

**Safe Burglars Strike in San Jose:
The 1948 Robbery of the
Pacific Telephone and Telegraph Company**

**An Essay Presented to the California Pioneers
of Santa Clara County**

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Introduction

"...documents do not suddenly materialize, in one place or another, as if by some mysterious decree of the gods. Their presence or absence in the depths of this archive or that library are due to human causes which by no means elude analysis."

-Marc Bloch, Professor of Medieval History

A dilapidated cardboard box tucked under a workbench in Bart Collins's garage provided the genesis for this story of crime in the mid-20th Century. Collins, who was appointed to the San Jose Police Department in 1935 and eventually served as Chief of Detectives (1951-1974), had a love for history. As a result, he left his own little archive to be sorted out at a later time.

Among the many news articles and other records, a few subjects stood out for their significance to the City of San Jose. One of these, the 1948 Robbery of the Pacific Telephone and Telegraph Company, resulted in a nearly two-year, nationwide search by the Federal Bureau of Investigation (FBI). One of the two robbers, Emery Lee Downs, was subsequently placed on the FBI's original "Ten Most Wanted List," and the search for him, his eventual arrest, and the two trials that followed garnered widespread publicity.

A trove of primary sources that survived the past 67 years provided insight into the times relevant to this paper. Collins taught courses in both Criminal Investigation and Advanced Criminal Investigation in the Department of Administration of Justice at San Jose State College (now San Jose State University). One of his lecture outlines focused on the crime of safe burglary that was prevalent in the 1930s and 1940s; in another lecture, he stressed the importance of writing down notes from interviews and interrogations as soon as

possible for later use - possibly in court. Thus, a detailed, eight-page, single-spaced typewritten transcript of the cross-country trip extraditing Downs by car, used during his testimony as a chief witness in the two Downs trials, was also left in the cardboard box.

Through the Freedom of Information Act (FOIA), the writer was able to obtain nearly 900 pages of Downs's 1100-page FBI file that details the robbery in San Jose and the subsequent exhaustive search for him. It has been an invaluable resource for the writing of this topic, and many of the details and descriptions herein derive from that source. At the time of his arrest and extradition hearings in Florida, the St. Petersburg Times, The Florida Times, the Tampa Morning Tribune, and the Florida State News provided extensive coverage. The San Jose Mercury Herald, the San Jose Mercury News and the San Jose Evening News provided detailed coverage of the robbery and the two trials that ensued.

Although the FBI's "Ten Most Wanted List" (available online) names the subject as Lee Emery Downs, other reports state, in addition to his many aliases, Emery Lee Downs. Since his death certificate lists him as Emery Lee Downs (as reported by his sister) the writer has chosen to use that name.

The intent of this paper is not to call attention to the career of a widely known criminal but rather to bring together a piece of mid-20th Century history that focused on San Jose. Although horticulture was still the Santa Clara Valley's leading industry in the late 1940s with Santa Clara County ranking tenth of all counties in the nation in farm wealth, the region was transitioning into the fastest

growing industrial area in the West. (1) There was growing affluence, and with that, money was a lure for the safe burglars who trolled the West Coast in search of their prey.

Downtown San Jose Circa 1948

Downtown San Jose was the hub of activity for the city's residents, and many major stores and businesses were located within the perimeters of Market, First, and Second Streets between San Carlos and St. John's Streets. The intersection of First and Santa Clara Streets, the heart of San Jose, was the location of the two major banks: The First National Bank, which advertised itself in the city directory as a "home owned independent bank," and the Bank of America.

Residents often stopped in to pay their bills, in cash or by check, at the local establishments. These monies were subsequently stored in safes usually located in a cashier's office on site. Police officers, working in pairs, routinely made the rounds of these establishments to pick up money and transport it in paper bags or bank bags to the local banks. (2)

According to Polk's 1947 San Jose City Directory, there were 99 members of the San Jose Police Department operating out of one central station. By 1949-50, that number had grown to 116. (The 1948 volume of the City Directory is missing). The officer assigned to "walk the beat" at First and Santa Clara streets had a prestigious assignment; his duty was to "help the little old ladies cross the street, to rub noses with business people, and more importantly to make sure that no bank robberies took place at the two major banks." Depending on the sergeant's orders, the perimeters of this beat might have been just the four corners at Santa Clara and First Streets or out to St. James Street on the north and San Fernando Street to the south. (3)

Sometime around June 1, 1948, Emery Lee Downs arrived in San Jose driving a 1947 Oldsmobile convertible bearing the Nevada license 23941. (It was later reported that the automobile had been stolen). Using the alias of C. E. Gardner, he checked into the Cottage Court Motel on Bayshore Highway and began to "case" the downtown area for his next target. He ultimately settled on the Pacific Telephone and Telegraph Company that was providing service to the nearly 47,000 telephones in the area. (4) According to the records maintained by the company's cashier, approximately \$5,000 in cash and \$9,500 in checks were stored in the safe - waiting for the taking on the night of June 3, 1948.

The Robbery at the Phone Company

Shortly before midnight on June 3, 1948, two unmasked, neatly-dressed men wearing light pigskin gloves and carrying heavy caliber automatic pistols entered the office of the Pacific Telephone and Telegraph Co. located at 70 South Market Street in San Jose, California, in order to make some easy money. Ira Miller and Sidney C. Rogers, two janitors who arrived to work at 11:45 p.m., encountered the burglars breaking into the safe and were ordered to lie down on the floor. The men were bound and gagged using paper towels and the sash cords off the venetian blinds and were warned they would not be harmed as long as there was "no monkey business." The two janitors heard the robbers "crack" a large Mosler fireproof safe in the cashier's office before they saw them casually saunter off with a metal wastebasket stuffed with money.

