

Striking Evidence: The Matchbook as a Cultural Artifact in Criminal Cases

By

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ABSTRACT:

Matchbooks have become common items in modern society. The primary function of a matchbook is to serve as a source of fire, including and especially fires used in connection with smoking tobacco products. Matchbooks serve in functions other than the creation of fire, however. A matchbook is also a communications medium, a manual tool, and a memento object which humans collect.

Matchbooks and matchbook covers have appeared in criminal prosecutions and other aspects of the criminal justice system. The roles of matchbooks in the criminal justice system can be analyzed from the purview of the matchbook and its functions in society. Matchbooks in several selected cases are analyzed accordingly.

Changes in the matchbook's cultural functions are presently evolving. The main causes of such changes are changes in the legal and social attitudes towards tobacco usage, and technological innovations which have replaced the matchbook as a source of fire. Such changes have already impacted the criminal justice system, and more of the same can be expected in the future. Nevertheless, the matchbook will continue to be a common cultural artifact, and present itself as such in criminal cases.

I. INTRODUCTION

All of human civilization is dependent upon a photochemical reaction known as fire. Over the centuries since the dawn of mankind, various developments have simplified the processes necessary for creating fire. The cardboard matchbook as we know it today was invented by a Philadelphia patent attorney named Joshua Pusey, who was issued Patent Number 483,166 on 27 September 1892 by the United States Patent Office.¹ The matchbook thus serves as a means for modern *homo sapiens* to expeditiously create fire on short notice. According to the United States

Consumer Product Safety Commission, American consumers created approximately 645 billion individual "lights" in 1976, of which, approximately 65% or 419 billion were done with matchbooks.² Nearly 98% of the 645 billion "lights" were for tobacco products.³

Since the time of Pusey, matchbooks have become a pervasive artifact in our modern society. This article will overview the functions of matchbooks in our society, with a brief excursus into the human collection imperative. Then the various roles of matchbooks in criminal matters from the perspective of the matchbooks' functions will be surveyed. The article will conclude with a brief discussion of ongoing developments which can be expected to bring change to the matchbook as a cultural artifact in the world of crime.

II. THE FUNCTIONS OF MATCHBOOKS IN AMERICAN SOCIETY

A. General Functions

In addition to the obvious role as a source of fire, matchbooks function in such diverse capacities as communications media, implements for performing manual tasks, and chattel objects to be owned, carried, traded, bought and sold, or stolen.

The matches and the striking surface are the elements of a matchbook which actually cause the fire. These elements are carried, covered and protected by a thin piece of thin cardboard which, in and of itself, has no inherent pyrogenic properties. Like other pieces of paper, however, the cover of a matchbook lends itself well as a substrate upon which letters and words can be printed or written, together with artistic designs if desired. Indeed, matchbooks have long been used to advertise products and services other than themselves, and continue to serve as an efficient form of advertising which can be directed to specific audiences.⁴

One cannot view the propaganda properties of matchbooks in a vacuum, for they obviously interface and intersect in a major and synergistic way with the use of tobacco. After all, it is no mere coincidence that most matchbooks contain twenty matches, which corresponds to the twenty cigarettes in a pack. It therefore is quite common for the advertising message printed on a matchbook to be read by the same user twenty times, reinforced with the satiation of a physical craving for tobacco each time a match is used to light a cigarette.⁵

And just as a paper matchbook cover can serve as a substrate for the printed word or image, it can similarly serve as a medium for writings handscribed with a pen or a pencil, or other available writing implement.⁶ Often, for want of any paper surface more formal or spacious, it is the most handy writing

surface available for committing a brief but significant item of data to writing.

Moreover, matchbooks can serve as manual implements to perform tasks not directly related to their pyrogenic or literary functions, whether as receptacles for storing or transporting small objects, forceps for manipulating small objects, obstructions to jam mechanisms, and any other use as a lamina of cardboard.

B. Excursus: Matchbooks and the Human Collecting Imperative

Collecting objects for the sake of collecting them is a practice invariably found in virtually every known human culture of now and yore. Specific psychological explanations and analyses of the human collection imperative are beyond the ambit of this article; suffice it to say that some individuals are pronouncedly predisposed to collect objects. The collecting hobbies of particular individuals have been implicated in much civil and criminal litigation, and judicial opinions have duly noted collections of objects as diverse as postage stamps,⁷ coins,⁸ firearms,⁹ knives,¹⁰ arrowheads,¹¹ paintings,¹² antiques,¹³ jewelry,¹⁴ clocks and pocket watches,¹⁵ glass novelties,¹⁶ gems and minerals,¹⁷ seashells,¹⁸ dolls,¹⁹ model railroad equipment,²⁰ comic books,²¹ baseball cards,²² motion picture films,²³ automobiles,²⁴ pianos²⁵ and evergreen trees.²⁶ Individuals who keep several types of collections have likewise been mentioned in the judicial opinions.²⁷

There are aficionados who collect matchbooks,²⁸ and who have formed organizations in furtherance of their hobby.²⁹ Libraries and historical societies sometimes retain matchbook covers from their local area businesses,³⁰ and museums and archives keep them in their collections as historical artifacts.³¹

Though many individuals deeply possessed by the human collecting imperative can proudly boast extensive organized collections of their chosen genre of objects, the propensity to collect can be manifested in a one-time, single instance accession of an object. Thus, many who are not organized matchbook hobbyists will perfunctorily pocket a souvenir matchbook which is displayed in a manner explicitly or impliedly offering it for the taking by the business establishment whose services or wares it advertises.

A matchbook, then, often exists as a chattel object in its own right, without regard to its other functions. As such, it can be accessioned, carried, bought, sold, lost, found, traded or stolen. Its small size and inherently inexpensive composition especially facilitate such a passive function.

III. MATCHBOOKS IN THE CRIMINAL JUSTICE CONTEXT

As previously described, a matchbook serves as a source of fire, a communications medium, a tool and a chattel object. Matchbooks which appear as evidence in criminal cases can be analyzed from such functional perspectives.

A. *Matchbooks as Sources of Fire*

Where criminal activity involves fire, the source of the fire is inherently relevant to the processes of the criminal justice system.

