

MARCH 1973



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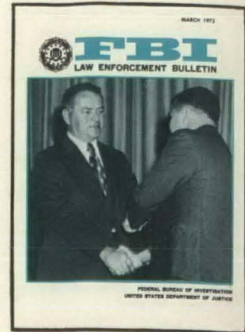
LAW ENFORCEMENT BULLETIN



FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

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VOL. 42 NO. 3



THE COVER—Mr. Don R. Dering, Chief of Police, Winnetka, Illinois, who is also President of the International Association of Chiefs of Police, is shown awarding a diploma to Major Adolfo P. Sgambelluri, U.S. Marine Corps, Washington, D.C., a graduate of the 91st Session of the FBI National Academy at Quantico, Virginia, on December 15, 1972. See article beginning on page 3.

FBI

LAW ENFORCEMENT BULLETIN

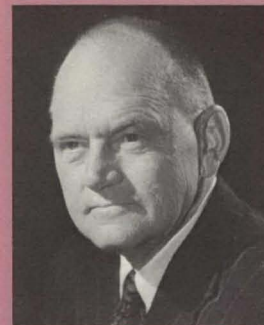
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MESSAGE FROM THE ACTING DIRECTOR . . .

. . . To All Law Enforcement Officials



LAW ENFORCEMENT AGENCIES in the United States form a far-flung network to combat crime. This network consists of some 15,000 agencies at all levels—municipal, county, State, and Federal—with more than 400,000 officers. As the Nation spread westward from the founding colonies this pattern of law enforcement agencies developed piecemeal, encouraged by an American tradition of well-founded suspicion of a centralized national police power.

This collage of law enforcement agencies has many attributes which accord with our concepts of federalism and representative government. Central among these has been that law enforcement has been directed by locally elected officials and has been responsive to local conditions. However, some responsible authorities have questioned the ability of the law enforcement profession to look beyond its local jurisdictional responsibilities and form a unified front to combat crime on a national scale. There has never been any doubt in my mind that the profession has demonstrated this ability and will continue to do so. Recent crime statistics, showing for the first time in many years a significant slowing of the nationwide growth of crime, are evidence of this ability. The substantial decrease of some

serious crimes in major urban centers is also very encouraging. These give us important footholds in a long-range assault on crime.

The greatest single asset in any joint effort is a willingness to work together. There is no substitute for that spirit of cooperation. No law enforcement agency is so big that it does not at some time need the assistance of another. Nor is any law enforcement responsibility too small for another department to aid in meeting it.

Unselfish cooperation among law enforcement agencies is an important factor in the effort to control crime. It is also a healthy indication of our profession's maturity.

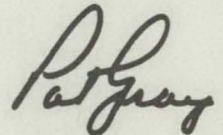
Cooperation among law enforcement agencies is a two-way street. It must be given as freely as it is received. The FBI experience over many years proves this. Every day we receive invaluable assistance from other law enforcement agencies throughout the country. Many of our successful investigations begin and end with information supplied by local, State, and other Federal officers. When needed, officers from other departments willingly accompany FBI Agents in dangerous raids and arrests. Without this assistance, the work of the FBI would be much more difficult.

MESSAGE

Under the inspired guidance of its late Director, J. Edgar Hoover, the FBI emphasized the importance of cooperation with other law enforcement agencies. Specific programs were developed which provide specialized services and information to other agencies. Over the years we have been privileged to assist thousands of law enforcement agencies in identification, laboratory, training, fugitive, organized crime, and criminal-data exchange matters, to name but a few. I am

pleased to report that in the past year FBI assistance to other law enforcement agencies set new records in many of these categories. You may be certain that we intend to continue to improve this record.

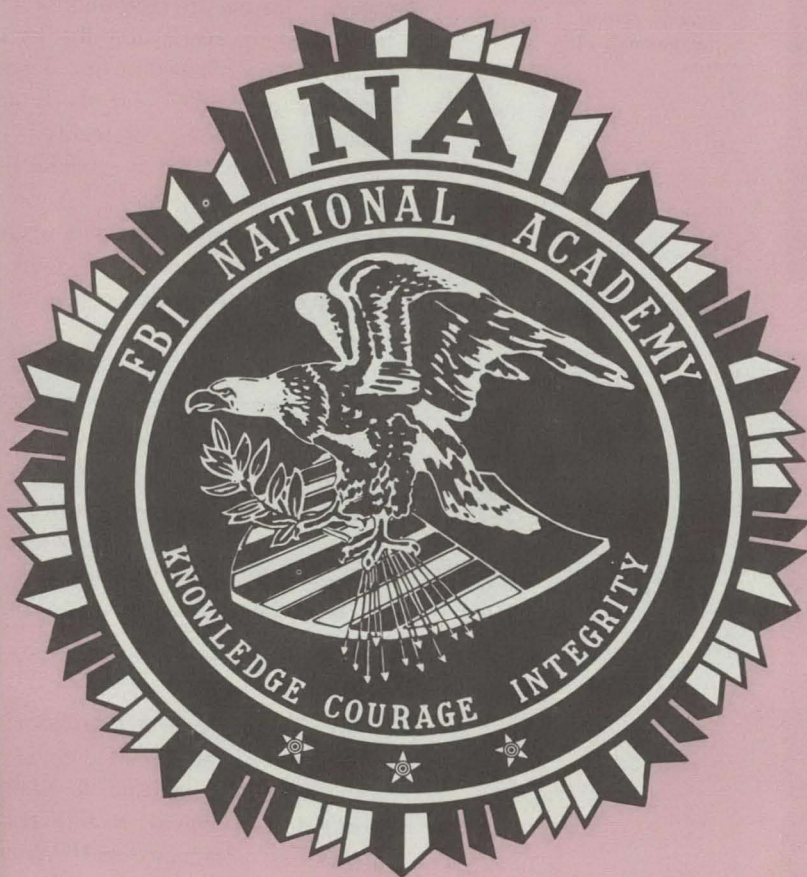
Our goal in law enforcement is to rid our society of the threat of crime. There is no better way to achieve this goal than by further strengthening our lines of cooperation.

A handwritten signature in dark ink, reading "Pat Gray", written in a cursive style.

L. PATRICK GRAY, III
Acting Director

MARCH 1, 1973

FBI National Academy Graduation



“The chief law enforcement officer in the United States took note of the increased size of the graduating class of the FBI National Academy and considered it symbolic of ‘that growing partnership’ between Federal, State, and local agencies in our present success against crime.”

Challenging Crime—

The FBI National Academy graduated 296 officers during the ceremonies held at the new FBI Academy in Quantico, Va., on December 15, 1972. With the graduation of this 91st Session, which included two women law enforcement officers, a total of 6,630 officers have now received diplomas from this institution since its beginning in 1935.

The ceremonies were called to order by Assistant Director Thomas J. Jenkins, head of the FBI's Training Division, following which the invocation was given by Comdr. John J. Glynn, U.S. Navy, Catholic Chaplain, U.S. Marine Corps Base, Quantico, Va.



Comdr. John J. Glynn, U.S. Navy, Catholic Chaplain, delivers the invocation during the graduation exercises.

"We [the graduating class] accept readily our challenge. Bring it on!"



President of the class Det. Lt. Francis G. Reynolds, Police Department, West Hartford, Conn., is shown delivering his address to the graduates.

Speaking on behalf of the members of the 91st Session, the class president, Det. Lt. Francis G. Reynolds, Police Department, West Hartford, Conn., expressed thanks and appreciation to the Academy instructors for "motivating each of us to a deeper and richer understanding of the intricacies of modern law enforcement which will be of immeasurable value when we return to our own agencies." Lt. Reynolds highly commended "... the foresight of our superiors in making it possible for us to receive this fine training. Our everlasting thanks go to the fellow officers in our departments who handled our work and made these 12 weeks a reality." He concluded with "We, the members of the 91st Session of the FBI National Academy, dedicate ourselves to preserving those values we all hold so dear. We accept readily our challenge. Bring it on!"

"... peace officers are the most visible symbol of law and government authority ... the officer stands squarely and constantly in the arena of action. ..."

Mr. W. Mark Felt, Acting Associate Director, FBI, addressed the class which time he noted that the graduation date was "the 181st anniversary of the first acceptance of the Bill of Rights to the Constitution and no one has any greater sensitivity to the rights, immunities and protections guaranteed to all citizens by the Constitution and the laws of the United States than those of us in the law enforcement profession." Mr. Felt pledged the FBI's continued cooperation to the graduates as they carry out their responsibilities to the citizen and their communities, and reminding the graduating class that peace officers



Acting Associate FBI Director W. Mark Felt addresses the graduates.

“... a law enforcement career presents such unique opportunities to set up a constructive example and to exert a wholesome influence on both the young and old.”

re the most visible symbol of law and government authority. He pointed out that the officer stands squarely and constantly in the arena of action where the impressionable eyes of the young people and the sensitive eyes of adults observe every move that he makes. Mr. Felt said that this is also why a law enforcement career presents such unique opportunities to set up a constructive example and to exert a wholesome influence on both the young and old.

Following his remarks, Mr. Felt introduced the Honorable Richard Gordon Kleindienst, Attorney General of the United States.

Attorney General Kleindienst extended congratulations to the class, and noted that this was the second

occasion that he has had the opportunity to address the graduating class of the FBI National Academy. He went on to comment concerning the slowed nationwide increase in crime and remarked that it is now comparable with the 1 percent growth in the country's population.

Mr. Kleindienst said that in reviewing rates of individual crimes, robbery is down by 4 percent. He recalled that nearly half the cities with more than 100,000 population show an actual decrease in crime rate. The total crime rate for the six cities of over one million population was down 7 percent in the first half of 1972, according to the Attorney General.

In praising the graduating class as representing “. . . many of those who

caused . . . this good news,” Mr. Kleindienst credited them and “thousands of other peace officers across this country” with helping to win the war against crime and lawlessness in the United States. He commented, “The frontline effort has been yours, and I offer you my congratulations and deep and most profound appreciation.”

With reference to the progress against organized crime and the drug traffic, the Attorney General cited fiscal year 1972 statistics reflecting indictments secured by the U.S. Justice Department's Organized Crime and Racketeering Section against more than 3,000 defendants, nearly triple the figure for fiscal year 1968, and almost 1,000 convictions, nearly double the 1968 figure.

Regarding drug traffic, he noted that the Federal Bureau of Narcotics and Dangerous Drugs alone seized six times more heroin in fiscal year 1972 than they did in fiscal year 1969. He added that in their combined effort, Federal agents made more than 16,000 narcotics arrests in fiscal year 1972, almost double the number made in fiscal year 1969.

Mr. Kleindienst stated that recently President Richard M. Nixon called attention to the lenient sentences given to some drug peddlers, and he asked the Department of Justice to survey this situation, looking toward possible legislation. The Attorney General added that “as a result, we've drawn up proposed Federal legislation that will modify the use of bail for alleged hard-drug traffickers, will prohibit probation for convicted traffickers, and will require minimum mandatory sentences for such traffickers.”

The chief law enforcement officer in the United States took note of the increased size of the graduating class of the FBI National Academy and considered it symbolic of “that growing partnership” between Federal, State, and local agencies in our present success against crime. He added, “. . . I



U.S. Attorney General Richard Gordon Kleindienst is shown addressing the graduates of the 91st Session of the FBI National Academy.

"Mr. Kleindienst credited . . . [the graduating class] . . . with helping to win the war against crime and lawlessness in the United States."

hope that you will carry back with you to your respective agencies a sense of combined purpose in strengthening the rule of law in America." He reminded the graduates ". . . if we are truly a nation of law and not of men, it's you and I that have to make it so. And if we do make it so, you and I, I think, will have the opportunity to pass on these great institutions of freedom of ours to succeeding generations so they too will know what you and I

have known, and that is what it is to be an American citizen in our beloved country."

Following Mr. Kleindienst's remarks, Mr. Felt introduced Mr. Don R. Darning, Chief of Police, Winnetka, Ill. Mr. Felt called upon Chief Darning, who is also president of the International Association of Chiefs of Police and instructor and lecturer at the University of Illinois, Northwestern University Traffic Institute, and

the FBI National Academy, to present the symbolic diplomas to the six sections of the graduating class.

During the program, Mr. Felt also introduced Maj. Clarence H. Hoffman, Police Department, Kansas City, Mo., who is president of the FBI National Academy Associates.