Although the bound and gagged janitors did not see the actual opening of the safe, they heard the pounding of steel instruments. This writer found that there were two differing accounts as to how the safe was "cracked." That night, the two janitors had indicated to local reporters that an explosive had been used to blow the outer door of the safe. Thus, the headline in the San Jose Mercury Herald on June 4, 1948, read "Bold Robbers Blow Phone Headquarters Safe, Escape." Further, on June 5, the caption accompanying a front-page photo of the crime scene referred to the debris left by the "blast." However, documents in the FBI file state that San Jose Police Department officials had reported that the safe was broken into by drilling a 3/4" hole in the upper left-hand corner of the door on the side opposite the hinges. A heavy crowbar was used to force

the door open, and the combination and locks were apparently broken by use of a sledgehammer. Law enforcement officials knew this technique as a "peel job." In addition to noting the tool marks (which could later be matched to a burglar's cache of tools) officers assigned to the investigation followed the standard protocol of gathering evidence including specimens of the safe's fire-proofing material, package, label, and name of the safe's manufacturer. No fingerprints were found.

In short order, police were able to identify Emery Lee Downs as one of the two robbers. Using information from witnesses outside the building, they ascertained that the two robbers drove off in a yellow convertible coupe (later determined to be stolen) with a Nevada license that had been parked out front of the building for some time. Since it was a pattern for high-profile burglars and robbers to stay at auto courts or trailer camps in or near the vicinity of the city in which they planned their next job, police routinely canvassed them immediately following a crime. During a careful check of all such in the vicinity, officers located the registration of C. E. Gardner at the Cottage Court Motel and identified it as being in Downs's handwriting.

Downs and an unidentified accomplice were also considered suspects in a similar safe job netting \$5,000 at the Garibaldi Hotel in Santa Cruz during the first week of July 1948. Although Clifford J. Judd was arrested in August 1948 as a possible suspect in both cases, he was later released because of lack of evidence. It was never determined who Downs's accomplice was that night in San Jose, and typical of the "wise guy" he never talked.

On June 23, 1948, a criminal complaint charging Emery Lee Downs with the crime of burglary and robbery was filed in the Police Court in and for the City of San Jose before Judge Percy O'Connor. District Attorney Napoleon Menard requested the United States Attorney at San Francisco to issue a federal warrant for Downs's arrest as he was alleged to have fled interstate in order to avoid prosecution for the crime of burglary. On August 3, 1948, the warrant was issued and the FBI took over the case. Menard stated that in the event of Downs's apprehension, he would extradite him from any place in the United States.

The Modus Operandi of the mid-20th Century Safe Burglar

Modus operandi: a method of operating or functioning. A person's manner of working.

The general rule in law enforcement in the 1940s was that a safe burglar would follow a given modus operandi throughout his career. All safes had doorplates built of steel plate with interiors of cast iron, fire insulation, and metal connectors such as spindles and handles made of lightweight metal. A safe burglar had to come prepared to the scene of the intended crime according to his modus operandi with the tools to fit his method in opening safes. These might include: chisels, hacksaws, tools for boring holes, strong pointed bars, nitroglycerin, soap, acetylene torches, and batteries. Downs had a reputation of being skilled in opening a safe by any known method but specialized in the "peel" job. FBI records in August 1948 described him as having a long criminal history and as being experienced at "peeling" safes.

While Downs left no fingerprints at the Pacific Telephone and Telegraph Co., he left two important clues instead: his modus operandi and the fact that he never disguised his face during the robbery. This, in addition to the identification provided through the license plate on the car -- and his reputation throughout the West as an elite, skilled and prolific safe burglar -- quickly led authorities on his trail.

Emery Downs and the Troop Gang

Emery Lee Downs was born in Butte, Montana, in 1906. His criminal record dated back to August 22, 1920, when at the age of 14 he was sentenced to an Idaho prison for second-degree burglary. Thus began a long, steady descent into a career of malfeasance marked by repeated burglary, robbery, and pimping offenses. He had a penchant for gambling, women, and luxury automobiles - all of which required money - usually acquired illicitly. By the time of the San Jose robbery, Downs had spent twenty years in penitentiaries in Idaho, Washington, Utah, and Oregon. While out of prison, the peripatetic Downs was constantly on the move and had no permanent home, thus making his whereabouts difficult to trace.

To law enforcement officials, Downs was "a wise guy" and a braggart. He preferred to do things "in style" and was skilled at "learning the ropes" in order to accomplish his wishes. He was fond of fishing and bragged about knowing all of the best fishing spots in the United States. He was also adept at changing his alias, location, and hair color. Over the years, he had been involved in several shooting scrapes and was thus reported to be armed and extremely dangerous.

Ex-cons always know ex-cons, and Downs was a veteran ex-con. When he was not in prison, he teamed up with his "colleagues" to make money in order to maintain the lavish lifestyle to which he had become accustomed. This seasoned group was referred to as "the Troop Gang" and operated throughout Idaho, Washington, Oregon, Utah, and California. Sobriquets of these men included such terms as "The Galloper," "The Goat," "Apples," "Bones," and "Bad

Eye". FBI officials described them as "a loosely knit gang of the highest caliber holdup men and burglars." They were, for the most part, ex-convicts who had served terms in the penitentiaries of the aforementioned states and were well known to practically all the major police agencies in those states. Downs was considered to be the most proficient of them all at safecracking.

Indeed, this motley gang (and their like-minded cohorts) engendered such concern on the part of proactive California law enforcement officers that by the mid-1950s, they had joined together to form the Safe and Burglary Investigators Association that operated out of the State Bureau of Criminal Identification and Investigation. Officers from around the state gathered regularly to report on crimes committed, license numbers of suspicious cars, wanted burglars's habits, "MO.s" of opening a safe – all in an effort to bring the responsible parties to prosecution as inter-agency communication was a key to capture.

