FBI LAW ENFORCEMENT BULLETIN

JANUARY 1979

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The Cover
January's cover features the FBI's new crime scene vehicle. See article on page 1. (Elliott M. Pazornick Photograph)

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

William H. Webster, Director

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FBI Crime Scene Vehicle

A new, sophisticated crime scene vehicle—a 7-ton, 26-foot modified step van—is the latest FBI resource in bombing investigations. Developed and constructed under a public bid contract to the Calumet Coach Company in Chicago, Ill., with additional equipment from the FBI's Technical Services and Laboratory Divisions, the vehicle is designed to respond to sites of bombings. It is also equipped to process any crime scene in the FBI's jurisdiction.

Special Agents atop the FBI's new crime scene vehicle adjust 500-watt quartz-halogen floodlamps.

Onboard communications facilities include radio gear permitting direct contact from any territory in which the vehicle may be operating to the appropriate FBI field office, a portable radio unit, and a telephone which can be connected to a commercial telephone system. This equipment, together with a desk and adequate working space, affords command post capabilities.

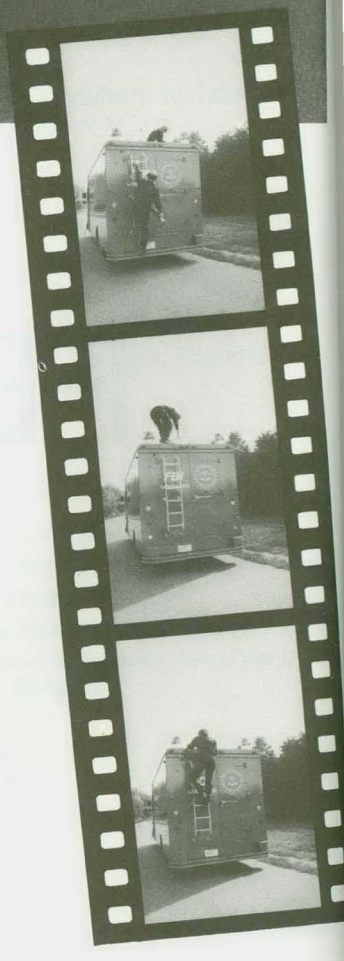
Four 500-watt quartz-halogen floodlights, a public address system, siren, emergency lights, an air conditioning unit, and ladders comprise the roof-mounted equipment.

A gasoline-operated 6,500-watt generator built into the side of the vehicle provides electrical current for the roof-mounted floodlights, some interior apparatus, and equipment being operated in close proximity to the vehicle. Two portable 3,000-watt generators supply electrical power at more remote locations. Exterior power from any 210/240-volt source can be connected to the vehicle by extension cord. Four portable 500-watt floodlights with associated junction boxes and reels of electrical cord are stowed in bins within the vehicle.

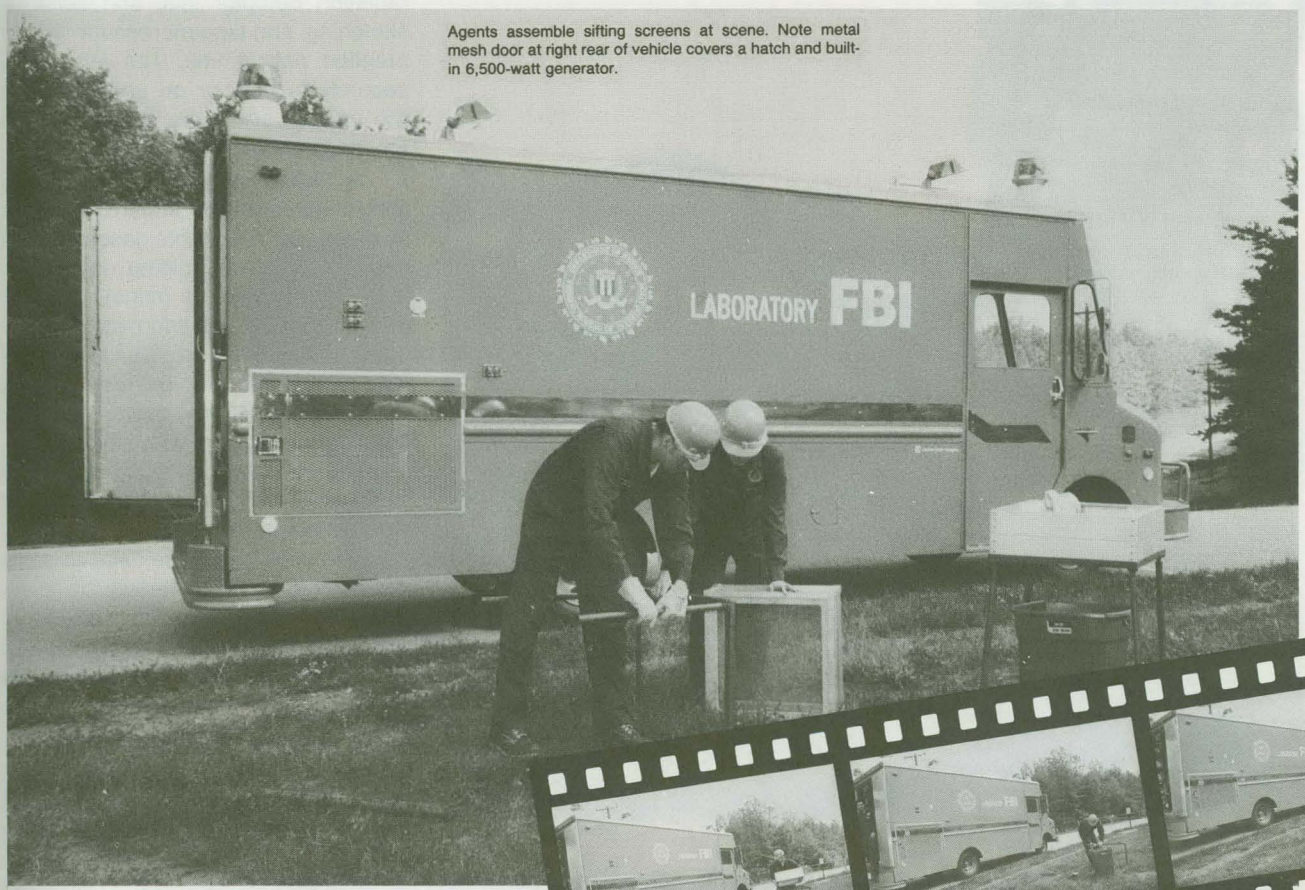
A winch mounted on the front end has a 7-ton capacity and will be used to move heavy objects, such as overturned vehicles, at bombing sites. The winch likewise offers the necessary self-recovery capability should the vehicle be operating in rough terrain.

Among personal provisions within the vehicle are winter parkas, foul-weather gear, coveralls, hard hats, safety boots, rubber boots, safety goggles, gloves, and protective masks.

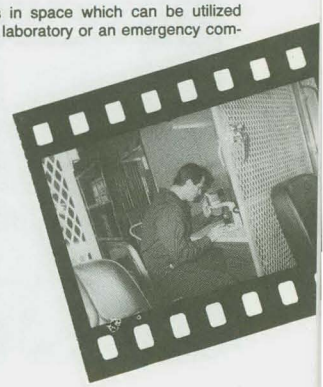
Most of the crime scene equipment has been compartmentalized into compact, space-efficient "kits." These include the air sampler kit; camera, explosive detector, and evidence container kits; fingerprint, plaster cast, and



Agents assemble sifting screens at scene. Note metal mesh door at right rear of vehicle covers a hatch and built-in 6,500-watt generator.



A Special Agent works in space which can be utilized either as an improvised laboratory or an emergency command post.



Accessible portable floodlights, a variety of kits, and other equipment are efficiently stowed in convenient compartments.

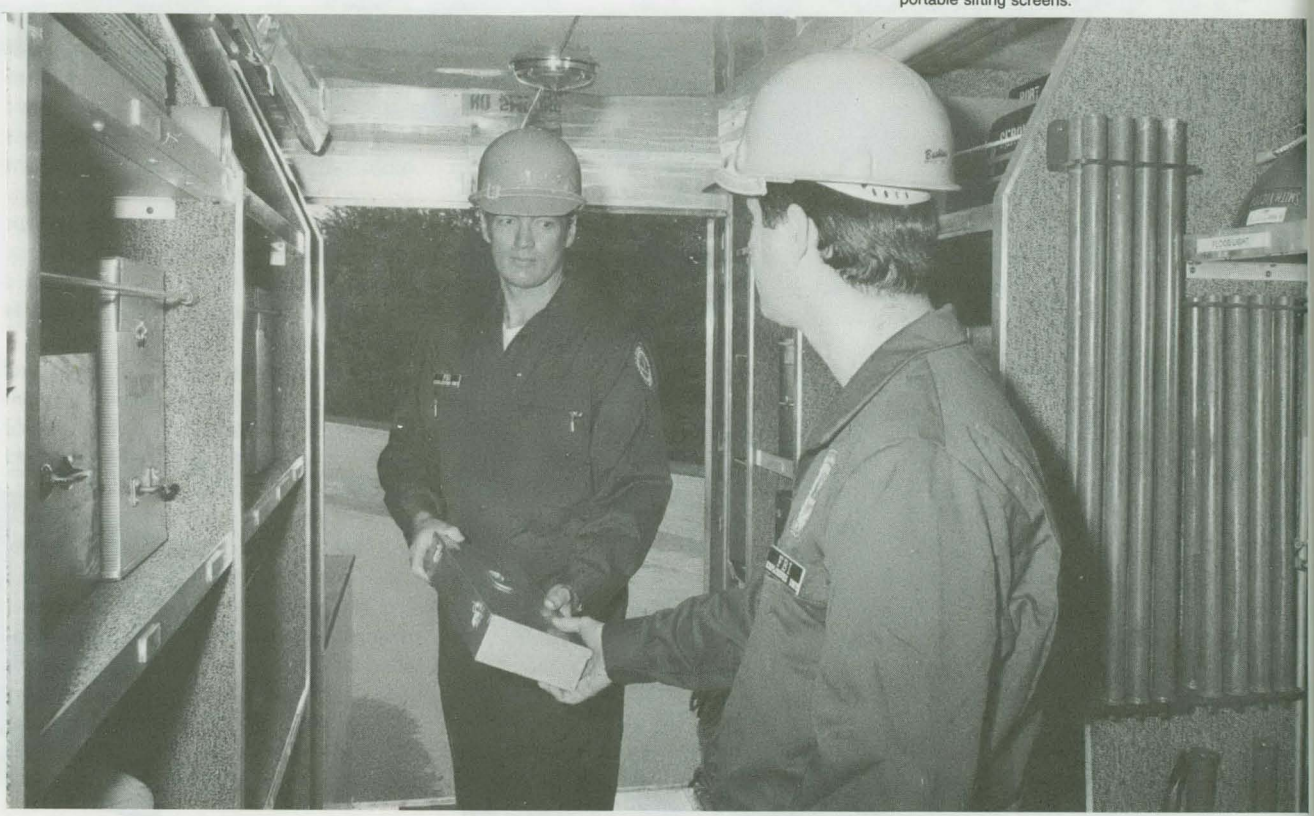
radiation detector kits; and serology, sketching, and taggant recovery kits, to mention only a few. The kits fasten securely in bins or on shelves within the vehicle and have been designed for ready accessibility.