Mr. Jenkins introduced the following 17 members of the graduating class who were awarded the John Edgar Hoover Certificate of Scholastic Excellence for their outstanding academic achievement:

Lt. John R. Balmat, Bratenahl, Ohio, Police Department;

Capt. Fritz O. Behr, New York City, N.Y., Police Department;

Capt. Stanley W. Carey, Santa Clara, Calif., Police Department;

Mr. Bennie W. Cooper, chief of police, Seaside, Calif., Police Department;

Lt. Jess F. Hale, Little Rock, Ark., Police Department;

Maj. Corry Mordeaux, U.S. Army Intelligence Command, Fort Holabird, Md.;

Capt. Donald Raymond Randall, Metropolitan Police Department, Washington, D.C.;

Capt. Vittoria Renzullo, New York, N.Y., Police Department;

Deputy Chief Inspector Edward Leonard Rising, New York City Transit Police Department, New York, N.Y.;

Lt. Jack M. Sands, U.S. Park Police, Washington, D.C.;

Chief Deputy Robert Dean Schmidt, U.S. Marshals Service, Washington, D.C.;

Inspector Michael A. Sgobba, San Diego, Calif., Police Department;

Capt. Gerald J. Shaughnessy, San Francisco, Calif., Police Department;

Capt. Daniel F. Sullivan, New York, N.Y., Police Department;

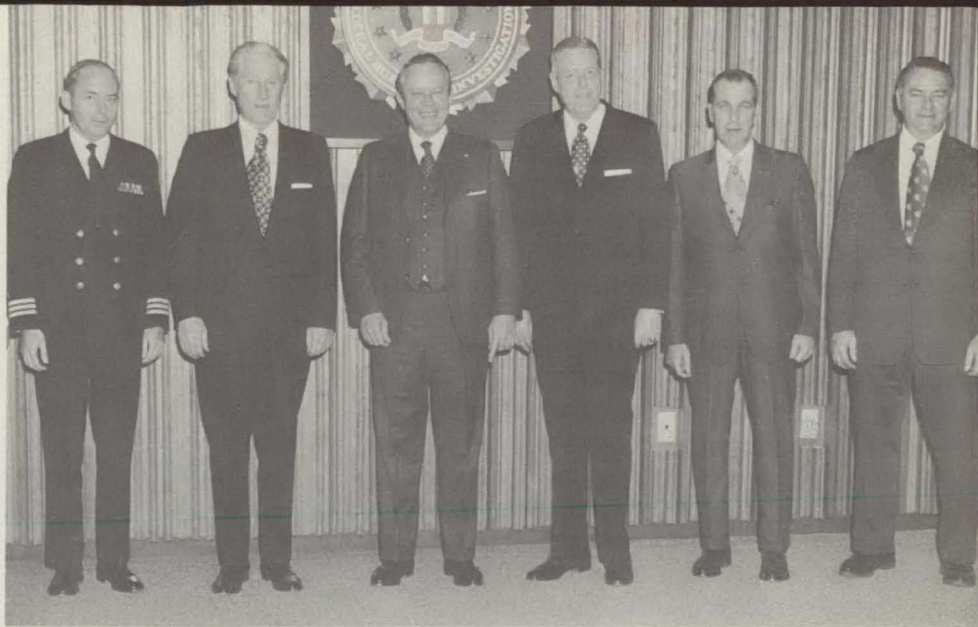
Mr. Alfred William Trembly, chief of police, Santa Barbara, Calif., Police Department;

Acting Capt. Edward J. Werder, Broward County Sheriff's Department, Fort Lauderdale, Fla.;

Maj. Harold Leslie Womack, U.S. Air Force, Washington, D.C.

The graduation program was concluded with the benediction delivered

(Continued on page 31)



Shown are members of the platform party following the graduation exercises. From left to right are: Comdr. John J. Glynn; Acting Associate FBI Director W. Mark Felt; Hon. Richard G. Kleindienst; Assistant FBI Director Thomas J. Jenkins; Lt. Francis G. Reynolds; Mr. Don R. Dering.

Following the graduation exercises, Attorney General Kleindienst is pictured with the first women graduates of the Academy. Shown, left to right, are: Capt. Vittoria Renzullo, New York, N.Y., Police Department; Mr. Kleindienst; and Chief Criminal Investigator Ann M. Schrader, Department of Public Safety, St. Croix, Virgin Islands.





The Role of Identification in Law Enforcement:

An Historical Adventure

PART I

By

JOHN EDGAR HOOVER

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

The Puzzle of the Past

An infallible means of human identification is not only essential to effective law enforcement but also to the achievement of justice. Without the ability to indisputably distinguish one person from another, there would be no certain means to establish an arrested person's identity, to surely determine any previous record of his involvement with crime or, in many cases, conclusively separate the guilty from those who, for whatever circumstance, become innocently enmeshed in the occurrence of crime.¹ That finger ridges—man's immutable

EDITOR'S NOTE: Many law enforcement officers are unaware of the rich history behind their profession and its skills. This article, one of the last prepared by Mr. Hoover before his death, uniquely brings to life many dramatic events that have contributed to modern law enforcement identification procedures, without which the profession would be severely handicapped to fulfill its responsibilities. It is reprinted with the permission of the "St. John's Law Review," in which it first appeared in the May 1972 issue. Certain statistical data and the outcome of proposed legislation have been updated in the interest of currency.

*"An infallible means of human identification
is not only essential to effective law enforcement
but also to the achievement of justice."*

marks of identification—also have the capacity to leave their impressions as incontrovertible testimony that their possessor was once at a particular place and touched certain objects there seems providential—at least to the law enforcement officer.

To many students of dactyloscopy—the science of fingerprint identification—it is puzzling that this knowledge eluded man for so long. There is intriguing evidence that in his earliest civilizations man may have recognized that the ridged patterns forming the friction surfaces of his hands and fingers were as uniquely personal to him, from among those of his acquaintance, as were his more obvious features. Artwork attributed to a primitive Indian culture, for example, pictures a human hand covered with rough representations of its subtle, ridged patterns and the skin creases which palmists find so prophetic.

Some scholars have interpreted Biblical passages as evidence that finger and handprints were recognized by early Christians as identifying marks. Artifacts have been uncovered that suggest that thumbprints were impressed on various clay seals in early China to identify their maker; that illiterates in the ancient Orient put their fingerprints on documents in lieu of a signature; that Palestinian potters of antiquity intentionally "signed" their creations with fingerprints; that contracts dating back some 12 centuries were affixed, perhaps to avoid fraud, with the fingerprints of the parties involved; and that in 16th century China some contracts for the sale of children bore the inked impressions of the hands and feet of these youthful chattels.

More tangible to the roots of criminal identification, however, may be a

relic, claimed to be in the British Museum, which contains the testimony of a Babylonian officer who relates how he was ordered by a superior to make property confiscations, arrests, and obtain the defendants' fingerprints.²

Unfortunately, distant history has not revealed the reasons for these early preoccupations with fingerprints and the distinctive patterns they form. Whether the potentialities for positive identification in fingerprint patterns glimmered centuries ago in the minds of man is not and probably may never be known. It is not improbable, however, that man's ancient interest in fingerprints went beyond mere ceremony, the occult, superstition, or idle curiosity. If he suspected that human identity could be established through comparison of fingerprints, his age lacked only the scientific methodology to make these notions a certainty.

Awakening of Scientific Interest

Dr. Nehemiah Grew, a fellow of the Royal College of Physicians, England, in the course of a lecture in 1684 commented upon the ridged patterns appearing on the fingers. Two years later Marcello Malpighi, professor of anatomy at the University of Bologna, Italy, making use of a newly discovered instrument, the microscope, discussed in his treatise "certain elevated ridges" on the palmar surfaces of the hands which he perceived to be "drawn out into loops or spirals" at the ends of the fingers.³ More than a century elapsed before John Evangel-

ist Purkinje, professor of physiology at the University of Breslau, Poland, published a thesis in which he vaguely defined nine varieties of patterns found "especially on the last phalanx of each finger."⁴ If these early scholars recognized the possibility of identification in the patterns of fingerprints, their works did not disclose it.

The inability to establish identity with certainty probably worked little hardship on the average citizen, particularly in the simplicity of most social organizations that preceded the Industrial Revolution. Criminal identification, by contrast, was always a vexing problem for those entrusted with enforcement of the laws. Witness testimony was commonly unreliable and offenders would simply disguise their identity by giving a different name at each confrontation with authorities. Providing officers or witnesses did not recognize or mistake them for another, as often was the case, this ploy served the criminals effectively in avoiding either detection or conviction. Past societies dealt severely with this problem by branding and tattooing various slaves and other outcasts, including criminals. This practice, a throwback to the ancient Greek and Roman civilizations, continued well into the 19th century.⁵

Photography more than humanitarianism probably put an end to the barbaric practice of branding society's malefactors for identification as well as its punitive effect. The camera⁶ provided a new medium of identification which was eagerly embraced by

"If [ancient man] suspected that human identity could be established through comparison of fingerprints, his age lacked only the scientific methodology to make these notions a certainty."

"Photography more than humanitarianism probably put an end to the barbaric practice of branding society's malefactors for identification as well as its punitive effect."

law enforcement agencies the world over. By the late 1800's, "Rogues' Galleries" containing the photographs of thousands of criminals were commonly in use by major police departments.⁷ These photographs provided substantial assistance in identifying newly arrested offenders, unknown offenders through witnesses to their crimes, and in locating wanted fugitives. Photography impressively aided in the process of criminal identification, but it was soon discovered that it was not a panacea as some may have first thought.

Valuable as photography is, it has proved to be no more than a convenient extension of identification by witnesses who can be, and sometimes are, wrong. To make matters worse, inept photographic technique, grimacing subjects,⁸ inadequate accompanying descriptions, and both deliberate and accidental factors that can dramatically alter physical appearance, further handicapped initial attempts to establish sure identification through photographs.

Application of Scientific Method

The French police is one of the oldest established law enforcement agencies in Europe. By the 1870's, the Prefecture of Police at Paris had compiled enormous archives of criminal records whose photographs and descriptions had become an equally huge problem to classify and file in a manner that would permit their most efficient use. Filing of these records by name was of limited value since this was the most variable of all criminal

identifiers. Likewise, classifications into definitive categories based on physical features generally proved useless due to the imprecision in descriptive detail which tended to amalgamate physical types and characteristics into broad, unwieldy groups.

It was in this setting that Alphonse Bertillon, a clerk in the criminal archives section of the Prefecture of Police in Paris, devised the first scientific method for the identification of criminals. Bertillon was the son of a French physician and anthropologist. His maternal grandfather was a distinguished demographer. With his exposure to scientific method and the frustration he experienced in attempting to maintain the archives as an effective investigative aid, Bertillon struck upon the idea of taking precise body measurements of arrested offenders. From these several measurements of major planes of the body and certain of its appendages,⁹ he derived a numerical formula which enabled swift retrieval of a matching record regardless of an offender's attempt to conceal his identity with an alias. The measurements taken, using established anthropological techniques, were of portions of the body which were presumed to be unchanging throughout adult life. In combination, the measurements were calculated as improbable to be the same in any two individuals, thus establishing exclusive identity.

Bertillon's system of identification, known as anthropometry, but more commonly referred to as Bertillonage, incorporated a standardized and detailed method of recording physical descriptions as well as precise procedures in photographing offenders,¹⁰ both of which he also developed. Bertillonage was adopted by the Paris police in 1883. By 1887, some 60,000¹¹ Bertillonage records ("signalments") of criminals were on file at the Paris Prefecture of Police, and the successes

of the system had become known throughout the law enforcement world. At the turn of the century, Bertillonage was in use or being considered by major police departments, principally in Europe and the United States.

Anthropometry had inherent weaknesses, however. It was not suitable for persons of less than mature growth who, nonetheless, probably comprised a substantial portion of all offenders.¹² It also could not account for changes in measurements of adults due to injury, age, or disease. As its usage proliferated to greater numbers of police and penal bureaus, it became increasingly evident that the measuring apparatus was cumbersome, the process time-consuming and, more importantly, the results highly susceptible to error—particularly when the system was entrusted to those not possessed with the zeal or competency of Bertillon. For example, measurements by two different operators of the same person often resulted in different measurements as did those by the same operator at different times. Finally, while it could in many cases identify previous offenders¹³ whom the police had in custody, it offered no assistance in the solution of that great imponderable of law enforcement: the identity of offenders not in its custody.

The Romance of Fingerprinting

When in 1883, Mark Twain's book "Life on the Mississippi" was published, no thought of fingerprints as a means of human identification had been known to appear in American literature.¹⁴ Only two men in widely separated regions of the world, consider

"[Bertillonage] offered no assistance in the solution of that great imponderable of law enforcement: the identity of offenders not in its custody."

ably distant from the United States, had by that time recorded their observations on that possibility and then only 3 years prior to Twain's book. Despite this, among numerous stories of fiction in the book was one entitled "A Thumb-Print And What Came Of It," which related how a distraught man had traced the identity of his wife's and child's murderer from a bloody thumbprint he found at the scene of the slaying. Disguising his search by posing as a fortuneteller, Twain's character, Ritter, circulated in a company of soldiers one of whom he suspected was the killer. He painted the "ball" of his client's thumbs, took a print of them on paper and later would compare them with the incriminating thumbprint. This eventually led him to the murderer.

