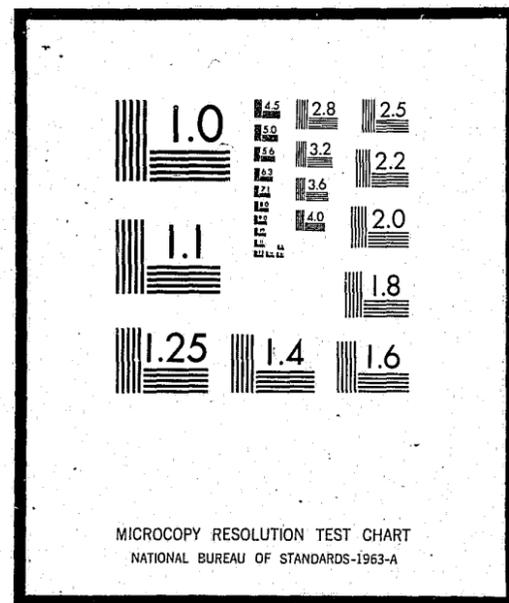


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STATE OF NEW MEXICO

GOVERNOR'S ORGANIZED CRIME  
PREVENTION COMMISSION

"CATCH YA' LATER, MAN!"

A REPORT ON CHARLIE'S SECONDHAND STORE  
AN UNDERCOVER STOREFRONT OPERATION

CONDUCTED JOINTLY BY THE  
ALBUQUERQUE POLICE DEPARTMENT  
AND THE  
GOVERNOR'S ORGANIZED CRIME PREVENTION COMMISSION

TARGET: FENCING AND PROPERTY CRIMES

Santa Fe  
New Mexico

C. Richard Baker  
Legal Counsel - Investigator  
January 1976

ABSTRACT

The gravity of the property crime problem in the Albuquerque area, and the painfully obvious fact that the existing approach to property crime with available resources had not been effective in curbing the incidence of property crime, sparked an effort in the latter part of 1974 to seek new and innovative techniques to effectively deal with property crimes in the Albuquerque area. What evolved was an undercover storefront operation conducted jointly by the Albuquerque Police Department and the Governor's Organized Crime Prevention Commission in which two agents set up a secondhand store on Central Avenue and posed in an undercover capacity as fences. The store was operational from January 2, 1975 to April 26, 1975 - a total of 115 days. The operation netted 39 defendants who were charged by a Bernalillo County Grand Jury with 218 state felony counts. Two indictments charging violations of the Federal Firearms Act emanating from the storefront operation were levied by a federal grand jury.

This report provides background information on the concept, the operation itself, and its results. Further, the report makes observations and recommendations on the laws pertaining to receiving stolen property.

A companion report is being issued which concentrates on the fundamental operational aspects of the secondhand store project. It was written by Agent Marvin "Bud" Young of the Governor's Organized Crime Prevention Commission, and it is more specifically related to

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.

interests of a police department. Agent Young was one of the officers who posed in an undercover capacity as a fence in the operation, and his report is intended to serve as an operational manual for those law enforcement departments interested in employing this imaginative and innovative attack on the challenging task of curtailing the incidence of property crime and fencing.

## TABLE OF CONTENTS

I. INTRODUCTION . . . . .	1
II. THE PROPERTY CRIME PROBLEM . . . . .	4
A. Property Crime in New Mexico . . . . .	5
B. Reasons for the Undercover Store Operation . . . . .	7
C. The Fence. . . . .	8
III. THE STOREFRONT FORMAT. . . . .	13
IV. THE OPERATION. . . . .	14
A. Personnel. . . . .	14
B. Cover - "The Front". . . . .	14
C. The Site . . . . .	14
D. Physical Set-Up. . . . .	15
E. Cost . . . . .	15
V. RESULTS. . . . .	21
A. Indictments. . . . .	21
B. Arrests. . . . .	27
C. Effect on Burglary Rates . . . . .	28
D. Convictions. . . . .	29
1. Jury Trials . . . . .	30
2. Plea Bargains . . . . .	31
E. Property Recovered . . . . .	34
1. Types of Property . . . . .	34
2. Nature of Acquisition of Stolen Property. . . . .	35
3. Flow of Stolen Property . . . . .	35
4. Amount Paid for Stolen Property . . . . .	36
5. Possession of Recently Stolen Property. . . . .	38
6. Operation Identification. . . . .	40

VI. PROFILE OF THE STOREFRONT OFFENDER . . . . .	44
VII. DRUG ABUSE AND CRIME . . . . .	45
VIII. OBSERVATIONS AND RECOMMENDATIONS . . . . .	48
A. Receiving Stolen Property Statute. . . . .	48
B. New Mexico Criminal Uniform Jury Instructions. . . . .	49
IX. CONCLUSION . . . . .	53
Appendix A . . . . .	55
Appendix B . . . . .	56
Appendix C . . . . .	57

I. INTRODUCTION

A young man, approximately 28 years old, enters a secondhand store located on Central Avenue in Albuquerque, New Mexico. He speaks briefly with one of the two proprietors. One proprietor, Charlie, a slight balding man with a beard and mustache, goes to the rear door of the store and helps the young man carry a stereo system, a color portable television, a 35 millimeter camera with telephoto lens, a 30/30 caliber rifle, a 16 gauge shotgun, and a .357 magnum pistol into the rear of the store from a car parked by the back door. The two men walk to a workbench in the front portion of the store where the merchandise is tested. A clock and date calendar are visible on the workbench. The date is March 20, 1975, the time is 10:30 a.m. The other proprietor, Bud, a heavier, fully-bearded, kind-looking man takes an interest in the merchandise. "How hot is it?" he asks the young man. "Hotter than hell, I just ripped it off last night out of a house on Comanche in the Northeast Heights," is the reply. "I cut my hand on the damn bedroom window when I was going in," he continues. "There was more stuff than I could carry off. I'm going to hit it again for another TV and some more stuff when it cools down."

During this conversation, Charlie administers first aid to a cut on the young man's right hand. Needle marks can be readily seen under the tattoo that covers the vein of his right arm.

The three discuss the purchase price to be paid for the stolen property. Finally, after some haggling, a price of \$200 is agreed upon. The price is approximately 15% of the fair market value of the stolen items. The money is handed to the young man. As he leaves the

front door of the secondhand store, the heavy, bearded man says, "catch ya' later, man." The young man replies, "Yeah, man."

And catch him later they did.

The scene described above is a fictionalized dramatization typical of the many transactions that occurred between the dates of January 2, 1975 and April 26, 1975 at Charlie's Secondhand Store in Albuquerque, New Mexico. Typically, this transaction would have been filmed by a movie camera secreted in a back room of the store, activated by pushing a button under the workbench. Subsequent investigation would have revealed that a stereo system, a color portable television, a 35 millimeter camera with telephoto lens, a 30/30 caliber rifle, a 16 gauge shotgun, and a .357 magnum pistol were stolen in a residential burglary sometime during the night hours of March 19, 1975 in a residential burglary of a house located on Comanche Road N.E., and that a television and other articles had been moved from their usual location but not taken. Field investigators would have been called to the scene and upon examining the obvious point of forced entry - the bedroom window - they would have found what appeared to be blood on a piece of the broken glass, or perhaps on the curtains by the broken window. The New Mexico State Police Crime Lab would have confirmed that the blood was in fact human and would have provided the prosecutor with a blood type, which after appropriate legal steps could be compared with the blood type of the alleged offender.

The young man subsequently would be a defendant in a felony criminal case in the District Court of Bernalillo County, New Mexico, wherein he would be charged with burglary, larceny and disposing of stolen property.

The proprietors of the secondhand store, who are in fact police officers, will be the primary witnesses for the State. One is Charlie Treadwell, a detective assigned to the Burglary Detail of the Albuquerque Police Department. The other is Marvin "Bud" Young, an agent of the Governor's Organized Crime Prevention Commission.

## II. THE PROPERTY CRIME PROBLEM

Crime is one of America's most plaguing and perplexing problems. Its proportions are staggering, and there are no easy answers to the problem. In addressing the problem of the nation's continuing crime wave in a special message to Congress a few months ago, President

Gerald Ford noted that, "America has been far from successful in dealing with the sort of crime that obsesses Americans day and night....."

It was his recommendation that the spiral of crime be attacked through improvement of the law itself and by improvement of the criminal justice system so that it will function more swiftly, surely, and justly.

There can be no question of the need for action. Even though property crimes are non-violent in nature, they are so predominant that they must be included among the crimes that in the President's words obsess Americans day and night. Many Americans are afraid to leave their homes unguarded for fear that when they return, they will discover a burglary in which most of their valuable possessions have been stolen. Time Magazine in a cover story, "The Crime Wave,"<sup>1</sup> which was prompted by FBI statistical reports, provides the following shocking statistics: "Since 1961 the rate for all serious crimes has more than doubled. From 1973 to 1974 it jumped 17% - the largest increase in the 44 years that national statistics have been collected."<sup>2</sup> The same article notes that preliminary reports to the FBI for 1975 show that the rate for violent

<sup>1</sup> Time Cover Story, "The Crime Wave." Time, June 30, 1975, pp. 10-24.