The fact pattern in a prosecution involving over 200 fires in the Boston area from 1982 to 1984, though carried to an extreme, is essentially typical. The modus operandi of one Stackpole was to enmesh a lit cigarette among the tips of matches in a matchbook, so that after a time delay the burning cigarette would ignite the matches, which would, in turn, ignite a plastic bag filled with flammable liquid such as gasoline or lantern fuel. Stackpole called his incendiary device "La Bomba."³² Such cigarette-matchbook devices, of varying degrees of sophistication and effectiveness, have figured as evidence in other arson prosecutions.³³

The matchbook need not have a cigarette fuse, however. One can maliciously cause a conflagration by "flipping" an entire matchbook set afire,³⁴ or even use one or more individual matches from a matchbook to start the fire.³⁵

Even in non-arson situations, a fire can be indicative of criminal activity and the source of the fire accordingly relevant. Burnt matches and matchbooks found along with crack cocaine, for example, can be evidence of the illegal use of that drug.³⁶

B. *Matchbooks as a Communications Medium*

1. Matchbooks used for propaganda:

Given the well known Constitutional protections afforded to speech and the press in America, the circumstances under which the content of a matchbook advertisement might be an element of a crime are inherently limited. Nevertheless, matchbook propaganda has been known to toe the limits of the law. In the context of the American social unrest of the late 1960's and early 1970's, matchbooks inscribed "EOW" were distributed at Bloomfield State College in West Virginia, the inscription being a supposed acronym for "End of Week", with the supposed implication that the campus would burn if the demands of certain student groups were not met by the end of the week.³⁷

But during those socially turbulent times, at least one law enforcement officer used matchbooks as propaganda media, with apparent success. The jargon of the angry American counterculture scornfully referred to police officers as "pigs." A Dallas police officer, apparently unfazed by such taunts, bolstered his personal public relations by distributing matchbooks inscribed "Leonard Edge: Pig and Proud!" along his beat.³⁸

More recently, American law enforcement authorities have successfully used matchbooks as a medium to advertise rewards for wanted international terrorists.³⁹

2. Matchbooks used as notepads:

In the world of criminal evidence, many matchbook covers have been employed as media for the written word.

A telephone number is one piece of information which can easily be written upon a matchbook cover, and has often been so inscribed. In one case involving drug trafficking, the law enforcement authorities obtained a matchbook marked "246 0700 Room 1110." The first seven digits corresponded to the telephone number of New York's Holland Hotel, which was visited by the police, and where the guest in Room 1110 turned out to be a Columbian drug dealer.⁴⁰ Other illicit drug dealers have likewise been found through matchbooks bearing their telephone numbers.⁴¹

But telephone numbers which have been written upon matchbook covers are by no means limited to those of drug dealers. A matchbook found on one burglary suspect bore the telephone number of the house of the victims, who had left their house to attend their daughter's wedding.⁴² Another burglar, caught in the act, had in his pocket a matchbook with the telephone number of a waffle house written upon it. The police went to the waffle house where they found the intended getaway car and the driver accomplices.⁴³ And the telephone number of a robber who wished to make amends by taking his victim out on a date was written on a matchbook by the victim.⁴⁴

In a kidnapping case, the suspect had, in his shoe, a matchbook upon which his brother's telephone number was written. The brother yielded evidence which the police then used to extract a confession from the initial suspect. Constitutional considerations, however, caused the first suspect's confession to be suppressed.⁴⁵

Telephone numbers are not the only criminal evidence which are written upon matchbook covers. Other data written upon matchbook covers has included illegal betting numbers,⁴⁶ and even a hold-up note used in a bank robbery.⁴⁷

Criminals are not the only ones who write evidence upon matchbook covers. Law-abiding citizens also carry matchbooks, which, in emergency situations when more formal writing papers are not immediately available, can and do serve as convenient media for inscribing succinct bits of information. One exigent circumstance in which matchbooks lend themselves well as writing papers is when a witness to or victim of a crime involving a motor vehicle memorializes the license tag number of the vehicle upon a matchbook. Matchbooks bearing such information have figured in several criminal prosecutions.⁴⁸

C. Matchbook Covers as Manual Tools

Matchbooks can serve as manual implements to perform tasks not directly related to their pyrogenic or literary functions. The tasks so performed can be relevant to criminal activity.

Matchbooks are handy receptacles for storing, carrying or transferring illegal substances. Many a matchbook has been used to store or deliver heroin,⁴⁹ cocaine⁵⁰ or marijuana.⁵¹ In a similar fashion, a matchbook can be used to pass money in the context of an illegal bribe, as exemplified in one case where a lawyer bribed a hearing officer with a \$100 bill folded up into a matchbook.⁵² Razor blades can also be concealed in matchbooks.⁵³

In addition to being a handy receptacle for the transport and storage of illegal substances, a matchbook cover can serve as a tool with which to administer the illegal substance into the body, whether to nasally "snort" a substance such as heroin⁵⁴ or to hold a burning marijuana cigarette.⁵⁵

Flashlights, familiar tools whose purpose it is to provide light, are to be found in many a skilled tradesperson's toolboxes. A match from a matchbook can similarly serve as a source of illumination, albeit for a limited period of time and with the risks and disadvantages inherent to an open flame. Such illuminatory implements have been incidental to the commission of a crime, as in one case where a would-be rapist held a lit match, as a lamp unto his feet, in the darkened hallway outside the victim's apartment. The flame of the match soon wilted as the perpetrator gained entry to the victim's quarters (whereupon he also wilted before establishing the contact required for his initially-intended offense). The burnt-out match, found on the floor outside the victim's door, was from the matchbook which the police found on the perpetrator's person upon his capture.⁵⁶

D. Matchbooks as Tangible Chattel Objects

Aside from its pyrogenic, literary or mechanical properties, a matchbook is a tangible and portable object, a chattel capable of being owned, lost, transported, bought or sold. One case which demonstrates this property in the criminal context involved a simple plain white matchbook with nothing written on it.⁵⁷ At a convenience store in Tennessee, a robber purported to purchase a single plain white matchbook, and then proceeded to rob the store when the clerk opened the cash register to process the payment for the matchbook. The matchbook found on the suspect's person was part of the evidence against him.⁵⁸ The fact that it was a matchbook was only incidental, the feigned purchase of any small object could have been used as the pretext to induce the store clerk to open the cash register.

Because matchbooks are objects which are manually handled, they can also serve as sources for fingerprints in forensic investigations.⁵⁹

And, consistent with the souvenir acquisition imperative which universally affects people from all populations and cultures, people tend to pocket matchbooks which are explicitly or impliedly offered as gratuitous advertising trinkets.