A variety of miscellaneous tools and instruments are aboard. They are as diverse as a portable gasoline metal saw, wheelbarrow, folding dolly, video tape camera, metal (mine) detector, mechanics creeper, and microscope.

Among these are the unique sifting screens used for examining bomb site debris. FBI personnel designed and fabricated them with efficient storage and portability in mind; they can be assembled for use or dismantled for storage in minutes.

The vehicle is to be used primarily in Washington, D.C., Maryland, and Virginia, but circumstances warranting, will be dispatched to other locations in connection with major cases. **FBI**

Special Agents of the FBI's Explosive Unit dressed in bomb scene investigation gear. Metal tubes fastened to vehicle (behind Agent on right) are supporting legs for portable sifting screens.



Analyzing Sports Betting Records

By R. PHILLIP HARKER

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The success of any bookmaking enterprise is dependent on the bookie's "line" information, his ability to lay off, and the business he receives from his "customers." For without the bettor, the man who pits his "knowledge" of the sport against the organized operation of the bookie, bookmaking would not be the multi-million dollar business that it is today. The following are various types of wagers bettors can make on football and basketball games. Betting on baseball games is quite different and will be considered in a later article.

Straight Bets.

The basic wager is called a "straight" bet, i.e., the bettor picks one team including the point spread and puts up or risks at the rate of $11 for each $10 the bookie risks. If the bettor wagers $600 on a team, he will collect $600 if the team wins, but will pay out $660 in case of a loss. This is referred to as 10 percent "vigorish" or "juice" and results in a long-run expectant profit to the operation of 4.76 percent of the total money wagered on an evenly balanced book.

In some instances, bookmakers require the bettor to put up $12 for each $10 the bookie risks (6–5 odds rather than 11–10 odds), resulting in a 9.1 percent long-run profit to the organization. And in many cases, even though the bookie generally uses 11–10 odds, he may require bettors to bet at 6–5 odds for the smaller bets, e.g., those under $50 or $100.

There are several variations in recording straight bets. For example:

Denver −6½ 100—a bet of $110 (or maybe $120) to win $100 if Denver wins by more than 6 points.

Seattle +4 110—the amount risked by the bettor, $110, has actually been stated.

Atlanta P 110/100—the whole bet is written out ($110 to make $100). In this case, "P" means pick or even game. Some bookies use "E" for even, although this can be confusing in baseball lines where "pick" and "even" mean different things.

"The basic wager is called a 'straight' bet . . . the bettor picks one team including the point spread and puts up or risks at the rate of $11 for each $10 the bookie risks."

Chicago +12½ 1—the amount of the bet has been disguised since no bookie will take a straight bet of $1. Usually, this means a bet of $100, but further analysis is sometimes necessary to prove this.

Washington −5½ 20X—the amount of the wager 20X, also written as 20T, stands for 20 times a specified amount of money—20×100, 20×25, 20×15, or whatever the bookie and his particular bettor predetermine as his basic bet. However, this type of notation usually means 20×5, which is an offshoot of the reasonably common horse betting notation. Thus, 15T or 15X means a bet of $75 (15×5); however, in each case further study is needed to be sure what the notation means. Houston +10 100T L550 means the bettor bet $500 (100×5) and lost $550, including the 10 percent vigorish.

A bettor can also place a bet by specifying a team's number on the line sheet rather than naming the individual team. In a wager such as 88 +3 100, a bet of $100 was placed on a team numbered 88, information which usually comes from the line sheet the bookmaker and bettors possess. A bet of this nature is advantageous to the bookie, since he is able to locate quickly the team and line on the sheet, which often has over 100 listed. The additional advantage is the cryptic nature of the bet, so that further research is necessary to determine the team wagered on, and coupled with the line, will usually show the date when the game was played. Such a determination is critical in proving the betting slip is current or within the period of the criminal charge. To be absolutely certain of many of the above notations, often several bets must be seen to eliminate the coincidence that team 88 may be +3 on other dates or in other years, unless of course the betting slip bears a date, as some do.

Parlay Bets.

A parlay is a bet on two or more teams, requiring each team to win in order to receive any payoff.

Buffalo	+12½	20 par
Cleveland	+2	

is a parlay bet of $20 that both Buffalo and Cleveland win, including the handicap. In most operations the bettor only risks $20, rather than $22 including the juice. Bettors think this is a bet without juice and that a return of a $48 net win is excellent. However, since there are four ways two separate games can end (Buffalo wins and Cleveland wins, Buffalo wins and Cleveland loses, Buffalo loses and Cleveland wins, and Buffalo loses and Cleveland loses), the bettor has only one chance of winning, his probability is one chance in four, making true odds against him of 3 to 1. Therefore, a true nonvigorish payoff would net him $60, not $48. Moreover, if the $20 parlay were at 11–10 odds, the payoff would be about $53, again not $48. It can be seen that there is more vigorish, percentage wise, in a parlay that usually pays off at 12–5 odds than if the bettor bet the two games individually at 11–10. The 12–5 payoff approximates parlaying two teams at 6–5 odds, and many operations pay less than 12–5.

A three-team parlay is written similarly:

Minnesota	−5½	10
San Francisco	−1	
Philadelphia	+8½	

The standard payoff here is 5–1 or $50 on a $10 bet. Without counting the ways three teams can be picked, we know mathematically to multiply the individual probabilities of each game, which is one chance in two (written ½). Therefore, the total ways are ½×½×½ or ⅛, which means the three games can finish eight different ways (excluding ties or "pushes") and the bettor must pick one of them. The odds then are 7–1, or the bettor should get $70 net, not $50. Even parlaying three times at 11–10 odds would produce an approximate $59 payoff.

Parlay bets with a bookmaker seldom exceed three teams, but if they do, the payoffs will be correspondingly poorer.

Round Robins.

Sometimes called "bird cages," "turn arounds," "back to backs," "twists," "trains," "chains," "baseballs," etc., a round robin is a series of all the possible two-team parlays that can be arranged from three or more teams, with each parlay treated separately. For example,

New Orleans	+14½	25RR
Seattle	+6	
Buffalo	−4½	

is a round robin with a total bet of $75, $25 on each of the two-team parlays of New Orleans and Seattle, New Orleans and Buffalo, and Seattle and Buffalo. In a straight three-team parlay, each team must win (always considering the line), but it can be seen that some payoff will be available if only two of the three teams win in a round robin. If two of the above teams won on a 12–5 net payoff, the bettor would get $60 (at 12–5 odds) less the $50 lost on the other two parlays and have a net profit of $10. He could get a net profit of $180 if all three won. But of course, if he had risked the same $75 on a straight three-team parlay, he would have netted $375 (5×75). He

"Statistical studies have shown that only 4 or 5 of the 13 professional football games per week result in final scores within 6 points of the line."

gives up a chance at the really big money of a straight parlay to get a maximum of about one-half as much, and if one team loses, still gets a very modest profit (10/75 of the amount risked).

If Bets.

This type of wager, common in horse betting, is not used to a great extent in sports betting. It is a bet on one event, and if that bet is a winning one, a portion of the proceeds is wagered on a second event. For instance,

Detroit	+3½ 500
NY Giants	+7 if 200

would place a $200 bet on New York if the Detroit bet of $500 was a winner. Thus, if both teams win, the bettor collects $700. If Detroit or Detroit and New York lose, he pays $550. If Detroit wins and New York loses, the bettor collects $280 ($500 − $220).

Over and Under Bets.

Wagers of this nature state whether the final total score of a game will be over or under the line for the total score. LA O 38 120 is a bet that the total score in the Los Angeles game (including LA's opponent) will be over 38 points. (Note that the wager is for $120 to make $100.) This type of bet is usually at 6–5 odds instead of 11–10. Kansas City U 36 60 places a bet of $60 to win $50 that the final combined scores of Kansas City and its opponent will total under 36 points. Bets of this type are quite popular in some parts of the country, especially on televised games where there is increased interest.

Teaser Bets.

Originally called "doyles," a teaser bet is a type of parlay in which the bettor is given an increased number of points to the regular line in each game wagered in exchange for a decreased payoff, or in a few areas, he may give up points in exchange for an increased payoff.

The following are common teaser propositions compared with corresponding straight parlays without benefit of the points. (See fig. 1.)

It should be noted that these numbers of points and payoffs are only examples and are subject to considerable variation in different areas of the country. They are called teasers because they tease the bettor into thinking he could pick any number of games at any payoff rate if he is given enough additional handicap. However, statistical studies have shown that only 4 or 5 of the 13 professional football games per week result in final scores within 6 points of the line. Therefore, on other games, for the bettor to get points in his favor would not help him, but on the other hand, he is giving up substantially in the payoff odds.

Pittsburgh −2½ Miami +3	50/60 T

is a six-point teaser (based on figure 1) of $50 to win $60 that both teams will win considering the indicated line. Apparently the straight line was Pittsburgh −8½ and Miami −3.

Half-time Wagers.

On televised games, a new line sometimes is established at the end of the first half, and bets can be placed at this time as if the teams were starting over in the second half. The line used will approximate one-half the original line, but not necessarily so.

Occasionally, other proposition bets are seen, such as bets that a certain player will score over or under his average (as in basketball), or bets on a game if a certain player does or does not play, etc. These, however, are rare for bookmakers due to the lack of an established line and a means for laying off.

The question arises in all of the above types of wagers as to what happens in the event of a tie, including the line. Generally speaking, a tie results in a no bet since neither team won. This is always true in straight bets. A one-game tie in parlays usually results in a no bet on that team; this team is mere-

Figure 1

Number of Teams	Points given per Team	Teaser Payoff	Parlay Payoff
Two teams	6	6–5	12–5
Two teams	6½	11–10	12–5
Two teams	7	Even	12–5
Three teams	8	6–5	5–1
Three teams	9	11–10	5–1
Three teams	10	Even	5–1
Four teams	12	6–5	10–1

"The best evidence in a gambling case is the recorded wager itself."

ly eliminated from the parlay with the bet riding on the remaining team or teams. Thus, if one of the three teams in a three-team parlay ties, the game is erased in effect and a two-team parlay remains. If one of the two teams in a two-team parlay ties, a straight bet remains on the other. However, in teaser bets, ties usually result in loss of the whole wager.

When examining wager records, the actual amount of the bet most commonly is shown, whether or not the vigorish is included, such as $1,000, $500, or $50. On the other hand, when the bookie and bettor talk on the telephone, various euphemisms or gambling jargon are usually used for the amounts. The following euphemisms are common:

$25	Quarter, two bits
$50	Half dollar, 50 cents (but may mean $5,000)
$100	Dollar, buck, bean, banana
$200	$2
$500	Nickel, 5 cents, sometimes $5
$1,000	Dime, 10 cents, sometimes $10
$2,500	25 cents (but may mean $25)

The tendency is to bet lesser amounts on parlays than on straight bets, so that a $20 parlay probably means a $20 bet literally, whereas a $20 straight bet might mean $2,000. In some cases considerable analysis is needed to be sure what the parties mean. For example, if a bettor says, "Give me Washington −13½, $1, Chicago +3, 50 cents, parlay the two for 25 cents," this probably is a $100 bet on Washington, $50 on Chicago, and a $25 parlay on the two teams. By contrast, "Houston +6½, a dime, Denver −8, a nickel, parlay the two for $3" probably is a $1,000 bet on Houston, $500 on Denver, and a $300 parlay on the two teams.

Records.