The rationale for this procedure, as told by Ritter in the tale, was the practice of an old French prison-keeper who recorded for future reference each new convict's thumbprint because "there was one thing about a person which never changed, from the cradle to the grave—the lines in the ball of the thumb; and . . . these lines were never exactly alike in the thumbs of any two human beings."¹⁵ The old man proved his theory among Ritter's friends and acquaintances, never finding any with the same thumbprint.

How much of Twain's story was based on acquired knowledge or upon a notion that may have persisted through the ages concerning the uniqueness of human fingerprints is a moot point. The recently revealed research on this subject was certainly not widely known, and it would appear that it was only seriously accepted by a few of those who were aware of it. What has been factually determined is that two men generally regarded as the fathers of modern fingerprint science corresponded in 1880 with the London, England, magazine *Nature*, which subsequently published both of their letters. The first was written by

Dr. Henry Faulds, a Scottish missionary working in a hospital at Tokyo, Japan. His letter revealed his study of the "skin furrows in human finger[s],"¹⁶ suggesting that the patterns they form could have traceable ethnic and hereditary origins and that they could be important in the identification of criminals. On one occasion, Faulds wrote, he had been able to identify an individual from the latent impression of "greasy finger-marks"¹⁷ and another time, on the basis of fingerprint comparison, he had eliminated from suspicion a person thought to have left some "sooty finger-marks"¹⁸ on a white wall. Faulds also told in his letter how he collected fingerprints from willing persons, impressing their fingers on a smooth surface thinly spread with printer's ink. He then transferred these inked impressions in the same manner onto paper—exactly the same procedure used in taking fingerprints today!

The other man, William James Herschel, British administrative official for the Hooghly district, Bengal, India, was in England at the time Faulds' letter was published in *Nature*. In response, he wrote the magazine stating how he had been taking fingerprints for more than 20 years and had successfully introduced their use in his district for identification purposes. Herschel claimed that fingerprint records ("sign-manuals")¹⁹ had prevented fraud and impersonation in handling pensioners and in the property registration office under his supervision. Moreover, wrote Herschel, fingerprints had established criminals' identities with certainty when required of each prisoner upon commitment to jail. Contrary to Faulds' observation, his inspection of thousands of fingerprints, said Herschel, had given him no reason to believe that they revealed ethnic or hereditary patterns.

The Faulds and Herschel letters began a controversy which has continued to this day; who between them should be awarded credit for having discovered fingerprints as a scientifically feasible method of establishing human identity. Subsequent evidence indicated that Herschel had as early as 1858 required Indian natives to affix their hand and fingerprints to contracts with the hope that the ceremony of this procedure, at least, would discourage default or dishonesty. Apparently Herschel had at first no thought of identifying anyone from such prints, but his interest in this possibility was aroused after he noticed that none of the curious designs they made were exactly alike. In 1877 Herschel wrote the Inspector General of prisons of Bengal informing him of his experiments with fingerprinting and recommended its use in the prisons as a means of prisoner identification which would prove "far more infallible than photography."²⁰

The Inspector General did not approve Herschel's recommendation, and both he and Faulds were to suffer other disappointments in gaining acceptance of their theories of fingerprints as a means of identification.

"Had it not been for Sir Francis Galton, fingerprinting might have continued to be ignored as the premier method of human identification."

Had it not been for Sir Francis Galton, fingerprinting might have continued to be ignored as the premier method of human identification. Galton, a renowned anthropologist and cousin of Charles Darwin, of "On the Origin of Species" fame, had been attracted to Bertillonage not only as a system of identification but more for its potential as a means to study hereditary and racial traits. With char-

acteristic thoroughness he also acquainted himself with the work of Herschel and immediately recognized that fingerprints held far more promise as an infallible means of human identification than did anthropometry. Galton's research into fingerprinting brought it scientific experience, order, and prestige. More important, however, was the fact that by 1892 Galton published a book, "Finger Prints," as well as a number of pamphlets which advanced the cause of dactyloscopy by giving it much needed publicity.

Growing out of Galton's research and writings on fingerprinting was an article published in the French magazine *Revue Scientifique* which described his work. This article along with material concerning the identification system of Bertillon was brought to the attention of Juan Vucetich of the Argentine provincial police in 1891. Vucetich, a statistical clerk of the provincial police at La Plata, was instructed to establish a Bertillonage bureau in the La Plata department. Vucetich found little merit in anthropometry but was captivated by the possibilities of fingerprinting. Fortifying his new-found knowledge with experiments of his own in fingerprinting, Vucetich in that same year devised the first workable system of classifying fingerprints for effective law enforcement use—a goal which had inexplicably escaped the patient pursuit of Galton over many years.

Without the official approval of his superiors, Vucetich maintained, along with Bertillonage measurements, fingerprint records at La Plata of offenders. Only after a murder was solved in 1892 in the small Argentine coastal town of Necochea by means of a latent thumbprint and the superiority of fingerprinting over anthropometry was consistently demonstrated by Vucetich, did the Argentine government adopt fingerprints in 1896 as the official method of identifying crim-

"Only after a murder was solved in 1892 in the small Argentine coastal town of Necochea by means of a latent thumbprint and the superiority of fingerprinting over anthropometry was consistently demonstrated by Vucetich, did the Argentine government adopt fingerprints in 1896 as the official method of identifying criminals."

inals. Like pioneers Faulds and Herschel before him, Vucetich found that fingerprinting was such a simple and handy means of identification that proposals for its use unaccountably generated suspicion and rejection rather than the acclaim and acceptance it deserved.

Knowledge of Vucetich's success in classifying fingerprints and putting them to use in the first police criminal identification bureau of its kind was apparently not known (or at least not widely so) outside South America. In the same year that fingerprinting was adopted in Argentina, Edward Henry, Inspector General of the province of Bengal, India, independently developed a fingerprint classification system which he utilized successfully to supplement Bertillonage in India. The following year anthropometry was abandoned throughout India in view of the superiority of fingerprinting.

Paralleling the Argentine experience, Henry's promotions of fingerprinting in his sphere of influence, which of course then encompassed England, was given a considerable boost by the solution of a murder case through the identification of a latent fingerprint discovered at the scene of the crime.

Acting upon the recommendation of a committee called together by the British Home Office to evaluate the comparative worth of Bertillonage and fingerprinting—before which both Galton and Henry testified—the latter was adopted in England in 1901 as the official police identification system. Henry (who was later knighted) was subsequently appointed to head the Criminal Investigative Department of Scotland Yard.

Although the classification and search problems for a fingerprint record system had been solved by both Henry and Vucetich,²¹ the use of anthropometry lingered on in many police departments in Europe and the United States for a number of years. Quite frequently the two coexisted in one record system which used a portion of each. This practice manifested itself in the taking of only a few of the total measurements required in Bertillonage and in the printing of less than all 10 fingers. As a result, when no previous fingerprint record was available for an offender, the fewer measurements taken of him heightened the chance for error in his identification.

After the turn of the century there were two episodes involving fingerprints that dramatized their infallibility and universality as a method of criminal identification. They also tolled the demise of Bertillonage.

The first of these occurred in 1903 when Bertillonage was still in wide spread use in law enforcement and penal institutions throughout the United States, including the Federal Penitentiary at Leavenworth, Kansas. In that year Will West, a newly arrived prisoner at Leavenworth, denied to the admittance clerk that he had ever been an inmate there before. West was measured and the classification produced from this procedure was searched through the Bertillonage files of the prison. Contradicting his denial

"... fingerprinting . . . was adopted in England in 1901 as the official police identification system."

the search produced a record for a William West who had, excepting slight differences, the same measurements. The record also contained a photograph which the astonished prisoner agreed was a striking likeness of himself. Provoked by West's continued denial that the record was his, the clerk examined it more closely and, to his surprise, discovered that the convict it described was then confined at the penitentiary for murder and could not be the prisoner before him.

Subsequent fingerprinting of both Wests disclosed that they had distinctively different ridge patterns on their fingers.

The other episode took place 3 years later in New York City when an alert detective arrested a sneak thief plying his trade on the third floor of the old Waldorf-Astoria Hotel. In a clear British accent the prisoner loudly protested his arrest, threatening that his government would soon demand an explanation for this indignity to him. The New York City Police Department had not adopted fingerprinting in its operations but, fortuitously, the arresting officer had been trained in its use by Scotland Yard. He more than called the defendant's bluff by fingerprinting him and mailing a copy of the prints to Scotland Yard which soon replied identifying the offender as a well-known London hotel thief with 12 prior convictions.²²

Five years later in a case involving the same New York City detective, the drama of fingerprints as courtroom evidence was sensationally demonstrated. Latent fingerprints on a window pane had been found at the scene of the burglary of a fashionable dress shop. The detective was called to testify as to the identity of the fingerprints, and defendant's counsel strived mightily to discredit his testimony that they were identical with those of their client, a notorious second-story

man. Realizing the importance of the detective's testimony and the necessity to convincingly establish his expertise in this novel area of identification, the judge in the officer's absence had each jury member impress his fingerprints on a courtroom window and then had 1 of the 12 again place his fingerprints on a separate pane of glass. When the detective returned to the court, the judge instructed him to identify which set of fingerprints on the window was duplicated on the pane of glass. Within a few minutes the officer identified the correct prints, thus removing any doubts as to the ability of fingerprints—or the law enforcement officer examining them—to identify their owner. The case received widespread publicity as the first conviction in New York State on the basis of fingerprint evidence.²³

FBI Identification Division

While the light that illuminated fingerprinting as a method of identification originally came from the East, it was in the West that it met the greatest challenges and fulfilled its highest expectations. With the law enforcement world then bristling with new programs and procedures in identification, the International Association of Chiefs of Police established in 1896 the National Bureau of Criminal Identification (NBCI) at Chicago, Ill. Its purpose was to compile and exchange criminal identification data among the complex array of law enforcement agencies that existed in the United States. This Bureau later moved to Washington, D.C., where it acquired a valuable fingerprint collection. In 1904, a similar exchange service of fingerprint records for offenders was

instituted at the U.S. Penitentiary at Leavenworth. It was not until 1924, however, that the exciting potential of fingerprint identification began to be realized. In that year the Bureau of Investigation²⁴ of the Department of Justice was authorized by Congressional enactment to take custody of the combined identification records of the NBCI and Leavenworth Penitentiary, which records together totaled more than 800,000.

The FBI's Identification Division was established to organize these records into an efficient nationwide exchange of criminal identification data which would be available without cost to all authorized law enforcement agencies. The service developed by the Identification Division met with immediate success, and in the less than 6 months of its first year's operation had 987 law enforcement agencies cooperating in the exchange. Much more important though than the considerable benefit derived in identifying arrested offenders was the potential this fingerprint collection held for the solution of crimes.

A striking example of this potential occurred in the armed robbery of a Lamar, Colo., bank in May 1928. After one of the bandits was wounded by the bank president, both the official and his son were shot before the injured robber and his three accomplices escaped with two other bank employees as hostages and \$219,000 in cash and bonds. A dragnet by local law enforcement officers failed to locate the bandits but did discover the bullet-riddled bodies of one of the hostages and a doctor who had been lured to aid the wounded criminal. A police fingerprint expert from an adjoining

(Continued on page 29)

"While the light that illuminated fingerprinting as a method of identification originally came from the East, it was in the West that it met the greatest challenges and fulfilled its highest expectations."

New FBI Jurisdiction

Act for the Protection of Foreign Officials and Official Guests of the United States

On October 24, 1972, President Nixon signed the above act into law. The act provides for concurrent jurisdiction of the Federal Government in the investigation of certain acts committed against foreign officials and official guests, and for the protection of such individuals.

At the beginning of the act, Congress recognizes, and reaffirms, that "... the police power to investigate, prosecute, and punish common crimes such as murder, kidnapping, and assault ... [of all individuals whether domestic or foreign] should remain with the States"; but also notes that, at times, commission of these common crimes against foreign officials or official guests may adversely affect or interfere with the foreign affairs of the United States.

Consequently, when common crimes, including those specifically enumerated in the act, are committed against foreign officials or official guests, or property occupied by a foreign government or international organization, it is the intent of Congress that these matters continue to be investigated and prosecuted by local authorities, as in the past.

On the other hand, particularly in light of the current trend towards violence which is directed against diplomats and officials of a government by that government's opponents for political reasons, and especially since these violent acts often occur in countries not directly involved in the dispute, Congress feels that the Federal Government must have concurrent juris-

diction in situations where international repercussions may be felt, or where the incident may have some effect on United States foreign relations.

Such an incident and subsequent investigation will require close coordination at the highest levels of the Federal Government. The FBI has been assigned jurisdiction for the enforcement of this act in cases in which the Federal Government has an interest.