Matchbooks can also link the suspect to the crime when it can be shown that the matchbook somehow was handed from the victim to perpetrator. In one Arkansas case, a young couple hitchhiking along encountered a trio who claimed engine trouble, and the wife handed one of the three a matchbook in order to shed light upon the problem. The couple was kidnapped and the wife raped by the three. The matchbook was part of the evidence against the three perpetrators.⁶⁰ In a California case, a well-described matchbook, "blue and white in color, having the name 'Newporter Inn' on the cover" which was given to the defendant by the rape victim was also part of the prosecutor's evidence.⁶¹

And, as tangible and portable objects which are susceptible to individual ownership, matchbooks are also objects which can be stolen.⁶²

E. Matchbooks serving more than a single function

1. Matchbooks as More than a Fire Starter:

The non-pyrogenic properties of some matchbooks which started the fires of incendiary crimes have clued the police to many a perpetrator. Subsequent to his expulsion from the family abode, Michael Pierce had lodged across the street in the home of his friend Tim O'Rielly the week before the fatal house fire which took the lives of Pierce's mother, father and grandmother. The fire was started by a match from a matchbook of the type found in O'Rielly's house.⁶³ Though that matchbook was the source of the fire, it

had also functioned as an object which Pierce took as a souvenir, and was thus linked to Pierce's known whereabouts in O'Rielly's home.

In a case with similar fact patterns (and involving a defendant with the same first name), a matchbook from a Tennessee motel where Michael Webb had stayed was used by Webb to start the house fire in Ohio which killed his own son.⁶⁴ That matchbook likewise served as both a source of the lethal fire and a chattel object taken as a souvenir, and further, was also a propaganda device for the motel. A matchbook from the Hippopotamus Discoteque in New York City functioned similarly in a case where a drug dealer killed a prospective witness against him and burned her body.⁶⁵

As a variation on the theme of matchbook as fire source, souvenir and advertising propaganda, a matchbook which was used by Elric Carlson to ignite a fatal fire advertised the business of his own uncle, with whom he lived.⁶⁶ And in an incident which was not nearly so destructive or lethal, the matchbook used by Vernon Bates Archibald in his attempt to burn the property of his erstwhile employer advertised a business owned by none other than Archibald himself.⁶⁷

2. Collected Objects which Advertise:

American author and humorist E. B. White wrote that a collection of objects is likely to reveal more about the collector than about the subject of the collection.⁶⁸ White's observation has proven itself quite valid, even in instances where the "collection" at issue has consisted of but a single matchbook.

A law-abiding citizen thinks little of pocketing a souvenir matchbook from the business establishment where it is displayed and explicitly or impliedly offered for the taking. But when the person who takes such a matchbook subsequently embarks upon a criminal enterprise, the literary content of that same matchbook can link the malefactor to the establishment from whence the matchbook was taken. A matchbook serving the dual function of a propaganda medium and a tangible collectable object can accordingly serve as compelling evidence of the crime in question.

A detached and rational criminal would take pains to be devoid of all evidence linking him or her to the scene of the crime. In reality, however, the inability of many perpetrators to detach themselves from their personal collecting imperatives has significantly contributed to the prosecutor's evidence. Thus, a gunman who took a matchbook from the Fountain Valley Golf Course in St. Croix, Virgin Islands during his murder spree there provided an exhibit for the Government's evidence at trial.⁶⁹ Similarly, the matchbook from Rhodes Automotive Service in Abilene, Texas was found on the person of the felon who had robbed that establishment.⁷⁰ Other

business establishments whose own matchbooks were possessed by the perpetrators of crimes at their premises include Richard's Best Texaco in North Carolina⁷¹ and the Trails Lounge Restaurant in Portage, Wisconsin.⁷²

A matchbook from an establishment known to have been the whereabouts of the suspect around the time of the crime, if found at or near the crime scene, can help to link the suspect to the crime.⁷³ Wrongdoers who gather such matchbooks have often provided such evidence of their involvement.

A matchbook from the Best Western -- Hudson House Inn, which was across the street from the Hudson Country Club where a burglary and theft occurred, was part of the evidence to link the suspect to the crime.⁷⁴ The former lover of a Los Angeles woman who, with her roommate, was violently attacked in her apartment, had earlier patronized the Mandarin Cove Restaurant along with the victims. A matchbook from that restaurant was found in the apartment and helped to link the attacker to the crime.⁷⁵ In two cases arising out of an ambush assault incident in Tennessee, the respective defendants, apprehended in Henryetta, Oklahoma, were linked to the crime by Oklahoma authorities, who found a matchbook from a Nashville hotel.⁷⁶ And a murderer who was careless enough to leave a matchbook from his own brother's wedding near the victim's body was also betrayed by his own collection imperative.⁷⁷

Matchbooks from distant localities have similarly implicated criminals from those distant locales. A resident of Westchester, New York who had passed bad checks 150 miles away in Binghamton was convicted upon evidence which included a matchbook from a Binghamton restaurant found in his car.⁷⁸ A matchbook cover found at the site of a kidnap victim's captivity linked the suspects to Chicago.⁷⁹ And a cocaine shipment found in a van apprehended along with its owner in Michigan was linked to its suspected source back East by a matchbook from a New Jersey motel.⁸⁰

In 1983, a shocking and sensational murder occurred in a restaurant in Philadelphia's Chinatown. Members of an Asian gang from New York, attempting to spread their "protection" racket influence to Philadelphia, had entered the Ho Sai Gai restaurant and demanded money from the manager, who was fatally shot when she refused. Among the evidence found on the scene was a matchbook which advertised a Brooklyn enterprise whose business was to help people to obtain New York driver's license learner's permits. At trial, the defense attorney's attempt to eliminate the connection between the matchbook and his client failed miserably when testimony was elicited that the defendant himself had begun the process of obtaining a New York State driver's license.⁸¹

Convicted murderer Eugene Wallace Perry apparently had a particularly pronounced collection imperative for matchbooks. The prosecution evidence which ultimately led to Perry's execution on 8 August 1997⁸² included matchbooks from the Terry Motel in Fort Smith, Arkansas and the Horseshoe Bend Marina in Rogers, Arkansas.⁸³ Another criminal whose collecting imperative got the better of him was a drug dealer named Charles James, who was in possession of matchbooks from motels in Mansfield, Ohio and Miami Florida, motels where drug deals were known by police to have been in the making.⁸⁴

