBI Director Clarence M. Kelley. From left to right are: Capt. Lawrence J. Dolan, Waterloo, Iowa, Police Department; Mr. Craig M. Beek, Director, Iowa Bureau of Criminal Investigation, Des Moines, Iowa; Capt. John A. Galt, San Diego County, Calif., Sheriff's Office; Mr. Kelley; Mr. Geoffrey Monge, Special Agent in Charge, Florida Department of Criminal Law Enforcement, Tallahassee, Fla.; and Lt. George C. Nuttall, California Highway Patrol, Sacramento, Calif.





but they comprise a legacy which you create and which you inherit."

Mr. Kelley concluded his address by praising the graduates for the fine attitude they displayed throughout their attendance and stated, "You are in the truest sense of the word a member of the family, and I welcome you into that family."

Following his comments to the graduating officers, Mr. Kelley introduced the principal speaker, Mr. Richard C. Clement, current president of the International Association of Chiefs of Police and chief of police, Dover Township, Toms River, N.J.

Mr. Clement's comments dealt with the present dilemma of the American crime victim. In discussing those unfortunate individuals, he stated, "If any underprivileged class was ever less represented, I can't imagine which

one it might be. . . . Our crime victims are burdened with proof of the allegation, uncompensated for their injuries, and required to support those that attacked them." He emphatically added, "Nothing in my mind is more unfair. In the almost fanatical belief that every benefit of doubt must favor the accused, our society has become a haven for criminals and a virtual prison for their victims."

The accused criminal, he explained, is directly subsidized by his victim's tax dollar which supports the criminal justice system. Although "he is not required to give evidence against himself, tax dollars will be provided for his defense against any other evidence that may be found. If he is without funds, the victim's tax dollar goes to work again in behalf of the accused. . . . Probationary programs


[are available] that even include skilled training and job placement services. . . . Again, they're supported by our victim's tax dollar."

Mr. Clement saw some hope of improvement in relation to this societal ill. He noted, "We're now just beginning to get some insight on the phenomenon that we call victimology—the study of what makes crime happen and to whom . . . new research is being made available to law enforcement that heretofore was exclusively [only accessible] to privately endowed institutions. Legislation is being introduced that provides financial compensation to victims. And, hopefully, it's not at too distant a point in time that our society will begin to treat the crime victim with the degree of concern that he deserves."

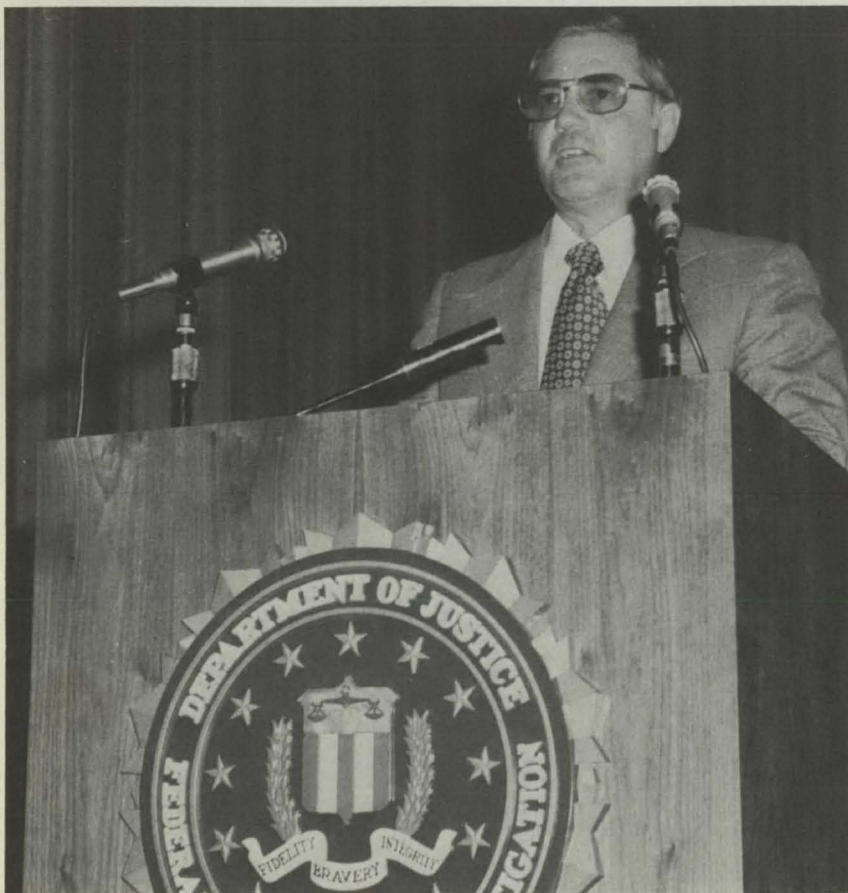
In concluding his remarks, Mr. Clement observed that as our Nation prepares to celebrate its Bicentennial, "it's time to get back to the basics: the Bill of Rights affords protection for all of its citizens and not just the criminal element."

