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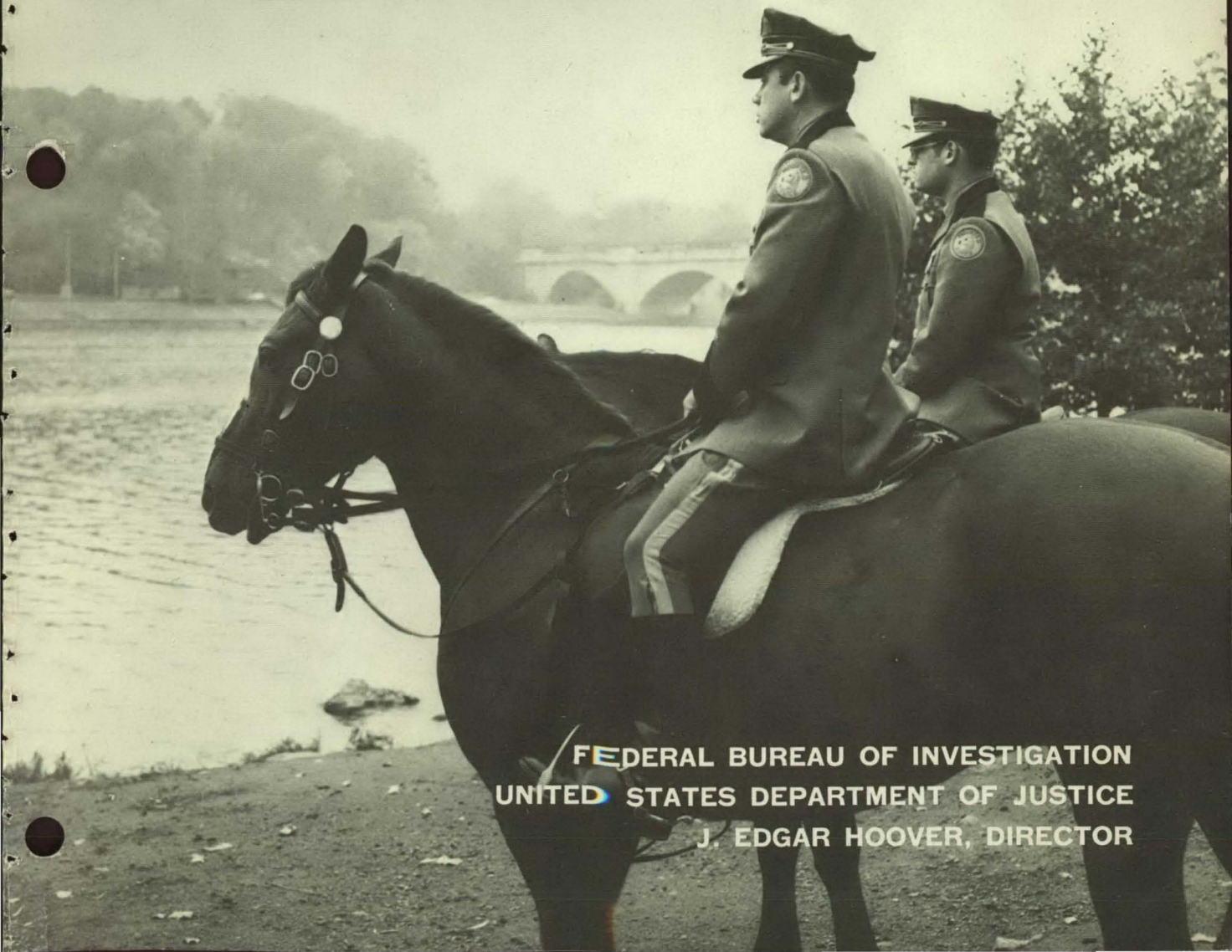
LAW ENFORCEMENT BULLETIN

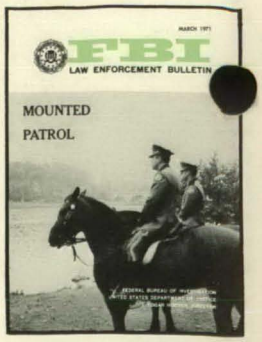
MOUNTED PATROL



FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
J. EDGAR HOOVER, DIRECTOR

MARCH 1971

VOL. 40 NO. 3



THE COVER—*Two mounted officers patrolling the Schuylkill River. See article beginning on page 2.*

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LAW ENFORCEMENT BULLETIN

Published by the
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20535

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MESSAGE FROM THE DIRECTOR . . .

. . . To All Law Enforcement Officials

FREQUENTLY, SOME BELLIGERENT, anti-law enforcement elements of our society refer to police officers as "pigs." Obnoxious four-letter words are shouted at policemen, and the familiar chant, "Off the Pigs," meaning "Kill the Police," is a prominent cry wherever these groups assemble. Further, cartoons and publications depicting police officers as pigs are common fare, even for children. The ridiculous statement, "The only good pig is a dead pig," is a slogan of violent protesters. Such deplorable epithets can be gratifying only to little minds.

Self-respect and respect for one's fellow man are hallmarks of civility under any recognized measure of achievement. Further, the proven concepts which enable men of all races, creeds, and backgrounds to live together with a reasonable degree of harmony should be respected. One such concept is the rule of law. Without the rule of law our world would be a jungle. Thus, it is important that the rule of law and all its facets, including the policeman, be respected. In a free society where law—not man—is supreme, the policeman is a living symbol of the freedoms shared by all.

In light of the humanitarian aspects of a policeman's work, I would like to repeat a comment made here a few years ago:

> "In any emergency, real or imaginary, the first cry that goes forth is for the police. The officer on the beat must be a journeyman of many trades— an on-the-spot doctor, plumber, or baby-sitter. Today's enforcement officer is expected to have multifarious ability, explicit judgment, and an unshakable temperament. He performs on a public stage. The audience is 'live'; every observer is a critic. There can be no retakes of his efforts nor pretaped performances. He is second-guessed, ridiculed, abused, cursed, assaulted, and sometimes murdered. But when he leads a small, lost tot from a dense, wooded area to the arms of a joyously weeping mother, his is a rewarding and satisfying service."

Policemen should be respected, at least for what they represent; they should not be called pigs.

We badly need to shore up some eroding ideals and principles in our country today. Community leaders, professional spokesmen, educators, clergymen, and others in positions of influence should take a firm stand to preserve our sense of values. Too many are swayed or intimidated by loud, unruly, and aimless ramblers—people with a lot of dialog but no message.

In a free society, which owes its very existence and prominence to the rule of law, abuse and ridicule of the law and those charged with enforcing it should not be taken lightly. I urge all members of law enforcement—in spite of personal indignities suffered—to serve with dignity and honor. As a rule, a repulsive slur is more descriptive of its origin than its target.

J. Edgar Hoover

JOHN EDGAR HOOVER, *Director*

MARCH 1, 1971

A Mounted Unit for

EFFECTIVE P

PATROL

"We do keep in mind that all our personnel are policemen first and specialists second."

By

PHILIP J. CELLA

Superintendent, Fairmount Park Police, Philadelphia, Pa.

The Mounted Division of Philadelphia's Fairmount Park Police provides, in its day-to-day operations, all of the services normally performed by a park police mounted force—and then some! In addition to assisting equestrians and directing hikers, it has been especially invaluable in traffic situations. Because of a mounted man's increased visability and maneuverability, he can quite effectively protect large numbers of parked cars from vandals at major events such as the Army-Navy football game and the Philadelphia police annual thrill show, which events attract over 100,000 spectators.

The physical structure of the Philadelphia Park System, one of the largest within a major city, requires many forms of police patrol activity. The Fairmount Park Police use foot, motor, marine, canine, and mounted patrols. Each type has its advantages and disadvantages. The administrator must decide when and where each type of patrol is needed and what specialized function is to be performed.

The Fairmount Park Police force is composed of 549 officers and men. There are 68 officers and men assigned specifically to the mounted unit. There are 68 horses assigned to the unit, some of which have been handpicked and purchased at area horse sales and some of which have been donated. It is a metropolitan force that for over 100 years has held the esteem and gratitude of the citizens of Philadelphia because of the competence and integrity with which it operates.

Patrols 8,000 Acres

Our department is charged with providing safety and service for approximately 8,000 acres of park land spread throughout Philadelphia and divided into seven park districts. Included are three main traffic arteries through the city of Philadelphia, many miles of the Schuylkill River and other similar streams, and over 100 miles of trails that must be patrolled daily even though many are located in dense and unpopulated areas. Our mounted personnel insure that private stable horses are not abused and, if necessary, in conjunction with the Society for the Prevention of Cruelty to Animals, criminally prosecute offenders. The Fairmount Park Police also patrol Philadelphia's four main public golf courses.

While progressive police administrators are currently talking about

The Mounted Unit color guard leads a parade in Philadelphia.

the relatively recent idea of regional police service, the Fairmount Park Police have been rendering such service for many years since a number of our park areas extend beyond the Philadelphia city limits into suburban communities. Even though the Fairmount Park Police is a separate entity from the Philadelphia Police Department, we use their radio bands and have jurisdiction within the city. Our recruits are drawn from a city of Philadelphia personnel testing agency, and we are fortunate that we usually get the top 10 percent of each group tested.

Upon being appointed superintendent of the Fairmount Park Police in June 1968, I recognized the growing importance of the Mounted Division and named Capt. James A. Loftus as its commanding officer. Mounted policemen are selected from personnel assigned to the foot patrol functions of the Fairmount Park police force. They are volunteers who have been recommended by their superior officers. They must have 1 year's service in an operational district of Fairmount Park. There is no restriction on height, but all applicants for the Mounted Division should weigh no more than 180 pounds.

Separate Training Program

Because of its specialized role, the mounted command was given the responsibility of preparing and executing a training program completely separate from that provided by the regular park training unit. Thus, a man assigned to the mounted command receives the benefit of dual training. The indoctrination period for the mounted trainee is 6 weeks. During that time he is instructed in basic horsemanship, stable management, first aid for the horse, and feeding, cleaning, and general care for the animal. He is instructed in the proper care and maintenance of the equipment that he will use while riding his assigned mount.

A volunteer in the Mounted Division need not have previous riding experience since we have determined that at times it is easier to teach an inexperienced person to ride correctly than it is to correct the bad habits

which an experienced rider may have acquired.

We do keep in mind that all our personnel are policemen first and specialists second. It is a matter of policy that mounted personnel are included in the annual inservice training given to all park policemen in addition to the mounted retraining courses. For special large mounted details or for training information, we utilize the experience and knowledge of Lt. George A. Smith who has had many years' experience as a mounted policeman and who now, through promotion, is primarily a squad commander of a line district.

The efficiency and adaptability of mounted police in dealing with crowd situations have been recognized by virtually every authority on police administration and by most knowledgeable civilians as well. It is a matter of record that using canine units in emotionally charged situations has had an adverse effect on community relations in some instances, whereas the use of mounted units in similar situations has been highly successful. The administrator must make the decision as to whether the physical structure of the area and the temperament of the community, among other factors, would dictate using mounted personnel. In most crowd situations experience has shown that the canine unit's effectiveness depends upon the individual's innate fear of being bitten by a vicious animal, while the mounted police officer overwhelms psychologically by the sheer mass of the horse and the officer's superior position when mounted on horseback.

The mounted policeman can see not only what is immediately in front of him, but also, from his position above the crowd, he can survey the entire situation with which he is confronted. The mounted policeman can move faster than either the canine or foot officer or the person or persons causing a disturbance. In view of the mounted man's speed and ability to pursue, there is much less opportunity for the offender to escape. Finally, the dog, even when well trained, is a much more excitable animal than the horse. Regardless of how effective he may be for solitary patrol work, in emotionally charged situations, the dog has difficulty in distinguishing a violent agitator from an innocent spectator.

A "jousting" contest was put on by members of the Mounted Unit for the public's enjoyment in connection with the annual Easter Seal Campaign for Crippled Children in Philadelphia.

Recent events all over the country have indicated that large groups of people attending antiwar and civil rights demonstrations, rock and roll festivals, or organized sports events raise numerous and delicate problems for police. There is, however, a large and obvious distinction between the type of crowd found at a parade or a political rally compared with the crowd one finds at a civil rights or antiwar demonstration. To enable all our mounted policemen to handle the latter situation with the greatest effectiveness, we afford them additional training.

Patrol at Youth Gatherings

During each summer many rock festivals that draw from 5,000 to 25,000 young people are held at Fairmount Park. These gatherings are handled by a combination of our foot, motor, and mounted patrols. By insuring that the mounted patrolmen are visible well before the beginning time of these events, we find that the groups take them for granted and take no offense at their presence. Many individuals attending these gatherings cannot resist talking to the mounted policeman about his horse. This sets up a type of rapport between them.

Teenage gang activity has become one of the major criminal problems for the Philadelphia Police Department in recent years. Deaths resulting directly from the feuding of these rival groups have reached astronomical figures: 30 in 1968, 43 in 1969, and 30 in 1970. Leaders of these groups have not chosen our park areas for their "rumbles" because they realize they cannot outrun our mounted patrols.

Fully Equipped

Failure to take adequate and timely steps in these situations may result in loss of lives and property as well as charges of double standards of justice and dereliction of duty. The unrestrained or misdirected application of physical force is apt to further aggravate the situation which the police are attempting to control. It may furnish support to those who term any restraining action taken, no matter how well justified, as "police brutality." Every metropolitan police force must take whatever preparatory steps are necessary to assure it is fully equipped physically, psychologically, and emotionally to cope with whatever situation may arise.

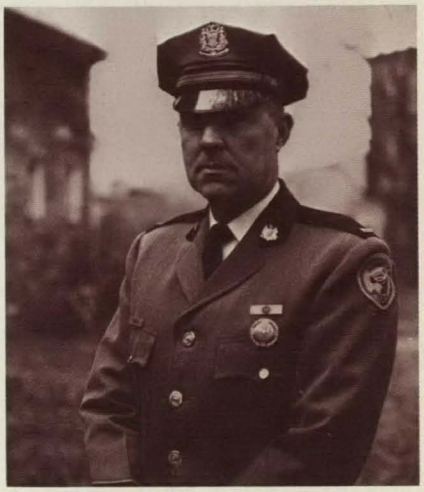
Recent civil rights demonstrations in many major cities throughout the United States have been successfully handled when well-trained and directed mounted units were utilized. Mounted units have drawn praise from the press and the public at large for their handling of these situations. These units not only functioned effectively but improved the public image of the police as well.

Public Relations

Some additional public relations activities of our mounted unit include performing as color guard for most of the major parades in Philadelphia. We compete annually with other mounted units from New York City, Washington, D.C., et cetera, at such events as the Devon Horse Show, Devon, Pa. We recently put on a "jousting" contest which was part of the "kickoff" program for the annual Easter Seal Campaign for Crippled Children in Philadelphia.