And if more than one person is involved in a criminal enterprise, the collecting habits of one can snare them all. Delores Pollack, suspected of passing American Express traveler's checks stolen in Pennsylvania, was arrested in Florida with a matchbook from the Olympia Motel in her possession. Upon paying a visit to the Olympia Motel, the Dade County Police found Pollack's accomplice with more stolen traveler's checks.⁸⁵ And a matchbook from the Rodeway Inn in Wilmington, North Carolina, found in the pocket of an arrested drug trafficker, led the law enforcement authorities to additional suspects who had taken a room at that place of lodging.⁸⁶

At the scene of a Colorado burglary-murder, a matchbook from a business in Henderson, Nevada was found, along with some burnt matches. The matches and matchbook were apparently used as illumination when the perpetrator broke the window to enter the premises. It was shown that the defendant had visited family in Henderson, thus connecting the matchbook to the defendant, and therefore, the defendant to the crime. The matchbook thus served as a source of fire, a collected chattel object, and an advertisement medium.⁸⁷

3. Collected Objects Bearing Personal Data:

As a variation to the collected object which advertises a commercial venture, product or service, a matchbook inscribed with the victim's own handwriting can also serve as evidence when found in the possession of the criminal defendant. Much less formal than a business card, it is usually produced on an impromptu basis on such occasions.

In a Tennessee murder case, the defendant initially denied knowing victim, but then produced matchbook which the victim had given to him and upon which she had written her telephone number. There obviously had been sexual activity between murderer and victim, but the evidence was ambiguous as to whether such sexual activity was consensual (which had bearing upon whether there would be an enhanced sentence).⁸⁸

And in yet another rape case involving a matchbook,⁸⁹ the matchbook somehow given to the rapist in question also bore the victim's telephone number.⁹⁰

Conversely, the name and telephone number of Jeffrey Alan Gears, a regular at the bar of Chi-Chi's Restaurant in Dearborn, Michigan, was written upon the Chi-Chi's matchbook found on the victim's body and served as evidence to convict Gears.⁹¹

The personal data on a collected object can serve to elucidate the memory of one who has been confused. It is obviously not unusual for the victim of a violent crime to be disoriented, and to make ambiguous or contradictory statements during the moments of confusion. One very agitated and disconcerted rape victim, who had trouble fixing the date of her attack, knew that it occurred on the same day as her sister's wedding and was thus able to compose her thoughts and refresh her memory with the aid of a memento matchbook from that wedding.⁹²

4. A Truly Multifunctional Matchbook:

One case which well exemplifies a matchbook in its multiple cultural functions was the U.S. Navy court martial of Yeoman Typist First Class George Stockdale.⁹³ It should be borne in mind that the events in the *Stockdale* case occurred in 1953, when the taboos against the use of marijuana were significantly stronger than they are in 1999.

Stockdale disembarked from a Navy transport in Honolulu, and was immediately apprehended and searched. Charged with wrongful possession and wrongful use of marijuana, Stockdale was court martialed and convicted on the possession specifications, and sentenced to confinement at hard labor, reduction in grade and bad conduct discharge. Among the evidence from the search was a partially smoked marijuana cigarette "in a paper match cover bearing an advertisement of a place in Arizona near where the accused had recently spent a period of leave."⁹⁴

The matchbook in evidence served several functions. It was a propaganda object which bore the advertisement of a commercial establishment in Arizona which was proximate to the known whereabouts of the accused. It also was a tangible physical object which Stockdale saw fit to collect as a souvenir. Serving those two functions, the matchbook connected the contraband marijuana to Stockdale, and was evidence that he had acquired it while on leave. When the contraband marijuana cigarette was placed inside of it, the matchbook thereupon served as a receptacle for it, a tool for holding and transporting the forbidden substance.

Though not specifically addressed in the Navy Board of Review opinion, there is a significant likelihood that when the partially smoked marijuana cigarette was smoked, it was ignited by a match from the same matchbook. If such were the case, then the same matchbook which served as a propaganda object, collectable souvenir and receptacle for concealment and transport may also have been a source of the fire inherent in the illegal use of the marijuana.

As matters actually transpired, Stockdale was convicted only on the illegal possession specifications, and not on the illegal use specification. We must, therefore, presume his innocence to the extent of the latter count.

IV. CONCLUSION

Matchbooks perform diverse functions in our society, legal and otherwise. The social habits relating to matchbooks are reflected in the matchbooks which have appeared in court cases, whether as criminal evidence or otherwise. Certain changes are afoot, however.

For one thing, the social and legal attitudes towards the smoking of tobacco (and other herbage) are now shifting.⁹⁵ Given the inextricable link between matchbooks and smoking, such changes cannot help but affect the matchbook as a cultural artifact. Indeed, it has already occurred, for the false advertising claims in the ongoing product liability litigation against the tobacco companies have specifically implicated the use of matchbooks bearing the well known "Joe Camel" cartoon character used to advertise Camel cigarettes.⁹⁶

Moreover, technological developments and marketing strategies have, of late, given the disposable butane lighter a heretofore unprecedented and continually growing popularity as a device for creating fire.⁹⁷ While butane lighters are arguably superior to matchbooks as a fire source -- after all, their flames can be maintained for longer periods of time, and can be adjusted in intensity to relatively long plumes -- they are not necessarily superior to matchbooks with respect to other functions.

There is no doubt that individuals with the collection imperative will see fit to collect butane lighters, whether as a one-time serendipitous action or as an organized hobby collection.⁹⁸ Cigarette lighters have already been relevant evidence in fire-related crime cases.⁹⁹ We can certainly expect to see more such cases in the coming years as the butane lighter becomes more ubiquitous. And while the butane lighter has already been put to use as an advertising medium, it is unlikely to be less expensive to produce, transport or store than a matchbook, and

therefore, less likely to be distributed in the population with the frequency that matchbooks have heretofore been placed into the stream of commerce.

Moreover, the butane lighter is not paper, and does not well lend itself to handscribe written communications in quite the same manner as the matchbook.

So, as the disposable butane becomes a more common artifact in American culture, it can be expected to appear with increasing frequency in criminal matters. But because its functions are not totally identical to those of a matchbook, the butane lighter will not appear in all of the same criminal justice roles which the matchbook has played for more than a half-century past.