The best evidence in a gambling case is the recorded wager itself. Total amounts wagered, name or code designation of bettors and/or writers, dates, commissions, gross wagering profit, layoff, etc., can be found in this type of record.

Figure 2 is a typical wagering slip. Examination of the slip is necessary to compare the various teams with the prevailing line in order to determine the date of the games on which wagers were placed. The format of the slip indicates that "Shop" is a writer, and "Joe" and "Marge" are bettors of Shop. It might also be determined that on the dates in question, Indiana played Purdue and UCLA was in a contest with California. Thus, Shop would be turning in conflicting wagers, or wagers on both sides of the games. It is also noted that Joe lost $120 and Marge lost $10, for a net loss of $130 (shown at bottom). However, $32 was deducted from the $130, indicating that Shop had been credited with a commission of 25 percent of the bookie's net profit from the bets he turned in. Therefore, Shop is a commissioned writer.

Other information sometimes ascertainable from such wagering records may be seen in figure 3. The first two bets are indicated as incoming bets from "K–5," both of which total for a loss of $1,100. However, the third bet is shown as "To K–5," a typical method of recording an outgoing layoff by the possessor of the record to K–5. It also shows the amounts of the bets with the vigorish differently, as to whether they are incoming or outgoing, since the bookie making the bets must risk the vigorish (550/500 and 500/550). The outgoing layoff is a winning bet ("W"), but is noted as a debt by K–5 of $500. This means that the third is an outgoing layoff which our bookie actually won, especially when compared with the first two incoming bets. The result is an additional debt of K–5.

Various types of accounting records may be found, the least indicative showing only the designation for the

Figure 2

SHOP

Joe				Marge				SHOP collects	
Indiana	+2	100	−110	UTEP	−4½	100	−110		120
UCLA	−16	100	+100	Cal	+16	50	+ 50		+10
NC	−8½	100	−120	Pur	−2	50	+ 50		130
			−120				− 10		−32
									98

account (a name, nickname, initials, or number) followed by the account balance. Depending on whether the designations are sufficiently unique or cryptic, the most that can be said of this type of record is that it relates to gambling. Certainly such net balances do not give any indication of the volume or type of wagering that transpired to make up the balance or "bottom figures."

Other accounting records may be more complete, often showing daily balances and frequently summary notes of the amount of wagers won and lost. If the record is this detailed, the volume of wagering may be determined.

Bottom sheets may also indicate who are street agents and what their commissions are. However, in only the most detailed of records can the net profit of the organization be established, since this usually includes amount won and lost from wagering, commissions, salaries, cost of maintaining the office, and unfortunately, sometimes "protection" payments to authorities or upper echelons of the organization.

It should be noted that winning and losing amounts listed by the bookmaker on either bottom sheets or wagering slips are at most times viewed from the bettor's standpoint. Thus, a figure preceded by a plus sign usually means the bettor is winning, and a minus figure means the bettor owes the bookie.

Another class of related wagering paraphernalia concerns reference material of many sorts. Included in this is the useful line sheet, which lists the teams by number, often shows the game times at the local time, sometimes scores games between the teams in previous years, and provides space for the handwritten insertion of line information. Some sheets will have one line inserted with several line changes or may show the lines of more than one bookmaker. Frequently, line sheets are used to make general notations of the volume of betting accepted on the games. This charting of bets enables the bookmaker to ascertain quickly his balance on the games should he desire to alter the line or lay off. If this type of notation is made, at least an approximation of the total wagering can be made. Usually the line sheet will show which team won considering the line and the final game score. It is very important for all bookmakers locally and their bettors to operate from the same sheet for common reference. A great deal of time is consumed trying to find one team on a sheet, which lists over 100 different teams, or trying to write down each team name with the line.

Other reference materials include power-rating services, sports record books (including records of teams in comparison to the line, home team advantages, strengths of conferences, as well as general sports magazines), weather information, telephone numbers of sources of scores (as well as of wagering accounts), and handicapping aids. Handicapping aids also include various systems for handicapping and touting services, which are available about the country to suggest good teams to wager on, if a certain point spread can be found. Bettors and bookmakers alike often heavily rely on such services, although even a good service is reasonably satisfied to pick, on the average, 60 percent of the winners with the line.

Of couse, these examples are only illustrative of the type of information that may be gleaned from a thorough examination of wagering records, such as examinations regularly conducted by the gambling experts in the FBI Laboratory. **FBI**

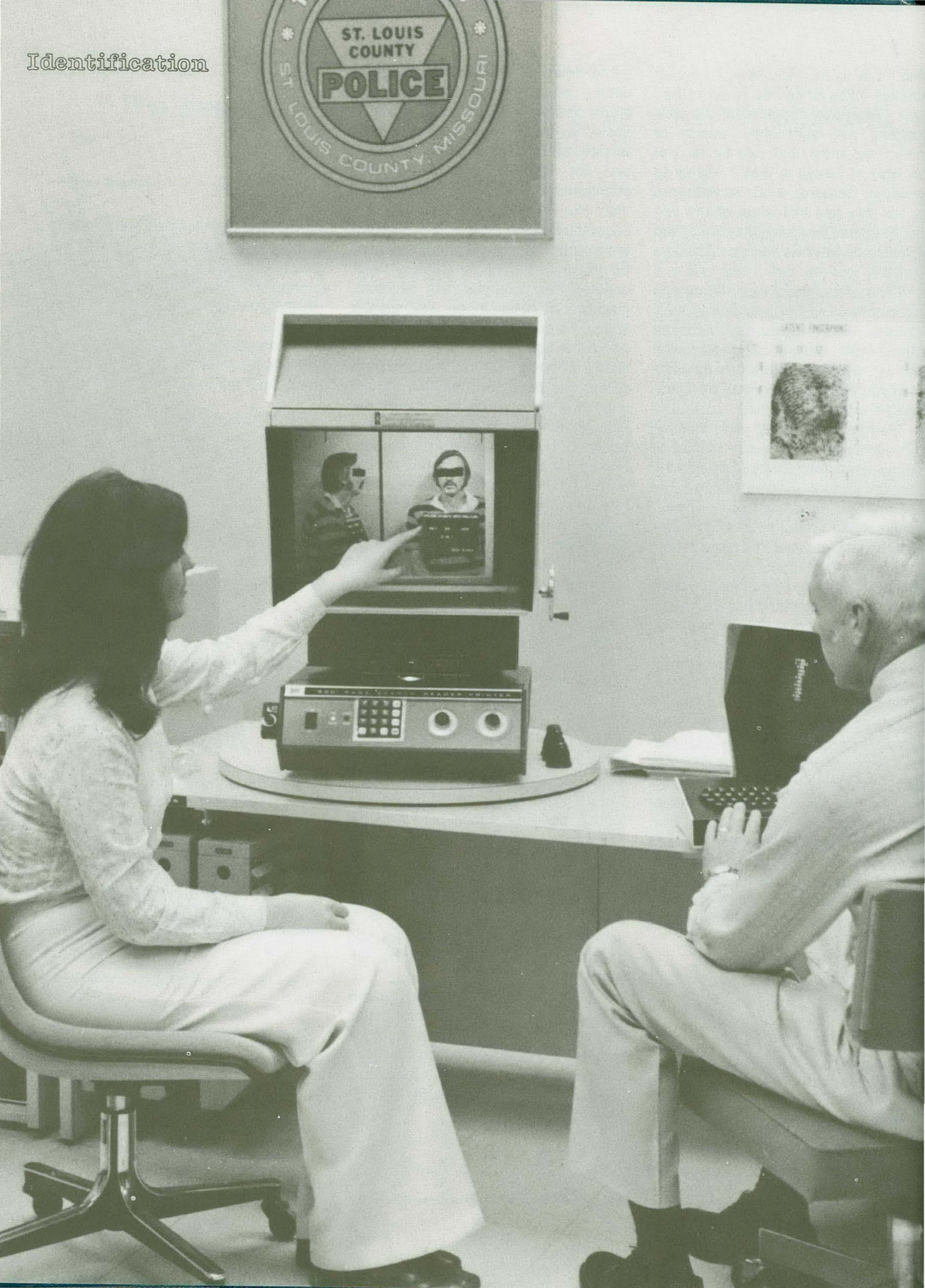
Figure 3

K-5

Minn	−3	550/500	L	
Tex	+9½	550/500	L	−1100

To K-5

Ariz S	−10	500/550	W	−500
				−1600


ST. LOUIS
COUNTY
POLICE
ST. LOUIS COUNTY, MISSOURI

A New Criminal Identification System

By SGT. MICHAEL FITZPATRICK

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On January 1, 1978, the St. Louis County Police Department put into operation a complete criminal identification program known as the Scientific Criminal Identification System. This system identifies perpetrators of criminal offenses through physical descriptions, tattoos, scars, deformities, nicknames, crime specialty, area of criminal activity, fingerprints, palm prints, or a combination of those factors.

The project began September 1975, with a Federal grant that provided funds for the purchase of a minicomputer, microfilm cameras, and a microfilm viewing system electronically connected to the computer. The first 6 months of the project consisted of developing codes that would permit identification data to be reduced to numerics, with the exception of the criminal's name and nickname. The code was divided into 5 major areas, with each area subdivided into 16 or less subdivisions. The completed entry and search codes were finalized as follows:

Area 1		Area 2		Area 3		Area 4		Area 5	
Coding Sheet		Mugs		Modus Operandi		Fingerprints		Palm Prints	
Year of entry into System.	YR	Race and Sex.	RS	Nickname.	NICK	Pattern, ridge count or whorl height.	F1–F8	Left palm print code.	LP1–LP3, LCD, LT2, LH2
Identification Number.	DCN	Year of Birth.	YOB	Agency of Criminal Activity.	Agency	Core and characteristic.	F1C–F8C	Right palm print code.	RP1–RP5 RCD, RT2, RH2
State Identification Number.	SID	Height.	HT	Area of Criminal Activity.	Cogis	Left delta Battley distance and type.	A1–A8 and B1–B8		
Last name, first, and middle initials.	NAME	Weight.	WT	Crime Specialties.	NCIC	Right delta Battley distance and type.	C1–C8 and D1–D8		
		Build.	BLD						
		Complexion.	COM						
		Hair Length.	HL						
		Hair Color and Part.	HCP						
		Eye Color.	EC						
		Eye Defects.	ED						
		Facial Hair.	FH						
		Facial Features.	FF						
		Facial Scars.	FS						
		Teeth and Speech.	TS						
		Tattoos and Scars.	TATS						
		Physical Traits or Deformities.	PHYS						

◄ Mug shot search with victim identifying photo of suspect.

