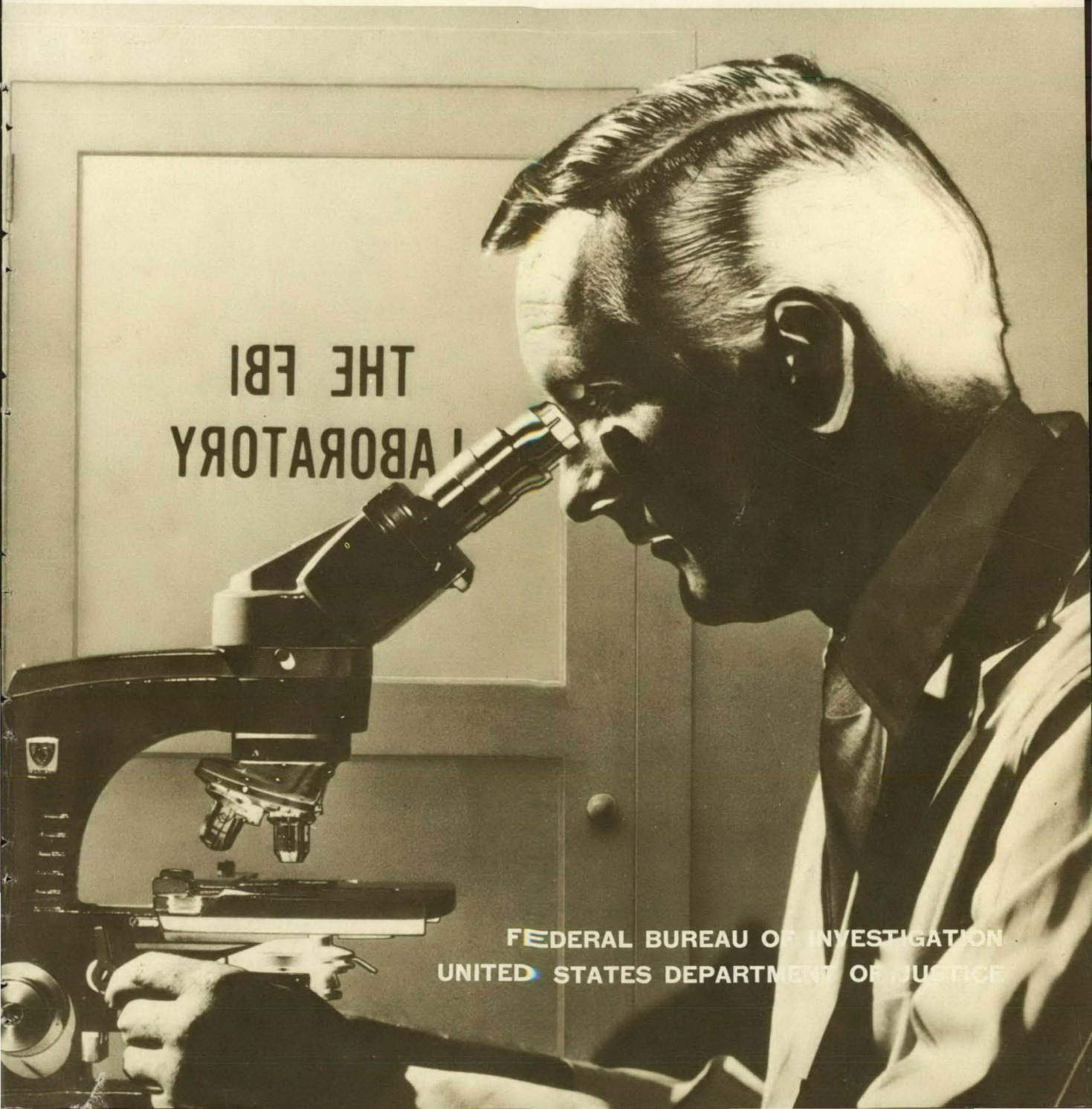
NOVEMBER 1972

FBI

LAW ENFORCEMENT BULLETIN



FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

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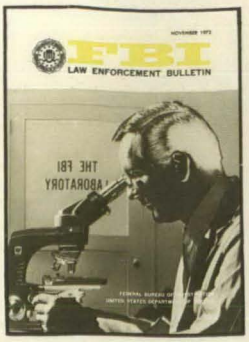

THE COVER—*The FBI Laboratory celebrates its 40th Anniversary this month. See article beginning on page 2.*

FBI

LAW ENFORCEMENT BULLETIN

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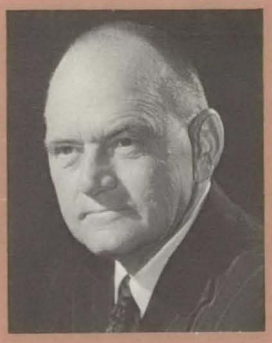
MESSAGE FROM THE ACTING DIRECTOR . . .

. . . To All Law Enforcement Officials



FORENSIC SCIENCE has brought an increased sureness to law enforcement efforts which has greatly advanced the pursuit of justice. Our ideal of justice requires objectivity tempered with compassion. Yet this ideal cannot be met if we have not the means to clearly distinguish between guilt and innocence. Science is providing a tool which increasingly is making it easier to make this distinction with some degree of certainty.

For the past four decades, the FBI Laboratory has been in the forefront of the effort to bring to law enforcement investigations the certainty that scientific procedures and techniques can provide. We are proud that its determined efforts to ascertain the truth have exonerated the innocent with the same precision as they have condemned the guilty.

From a meager beginning which saw fewer than 1,000 examinations of evidence conducted in its first full year of operation, the FBI Laboratory has expanded in coverage to embrace all major branches of the forensic sciences, and in volume to handle nearly one-half million examinations of evidence in the past fiscal year for the Nation's law enforcement agencies, including those of State, local and other Federal jurisdictions. In addition, FBI Laboratory experts criss-cross the country daily, bringing their expertise in testimony to criminal court proceedings in every corner of the land.

These accomplishments reveal the growing awareness in all levels of our profession of the value of forensic science in law enforcement performance. This recognition reinforces the validity of the traditional requirement of our criminal law that for a person to be found guilty, his guilt must be proven beyond a reasonable doubt. Moreover, this acceptance of science in law enforcement gives increased reassurance to the innocent individual trapped in a seemingly inescapable web of circumstantial evidence spun by the unlawful acts of others. Like the symbolic figure of Justice, science is blindfolded to favoritism and deals only with substantiated facts.

It is fitting that science has come to be in staunch opposition to crime. Discovery is the lifeblood of one, while concealment is vital to the other. Science, by strengthening the forces of justice, is a powerful ally of the war on crime. There is no doubt that its penetrating insights will expose crime and those who commit it with increased frequency and decisiveness. In this, the law enforcement profession and all others concerned with justice can take heart.

Pat Gray

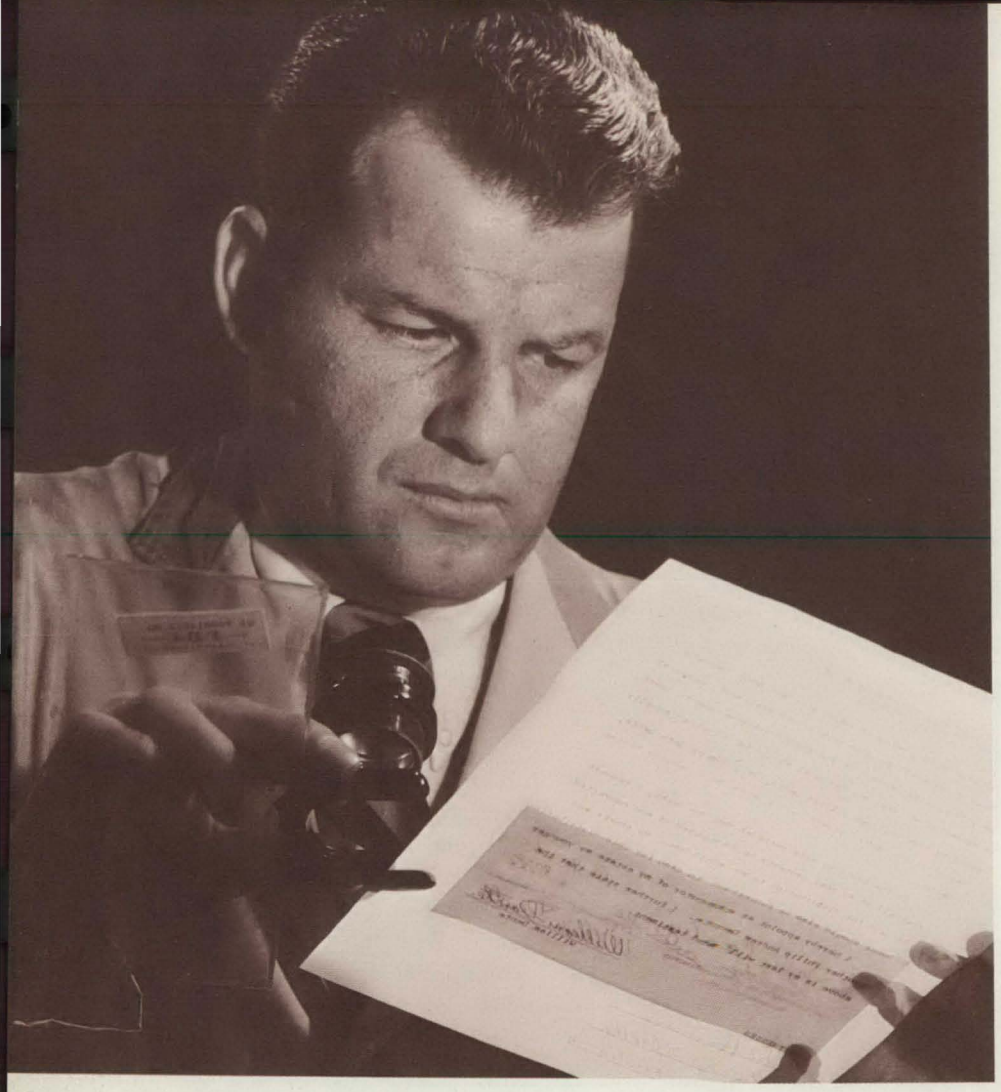
L. PATICK GRAY, III
Acting Director

NOVEMBER 1, 1972

40 Years of Distinguished Scientific Assistance to Law Enforcement

ANNIVERSARY REPORT

The shadowgraph shown is used to greatly enlarge document specimens.



Pictured is a document specialist making handwriting comparison for court testimony.

The FBI Laboratory facilities and experts are available without charge to all duly constituted Federal, State, county, and municipal law enforcement agencies of the United States and its territorial possessions. Examinations are made with the understanding that evidence is connected with an official criminal investigation.

During the first month of service, FBI Laboratory examiners handled 20 cases. In its first full year of operation, the volume increased to a total of 963 examinations. By the next year that figure was more than doubled. But this was only a thin shadow of the potential that loomed ahead for the FBI Laboratory. By the end of fiscal year 1972, total examinations had reached 495,000 for the preceding 12 months.

Specialization

While the new Laboratory gave assistance to law enforcement agencies of all sizes and from all regions of the Nation, the FBI received commensurate cooperation from them in return. In addition, manufacturers from throughout the country provided assistance in the form of reference collections or standards files. Typical are the Typewriter Standards File, the Automotive Paint File, and numerous other files for comparing known manufactured items with suspect samples. Just as the fingerprint examiner depends heavily on the comparison of a known print and a questioned print, so too does the Laboratory scientist, in many instances, depend on a comparison examination. The standards files are invaluable for this purpose.

The FBI Laboratory is staffed with specialists experienced in many scientific and technical fields. Specialization enhances the examination capability of the Laboratory, in that each unit limits its examinations to a relatively narrow field, thus making it possible for that specific department to research intensively in its discipline. This enables each unit to apply the most up-to-date equipment and knowledge to every aspect of its examinations.

A continuous program of adaptation and innovation is underway in the FBI Laboratory utilizing new developments in the examination of evidentiary materials. Many of the crimes investigated by local law enforcement agencies result in submissions of objects and samples found at the crime scenes to the FBI Laboratory for analysis and possible information of investigative value. Cases involving homicides and assaults on very young children place particularly heavy emphasis on the work of the crime laboratory because of the victim's frequent inability to offer effective testimony to the crime or make

"Specialization enhances the examination capability of the Laboratory, in that each unit limits its examinations to a relatively narrow field, thus making it possible for that specific department to research intensively in its discipline."

"Impressive as they are, the hundreds of technical reports, the thousands of exhibits presented from the witness stands, the tens of thousands of words of expert testimony given, and the hundreds of thousands of scientific examinations conducted annually fall far short of measuring the full influence of the FBI Laboratory's contribution in the nationwide solution of crime."

A scheduled airliner crashed near the southeastern tip of North Carolina, taking the lives of all aboard. Experts from the Federal Bureau of Investigation's Laboratory, experienced in many areas of scientifc examination, rushed to the scene to assist in determining the cause of the disaster.

Some of the first pieces of evidence to be examined were various articles of clothing from the body of one of the passengers found some 16 miles from the crash scene. These were soon followed by hundreds of other pieces of evidence which quickly set into motion the scientific personnel and equipment representing virtually every segment of an elaborate crime detection facility—the FBI Laboratory. Slowly the test tubes, microscopes, and spectrographs yielded from the debris found at the crash site the grim evidence that a bomb had been responsible for the fatal disaster to the aircraft, its crew, and passengers.

The final report compiled by the FBI Laboratory indicated that a dynamite explosion had taken place aboard the ill-fated flight. Triggered by means of a dry cell battery, the bomb had vented its carnage in the passenger compartment near the seat occupied by the victim whose body was found a considerable distance from the main crash scene.