Notwithstanding the inroads being made by the butane lighter, the matchbook will likely continue to be a common cultural artifact for the foreseeable future, and its appearances in civil and criminal litigation will reflect its functions accordingly.

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¹ See *Diamond Match Co. v. Schenk*, 71 F. 521 (C.C.E.D. Pa. 1895), *aff'd* 77 F. 208 (3d Cir. 1896). Pusey transferred his patent rights to the Diamond Match Company, and became its corporate counsel, in which capacity he represented his employer in the lawsuit against Schenk.

² See *Safety Standard for Matchbooks*, 16 C.F.R. § 1202.2(c)(i) (1998).

³ *Id.*

⁴ *Safety Standard for Matchbooks*, 16 C.F.R. § 1202.2(c)(ii) (1998).

⁵ See *id.*, § 1202.2(c)(i).

⁶ See *People v. Buchholz*, 363 Ill. 270, 272, 2 N.E.2d 80, 81 (1936) (robbery victim used her eyebrow pencil to write the name and telephone number of the perpetrator on a matchbook).

⁷ *E.g. United States v. One Zumstein Briefmarken Katalog* 1938, 24 F. Supp. 516, 518 (E.D. Pa. 1938;

Halladay v. McGraw, 118 Misc. 843; 192 N.Y.S. 489 (Sup. Ct. Erie Co., 1921), *aff'd* 204 A.D. 901, 197 N.Y.S. 928 (4th Dept. 1922), *app. dismissed* 236 N.Y. 578, 142 N.E. 291 (1923).

⁸ *E.g.*, Estate of Trompeter v. Commissioner, T.C. Memo 1998-35; 75 T.C.M. (CCH) 1653, *amended* 111 T.C. 57 (1998); DeBiasi v. Commercial Union Ins. Co., 53 Misc. 2d 45; 278 N.Y.S.2d 145 (NYC Civ. Ct. N.Y. Co., 1967), *aff'd* 55 Misc.2d 676, 286 N.Y.S.2d 502 (App. Term, 1st Dept. 1967).

⁹ *E.g.*, Harrington v. New York Life Ins. Co., 193 F. Supp. 675 (N.D. Calif. 1961), *aff'd* 299 F.2d 803 (9th Cir. 1962).

¹⁰ *E.g.*, McKinney v. Rees, 993 F.2d 1378 (9th Cir. 1993).

¹¹ *E.g.*, Wood v. Hustler Magazine, Inc., 736 F.2d 1084, 1085 (5th Cir. 1984), *cert. denied*, 469 U.S. 1107, 105 S. Ct. 783, 83 L. Ed. 2d 777 (1985).

¹² *E.g.*, Maurice Steinberg, Inc., v. James, 577 F. Supp. 882 (N.D. Ill. 1984); Ronis v. Terry Dintenfass, Inc., 1986 U.S. Dist. LEXIS 18345 (S.D.N.Y., 1986).

¹³ *E.g.*, Kub v. Commissioner, T.C. Memo 1974-278; 33 T.C.M. (CCH) 1282, *aff'd*, 558 F.2d 1033 (7th Cir. 1977).

¹⁴ Elliott v. Commissioner, 40 T.C. 304 (1963), *acq.* 1964-1 C.B. (Pt. 1) 4.

¹⁵ *E.g.*, J & H Auto Trim Co., Inc v. Bellefonte Ins. Co., 501 F. Supp. 942, 960 (M.D. Fla. 1980).*rev'd* 677 F.2d 1365 (11th Cir. 1982).

¹⁶ *E.g.*, Stanley v. Commissioner, T.C. Memo 1980-217; 40 T.C.M. (CCH) 516.

¹⁷ *E.g.*, Dubin v. Commissioner, T.C. Memo 1986-433; 52 T.C.M. (CCH) 456.

¹⁸ *E.g.*, Scott v. State, 581 So. 2d 887, 889 (Fla. 1991).

¹⁹ *E.g.*, Protective Cas. Ins. Co. v. Killane, 447 So. 2d 316 (Fla. App. 1984), *aff'd*. 459 So.2d 1037 (Fla. 1984).

²⁰ *E.g.*, Lencke v. Commissioner, T.C. Memo 1997-284; 73 T.C.M. (CCH) 3152.

²¹ *E.g.*, Tesar v. Commissioner, T.C. Memo 1997-207; 73 T.C.M. (CCH) 2709.

²² *E.g.*, *Eckes v. Card Prices Update*, 736 F.2d 859 (2d Cir. 1984); *United States v. O'Kane*, 155 F.3d 969 (8th Cir. 1998).

²³ *E.g.*, *American International Pictures, Inc. v. Foreman*, 400 F. Supp. 928, 930 (S.D. Ala. 1975), *rev'd* 576 F.2d 661 (5th Cir. 1978).

²⁴ *E.g.*, *Moorhead v. Mitsubishi International Aircraft, Inc.*, 639 F. Supp. 385, 404 (E.D. Tex. 1986), *modified and remanded* 828 F.2d 278 (5th Cir. 1987); *Board of Commissioners v. Thompson*, 177 Colo. 277, 493 P.2d 1358 (1972); *Patullo v. Zoning Hearing Board of the Twp. Of Middletown*, 701 A.2d 295 (Pa. Commw. Ct. 1997).

²⁵ *E.g.*, *International Artists, Ltd. (Liberace) v. Commissioner*, 55 T.C. 94 (1970), *acq.* 1971-2 C.B. 3.

²⁶ *E.g.*, *Montgomery v. Commissioner* 37 B.T.A. 232 (1938), *acq.* 1938-1 C.B. 20.

²⁷ *E.g.*, *March v. Commissioner*, T.C. Memo 1994-534; 68 T.C.M. (CCH) 1028 (Taxpayer collected vintage automobiles and airplanes); *Farrell v. Commissioner*, T.C. Memo 1989-662; 58 T.C.M. (CCH) 979 (Taxpayer's spouse collected antiques, guns and winemaking equipment); *Andrews v. Andrews*, 242 Md. 143, 148, 218 A.2d 194, 197 (1966) (In matrimonial proceeding, husband, an anthropologist, explained his pornography hobby as a collection along with his other collections of shells, ash-trays, native objects, stamps, et al.).