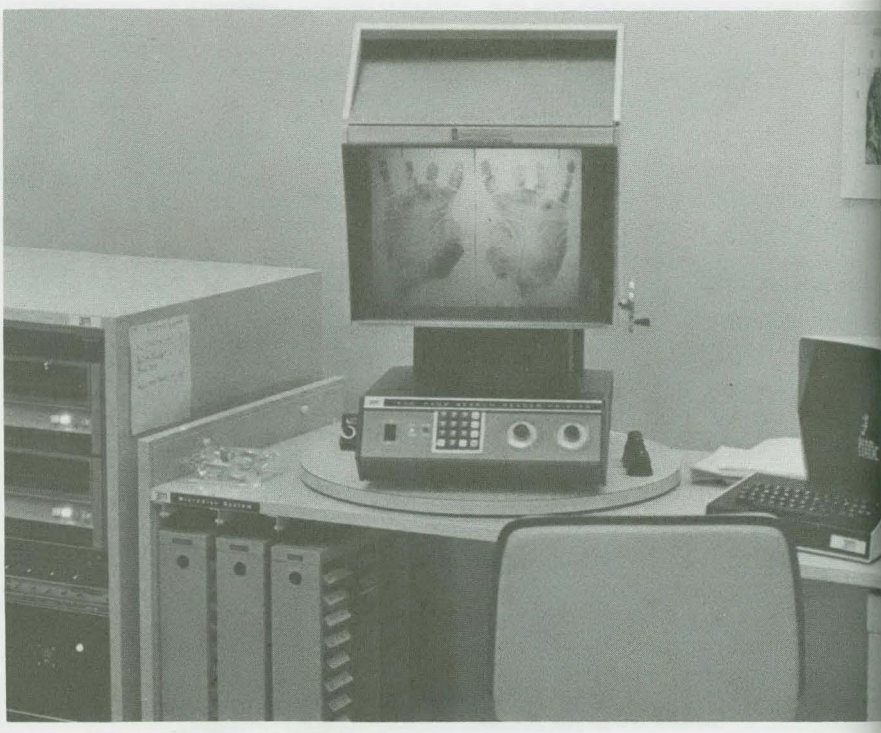
"The project began September 1975, with a Federal grant that provided funds for the purchase of a minicomputer, microfilm cameras, and a microfilm viewing system electronically connected to the computer."

The code is entered into the computer via a typewriter-type keyboard.

The documents filmed for viewing are the colored mug shots, fingerprint/palm prints, and the coding sheets. Due to the size differential of the mug shot over the fingerprint/palm print cards and coding sheets, and the fact that all mug shots are in color, two cameras were purchased. One camera is used to photograph the mug shots with 16 mm color film at a 6 to 1 reduction ratio. The fingerprint/palm prints and code sheets are filmed on black and white 16 mm film with a reduction ratio of 21 to 1. Each subject in the system has documents on three different rolls of film. While each roll will have the same roll number, the subject's mug shot, fingerprint/palm prints, and coding sheet will have the same frame number. The film rolls are loaded into cartridges which are color coded; red for colored mug shots, black for fingerprints/palm prints, and gray for coding sheets. Each cartridge contains 1,200 mug shots, fingerprint/palm prints, or coding sheets.

A typical photo search of the system begins by interviewing the victim to obtain a physical description of the suspect, which is in turn converted to a numerical code. The code is entered into the computer, which responds with the number of subjects in the system matching that description and their locations. The victim is seated in front of a viewing screen, and the command to view is entered into the computer. The computer responds with instructions to mount the first roll of microfilmed mug shots containing subjects matching the description and displays the roll number on the cathode-ray tube (CRT) screen. The mug shot film is inserted into the viewer, and the computer begins displaying suspect mug shots on the viewing screen for identification.

Sgt. Michael Fitzpatrick



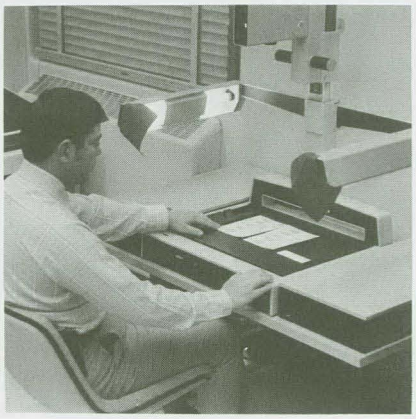
The Scientific Criminal Identification System: Far Left, computer, film cartridges, viewing screen, CRT, and keyboard.

The system has the capability to use any and all known data, either separately or mixed together. For example: A suspect, white male, with a tattoo on his left forearm, with a right-slant loop fingerprint pattern on his right thumb, has the crime specialty of rape, and is active in the north area of St. Louis County. This information is reduced to code and put into the computer. The computer responds with a "hit" list based on all of the data entered. The technician can display the mug shots of the suspect by placing the red microfilm cartridge into the viewer, the fingerprints of the suspects by placing the black cartridge into the viewer, and the name and pedigree of the suspects by placing the gray cartridge into the viewer. The documents viewed are determined by the type of search being conducted. If a latent print is being searched, the rolls of film containing the fingerprints are placed into the viewer. The roll of film containing mug shots is placed in the viewer for victim/witness viewing and the coded sheets roll will be viewed for specific information pertaining to possible suspects.

Between January 1, 1978, and April 1, 1978, a total of 20 cases was solved by the system. Before the system became operational, 12,000 subjects were coded and entered into the system. The system has a 50,000-subject capacity, which is more than ample for St. Louis County.

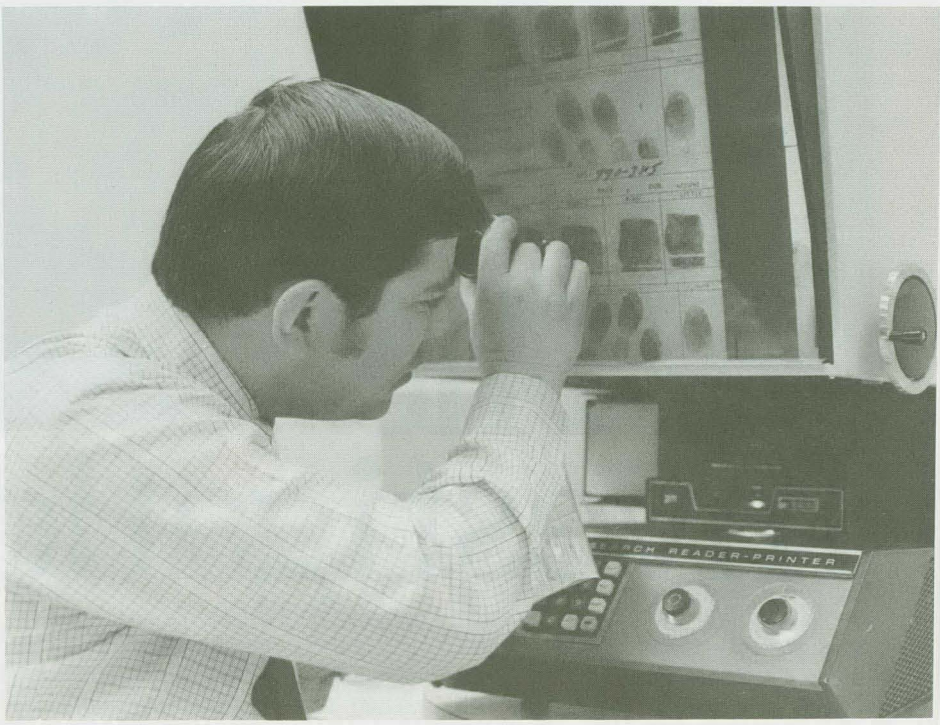
One of the unique cases solved by the system was the identification of a rape suspect. A search was made with fingerprint evidence obtained from several burglary and rape offenses that occurred in South St. Louis County. The search resulted in a positive identification. The victim was brought in and viewed 30 mug shots of suspects and from this made an identification of the same suspect identified in the fingerprint search. The system was used twice in the same case, once for the identification of the latent print and second for a photo lineup identification.

The system has the capability for supporting 15 satellite search stations located throughout the St. Louis area. Each satellite search station will have complete search capability, including microfilm viewing equipment, CRT, keyboard and mug shots, fingerprint/palm prints, and coded-sheets microfilm cartridges. Each satellite search station will be interphased into the computer through telephone lines and modems. The first satellite search station is scheduled for installation in the fall of 1978. **FBI**

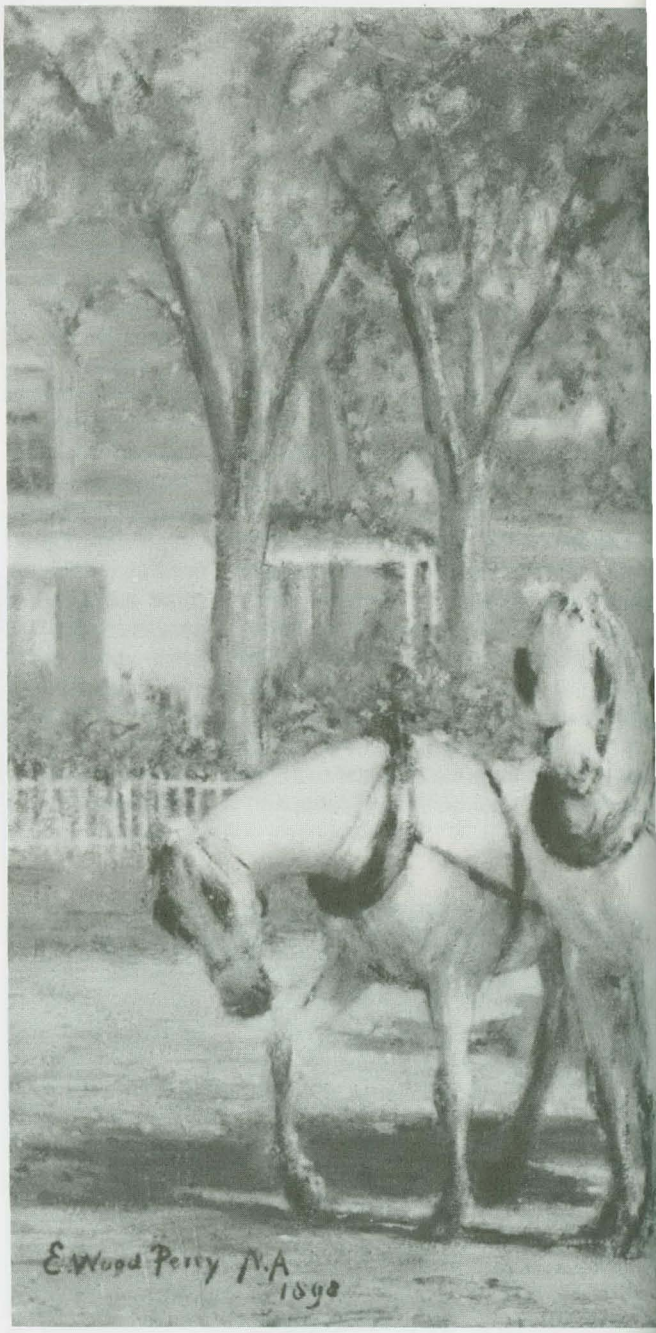


Officer filming fingerprint cards. Camera used for filming mug shots is in background.

G.H. Kleinknecht
Superintendent of Police
St. Louis County Police Department



Fingerprint search with officer making a comparison.



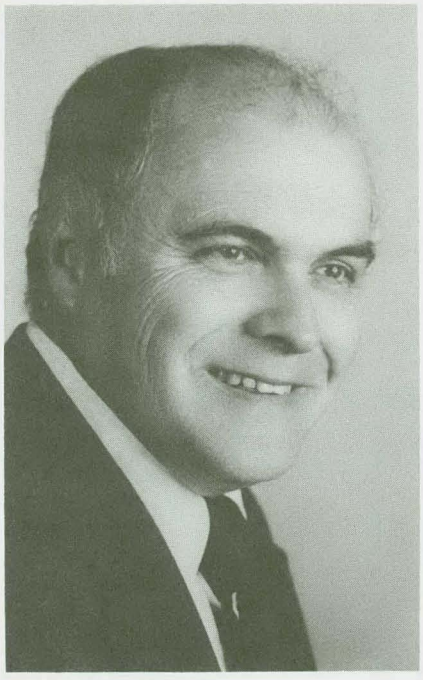
Art Theft Investigations

By DONALD L. MASON

Stolen and still missing is "Concord Coach", an 1898 oil painting by Enoch Wood Perry.