<sup>2</sup> Ibid., p. 10.

crimes as well as property crimes like burglary is still sharply on the rise. (Emphasis added). There can be no doubt that crime has become an ominous national problem and that property crimes have a significant impact on all Americans. According to one source, property crimes cost U.S. citizens approximately \$16 billion in 1973. With particular reference to the property crimes of burglary and larceny, the Uniform Crime Reports of the Federal Bureau of Investigation show that burglaries throughout the nation were 17% higher in 1974 than in 1973 and that larcenies increased by 20% during the same period.<sup>3</sup>

### A. Property Crime in New Mexico

Statistics compiled by the crime reporting unit of the New Mexico State Police, when compared with the FBI national statistics, show a lesser but nevertheless alarming increase in burglary and larceny offenses from 1973 to 1974. Burglaries reported in New Mexico increased to 17,101 in 1974 from 16,159 in 1973 (up 5.8%), and larcenies increased to 31,625 from 27,660 (up 14.3%).<sup>4</sup> The New Mexico Uniform Crime Reporting Program in its 1969 to 1973 report shows that one property crime occurred in the State of New Mexico every 20 minutes in 1969. In 1973, one property

<sup>3</sup> Seven offenses are used to establish the FBI Uniform Crime Reports Index. They are murder, forcible rape, robbery, aggravated assault, burglary, larceny (\$50 and over), and motor vehicle theft. The FBI compiles its statistics from reports of offenses known to and reported by local police agencies. The last three crimes listed, known as property crimes, make up nearly 90% of Index crimes.

<sup>4</sup> New Mexico Uniform Crime Reporting, 1974 Preliminary Annual Release compiled in February 1975.

crime occurred every 11 minutes,<sup>5</sup> thus almost doubling the frequency rate in only four years.

Consolidation of reports submitted by the Albuquerque Police Department, the Bernalillo County Sheriff and the University of New Mexico is necessary in order to determine how many burglaries and larcenies occurred in Bernalillo County. The following table lists the number of such crimes reported by these organizations for 1973 and 1974 and also shows the proportion of burglaries and larcenies throughout New Mexico that occurred in Bernalillo County.

	<u>Burglary</u>		<u>Larceny</u>	
	<u>1973</u>	<u>1974</u>	<u>1973</u>	<u>1974</u>
Bernalillo County Sheriff	1,226	1,261	949	1,104
Albuquerque Police Department	6,942	6,547	11,852	12,781
University of New Mexico	<u>N/R*</u>	<u>44</u>	<u>N/R*</u>	<u>622</u>
Total - Bernalillo County	8,168	7,852	12,801	14,507
Total - State of New Mexico	16,159	17,101	27,660	31,625
Percentage Occurring in Bernalillo County	50.5	45.9	46.3	45.9

\*No report submitted.

\* The gravity of the problem becomes even more obvious when it is recognized that crime statistics are not a particularly good indicator of the amount of crime actually committed or the enormous monetary loss through property crime. Techniques for measuring crime are imperfect,

<sup>5</sup>New Mexico Uniform Crime Reporting Program Crime Index - Totals, 1969-1973, Uniform Crime Reporting Unit, Santa Fe, New Mexico, released December 6, 1974.

at best. Successful crime, after all, is secret crime. Furthermore, only a small percentage of crime is actually reported. For example, the President's Commission on Law Enforcement and Administration of Justice reports that burglaries occur about three times more often than they are reported to police.<sup>6</sup>

#### B. Reasons For The Undercover Store Operation

The foregoing statistics indicate the gravity of the property crime problem in the Albuquerque area during the period preceding the opening of the undercover storefront operation at 518 Central S.E. This was perhaps the major concern of officials of the Governor's Organized Crime Prevention Commission and the Albuquerque Police Department when they met during the latter part of 1974 in an effort to seek new and innovative techniques to effectively deal with this type of criminality. It was painfully obvious at this point in time that the existing approach to property crime with available resources had not been effective in curbing the incidence of property crimes. In addition, despite the fact that the "fence" is perhaps the key character and could be the most vulnerable law enforcement target in the area of property crimes, very little is known about him and his operations. The innovative storefront concept was conceived and implemented with the expectation and goal of securing prosecutable cases thus curbing the incidence of property crime in the Albuquerque area, gaining valuable intelligence information on the modus operandi, backgrounds, and associations of burglars and thieves who dealt with the store, and gaining insight into the identities, habits, scope

<sup>6</sup>President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society" (Washington, D.C.: Government Printing Office, 1967), p. V.

of operations, and markets of professional fences.

According to one shocking estimate,<sup>7</sup> an adult burglar runs only 24 chances in 10,000 of being sent to prison for any single offense. To Isaac Ehrlich of the University of Chicago, the key economist in the empirical investigations of crime, this means that crime has become more attractive, and, crime rates have soared. Ehrlich demonstrates that states with better police protection, higher certainty of conviction and imprisonment, and longer prison sentences have lower crime rates than more permissive states. The storefront operation was conceived and made operational with a goal of enhancing the Albuquerque burglar's chances of conviction and thus having a deterrent effect on property crime in the Albuquerque area.

Before delving into the various aspects of the operation itself, the status of available information on fencing and the fence should be considered, since obtaining useful intelligence information on this aspect of property crime was one of the major goals of the storefront operation.

### C. The Fence

Compared with other areas of criminal activity, very little is actually documented and known about the marketing of stolen goods or "fencing" as it is commonly referred to.<sup>8</sup> Available literature provides

<sup>7</sup>This estimate is attributed to Gregory Krohm of Virginia Polytechnic Institute as reported in "Crime: A Case For More Punishment," Business Week, September 15, 1975, pp. 92-97. Another way of stating Mr. Krohm's statistic is that the adult burglar has only one chance in 417 of going to jail for any single job.

<sup>8</sup>"Fence" is a term commonly applied to people in the business of receiving stolen goods; it is a colloquial expression used to designate a person who receives stolen goods from the persons who steal them.

only limited information on the inner nature of things in the world of fencing and the fence. The President's Crime Commission's Task Force on Assessment summed up the void in existing literature on the subject and the need for more information in the following paragraph:

"Little research has been done on fencing despite its central role in professional crime. More information is needed about the nature of the market for illicit goods and the extent to which the demand for various types of goods affects the incidence of theft. More should be learned about the relationship of legitimate and illegitimate markets. Little is known about the pattern of distribution of stolen goods....The redistribution of goods through theft might constitute a significant subsidy to certain groups in our society; its curtailment might have significant side effects which should be explored. Finally, it would be desirable to have more information about the organization and operations of large-scale fencing operations, to aid in the development of better law enforcement."<sup>9</sup>

The President's Commission on Law Enforcement and Administration of Justice notes in its Task Force Report that the services of the fence appear to be essential to the operations of many professional criminals.<sup>10</sup> The President's Commission in studying professional crime sponsored a pilot field research study in four cities - Atlanta, Chicago, New York and San Francisco - during the summer of 1966. For purposes of the study the Commission defined professional crime as: "Crime committed for personal economic gain by individuals whose major source of income is from criminal pursuits and who spend the majority of their

<sup>9</sup>President's Crime Commission on Law Enforcement and the Administration of Justice, Task Force on Assessment, Crime and Its Impact -- An Assessment (Washington, D.C.: Government Printing Office, 1967), p. 99

<sup>10</sup>Ibid.

working time in illegal enterprises." The Commission indicated that the fence may be a particularly vulnerable and effective law enforcement target when it noted that "(s)ince a great many professionals may depend on a very few such figures, they may constitute a particularly vulnerable aspect of professional crime."<sup>11</sup>

As is true on the national level, little is known about the operation, nature and scope of the marketing system for stolen goods in the Albuquerque metropolitan area. Two studies have been conducted concerning fencing in the Albuquerque area with the same results - recommendations that more studies be conducted or that innovative techniques be utilized. The first study resulted in a working paper of the Criminal Justice Program of the Institute for Social Research and Development, University of New Mexico. The study, "A Preliminary Inquiry Into the Marketing of Stolen Goods in Albuquerque,"<sup>12</sup> represented an initial survey into the nature and scope of the marketing system for stolen goods in Albuquerque and was very limited in scope. Utilizing open ended interviews with members of the Albuquerque Criminal Justice System who are charged with enforcing the law against fencing operations, the purpose of the study was to merely "define an area of potential research rather than to meticulously document the fencing system in Albuquerque."<sup>13</sup>

<sup>11</sup> Ibid.

<sup>12</sup> Richard P. Fahey, "A Preliminary Inquiry Into The Marketing of Stolen Goods in Albuquerque," A Working Paper Of The Criminal Justice Program, Institute For Social Research and Development, The University of New Mexico, Albuquerque, New Mexico, CJP-71-3. September 1971.