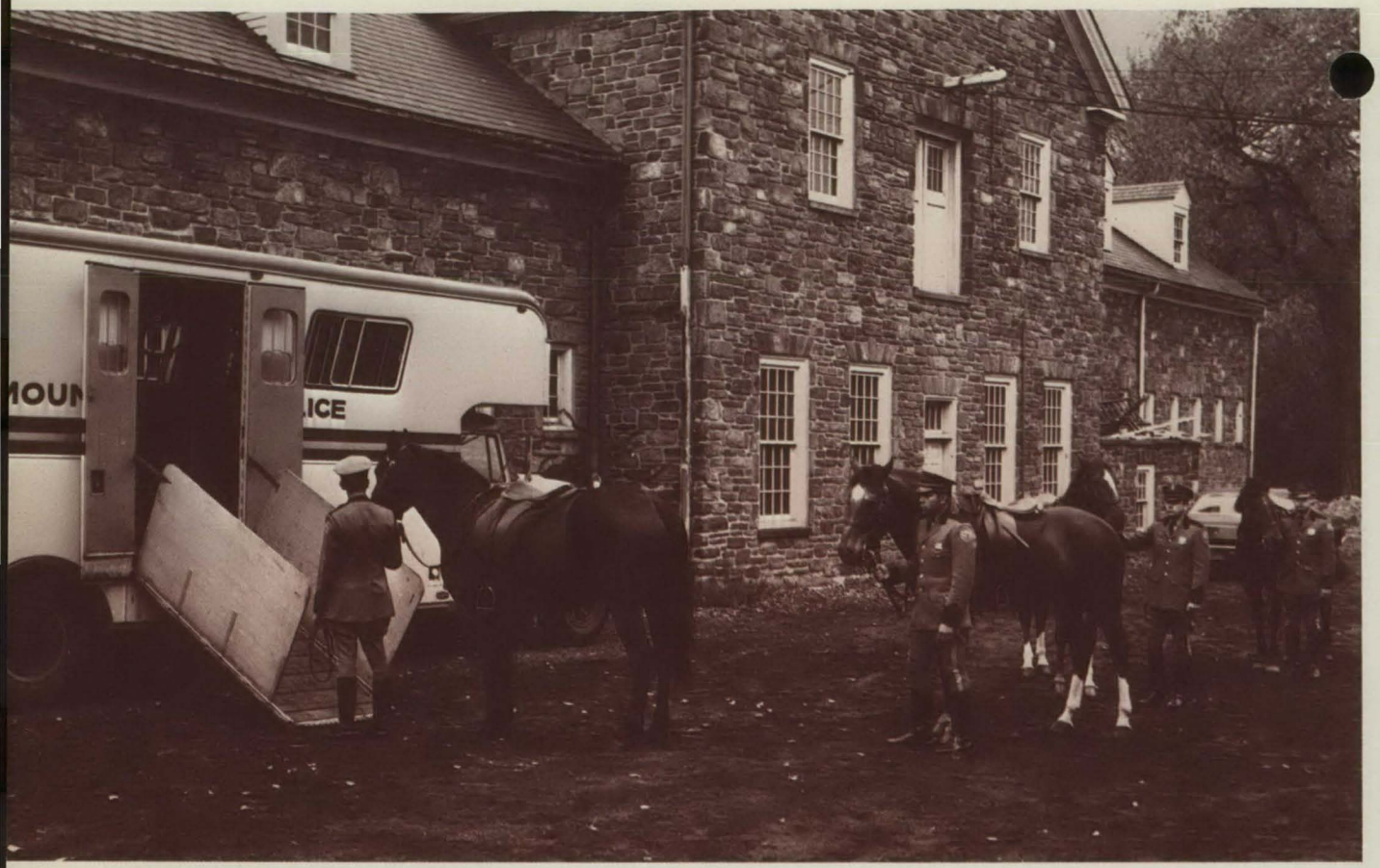
Another of our noteworthy accomplishments concerns accidental drownings in the park areas along the Schuylkill River which averaged about 12 a year until 1958. We instituted a simple preventive program aimed at reducing these fatalities. Since 1958 these drownings have been reduced approximately 90 percent. In several ensuing years we were fortunate that no drownings occurred. During 1970 our record was marred by two drowning incidents.

Capt. James A. Loftus.



Lt. George A. Smith.

Our mounted patrolmen are instructed to question every youngster observed near the water as to his ability to swim and whether or not he was accompanied to the area by adults. If these young people came with adults and cannot swim, they are returned to the older people and instructed not to return to the water area without proper supervision. Those who cannot swim and are in the park alone are sent home immediately. An appropriate record is executed and maintained concerning each of these in-



A van with a capacity for seven horses and equipment is used to transport a special force expeditiously to any pertinent trouble area.

stances. Youngsters who fish and explore along our streams number in the thousands since many accompany their parents on outings and picnics while many others are permanent residents of homes located near the park areas.

In December 1970 we adopted a special training course that will create a small professional strike force of mounted personnel. The basic program will eventually be afforded to all our mounted policemen and will be organized as follows:

The nucleus of the special force consists of seven men and horses divided into three two-man teams and a unit leader. This provides a maximum operating flexibility for the unit as a whole and at the same time provides protection for the men through operation of the "buddy system." Each two-man team will supply the leadership for a larger group, if required. Identical training permits the interchange of men from one team to another, where desirable or necessary, and will eliminate the necessity of any two particular men working as a team. This entire special unit can be transported expeditiously to any pertinent trouble area since the capacity of the horse van utilized by the mounted unit is seven horses and equipment.

Of High Quality

The situations to which this special force will be assigned will be most delicate. Therefore, the men selected must be of superior quality mentally, emotionally, as well as physically. They must have a keen appreciation of the individual's rights under the law and a personal philosophy that is sympathetic to these rights. Above all else, those selected must be able to remain calm under emotional stress. While the man's horsemanship must be satisfactory by the time training is completed, it need not be considered a primary prerequisite since deficiencies can be corrected during the course of the training.

The training time required for the special force is 80 hours, that is, ten 8-hour days. The course of instruction includes (1) a detailed study of all pertinent laws and their specific application to delicate crowd situations, (2) classroom study of tactics and procedures to be employed in crowd control, (3) outdoor practice simulating as closely as possible "real-life" situations, (4) extensive physical conditioning for all personnel, and (5) intensive training in all aspects of horsemanship. After completing the

(Continued on page 27)

"Reason Is the Life of the Law."
—Sir Edward Coke

Chambers v. Maroney:

The Warrantless Search of Motor Vehicles*

Perhaps no area of the criminal law has undergone greater revision in the past several years than that relating to the search of automobiles. Until recently, most vehicle searches were conducted incident to a lawful arrest of the driver or other occupant of the car and any evidence found therein was admissible in court. Arrest on virtually any charge seemed sufficient to support a search, regardless of whether there was any physical evidence connected with the arrest offense. Thus, some courts routinely sustained car searches following arrests for traffic violations.[1] Others permitted a detailed search of a car after a vagrancy arrest.[2] These searches were often conducted at the police station, long after arrest, and included any area of the car in which physical evidence might be found.[3]

With the introduction of Federal supervision over State practices in 1961, this search authority became increasingly restricted. Under current law, a search incident to arrest is lawful only if it is reasonably related to some evidence of the crime for which the arrest was made.[4] Thus, apart from such violations as drunk driving [5] or driving under the influence of narcotics,[6] few traffic offenses will support an incidental search.[7] Furthermore, the courts are examining such cases with greater care to insure that the arrest is not a pretext or subterfuge to acquire evidence of another crime.[8]

Still another limitation, relating to the time and place of the search, was

[1] *Watts* v. *State*, 196 So. 2d 79 (Miss. 1967); *Lane* v. *State*, 424 S.W. 2d 925 (Tex. Crim. 1967).

[2] *U.S.* v. *Sykes*, 305 F. 2d 172 (6th Cir. 1962), *rev'd sub nom., Preston* v. *U.S.*, 376 U.S. 364 (1964); *Williams* v. *U.S.*, 412 F. 2d 729 (5th Cir. 1969), suppressing evidence seized from vehicle incident to vagrancy arrest. However, some courts will look behind the booking charge and sustain the arrest and incidental search if there is cause to believe that some other substantive crime was involved. *State* v. *Thunder Horse*, 177 N.W. 2d 19 (S. Dak. 1970).

[3] *U.S.* v. *Sykes*, *supra* footnote 2.

[4] *Williams* v. *U.S.*, 412 F. 2d 729 (5th Cir. 1969); *U.S.* v. *McIntyre*, 304 F. Supp. 1244 (1969).

[5] *Wellman* v. *U.S.*, 414 F. 2d 263 (5th Cir. 1969); *State* v. *Cusick*, 264 A. 2d 735 (N.J. App. 1970); *State* v. *Braxton*, 26 A. 2d 40 (N.J. App. 1970); *State* v. *Warner*, 237 A. 2d 150 (Maine 1968).

[6] *People* v. *Lujan*, 141 Calif. App. 2d 143, 296 P. 2d 93 (1956).

[7] *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968) (by implication); *Amador-Gonzalez* v. *U.S.*, 391 F. 2d 308 (5th Cir. 1968); *Montana* v. *Tomich*, 332 F. 2d 987 (9th Cir. 1964); *U.S.* v. *Humphrey*, 409 F. 2d 1055 (10th Cir. 1969); *U.S.* v. *Tate*, 209 F. Supp. 762 (1962); *Travers* v. *U.S.*, 144 A. 2d 889 (D.C. Mun. 1958); *U.S.* v. *One 1963 Cadillac Hardtop*, 224 F. Supp. 210 (1963). See, Annotation, Lawfulness of Search of Motor Vehicle Following Arrest for Traffic Violation, 10 A.L.R. 3d 314. See *U.S.* v. *Jackson*, 429 F. 2d 1368 (7th Cir. 1970), supporting search of vehicle incident to arrest for use of fictitious plates.

[8] *U.S.* v. *McIntyre*, *supra* footnote 4; *Amador-Gonzalez* v. *U.S.*, *supra* footnote 7; *Lipton* v. *U.S.*, 348 F. 2d 591 (9th Cir. 1965) (dictum). Cf. *Hill* v. *U.S.*, 418 F. 2d 449 (D.C. Cir. 1968); *Taglavore* v. *U.S.* 291 F. 2d 262 (9th Cir. 1961); *U.S.* v. *Edmons*, 432 F. 2d 577 (2d Cir. 1970).

*A lecture given by Special Agent John B. Hotis, FBI, Training Division, before the Sectional Retraining Session, FBI National Academy Associates, Northeastern States, on July 1, 1970, at Portsmouth, N.H.

imposed by the Supreme Court in *Preston* v. *United States*,[9] decided in 1964. Preston and his two companions were arrested for vagrancy in the early morning hours and his vehicle was towed to a police garage. There, while the suspects were being booked and fingerprinted, an officer went to the glove compartment of Preston's car and discovered a loaded gun. He then searched the trunk of the vehicle and found evidence which was later useful in convicting Preston of conspiracy to rob a federally insured bank. On appeal, the Supreme Court unanimously reversed the conviction. The search incident to arrest is justified, the Court said, by the need to seize weapons and to prevent the destruction of evidence, but "these justifications are absent where a search is remote in time or place from the arrest." [10]

Further Limitations

The Court imposed still further limitations on the rule in 1969 by severely restricting the permissible scope of the search. In *Chimel* v. *California*,[11] the defendant was arrested in his home by officers acting under a warrant authorizing his arrest for the burglary of a coin shop. Incident to arrest and without a search warrant, the officers searched the entire three-bedroom house for about an hour. Various items seized from a dresser-drawer were admitted in evidence over the defendant's objections and he was convicted. The Supreme Court reversed the judgment, ruling the search was unlawful. Looking once again to the justifications for a search incidental to arrest, the Court held that such search must be limited to "the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence," or "the area within his reach." [12] A search beyond such areas is unreasonable, the Court said, unless conducted under the authority of a warrant.

In a footnote to the opinion, the Court stated that its holding was "entirely consistent with the recognized principle that, assuming the existence of probable cause, automobiles and other vehicles may be searched without warrants 'where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.' " [13] This statement left itself open to two quite different constructions. One was that *Chimel* does not apply to cars and that, following traditional rules, an incidental search of a vehicle can extend to any place in the car where evidence might be found.[14] Others read the footnote as saying no more than that the decision does not disturb the long-standing *Carroll* doctrine, which permits a vehicle search where there is probable cause to believe it contains evidence of crime.[15] A search of this type depends solely upon the existence of probable cause and does not look to an arrest for its validity.

If the latter interpretation is correct, and current authority suggests that it is,[16] a search incident to arrest without independent cause to believe that the car contains evidence of crime, must be confined to that area of the car which is immediately accessible to the arrestee. It would be most unusual, therefore, for there to be grounds to search once the person has been removed from the car and placed under police control. Judging from past decisions, it can be expected that the courts will give greater deference to a self-protective search than to one conducted for evidentiary purposes.[17]

". . . a search incident to arrest, without independent cause to believe that the car contains evidence of crime, must be confined to that area of the car which is immediately accessible to the arrestee. It would be most unusual, therefore, for there to be grounds to search once the person has been removed from the car and placed under police control."

Thus, one court recently sustained a search where the suspects, though in police custody, were "within leaping range" of weapons in the back seat of the car.[18] An evidentiary search

[9] *Preston* v. *U.S.*, 376 U.S. 364 (1964).
[10] *Id.* at 367.
[11] 395 U.S. 752 (1969).
[12] *Id.* at 763.
[13] *Id.* at 764, n.9.
[14] *State* v. *Zamara*, 469 P. 2d 752 (Idaho 1970).
[15] *Chambers* v. *Maroney*, 399 U.S. 42, 62, n.6 (1970) (Harlan, J., dissenting). See, A.L.I. Model Code of Pre-Arraignment Procedure, Tent. Draft No. 3, Part II, Search and Seizure SS.3.04 (1970).

Notice that the court said a vehicle can be searched without a warrant, "assuming the existence of probable cause. . . ." This suggests that an exception to *Chimel* is made only where there is independent cause to believe that the car contains evidence of crime. Thus, as the article illustrates, a search of the vehicle might not be possible even though there are adequate grounds to arrest the occupant.

Several courts have held that *Chimel* does not apply retroactively; consequently the validity of searches conducted prior to the date of that case has been determined by pre-*Chimel* standards. *U.S.* v. *Roth*, 430 F. 2d 1137 (2d Cir. 1970); *U.S.* v. *Chaplin*, 427 F. 2d 14 (2d Cir. 1970); *U.S.* v. *Bennett*, 415 F. 2d 113 (2d Cir. 1969); *U.S.* v. *Ballard*, 423 F. 2d 71 (9th Cir. 1970); *Williams* v. *U.S.*, 418 F. 2d 159 (9th Cir. 1969). For this reason, there have been few decisions on whether the rule applies to searches of motor vehicles. See, footnote 16, *infra*.