Following this address, Mr. Kelley introduced Lt. Gen. Joseph C. Fegan, Jr., commanding general of the Marine Corps Education and Development Command, Quantico, Va.; Chief Clyde P. Klaumann, of the Carmel, Calif., Police Department, who is president of the FBI National Academy Associates; and Mr. Bruce W. Nelson, dean of the School of Continuing Education, University of Virginia, Charlottesville.

Insp. James V. Cotter of the FBI Training Division then presented the graduating class to Mr. Kelley for the individual awarding of diplomas.

Benediction led by Commander Boyette and a rendering of the National Anthem by the U.S. Marine Band, under the conductorship of M. Sgt. Thomas Barlow, concluded the program. 

Chief of Police Richard C. Clement, Dover Township, Toms River, N.J., and President, International Association of Chiefs of Police, delivers the principal address.





tions will be more trustworthy if the witness bases his identification on his memory of the image of the person actually seen committing the crime. This being so, it seems reasonable that

likely to result in a "misidentification"? If the latter or both of these are lacking, the reported decisions indicate that the eyewitness identification testimony should be admissible.<sup>14</sup>

***"To sustain exclusion of identification testimony, there must be not only (1) a showing of impermissibly suggestive procedures, but also (2) a resulting substantial likelihood of irreparable misidentification."***

rather than tarnishing that image, viewing a surveillance photograph would strengthen it. The witness simply is observing again the image he saw at the time of the robbery.

### **Two-Step Test**

But let us consider the possibility that the *Simmons* due process test is applicable to displaying robbery surveillance photos. A brief examination of what is required to satisfy that test seems appropriate. Generally, the lower courts have adopted a two-step approach in administering the standard. To sustain exclusion of identification testimony, there must be not only (1) a showing of impermissibly suggestive procedures, but also (2) a resulting substantial likelihood of irreparable misidentification.<sup>12</sup> This approach seems consistent with the Supreme Court's recent decision in *Neil v. Biggers*,<sup>13</sup> in which the Court held that identification evidence was properly allowed to go to a jury inasmuch as there was no showing of a substantial likelihood of irreparable misidentification, notwithstanding a previous showup which was unnecessarily suggestive.

The logical inquiry, then, (assuming there is a *Simmons* due process issue) appears to be whether the display of single robbery surveillance photographs to witnesses of the robbery violates both prerequisites of the *Simmons* test. That is, is the practice "suggestive," and, if it is, is it

A recent case, *United States v. Arcediano*,<sup>15</sup> considered the issue of whether displaying a single bank robbery photo to witnesses was suggestive in violation of the first part of the *Simmons* test. The defendant was accused of bank robbery after being identified as the holdupman by tellers who picked his photo out of a spread displayed by investigators. Within a day of the identification, both tellers also viewed the surveillance pictures and identified them as depicting both the robber and the robbery scene. They also initialed the photographs. In response to the defendant's challenge to any identification testimony which might be offered by the tellers, the court said that the surveillance picture:

"does not fall into the category of photographs that present a *Simmons* issue of impermissible suggestiveness *vel non*. . . . The photograph is not 'suggestive' in the sense that the 'impermissible suggestiveness' doctrine is raised in *Simmons*."<sup>16</sup>

Also pertinent here is *United States v. Ervin*.<sup>17</sup> A passenger on a hijacked airliner photographed the hijacker as he was walking away from the aircraft at the Havana airport. The photo depicted a young black male (defendant) in the company of Cuban officials. Nine prosecution witnesses, who made in-court identifications of the defendant, testified that 1 or 2 days prior to trial the U.S. attorney

showed them a small print of this snapshot. Although the defendant's appeal was based on the contention that his attorney should have been present when the "res gestae" picture was shown, the following passage by the Court seems relevant:

"The fact that this photograph included a depiction of the perpetrator of the crime, who was shown both at a distance and at an oblique angle, did not make the photograph impermissibly suggestive within the meaning of *Simmons*. In fact it was not suggestive at all. The evidence disclosed that the photograph depicted a true detail of as active part of the hijacking and kidnapping. Its pre-trial display to prospective witnesses was no more than the equivalent of showing such witnesses a contemporaneously made written statement describing facts, in order to refresh their recollection and make their testimony more accurate. The photograph did not suggest possibilities, it showed facts. A review of events with witnesses prior to a trial is a time-honored and a legitimate, if not a required, part of the duty every attorney owes both the court and his client in the development of a trial's search for truth."<sup>18</sup>

The cases seem to indicate, then, that a display of a single robbery surveillance photo to a witness does not violate the first step of the *Simmons* test in that the courts do not characterize the practice as "suggestive."