²⁸ *See, e.g.*, *Hart v. State*, 1999 Ga. App. LEXIS 1677 (Defendant convicted of a burglary in which several items were stolen, including a collection of matchbooks.).

²⁹ The Rathkamp Matchcover Society ("RMS") is the main national organization, with a Web site at <<http://www.matchcover.org>> (last visited 17 January 2000). There are other local and regional clubs, some of which have Web sites which can be accessed via the RMS Web site.

³⁰ *See, e.g.* Bethlehem Public Library, Delmar, NY <<http://www.uhls.org/niche/Bethlehem.htm>> (visited 2 August 1999); Troup County Historical Society, LaGrange, GA <<http://www.lgc.peachnet.edu/archives/new.htm>> (visited 2 August 1999).

³¹ The Popular Culture Library at Bowling Green State University (Ohio) has a collection of approximately 12,000 matchbook covers. E-mail from Alison M. Scott, Head Librarian, Popular Culture Library, Bowling Green State Univ. to Kenneth H. Ryesky, Esq. (24 August 1999) (on file with author).

Apart from the extensive matchbook cover collections exemplified by the Bowling Green State University collection, other archives have matchbook specimens. *E.g.*, Hope College, Archive Catalog Number T90-1114, Chicago, Duluth and Georgian Bay Transit Company (1913-1967), listed on the Internet at <<http://www.hope.edu/jointarchives/collections/registers/hht/georgian.html>>, visited 16 August 1999 (Archives include a matchbook cover which lists of reservations offices of the Company); Hampshire County Council, Search Museums Object Records, <http://www.hants.gov.uk/cgi-bin/fx.phrase?DB=museum_cat> (visited 16 August 1999) (Inquiry into searchable Internet database of holdings of the various museums of Hampshire County, England, using keyword "matchbook" yields at least eight specific hits of matchbooks in the collections of the various museums of Hampshire County, England.).

³² *United States v. Stackpole*, 811 F.2d 689 (1st Cir. 1987).

³³ *E.g.*, *United States v. Beldin*, 737 F.2d 450 (5th Cir. 1984), *cert. denied* 469 U.S. 1075, 105 S.Ct. 572, 83 L.Ed.2d 512 (1984); *United States v. Ragusa*, 664 F.2d 696 (8th Cir. 1981), *cert. denied* 457 U.S. 1133, 102 S.Ct. 2958, 73 L.Ed.2d 1349 (1982) ; *Zucco v. State*, 1996 Ark. App. LEXIS 634; *State v. Seifert*, 151 Vt. 66, 557 A.2d 494 (1989). *See also* *State v. Swearengen*, 32 Ore. App. 349, 573 P.2d 778 (1978), where defendant had confessed to unsuccessfully attempting to start a fire with a matchbook-cigarette device, but the confession was not corroborated.).

³⁴ *Georgia Farm Bureau Mut. Ins. Co. v. Purvis*, 213 Ga. App. 239, 444 S.E.2d 109 (1994).

³⁵ *E.g.* *United States v. Moore*, 556 F.2d 479 (10th Cir. 1977); *State v. Stroud*, 1989 Kan. App. LEXIS 21.

³⁶ *See, e.g.* *Hawkins v. Commonwealth*, 1996 Va. App. LEXIS 688.

³⁷ *James v. West Virginia Bd. Of Regents*, 322 F.Supp. 217 (S.D. W.Va., 1971), *aff'd* 448 F.2d 785 (4th Cir. 1971).

³⁸ *See* *Minor v. State*, 469 S.W.2d 579 (Tex. Crim. App. 1971); *Minor v. State*, 476 S.W.2d 694 (Tex. Crim. App. 1972).

³⁹ *See* 144 CONG. REC. H10167 (daily ed. Oct. 8, 1998) (remarks of Rep. Gilman); *see also* United States Department of State, Daily Press Briefing (October 2, 1995), available on the Internet at http://dosfan.lib.uic.edu/ERC/briefing/daily_briefings/1995/9510/951002db.html (visited 10 August 1999).

⁴⁰ *Unites States v. Rueda*, 549 F.2d 865, 868 (2d Cir.1977).

⁴¹ *E.g.*, *United States v. Lechuga*, 888 F.2d 1472, 1475 (5th Cir. 1989); *see also* *United States v. Reyes*, 18 F.3d 65, 68-69 (2d Cir. 1994) (evidence of beeper numbers of cocaine traffickers on matchbook covers was suppressed).

⁴² *State v. Adkins*, 679 S.W.2d 303 (Mo.App. 1984).

⁴³ *Pace v. State*, 407 So. 2d 530 (Miss. 1981).

⁴⁴ *Buchholz*, note 6 *supra*.

⁴⁵ *State v. Foster*, 40 Ore. App. 635, 596 P.2d 572 (1979), *rev'd & remanded* 288 Ore. 649, 607 P.2d 173 (1980).

⁴⁶ *See Danzo Estate, Inc., v. New York State Liquor Authority*, 27 N.Y.2d 469, 267 N.E.2d 474, 318 N.Y.S.2d 736 (1971).

⁴⁷ *United States v. Fletcher*, 15 F.3d 553 (6th Cir. 1994).

⁴⁸ *E.g.*, *State v. Rook*, 304 N.C. 201, 283 S.E.2d 732 (1981); *Grimes v. State*, 258 Ind. 257, 280 N.E.2d 575 (1972); *State v. Stem*, 1987 Ohio App. LEXIS 7801 at *3 - *4.

⁴⁹ *E.g.*, *People v. Hominick*, 177 Ill. App. 3d 18, 24, 531 N.E.2d 1049, 1053 (Ill.App. 1988), *cert. denied* 125 Ill.2d 570, 537 N.E.2d 815, 130 Ill.Dec. 486 (1989); *Montague v. Commonwealth*, 1996 Va. App. LEXIS 797; *People v. Williams*, 224 Cal. App. 3d 179, 273 Cal. Rptr. 526 (1990); *Kendrick v. Indiana*, 163 Ind. App. 555, 325 N.E.2d 464 (1975).