Each day, in similar manner, the resources of the FBI Laboratory, which celebrates its 40th Anniversary November 24, 1972, are mobilized in the mounting struggle against crime.

The Formative Years

The 40-year history of the FBI Laboratory is one of growth and accomplishment. During the fall of 1932, a few file cabinets were removed from one room in the old Southern Railway Building, 13th and Pennsylvania Avenue, NW., Washington, D.C., in order to find available space for the crime laboratory of the FBI, then known as the Bureau of Investigation. One microscope was moved into the room, along with ultraviolet light equipment, a large drawing board, a helixometer, and some surplus bookshelves. A few tables were added to the equipment, and plans were made to bring in photographic instruments. A crime lab was in the making.

During the formation of its Laboratory, the FBI launched a program to locate businessmen, manufacturers, and scientists whose knowledge and experience might be useful in guiding the new facility through its infancy. With the future in mind, an FBI Special Agent was enrolled in a course of study offered by the scientific crime detection laboratory of a large midwestern university.

The mere collecting and grouping together of scientific equipment, however, certainly did not constitute a a complete laboratory for service to law enforcement. It needed qualified personnel. Training and selection of the Laboratory's staff were among the most important initial efforts. Then followed the slow but necessary task of educating law enforcement agencies throughout the country to the potential value of scientific examinations in criminal investigations.

Following the acquisition of some basic scientific instruments, the selection of properly trained personnel to operate them, and the notification of interested law enforcement agencies of its purpose and availability, the FBI Laboratory was officially established on November 24, 1932.

"Cases involving homicides and assaults on very young children place particularly heavy emphasis on the work of the crime laboratory because of the victim's frequent inability to offer effective testimony to the crime or make a positive identification of the assailant."

a positive identification of the assailant.

Document Section

Almost the entire spectrum of criminal violations is represented by evidence received in the Document Section. Examinations of handwriting, hand printing, typewriting, indented writing, obliterated writing, charred papers, shoe prints, and tire treads result in the appearances of document experts of the FBI Laboratory in all jurisdictional levels of courts throughout the United States and territories with ever-increasing frequency.

Recent testimony by a document examiner aided in conviction of a burglar and attempted rapist who, during the night of September 27, 1971, broke into the home of a Charles County, Md., woman who was alone and asleep in an upstairs bedroom. The intruder used matches from several paper matchbooks to light his way through the home, discarding the matches as they burned near the end.

The intruder proceeded to the upstairs bedroom where he attempted to rape the victim. He fled after the woman was successful in resisting the attack.

A short time later the suspect was arrested by local police. In his pockets were found several matchbooks which were submitted to the FBI Laboratory along with the match stems found at the crime scene. A Document Section expert identified two of the match stems found at the crime scene as having been torn from two of the books of matches found in the suspect's pockets.

The National Fraudulent Check File, Bank Robbery Note File, and Anonymous Letter File of the Document Section are familiar names to law enforcement agencies. These reference files serve as invaluable tools in associating unidentified evidence from throughout the country with particular suspects or crimes.

For example, during the period from 1965 to early January 1971, 168 questioned documents were submitted to the FBI Laboratory for examination in a case involving scurrilous, racist, and threatening letters which had been mailed to many prominent persons including a former Vice-President and three U.S. Senators. These letters, although anonymous and submitted from various parts of the country, were associated with each other, based on handwriting and hand printing, as a result of the Document Section's Anonymous Letter File.

Examination by the FBI Laboratory of one of the letters revealed a distinctive watermark. Another letter was found to contain the name "Morris" (fictitious) in indented writing.

Using information furnished by the FBI Laboratory concerning the watermark, the paper was traced by FBI Agents to a midwestern city siding and roofing contractor. A review of company records revealed the firm had an employee named Melvin James Morris (fictitious) who subsequently was identified by an FBI document examiner as the writer of the letters.

Morris was arrested, tried, and found guilty of violating the Federal Extortion Statute, thus ending a steady flow of threats which had spanned more than a 5-year period.

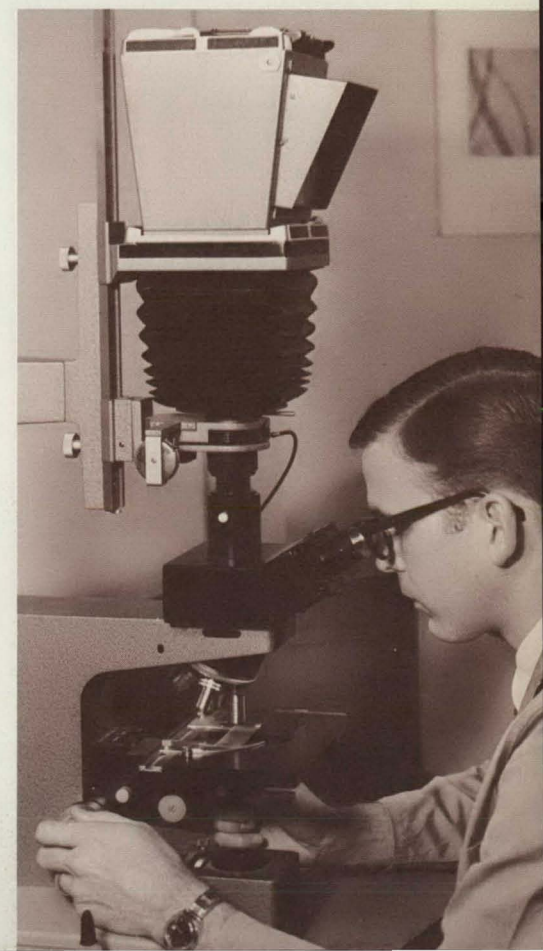
Physics and Chemistry Section

Because of the wide range of analytical techniques employed in the Physics and Chemistry Section, a correspondingly wide variety of evidence, much of it from crimes of violence, is handled in this Section.

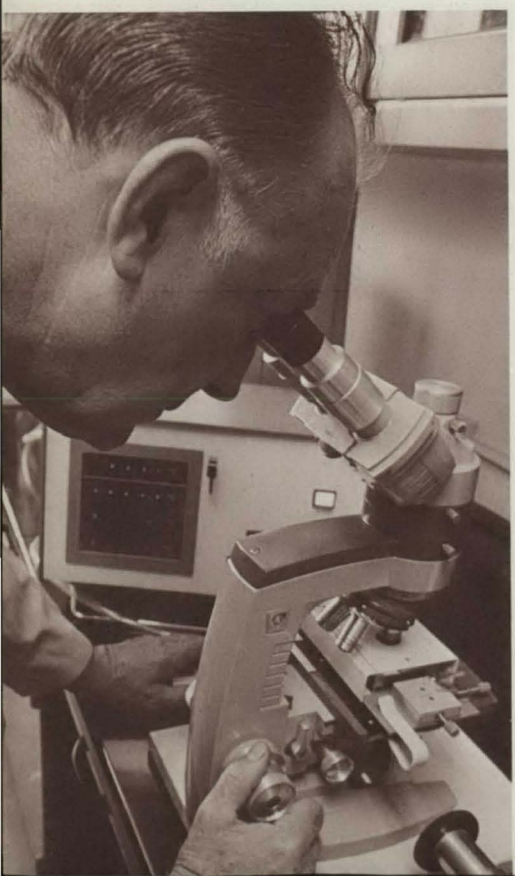
Microscopy

Hair and fiber analysis is of special value where bodily contact is made with an object or another individual. While the examination of a human hair sample normally does not permit a certain person to be identified as the only possible source of the hair, a great number of comparable characteristics permits a strong prob-

This Microscopy Unit examiner studies the structure of a fiber to determine its origin.



ability to be established. It is also possible to eliminate a person as the source of a hair. Observation of hair characteristics will normally permit a determination to be made of the race of the person from whom the hair originated, as well as the part of the body from which it came. Hair studies may also reveal if the hair was forcibly removed or naturally fell from the body; if it was cut, crushed, or burned; if it was bleached or dyed; or if it was artificially waved. The nature and composition of clothing fibers exchanged during body contact in violent crimes against a person may be determined and compared with those of the clothing of a victim and suspect. Examinations are also made in this unit for invisible laundry marks and identifying characteristics of rope, string, tape, fabric patterns, and features related to woven material.



A petrographic expert conducts soil examination with a powerful microscope.

These Laboratory experts examine a variety of objects for evidence of identifiable body fluids.

Serology

The body fluid most commonly associated with violent crimes is blood. The presence of blood on clothing, weapons, automobiles, home furnishings, in scrapings from fingernails, from surfaces at crime scenes, and on every conceivable object relating to a bodily injury may be relevant both in establishing a criminal act and in associating a suspect with the crime. In other instances, small stains of blood on objects may be determined to have come from nonhuman sources through analytical methods. These findings may thereafter be associated with another animal source, verifying a suspect's story and helping to clear the innocent. In still other situations, semen, saliva, and other body fluids are identified and sometimes classified as having originated from a person possessing a particular blood group if the person from which the body fluid originated is a secretor. Recent developments in dried blood grouping techniques in the Serology Unit have enabled stains to be more specifi-

(*Continued on page 24*)

A Prosecutor Looks at the Police

By
PATRICK J. LEAHY*
State's Attorney,
Burlington, Vt.

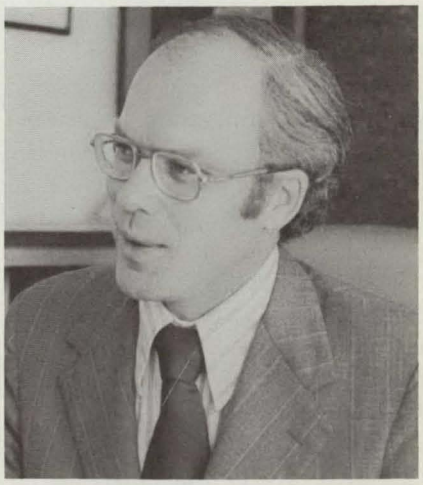
Frankly, I approached the preparation of this article with some hesitancy. When a prosecutor's views are solicited, most persons are apt to have in mind those of a district attorney in New York City, Houston, Los Angeles, Minneapolis, or some other metropolitan area; not a State's attorney from Vermont with a jurisdiction covering little more than 100,000 people. The vast majority of prosecutorial districts and communities with police departments, however, represent less populated jurisdictions rather than the more prominent metropolitan areas. In this fact alone, then, it makes sense to have a prosecutor from a smaller jurisdiction tell what he needs and what he does not need from a police department.

Contrasts

Two cases, out of the thousands prosecuted during the past 6 years by my office, come to mind because of their contrast in police efforts.

In one case, the local fire and police departments had investigated a "fire of suspicious origin" in a wood-frame apartment building. The fire had been discovered just before reaching two gasoline-filled containers which were underneath an apartment occupied by several sleeping people.

The prime suspect in the subsequent investigation was known to have been in the area of the apartment building during the early hours of the morning shortly before the fire was discovered. Furthermore, he was known



*Mr. Leahy, a native of Vermont, received his doctor of jurisprudence degree from the Georgetown University Law Center in 1964 and was appointed State's Attorney of Vermont's Chittenden County in 1966. He has served on numerous State and national crime control commissions and was recently elected by prosecutors across the country as Vice President of the National District Attorneys' Association.

"... prosecutors and the police should work ... as a team and not as rivals since they are seeking the same goal."

". . . a prosecutor's success in court is in direct ratio to the abilities, policies, and performance of the police agencies reporting to him."

to have been recently associating with a convicted arsonist.

In the meantime, following discovery of the blaze, an investigator from the fire marshal's office, which had jurisdiction for the arson investigation, arrived on the scene. He alerted the press, had his picture taken for the area paper, was told of the suspicions of the local police—and promptly left for another minor investigation, as well as a 2-day vacation!

By the time he returned to the investigation the suspect had developed an explanation of his early morning sojourn, the known arsonist had a recently developed—but by now unshakable—alibi, and the case had gone down the drain.

The second case involved a particularly vicious thrill slaying. In contrast with the delay in the arson investigation, two suspects were arrested soon after the crime and were charged by my office with first degree murder. The case, as originally presented to me, appeared "ironclad" and revolved primarily around admissions made by the suspects to friends. Also, following these admissions, it was alleged they had thrown a set of keys belonging to the victim out of the window of a speeding car.

While the matter was pending trial (a period of 2 to 3 months), the investigating officers set out to make their "ironclad" case even more so. Working nights, weekends, and days' off, they found a witness who led them to an area where the officers—following hours of painstaking detective work—actually found the keys thrown from the car.

As their investigation was completed, it appeared likely that none of this additional evidence would be necessary to the case. However, just before trial, a key witness changed his story, and our case rested primarily on this "superfluous" evidence turned up by these diligent detectives. Because of this evidence, the killer was convicted by a jury of first degree murder, and his accomplice pleaded guilty to second degree murder.

I mention these two cases to emphasize how aware I am of the fact that a prosecutor's success in court is in direct ratio to the abilities, policies, and performance of the police agencies reporting to him. With this in mind, I would like to underscore what a prosecutor needs from the police.

Needs

While the prosecutor realizes that the police have investigative responsibility in a violation, there is nothing more frustrating to a prosecutor than to have a police agency take the attitude that once an arrest has been made the case is closed. In my own jurisdiction, more than 90 percent of all arrests are made on prosecutors' informations following the submission of a report from the police department. Unfortunately, some departments have the attitude that once the charges have been issued the case is closed. In my estimation, that is the time when the case is actually beginning; no case can truly be considered closed until there has been a conviction, and the conviction has been upheld by the appropriate appellate court.

"The police and the prosecutors are the two elements that should work closest together."

