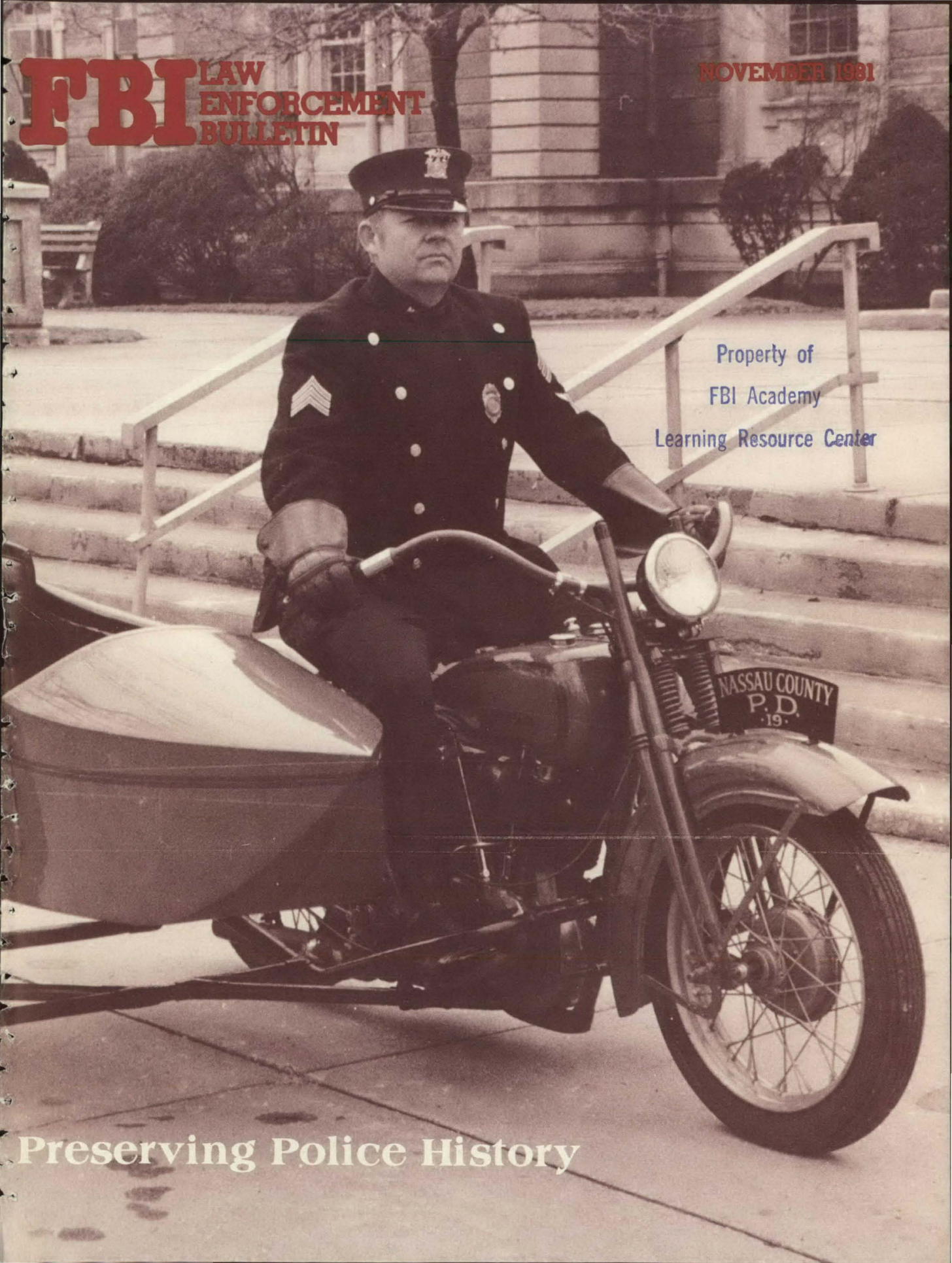
FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1981



Preserving Police History

FBI LAW ENFORCEMENT BULLETIN

NOVEMBER 1981, VOLUME 50, NUMBER 11

Contents

THE COVER:

A restored 1925 Harley Davidson is driven by an officer dressed in a uniform of that era. See article on preserving the history of a police department beginning on p. 1.

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

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through December 28, 1983.

Published by the Office of Congressional and Public Affairs
Roger S. Young
Assistant Director

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers

ISSN 0014-5688 USPS 383-310

Preserving Police History

By GEORGE F. MAHER
Chief of Headquarters
Nassau County Police Department
Mineola, N.Y.

When consideration is being given to preserve the history of an organization, a situation arises that seems to be common with all agencies—the decision is made to collect and preserve all old records and equipment *after* a general housecleaning and disposal of irreplaceable items. This example of bad timing usually causes a belated scramble to locate and retain anything that looks old, resulting in an accumulation of items of questionable value.

The recollections and experiences of the pioneering members of the department are a very important part of an agency's history. Once lost, these can never be replaced. Ideally, an organization should decide to preserve its history while there are still some original members available to interpret it. There is nothing more frustrating to a historian than to have a photo depicting an important event in the growth of the organization and have no way of identifying the person in the picture. Also, equipment is sometimes found that no one knows how or if it was used, unless an "oldtimer" is located to describe its function.

"The recollections and experiences of the pioneering members of the department are a very important part of an agency's history."

There are also the problems of management support of such an undertaking and the space needed for storage and display. Without management support, any attempt to preserve an organization's history would be incomplete. A top-level decision is necessary to set aside the needed space and assign the manpower to receive, catalog, and prepare and maintain displays.

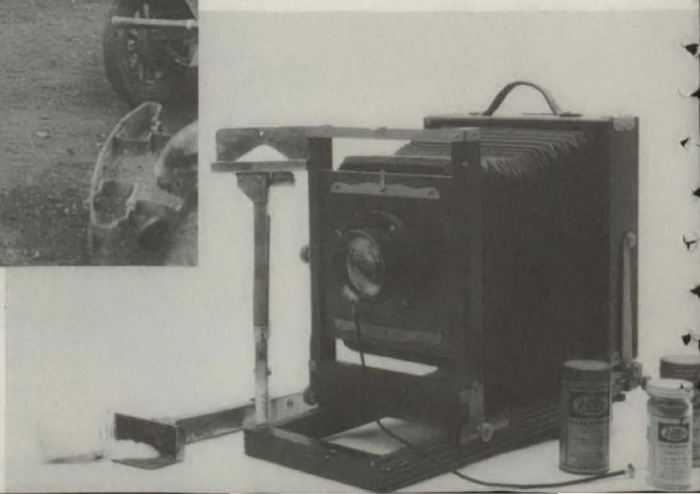
Traditionally, government agencies are in need of additional space, so that areas to be set aside for safe storage or displays are at a premium. The area reserved for displays should be attractive and accessible to the public.

While these are concerns which need to be addressed, they should not deter any organization from preserving its history. Once the decision has been made and the support of the organization's top administration obtained, the next step would be to form a volunteer group—a historical society—within the organization which has as its sole purpose the preservation of the department's history. The society should be given access to whatever records, photographs, weapons, equipment, or other memorabilia necessary to do the job.

Nassau County Police Department motorcycle squad with Charles A. Lindbergh upon his return to Roosevelt Field after his Paris flight—June 1927. (Print from a glass plate negative.)

The "Spirit of St. Louis" before its historic flight to Paris with members of the N.C.P.D. Security Detail. (Print from a glass plate negative.)

This camera, still fully operational, was used to take many of the glass plate negatives in the early days of the department.



Chief Maher

Samuel J. Rozzi
Commissioner of Police

The Nassau County, N.Y., Police Department was established in April 1925, with the appointment of 55 members. When the department's historical society was formed more than 50 years later, in June 1979, a few of the original 55 officers were available for consultation. One of the first steps taken by the society was to contact these and other retired members, soliciting photos, insignia, equipment, and other memorabilia. As word spread among the active and retired members of the intention to set up a police museum, many items of historical and intrinsic value surfaced. A few "false starts" to establish a police museum had been made in previous years, but no program had been adopted. As a result, some "museum conscious" members of the department stashed many irreplaceable records and pieces of equipment in their own closets, basements, and attics. When the commissioner of police approved the formation of the historical society and allotted the space needed for a museum, these stored items were donated to the society to be incorporated into the present display.

Thousands of photographic negatives, many of them glass plates dating back to the early 1920's, were inspected for historical interest and value. These, together with obsolete equipment, uniforms, general orders, blotters, annual reports, newspaper clippings, etc., were made available to the historical society. However, the accumulation of these items created a serious inventory problem. To resolve this problem, the department's data processing unit established a computer program to aid in the indexing and to establish the identity of each item, its purpose and date, and where it is filed or displayed. Without an effective indexing system, the research necessary for a pictorial account of the department's history, planned for future publication, would be almost impossible.

A monthly column outlining the events in the department's history and describing the displays and needs of the museum was prepared, which resulted in an increased interest by both active and retired members. The department's historical society joined other county and private historical societies for the exchange of information and items of mutual interest. Contact with the curators of other museums helped to advance our capability to produce effective, accurate, and attractive displays. Of extreme importance was the ordinance passed by the county board of supervisors to allow the police historical society to accept donations of memorabilia valued up to $1,000 without soliciting board approval each time an item was offered.

Interior views of the Nassau County Police Department Museum.

A restored 1941 Plymouth highway patrol radio car with an operator in a 1941 uniform.

An example of public and department support of the establishment of a police museum was the donation and restoration of an inoperative, somewhat dilapidated, 1925 Harley Davidson. An enthusiastic group of volunteers also located a 1925 sidecar and labored over the motorcycle until it was fully operational. When work of this restoration spread, another group of volunteers obtained and restored a replica of one of the department's 1941 Plymouth patrol cars. These two units generate considerable public interest when used in the many parades and public ceremonies in which the department participates.

Members of the historical society also approached a local model club to manufacture scale models of both antique and modern police vehicles, boats, and aircraft for museum display. The results of their efforts, some depicting equipment dating back to the early 1920's, are presently on display with accompanying photographs of the original equipment.

The department's line organizations, the Superior Officer's Association, the Detective's Association, and the Patrolmen's Benevolent Association, each donated a stained glass window in the museum. These windows, depicting the logo of the organization, not only enhance the museum display but also bring together the entire force membership behind the museum effort.

The establishment of a police museum, especially when it receives media coverage, can result in an overabundance of items donated by an interested public. Some of the problems that arose were caused by our close proximity to New York City. Many of the items offered, although of historical value, did not represent the history of the Nassau County Police Department. Citizens with memorabilia from a relative's early days in the New York City Police Department were referred to that department's museum. Numerous offers of extensive shoulder patch and shield collections, foreign uniforms, and insignia also had to be refused to purify the collection, avoiding the danger of accumulating many nonrelated items in limited space.

The museum was officially dedicated on May 15, 1980. Attending the ceremony were the last three surviving members of the original 55 members who were sworn in as police officers on April 16, 1925. Since the dedication, thousands of people have visited the museum. It is a highlight of the tours of police headquarters conducted daily by the public information officer. Most importantly, however, the Nassau County Police Museum serves as the repository for the department's 55-year history and as a tribute to its dedicated men and women. **FBI**

Ponzi Schemes and Laundering--

How Illicit Funds are Acquired and Concealed

By
VINCENT P. DOHERTY
and
MONTE E. SMITH
Special Agents
Economic And Financial Crimes
Training Unit
FBI Academy
Quantico, Va.

Historically, "crime" has been considered only in terms of acts of violence, threats of violence, and overt thefts. Our system of jurisprudence has evolved by defining as illegal certain activities directed against property and persons, and over a number of years, law enforcement agencies have developed generally accepted methods for investigating these traditional crimes.

In 1949, however, a new type of crime was brought to the attention of law enforcement when Professor Edwin H. Sutherland coined the term "white-collar crime." He defined this crime as " . . . a crime committed by a person of respectability and high social status in the course of his occupation." [1]

The definition of white collar-crime has, since 1949, expanded to include acts committed by people of less than high social status, and our appreciation for the impact of this crime has prompted law enforcement to look beyond traditional acts for illegal and criminal behavior.

Herbert Edelhertz, writing in 1970, provided a comprehensive definition of white-collar crime as " . . . an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage." [2] This definition considers white-collar crime in terms of the nature and character of the wrongful activity involved rather than the offender.

This distinction is important for law enforcement officials, since a successful prosecution must show that one or more criminal statutes were violated by the activity in question. Thus, in white-collar crime investigations, efforts must be directed toward proving an illegal activity rather than concentrating on the offender. The law enforcement officer must find the crime rather than the criminal.

It is important, therefore, for the officer to understand exactly how the crime is committed and at what juncture or junctures in the activity the illegality occurs. Knowing the identity of the perpetrator of a fraud is not enough. The law enforcement officer must be able to understand, explain, and show conclusively how and why the activities are illegal.

Special Agent Doherty

Special Agent Smith

This article takes an in-depth look at two types of white-collar crime in an effort to demonstrate the complexity of the crime and to explain how the activities are fraudulent. The Ponzi or pyramid schemes and the laundering of funds activities are only two examples of dozens of bribery, kickbacks, payoffs, bankruptcy, credit card, check, consumer, and insurance frauds and schemes that occur each year. Nonetheless, analyses of these two schemes may provide the officer familiarity with the type of activity involved in any white-collar crime.

Ponzi and Pyramid Schemes

Pyramid sales schemes, otherwise known as chain referral schemes or Ponzi schemes, have mushroomed across the United States and may be operating in other countries. There is no way of calculating the exact amount of money lost by the victims of pyramid schemes, but it is estimated to be well over one-half billion dollars in the United States alone. Some officials even contend that pyramid sales schemes are the number one consumer fraud problem today. Despite the scope of the problem, many persons still do not know what pyramids are or the dangers inherent in them.

A pyramid sales scheme is a marketing program by which people buy the right to sell others the right to sell a specified product. The promoters select a product, such as household items, cosmetics, or safety devices, and sell large inventories to distributors with the added incentive of permitting the distributor to sell new distributorships. The real profit is earned primarily by recruiters developing new recruits who develop even more recruits. In all of this activity, there is little or no real concern given to direct sale of products or services to the public. Consumer distribution, therefore, becomes a sham and acts merely as a cloak of respectability.

