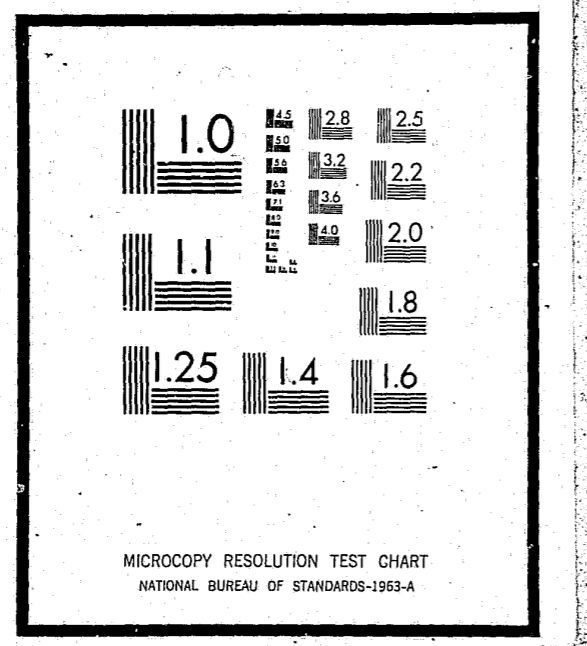


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STATE OF NEW MEXICO  
GOVERNOR'S ORGANIZED CRIME  
PREVENTION COMMISSION

AN UNDERCOVER FENCING OPERATION

A Manual For Establishing And Operating  
A Storefront For Purchase of Stolen Property

Marvin "Bud" Young  
Investigator  
November, 1975

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The preparation of this report was financially aided through a federal grant from the Law Enforcement Assistance Administration; however, the conclusions and statements expressed in the report do not necessarily attach to the responsibility of the Law Enforcement Assistance Administration or to the Governor's Council on Criminal Justice Planning.

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INTRODUCTION

From its inception, the Governor's Organized Crime Prevention Commission considered fencing of stolen property a priority target. The Commission was logically interested in (a) identifying and assessing major fences and (b) developing operations in coordination with other agencies to neutralize the operations of such fences through successful prosecution or methods designed to deter continuing fencing operations.

The available resources of New Mexico do not afford the elements for a massive approach in the form of personnel, equipment, or funding. Exchange of operational concepts between the Governor's Organized Crime Prevention Commission and the Albuquerque Police Department led to consideration of operating an undercover store for purchase of stolen property.

The operation, in a sense, was a pilot project. Very few personnel were to be used and funding was to be extremely small. The operation of "Charlie's Secondhand Store" cost the city of Albuquerque approximately \$12,500. There was supportive funding from private citizens who voluntarily assisted with contributions.

The report being submitted has been referred to as a "Manual". It was prepared by Agent Marvin "Bud" Young of the Governor's Organized Crime Prevention Commission who was one of the agents playing an undercover role. It is believed that Agent Young's report on this operation can truly serve as a very useful "Manual" for any department interested

in employing an imaginative approach to one of most challenging tasks in law enforcement. Much of what was learned can be readily applied to major targets.

For the benefit of the reader, a companion report is being issued which concentrates on the prosecution of the cases stemming from the storefront operation. This will not only be useful to the investigator, but to all elements of the Criminal Justice System.

#### ESTABLISHING THE SITE

In an innovative attempt to gather badly needed knowledge to counter the high property crime rate and to develop intelligence and strategy for operations against major fences, the Governor's Organized Crime Prevention Commission and the Albuquerque Police Department jointly initiated a project centered around a store where stolen property would be purchased.

A store was to be established, in a high property crime area, for the purpose of dealing with persons suspected of perpetrating property crimes.

A site was selected at 518 Central S.E. (refer to exhibit 1). This location is in a high property crime area and also an area for personal assaults. This area is populated by older residents, a large percentage living in apartment buildings. There has been a migration of very low-income residents into the neighborhood from the First and Second Street areas as a result of Urban Renewal activity. Located directly to the west of the storefront site is a bar which serves as a gathering place for narcotic users and dealers.

## ESTABLISHING THE COVER

### Cover & "Operational Modus Operandi"

In the following paragraphs are described the nature of the cover and the "operational modus operandi" or "style" practiced by the two undercover agents. It will be noted that throughout comments are made concerning error or pitfall hazards.

For purposes of the operation, the secondhand store cover was chosen. It was felt that the secondhand store cover was consistent with the type of cover utilized by fences, since intelligence revealed that fencing operations had been conducted out of such businesses as pawn shops, used car lots, salvage yards, service stations, Indian jewelry outlets, auctions, bars, barber shops, grocery stores, and secondhand stores.

The secondhand store cover had the advantage of being easily and economically stocked, and there were no legal restrictions such as the records and reporting requirements, imposed by law, on pawn shops. Also, the secondhand store business is of such a nature as to not require an inordinate amount of record keeping which would have detracted from the primary purpose for which the store was established.

The store was given the name of Charlie's Secondhand Store. Prior to opening, writer and Detective Treadwell spent approximately one month in preparing the store. Originally, it was an abandoned building. Alcoholics had lived there at night and human feces and wine bottles were in every corner. We used donated materials and rebuilt two walls of the store. We had to keep security in mind during this period.

We painted the walls and built shelving and completely redid the bathroom. We built a "secret room" to accommodate a secreted camera and evidence (refer to exhibits 2 & 3). We installed some donated used carpet and built workbenches.

We installed a two-way viewing mirror in the wall between the shop and the secret room.

We hung curtains over the front windows. The curtains were hung just below eye level so that we could still see out. (Almost all of our intelligence information, vehicle description, license numbers and associations were obtained by merely looking out the window.) We assisted in going to the cars parked outside and helping carry goods into the store. We could then obtain vehicle descriptions and license numbers. We occasionally complained about the "heat" being around the store and blamed it on the bar next door. We installed an audible alarm system and built removable wooden covers for the front windows.

We had an old cash register which we kept our money in. We did not keep all the money out front as crooks occasionally rip off their fences. If we had a big deal, we would tell them to contact us later and we would then make arrangements for additional money. We occasionally made a point of saying we did not keep much "bread" around the store.

We were constantly asked for telephone numbers where we could be reached after closing time and on Sunday or Monday. We would reply, that we moved around a lot and did not trust some of the people we deal with. We told them that we had been "snitched off" in the past, but we "faded it" as we did not keep property at the store for a very long period of time.

We had business cards printed for the store and would give these cards out when someone asked for our telephone number. (See Exhibit 4). These cards may also serve as a valuable piece of evidence. Upon arrest, the contents of each defendant's wallet should be searched. The finding of this card would refute any denial of knowledge of the existence of the store.

We did not initially "advertise" the existence of the store. Thus, we were required to place a \$50 deposit as earnest money against the first month's rent. Of course, this \$50 would be applied to the last month's rent. We were also required to place a \$75 deposit with Mountain Bell for telephone service and a deposit of \$35 with Southern Union for gas service. These deposits were required as we could not claim prior service with these utilities.

Our rental agreement was \$110 per month with a three month rental contract. This included payment of all utilities with the exception of telephone.

It would have been possible to have some citizen donate the use of a vacant building for a store and thus cut down operating expenses. However, this would also have increased the chances of a "leak".

We stocked the store with unclaimed property from the evidence room and property donated by individual police officers. (Refer to Exhibit 5 & 6) Generally speaking, we would keep the property we purchased for ten days. During this period of time, a report would usually be made indicating the theft/burglary of items. If a report was not made during this period of time, the property would be returned to the store to be sold.

There is an important point to be stressed. Many times, during the

execution of a search warrant, property will be recovered and, for various reasons, not identified as stolen. This property will eventually find its way to the police evidence room, the police auction, or under the desk of the investigating detective. Care should be taken in utilizing this unidentified and unclaimed property in store situations. It would be difficult to explain, to a suspected burglar, how the store obtained this merchandise for resale when the suspect last saw it in the custody of the local police department. The monies derived from sales would be recorded and returned to the "buy" fund. In many instances, the property would be kept for a longer period of time and additional investigation would be conducted pertaining to the origin of the property. Systematic recording to assure exact accountability and maintaining specific chain of evidence is absolutely essential.

We operated the store from 9:00 A.M. to 5:00 P.M. and closed on Sunday and Monday. We never left at 5:00 P.M. as we always had to get property descriptions and meet our "department contact" for the exchange of property and information. If someone called, we would stay late to deal.

The "department contact" was a detective who was privy to the operation and was responsible for moving the stolen property to the evidence room. It was his responsibility to handle the recording and preservation of the property; the initiation of supportive investigation; the correlation of the intelligence collected; and preparation of necessary reports for assisting the prosecution of cases. He worked closely with an attorney from the Crime Commission who prepared the cases for prosecution. All of the data collected was compartmented from exposure to individuals who had no need for access to any of the developments. Such compartmentation is essential to minimize leaks.



### Firearms

We obtained a federal firearms license (ATF) to deal in firearms. This should be done on a "need-to-know" arrangement with A.T. & F. We framed the license and hung it on the wall. This license restricted us to buying, but not selling, firearms. Because of this, when we were asked if we had any pistols for sale, we would reply that we did have, but they sell faster than we obtain them. Many of our customers asked for us to sell them pistols and many of them were carrying firearms when they visited the store. (This will be discussed in detail later.) We were never inspected for a city occupational license and we could have invited a problem in that we did not have a license. It is an item to be kept in mind.

We operated under a strict rule of not "ordering up" specific property in order to refute any charges of entrapment. When we were asked what we dealt in, or what we would buy, we stated, "appliances, tools, stereos, televisions, guns, and most any other secondhand items.". We did not discuss specific places to burglarize or offer any type of inducement whatsoever. It is to be emphasized that any conversation suggesting inducement can later bring on serious problems if a defense attorney claims entrapment. We also offered the lowest price possible in order to consummate the deal.

Much thought should be given to the agent's conversation at the initial opening of the store. He should not be concerned if business is slow at the beginning. He should not do anything to induce people to bring in stolen property. We found that people did start coming in and the word did get around to the criminal element.

A variation would be to put the word out on the street via undercover agents already traveling in a circle of burglars and addicts. This approach

should be given careful consideration as, eventually, every undercover agent must be surfaced or "burned". At that time, the "heat" will be shifted to the operation or activity referred to by the undercover agent.

### SELECTION OF PERSONNEL

Charlie's Secondhand Store was in operation 115 days from January 2, 1975 to April 26, 1975. Two law enforcement agents were utilized as the proprietors of the store, and posed as fences. Another detective served on the outside in support capacity. His primary duties were to maintain communication, keep the store supplied with operational funds and film, take custody of evidence, and trace the stolen property to its owners. This support element is vital and if resources permit more than one man - all the better. He must be carefully chosen. If he is a weak element, the operation can experience numerous problems. It is absolutely essential that communication with him be secure and intact. If he is unavailable for hours at a time, you can expect trouble.

The criteria for selection of personnel to operate an undercover storefront operation varies and certainly hinges on availability of qualified types. It is possible to use non-officer personnel, but this immediately poses problems of adequate control and can bring on any number of obstacles in the handling of evidence and its introduction in court. If a non-officer is used, he should have a partner who is an officer to maintain the necessary control of each transaction.