The prosecutor is not merely a functionary required to issue charges or to be present in court when the charges are first brought there. He is, in his capacity as chief law enforcement officer of the jurisdiction, a very necessary piece of the whole law enforcement fabric. His functions should intermesh carefully with the extremely necessary duties of the police.

The police and the prosecutor should know each other's needs. Prosecutorial policies should be set down by the prosecutor's office, and to the extent which they relate to the police, they should be worked out in conjunction with them. Because the prosecutor has the ultimate responsibility and duty in connection with his prosecutorial policies, he will have the final say in what those policies will be. He should not, however, reach this position arbitrarily without taking into consideration the ideas, capabilities, and philosophies of the police departments working with him.

In connection with this, the prosecutor and the police should realize that certain items which technically require prosecutorial decisions can be handled at the police level. Certain guidelines can be set up regarding routine traffic matters, minor or petty crimes such as shoplifting or vandalism, and so forth, whereby the police can have a degree of discretion in deciding whether such matters should be prosecuted or not. By the same token, the prosecutor should have available, on a regular basis, members of his staff to consult with the police in helping them make a decision

whether to pursue cases with the ultimate goal of prosecution or to avoid prosecution.

Authority

In giving the police discretion to bring or not to bring for prosecution certain types of cases, it should be remembered that the ultimate authority for doing so must be that of the prosecutor. Under the law no police agency has the right to determine not to prosecute somebody without either following the prosecutor's policy or clearing the decision directly with him. While the police are the investigative arm of the judicial system and, as such, exercise great degrees of discretion affecting prosecution, the prosecutor has the ultimate responsibility and, thus, all prosecutorial decisions must be made within his guidelines.

"Under the law no police agency has the right to determine not to prosecute somebody. . . ."

On all major and complicated investigations, the prosecutor and the police should work together. It makes little sense for the police department to get involved in a lengthy and complicated investigation, oftentimes involving hundreds of man-hours and thousands of dollars, if the prosecutor must ultimately disregard the work they have done because the case will not be prosecuted. In such types of investigations, following the preliminary involvement of the police department, a member of the prosecutor's office should be informed of the investigation and should be consulted on a regular basis. The prosecutor should realize that he is not himself an investigating officer and should not involve himself as a police officer in investigations. At the same time, however, he should be available to lend his legal expertise and knowledge in helping to guide the police in the obtaining of relevant and admissible evidence of the crime. Moreover, the prosecutors and the police should work in such matters as a team and not as rivals since they are seeking the same goal. The prosecutor should realize the investigative abilities of the police and should rely on their procedures and techniques of investigation. At the same time, the police should realize that the prosecutor is skilled in handling legal issues, and they should be guided by the legal framework outlined by the prosecutor.

Mutual Understanding

In all the foregoing items, it is important to realize that the prosecutor should be not only available to the police in discharging their mutual responsibilities; but he should also encourage periodic meetings at other times with the heads of police agencies working within his jurisdiction. In my own jurisdiction, each police department has a particular deputy State's attorney with whom they can meet on a 24-hour basis on everything ranging from the giving of legal advice to the signing of informations and obtaining arrest warrants. When there is a significant change in the criminal law, in prosecutorial and court procedures, or in major items of law enforcement concern, I hold regular meetings with the heads of all police departments and those officers affected.

The main reason for making the prosecutors available to the police is, of course, to have someone knowledgeable in the law available to bring charges in behalf of the State and continue them through the court system. A certain percentage of the cases are ones in which the prosecutor refuses to bring charges and drops or lowers charges already brought. I definitely feel that the prosecutor has an obligation to discuss with the police department and, if at all possible, the individual officer involved in the investigation any case in which he decides to drop charges. If a charge is lowered as part of a plea-bargaining situation, this should be explained to the officer. If a charge is dropped because the prosecutor has exercised his discretion and intends to give a particular defendant a "break" in hopes of facilitating his rehabilitation, then this should be explained to the officer—certainly before the charge is actually dropped. And if a charge is dropped or lowered because the officer has provided insufficient evidence or has in some way damaged an investigation, then this should be pointed out to the police department involved. At no time should a prosecutor use the excuse of insufficient evidence to cover other motives for dropping or lowering a charge.

While the court has the final decision in sentencing and the executive has the ultimate discretion in granting pardons, the prosecutor alone has the power to withhold or bring charges and to drop or lower charges once they have been brought. An officer or police department should feel free to express disagreement with the prosecutor's reasoning but be aware that the ultimate decision is that of the prosecutor. I personally feel that it would be unprofessional for the police to publicly or privately criticize the actions of a prosecutor in dropping or lowering charges once he has ex-

(Continued on page 28)

"At no time should a prosecutor use the excuse of insufficient evidence to cover other motives for dropping or lowering a charge."

A Search for New Solution—

What Bar Associations Can Do About

By
HON. HENRY E. PETERSEN
Assistant Attorney General,
Criminal Division,
Department of Justice,
Washington, D.C.

CRIME PREVENTION AND CONTROL *

"We can no longer afford those who violate the law with the luxury of an inadequate system [of justice] incapable of properly disposing of the charges against them."

*The following is an address which was given by Mr. Petersen before the Section of Bar Activities, Award of Merit Luncheon, American Bar Association Convention, on August 13, 1972.

It is my pleasure to appear before you to help you honor those State and local bar associations which have distinguished themselves this past year.

When I was first asked to speak to you, I thought of several things that I could suggest you do about the "crime problem." I thought of many different programs which could be initiated by bar associations. For example, there is a growing need for members of our profession to educate people about our system of criminal justice and attempt to gain their support and confidence. Police departments across the Nation need to gain the respect of the citizenry and you could help in this regard. However, rather than suggest to you programs which would require you to defend our present system, I

". . . our present system of justice is at a crossroads. . . . We must find new paths to follow. . . ."

would prefer to offer some comment on how the system can be altered so that we will no longer need to explain why the courts are congested; why there are delays; why we cannot rehabilitate those we convict; why the crime rate continues to rise.

In my judgment, our present system of justice is at a crossroads. We can no longer continue down the same path. We must find new paths to follow and every member of our profession must help discover them. I realize that you have heard this cry for help before, but let me assure you that you should not equate this call with the little boy who called wolf. Last year in London, Chief Justice Burger implored the Bar to better police itself in order to assure proper conduct on the part of its members. Former Attorney General Mitchell told you of the long delays that are now commonplace in the courts. He told you of the desperate condition of our judicial system. Unfortunately, their comments are still applicable.

I am unable to stand before you today and provide answers to these and other problems which confront us. I can offer no panacea. I can, however, share with you some of my thoughts and perhaps, to that extent, be provocative and gain your active support and help in the search for new solutions.

It is clear to me that we can no longer limit our search to refinement of the present system. We must now look at the system with the thought of making fundamental reforms. It is imperative that the system be made to function without inordinate delays so that we can be assured that the guilty will no longer be able to take advantage of plea bargaining which has become an indispensable part of the present system. It has been estimated that approximately 90 to 95 percent of all convictions in the Federal system are secured by the process of plea bargaining, which often means that the guilty avoid necessary correction. We, therefore, must provide speedy justice so those who violate the law will no longer think that they will not be punished if caught. We must develop a system which truly holds an individual accountable for his actions.

It is time for us to question a system which has become dependent upon an extra-judicial process for determining guilt; a system where plea bargaining is the rule not the exception. We must question a system which has become so congested that the courts are unable to try cases and unable to perform their primary function of judging innocence and guilt.

What I have just described is not justice. Such a system allows the guilty to take advantage of the backlog and entices the innocent to plead guilty in order to obtain a lenient sentence, if any, without risking the publicity and uncertainty of trial.

Recently, there has been a great deal of discussion to involve the judiciary in the plea bargaining process. Many courts refuse to recognize its existence, but are dependent upon it—indeed, they would fail without it. In my opinion, this nonrecognition constitutes hypocrisy of the highest order. How can a system demand respect when it engages in such activity? Although making plea bargaining more visible would be helpful, it is not the answer because it would only increase the burden on the already overburdened courts and prosecutors. We must search deeper for the answer.

There are indications that some concerned individuals are exploring major changes in the system. For example, there is a strong movement which seeks modification or abolishment of the exclusionary rule. Many, including myself, have reached the conclusion that in its present form the exclusionary rule has not served a useful purpose, in that it has failed to discourage police officers from conducting unreasonable searches and seizures. It is difficult to perceive how suppression of reliable and probative evidence can discourage unreasonable police conduct. Unlike coerced confessions, probative evidence is reliable regardless of the manner in which it is seized. Moreover, the rule provides no flexibility. It imposes suppression without regard to the nature of the misconduct—whether honest mistake or outrageous behavior. Chief Justice Burger has stated that society has a right to expect judges to exercise their discretion in cases where police error is shown in the acquisition of evidence. In my view, a rule which frees the guilty only harms society upon whom the guilty will again be free to prey.

"Many, including myself, have reached the conclusion that in its present form the exclusionary rule has not served a useful purpose, in that it has failed to discourage police officers from conducting unreasonable searches and seizures."

"We . . . must provide speedy justice so those who violate the law will no longer think that they will not be punished if caught."

On another front, the Department of Justice is seeking a method to limit the number of collateral attacks that can be brought after the decision in a criminal case. Presently, there is no finality within our system. Even when incarcerated, a prisoner can file petitions which may result in the reopening of a case. Such an unlimited right of review has clogged both our appellate and trial courts.

We must not be satisfied with the efforts I have just described. We must look for even more fundamental reforms. Today, we face the danger of the system destroying itself because of the protection afforded all defendants. For example, if all defendants who are charged with an offense providing for 6 months or more imprisonment exercised their right of trial by jury, the courts would have to shut their doors. They could not withstand such a request. Yet, courts continue to enlarge defendants' rights despite our inability to enforce them.

Am I criticizing the courts because they extend rights consistent with the Constitution and legislative intent—no more so than I criticize myself. As a matter of fact, I recently was signatory to an amicus brief filed by the Government which set forth the position adopted by the majority opinion in *Argersinger* v. *Hamlin*, which held that misdemeanants are entitled to counsel in cases where imprisonment is in fact imposed. Within the framework of our present system, I do not disagree with that holding. But, it was this case and our position when contrasted with the demands of everyday reality that led me to question the basic proposition involved—that is, I question the wisdom of a system which affords every defendant the same degree of protection. First, is it necessary to do so in order to assure justice? Second, can the system continue to function if we do not differentiate?

". . . the amount of time needed to try a case has increased largely due to the seemingly endless number of rights afforded every defendant. . . ."

I favor the adoption of a more flexible standard of due process based on fairness with the amount of protection varying depending upon the nature of the offense and the severity of the punishment which could be imposed if conviction resulted. Certainly such a system would reduce much of the pressure on the courts.

Not only are we confronted with delays in bringing a case to trial, but it also takes twice as long to try a case today when compared to a decade ago. There are many reasons for this. We as attorneys often complicate the search for truth by placing obstacles in the path of the finders of fact. I do not mean to imply that an attorney should ever fail to raise valid defenses, but I fear many go far beyond this. Many attorneys, often at the direction of their clients, raise every conceivable defense in order to prolong the proceedings hoping to gain some advantage by the mere passage of time. Some of these attorneys are young and inexperienced and are reluctant to risk failure by an act of omission. I realize that recent case law development concerning the adequacy of representation has exacerbated this problem. But, the amount of time needed to try a case has increased largely due to the seemingly endless number of rights afforded every defendant; the increased frequency in the assertion of these rights and the seemingly insistent demand for perfection by prosecutors. As a result, trial judges have become afraid to rule from the bench without a separate evidentiary hearing regarding suppression of evidence, the voluntariness of a confession, or other similar problems.

I am cognizant that many may criticize any suggested change in the rights guaranteed by procedural due process as being discriminatory against the underprivileged. I disagree with those who would adopt this position. Any change which has fairness as its standard cannot be said to be discriminatory against any class of people. To the contrary, if a more flexible standard of due process can reduce the congestion in our courts, the underprivileged will receive substantial benefits. If speedy trials can be provided, the poor will not remain in custody for long periods of time awaiting trial because they are unable to make bail. Furthermore, if the system can be made to function more efficiently, it can be more responsive to all of society's needs.

The proposal of a flexible standard of due process based on fairness with consideration being given to the nature of the offense and the severity of the punishment is not as controversial as it may seem. Indeed, these are precedents for such a system.

The Supreme Court in *Duncan* v. *Louisiana* held that a defendant charged with a petty offense is not entitled to a trial by his peers. The Court after reviewing the history of the common law right of trial by jury concluded that this form of protection from government oppression existed only in cases involving serious offenses. In reaching its decision, the Court balanced society's need to have an efficient criminal justice system with the individual's need of trial by jury in petty offenses. The Court concluded that, "The possible consequences to defendants from convictions for petty offenses have been thought insufficient to outweigh the benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications."

Until recently, a similar distinction between serious and petty offenses existed in many jurisdictions relative to right of counsel. As mentioned, the Supreme Court in the *Argersinger* case refined this distinction. The majority held that due process requires that indigent misdemeanants be provided counsel, absent of knowing waiver, in all cases in which imprisonment is imposed. The Court held that the length of time is irrelevant. We have not yet learned of the repercussions of this decision. Indeed, it is difficult to imagine the severity of its impact especially in thinly populated areas where there are few, if any, attorneys.

I now view this decision, with a long line of others, as illustrative of the degree of protection we have afforded those who violate the law with little regard being given to the seriousness of the violation. The decision, to some extent, does attempt to have the protection afforded correspond to the severity of the punishment, in that counsel must be appointed if an individual is deprived of his liberty.