One of the earliest known examples of a pyramid scheme appeared in 1920, in Boston, Mass. Charles Ponzi, an Italian immigrant and financial wizard, established the Securities and Exchange Company. The corporation consisted of only Ponzi, who started his company with a few hundred dollars borrowed from two silent partners. The company's prospectors promised investors substantial returns on their investments in Ponzi's company. Within 45 days an investor would receive his original investment plus 50 percent interest; in 90 days, he would double his original investment. By June 1920, Ponzi claimed to be receiving $500,000 per day and paying out $200,000 a day.

Ponzi explained to doubters that knowing how to take advantage of the varying currency exchange rates in different parts of the world was how he made his profit. He started his company upon receiving a business letter from a conspirator in Spain, who enclosed a reply coupon which, if exchanged at any U.S. Post Office, was worth 6 cents. In Spain, the cost of the coupon to a buyer was only 1 cent. Ponzi reasoned that by buying the coupon in Spain and redeeming it in the United States, he made a 5-cent profit. Thereafter, Ponzi began operations in nine different countries, with his agents traveling back and forth between these countries and the United States to take advantage of the disparity in currency value.

A *Boston Post* newspaper reporter was convinced that Ponzi had never purchased any coupons and that he was taking money from one investor to pay off another. Further investigation by this reporter turned up information that Ponzi, under his real name Charles Bianchi, had been sentenced to prison in Canada for forgery several years earlier.

By the end of 1920, Ponzi's world collapsed and he was subsequently convicted in Massachusetts. Of the $15 million that Ponzi had taken in, there was no accounting for $8 million. Such schemes became known as Ponzi schemes.

Today, another Ponzi plan, sometimes called the pyramid scheme, has hit the United States. It involves the making of $16,000 from a $1,000 investment. To play the pyramid game, one needs only a chart and $1,000 in cash. (See fig. 1.)

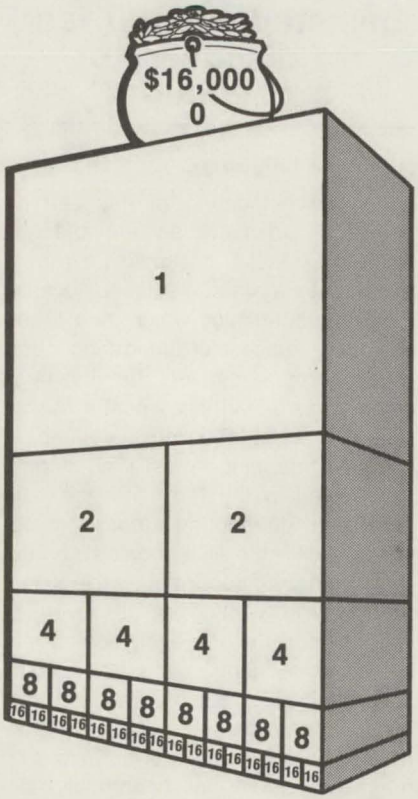
With the $1,000, you can buy a "slot" on the bottom line. This purchase is accomplished by giving $500 to each investor above you on the 8th line and to the player in the zero position. Pyramid success occurs when all the slots on your line are filled and you are able to progress up the chart. When an investor finally moves into the zero position, he or she can begin collecting up to $16,000.

At the heart of each pyramid scheme is the representation, expressed or implied, that a new participant can recoup his original investment by simply finding and inducing two or more prospects to make the same investment. Promoters fail to tell prospective participants that this is mathematically impossible, since some persons drop out of the pyramid while others recoup their original investment and then drop out. This simple misrepresentation constitutes the heart of the fraudulent scheme.

If each investor recruits two additional investors in an effort to get his money back and no one drops out, everything works according to plan. If there are 15 investors at the first meeting to start a pyramid and one person at the top level, the number of new members doubles each day thereafter until, at the end of 2 weeks, 262,143 persons are involved and at the end of 3 weeks there are 33,554,431 participants. It is obvious that the whole scheme must collapse before this is reached. Therefore, the earlier one gets in on the pyramid, the better the possibility to collect the $16,000. For everyone to win, an infinite number of investors is needed to fill the chart from the bottom up.

"One immediate answer to reducing the effectiveness of pyramid schemes is to increase the public's awareness of the impossibility of success in the schemes."

Figure 1



Problems for Law Enforcement

When corporate entities are employed, company promotions of Ponzi plans frequently take on enormous and complex proportions, making auditing difficult, expensive, and time consuming. Too many promoters in local areas make prosecution impractical. By the time informative actions are taken, most promotions have run their course, rendering restraining orders ineffective.

The overall problem of establishing criminal liability is made more difficult by the need to separate victims from promoters. Peculiarly, it is in the victim's best interest to become a promoter and transfer his loss to another. Participants who lose their entire investments do so only because they cannot convince others to invest. For this reason, useful victim testimony is limited. The prosecutor finds appealing victim testimony only from those investors who invested in the pyramid for reasons other than participation in the chain-referral recruiting.

One immediate answer to reducing the effectiveness of pyramid schemes is to increase the public's awareness of the impossibility of success in the schemes. Public education is an effective tool in combating the Ponzi schemes. Law enforcement should not rely solely upon adverse publicity, during or after disclosure of a Ponzi scheme, as the means for combating the crime.

The Laundering of Money by Organized Crime

At the end of the 19th century, most money earned by the American underworld was money gained through extortion, blackmail, and dock racketeering. By the 1920's, the chief source of income had changed to bootlegging, and some believe that it was prohibition that supplied organized crime with the funds and expertise to operate multimillion-dollar ventures.[3] Today, it is estimated that organized crime has invested more than $20 billion into between 15,000 and 50,000 business establishments in the United States.[4] It is estimated that annually, organized crime businesses take in at least $48

billion in gross revenues, with about $25 billion in untaxed profits.[5] If these figures are accurate, it becomes obvious that organized crime has historically been successful in concealing from law enforcement officials and legitimate businessmen the true nature and origin of funds invested in business enterprises.

Definition of Laundering

Alphonse Capone, the infamous gangster of the 1920's is said to have amassed a fortune of $20 million in a 10-year period through such illegal activities as bootlegging and gambling.[6] Yet, when Capone was sentenced to 11 years in prison in 1931, it was for an income tax evasion conviction, not because he had been charged with any of these illegal activities.

The conviction of Capone taught other organized crime members an important lesson: Money not reported on an income tax return is money that cannot be spent or invested without risk of detection and prosecution.

Since most monies collected by organized crime activities are from illegal sources such as loansharking, prostitution, gambling, or narcotics, the individual racketeer is understandably reluctant to report the income and its source on his tax return. Before spending or otherwise using these funds, it is necessary that these monies be given an image of legality so that they can be reported on a tax return without revealing the true nature of their origins. This process of conversion is known as "laundering."

If law enforcement officials are to combat organized crime successfully, they must have an understanding of how monies acquired from illicit sources are transformed into respectable funds that can be spent and invested without fear of discovery or prosecution.

"If law enforcement officials are to combat organized crime successfully, they must have an understanding of how monies acquired from illicit sources are transformed into respectable funds that can be spent and invested without fear of discovery or prosecution."

Domestic Laundries

While laundering money can be accomplished in a wide variety of legitimate businesses, it should be recognized that certain domestic businesses have characteristics which lend themselves to successful laundering operations. For example, the business selected as a "laundry" must be capable of absorbing a large volume of cash income, since most illicit income is received in the form of cash. The purpose of laundering funds is to commingle licit and illicit monies so that they cannot be separated, while simultaneously preventing the discovery of the introduction of illegal monies into the business. Since almost all checks and credit card receipts are traceable by law enforcement officials, businesses such as restaurants, bars, and massage parlors, which normally take in a high proportion of cash, tend to be more desirable as a potential "laundry" than a business normally receiving most of its income in the form of checks or other traceable financial instruments.

Another favorable characteristic for a "laundry" is relatively fixed expenses which do not vary with sales volume. An example of such a business is a movie theater showing pornographic films. The expenses of such a business (rent, electricity, wages) are almost constant, regardless of whether the theater is full. Illicit income can be introduced and camouflaged in this type of business quite easily, since the additional sales volume does not result in a proportional increase in business expenses. Law enforcement officials who later examine the records of such a movie theater would have a difficult time proving that the actual or "legitimate" income generated by the theater was much less than that recorded on the books and reported to the taxing authorities.

Businesses that normally experience a high rate of spoilage or other loss of goods also have a high potential for being used to launder money. Groceries and restaurants are good examples, since some spoilage of goods is expected during the normal course of business. When such a business is controlled, large blocks of illicit money are introduced into the business and recorded in the general income accounts of the grocery store or restaurant as if this money were received from customers. Fraudulent invoices for produce or other perishable items are then issued to these businesses by other mob-owned or mob-controlled companies acting as suppliers. The grocery store or restaurant either issues checks to these "suppliers" or records the transaction as a cash payment and charges the expenditure to an expense account, such as cost of goods sold. The undelivered produce or perishable items listed as spoiled and discarded are written off the books. (See fig. 2.)

By using this method, the grocery store or restaurant avoids substantial tax liability on large blocks of illicit monies introduced into the business, since this income is offset by corresponding expenses relating to the nondelivered goods. The funds paid to the

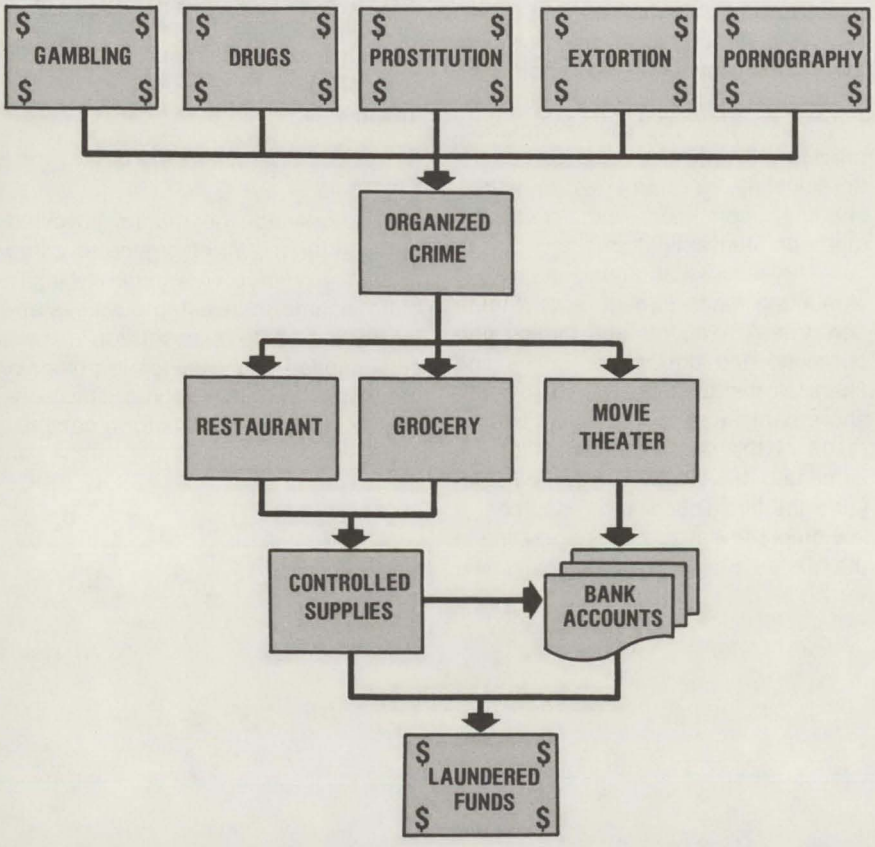
"supplier" by the grocery or restaurant have taken on an image of legality and may be spent or invested with very little risk of discovery. Within a week of this "transaction," it is almost impossible for law enforcement officials to disprove the story of the grocer or restaurant owner.

The above techniques have been used to launder funds successfully for a number of years, and large numbers of domestic businesses controlled by organized crime are still being used for this function. Recently, however, law enforcement officials have adapted new methods, such as sampling, ratio analysis, and flowcharting, to discover laundering operations and to prosecute successfully the people involved in the conversion process.

Simply stated, "sampling" is a statistical procedure wherein the number of customers of an establishment is randomly counted, a conservative estimate is made of the amount of money spent by each customer, and a projection is made as to how much money is actually received by an enterprise in the ordinary course of operation. This procedure is similar to that used to project the outcome of an election with only a small percentage of the votes counted. If the projected income is materially smaller than that reported to taxing authorities, it is a good indication that the business is being used to launder funds.

". . . law enforcement officials have adapted new methods . . .to discover laundering operations and to prosecute successfully the people involved in the conversion process."

Figure 2



The use of ratios to evaluate businesses has been used for many years by accountants, investors, and lending institutions. There are four basic types of ratios in common use:

1) Liquidity ratios, which indicate the ability of an enterprise to satisfy its immediate (short term) financial obligations;
2) Operating ratios, which indicate the efficiency of the business enterprise;
3) Profitability ratios, which indicate the effective use of assets and the return on the owner's investment in the business; and
4) Leverage ratios, which indicate the extent to which the enterprise is financed by debt.

By using ratio analysis, an investigator is able to compare the past performance of a business enterprise to that of the industry in which the business operates. This comparison is for the purpose of spotting significant deviations from the norm, which may indicate the existence of a laundering operation.

Another method used to uncover domestic laundering operations involves researching the corporate and ownership structures of both the suspected business and all the companies with which the suspected business deals. Since the ultimate success of a laundering operation is dependent upon keeping the money "in-house," there will be a commonality among the various businesses. The relationship between the various companies may be illustrated visually by the process of flowcharting, which allows investigators, prosecutors, and juries to grasp more easily the sometimes complex relationships which exist in laundering operations.

While law enforcement agencies have been relatively successful in detecting and exposing domestic laundering operations, it should be realized that underworld leaders have developed and perfected a number of international money laundering operations that have traditionally been immune from this detection and exposure. Although these international laundries vary greatly in form, organization, and complexity, the object is still to disguise the true nature and origin of funds derived from illegal activities. International laundering schemes often involve the use of dummy corporations and numbered bank accounts, or they may use securities or financial instruments issued by banks located in a country where banking regulations are lax (often referred to as "off-shore banks").