You can utilize an officer who is experienced in property crimes investigations and has a working knowledge of the movement of stolen property. Conversely, this type of agent could be too well-known by the criminal element to fit into a store operation. Another consideration would be to use a new recruit or someone who has not had daily contact with suspected burglars. This would mean that his "street" knowledge would be somewhat limited. This can be considerably improved by having burglary detectives provide orientation of a

degree which can provide a suitable beginning. The young relatively inexperienced officer should not be overlooked. He may have unusual talent and that coupled with orientation may provide you a real "ace". Bear in mind, since he has not been on the streets for an extensive period, his chances of being a "known" are reduced. Ideally, a police department should have a system for screening and pinpointing types who have undercover talents.

Your chosen operator should be alert and possess excellent observation traits. He will never be in a position to record all events as they happen, but his capabilities to recall conversations, fix identities, remember time sequences, is of inestimable value.

The recollection of minute details of a conversation, or transaction, effectively support the technically collected evidence. Also, much intelligence is obtained as a result of an alert performance by the store operators.

The operator must be a level thinker and have the demonstrated ability to perform well in stress situations. He must be able to "fade the heat" in tight situations and avoid carelessness, and always have the personal safety of himself and his partner uppermost in his mind. There is a variety of reasons an operator can utilize in order to stall a deal. He might want to stall, in the case of a large transaction, in order to obtain approval of supervisors, to obtain additional funds, or to place observation teams in a particular location. In these situations, an operator must possess the ability to "think on his feet".

If a seller telephones the store and requests you come to his pad, you can always stall and say your partner is running an errand and you will go as soon as he returns. This will give you time to plan your activity. You



should not immediately use the telephone, unless you have a covert telephone, as the possibility exists that the seller will call back if he suspects your cover.

Self-confidence is essential, but over-confidence leading to loose unnecessary conversation with customers is dangerous. The agents must live the cover at all times, not "off and on". Therefore, in selecting personnel, it is not required to have the glib fast talker.

It has been learned that the agents who have the habit of "regrouping" at the end of the day and reviewing all events of the day, giving particular emphasis to "goofs", will strengthen the operation on a day to day basis. This exchange between the two regarding personalities and unusual incidents eventually fortifies the cover and security.

Ideally, the undercover operators should not be burdened with domestic problems or other duties which might impair day to day store operations. Emergencies can arise at home and this should be taken into account when planning the operation. If one operator leaves on an emergency, does the other remain alone? It is better that an excuse be given to customers that you are closing early.

When selecting an officer, endeavor to acquire one who is not inclined to discuss the operation with fellow officers unless so authorized. Tendencies to impress fellow officers, friends, or members of the family can destroy the operation.

The officer who talks but who essentially "says nothing" provides a quality which fits with the operation.

Beware of the officer who loses interest after a short span and then becomes careless.

The operation requires a high level of integrity. The agent who "cuts corners", keeps sloppy records, is inclined to color or fabricate findings can kill the entire operation.

Not to be overlooked and to be carefully considered in selecting personnel is assessing the candidate's capability to testify in court. He can perform excellently as an undercover operator, but if he is weak in court, his usefulness is seriously weakened.

As support to the operation, two officers experienced in property crime investigation should be assigned in a liaison capacity and charged with the duties of collecting and maintaining evidence, providing operational monies and film for the store, tracing stolen property, developing film and maintaining records on the film, having tape recordings transcribed by trustworthy personnel, obtaining expert opinions on values of property, handling the identifications of property and obtaining statements of victims, furnishing identification data, and collecting, recording and analyzing raw intelligence data. Ideally, the liaison men would be officers who had served in prior operations in the capacity as agent-fences.

Because of the large number of transactions handled by a storefront operation of this nature, it is suggested that a lawyer be assigned to the project from its inception. If the prosecuting attorney is assigned to the project after the storefront has closed down, he is faced with a large number of cases and must rely largely on the written reports of the proprietor-fences. On the other hand, if the attorney is assigned to the project at its inception, he can supervise all legal aspects of the project, debrief the agents on each transaction while the transaction is fresh, and prepare indictments as each case develops.

#### PHYSICAL SET-UP

Vital intelligence information on such things as associations, other fences, and addresses can be obtained if personnel are available to tail a "customer" as he leaves the storefront. Assuming, for instance, that the agent-fences refuse to buy property which is represented as stolen, it is possible that the customer may immediately take the property to another fence in order to sell it. A tail and surveillance would lead the officers to a fence who may not have previously been identified.

It is realized that budgetary considerations may not allow the luxury of assigning this many officers to one operation. The guidelines are offered merely as suggestions.

Prior to the store's opening on January 2, 1975, Agent Young and Detective Treadwell spent approximately one month in preparation of the store. Shelves were built, work benches and display cabinets were installed, and a secret room was built to accommodate the camera and evidence.

The store was stocked with unclaimed property from the property room of the Albuquerque Police Department and by second hand goods donated by Officer Treadwell and Agent Young and the detectives of the Burglary Detail of the Albuquerque Police Department.

The camera room required special attention. A converted closet was chosen for the dual purpose of providing security for the camera and providing a storage room for evidence. It was large enough to accommodate an observer who could witness transactions taking place in the store through an installed one way mirror. A false wall was constructed utilizing paneling to cover the original door on the closet. A 4-inch wall receptacle box was installed as a handle so that access could be gained to the room.

Camouflage for the camera was obviously of great importance. This was achieved by cutting a hole in the paneling and placing a decorative mirror over the hole. A portion of the mirror's backing was cleaned off and the camera was placed in a permanent installation to film transactions. (See Exhibit 7) To further camouflage the mirror, glass shelves were placed around the opening and glasses and beer mugs were placed on the shelves. The camera installation was completed by the addition of a remote control to a button concealed behind a work counter. It was necessary to have adequate lighting without arousing suspicion. Detective Treadwell is adept at repairing small appliances, televisions and radios. Agent Young builds stained leaded glass lamps. These activities were utilized as a cover for the installation of flood

lamps around the work area. Work counters were utilized as an area on which to place the stolen property, within the range of the camera. A clock and a hand lettered calendar were placed on the work counter within range of the camera. This provided corroborative evidence of the time of the transaction. (See Exhibit 8)

It was felt that the physical characteristics of the store could be used to advantage in gathering evidence that the person offering stolen goods for sale knew or believed that they were stolen.

A deadbolt lock was installed on the front door, and an "out to coffee" sign was made. When a "customer" brought stolen goods in, one of the "proprietors" would lock the deadbolt and place the "out to coffee" sign on the door. This added an air of covertness and secrecy to the operation, and allowed the potential defendant to be more at ease, and hopefully, more communicative about the nature and circumstances surrounding his acquisition of the stolen goods. On one occasion, a defendant himself locked the door shortly after entering. This is, to say the least, somewhat of an unusual practice for a "normal" customer. The defendant was filmed locking the door and this incident, in and of itself, is evidence of the defendant's knowledge or belief that the goods he offered for sale were stolen.

The front door of the store faced Central Avenue (the central east-west artery of Albuquerque) and a rear door opened onto a vacant lot. It was felt that evidence could be gathered concerning the person's knowledge or belief that the property he offered for sale was stolen by virtue of his choice of entry into the store. A person offering legitimate secondhand goods for sale would not hesitate to handle the goods openly and would have no fear of someone (including the police officers who frequently patrol Central Avenue) observing

him in possession of such goods. On the other hand, a person who had goods he knew or believed to be stolen would be most hesitant to display the goods openly on a public thoroughfare such as Central Avenue. In fact, the anticipated paranoia did accompany the transactions in stolen goods. Frequently, a customer having stolen goods to offer for sale would come to the front door and request one of the officers to open the back door so that the "hot" merchandise could be covertly transferred from a car backed up to the rear door into the store, without anyone observing the transfer. Often, the person would admit his knowledge that the goods were "hot" at the time he asked that the rear door be opened, thus giving the officers the opportunity to further inquire into the circumstances of their acquisition without arousing the suspicion of the offender.

Thus, a distinction was drawn for evidentiary purposes between a "front door" transaction and a "rear door" transaction. Although the former did not preclude the officers developing, by questioning, evidence that the person knew or believed the property was stolen, the latter type transaction often served as threshold notification to the officers that the person knew or believed that his merchandise was "hot". This was often accompanied by an initial admission that the property was stolen and provided an opportunity or leading for further questioning.

### EQUIPMENT, SUPPLIES & PROPS

Care should be taken in the selection of equipment as in this operation there were budget restrictions and there was a need to use equipment to conform with the physical setting. It should be remembered that the equipment must be available for the duration of the operation. It will complicate future testimony if it becomes necessary to change cameras or other pieces of equipment during the course of the operation.

The camera utilized in this operation was a Minolta 8D10, Super 8 Auto Pak, with remote control, mounted on an adjustable tripod. We built a "secret" room to accommodate the camera and to temporarily store evidence. A two-way viewing mirror was installed in the wall between the shop and the secret room.

We had originally planned to operate the camera remotely and film through this mirror. At this point, we made a mistake in that we did not seek technical advice in filming under these conditions. Thus, some of our very first film was almost useless.

We eventually abandoned the mirror concept and cut a hole in the paneling and placed a decorative mirror over the hole. We cleaned a portion of the backing off the mirror and filmed through this clear area. It appeared at first that it would be too obvious. We then built shelves around the opening and placed glasses and beer mugs on the shelves. This served to partially conceal the opening and still provided a clear viewing area. (In a similar operation in Long Beach, California, video tape filming was utilized. the television camera was hidden behind a non-operable aquarium.)

We rigged a remote control from the camera to a pushbutton concealed behind a work counter. It was necessary to have adequate light to film without

appearing suspicious. My partner was adept at repairing small appliances, radios and televisions. I build stained leaded glass lamps. We used these activities as a cover and installed flood lamps to cover the work area. The work benches also provided an area to place the property, within filming view of the camera, while we conducted transactions. These activities served as a cover for the existence of the store and also provided a means of staying occupied while we were not dealing with our "customers". On the workbench was a clock and a hand-lettered calendar. The calendar was changed each day with a grease pencil, thus we always had the date and time within view of the camera. This provided corroborative evidence of the transaction.

We converted a closet into our "secret" camera and evidence room. It was large enough to accommodate an observer who could witness transactions taking place in the store. We built a false wall to cover the original door to the room, then converted pieces of paneling into a door at the rear of the room. For a handle we used a "4" wall receptacle box. This arrangement did substantially enhance the security of the room.

We left the camera permanently set-up in the room. This is somewhat risky in that the store could be destroyed by fire or someone could break in and accidentally find the room. However, the permanent set-up eliminates focus and viewing adjustments each time it is set up and also eliminates taking the camera and tripod in and out of the store each day.

As previously stated, our camera was activated by remote control. A button was concealed under the edge of a workbench. The property was placed on the bench for inspection, thus placing it in view of the camera. It was necessary to hold the button down in order to continue operating the camera. A variation of this would be a silent/off switch or a foot activating button or switch located in another part of the store. This would give agents more

flexibility in activating the camera.