[16] *Application of Kiser*, 419 F. 2d 1134 (8th Cir. 1969); *U.S. ex rel Williams* v. *LaVallee*, 415 F. 2d 643 (2d Cir. 1969) (by implication); *Ramon* v. *Cupp*, 432 F. 2d 248 (9th Cir. 1970) (by implication); *Whitely* v. *Meacham*, 416 F. 2d 36 (10th Cir. 1969) (by implication); *U.S.* v. *Holsey*, 414 F. 2d 458 (10th Cir. 1969) (by implication); *U.S.* v. *McIntyre*, 304 F. Supp. 1244 (1969); *U.S.* v. *Brooks*, 310 F. Supp. 289 (1970); *U.S.* v. *Lewis*, 303 F. Supp. 1394 (1969) (by implication); *Mitchum* v. *Foster*, 315 F. Supp. 1387 (1970); *U.S.* v. *Pullen*, U.S. Ct. M.A. (Jan. 29, 1970), 6 Cr. L. 2350; *State* v. *Steel*, 450 S.W. 2d 545 (Ark. 1970); *State* v. *Browning*, 233 So. 2d 686 (Fla. App. 1970); *State* v. *Keyes*, 467 P. 2d 730 (N. Mex. 1970) (by implication); *State* v. *Keith*, 465 P. 2d 724 (Oreg. 1970) (by implication); *Ricketson* v. *People*, Ill. App. Ct., 2d Jud. Dist. (Sept. 25, 1970) 8 Cr. L. 2182.
[17] *Terry* v. *Ohio*, 392 U.S. 1 (1968); *Warden, Maryland Penitentiary* v. *Hayden*, 387 U.S. 294 (1967).
[18] *Application of Kiser*, 419 F. 2d 1134 (8th Cir. 1969).

conducted under these circumstances would be difficult to support. Simply stated then, the rule is—if the arrestee cannot reach any weapon or evidence in the vehicle, the officer cannot search for it.[19]

The Carroll Doctrine

The growing body of rules limiting the search incident to arrest makes it necessary to look to other means of acquiring physical evidence from motor vehicles. The principal alternative is found in *Carroll* v. *United States*, which involved a violation of the National Prohibition Act.[20] There two Federal prohibition agents, posing as buyers, arranged to purchase several cases of whisky from the defendants. Carroll apparently became suspicious and failed to return with the liquor. However, the agents noted the kind of automobile he had driven and recorded its license number. Subsequently, they saw the defendants driving on a highway which was known to be heavily traveled by bootleggers; they attempted to follow, but lost track of the car. About 2 months later, the agents again spotted the vehicle in the same area and stopped it. They searched the car and found a large quantity of liquor behind the upholstering of the seats. Upholding the search, the Supreme Court ruled that automobiles and other conveyances can be searched without a warrant where there is probable cause to believe that the car contains articles that the police are entitled to seize. The Court reasoned that an exception to the traditional warrant requirement was necessary "because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." [21]

In brief, the *Carroll* rule requires that there be (1) probable cause to believe that (2) a mobile vehicle (3) contains contraband or other items which offend against the law. The standard of probable cause here is at least as stringent as that required for a search warrant.[22] The test is whether the facts and circumstances are sufficient to persuade a court that there are reasonable grounds to believe that evidence of a crime can be found in a particular vehicle. Notice that the search in this case was not dependent for its validity upon the arrest which was later made. Moreover, unlike the arrest, probable cause relates not to the guilt of any individual, but to the belief that there is evidence in a particular automobile. Thus, cases will arise in which there are grounds to search the car under *Carroll* but, without more, insufficient cause to arrest the occupant.

Suppose, for example, that A robs First National Bank and makes his getaway in a red sports car. A is identified the following day from photographs taken by the bank camera and witnesses describe his car in detail to the investigating officers. Armed with an arrest warrant, the officers go to A's residence. As they arrive, A's teenage daughter is seen driving away from the house in a red sports car bearing the license number furnished by the witnesses. A search incident to arrest is unavailable in this instance because there is no indication that A's daughter was involved in the crime. But since the vehicle played an integral part in the robbery, it may be searched, under *Carroll*, on the belief that it contains fruits or instrumentalities of the offense.

By the same token, circumstances may sometimes justify arrest of the driver without giving rise to a belief that evidence of crime can be found in the vehicle. Let's assume now that A is apprehended 5 months later in a distant State, while operating another vehicle. Here the officers could properly search the car incident to arrest, subject only to the limitations of time and scope mentioned earlier. But without some further information connecting that vehicle with criminal activity, the facts would not support a search under the *Carroll* rule.[23]

Another Situation

Take still a third situation. A is arrested shortly after the robbery, while fleeing the scene in his automobile. In this case, both methods of search are available to the police. A search of the car can be justified either as incident to arrest, since the vehicle is the place of arrest, or on the broader authority that there is cause to believe the car contains the fruits, instrumentalities, or other evidence of a criminal violation.

The question of what constitutes "mobility", in terms of the *Carroll*

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[19] *U.S.* v. *McIntyre*, 304 F. Supp. 1244 (1969); *U.S.* v. *Tate*, 209 F. Supp. 762 (1962).

This limitation applies only to a search incident to arrest and does not prevent the officer from seizing any weapons or evidence which is in plain view. *Young* v. *U.S.*, — F. 2d —, No. 21, 757 (D.C. Cir. June 26, 1970); *U.S.* v. *Thompson*, 420 F. 2d 536 (3d Cir. 1970); *U.S.* v. *Kim*, 430 F. 2d 58 (9th Cir. 1970); *Carpenter* v. *Sigler*, 419 F. 2d 169 (8th Cir. 1969); *Application of Kiser*, 419 F. 2d 1134 (8th Cir. 1969); *U.S.* v. *Bourassa*, 411 F. 2d 69 (10th Cir. 1969), cert. den. 396 U.S. 915 (1970); *Thompkins* v. *U.S.*, 251 A. 2d 636 (D.C. App. 1969); *Cook* v. *Sigler*, 299 F. Supp. 1338 (1969). Nor does it prevent him from frisking occupants of the car where there is a reasonable basis for believing that his safety or the safety of others requires such action. *Terry* v. *Ohio*, 392 U.S. 1 (1968).

[20] *Carroll* v. *U.S.*, 267 U.S. 132 (1925); *U.S.* v. *Lee*, 274 U.S. 559 (1927); *Husty* v. *U.S.*, 282 U.S. 694 (1931); *Scher* v. *U.S.*, 305 U.S. 251 (1938); *Brinegar* v. *U.S.*, 338 U.S. 160 (1949); *Preston* v. *U.S.*, 376 U.S. 364 (1964) (dictum); *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968) (dictum); *Chambers* v. *Maroney*, 399 U.S. 42 (1970).

[21] *Carroll* v. *U.S.*, *supra* footnote 20 at 153.

[22] While not expressly stated in the case law, any other rule would encourage circumvention of the warrant requirement. For illustration of cases finding inadequate grounds to search under *Carroll*, see, e.g., *U.S. ex rel Poulson* v. *Myers*, 245 F. Supp. 746 (1965) (presence of burglars in area experiencing high incidence of burglaries insufficient cause to search). Cf. *Riccardi* v. *Perini*, 417 F. 2d 645 (6th Cir. 1969). But similar circumstances have supported a temporary detention for investigation, short of arrest. *Wilson* v. *Porter*, 361 F. 2d 412 (9th Cir. 1966); *Nicholson* v. *U.S.*, 355 F. 2d 80 (5th Cir. 1966); *Carpenter* v. *Sigler*, 419 F. 2d 169 (8th Cir. 1969).

[23] See, e.g., *U.S.* v. *Holsey*, 414 F. 2d 458 (10th Cir. 1969) (probable cause to arrest bank robbery suspects did not provide grounds for search of vehicle).

414-427 O - 71 - 2

rule, is a bit more difficult to resolve. The central inquiry in each instance is whether it is "impracticable" to get a warrant, i.e., whether there is a reasonable likelihood that the car would be moved in the time required to obtain a warrant. This is normally the case where the car is in running order, or capable of operating under its own power. Thus, assuming that all other requirements are met, a lawful search can be made of a car which is locked, parked, and unoccupied.[24]

"Once these items [for which a search warrant would issue] are located, the search must terminate. If, however, while legitimately looking for such articles, the officer unexpectedly discovers evidence of another crime, he can seize that evidence as well."

As to the scope and objectives of the search, the officer can look for any item for which a search warrant would issue. In the Federal jurisdiction, this means that he can search for the instrumentalities and means by which a crime has been committed, the fruits of crime such as stolen goods, contraband, and any evidence which will aid in a particular apprehension or conviction.[25] Moreover, the search can extend to any place in the car where such items might reasonably be found. Once these items are located, the search must terminate. If, however, while legitimately looking for such articles, the officer unexpectedly discovers evidence of another crime, he can seize that evidence as well.[26]

Some Reluctance

Despite the long history of the *Carroll* rule and the numerous cases interpreting its application,[27] there has been a curious reluctance by police and prosecutors to accept it as a valid method of search. Invariably, they prefer to rely on other, less appropriate, procedures to accomplish their purposes. To be sure, the rule is not free from ambiguity. An occasional decision has questioned whether the doctrine applied to noncontraband items,[28] particularly where there was no specific statutory authority to conduct such a search; or whether a car was "mobile" once the driver was placed in custody.[29] And the Supreme Court itself once suggested that mobility, terminated when the automobile was removed to the police station.[30] But these issues were largely resolved by the Court in *Chambers* v. *Maroney*,[31] decided in June 1970.

In *Chambers*, two men robbed a service station attendant at gunpoint, carrying off the currency from the cash register in a right-hand glove. One of the men was wearing a green sweater and the other was wearing a trench coat. Witnesses reported that they saw four men speed away from a nearby parking lot in a blue compact station wagon. Within an hour, a car answering that description and carrying four men was stopped about 2 miles from the service station. The defendant, Chambers, who was in the vehicle, was wearing a green sweater and one of the other men had a trench coat with him. The occupants were placed under arrest, but no search was conducted at the scene. The vehicle was taken to the police station where an immediate search was conducted without success. The officers later returned to the car for a second search and, on this occasion, found two revolvers, a right-hand glove containing small change, and credit cards taken from the victim.

Not Unreasonable

On review, the Supreme Court of the United States upheld the search, noting that there is a constitutional difference between an automobile and a home or an office. The opinion of the

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[24] *U.S.* v. *Haith*, 297 F. 2d 65 (4th Cir. 1961) cert. den., 369 U.S. 804 (1962); *Thompson* v. *U.S.*, 342 F. 2d 137 (5th Cir. 1965); *U.S.* v. *Walker*, 307 F. 2d 250 (4th Cir. 1962); *U.S.* v. *Mazzella*, 295 F. Supp. 1033 (1969); *U.S.* v. *Callahan*, 256 F. Supp. 739 (1966); *Carver* v. *Ross*, 257 F. Supp. 894 (1966).

[25] *Preston* v. *U.S.*, 376 U.S. 364, at 367–68 (1964), suggests that police can search car under *Carroll* rule on reasonable belief that vehicle is stolen. *Contra*, *Winkle* v. *Kropp*, 279 F. Supp. 532 (1968). The following cases support the seizure of a vehicle to hold it for the true owner: *Schoepflin* v. *U.S.*, 391 F. 2d 390 (9th Cir. 1968); *U.S.* v. *Kucinich*, 404 F. 2d 262 (6th Cir. 1968).

There is some question whether the rule extends to vehicles allegedly carrying obscene materials without a prior determination of obscenity by a judicial officer. Compare, *U.S.* v. *Marti*, 421 F. 2d 1263 (2d Cir. 1970), with *U.S.* v. *Apple*, 305 F. Supp. 330 (1968).

[26] *U.S.* v. *Henry*, 259 F. 2d 725 (7th Cir. 1958), *rev'd* on other grounds, *sub nom.*, *Henry* v. *U.S.*, 361 U.S. 98 (1959). Cf. *Abel* v. *U.S.*, 362 U.S. 217, 238 (1960).

[27] *Gorman* v. *U.S.*, 380 F. 2d 158 (1st Cir. 1967) (semble); *U.S.* v. *Lipowitz*, 407 F. 2d 597 (3d Cir. 1969); *Williams* v. *U.S.*, 404 F. 2d 493 (5th Cir. 1968); *Barnett* v. *U.S.*, 384 F. 2d 848 (5th Cir. 1967) (*pre-Chambers* ruling, car in jail parking lot not mobile; *contra*, see footnote 39); *Grimes* v. *U.S.*, 405 F. 2d 477 (5th Cir. 1968); *U.S.* v. *Brown*, 411 F. 2d 478 (5th Cir. 1969); *U.S.* v. *Kimbrew*, 380 F. 2d 538 (6th Cir. 1967); *U.S.* v. *Freeman*, 382 F. 2d 272 (6th Cir. 1967); *U.S.* v. *Woods*, 420 F. 2d 1260 (7th Cir. 1970); *U.S.* v. *Sherman*, 430 F. 2d 1402 (9th Cir. 1970); *Call* v. *U.S.*, 417 F. 2d 462 (9th Cir. 1969); *U.S.* v. *Humphrey*, 409 F. 2d 1055 (10th Cir. 1969) (semble); *Murray* v. *U.S.*, 351 F. 2d 330 (10th Cir. 1965) (semble); *Mitchum* v. *Foster*, 315 F. Supp. 1387 (1970); *Collier* v. *Wingo*, 294 F. Supp. 27 (1969); *U.S.* v. *Mazzella*, 295 F. Supp. 1033 (1969); *U.S.* v. *Pierce*, 301 F. Supp. 824 (1969); *U.S.* v. *Lewis*, 303 F. Supp. 1394 (1969); *U.S.* v. *Verret*, 302 F. Supp. 1033 (1969); *U.S.* v. *Callahan*, 256 F. Supp. 739 (1966).

The *Carroll* rationale has also been applied to support searches of *persons*, *Lowery* v. *U.S.*, 135 F. 2d 626 (9th Cir. 1943); *U.S.* v. *Johnson*, 363 F. 2d 333 (7th Cir. 1966); *packages*, *Parish* v. *Peyton*, 408 F. 2d 60 (4th Cir. 1969); *airplanes*, *Travis* v. *U.S.*, 362 F. 2d 477, 480 n.3 (9th Cir. 1966); *State* v. *Kinnear*, 298 Pac. 449 (Wash. 1931); and *luggage*, *Hernandez* v. *U.S.*, 353 F. 2d 624 (9th Cir. 1965), *People* v. *Temple*, 6 Cr. L. 2096.

[28] *U.S.* v. *McIntyre*, 304 F. Supp. 1244, 1246, n.3 (1969); Justice Harlan, dissenting, expressed a similar view in *Chambers* v. *Maroney*, 399 U.S. 42, 62 n.7 (1970).

[29] *U.S.* v. *McIntyre*, *supra* footnote 28. *Conti* v. *Morgenthau*, 232 F. Supp. 1004 (1968); *U.S.* v. *Stoffey*, 279 F. 2d 924 (1960); *U.S.* v. *Kidd*, 153 F. Supp. 605 (1957); *Shuman* v. *U.S.*, 219 F. 2d 282 (1955) (dictum). *Contra*, *Staples* v. *U.S.*, 320 F. 2d 817 (5th Cir. 1962) (decision on other grounds) (companion of driver was still at large).