Foreign Laundries

It will come as no surprise to most law enforcement officials that much of the money invested by organized crime in legitimate businesses in the United States is first routed through secret numbered bank accounts in countries such as Switzerland, Liechtenstein, West Germany, Panama, and the Bahamas. This type of arrangement is ideal for the racketeer who wishes to clean large amounts of cash earned through illicit activities. Very often, this laundering process involves depositing illicit funds in a secret numbered account, then bringing the funds back into the United States in the form of a loan from either the foreign bank or from a dummy corporation set up under the laws of a foreign country. Not only are the illegal income and the sources of this income hidden from the Internal Revenue Service and other law enforcement agencies, but the "interest" on this supposed loan is often deducted as a business expense on the tax return of the racketeer.

In many cases, organized crime members have not been content with merely using secret numbered accounts in foreign banks. As early as the 1960's, it was recognized that numerous banks in Switzerland and the Bahamas had been taken over by Americans known to be associated with organized crime activities.[7] Not only did the American ownership protect the identity of bank customers and allow for the falsification of bank records, but it also enabled the racketeers to bring apparently legitimate monies back into the United States in the form of various financial instruments issued by these banks and by foreign governments. It did not take long for these owners to realize that controlled banks could also be used to generate other illicit income through the issuance of fraudulent financial instruments that are used in this country as collateral for loans and in other fraud schemes. Enforcement agents working for the U.S. Comptroller of the Currency now estimate that the volume of phony financial instruments issued by offshore banks is "in the hundreds of millions of dollars."[8]

Implication for Law Enforcement

The successful use of domestic businesses to launder dirty money depends upon keeping the cash flow "in-house" and creating such complexity that investigation into the operation appears to be too complicated to undertake. Experience has shown, however, that these laundering operations are not complicated and can be successfully investigated by law enforcement officers willing to use techniques such as sampling, ratio analysis, and flowcharting, combined with traditional methods of investigation.

The success of organized crime in laundering funds through secret numbered bank accounts and foreign corporations and through securities and financial instruments issued by offshore banks has, in large part, been a result of the fact that these "foreign laundries" have traditionally been beyond the jurisdiction and resources of law enforcement agencies operating in the United States. While investigating this type of a laundering operation remains expensive, difficult, and time-consuming, significant steps have been taken in providing investigators with new jurisdictional tools to combat this problem.

On January 23, 1977, a Mutual Assistance in Criminal Matters Treaty between the United States and Switzerland became effective. As a result of this treaty, U.S. law enforcement authorities are now able to obtain previously secret bank information where organized crime is involved.

Investigators are further aided by the passage of "The Currency and Foreign Transactions Reporting Act" (U.S.C., title 31, secs. 1051–1143). This act and the Treasury Department's regulations implementing its provisions set forth reporting requirements for any person importing or exporting currency or other financial instruments totaling more than $5,000. Further, banks and financial institutions must report currency transactions in excess of $10,000 to the Internal Revenue Service.[9] This act also requires all U.S. citizens having a financial interest in, or signature authority over, bank securities or other financial accounts in foreign countries to report this relationship annually to the Treasury Department.

Summary

Laundering operations evolved because members of organized crime needed a source of apparently legitimate income to invest in business enterprises and to account for excess consumption and changes in personal net worth over any period of time chosen by taxing authorities for a compre-

hensive investigation. These operations have continued because legitimate businesses also provide other essential services needed by organized crime, such as warehousing, transportation, and a place to do business. The concept of investing illegally derived income into legitimate businesses within America becomes most disturbing when one considers that the very methods used to obtain these illicit funds can also be applied to the marketplace to eliminate competition, compel the purchase of defective merchandise, and gain unfair business advantages over more honest businesses.

Historically, law enforcement efforts have concentrated on the illegal activities of organized crime rather than on what was done with the income derived from these activities. If investigative efforts against organized crime are to be successful, law enforcement agencies must also begin to concentrate on how these illicit funds are being converted and used to infiltrate legitimate businesses.

Conclusion

White-collar crime, like traditional crime, has existed for hundreds of years. Our system of jurisprudence has, however, concentrated on those crimes involving violence, threats to person and property, and overt theft. For this reason, laws were passed to deal with the poorer, more visible criminal element, and law enforcement agencies have concentrated their investigative efforts on these types of crimes.

Following the massive securities swindles and bank failures of the 1930's, government leaders and criminologists began to address the problem of white-collar crime and passed the first laws to deal with these crimes. Since that time, both the general public and the law enforcement community have come to perceive these activities as illegal, and studies have shown that the costs of these crimes are a threat to our economy.

Few police officers, however, have had experience and training in this subject. The two types of white-collar crime explored in this article illustrate the wide diversity of activities which qualify as this type of crime. This examination of the subject is intended to be of assistance in law enforcement efforts to combat this crime. If the rapid increase in white-collar crime is to be dealt with effectively, it is essential that law enforcement officials understand the nature of these crimes and develop new techniques to investigate these activities successfully. **FBI**

Footnotes

[1] Edwin H. Sutherland, *White Collar Crime,* (New York: Dryden Press, 1949), p. 9.

[2] U.S. Department of Justice, LEAA *The Nature, Impact, and Prosecution of White-Collar Crime* (Washington, D.C.: U.S. Government Printing Office, 1970) pp. 4–6.

[3] August Bequai, *Organized Crime, The Fifth Estate,* (Lexington, Mass.: D.C. Heath and Company, 1979), p. 183.

[4] Lawrence J. Kaplan and Dennis Kessler, *An Economic Analysis of Crime,* (Springfield, Ill,: Charles C. Thomas, 1976), p. 275.

[5] "The Mafia—Big, Bad and Booming," *Time,* May 16, 1977, p. 33.

[6] Wayne Moquin and Charles Van Doren, *The American Way of Crime—A Documentary History,* (New York, N.Y.: Praeger Publishers, Inc., 1976), p. 68.

[7] James Cook, "The Invisible Enterprise," *Forbes,* October 13, 1980, p. 125.

[8] Jim Drinkhall, "Con Men Are Raking In Millions By Setting Up Own Caribbean Banks," *The Wall Street Journal,* March 23, 1981, p. 1.

[9] Robert E. Chasen and Arthur Sinai, "Currency and Foreign Transactions Reporting Act—A New Law Enforcement Tool," *FBI Law Enforcement Bulletin,* August 1979, pp. 1–5.

15-Percent Decrease in Bombing Incidents

The number of bombings during the first 6 months of 1981 represented a 15-percent decrease when compared to those occurring in the same 6-month period of 1980. In the first half of 1981, there were 553 bombings in the United States and Puerto Rico. Of these, 369 were explosive and 184 were incendiary. Last year, during January through June, 654 bombings were reported. Explosive bombings and incendiary incidents were down 16 percent and 14 percent, respectively.

This year's bombings resulted in 11 deaths, 68 injuries, and property damage estimated over $55 million. Of the 11 fatalities, 4 were the perpetrators themselves. Five of those killed were the intended victims and two were innocent bystanders. The 11 deaths represented a decrease from the 13 deaths that occurred in the first 6 months of 1980.

The number of persons injured also declined—from 75 reported in the first half of 1980 to 68 in the same period of 1981. Of those injured this year, 25 were innocent bystanders, 22 were perpetrators, 16 were intended victims, and 5 were law enforcement officers.

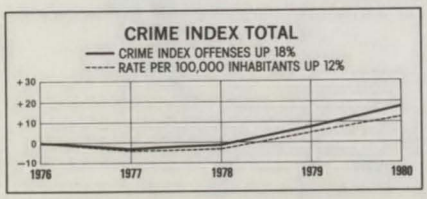
Residences were the most frequent targets of the bombings, accounting for 33 percent of the incidents. Other leading targets were commercial operations and office buildings, vehicles, and school facilities. Eleven attacks were directed at law enforcement.

Regionally, the Western States recorded 209 bombings; the North Central States, 154; the Southern States, 130; and the Northeastern States, 54. Puerto Rico reported six incidents.

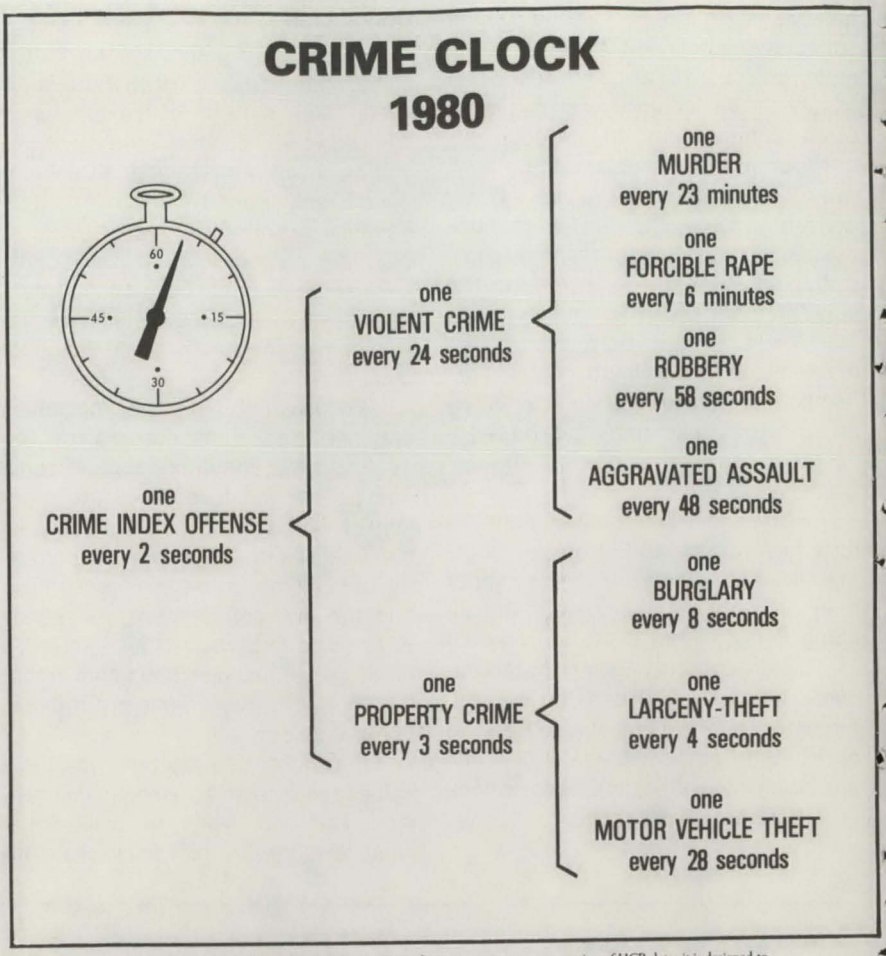
1980 Crime Statistics

Final 1980 statistics published in the FBI Uniform Crime Reports' "Crime in the United States" reveal an overall 9-percent volume increase in Crime Index offenses over the 1979 figure. Over 13 million offenses were reported nationwide.

In 1980, the Crime Index was 18 percent higher than in 1976 and 55 percent higher than in 1971, while the U.S. population increased by 2 percent since 1979, 5 percent since 1976, and 9 percent since 1971. The national crime rate, which relates the crime volume to population, increased 7 percent in 1980 over 1979, 12 percent over 1976, and 42 percent over 1971.



Geographically, the most populous region in the Nation, the Southern States, accounted for the largest volume of Crime Index offenses in 1980—31 percent. The North Central and Western States recorded 24 percent each and the Northeastern States, 21 percent.



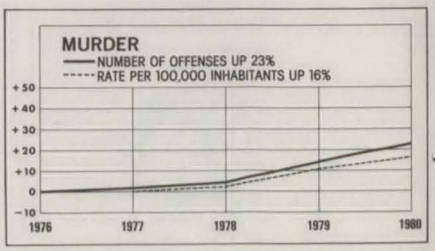
The crime clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Part I Offenses; rather, it represents the annual ratio of crime to fixed time intervals.

In 1980, there were 5,900 Index offenses for every 100,000 persons in the United States. A 7-percent increase over 1979 was recorded in the metropolitan areas, where there were 6,758 Index offenses per 100,000 people. The rural counties reported a rate of 2,290 offenses, a 6-percent rise, and cities outside metropolitan areas recorded a rate of 5,396 offenses, a 9-percent increase.

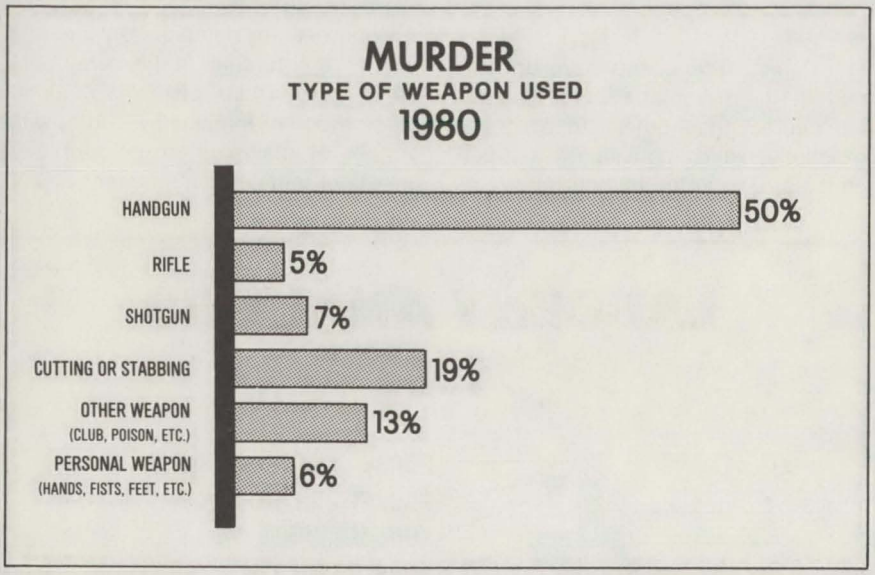
Violent Crimes

Collectively, the violent crimes of murder, forcible rape, robbery, and aggravated assault increased 11 percent in volume during 1980 and represented 10 percent of the total Crime Index offenses. Murder rose 7 percent; forcible rape, 8 percent; robbery, 18 percent; and aggravated assault, 7 percent. The volume of violent crimes increased by 33 percent since 1976 and by 60 percent since 1971, and the violent crime rate per 100,000 inhabitants was up 8 percent over 1979, 26 percent over 1976, and 47 percent over 1971.