These problems could be eliminated by the use of a full-time camera and "tech" crew. We were not fortunate enough to enjoy that luxury. The tech crew, utilizing a viewing mirror or peep slot, could visually observe persons entering the store. They could control the camera and/or any recording equipment in use.

Either sound film, videotape, or silent movie and a cassette recorder could be utilized. After each transaction the sound man could dictate date, time, and other pertinent information onto the tape. This would be placed in a descriptive envelope and handled as evidence. One man from the tech team could also serve as an evidence agent in order to preserve the continuity of the chain of evidence.

One might wish to consider using an outside back-up team to take still photos of persons entering and leaving the store. Another team could be utilized for mobile surveillance of persons leaving the store. The intelligence information developed could possibly lead to other fences, addresses previously unknown, etc. The information also would be of paramount importance in drawing up an affidavit for search warrant.

In filming, the ideal situation would be to film the complete transaction from the time the person enters the premises with the property to the actual exchange of money. This was not always feasible in this operation, a factor to be kept in mind at the planning stage.

Our store had a front and back door. We kept the back door locked. This back area was out of the view of the camera, thus, we could not film people bringing goods in via the back door. The covert action of bringing goods in the back door of a business does much to substantiate the guilt knowledge of the defendant. A solution would be to cover both entrances with cameras or just use the front entrance. However,

one should not want to be put in the position of predicating cases strictly on the availability of film documenting the exchange. During a trial of one of the defendants, the defense attempted to make an issue of the fact that his client was not continuously filmed during the entire length of his visit to our store. One should not be hesitant to testify that it was not the intent to photograph the entire presence of the defendant and that, in most cases, it would be impossible to do so and give reasons.

Since our camera was secreted in another room and activated by remote control, we had no way of knowing when the camera was out of film. On some occasions, we did run out of film during a transaction. We tried to always have a full roll and would change film toward the end of the roll. Again, this is a small but most significant item to be considered in planning. We learned that arranging for handling of the film for splicing and reproduction should be established early in the operation.

In discussing film, we found it absolutely necessary to establish some type of inventory system for categorizing numerous rolls of film. In our operation we exposed a total of 35 rolls. We used a "film log" (refer to exhibit 9). This log reflected the roll number, the factory roll number, and the dates covered by the roll.

It is difficult to stay in one place to activate the camera unless you use a silent mercury switch, similar to a light switch. This system would obviously use up more film and the possibility exists that you would forget to turn the camera off. We used a switch similar to a doorbell button. The button had to stay depressed in order to activate the camera.

In utilizing the camera, our intent was (1) to photograph the individual for identification, (2) to photograph the property for identification, (3) to photograph the exchange of money from agent to defendant.

At no time did we attempt to constantly photograph a defendant during his stay in the store. It would be more practical to attempt to do so if videotape or a "tech" team were used.

Exhibit 10, which is a copy of a communication captioned "Motion Pictures as Evidence" prepared by the attorney who handled the prosecutive preparation of the cases, will be of assistance in assessing the importance of proper utilization of movie equipment.

One might wish to consider using other tape recorders in addition to sound film or videotape. Possibly a small office outside the view of the camera could be used to record conversations away from the general store area.

Another consideration is the availability of telephones. We kept a telephone on the counter obviously available for use. Customers would use the phone to contact other fences and burglars. This phone could also be monitored. A telephone should be made available to the "tech" team if an observation room is set up.

A body transmitter could also be considered. This is especially beneficial if the scene of the transaction varies. In the operation of our store, we went to various homes and motels and picked up property. This should be the exception, rather than the rule, as it is much easier to lose control of the situation. You certainly should have a surveillance team available for back-up.

The availability, or limitations, of men and equipment will determine just how involved your activities are outside the store setting.



## REVIEW AND ANALYSIS OF PROPERTY STOLEN

### A. Types of Property

During the 115 days Charlie's Secondhand Store was operational, agents purchased a vast variety of property. Several criteria governed the agents' selection of what to buy and what to refuse. Among the criteria employed were such factors as the customer admitting the goods were stolen, cases having been made previously on the customer, the ready establishment that goods could be identified and traced to their owners, and the ever present consideration of budget restrictions.

Firearms accounted for the type of stolen property most often purchased by the agents. Firearms were given a high priority for several reasons. Not only are they easily traced because of their serial numbers and federal regulations requiring firearms dealer to maintain records on firearms purchasers, but because of their proclivity for violence when used in criminal violations. It was felt that a moral obligation existed to remove stolen firearms from the hands of the criminal element. A total of seventy-nine (79) firearms were purchased; rifles, handguns and shotguns.

Nineteen (19) calculators and adding machines were purchased. These accounted for the second most often type of property purchased. These were followed by sixteen (16) televisions and ten typewriters and ten tape recorders.

Other types of property recovered consisted of radios, cameras, record players and turntables, projectors, skis, AM/FM stereo amplifier receivers, speakers, ammunition, hair dryers, knives, sewing machines, Indian jewelry, antique silver, photography equipment, scientific instruments, hair clippers, a chain saw, an amplifier, an electric metronome, a vibrator, a holster, a check protector, a desk lamp, a

classical guitar, a bicycle, a transcribing recorder, a Mastercharge card, several fraudulent checks, a generator, and various other types of personal property.

### B. Nature of Acquisition of Stolen Property

The stolen property purchased by agents operating the secondhand store was acquired in several types of property crimes perpetrated in the Albuquerque and adjacent areas. Property was recovered from a total of 51 burglaries: 41 residential burglaries, 6 commercial burglaries, 3 auto burglaries and one structural burglary. Property was recovered from 16 larcenies. This property was recovered from a total of 67 property crimes.

### C. Flow of Stolen Property

Flow of stolen property of the burglaries: 15 occurred in the southeast quadrant of Albuquerque, 13 in the northeast, 10 in the southwest and 9 in the northwest. In addition, property was recovered from a burglary in Tijeras Canyon, an Isleta Pueblo burglary, a Peña Blanca burglary, a commercial burglary in Santa Fe, and a church burglary in Clovis, New Mexico. Property was recovered from 9 larcenies perpetrated on the University of New Mexico campus, and larcenies from a church, a construction site, a hospital, a bakery, a federal office building, an automobile, and a doctor's office.

### D. Amounts Paid for Stolen Property

The conversion of stolen property to cash nets the thief a very low return for his criminal endeavors. Stolen property cannot be converted at full value and it is estimated that a thief receives as cash from a fence no more than twenty percent of the value of stolen

goods. The agents attempted to offer no more than ten to twenty percent of their estimate of the fair market value of stolen goods.

The agent's ability to set a price based on a low percentage of the fair market value of the stolen goods offered for sale at the store was important in several respects. If too high a price were offered, the thief could become suspicious as most professional criminals are aware of the amount of money a fence will pay for stolen goods. Thus, if too high a price was offered, the agents' cover could be jeopardized. Secondly, offering too high a price would lend itself to aiding in the establishment of the defense of entrapment. In essence, the entrapment defense is an affirmative or positive defense in the nature of a confession and avoidance. The defendant must admit that he committed the crime and present evidence that he was induced to violate the law when he would not otherwise have done so. The burden is then upon the State to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime and that the law officers merely gave him the opportunity to commit the crime. If a high purchase price is paid for the stolen property the defense can argue that it, in itself, was an inducement. Conversely, if a low purchase price is paid, this tends to negate the idea of inducement and also establishes an important element of the crime which is difficult to prove - the defendant's knowledge that the property was stolen. New Mexico law provides that a substantial discrepancy between the fair market value of an item and the price actually paid for it is admissible evidence which tends to prove a defendant's guilt knowledge that the property disposed of was stolen.\*

\*State v. Zarafonetis, 81 N.M. 674, 472, P.2d 388 (Ct. App. 1970).

Fair market value is defined by New Mexico law as the "price at which property could ordinarily be bought or sold at the time of the alleged crime." An owner of property is competent to testify as to the market value of his property. This is the method usually utilized in criminal cases, by prosecutors, to establish the fair market value of the stolen property.

In an effort to establish the overall percentage of fair market value paid by the agents during the course of the operation of the secondhand store, receipts were examined to determine how much money was expended, and police reports and victims' statements were examined to determine the owners' opinion of the fair market value of the stolen property. This information was compiled from the indicted cases and it was ascertained for the indicted cases that \$4,583 was spent for property having a fair market value, based on owners' opinion, of \$29,996.28. This represents an overall average of 15.3% of fair market value, or a little over fifteen cents on the dollar money expended in buying stolen property. Considering the estimate that a thief receives from a fence no more than twenty percent of the value of stolen goods, it is obvious that the agents did an exceptional job in estimating the fair market value of stolen property offered for sale and offering a proportionately low purchase price.

Perhaps the best "buy" was that involved in the purchase of a television and 14 pieces of antique silver stolen in a residential burglary. Agents paid a price of \$40 for the property, which was appraised by an expert as having a fair market value of \$2,161. The \$40 purchase price represents 1.9% of the fair market value of the stolen property.

E. Possession of Recently Stolen Property

Another interesting aspect of the undercover store operation was the amount of time that elapsed between the time of the theft of the property and the time that the stolen property was presented at the store for sale. In many instances, the property had been purchased at the store, with the thief's accompanying admission that he had "just" stolen the property and the location of the theft or the burglary, before the owner had even discovered the theft or the burglary. In 33 of the cases, the stolen property was disposed of at the store on the same day as the theft or the burglary. In 14 cases, the stolen property was disposed of on the day following the burglary or theft. In the remaining 20 cases, the property was disposed of in the time period from two days to five months after the theft or burglary.

The possession of recently stolen property has important evidentiary value in a prosecution for receiving stolen property or burglary. The most difficult element to prove in a receiving case is the defendant's knowledge or belief that the property was stolen. Unless the defendant admits his knowledge or belief that the property was stolen, this element of the crime must be established by circumstantial evidence. While mere possession of recently stolen property is not sufficient, in and of itself, to warrant the conviction of a defendant on a charge of receiving stolen property, there must be other proof showing the defendant had knowledge the property was stolen; nevertheless, such possession, if not satisfactorily explained, is a circumstance to be taken into consideration, with all other facts and circumstances in the case, in determining if the person in possession knew the property had been stolen. Similarly, in a burglary

prosecution, evidence that a defendant is found in possession of recently stolen property will not alone support a conclusion of guilt. There must be evidence of other circumstances connecting a defendant with the burglary. Nonetheless, evidence of possession of recently stolen property is persuasive evidence and may be admitted in a burglary prosecution. It is obvious that the undercover storefront concept is an excellent vehicle in procuring this type of evidence of possession of recently stolen property.

STOREFRONT OPERATION APPROACH  
TOWARD COLLECTION OF EVIDENCE

Gathering Evidence in the Storefront Operation

In most jurisdictions, statutes have been enacted which provide for the prosecution and punishment of those who intentionally and knowingly receive, buy, conceal or dispose of property which has been lost to its owner through theft, burglary, robbery, embezzlement, or similar criminal acts. Federal statutes also prescribe penalties for the receipt of stolen property under given circumstances.