However, even assuming that such a display was suggestive, in order to exclude the subsequent identification testimony it also must be found that a "substantial likelihood of irreparable misidentification" resulted in violation of the second part of the *Simmons* test. A brief review of some cases which have considered that issue re-



veals that the practice does not give rise to such a likelihood.

Addressing itself to this very point, the Court of Appeals for the Fifth Circuit in *United States v. Ervin*<sup>19</sup> stated, "Rather than presenting a situation where there was a very substantial likelihood for misidentification, the circumstances here tended to make identification almost indelibly certain."<sup>20</sup> The significance of this quotation is clear. Viewing the photo prior to trial refreshed the witness' memory of the mental image of the offender and thereby strengthened the reliability of his in-court identification.

Other cases which have considered the issue have detected no substantial likelihood of misidentification. For example, in *United States v. Evans*,<sup>21</sup> witnesses viewed the photo on the day of the robbery and again prior to trial. The court noted that "[t]he film contained the likeness not of some possible suspect in the police files, but of the man who actually committed the robbery. As a consequence, to refresh the memory of each eyewitness from that source ran a significantly smaller risk of misidentification than to refresh it from a source unrelated to the actual events."<sup>22</sup> And in *United States*

the depicted robbery indicate that the practice does not raise a due process issue under the test enunciated by the Supreme Court in *Simmons v. United States*.<sup>25</sup> But even if the due process standard were held to apply, the decisions establish that it is not violated by this procedure. The practice is neither impermissibly suggestive nor does it give rise to a substantial likelihood of irreparable misidentification at a subsequent identification procedure.

As helpful as surveillance photographs may be, investigators should be aware of three limitations on their use. First, one court has disapproved the practice of multiple witnesses *simultaneously* viewing robbery surveillance photos.<sup>26</sup> Although joint viewing probably would not taint a subsequent conviction in most cases, prudent officers should avoid this situation. Second, although more of a concern of the prosecutor, another court has questioned the practice of allowing a witness to refresh his recollection by viewing the surveillance film during a break in his actual trial testimony.<sup>27</sup> Finally, displaying a single surveillance photo of a robber to witnesses of *another* robbery would seem to be an attempt to identify the suspect

choice similar to that approved by the Supreme Court in the *Simmons* case (spread of snapshots).

By observing these limitations, officers who have occasion to utilize robbery surveillance photographs should reap substantial investigative benefits from a device which represents the direct application of technology to the solution of crime.

#### FOOTNOTES

<sup>1</sup> *United States v. Evans*, 484 F. 2d 1178 (2d Cir. 1973); *United States v. Hobbs*, 403 F. 2d 977 (6th Cir. 1968). In addition, some courts have permitted photographic identification experts to testify to similarities between a surveillance photograph and a police photo of the defendant. *United States v. Harris*, 17 CrL 2197 (4th Cir. 5/23/75); *United States v. Cairns*, 434 F. 2d 643 (9th Cir. 1970).

<sup>2</sup> This claim may be of special concern when sequence-type cameras are utilized. The sequence camera can be activated by an employee any time a suspicious individual enters the business and turned off after the person exits. The film, however, normally is not removed and developed until after an actual robbery. The result is that the filmstrip containing the shots of the robbery may also contain many other scenes depicting innocent activity in the store taken over an extended period of time. If the witness can view the photo and identify the robbery scene promptly, the prosecution is in a stronger position to contend with the defendant's assertion that his appearance on the filmstrip is the result of an activation of the camera during one of these periods of "innocent activity."

<sup>3</sup> *United States v. Ervin*, 436 F. 2d 1331 (5th Cir. 1971); cf. *United States v. Ash*, 413 U.S. 300 (1973).

<sup>4</sup> 390 U.S. 377 (1968).

<sup>5</sup> *Id.* at 384.

<sup>6</sup> *Id.* at 383 (emphasis added).

<sup>7</sup> *Kimbrough v. Cox*, 444 F. 2d 8 (4th Cir. 1971); *United States v. Fowler*, 439 F. 2d 133 (9th Cir. 1971).

<sup>8</sup> 390 U.S. at 383, 384.