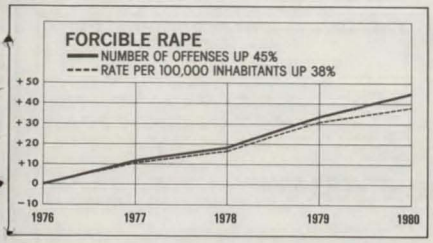
In all regions and areas of the United States, the volume of murders increased during 1980, with an estimated 23,044 murders representing approximately 2 percent of the violent crimes committed. As in the previous



year, firearms were the dominant weapons used—62 percent of the murders reported in 1980 were committed with firearms. The largest group of murder victims was composed of males between the ages of 20 through 29, while the 18- to 24-year age group accounted for 35 percent of total murder arrests. Of all reported murders, 51 percent were committed by relatives or acquaintances of the victim.

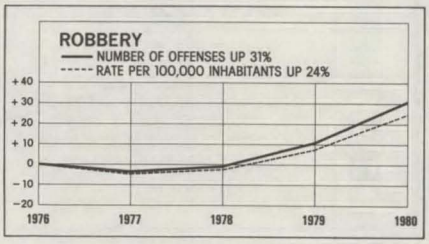


During 1980, there were 82,088 forcible rapes, which constituted 6 percent of the violent crimes and an increase of 45 percent over 1976. Nationwide, an estimated 71 of every 100,000 females were reported rape victims, while the highest rape rate regionally was in the West with 101 reported victims per 100,000 females. Males under the age of 25 comprised 54 percent of the arrestees for this violent crime, with 29 percent in the 18- to 22-year age group.



In 1980, the estimated 548,809 robberies totaled 4 percent of the Index crimes and represented a 31-percent increase over the past 5 years. For every 100,000 inhabitants, there were 244 robberies, a 15-percent increase from the 1979 rate. Regionally, robberies occurred most frequently in the Northeastern States, where the rate was 363 per 100,000 inhabitants. The average loss per incident was $607, for an estimated total loss of $333 million. Of those arrested for robbery, 73 percent were under 25 years of age.

Rises in each geographic region of the country were reported in the 1980 volume of aggravated assaults, which accounted for 50 percent of violent crimes. The estimated 654,957 of-

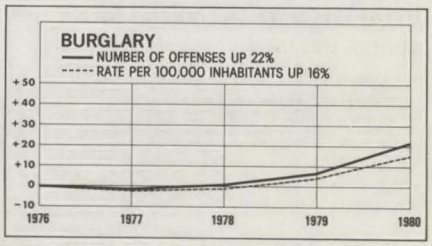


fenses represented a 33-percent increase over 1976. For every 100,000 people in the United States, there were 291 aggravated assaults, of which 24 percent were committed with firearms, 22 percent with knives or cutting instruments, 28 percent with blunt objects or other dangerous weapons, and 27 percent with personal weapons, such as hands, fists, feet, etc. Persons 21 years of age and over accounted for 70 percent of aggravated assault arrests.

Property Crimes

The property crimes of burglary, larceny-theft, and motor vehicle theft were up 9 percent in 1980. Not included in this figure is arson, since adequate data for 1979 were not available to establish trends for this offense. Burglary increased 14 percent; larceny-theft, 8 percent; and motor vehicle theft, 2 percent. Since 1976, the volume of property crimes rose 16 percent and since 1971, 54 percent. The property crime rate per 100,000 inhabitants was up 7 percent over 1979, 11 percent over 1976, and 41 percent over 1971.

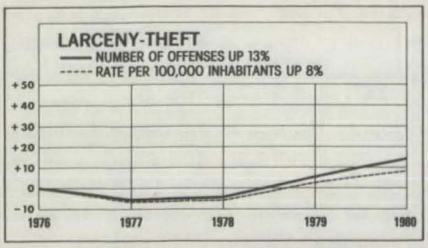
The nearly 4 million burglaries occurring in the United States in 1980 represented 31 percent of the property crimes and 28 percent of the total Crime Index. Burglary offenses rose 22 percent over the 1976 volume, with increases experienced in all regions and areas. There were 1,668 burglaries per 100,000 inhabitants, which represented an 11-percent increase over 1979 and a 16-percent rise over 1976.



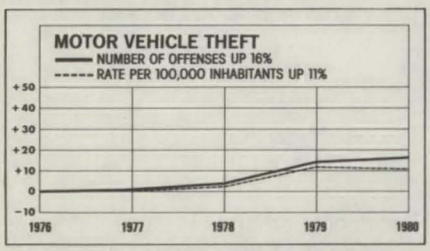
Residential property was the target in 67 percent of the reported burglaries. This offense caused an estimated financial loss of $3.3 billion, or an average of $882 per burglary. Nationally, persons under 25 years of age accounted for 81 percent of all arrests for burglary, and 45 percent of those arrested were under the age of 18.

Larceny-thefts totaled more than 7 million and accounted for 53 percent of all reported Index crimes and 59 percent of property crimes. The larceny-theft rate was 3,156 per 100,000 people, with a total loss to victims of $2.2 billion. Of those arrested for this crime, 55 percent were under 21 years of age and 37 percent were under the age of 18. More women were arrested for this

offense than for any other crime during 1980, comprising 29 percent of all larceny-theft arrestees.



For 1980, more than 1 million motor vehicle thefts were reported in the United States, with 495 motor vehicle thefts per 100,000 inhabitants. The estimated loss totaled $3.2 billion. Thirty percent of the motor vehicle thefts took place in the Northeastern States, 25 percent in the Southern States, 23 percent in the Western States, and 22 percent in the North Central States. An estimated 1 of every 143 registered motor vehicles was stolen in the Nation, and law enforcement agencies cleared 14 percent of the thefts. Sixty-five percent of all persons arrested for this offense were under age 21, and those under 18 accounted for 45 percent of the total.



There were 128,752 reported arsons in 1980, of which 16 percent were cleared by law enforcement agencies. Property damage due to reported arsons was $891 million; the average loss per incident was $7,745. Persons under 18 comprised 44 percent of those arrested for this crime and those under 25 years of age comprised 70 percent.

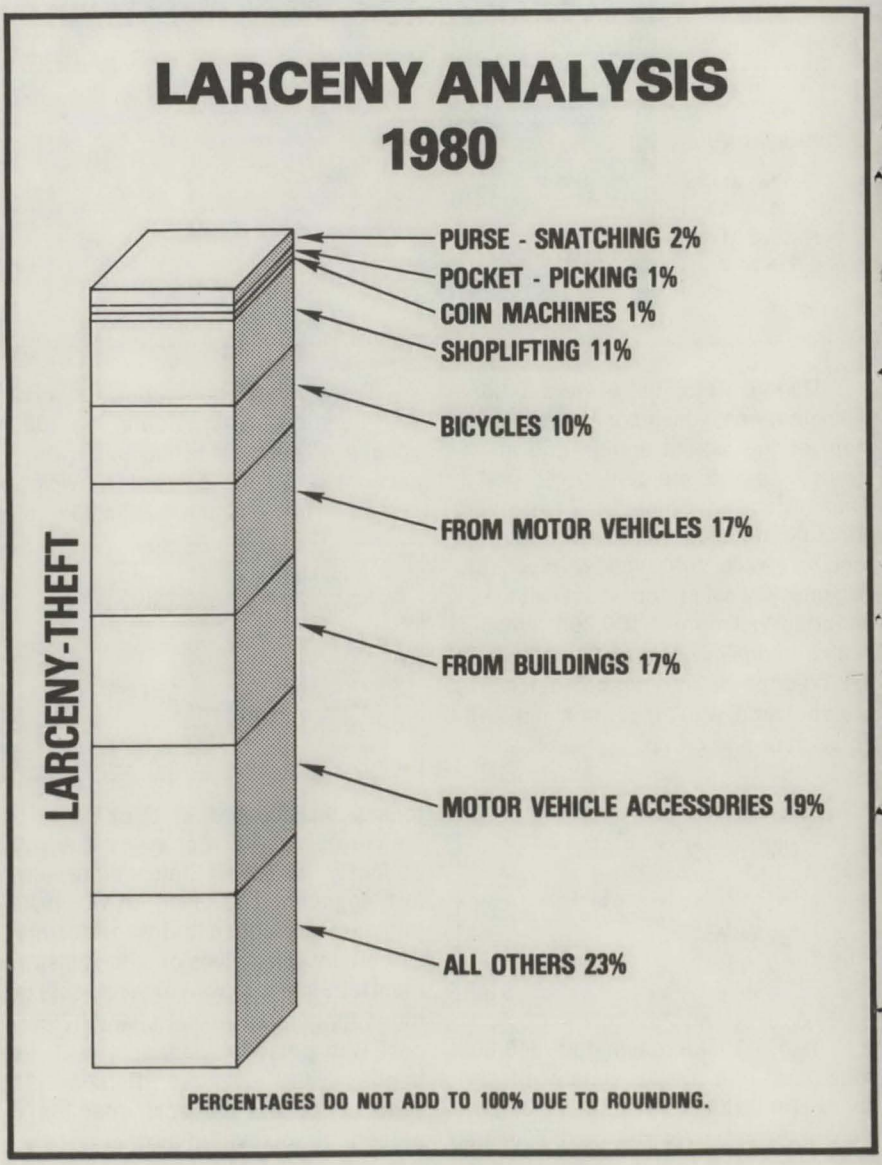
Clearance Rates

Law enforcement agencies were successful in clearing 19 percent of the Index offenses reported during 1980. The clearance rate for violent crimes was 44 percent—murders, 72 percent; forcible rape, 49 percent; robbery, 24 percent; and aggravated assault, 59 percent. A 16-percent clearance rate for property crimes was recorded—14 percent of burglaries, 18 percent of larceny-thefts, and 14 percent of motor vehicle thefts. Persons under 18 years of age were involved in 24 percent of the Crime Index clearances (excluding arson), 11 percent of the violent crime clearances, and 28 percent of property crime clearances.

Arrests

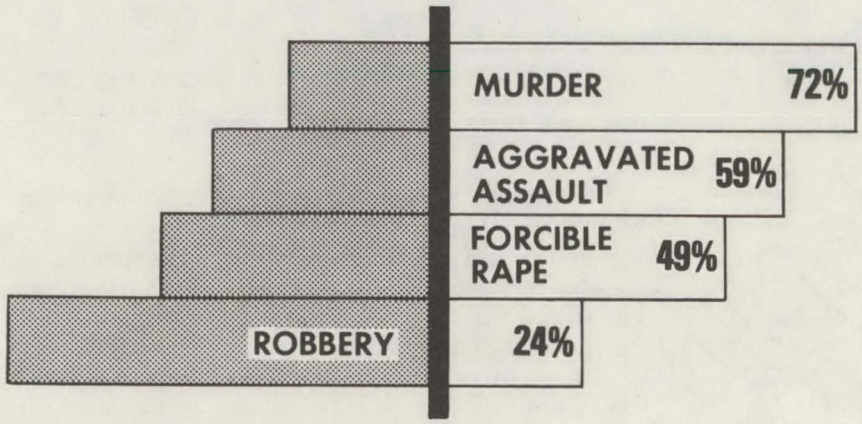
During 1980, there were an estimated 10.4 million arrests for all criminal infractions other than traffic violations, which constituted a 2-percent increase in the number of arrests since 1979. For the 5-year period from 1976 to 1980, arrests for all offenses except traffic violations increased 5 percent.

Persons under 25 years of age comprised 70 percent of those arrested for Crime Index offenses, 57 percent of those arrested for violent crimes, and 73 percent of those arrested for property crimes. Between 1979 and 1980, arrests for persons under 18 years of age decreased 6 percent, while arrests for persons 18 years and over rose 4 percent. In this same period of time, arrests of males outnumbered those of females by 5 to 1, with arrests of males up 1 percent and arrests of females up 2 percent. **FBI**

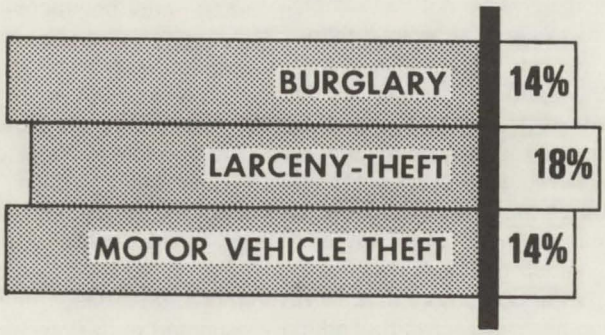


CRIMES CLEARED BY ARREST
1980

CRIMES OF VIOLENCE



CRIMES AGAINST PROPERTY



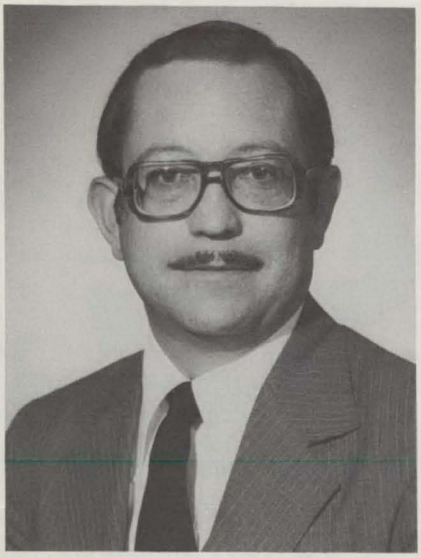
The Police: From Slaying Dragons to Rescuing Cats

By
EDWIN J. DELATTRE
President
St. John's College
Annapolis, Md.

Taken in its literal form, the story of St. George is a simple one. His task was to slay an evil dragon and to stand for what was good. His job was much easier than that of police officers today, since all he had to do was kill the dragon. He did not have to enforce the law, prevent crime, work in a chain-of-command, or deal with the public while abiding by policies and regulations. Also, he was not responsible for the maintenance of domestic and civil order. He did not have to work with the press, the media, or informants. He did not have to cooperate with or work in internal affairs, be guided by legislation, or accept the decisions of the courts. Finally, he did not have to provide a wide range of services for those in need, from evicted families to helpless alcoholics to lost children. He did not have to rescue cats, exercise discretion, make arrests, complete reports, testify in court, or look out for the safety of a partner. He had only to put on his uniform (in his case, a uniform made of metal), mount his vehicle (in his case, an armored horse), draw his weapon (in his case, a sword), find the dragon, and slay it. Police work is much more complex and demanding than the work of St. George. No matter how well a police officer does his work—even if he is commended for his performance—he will never be made a saint for it.