Although the terms of the appropriate statutes vary, and thus the elements of the offense may differ somewhat from jurisdiction to jurisdiction, generally a person who receives, purchases, conceals, sells or disposes of stolen property, knowing or believing it to have been stolen, with intent to deprive the owners of it, is guilty of receiving stolen goods. The gravamen or gist of the offense is the felonious receiving of the stolen property belonging to another, "knowing or believing that it has been stolen." (emphasis added). Thus, the essential elements of the crime, which must be proven by the state to the jury's satisfaction beyond a reasonable doubt, are: (1) the property was received (or purchased, concealed, retained, sold, or disposed of depending on the language of the statute); (2) it must, at the time of receipt (or other prescribed act), be stolen property (or otherwise criminally obtained in a manner specified by the statute); (3) the defendant must have guilty knowledge (or belief) that it is stolen property; and (4) his interest in receiving, concealing or disposing of it must be felonious or fraudulent. In some

jurisdictions the offense of receiving stolen property is always a felony regardless of the value or nature of the property stolen. In other jurisdictions, the value of the property stolen, or its nature, will determine the grade or degree of the offense.\*

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\*New Mexico's Receiving Stolen Property Statute is typical of those found in many other jurisdictions. In New Mexico, the value or nature of the stolen property determines the grade or degree of the offense. It is found at Section 40A-16-11, N.M.S.A., 1953 Compilation, 2nd Rep'l Vol. 6. The New Mexico Statute provides in pertinent part:

"40A-16-11, Receiving Stolen Property - Penalties.

A. Receiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.

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D. Whoever commits receiving stolen property, when the value of the property is one hundred dollars (\$100) or less, is guilty of a petty misdemeanor.

E. Whoever commits receiving stolen property, when the value of the property is over one hundred dollars (\$100) but not more than twenty five hundred dollars (\$2,500), is guilty of a fourth degree felony.

F. Whoever commits receiving stolen property, when the value of the property exceeds twenty-five hundred dollars (\$2,500), is guilty of a third degree felony.

G. Whoever commits receiving stolen property, when the property is a firearm, is guilty of a fourth degree felony when its value is less than twenty five hundred dollars (\$2,500)."

One of the elements often provides problems in the prosecution of the receiver of stolen goods, and this problem is sometimes of insurmountable proportion. The fact that the property was received, retained, concealed or disposed of by the defendant can be readily established. The fact that the property was actually stolen can likewise be proved. And the fact that the defendant intended to deprive the owner of his property is usually not difficult to prove. The major difficulty in the prosecution of a receiving stolen property case is establishing proof of the guilty knowledge or belief element. As was previously explained, guilty knowledge on the part of the receiver that the property is stolen is an essential element of the offense of receiving stolen property in common law and under statute. Guilty knowledge is said to be the gist of the offense, and must exist at the time the property is received, concealed or disposed of. Unless a defendant admits knowledge or belief of the fact the goods he has received, concealed or disposed of are stolen, this knowledge or belief of necessity must be established by circumstantial evidence.

The undercover storefront fencing operational format has the advantage of enabling the agents, who pose as fences, to be able to gather not only circumstantial evidence that the defendant knew or believed the goods he offered for sale were stolen at the time of the offering, but also direct evidence on this critical element. The methods of gathering this evidence available in the storefront context will be discussed under the two traditional categories of evidence, direct and circumstantial.

#### A. Direct Evidence

The storefront format is particularly adapted to the gathering of direct evidence on the element of the defendant's knowledge or belief that the property he brings into the store is stolen. After the store has been operational, and several transactions in stolen property have occurred, the store will develop a street reputation for being willing to traffic in stolen merchandise. The proprietors will develop a reputation for being fences. A person offering stolen goods will most likely be aware of this reputation or will have been "referred" by another person who has sold stolen goods to the store.

Thus, the stage is set for relatively open communication between the "customer" and the "fence", both of these figures being in the mind of the customer, illegitimate traffickers in illicit goods.

The fence certainly has a legitimate interest in knowing something about the nature of the acquisition of the goods he is about to buy. If they are "hot" he certainly has a right to know this fact, since this would undoubtedly affect his handling and disposal of the goods. For example, a fence would certainly not openly display hot merchandise in his store, nor would he allow this type of merchandise to remain in his custody for a very long period of time. The fact that goods are hot also affects the purchase price. The person offering stolen goods for sale knows this and thus does not become suspicious when he is questioned about the nature of the goods. In fact, he might become suspicious if a person he believed to be a fence was not curious about the nature of the acquisition of the merchandise he offered for sale.



The normal relationship between the fence and the person offering stolen goods for sale then provides an avenue for illiciting of admissions\* on the part of the person offering stolen goods. These admissions go to the very element of the crime of receiving stolen property, which in the normal case is difficult of proof - the knowledge element.

No set format can be used in every case by the undercover agent-fence in illiciting information on the subject's knowledge or belief that the property he offers for sale is stolen. The type and amount of questioning depend on the circumstances and the agent's assessment of the offender. Normally, the suspect may be asked a question such as, "How hot is it?" or "Was it stolen from around here?"

This type of leading question was found to be more successful than a similar question posed in a non-leading manner such as, "Is it hot?". This type of question elicits a positive/negative response and does not provide entree for additional questions.

Experience from the Charlie's Secondhand Store operation indicates that the suspect offering stolen goods for sale will normally be candid with the agent-fence in answering such inquiries as this. In addition, there are several tactics which can be utilized to insure a covert and safe atmosphere which will make the suspect feel at ease and more communicative. These will be discussed in the section on circumstantial evidence.

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\*An admission is defined as "an acknowledgement of a fact which falls short of an acknowledgement of all essential elements of the crime." A confession, on the other hand, is defined as "a statement admitting or acknowledging all facts necessary for conviction of the crime."

McCormick On Evidence, 2nd Ed., West Publishing Company, 1972, p. 310.

Assuming that the suspect does admit that the goods are "hot", or if he provides further information evidencing his knowledge of their stolen character, is his statement admissible in court at his trial, or will it be excluded because he was not advised of his rights under the Miranda\* decision? The Miranda case is not applicable, and his statement is admissible.

The United States Supreme Court in the landmark case of Miranda v. Arizona held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. The procedural safeguards alluded to were spelled out by the court to be the constitutional rights advisement now known to all law enforcement officers, as the "Miranda warning". The court defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. The court, in a footnote to this sentence, explained their holding in Escobedo v. Illinois\*\* in the following language: "This is what we meant in Escobedo when we spoke of an investigation which had focused on an accused." In the storefront context, a suspect is certainly neither "in custody" nor "otherwise deprived of his freedom of action in any significant way". The test of whether or not an officer is obliged to give a suspect warning of his constitutional rights before asking him any

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\*Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed., 2d 694, 10 A.L.R. 3d 974 (1966).

\*\*378 U.S. 478, 84 S. Ct. 1758, 12 L.Ed., 2d 977 (1964).



questions is "custodial interrogation." While there is interrogation in this instance, there is no custody. Thus, the undercover agent-fence will be permitted to testify as to whatever the defendant told him concerning the nature of the property. This testimony constitutes direct evidence of the defendant's knowledge or belief that the property was stolen at the time he offered it for sale.

How best to preserve this evidence and to present it to the jury is another question. Certainly it should be corroborated, at the very least, by two agents. Thus, the issue will not degenerate to a swearing match between one agent and the defendant. At a minimum, two agents should be in the store at all times and should engage in the bargaining negotiations so that both will be available to testify based on personal observation as to what exactly was said by the defendant. The report should be drafted as soon as possible after the defendant leaves the store, or rough notes made, while the information is fresh. Particular attention should be given to remembering and recording verbatim what the agents said and what the defendant said, as the precise words spoken will be critical in court.

Ideally, this critical evidence should be preserved by a videotape recording or a sound movie camera device. Thus, the jury will have the benefit of not only hearing the defendant's actual words, but of also seeing him speak them.

Experience in the four-month storefront undercover operation provides several effective interrogation techniques which may be of benefit. One must keep in mind though, that these are merely guidelines

which proved effective with certain individuals. Ultimately, the undercover agent on the scene must have the ability to size up the suspect and frame his questions in a manner not to arouse suspicion in the particular suspect's mind. It is far better to fail to gain an admission that a particular subject knows property he offers for sale is stolen, than to jeopardize the operation's cover by arousing suspicion on the part of a single suspect. Experience indicates that a suspect tends to become more open and communicative the more contact he has with the store and its proprietors. This may be because his confidence increases each time he "downs" property he knows to be stolen and nothing happens. Also, the thrust between the agent-fence and the seller of stolen goods increases with each personal contact. In many instances, suspects who were hesitant to admit that the property was stolen on the first contact with the store became very open and candid on the second or third visit, even to the point of admitting that they themselves had in fact stolen the goods in a recent burglary, the location of the burglarized house, and the time of the burglary. Effective interrogation techniques guidelines will now be analyzed.

#### Interrogation Techniques

The police agent chosen to play the undercover role as a fence in a storefront operation must always keep in mind that he has a primary goal in interrogating a suspect who has brought goods to his store which he believes to be stolen. His mission is to ferret out the illegitimate customer from the customer offering legitimate secondhand goods for sale. It is essential to size up the person the minute he walks into the store. This process will entail using every bit of judgment and power of observation

that his training and experience will avail him. A suspect's first contact with the store will obviously be the most critical. Several factors may serve to indicate whether a customer has stolen or legitimate goods. For example, if a customer enters the store empty-handed and advises he has certain merchandise for sale and asks if the proprietors would be interested, this may indicate that the goods are stolen. A person having legitimate secondhand goods would not likely be hesitant to openly display his goods in public, as would a person who knows he possesses stolen goods in violation of the law, with the accompanying paranoia of that knowledge.

The effectiveness of collecting evidence can be greatly improved if the two-man team develops a coordinated approach to raising questions or simply making observations which elicit useful information. This means almost instinctive timing as situations develop. In essence the two men develop a refined "art".

#### B. Circumstantial Evidence

As explained in the preceding section, one of the main advantages of the storefront operation format in receiving stolen property prosecutions, is the opportunity it provides to gather direct evidence on the critical element of the defendant's knowledge or belief of the property's stolen character. Unless a defendant admits knowledge of the fact that goods are stolen, this knowledge of necessity must be established by circumstantial evidence.

The storefront operation format provides a valuable vehicle for the collection of circumstantial, in addition to direct, evidence.

#### 1. Possession of Recently Stolen Property Evidence

The courts instruct the jury that possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, the person in possession knew or believed the property had been stolen. The storefront operation is an excellent vehicle for obtaining recent possession evidence, since in many cases the "customer" brought stolen goods directly to the store from the burglary, and the stolen property had been recovered even before the burglary was discovered by the victim and reported to the police.