<sup>13</sup> Ibid, p.1.

The study concluded that "as a first step in preparing an effective statute against fencing, a thorough study should employ the tools of the economists as well as those of a more traditional criminologist."<sup>14</sup>

The second study was conducted by the Governor's Organized Crime Prevention Commission in cooperation with the Albuquerque Police Department in early 1974. The purpose of this investigation and research was to determine the nature of organized fencing operations in Albuquerque. The investigation and research, involving hundreds of man-hours, led to the compilation of volumes of material. The results were summarized in the 1974 Annual Report and Guidelines For A Comprehensive Plan of the Governor's Organized Crime Prevention Commission.<sup>15</sup> Perhaps the most significant finding of the Commission was that the existing approach with available resources has not been successful in curbing the incidence of property crime in general, and fencing in particular. The Commission noted that "law enforcement in New Mexico has not reached the level where a task force or team can be devoted to a major fencing target for a prolonged period of time. No single agency has the manpower to tackle key targets when this will require the application of sophisticated techniques."<sup>16</sup>

Perhaps the most important and apparent lesson learned was the need for an innovative approach to the problems of property crime and fencing

<sup>14</sup> Ibid, p. 9.

<sup>15</sup> Governor's Organized Crime Prevention Commission of New Mexico, 1974 Annual Report and Guidelines For A Comprehensive Plan, Santa Fe, New Mexico, December 1974.

<sup>16</sup> Ibid, p. 35.

and the need for developing sophisticated techniques as well as an adequate and able staff that can adapt and apply the techniques in accumulating the evidence needed for indictment and conviction of those individuals involved in fencing.

After considering several alternatives, the Commission and the Albuquerque Police Department decided to conduct the undercover storefront operation. The concept was simple. Undercover agents would pose as fences and purchase stolen property. As previously explained, it was felt that such an operation would have the advantage of not only generating prosecutable cases in an effort to curb the incidence of property crimes, but would also provide an avenue which would produce invaluable intelligence information on property crimes and fencing operations.

The operation, in a sense, was a pilot project. Much valuable information about the modus operandi of the fence was learned. Much of what was learned can be readily applied to major fencing targets.

### III. THE STOREFRONT FORMAT

The idea of an undercover operation utilizing police officers in the role of fences is relatively new.

The format has been utilized with effective results in Portland, Oregon; Long Beach, California; Sacramento, California; New York, New York; and Honolulu, Hawaii. Appendices A and B provide interesting newspaper accounts of the operations in Long Beach, California and New York, New York.

#### IV. THE OPERATION

##### A. Personnel

Charlie's Secondhand Store was in operation 115 days, from January 2, 1975 to April 26, 1975. Two law enforcement officers posing as fences were utilized to operate the store. Another officer served in a liaison - backup capacity. His primary duties were to keep the store supplied with operational funds and film, take custody of the evidence, and trace the stolen property to its owners.

##### B. Cover - "The Front"

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

##### C. The Site

A site was selected at 518 Central S.E., Albuquerque, New Mexico. This location is in a high property crime area. The store was given the name of Charlie's Secondhand Store.

##### D. Physical Set-Up

The physical set-up of Charlie's Secondhand Store was similar to that of almost any secondhand store found anywhere. It was stocked with secondhand items. (Figure 1). Several physical characteristics of Charlie's differed significantly from the normal secondhand store though. These were the super 8 millimeter camera hidden in a secret room, its remote control device, and the clock and hand-lettered calendar which were present on one of the workbenches. These items provided corroborative evidence gathering devices and proved successful in achieving their purpose. The camera was secreted in a camera room and placed in a permanent installation to film transactions through a hole in the paneling and a decorative mirror. The mirror was further camouflaged by glass shelves which were placed around the holes. Glasses and beer mugs were placed on the shelves. (Figures 2 and 3). The camera installation was completed by the addition of a remote control to a button concealed behind a work counter, allowing the officers to film the transactions occurring at the counter. The clock and hand-lettered calendar were placed on the work counter within range of the camera. (Figure 4). This provided corroborative evidence of the time of the transaction.

These devices were utilized to film the date and time, the offender, the goods he offered for sale, and the exchange of money, thus corroborating the agents' testimony concerning the transactions.

##### E. Cost

One of the primary advantages of the undercover storefront operation was its small cost to the taxpayers. A vast amount of valuable property

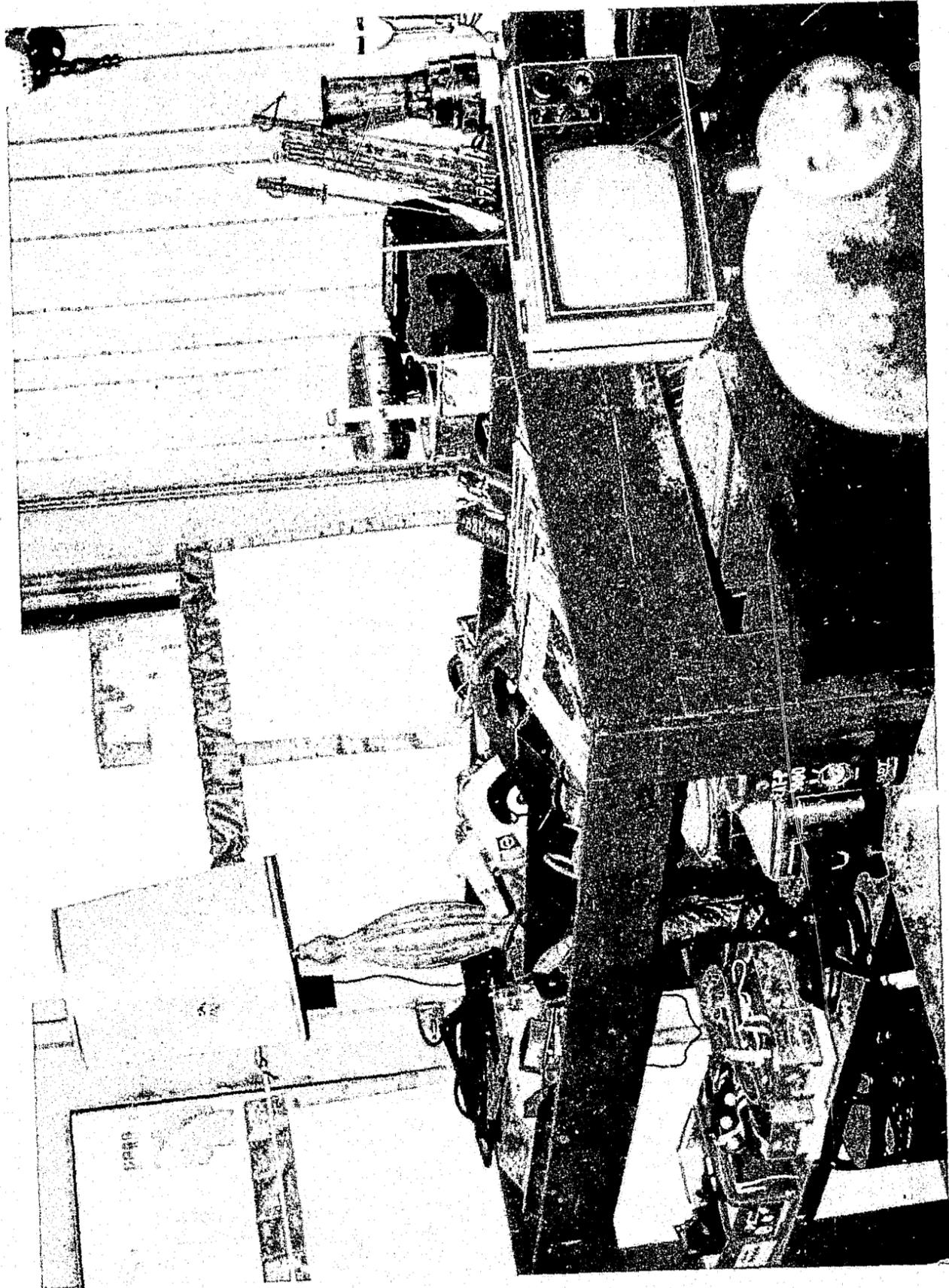


FIGURE 1. This photograph illustrates the manner in which the store was stocked with second hand items to establish the secondhand store cover.