Justice Powell, in his concurring opinion, would provide more latitude in determining the right of counsel and his criterion may be more appropriate in the system I envision—that is, a system which has a more flexible standard of due process. Justice Powell recognized that fairness is the foundation of due process and as such is flexible depending on the circumstances of each case. He stated the deprivation of property may, in some instances, be of greater consequence to some than a nominal jail sentence. There are also certain types of violations, including some where imprisonment is imposed, where he feels counsel is not essential to assure fairness. If, for example, a case presented no collateral legal questions and the proof of the violation was overwhelming and it appeared that whatever punishment imposed would be minimal, his standard would not require the appointment of counsel.

I believe the distinctions I have just described between serious and petty offenses should be expanded. In my estimation, it should not be necessary to provide the same degree of protection to one who has murdered his wife and one who has been charged with public intoxication.

Not only do I question whether we should guarantee each defendant the same rights regardless of the nature of the offense and the severity of the punishment, but I question the need to treat certain violations as criminal offenses. I question the need to deal with a traffic violation within the criminal justice process. When an officer stops an individual for a traffic offense, why should it be viewed as an arrest rather than an administrative inquiry? Is there any basis, other than tradition, for requiring all of the procedural safeguards in such a case? There are many similar offenses which in my view need not be brought into the criminal justice process. Legislatures all too frequently look to criminal sanctions when others could more appropriately deal with a particular problem. For example, if a businessman violates a safety regulation, should he be subjected to criminal penalties or would a better remedy be to close down his business concern until he is in compliance with the regulation? In many instances, civil and administrative proceedings can offer much more flexibility in dealing with certain antisocial behavior. In addition to injunctions, civil penalties, court sanctions, and possible restitution can be strong deterrents. Although decriminalization of certain offenses may provide an answer to some of our problems, I hasten to add that it cannot be viewed as a total answer.

I do not know if any of you agree with the positions I have just stated. Indeed, I think it unimportant that you do. What I do think important is whether or not you have thought of these positions or viable alternatives to them. We as members of the legal profession influence the lives of all Americans. In this regard, we have a great responsibility. We must maintain a system of criminal justice which not only protects those accused of committing a crime but one that is also responsive to the needs of society.

Our present system is failing. It no longer commands the respect of the criminal element of society, or, for that matter, of any element of society. It is clear that we must seek reform, and in so doing we must not be afraid to question principles that have previously been universally accepted. We must explore every possible avenue of change. We cannot leave a stone unturned.

> ***". . . it should not be necessary to provide the same degree of protection to one who has murdered his wife and one who has been charged with public intoxication."***

My answer to "What Bar Associations Can Do About Crime Prevention And Control" is to join in this effort to improve our system of criminal justice so that it protects every segment of society. We can no longer afford those who violate the law with the luxury of an inadequate system incapable of properly disposing of the charges against them. If we can make our system more workable, I assure you that the rate of crime will be reduced, that crime will become controllable. I intend to use my good office for this purpose and I implore each of you to join me.

Thank you.

During the first meeting of the FBI Law Enforcement Training Advisory Committee, members of the board, along with representatives of the FBI, met with Acting FBI Director L. Patrick Gray, III. Shown in Mr. Gray's office are (left to right): Mr. Peter Haas, Benton Tompane and Co., New York, N.Y.; Inspector John B. Hotis, FBI; Mr. Gene S. Muehleisen, Executive Officer, Commission on Peace Officer Standards and Training, Sacramento, Calif.; Mr. Michael N. Canlis, Sheriff-Coroner, San Joaquin County, Stockton, Calif.; Mr. Thomas J. Jenkins, Assistant Director, FBI Training Division; Frank J. Remington, Esq., Professor of Law, University of Wisconsin Law School, Madison, Wis.; Mr. Gray; Mr. Clarence M. Kelley, Chief of Police, Kansas City, Mo.; Mr. Don R. Derning, Chief of Police, Winnetka, Ill.; Hon. John F. Nichols, Police Commissioner, Detroit, Mich.; Dean Andre C. de Porry, School of Continuing Education, University of Virginia, Charlottesville, Va.; Mr. Harvey G. Foster, Vice President, American Airlines, Inc., Chicago, Ill.; and Inspector William M. Mooney, FBI.

Jones to Bishop Memo Aug. 10, 1972

FBI Law Enforcement Training Advisory Committee Convenes

The newly established FBI Law Enforcement Training Advisory Committee held its first meeting August 16–18, 1972. After conferring with Acting Director of the Federal Bureau of Investigation L. Patrick Gray, III, at the Bureau's Washington, D.C., headquarters on Wednesday, August 16, the advisory committee conducted its first evaluative visitation to the FBI Academy at the U.S. Marine Corps Base, Quantico, Va.

The 12-member committee, composed of five leading law enforcement officials, four prominent educators, and three successful business executives, is an important source of guidance and communication for the FBI on law enforcement education and training matters. It will meet periodically to evaluate the law enforcement education and training programs offered by the FBI, both at the Academy and through the Field Police Training Program, to insure that they are truly responsive to current law enforcement needs.

During the August meeting, the committee considered the role and mission of the FBI in police training and examined the curriculum, faculty, students, facilities, educational support materials, research projects, and the education and training policies of the FBI Academy. Committee members conferred at length with Thomas J. Jenkins, Assistant Director of

the FBI Training Division, and his two assistants, Inspectors William M. Mooney and John B. Hotis, as well as with the heads of the Academy's various departments and faculty liaison representatives of the University of Virginia at Charlottesville. They also audited National Academy classes, interviewed faculty, and informally met with students. After completing their work at the Academy, they returned to Washington and made a preliminary report on their findings to Mr. Gray.

The advisory committee will submit a detailed supplementary report to the Acting Director which will include an analysis of their findings as well as their conclusions and recommendations. The committee intends to reconvene later this year.

The committeemen selected Don Derning, a graduate of the 67th Session of the FBI National Academy, who is currently chief of police, Winnetka, Ill., and president of the International Association of Chiefs of Police, to serve as chairman; and Frank J. Remington, Esq., professor of law, University of Wisconsin Law School, Madison, to serve as reporter and coordinator of findings and recommendations of the FBI Law Enforcement Training Advisory Committee.

Others serving on the committee are:

Businessmen

• Harvey G. Foster, vice president of American Airlines, Inc., Chicago, Ill., a former Special Agent in Charge of several FBI field offices who retired from the FBI on November 19, 1962.

• Peter Haas, an ex-Marine who formerly held a seat on the New York Stock Exchange and who is currently a member of the firm of Benton Tompane and Co., New York, N.Y.

• Richard Mellon Scaife, vice president of T. Mellon and Sons Co., and director of the Mellon National Bank and Trust Co., Pittsburgh, Pa., who is a trustee of Carnegie Mellon University and Waynesburg College.

Educators

• Andre C. de Porry, dean, School of Continuing Education, University of Virginia, Charlottesville, who coordinated the FBI-University of Virginia accreditation study for the university.

• Gene S. Muehleisen, an alumnus of the 51st Session of the FBI National Academy, who is presently executive officer, Commission on Peace Officer Standards and Training, Sacramento, Calif., and president, National Association of State Directors of Law Enforcement Training, and who served on the President's Commission on Law Enforcement and Administration of Justice and contributed to *Task Force Report: The Police.*

• Dr. E. Mansell Pattison, associate professor, Department of Psychiatry and Human Behavior, University of California at Irvine, who formerly was employed by the U.S. Bureau of Prisons.

Law Enforcement Officers

• Michael N. Canlis, sheriff-coroner, San Joaquin County, Stockton, Calif., a graduate of the 37th Session of the FBI National Academy, who is the immediate past president of the National Sheriffs' Association and California State Sheriffs' Association.

• Clarence M. Kelley, chief of police, Kansas City, Mo., a former Special Agent in Charge of several FBI field offices until his retirement on October 10, 1961.

• Col. David B. Kelley, superintendent, Division of State Police, Department of Law and Public Safety, West Trenton, N.J., and chairman of the State and provincial police division of the International Association of Chiefs of Police.

• Hon. John F. Nichols, police commissioner, Detroit, Mich., a World War II veteran and Colonel in the U.S. Army Reserve who was a member of the Detroit Police Department for 28 years prior to his appointment as commissioner on October 15, 1970.

Members of the FBI Law Enforcement Training Advisory Committee and representatives of the FBI are shown in conference during the board's visit to the FBI Academy at the U.S. Marine Corps Base, Quantico, Va.

In New Orleans—

Televised Banking: Deterrent to Crime

"[Banking] growth has been extremely rapid and . . . somewhere along the road to increased prosperity . . . [bank protection] . . . was either omitted or its value greatly underestimated."

By
LONNIE L. BLANCHARD
Vice President and Cashier, International City Bank and Trust Company, New Orleans, La.

The banking industry has witnessed and experienced a dramatic change in traditional banking methods and concepts over the past decade.

Competition between banks for new deposits and customers has heightened to such a degree that the ancient image of the conservative banker placidly sitting behind his huge desk, confidently waiting for customers to trust him with their money, has all but disappeared. The increasing number of new bank charters and the tremendous deposit growth of existing banks have created a most decided change and outlook in the banking world.

Readers desiring additional information concerning the remote controlled equipment described in this article should direct their inquiries to the International City Bank and Trust Co., 321 Saint Charles Ave., New Orleans, La. 70130.

Growth has been extremely rapid and, as is sometimes the case, somewhere along the road to increased prosperity an important ingredient necessary to the welfare of banking was either omitted or its value greatly underestimated. This necessity is the protection of bank customers, employees, and assets.

During the 1960's, crimes against banks increased and reached such alarming proportions that the U.S. Congress found it necessary to enact legislation that would require banks to better protect themselves and customers from crimes against them. The Bank Protection Act, passed in 1968, prescribed that certain security standards and equipment be installed and maintained. The protection of banks

became and still is a very important topic.

Banks began installing a variety of sophisticated security devices in an attempt to stem the floodtide of crimes against them throughout the country. Their boards of directors were required to appoint a security officer who was charged with the responsibility of implementing a continuous security program; one which would include the installation of certain crime-deterring equipment, as well as a comprehensive security training program for bank employees.

The degree of success of the Bank Protection Act is yet to be determined; however, one measure of its influence could be the increased number of crimes against banks using methods which include kidnap-extortion schemes and bomb threats. These ugly crimes often entirely circumvent the internal security protection program of a bank. The criminal, unfortunately, has kept pace with the banking industry's own growth and, realizing that internal bank protection is increasingly more effective, has devised new schemes for compelling it to surrender its money.

New Concept

At the International City Bank (ICB) and Trust Co., in New Orleans, La., an attempt was made to remain alert to security problems which are inherent in similar financial institutions. Recently, many new banking concepts and methods of handling cash transactions have emerged. One such method is the system whereby customers in the bank lobby and at drive-up windows are served by tellers who communicate with them via closed-circuit television and transact business with them through pneumatic tubes. There is no open exposure of large amounts of cash, and tellers operate from a remote area protected from most outside criminal attack.

When ICB president and board chairman, Eads Poitevent, made the decision to install this equipment in the West Bank Office, bank security was not the motivating factor for the decision. Indeed, if there was no other reason except bank security for this type of operation, it most probably would never have been considered. This is not to say that security of the bank, its customers, and employees is not important. On the contrary, security has always been uppermost in the thinking and planning of the bank's officers. The primary reason, however, for installing closed-circuit television and remote controlled customer service devices in the bank was to increase teller efficiency with maximum speed in a minimum of space. In short, this allowed the bank to serve more customers more quickly with less tellers. This certainly has been accomplished, and the result has more than justified the cost. Since this system concept is fairly new to the banking industry, it was difficult to draw on past experience to determine and gauge how the installation would affect security at the branch office. Very frankly, there was no implication in any advertisements announcing the new facilities that, because of the remoteness of the tellers, this branch was more secure from criminal acts.

After 9 months of operation the added security provided by this equipment has been a valuable byproduct of its space-age design. It would be unrealistic to contend that the new office is completely secure and robbery proof. However, there are a num-

". . . customers in the bank lobby and at drive-up windows are served by tellers who communicate . . . via closed-circuit television and transact business . . . through pneumatic tubes."

Mr. Eads Poitevent, president and board chairman, International City Bank and Trust Co.

One of four closed-circuit televisions which are operated from a safe, remote area by two tellers, but still allow visual contact between the tellers and customers.

"Now that the threat of physical harm has been greatly reduced for tellers due to their remoteness, there is time for concentrating on procedures which may enhance their efficiency."

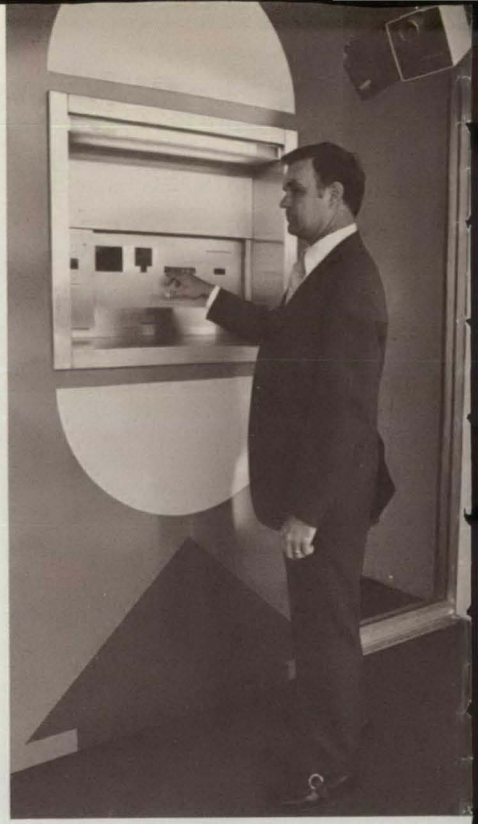
ber of definite security advantages which the bank now enjoys which it did not prior to installing closed-circuit television and remote controlled teller stations.