It must also be remembered that while people are terrified of dragons, a little tremor also runs through most of them in the presence of those who slay dragons. Police officers have witnessed this, I am sure, and have sensed many people drawing into themselves when the police are around, even if they have nothing to fear. This is, perhaps, why the social life of many police officers centers largely on the companionship of other law enforcement officers. They share in the tradition of St. George, because they, like him, have the authority to use force, including deadly force, even though for most officers the use of force is not commonplace. The police share in this tradition to the extent that people experience a tremor in the presence of authority conjoined with the visible trappings of power.

The job of St. George was much easier, less complex, and in some ways, more rewarding than that of today's police officer. For him, there was never any question about what to do or how to do it. Much more is asked and expected of the officer who works not in the company of saints, but in the company of human beings, from the best to the worst. And so, the first step is to have a look at the idea of human beings which underlies this country, the idea of human beings which has led to the U. S. Constitution, to our form of government, and in part, to the prevailing notions of what the proper functions of the police are.



Dr. Delattre

James Madison is commonly described as "The Father of the Constitution." He is one of my heroes because he tried hard to be competent and qualified to do the work that he set out to do. The work in which he was interested was the design and construction of a durable country—one that would last—and a country in which there would be a willingness to conduct an experiment. The experiment he contemplated was an experiment in ordered liberty. He envisioned a country in which there would be long term survival of law, order, and freedom.

To make himself qualified for this work, Madison studied the best books on government and forms of nations. He also studied and observed human beings, including himself, to find out what could be expected of them. He realized that if he was wrong about human beings, the experiment was doomed to failure. He stated in the Federalist Papers:

> "What is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself."

Madison saw clearly that men are not angels—they are capable of vice as well as virtue. Because they are not angels, they cannot live together with any measure of freedom unless someone is vested with the authority and power to intervene if men begin to disregard the freedom of others to do whatever they please. But those who possess the authority and power are human beings, not angels. There must accordingly be limits to their right to intervene, to their authority, and to their power. These limits are imposed by the law and the Constitution. But those who make the laws are men and women as well—not angels. Because they must be limited, there is an executive branch of government to administer and enforce laws or veto legislation, if necessary. Beyond this, there must be a judicial system to review the constitutionality of the laws and to prosecute and defend those accused of violating them. But the judges are human beings, not angels, and they must not be allowed to elect themselves or choose their successors. The same principles apply to the police, internally and externally. Thus, Madison attempted to design a country where people could live together with liberty—a country built on the undeniable fact of life that no country is durable if it is designed as if men and women were angels. If men were angels, there would be no need for police. And if all men were devils, the police would never be enough, nor would martial law be enough.

Madison understood what the English historian Lord Acton put into words in a letter dated April 5, 1887, to Bishop Mandell Creighton. He said "Power tends to corrupt (he did not say it corrupts, but that is *tends* to corrupt), and absolute power corrupts absolutely." This is why tyranny—absolute power vested in someone—always ends in disaster. Nobody can handle absolute power without sooner or later being overwhelmed by it and using it abusively. America has a better idea.

The police have both authority and power, but like the rest of us, they are not angels. The challenge of police work is to live with these three factors simultaneously. The way to meet the challenge is to act as Madison did—do everything possible to become the kind of person to whom authority and power can be entrusted and the kind of police officer, patrol or command, who can exercise authority responsibly and use power in the right ways at the right times for the right reasons.

It is because this is the challenge of police work that police work must be taken seriously. To be a competent police officer is a tremendous achievement—few human accomplishments related to work are more impressive. To be an efficient officer requires technical skills, self-knowledge, a capacity for sound judgment, the ability to make rapid decisions about people and events, patience, the ability to cooperate, preparedness to draw the line on how far an incident is allowed to develop, and sensitivity to suffering. At the same time, an officer must have very thick skin, courage, respect for the law, personal restraint, concern for justice and fairness, the ability to face human depravity, hopelessness, viciousness, and deceit. He must possess the ability to face predators and victims without being destroyed by them and the self-discipline required to face hours of boredom without becoming indifferent or lax. A good police officer is like the

transmission of a fine highway tractor—10 speeds forward, 3 in reverse, with a clutch that makes it possible to move from one to another smoothly and virtually at will. Few occupations require so much or are exposed to as much scrutiny or criticism. Harry Truman had the right answer to those who complained when he said, "If you can't stand the heat, get out of the kitchen." If you can't tolerate having colleagues who do not attempt to be good police officers, leave the profession, because they will always be there. If you haven't the patience to deal with questionable court decisions, leave the profession, because they will always be there. If you can't stand public officials, incompetent officials, an indifferent or cowardly public—persons who are afraid to get involved—leave the profession, because they will always be there. If you dislike making decisions of magnitude in a hurry—decisions on which you may be second-guessed—leave the profession, because they will always be there. If you dislike people getting away with something when you know they are guilty, leave the profession, because they will always be there. These are the burners on the stove in the kitchen, and they are always lit, emanating heat. But before you leave the profession, notice that in every walk of life, when people are entrusted with responsibility and the authority to exercise discretion, and in every occupation where one deals with the public and its agencies, the conditions are largely the same. The problems are prominent and they grind on us. But the experiment in ordered liberty looks to be a lot better than the alternatives. When you are appalled by all these sources of heat, remind yourself of your good colleagues, decent citizens, worthwhile officials, competent journalists, sound laws, and appropriate convictions for crime. Think of the good things—they are always there.

So, if this is the challenge—to exercise authority responsibly and to use power appropriately in circumstances which are far from ideal, and when none of us is an angel—how, in practice, is it to be met?

". . . the challenge [is] to exercise authority responsibly and to use power appropriately in circumstances which are far from ideal. . . ."

The first consideration is acquiring the technical skills necessary to function effectively. These skills range from the basic study of psychology to the use of weapons—the former is intended to reduce the need for the latter. It is the responsibility of the police academy to provide instruction in these skills and the responsibility of senior officers to practice them as teachers in the presence of less experienced officers. Basic competence enhances technical skills.

The second consideration is self-knowledge. Not everyone is suitable for police work. Some lack the fortitude for it, some are physically inept, some are too emotionally vulnerable, and some cannot resist the temptations of it. The latter can be explained by the story of Richard Rich, who lived in the 16th century, and like the rest of us, was no angel. He was tremendously ambitious—not to accomplish anything worthwhile but to get ahead. He lusted for power, prestige, and wealth. When Rich was young, he asked Thomas More, "the man for all seasons," to give him a political appointment. Thomas declined, telling Rich that he could not handle the temptations of power. More told him that "a man should go where he won't be tempted," meaning that people should accept only jobs with temptations they can resist. Rich disregarded More's advice and made his way into politics by accepting greater and greater bribes to betray trusts. Finally, Rich perjured himself. His perjury led to the execution of Thomas More at the hands of Henry VIII. Rich's corruption led him to the power, prestige, and wealth he wanted, but as a human being and a politician, he was worthless—he betrayed everything that was ever entrusted to him.

The temptations of police work are considerable. There are economic profits to be made from giving "the blessing" to illegal activities such as gambling, dealing, and prostitution, there are chances to be sadistic, there are sexual favors to be had, there are the benefits of providing selective protection to merchants, there are opportunities to break the law with impunity because of "the brotherhood," and there is bribery. Thus, opportunities to be tempted are more commonplace than in most occupations. There is also the temptation to think of the police as an isolated, maligned group who complains about the nature of people and institutions and who is self-indulgent with liquor and other depressants and stimulants off duty because the work is so demanding. The latter are the temptations of self-righteousness and self-pity. There is the temptation to be hard on one's family and friends because the tension in police work is so constant compared to that in most endeavors. Anyone who aspires to be really good at police work must learn to resist these temptations, must learn that they are invariably present, and must learn that the responsibilities of the office require that they be resisted successfully. The cop on the pad is an affront to every sacrifice ever made to build this country—from the diligence of Madison to the deaths of our soldiers in Vietnam. It is no refuge to insist that other people, even other police, yield to these temptations and get away with it. The badge and the shield are not licenses for personal gain. Rather, they should signify that the person who holds them is worthy of trust. The person who serves the law and the public should be committed to

the experiment in ordered liberty. When one puts on the badge, he is still a human being—he is still no angel. He is, however, expected to stand for the best in us.

Technical skills and self-knowledge are straightforward dimensions of the police officer worthy of the badge. Not all officers possess them, making it much worse for them, much worse for their colleagues, much worse for the rest of us, and much worse for the experiment in ordered liberty. That is the risk involved in being human and in entrusting authority to human beings.

As I have said, there is much to being excellent at police work. There are fundamental virtues of good personal character—wisdom, temperance, justice, courage, and integrity.

Integrity means wholeness and unity. It means being one person at work, at play, and in all parts of occupational, civic, personal, and social life. This is the kind of wholeness that makes people trustworthy, not only in the sense that they are honest but also in the sense that they make reliable, well-reasoned decisions and judgments. They don't act impulsively even when they have to act quickly. This kind of trustworthiness is akin to wisdom—to being able to read situations and people in order to understand what is meant by what one sees and hears. It is not just being street smart, being able to sense that someone is "hinky," or being able to sense that something is amiss. Important as these traits are, it goes much farther than these. When Bill Bradley, currently the junior Senator from New Jersey, played his last game for Princeton in the NCAA consolation finals, he concluded his time on the floor with a dazzling array of shots, all successful. He made baseline jumpers, fall-aways, and hook shots, some without ever looking at the basket. Asked later how he could do that, he explained that as a boy he had practiced every day, and at the end of his practice, he would shoot 10 different shots, 10 times in succession, until he made the 100 shots. This diligent practice gives one, he said, "a sense of where you are."

"Technical skills and self-knowledge are straightforward dimensions of the police officer worthy of the badge."

This same sentiment could be applied to wisdom—having a sense of where you are with respect to the Constitution, the laws, the public, your colleagues, and the other people in your lives. It takes practice to achieve it, just as it does to achieve other cardinal virtues. It comes from reading books and paying attention to one's experience. Temperance means self-control, not giving oneself over to impulse, rage, or fleeting desire for instant gratification. Justice consists of fair, nondiscriminatory treatment in light of relevant facts and circumstances. Courage means physical bravery—the bravery to make decisions, to stand by them when they are right, and to improve upon them when they are wrong.

These virtues—technical skills, self-knowledge, integrity, wisdom, temperance, justice, and courage—are the backbone of the ability to exercise discretion soundly in the performance of one's duties and the conduct of one's life. They are the characteristics that "separate the men from the boys." They are the achievements that distinguish mature adults from children and immature adults. People who achieve them do not have empty heads. They make mistakes, but they are able to avoid them frequently. They do not have hollow chests. They experience fear, but they do not run away. They experience temptation. Sometimes they yield to it, because they are not angels. Often, they succeed in resisting it—they do not betray their oaths.

Finally, there is respect for persons, not because they are good or noble, but simply because they are people. This kind of respect is embodied in the eighth amendment to the U.S. Constitution which prohibits cruel and unusual punishment. It does not prohibit cruel and unusual punishment only for decent people—it prohibits it for everyone. It is difficult, sometimes, in the company of dope users, rapists, or pimps to preserve this sense of limits as to what we can rightly do, but preserve the limits we must. In some police divisions citizens are referred to as "maggots." Officers will comment, "Why should I risk my life for some maggot?" The vision won't work. Every time a parent attempts to make a child behave by threatening to turn him over to a policeman, teaching him that the officer is to be feared, it becomes important for the officer to remember the limits and to preserve the capacity to treat people fairly and within the law, no matter how bad they are or what laws they have broken. This does not mean that the civil rights of the public are more important than those of the police, that the life of a "civilian" is more important than that of a police officer, or that an officer should never use force or violence. It does mean that the police are obliged, as Madison puts it, to govern themselves in the performance of their duties. They are obliged to remember that the most despicable person is still a human being.

Police officers who take these matters seriously bring a nobility to the work. This is not to romanticize them—they are worthy of the trust placed in them. They have taught me about institutions other than the police, and I have used what they taught me. They have explained what they say to people from other cities where it is common practice to give an officer money if stopped for a traffic violation or drunkenness. Their response is, "We don't do that here." Now, in the institutions I serve—in the college where I work—when something is not done as it should be, I say, "We don't do that here." **FBI**

Joint FBI/NYPD Task Forces: *A Study in Cooperation*

By
KENNETH P. WALTON
Deputy Assistant Director
Federal Bureau of Investigation
New York, N.Y.
and
PATRICK J. MURPHY
Chief of Operations
New York City Police Department
New York, N.Y.

A New York FBI/NYPD Task Force in operation at the command post.

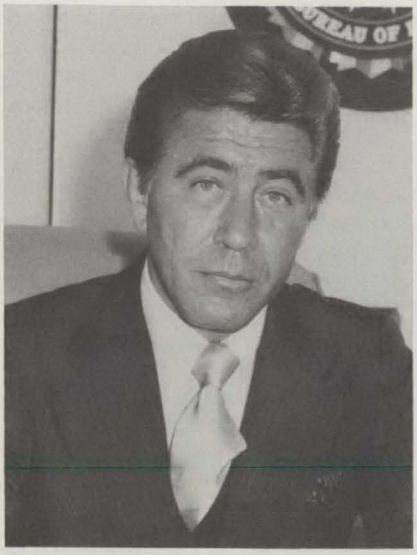
FACT SITUATION: An NYPD informant has information concerning a bank robbery gang operating in the South Bronx. Two police officers have been shot. Nearly $250,000 in loot has been obtained in four separate robberies. When a joint task force is in operation, who gets the information? How is it handled? If necessary, who pays for it?

Competition is a natural human and social phenomenon. It is the basis upon which our system of free enterprise has grown and developed. However, when competition erupts between individual law enforcement officers and agencies, the ultimate goal of law enforcement is lost in the labyrinth of real or imagined slights. The fact that an investigation is being conducted to lead to a successful prosecution all too often becomes secondary.

Over 40 years ago, the late J. Edgar Hoover, then Director of the Federal Bureau of Investigation, placed the entire issue in the open when he said, "Cooperation is the backbone of effective law enforcement."