#### 2. Substantial Discrepancy Between Fair Market Value and Price Actually Paid Evidence

Another type of circumstantial evidence is easily obtained in the storefront operation. The courts hold that a substantial discrepancy between the fair market value of an item and the price actually paid is relevant and admissible evidence tending to prove the defendant's guilty knowledge of the stolen character of the property. As previously explained in the Review and Analysis of Property Stolen Section, the agents paid approximately 15.3% of the fair market value of items of stolen property. In this factual situation, the jury could be instructed that if they find that the defendant sold the property for a price substantially below the fair market value of the property, this is a circumstance which may be taken into consideration with all the other facts and circumstances in determining whether or not the defendant knew that the property had been stolen or that he believed that it had been stolen.

### 3. Evidence of Other Crimes

Generally, evidence of crimes other than and independent of the offense with which an accused is charged and for which he is being tried is not admissible. However, there are distinct exceptions to this general rule. One of these exceptions is that of proof of knowledge. This exception is held by the courts to be especially applicable to the offense of receiving stolen property, since guilty knowledge is the gist or substance of the offense. As stated above, unless a defendant admits knowledge of the fact that the goods he is disposing of are stolen, this knowledge of necessity must be established by circumstantial evidence. Often the only way this can be accomplished is by evidence of other similar offenses. In the storefront operation, a defendant may engage in many transactions with the store. On some occasions he may readily admit that the property he offers for sale is stolen. On other occasions he may not admit his knowledge of the stolen nature of the property. Under the evidence of other crimes rule exception, the prosecuting attorney can show possession of other stolen goods on the knowledge element in those instances in which the customer did not admit his knowledge that the goods were stolen.

The covert nature of the storefront operation in and of itself provides a tremendous vehicle for the collection of circumstantial evidence indicating the defendant's knowledge or belief of the stolen nature of property he presents for sale at the store, in those rare cases where the defendant does not readily admit his guilty knowledge to the agent-fence.

### MAINTENANCE OF RECORDS

The maintenance of accurate books, records and notes is of paramount importance for the success of this type of a project. Copious notes accurately identified will be invaluable at a later date, especially so considering that the life of this project was approximately five months.

We purchased books of numbered sales forms and made out a slip on each transaction. The slip indicated the date and time of the transaction, the people involved, vehicle description and a description of the property and the amount paid. The receipt numbers could also serve as case numbers.

We also filled out an Albuquerque Police Department Narcotics Unit buy report on each transaction. This report reflected the complete transaction, a detailed description of the property involved, and whatever conversation took place. The aforementioned receipt was then stapled to the buy report.

In addition, a chronological ledger should also be kept on all purchases. This ledger should reflect the date, the cash receipt number in sequence and the amount paid. Thus, it is possible to record each transaction, both by date and by receipt number.

A ledger, of operational monies, by date and amount should also be kept.

Another book on general intelligence information such as associates, vehicle description, addresses, telephone numbers, etc. should be maintained daily.

We were provided with a firearms acquisition ledger by the local ATF office. Each numbered entry contained the date, a detailed description of the firearms, and the person from whom the firearm was purchased.

A record should be maintained to provide description of individuals, how and when they entered and left in order to support identification questions which might arise on the film.

Each piece of property must be appropriately identified and labeled as it leaves the store for preservation in the evidence room. The labeling must conform with the record entries in the store. A receipt form must be signed by the officer who moves the property from the store. As obviously indicated there must be an accurate record of the chain of evidence.

Ideally, the early planning should include a simple practical system of establishing identification of property. A particular piece of property should carry a number continuously from its acquisition to its introduction as evidence. The system should not be complicated.

Additionally, a film log was maintained indicating the date and a chronological record of all persons filmed and the number of the roll of film on which they appear. If a transaction was filmed its nature should be noted so that the film may be correlated to the case report. In anticipation of the entrapment defense, a transaction and contact summary should be maintained including specific details on a defendant's first contact with the operation, and any other information on how a defendant came to do business with the store.

## ARRESTS

Although the undercover store operation did not reveal a structured organization of burglars-thieves dealing with the store, many of the store's "customers" knew one another on a personal basis and in some instances on a professional basis or were related. Indeed, the agents observed several reunions of "customers" who had served in prison together or who had pulled burglaries or engaged in other criminal activities together. Thus, it was necessary to prepare all storefront cases in secret and utilize mass roundup arrest techniques. Otherwise, it was feared that once any arrests were made, and the operation was made public, many of the defendants who had dealt with the store would learn of the true nature of the store and flee the jurisdiction to avoid prosecution, or at least go underground and make their arrest more difficult.

On May 16, 1975 a concerted mass roundup arrest of storefront defendants was conducted. Officers of the Albuquerque Police Department, the Drug Enforcement Administration and the Governor's Organized Crime Prevention Commission participated in the arrests.

Intelligence information on offenders' suspected place of abode was compiled and made available to officers who were assigned specific arrest targets. The success of the mass arrest operation was considered as a criterion for testing the security precautions surrounding the whole operation and particularly the secrecy surround the charging procedure. That there had been no "leaks" in security was manifested by the success of the "roundup".

A Friday morning was selected since it was felt that most offenders would be at their usual abodes at this time. Arrest teams were dispatched at 6:00a.m. after having been briefed in detail. At the end of working hours on May 16, 1975, twenty-five storefront defendants had been arrested and incarcerated. By the end of the weekend of May 17, 18, 1975, a total of thirty-two storefront defendants had been arrested.

Two defendants fled the jurisdiction and were located and arrested by the El Paso Police Department in El Paso, Texas when information was disseminated to law enforcement agencies in the probable areas where it was suspected the defendants would go.

As of the date of the writing of this report, all of the storefront defendants except one have been arrested. Efforts are being made to locate this defendant.

From the foregoing it is obvious that the secrecy and confidentiality of the operation was well maintained and no leaks occurred. Otherwise, the arrest effort would not have been so successful. This aspect of the operation is termed a complete success, and credit should go to those who coordinated the arrest effort and researched and disseminated the intelligence information utilized by arresting officers in locating the defendants.

#### Arrest and Booking Procedures

During the day to day operation of the store, we were provided with photographs, vehicle registration, and other back-up material which would aid in the identification of our "customers." We predicated our cases on identification of offenders by the use of photographs.

This method could probably be improved upon by utilizing a line-up after the arrest of the offenders. The line-up would lend more credence to the true identification of the offender and would have a greater impact during subsequent court proceedings.

Each offender should also be fingerprinted and photographed at the time of arrest, regardless of how recently he had been processed. This will be a further aid in identification as many offenders change their appearance from time of arrest to court appearance. These most recent photographs will accurately portray the offender as he appears in your film or videotape.

Prior to arrests the officers involved were briefed. It is important that at such briefings all officers be advised to be on the alert for stolen property. They also should be clearly informed concerning identities of individuals known to be armed.



### COLLECTION OF INTELLIGENCE

Much intelligence is available anytime an agent associates with the criminal element for an extended period of time. Required are constant alertness, keen observation, and preservation of knowledge gained. The intelligence should be considered as raw intelligence and care should be given before incorporating this information into the original "buy" reports. However, it should be made clear that anything pertinent to the transaction, and any conversation pertaining to past or future criminal activity, must be included in the buy report.

Some readily available intelligence would be:

1. Vehicle descriptions and license numbers
2. Associations and relationships
3. Telephone numbers and addresses
4. Identity of other fences
5. Other criminal activities-particularly in narcotics field
6. Identity of individuals carrying weapons
7. Handwriting specimens
8. Drug addiction

The information, not directly related to the actual transaction, should be recorded on a separate report and indexed back to the original buy report. This information should be funneled to one agent whose duty would be to make record checks and analyze the data for future use. He would also be responsible for obtaining vehicle registrations, telephone

subscriber information, etc.

During the operation of the store, we did considerable business with two subjects. They repeatedly brought us goods taken in burglaries. During conversations we had, it was ascertained that both were felony fugitives from two other states. We were able, through conversations, to obtain enough intelligence information to query the proper authorities who provided documentation of their fugitive status. We were then able to cause their arrest without putting any "heat" on the store. We also dealt numerous times with a person we later found to be an escapee from the State prison.

During the operation of the store, we were able to elicit information on other fences. If the names of these fences were incorporated into the original "buy" report, it would have jeopardized pending or future investigations as under the "discovery rule" a copy of the buy report must be provided to the defense counsel.

As the project was drawing to a close, we put the word out that we were considering moving the store and, at some point, it would be temporarily closed. We said that we needed a larger store and there were too many "cops" in the neighborhood. When our customers asked how they could stay in touch with us, we asked for their telephone number. We would furnish them with paper and pen and they would provide their name and telephone number in their own handwriting. We would then tell them that we would be in touch with them when we opened our new store. This provided us with identifying information and also served to cover the closing of the store.



There is little doubt that if the operation enjoyed the luxury of a support team which could have surveilled the "customers", voluminous intelligence data would have been developed concerning their associates, hang-outs, and habits. In addition, expeditious review and analysis of all the collected intelligence would have given the entire operation additional productivity of significant value.

#### USEFUL TIPS

- (1) Do not leave any incriminating evidence in store at night such as notes, blank reports, film containers, license numbers.
- (2) Develop "code" system for communicating with your supervisors.
- (3) Don't carry any incriminating identification, i.e., credit cards on your person.
- (4) Do not have anything in or on your automobile which is incriminating.
- (5) Do not give phone number to your family or friends.
- (6) Do not leave fellow agent alone in store.
- (7) Do not have any chairs available for customers. Chairs can serve as weapons, can extend unneeded presence of customer, and can inject obstacles to established photo procedure.
- (8) Before closing both agents should make careful sweep of premises to make certain there is no incriminating material.
- (9) When you leave, check to see if your vehicle is being followed.
- (10) Do not display weapon. Do not leave it at any time or in a position where it can be seen or picked up by a customer.
- (11) Develop protective techniques so one officer is ready to protect his partner.
- (12) If disguise in any form is used - stick to it day by day.
- (13) Fill your role. Don't try to act several parts. You are a Fence!
- (14) Have business cards which you can pass out. If such card is found in the possession of a subject when arrested it is very useful evidence. It indicates he visited the store.

(15) Use an old wallet. Your driver's license should be "worn".

(16) Avoid unnecessary conversation. If you start telling "war stories" you may dig a hole for yourself.

(17) If property has not been identified as stolen, don't assume that it will not be at some future date.

(18) Employ tight security in communicating or meeting with your "support" agent.

(19) All business with your superiors should be conducted in a secure location.

(20) Remember your operational philosophy should emphasize that you are developing cases (felonies) and you operate by spending the least amount of money.

(21) Develop a market knowledge of value of property. Become familiar with brand names, their values, etc.

(22) Don't buy everything. Be selective. Stall when in doubt but give plausible stall. Don't become engrossed in deals where property obviously is not stolen.

(23) Start operation slowly - cautiously. Maintain a "learning period" and then progress to more activity.

(24) Don't hesitate to leave impression you move goods out of State.

(25) Don't get involved in discussions touching on your family or marital status.