⁵⁰ *E.g.*, *Enoch v. Gramley*, 861 F. Supp. 718, 725 (C.D. Ill., 1994), *aff'd* 70 F.3d 1490 (7th Cir. 1995), *cert. denied* 519 U.S. 829, 117 S.Ct. 95, 136 L.Ed.2d 50 (1996); *Duca v. Martins*, 941 F. Supp. 1281, n. 6 at 1288 (D. Mass. 1996); *People v. Butts*, 131 A.D.2d 244, 248, 520 N.Y.S.2d 564, 566 (1st Dept. 1987), *aff'd* 72 N.Y.2d 746, 533 N.E.2d 660, 536 N.Y.S.2d 730 (1988); *People v. Carrillo*, 191 A.D.2d 812, 594 N.Y.S.2d 902 (3d Dept. 1993), *appeal denied*, 81 N.Y.2d 1070; 619 N.E.2d 668, 601 N.Y.S.2d 590 (1993); *State v. Cancel*, 1990 Ohio App. LEXIS 2673; *Haymond v. State*, 1993 Tex. App. LEXIS 2067; *State v. Tellier*, 1991 Wisc. App. LEXIS 1462, *review denied* 482 N.W.2d 105, 1992 Wisc. LEXIS 44 (1992).

In the *Butts* case the defendant used matchbooks to pass cocaine on two separate occasions to two separate undercover officers. *Butts*, 72 N.Y.2d 746, Brief for Respondent (*People*) at 6 & 8.

⁵¹ *E.g.*, *People v. Molsby*, 66 Ill. App. 3d 647, 651, 383 N.E.2d 1336, 1339 (Ill.App. 1978); *Garcia v. People*, 160 Colo. 220, 416 P.2d 373 (1966); *State v. Sigur*, 578 So. 2d 143, 146 (La. App. 1990); *see also* *Mora v. People*, 178 Colo. 279, 496 P.2d 1045 (1972) (evidence of marijuana in matchbook suppressed).

⁵² *Sands v. State Bar of California*, 49 Cal. 3d 919; 782 P.2d 595 (1989).

⁵³ *See, e.g.* *Carswell v. State*, 201 Ga. App. 746, 747, 412 S.E.2d 572, 574 (1991).

⁵⁴ *E.g.*, *State v. Davis*, 9 Ore. App. 412, 419, 496 P.2d 923, 926 (1972).

⁵⁵ *E.g.*, *State v. Purvis*, 249 Ore. 404, 438 P.2d 1002 (1968); *cf.* *Carroll v. Oregon State Penitentiary*, 33 Ore. App. 83, 575 P.2d 173 (1978) (Rolled matchbook and piece of tinfoil found in prisoner's cell not proven to be intended for drug uses, though such uses were possible and not unknown.).

⁵⁶ *Colbert v. State*, 18 Md. App. 632, 308 A.2d 726 (1973).

⁵⁷ Presumably, the matchbook did bear the name of its manufacturer in very small type. All matchbooks manufactured in or imported into the United States after May 4, 1978 must be marked with the name and city of the manufacturer or private labeler. 16 C.F.R. § 1202.6(a) (1999). Such an inscription is sometimes referred to as the "manumark." Even before the 1978 regulation, the overwhelming majority of matchbooks in the United States bore manumarks.

⁵⁸ *State v. Kearney*, 1985 Tenn.Crim.App. LEXIS 3088, *aff'd* 1988 Tenn. Crim. App. LEXIS 177.

⁵⁹ *E.g.*, *State v. Steadman*, 253 Kan. 297, 299, 855 P.2d 919, 921 (Kans. 1993); *State v. Allen*, 162 Mont. 149, 509 P.2d 849 (1973); *Regina v. Keller* (1970), 1 C.C.C. (2d) 360 (Sask. C.A.); *see also* *United States v. Corso*, 439 F.2d 956 (4th Cir.1971) (Conviction overturned on other grounds).

⁶⁰ *Ingram v. State*, 255 Ark. 6, 498 S.W.2d 863 (1973).

⁶¹ *People v. Thomas*, 5 Cal.App.3d 889, 86 Cal.Rptr. 97 (1970).

⁶² *See Hart v. State*, 1999 Ga. App. LEXIS 1677.

⁶³ *Commonwealth v. Pierce*, 537 Pa. 514, 521, 645 A.2d 189, 193 (1994).

⁶⁴ *State v. Webb*, 70 OhioSt.3d 325, 352, 638 N.E.2d 1023, 1031 (1994), *cert. denied* 514 U.S. 1023, 115 S.Ct. 1372, 131 L.Ed.2d 227 (1995).

⁶⁵ United States v. Pacelli, 521 F.2d 135 (2d Cir. 1975), *cert. denied* 424 U.S., 96 S.Ct. 1106, 47 L.Ed.2d 314 (1976).

⁶⁶ State v. Carlson, 5 Wis.2d 595, 93 N.W.2d 354 (1958).

⁶⁷ People v. Archibald, 164 Cal.App.2d 629, 331 P.2d 69 (1958).

⁶⁸ E. B. White & Katharine S. White, eds. , A *Subtreasury of American Humor* (New York: Coward-McCann, 1941), Preface, p. xi.

⁶⁹ Government of the Virgin Islands v. Gereau, 10 V.I. 53, 1973 U.S. Dist. LEXIS 5201 (Dist. V.I. 1973), *vacated & remanded* 502 F.2d 914 (3d Cir. 1974); *decision on remand aff'd* 523 F.2d 140 (3d Cir. 1975), *cert. denied* 424 U.S. 917, 96 S.Ct. 1119, 47 L.Ed.2d 323 (1976).

⁷⁰ Cooper v. State, 509 S.W.2d 865 (Tex.Crim.App. 1974).

⁷¹ State v. Kennon, 20 N.C.App. 195, 201 S.E.2d 80 (1973).

⁷² State v. Rogers, 1986 Wisc. App. LEXIS 3871.

⁷³ Conversely, matchbooks carried by individuals can also link them to the business establishments advertised on the matchbooks. In the noncriminal context of professional hockey, Detroit Red Wings coach Scotty Bowman, a non-smoker, reportedly would ask his players for matches and, based upon the matchbook covers, would deduce the places which the team members frequented during off-hours. Harry Atkins, "Bowman Takes the Heat, but Delivers Championships," *Detroit News*, 4 October 1997, Internet Edition, <<http://detnews.com/1997/wings/9710/04/10040105.htm>> (visited 18 August 1999).

⁷⁴ State v. Bane, 1990 Wisc. App. LEXIS 642.

⁷⁵ People v. Evens, 233 Cal. App. 3d 982, Cal. Rptr. 861 (1991).