Forming a Joint Task Force

Specific problems require specific solutions. When armed bank robberies in New York City reached epidemic proportions in mid-1979, both the FBI and the New York City Police Department recognized that the historic practice of concurrent separate investigations by the NYPD's Major Case Squad and the FBI's Bank Robbery Squad could no longer quell the problem. The commissioner of police and the chief of operations, in concert with FBI officials, realized that armed bank robberies had emerged as a plague that transcended traditional remedies. Representative of this epidemic, in the last week of July 1979, 48 bank robberies occurred in the New York City area.



Deputy Assistant Director Walton

Chief Murphy

"'Cooperation is the backbone of effective law enforcement.'"

In an effort to curb this upswing in urban violence, a joint FBI/NYPD task force was formally announced on August 6, 1979. It represented the culmination of considerable precursory work. Meetings with the U.S. Attorneys for the Southern and Eastern Federal Judicial Districts resulted in agreements delineating each agency's responsibilities. The NYPD Major Case Squad would investigate all unarmed/note demand violations; the remaining incidents would be referred to the joint task force. All task force undertakings would proceed in accordance with the Federal Rules of Criminal Procedure.

The task force is headquartered in the Criminal/Organized Crime Division of the FBI in New York. Identification badges were supplied to the police members of the task force, as were office equipment and supplies. Vehicles and communication equipment were furnished by the respective agencies to enable the group to become operational as soon as possible. The end result was that the task force members began working side-by-side.

However, all this was not accomplished by a mere stroke of the pen. Everyone knows that cerebral agreements between heads of two agencies have a way of disintegrating when they are subjected to the stress of day-to-day operations. The top men met infrequently in comfortable surroundings. However, coffee in the commissioner's office is a world apart from the adrenalin-pumping action of a street corner in Harlem, where decisions must be made on the spur of the moment without the benefit of amenities and when the integrity of an agency swings in the balance.

Memorandum of Understanding

A formalized Memorandum of Understanding was executed between the two agencies, addressing the purpose of the task force and identifying its mission, namely, the investigation of armed bank robbery violations in New York City and the subsequent apprehension of those individuals who committed these violations. The memorandum states the task force would operate within the confines of the four boroughs of Manhattan, Bronx, Brooklyn, and Queens. Violations in Staten Island would continue to be handled by the local police divisions and the FBI office covering that borough. However, as specified in the memorandum, the task force would render any assistance to Staten Island, as needed.

The agreement went on to state the NYPD would allocate 16 personnel, to include 2 supervisory personnel, while the FBI would provide 14 Special Agents, including a Supervisory Special Agent and sufficient support employees to meet the needs of the task force. The assigned supervisors would be responsible for addressing and resolving operational problems. To insure that the task force concept worked, every effort was made to cultivate an aura of camaraderie and cooperative spirit between the individuals and agencies involved.

The drafters of the Memorandum of Understanding recognized the problems inherent in the joint task force concept and confronted them directly. The information possessed by an informant would be accepted by a member of the task force, whether it be an FBI Agent or a police officer. The FBI agreed to pay any reasonable and necessary expense regarding informants, providing there was compliance with the FBI's guidelines on informants.

NYPD informants used by the task force are assigned a numerical identifier (NYCPD 1 TF) and an appropriate informant file is opened and maintained by the police department. All information, including the identity of the informant and recommendations for payment and receipt for information, is entered into this file. For accounting and control purposes, an identical file, minus the identity of the informant, is maintained by the task force. Receipts of payment to the informant, signed in his code name, are also maintained in both informant files. FBI informants would be treated in accordance with the provisions of the Attorney General's informant guidelines and the rules of the FBI regarding handling and payment of informants.

Also included in the memorandum is the stipulation that all investigative records would be maintained in the FBI office and would use FBI reporting procedures. The NYPD record system would receive the Detective Bureau's Unusual Occurrence Report in all assigned cases.

Another issue, perhaps the next most sensitive issue, second only to informants, was also addressed in the Memorandum of Understanding—media relations. No information pertaining to either the task force or task force investigations is to be released formally or informally without *mutual* approval of the respective agencies. All releases, press inquiries, or interviews, as with information matters, are consistent with the existing Department of Justice guidelines and regulations.

Task Force Operations

All cases are jointly investigated; each task force team consists of a police detective and an FBI Agent. More importantly, however, is the understanding between the members that unilateral action on the part of either agency is not in the best interest of the task force. As the reporting rules conform to FBI procedure, the task force investigative procedures conform to the requirements for Federal prosecution. Use of informants also adhere to FBI guidelines.

"A formalized Memorandum of Understanding was executed between the two agencies, addressing the purpose of the task force and identifying its mission. . . ."

In mid-1980, the Bank Robbery Task Force was called into a case in which a retired New York City policeman attempted to thwart a robbery and was shot and seriously wounded in the process. He was able to wound one of the robbers, who was subsequently apprehended at the bank. Not surprisingly, the wounded bank robber refused to cooperate with authorities.

Investigation by the joint task force soon developed information that the wounded gunman and his escaped accomplice had been responsible for nine bank robberies in New York within a short period of time and had escaped with nearly $75,000.

One of the getaway cars used by this bank robbery team proved to be registered fictitiously to a taxi service. A large-scale effort by members of the joint task force was mounted in an attempt to locate the getaway vehicle, and in the process, a suspect—Christopher White (not his true name)—was identified. Subsequently, a garage was located where White allegedly stored the getaway vehicle. Police officers and FBI Agents acting together had insufficient evidence to arrest the suspect, but did have sufficient probable cause at the time to obtain a search warrant. It was important that White not know he had been identified. Therefore, the search warrant had to be executed without his knowledge and the results sealed. An early morning search by members of the task force resulted in the acquisition of additional evidence that produced sufficient probable cause to obtain an arrest warrant. His whereabouts was unknown and extended surveillance of his commonlaw wife by members of the task force indicated that the suspect occasionally came to his commonlaw wife's apartment late in the evening and left prior to sunrise. It was also determined that two German Shepherds were maintained in the apartment for security purposes. Acting in concert, FBI Agents and police officers of the task force obtained an arrest warrant which was to be executed at 3:00 a.m. on August 7, 1980. Using uniformed personnel from the New York City Police Department to set up a perimeter to seal off vehicular traffic and other modes of escape in the area, the task force members entered the apartment and arrested White before he had an opportunity to flee. Found in the apartment at the time of his arrest were a sawed-off shotgun, various revolvers, and automatic handguns, including the firearm used to shoot the retired police officer. This type of coordinated effort can only be accomplished when law enforcement places professional competition behind them in the interest of the greater good.

During 1979, there were 319 armed bank robberies in New York City, of which 52 percent were cleared. During 1980, the first full year of the joint task force's operation, armed bank robberies had fallen to 252. The task force clearance rate for 1980 was 85 percent. By mid-1981, the task force complement consisted of 15 Special Agents and 17 NYPD detectives. Less than 2 years after its formation, the number of armed bank robberies which occurred during the first 3 weeks of June 1981, averaged only 4.3 per week.

In the spring of 1980, the commissioner of police awarded the Bank Robbery Task Force a unit citation for its work in 1980. This is the highest recognition that a command can receive from the New York City Police Department. The award was accepted by a Supervisory Special Agent and a police lieutenant, the task force commanders.

Terrorist Task Force

In late 1979 and early 1980, New York City was racked by a series of terrorist bombings, bomb threats, and the assassination of a diplomat. Recognizing once again that a specific solution must address a specific problem, and because of the success of the earlier joint Bank Robbery Task Force, a joint FBI/NYPD Terrorist Task Force was formed.

Both agencies readily acknowledged that there was a lack of cooperation between the NYPD Arson and Explosion Unit, responsible for bombing investigations, and the Terrorist Squad of the New York FBI Office. There were instances where evidence acquired by one agency was not promptly and appropriately shared with the other. There was open animosity between the Agents and police officers. Only members of the terrorist groups operating in New York profited from this dissension.

As was the case with the joint Bank Robbery Task Force, a formalized Memorandum of Understanding, using much of the same procedural data, was executed between heads of the two agencies. Members of the NYPD Arson and Explosion Unit, who were designated to be members of the task force, were provided the same services by the FBI as was the Bank Robbery Task Force.

Not surprisingly, when the task force was announced in a major press conference, terrorist incidents dropped substantially. Slowly, the Terrorist Task Force grew into a cohesive, highly professional unit. As the initial competitive antagonism gave way to a mutual cooperative spirit, results began to accrue.

". . . when competition erupts between individual law enforcement officers and agencies, the ultimate goal of law enforcement is lost. . . ."

The Croatian terrorists are some of the most violent in existence today. Their efforts certainly represent the most violent terrorist acts encountered in the United States. They were responsible for at least 50 deaths throughout the world since 1972. As rightwing, anti-Tito fanatics, they used bombings, assassinations, extortion, and skyjackings as their tools. In 1975, the Croatian terrorists began appearing in New York. On May 3, 1975, the Yugoslav Consul-General and his wife were assaulted. Slightly over a month later, the Yugoslav Mission to the United Nations in New York was bombed. Five Croatian nationalists hijacked a TWA aircraft enroute from Newark to Paris, and a New York City policeman died in a bombing related to that hijacking. During the period May 1975, through mid-1980, 13 terrorist acts were attributed to the Croatians.

At the same time, FBI field offices in Los Angeles, San Francisco, Chicago, and Cleveland were continuing their investigation of terrorist acts carried out by the Croatians. The New York City Office of the FBI became the focal point in this nationwide probe as intelligence data were collected by the joint Terrorist Task Force, which led them to believe an assassination attempt was about to occur. In November and December 1980, around-the-clock surveillance of known Croatian terrorists in the New York City area resulted in sufficient probable cause to obtain indictments of five of the nationalists who were participating in their proposed terrorist acts. Ultimately, five were convicted in Federal court and received sentences ranging from 25 to 35 years. .

Capitalizing on the results, the joint Terrorist Task Force continued its probe of terrorist acts by members of this group. In June 1981, a racketeering indictment named the hierarchy of a Croatian organization as a racketeering enterprise. In nationwide arrests from Los Angeles to New York, including one arrest in Canada, leaders and former leaders of this Croatian group were charged with murder, extortion, interstate transportation of incendiary devices, and conspiracy in an overall blanket Racketeer Influenced and Corrupt Organization (RICO) indictment.

The cooperation which exists between members of the NYPD and Agents of the FBI as a result of the formation of this task force was primarily responsible for this major investigative accomplishment.

Problems which are indigenous to New York are frequently viewed as being solved by their mere recognition. In other words, historically, the FBI and the NYPD were viewed as friendly adversaries competing in many of the same general areas. Many people thought it would always remain the same because it has always been that way. The formation of these two task forces indicates unequivocally that on occasion, problems not only can be identified but also addressed and corrected. **FBI**

THE MOTOR VEHICLE EXCEPTION TO THE SEARCH WARRANT REQUIREMENT (PART I)

By
JOHN C. HALL
Special Agent
Legal Counsel Division
Federal Bureau of Investigation
Washington, D.C.

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

The fourth amendment to the U.S. Constitution prohibits "unreasonable searches and seizures." [1] Although there is no explicit warrant requirement in that amendment, the U.S. Supreme Court has held that warrantless searches "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." [2] Furthermore, "the burden is on those seeking the exemption to show the need for it." [3]

One of the "few carefully delineated and limited exceptions" was first recognized by the Supreme Court in *Carroll* v. *United States,*[4] a 1925 decision issued in the midst of the Prohibition era. The newly arrived-on-the-scene automobile was a natural attraction for the "bootlegger" who required a means of transporting his contraband goods swiftly from one point to another to meet the demands of the market and to evade detection and capture by the authorities.

On December 15, 1921, Federal Prohibition agents were routinely patrolling a road between Grand Rapids and Detroit, Mich., when they observed an automobile occupied by George Carroll and John Kiro traveling from the direction of Detroit toward Grand Rapids. About 2 months prior to the sighting, the same two men, driving the same automobile, had met with the agents (who were acting in an undercover capacity) and agreed to sell them a quantity of whiskey which they indicated would be obtained from the east end of Grand Rapids (in the direction of Detroit). For reasons not apparent in the record, the transaction was not consummated and the whiskey never delivered. However, about a week after the meeting, the agents spotted the Carroll automobile traveling the road from Grand Rapids to Detroit. An attempt to follow the vehicle to determine its destination was unsuccessful.

Because of their knowledge of the area as "one of the most active centers" for smuggling whiskey into the United States, the earlier offer of the same two men (in the same vehicle) to sell whiskey to the agents, and the earlier observation of the vehicle on the same highway, the agents stopped the car and searched it. Beneath the upholstery of the seats they found several bottles of contraband whiskey, some of which was introduced at trial to secure the convictions of Carroll and Kiro for violation of the National Prohibition Act.

Carroll and Kiro appealed their convictions to the U.S. Supreme Court, challenging the legality of the search. It should be noted that the agents did not have a warrant to search the automobile; they did not have the voluntary consent of Carroll or Kiro to conduct the search; and the search was not incidental to an arrest, inasmuch as no arrests occurred until after the search uncovered the contraband.

Nevertheless, the Supreme Court upheld the search and affirmed the convictions. In so doing, the Court acknowledged the general requirement that a warrant be obtained prior to conducting a search, but concluded

Special Agent Hall

that historically, the fourth amendment had been construed as recognizing:

> ". . . there is a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile . . . where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." [5]

While recognizing that there is a "necessary difference" between the search of a house and the search of an automobile, the Court emphasized that the difference was not enough to place automobiles and other vehicles completely beyond the protections of the fourth amendment. On the contrary, the Court stated:

> "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile *on the chance of* finding liquor. . . . those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, *probable cause* for believing that their vehicles are carrying contraband or illegal merchandise." [6] (emphasis added)

Considering the facts, the Court concluded that there was probable cause to believe that whiskey was in the car. Given the probable cause, the Court considered that the mobility of the vehicle created an exigency rendering the securing of a search warrant impracticable, therefore justifying the warrantless search. In the words of the Court, such searches are reasonable where:

1) ". . . the search and seizure without a warrant are made upon probable cause. . . ." [7] and
2) ". . . it is not practicable to secure a warrant because the vehicle can be quickly moved. . . ." [8]

The Supreme Court's decision in *Carroll* marks the beginning of the "Carroll Rule" or what is more frequently referred today as the "automobile exception." This article traces the development of the exception from its origin in *Carroll* to the present day and examines the manner in which it has been applied by the courts. Specifically, judicial interpretation of the *probable cause* and *exigent circumstances* standards as applied to vehicles will be reviewed in an effort to assist the law enforcement officer in judging when this exception can be used to justify a warrantless vehicle search. Two points are worthy of emphasis before proceeding.