[30] *Preston* v. *U.S.*, 376 U.S. 364 (1964); *Barnett* v. *U.S.*, 384 F. 2d 848 (5th Cir. 1967).

[31] 399 U.S. 42 (1970). See cases cited in footnote 39, *infra*.

(*Continued on page 29*)

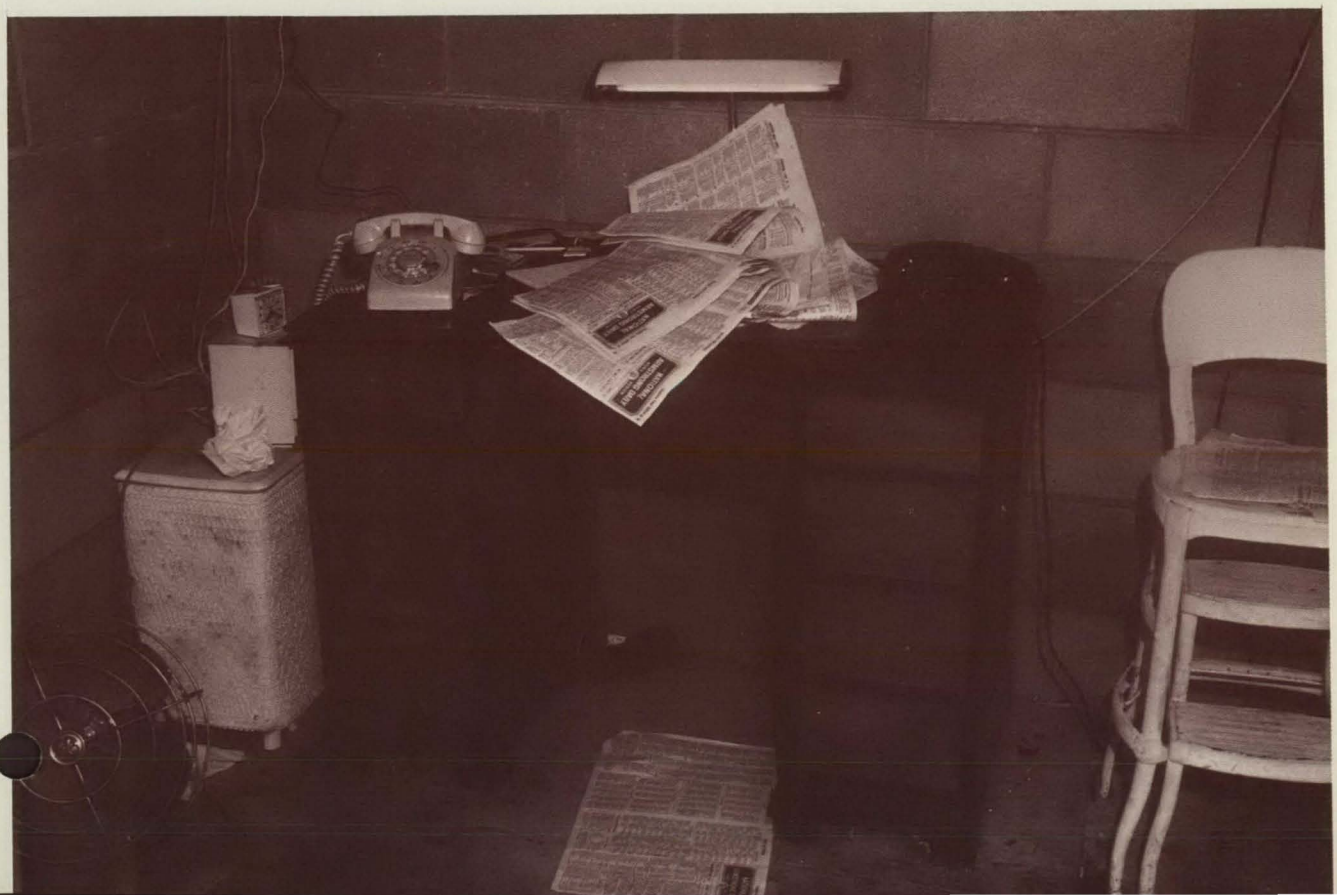
Local Investigation of Illegal Gambling Operations

By
CAPT. GEORGE H. BULLEN, JR.
Delaware State Police,
Dover, Del.

The operations of nationwide crime syndicates and their actual control of gambling at any given time are difficult to gauge. Where organized gambling exists, the syndicates have exploited the traditional urge exhibited by millions of citizens to gamble occasionally, frequently, or habitually. And yet, these same millions do not condone criminality in principle.

Gambling, of course, is widespread. It involves both rich and poor. The motto of the gambling moguls might

Illustration No. 1.



well be, "Give the people what they want." It is this obsession of giving a little to gain a lot, regardless of the odds, that contributes to the success of the gambling syndicates.

Every legitimate business operates to the mutual advantage of the owner and the customers. But as an enterprise, gambling operates on a one-sided basis to the advantage of the professional gambler. It is entirely unproductive; it upgrades no economic level and performs no useful service. Since there is no element of mutual advantage between the operators and the bettors, there are many who feel that gambling should be legalized and licensed so that the bettors could more equally share in the profits, rather than have the operators receive most of the rewards.

The Key Word Is Control

Social customs such as gambling and social drinking have not been and cannot be eliminated by legislation, and the subject of gambling cannot be approached from a moral standpoint alone. The key word is control, not elimination. In some areas gambling is an accepted social custom. Morals are more coercive than laws. Prohibition proved to be a prima facie example.

The lottery was the first American gambling pastime. But as corruption in its operation began to spread, lottery lost support and was gradually outlawed. With the abolition of the lottery in most States, professional gamblers turned to another lucrative activity known as "policy" or the "numbers" game. This is actually a lottery with a high return to the one who successfully guesses certain selected numbers, such as payoff figures at a given racetrack. The lucky number, consisting of three numbers, pays about 500 to 1. The lucky number is usually derived by adding the payoff figures from the win, place, and show

Illustration No. 2.

horses of the second, third, and fourth races at a given track. The total of the win, place, and show payoff figures for the second race might, for example, be $71.50. The number to the left of the decimal point, in this case the number one, would be the lead number in the lucky number for the day. In Delaware, the lead number pays 7 to 1. The second digit in the lucky number is obtained by adding the win, place, and show payoff figures of the third race at the same track. If the sum were $82.40, the second digit of the lucky number would be two. The third is obtained by the same method using the payoff figures of the fourth race, again at the same track.

The numbers game is deeply entrenched in most of our larger cities and in some operates almost in the open. The policy jargon is known to citizens in all walks of life and all levels of society. The numbers game flourishes in many urban neighborhoods as well as in many smalltown taprooms, corner stores, barbershops, and poolrooms.

Bookmaking on horseraces and other sports events surpasses any other single form of illegal gambling activity in volume. The bookmaking field has been aggressively organized, although syndicated bookmaking is not evident in Delaware, where receiving and recording horse bets is still a misdemeanor.

In order to reduce illegal gambling operations in Delaware, two basic investigative techniques are used by the Delaware State Police. They are

(1) informants or sources, and (2) surveillance.

The sequence of events in the surveillance-type technique often evolves from information received from an informant or observation by the investigating officer. Through surveillance, investigators help to establish probable cause sufficient to satisfy the issuing judge that illegal gambling activity is being conducted at a named location—be it a house, place of business, poolroom, et cetera.

Obtaining a Search Warrant

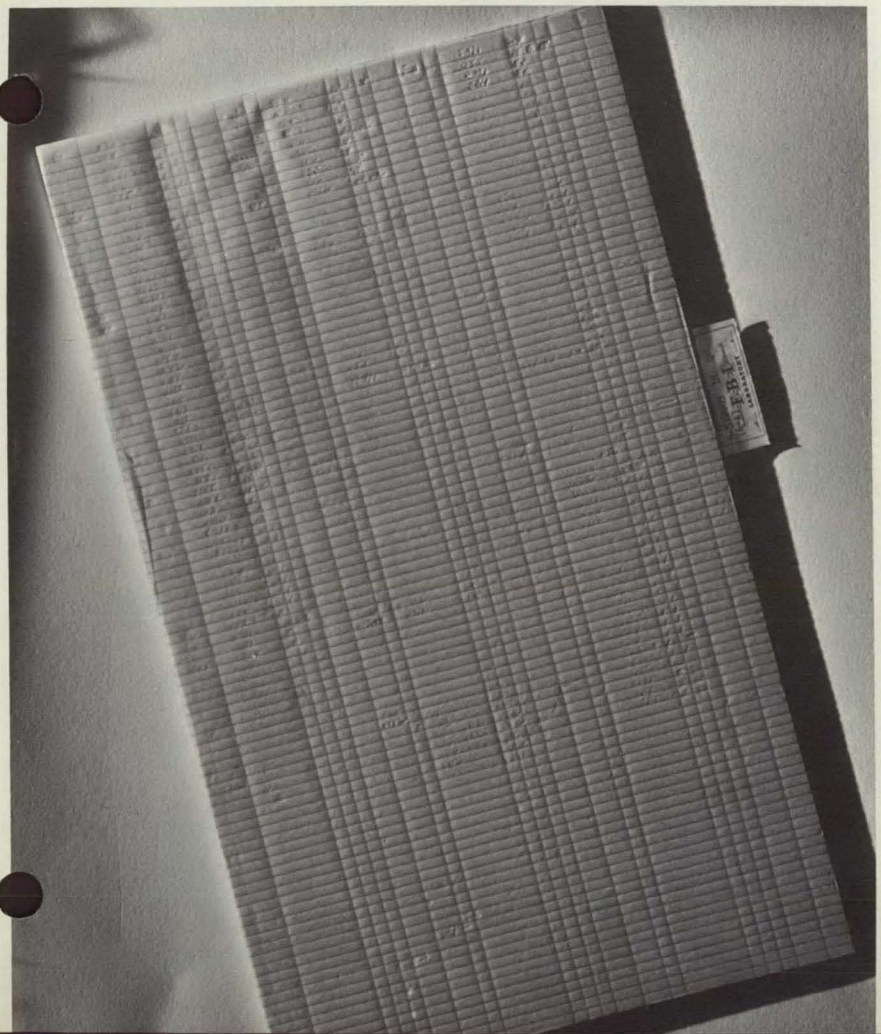
Here are some aspects we consider when preparing an affidavit to obtain a search warrant:

1. Information received from a confidential informant who has been reliable in the past and knows that the person named in the search warrant is concerned in lottery policy-writing or, in the case of bookmaking, is receiving and recording bets on horseracing or other sporting events.
2. That this person has no known legal means of support.
3. That it is well known in law enforcement circles the party named in the affidavit and search warrant is involved in illegal gambling activities.
4. That the affiants have called the numbers bank or subbank, as the case may be, X number of times during its operational hours and found the telephone was constantly busy.
5. That the affiants observed the suspect operating a vehicle registered to someone else, obviously in order to avoid detection and any subsequent investigation.
6. From their experience in investigating the numbers racket, the affiants relate that it is not unusual for a person involved in the policy game to have an unlisted telephone or one listed to someone else; to use a house, business, apartment, et cetera, not owned or rented by him; and to drive evasively when going from one location to another to pick up numbers bets from the subbank.
7. Any record of violations for this type of activity or any contact or associations with others who have a record of gambling violations.

Only some of the variables which may be used to obtain a search warrant have been mentioned. Officers who have been involved in this type of case are aware of the many factors, at times, available to the investigator.

Developing a case to obtain a search warrant can be a complex matter. Any single factor included in the affidavit may not appear unusual in itself. However, in conjunction with the other information, it is essential in the construction of the case. An analogy might be the making of a salad. It is not any particular ingredient which is important but, rather, the combination of ingredients.

Illustration No. 3.



Investigative Techniques

One of the most effective investigative aids used by the Delaware State Police in following a suspect in order to obtain probable cause is the airplane. On numerous surveillances, particularly when the subject has a record and is familiar with other vehicles used by the police, our department has used its plane with tremendous success. When used in conjunction with a surveillance team in a cruiser, it is almost impossible for the suspect to become aware he is being followed.

Because of more sophisticated investigative techniques, the bookmaker has found it essential to further protect his operation by building barricaded rooms, referred to by many defense attorneys as "bomb shelters." Still, with forethought, persistence, and a little luck, it is probable that enough evidence will be found to warrant an arrest and subsequent prosecution. An example of this would be a Delaware case which occurred a few

years ago, about the time we were encountering many reinforced rooms.

On June 23, 1966, at 1:30 p.m., investigating officers executed a search warrant, in northern Delaware. Once inside the house, the officers found the subject in a barricaded room in the basement. This was a concrete block room depicted in illustration No. 1. It was 7 by 8 feet in dimensions, with 2 by 4's supporting a seven-eighths-inch plywood wall on the outside of the room. There was a 3-inch steel door reinforced with a steel brace shown in illustration No. 2.

A considerable amount of time elapsed between the initial entry into the house and the final entry into the shelter. Even though the subject had ample time to destroy the evidence, the officers were successful in locating latent evidence which was subsequently identified, photographed, and submitted to the FBI Laboratory for further analysis.

In illustration No. 3, according to the result of the FBI examination, the printed form comprising the tablet is the type commonly used by bookmakers for the purpose of recording wagers on horseraces. The indented writing on the tablet consists of three columns of four digit numbers, each with three columns of figures to the right. Arrangements of this type are commonly used to record win, place, and show wagers. As an example, the indented figure "0211" on the tablet represents the number of the horse while the indented writing "5 x" to the right thereof represents a $5 wager on this horse to win.

Illustration No. 4.

Searching for Evidence

In reference to illustration No. 4, an examination of the charred paper disclosed two columns of four digit numbers. One of these also shows the recording columns of wagers on horseraces. As an example, the figures "3636" represents the number of the horse while the two figures "2" and "2" to the right thereof represent a $2 win wager and a $2 place wager.

Additional evidence, namely number bets, was found in the shelter, and the subject was arrested for receiving and recording horse bets and being concerned in lottery policy-writing. When confronted with all of the evidence in court, the subject pleaded guilty and was fined.

One of the most interesting and bizarre attempts by a bookmaker to avoid detection occurred a few years ago in northern Delaware. The suspect had constructed the first barricaded room encountered by the Delaware State Police. After obtaining a search warrant, officers located the room in a crawl space which had been dug out to a size of approximately 6 by 6 feet in dimensions under a bedroom in the

rear of a house. The room was furnished with a table, chair, radio, clock, and air-conditioner. Entrance to this dugout room was gained by a trapdoor found on the floor of the bedroom closet. This door was covered by a rug onto which shoes, bedroom slippers, et cetera, had been nailed. When occupied, entrance to the dugout room from above was prohibited by a metal bar which was used to secure the trapdoor.