EXHIBITS

- #1 Exterior of Charlie's Secondhand Store, 518 Central, S.E.
- #2 The Camera Installation
- #3 Business Card Used
- #4 Interior of Store
- #5 Interior of Store
- #6 Concealment of the Camera (arrow shows concealed camera aperture)
- #7 Clock & Calendar
- #8 The Film Log
- #9 Legal Predicate for Motion Pictures

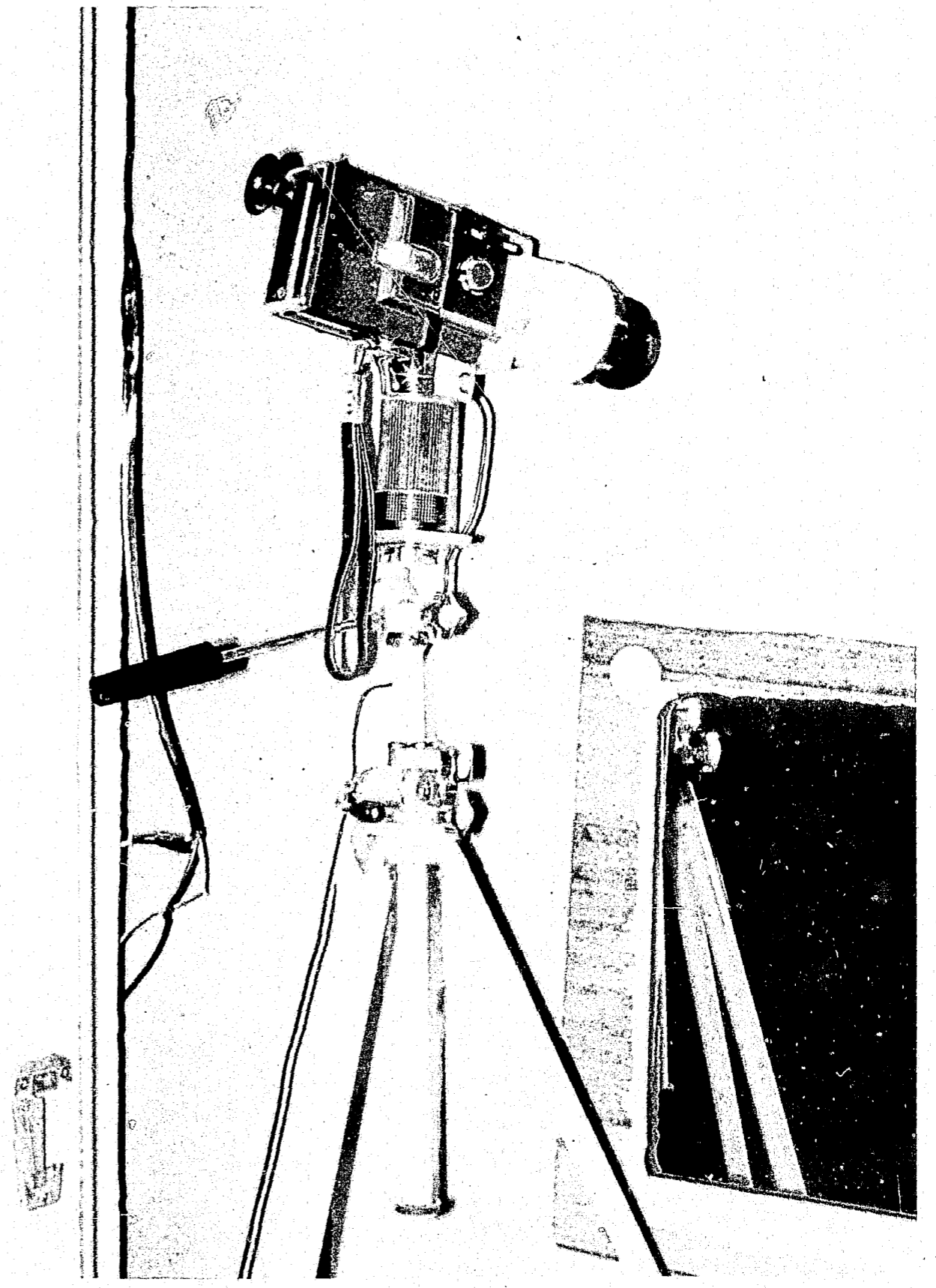
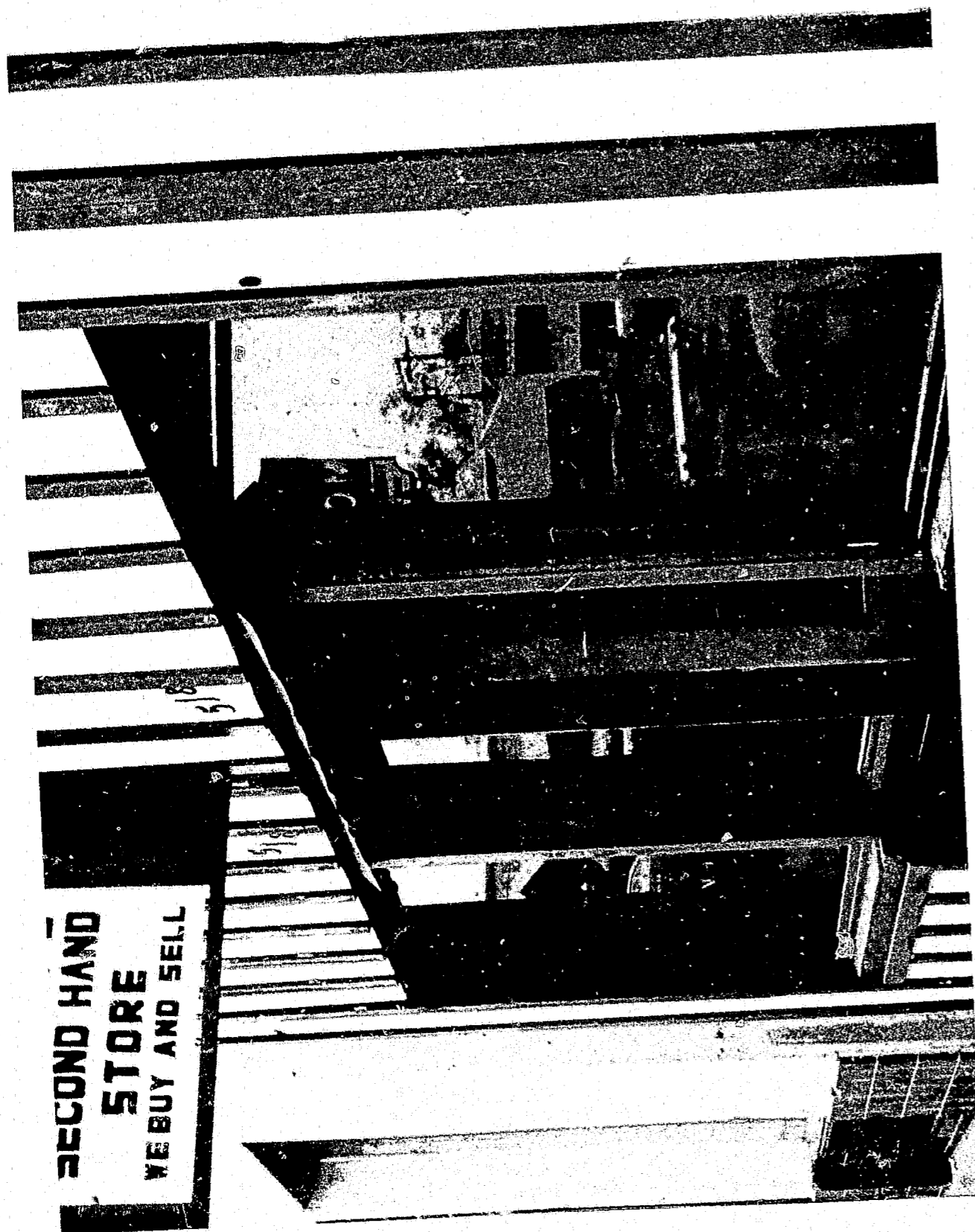