The act provides for concurrent Federal jurisdiction when the following prohibited acts are committed: murder; conspiracy to murder; manslaughter; or kidnapping of a foreign official or official guest. (Federal jurisdiction attaches immediately in the kidnapping of a foreign official or official guest. The victim need not be transported in interstate or foreign commerce.)

The act also prohibits anyone from assaulting; striking; wounding; imprisoning; or offering violence to a foreign official or official guest and from intimidating; coercing; threatening; or harassing a foreign official or official guest; and from obstructing a foreign official in the performance of his duties.

Outside the District of Columbia, the act also prohibits anyone from, within 100 feet of a foreign or international establishment or the residence of a foreign official, parading; picketing; displaying any flag, banner, sign, placard, or device; uttering any word, phrase, sound, or noise; or congregating with two or more other persons

with the intent to perform such acts, for the purpose of intimidating; coercing; threatening; or harassing any foreign official or obstructing a foreign official in the performance of his duties. (These prohibitions shall not be construed or applied to abridge the exercise of first amendment rights.)

The act further prohibits anyone from injuring; damaging; destroying; or attempting to injure, damage, or destroy any real or personal property belonging to, utilized by, or occupied by a foreign government, international organization, foreign official, or official guest.

Definitions, for the purposes of the act:

Foreign official: "(1) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and (2) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, [i.e., the United States has been officially informed of his position] and who is in the United States on official business, and any member of his family whose presence in the

United States is in connection with the presence of such officer or employee."

Foreign government: "the government of a foreign country, irrespective of recognition by the United States."


International organization: "a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288)."

Family: "(a) a spouse, parent, brother or sister, child, or person to whom the foreign official stands in loco parentis, or (b) any other person living in his household and related to the foreign official by blood or marriage."

Official guest: "a citizen or national of a foreign country present in the United States as an official guest of the government of the United States pursuant to designation as such by the Secretary of State."

The definitions are quite broad, and are not limited to individuals with diplomatic status.

The United States Department of State is informing governments and organizations affected by this act of the contents of the act, and the manner of its enforcement, specifically the intention of the Federal Government not to supplant local authority in routine criminal cases having no international political ramifications.

Information concerning possible violations of the act and intelligence information relating to threatened violations should be brought to the attention of the nearest FBI office, since such incidents may have implications affecting United States foreign policy considerations. If it is determined the violation does not affect the foreign affairs of the United States, no Federal prosecution will result. 

LAW ENFORCEMENT OFFICERS KILLED—1972

According to information collected through the FBI's Uniform Crime Reporting Program, a total of 112 local, county, and State law enforcement officers were killed due to criminal action in 1972. In 1971, 126 officers were slain. On a regional basis, 57 officers were killed in the Southern States during 1972, 30 in the North Central States, 14 in the Northeastern States, and 11 in the Western States.

Ambush-type attacks claimed the lives of 14 law enforcement officers during 1972—three in January, four in April, two in August, one in October, three in November, and one in December. Twenty-five officers were killed in connection with robbery matters; 24 while attempting arrests for crimes other than robbery and burglary; 15 in connection with disturbance calls; 14 while making traffic stops; nine in connection with burglary matters; five investigating suspicious persons or circumstances; two in connection with a civil disorder; two by mentally deranged persons; and two met death at the hands of prisoners.

One hundred eight of the 112 officers slain during 1972 were killed through the use of firearms. Seventy-five of these slayings were committed through the use of handguns.

(Press Release 1-11-73)

FBI AGENTS ASSAULTED

From January through June, 1972, 52 Special Agents of the FBI were assaulted in the line of duty in 31 separate incidents. Thirty-six of the assail-

ants in 30 of the cases were identified and arrested by the FBI. During the same period in 1971, 47 Special Agents were assaulted in 28 separate incidents.

Twenty-eight of the victim Agents were attacked through the use of personal weapons such as hands, fists, and feet; 11 by firearms; six by automobiles; four by threats, made in person, that they would be killed; two with knives; and one by an unidentified blunt object.

During the first 6 months of 1972, more Agents were assaulted while making arrests than in any other activity. (Roderick to Soyars memo, Report Concerning Assaults on Special Agents of the FBI and Assaults on other Federal Officers, Uniform Crime Reports, 10-2-72)

CRIME FIGURES MIXED

According to a nationwide collection of police statistics supplied voluntarily by local, county, and State law enforcement agencies, serious crime in the United States increased at the smallest rate during the first 9 months of 1972 than at any time since the FBI's Uniform Crime Reports began publishing these figures in quarterly bulletins in 1960. Eighty-three of the major cities in the country recorded an actual decrease in serious crime in the first 9 months of 1972 compared to 52 cities showing decreases in the same period of 1971.

The increase in violent crime was 3 percent and there was no increase in property crime. During the same period in 1971, violent crime increased by 10 percent and property crime went up 6 percent.

Suburban law enforcement agencies reported a 4 percent increase, and crime in the rural areas increased 6 percent. Armed robbery, which makes up about two-thirds of all robbery offenses, showed no percent change for this 9-month period.

(Press Release 9-28-72

re UCR)

The Police Off

Because of the nature of enforcement officers are experienced even those officers who are new can benefit from these helpful hints submitted by James Clark, District Attorney, Ardmore, Okla.

Many crime investigations reach their climax at trial. The courtroom, in many instances, determines whether the investigation has been handled properly.

More and more police officers are being called upon to testify for either the prosecuting authority or the defense. An increasing number of guilty pleas follow the courtroom testimony of the officer handling the case or participating in the investigation. Here are some suggestions for more effective courtroom performance by the officer testifying:

Discuss the testimony with the prosecutor. This is a must and should be done at least several days before the trial appearance. Take your copy of the arrest report and any other notes or memorandums with you. Iron down all loose ends, such as time of arrival at the crime scene, mode of dress of accused, date, day of week, and persons present. This also will be an invaluable aid to the prosecutor handling the case. Avoid last minute interviews at all costs.

Be present for court on time. During the pretrial briefing find out when the prosecutor expects to need you. Do not be late. The judge in most jurisdictions will not consider your

tardiness leniently as he might that of a witness appearing for the first time.

Physical appearance. Always wear your uniform or business suit, even on days off. You are testifying as a professional and must look like one. The jury will raise their eyebrows if you appear in casual clothing, even if properly explained. Leave your gun in the prosecutor's office or at the station. An empty holster in court will indicate respect for the court and jury. Obviously, your uniform must be well pressed, and you should be well groomed. In most jurisdictions, conservative dress is an asset.

Entrance. Walk directly to the witness stand or clerk's desk and prepare to take the oath. Do not look at the accused, the jury, or the judge. Follow the prosecutor's direction. Your command of yourself as you enter the courtroom is an important first impression.

Testimony. A good police witness should speak clearly and slowly, so the jury hears and understands all that is said. Avoid use of slang terms and police "lingo." Look directly at the prosecutor at all times while answering his questions. Remember that the defense counsel will be making objections to portions of your testimony.



er as a Witness

duties and training, law enforcement courtroom witnesses. However, efficient in courtroom testimony renders which have been sub-orney, 20th Judicial District,

When an objection is made, immediately cease your testimony, look at the judge, and await his decision. Do not try to blurt the answer quickly as this will possibly cause error, or even a mistrial, and indicate unmistakable bias. After the judge rules, and you are allowed to answer, ask for a repeat of the question if its details are foggy. **Do not answer a question not asked.** A witness should not volunteer any items of testimony not requested and should be responsive.

In the event you realize you have made a mistake in your testimony, correct it as soon as possible. This will be much better than being recalled as a witness to explain the discrepancy.

Avoid evidentiary "harpoons." Do not relate the facts of the accused's former arrest record, convictions, etc. "I've known him since I arrested him once for a burglary" has caused many judges to declare mistrials and cases to be reversed.

When the prosecutor has finished, stay seated and await cross-examination. It is at this point that an officer's effectiveness as a witness will be tested. Here are some cross-examination do's and don'ts:


Do not argue. Depend on the prosecutor to protect you from

cross-examination badgering.

Avoid displays of bias. Treat the facts, and defense counsel, as if the case at bar was only one of hundreds you have been working on and display an interest in justice only.

Do not joke or laugh. Avoid all temptations to be a courtroom comedian. You are there asking a jury to deprive a citizen of his liberty, and that is a serious business.

Be responsive. Answer the question asked. If defense counsel asks two questions in one, ask him to separate them. Do not answer a question that has a presumption as its first part. For instance, "Since it is obvious you don't like my client, why didn't you have a recording made of the conversation?" The officer should rebut the first part of the question before explaining the absence of the recording.

Be a professional witness. Be a credit to your profession and yourself. By doing so, you can convince a great number of jurors that your cause is just and that justice can be done by believing your testimony. 



*The
Legal*



Digest

*(This is the conclusion
of a two-part article. Part I
appeared in the February issue.)*

The Entrapment Defense

PART II

IV. Application of the Rule Under the Majority View

A. In General

The *McGrath*, *Bueno*, and *Russell* cases illustrate not only the manner in which the minority view is implemented, but also serve to demonstrate the application of that approach to factual situations. There remains now a review of several cases in which the defendant has argued that the conduct of police officers, informants, and third persons has resulted in his being illegally entrapped. Here the difficulties predicted by Justice Frankfurter—by letting the jury and not the court decide the issue, no reported

standards of conduct or guidelines are available to the police for use in future investigations—become readily apparent.

A police officer can read a judge's written opinion, try to understand what the court deems permissible and impermissible, and thereafter utilize that which he has learned to guide future conduct. Juries, however, write no opinion. What follows must, by its nature, then be incomplete and can be augmented in part by those in various local departments who have ascertained through experience and study what practices are permitted and prohibited in their particular jurisdictions.

By

JOHN DENNIS MILLER

Special Agent,
Federal Bureau of Investigation,
Washington, D.C.

“... by letting the jury and not the court decide the issue [of entrapment], no reported standards of conduct or guidelines are available to the police for use in future investigations. . . .”

B. Conduct of Police

1. Minimum Participation

Although some investigations are long and involved, others are rather simple in nature. Consider *Bush v. United States*.³⁴ There, an officer observed, for about 1 hour, a subject near a bench in front of a cafe. During that time the subject met five or six people individually and gave each something from under his shirt. The officer walked over to the defendant and asked for whisky. He followed the defendant to a recessed door of a nearby building where the subject took whisky from under his shirt and collected \$5. The vendor was arrested and convicted. The court sustained the conviction and stated it was “extremely doubtful” if the actions of the officer were sufficient even to raise the issue of entrapment. The court noted the officer did nothing to initiate an intent by the defendant to commit the crime other than to ask if he could buy some whisky, and the defendant asked no questions and displayed no hesitancy. He appeared ready and willing to sell to anyone.

In another case, two foreign sailors were arrested in New Orleans, La., with untaxed whisky in their possession. One of the sailors admitted the whisky was being smuggled into the country for delivery to the defendant. He agreed to make the delivery and to allow an undercover agent to accompany him. The officer did so and, during the transaction with the defendant, said nothing as he pretended to be a foreign sailor who could not speak English. In sustaining the defendant's conviction, the court held there was no entrapment as a matter of law and that

the issue was properly submitted to the jury.³⁵

In *Lewis v. United States*,³⁶ an undercover narcotics officer learned through an informant that Lewis was selling narcotics. After the informant told the defendant about a customer named “Jimmy,” the officer telephoned Lewis and identified himself as “Jimmy, the Pollack.” Accepting Lewis' invitation to come to his house, the officer did so and purchased narcotics. He returned 2 weeks later and made another buy. Lewis was arrested, convicted, and he appealed. The Supreme Court sustained that conviction, and while the case was decided on fourth amendment considerations, Chief Justice Warren noted the defendant did not argue that he was entrapped, and he could not on the facts of the case, as the defendant invited the agent to his house for the purpose of executing the sale of narcotics.

(It is noteworthy that the Court stated the information the police possessed concerning the defendant's activities coupled with the results of the pretext telephone call were sufficient probable cause to obtain a search warrant.)

The technique used by an undercover narcotics agent in *Masciale v. United States*³⁷ (decided the same day as *Sherman*) is worth remembering. An informant introduced the defendant to the agent. The agent, at the outset of the conversation, told Masciale he wanted to purchase a large quantity of narcotics and testified he told Masciale that if he was not interested, “the conversation would end at once.” The conversation continued. After several subsequent meetings, the defendant introduced the agent to another individ-

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.

ual for the purpose of effecting a transaction. After his conviction, Masciale argued on appeal that the informant engaged in a campaign to persuade him to sell narcotics by using a lure of easy income.