Increased Security

When a customer enters the office, the first thing he will probably notice is the complete absence of tellers. Upon closer examination he may observe that he has actually been "on camera" since he entered the bank. He sees himself on one of the several television receivers and now observes that he appears to be under camera surveillance. A would-be bank robber could very well develop more than a few fleeting thoughts of insecurity at this moment. When he further realizes that he cannot see the tellers, but that they can observe his movements totally unseen and unheard, he may change his larcenous intentions completely. Even if the suspect displays only hesitation, the teller can telephone the manager or security guard to report any suspicion of the would-be bank robber. If necessary, of course, the teller can activate the silent alarm to alert the police.

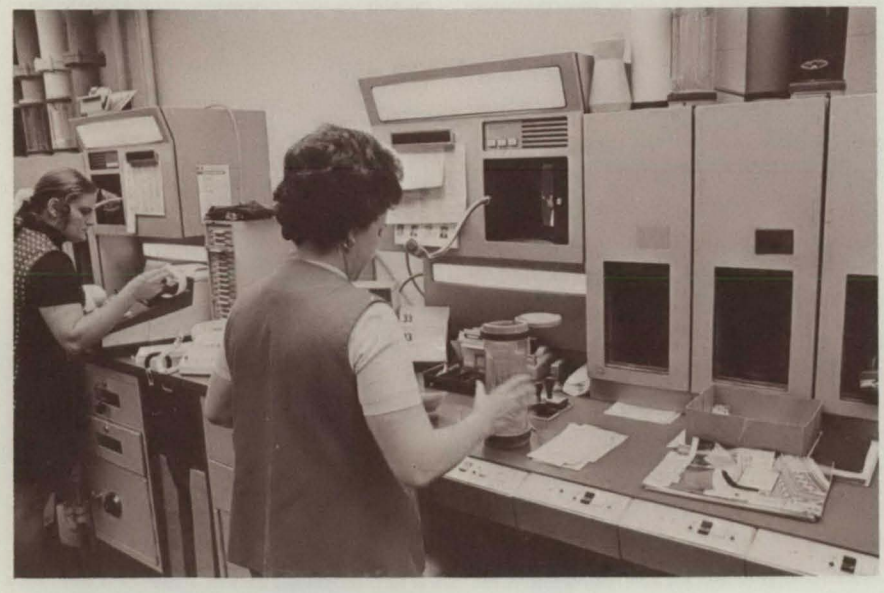
In addition to giving an alarm, the teller can also activate the silent surveillance cameras inside the lobby which can take still photographs of any person in that area. A good description of the person under suspicion can be reported, since the teller is able to observe the suspect's features and characteristics deliberately and without imminent fear of retaliation.

The positive effect that televised banking has had on the tellers is probably the most rewarding experience of this installation and certainly the most beneficial. It is common knowledge that well-adjusted, experienced tellers contribute to bank security. Now that the threat of physical harm has been greatly reduced for tellers due to their remoteness, there is time for concentrating on procedures which may enhance their efficiency.



Automatic teller is capable of handling many types of transactions such as making deposits, dispensing cash, and transferring funds from one account to another—all without the services of a teller.

The teller area which is pleasant and roomy, as well as safe and secure.



Fewer Errors

Long banking hours, although extremely beneficial to bank growth, are demanding on tellers. With closed-circuit television, it is much easier for them to relax during slow or slack periods without leaving the teller area. Now, by simply turning off their cameras, they can take a break, smoke, or generally relax without being under constant scrutiny from lobby traffic.

Another unanticipated result is the reduced number and size of discrepancies in tellers' transactions at the end of the day. This is attributed to the fact that, although the tellers handle a greater volume of transactions

than before, they are less error prone in the more relaxed atmosphere without someone visibly observing their every action. Also, confidence men and short-change artists would find it extremely difficult to fool tellers insulated from them by pneumatic tubes and television cameras.

The ICB television-equipped office, located on the West Bank of the Mississippi River in New Orleans, is a spacious, attractive, and eye-pleasing layout designed for customer convenience. At the same time, security of the premises is apparent. Beginning with the surveillance camera, which is positioned outside the bank and aimed at the front door, to the mirrored walls inside which give a feeling of spaciousness, it is evident that this office was built for customer convenience as well as bank security.

The remoteness of the tellers and their working cash tends to discourage holdups. To reach the tellers' room, a person must enter through two steel-encased security doors. The first door is equipped with an electronic lock which is opened by a remote control switch after the individual's identity has been established. Upon gaining entrance through the first door, a second locked door confronts anyone seeking access into the tellers' area. This door can only be opened from the inside and identification of any person requesting entrance is made through a small bullet-resistant glass window.

Discourages Crime

The tellers' area is a pleasant, windowless room with controlled public access and limited employee traffic. Inside, four tellers operate eight customer stations—four in the bank lobby and four at automobile drive-up windows—all by remote control. The bank has the usual perimeter protection, as well as surveillance cameras previously mentioned, and other security devices, equipment, and alarms. Management personnel have small television monitors at their desks which allow them to view the tellers' area at all times.

> ***"A television installation such as ICB's is a significant move in this direction. It will certainly minimize the options which are open to a bank robber and other criminals and make more difficult their attempts to victimize a bank than in years past."***

A bank lobby with exposed tellers and their cash represents, as opposed to a remote and protected tellers' room, an enticing opportunity for the criminal. The contrast between the open and the protected bank installation makes it easy to see how many robberies could have been discouraged and perhaps prevented.

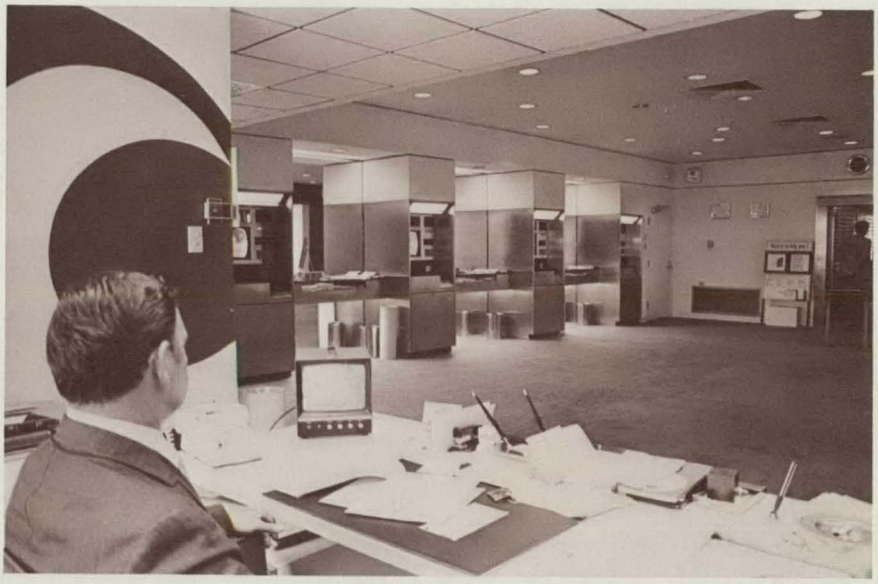
The experience with this new equipment has been extremely favorable; so much so that similar equipment installations for each new branch are planned. The main office, although it has not yet converted to this new customer service concept, does have a closed-circuit television system which monitors critical security areas. Seven cameras continuously survey and permanently record on film, day and night, 24 hours a day, all activities in these areas. Even if the bank is closed, persons illegally entering or leaving the bank can easily be identified.

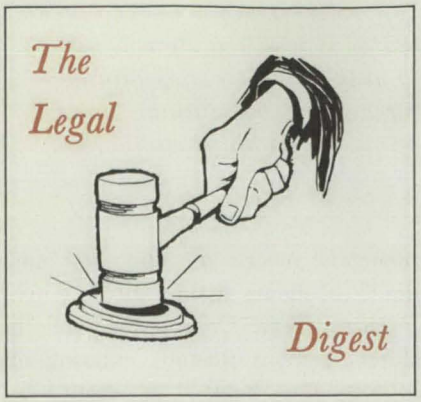
Keeping Ahead

As elaborate and impressive as all this electronic-age equipment is, it is realized that it is only as effective as the personnel charged with its operation. No one contends that this equipment is the complete answer to bank protection. It is merely one more step in the total security program of a bank. The alert criminal will probably continue to devise schemes to circumvent the most efficient electronic equipment. The banking industry must try to stay one step ahead of him. A television installation such as

(*Continued on page 29*)

A small television receiver on the manager's desk allows him to see inside the remote control area and commands a good view of the entire lobby and front entrance of the bank.





" 'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.' "

A Look at the Open Fields Doctrine in Light of Katz *v.* United States

By

J. PAUL BOUTWELL

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". . . [T]he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to open fields." Thus wrote Justice Holmes in 1924 in the famous Supreme Court decision, *Hester* v. *United States.*[1] It was this case that first enunciated the open fields doctrine. The significance of that decision, at least from a law enforcement officer's point of view, can be measured in the numerous cases, both State and Federal, in which courts have approved official entry upon open fields without a warrant to conduct a search. Even though the officer may appear to be a trespasser, the weight of authority holds that this technical violation of real property law does not prevent the use of evidence acquired in open fields.[2]

The rationale of *Hester* is that some areas are constitutionally protected against unreasonable searches while other areas are not. The only specific areas or places mentioned in the fourth amendment are "houses." That word, however, has not been strictly construed. In *Lanza* v. *New York,*[3] the Supreme Court of the United States said:

"To be sure, the Court has been far from niggardly in construing the physical scope of the Fourth Amendment protection. A business office is a protected area, and so may be a store. A hotel room in the eyes of the Fourth Amendment, may become a person's 'house,' and so, of course, may an apartment. An automobile may not be unreasonably searched. Neither may an occupied taxicab. Yet, without attempting either to define or to predict the ultimate scope of Fourth Amendment protection, it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room."

Thus, the fourth amendment was viewed in terms of property rights. The constitutional question posed was whether an officer's action constituted an unauthorized governmental intrusion into a "constitutionally protected area." [4] This approach to fourth amendment problem solving was based on the common law protection of property interest. Lord Camden expressed it when he wrote in *Entick* v. *Carrington*: [5] "The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole."

It was this concept of the fourth amendment that the Supreme Court rejected in its landmark decision, *Katz* v. *United States*,[6] in 1967. While admitting that they had occasionally interpreted the amendment in terms of "constitutionally protected areas," the Court went on to say they had never suggested that this concept could serve as a "talismanic solution to every Fourth Amendment problem." The Court emphasized in *Katz* that ". . . once it is recognized that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures it becomes clear that the reach of the Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure." Further, the Court declared: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

While *Katz* was a nontrespassory electronic eavesdropping case, its language has found application far beyond its facts. The Court's shift in emphasis from protected areas of privacy to the privacy enjoyed by the individual raises important questions for law enforcement. One such question is whether the open fields doctrine of *Hester* can be harmonized with the *Katz* decision.

This article will deal with that question, first, by providing a brief examination of the open fields doctrine, pre-*Katz;* by examining the *Katz* decision itself; and by reviewing the post-*Katz* cases to assess the current validity of the open fields doctrine.

*Open Fields Pre-*Katz

In the *Hester* case, Revenue officers concealed themselves 50 to 100 yards from the house of Hester's father.

"Even though the officer may appear to be a trespasser, . . . [the] . . . courts have approved [his] official entry upon open fields without a warrant to conduct a search."

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.

From this vantage point, the officers saw Hester hand a bottle to one Henderson. An alarm was sounded, whereupon Hester went to a nearby car, took a jug from it, and fled. One officer fired a shot. Hester dropped the jug, which broke but kept about a quart of its contents. The jug was seized and found to contain moonshine whiskey. The Supreme Court rejected the claim that the jug was the product of an illegal search or seizure and held that the fourth amendment did not extend to open fields.

The Supreme Court pronouncement in *Hester* has been judicially recognized and applied in cases involving searches in open fields. Of considerable difficulty, however, has been the problem of defining the term "open fields" and the related term "curtilage."

The constitutional significance of curtilage was that its geographical boundary marked the fourth amendment's coverage. In *Rosencranz* v. *United States*,[7] the Court said: "This amendment (Fourth) speaks of the 'houses' of persons, which word has been enlarged by the courts to include the 'curtilage' or ground and buildings immediately surrounding a dwelling. . . . The reach of the curtilage depends on the facts of a case." The Court in *Care* v. *United States* [8] said: "Whether the place searched is within the curtilage is to be determined from

the facts, including its proximity or annexation to the dwelling, its inclusion within the general enclosure surrounding the dwelling, and its use and enjoyment as an adjunct to the domestic economy of the family."

The cases are far from agreement as to the application of curtilage. Generally stated, the grounds and buildings within the curtilage are protected by the fourth amendment [9] while the land (open fields) outside the curtilage, and any structures on that land, are not protected.[10]

Katz *Decision*

In *Katz* v. *United States*, FBI Agents, having grounds to believe that Katz was using a certain public telephone booth in transmitting wagering information by telephone from Los Angeles to Miami and Boston in violation of a Federal statute, attached an electronic listening and recording device to the outside of the telephone booth from which he placed the calls. At the trial, the Government introduced evidence of Katz's telephone conversations. Katz was convicted and the Ninth Circuit Court of Appeals affirmed the conviction holding that the recording had not been obtained in an unconstitutional manner because "there was no physical entrance into the area occupied by Katz." [11]

The questions before the Supreme Court were whether a public telephone booth was a constitutionally protected area and whether a physical penetration into this protected area was necessary to constitute a fourth amendment violation. The Court rejected these formulations and said: ". . . the correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase 'constitutionally protected area.' " The Court felt that the effort to decide whether or not a given "area" was "protected" deflected attention from the real issue. "For the Fourth Amendment protects people, not places," the Court said.