The Origin of the FBI's "Ten Most Wanted" List

The United States was in the throes of the Great Depression in the 1930s while the 1940s brought World War II. During this time, bank robberies and safe burglaries were major sources of crime, and they were guaranteed to generate headlines in the press. In February 1949, a reporter for the United Press International contacted the FBI and asked for a list of the names and descriptions of the "toughest guys" they wanted to capture. As a result, the FBI listed the names of the ten fugitives it considered to be the most potentially dangerous; the story resulting from that query generated so much publicity and interest that the "Ten Most Wanted Fugitives" program was instituted a year later on March 14, 1950, and continues with a high rate of success to this day.

Emery Lee Downs met both criteria for the list: 1) he was armed, dangerous, and had a lengthy record of committing serious crimes, and 2) his apprehension would be facilitated by nationwide publicity. On March 20, 1950, Downs's name was the sixth to be entered into the handwritten log book maintained by the FBI. He was subsequently arrested on April 7, 1950.

San Jose was to become closely associated with Downs, the FBI, and two well-publicized trials.

The Search for Emery Lee Downs

Around the nation, law enforcement authorities searched for Downs for nearly two years. He was described as extremely dangerous, generally armed, and involved in several shooting scrapes. One confidential informant to the FBI stated that Downs was armed at all times and that he would attempt to shoot his way out of any "tight spot" in which he might find himself. The FBI file shows "Leads" being sent to the Anchorage, Billings (Montana), Butte, Denver, Chicago, Kansas City, Springfield (Illinois), Portland, San Diego, San Francisco, Seattle, Spokane, Los Angeles, Reno, Pittsburgh (Pennsylvania), and Salt Lake City Divisions requiring follow-up interviews and contacts. FBI agents traveled throughout these areas to interview associates and possible acquaintances of the reputed leader of the Troop Gang and reminded them of the provisions of the Federal Fugitive Harboring Statute. Occasionally, this prompted agreement to report immediately any information received on Downs. Interviews in the file were typically introduced with the standard, "The following investigation was conducted by Special Agent"

Only a few decades removed from the era of the Wild West, the agents' travels took them to the underworld; bars (among the many, the "Bucket of Blood," "Wild West Club," "Chiseler's Inn," Golden Nugget Casino,), brothels, prisons, and residences of Downs's former associates, most of whom were known criminals and almost always uncooperative in providing any useful information. To do so would be labeled "a snitch" in the underworld community. Some gave reliable information; many did not.

In January 1949, Downs and his wife Patricia were seen at a Sunset Boulevard (Los Angeles) motel with John De La Casa who also worked with Downs from time to time. On January 25, 1949, De La Casa was killed in a gun battle with 100 police officers in the hills above Sunset Boulevard in the Silver Lake district of Los Angeles. Three officers were also wounded in what was vividly described as a "noisy tiff" in which "the darkness of the hills was punctured by tiny beams of lights from officers' flashlights and the stillness of the night was broken by the sharp crack of gunfire." (5)

After Downs was placed on the FBI's "Ten Most Wanted" list on March 20, 1950, tips came in from throughout the country. As the search broadened into the South, there were reports of Downs and his wife Patricia driving a 1949 Lincoln convertible pulling a two-tone green house trailer in Georgia. In addition to the usual investigative sources of having police and the highway patrol check bridges and install roadblocks, an aerial search using five airplanes from the Air National Guard was employed to look for the Downs's vehicles.

For a brief period, on April 5, 1950, the FBI thought they had found Downs when, acting on a tip, an FBI agent and a rookie California Highway Patrolman engaged in a 70-mile-an-hour chase across the Mojave Desert ending in a shootout. The fugitive, Fred Walter Lennon, was a longtime partner of Downs and was sought in many cities throughout the country for unlawful flight to avoid prosecution. Inside the expensive, late-model car, authorities found \$9,000.00 and four other pistols. (6) Lennon and Downs had worked together for many years as burglars and robbers, and both men had been reported seen in Los

Angeles the previous week. The Sheriff's office in Bakersfield initially announced that Downs had been killed in the gun battle, but soon after it was determined that the deceased fugitive was Lennon. (7)

The shooting of Lennon, however, led the FBI one step closer to Downs who was subsequently arrested two days later. When the Montana license plate on Lennon's car was checked, it showed the registration of a trailer that proved to be the same one that Downs - using the alias of George Clarkson - and his wife had been using for the past four months as they moved from one trailer camp to another. After Lennon's death was announced, Downs left the Holly Hill, Florida, trailer camp in which he had been staying since December 14, 1949, and relocated to another camp one mile away. (8)

On the night of Thursday, April 7, 1950, a raiding party of 12 FBI agents with guns drawn finally closed in on Downs and his wife at the trailer camp near Holly Hill. Although Downs was armed with a .32 caliber fully-loaded revolver in the pocket of his jacket, he did not resist arrest. He had over \$3,000 on his person, and his automobile was loaded with an additional revolver as well as four high-powered rifles, all loaded. Additionally, the trunk contained leather briefcases full of ammunition, nine sticks of dynamite and 12 electric fuses. Agents described the trailer as having a television set and piano and as being "one of the most sumptuously appointed trailers ever built." (9) Later that night, FBI Director J. Edgar Hoover announced the arrest of Downs. It was Good Friday in more than one sense for the FBI.

Rendition and Extradition

The processes of rendition and extradition required paperwork, a \$5 extradition fee exchanged by the State of California, and signatures from both Florida Governor Fuller Warren and California Governor Earl Warren before the San Jose Police Department could take over the case. In the meantime, Downs was held at the Duval County Jail on the Federal charge of fleeing the State of California to avoid prosecution for burglary and robbery.