-16-

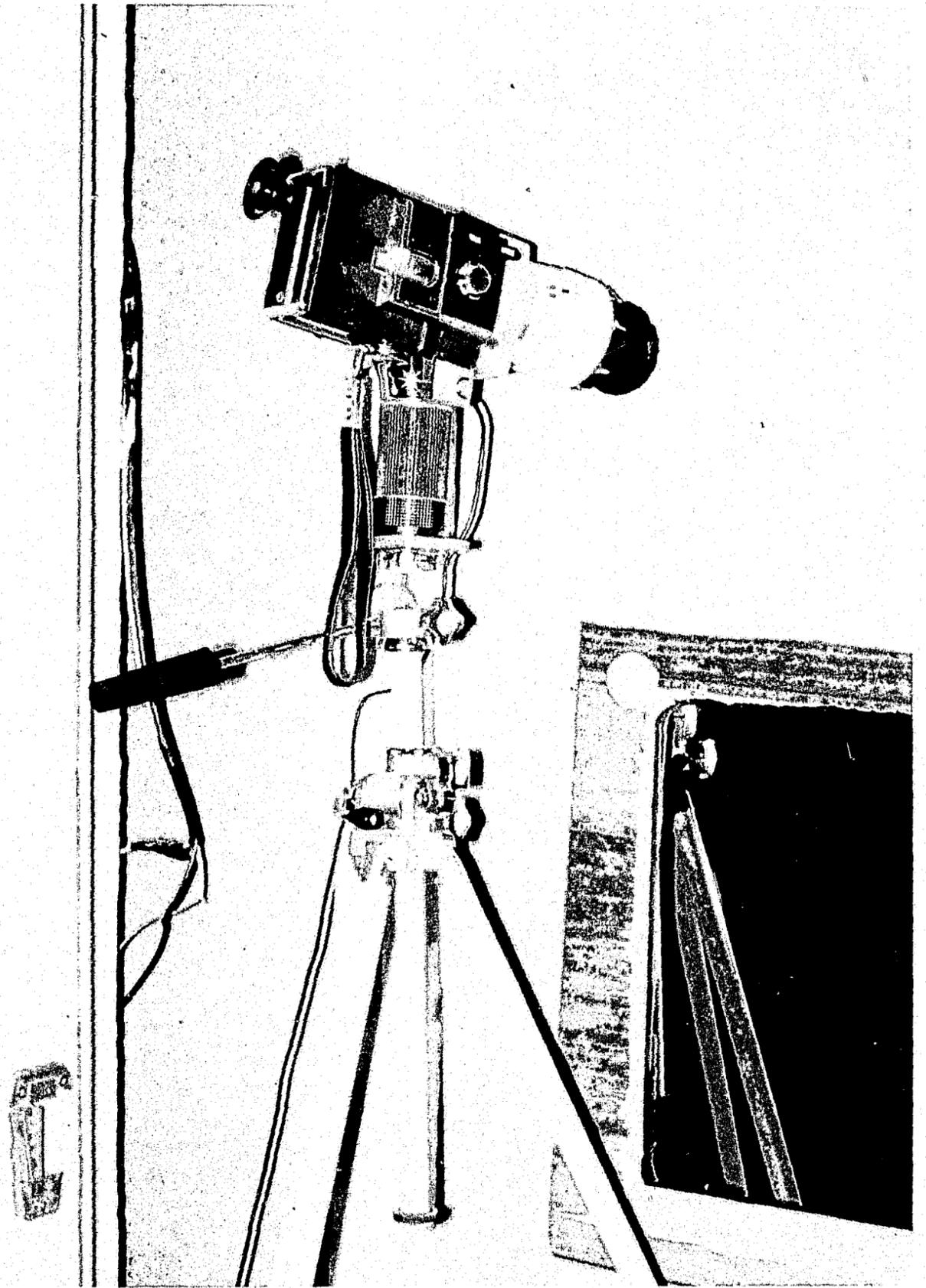


FIGURE 2. This photograph illustrates the permanent installation of the camera which was secreted in a back room in the store.

-17-



FIGURE 3. This photograph illustrates the camouflage utilized to hide the hole through which transactions were photographed. The hole is located below and slightly to the right of the letter "N" in the word "SALOON".



FIGURE 4. This photograph illustrates the calendar and clock which were within viewing range of the camera. Filming of these two items provided corroborative evidence of the date and the time of the transaction.

was recovered and a large number of prosecutable cases were generated by this pilot project. Yet the operation of Charlie's Secondhand Store cost the city of Albuquerque about \$12,500, excluding the officers' salaries.

The overhead for the entire operation, excluding officers' salaries, resulted in an outlay of approximately \$1,600. Approximately \$6,500 was expended on property which, after subsequent investigation, was identified as stolen and traced to its rightful owners. Approximately \$4,200 was expended on the purchase of property which has not yet been identified and traced. An ongoing investigation is being conducted by the Albuquerque Police Department in an effort to trace this property. As a result of expending \$10,700 on the purchase of property represented to be stolen, property was recovered having an estimated value of \$71,333.<sup>17</sup>

When compared with the results achieved, which are reported in the next section, it is obvious that the costs were most reasonable. The cost of obtaining the same results by traditional law enforcement methods would be prohibitive not only in terms of manpower and time, but also economically.

<sup>17</sup>Estimating the fair market value of stolen property is a difficult task. A rule of evidence allows an owner to give his opinion of the fair market value of property. In those instances in which property has not been traced, no such opinion evidence is available, and the only remaining way to value such property would be by expert appraisal. Since this was not feasible, the estimated overall value of recovered stolen property was projected by utilizing the figure of 15.3 percent, which represented the proportion of fair market value paid in the indicted cases in which the owners' opinions of value were available.

## V. RESULTS

As previously explained, the purposes of the undercover storefront operation were varied and included several goals, some of which can be measured in terms of tangible results, and some of which are intangible. The goal of generating prosecutable cases in an effort to curb the incidence of property crime in the Albuquerque area by having a deterrent effect can be measured in terms of tangible results. The success of the operation in this respect will be measured by several criteria, including the number of indictments, arrests, convictions, and plea bargains. Certainly the ultimate test of success of this phase of the operation is the number of convictions emanating from the storefront operation. Virtually all criminologists agree that the likelihood of an offender's getting caught and convicted is the most important deterrent to crime.

### A. Indictments

The defendants in the storefront cases were charged by way of secret grand jury indictments. Both state and federal grand juries considered evidence and returned indictments on storefront cases. Obviously, the large number of cases involved made it impractical to proceed against the defendants by way of information and preliminary hearing.

Two days were set aside for the purpose of presenting the storefront cases to the Bernalillo County Grand Jury. The indictments were prepared in advance, and the witnesses were notified and asked to appear telephonically. Because of the necessity of complete secrecy in the handling of the charging process, indictments were prepared by an attorney consultant to the Governor's Organized Crime Prevention

Commission and an assistant district attorney for the Second Judicial District. All case preparation was done in the offices of the Governor's Organized Crime Prevention Commission. A vast amount of secretarial support was necessary to complete the typing of indictments and other legal documents, and this was accomplished in secrecy by the secretarial personnel of the Governor's Organized Crime Prevention Commission.

The Bernalillo County Grand Jury heard evidence on May 14, and May 15, 1975, and returned true bills (indictments) against 37 storefront defendants, the indictments comprising 245 counts. Two more defendants were later charged by the grand jury. State charges emanating from the storefront operation included burglary, larceny, receiving stolen property, forgery, credit card theft, fraudulent transfer of credit card and unlawful carrying of a deadly weapon.

The most common offense charged, as would be expected from an operation of this character, was receiving stolen property. The grand jury returned 101 receiving stolen property counts. The next most common offense charged was 88 counts of larceny and this was followed by 53 burglary counts. See FIGURE 5 for a breakdown of the various types of offenses charged by the grand jury and the degree of offense each represents.

FIGURE 6 summarizes the numbers of each degree of offense charged and the penalties allowed by New Mexico law for each degree of offense. <sup>15</sup>

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<sup>18</sup>See next page.

<sup>18</sup>With regard to the sentencing authority for third degree felonies, Section 40A-29-3C, N.M.S.A., 1953 Compilation, provides:

"Where the defendant has been convicted of a crime constituting a third degree felony, the judge shall sentence such person to be imprisoned in the penitentiary for the term of not less than two (2) years nor more than ten (10) years, or to the payment of a fine not more than five thousand dollars (\$5,000), or to both such imprisonment and fine in the discretion of the judge."

With regard to the sentencing authority for fourth degree felonies, Section 40A-29-3D, N.M.S.A., 1953 Compilation, provides:

"Where the defendant has been convicted of a crime constituting a fourth degree felony, the judge shall sentence such person to be imprisoned in the penitentiary for the term of not less than one (1) year nor more than five (5) years, or to the payment of a fine of not more than five thousand dollars (\$5,000) or to both such imprisonment and fine in the discretion of the judge."

With regard to the sentencing authority for petty misdemeanors, Section 40A-29-4B, N.M.S.A., 1953 Compilation provides:

"Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence such person to be imprisoned in the county jail for a definite term not to exceed six (6) months, or to the payment of a fine of not more than one hundred dollars (\$100) or to both such imprisonment and fine in the discretion of the judge."