The Supreme Court reversed the conviction and in doing so noted that electronically listening to and recording Katz's words violated the "*privacy upon which he justifiably relied.*" (Emphasis added.)

Mr. Justice Harlan, concurring, understood the rule as creating a two-fold requirement, "first that a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one society is prepared to recognize as 'reasonable.' " He made the point that a person's reasonable expectation of privacy usually must be considered in reference to a place. It is interesting to note that Mr. Justice Harlan in his opinion said, "I read (the Court's opinion)to hold only . . . that an enclosed telephone booth is an area where, like a home . . . and unlike a field . . . a person has a constitutionally protected reasonable expectation of privacy. . . ."

How will the privacy test work in practice? What guidelines for the officer emerge from the decisions applying the reasonable expectation of privacy test? For the answers to these questions it is necessary to turn to the cases decided since *Katz*.

Open Fields—Post Katz

One recent case that squarely raised the issue of whether *Katz* or *Hester* governed open field searches was *State of Oregon* v. *Stanton*.[12] A police chief was furnished a marihuana plant with the explanation that it came from defendant's farmland. The chief went upon the defendant's farm and observed the marihuana plants. Was this a search of constitutionally unprotected open fields, or must the defendant be afforded protection from search without a warrant because he had a reasonable expectation of privacy in the farmland? The court pointed out that the idea that open fields could never be protected, as under *Hester*, was not consistent with *Katz*. In resolving the issue, the court noted that it was impossible to say in all cases that an expectation of privacy was objectively reasonable when activities are carried on in an open field. The issue was resolved by weighing defendant's subjective expectation of privacy against the facts of the case. Here, the cultivated plot was undeveloped pasture, mostly brush and small trees and not close to any road. Fences had to be crossed to get to the area. The plants were discovered by two young boys searching for lost cattle. Reviewing these facts, the court said that regardless of defendant's subjective expectation of privacy it was not objectively reasonable. In Oregon, the court noted, fences were designed more to keep livestock in than to keep people out.

"In one case, the search of a trash receptacle in a suspect's backyard was held improper because the individual had a reasonable expectation that garbage would be hauled away and lose 'its identity and meaning by becoming part of a larger conglomeration of trash elsewhere.' "

California also has shifted the legal emphasis away from protected areas to personal privacy. In one case, the search of a trash receptacle in a suspect's backyard was held improper because the individual had a reasonable expectation that garbage would be hauled away and lose "its identity and meaning by becoming part of a larger conglomeration of trash elsewhere." *People* v. *Edwards*.[13] The same expectation of privacy was held to apply even though garbage was searched by police after pickup by a trash collec-

tor, as where collector kept suspect's garbage separated. *People* v. *Krivda*.[14]

In another case, police officers saw marihuana through a window from a fire escape. The trial court denied the motion to suppress on the grounds there had been no trespass. The California Court of Appeals reversed and sent the case back to the trial court because an improper test was applied in reaching the results, namely whether there had been a trespass. The proper test was said to be whether peeking into a window was an unreasonable invasion of the occupant's privacy. *Cohen* v. *Superior Court*.[15]

In *People* v. *Bradley*,[16] police went to defendant's residence pursuant to a tip regarding the sale of marihuana. Defendant was not at home. Police went into his yard and there discovered marihuana growing in a keg about 20 feet from defendant's door, to which presumably delivery men and others came. The plants were not covered. "Under the circumstances it does not appear that the defendant exhibited a subjective expectation of privacy in the plants." The search was held to be reasonable. In regard to this decision, it is interesting to note that prior to *Katz* the California courts had held that grounds around a house, enclosed or unenclosed, or open fields were not protected by the fourth amendment. *People* v. *Shields*.[17]

One of the first Federal cases to consider the issue of what effect *Katz* has had on the open fields doctrine was *Wattenburg* v. *United States*.[18] In that case, Wattenburg, together with Owens, was convicted of stealing approximately one thousand red fir trees, of Christmas tree size, from U.S. Government lands. A criminal investigator for the U.S. Forest Service examined the suspect trees while they were stockpiled near the defendant's lodge. The examination was made pursuant to a search warrant which the Government later conceded was invalid. The Government sought, however, to uphold the search under the open fields doctrine. The trees were located 20 to 35 feet from the lodge and within 5 feet of the parking lot serving lodge personnel and patrons. The Ninth Circuit Court of Appeals reversed conviction and held that the open fields doctrine did not apply since the Christmas trees were within the curtilage and therefore protected by the fourth amendment.

The opinion, however, criticized the curtilage concept and said the question should turn rather upon the degree of privacy a resident seeks to preserve, without resort to the ancient concept of curtilage. In this way, attention would be focused on the basic interest the fourth amendment was designed to protect. There was no doubt, the court reasoned, that Wattenburg, by placing the stockpile so close to his place of residence as he did reasonably expected privacy and the facts of the case supported that expectation. The court said it would also reverse conviction on that basis. See also the Fifth Circuit Court of Appeals decision in *United States* v. *Ressnick*,[19] which questioned whether or not *Hester* and the open fields doctrine had continuing viability.

Though not an open fields case, a decision from the Sixth Circuit Court of Appeals provides an interesting *Katz* application. Police obtained a murder suspect's suit jacket from the cleaners and submitted it to the FBI laboratory for examination. The question presented was ". . . whether appellant can be said to have sought to 'preserve as private' the matter contained on the suit after the suit was delivered to the cleaners?" The facts were that defendant took the suit to the cleaners open to public view; he knew the suit would be handled and examined by many persons; he in no way tried to conceal the suit or anything on it; and he did not try to restrict the number of persons who handled it. There was no invasion of anything defendant sought to preserve as private. "What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *Katz*, *supra*. The police procedure was held not to invade defendant's expectation of privacy.

Katz shifted emphasis in fourth amendment cases from protection of property interests to personal privacy interests. The court did not elaborate on what the limits of the privacy approach should be.

While it may be said that every individual has a justifiable expectation of privacy with regard to his person wherever he may be, the same cannot be said with regard to the place where the individual may happen to be. The place must be of such a nature or character to objectively support a reasonable expectation of privacy. In deciding the nature of the place the earlier open field decisions will, of course, be of value. However, with *Katz* in mind it appears that open fields will be protected to the extent that it can be shown that there is a reasonable expectation of privacy therein.

Rather than eliminate the open field doctrine of *Hester*, the *Katz* decision sought to make clear that places formerly classed as public could become subject to fourth amendment protection, depending upon the expectation of the person making use of the place and whether the expectation is one society is prepared to term "reasonable." As the court in *Katz* phrased it ". . . what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

FOOTNOTES

[1] 265 U.S. 57 (1924).

[2] *McDowell* v. *United States*, 383 F. 2d 599 (8th Cir. 1967).

[3] 370 U.S. 139.

[4] "The purpose of the probable cause requirement of the Fourth Amendment to keep the state out of constitutionally protected areas until it has reason to believe that a specific crime has been or is being committed. . . ." *Berger* v. *New York*, 388 U.S. 41 (1967).

[5] 19 Howell, St. Tr. 1029 (1765) quoted in *Boyd* v. *United States*, 116 U.S. 616, 627 (1885).

[6] 389 U.S. 347 (1967).

[7] 356 F. 2d 310 (1st Cir. 1966).

[8] 231 F. 2d 22 (10th Cir. 1956), cert. denied, 351 U.S. 932.

[9] Barn across driveway from dwelling, *Rosencranz* v. *United States*, 356 F. 2d 310 (1966); Smokehouse associated with dwelling, *Roberson* v. *United States*, 165 F. 2d 752 (1948); Fenced backyard, *Hobson* v. *United States*, 226 F. 2d 890 (1955); Barn 70 to 80 yards from house, *Walker* v. *United States*, 225 F. 2d 447 (1955).

[10] Cave in a plowed field across road from house and about 125 yards from it, *Care* v. *United States*, 231 F. 2d 22 (1956); A small concrete outbuilding 150 to 180 yards from residence, *Brock* v. *United States*, 256 F. 2d 55 (1958); A chicken house 150 feet from the house and separated from it by two fences, *Hodges* v. *United States*, 243 F. 2d 281 (1957).

[11] 369 F. 2d 130.

[12] 490 P. 2d 1274 (1971).

[13] 458 P. 2d 713.

[14] 486 P. 2d 1262. Cert. granted, April 3, 1972. 11 CrL 4001.

[15] 85 Cal. Rptr 354 (1970).

[16] 460 P. 2d 129 (1969).

[17] 43 Cal. Rptr. 188.

[18] 388 F. 2d 853 (9th Cir. 1968).

[19] 455 F. 2d 1127 (5th Cir. 1972).

40 YEARS

(*Continued from page 6*)

cally classified into additional blood grouping systems, thus narrowing down the possible sources from which they originated.

Mineralogy

The examination of soils and combinations of mineral substances requires utilization of instruments specially designed for petrographic work. Various particles of physical evidence found on the property of a suspect or on his person may be used to associate him with the scene of a crime based on the results of the Mineralogy Unit's analyses. These substances include soils, safe insulation, concrete, plaster, mortar, ceramics, glass, ore, and abrasives.

Chemistry—Toxicology

A number of different types of chemical examinations are conducted in the Chemistry—Toxicology Unit utilizing gas chromatography, infrared, and ultraviolet spectroscopy as well as chemical analyses to identify poisons, drugs, and other toxic materials as possible causes of a victim's death. Other materials, such as probable accelerants found at a scene of a fire or sabotage incident, are analyzed to determine if the act was in fact a criminal effort and to determine if the materials contain any unusual substance that could provide a lead for investigators.

Firearms, Toolmarks, and Explosives

Probably best known of the examinations conducted in these areas is that of determining whether or not a questioned bullet was fired from a specific weapon. The firearms examiner may also be called upon to determine if firearms are operating properly or to conduct gunpowder and shot pattern tests. In other instances, examinations of a questioned bullet or cartridge case may assist in ascertaining the type of weapon used in a crime. Also possible, utilizing the basic principles of firearms examinations, is the identification of telltale marks left at crime scenes by punches, hammers, axes, pliers, screwdrivers, chisels, wrenches, and other objects. The explosives specialist is called upon to examine evidence recovered at the scene of explosions—a problem

Shown are Laboratory specialists determining the identities of poisons.

Confiscated firearms are examined by FBI expert for possible addition to the Reference Collection.

rendered the more difficult because of the inherently destructive nature of the crime.

Metallurgy

The popularity of motorcyles and the ease with which they may be illegally obtained and transported have resulted in a substantial increase in the number of altered serial numbers submitted for restoration to the FBI Laboratory. Obliterated numbers can also be restored on firearms, sewing machines, watches, outboard motors, slot machines, automobiles, tools, and other metallic items. Tests may show whether two or more pieces of metal are in any way related, the possible cause of metal separation, and if production specifications for the metals have been met.

Instrumental Analysis

Examiners in the Instrumental Analysis Unit conduct microscopic, microchemical, and instrumental analyses of a wide variety of physical evidence such as paints, plastics, metal, glass, rubber, and other minute specimens of materials too small for examination by other means. Spectrographs, spectrophotometers, chromatographs, and X-ray diffraction apparatus provide the Laboratory experts with the data necessary for the identification and quantitative analysis of trace evidence.

Neutron Activation

In neutron activation analysis a sample of unknown material is irradiated with neutrons (nuclear particles). Some of the irradiated atoms in the unknown material are thereby made radioactive and begin to disintegrate (radioactively) with the emission of gamma rays. The energy of these gamma rays is measured with a gamma ray spectrometer. These energy values are then used to identify the element in the original material. Quantitative measurement of the elements present can be made by comparing the radioactivity of the elements in the evidentiary material with the radioactivity of known amounts of these elements.

Cryptanalysis—Gambling—Translation Section

The President's declared war against the gambling interests of organized crime and the increased emphasis on antigambling enforcement by State and local authorities have dramatically increased the examinations conducted in the FBI Laboratory's Gambling Unit. Its personnel have a rich depth of experience in identifying, defining, and demonstrating the meaning and significance of wagering records and related materials used by bookmakers and numbers writers in the conduct of their illicit profession. Similar examinations are performed on recorded material obtained through court-

Laboratory examiners conduct drug analysis with the use of a fluorescence spectrophotometer.

"The President's declared war against the gambling interests of organized crime and the increased emphasis on antigambling enforcement by State and local authorities have dramatically increased the examinations conducted in the FBI Laboratory's Gambling Unit."

authorized interception of telephone communications.