First, the commonly accepted phrase "automobile exception" is somewhat misleading because the rule is not limited in application to automobiles. As noted above in *Carroll*, the Court suggested that the same characteristics which distinguish automobiles from houses are applicable to a "ship, motorboat, wagon" or "other vehicle." [9] Indeed, in subsequent cases, the exception has been applied by the courts

". . . the exception to the warrant requirement recognized in *Carroll* is distinct from, and should not be confused with, one of the other major exceptions to the warrant requirement—the search incidental to arrest."

to sustain warrantless searches of a variety of vehicles, including boats,[10] aircraft,[11] camper trailers,[12] mobile homes,[13] tractor-trailers,[14] and even a U-haul trailer attached to an automobile.[15] Therefore, throughout this article, the phrase "vehicle exception" is used in lieu of "automobile exception," inasmuch as the rule clearly is intended to embrace mobile vehicles in general.

The second point to be emphasized is that the exception to the warrant requirement recognized in *Carroll* is distinct from, and should not be confused with, one of the other major exceptions to the warrant requirement—the search incidental to arrest.

The latter is dependent upon a lawful custodial arrest,[16] regardless of the probability that weapons or evidence would in fact be found,[17] and encompasses the arrestee's person and the area within his immediate control,[18] an area which the Supreme Court has quite recently construed to mean the passenger compartment (but not the trunk) [19] of an automobile following the arrest of its occupant(s), including any containers, opened or closed,[20] found therein.

Conversely, the validity of a search conducted pursuant to the vehicle exception is *not* dependent upon the right to arrest[21] but *is* dependent on the reasonable cause (probable cause) the officer has for belief that the contents of the automobile offend against the law.[22] Furthermore, while the search may extend beyond the passenger compartment to other parts of the vehicle where the evidence or contraband sought can reasonably be located—*including the trunk*—it may not extend into separate containers, such as suitcases, found in the vehicle "unless the container is such that its contents may be said to be in plain view," [23] either because the contents can be inferred from the very nature of the container or because the container itself is not closed.[24]

The foregoing may tempt the reader to concur with a recent observation of Supreme Court Justice Rehnquist that "the decisions of this Court dealing with the constitutionality of warrantless searches, especially when those searches are of vehicles, suggest that this branch of the law is something less than a seamless web." [25] But if it illustrates the complexities of search and seizure law relating to vehicle searches today, it also emphasizes the need for law enforcement officers to possess a workable knowledge of that law.

Developments

At the time of its conception, and for many years thereafter, the vehicle exception to the warrant requirement of the fourth amendment created hardly a ripple in State and local law enforcement circles. Although the Supreme Court had occasion to recognize its holding in *Carroll* on at least four other occasions between 1925 and 1970,[26] not one of those cases involved State prosecutions. There were two obvious reasons. First, the case which gave rise to the new rule involved a warrantless search conducted by Federal officers under the authority of a Federal statute. But more importantly, the fourth amendment itself—with its proscription of unreasonable searches and seizures, its Warrant Clause, and its judicially devised Exclusionary Rule—had not yet been applied to the States. In a word, the authority possessed by State and local officers to search for and seize evidence was defined essentially by the legislatures and courts of the respective States.

This picture began to change in 1949[27] when the Supreme Court applied the 4th amendment to the States through the Due Process Clause of the 14th amendment and followed up that decision by imposing the Exclusionary Rule in 1961.[28]

The cumulative effect of these developments was to focus greater attention on the few carefully delineated and limited exceptions to the warrant requirement, particularly the little-known and rarely used vehicle exception. In the midst of a persistent stream of cases from the Supreme Court in recent years in which the warrant requirement has been emphasized and extended,[29] the vehicle exception may be said to have flourished, with its most remarkable period of growth beginning in 1970 and continuing virtually without pause to the present. During this 11-year period, there have been more than 12 cases[30] decided by the U.S. Supreme Court alone which have recognized the rule, almost all of them involving searches of vehicles conducted by State and local officers and some of them broadening the application of the rule. Contrasting the past 11 years of its life with the first 45 confirms the view that the vehicle exception has emerged from the decade of

the 1970's as one of the most effective search and seizure tools available to the modern law enforcement officer. It is this renewed vitality which compels a closer look at the rule.

The vehicle exception, by definition, envisions the law enforcement officer on the scene making the initial judgment as to its applicability. There are two threshold questions which must be answered. Is there probable cause to believe evidence or contraband is in the vehicle? If so, are there exigent circumstances which would justify a warrantless search?

The Probable Cause Requirement

> "In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution."[31]

In *Carroll*, the Supreme Court provided one of the most frequently cited definitions of probable cause:

> ". . . facts and circumstances within their knowledge, and of which they had reasonably trustworthy information. . . . sufficient in themselves to warrant a man of reasonable caution in the belief. . . ."[32]

Most law enforcement officers today can quote some variation of that definition. On the other hand, any discussion of probable cause is likely to generate a comment to this effect: "I can't tell you what it is, but I know it when I see it." While the statement is generally meant to be amusing, it, nevertheless, expresses an important point—probable cause is a concept more conducive to illustration than to definition.

The following cases will perhaps serve to illustrate the *quality* and *quantity* of information deemed necessary by the courts to establish probable cause to believe evidence or contraband is in a vehicle. It will be noted that the facts and circumstances which give rise to probable cause may come from a variety of sources and may be acquired through the firsthand experiences of an officer or through secondhand (hearsay) sources. More often than not, it is a combination of the two. A review of some examples of probable cause as determined by the courts will enhance our ability to "know it when we see it."

> As the Supreme Court has stated: "In dealing with probable cause . . . we deal with probabilites. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."[33]

FIRSTHAND INFORMATION

Personal Knowledge

Personal knowledge is obviously one of the most common sources of information establishing probable cause. The *Carroll* case itself is illustrative. The Federal agents personally participated in negotiations with Carroll and his partners to purchase whiskey from them, they also personally observed Carroll's vehicle on two occasions traveling a road known to the agents as one commonly used by bootleggers, and they had personal knowledge of the area's reputation as a center for the illicit whiskey business.

In *Brinegar* v. *United States,*[34] an investigator for the Alcohol Tax Unit was parked in a car in northeastern Oklahoma near the Missouri-Oklahoma State line when he observed Brinegar drive past from the direction of Joplin, Mo. He had arrested Brinegar in the recent past for illegally transporting liquor, had personally observed him loading liquor into a vehicle in Joplin, Mo., on at least two occasions in the recent past, and knew him to have a reputation for hauling liquor. In addition, the vehicle appeared to the officer to be heavily loaded. The Supreme Court concluded that this information was sufficient to establish probable cause to search Brinegar's automobile for liquor.

A particularly interesting case involving an officer's personal knowledge and observations is *United States* v. *Matthews,*[35] decided by the U.S. Court of Appeals for the 10th Circuit. Military officers on a military base observed a civilian car with military license plates. Their suspicions were aroused further because the car did not have a military decal and the officers knew that it should if it were an authorized military vehicle. When Matthews was asked for identification, he

"The plain view sighting of evidence or contraband in a vehicle not only subjects them to seizure but may provide probable cause to conduct a search of the vehicle for other such objects."

produced an apparently altered registration form for a Chevrolet, even though the car in question was a Ford. Matthews was unable to produce his military log book, which the officers knew military vehicles carry. The court determined that "the facts of this case indicate that there was probable cause to search the vehicle for evidence pertaining to its theft." [36]

Another case to illustrate the importance of an officer's personal knowledge is *United States* v. *Gomori.*[37] A West Virginia State trooper stopped a rental truck in the northern panhandle of the State, based on a departmental communication advising that such vehicles were being used to transport stolen goods. At the time of the stop, the trooper noticed the truck was heavily loaded and resting on overload springs. The operator of the truck produced a lease agreement which indicated he was carrying a load of furniture. However, when asked the nature of his cargo, the operator stated the truck was empty. The trooper requested to search the truck by consent, which was twice refused, but granted when the trooper stated that he would get a search warrant. The search revealed a truckload of stolen cigarettes.

Gomori challenged the search, contending that the consent was not voluntarily given. The U.S. Court of Appeals for the Fourth Circuit bypassed the consent issue, however, and ruled that there was "probable cause for the trooper to believe that the truck was carrying stolen goods or contraband. . . ." [38] Furthermore, the court stated:

> "The lawfulness of the search was not dependent upon the trooper's having probable cause to believe the cargo consisted of stolen cigarettes. It is enough that he had probable cause to believe that the truck was carrying stolen goods or some sort of contraband." [39]

Plain View

In addition to those cases wherein the officers had personal knowledge of criminal activities or personally observed suspicious activities or circumstances, there are cases wherein probable cause may arise because an officer sees evidence or contraband in "plain view." In *Harris* v. *United States,*[40] the Supreme Court stated:

> "It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence."

The plain view sighting of evidence or contraband in a vehicle not only subjects them to seizure but may provide probable cause to conduct a search of the vehicle for other such objects.

For example, in *United States* v. *Johnson,*[41] a vehicle was stopped by police at night for a traffic violation. Three male occupants left the vehicle and approached the police car, while a female remained inside. A routine warrant check revealed that one of the men was wanted for assault and battery. He was immediately arrested and searched, whereupon a number of .410-gage shotgun shells were found in his pocket. An officer approached the stopped vehicle, shined a flashlight inside, and saw what appeared to be the butt end of a shotgun wedged between the cushions of the back seat. The officer entered the car and removed a 12-gage sawed-off shotgun. A further search located a .410 sawed-off shotgun in the front seat area. The Federal appellate court upheld the seizure of the first shotgun under the plain view doctrine (including use of the flashlight) and held that the finding of the first shotgun gave probable cause to search the car for other weapons.

Sensory Perception

The rationale of the plain view doctrine has logically been applied to other sensory perceptions, particularly the sense of smell. In *United States* v. *Rumpf,*[42] Federal Drug Enforcement agents in New Mexico observed two vehicles with camper trailers, previously observed in connection with a marihuana transaction, traveling in an area which the agents had learned would be the pickup site for a load of marihuana coming from Mexico. The following morning, the same vehicles were followed from the area of the pickup to a farm where the agents observed marihuana in plain view. In addition, they

smelled the odor of marihuana emanating from the trailers. The Federal appeals court sustained the search, stating, ". . . smell alone is sufficient probable cause for a search."[43]

Officer's Expertise

The weight which an officer may attribute to a particular item of information and the inferences which he may draw therefrom are largely the result of the officer's training and experience. The courts are cognizant of that fact and rely upon it in evaluating probable cause.

In *United States* v. *Zurosky,*[44] Federal customs officers observed a boat tied to a fish warehouse loading dock where a large amount of marihuana was discovered. When the officers boarded the vessel, they noticed the decks and hold were wet, despite the absence of rain or high seas. A search of the boat revealed a quantity of marihuana. In sustaining the search, the Federal court of appeals stated:

> "Taking into account the officers' experience it was reasonable for them to believe that an effort had been made to eliminate evidence of marijuana by hosing down the ship and also reasonable for them to believe that a thorough search of it would reveal marijuana."[45]

SECONDHAND INFORMATION

Identifiable Sources

It is probably safe to say that most crimes do not occur in the presence of law enforcement officers. For that reason, the information necessary to establish probable cause must frequently come to the officer from secondhand sources. Typical is information received from victims or witnesses[46] or that which is transmitted to the officer by radio.[47]

In addition, information possessed by fellow officers may be attributed to the officer making an arrest or conducting a search under the "collective knowledge" rule. An example is *United States* v. *Hawkins,*[48] in which an officer using binoculars observed Hawkins apparently engaged in peddling marihuana. After one transaction, the officer observed Hawkins carry the money obtained to the trunk of his car. Information concerning the transaction was radioed to another officer, who arrived on the scene and placed Hawkins under arrest. The arresting officer removed marihuana, money, and the keys to the car from Hawkins and then searched the car, where additional evidence was found. Hawkins challenged the search of his car, contending that the supervising officer who ordered the search lacked probable cause. The Federal court of appeals rejected the argument and concluded that probable cause existed. In a footnote to the opinion, the court explained:

> ". . . probable cause may emanate from the collective knowledge of the police, though the officer who performs the act of arresting or searching may be less informed."[49]

Another illustration may be helpful. In *Wood* v. *Crouse,*[50] a county sheriff arrested the occupants of an automobile based on a report that an occupant of a vehicle of precisely the same description had attempted to pass a stolen check. At the time of the arrest, a stolen check was found in the shirt pocket of one of the individuals. The occupants were removed to jail and the vehicle left parked by the highway.

At the sheriff's request, a highway patrolman took the keys, drove the vehicle to the sheriff's office, and searched it, locating 93 additional stolen checks. At the time of the search, the patrolman was aware of a report that some checks had been stolen and of an attempt to pass such checks. He was not present when the arrests were made and was not aware that a stolen check had been discovered on one of the vehicle's occupants.

Nevertheless, the Federal appellate court upheld the search based on probable cause and concluded:

> "In determining whether probable cause existed we must evaluate the collective information of all the officers."[51]

Unidentified Sources—Informants

When the source of information can be clearly identifed, a reviewing magistrate can readily evaluate the information presented in determining whether there is probable cause. Otherwise, it may be impossible to ascertain how credible the source may be or whether the information itself is reliable.

". . . information possessed by fellow officers may be attributed to the officer making an arrest or conducting a search under the 'collective knowledge' rule."

Nevertheless, the necessity for using confidential sources to establish probable cause has long been recognized by the courts. Special rules have been devised to accommodate the competing interests of law enforcement on the one hand, and some assurance that information used to establish probable cause to arrest or search is reasonably trustworthy on the other.

In *Aguilar* v. *Texas,*[52] the Supreme Court established a two-pronged test requiring that a reviewing magistrate be advised of: (1) The underlying circumstances from which the confidential informant concluded the facts supplied were true (i.e., how did the informant acquire the information); and (2) the reason for believing the source. If the confidential informant's tip is to be the sole basis for the probable cause, both prongs of the test must be met. Otherwise, the information must be corroborated by other evidence.

This standard, which governs the issuance of a search warrant, is also applicable when an officer is making a judgment of probable cause to support a warrantless search.

As the following cases demonstrate, when probable cause to search a vehicle is dependent upon an informant's tip, there is usually other evidence to corroborate.