FIGURE 5

OFFENSE	DEGREE OF OFFENSE	TOTAL COUNTS
<u>BURGLARY</u>		
1. Residential	Felony - 3rd degree	42
2. Vehicular	Felony - 4th degree	5
3. Commercial	Felony - 4th degree	4
4. Structure	Felony - 4th degree	2
Total Burglary Counts:		53
<u>LARCENY</u>		
1. \$100 or less	Misdemeanor - Petty	11
2. \$100 - \$2,500	Felony - 4th degree	48
3. Exceeds \$2,500	Felony - 3rd degree	3
4. Firearm	Felony - 4th degree	26
Total Larceny Counts:		88
<u>RECEIVING STOLEN PROPERTY</u>		
1. \$100 or less	Misdemeanor - Petty	17
2. \$100 - \$2,500	Felony - 4th degree	54
3. Exceeds \$2,500	Felony - 3rd degree	4
4. Firearm	Felony - 4th degree	26
Total Receiving Stolen Property Counts:		101
<u>FORGERY</u>		
	Felony - 3rd degree	2
Total Forgery Counts:		2
<u>THEFT OF CREDIT CARD</u>		
	Felony - 4th degree	1
Total Credit Card Theft Counts:		1
<u>FRAUDULENT TRANSFER OF CREDIT CARD</u>		
	Felony - 4th degree	1
Total Fraudulent Transfer of Credit Card Counts:		1

(continued)

FIGURE 5 (continued)

UNLAWFUL CARRYING/ DEADLY WEAPON	Misdemeanor - Petty	
		1
Total Unlawful Carrying/Deadly Weapon Counts:		1
TOTAL COUNTS:		247

FIGURE 6

DEGREE OF OFFENSE	PENALTY	NUMBER CHARGED
Felony - 3rd Degree	2-10 years, N.M. State Penitentiary	51
Felony - 4th Degree	1-5 years, N.M. State Penitentiary	167
Misdemeanor - Petty	Not to exceed 6 months, County Jail	29
TOTAL OFFENSES CHARGED		247

At the conclusion of its term, the Bernalillo County Grand Jury which heard the storefront cases, issued a commendatory citation to the personnel involved in the operation. The grand jury commended the personnel involved for the "thorough investigation of fencing operations and the professional manner of presentation for indictments on May 14, and May 15, 1975." The grand jury was of the opinion that "the efforts by local authorities to reduce crime was greatly enhanced by the relatively inexpensive store operations." Further, the grand jury stated that it was impressed by the "well-planned and executed investigation of the fencing operation in the collection of admissible evidence for expedient prosecution."

Finally, the grand jury made an important recommendation concerning future innovative operations such as the storefront operation. The Bernalillo County Grand Jury said,

"Since the operation was the first action of this type in New Mexico by the Organized Crime Commission, we hope in the future that the New Mexico Legislators will observe the results and recognize the successful operation considering future funding of the Crime Commission activities."

In addition to the state charges emanating from the storefront operation, a federal grand jury indicted two defendants on federal firearms violations charges. The federal laws allegedly violated involved possession of an unregistered firearm, unlawful transfer of a firearm without paying tax and possession of a firearm by a convicted felon.

#### B. Arrests

Although the undercover store operation did not reveal a structured organization of burglars-thieves dealing with the store in the traditional "organized crime" sense, many of the store's "customers" knew one another on a personal basis and in some instances on a professional basis. Indeed, the agent-fences 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 surrounding the charging procedure. That there had been no "leaks" in security was manifest 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 6:00 a.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 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, through the efforts of Agent Bud Young who disseminated information to law enforcement agencies in the areas where it was suspected the defendants might go.

As of the date of completion 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 that no leaks occurred. Otherwise, the arrest effort would not have been so successful. Other-wise, 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.

#### C. Effect On Burglary Rates

An analysis by the Albuquerque Police Department showed that 1975 burglaries were exceeding the rate for 1974 by more than 30 percent prior to the arrest of most of the storefront defendants on May 16, 1975 and their subsequent incarceration for approximately one week while awaiting arraignment. As might be expected the number of burglaries dropped appreciably during the period of May 16-31, 1975. In fact, the rate was below the corresponding period for 1974.

#### D. Convictions

As of the date of the release of this report, 38 storefront cases involving 23 storefront defendants have been disposed of by the courts. Of these, seven cases involving six defendants were disposed of by jury trial. Convictions were obtained in all seven cases, with one defendant being convicted by jury in two separate cases. One jury trial ended in a hung jury and will be retried. Thirty-one cases involving sixteen defendants were disposed of through the process of plea negotiations with the district attorney's office.

In six cases involving five separate defendants nolle prosequis were entered by the district attorney's office. A nolle prosequi is a legal pleading which indicates that the district attorney does not desire to prosecute the case at this time. Two of the nolle prosequis were entered as a result of the victim filing affidavits of non-prosecution and the problem that New Mexico's Receiving Stolen Property statute does not encompass property received by embezzlement. In the case of two defendants, nolle prosequis were entered because the facts in the cases indicated that the property was acquired through embezzlement rather than being stolen. In three cases, nolle prosequis were entered because of the poor quality or non-existence of film and the problem of proving beyond a reasonable doubt the identities of the offenders. A nolle prosequi was entered in one case because of the unavailability of a material witness and the judge's refusal to grant a continuance.

Cases involving eleven storefront defendants are still pending.

## 1. Jury Trial

As mentioned previously, in the seven cases disposed of by jury trial, convictions were obtained in all seven cases. The most common defense encountered was that of entrapment. Entrapment is defined as "the inducement of one to commit a crime not contemplated by him, for the mere purpose of instituting a criminal prosecution against him," or as "the conception and planning of an offense by an officer and the procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer."<sup>19</sup>

The United States Supreme Court has recognized that deception is not forbidden since in every arrest there is a certain amount of entrapment in order to outwit criminal offenders. The United States Supreme Court in the style entrapment case of Sherman v. United States<sup>20</sup> recognized that "[c]riminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer." The Sherman court then went on to say, "However, 'A different question is presented when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.'<sup>21</sup> In defining what types of stealth and strategy are permissible, the United States Supreme Court has stated:

<sup>19</sup> 21 Am Jur 2d, Criminal Law, Section 143.

<sup>20</sup> 356 US 369, 78 S. Ct. 819.

<sup>21</sup> Sherman v. United States, 356 US, at 372, 78 S. Ct. at 820 quoting Sorrells v. United States, 287 U.S., at 442, 53 S. Ct., at 212.

"The fact that government agents merely afford opportunity or facilities for the commission of the offense does not constitute entrapment. Entrapment occurs only when the criminal conduct was the product of the creative activity of law enforcement officials. To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal."

In all the storefront cases in which the entrapment defense has been raised, the jury has rejected it and returned a guilty verdict, thus determining that the officers running the storefront operation had not induced the defendants to commit the crime, but had merely given them the opportunity for the commission of the offense.

## 2. Plea Bargains

The strength of the storefront cases and the successful prosecutions resulting in jury convictions have induced many of the storefront defendants to enter into plea negotiations with the district attorney's office. In plea bargaining the State permits a defendant to plead guilty to a reduced charge in return for a sure final conviction. A conviction resulting from a plea bargain cannot be appealed and dispensing with a trial results in a saving of time, money and manpower. Given crowded dockets and available prosecutors, defenders and courts, plea bargaining is considered by many as a necessary evil.

In one of the storefront cases, plea bargaining resulted in the dismissal of three third degree felony charges, five fourth degree felony charges, and three petty misdemeanor charges, in return for a plea to one fourth degree felony charge. This plea bargain resulted because of a previous plea bargain entered into between the defendant and the District Attorney's Office on or about April 2, 1975 in a

totally unrelated case. On or about April 2, 1975, the defendant pled guilty to charges of residential burglary and commercial burglary and was sentenced to serve three to fifteen years in the New Mexico State Penitentiary on those charges. In return for that plea, the District Attorney's Office agreed to drop all charges pending or under investigation at that time, including any crime against property which the defendant had committed up until the date of the agreement. The plea bargain excluded any violent crimes committed by the defendant. The reason for stating the plea bargain in these terms was that the defense attorneys and the assistant district attorney handling the case were aware of some cases which were under investigation by police officials, but which had not yet been referred to the District Attorney's Office.

The defendant was subsequently charged in three separate storefront cases with three third degree felonies, six fourth degree felonies, and three petty misdemeanors. All of these offenses allegedly occurred before April 2, 1975, and were thus precluded by the previous plea bargain except one third degree felony and two fourth degree felonies which allegedly occurred on April 18, 1975, sixteen days after the previous plea bargain. The defendant was allowed to plead to one of the fourth degree felonies which was not precluded by the previous plea bargain. He was sentenced to serve one to five years concurrently with the three to fifteen years to which he was sentenced in the previous case.

Thus, this defendant received immunity and escaped prosecution on three storefront cases, because of a previous plea bargain in which the District Attorney's Office agreed not to prosecute the defendant for

any crimes committed up to a certain date. The vice of this type of plea bargaining is obvious in this case. The assistant district attorney handling the previous plea bargain could not have had knowledge of the storefront cases because of the necessary secrecy surrounding the operation. Thus, this plea bargain was based on incomplete information, resulting in the defendant having escaped prosecution for three alleged burglaries, three larcenies, and five receiving stolen property charges.