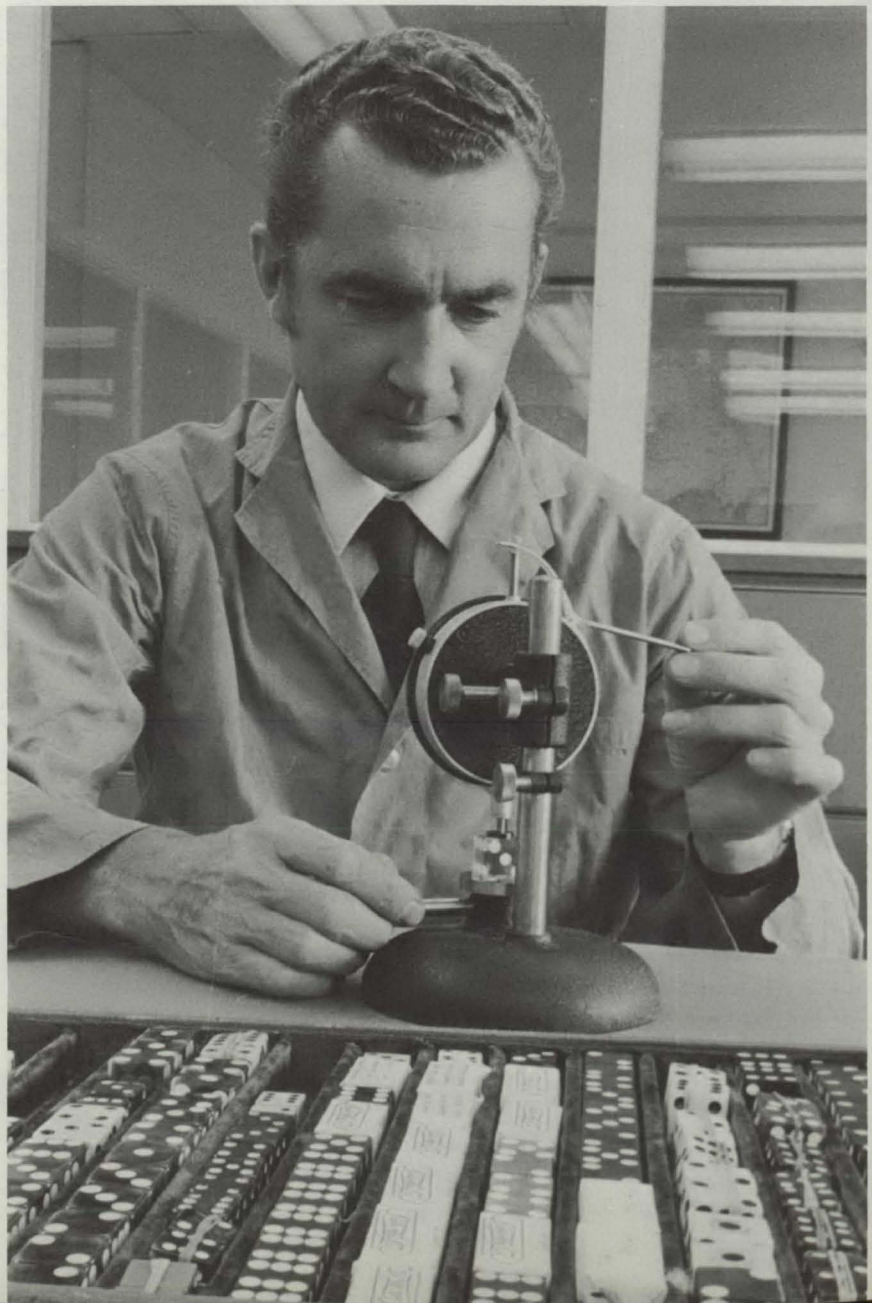
Attempts to thwart recognition of gamblers' records through the use of codes and ciphers are unmasked by FBI Laboratory cryptanalysts using electronic data-processing equipment. Through the joint efforts of gambling examiners, chemists, and document examiners, specialized papers used by bookmakers and numbers writers are identified or their sources established. The existence of gambling records also is frequently proved through the development of indented-writing impressions made on an underlying piece of paper and, in other instances, by the restoration of burned or multilated papers.

In casino and carnival games, the Laboratory cryptanalysis staff possesses the capacity and experience to mathematically define the odds favoring the game's operator. This includes detailed examinations of pinball machines, various types of slot machines, roulette wheels, and other gambling devices. Rigged equipment such as altered dice, marked cards, and electrically controlled dice tables can be exposed and their effects demonstrated.

The Organized Crime Control Act of 1970 caused some sports bookmakers in South Carolina to hire legal counsel in their search for loopholes in the new laws prohibiting certain gambling operations. The bookmakers were advised by their counsel to decentralize, thus—they thought—avoiding the prohibition of an enterprise involving five or more persons. Through a tangled web, layoff wagers were handled telephonically with seemingly fewer persons involved.

Into this gambling operation drifted a compulsive bettor with connections enabling him to place wagers with top New York bookmakers. The bettor was permitted by his New York sources to manipulate the handicap by one-half point, provided he furnished a minimum of $500 in wagers on each of the 13 professional football games each week. Lacking such resources, he began handling layoff wagers for local bookmakers. Soon he accepted these wagers at the established handicap and took advantage of the one-half point manipulation when forwarding the wagers to New York. This last tactic moved him from the ranks

A dial indicator gauge is used by gambling specialist pictured to determine if dice have been tampered with to affect their balance.



of a mere bettor to those of a layoff bookmaker using an interstate facility in violation of the law. His connections and those of others were traced, resulting in convictions against him and the bookmakers furnishing him layoff wagers.

It was an FBI Laboratory expert on gambling who explained the complexities of this bookmaking operation to the court and clearly refuted the defendant's denials of bookmaking activity.

The trial also established a precedent by holding that decentralized bookmakers, even though acting as independent businesses when dealing with the public, constituted a single enterprise when they exchanged layoff wagers with one another in violation of the law.

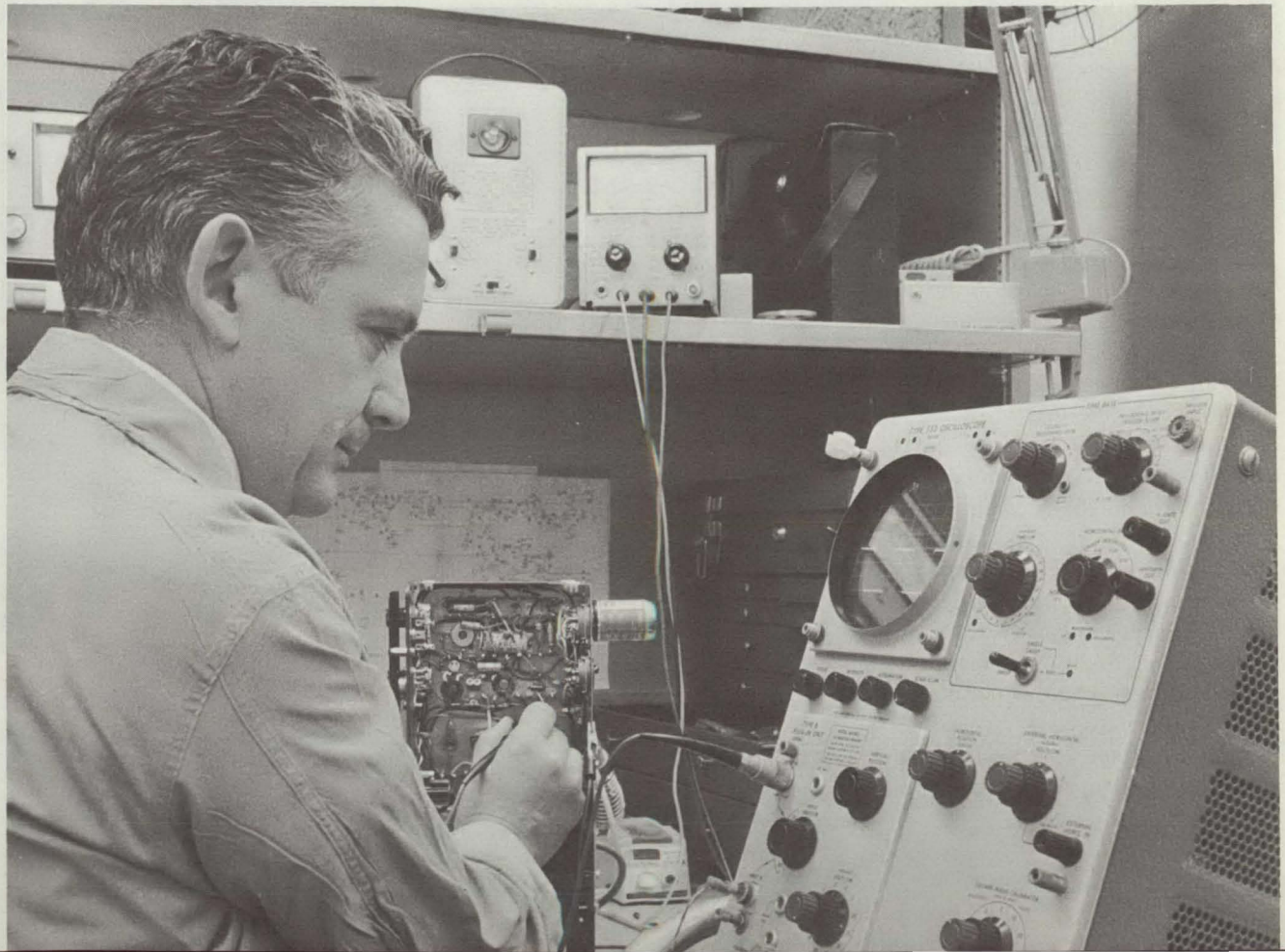
In addition to the assistance given gambling investigators in the breaking of bookmakers' codes and ciphers, the cryptanalytic staff can frequently recover the true meaning of encrypted messages in criminal matters. Many examinations of this type have very materially contributed to successful prosecutions in local investigations involving, for example, murders and narcotics.

Radio Engineering Section

In recent years, one of the fastest developing phases of law enforcement has been in the field of radio communications. Cities have grown to megalopolises, towns have become cities, and the need for larger radio systems and more sophisticated communications equipment has grown proportionately. The Radio Engineering Section of the FBI Laboratory is equipped with the most modern and up-to-date instruments, tools, and equipment and is staffed with specialists in this field. These specialists are primarily responsible for insuring that all of the field divisions are equipped with efficient, modern FM automobile two-way radio communications systems. This responsibility includes systems engineering, installation, evaluation of equipment, and maintenance procedures to be effected in each field division system.

Continual contact is maintained with the various commercial firms which manufacture radio communications equipment, as well as with military services and other civilian Government agencies. In this way, Laboratory engineers are kept abreast of the latest developments so that agents in the field may at all times be provided with the finest radio communications facilities in carrying out

Radio engineering expert shown testing sophisticated law enforcement communications equipment.



the Bureau's investigative responsibilities.

The expertise in radio and electronics required of the technical personnel assigned to the Radio Engineering Section is also used to advantage in responding to requests of other law enforcement agencies for examinations and testimony in matters involving electronic or mechanical devices. For instance, a recent marked increase in submissions by State and Federal officials of illegal electromechanical gambling devices has resulted in related testimony in State and Federal courts. Pinball machine gambling has often formed a financial base for organized crime-associated activities in States where the machines are in operation. Expert testimony has been found to be an essential element in establishing the nature of such machines in court.

Recent testimony was important in gambling cases in several Southern States involving over 4,000 machines valued at approximately $8 million. The successful conclusions of these cases to date have been in large part the result of long hours of preparation and excellent presentation in court by Laboratory experts assigned to the Radio Engineering Section.

The Impact

Impressive as they are, the hundreds of technical reports, the thousands of exhibits presented from the witness stands, the tens of thousands of words of expert testimony given, and the hundreds of thousands of scientific examinations conducted annually fall far short of measuring the full influence of the FBI Laboratory's contribution in the nationwide solution of crime. Of much greater importance is the growing realization that scientific crime detection is an essential tool in effective law enforcement performance. It is this impact on modern investigative procedures which is revitalizing present-day law enforcement efforts. It is a welcome and timely trend—in this 40th Anniversary Year of the FBI Laboratory—to be enjoyed not only by the entire law enforcement profession, but also by the people of our Nation who demand and deserve to have the best in crime detection.

PROSECUTOR

(*Continued from page 9*)

plained his reasons to the police. Similarly, it would be improper for the prosecutor to criticize the actions of the judiciary in setting sentences and the executive in granting pardons or paroles, even though the prosecutor may disagree with their actions.

Liaison

Just as the prosecutor should be available to the police, the police should be available to the prosecutor's office not only in preparing for the case, but, most importantly, at the actual time of trial. While the police should always be available for trial of their cases, impossibilities cannot be expected from them. Prosecutors should take into consideration the fact that police officers, like themselves, might plan days' off weeks in advance. If at all possible, trials should be scheduled around the officer's time off. This can often be done if the head of individual police departments will establish liaison with the prosecutor regarding scheduling of trials. Trials may then be coordinated as much as

State's Attorney Leahy (center) discusses case with area strike team officers, Det. Sgt. Wayne Liberty (left) and Det. Lt. Richard Beaulieu (right).

possible to avoid officers' days' off. Such a system can work if the head of a department is willing to cooperate and have someone within his department maintain liaison with the prosecutor. It is certainly far easier for one person in a police department to work with the prosecutor in keeping track of the scheduled leave of officers involved with trial cases than it would be for the prosecutor to try to keep track of them individually.

Most prosecutors realize that while the hard, sometimes nonglamorous, work of investigation is done by the police officer, the prosecutor is often the one who appears in the news media and before the television cameras announcing the arrests and prosecutions of significant cases. Because of this, the prosecutor should at all times make an effort to give ample credit to the police agency doing the initial work.

"When elements of the criminal justice system are at odds, society suffers."

At the same time, the police officer should realize that if the public is dissatisfied with his performance it generally complains about the police agency collectively and not about the police officer individually. The situation is considerably different, however, with the prosecutor. If a case is lost, the public questions the individual competence of the prosecutor. The police officer, also, does not have to face the voters every 2 or 4 years, and in the normal scheme of things he is not available to be questioned regarding the shortcomings in his department. The prosecutor is quite probably the one who would be questioned in such a situation.

Goal

The criminal justice system has experienced unprecedented strain during the last decade, not the least of which has been a marked increase in crime rates.

The criminal justice system can succeed in the coming decade only if all elements of it—from the police through the judiciary—fulfill their roles. When elements of the criminal justice system are at odds, society suffers. Conversely, however, society is immeasurably benefited when all elements of the system work together.