In Europe, art thefts have become so common that sick jokes about the problem have come into vogue. More than 44,000 art thefts have been reported in Italy alone since World War II, and half of these were committed during the last 6 or 7 years. "If you want to see Italy's art—hurry!" is a typical one-liner currently in circulation. This problem has induced not only Italy but also Austria, England, France, Mexico, Sweden, and Switzerland to train and assign specialists exclusively for the purpose of conducting art crime investigations.

The United States is burdened with a significant art theft problem, too. Exact figures are evasive because police agencies in America are not required to break down thefts by category, but the problem was significant enough to cause the Federal Bureau of Investigation to establish the Nation's first art theft specialists some 15 years ago. The New York City Police Department followed suit when it developed its own art squad about 7 years ago, and the Philadelphia, Pa., Police Department likewise has be-



Donald L. Mason
Fine Arts Consultant and Consultant to The International Guide to Missing Treasure
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Former Special Agent, Federal Bureau of Investigation

come interested in this investigative specialty. But unfortunately, few other major city police departments are training personnel specifically to fight this unique type of property crime.

The apparent lack of foresight is especially disturbing when considering the fact that the sum of $1 billion is often mentioned as the value of all stolen art. An entirely accurate accounting of this billion-dollar figure would be impossible, but surely the art theft problem deserves closer scrutiny by the law enforcement community.

One recurring and particularly frustrating problem confronting the investigator today is not recovering stolen art objects at the time of an arrest, but being unable to determine the identity of the victim of the theft. For example, the New York City Police Department recently held an exhibition of recovered jewelry in the hope of identifying the owners of the stolen jewels. In spite of the fact that the press gave the exhibition excellent coverage, only a few people were able to recover any of their stolen possessions. The identical problem characteristically arises with regards to recovered art, and it has been further compounded by the fact that until recently there has been no central index to which the investigator could refer either for leads or to enter his art theft reports. To help fill this void, a new publication and service, the International Guide to Missing Treasures (IGMT), has been developed in New York City.

The IGMT is a compilation of descriptive data and photographs of stolen art gathered from all over the world. All information is alphabetized and categorized to include paintings, drawings, prints, sculpture, antiques, antiquities, ethnological art, tapestries, rare books, and manuscripts.

The IGMT publishes three supplements, issued quarterly, which are followed by an annual volume in the fourth quarter. When a subscriber experiences a loss by theft, a special news bulletin will be issued promptly to subscribers, law enforcement agencies, and members of the art community. Although anyone can report stolen works of art to the IGMT, only those objects that have been reported missing to a police agency will be published. (LEAA funds are available for those police agencies wishing to subscribe to the IGMT.)

Very little has been written about the unusual circumstances generally associated with art theft recoveries. Yet the investigator, upon recovering stolen art, often is faced with unique and multiple responsibilities. And how should the investigator treat recovered art? To be a bit facetious, he treats it carefully; he may very well be protecting a national treasure.

In the event a painting is recovered, the investigator should initial it for evidentiary purposes. A small gum label affixed to the reverse side of the canvas or stretcher usually will suffice. A felt-tip pen may also be used to initial the stretcher or the small wood frame beneath the main frame to which the canvas is attached.

Photographs should be taken of the recovered art immediately. Black and white film is adequate for identifi-

The four paintings shown here and on page 18 were previously stolen and have since been recovered:

Peter Paul Rubens, "Judgement of Cambyses"

Rembrandt Van Ryn, "Un Rabbin"

Gerard ter Borchs, portrait of Johanna Quadacher Bannier

Serra Brothers, alter painting entitled "Gozos de la Virgen"

cation purposes, but colored film may also be used. The photographs should be made a part of the investigative report, with copies being forwarded to the prosecuting attorney. The importance of the photograph is that it will later serve as an indication of the exact condition of the work at the time of recovery and will counter any subsequent claims to the contrary. Paintings should be photographed on both the front and reverse side of the canvas, and sculptures should be photographed from several angles, including the bottom of the base.

Law enforcement agencies rarely plan their facilities to accommodate recovered art works, which require carefully controlled temperature and humidity for optimum preservation. For this reason, it is recommended that the prosecutor immediately be advised of the unusual and fragile nature of the recovered property. Prosecutors generally welcome this type of information and will often agree to storing the art in a bonded warehouse. It is recommended that a professional packer be retained if the art is to be stored or shipped. Some prosecutors may prefer to release the art work to the institution or person from whom it was stolen on the condition that it will not be shown or sold before the case has been resolved in court.

Careless handling of an object of art can result in the loss of that creation to mankind forever. The author recalls one case in which a painting was in such horrendous condition at the time of recovery that most of the paint crumbled and fell from the canvas. Thieves had secreted the painting, covered with burlap and leaves, in a forest for several weeks and foul weather had destroyed it. Upon examination, a museum conservator sadly related that the canvas could not be restored.

Since the required chemicals could damage the canvas and depreciate the painting, fingerprint examinations of a painting should not be attempted. The frame, however, can be removed and examined for fingerprints. Though an ornately carved frame seldom lends itself to a meaningful fingerprint examination, the reverse side of the frame is flat and may be considered a logical site for dusting.

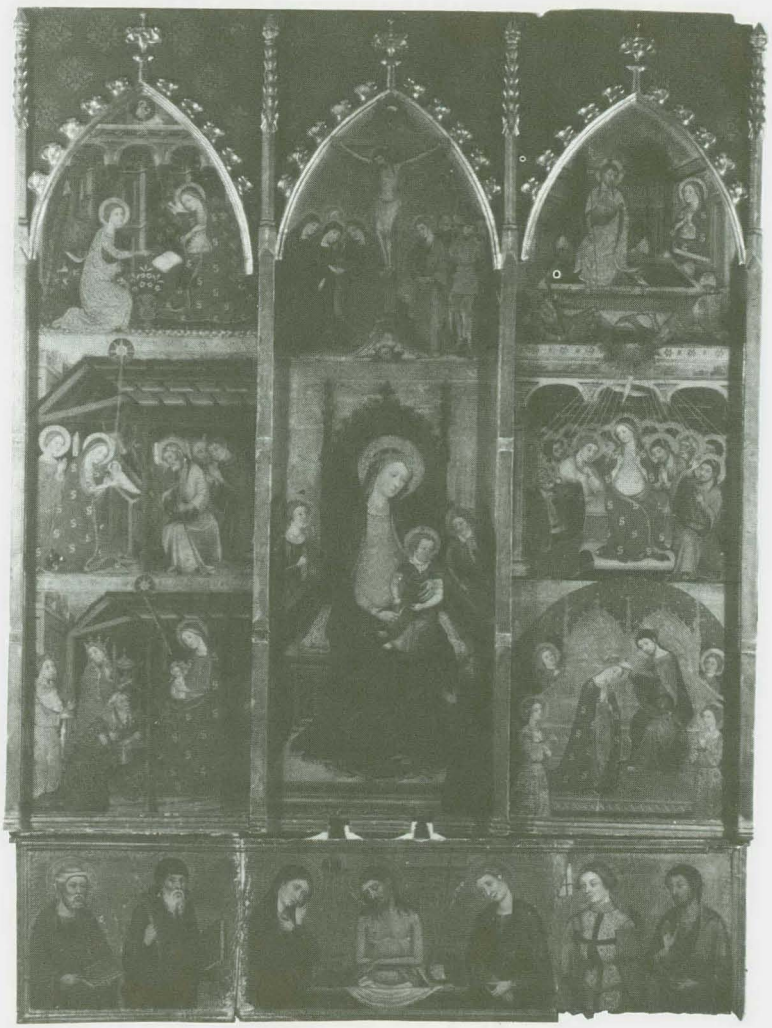
There is another examination the investigator should not overlook. When a thief steals a painting, he often will use a sharp instrument, such as a razor, to cut the canvas away from the frame. The investigator should retain and preserve as evidence the strips of canvas left in the frame. The author recalls once recovering a stolen painting and noting that a bottom strip of the canvas was missing. Further investigation disclosed that the police department who had originally investigated the theft had kept the empty frame in which remained a strip of canvas from the bottom of the painting. An examination of the recovered painting and the strip of canvas determined they fit like two pieces of a jigsaw puzzle, thus providing concrete evidence that the recovered painting was identical indeed to the one reported stolen.

The investigator, in preparing his report, should consider including the following information relevant to recovered art works: Name of artist; medium, such as oil on canvas, oil on wood panel, etc.; size (give the vertical measurement first); and any date or signature and its location on the art object. Also note the presence and location of any museum or exhibit tabs, stock numbers, or any other written information appearing on the reverse side of the canvas.

The investigator may find the following suggestions helpful in answering inquiries from the citizen who would like to know what to do in the event of an art theft:

1. Report the theft to the local police.
2. Do not disturb the scene of the crime. Try to keep it as you found it until the police arrive.
3. Consider publicizing the theft through local news media, and
4. Report the theft to your insurance company and insist that photographs and a description of the missing treasures be forwarded to pertinent dealers, museums, and auction houses.

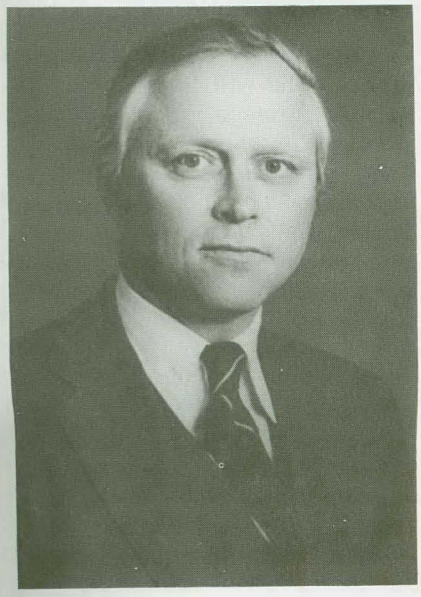
Also consider forwarding the same material to the following organizations, who have experienced personnel working in the art recovery field: Federal Bureau of Investigation, Art Squad, 201 E. 69th Street, New York, N.Y. 10021, 212-535-7700, extension 249; Federal Bureau of Investigation Headquarters, Supervisor, Interstate Transportation of Stolen Property Desk, J. Edgar Hoover Building, Washington, D.C. 20535, 202-324-3000; Interpol, Department of Justice, Washington, D.C. 20530, 202-739-2867 (upon request from a law enforcement agency, will forward art theft circulars abroad); Commanding Officer, Property Recovery Squad, New York City Police Department, No. 1 Police Plaza, New York, N.Y. 10038, 212-374-3823; Art Dealers Association of America, 573 Madison Avenue, New York, N.Y. 10022, 212-644-7150 (will periodically mail art theft circulars on certain types of art); and The International Guide to Missing Treasures, 219 E. 69th Street, New York, N.Y. 10021, 212-753-2048 (now accepting photographs and descriptions of stolen art to be published in book form). FBI



Terrorism

The Government's Response Policy

By BENJAMIN R. CIVILETTI



Benjamin R. Civiletti
Deputy Attorney General
U.S. Department of Justice
Washington, D.C.