It is felt that justice would be better served if the practice of granting broad-based immunity for unknown crimes, in return for a guilty plea, would be discontinued. Plea bargaining can only result in justice if it is based on complete information.

Those cases involving plea bargains resulted in sentences ranging from probation to the statutory maximum. The harshest sentence involved a defendant who pled guilty to ten storefront charges of burglary, larceny, and receiving stolen property. This defendant was originally indicted on thirty storefront charges. The defendant's attorney argued at sentencing that the defendant engaged in criminal conduct because of his addiction to heroin and that he should not be incarcerated because incarceration had not worked during four previous confinements. Citing the successful completion of three months with a drug treatment program, the attorney urged the court to commit the defendant to the drug treatment program. The court cited the defendant's long list of felonies and sentenced him to two to ten years on each of two counts of burglary, one to five years on each of four counts of larceny and one to five years on each of four counts of receiving stolen property, the terms to run consecutively. Thus,

the defendant was sentenced to a total of 12 to 60 years in the New Mexico State Penitentiary. He will be eligible for parole in four years.

#### D. Property Recovered

##### 1. Types of Property

During the 115 days Charlie's Secondhand Store was operational, agents purchased a vast variety of personal property. Several criteria governed the agent's selection of what to buy and what to refuse. Among the criteria employed were such factors as whether or not the customer admitted that the goods were stolen, whether or not cases had been made on the customer before, whether or not the goods could be readily identified as stolen and traced to their owners, and the ever-present consideration of budget limitations.

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 firearm purchasers, but because of the proclivity to violence when used in criminal violations, it was felt that a moral obligation existed to get stolen firearms out of the hands of the criminal element. A total of seventy-nine firearms were purchased; rifles, handguns and shotguns.

Nineteen calculators and adding machines accounted for the second most often purchased type of property. These were followed by sixteen televisions, 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.

##### 2. Nature of Acquisition of Stolen Property

The stolen property purchased by agents operating the second-hand store undercover operation was acquired in several types of property crimes perpetrated in the Albuquerque area and adjacent areas. Property was recovered from a total of 51 burglaries: 41 residential burglaries, 6 commercial burglaries, 3 auto burglaries and 1 structural burglary. Property was recovered from 16 larcenies. Thus, property was recovered from a total of 67 property crimes.

##### 3. Flow of Stolen Property

Property acquired by the storefront operation came from 15 burglaries 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, and a commercial burglary in Santa Fe. 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.

#### 4. Amount 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 was offered, the thief could become suspicious since 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 agent's cover could be jeopardized. Secondly, offering too high a price would lend itself to helping the defense establish the entrapment defense. 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 guilty knowledge the property disposed of was stolen.<sup>22</sup>

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 and 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 owner's opinion of the fair market value of the stolen property. This information was compiled from the indicted cases for which \$4,583 was spent for property having a fair market value, based on owners' opinions, of \$29,996.28. This represents an overall average of 15.3 percent of fair market value, or that a little over fifteen cents was expended for each dollar's worth of stolen property purchased. 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.

<sup>22</sup>State v. Zarafonetis, 81 N.M. 634, 472 P.2d 388 (Ct. App. 1970).

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 represented 1.9 percent of the fair market value of the stolen property.

Obtaining an estimate of the total value of property recovered in the whole operation is more difficult, since in the case of unidentified property, the owner's opinion of the value of his property is not available. The overall value of property recovered can be projected based on the 15.3 percent of fair market value figure obtained in the indicted cases. It is felt that the indicted cases represent sufficient data on which to base the overall estimate. Approximately \$10,700 was expended on the purchase of property represented to be stolen. Assuming that the officers paid approximately 15.3 percent of fair market value in the purchase of property for the overall operation, the value of property recovered would have an estimated value of \$71,333.

##### 5. 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, and 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 whether or not 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.

## 6. Operation Identification

Initiated in Monterey Park, California in 1963, "Operation Identification" has become a principal adjunct of citizen participation crime prevention programs throughout the United States. The "Operation Identification" programs seek to deter burglaries by encouraging citizens to mark their valuables with a unique, traceable number, name or other sign which can be used to establish and trace ownership of stolen goods. Frequently, identifiable markings or numbers are etched on valuables with a device provided by various law enforcement agencies. A recent study conducted for the National Institute of Law Enforcement and Criminal Justice by the Institute for Public Programs Analysis in St. Louis concludes that while "Operation Identification" apparently helps deter burglaries at participating households, it does not affect community-wide levels of residential property theft. This conclusion is reported in the National Evaluation Program Phase I summary report entitled, "Operation Identification Projects: Assessment of Effectiveness." The research which led to the conclusions espoused in this report was based on a review of previous evaluations, a telephone survey of 65 ongoing programs, an on-site visits to 18 current projects.

Other interesting findings reported are that "Operation Identification" projects cannot be shown to have increased either the apprehension or conviction of burglars, do not significantly reduce opportunities to dispose of stolen property and do not appreciably increase the recovery or return of stolen property.

While these findings may very well be true when traditional law enforcement methods are utilized in the investigation of property crimes, they are certainly subject to closer scrutiny in the context

of the undercover storefront operation approach to property crime.

Experience in the Albuquerque undercover storefront operation indicates that operation identification program markings certainly increased the likelihood of the apprehension and conviction of burglars. In the storefront situation, stolen property was sold to officers and at the time of sale representations were made by the seller that the property was "hot". In many instances, the "customer" went on to indicate the nature of the circumstances of his illegal acquisition of the property. However, in no instance did the "customer" indicate more than the approximate area of the city or the street from which the property was stolen. While this made tracing the property easier, assuming the seller was truthful, still the necessity to find the owner of the property existed. In those instances in which operation identification markings were found on property, the tracing of the property to its rightful owners was made much easier. Also, the markings made positive in court identification of valuables by their owners certain and sure with no doubt, thus, obviating the usual problem of proving beyond a reasonable doubt, in the absence of distinguishing characteristics, that the goods were stolen. It was also found that the people who had taken the time to participate in operation identification were more responsible in recording serial numbers, thus, making the proof that the item in question which was sold at the storefront was the same item that was stolen.

Operation identification markings can also play another significant part in the conviction of burglars in the storefront situation. In a disposing of stolen property case, the State must prove beyond a reasonable doubt that the defendant knew or believed that the property was stolen. If the defendant does not admit this knowledge or

belief, it must of necessity be proved by circumstantial evidence.

The fact that an item bears another's social security number is valuable circumstantial evidence when considered with other available evidence on the issue of establishing the knowledge or belief on the part of the defendant that the property was stolen. Similarly, while operation identification markings may not significantly reduce opportunities to dispose of stolen property, the markings constitute valuable circumstantial evidence in the case of the receiver of stolen property. They are evidence of ownership, and as such should put a prudent person on notice that the property he is about to purchase may, considering the surrounding circumstances, be stolen. It can certainly be argued that a fence, merely because of the enhanced traceability of property which bears operation identification markings, would be more likely to refuse this type of property than property with no traceable markings at all. Knowing this, it is more likely that a thief would bypass a house having operation identification notification and burglarize a house having less traceable property. This is consistent with the finding that operation identification programs provide some burglary deterrence at the homes of project participants.

During the storefront operation, approximately \$6,500 was expended to purchase property which was able to be traced to its rightful owners. Another \$4,000 was expended in the purchase of property represented to be stolen, but which could not be traced and identified. Significantly, all property sold to the store bearing operation identification markings was traced, identified and available for use in evidence in resulting criminal prosecutions.

For these reasons, operation identification markings on property obtained in the storefront undercover operation increased recovery and return of stolen property and increased the apprehension and conviction of burglars. At the very minimum, it made the job of the backup personnel easier in the investigatory effort of tracing the property and identifying it as stolen. Further, it is believed that the "prudent fence" would be less likely to buy property with operation identification markings. If a fence does purchase such property, the markings may be very helpful in securing his conviction as a receiver of stolen property.

## VI. PROFILE OF THE STOREFRONT OFFENDER

Thirty-seven of the storefront defendants were male, while only two were female. The average age of the indicted storefront offender was twenty-eight years.

Checks of previous criminal histories indicated that many of the storefront defendants were convicted felons at the time of their trans-actions at the store. Very few storefront defendants were first time offenders.

Perhaps the most significant finding was that seventy-two percent of the indicted storefront defendants or 28 out of 39 were heroin addicts. The relationship between drug abuse and crime is considered in some detail in the next section.