Stating that Masciale's undisputed testimony about the informant's alleged campaign did not equal entrapment as a matter of law, the Court held that the issue rightfully went to the jury and suggested that the jury evidently chose not to believe the defendant. The Court also stated, “It is noteworthy that nowhere in his testimony did the petitioner state that during the (original) conversation either (the agent) or (the informant) tried to persuade him to enter the narcotics traffic.”³⁸

Thus, the officer is on solid footing in those situations in which he approaches the subject and during the initial contact takes no affirmative action beyond making a purchase of contraband, or merely witnessing a transaction, prearranged by neither the police nor informants.

2. Increased Participation

Not all criminals are as ready to perform their illegal activities with complete strangers, or even to meet them, as the defendants in the cases just discussed, and additional effort by the investigator is necessary. In such

"Not all criminals are as ready to perform their illegal activities with complete strangers, or even to meet them . . . and additional effort by the investigator is necessary. In such cases the officer should remember a well-known rule of science: The more steps one takes, the further he gets from shore, and the further he gets from shore, the thinner the ice."

cases the officer should remember a well-known rule of science: The more steps one takes, the further he gets from shore, and the further he gets from shore, the thinner the ice.

Recall that in *Sorrells*, the undercover revenue officer was unable to purchase whisky from the defendant after asking several times. Not until the agent reminisced about their old Army outfit and repeated his request was he able to persuade Sorrells to sell him whisky. Note that the Court did not hold that this was entrapment as a matter of law, but that the issue should have been submitted to the jury and therefore ordered a new trial.

The ice became too thin in *United States v. Klosterman*.³⁹ The involved facts of this case are as follows:

A Government agent, King, was conducting an investigation in a matter in which Klosterman was the subject. On August 24, 1955, a second agent, Deeney, related to King that a "friend" told him that Klosterman would be willing to bribe King. King urged that the two report this offer to their superiors, but Deeney declined because of his friend and, "I told him to stay away from me; that I don't want any part of this whole deal."

About 1 week later, King was instructed by his superiors to obtain additional information, identify the friend, and arrange to meet Klosterman. King contacted Deeney who said he could arrange a meeting. In the next 3 weeks, King asked Deeney 10 or 11 times if he had seen his friend, and each time Deeney replied that he had not. Finally, on September 20, 1955, Deeney told King he had con-

tacted his friend, that the friend did not want any part of the scheme, and that neither he nor King should jeopardize their own positions by becoming involved in the matter. On October 19, 1955, King stated to Deeney that he wanted a meeting, and Deeney agreed to set up contact with his friend. King then met Stafford, the friend, who indicated he was aware of the scheme. Stafford agreed to arrange a meeting between King and Klosterman. At this meeting, held on October 21, 1955, Klosterman paid King and was arrested for bribery. He was convicted, as were Deeney and Stafford for their participation in the scheme.

The court held that Klosterman, Deeney, and Stafford all were entrapped as a matter of law, as there was an inordinate amount of persuasion of Deeney by King which indicated that Deeney sincerely attempted to abandon the plan; and secondly, the criminal design originated with the officers (King and his superiors) who engineered the persuasion and solicitation. The court severely condemned what it called "overzealous tactics of the law enforcement agents in creating a criminal out of a man who had abandoned his criminal intent."⁴⁰

The court emphasized that King admitted Deeney expressed a desire to abandon the plan three times, that from September to October 19 King asked Deeney 10 or 11 times if he had arranged a meeting, and that Deeney asked King to consider their own positions and forget the scheme.

Parenthetically, the court commented that Deeney's initial approach to King may have been a criminal act, but noted it was not deciding that question in this particular appeal.

As to Stafford, the friend, Deeney became King's agent for the purpose of entrapping Stafford who, the court said, was an innocent man before King conceived his plan.

The same reasoning was applied to Klosterman and, having found that Deeney and Stafford were entrapped, as a matter of law, it followed that Klosterman was, too. The fact that he came to the arranged meeting and paid King did not show a predisposition to commit a crime, the court said, but instead indicated he had yielded to temptations of the agents.

The court recalled that Klosterman had been interviewed many times by other Government agents and had never offered a bribe, and stated that the long investigation (Klosterman had been investigated by four other agents from 1947 to 1951 before King was assigned the case in 1953) must have made the defendant more susceptible to the persuasion of King through Deeney and Stafford.

Not all readers will agree fully with the result in *Klosterman*, and police officers can understand overzealousness in the investigation of police bribery cases as much as nearly any type of crime, for bribery strikes at the very heart of law enforcement. Nevertheless, there are lessons to be learned from *Klosterman*.

Notice that it was King's plan to obtain evidence against Klosterman through, first, Deeney and then Deeney's friend, Stafford. But, once Deeney was entrapped, all was lost, as Deeney's entrapment led to Stafford's entrapment which led in turn to Klosterman's entrapment. The court's opinion bears a similarity to the "primary illegality" or "fruit of the poisonous tree" rationale of search and seizure cases in which the illegal arrest

or unreasonable search renders useless all evidence gained as a direct result therefrom.

Secondly, once a subject indicates he does not want to participate in a crime, or that he desires to terminate preparation in a crime, the time has arrived for the investigator to consider ceasing his own involvement as a participant in the scheme. The investigation should continue only if the officer has a substantial basis for doing so. Cases in which the subject's hesitancy is false, as in an effort to reach a better bargain in a bribe or sale of contraband or to ascertain whether or not his new "customer" or "partner" is an undercover agent or informant, are examples, especially when it can be shown that the subject is or has been engaged in similar crimes. In any event, the facts supporting the decision to continue must certainly be detailed in the investigative report, and the investigator should be prepared to testify concerning them.

Efforts by a narcotics agent in *United States v. Haden*⁴¹ furnish a worthy model for use in investigations into a criminal scheme extending over a period of time and necessitating repeated contacts with the subject.

Upon learning that Haden was interested in a method by which heroin could be obtained from a morphine sulfate base, the undercover agent contacted him, stating he had been referred to Haden by an employee of the firm Haden had previously contacted in an effort to learn the details of the conversion process. Haden denied making any such contact.

A month passed and the agent wrote Haden a letter in which he listed his telephone number. Two weeks later, the subject called and a meeting was arranged. At this meeting, a plan was developed in which Haden would obtain the morphine sulfate base, and the agent would assist him in converting it into heroin.

The agent told Haden that as he had no permanent address, it would be necessary for him to call Haden to arrange future meetings. Haden agreed and, at the conclusion of most of the meetings which followed, Haden, who was extremely cautious throughout the entire operation, instructed the agent to call him to arrange subsequent meetings. During the course of these meetings, the agent suggested at least twice that they abandon the plan, but Haden insisted they proceed. Finally, Haden met the agent and stated that he had at last gotten a quantity of morphine sulfate. After furnishing the contraband to the agent, he was arrested and convicted.

Disagreeing with the defendant's contention that he had been entrapped, as a matter of law, the court noted: The idea to use the morphine base originated with the defendant; more than once the agent feigned reluctance, but the defendant insisted they continue; all of the telephone calls except one that the agent made to Haden were at Haden's instruction or pursuant to prior understanding; and all the meetings except the first one were arranged by Haden. The court commented that any reluctance the defendant displayed was explained by his abundant caution.

So, by leaving a telephone number in the initial letter, allowing the subject to arrange the meetings, and pretending reluctance on several occasions, this skillful investigator forced the subject to furnish the initiative throughout the long, involved process. As the defendant initiated step after step, he clearly demonstrated his willingness and predisposition to commit the crime. The agent took few steps, the ice was thick enough where he

stood; it was the criminal who took many steps and found the ice too thin.

3. Utilization of Technical Devices

Once the defense of entrapment is raised, the exact words of the police officer and/or his informant and the defendant during any conversation are of critical importance. Seldom will there be any available witness whose testimony can corroborate that of the officer or informant. A criminal rarely desires an audience. Is it constitutionally permissible for the police to record or monitor conversations with the subject without his knowledge so that the exact words will be preserved? The answer is that the police can do just that.

In *Lopez v. United States*,⁴² the defendant attempted to bribe a Government agent and requested the agent to return to the defendant's place of business several days later. The agent did so and on this visit carried a recorder concealed on his person. Lopez again attempted to bribe the agent. At the trial, the agent testified concerning the conversations with Lopez, and the tape recording of the second conversation was introduced to corroborate this testimony.

The conviction was affirmed, the Court noting the recorder was carried into Lopez's office by a man whose official identity was known and who was invited into the office by the defendant. Thus, the recorder "neither saw or heard more than the agent himself."^{42a}

Lopez was followed in 1971 in *United States v. White*.⁴³ Government agents testified concerning eight conversations between White and Harvey

"Once the defense of entrapment is raised, the exact words of the police officer and/or his informant and the defendant during any conversation are of critical importance."

Jackson, an informant, which conversations they overheard by monitoring the frequency of a radio transmitter carried by Jackson on his person without the knowledge of White. Four of the conversations were in Jackson's car, one in White's home and one in a restaurant.

The Supreme Court held that it was permissible for the agents to testify concerning the conversations they monitored, there being no violation of White's fourth amendment rights. The Court could see no difference for constitutional purposes between the situation in which an informant writes down his conversations with a defendant and the situation in which the informant either records the conversation or carries a transmitter which allows the police to record or monitor the conversation.⁴⁴

4. Selection of Subjects

An undercover narcotics agent in *Whiting v. United States*⁴⁵ made several visits to the defendant's house over a period of time. In the conversations which occurred during these meetings, the agent talked to the defendant, and his wife, about various clubs in another city and mentioned some of Whiting's friends. At each visit when the agent asked the subject if he had any narcotics, Whiting would depart and then return with the contraband.

Following his arrest and conviction, the defendant appealed and argued not only was he entrapped as a matter of law, but also it was improper in itself for the agent to induce him without prior good reason to suspect guilt. The court rejected both of Whiting's contentions and affirmed the conviction.

The court acknowledged the Government offered no evidence which suggested why the agent initially approached the defendant. Specifically stating it was not assuming that the agent had legally adequate evidence of the defendant's predisposition prior

to approaching him, the court noted the agent's knowledge of Whiting's friends indicated "for what it's worth" the officer was not making blind spot checks when he initially approached Whiting.

A per curiam opinion in *Childs v. United States*⁴⁶ stated that reasonable suspicion, and not probable cause, that the defendant is engaged in a particular crime is all that is necessary before the police may invite him to engage in any particular behavior.

It is difficult to envision cases in which a defendant can successfully contend on appeal that it is improper, per se, for the police to approach him without reason to suspect guilt. In the first place, it is uncertain that any such proof is an absolute prerequisite (but see IV., C., 2., *infra*) and secondly, whatever requirement there may be in this area should be satisfied by the evidence submitted to show the defendant's predisposition to commit the crime (III., A., 2a., *supra*) once he raises the issue of entrapment at the trial level. As the *Whiting* court pointed out, the argument is of little consequence since prosecution will be unsuccessful unless it can be shown that the defendant was not corrupted by police conduct.⁴⁷

The last few paragraphs should serve to emphasize the necessity of the preparation of a complete investigative report, including all evidence of the subject's predisposition, as such evidence can be utilized to serve the two above-mentioned purposes.

5. Criminal Liability of the Officer

In a typical case in which an undercover officer purchases contraband, does he subject himself to criminal prosecution? Generally, he cannot be prosecuted for his own involvement in a criminal activity when that involvement is the result of conduct employed in good faith to obtain evidence in the course of a criminal

"It is difficult to envision cases in which a defendant can successfully contend on appeal that it is improper, per se, for the police to approach him without reason to suspect guilt."

investigation. It has been said that the officer does not possess the essential element of malicious determination to violate the law,⁴⁸ that the common law doctrine of necessity allows the officer to break the law in such a situation,⁴⁹ and that the public policy exempts police officers.⁵⁰

C. Conduct of Informants

1. In General

The informant, working for or at the direction of a police officer, is that officer's agent, and it is as valid a defense for the defendant to prove he was entrapped by the informant as it is to prove he was entrapped by the officer himself.

*Sherman v. United States*⁵¹ specifically held that the Government was responsible for the informant's actions. The Government cannot use an informant, the Court said, and then circumvent the defense of entrapment by claiming ignorance of the informant's conduct.

The investigator must carefully instruct his informant on the rules against entrapment. Preparation for trial must include the details of the informant's contacts with the subject, just as it sets out the officer's own activities in cases in which no informant is involved.

2. Selection of the Subject

Of course, the previous discussion of this matter is applicable here (IV., B., 4., *supra*). An additional issue has arisen in cases in which a "contingent fee" agreement is used.

In *Williamson v. United States*,⁵² an informant was offered \$200 by a Government agent if he could effect a purchase of illicit liquor from the defendant. There was no testimony in the record why the defendant was selected. The court reversed the conviction, held that an unjustified contingent fee agreement was entrapment as a matter of law, and ordered a new trial, stating it could not sanction a contingent fee agreement to produce evidence against a specific defendant as to crimes not yet committed. Such an agreement could cause an informant to induce or persuade innocent persons to commit crimes they otherwise had no intention to commit.