Excerpts from testimony before the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee of the U.S. House of Representatives on August 16, 1978.

As an overview, I would like to assure the committee, and the citizenry, of two fundamental points:

1. The Government's capabilities to meet the kinds of terrorist acts *likely* to occur inside the United States are sound and they are sufficient; and
2. The plans and procedures for meeting and effectively handling such incidents do not involve any infringement, dilution, or disregard of civil and constitutional rights.

In assessing the capabilities of the Federal Government, it is well to remind ourselves that under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local government. The Federal Government has authority to assume these responsibilities only in certain limited circumstances.

Acts constituting "terrorism," as we define it, are crimes already proscribed by State statutes. Most major acts are also violations of Federal criminal statutes. They include:

1. Assassination (Murder),
2. Hijacking,
3. Kidnaping,
4. Hostage Holding,
5. Bombing,
6. Arson,
7. Armed Attack, and
8. Extortion.

Since most major acts of terrorism are violations of both State and Federal law, concurrent criminal jurisdiction is the rule. Accordingly, the Federal Government can either act or defer to State jurisdiction and action, depending on the nature of the incident and the capabilities of local authorities. I might add that even where State jurisdiction prevails, the Federal Government provides law enforcement

"The Government's capabilities to meet the kinds of terrorist acts *likely* to occur inside the United States are sound and they are sufficient. . . ."

assistance and support to local authorities upon request. Conversely, where Federal jurisdiction is exercised, State and local agencies provide assistance.

Federal antiterrorism capabilities have recently been reviewed. Shortly after President Carter's inauguration, the National Security Council (NSC) initiated a detailed study to assess our abilities both to develop consistent policies for dealing with terrorism and to handle specific terrorist incidents which might occur. That study confirmed the need for an extremely flexible, antiterrorism program at the Federal level that would take into account the changeable nature of the contemporary terrorist threat and the wide range of resources that would have to be marshaled to meet all likely contingencies. The administration therefore developed a program based upon the concept of organizing and coordinating existing Federal capabilities and agencies within a clearly defined command and control structure, linking field operations with policy level officials in the Justice Department for domestic incidents and the State Department for foreign incidents.

The program has four basic aspects:

1. Reaction—Antiterrorism operations in response to specific major acts of terrorism;
2. Deterrence—Prosecution and protection and security efforts of the public and private sectors to discourage terrorist acts;
3. Prevention—International initiatives to discourage any country from condoning or permitting terrorism and to encourage sanctions to make terrorism unattractive as a form of political action;
4. Prediction—Intelligence efforts, which in the United States are undertaken only under strict guidelines, to support the other three aspects of the program.

At the Presidential level, the Special Coordination Committee of the National Security Council is the crisis management mechanism. It also provides oversight for the U.S. Government's antiterrorism program. Other essential entities for developing antiterrorist measures are the Executive Committee for Combating Terrorism and the Working Group to Combat Terrorism, within the Special Coordination Committee of the National Security Council. The working group and its executive committee are responsible for development of Government-wide policies to deal with terrorism and for coordination among agencies involved in responding to particular terrorist incidents.

The Executive Committee for Combating Terrorism (ECCT) consists of officials from the Departments of State, Defense, Justice, Treasury, Transportation, Energy, the Central Intelligence Agency, and the National Security Council staff. It is chaired by the representative of the State Department; the deputy chairman is the representative of the Department of Justice. Agencies have assigned as ECCT members officials with experience and special training in the coordination and control of complex military or law enforcement operations or in policy analysis and development.

The Working Group to Combat Terrorism (WGCT) meets, usually at frequent intervals, to exchange information, discuss jurisdictional issues, and coordinate antiterrorism activities of the various agencies. WGCT members are generally managers, planners, or coordinators of antiterrorism operations for their respective agencies.

The responsibility for overseeing the Federal response to major acts of terrorism occurring in the United States rests with the Attorney General, who has delegated it to the Deputy Attorney General. The Deputy Attorney General makes major policy decisions during a terrorism crisis. In carrying out this responsibility, the Justice Department would, of course, consult with other Federal agencies as appropriate in each case.

If a terrorist incident of unusually great magnitude occurred, the President of the United States might choose to participate in the handling of the incident. The NSC Special Coordination Committee is the mechanism he would utilize. In most instances, however, we would assume that the response would be under the direction of the Department of Justice.

The lead agency for the management of terrorist incidents is the FBI. The initial, tactical response to such incidents is made by the FBI Special Agent in Charge at the scene, under the supervision of the Director of the FBI. Judge Webster and the FBI are also responsible for ongoing operations to contain and resolve the incident. The Deputy Attorney General and his immediate staff are responsible for policy decisions and for legal judgment relating to such resolution. The Department is linked through its 24-hour a day emergency programs center to the FBI operations command center in Washington which, in turn, is in continuous communication with Agents at the scene.

In addition to FBI Agents, the Department also has available specially trained officers of the U.S. Marshals Service. The Department could also draw on other Federal agencies for specialized personnel and equipment, as well as the resources of State and local agencies. The antiterrorist program thus provides considerable flexibility in responding to a wide range of possible domestic terrorism incidents.

It is conceivable, however, that a very large terrorism incident might exceed the capabilities of available civil police forces and that the use of specially trained and equipped military forces might be necessary in order to effectively restore order and preserve human life. In such a situation, assuming the legal conditions are met, the President has the option, under the provisions of 10 U.S.C. 332 and 333(2), to direct Federal military forces to respond. He would act on the recommendation of the Attorney General.

It should be noted that the FBI and other civil authorities have substantial capacity to deal with terrorism incidents. Use of military forces would be necessary only in unusual incidents, such as ones involving highly sophisticated, paramilitary terrorist groups.

The effectiveness of our response, of course, depends in part on what information is available not only from the scene of an incident, but from preexisting sources. Therefore, there is a continuing program of intelligence collection and processing on terrorists and their potential targets. Responsibility for the collection and dissemination of intelligence on the foreign aspects of international terrorism rests with the intelligence agencies under Executive Order 12036. Within the United States and its territories, the Federal Bureau of Investigation collects and disseminates intelligence on both foreign-directed and domestic groups which engage in or plan acts of terrorism, here or abroad.

A complete discussion of terrorism and intelligence requires an acknowledgment that apart from the direct threat to lives and property posed by terrorists, there is the subtle threat that concerned people may urge, or investigators may feel under pressure to take, what might be called "constitutional shortcuts." This possibility could pose a danger of more lasting harm to the country than individual terrorists acts. To guard against this danger, the Justice Department has adopted guidelines which control the collection of intelligence and the conduct of preventive investigations relating to terrorism. The guidelines are designed to ensure that the focus remains on violent or criminal activity, not on the exercise of first amendment rights. They carefully restrict the investigative efforts which may be directed at groups suspected of terrorism until such time as there is a sound factual basis for believing the group, or individuals, are actually engaging in terrorist acts or are plainly planning such acts.

At the same time, the guidelines recognize that the Government's response to terrorism will, of necessity, vary with the situations presented. The nature and magnitude of a particular threat, its likelihood and immediacy, as well as the danger to privacy and free expression of ideas which an investigation of ideologically motivated crimes may present, all must be weighed. The Government's response must be reasonable under the circumstances—the concept embodied in the text of the fourth amendment and in the Supreme Court's interpretation of the first amendment.[1] For example, ordering the entire population of a city to evacuate their homes might be entirely reasonable in the event of a nuclear terrorist incident, but would almost certainly be unreasonable where there is only a general suspicion of a conventional bombing somewhere in the city. Airport security screening to prevent hijacking has been upheld as reasonable, but no doubt, the courts would find impermissible the same type of screening on city streets.

It is impossible to state with precision all the various measures which the Government may have to take to deal with different terrorist situations. Indeed it is the genius of the Constitution that it does not attempt to articulate specific rules for law enforcement, but rather establishes broad principles, such as reasonableness, permitting a balancing of rights and responsibilities based on the particular facts at hand. The guidelines also follow this approach. We believe the guidelines are sound, permitting sufficient freedom of action to the FBI, and still guaranteeing civil rights effectively.

Regarding the subject of media coverage of crisis situations and whether restrictions on news coverage might be necessary, I want to stress that restrictions imposed by Government on media coverage in such situations are neither appropriate nor possible. Terrorist incidents are legitimately newsworthy. We recognize that under the first amendment, the Government has no right to prohibit or limit coverage of a newsworthy event. We have no plans or intentions of attempting anything of the kind.

We may, however, seek voluntary media cooperation in minimizing risks to life. We may suggest that certain media actions might exacerbate a dangerous situation. But that is basically the extent of our proper role. Our judgment, based on our experience, is that the mutual cooperation and understanding of law enforcement officials and the newsmen can and must be worked out on the spot in each situation. Generally, this approach has worked satisfactorily in the past.

Problems of course can arise and they can be serious. Officials charged with responsibility for handling an incident will be concentrating primarily on resolving it with minimum risk to life and property, and under pressure, they may find it distracting to deal with press inquiries or cameras focused on them. At the same time, they recognize the right of the media to cover the situation as it evolves and the need for information on what is happening. We have found that the best way to secure media cooperation and, on occasion, even active media assistance, is to be as forthcoming as possible with the information the media needs and

"Judge Webster and the FBI are also responsible for ongoing operations to contain and resolve the incident. The Deputy Attorney General and his immediate staff are responsible for policy decisions and for legal judgment relating to such resolution."

wants. In previous incidents, the Justice Department has helped meet media needs, while at the same time relieving law enforcement officials from additional pressures, by assigning a public information officer to the scene of the incident. Where the public information officer has been kept well informed, he has been able to reduce friction between law enforcement and media personnel.

In rare cases, media coverage of incidents can pose severe problems for law enforcement and increase risk to life. This occurs most often in protracted hostage-taking situations where the very length of the incident increases pressures on the media to come up with new stories. Media attempts to talk directly with the hostage-taker may interfere with law enforcement communications with him or may excite him in a manner directly contrary to the efforts of the negotiators. On the other hand, where publicity is his primary goal, such direct communication with the media may prove helpful to law enforcement.

In the final analysis, hard and fast rules which would effectively deal with all these situations cannot be established in advance, even by the media itself. Voluntary efforts by the news organizations themselves to develop guidelines for reporting during terrorist incidents are nevertheless commendable. Through Government contacts with news media representatives, suggestions regarding how media coverage can assist or impede the handling of difficult situations have been made. All suggestions along these lines have, of course, been advisory in nature and questions of their adoption have been left entirely up to the discretion of the media personnel and organizations. To sum up:

1. We are continually working to strengthen our antiterrorist capabilities by refining contingency plans for dealing with foreseeable incidents of domestic terrorism. Our basic mechanisms and procedures have been established. Our plans appear to be adequate. But they can be improved, and they are being improved.
2. We believe that, given the current level of the threat, the United States is prepared to respond effectively should such incidents occur. The Government presently has sufficient resources and a sufficient variety of resources, including SWAT teams, specially trained psychologists, intelligence analysts, and potentially, military teams, as well as special equipment. Some upgrading may be needed, but generally the necessary resources are available.
3. We are satisfied that the Government can deal with the threat of terrorism without affecting those constitutional rights and protections that are the birthright of our citizens and the essence of our Government under law. FBI

Footnote

[1] Cf. *Cox* v. *New Hampshire*, 312 U.S. 569 (1941); *Feiner* v. *New York*, 340 U.S. 315 (1951); *Yates* v. *United States*, 354 U.S. 298 (1957); *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

Qualified Immunity of Law Enforcement Officials

By J. PAUL BOUTWELL
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Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

"Hundreds of Police Agencies Losing Insurance Coverage," *The Washington Post,* October 26, 1976, p. A3.