## VII. DRUG ABUSE AND CRIME

That a relationship exists between drug abuse and crime, especially property crime is a known fact. The President's Commission on Law Enforcement and Administration of Justice in its report, "The Challenge of Crime in a Free Society," succinctly notes that, "drug addicts are crime prone persons."<sup>23</sup> While drug addiction itself is not a crime,<sup>24</sup> it is certainly a causative factor leading to drug and non-drug related offenses. By definition, an addict has a constant need or desire for drugs, whether his need be psychological or physiological. The illicit drugs must be purchased and possessed before they can be consumed by the user. State and Federal laws proscribe and make criminal the sale, purchase and possession of certain drugs, and thus, it is impossible for the addict to consume drugs without violating the criminal law.

<sup>23</sup> President's Commission on Law Enforcement and Administration of Justice, "Commission Report: The Challenge of Crime in a Free Society" (Washington, D.C.: U.S. Government Printing Office, 1967) p. 221.

<sup>24</sup> Drug addiction has never been a crime under federal law, and in 1962 the Supreme Court of the United States struck down as unconstitutional a California State Law making it a crime to be a drug addict. The statute in question did not require any proof that the defendant either bought, used or had drugs in his possession. The mere status of being an addict, which could be established by needle marks in the arm, was sufficient for conviction. The Supreme Court in Robinson v. California, 370 U.S. 660, 82 S. Ct. 1417, regarded addiction as an illness rather than a crime, and held that ninety days in jail for being ill was cruel and unusual punishment.

More important for this study is the relationship between drug addiction and property crime, a non-drug offense. One of the purposes for which the undercover store operation was initiated was to gather information on the question of the relationship between drug addiction, especially heroin addiction, and property crimes.

As the President's Commission on Law Enforcement and Administration of Justice notes, "the non-drug offenses in which the heroin addict typically becomes involved are of the fund-raising variety."<sup>25</sup> This is true since illicit drugs are a very expensive commodity. An LEAA Technical Assistance Publication, "Police Guide on Organized Crime,"<sup>26</sup> suggests that a heroin addict spends an average of at least \$30 - \$40 daily on drugs. While the price of drugs is not uniform and fluctuates, it is never low enough to permit the addict to obtain it by monies obtained by lawful means. Thus, to sustain his daily habit, the heroin addict must resort to criminal activities, generally theft of property. Stolen property generally must be converted to cash in order to obtain illicit drugs, and it must be converted quickly since possession of the stolen property enhances the thief's chances of being apprehended.

<sup>25</sup> President's Commission on Law Enforcement and the Administration of Justice, "Commission Report: The Challenge of Crime in a Free Society" (Washington, D.C.: U.S. Government Printing Office, 1967) p. 222. The Commission went on to note that "assaultive or violent acts, contrary to popular belief, are the exception rather than the rule for the heroin addict, whose drug has a calming and depressant effect."

<sup>26</sup> "Police Guide On Organized Crime," Law Enforcement Assistance Administration, (Washington, D.C.)

Stolen property cannot be converted at full value and it is estimated that the addict receives as cash no more than twenty percent of the value of stolen goods. Assuming that on the average the addict spends \$30 - \$40 a day on drugs, he must steal as much as \$150 - \$200 worth of goods each day.

Realizing that drug use is a causative factor of property crime, the backgrounds of the storefront defendants were studied in an effort to ascertain how many of them were drug abusers, and particularly how many of them were heroin addicts. Their criminal histories were reviewed to ascertain if they contained drug arrests or convictions and the undercover agents were debriefed concerning conversations in which customers admitted addiction or use of drugs. Also, defense attorneys' representations that their clients were drug abusers or heroin addicts at sentencing were considered.

As a result of this research, it was determined that twenty-eight of the thirty-nine indicted storefront defendants, or seventy-two percent, were heroin addicts. The frequent transactions of these defendants with the store, some on an almost daily basis, as well as their conversations with the agent-fences, certainly support the strong relationship between drug abuse and property crime, which was described above.

## VIII. OBSERVATIONS AND RECOMMENDATIONS

### A. Receiving Stolen Property Statute

The current New Mexico receiving stolen property statute is found in Section 40A-16-11, N.M.S.A., 1953 Compilation. It provides that:

"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."

The statute was amended to this form in 1972. The previous receiving stolen property statute provided that:

"Receiving stolen property consists of buying, procuring, receiving or concealing anything of value, knowing the same to have been stolen or acquired by fraud or embezzlement."

By leaving the words "or acquired by fraud or embezzlement" out of the statute, the 1972 legislative amendment raises a serious legal question. Under the present statute, can a person be convicted of knowingly receiving, retaining or disposing of goods which have been embezzled or acquired by fraud, or is the statute limited to the person who knowingly receives, retains or disposes of stolen property? Most likely, the statute is limited to knowingly receiving, retaining or disposing of stolen property. Rules of statutory construction generally provide that the legislature knows the law, and most likely a court would hold that the omission of the words "or acquired by fraud or embezzlement" was done knowingly and with the legislative intent to change this aspect of the law. Other jurisdictions have held that under a statute providing for punishment of receivers of goods taken by burglary or housebreaking there can be no convictions where the goods were taken otherwise; but there is no variance between an averment that the goods were "stolen" and proof that they were taken

by robbery or by burglary, since every robbery or burglary includes a larceny. Since fraud and embezzlement are separate and distinct statutory crimes from larceny in New Mexico, it is anticipated that Section 40A-16-11, in its present form does not apply to persons who knowingly receive, retain or dispose of property acquired by fraud or embezzlement. Thus, in two storefront cases, defendants could not be proceeded against under the receiving stolen property statute, because the facts indicated that the property had been acquired through embezzlement rather than by larceny, burglary or robbery.

Thus, it is recommended that Section 40A-16-11, N.M.S.A., 1953 Compilation, be amended to include not only stolen property, but property acquired by fraud or embezzlement. This would fill the gap of what very well may be a void in the current law.

### B. New Mexico Criminal Uniform Jury Instructions

Another question concerning the current status of New Mexico's receiving stolen property law is raised by the recently promulgated New Mexico Criminal Uniform Jury Instructions. The New Mexico Criminal Uniform Jury Instructions were promulgated by Supreme Court Order of June 24, 1975, and are effective for all criminal cases filed in the District Courts on or after September 1, 1975.

It is elementary law that one who steals property, or that one who is a principal to the theft thereof, cannot be convicted of receiving, buying, concealing, or aiding in concealing the property stolen. Thus, it is error for the trial court to permit the jury to convict an accused of both offenses. The reason for the rule is that the statutes making

the receiving of stolen goods a substantive offense are not intended to punish the thief by way of a double penalty, but are directed against those who would make theft profitable. So, where one steals goods under such circumstances that the receiving thereof is a part of the theft itself, he cannot be convicted of receiving the stolen goods.

The rationale for the rule is logical and easily understood in the case of a person who himself steals goods and thus receives or retains them. He is guilty of the caption and asportation of the goods and logically should be convicted of the crime of larceny. Here the asportation of the goods may be viewed as continuous.

But the logic is less persuasive in the case of the person who steals goods himself, and then also disposes of them, for in such a case the theft and disposal are two separate and distinct acts. Both acts are proscribed as criminal by the statutes of New Mexico. Such a fact situation was considered by the New Mexico Court of Appeals in the 1974 case of State v. Mitchell, 86 N.M. 343, 524 P. 2d 206. In the Mitchell case, the defendant was charged with burglary contrary to Section 40A-16-3, N.M.S.A., 1953 Comp., and receiving stolen property of a value in excess of \$100.00 but less than \$2,500.00. contrary to Section 40A-16-11, N.M.S.A., 1953 Comp. He was acquitted on the burglary count and convicted on the receiving stolen property count. The applicable receiving stolen property statute was the present statute which provides that "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".

On appeal the defendant cited authorities to the effect that one who is a thief cannot be convicted of "receiving" the property he stole because the theft and receipt are the same act. The New Mexico Court of Appeals stated that, "those authorities are inapplicable when the record supports the conclusion that the defendant 'disposed of' property which he may have also stolen." (emphasis added). The Court went on to say that "the theft and disposal are different acts." The Court also pointed out that defendant was convicted of only one of the counts and that defendant's authorities proscribed only conviction for both offenses and not the charging of both. Thus, the Court did not reach the question of whether the defendant could be convicted of both the theft and disposing of stolen property.

The status of the law on this point was settled until the promulgation of the New Mexico Criminal Uniform Jury Instructions. The Mitchell case stood for the proposition that where the record supported the conclusion that a defendant "disposed of" property which he may also have stolen, the principle that one who is a thief cannot be convicted of "receiving" property he stole because theft and receipt are the same act is not applicable, and a defendant could be properly convicted of receiving stolen property, because the theft and disposal are different acts.

The New Mexico Criminal Uniform Jury Instructions include an instruction on the essential elements of receiving stolen property. It is a mandatory instruction which must be used without alteration. The first element of the instruction provides that "The (describe the property in question) had been stolen by another."<sup>27</sup> This instruction has the

<sup>27</sup>The entire instruction is included as Appendix C.

effect of overruling the Mitchell decision and thus, under the instruction, the principle that the theft of property and its disposal are different acts is overruled.