Upon searching the house, investigating officers were unable to find the suspect. One of the raiding officers, however, detected the odor of smoke in the area of the bedroom closet. Further investigation revealed the trapdoor with a ladder leading down into the hidden room. (Fortunately for the officers, on the day of the raid the suspect failed to use the metal bar.) Several of them entered the room and again failed to find the suspect.

All of the paraphernalia used for receiving and recording horse bets, with the exception of a daily racing paper and a telephone, were present. There was also a strong odor of smoke in the room. After calling several times for the suspect to come forward, a police dog and handler were brought in. When the suspect realized that a dog was about to be used, he readily appeared from the farthermost corner of the crawl space under the house and adamantly denied any connection with bookmaking.

During a continuation of the search, the paneling of one wall of the room was removed behind which a telephone wrapped in a plastic bag was found. No horse bets could be found, but the suspect was arrested for tampering with a telephone, was found guilty, and fined.

In addition to receiving and recording horse and other sports bets and lottery policy-writing, there are many other forms of gambling. To mention a few: baseball pools, football pools, crapshooting, slot machines, and Bingo, which incidentally has been legalized in Delaware.

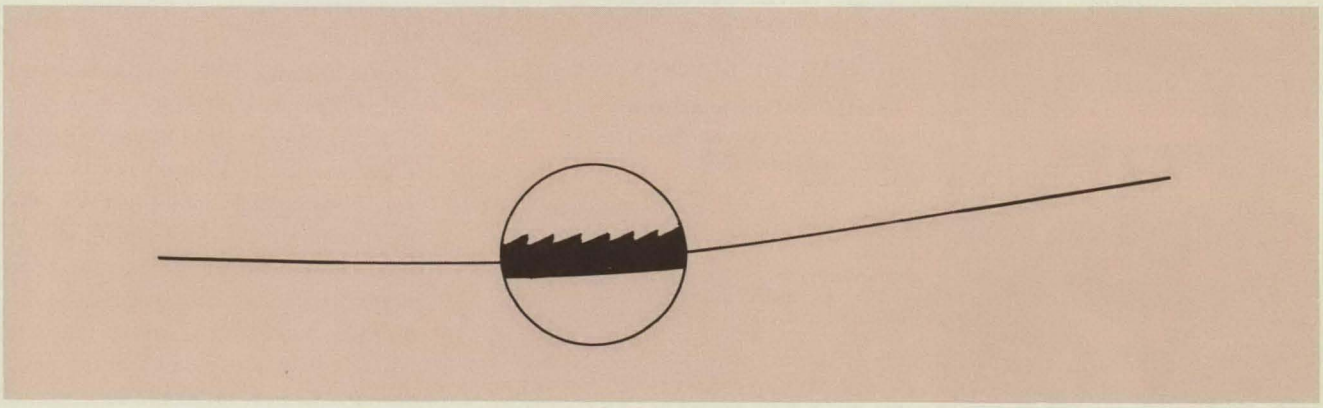
Gambling has been with us for centuries, and presumably there will always be people who are willing to lose their money through games of chance.

UNTRUSTY "TRUSTY"

Recently, a jailer in a western state became puzzled over the meticulous care which a trusty took in keeping his jail cell in order. Each day, the trusty would clean his cell, always emptying the dilapidated corrugated cardboard box which he kept in his cubicle for refuse collection.

Wanting to reward this inmate for his clean habits, the jailer replaced the worn refuse box with a new one. Becoming suspicious when the trusty made frantic pleas to have his old box returned, the jailer retrieved and thoroughly searched it. This revealed what appeared to be a black hair, about 5 inches long, which had been pushed into one of the corrugated ridges of the box, making it almost invisible. Upon closer inspection, the "hair" was found to be a professional jeweler's saw, a piece of high tensile-strength steel less than one-quarter the diameter of a pencil lead.

Subsequent inspection of the inmate's cell revealed that he had sawed two window bars completely through and was working on a third bar in preparation for an escape. Needless to say, the trusty was no longer trusty.

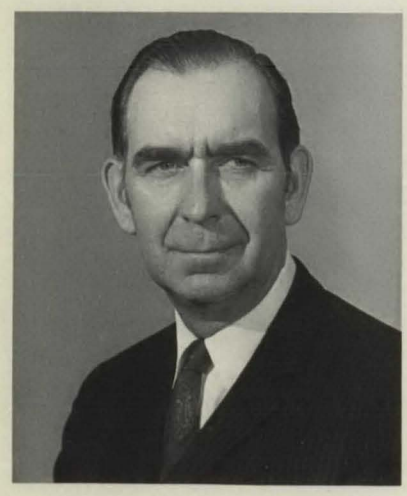


The jeweler's saw (actual size) has teeth so minute they are visible only upon close inspection.

SAC, Sacramento 12-28-70 R/S

President Nixon signs the Executive Order establishing the National Council on Organized Crime to formulate a national strategy to eliminate organiz
ceremony were Attorney General Mitchell, FBI Director Hoover, former Treasury Secretary Kennedy, former IRS Commissioner Th

How the IRS Enforces the Tax Laws



By
DONALD W. BACON*
Assistant Commissioner, Internal Revenue Service, Washington, D.C.

*Born in Cincinnati, Ohio, Mr. Bacon received his Bachelor's degree from Antioch College in Yellow Springs, Ohio. He began his career with the Service in 1954 and was appointed Assistant Commissioner (Compliance) in 1962. In that capacity he directs the work of the Audit; Appellate; Alcohol, Tobacco and Firearms; Collection; and Intelligence Divisions; and the Office of International Operations of the National Office.

The Internal Revenue Service (IRS) has carried out a great variety of tasks during its 108-year history of enforcing the Federal tax laws. It has investigated violations of the oleomargarine law, checked food and drug samples for ingredients unfit for human consumption, regulated the domestic manufacture and use of narcotics, administered laws which gave a bounty to U.S. sugar producers, and even issued residence certificates to Chinese laborers.

Some of the Council members present at the IRS Chief Counsel Worthy.

"IRS enforcement activities have as their mission the encouragement of taxpayers to honestly, accurately, and willingly comply with the law. Without this compliance, the tax system would not work."

Over the years, many of these jobs have been discontinued to be replaced by others more directly related to tax administration.

The most obvious function—the investigation of tax fraud, including failure to file tax returns and evasion of income, wagering, and other Federal taxes—is that of the Special Agents of the Intelligence Division.

As early as 1863, the Secretary of the Treasury was empowered to hire agents to help detect those who commit fraud; yet it was not until 1919, 6 years after the enactment of the 16th amendment and the first income tax law, that the Intelligence Unit was established.

The reasons for the new unit were obvious. Since 1913, total tax collections had increased tenfold and personnel from 4,000 to 14,000. An internal inspection unit was needed to insure public confidence in the self-assessment American tax system. An additional function of the new unit, which was originally composed of six former Post Office inspectors, was the investigation of attempts to defraud the Government.

In 1927, a Supreme Court ruling upholding the taxability of illegal income gave the Intelligence Unit a clear mandate to investigate some of the Nation's most notorious racketeers and corruptors. Al Capone, Johnny Torrio, Frank Nitti, "Boss" Pendergast, Micky Cohen, "Nucky" Johnson, Albert Anastasia, Frank Wortman, "Waxey" Gordon, and Frank Costello were involved in some of the more publicized cases handled by the unit.

Intelligence Division

Today, as income tax collections total $188 billion, the Intelligence Unit has become the Intelligence Division, with more than 1,800 special agents. Holding degrees in business, law, and accounting, the agents are trained at the Treasury and special agents law enforcement schools.

IRS Special Agents are experts at locating hidden assets or unreported sources of income and are skilled in methods of determining the true income of a tax evader. Unlike the usual criminal offense, tax fraud involves many illegal acts committed over a period of years. An investigation is further complicated by the vast number of past business transactions, the various methods of evasion, and the voluminous records which must be analyzed.

In one case, the president of a Midwest manufacturing firm tried to conceal corporate income through a series of financial transactions with three companies. The taxpayer's company purchased supplies from another firm, also controlled by the president, at prices 6 percent higher than normal. The second firm retained one-sixth of this excess charge and sent the remainder to a third company, which had no capital, no equipment, and no office. It consisted only of the president's son. Hundreds of thousands of dollars were concealed in this manner until IRS Special Agents exposed the scheme.

Tax fraud investigations often originate in taxpayer audits, referrals from other agencies and IRS divisions, and informants' letters and are sometimes generated by the same computers that process well over a hundred million tax returns a year.

One recent case involved a corporate vice president who had not filed a return since 1944. Computers matched data furnished by employers

and financial institutions with information on the IRS master file of taxpayer accounts to identify the taxpayer as a nonfiler. The end result was a visit from special agents and a guilty plea by the taxpayer to five counts of willful failure to file returns.

Another case originated in a bribery investigation successfully completed by State law enforcement officials. While hunting for unreported bribes on tax returns of some businesses and individuals, special agents discovered that campaign contributions, as well as bribes, were being deducted as regular business expenses.

Council on Organized Crime

Such multipronged assaults on crime are especially valuable in the battle against organized crime. Recently, President Nixon established the National Council on Organized Crime and gave it the job of formulating a national strategy to eliminate organized crime. The Council, composed of 18 officials of the Federal Government, including the Attorney General, the Director of the FBI, the Commissioner of Internal Revenue, the Director of the Secret Service, and others, will go far to make the Government more efficient in fighting the syndicate.

In addition to taking part in this cooperative effort to formulate strategy to combat organized crime, the IRS has been involved in many joint actions on the tactical level. One of these is the Federal strike force. Composed of State and local law enforcement agencies, representatives of the Department of Justice, the Internal Revenue Service, and other Federal agencies, strike force teams go into an area together, pooling and analyzing their information to root out organized criminal elements. In most areas IRS Special Agents, Revenue Agents, and Alcohol, Tobacco and Firearms Investigators provide the largest portion of the total manpower.

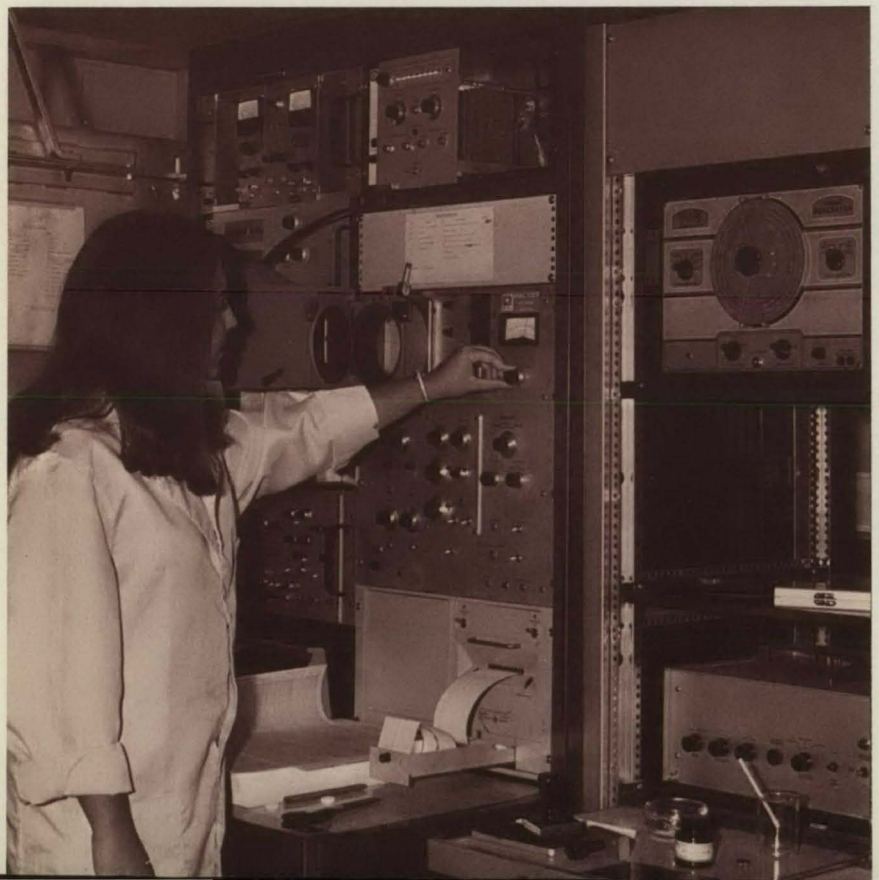
Strike forces are now operating in 17 cities: Baltimore, Boston, Brooklyn, Buffalo, Chicago, Cleveland, Detroit, Kansas City, Los Angeles, Miami, Newark, New Orleans, New York, Philadelphia, Pittsburgh, St. Louis, and San Francisco.

In addition to chasing tax evaders, the IRS is often closely identified with another enforcement function—administering Federal liquor laws. However, responsibility for the enforcement of the Federal liquor laws has not always resided with the IRS, and even the existence of these laws often has varied with the Government's need for revenue.

Congress passed the first revenue act in 1791, more than 70 years before the IRS was created. One of the items taxed was "spirits." Taxes on liquor were repealed in 1802, reinstated in 1813, repealed in 1817, and reinstated in 1862 to finance the Civil War and have remained to the present day.

The 18th amendment, prohibiting the manufacture, sale, or transportation of intoxicating liquors for beverage purposes, and the Volstead Act were responsible for the establishment of the IRS Prohibition Unit. In 1925 alone, the Prohibition Unit made 77,000 arrests and seized property valued at $11.2 million. In 1930, primary enforcement of the liquor laws was shifted to the Justice Department but was returned to Internal Revenue after Prohibition, along with regulatory and tax-collecting duties.

An ATF Laboratory technician operates a multichannel analyzer used in neutron-activation analysis, a sensitive method of comparing samples of physical evidence via radioactivity. The analyzer measures the gamma rays which the sample emits after exposure to neutron flux.



ATF Division in Action

Because State and Federal laws govern the manufacture, transportation, and sale of liquor and because of the difficulty in ferreting out "moonshiners," the attack on illicit liquor involves the closest coordination between Federal, State, and local law enforcement agencies.

Such cooperation has been especially evident in the "Operation

An important part of Operation Dry-Up—an intensive investigative program designed to eliminate large-scale illicit liquor operations—was an information campaign to inform the public of the dangers of "moonshine." In addition to radio, TV, and newspapers, such devices as posters, bumper stickers, booklets, fans, and even milk cartons were used to convey the message.

Dry-Up" program, which was launched in 1963 and designed to eventually eliminate large-scale illicit liquor operations in a seven-State area. Experienced investigators from the Alcohol, Tobacco and Firearms (ATF) Division were concentrated in the States where "moonshine" was a problem. There they joined forces with local law enforcement officers to make thousands of raids on illegal stills. At the same time, an intensive multimedia public education campaign was launched, enlisting the aid of medical associations, local officials, and television and movie stars. The drive was backed up by tests which showed that 90 percent of "moonshine" seized contained deadly lead salts.

Sometimes, the results of a raid proved more horrifying than a doctor's warning. After a week of surveillance, county sheriffs and ATF agents raided a still on an island off the coast of South Carolina and arrested two men. The officers discovered that the illegal whisky was being made with canned lye as an additive to the mash to speed the fermentation process.