EXHIBIT 2: The Camera Installation

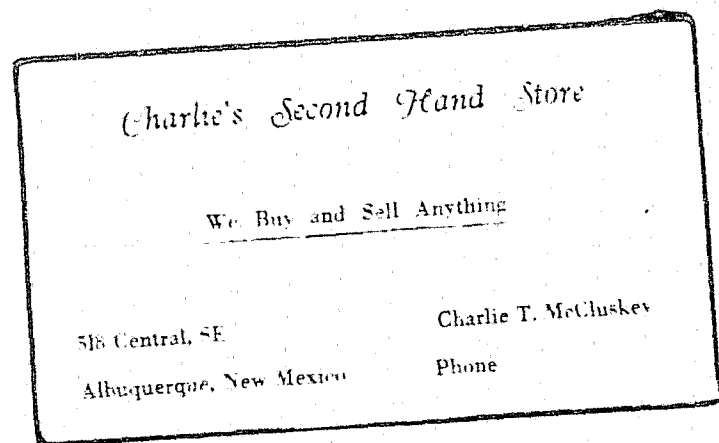


EXHIBIT 3. Business Card Used

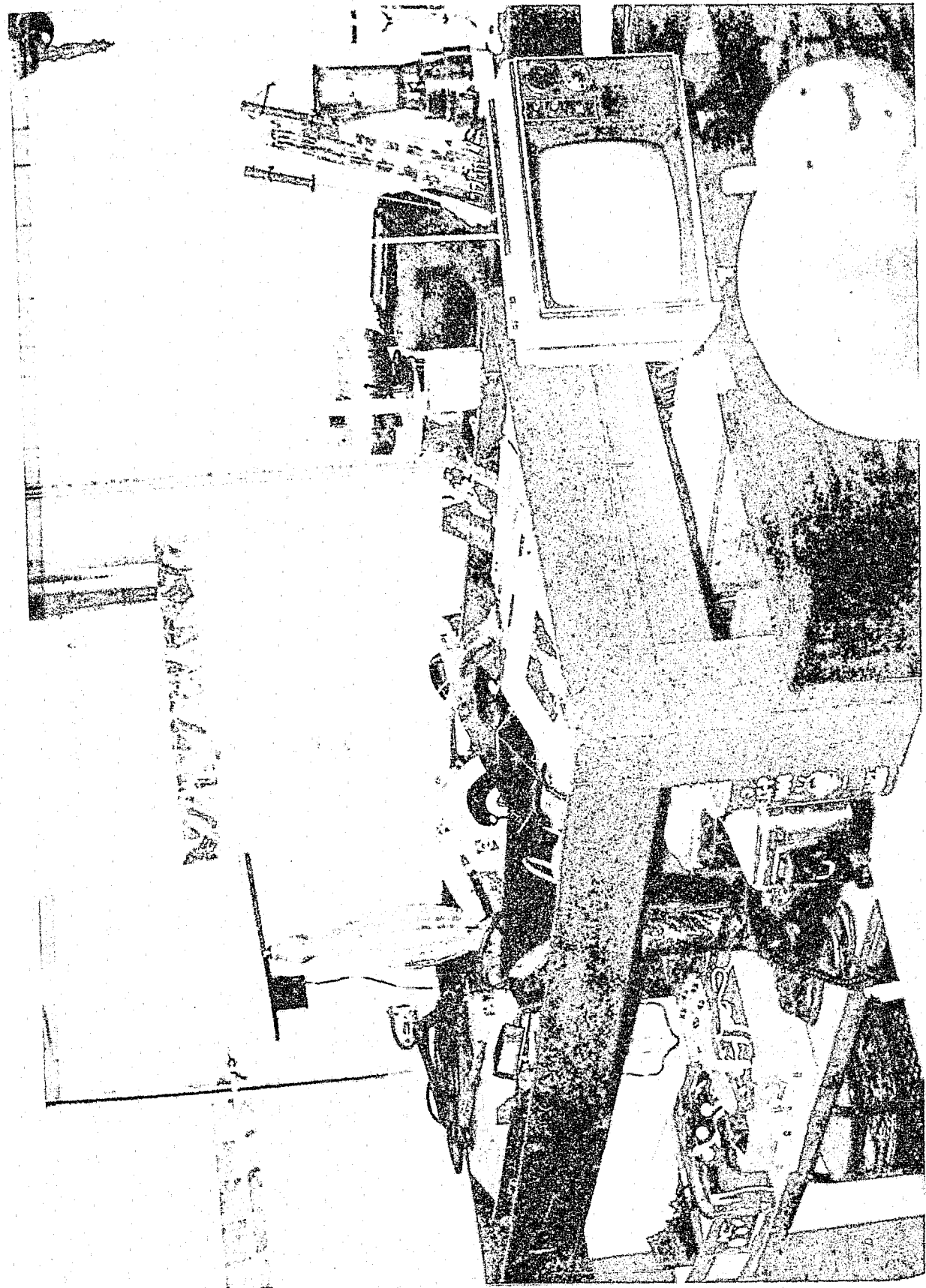


EXHIBIT 4: Interior of the Store

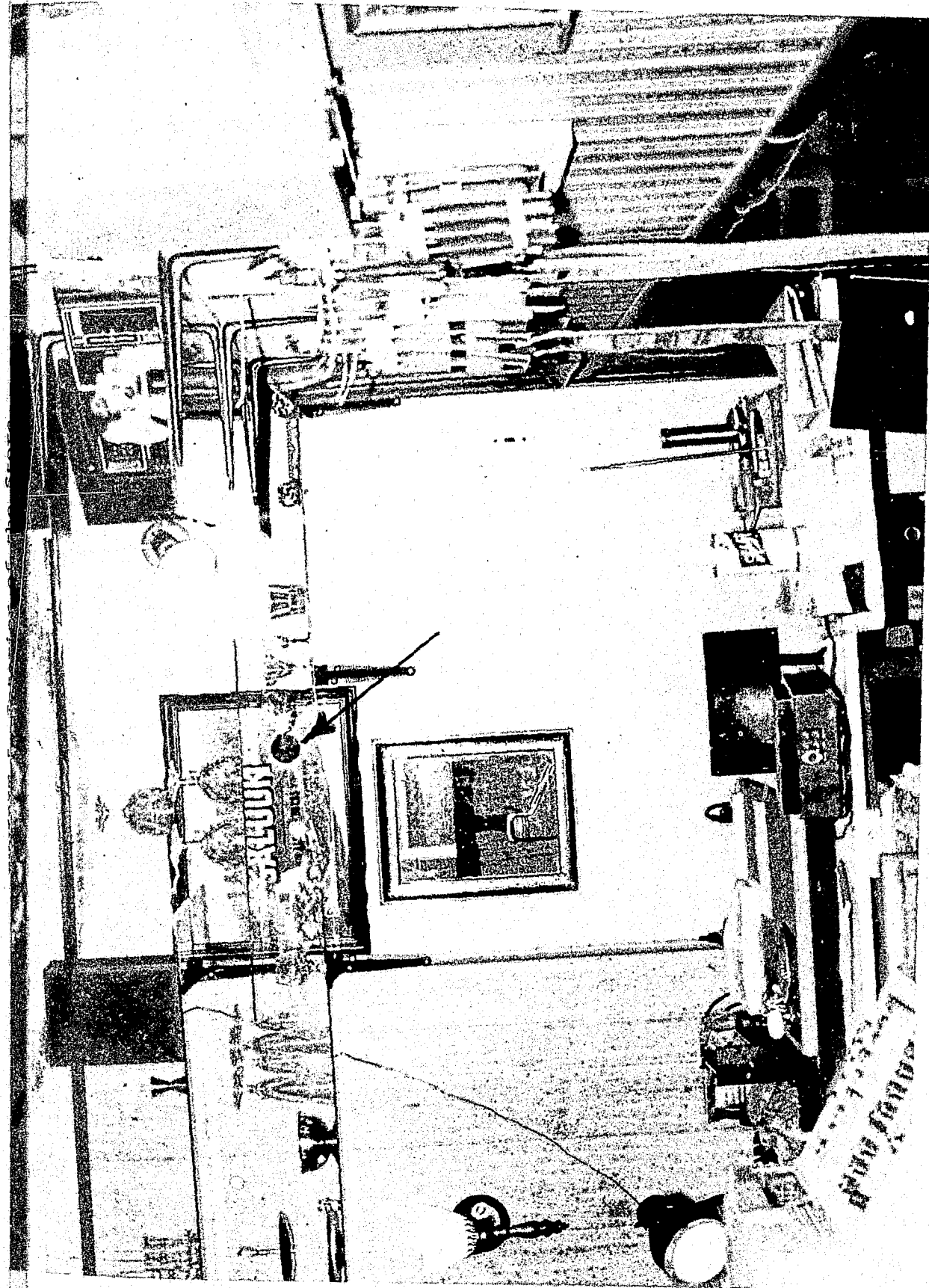
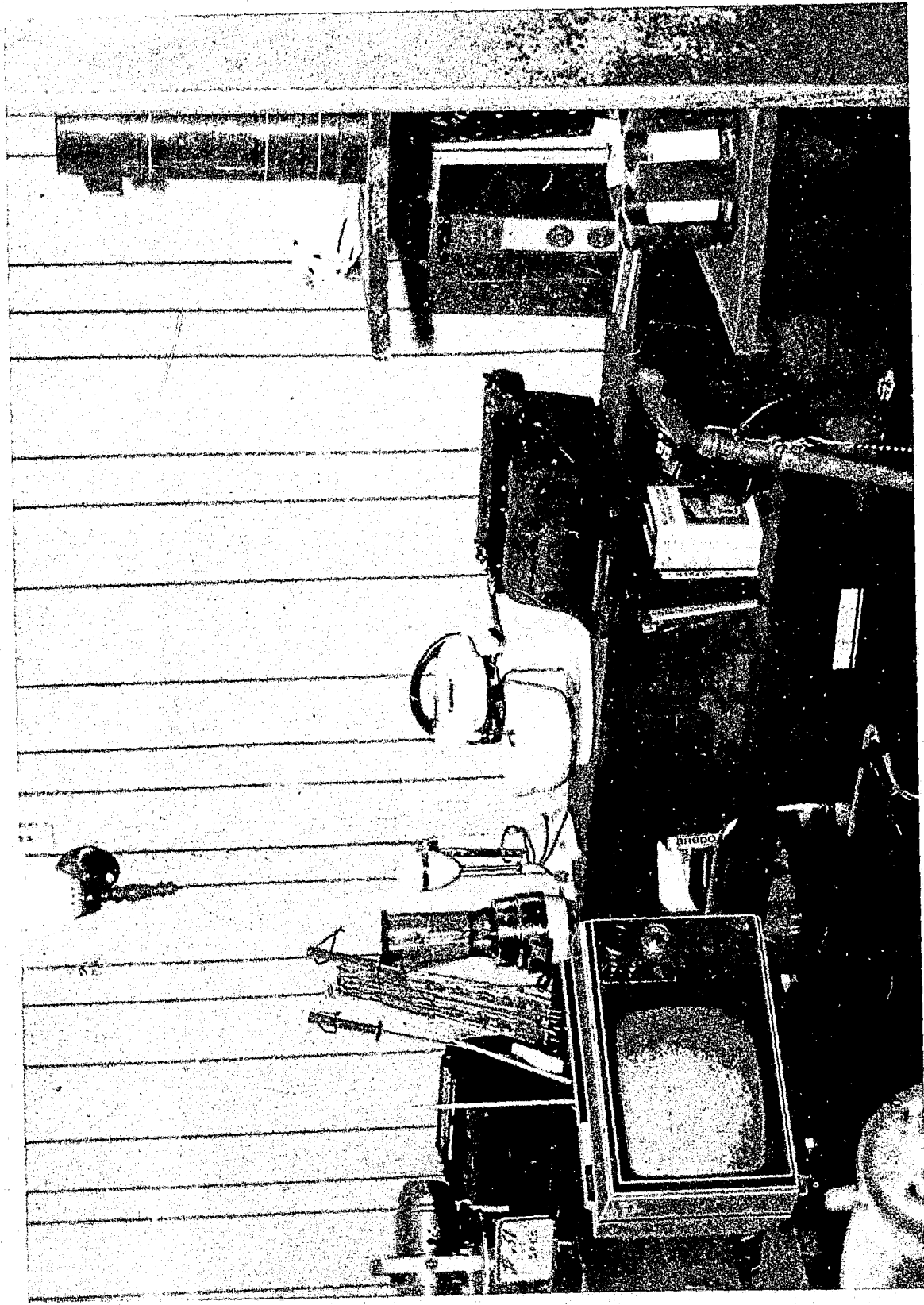


EXHIBIT 6: Concealment of the Camera





Film	Number	Dates	Film	Number	Dates
1	1	1-27-75	20	03045	3-26-75 3-28-75
2	2	1-29-75	21	03157	3-23-75 3-29-75
3	07229	1-31-75 2-4-75	22	03277	3-2-75 3-3-75 3-4-75
4	07259	2-7-75	23	03279	4-4-75 4-5-75
5	07291	2-9-75	24	03278	4-5-75
6	6	2-13-75 2-14-75	25	03374	4-9-75 4-10-75
7	07419	2-14-75 2-15-75	26	03375	4-11-75 4-12-75
8	07427	2-18-75 2-19-75 2-20-75	27	03416	4-16-75
9	07519	2-20-75 2-21-75 2-25-75	28	03450	4-17-75 4-18-75
10	35135	2-26-75 3-1-75 (Clovis)	29	03495	4-22-75
11	07746	3-4-75 3-5-75	30	03543	4-22-75 4-23-75
12	07747	3-6-75 3-7-75 3-8-75 3-11-75	31	03541	4-23-75
13	07874	3-11-75 3-12-75	32	03545	4-24-75
14	07873	3-13-75 3-14-75	33	03544	4-25-75
15	07856	3-15-75 3-18-75	34	03542	4-25-75
16	07952	3-19-75 3-20-75	35	03520	4-26-75
17	07894	3-20-75 3-21-75			
18	07951	3-21-75 3-22-75			
19	03944	3-25-75			

EXHIBIT 3  
THE FILM LOG





THE GOVERNOR'S ORGANIZED CRIME PREVENTION COMMISSION

120 CENTRAL S.W.  
ALBUQUERQUE, N. M.  
(505) 843-7800

MAILING ADDRESS  
P. O. Box 1805  
ALBUQUERQUE, N. M. 87103

MOTION PICTURES AS EVIDENCE

In a large majority of the undercover "storefront" cases, motion pictures of the actual disposition of stolen property transactions are available for use in evidence. The purpose of this memo is to discuss the legal predicate which must be established in order to assure introduction of these motion pictures into evidence, and to provide the assistant district attorney with ready references and citations so that he will not have to expend time in researching this aspect of the case.