On April 11, 1950, Captain of Detectives Bart Collins announced that he and Detective George Cannell would be traveling to Florida to extradite Downs. (10). Commercial airlines refused to transport officers when accompanied by dangerous criminals or suspects; thus, Collins and Cannell traveled to Florida by car arriving at Daytona Beach around April 19. The local FBI agent at Daytona Beach had arranged for them to stay at the Sheraton Hotel, and although the two men were delighted with the choice, they had to wait several more days for the necessary paperwork to be completed. In a letter home to his wife and daughters, Collins wrote: "Time is surely dragging here. The town is about closed up. The winter season is over and not much to do."

On April 24, 1950, Collins and Cannell finally met the man with whom they would share lengthy conversations - and a long ride back to San Jose - over the next week. Downs's large cache of firearms and his burglary tools were stored in the trunk to be used as evidence in the forthcoming trial. In a form of passive resistance, Emery Lee Downs decided to forego bathing for the duration, and it became a real issue. Each night, the officers would drop him off at the local jail

before they checked into an "auto court," and each night, they elicited a promise from him that he would bathe and shave. Yet each morning they found him in the same condition.

During the long days on the road, Downs shared his life story beginning with his first stay in the Idaho State Penitentiary at the age of 14, his dislike for police officers and district attorneys and how they would not let him make an 'honest living,' the many jails and prisons he had been in, which ones he liked best (and vice versa), where the best fishing was, and more. Collins was reputed to be a master at interrogation, and although Downs quickly overcame any reluctance to talk, he was skilled in evasion. Subsequently, each time a question came up about the San Jose robbery, he would fall into silence.

On April 30, 1950, the San Jose Mercury News ran a large photo of Downs on the front page announcing his return to San Jose. The preliminary hearing took place two weeks later, and a two-week continuance was granted while he decided on a plea. Initially he was moved back and forth between the San Jose City and County Jails, but concern grew that other members of his gang might try to deliver him from the Santa Clara County Jail. (Quite possibly, memories of the kidnapping of Brooke Hart in 1933 and the subsequent storming of the jail by vigilantes who hanged the two responsible criminals across the street in St. James Park were still fresh in the minds of local law enforcement authorities).

Therefore, after the initial proceedings, Downs was transferred to San Quentin "for safe-keeping" where Warden Clinton Duffy greeted him at the gate

with the words, "Welcome Home." Downs was housed on Death Row, prison officials explained, "because occupants of that section have such privileges as movies, card games, radio – and good food." (11)

The First Trial and the "Surprise Alibi"

On April 3, 1951, Superior Court Judge William F. James impaneled a jury of seven women and five men to try Emery Lee Downs for the robbery of the Pacific Telephone and Telegraph Company. As was custom, names and addresses of the jurors were listed in the newspaper. Charles H. Bauer was selected to be the Foreman.

Two veteran legal minds were pitted against each other in this trial. District Attorney Napoleon J. Menard was described by a contemporary as "one of the most combative lawyers ever to star in a San Jose courtroom...and the epitome of the prosecutor – sardonic, truculent, tenacious." (12) He was to be assisted in the trial by Deputy District Attorney Fred Reinheimer. Acting as Downs's defense lawyer was Nathan Coombs Coughlan, a self-educated man who "exhibited a natural flair for a courtroom oratory distinguished for emotional power, inaginative (sic) and theatrical techniques, and spiced by classical allusions." He was further described as "perhaps the last of the old school of eloquent, florid-phrased barristers." (13)

Menard had termed Downs "the double-dyed rascal" as his normally brown hair was dyed platinum at the time of his arrest. After his arrest, however, Downs had shaved his head and grown a beard in an attempt to hinder identification by the two janitors.

The trial was well attended by officers from several jurisdictions that were in attendance for what many considered to be one of the most important held in San Jose in recent years. The Troop Gang had operated throughout Idaho,

Washington, Oregon, Utah, and California, and Downs was a familiar figure to them all. Several members of the Troop Gang as well as a Santa Rosa police officer had been killed in shoot-outs, and the concern was shared that Downs would follow the same path if he were not incarcerated for life.

On the first day of the trial, Menard revealed that the janitor Ira Miller, one of the State's two important witnesses able to identify Downs, had died in an automobile accident along with his wife and infant son the previous July. Miller had identified Downs through a photograph back in 1948. Menard believed, however, that he could overcome this complication by offering into evidence the testimony that Miller had given at Downs's preliminary examination nearly one year prior. (14) Miller had testified that "To my best knowledge the defendant (Downs) is the man who was kneeling at the safe ...when I walked into the room." However, Ira Rogers, Miller's companion that night, testified that he could not positively identify Downs. Both men (Miller by the transcript) described how they entered the cashier's office at 11:45 p.m. to sweep up and surprised the two men breaking into the safe. (15)

Menard also entered into the record certified copies of Downs's past prison records showing his four terms served for second-degree burglary and pointing out that Downs had served 20 of the last 29 years in prison. Additionally, he introduced 160 separate articles found in Downs's possession when he was arrested. The items were neatly arranged on three plywood boards, each five feet long and four feet tall. Coughlan, on the other hand, made a "desperate attempt" to keep the collection out of evidence. (16)

In the following days, other witnesses took the stand to testify for the prosecution including Captain Collins, Detective Cannell, and FBI agent Jerome Daunt who was one of the two men involved in the shootout with Fred Lennon while he was searching for Downs. A locksmith demonstrated that tools found among Downs's possessions were of the kind used by locksmiths to pick locks, as Downs might have done to enter the building. The operator of the Cottage Court Motel on Bayshore Highway testified that a man answering Downs's description was registered under the name of C. E. Gardner at her motel on the day of June 3, 1948. (17)

The loquacious Downs took the stand in his own defense and told the jury how he always made better than \$100 a week in prison by gambling, booking horse races, and at his trade of silversmith. At Walla Walla alone, he had earned \$38,000 through his endeavors, and at the Utah State Prison he netted \$17,000; thus, he claimed, he didn't need to work regularly when he was outside of prison. He complained that when he tried to do honest work, officers always hounded him out of town. Downs's sister, Mrs. Beatrice Rule of Oakland, testified that he was hounded out of town by Oakland police in 1946 when he was trying to "go straight" after his release from the Utah State Prison. (18) He stated that he had been in a lot of jails, "but I never saw anything to beat it here." (19)

On Thursday, April 12, 1951, Downs surprised the courtroom with a last-minute alibi. Although he had denied all along that he was responsible for the San Jose job, and with over a year since his arrest, he suddenly proclaimed

that on the night of June 3, 1948, he had registered under the name of Charles Murphy at the Senator Hotel in Portland, Oregon. (20) At this late date in the trial, the District Attorney could not refute Downs's claim without direct evidence.