The court noted that the Government possibly had certain information that Williamson was engaged in illicit liquor dealings and was justified in setting up the contingent fee agreement. Further, the court said, the Government could have carefully instructed the informant on the rules against entrapment, but there was no evidence in the record to indicate either was the case, and thus ordered a new trial.

In a similar case, a Government agent contacted an informant and promised \$300 if the defendant, Hill, were caught. The court held the conditions required by the *Williamson* decision were met; that is, the contingent fee arrangement was justified by the agent's testimony that Hill had prior convictions for the same offense and that two neighbors had complained to another agent about the defendant's activities.⁵³

The *Williamson* requirements were satisfied in another contingent fee case, also involving a liquor violation, by testimony that the defendant had a reputation for liquor violations and that a separate moonshine operator suggested to the informants that the defendant could supply them with liquor.⁵⁴

The reader will note that the evidence submitted to justify the use of a contingent fee arrangement also tends to show a predisposition by the defendant to commit the crime charged.

D. Conduct of Third Persons

1. Private Persons

The defense is not available in cases in which the defendant claims he was entrapped by a third person not an agent of the police.⁵⁵ Clearly, police officers, as in *Sorrells*;⁵⁶ informants, as in *Sherman*;⁵⁷ and police officers from another jurisdiction assisting the officers, as in *Henderson*⁵⁸ in which the alleged entrapper in a Federal prosecution was a State officer, are not third persons, and the defense can be used in cases in which they are involved.

The defense had been used in at least one case in which a private detective was the alleged entrapper.⁵⁹

2. Victims

Consent, not entrapment, is usually the appropriate defense in cases in which an intended victim meets the defendant at the request of the police. Assume a subject telephones a citizen and makes improper advances to her. The citizen complains to the police who instruct her to agree to meet with the subject. He calls again, the victim schedules a meeting as instructed, and notifies the police. The two meet later at the specified location with the police observing. The subject begins to assault the victim by putting his hand on her leg at which time the police make the arrest.

The defendant could argue that the victim's words and actions reasonably seemed to him that she was consenting to his actions, but the issue of entrapment is not present here.⁶⁰

V. Conclusion

Surely there can be no dispute with the conclusion reached by Justice Brandeis that "Respect for law will

not be advanced by resort, in its enforcement, to means which shock the common man's sense of decency and fair play."⁶¹

Hopefully the preceding pages have conveyed to the reader some understanding of the formulation, implementation, and application of the general rule on the defense of entrapment, and, in so doing, have furnished a foundation upon which there will be established decent, fair, and successful investigations and prosecutions, not of the unwary innocent, but of the criminal, wary or otherwise.

FOOTNOTES

⁵⁴ 218 F. 2d 223 (10th Cir. 1954).

⁵⁵ *Badon v. United States*, 269 F. 2d 75 (5th Cir. 1959), cert. denied, 361 U.S. 894.

⁵⁶ 385 U.S. 206 (1966).

⁵⁷ 356 U.S. 386 (1958).

⁵⁸ *Ibid.* at 387.

⁵⁹ 248 F. 2d 191 (3d Cir. 1957).

⁶⁰ *Ibid.* at 195.

⁶¹ 397 F. 2d 460 (7th Cir. 1968), cert. denied, 396 U.S. 1027.

⁶² 373 U.S. 427 (1963).

^{63a} *Ibid.* at 437.

⁶⁴ 401 U.S. 745 (1971).

⁶⁵ See also *Osborn v. United States*, 385 U.S. 323 (1966).

⁶⁶ 321 F. 2d 73 (1st Cir. 1963).

⁶⁷ 267 F. 2d 619 (D.C. Cir. 1958), cert. denied, 359 U.S. 948.

⁶⁸ *United States v. Abdallah*, 149 F. 2d 219 (2d Cir. 1945), especially footnote 1, p. 222, cert. denied, 326 U.S. 724; *Silva v. United States*, 212 F. 2d 422 at 424 (9th Cir. 1954); and *Newman v. United States*, 299 F. 128 at 132 (4th Cir. 1924).

⁶⁹ Wharton, Criminal Law, sec. 231.

⁷⁰ Williams, Criminal Law, sec. 236 at 798, 2d ed.

⁷¹ *Lilly v. West Virginia*, 29 F. 2d 61 (4th Cir. 1928).

⁷² *Supra* footnote 11.

⁷³ 311 F. 2d 441 (5th Cir. 1962), cert. denied, 381 U.S. 950.

⁷⁴ *Hill v. United States*, 328 F. 2d 988 (5th Cir. 1964), cert. denied, 379 U.S. 851.

⁷⁵ *Bullock v. United States*, 383 F. 2d 545 (5th Cir. 1967).

⁷⁶ *Henderson v. United States*, 237 F. 2d 169 (5th Cir. 1956); *Whiting v. United States*, *supra* footnote 43; *Polaski v. United States*, 33 F. 2d 686 (8th Cir. 1929), cert. denied, 280 U.S. 591; *Beard v. United States*, 59 F. 2d 940 (8th Cir. 1932).

⁷⁷ *Sorrells v. United States*, *supra* footnote 1.

⁷⁸ *Sherman v. United States*, *supra* footnote 11.

⁷⁹ *Henderson v. United States*, *supra* footnote 55.

⁸⁰ *Commonwealth v. Brown*, 54 Pa. Super. 439 (1913).

⁸¹ *State v. Burnett*, 226 S.C. 421, 85 S.E. 2d 744 (1955). Also see 34 N.C. L. Rev. 536 (1955-56).

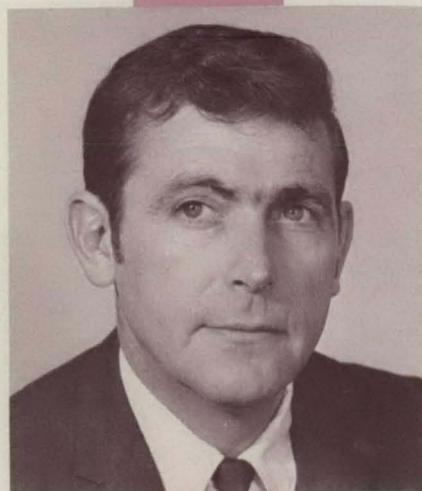
⁸² *Burdeau v. McDowell*, 256 U.S. 465 at 477 (1921), dissenting opinion.

FALSE REPORTS OF ARMED ROBBERY



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Curiously, little has been written on false reports of crime. Nor are statistics readily available on the incidence of false reports. When detected, they are classified as unfounded, but not all unfounded reports are false reports. Records of the Denver Police Department show that in 1971 almost 7 percent of all reports of aggravated robbery were found on investigation to be false reports. The purpose of this article is to review the motives for false reports and to provide practical guidance for the recognition of baseless claims of armed robbery.

Armed robbery is a serious crime which demands the immediate intervention of many police officers. False reports of this crime cause many problems. Officers driving to the scene of a robbery must do so swiftly, which tends to compromise safety and increase the risk of traffic accidents. Patrol cars assigned to the area search at the crime scene are out of service when they may be required urgently elsewhere. Cars resembling the alleged getaway car may be stopped, and innocent persons may be detained because their appearance closely resembles that of the alleged offenders. Detectives spend valuable time in the investigation of false reports of armed

"[The officer's] greater awareness and understanding of the motivations behind most false reports of armed robbery should contribute to increasing his skill in their recognition, thus saving the police department and the community wasteful expense in needless investigation."

robbery, possibly at the expense of other investigations of actual holdups.

Motives for False Reports

There are many motives for false accusations of armed robbery, although some cases appear to be inexplicable.

Financial gain. This motive is an obvious factor in many cases. After reporting that a gunman robbed him of over \$2,000, the owner of a small grocery store claimed this substantial sum from his insurance company. A gas station employee on duty alone at night helped himself to the contents of the cash register, then blamed the loss on a masked gunman.

To explain loss of money. The man who squandered his paycheck in a game of poker or who spent the evening drinking and comes home to find his wallet missing may claim that he was held up in order to avoid the anger of his wife. A bartender invited some friends to the bar for free drinks after closing time. One of his friends took money from the cash register, and when the barman discovered the theft the next day, he reported a robbery to avoid responsibility for repaying the money to his employer.

Claims of robbery may be made to explain the loss of money in illegal transactions. A young man received over \$1,000 from his father to pay his university fees. In the hope of a quick profit, he decided to buy some heroin for resale to fellow students. On inspecting his purchase, he discovered that he had been sold baking soda.

Prostitution is another illegal transaction leading to false reports of robbery. When a patron of this vice dis-

covered on arriving home that his wallet was missing, he could not tell his wife that he had been "rolled" by a prostitute. He made up a story of a stickup outside his apartment house, and in order to convince his wife he called the police to report an armed robbery.

To explain gunshot wounds or other injuries. Criminals who have suffered gunshot wounds while committing a robbery or other crime may appear at a hospital with a claim that they were victims of an armed robbery. In an unusual case, two young men who were planning to hold up a supermarket rehearsed the robbery beforehand in a city park. One man in his excitement fired his revolver and killed his colleague.

When a person deliberately or accidentally wounds a friend with a gun, together they may concoct a story of armed robbery to explain the shooting, especially if the gun is a stolen weapon. A 15-year-old youth told police that while he was walking with two other friends on a city street they were held up by six hoodlums, aged 18 to 20 years. When the three victims fled, one of the suspects reportedly fired a shot which hit one of them in the arm. Later one of the three "victims" confessed to police that they were playing with a revolver when his companion was shot accidentally rather than while running away from a holdup. The three boys made up the story of an armed robbery as they walked to telephone an ambulance.

Self-inflicted gunshot wounds, whether accidental, as in the case of a man practicing a quick draw, or deliberate, as in suicide attempts, may be attributed to a stickup. A young

woman claimed that a man broke into her home and attempted to rob her at knife point. She stated that she ran to her bedroom and got her revolver which she fired at him. She missed, and he pushed her to the floor. In the struggle the gun discharged, and she was shot in the arm. On questioning, she admitted to detectives that she had shot herself because she was despondent and was trying to obtain sympathy. She was most insistent that this was not a suicide attempt.

"Family fights involving injuries prompt some false reports of robbery."

Family fights involving injuries prompt some false reports of robbery. A 28-year-old woman told police that while she was walking home in the early hours of the morning a stranger demanded her money. When she started to walk away, he slashed her across the body three times with his knife. She also had cuts on her hand from her attempts to protect herself.

Shortly after the woman was admitted to a hospital, her husband, an apartment house manager, telephoned the police to report that he had been robbed of \$650 by two men who forced their way into his apartment. He claimed that they beat him unconscious with a .45 caliber automatic pistol. When he regained consciousness, his wife and the rent receipts were missing.

The officers, who were unaware of the earlier robbery report by the man's wife, found blood all over the bed and on clothing in the apartment. Detec-

tives interviewed one of the tenants in the apartment house. This man had lost his door key the previous night, and the manager on opening the door invited him to his apartment for a drink. The manager told him that he was "practicing being nervous so that when the cops came they would think he had been held up." The manager's wife admitted that he had beaten her and had cut her with a butcher knife after he returned home drunk.

To avoid arrest. Persons who have committed crimes may attempt to avoid detection by claiming that they were the victims of armed robbery. Reference has already been made to armed bandits with gunshot wounds who claimed to be victims of robbery.

Another example of this is the woman involved in a hit-and-run accident who was fearful of being arrested. She called the police several hours after the accident, falsely claiming that she had been abducted and robbed by a man with a pistol. After getting into her car, she alleged, he forced her to drive to various parts of the city before releasing her. To account for the damage to her car, she claimed that at one location he made her back her car into a parking lot at which time she collided with another automobile.

"Revenge is sometimes the motive when a man falsely accuses someone he knows as his assailant in an armed robbery."

For revenge. Revenge is sometimes the motive when a man falsely accuses someone he knows as his assailant in an armed robbery. A young man who lost money to three strangers in a game of poker told police that they had robbed him of \$240. Later he admitted that he hoped the police would arrest the men he had described as he wanted to "get even with them" be-

cause he felt they had cheated him in a card game.

In another case, a man who was cheated on a business deal made a false accusation of robbery and gave the police the car license number of the man who had cheated him. He thought this man was driving a stolen car and that police inquiry would lead to an arrest for this offense.

Other motives. Persons in debt occasionally try to explain a default in payment on their home or car by saying, "I was robbed, if you don't believe me call the police."

Attempts to gain sympathy or attention from a boy friend whose affection is waning or a desire for newspaper publicity can lead to false claims of robbery.

A convenience store employee took money from the cash register and then reported a much greater loss as the result of a stickup. He confessed that his motive was to make his sales appear better than they were in the hope of obtaining a promotion to manager.