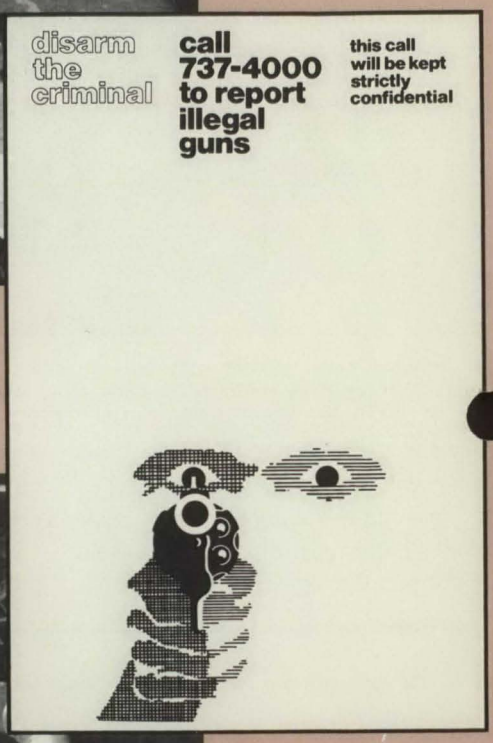
"The officers discovered that the illegal whisky was being made with canned lye as an additive to the mash to speed the fermentation process."

In the first 5 years of Operation Dry-Up, more than $27 million in additional revenue was collected, probably because of shifts in consumption of alcoholic beverages to legal markets. More importantly, as a result of this continuing program, many violators are leaving the "moonshine" business.

A valuable aid in the enforcement of the liquor, gun, and income tax laws is the ATF Laboratory in Washington, D.C., the second oldest Government laboratory. It was one of the pioneers in neutron activation analysis, an extremely effective method of physically matching two pieces of the same material—e.g., one that is found at a still site and the other in the possession of a suspect. Such match-ups provide convincing circumstantial evidence in court that the suspect was at the still site. The samples are placed in a nuclear reactor capable of bombarding them with a tremendous number of neutrons, thus making the samples radioactive. Radi-

ATF investigators display weapons seized for violations of the Gun Control Act in the evidence room of IRS National Office in Washington, D.C.

Agents of the Alcohol, Tobacco and Firearms Division prepare to destroy an illegal still.



This poster was used to achieve public cooperation in a program to combat illegal use of firearms in the District of Columbia. Citizens were urged to report illegal guns to ATF investigators.

ation emitted by the samples is then measured by an electronic radiation detection device. Finally, the information is converted to graphic form, from which IRS scientists can determine whether the samples match.

The IRS Laboratory cooperates with other Federal and State agencies and, at times, with industry. An example of this cooperation is the agreement with the FBI, Post Office Department, Food and Drug Administration, and Geological Survey to share the costs of using the Naval Research Reactor for detective work.

ATF also administers the Federal gun laws. The first Federal firearms legislation, the National Firearms Act, became law in 1934. Passed after Congress was alarmed by the attempted assassination of President Franklin D. Roosevelt and the proliferation of gangland murders by machineguns and sawed-off shotguns, the law imposed taxes on the transfer and making of gangster-type weapons and called for their registration. Four years later, the Federal Firearms Act established licensing requirements for firearms dealers and manufacturers and prohibited felons and fugitives from transporting firearms or handgun ammunition in interstate commerce.

Until 1968, these were the only gun laws ATF had to work with. Limited though they were, they helped produce some results. Between 1962 and 1967, firearms investigations resulted in the recommendation of 3,230 criminal cases for prosecution and the seizure of 14,060 firearms.

The IRS firearms function, however, did not become a major enforcement program until the enactment of the Gun Control Act of 1968. This law, among other things, channeled interstate and foreign commerce in firearms through federally licensed importers, manufacturers, and dealers; prohibited the sale of pistols to persons under 21 and the sale of rifles and shotguns to persons under 18; provided more emphasis on the record-keeping responsibilities of licensees; and called for the registration of destructive devices and gangster-type weapons.

Because the purpose of the Gun Control Act is to help Federal, State, and local law enforcement officers fight crime and violence, and because of the many State and municipal gun laws, ATF has cooperated with other authorities for effective enforcement. An example of such concerted action is "Operation Disarm the Criminal" in Washington, D.C.

In this pilot project, 50 ATF agents teamed up with the District of Columbia police to get guns out of the hands of criminals and to break the flow and use of illegal weapons. The Justice Department promised speedy prosecutive action against the offenders. In less than 6 months, 124 cases involving illegal possession of firearms were investigated, 92 within the city limits.

One of the first cases of the drive involved an off-duty District of Columbia patrolman who spotted the butt of a revolver in a man's pocket on a city bus. The policeman took the man off at the next stop, and his search of the suspect's shopping bag disclosed five Molotov cocktails made from light bulbs. The suspect was charged with violating the Gun Control Act.

In another case, agents found 180 illegal weapons and 13,000 rounds of ammunition in a house in a Maryland suburb after an undercover agent managed to buy a few guns for evidence from the occupant.

IRS enforcement activities have as their mission the encouragement of taxpayers to honestly, accurately, and willingly comply with the law. Without this compliance, the tax system would not work. Voluntary participation on such a massive scale is grounded in the assumption by each taxpayer, as he complies with his responsibilities as a citizen, that others are doing likewise, and that he can depend on the IRS to root out and prosecute those who would evade theirs.

IRS enforcement divisions are represented by the three badges.

The young first offender is difficult to sentence. A dismissal often encourages a life of crime; fines, jails, and probation may brand him a criminal. The alternative is a sentence that is as tough as steel, yet provides an opportunity for self-reformation.

Punishment for First Offenders

By
KEITH J. LEENHOUTS*
President,
Volunteers in Probation, Inc.,
Royal Oak, Mich.

His name was Joe Smith.[1] He was typical of many offenders who appear before the city courts on a misdemeanor charge. He was 18 years of age and had finished high school a few months before he was arrested for drinking and fighting. He had never been in trouble before, except for a referral to the juvenile court for truancy from school when he was 16 years of age. He was warned and released to his parents then; the case was closed.

When he appeared in court this time, all alone without parents or friends, he was ready to plead guilty. He had done wrong and was willing to take his punishment. (The penalty for a misdemeanor in most States is a maximum of 90 days in jail, a $500 fine, or 2 years' probation.) The judge, however, indicated on the court file that he "tendered a plea of guilty, which the court was taking under advisement."

[1] Fictitious.

*A native of Grand Rapids, Mich., Mr. Leenhouts received an A.B. degree from Albion College in 1949 and an LL.B. degree from Wayne State University Law School in 1952. He served as Municipal Judge and District Judge in Royal Oak from 1959 until he resigned in 1969 to accept his present position.

"Now, first of all, let's get one thing straight. This court is not interested in giving dismissals. This we will not do. However, we are interested in giving you the opportunity to earn a dismissal if you really want to."

The judge often kidded himself about this, telling friends and audiences, "When anyone else doesn't know what to do, he says, 'I don't know.' When a judge doesn't know what to do, he says, 'I will take the matter under advisement.' " Thus, the judge continued the case for 3 weeks to contemplate the matter. He referred it to the presentence department.

Joe met with the presentence investigator, a retired superintendent of schools. He had time to listen to Joe. After Joe told his story and they had "chatted," as the investigator would put it, for 2 or 3 hours, he told Joe that he wanted to talk to his parents. Joe did not like this idea, but the investigator told him the judge insisted upon it.

A few days later Joe came back with his parents. The four of them talked for several hours. (The investigator and the judge had already decided that no psychological testing or psychiatric evaluations were necessary.)

Then the investigator leaned back in his chair a little bit, took a couple of extra long puffs on his pipe, and said, "Joe, how would you like to earn a dismissal of this charge?" Joe and his parents were a little surprised. They had never heard of this before. However, they did indicate their interest, and the investigator continued, "Now, first of all, let's get one thing straight. This court is not interested in giving dismissals. This we will not do. However, we are interested in giving you the opportunity to earn a dismissal if you really want to.

"Before you say yes, consider a few things. First, it will be tougher on you. You are a first offender. You probably will receive a fine of about $50 to $100 and probation if you do not apply for an opportunity to earn a dismissal. Your parents will most likely pay your fine, or at least help you pay it. Probation will be strict, but not as strict as the supervision under the terms of the adjournment work plan.

"The work detail plan operates like this: You must petition for this program. The court will not, it cannot, order it. The court can only assess fines, jail terms, probation, and adjourn cases. Nothing more. I will recommend that the court adjourn this case if:

1. You will work a total of 8 days for the city of Royal Oak. You will work 8 hours a day on Saturdays. If this interferes with your regular job, other arrangements can be made. You will work hard, but with dignity.
2. You will pay the court $96 to cover the cost of insurance, supervision by city employees, and the administration of the program by a retiree.
3. You will report regularly each week to a volunteer who will act as your sponsor, friend, and counselor.
4. You will report once a month to either a retiree or to one of our part-time professional staff counselors. The volunteer will also report to him monthly.
5. You do not commit any other criminal offense. If you do, all the work you have done and any payments you have made will be forfeited. You will be sentenced for both offenses with a fine and/or jail term, probably with regular probation as part of the sentence. A jail term is likely under such circumstances.

"If, on the other hand, you perform all of these obligations successfully, the judge will dismiss the case after a year or so and you will have nothing on your record.

"The important thing for you to decide, and only you can decide it, Joe, is how important it is to you not to have a criminal record. A criminal record, even of a misdemeanor offense, can hinder you in the procurement of employment, in entering the armed forces, in your life's profession, in procuring a bond needed in your work, and in many other ways.

"What do you have in mind for yourself? If you have little concern for yourself and your future, if you do not care about employment and future accomplishment, do not apply for the work detail plan. It is harder and tougher. No dad has ever been out there raking leaves in the parks, helping remove diseased trees, working at snow removal, and so on. That will be you out there. But many dads pay fines. We both know that.

"So, Joe, consider it well. Talk it over with your parents, your friends, and, we hope, an attorney. But ultimately you must decide what you want for yourself. If you think you have a good future and good potential, if you are serious about your contribution to society, to the family you will have someday, and to God as you know Him, then you might want to earn a dismissal. If not, we can proceed in the usual manner.

"One other thing you should know. We do not offer this opportunity to everyone. We look for five things:

1. No prior criminal record or, if any at all, a minor record. You qualify here.
2. Parental concern. Your parents are here and we know they are concerned.
3. Payment of any damages to property or

for any injuries you have inflicted on others. There were no damages or injuries in this case.

4. A feeling on your part, Joe, that you are sorry for what you did, not just sorry that you got caught. We sense that here.
5. A record of some achievement. Your high school diploma attests to that.

"You meet these qualifications. Sometimes we offer this to youngsters who fit less than all five categories, but in your case there is no doubt that you deserve this opportunity if you want it.

"Joe, I will see you and your parents on your sentencing day. We hope you will make the right decision, whatever it is."

Sentencing Day

On sentencing day, Joe, his parents, an attorney whom Joe had consulted after the court urged him to do so, and the investigator all appeared before the court. In his hand, Joe had a petition which he and his parents had signed. It was a petition to earn a dismissal through the work detail program. The judge, much to his own discomfort and unhappiness, filled the role of the skeptical disciplinarian. However, he had long since resigned himself to the fact that the volunteers, the retirees, and the professional counselors would give the affection, concern, and friendship. He would give the discipline and be the authoritarian figure.

Carefully avoiding the use of the defendant's first name, the judge said, "Mr. Smith, I have been advised that you would like to earn a dismissal of these charges. I must ask you a few questions. Do you realize that this is the tough way for you to go? The alternative would be much easier. Do you know that if you succeed in everything that is required of you for 364 days and then commit a second offense, I will sentence you quite severely? You must not expect another chance to avoid a jail term and a fine with regular probation. Do you want this pressure? Do you want this responsibility?

"Do you realize that this decision requires intestinal fortitude—just plain 'guts'? This means that when a friend calls up and says, 'Let's go drinking,' you have to say, 'No.' He might laugh at you and call you a goody-goody. Do you have that kind of courage? Anyone can go out and drink and fight. That's easy. It takes a real man to accept the taunts and scornful laughs of his 'friends.' Do you have that kind of courage?

"Do you know that we will not give you a thing? You will earn it by hard work and diligence. If you want something for nothing, do not apply for this. It just will not work. Life is not that way. Are you sure you want to do this?"

Joe said that he did want to earn a dismissal and that he knew he could do it. His parents, his attorney, and the investigator agreed.

The judge softened his voice, but just a little bit, "All right, Mr. Smith, the adjournment is granted for 1 year. Let me add this. We think you can do the job, or we would not have granted this opportunity to you. We do not believe that your name, or the name of your family, should be on the court records at all. It never will be if you do the job we think you can do. Good luck! I will look forward to seeing you a year from now and then we will dismiss this case. No one will ever know you were before the court."

Joe left the courtroom with the investigator to meet with another retiree, who formerly worked 30 years for a leading automobile company and now administers the work detail program. After explaining the matter to Joe, the administrator assigned him to a work crew of five under the supervision of a city employee who is paid time and a half for his overtime work on Saturdays. His work began within 2 or 3 weeks.

This administrator is really the key person in the program. If a young offender misses a Saturday, he knows about it on Monday. On Thursday the youth is before the court. If he has no valid reason for missing, he is assigned additional workdays and costs. If he has a good reason, he is excused. Generally, for an excuse to be valid, it must be requested ahead of time, although there are exceptions. When the defendant cannot work on Saturdays, he is assigned to the hospital or the Salvation Army on other days. Women offenders also go to the hospital or the Salvation Army.

Punishment, in most cases, is a necessary part of the rehabilitative process. A defendant should know there is a right and there is a wrong. He should know that wrongdoing means punishment.

After receiving his work assignment, Joe goes to see his volunteer sponsor. The volunteer might be a mechanic, an insurance agent, a lawyer, or anyone else in the community who is warm, sensitive, concerned, understanding, and empathetic. They meet weekly and usually become lifelong friends within a few months. He also meets monthly with another retiree who administers the volunteer program.

Because Joe was charged with an

alcohol-related offense, he also attends the alcohol information school, taught by a recovered alcoholic and administered by another retiree.

Joe did well and performed all of his obligations and duties. He and his volunteer sponsor soon became good friends. His sponsor was a radio and TV repairman and Joe was interested in electronics. They repaired several TV sets together. Joe's interest grew and now, several years later, he is in electronics.

The real thrill of the program is at the end of the year. Joe came back in court for his dismissal date. The judge said, "Mr. Smith, did this court do anything for you?"

Joe started to say, "Yes, sir, it sure [illegible]"

The judge interrupted him, "Always remember, Mr. Smith, that this court did nothing for you. You did it for yourself. You set for yourself a goal and you accomplished that goal. You earned your dismissal. No one gave it to you. You earned the right to leave this courtroom with dignity, honor, pride, and self-respect. We are proud of you and you should be proud of yourself. This case is dismissed and the police department will be so advised. You have no criminal record. Congratulations and good luck!"