On April 19, 1951, Judge James discharged the jury after it failed to agree on a verdict following seven hours of deliberation and half a dozen ballots. Jurors cited (1) the failure of the prosecution to produce evidence to refute Downs's alibi about the hotel registration and (2) uncertainty in the minds of some that Downs had been positively identified as one of the robbers. (21) The crafty Downs had scored on Round One.

With a second trial scheduled for June 19, 1951, the goal of the District Attorney turned to finding evidence to refute Downs's alibi. On May 1, 1951, Captain of Detectives Bart Collins and Chief Investigator George Pyne of the District Attorney's office left on a tour of the Pacific Northwest in order to retrace the footsteps of Emery Lee Downs. Their first destination was Portland, Oregon, to find evidence verifying that Emery Lee Downs had registered at the Senator Hotel on the night of the robbery. Following that, they planned to visit prisons where Downs had spent many years including those in Butte, Montana, and Walla Walla, Washington. It was at the latter that Downs claimed to have made \$38,000 as a bookmaker during his prison stay. (22)

The Second Trial and the "All-Woman Jury"

Historically, there was considerable skepticism about the role of women as jurors. Subsequently, the evolution of women in that role was a slow process throughout the United States. In 1870, it was necessary to draft women to serve on juries in the outlaw settlements of the Wyoming territory as they were deemed to be "reliable citizens." By 1927, however, women were serving on juries in only 19 states. Concerns that women with small children needed their attention at home and that women might subordinate their reason to emotion were commonplace. Yet, a number of judges across the country increasingly noted that women serving on their juries were courageous, fair, quite capable, and willing to serve. (23)

Early in July 1951, Bailiff Frank Saraniti issued 75 summonses in preparation for Downs's second trial. Fewer than 50 people responded. Prominent among them was Alex Hart Jr., president of Hart's Department Store. Prior to examination in the jury box, Hart obtained a court excuse due to a business commitment in San Francisco. Several other prospective jurors obtained court excuses when they said they would not convict on purely circumstantial evidence. In addition, two women were excused after they said they were subject to "unpredictable and painful headaches, and that sudden attacks would make them unfit for jury duty." (24)

For the first time in many years, "a jury strictly on the feminine side, was selected to try a criminal case in Superior Court," and on July 10, 1951, Judge William F. James impaneled them to try Downs for a second time. With one

exception, the jurors, listed by name and address in the local newspaper were all described as either "housewife" or "homemaker." The exception, Mrs. Margaret Hoolsema was listed as a "gift dealer" and was later selected to become the Foreman. (25)

The second trial convened on July 12, 1951, and this time District Attorney Menard, who was being assisted by Chief Trial Deputy Louis Bergna, said that his office would bring evidence to "crack" Downs's last-minute alibi offered during the first trial that he was registering in a hotel in Portland, Oregon, on the night of the robbery.

In his opening statements, once again Defense Attorney Coghlan described Downs as being harassed by police since the age of 14 and driven out of Oakland, Reno, and Logan, Utah. He refuted prosecution statements that Downs was a 'big time' operator in crime. Coghlan claimed that Downs used fictitious names to avoid police harassment and eventually started traveling around the country in a trailer in order to do so. Menard, on the other hand, offered two witnesses who took the stand and placed Downs as being in the San Jose area at the time of the burglary. As in the first trial, he also presented the large collection of firearms and burglar tools that had been seized from the Downs car and trailer upon his arrest in Florida. Although the defense again objected, the collection was allowed as evidence. (26)

As the trial progressed, the District Attorney began to "methodically tear down" the alibi that Downs had presented. First, he placed Mrs. Grace Murray, a "blue-eyed honey blond," of Portland, Oregon, on the witness stand. Mrs.

Murray and her husband had purchased the Senator Hotel in September 1950. She testified that on March 26, 1951, Roy Harris, a private detective from San Francisco had paid her a visit to determine if hotel records for June 3, 1948, showed that a Charles Murphy had registered there that night. (Downs claimed that he had registered there under the name of Charles Murphy). Harris was seeking to borrow the card to have it photostated. Mrs. Murray testified that she found a registration card for said Murphy but noticed that it looked different from the other cards used by the hotel in 1948. Upon close examination, she decided it was "a phoney" and locked it up. She also observed that the handwriting on the card resembled that of Patrick Murphy, a night clerk at the hotel. With her suspicions aroused over the authenticity of the card, she refused to allow Harris to take it from the hotel without the authority of the Portland police. (27) Santa Clara County Criminalist Lowell Bradford later testified that the type of card Downs claimed to have signed in the hotel that night had not been manufactured in 1948. (28) Downs's alibi finally collapsed "like a deflated balloon" when Patrick Murphy confessed his role in the duplicity. (29)

As Menard continued to attack the "surprise" alibi, Downs continued to adhere to it and during cross-examination said that he was "mystified" by the prosecution testimony of the "phoney" registration card "because I did register at the hotel that night and was there several days." (30) When queried as to why he hadn't told the officers who returned him from Florida about the Portland hotel during their lengthy conversations, Downs insisted he couldn't remember

where he'd been two years before. Menard asked if it was because Downs had not "fixed" his alibi at that time, and Downs indignantly replied, "I never fixed anything or had anybody fix anything for me." (31)

Once again, the trial was well attended by law enforcement officers from several western states. Three law enforcement officers from Utah took the stand to deny Downs's story of police persecution. Downs had claimed he was "run out" of Logan by police after his release from Utah State Prison in 1946. Although there had been a safe burglary in Logan at that time, the officers testified that Downs had never been accused of it and that he had not been run out of the area. (32)

The second trial neared its close on Thursday, July 26, 1951. As reported in the San Jose Evening News, "Since Judge James is loathe to give a jury instructions and send it to deliberate late in the afternoon, it was probable the jury would not receive the Downs case for decision until tomorrow morning."