"Many Insurers Leave Field, Citing Surge in Lawsuits," *The Wall Street Journal,* November 7, 1977, p. 1.

"Are Officers Afraid to Act?" *The Wall Street Journal,* November 7, 1977, p. 1.

Headlines, such as those quoted above, reveal a serious problem facing law enforcement agencies everywhere. The surging number of lawsuits charging police officers with a variety of misconduct has caused insurance carriers to drop their coverage of a large number of departments. Where coverage is continued, or a new policy sought, departments have found the new premium rates exorbitant or even prohibitive.

This does not mean that a law enforcement officer is a poor risk. On the contrary, most suits are won by the officer.[1] The problem, primarily, is attributable to the skyrocketing cost of litigation. Even if the officer wins in the lawsuit, the insurance premiums are likely to go up.

Litigation expenses create pressure on the agency to settle the claim out of court. The temptation to settle may be great, even if the claim against the officer lacks merit. Settlement may appear attractive when compared to the long-run litigation costs, but it must be assessed in light of the morale problem it may cause and the increased number of suits it may invite in the future. Perhaps even more important than the cost involved is the need to carry a case forward simply to establish a principle. This was done in *Hill* v. *Rowland.*[2]

In *Hill,* two police officers were sued in Federal court for violating plaintiff's constitutional rights, which violation assertedly arose from Hill's warrantless arrest without probable cause. The defendant officers asked the judge to instruct the jury that the defense of good faith and probable cause was available to them. That is, if the officers reasonably believed in good faith that the arrest was constitutional, then it would be the jury's duty to render a verdict for the officers even though the arrest was in fact unconstitutional. The judge refused the defendants' request, but rather instructed the jury that the standard of probable cause was an objective one, not personal to the officers.

The jury found for the plaintiff and assessed money damages against both officers in the amount of $2.50 each. It would have no doubt been cheaper to pay the damages, but an important principle was involved. On appeal, the court's ruling was reversed. The appellate court found the judge had improperly instructed the jury as to the defense available to the officers. The test of liability was not the objective test of probable cause, but rather the partly subjective test of the reasonable good faith belief of the officer in the legality of the arrest.

The *Hill* case has aided officers everywhere in gaining a better understanding of the concept of probable cause. Furthermore, it has been a case of immense value to attorneys asked to defend similar cases.

There is no doubt that the cancellation of insurance coverage, increased premiums, and escalating litigation costs are all serious problems, but none of them compare in significance with the problem facing law enforcement agencies suggested by the last quoted headline: "Are Officers Afraid to Act?" If an officer feels that he faces the prospect of monetary loss because of a reasonable mistake he might make while performing his duty, a duty which calls for the exercise of discretion, he may indeed be afraid to act. Even the most conscientious officer will be deterred from exercising his judgment independently and forcefully if the likely prospect is a civil suit in which he risks personal, financial loss.

Surely, society is not served by an officer who is afraid to act, or is unduly timid in the exercise of his discretion. He must perform his duty in a firm, vigorous, and enthusiastic manner. The fear of financial loss and of being tied up in a long, debilitating lawsuit may have a chilling effect on those desirable qualities.

If the work of law enforcement agencies is to go forward, everyone from the newest man on the force to the chief administrator must be assured that action taken in good faith fulfillment of their responsibilities and within the bounds of reason will not be punished, and they need not exercise their discretion with undue timidity. The public interest is served by nothing less.

"The law ought to, and does, provide the law enforcement officer with protection when he acts in good faith and reasonably believes that his conduct is lawful."

It states the obvious to say that a law enforcement officer is called upon to use discretion and make decisions. One of his primary responsibilities is to see that public order is maintained. In doing so, he is required to make decisions in an atmosphere of confusion, ambiguity, and swiftly moving events. He is called upon to act under circumstances where judgments are tentative. He often discovers that the unambiguous course of action becomes clear only by use of hindsight. If such is the obligation imposed upon the officer by the duties of his office, it would be manifestly unjust to subject him to civil liability for the reasonable exercise of such discretion.

If an officer fails to act when action is needed, or if he fails to implement decisions when they are made, he does not fully and faithfully perform the duties of his office. The law ought to, and does, provide the law enforcement officer with protection when he acts in good faith and reasonably believes that his conduct is lawful. The nature of that protection is the subject of this article. The U.S. Supreme Court's formulation of this protection is called "qualified immunity." This article will discuss several cases interpreting this immunity, as analyzed by the Court in connection with civil actions against police officers filed pursuant to Title 42, U.S. Code, Section 1983 (hereafter section 1983).[3]

Qualified Immunity Doctrine.

It has long been the rule in this country that certain officials, acting in their official capacities, are immune from lawsuits. It is well established that certain common law immunities survive in section 1983 litigation.[4] Certain officials have absolute immunity, while others have only qualified immunity.

Absolute v. Qualified Immunity.

The procedural difference between absolute and qualified immunity is important. The U.S. Supreme Court has stated that absolute immunity defeats a lawsuit at the outset.[5] It is a complete bar to a lawsuit. Thus, so long as the official's action was within the scope of his employment, he cannot be sued successfully. On the other hand, the fate of an official with only qualified immunity depends upon the circumstances and motivations of his actions.

Absolute immunity is easy to understand and apply. It is absolute protection against civil liability. The official will not even be put to the task of defending against the allegations. Examples of those officials whom the Supreme Court has declared to have such immunity are State legislators,[6] judges,[7] and prosecuting attorneys.[8]

Qualified immunity is not so easy to understand and is even more difficult to apply. As one Justice expressed it, "It amounts to saying that an official has immunity until someone alleges he has acted unconstitutionally. But that is no immunity at all: the 'immunity' disappears at the very moment when it is needed."[9]

The U.S. Supreme Court has considered several times the immunity of State officers when sued under section 1983 for alleged violations of constitutional rights. These decisions are instructive for present purposes.

Pierson v. *Ray*[10] presented the issue of whether immunity is available to local police officers (that segment of the executive branch of State government most frequently exposed to situations which can give rise to claims under section 1983). Relying on common law, the Court held that police officers were entitled to a defense of "good faith and probable cause," even though an arrest might subsequently be proven unconstitutional. The Court observed that common law had never granted police officers absolute immunity.

Several years later, in *Scheuer* v. *Rhodes,*[11] the Court was faced with the issue of whether "higher officers of the executive branch" of State governments were immune from liability under section 1983 for violations of constitutionally protected rights. There, the governor of a State, the senior and subordinate officers of the State National Guard, and a State university president had been sued on grounds that they had suppressed a civil disturbance in an unconstitutional manner. Holding that the officials involved were not entitled to absolute immunity, the Supreme Court pointed out:

". . . in varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct."[12]

Subsequent decisions have applied the *Scheuer* standard in other contexts. In *Wood* v. *Strickland,*[13] school administrators were held entitled to claim a similar qualified immunity. A school board member would lose his immunity from a section 1983 suit

"... law enforcement officers are protected by qualified immunity, as a matter of law, if their actions are not clearly prohibited by statutory or decisional law when they acted and if they do not act with malice."

only if "[he] knew or reasonably should have known that the action [he] took within [his] sphere of official responsibility would violate the constitutional rights of the student affected, or if [he] took the action with the malicious intention to cause a deprivation of [constitutional] rights or other injury to the student."

Last term, the Court, in *Procunier* v. *Navarette,*[14] furnished further instruction regarding the qualified immunity doctrine. In that case, Navarette, an inmate of Soledad Prison in California, filed a complaint charging prison officials and others with interfering with his outgoing mail, which conduct allegedly violated his constitutional rights. The officials moved for dismissal for failure to state a claim on which relief could be granted or alternatively for summary judgment. The claim was not that they shared the absolute immunity accorded judges and prosecutors, but that they were entitled to the qualified immunity accorded those officials involved in *Scheuer.* Affidavits in support of the motion and counter-affidavits opposing it were before the district court. The court granted summary judgment. Navarette appealed to the U.S. Court of Appeals for the Ninth Circuit. While agreeing that the officials had qualified immunity, the court of appeals held the officials were not entitled to summary judgment because there were issues of fact to be resolved, and because when the facts were viewed, most favorably to Navarette, the defendants were not entitled to judgment as a matter of law.[15] The Supreme Court reversed, holding that the rights Navarette alleged to have been violated were not "clearly established" at the time of the conduct complained of, and therefore no remedy for past conduct is allowable. The officials, under the qualified immunity doctrine, were entitled to summary judgment as a matter of law.

The significance of *Procunier* is that law enforcement officers are protected by qualified immunity, as a matter of law, if their actions are not clearly prohibited by statutory or decisional law when they acted and if they do not act with malice. The officer should not only be protected from possible liability, but also, in most cases, from the risks and financial burdens of a trial itself.

This does not mean that the citizen whose constitutional rights have been violated is left without a remedy. On the contrary, the Court's majority has persistently emphasized that the extension of absolute immunity from liability to law enforcement officers would seriously erode the protection provided by basic constitutional guarantees. It is not unfair to hold liable an officer who knows, or should know, that he is acting outside the law, and to insist on an awareness of clearly established constitutional limits. The Court has reasoned that while officers are not absolutely immune, the public interest is sufficiently protected by giving officers and their superiors qualified immunity.

The chief of police or other high executive officers do not have absolute immunity. The Court recently stated:

"It makes little sense to hold that a government agent is liable for warrantless and forcible entry into a citizen's house in pursuit of evidence, but that an official of higher rank who actually orders such a burglary is immune simply because of his greater authority. Indeed, the greater power of such officials affords a greater potential for a regime of lawless conduct. Extensive Government operations offer opportunities for unconstitutional action on a massive scale. In situations of abuse, an action for damages against the responsible official can be an important means of vindicating constitutional guarantees."[16]

Damages for Violation of Section 1983.

Only where qualified immunity cannot be established will an officer be subject to pay personal damages. The measure of such damages is often speculative. The U.S. Supreme Court addressed this problem last term in an interesting case, *Carey* v. *Piphus.*[17] There, two students were suspended from a public elementary school and a public secondary school without being given an adjudicatory hearing. The students filed suit, and on stipulated facts, a Federal district court held that the students had been suspended without the procedural due process required by the 14th amendment, and that they were entitled to declaratory relief, but that their claims for damages failed for complete lack of proof.

The U.S. Court of Appeals for the Seventh Circuit reversed,[18] holding that the students were entitled to recover substantial nonpunitive damages even if they did not prove that any other injury was caused by the denial of procedural due process. Such damages should be awarded, the court held, even if there was no proof of individualized injury to the plaintiff, such as mental distress. Furthermore, the students were entitled to substantial nonpunitive damages even though

it may later be determined that the suspensions were justified in the first place. The plaintiff had successfully contended that substantial damages should be awarded under section 1983 for the deprivation of constitutional rights whether or not any injury was caused by the deprivation. This, the plaintiff argued, is appropriate because constitutional rights are valuable in and of themselves, and because of the need to deter violation of constitutional rights. Furthermore, deprivation of constitutional rights may be **presumed** to cause some injury.