The following general rules of evidence apply to motion pictures:

- (1) Motion pictures, when relevant and properly authenticated, are admissible in evidence to help establish the scenes or events they depict.
- (2) They are competent evidence, not subject to the objection that they are hearsay or that their admission violates the best evidence rule.
- (3) Their admission is a matter within the discretion of the trial court.

Professor McCormick provides the following background information on motion pictures as evidence:

"Motion pictures, when they were first sought to be introduced in evidence, were frequently objected to and sometimes excluded on the theory that they afforded manifold opportunities for fabrication and distortion. Even those older decisions which upheld the admission of motion pictures appear to have done so on the basis of elaborate foundation testimony detailing the methods of taking, processing, and projecting the film.

More recently, however, it appears to have become generally recognized that, as with the still photograph, the reliability and accuracy of the motion picture need not necessarily rest upon the validity of the process used in its creation, but may rather be established by testimony that the motion picture accurately reproduces phenomena actually perceived by the witness. Under this theory, though the requisite foundation may, and usually will, be laid by the photographer, it may also be provided by any witness who perceived the events filmed." (Emphasis added) (McCormick On Evidence, 2nd ed, 1972, 533).

McCormick notes that "judicial discretion in the admission or exclusion of motion pictures is constantly emphasized in the decisions, and is perhaps largely attributable to the fact that the presentation of this kind of evidence will involve considerable expenditure of time and inconvenience." He goes on to make an important distinction between motion pictures which reproduce the actual facts or original events in controversy (such as in the storefront cases) and films which represent a staged reproduction of one party's version of the facts. Speaking of the films that reproduce actual facts or original events in controversy, McCormick states that "the cogency of the evidence is such that the taking of considerable time and trouble to view the evidence would appear amply warranted." In support of this statement, he cites the case of Wren v. St. Louis Public Service Co., 333 S.W. 2d 92 (Mo. 1960), a case which contained the suggestion that if cogent motion pictures could not be satisfactorily viewed in the courtroom, the court should move to see them.

The movies in your case are analogous to motion pictures filmed by camera systems used in stores and banks. In Mikus v. United States, 433 F 2d 719 (1970) 2nd Cir, defendant contended on appeal that a proper foundation was not laid for the introduction into evidence of the motion picture film which recorded the bank robbery for which he stood accused. The court held that the testimony of one of the bank tellers, Mrs. McMahan, constituted adequate authentication to warrant the film's admission. In discussion the proper predicate for admission of motion pictures into evidence, the court noted that prior to the first of four showings of the film to the jury, the Government elicited testimony from Mrs. McMahan as to (1) the area to which the camera was directed, (2) the means of activating the camera,

(3) her own activation thereof, and (4) her own prior viewings of the film sought to be introduced. The court noted further that after this preliminary testimony, Mrs. McMahon testified that the film was a "fair and accurate representation of the occurrences inside the bank during the time of the January 15, 1968 robbery."

In reaching its holding the court cited 3 Wigmore on Evidence, Section 798A (1940) at 203 for the proposition that motion pictures, as demonstrative evidence, must be authenticated. The court went on to say that "we cannot agree that the most stringent requirements as to their admissibility urged upon us by appellant's counsel should be made applicable to this case. (Citing Kennedy, Motion Pictures in Evidence, 27 Ill. L. Rev. 424-427 (1932), quoted in 3 Wigmore on Evidence, Section 798a (1940), and Note: Demonstrative Evidence - Admissibility of Motion Picture and Wigwag Signal, 47 Ia. L. Rev. 1138 (1962))."

The court then discussed the distinction drawn uniformly by the authorities - the motion picture recordation of actual events in issue versus motion picture recordation of artificial reconstructions. The court said:

"The film in question was the purported recordation of the actual occurrences involved in the trial, and not a reconstruction thereof. Therefore, (w)here the motion picture is taken without artificial reconstruction, i.e., at the time and place of the actual event (a possibility not infrequent), it lacks the above element of weakness (i.e., special risk of misleading) and is entitled to be admitted on the same principles as still photographs. 3 Wigmore, supra; see also Kennedy, supra, at 424-25."

In the case of Mikus v. United States, defendant contended on appeal that highly detailed, effectively "expert", authentication was necessary in order to prevent dangers of cutting, editing and other doctoring of the film which might have created misleading and prejudicial impressions in the minds of the jurors. Defendant contended that it was necessary to call the person(s) responsible for installation and maintenance of the bank camera to testify as to his competence and his knowledge of the particular camera mechanism, film, speed, exposure, development and possible editing of the film. The Mikus court rejected this contention saying:

"This line of argument was expressly presented to and correctly rejected by the Sixth Circuit in United States v. Hobbs, 403 F. 2d 977; 978-979 (6th Cir. 1968), as creating 'unrealistic

roadblocks' to the introduction of important objective evidence."

The Hobbs court was cited as saying:

"Even where an occasional qualified witness may be available to testify as to such details such testimony would obviously be irrelevant and immaterial. What is material is what the rankest box camera amateur knows, namely that he 'gets' what he sees. We thus come the full circle to the judicial test . . . . whether the proffered photography is an accurate representation of the scene depicted."

The court held, "we are satisfied that Mrs. McMahon's testimony adequately made out the requisite elements for authenticating the film, see Kortz v. Guardian Life Insurance Company, 144 F. 2d 676, 679 (10th Cir.), cert. denied, 323 U.S. 728, 65 S. Ct. 63, 89 L.Ed. 584 (1944), and that the trial court was within its discretion in allowing the film into evidence."

The Mikus case may be cited for another important proposition in the "storefront" cases. I would think that it would be dramatic and convincing evidence if the ADA compelled the defendant to physically stand by the screen while a still shot is projected. Thus the comparison of the defendant's person and the projection of the defendant at the store would dramatically be portrayed to the jury. In the Mikus case defendant contended on appeal that his constitutional privilege against self-incrimination was violated when, on two occasions, he was called upon by the Government to stand up for purposes of identification and comparison. The court held the contention clearly without merit stating, "it is well established that a defendant may be compelled to stand up during trial for purposes of identification and comparison, Stales ex rel. Stovall v. Denno, 355 F. 2d 731, 736 (2d Cir. 1966) (en banc), aff'd, 388 U.S. 293, 87 S. Ct. 1967, 18 L.Ed. 2d 1199 (1967), and that such compulsion results in non-testimonial or non-communicative evidence given by a defendant which is not protected by the Fifth Amendment privilege against self-incrimination, Schmerber v. California, 384 U.S. 757, 761, 764, 86 5Ct. 1829, 16 L.Ed. 2d 908 (1966)."

The case of Williams v. State, 461 SW 2d 614, (Tex. Crim. App. 1970), is similar to the Mikus case. In the Williams case, color motion pictures were taken of the defendant during the robbery of a Seven-Eleven Store in Houston, Texas. The defendant contended on appeal that a proper predicate was not laid for the introduction of the

color movies recorded by the Scanascope camera. In discussing the predicate that was laid the court noted that prior to the admission into evidence of the film Doy Jones, general manager of Scanascope, Inc., testified he had secured the film in a self-sealed container from the store the morning following the alleged robbery and had the same processed by a machine utilized by one Stanley Fox. Jones testified he had viewed the developed film and identified the same as the one which he had removed from the camera in the Seven-Eleven Store. The complaining witness testified that he had activated the camera and had viewed the film prior to trial. He testified that the film was a "fair and accurate representation of persons and events during the course of the robbery, all of which he had observed with his naked eye."

In holding that the film was properly admitted into evidence the court stated that, "Like still photographs, motion pictures are admissible in criminal prosecutions where they are properly authenticated, relevant to the issues and not violative of the rules of evidence established for the admissibility of photographs." With relation to the rules of evidence established for the admissibility of photographs, the court cited Pait v. State, 433 S.W. 2d 702 (Tex. Crim. App. 1968) for the proposition that "all that is required of a witness who observed the object or scene depicted with his naked eye is testimony that the photograph truly and accurately represents that object or scene."

The Williams court also noted that the defendant also testified that the film was a fair and accurate representation. This question should certainly be asked of the defendant if he takes the stand. If you have had the defendant stand by the screen for comparison purposes, the jury is exceedingly aware of the fact that the defendant was undeniably in the store. If he denies that the film is a fair and accurate representation, the jury will at the least question his creditability. If he agrees that the film is a fair and accurate representation you have helped your case and further strengthened your predicate.

In order to attain a smooth presentation of the motion picture it is suggested that the film first be exhibited to the judge and opposing counsel to eliminate all objections that might interrupt the showing of the film to the jury. The films have been duplicated and separated into transactions by the addition of leader to the beginning and the end of each transaction. The originals have been retained to rebut any suggestion of editing. The witness who took the film (either Bud Young or Charlie Treadwell) should be ordered during the showing of the film to stop the camera whenever a significant scene is projected. Their testimony, explaining

what is depicted, can then be elicited to explain what is being shown on the screen. For example, a date display and and clock may be seen in most of the films. The camera should be stopped and testimony should be elicited explaining this part of the film. The camera should be focused and stopped so that a good still image of the defendant may be projected. The defendant should then be compelled to stand by the screen for comparison purposes. In most of the films, the stolen property, or part of it is plainly visible. The actual property can be compared with the film. Most films show the defendant receiving money from one of the agents. The camera should be stopped and testimony elicited at this time concerning the money transaction. In some cases with multiple defendants the film shows the defendants splitting up the money. Testimony should be elicited at this time to explain that transaction.

A stock instruction is utilized in the Second Judicial District which advises the jury they are entitled to view exhibits during deliberations. You should be sure and call this instruction to the attention of the jury during your closing argument and suggest to them that in an important case such as this one it is incumbent upon them to request the exhibits so that they may fulfill their duty and oaths as jurors. You should see that the projector and screen also go into the jury room. This may create a problem - one judge is known to have required the screen and projector to be qualified and admitted as evidence - but the court should recognize that the projector and screen are merely mechanical aids for viewing the evidence just as are the juror's eyeglasses. A projectionist will not be allowed to accompany the jury, but you can see that the film is set on the projector. You should request to be allowed to show a juror how to focus the projector and how to run and rewind the film. This could be done in the presence of the judge and defense counsel to forstall any suggestion of impropriety.

In summary, proof of the following three facts and circumstances lays the foundation for the admission of motion pictures as evidence:

- (1) Relevancy to the issues and materiality.
- (2) Identity of the subject matter shown in films.
- (3) Accuracy of the representation (the motion pictures present a true and accurate representation of the scene photographed).

Testimony, by one who saw firsthand the events recorded on film, that the motion picture is an accurate depiction of what he observed is the one authenticating element essential to the introduction of motion pictures as evidence. This testimony can be supplied by either of the agents, preferably by the agent who activated the camera. This agent can lay the whole foundation necessary for the admission of the motion picture.

**END**