⁷⁶ State v. Coury, 697 S.W.2d 373 (Tenn. Crim. App. 1985; Laird v. Lack, 884 F.2d 912, 914 (6th Cir. 1989), *cert. denied* 493 U.S. 1086, 110 S.Ct. 1150, 107 L.Ed.2d 1054 (1990).

⁷⁷ State v. Meekins, 326 N.C. 689, 392 S.E.2d 346 (1990).

⁷⁸ People v. DeGina, 39 N.Y.2d 96, 346 N.E.2d 809, 382 N.Y.S.2d 971 (1976), *aff'g* 46 A.D.2d 925, 361 N.Y.S.2d 725 (3d Dept. 1974).

⁷⁹ United States v. Larson, 596 F.2d 759, 775 (8th Cir. 1979).

⁸⁰ Ross v. Elo, 1999 U.S. Dist. LEXIS 10166 (E.D. Mich. 1999).

⁸¹ Commonwealth v. Ly, 528 Pa. 523, 535, 599 A.2d 613, 619 (1991).

⁸² Death Penalty Information Center, "Executions in the U.S. 1997,"
<<http://www.essential.org/dpic/dpicexec97.html>>
(visited 18 August 1999).

⁸³ Perry v. Lockhart, 879 F.Supp. 1503 (E.D. Ark. 1995), *aff'd sub nom* Perry v. Norris, 107 F.3d 665 (8th Cir. 1997), *cert. denied* 521 U.S. 1139, 118 S.Ct. 15, 138 L.Ed.2d 1047 (1997).

⁸⁴ State v. James, 1991 Ohio App. LEXIS 2997.

⁸⁵ United States v. Stegmaier, 397 F. Supp. 611, 613 (E.D. Pa., 1975), *aff'd* 538 F.2d 321 (3d Cir. 1976).

⁸⁶ United States v. Seni, 662 F.2d 277, note 1 at 281 (4th Cir. 1981), *cert. denied sub nom.* Minton v. United States, 455 U.S. 950, 102 S.Ct. 1453, 71 L.Ed.2d 664 (1982).

⁸⁷ People v. Mandez, 1999 Colo. App. LEXIS 288.

⁸⁸ State v. Dunn, 1993 Tenn. LEXIS 332 at *4, *sentence on remand rev'd and remanded* 901 S.W.2d 398 (Tenn. Crim. App. 1995).

⁸⁹ Cf. Notes 59 and 60, *supra*, and accompanying text. For some reason, there are several rape cases on the books which involve a matchbook linking the rapist to the crime.

⁹⁰ Commonwealth v. Morrison, (No. 3470 C.D. 1991, Common Pleas Ct., Dauphin Co., PA, 19 Nov. 1992), *digested at* Pa. L.J., 4 January 1993, p. 16. In *Morrison*, the testimony regarding the defendant's receipt of the matchbook was found to be hearsay, but was harmless error on account of the plethora of other evidence linking the defendant to the crime. From the digested version of the case, it is not clear as to who wrote the victim's telephone number on the matchbook, nor indeed, who gave the matchbook to the defendant.

⁹¹ People v. Gearn, 457 Mich. 170, 175, 577 N.W.2d 422, 425 (1998).

⁹² Commonwealth v. Lagacy, 23 Mass.App. 622, 627, 504 N.E.2d 674, 678 (1987).

⁹³ *United States v. Stockdale*, 13 C.M.R. 540 (N.B.R., 1953).

⁹⁴ *Id.* at 542.

⁹⁵ *Cf.*, e.g. Burns Ind. Code Ann. §§ 16-41-37-2(1) & -4(1) (1998) (Smoking is prohibited in the courtrooms of the State of Indiana) *with Musselman v. Musselman*, 44 Ind. 106, 118 (1873) (smoking in Indiana courtrooms by judges and attorneys was obviously a normal and well accepted practice in 1873). See also N.Y. L. 1994, ch. 565, § 2 (25 August 1994) which added additional restrictions against smoking to New York's Public Health Law, N.Y. Pub Health L. § 1399-o (1999); 35 Pa. Cons. Stat. § 1230.1 (1998) (regulating smoking in public places); Md. Code Ann., Health-Gen. §§ 24-501 thru -505 (1998) (regulating smoking in retail stores).

⁹⁶ *Mangini v. R. J. Reynolds Tobacco Co.*, 7 Cal.4th 1057, 1060, 31 Cal.Rptr.2d 358, 875 P.2d 73, 75 (1994), *cert. denied* 513 U.S. 1016; 115 S. Ct. 577, 130 L. Ed. 2d 493 (1994).

⁹⁷ *Safety Standard for Cigarette Lighters*, 16 C.F.R. § 1210.5 (1999).

⁹⁸ Cigarette lighter collectors have already organized clubs for their hobby. See, e.g. Spark-International: The Truly International Lighter Collectors Club <<http://members.aol.com/intspark>> (last visited 17 Jan. 2000). One celebrity collector of cigarette lighters was noted pianist, composer and band leader Ernesto Lecuona (1895 - 1963), see Space Age Musicmaker: Ernesto Lecuona <<http://home.earthlink.net/~spaceagepop/lecuona.htm>> (last visited 17 Jan. 2000).

According to a February 1999 posting at a collectables website, one Barbara Lemon of Annapolis, MD collects cigarette lighters, old and new, and has more than 300 specimens in her collection. Posting by Barbara Lemon <blemon@web.aacpl.lib.md.us> (posted 18 Feb. 1999) at Pen Pals Across The Miles - Country Collectibles Magazine <<http://www.countrycollector.com/guestbook/february99.html>> (last visited 17 Jan. 2000).

⁹⁹ *E.g.*, *Sawyer v. Whitley*, 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992); *United States v. Woodward*, 896 F. Supp. 1078 (Dist. Kans. 1995), *aff'd* 76 F.3d 394 (10th Cir. 1996); *People v. Wagner*, 100 Ill. App. 3d 1051, 427 N.E.2d 985, 56 Ill. Dec. 580 (1981), *appeal denied* 88 Ill.2d 554 (1982); *Commonwealth v. Wike*, 269 Pa. Super. 141, 409 A.2d 104 (1979).

In *People v. Hemphill*, 124 A.D.2d 862, 508 N.Y.S.2d 297 (3d Dept. 1986), the evidence of arson

included both the cigarette lighter and the three books of matches found on the defendant's person.