(33)

On the morning of July 27, 1951, Judge James gave his instructions to the jury:

I might here properly caution you against adopting a hypercritical attitude in analyzing the facts of this case. You're not expected to act as lawyers. The theory of the law by which a case is tried before a jury is that 12 responsible citizens, who have a stake in their community and have a general understanding of the affairs of life, and a sense of practical values, should sit upon the facts of the case and decide them, using therefore under the Court's guidance in the matters of law, the common sense and sound judgment which they would use in deciding important matters arising in their own affairs. (34)

The jury deliberated for four and one-half hours prior to convicting Downs of burglary and robbery. As reported by Mrs. Hoolsema, the Foreman, only one written ballot was taken but that two showing of hands were called for during deliberations. As a result of the jury's verdict, which also found that Downs was armed at the time of the burglary and had served four previous prison terms for burglaries, District Attorney Menard stated that Downs faced a possible life term in Folsom Prison as an habitual criminal. At the same time, Defense Attorney Coghlan announced that he would ask for a new trial when Downs appeared before Judge James on August 3 for sentence.

The District Attorney had also arrived at another conclusion:

...the verdict convinced him an all-woman jury is just as capable as a male one to evaluate complicated circumstances as appeared in the Downs evidence and reach a proper conclusion, and that it dispelled certain doubts the women would agree. Certain well-meaning persons who have forgotten more feminine psychology than I ever knew told me 12 women would never agree on anything. If that theory is in the textbooks, the textbooks will have to be rewritten now. (35)

On Saturday morning, July 28, 1951, the front page of the San Jose Mercury carried an article titled, "Downs Is Guilty, Jury Finds: Four-Time Loser Faces Life Term For Safecracking." Two pictures accompanying the article showed the all-woman jurors filing down the stairs of the courthouse and the "public enemy" being escorted to the County Jail. The District Attorney had prevailed during Round Two.

Downs returned to Judge James's courtroom for one last time on August 3, 1951, for the sentencing on the two charges of burglary and robbery. The judge ordered the two five-year to life terms to be served consecutively and

that the prison Adult Authority would decide whether Downs, as an habitual criminal, should be confined for the remainder of his life without the benefit of parole. Downs was transported back to San Quentin and later transferred to Folsom State Prison to serve out his term. (36)

.....

After numerous appeals, Emery Downs was paroled in 1968. Not long after, he was arrested for attempting to burglarize the Colombian consulate in San Francisco and was returned to prison for a violation of parole. Downs died in Emeryville, California, on April 14, 1980.

Conclusion

Although San Jose was still a relatively small town in 1948, the robbery led to outsize publicity. Moreover, it played a role in leading to the creation of the FBI's "Ten Most Wanted" List when the agency first became involved in the search for Downs after the federal warrant for his arrest was issued in August 1948. The painstaking, nationwide search that followed lasted for two years. It was a crime solved -- not so much by technical science -- but by experience, tiring legwork, and persistent checking of sources and "leads." Experienced detectives initially and quickly focused on Downs after the robbery due to their recognition of his modus operandi and recognition of his handwriting on the registration card at the Cottage Court Motel.

The story of the Pacific Telephone and Telegraph robbery illustrates some of the many challenges facing law enforcement at the mid-20th Century. The events herein unfolded prior to the advent of the Jet Age and the building of the Interstate Highway System. By example, the long drive involved in transporting Downs back to California took place on a maze of local, county and state roads, and the many FBI agents involved in following the leads on his trail did so by the same methods. Communications were slow as demonstrated in the process of waiting for extradition papers to be exchanged between the offices of the California and Florida governors. Messages were often sent by teletype and contacts made by phone.

In the end, it was the documents found in Chief Collins's garage that made it possible for the writer - nearly 70 years later - to bring the story to light.



PROBE SAFE CRACKERS' WORK—Shown examining the remains of the Pacific Telephone & Telegraph Co. office safe which was "cracked" early yesterday morning are Capt. of Detectives Barton Collins, right, and Detective Leon Green. Note debris caused by concrete filling within the safe door being displaced by blast. Two burglars tied up a pair of maintenance men who surprised them in the act of blowing the vault. They escaped with \$2000 in cash and checks.

Figure 1: Photo of Captain of Detectives Bart Collins and Detective Leon Green examining the "cracked safe" at the Pacific Telephone and Telegraph Company. San Jose Mercury Herald, June 5, 1948, p. 1.

**IDENTIFICATION
ORDER NO. 2260**
September 18, 1949

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

F.P.C. 26 L 1 U III 0
L 1 U III

FBI No. 87,919

**WANTED
LEE EMORY DOWNS,**

with aliases, EMERY LEE DOWNS, C. L. BARDNER,
HAROLD MOON, LEE HARRINGTON, LEE PLANDERS, ED
MORRIS, CHARLES MURPHY, LEE MURPHY, FRANK
RALSTON, TRAVE and others.