It is believed that the logic and rationale of the Mitchell case is sound and that the theft of property and the disposal of the same property by one person are two separate acts which may be proscribed by the legislature and for which a defendant may be charged and convicted.

Thus, it is recommended that the New Mexico Criminal Uniform Jury Instruction relating to the essential elements of receiving stolen property be modified so that the first element is only applicable in cases in which a defendant is alleged to have received or retained stolen property. The element should not be included in the charge to the jury in a case where a defendant is alleged to have "disposed of" stolen property. The principle that one who is a thief cannot be convicted of "receiving" the property he stole because the theft and receipt are the same act is simply not applicable in the case of a person who steals property and then disposes of the same property. The theft and the disposal are different acts, each declared unlawful by the legislature.

#### IX. CONCLUSION

The Time Magazine cover story, "The Crime Wave," quoted previously, makes a significant observation about the money spent by the L.E.A.A. in its war against crime. The article points out that while a number of important things have been learned from L.E.A.A. and other research, unfortunately most of the findings have tended to show what does not work. The storefront operation is an exception to the general rule. It does work and its effectiveness is in the area where it most counts. Virtually all criminologists agree that more important than any harsh penalty, is increasing the likelihood of an offender's getting caught and convicted. The storefront operation pilot project has proved that the concept provides a relatively inexpensive vehicle for increasing the property crime perpetrator's likelihood of being caught and convicted. The storefront operation generated prosecutable cases and indeed led to conviction of many offenders.

Of tremendous importance is the valuable intelligence information gained as a result of the operation. The information gained on the modus operandi, identities, and associations of burglars and thieves and the scope of operations and markets of the professional fences operating in the Albuquerque metropolitan area will provide a basis for the formation and implementation of other strategic innovations to be used in the continuing war against property crime and fencing. The Governor's Organized Crime Prevention Commission intends to continue its leadership and assistance in combatting the professional fence since fences constitute a particularly vulnerable aspect of professional crime. The lessons learned and intelligence

gained from this pilot project have provided much of the information needed for new and innovative techniques and approaches currently being considered and evolved by the Commission.

## Store Front Cop Sets Up 'Reunion'

APPENDIX A

LONG BEACH, Calif. (AP) — Many of the people who dropped by Jim's Second-Hand Store to do business are having a reunion — in court.

The army store, opened last August and closed Jan. 2, looked like a hundred others scattered along run-down streets. Its hand-lettered signs promised ready cash for furniture, old clothes and other items.

Inside was the random litter of aging record players, racks of wrinkled clothing, a few tools, cheap guitars and

two or three worse-for-wear bicycles.

But on the street, the word was that this second-hand store was different. Its bearded, young proprietor, who called himself Jim McEvoy, would buy anything — stolen or not — from a "hot" accordeon to a zebra-skin jacket.

And he paid a good price.

IT SOUNDED alluring, and it attracted sellers of "hot" merchandise.

The only problem was that Jim McEvoy was actually

officer Jim Shinn of the Long Beach Police and every transaction was recorded by a tiny television camera hidden behind a nonoperable aquarium. Thieves who had sold their goods there were tracked down by detectives.

"It surprised the hell out of a lot of people when they found out the cops had been running this store," said Detective Tim Chamberlain, who helped set it up.

Chamberlain expects to get that look during the next few months when most of the store's customers turn up in court on a variety of criminal charges, including conspiracy, burglary, shoplifting, grand theft and possession of stolen property.

"Some of those damned crooks even showed Jim how they kicked in doors and slipped locks to break into certain places," said Detective Al Summers, who worked with Shinn and Chamberlain at the store. "And we've got the whole

thing on video tape, which means their lawyers are going to take one look, figure we've got a dead bang case and plead their clients guilty."

The venture, opened last Aug. 21, was one part of a crime prevention and burglary suppression project

initiated by the Long Beach Police Dept. under a \$255,000 federal grant from the Law Enforcement Assistance Administration.

THE STORE closed after police believed that its "cover" was suspected by some.

Before the store closed last month, the burglary suppression team received between \$150,000 and \$200,000 worth of stolen

merchandise.

They recorded buys from more than 40 different suspects on video tape, broke up several major burglary rings and cleared scores of unsolved burglaries.

"We even managed to sell about \$3100 worth of legitimate items from the department's unclaimed property lockers to walk-in customers," Summers said.

The idea for the second-

hand store originated with Detective Sgt. John M. Locke after he and several Long Beach officers studied a similar operation in Sacramento.

Similar schemes have proved successful in New York, Honolulu and Sacramento, and others are currently operating in other California cities.

## Police Posing as 'Fences' Seize 41 in Bronx for Stolen Goods

By EMANUEL PERLMUTTER

Forty-one burglary suspects, most of them lured by the promise of \$5,000 in counterfeit currency, were captured Friday night and early yesterday as the police sprung a trap in a west Bronx store where undercover detectives had been "fencing" stolen goods for six months.

So authentic had been the police impersonation of fences that two burglary suspects who had gone to Puerto Rico and committed hotel-room thefts had called to say they needed money to get back to the Bronx with their loot.

The undercover policemen sent the two suspects tourist-rate airline tickets so they could come back to New York, where they allegedly made a deal with the police fences for the stolen items.

On another occasion, a suspect displayed a handsome pistol while in the store to sell some stolen items. The police men had admired the weapon, and when the suspect's girlfriend broke off with him later, she remembered the officers' interest in the gun, stole it from him and sold it to them.

More than \$500,000 worth of stolen property had been purchased at the store by the police with the assistance of Federal authorities. The suspects had allegedly received about \$55,00 for the stolen firearms, cameras, television sets, credit cards and other items.

Friday night, the suspects were told there would be at least \$5,000 worth of counterfeit money for each if they came to the store, at 2701 Decatur Avenue, which had been used for the police fence operation. They also had been told that with the bogus money, they could buy merchandise that the "fences" would buy from them on Monday for one third the sale price.

### 48 Suspects Seized

Twenty-four of the suspects were arrested Friday night and 17 yesterday. An additional 31 suspects are being sought under indictments that have been handed up by a Bronx grand jury charging the 72 with crimes ranging from possession of stolen property to burglary. Each of the defendants faces up to seven years on each count if convicted.

The arrests and the ending of the fence operation were announced jointly yesterday by the Bronx District Attorney, Mario Merola, and the chief of detectives, Louis C. Cottell, at a news conference in Mr. Merola's office.

Chief Cottell said the operation had been started last April after the receipt by the police of a Federal grant from the Law Enforcement Assistance Administration to set up the fence activity. When guns began to turn up at the store, an agent from the Bureau of Alcohol, Tax and Firearms was assigned to work with the six detectives who were acting as fences.

The store used by the police had formerly a Chinese laundry. Other detectives took an apartment across the street and kept in contact with the store through closed-circuit television setup. All the transactions between the suspects and the fences were recorded with videotape and with a 35 mm. camera. All conversations in the store were logged on a tape recorder.

### Description of Loot

In addition to 38 handguns, shotguns and other arms, the police purchased \$100,000 worth of credit cards from major companies and department stores.

So brisk was the business at the Bronx store that on one occasion Detective Thomas Ferrick had to go to the apartment across the street to borrow money for a purchase.

Detective William Carreras, who had acted as paymaster in the fence operation, said yesterday:

"I had to make it look authentic. I would refuse to buy stuff that didn't seem valuable, so that the burglars would not suspect it was a police plant."

Detective John Fasullo recalled one occasion when a suspect rode into the store on a bicycle with his loot, sold it and bicycled away.

The police were confronted with a problem when a man came in to sell thousands of dollars of Social Security and other government checks that he had stolen from mailboxes.

He had been stealing at so fast a rate that he was arrested by other policemen, who turned him over to postal authorities.

In order to forestall Federal prosecution, he offered to inform on the alleged fences to the Government, but he subsequently jumped bail and is at large.

## APPENDIX C

### RECEIVING STOLEN PROPERTY — ESSENTIAL ELEMENTS

16.40

For you to find the defendant guilty of receiving stolen property [as charged in Count \_\_\_\_\_]<sup>1</sup>, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The \_\_\_\_\_ had been stolen by another; describe the property in question
2. The defendant [acquired possession<sup>2</sup> of]<sup>3</sup> [kept] [disposed of] this property;
3. At the time he [acquired possession<sup>2</sup> of]<sup>3</sup> [kept] [disposed of] this property, the defendant knew or believed that it had been stolen;
4. The property had a market value<sup>4</sup> of over \$ \_\_\_\_\_;<sup>5</sup>
5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

### USE NOTE

1. Insert the count number if more than one count is charged.
2. Use Instruction No. 1.20 if possession is in issue.
3. Use only applicable bracketed phrase.
4. See Instruction 16.01 for definition of market value.
5. This bracketed provision need not be used if the property is a firearm with a value of less than \$2500.00.

**END**