Joe then shook hands with his sponsor, his counselor, and the judge. He had worked hard for this day and he was glad it was all over. So were the judge, the sponsor, and the counselor.

The main idea of the program is simply this. You cannot give anyone self-respect, honor, dignity, and pride. All of us have to earn these ourselves. They cannot be given. They must be earned. The defendant earned self-respect and this was important. In fact, it is the great struggle we all have. When we acquire this, we have won a very important victory. "Love your neighbor, as yourself," the Bible says. We should love ourselves. Most offenders hate themselves.

"You cannot give anyone self-respect, honor, dignity, and pride. All of us have to earn these ourselves. They cannot be given. They must be earned."

The judge believes that punishment, in most cases, is a necessary part of the rehabilitative process. The defendant should know there is a right and there is a wrong. He should know that wrongdoing means punishment. If he does not learn this, there will probably be more wrongdoing, more criminal acts. However, punishment should end! For those who go to jail even for a day, pay a fine of even $1, or go on probation, it does not end. They have a permanent criminal record. This record can, and often does, cause them trouble for the rest of their lives. This is wrong and probably is even a greater injustice than the original criminal act. The work detail avoids this. The punishment is meaningful and sufficiently severe. But it has an end, and then it is no more. This is so important!

We believe that the work detail is effective since it combines the equivalent of jail (limitation of freedom on the workdays) with the equivalent of a fine (payment of the costs of the work detail program) and the equivalent of probation (unofficial, but very actual, supervision). Added to these is the hope of earning a dismissal.

In the 5 years that we have used this program, about 98 percent have completed it successfully. About 1,000 offenders have applied for the work detail and have performed under it. We feel that this is a good record. To be successful, the defendant must report as directed, pay his costs, do his work, and commit no more crimes within the period of adjournment, usually 1 year. Later repeat offenses, after the 1-year period, have been very rare.

One thing amazed us from the beginning, about 95 percent of the defendants who were told of this opportunity applied for it. We fully anticipated that only 10 to 15 percent would ask for this chance. We too had heard all the barbershop talk about how great it was to have a jail record. You do not hear these words in court, however. When over nine out of 10 young offenders, 17 to 23 years of age, who have committed the more serious misdemeanor violations of theft, disorderly conduct, fighting, drinking, and drunkenness took the hard way out to avoid a criminal record, we were very pleased. Much to our surprise, about half of the defendants under supervision were referred to the work detail program within 2 years after it began. The balance were assigned to regular probation.

Constructive Punishment

Another aspect of this program is that the punishment is constructive. Jail is a waste of time. Sitting in a cell helps no one. By doing needed work, the defendant feels useful and worthwhile. Also, is not society really saying, "We need your talents, your energy, and your time"? Jail terms do not say this.

We were very careful from the beginning to avoid work that was being performed by the city employees. We had no desire to eliminate jobs or create unemployment. In this we had the complete cooperation of

the city manager. Only work that had never been done, like raking leaves in the city parks, was assigned. One winter the work crews helped burn diseased Dutch Elm trees. They removed hundreds of trees that could never have been destroyed by the city workers alone. The city employees appreciated the opportunity to earn time and a half in wages on Saturday. Because so many wanted the job, they took turns.

Our city attorney opined that a special insurance policy should be procured. It was, but no claim has ever been made under it. If a defendant is injured due to his own negligence, he is covered by the special policy. Regular insurance coverage of the city provides the balance of the needed protection. The defendants are not considered to be employees but are furnishing services under contract. This avoids many problems.

A Lower Rate of Felonies

Another factor is very significant. Between 80 and 90 percent of the felonies in Royal Oak—serious crimes such as murder, rape, and armed robbery—are committed by persons who have previously been found guilty of a misdemeanor or a juvenile offense. If we can deal successfully with these young offenders, we may be able to prevent many felonies. At the very least, we know punishment blindly and quickly administered does not work. Should we not try something that can work?

Another city successfully utilizing this concept is Tulsa, Okla. Other courts have started using it more recently, but it is too early to tell the results at this time.

The reports of the work crew supervisors are, almost without exception, very good. Many times we receive a report which states, "This boy has an excellent attitude. He is a good worker. I do not know how he got in trouble. I recommend he be released early from the work obligation and his period of supervision." When a poor report is received, which is quite rare, the defendant is assigned additional days on the work crew if a warning is not effective.

"Individuals employed in many different fields also give freely of their time to sponsor the youths who choose to earn a dismissal of the charges against them."

In most cases, the entire cost assessed is prepaid, often out of the bond money. In cases of hardship, the defendant is given a period of months to pay the $48 or $96.

In rare cases, the defendant has been assigned 12 to 24 workdays. In a few unusual cases, felonies have been reduced to misdemeanors to allow the utilization of the work detail program. In each such case, it has been successful. These cases account for most of the assignments of 24 working days, with an assessment of costs in the amount of $288.

The judge on the bench when the program was initiated is now retired. He looks back at his days as judge with considerable satisfaction when he realizes that hundreds of youngsters do not have a criminal record because of the work detail program. They received meaningful and appropriate punishment which, along with rehabilitative techniques—usually one-to-one volunteer counseling—was effective. Perhaps best of all, the punishment is now over. It does not continue indefinitely.

Under this program psychologists, psychiatrists, and other professionals volunteer their services. Individuals employed in many different fields also give freely of their time to sponsor the youths who choose to earn a dismissal of the charges against them. The program is entirely administered by retired citizens of Royal Oak. Some work part time as volunteers while others work full time and receive minimal salaries paid by donations from businessmen in the community.

One of our volunteer psychiatrists actually began the work detail. He told the judge about a professor he had in medical school who said, "Gentlemen, you will never do any good. Nature will cure. God will heal. You will be great doctors if you just do no harm. If you can avoid doing harm, you will be doing the best you can. Just stay out of the way of nature and God."

Keep the Faith

The doctor later realized what the professor meant—do not panic. Do not run after every new miracle drug. Have faith in your patient, yourself, nature, and God. Do not do any harm. God and nature will do the good.

We tried to apply this to the court. Do not do any harm. Do not give the defendant a lifelong criminal record. Have faith in the defendant. Give him a chance to earn a dismissal. Give him a chance to earn dignity, pride, honor, and self-respect. Let him do the good. Given a chance, he will.

I know he will, for I was the judge. I know Joe Smith. I am proud to say he is a friend of mine.

If this makes sense to you, write us, Volunteers in Probation, Inc., at 200 Washington Square Plaza, Royal Oak, Mich. 48067. We will help you get started!

PARK PATROL

(Continued from page 6)

basic training, all personnel will be required to attend periodic 1- or 2-day refresher courses.

Because of the lack of written material on mounted police training, we found it necessary to start from the beginning and develop our own techniques and procedures. By consulting with and observing other mounted units, we learned from their experiences and gained knowledge from their successful handling of actual situations. This aspect of getting the program organized cannot be overemphasized since most of the information available in our immediate area was based on personal theory and/or personal conviction rather than on actual experience. It was believed dangerous to entrust this new training

A hostler cleans and grooms one of the horses of the Fairmount Park Mounted Unit.

Mounted officers patrol a crowd in Fairmount Park.

to hearsay "theories" and unproven "maxims." Such an approach could only bring discredit to the force and might possibly have resulted in needless personal injuries.

The special force will be mobilized during all appropriate emergency situations. During interim periods the men perform their normal patrol duties in the commands to which they are regularly assigned.

Upon request of the Philadelphia Police Department, this special force will be assigned to the officer in charge of the city's Riot Control Unit. The special force will then operate as a part of and subject to the orders of that unit until the need for their services has passed. This arrangement not only benefits the city by making available specially trained personnel, but likewise benefits the Fairmount Park Police by helping us keep up to date in perfecting our already proven techniques of crowd control and keeping abreast of new developments in this field.

It is believed that the cost of this special training will be negligible when compared to the benefits realized by preventing casualties and injuries to persons and limiting or reducing property damage. Experiences in Philadelphia, Washington, D.C., and New York, among others, furnished more testimony to this fact than anything that could be written here.

Conclusion

In conclusion, it is our firm belief that many of the complex problems facing modern-day law enforcement organizations may be solved, or at least minimized, by the effective use of well-trained mounted policemen. To this end, we will continue our mounted unit as an integral part of our department and will continually be alert for additional duties they can perform in their usual efficient manner.

HANDWRITING EVIDENCE CONVICTS THIEF

Thefts from interstate shipments had become an expensive problem for a large express company in the Midwest. The company's security department conducted an extensive investigation to find out how the merchandise was being stolen. Company officials discovered that the stolen shipments had been relabeled and delivered to receivers other than the intended consignees. Since this is a Federal violation, they called in the FBI. Agents conducting the investigation determined that one employee had been working the outbound trailers where the stolen shipments had been located.

This suspect was interviewed and requested to furnish specimens of his handwriting to FBI Agents. He was uncooperative, and the Agents had to obtain specimens through his employment application and other sources. These handwriting specimens were forwarded to the FBI Laboratory for comparison with labels obtained from merchandise which had obviously been relabeled but not yet delivered. After examination of this evidence, Laboratory experts positively identified the handwriting thereon as having been prepared by this suspect. Based on this information, he was arrested and charged with violation of the Theft From Interstate Shipment Statute.

An expert from the FBI Laboratory testified to his findings during the suspect's trial. The subject was found guilty and sentenced to 3 years in custody of the Attorney General.

The subject later appeared in court and advised that he did not wish to appeal his conviction. The judge reduced the sentence to 5 years' probation and made the requirement that the subject serve 30 days a year in jail for each of the 5 years' probati

I.I.L. #839

UNLAWFUL FLIGHT TO AVOID PROSECUTION, CONFINEMENT, OR GIVING TESTIMONY

The interstate flight of a person to avoid prosecution or custody or confinement after conviction for a felony or an offense punishable by death is a Federal offense within the investigative jurisdiction of the FBI. The Federal statute also covers interstate flight of persons to avoid giving testimony in any felony proceedings. As a matter of practice, fugitives apprehended are usually released to local authorities for extradition and prosecution or confinement.

Cooperation Booklet & Checked Agent's Handbook

CRIME MAY COST THE CRIMINAL

Under a recently enacted Pennsylvania law, the courts may compel any person who is convicted of a crime involving theft or damage to property or injury to person to be sentenced not only to imprisonment, but also to make restitution to the victim. It authorizes the sentencing judge to consider the financial condition of the offender, the extent of the injury, and to set appropriate arrangements for restitution.

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(*Continued from page 10*)

Court, by Mr. Justice White, put the decision squarely and solely on the *Carroll* doctrine. The search at the station, he said, was clearly too remote in time and place to be justified as incidental to the defendant's arrest. But the search of an automobile on probable cause is based on a theory "wholly different from that justifying the search incident to an arrest." Quoting from the *Carroll* decision, the Court said: "The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." [32] The Court found that the facts in this case supported both an arrest of the occupants of the station wagon and a search of the car when it was first stopped. Since the probable cause factor and the mobility of the car "still obtained at the stationhouse," the search there without a warrant was not unreasonable.

Don't Misunderstand

Despite the broad language of the opinion, it would be a mistake to conclude that the warrant requirement no longer applies to automobiles. The Court emphasized that a warrant may be necessary in some circumstances even though there is probable cause to search. It is only where the car is readily movable and "the opportunity to search is fleeting" that the officer can lawfully proceed without a warrant. As we have seen, this language was rather generously interpreted in *Chambers* to encompass a vehicle that had been taken into police custody. Removal of the car was justified, the Court said, because the arrest was made "in a dark parking lot in the middle of the night. A careful search at that point was impractical and perhaps not safe for the officers . . ." [33] Moreover, the Court concluded that "it would serve the owner's convenience and the safety of his car to have the vehicle and the keys together at the station house." [34]

"Removal of the car was justified, the Court said, because the arrest was made 'in a dark parking lot in the middle of the night. A careful search at that point was impractical and perhaps not safe for the officers. . . .'"

There remained, then, only the question of mobility. Justice White failed to explain why mobility still obtained at the police station, except to say that there was no statutory authority to hold the vehicle "as evidence or as an instrumentality of crime; nor was the station wagon an abandoned or stolen vehicle." [35] For this reason, police control over the car was very limited. As the Court noted, the car was in custody, at least in part, for the owner's convenience. Thus the implication is that the officers had no authority to keep the vehicle from him or from any person he might send for it.[36] There was the possibility, therefore, that further delay in the search might result in the loss of evidence.[37]

It had been argued that, because of the preference for judicial determination, the station wagon should have been held by the police while a warrant was obtained. But the Court could see no constitutional difference, "between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." [38]

[32] 399 U.S. at 49.

[33] 399 U.S. at 52, n. 10.

[34] *Ibid.*

[35] Paradoxically, this argument seems to cut both ways with the Court. Justice White is suggesting here that the vehicle could be searched without a warrant because the police lacked statutory authority to retain possession of the car. Thus, unless an immediate search was conducted, important evidence might be lost or destroyed. And yet, in the earlier *Cooper* case, the Court sustained a warrantless search of a car for the very reason that the police had statutory authority to seize and retain possession of it. The police there were required by State law to seize a vehicle which had been used in the transportation of narcotics and hold it for a later forfeiture proceeding. In those circumstances, the Court said, "It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it." *Cooper* v. *California*, 386 U.S. 58, 61–62 (1967).

This leaves only the situation where the search is based solely on the fact of arrest. That is to say, there is neither an independent showing of probable cause to search, nor any statutory authority directing police to seize and hold the vehicle until a forfeiture proceeding is completed. In such a case, a search of the car can be justified only as incidental to arrest, and the time and scope limitations imposed by *Preston* and *Chimel* must be followed.

[36] This was one of the factors in *Preston* that led the Court to declare the incidental search invalid. See, *Cooper* v. *California*, 386 U.S. 58 (1967). There was a suggestion in *Cooper* that what was really, or perhaps additionally, wrong in *Preston* was that the search was unrelated to the reason for arrest. Although there was cause to believe that the car was stolen, Preston was arrested for vagrancy, not for auto theft. It is quite plain that there is no physical evidence of the crime of vagrancy. By contrast, the search in *Cooper*, involving a vehicle seized for forfeiture proceeding, "was closely related to the reason petitioner was arrested, the reason his car had been impounded, and the reason it was being retained."

[37] It is difficult to reconcile this position with the view expressed in *Preston*, *supra* footnote 30. In that case, the Court assumed that the officers had sufficient cause to believe the car was stolen and thus could have searched the vehicle when they first came on the scene. But the Court ruled, citing *Carroll* as authority, that "once the men were under arrest at the police station and the car was in police custody at a garage," there was no longer "any danger that the car would be moved out of the locality or jurisdiction." For this reason, the later search at the station was ruled invalid. It is thus quite evident that the *Chambers* decision has sharply relaxed the definition of mobility.

[38] 399 U.S. at 52.