Another unusual case was that of a woman who claimed that a man held her up with a .38 caliber revolver and told her, "Give me your purse or I'll blow your brains out." She told police that he warned her, "If you call the cops, I'll shoot it out with them." Investigation by detectives revealed that the man was her common law husband and that they had been fighting recently. Indeed, she had attempted to hire someone to kill him. On questioning she admitted that she hoped the police would attempt to arrest her common law husband and in the process would shoot him.

Clues to False Reports

An experienced detective can often predict with accuracy that a complaint is false simply from a careful scrutiny of the patrolman's report of the offense. No decision should be made until the victim, witnesses, and, when-

ever possible, the suspected offender have been interviewed. There are many factors which arouse suspicion of a false complaint of armed robbery. In reading an offense report care should be taken to check the following factors:

Delay in reporting the offense. Victims of armed robbery usually notify police without delay. They seldom wait for an hour or more before taking any action.

"There are many factors which arouse suspicion of a false complaint of armed robbery . . . [which can be detected from] . . . reading an offense report. . . ."

Location of the offense. Inability to give the location of the offense is most often encountered in false reports. If the site of the offense is in an area notorious for illegal narcotic sales, prostitution, or homosexual activity, it is possible that a theft or assault has been falsely reported as an armed robbery. A robbery in an area where this offense seldom occurs, especially when no robberies with a similar *modus operandi* have been reported elsewhere, may not be genuine.

Amount of loss. When the amount of money taken in the crime is larger than might be expected, for example, a \$2,000 loss in a small tavern which has an average trade of less than \$200 a day, some explanation is required. When there is a note in the offense report that the loss is high because the victim failed to follow his usual daily procedures, the possibility of a false report should be considered. Failure to place money in a bank, in a safe, or in the custody of an armored car driver in accordance with daily routine, and failure to lock a door that is normally kept locked may be an oversight by a genuine victim, but

such failure may also be a feature of a false report.

Sometimes people who take money from their place of employment, then report a robbery, will leave some money in the cash register or otherwise in plain view to divert suspicion from themselves.

Description of the offenders. Exceptionally detailed descriptions of the alleged offenders, or just the opposite, no reference to height, weight, hair color, and so on, occur more often in fabricated reports. The man who makes up a story about a robbery sometimes uses himself as a model when asked to describe his assailant. If the so-called victim closely resembles the suspect, bear in mind that the report may be a product of his imagination. Occasionally the "victim" gives a description of a villain-type assailant in his efforts to make the suspect look like a criminal.

There may be something about the description of the suspect that strikes a discordant note, e.g., a person who wears a white shirt and tie in a neighborhood where white shirts and ties are seldom seen. Face masks, too, are seldom a feature of street robberies.

Unlikely or improbable events. A robust steelworker who complains that he was robbed by a short, slight man wearing glasses and carrying a tire iron is likely to encounter raised eyebrows in a police department. A man armed only with a club is unlikely to rob three robust young males without some resistance.

Armed robbers in public places have to move quickly because of the risk of interruption. Their commands are brief and to the point. Long-winded, threatening statements might occur in a private home behind closed doors but not in a public place. A

melodramatic quality in the report of the robbery arouses question. Some bizarre-sounding robbery accounts, of course, can be truthful.

Failure to call for help and failure to attempt escape when the opportunity presents itself demand an explanation from a professed victim.

Loss of consciousness and injuries. In their effort to impress the police, fakers of robberies tend to overstate their case. Too often they claim that they were knocked unconscious and indeed will sometimes claim a period of unconsciousness extending over several hours. A statistical study of 100 consecutive cases of false reports and of 1,000 genuine reports of armed robbery showed that reported loss of consciousness by the victim occurred 50 times more often in the unfounded reports. The victim suffered gunshot and knife wounds almost twice as often in the false reports.

A man who claimed that he was struck from behind had an abrasion on his forehead. Often in cases of loss of consciousness there is a notation on the offense report that there is no visible sign of physical injury. Persons who claim to have been involved in a violent physical struggle are neatly dressed without a hair out of place.

False or contradictory statements. In his distress, a victim of armed robbery may give a disjointed account of the event. His emotional state may influence his recollections and lead to contradictory statements. But such statements may have another basis, and the patrolman who takes the offense report should list the contradictions in a separate report. For example, the suspect was wearing a red and white check jacket which is later described as black and white; one make of car becomes another; a white as-

sailant becomes a Negro; and the gun changes from a revolver to an automatic pistol.

The Investigation

Preliminary investigation at the scene of an alleged robbery may provide evidence of a false report. A man claimed that the offender gained entry to his home by kicking a door in; but investigation showed no sign of forced entry. A tavern owner claimed that he was struck over the head in the basement office of his establishment; yet the basement ceiling was so low that it would have been impossible for an assailant to have hit him in the manner he described.

When the victim makes no attempt to contact detectives to aid in the follow-up investigation, or when difficulty is encountered in contacting the victim and in persuading him to come to the detective bureau, the possibility of a false report should be considered. Repeated promises to appear, and ever-changing excuses for failure to do so, are almost always characteristic of false reports. Attempts to locate the complainant are sometimes unsuccessful because he has given a non-existent address or because he neither lives at his listed home address nor works at his listed place of employment.

Under these suspect circumstances, the victim should be asked to repeat his account of the crime. Sometimes it is helpful to ask him to show by words, gestures, and other actions the behavior of all involved in the crime. Any discrepancies between the victim's original report and this report should be explored thoroughly. Unlikely or improbable circumstances should be investigated.

"Repeated promises [by the victim] to appear, and ever-changing excuses for failure to do so, are almost always characteristic of false reports."

A man who was robbed of \$5,000 in a parking lot in the early hours of the morning said he was on his way to buy postal money orders for this amount at a convenience store. Such an unlikely story prompted further inquiry. He told detectives he had received the money in a package of clothing insured for \$250, and the money was to be used to purchase a new car. However, inquiry showed that he had told his employer he had received a check in the mail and had to pay \$50 to cash it at a well-known tavern. The tavern had never cashed a check for this amount.

The victim should be asked his reason for being at the scene of the crime especially if the crime occurred in the early hours of the morning. One man who claimed to be the victim of a street stickup said he was taking a friend home in his car. However, he did not know the name of his friend and was unable to point out his friend's home.

A very hasty review of mug shots at police headquarters by the victim is often a sign that the robbery report is false. Complainants who feel the detective suspects a false report will sometimes make a very positive mug shot identification.

Teenagers often have an encyclopedic knowledge of cars and their failure to identify the make and model of the getaway car in a robbery is puzzling.

The victim should be asked the reason behind any request that his parents, wife, or employer should not be informed of the alleged robbery.

If a victim's signature is clearly more legible than that which appears on the offense report, the possibility of drunkenness or drug intoxication should be considered.

In suspected drug thefts, examination of the professed victim's arms may reveal injection marks indicating, of course, his own possible interest in the drugs.

Too many convenient occurrences in a robbery report arouse suspicion, e.g., an unusually large amount of money in the cash register, absence of another employee because of sickness, the bandit's knowledge of a secret money hiding place, and an unlocked door.

In the case of a dubious report, the complainant should be asked about his debts, his length of employment, if he has ever been arrested by the police regardless of whether or not he was subsequently charged with a crime, and if he has made any prior reports of assaults, thefts, burglaries, or robberies. One man made 13 reports of robbery and burglary within 3 years. His insurance company had canceled his policy because of the unusual number of claims. False reports could be a source of income for complainants through income tax deductions to cover alleged uninsured losses. Official records on arrest as well as any other contact the police may have had with the complainant should be reviewed.

"An unexpected call on the complainant at his residence may be very revealing."

An unexpected call on the complainant at his residence may be very revealing. His companion may be a known criminal or may resemble in appearance the suspect described by him. Even better, the companion may be identical with a witness who supported the complainant's robbery claim and led police to believe they were complete strangers to one another.

Similarly, a surprise visit to the home of a witness may be equally revealing. Even when witnesses confirm the victim's account of a robbery, the report may be false. A service station

employee set up a false stickup of the gas station and arranged for two of his friends to act as witnesses to support his story.

On the other hand, witnesses to an alleged robbery may give an account of the event quite different from that provided by the complainant as in the following example:

A delivery truck driver reported that he was robbed of \$471 by two armed men in the parking lot of a large shopping center. Detectives located a witness to the "robbery." The witness saw two men approach the driver and speak to him. They appeared to know the driver and they did not show any firearms. Furthermore, their ethnic group and facial and general appearance were quite different from the description of the holdup men provided by the complainant. When confronted with this information, the driver told the detectives, "We planned a false robbery. I knew that every Friday I would get a lot of money. I was kind of down and I needed the money."

Tactful questioning of the victim's employer, acquaintances, and relatives may throw doubt on his story of the robbery. A gas station attendant reported that a gunman had taken \$65 from the cash register and also his own billfold, which contained \$7. Yet the owner of the gas station had seen the billfold earlier in the evening, and it contained much more money. When confronted, the employee changed his story and said that the offender did not take all his money and did not take his wallet.

A robbery victim's story may be suspected from the start by those who know him. The sister-in-law of one complainant telephoned the detective to report that he had asked her husband to set up a "phony" robbery.

Informants sometimes provide valuable information. One informant told police that he had seen the boy friend of a "victim" in possession of items she had reported taken in a robbery of the store where she was employed.

Quite often a robber hands the victim a demand note warning him that this is a stickup and telling him to hand over the money. If the note is left at the scene and there is reason to suspect the authenticity of the robbery, it is sometimes helpful to ask the victim to write down the contents of the note. In one case the "victim" was able to recall all the words in the note and he even misspelled one word in the same way as in the original note. Handwriting experts showed that the "victim" had written the original note.

Persons who make false complaints of robbery are usually reluctant or unwilling to agree to a polygraph examination. The curious circumstance may occur in which an identified suspect may demand a lie detector test yet the complainant refuses. This, certainly, should be grounds for deep suspicion of the complainant's motives. Those complainants who agree to take a polygraph test may confess that the robbery did not occur if the results suggest that they have lied in making a report or have attempted to deceive the examiner.

Prosecution

There is some doubt whether prosecution of persons who make false reports serves a useful purpose except to discourage those few persons who make one false complaint after another. In any event, if prosecution is contemplated, the complainant would have to be advised of his constitutional rights, of course, at the point in his interrogation when his guilt became suspected. The very nature of these rights may make it much more dif-

ficult both to obtain a confession and to obtain any money stolen by the professed "victim."

Guidelines

Guidelines for the recognition of false claims of armed robbery can be very helpful to police investigations. It should be emphasized, however, that guidelines are only that and represent no certain means of exposing false robbery reports. Reports of genuine armed robbery are encountered which seem to have all the hallmarks of a false complaint. On the other hand, bizarre stories which arouse skepticism may be factual. Truth is indeed sometimes stranger than fiction, and apparently genuine accounts can prove false.

The victim's appearance, likewise, might indicate an inconsistency in his story but cannot be taken as sure evidence of a fraud. Someone who appears unruffled by homicidal threats and loss of several hundred dollars may be a genuine victim; whereas a person who shows apparently authentic distress following a stickup may be the author of a counterfeit complaint. Because some information is false, it does not inevitably follow that a robbery did not occur. There will always be nagging inconsistencies or unexplained falsehoods in the statements of victims and witnesses in most criminal investigations.

Conclusion

The skilled detective should be neither too credulous nor too skeptical as he listens to persons who claim that they have been robbed. His greater awareness and understanding of the motivations behind most false reports of armed robbery should contribute to increasing his skill in their recognition, thus saving the police department and the community wasteful expense in needless investigation. (FBI)

ROLE OF IDENTIFICATION

(Continued from page 13)

State was summoned to examine the dead physician's car which also had been found wrecked near his body. The search for fingerprints seemed useless since the car had obviously been wiped clean. But the officer's dogged determination was rewarded when, under the strokes of his dusting brush,²⁵ there appeared on the corner of one of the car's windows a faint and fragmentary latent fingerprint. An enlarged photograph of this print was subsequently forwarded to the FBI Identification Division which was unable to search it against its records since they were necessarily classified and filed on the basis of all 10 fingers for each fingerprint record. Due to the viciousness of the crime, however, a decision was made to have all supervisors in the Identification Division memorize the latent print as best they could in the long-shot hope that one of them might someday come across its matching print.

More than a year following this robbery-murder, a fingerprint record for William Harrison Holden was received from the Stockton, Calif., Sheriff's Office. It was no surprise to the FBI supervisor who searched this record that Holden turned out to be quite another person entirely: Jake Fleagle who had served time for robbery in the Oklahoma State Penitentiary. After confirming this identification by close comparison of each fingerprint pattern of both "Holden" and Fleagle, the supervisor set aside the cards momentarily—just long enough for a glimmer of recognition to run through his mind. He had seen one of those fingerprints before—but where? Another perusal of the cards sent him back to the files to check several hunches. Then it all came rushing back—one of the finger-

"The Fleagle case was one of the first in a long series of investigations of major attention in which the FBI Identification Division has significantly contributed evidence by the identification of latent fingerprints."

prints was identical with the latent fingerprint from the Colorado robbery-murder case.