The police and the prosecutors are the two elements that should work closest together. I see no reason why they cannot work together, and I see no excuse when they do not. This is the very least the public has a right to expect from their officials and organizations. FBI

BANKING

(*Continued from page 19*)

ICB's is a significant move in this direction. It will certainly minimize the options which are open to a bank robber and other criminals and make more difficult their attempts to victimize a bank than in years past.

Just as important as sophisticated security equipment, if not more so, are the robbery deterrent qualities of alert, informed employees who know the value of bank security. FBI

MURDERS OF LAW ENFORCEMENT OFFICERS

During the first 9 months of 1972, a total of 75 local, county, and State law enforcement officers were murdered due to criminal action.

Geographically, 40 officers were killed in the Southern States, 10 in the Northeastern States, 16 in the North Central States, and 9 in the Western States.

Ambush-type attacks claimed the lives of nine law enforcement officers—three in January, four in April, and two in August. Seventeen officers were killed investigating robbery matters; ten answering disturbance calls; thirteen while attempting arrests for crimes other than robbery and burglary; seven in connection with burglary matters; five investigating suspicious persons or circumstances; eight making traffic stops; two handling a civil disorder; two by mentally deranged persons; and two officers were killed by prisoners.

Seventy-three of the 75 officers slain during the first 9 months of 1972 were killed through use of firearms. In 50 of these slayings, the crime was committed through use of handguns.

Enclosed to Agnew Memo 10/31/72

NATIONWIDE CRIMESCOPE

Press release 8-28-72

RECIDIVISM AMONG POLICE KILLERS

Of the 975 offenders known to have been involved in the killing of police officers during the period 1962–71, 77 percent had been arrested previously on some criminal charge. Forty-three percent of them had been arrested for a violent crime such as murder, forcible rape, robbery, and assault with intent to kill. Sixty-one percent of those convicted had been granted leniency in the form of parole or probation.

During the same period, 722 law enforcement officers have been killed in the line of duty. Firearms have been used to commit 96 percent of these police killings, and 73 percent of the weapons used were handguns.

Fiscal year-end release 7-13-72 p. 18

LABORATORY EXAMINATIONS AND FINGERPRINT COMPARISONS

During fiscal year 1972, the FBI Laboratory conducted nearly 500,000 scientific examinations of evidence, and over 24 percent of these were for other Federal and State law enforcement agencies on a cost-free basis.

In the same period, the FBI Identification Division recorded fingerprint receipts exceeding the 6 million mark, and more than 40,000 fugitives were identified as a result of fingerprint comparisons during the 12-month period.

UCR - 1971 pg 7-9

MURDERS INCREASE

There were an estimated 17,630 murders committed in the United States in 1971. This represents a numerical increase of 1,770 over the 15,860 homicides recorded in 1970.

The frequency of murder in 1971 was highest in December. In a breakdown by region, 44 percent of the murders occurred in the Southern States, 23 percent in the North Central States, 19 percent in the Northeastern States, and 14 percent in the Western States.

Sixty-five percent of the homicide victims were killed through the use of a firearm. Handguns were again the leading type of firearms used, with 51 percent of the murders resulting from the use of handguns, 8 percent from the use of shotguns, and 6 percent from rifle wounds.

NCIC Newsletter 8-72

NCIC TRANSACTIONS

In August 1972, National Crime Information Center (NCIC) network transactions totaled 3,042,545, an average of 98,144 daily. A record number of 112,226 transactions were processed on August 22, 1972.

As of the first of September 1972, there were 3,949,793 active records in NCIC with the breakdown showing 120,880 wanted persons, 794,849 vehicles, 249,508 license plates, 769,280 articles, 515,469 guns, 1,291,101 securities, 6,305 boats, and 202,401 criminal offenders (computerized criminal histories).

Fiscal year-end release 7-13-72 p. 19

RECORD NUMBER OF CONVICTIONS

A record number of convictions resulted from FBI investigations involving embezzlements, frauds, and thefts from financial institutions during fiscal year 1972.

In one case, a bank president embezzled more than $5 million to help finance his investment in the stock market. When brought to trial, he entered pleas of guilty to the charges against him.

In another case, 13 bank employees schemed to steal mutilated U.S. currency in excess of $1.3 million. All 13 employees have been indicted by a Federal grand jury, and as of August 15, 1972, over $1 million had been recovered.

UCR 1971 pg. 14-15.

ROBBERIES—1971

During the calendar year 1971, there were an estimated 385,910 robberies committed in the United States. This represents an increase of 37,670 over the prior year. Geographically, the heaviest volume of robbery occurred in the Northeastern States, which reported 37 percent of the total in 1971. In the other geographic regions, the North Central States had 26 percent, the Southern States 22 percent, and the remainder occurred in the Western States.

Armed perpetrators were responsible for 65 percent of the robbery offenses during 1971, while 35 percent were muggings, yokings, or other violent confrontations where personal weapons were used by the offender to subdue or overcome the victim.

INVESTIGATORS' AIDS

TOMATO IDENTIFIES BANDIT

On December 20, 1971, three men entered a small supermarket in Benton Harbor, Mich., intent on committing a robbery. Finding more people in the store than anticipated, the men posed as customers and each, taking a shopping cart, proceeded to select various grocery items which they placed in the carts. After some of the customers had left the store, the three men held up the employees and remaining customers. They escaped with the day's receipts after firing a shot at the store owner.

Detective Robert L. Johnston of the Benton Harbor Post of the Michigan State Police, because of his training and experience in latent fingerprint work, was requested by the Benton Harbor Police Department to assist them in conducting a search for latent fingerprints at the crime scene.

Among other things, the articles in the shopping carts left by the robbers, including a fresh tomato, were examined. This tomato had been displayed in a refrigerated case and, when found by Detective Johnston, was covered with moisture from condensation. The tomato was carefully preserved at room temperature until it was dry, following which it was processed with gray powder that succeeded in developing a single latent impression with sufficient characteristics to permit comparison. However, a unique happening occurred in the development of this latent print. Evidently, when the ridge structure of the finger made contact with the moistened tomato, either the ridges removed the moisture, or through pressure they pushed all the moisture into the furrows, so that when the tomato was processed, the powder adhered to the furrow area, thus giving a reversed print of the ridge structure.

The latent print later was identified with one of several fugitives subsequently apprehended following a spree of other robberies.

A "SMASHING" DEPARTURE

When an alarm sounded while a bar was being burglarized, the burglar bolted from the premises through a glass door to make good his escape. An investigation revealed that he had entered the bar via a sisal rope lowered through a hole in the roof.

The tattered suspect was located and arrested as he attempted to hide on the floor of an automobile parked near the scene of the crime. Several articles of his clothing were sent to the FBI Laboratory for examination, along with various items from the crime scene.

At the trial FBI Laboratory experts testified that glass particles found on the defendant's jacket matched glass from the shattered door, just as paint chips and varnish on his jacket and gloves matched paint and varnish from the door. Sisal fibers also found on his jacket and gloves matched the fibers composing the rope.

Following this testimony, the jury had no difficulty finding the defendant guilty of burglary.

INTENSIFIED NARCOTICS LIAISON

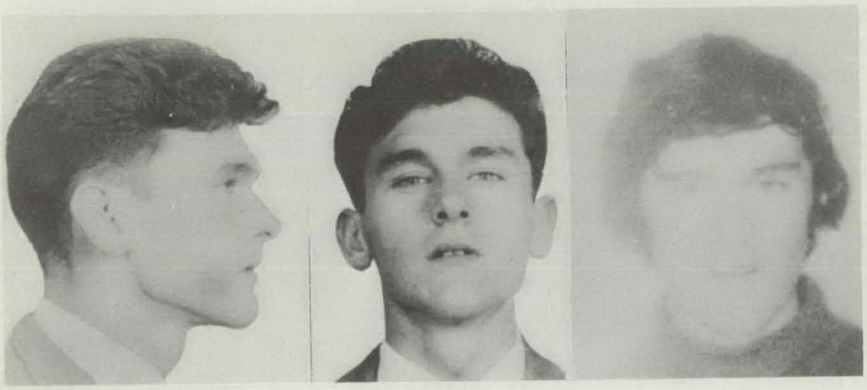
The FBI has begun a stepped-up liaison with other law enforcement agencies to speed and facilitate the exchange of information dealing with illicit narcotics traffic. The new procedure provides for all narcotics intelligence information obtained by the FBI to be channeled through selected Special Agents designated as narcotics coordinators in each of the FBI's regional field offices and at Washington, D.C., headquarters. This intensified liaison program is also coordinated with the recently created National Narcotics Intelligence Center in the Department of Justice.

Through its regular liaison with other Federal, State, and local law enforcement agencies, the FBI has always promptly disseminated drug abuse information received in connection with its own investigative responsibilities. This data has enabled those other agencies to make numerous arrests and confiscate millions of dollars' worth of narcotics. While illicit drug violations are not within the FBI's jurisdiction, the new program has enhanced its position to make an even more meaningful and positive contribution to the Government's anti-narcotics drive.

INVESTMENT RETURN

The total of fines, savings, and recoveries in FBI cases reached a record high of $547 million during fiscal year 1972. This was an average of $1.63 for each dollar appropriated for FBI operations.

WANTED BY THE FBI



RICHARD THOMSON FORD, also known as: Richard Arthur Gagnon (true name), Joseph Michael Fitzgerald, Richard Thomas Ford, Frederick H. Harrison.

Interstate Flight—Escape, Assault with Intent to Murder

Richard Thomson Ford is being sought by the FBI for unlawful interstate flight to avoid prosecution for escape and assault with intent to murder. A Federal warrant for his arrest was issued on March 18, 1970.

On December 27, 1967, as officers from the Lawrence, Mass., Police Department attempted to arrest Ford on a local warrant, he reportedly tried to escape through an alley. Shots were exchanged between Ford and the arresting officers and, as a result, Ford was wounded, taken into custody, and charged with intent to murder.

On December 8, 1968, Ford escaped with three other prisoners from the Essex County House of Correction, Lawrence, Mass. Three of the escapees were subsequently arrested, but Ford remains at large.

Caution

Ford has been convicted of armed robbery and escape. He reportedly is in possession of a shotgun and should be considered very dangerous.

Description

Age	27, born June 6, 1945, Lowell, Mass.
Height	5 feet 10 inches to 5 feet 11 inches.
Weight	165 to 175 pounds.
Build	Medium.
Hair	Dark brown.
Eyes	Hazel.
Complexion	Medium.
Race	White.
Nationality	American.
Scars and marks	Scars between left thumb and left index finger; scar on abdomen; scar on left ankle. Tattoo: "DICK" on left forearm.
Occupations	Carpenter's helper, golf course maintenance worker.
FBI No.	93,884 F.

Fingerprint classification

13 O 13 U OOO Ref: 13
I 21 U OOO 16 17

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.

NCIC Newsletter 8-72

THREE IN ONE

The Denver, Colo., office of the FBI recently made an NCIC check on a .45 caliber automatic pistol which had been located in a pawn shop in that city. Examination of the weapon had disclosed what appeared to be three different serial numbers—one on the frame, one on the slide, and one on the barrel bushing. NCIC inquiries were made on all three numbers and a "hit" was received on each. The number on the frame had been entered by the Chicago, Ill., Police Department in April 1972; the number on the barrel bushing had been entered by the Columbus, Ga., Police Department in March 1972; and the number on the slide had been entered by the New Orleans, La., Police Department in January 1970. The cannibalized pistol represented weapons taken in three different house burglaries.

Press Release 8-28-72

CAREERS IN CRIME

A study of 68,914 Federal offenders arrested during 1971 revealed that 68 percent had been arrested previously on a criminal charge. These offenders had 79,242 convictions and 28,488 imprisonments of 6 months or more during their criminal careers which averaged 6 years and 2 months.

Over half of those under 20 years of age who were arrested in 1971 were repeat offenders. They were rearrested more frequently than any other age group, with an arrest every 4 months.

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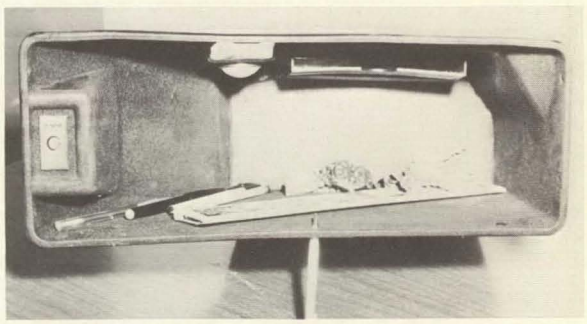
Letter from W. A. Dagg - Galveston Police Department
Credited 6-29-72

SECRET COMPARTMENT

During a search of a late-model luxury car, officers of the Galveston, Tex., Police Department discovered a false compartment in the rear of the glove compartment. A fake back had been fashioned from a box top and shaded with a black marker to simulate the same color as the actual back. The edges had been bent to conform to the inside surface of the glove compartment; and the false back, when placed in the glove compartment, left an 8- by 10-inch area behind it which was not visible when the door was opened.

Behind the false glove compartment back were found nine stolen credit cards, 11 counterfeit drivers' licenses, a number of stolen traveler's checks, a bag of marihuana, 8 capsules of heroin, 22 amphetamine capsules, one water pipe containing marihuana residues, and one empty bullet cartridge which had been made into a marihuana cigarette holder.



Interior view of glove compartment fitted with a false back to conceal a secret compartment in the rear.

False back in glove compartment used to secrete stolen credit cards, counterfeit drivers' licenses, and other contraband.

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

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THIRD CLASS

QUESTIONABLE PATTERN

Although the questionable pattern illustrated above has the general appearance of a whorl, a close examination reveals the absence of a sufficient recurve in front of the right delta formation. Consequently, this impression is classified as a loop with six ridge counts.