<sup>9</sup> 474 F. 2d 55 (4th Cir. 1973), cert. denied, 412 U.S. 941 (1973).

<sup>10</sup> *Id.* at 56 (emphasis added).

<sup>11</sup> *Id.*

<sup>12</sup> *United States v. Evans*, 484 F. 2d 1178 (2d Cir. 1973); *United States v. Ervin*, 436 F. 2d 1331 (5th Cir. 1971); *Rudd v. State of Florida*, 343 F. Supp. 212 (M.D. Fla. 1972), *aff'd*, 477 F. 2d 805 (5th Cir. 1973); *Boyd v. State*, 472 S.W. 2d 125 (Tex. 1971).

<sup>13</sup> 409 U.S. 188 (1972).

<sup>14</sup> See cases cited footnote 12, *supra*.

<sup>15</sup> 371 F. Supp. 452 (D.N.J. 1974).

<sup>16</sup> *Id.* at 457.

<sup>17</sup> 436 F. 2d 1331 (5th Cir. 1971).

<sup>18</sup> *Id.* at 1333, 1334.

<sup>19</sup> 436 F. 2d 1331 (5th Cir. 1971).

<sup>20</sup> *Id.* at 1334.

<sup>21</sup> 484 F. 2d 1178 (2d Cir. 1973).

<sup>22</sup> *Id.* at 1186.

<sup>23</sup> 464 F. 2d 816 (D.C. Cir. 1972).

<sup>24</sup> *Id.* at 820.

<sup>25</sup> 390 U.S. 377 (1968).

<sup>26</sup> *United States v. Hopkins*, 464 F. 2d 816 (D.C. Cir. 1972).

<sup>27</sup> *United States v. Evans*, 484 F. 2d 1178 (2d Cir. 1973).

*"As helpful as surveillance photographs may be, investigators should be aware of . . . limitations on their use."*

*v. Hopkins*,<sup>23</sup> a case in which bank robbery witnesses viewed surveillance photographs shortly after the crime, the court found "lacking such circumstances as might have given rise to 'a very substantial likelihood of irreparable misidentification.'" <sup>24</sup>

#### Conclusion

The reported cases which have addressed themselves to the problem of displaying single robbery scene surveillance photographs to witnesses of

as the perpetrator of the second robbery and, thus, fall within the scope of the *Simmons* decision. The practice could be suggestive and might give rise to a substantial likelihood of misidentification at a subsequent corporal identification procedure. Thus, officers who desire to show surveillance photos taken during robbery A, to witnesses of robbery B, should intermingle the photo of robbery A with other unrelated surveillance photos so that witnesses to robbery B are offered a



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## WHITE-COLLAR CRIME

Bank Fraud and Embezzlement, February 1975, vol. 44, No. 2, p. 7.

Economic Crime: The Crippler, by Nathaniel E. Kossack, director, Economic Crime Project Center, National District Attorneys Association, Washington, D.C., March 1975, vol. 44, No. 3, p. 3.

White-Collar Crime Strikes Home: FHA-Related Frauds, December 1975, vol. 44, No. 12, p. 12.

## YOUTHFUL CRIMINALITY

Camp Win-A-Friend, by Col. Donald J. Thibodeaux, superintendent, Louisiana State Police, Baton Rouge, La., October 1975, vol. 44, No. 10, p. 19.

A Community Approach to Juvenile Delinquency, by Capt. William H. Logan, Jr., commander, Investigations Division, Police Department, Evanston, Ill., August 1975, vol. 44, No. 8, p. 28.

The Honolulu Family Court, by Hon. Herman T. F. Lum, senior judge, Family Court, First Circuit, State of Hawaii, Honolulu, Hawaii, May 1975, vol. 44, No. 5, p. 24.

specialized schools for law enforcement administrators in such topical areas as crisis intervention, executive development, forensic science, instructor development, and legal matters.

Specially trained FBI Agents assigned to the Bureau's 59 field offices provided 108,383 hours of instruction while participating in 10,516 law enforcement schools attended by 319,663 criminal justice personnel. The topics ranged from basic law enforcement subjects to specialized matters such as kidnappings, hostage situations, extremist groups, and organized crime.

## *Annual Report, 1975, p10* THEFT OF GOVERNMENT PROPERTY

Recoveries of stolen Government property totaled \$2,083,479 in FBI investigations during fiscal year 1975. Convictions resulting from these investigations reached 1,058—132 more than the previous fiscal year.

## ORGANIZED CRIME

As a part of its quality approach to investigative matters, the FBI recorded a number of significant achievements in the fight against organized crime during fiscal year 1975, with investigations resulting in 1,417 convictions of hoodlum, gambling, and vice figures. This was an increase of 786 over fiscal year 1971.