As a result of this identification, Fleagle (who had subsequently been released at Stockton) was located, shot, and killed when he fired at officers attempting to apprehend him. His three accomplices were subsequently identified and four innocent suspects who had been charged with the crime earlier were released.

The Fleagle case was one of the first in a long series of investigations of major attention in which the FBI Identification Division has significantly contributed evidence by the identification of latent fingerprints.²⁶ The need for a latent fingerprint service grew in succeeding years resulting in the formation of the Latent Fingerprint Section of the FBI Identification Division in 1933.

Utilizing the most experienced of its fingerprint identification specialists, the FBI Latent Fingerprint Section began to compile and classify on a single fingerprint basis the prints of notorious criminals and suspects identified with major crimes. The work of this section generally consists of comparison of latent finger, palm, and even foot impressions against those in the major case files or with the submitted prints of logical suspects. The proficiency of this special identification service is attested to by the fact that in 1972 more than 36,000 cases were submitted to it which resulted in nearly 2 million fingerprint comparisons and the identification of over 5,000 suspects.

The year 1933 also witnessed the beginning of a significant expansion of FBI identification functions. In that year more than 140,000 fingerprint

records of government employees and applicants from the U.S. Civil Service Commission were acquired to form a separate Civil Identification Section of the FBI Identification Division. These civil fingerprint records grew enormously with the later addition of alien and armed forces fingerprint records which in 1943, for example, swelled FBI fingerprint receipts for that year to an alltime high of 28,733,286 or an average daily workday influx of 93,540 records. This civil section has down through the years consistently provided, to law-abiding citizens in the files, protection from loss of identity through amnesia or the disfiguring circumstances of some deaths.

The humanitarian potential for these expanded civil fingerprint files became evident in 1940 as a result of a commercial airline crash 40 miles outside Washington, D.C. FBI fingerprint identification specialists were sent to assist in identifying the deceased among whom were two FBI employees who had been passengers aboard the flight. This spurred formation of the FBI Disaster Squad which since 1940 has furnished identification assistance, at the request of appropriate authorities, in 96 major disasters including some abroad which involved U.S. citizens. These have encompassed aircraft and bus crashes, ship accidents, fires, explosions, and hurricanes. Of those disasters in which identification assistance has been extended since 1958, FBI experts have identified from finger or palmprints more than 73.5 percent of an estimated 2,123 victims from whose bodies prints could be found.

The number of fingerprint records in the FBI Identification Division is the largest known of any comparable

repository in the world. As of October 31, 1972, these amounted to more than 159,500,000 sets of fingerprints representing nearly 61 million persons of whom over 40 million were in the noncriminal category. These civil fingerprints consist of applicants for Federal Government and certain other miscellaneous positions, members of the Armed Forces, aliens, and those persons who have voluntarily submitted their fingerprints for personal identification reasons. In its 48th year of operation, the Identification Division has over 7,000 contributing agencies for which it identified over 33,000 fugitives in the first 10 months of 1972.

The scope and accomplishments of the FBI Identification Division truly represent a separate chapter in the role and history of law enforcement identification. It has brought to realization most of the dreams²⁷ of early identification pioneers and more than rewarded their efforts and sacrifices to develop scientific procedures in the identification and detection of criminals.

(Continued Next Month)

FOOTNOTES

¹ Instances of innocent persons arrested and convicted of crimes as a result of mistaken identity are not common, but, when discovered, they justifiably attract widespread attention. One of the most aggravated cases helped hasten, due to the period in which it took place (1877-1904), the adoption of new police identification methods. It involved a Norwegian by the name of Adolf Beck who despite his insistent avowals of innocence was, during the period of 1895 to 1904, twice arrested, convicted, and imprisoned on the basis of his mistaken identification by witnesses as John Smith, alias "Lord Willoughby," who previously had been imprisoned and released for defrauding a series of women at London, England. Beck's plight was discovered during his second imprisonment and only after Smith was again arrested for defrauding women. C. R. M. Cuthbert, *Science and the Detection of Crime* 14-16 (1958).

² See B. C. Bridges, *Practical Fingerprinting* 11 (1942).

³ See B. Wentworth & H. H. Wilder, *Personal Identification* 333 (1932).

⁴ Id. 335.

⁵ See J. P. Wood, *Scotland Yard* 80-81 (1970).

⁶ The camera was invented in France in 1822.

⁷ For an interesting illustration of a police "Rogues' Gallery" of the period, see T. Byrnes, *Professional Criminals of America* (1886). Byrnes was then Chief of Detectives of the New York City Police Department, and it is believed his book, which pictures and describes a wide variety of notorious offenders, was the first of its kind.

⁸ Id. 52-55, contains a chapter, "Why Thieves Are Photographed," in which are pictured some of Byrnes' detectives restraining a struggling prisoner who is resisting efforts to have his photograph taken. Photographs, of course, taken under such circumstances would have little value for identification purposes.

⁹ These consisted of 11 measurements: height, reach, trunk, length of head, width of head, length of right ear, cheek breadth, left foot, middle finger of left hand, little finger of left hand, and the left forearm. A. Bertillon, *Signaletic Instructions* 15 (R. W. McClaughry transl. 1896).

¹⁰ In addition to pioneering anthropometry and law enforcement photography, Bertillon developed the *Portrait Parle* (or speaking likeness) which by means of photographs or drawings of the most characteristic types of facial and body features attempted to standardize the terminology in physical descriptions. The system proved cumbersome for the average police officer on the street but helpful in establishing uniformity in descriptive material filed in police identification bureaus as well as in forming more accurate descriptions by witnesses of unknown suspects. Bertillon was also one of the first to study handwriting characteristics as a means of identification. H. T. F. Rhodes, *Alphonse Bertillon* 102-109, 128 (1956).

¹¹ F. Galton, *Finger Prints* 155 (1892) [hereinafter Galton].

¹² Accurate records concerning youth involvement

in crime are a 20th century development. The literature of the 19th century, however, would seem to indicate that youthful criminality comprised a substantial portion of all serious crimes. Twenty-eight percent of all Crime Index offenses (murder, forcible rape, robbery, aggravated assault, burglary, larceny \$50 and over, and auto theft) solved involved persons under 18 years of age. 1971 FBI Uniform Crime Reports 31. If youth involvement with serious crime in the last quarter of the 19th century was anywhere near this proportion, it is evident that Bertillonage would not have been a reliable means of identification for a significant number of offenders.

¹³ Identification of an offender with prior criminal acts is not only important to the investigative and prosecutive processes but it is also useful in measuring the success or failure of the entire criminal justice system. Recidivism among criminals has always been thought to be high but, until the last decade, comprehensive data has been lacking. Beginning in 1963, the FBI Uniform Crime Reporting Program began to analyze, among other factors in criminal histories, the degree of recidivism among Federal offenders. Thus far the study has found that recidivism is high in this group, supporting the notion that it is probably high among all offenders. For details see 1971 FBI Uniform Crime Reports 36-38.

¹⁴ The year before, it was later learned, Mr. Gilbert Thompson, an American geologist working in New Mexico, made out a payment order to a member of his staff on which he wrote the amount payable over his thumbprint. His purpose was to prevent any alteration which, of course, might also alter his thumbprint. Galton 27.

¹⁵ S. Clemens, *Life on the Mississippi* 270 (1883).

¹⁶ See G. W. Wilton, *Fingerprints: History, Law and Romance* 14 (1938).

¹⁷ Id. 16.

¹⁸ Id.

¹⁹ Id. 21.

²⁰ Id. 11.

²¹ The Henry and Vucetich methods of classification are the base for all 10-finger identification systems. It is the basic Henry system, with modifications and

extensions, which is used by the FBI and throughout the United States. The Vucetich system is used in most Spanish-speaking countries and a number of other countries as well.

²² Miles, *Historic Fingerprint*, N.Y. Times, Apr. 22, 1956, (Magazine) at 30.

²³ Id.

²⁴ The Bureau of Investigation was later known as the Division of Investigation and was not officially titled the Federal Bureau of Investigation until 1935.

²⁵ Powder brushed lightly over a hard, smooth surface touched by the human hand will cling to any grease or moisture impressions left by the ridges of the hand's friction surface, making (if a contrasting powder is used) the details of its pattern visible against the background.

²⁶ Just a few of the important FBI cases of recent years would include the assassination of former President John F. Kennedy in 1963; the murder of Dr. Martin Luther King, Jr., in 1968; and the kidnapping of Barbara Jane Mackle in 1968.

²⁷ Vucetich championed fingerprinting of the entire population of Argentina which proposal was enacted into law by the Argentine Parliament in 1916. Efforts to carry out the program provoked so much resistance and protest, however, that the law was repealed the next year. The *Concise Encyclopedia of Crime and Criminals* 330 (H. Scott ed. 1961).

GRADUATION

(Continued from page 7)

by Chaplain Glynn and the National Anthem played by the U.S. Marine Band, which traditionally has presented outstanding musical programs at the National Academy graduations.



Attorney General Kleindienst and Mr. Felt are shown with representatives of the class with plaques presented to them in recognition of their services. From left to right are: Lt. Col. Chester L. Arnzen; Mr. Earle W. Robitaille; Sgt. Edmund A. Hagan; Mr. Kleindienst; Mr. Felt; Maj Adolfo P. Sgambelluri; Capt. Andrew C. Zawelensky; and Lt. Francis G. Reynolds.



WANTED BY THE FBI



KENNETH DEE CARPENTER, also known as: **Kenneth Lee Carpenter**, "Cream," "Creamie."

Interstate Flight—Burglary; Bank Robbery

Kenneth Dee Carpenter is being sought by the FBI for unlawful interstate flight to avoid prosecution for burglary and bank robbery. Federal warrants for his arrest were issued on January 27, 1972, and on March 22, 1972, at Springfield, Ill.

On December 29, 1970, Carpenter was arrested by the Bloomington, Ill., Police Department for the burglary of a vacuum cleaner establishment. He appeared in the McLean County, Ill., circuit court on November 30, 1971, and entered a plea of guilty to the charge. Probation investigation was ordered and a probation hearing was set for January 3, 1972, at which time Carpenter failed to appear.

On December 1, 1971, Carpenter allegedly robbed the National Bank of Bloomington, Bloomington, Ill., of \$6,400. He reportedly approached the teller with his right hand in his jacket pocket, pointing as if holding a weapon, and handed the teller a brown paper bag, demanding money. The robber reportedly left the bank by the front door and fled on foot through a motel parking lot into a nearby alley.

Caution

Carpenter may be armed and should be considered dangerous.

Description

Age.....	31, born July 27, 1941, Mt. Sterling, Ill.
Height.....	5 feet 9 inches to 5 feet 10 inches.
Weight.....	145 to 160 pounds.
Build.....	Medium.
Hair.....	Dark brown.
Eyes.....	Green, blue.
Complexion.....	Medium.
Race.....	White.
Nationality.....	American.
Occupations.....	Cook, electrician's helper, machinist, service station at- tendant.

Scars and marks... Scar on right cheek,
scar under right side
of jaw; tattoo: figure
of man with para-
trooper boots and
two parachutes up-
per right arm.

FBI No.....	957, 984 D.
Fingerprint classification...	15 O 9 U 000 16 M 17 U 000

Right ring fingerprint.



Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Acting 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.

FOR CHANGE OF ADDRESS ONLY

(Not an order form)

Complete this form and return to:

ACTING DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

(Name) (Title)

(Address)

(City) (State) (Zip Code)

UNIFORM CRIME REPORTING PROGRAM CRIME INDEX OFFENSE-LARCENY

"Total larceny-theft" is being used to replace the category "larceny \$50 and over" as a Crime Index offense in the Uniform Crime Reporting Program. During the 1973 calendar year the Crime Index offenses used to measure crime in the United States will consist of murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and auto theft. The Uniform Crime Reporting collection forms will not be changed during calendar year 1973. The change in the format of the forms will occur in calendar year 1974. All crime trends and other presentations under the Uniform Crime Reporting Program will be based on the utilization of "total larceny" as a Crime Index offense commencing with publication of 1973 data.

(Soyars to Conger memo 9/8/73, Subject: Uniform Crime Reporting Program Crime Index Offense-Larceny)

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

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THIRD CLASS

INTERESTING PATTERN



In the Identification Division of the FBI the interesting pattern illustrated is classified as an accidental whorl. The tracing which is inner is obtained by using the two outermost deltas. It is interesting due to the fact that it combines a loop over a whorl in the same impression.