It is too early to say with any assurance what circumstances—other than personal safety or the owner's convenience—will support a delay and removal of the vehicle to the police station. One thing seems fairly clear: the officer cannot routinely postpone the search and take the car to the station for a later examination. A delay is permitted only where it is impractical to search the vehicle at the scene. This is particularly true where the search is neither accompanied, nor followed, by an arrest. What is not so clear is the question of what constitutes a reasonable period of delay.[39] In *Chambers*, the search leading to discovery of evidence was made shortly after the defendant's arrest. Would the result have been different if the search had been conducted the following day? Or 2 days later? We can safely assume that at some point the courts will insist that a warrant be secured.

Search Right Away

Until further decisions outline the limits of this doctrine, the officer is well advised to conduct his search as soon as circumstances permit. If the search cannot be accomplished safely and effectively at the first place of detention, the vehicle should be moved to a more appropriate location. Should the circumstances support both a search of the automobile and an arrest of its occupants, the vehicle can be taken to the station house, where an immediate search should be conducted. The longer the delay, the more likely it is that a reviewing court will find there was ample opportunity to secure a warrant.

It should be apparent from all this that important differences exist between searches made incident to arrest and those conducted under the *Carroll* rule. These differences may affect not only the initiation of the search, but the scope and intensity with which it may be conducted. The rules governing each of these procedures may be summarized as follows:

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

Search incident to arrest

1. *Justification.*—Probable cause to believe that a particular person has committed a criminal offense.
2. *Object of the search.*—Weapons and any fruits, instrumentalities, contraband, or evidence of the crime for which the arrest is made. Given the possible existence of such items, no further justification for the search is necessary.
3. *Scope of the search.*—If the courts in your jurisdiction hold that the *Chimel* limitation applies to cars, the search can encompass only that area of the vehicle which is within the immediate reach of the person arrested. Should the courts hold to the contrary, you can search any place in the car where the items sought might be located.
4. *Place of the search.*—The search should be conducted at the same time and place of the arrest. Removal of the car to the police station will normally terminate the authority to search incident to arrest.

Search on probable cause

1. *Justification.*—Probable cause to believe that evidence of crime can be found in a particular vehicle.
2. *Object of the search.*—Any fruits, instrumentalities, contraband, or evidence of the crime under investigation.
3. *Scope of the search.*—The officer can search any place in the vehicle where items related to the offense under investigation might reasonably be found. The authority to search does "not" extend to occupants of the vehicle. However, should the search disclose grounds for arrest, the occupants may now be searched incident to arrest.
4. *Place of the search.*—If circumstances permit, the search should be made at the place where vehicle is first stopped. However, the courts will allow delay and removal of the car to a more appropriate location, if it is impractical to search at the scene.

[39] *Smith* v. *U.S.*, 431 F. 2d 1 (8th Cir. 1970) (sustaining search at scene of wreck and subsequent search at garage later that morning, as consistent with *Chambers*); *U.S.* v. *Brown*, 432 F. 2d 552 (5th Cir. 1970) (citing *Chambers* in support of a search conducted after defendants arrested and placed in custody in nearby police vehicle); *U.S.* v. *Croft*, 429 F. 2d 884 (10th Cir. 1970) (upholding search after defendant was arrested and placed handcuffed in patrol car).

On June 29, 1970, the Supreme Court vacated judgments in three cases, wherein the Federal appellate courts had invalidated car searches conducted at police station and remanded them for further consideration in light of *Chambers*: *Colosimo* v. *Perini*, 415 F. 2d 394 (6th Cir. 1969), *rev'd and remanded, sub nom.*, *Perini* v. *Colosimo*, — U.S. —, 26 L. Ed. 777 (1970); *Heffley* v. *Hocker*, 420 F. 2d 881 (9th Cir. 1970), rev'd and remanded, sub nom., *Hocker* v. *Heffley*, — U.S. —, 26 L.Ed. 780 (1970). On rehearing, the Court of Appeals for the Ninth Circuit sustained the search as valid under the Fourth Amendment. *Heffley* v. *Hocker*, 429 F. 2d 1321 (9th Cir. 1970).

QUOTABLE QUOTE

"The miracle, or the power, that elevates the few is to be found in their industry, application, and perseverance under the promptings of a brave, determined spirit."

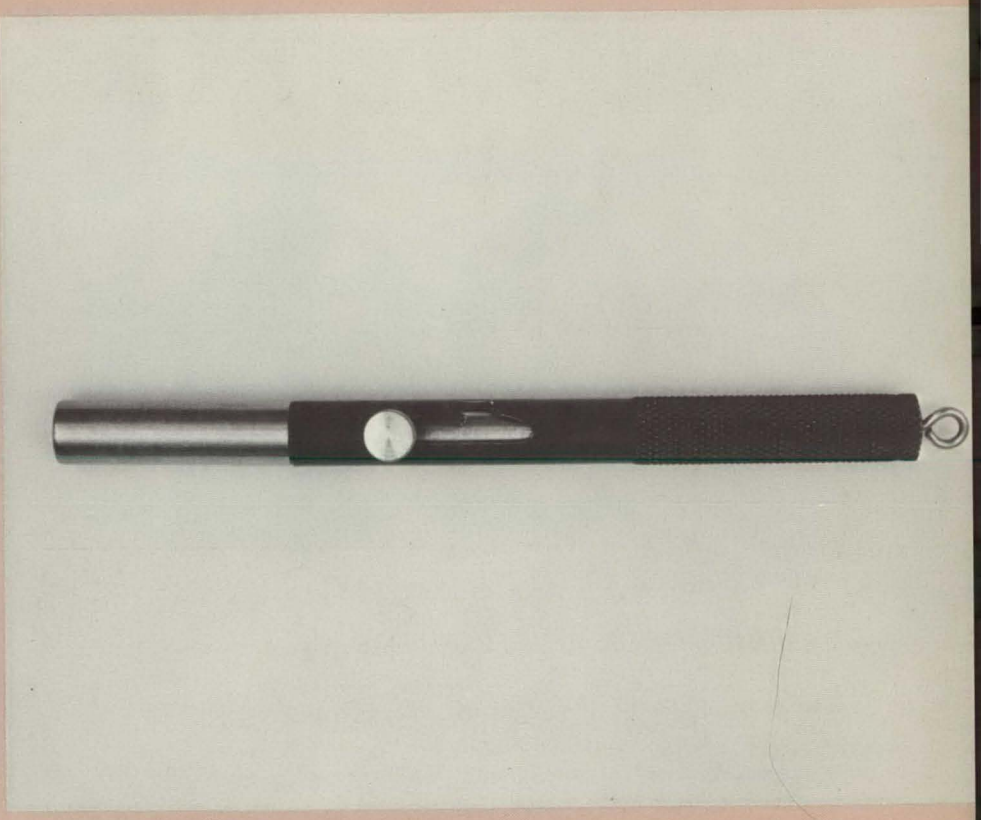
—Mark Twain

The New Dictionary of Thoughts by Edwards, p. 79

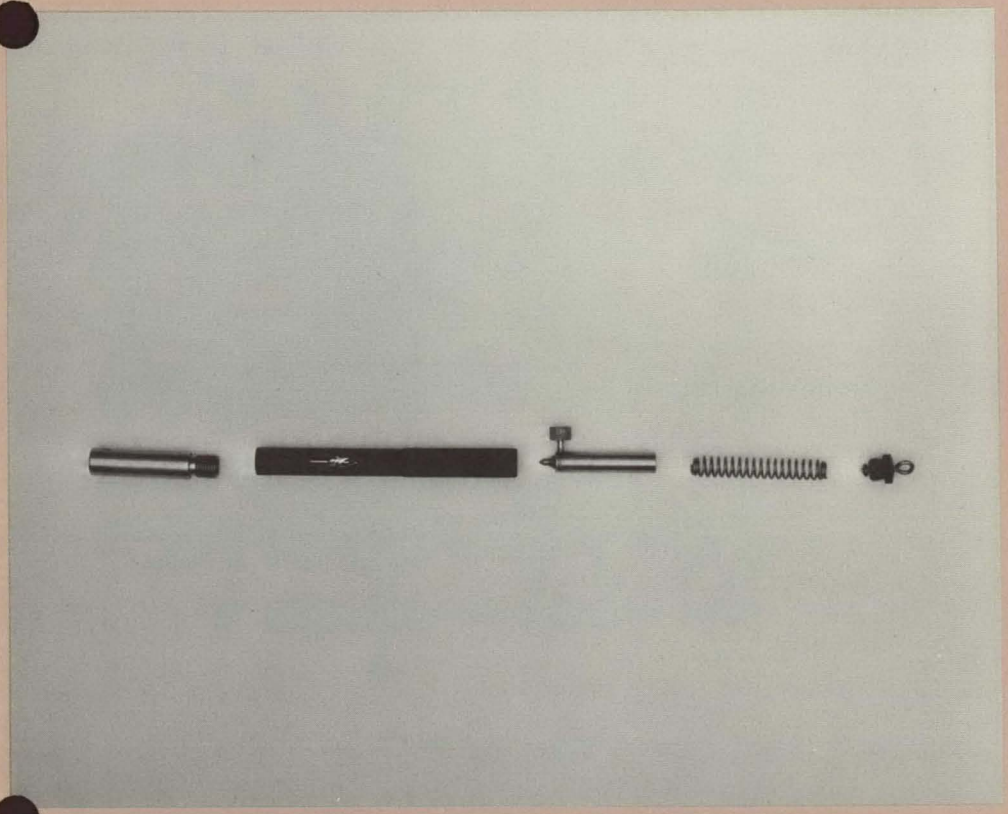
SAC, Springfield R/S dated 12-16-70

Not Farm Machinery

A sheriff in a midwestern county recently recovered a .25 caliber single-shot machined zip gun (shown in photographs) made from tractor parts. The weapon measures 6⅝ inches in length. The cartridge is placed into the unscrewed polished metal part on the front of the gun. It is fired by pulling back the bolt (spring type) and letting go. According to the official who made the photographs available, the weapon fired a shot when tested.



Assembled zip gun is ready for firing.



Components of zip gun made from tractor parts.

WANTED BY THE FBI

KATHIE BOUDIN, also known as: Kathy Boudin.

***Interstate Flight*—Mob Action; Riot; Conspiracy**

Kathie Boudin is being sought by the FBI for unlawful interstate flight to avoid prosecution for mob action, violation of Federal antiriot laws, and conspiracy.

On October 9, 1969, Boudin was arrested by the Chicago, Ill., Police Department in connection with a series of violent demonstrations held there and sponsored by the militant Weatherman group, a former faction of the Students for a Democratic Society (SDS). She was subsequently indicted for mob action. A Federal warrant was issued for her arrest on March 17, 1970, in Chicago, when she failed to appear for trial. Another Federal warrant was also issued at Chicago on April 2, 1970, charging Boudin with violation of the Federal antiriot laws and conspiracy. She has been convicted of criminal damage to property and contempt of court.

Caution

Boudin reportedly has been associated with persons who advocate the use of explosives and may have acquired firearms; she should be considered dangerous.

Description

Age	27, born May 19, 1943, New York, N.Y.
Height	5 feet 4 inches.
Weight	128 pounds.
Build	Medium.
Hair	Brown.
Eyes	Blue.
Complexion	Fair.
Race	White.
Nationality	American.
Occupations	Camp counselor and swimming instructor.
FBI No.	601, 252 G.
Fingerprint classification	14 O 17 W MOI 10 M 19 W MOI

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.

FINGERPRINT BOOKLET

The history, services, and operations of the FBI Identification Division are contained in the booklet, "Fingerprint Identification," which can be obtained free of charge in limited quantities by interested individuals and organizations.

Requests for copies of this item should be submitted to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

Cooperation Booklet

WOOD EXAMINATIONS

Examination and comparison of wood specimens are handled in the FBI Laboratory. A reference file of standard North American woods is maintained.

MEDICAL EXAMINER'S MASK

The overwhelming odor from a body undergoing putrefaction is a problem sometimes encountered by law enforcement officers during the fingerprinting, photographing, and post mortem examining of a corpse. Dr. Frederick T. Zugibe, Chief Medical Examiner of Rockland County, Pomona, N.Y., reports that he has devised a small, light-weight, nose-mouth mask which protects against undesirable odors, allows for easy breathing, and is easily washed and sterilized. The mask contains a small filter cartridge which gives approximately 10 hours of use and is easy to replace.[1]

Let. dated 12-18-70 from Dr. Zugibe.

[1] Editor's Note: Items of this nature are printed in the Bulletin as an informative service for our readers and do not constitute an endorsement or approval by the FBI.

U. S. GOVERNMENT PRINTING OFFICE : 1971 O - 414-427

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INNOCENT CLEARED—GUILTY IDENTIFIED I.I.L. # 804

Although a service station attendant in a southern State positively identified a suspect as the person who previously cashed a fraudulent check at his station, the suspect maintained his innocence and volunteered handwriting specimens when arrested.

The arresting police department submitted the fraudulent check and handwriting samples to the Document Section of the FBI Laboratory, where handwriting experts determined the check had not been prepared by the man. Through a search of the National Fraudulent Check File, the experts further determined that the check was actually prepared by an individual who had previously been arrested in the State for negotiating similar checks.

This case serves as an excellent illustration of the dual functions of the FBI Laboratory—protecting the innocent and identifying the guilty.

QUOTABLE QUOTE

"America has proved that it is practicable to elevate the mass of mankind—the laboring or lower class—to raise them to self-respect, to make them competent to act a part in the great right and the great duty of self-government; and she has proved that this may be done by education and the diffusion of knowledge. She holds out an example a thousand times more encouraging than ever was presented before to those nine-tenths of the human race who are born without hereditary fortune or hereditary rank."

—Daniel Webster

New Dictionary of Thoughts by Edwards, p. 20

QUOTABLE QUOTE

"We want the spirit of America to be efficient; we want American character to be efficient; we want American character to display itself in what I may, perhaps, be allowed to call spiritual efficiency—clear disinterested thinking and fearless action along the right lines of thought."

—Woodrow Wilson

New Dictionary of Thoughts by Edwards, p. 79

PAWNED INTO CUSTODY

During the 1969 hunting season the Sheriff's Office at Flagstaff, Ariz., took theft reports from several hunters who had rifles stolen from their vehicles and entered this data in the NCIC stolen property file. Recently Tucson Police, when running NCIC checks on a list of items pawned in that city, made hits on two of the weapons. Tucson Police immediately notified the Sheriff's Office at Flagstaff and determined that the thief, after holding the weapons almost a year, had sold them to the pawn shop using his true name and driver's license for identification. Warrants were issued, and the suspect was arrested and charged with grand theft.

Saunt to Bishop Memo, 1-6-71, NCIC Weekly Status

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

OFFICIAL BUSINESS

RETURN AFTER 5 DAYS

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FEDERAL BUREAU OF INVESTIGATION

INTERESTING PATTERN

The interesting pattern presented here is classified as a loop with 21 ridge counts. Although the formation above the inner looping ridges is unusual, it does nothing to affect the classification of this pattern.