In *Arkansas* v. *Sanders,*[53] a case in which the Supreme Court suppressed the fruits of a warrantless search of a suitcase found in an automobile, the Court nevertheless found that there was probable cause established by an informant's tip and the officers' corroborating observations. The Court said:

> "A previously reliable informant had provided a detailed account of (Sanders') expected arrival at the Little Rock Airport, which account proved to be accurate in every detail, including the color of the suitcase. . . . Having probable cause to believe that contraband was being driven away in a taxi, the police were justified in stopping the vehicle, searching it on the spot, and seizing the suitcase. . . ."[54]

Another illustrative case is *United States* v. *Nocar.*[55] Federal narcotics officers received telephone information from an informant who had previously supplied reliable information that two men and a woman, driving a blue Toyota automobile with Texas license plates, were in Chicago attempting to locate buyers for narcotics. The informant's information included a description of the general area where the three were staying at a motel. The vehicle was located by the officers at a motel in the area indicated by the informant. They confirmed through observation that two men and a woman were occupying the room to which the vehicle occupants were registered.

Through other investigation, the officers learned that the individual to whom the Toyota was registered had a daughter who matched the description of the female in the motel room and who was under indictment in Texas, and that the vehicle had recently been in Mexico. Furthermore, during the period of surveillance, the occupants of the motel were visited by an individual known to the officers as a dealer in marihuana.

The following day, the officers followed the three individuals to another location and observed what appeared to be a narcotics transaction. One person was observed removing some white bags from the trunk of the Toyota, at which point the officers moved in, searched the Toyota, and arrested the three occupants upon finding marihuana in the trunk. The probable cause for the search was challenged by the defendants on the ground that the informant's tip did not indicate the basis for the assertion that the persons he mentioned were attempting to sell narcotics (i.e., the first prong of the *Aguilar* test). The court rejected the argument, holding that the informant was credible because he had supplied reliable information in the past, and furthermore, the additional investigation conducted by the officers provided sufficient corroboration.[56]

The foregoing cases illustrate the manner in which the probable cause standard has been applied by the courts to warrantless vehicle searches. They emphasize the necessity of facts and circumstances to establish probable cause and demonstrate the importance of an officer being capable of articulating those facts and circumstances upon which he relied.

They also confirm an important point made by the Supreme Court several years ago concerning the probable cause standard:

"The long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. . . . Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." [57]

Once an officer has concluded that probable cause exists to believe that a conveyance contains evidence or contraband, the first requirement of the vehicle exception is met. However, the Supreme Court has cautioned:

"Neither *Carroll* . . . nor other cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords. . . ." [58]

Part II of this article will discuss the circumstances which, *coupled with probable cause,* invoke the vehicle exception and justify a warrantless search.

FBI

(Continued next month)

Footnotes

[1] The fourth amendment reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] *Katz* v. *United States,* 389 U.S. 347 (1967).

[3] *United States* v. *Jeffers,* 342 U.S. 48, 51 (1951).

[4] 267 U.S. 132.

[5] *Id.* at 153.

[6] *Id.* at 154 and 155.

[7] *Id.* at 149.

[8] *Id.* at 153.

[9] *Supra* note 4, at 149.

[10] *United States* v. *Lee,* 274 U.S. 559 (1927); *United States* v. *Hilton,* 619 F.2d 127 (1st Cir. 1980), *cert. denied,* 101 S.C. 243 (1981); *United States* v. *Laughman,* 618 F.2d 1067 (4th Cir. 1980), *cert. denied,* 447 U.S. 925 (1980); *United States* v. *Zurkosky,* 614 F.2d 779 (1st Cir. 1979), *cert. denied,* 446 U.S. 967 (1980); *United States* v. *Weinrich,* 586 F.2d 481 (5th Cir. 1978), *cert. denied,* 441 U.S. 927 (1979); *United States* v. *Hickman,* 523 F.2d 323 (9th Cir. 1975).

[11] *United States* v. *Montgomery,* 620 F.2d 753 (10th Cir. 1980); *United States* v. *Good,* 603 F.2d 122 (10th Cir. 1979); *United States* v. *Brennan,* 538 F.2d 711 (5th Cir. 1976), *cert. denied,* 429 U.S. 1092 (1976).

[12] *United States* v. *Rumpf,* 576 F.2d 818 (10th Cir. 1978), *cert. denied,* 439 U.S. 893 (1979).

[13] *United States* v. *Miller,* 460 F.2d 582 (10th Cir. 1972).

[14] *United States* v. *Forrest,* 620 F.2d 446 (5th Cir. 1980); *United States* v. *Bozado,* 473 F.2d 389 (8th Cir. 1975).

[15] *United States* v. *Gulledge,* 469 F.2d 713 (5th Cir. 1973).

[16] *United States* v. *Robinson,* 414 U.S. 218, 235 (1973).

[17] *Id.*

[18] *Chimel* v. *California,* 395 U.S. 752 (1969).

[19] *New York* v. *Belton,* 29 CrL 3124 (1981).

[20] *Id.*

[21] *Carroll, supra* note 4, at 158–159; see also, *Husty* v. *United States,* 282 U.S. 694, 699 (1931).

[22] *Id. Carroll,* at 159.

[23] *Arkansas* v. *Sanders,* 442 U.S. 753 (1979); *Robbins* v. *California,* 29 CrL 3115 (1981).

[24] *Id. Robbins.*

[25] *Cady* v. *Dombrowski,* 413 U.S. 433, 440 (1973).

[26] *Brinegar* v. *United States,* 338 U.S. 160 (1949); *Scher* v. *United States,* 305 U.S. 251 (1938); *Husty, supra* note 21; *United States* v. *Lee,* 274 U.S. 559 (1927).

[27] *Wolf* v. *Colorado,* 367 U.S. 643 (1949).

[28] *Mapp* v. *Ohio,* 367 U.S. 643 (1961).

[29] E.g., *Steagald* v. *United States,* 68 L.Ed. 2d 38 (1981); *Mincey* v. *Arizona,* 437 U.S. 385 (1978); *Michigan* v. *Tyler,* 436 U.S. 499 (1978); *Marshall* v. *Barlow's Inc.,* 436 U.S. 307 (1978); *Katz, supra* note 2.

[30] E.g., *Robbins, supra* note 23; *Colorado* v. *Bannister,* 66 L.Ed.2d 1 (1980); *Sanders, supra* note 23; *United States* v. *Martinez-Fuerte,* 428 U.S. 543 (1976); *South Dakota* v. *Opperman,* 428 U.S. 367 (1976); *Texas* v. *White,* 423 U.S. 67 (1975); *United States* v. *Ortiz,* 422 U.S. 891 (1975); *Cardwell* v. *Lewis,* 417 U.S. 583 (1974); *Cady, supra* note 25; *Almeida-Sanchez* v. *United States,* 413 U.S. 266 (1973); *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971); *Chambers* v. *Maroney,* 399 U.S. 42 (1970).

[31] *Id. Chambers.*

[32] *Supra* note 4, at 162.

[33] *Supra* note 26.

[34] *Id.*

[35] 615 F.2d 1279 (10th Cir. 1979); see also, *Orricer* v. *Erickson,* 471 F.2d 1204 (8th Cir. 1973).

[36] *Id. Matthews,* at 1287.

[37] 437 F.2d 312 (4th Cir. 1971).

[38] *Id.* at 314.

[39] *Id.*

[40] 390 U.S. 234 (1968).

[41] 506 F.2d 674 (8th Cir. 1974); see also, *United States* v. *Milhollan,* 599 F.2d 518 (3d Cir. 1979); *United States ex rel. La Belle* v. *La Vallee,* 517 F.2d 750 (2d Cir. 1975).

[42] 576 F.2d 818 (10th Cir. 1978), *cert. denied,* 439 U.S. 864 (1979).

[43] *Id.* at 823; see also, *United States* v. *Ballard,* 600 F.2d 1115 (5th Cir. 1979); *United States* v. *Sigel,* 500 F.2d 1118 (10th Cir. 1974); *United States* v. *Cohn,* 472 F.2d 290 (9th Cir. 1973).

[44] *Supra* note 10.

[45] *Id.* at 790; see also, *United States* v. *Darrow,* 499 F.2d 64 (6th Cir. 1974).

[46] See, e.g., *United States ex rel. Stambridge* v. *Zelker,* 514 F.2d 45 (2d Cir. 1975); *Johnson* v. *Wright,* 509 F.2d 828 (5th Cir. 1975).

[47] See, e.g., *United States* v. *Kemper,* 503 F.2d 327 (6th Cir. 1974); *McNeary* v. *Stone,* 428 F.2d 804 (9th Cir. 1973).

[48] 595 F.2d 751 (D.C. Cir. 1978), *cert. denied,* 441 U.S. 910 (1979).

[49] *Katz, supra* note 2, at 752–753; see also, *United States* v. *Sink,* 586 F.2d 1041 (5th Cir. 1978), *cert. denied,* 443 U.S. 912 (1979).

[50] 436 F.2d 1077 (10th Cir. 1971).

[51] *Id.* at 1078.

[52] 378 U.S. 108 (1964).

[53] *Supra* note 23.

[54] *Id.* at 761.

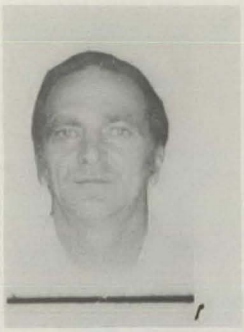
[55] 497 F.2d 719 (7th Cir. 1974).

[56] See also, *Brewer* v. *Wolff,* 529 F.2d 787 (8th Cir. 1976); *United States* v. *Gomez,* 529 F.2d 412 (5th Cir. 1976); *United States* v. *Anderson,* 500 F.2d 1311 (5th Cir. 1974).

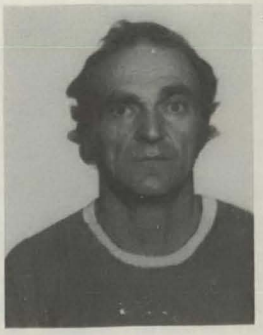
[57] *Brinegar, supra* note 26, at 176.

[58] *Chambers, supra* note 30, at 51.

WANTED BY THE FBI



Photograph taken 1976.



Photographs taken 1978.

Harold Edward Shore

Harold Edward Shore, also known as Eugene Douglas Ebeling, Gary Lee Hunter, Harold Hunter, James Patrick Hunter, Edward Shore, Edward Harold Shore, H. Edward Shore, Harold Edward Suhr.

Wanted for:

Interstate Flight-Murder

The Crime

Shore is being sought in connection with the vicious murder of a man whose body was decapitated, dismembered, and dissected by the use of a coarse grain saw and later found buried in a landfill.

A Federal warrant was issued for Shore's arrest on May 3, 1979, in Tucson, Ariz.

Description

Age	49, born December 18, 1931, Flint, Mich.
Height	5′5″.
Weight	130 to 140 pounds.
Build	Medium.
Hair	Brown-graying.
Eyes	Hazel.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Bartender, hotel manager, laborer, orderly, practical nurse, and newspaper carrier.
Scars and Marks	Moles on left cheek, upper lip, neck, and upper back; scars on right cheek and right side of abdomen; tattoos: Octopus on upper right arm and flower on upper left arm.
Social Security Number Used	527-36-0302.
Criminal Record	Shore has been convicted of grand theft, interstate transportation of a stolen motor vehicle, forgery, robbery by assault, and breaking and entering a motor vehicle.
FBI No.	551 221A.

Caution

Shore should be considered armed and extremely dangerous.

Notify the FBI

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

Classification Data:

NCIC Classification:
2204060809160604091 2
Fingerprint Classification:
22 L 1 U I I I 9
M 1 U I I I

Right middle fingerprint.

U.S. GOVERNMENT PRINTING OFFICE : 1981 O—354-416 QL3

Change of Address
Not an order form

FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

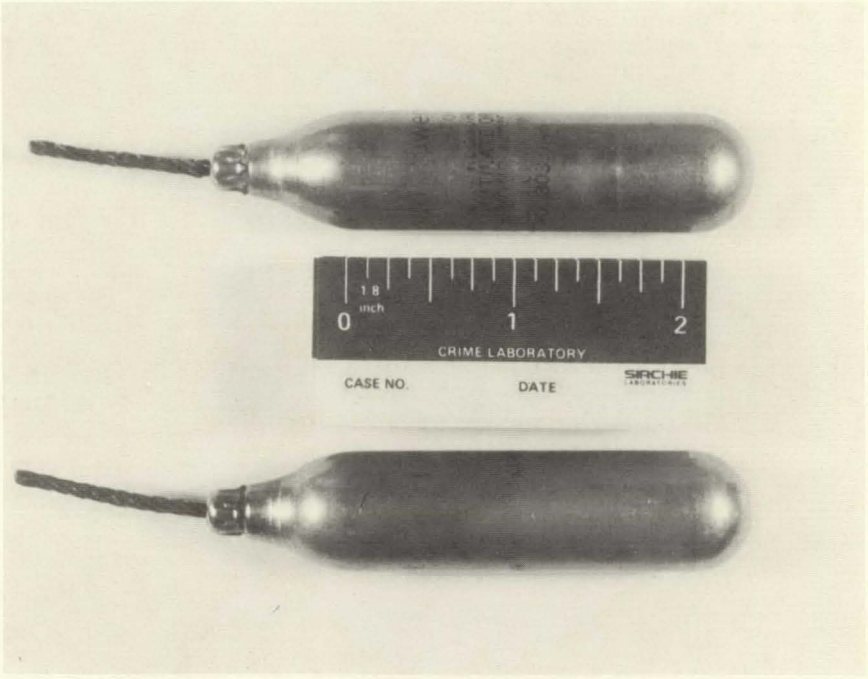
Address

City State Zip

Cartridge Converted Into Explosive

Empty CO_2 cartridges can be converted into explosive devices by loading the cartridges with gunpowder and placing a fuse at the tip. When exploded, deadly shrapnel is released for a distance up to 50 feet.

(Submitted by the County for Oneida Sheriff's Department, Oriskany, N.Y.)



U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Second Class

Washington, D.C. 20535

Interesting Pattern

This pattern is classified as a central pocket loop-type whorl with an outer tracing. However, pressure may cause the only recurve appearing in front of the inner delta to appear pointed. Therefore, a reference search would be conducted as a loop with nine ridge counts.