On appeal, the Supreme Court of the United States reversed. In the absence of proof of **actual** injury, the students were entitled to receive only nominal damages, not to exceed $1, from the school officials. The amount of damages recoverable for a violation of a constitutional right generally must be evaluated in the context of the interests sought to be protected by the right, and the common law tort rules of damages.

The basic purpose of a damage award in section 1983 cases is to compensate persons for injuries caused by the deprivation of constitutional rights. The plaintiff must be able to prove what injuries he has suffered. Thus, injury will not be presumed.

In *Carey,* an award of substantial damages for injuries caused by the suspension of public school students not accorded procedural due process would constitute a windfall, rather than compensation. The Court also stated that the officials would be entitled to prove in mitigation of special damages that the plaintiffs probably would have been suspended even if there had been a hearing.

One additional case that may have significance to a State official, decided last term by the Court, is *Butz* v. *Economou.*[19] While the opinion dealt with immunity of a top Federal executive (Secretary of Agriculture), it could nevertheless prove valuable to a State officer defending a section 1983 allegation. The Court held that it would be untenable to draw a distinction for purposes of immunity between suits brought against State officials under section 1983 and suits brought directly under the Constitution against Federal officials. Such officials, even though they might be of cabinet level, should enjoy no greater zone of protection when they violate Federal constitutional rules than do State officers. Therefore, the defendant was entitled to no more than qualified immunity. Responding to the prospect that such officials might find themselves inundated with suits which might have a devastating effect upon the exercise of their discretion in a vigorous and forthright manner, the Court suggested that Federal courts be alert to insubstantial lawsuits and to quickly terminate them; that unless the complaint states a compensable claim for relief it should not survive a motion to dismiss; and that the Federal courts firmly apply the Federal Rules of Civil Procedure to ensure that officials are not harassed by frivolous lawsuits.

Message to Law Enforcement Officials.

(1) You have a qualified immunity from monetary liability under Title 42, U.S. Code, Section 1983.

(2) This immunity is unavailable if you act with such disregard of another's clearly established constitutional rights that your action cannot reasonably be characterized as being in good faith. That is, if you knew or reasonably should have known that the action you took within the sphere of official responsibility would violate the rights of another, you no longer have immunity.

(3) Given this immunity, damage suits alleging constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for judgment on the pleadings. Properly supported motions documenting both the subjective and the objective elements of the defense of good faith with supporting material should be filed.

(4) Only where the qualified immunity is not established will an officer be subject to personal damages. But even there, those damages would be nominal, unless the plaintiff can prove actual damages.

(5) *Procunier's* interpretation of the qualified immunity doctrine reduces the likelihood of an officer being subject to trial for violating constitutional rights. *Carey* reduces the likelihood of large, speculative damages awarded against law enforcement officers where the qualified immunity doctrine is not available. *Butz's* message to courts below is that officials should not be harassed by frivolous lawsuits, and that Federal courts should dismiss insubstantial claims. **FBI**

Footnotes

[1] "Survey of Police Misconduct Litigation 1967–1971," (1974), Americans for Effective Law Enforcement, Inc., Legal Defense Center.

[2] 474 F.2d 1374 (4th Cir. 1973).

[3] Title 42, U.S. Code, Section 1983 reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[4] *Pierson* v. *Ray,* 386 U.S. 547 (1967).

[5] *Imbler* v. *Pachtman,* 424 U.S. 409 (1976).

[6] *Tenny* v. *Brandhove,* 341 U.S. 367 (1951).

[7] *Pierson* v. *Ray, supra* note. 4.

[8] *Imbler* v. *Pachtman, supra* note. 5.

[9] *Butz* v. *Economou,* 57 L.Ed. 2d 895, 925 (1978) (Justice Rehnquist, dissenting).

[10] *Pierson* v. *Ray, supra* note 4.

[11] *Scheuer* v. *Rhodes,* 416 U.S. 232 (1974).

[12] *Id.* at 243.

[13] 420 U.S. 308 (1975).

[14] 55 L.Ed. 2d 24 (1978).

[15] *Navarette* v. *Enomoto,* 536 F.2d 277 (9th Cir. 1976).

[16] *Butz* v. *Economou, supra* note 9, at 915.

[17] 55 L.Ed. 2d 252 (1978).

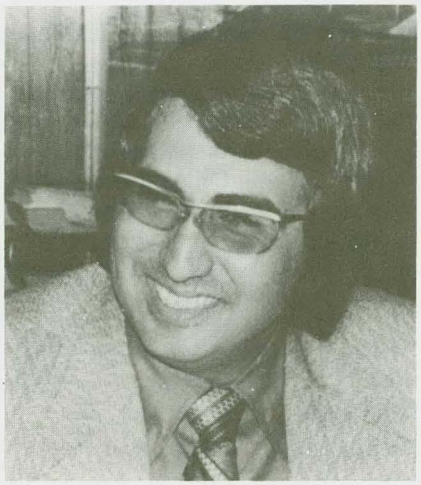
[18] 545 F.2d 30 (7th Cir. 1976).

[19] *Butz* v. *Economou, supra* note 9.

WANTED BY THE FBI

Jose Dionisio Suarez Y Esquivel, also known as Dionisio Suarez Esquivel, Jose Suarez Esquivel, Jose D. Suarez, Jose D. Suarez-Esquivel, Jose Dionisio Moises Suarez Esquivel.

Conspiracy to Murder a Foreign Official

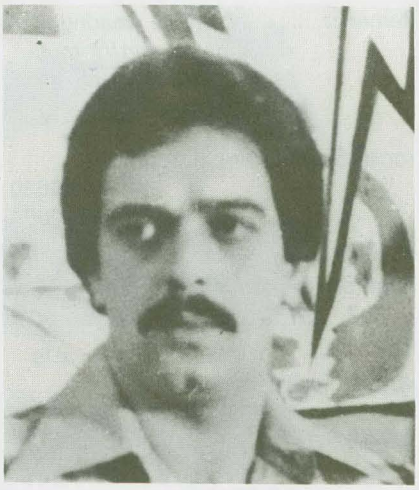


Suarez

Left index fingerprint.
Description on following page.

Virgilio Pablo Paz Y Romero, also known as Alejandro Bontempi, Virgil Paz, Virgilio Paz, Virgilio P. Paz, Virgilio Pablo Paz, Virgil Romero, Virgilio Romero, Virgilio Paz Romero, Virgilio P. Paz-Romero, "Javier," "Romero."

Conspiracy to Manufacture Unlawful Explosives; Conspiracy to Murder a Foreign Official



Paz

Right ring fingerprint.
Description on following page.

The Crime

Paz and Suarez were among eight persons indicted in August 1978, for their alleged roles in the 1976 slaying of Orlando Letelier, who served as Chilean Ambassador to the United States from 1971 to 1973. Letelier and a business colleague, Ronni Moffitt, were brutally murdered in Washington, D.C., when a bomb exploded in a car in which they were riding.

Of the eight persons indicted, only Paz and Suarez have not been located. All are alleged to be associated with a Cuban terrorist group.

WANTED BY THE FBI

Jose Dionisio Suarez Y Esquivel
Description

Age ..... 39, born February 17, 1939, Holguin, Cuba (not supported by birth records).
Height ..... 5'10".
Weight ..... 175 pounds.
Build ..... Large.
Hair ..... Black.
Eyes ..... Brown.
Complexion ..... Light.
Race ..... White.
Nationality ..... Cuban.
Occupation ..... Used car salesman.
Remarks ..... May be wearing beard and/or mustache.
Scars and Marks ..... Scar upper lip under nose.
Social Security Nos. used: 202-70-9712, 262-70-9712
FBI No. ..... 264,663 E.
Fingerprint Classification:

12 M 1 U 100 13 Ref: 3
M 3 W MIO 3

NCIC Classification: 120912171312CM041413

Virgilio Pablo Paz Y Romero
Description

Age ..... 27, born November 20,1951, Santa Clara, Las Villas, Cuba (not supported by birth records).
Height ..... 5'7" to 5'9".
Weight ..... 150 to 185 pounds.
Build ..... Medium.
Hair ..... Brown.
Eyes ..... Brown.
Complexion ..... Light.
Race ..... White.
Nationality ..... Cuban.
Occupations ..... Used car salesman, truck driver, clerk.
Remarks ..... May be wearing beard and/or mustache or clean shaven.
Social Security Nos. Used: 140-44-9630, 071-36-2803
FBI No. ..... 626,118 L9.
Fingerprint Classification:

4 1 U 11
1 aUa

NCIC Classification: 0409070911AA07AA0410

Caution

Jose Dionisio Suarez Esquivel and Virgilio Pablo Paz Romero, Identification Order No. 4800, members of a terrorist group reportedly responsible for several acts of violence in which deaths and injuries have occurred, are known to have been armed in the past and are being sought in connection with the bombing deaths of a former Chilean ambassador and business colleague. Consider both armed and dangerous.

Notify the FBI

Any person having information which might assist in locating these fugitives is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, 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.

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Washington, D.C. 20535

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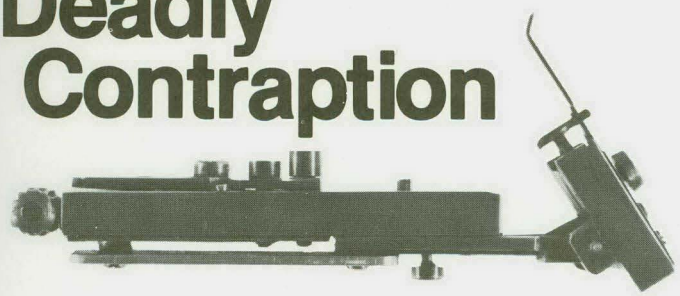
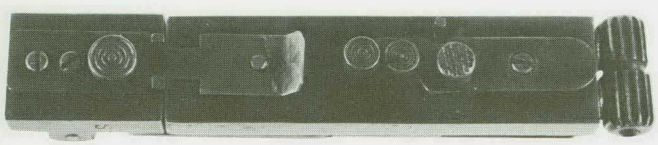
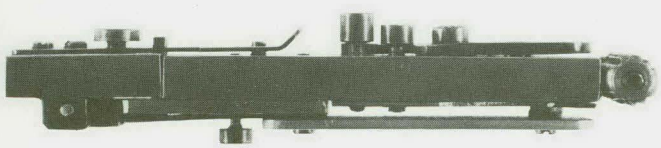
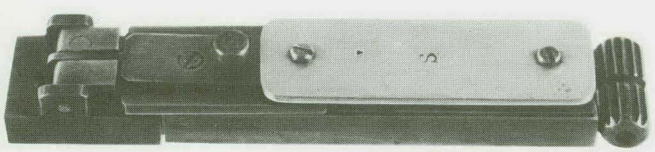
A Deadly Contraption









A compact, homemade firearm, sold in Mexico for $25, has been discovered in the United States by the Chula Vista, Calif., Police Department. The concealable weapon, measuring 5¼ inches by 1 inch by ½ inch and weighing 9 ounces, is capable of firing two .22-caliber short, long, or long-rifle cartridges. Both barrels are rifled, and an extractor ejects spent casings when the weapon is broken. Pulling the serated knob at the rear of the weapon straight back cocks the firing pins. With the safety in the "fire" position, pressing one or both buttons behind the barrels on top of the weapon will fire it.

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

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Interesting Pattern

This fingerprint pattern is interesting and unusual due to the position of the two overhanging loop formations on the left side of the pattern. As printed, this impression is classified as an accidental whorl with an outer tracing.