UNLAWFUL FLIGHT TO AVOID PROSECUTION (BURGLARY)



Photograph taken November 2, 1946

Photograph taken June 8, 1947

Emery L. Downs

DESCRIPTION

Age 43, born April 2, 1906, Butte, Montana;
Height, 6' 1"; Weight, 167 pounds; Build,
slender; Hair, brown, may be bleached; Eyes,
blue, right eyelid tends to droop; Complexion,
red-dun, mustache; Race, white; National-
ity, American; Occupations, presser, sales-
man, jeweler, engraver, barber, bartender; Scars
and marks, cut scar right side of upper lip,
cut scar under forehead, freckles on forehead and
face, scar under right arm, round burn scar
right forearm inner, scar left wrist inner,
both little fingers deformed at second joint,
upper teeth missing.

CRIMINAL RECORD

Downs has been convicted in the states of
Idaho, Oregon, Utah and Washington for burglary.

CUTION

DOWNS IS ARMED AND IS CONSIDERED EXTREMELY
DANGEROUS.

A complaint was filed before a United States Commissioner at San Jose, California on August 3, 1948, charging this subject with violating
Section 40, Article 18, U. S. Code in that he fled from the State of California to avoid prosecution for the crime of burglary.

Any person having information which may assist in locating Lee Emory Downs is requested to immediately notify the Director of the Federal
Bureau of Investigation, U. S. Department of Justice, Washington, D. C., or the Special Agent in Charge of the Division of the Federal Bureau of
Investigation listed on the back hereof which is nearest your city.

IDENTIFICATION ORDER NO. 2260.

(over)

Issued by: JOHN EDGAR HOOVER, DIRECTOR



Figure 2: Publicity issued by the FBI on September 19, 1949 in seeking the public's help toward bringing about the arrest of Emery Lee Downs. Courtesy of FBI File Number 88-4034.

Rain Easter

San Jose Mercury Herald

What's Inside

FBI Nabs Downs, Wife In Florida

Drizzles Add .37 Inch To S.J. Rainfall

By J. Rogers Kauter
Staff Writer

Cold Blows in South
For Half of Nation;
Frost Hits in South



Child of 9 Most Wanted Suspect To Inherit 9 Millions To Face S.J. Charge

Morgan to Submother
Leave Huge Estate
To Newport Beach Lad



Ex-Con Found Living In Sumptuous Trailer

DOUBLE BARRICADE WARNING

U.S. Demands Korea Hold May Elections

Exoneration Of Lattimore Under Fire

Army to Ask Million Men In Reserves

Quakes Panic Italian City

Figure 3: Story line following the arrest of Downs. San Jose Mercury Herald, April 8, 1950, p. 1.

Files 6-14

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

IN REPLY, PLEASE REFER TO
FILE NO. _____

Date 4-10-1950

[Signature]
MEMORANDUM FOR THE CRIME RECORDS SECTION

NAME Lee Emory Downe
INDEX 2260 WANTED FLYER # FBI# 87,919
FORWARDED April 7, 1950 PROSECUTION DISMISSED
• 1 Holly Hills, Fla.

According to Bureau records, data reflecting the fugitive status of this individual have been forwarded to the following publications, and it is suggested that you notify said publications that the fugitive is no longer wanted by this Bureau.

✓ <u>Postal Publications</u>	✓ <u>Columbus Star</u>
✓ <u>Confid. Del. Case</u>	✓ <u>Police Journal</u>
✓ <u>Times Detective</u>	✓ <u>Standard Mag.</u>
✓ <u>2 Peace Officers</u>	✓ <u>Minneapolis Tribune</u>
✓ <u>Front Page + Daily Pub. Co.</u>	✓ <u>Bismarck (ND) Tribune</u>
✓ <u>Detective World</u>	✓ <u>Miami Herald</u>
✓ <u>Miss Sheriff</u>	✓ <u>Miami Daily News</u>
✓ <u>The Detective</u>	✓ <u>International News Service</u>

*Index 15
Completed
4-12-50
BMD*

Very truly yours,
[Signature]
A. Rosen
Assistant Director

602-201950

FILE NO. 88-4034

Figure 4: Document illustrating the FBI's close connection to media sources in the search for "Top Ten Fugitives." Courtesy of FBI File No. 88-4034.



IN THE ROUGH—Sporting a gray and black beard and shaved head, Lee Emory Downs, 43, described by the FBI as among its "10 most wanted men," was returned to San Jose last night to face charges he burglarized the telephone company here of \$10,300 in June, 1948. When captured in a luxury three-room trailer at a Daytona Beach, Fla., hideout last month, Downs was clean-shaven and wore long bleached hair. Police suspect the beard and head shaving may be an attempt to confuse witnesses to the burglaries.

Figure 5: Photo of Emery Lee Downs following his extradition from Florida and arrival in San Jose on April 29, 1950. San Jose Mercury News, April 30, 1950, p. 1.



Figure 6: Photo of Court Bailiff Frank Saraniti displaying burglary tools on one of three plywood boards presented by the District Attorney as evidence in the trials of Downs. Photo used by Bart Collins during lectures on safe burglaries in courses on criminal investigation at San Jose State College.

Patches of Fog

San Jose Mercury

44 Years of Service (1851-1951)

What's Inside

Downs Is Guilty, Jury Finds

Farm Labor Union
Fines Life Term
For Subversive



Truce Negotiators Battle Over New Military Line

Nationalist Force Hits Chinese Reds

Secret Arms Shipment to Yunnan In Assault Force Borneo

Truman Raps Deportations By Hungary

President Truman today denounced the Hungarian government for its policy of deporting thousands of refugees from the country, saying it was a "gross violation of the principles of the United Nations Charter."