Recoveries and confiscations in FBI organized crime cases exceeded \$5 million during the fiscal year.

*Annual Report, 1975, p2*

## *Annual Report, 1975, p22* TRAINING

During fiscal year 1975, a total of 8,613 law enforcement personnel, including FBI Agents and employees, received training at the FBI Academy at Quantico, Va. The programs included training in investigation of organized crime, white-collar crime, and sex crimes, as well as fingerprinting.

Instructors from the FBI Academy conducted over 200



# WANTED BY THE FBI



Photos taken 1967.

Photo taken 1968.

**THOMAS EUGENE SWAITE, also known as Clifford Johnson, "Gene"**

## Interstate Flight—Armed Robbery

Thomas Eugene Swaite is presently being sought by the FBI for unlawful flight to avoid prosecution for armed robbery.

## The Crime

On June 22, 1968, Swaite and an accomplice allegedly robbed at gunpoint a supermarket in Savannah, Ga. The robbers reportedly made good their escape in a getaway car which was allegedly stolen locally, prior to the robbery. A Federal warrant was issued for his arrest on October 13, 1972, at Savannah.

## Description

Age----- 37, born January 4,  
1938, Bay Village,  
Ark.  
Height----- 6 feet.  
Weight----- 210 pounds.  
Build----- Heavy.



Right ring fingerprint.

Hair-----	Brown.
Eyes-----	Brown.
Complexion---	Medium.
Race-----	White.
Nationality----	American.
Scars and marks-----	Scar on left side of face; tattoos of a bird, "MOTHER," and "DAD," on his right arm.
Occupations---	Construction work- er, machine oper- ator, pest control worker, salesman.

Remarks----- Reportedly has  
large buttocks  
and appears to  
be sway-backed.

FBI No. ----- 407, 524 D.

Fingerprint classification:

16	M	9	U	100	15	Ref: 9
	M	1	U	000		2

NCIC classification:

16 09 14 CO 15 12 12 16 19 15

## Caution

Swaite has been convicted of possession of gambling equipment, armed robbery, willful murder, and unlawful use of weapons. In the past, he reportedly has been closely associated with individuals who have displayed a hatred for law enforcement officers. He should be considered armed and very dangerous.

## Notify the FBI

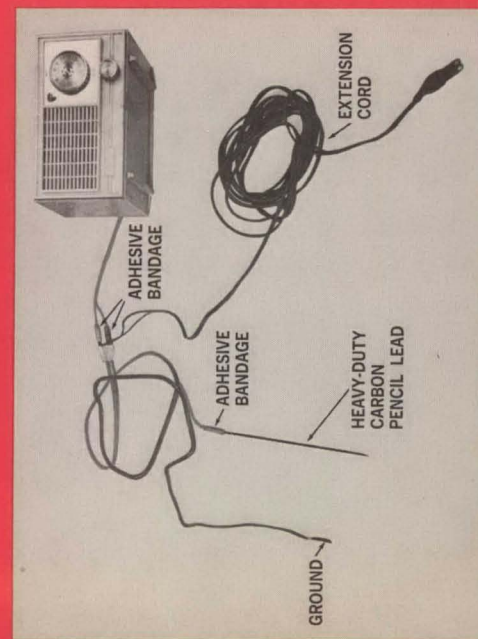
Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of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



# Radio Rig Escape Efforts Fail

An escape attempt from the Galveston County, Tex., jail involved the use of a common extension cord, pencil lead, and a small radio.

The radio power cord was cut in two. The dual prongs of the electrical plug at the end of the severed cord were separately taped with adhesive bandage to each of the wires of the remaining portion of power cord and to those of an extension cord. The opposite end of the plug section of power cord was stripped of insulation and, again using an adhesive bandage, the lead of a drafting pencil was taped to one of the bare wires, leaving the other wire for grounding purposes. After the extension cord was connected to a power source, a ground was established and the pencil lead touched to a cell bar, thereby creating an arc similar to that produced by an arc welder. During the process, the radio was played to cover sound generated. In the incident described, the arcing device was used approximately 1 1/2 hours per day over a 2-day period. Its operation, however, resulted in obvious damage to the lighting system in the area, leading to discovery of this ingenious instrument of escape. Although damage to the cell bar was not extensive, it was enough to warrant its replacement.



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Galveston County, Galveston, Tex. 77560



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FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

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## QUESTIONABLE PATTERN

The pattern at left has the general appearance of a loop; however, on close examination it will be found to lack the necessary looping ridge, sufficient recurve, and ridge count. Consequently, this impression is classified as a tented arch.