Reds Demand U.N. Retreat To Parallel

After work to keep World War frontiers along present front

Bail for S.F. Reds Set At \$50,000 Each

Senate Votes
Extensive Oil
Some Controls

New County Budget
\$1,001,176 Over '50

3 Small Boys
Hit by Car,
Slightly Hurt

Figure 7: Photos of the "All-Woman Jury" leaving the courthouse at the conclusion of the second trial and of Downs being returned to the County Jail. San Jose Mercury, July 28, 1951, p 1.



"LEFT 6, RIGHT 4" — Dials of locked safe intrigue even men who investigate safe cracking jobs. Delegates to Safe and Burglary Investigators Conference take

time from Santa Clara session to twirl dial. Kneeling is William Valentine, San Francisco police; Coaching him are Dist. Atty. Louis Bergna, right; Santa Clara In-

spector Robert Basho; Chief of Detectives Barton L. Collins, San Jose; John Welch, Alameda County Sheriff's Office, and Deputy Dist. Atty. Harry Parker.

AN ORGANIZATION'S AGAINST YOU, CHUM

Peel a Safe, Start a Manhunt'

By DICK COX
Mercury Staff Writer

SANTA CLARA — Once there was a time when "smart boys" in San Francisco or Oakland could climb into a car, wheel down to San Jose, Santa Clara or Sunnyvale, "punch" or "peel" open a safe in the middle of the night and then disappear back to their holes.

That was before the Safe and Burglary Investigators Association was formed by

Behind a desk in the State Bureau of Criminal Identification and Investigation a sandy haired ex-deputy sheriff from San Jose shifts through the reports looking for a common link. He is Everett Chamberlin, head of the burglary "modus operandi" or "M.O." section. His fellow members of the association swear that Chamberlin knows "every burglar and safe-man in the state."

When the safe and burglary detectives gather around a table, as they did in Santa Clara recently, and start comparing notes on crimes and suspects Chamberlin's voice can be heard frequently.

An officer reports an unusual type of burglary, and Chamberlin may recall another city 50 miles away that has reported an identical crime. An officer may

Figure 8: Photo of delegates (including District Attorney Louis Bergna and Chief of Detectives Barton Collins) to the newly-formed Safe and Burglary Investigators Conference meeting in Santa Clara circa 1955. San Jose Mercury.

Notes

1. Polk's San Jose (California) City Directory 1947, pp. 14-15.
2. Donald Ewing, interview by author, February 23, 2004, San Jose, California.
3. Ibid.
4. Polk's San Jose (California) City Directory 1949-50, p. 11.
5. "Ex-Convict Slain Battling Police in Silver Lake Area," Los Angeles Times, 26 January 1949, p. 2.
6. "Fugitive Slain After Long Desert Chase," San Jose Mercury, 6 April 1950, p. 1.
7. "Suspect in Phone Co. Theft Dies," San Jose Evening News, 5 April 1950. (microfiche file).
8. "FBI Nabs One of Nation's Top Fugitives in Florida," Tampa Morning Tribune, 8 April 1950, p. 1.
9. "One of Nation's 'Most Wanted' Fugitives Arrested in Florida," St. Petersburg Times, 8 April 1950, p. 1.
10. "San Jose Officers Await Downs Return Papers," San Jose Mercury Herald, 11 April 1950, p. 7.
11. "Death Row Cell Dazes Downs," San Jose Mercury, 16 April 1951, p. 1.
12. Harry Farrell, San Jose -- and other famous places, (San Jose, California, The San Jose Historical Museum Association, 1983), p. 55.
13. "Nate Coghlan, S. F. Lawyer, Dies at 79," San Francisco Chronicle, 2 December 1954, p. 23.
14. "Emery Downs Jury Ready; Testimony Begins Today," San Jose Mercury, 4 April 1951, p. 1.
15. "Downs Put at Crime Scene By Dead Man's Testimony," San Jose Mercury, 5 April 1951, p. 12.
16. "Downs's Super Tool Kit (160 Items) in Evidence," San Jose Mercury, 6 April 1951, p. 17.

17. "Downs Put at Crime Scene By Dead Man's Testimony."
18. "Downs' Sister Testifies Oakland 'Hounded' Him," San Jose Mercury, 12 April 1951, p. 25.
19. "Death Row Cell Dazes Downs."
20. "Downs Claims Portland Alibi, Tells of Money-Making Prison Enterprizes (sic)," San Jose Mercury, 13 April 1951.
21. "Downs Jury Discharged; New Trial Due 'Most Wanted Man'," San Jose Mercury, 20 April 1951, p. 17.
22. "Downs' Alibi Being Checked," San Jose Evening News, 1 May 1951. (microfiche file).
23. Burnita Shelton Matthews, "The Woman Juror," Women Lawyers' Journal 15. (January 1927).
24. "All-Woman Jury Impaneled In Emery Lee Downs Trial," San Jose Evening News, 11 July 1951. (microfiche file).
25. Ibid.
26. "Attorney Pictures Downs As Harassed By Police," San Jose Evening News, 12 July 1951, p. 6.
27. "Downs' Alibi Attacked By Menard," San Jose Evening News, 17 July 1951, p. 5.
28. "Downs Opens Defense By Taking Stand," San Jose Mercury, 20 July 1951, p. 17.
29. "Downs's Hotel Card Alibi Goes Pffttt!," San Jose Mercury, 19 July 1951, p. 19.
30. "It's Mystifying, Says Downs; He Sticks to Hotel Alibi," San Jose Mercury, 25 July 1951, p. 5.
31. Ibid.
32. "Once Again, Downs Trial Near Jury," San Jose Mercury, 26 July 1951, p. 17.
33. Ibid.

34. ""The People, Respondent v. Emery Lee Downs, Appellant. California Court of Appeals. First District. Division Two. December 16, 1952. (Justia US Law).

35. "Downs Is Guilty, Jury Finds," San Jose Mercury, 28 July 1951, p.1.

36. "End of Line For Downs, Plea Denied," San Jose Mercury, 4 August 1951, p. 1.

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