

UIC John Marshall Journal of Information Technology & Privacy Law

Volume 7
Issue 1 *Computer/Law Journal - Summer 1986*

Article 5

Summer 1986

The Flagler Dog Track Case, 7 Computer L.J. 117 (1986)

Marilyn Hochman

Follow this and additional works at: <https://repository.law.uic.edu/jitpl>



Part of the [Computer Law Commons](#), [Internet Law Commons](#), [Privacy Law Commons](#), and the [Science and Technology Law Commons](#)

Recommended Citation

Marilyn Hochman, *The Flagler Dog Track Case*, 7 *Computer L.J.* 117 (1986)

<https://repository.law.uic.edu/jitpl/vol7/iss1/5>

This Comments is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC John Marshall Journal of Information Technology & Privacy Law by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

THE FLAGLER DOG TRACK CASE*

I. FACTS OF THE CASE

The gun went off and the dogs shot out of the gate. Leon Rodriguez had bet a trifecta and was hoping that today he would come home with the jackpot. The dogs were racing around the track. The finish line was in sight. In an instant the tote board flashed the results. Leon Rodriguez had won. The total trifecta pool for the race was nearly \$15,000, but there were four other winners at Flagler on August 30, 1977. Unbeknownst to Rodriguez, the track or the state, the other four people who had won that pool were "electronic partners." Leon Rodriguez did not know that he had really won the whole pool.¹ He learned that much later with the help of people like Martin Dardis. Dardis was the chief investigator for the Dade County State Attorney's Office in the "Flagler Dog Track Case," as it was commonly known.²

A. THE PLAN

In 1972 Robert Watters had a general conversation with William (Bill) Deal and Tom Sclerz about ways to beat the betting system with a computer.³ Watters did not know that this conversation was the beginning of the great computer fraud at Flagler Dog Track. Two years later, Deal was asked by co-worker, Jacques Lavigne, whether it was possible to "pull tickets"⁴ out of the Flagler computers. A few days later, Deal told Lavigne the computers could be fixed. But Lavigne was cautious; if the scheme were to succeed, it could not arouse the suspicion of either the track officials or the betting public.⁵ One day as he was watching a race, Lavigne realized how he could make money without the track's knowledge. In this scheme the track would not lose any money; "there would be no shortages, no counterfeit tickets lying around and no evidence that could not be destroyed."⁶ He would "steal

* National Fifth Place, Second Annual Computer Law Writing Competition.

1. Underwood, *Win Place . . . and Sting*, SPORTS ILL., July 23, 1979 at 65.

2. Interview with Martin Dardis, Chief Investigator of the Flagler Dog Track case, in Miami, Florida (Dec. 19, 1984).

3. Deposition of Robert Watters, in Miami, Florida, at 12, Jan. 26, 1978 [hereinafter Watters Deposition].

4. Underwood, *supra* note 1, at 55.

5. *Id.*

6. *Id.* at 56.

it from the betting public, take money right out of the bettors hands without their knowing it."⁷ He would steal it from their winnings.

The computer scam was really a very simple procedure. The scam centered around a race called a trifecta which is "a bet requiring the selection of the exact 1-2-3 order of finish in a race."⁸ The odds against winning are about 336 to 1 in an eight-dog field.⁹ Using a computer to calculate the odds is simple, but space constraints make it impossible to post the 336 possible betting combinations on the infield tote board. Therefore, when a bettor plays a trifecta, the odds and betting pools are not displayed until the race is over and the payoff is established.¹⁰ What Lavigne realized was that "the trifecta odds could change dramatically, even *after* a race, and no one would be the wiser."¹¹ The odds "could be changed in and by the computer itself as they drifted in the electronic limbo of the computer memory, awaiting the operator's release of the final printout and the posting."¹² When Lavigne discussed his observation with Deal, he was assured

that between the finish and the final posting [Deal] could "move" tickets from one "address" in the computer to another, manipulate the switches in such a way that tickets purchased on losing dogs could be readdressed to the number of the winner. The final totals would match. . . . [H]e could do it right under the noses of the men the state paid to stand watch—because they knew zilch about computers.¹³

B. THE OPERATION

The plan had several phases which required "moving, printing and then cashing" fraudulent tickets.¹⁴ There were two areas where help was needed: "the mutuels rooms, whose personnel was employed by the track,"¹⁵ and "the computer-totalisator operation, run by Automatic Totalisators."¹⁶ Lavigne needed someone in the mutuels room to "calm track officers in case of a foul-up, someone in authority to explain any delays to the stewards and the two state agents overseeing the operation."¹⁷ Richard Korn, a mutuels calculator, was easily persuaded to

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* Autotote, as it is commonly known, is a Delaware corporation which services sixty tracks nationwide. Autotote "serviced all the Flagler betting machinery and ran the computers. Deal was Autotote's computer manager at Flagler." *Id.*

17. *Id.*

join Lavigne and Deal. Korn recruited Al Johnston, the mutuels manager. Robert Watters was enlisted to protect Deal in the computer room. Watters was trained to be Deal's backup. Gilles Caisse was brought in to keep track of the moving bets and to print the necessary tickets.¹⁸

Flagler operated two computers, utilizing Autotote's dual system. Computer A's information was channeled directly into the tote board and was considered the official system. Computer B operated simultaneously as a backup system.¹⁹ At the start of a race Deal simply switched off Computer A.

No one noticed when Deal turned off the computer. There were no telltale lights, no alarms. He waited the minute or so it took the dogs to run around the track, and on a signal from one of his confederates in the mutuels room—giving the winning number as the dog crossed the finish line—he transferred bets recorded on losing numbers to the winners. The transfer involved as many as 20 toggle-switch maneuvers and required upwards of 30 seconds. He then turned the computer back on and hit the "race increment" button to produce the final printout of the betting. The bogus figures were now implanted with the legitimate bets.

The rest was routine. When the race judges verified the order of finish, Deal punched the "compute prices" key, then hit the "display" button to light up the payoffs on the tote board.²⁰

What had actually occurred was that the trifecta pool, which should have been split by all the winners, had been diluted; the number of illegitimate winners proportionally reduced the amount the legitimate winners would receive.²¹ While Computer A was being tampered with, Computer B was printing out the real betting results. But because Computer A produced the official printout, Computer B's output was routinely ignored and thrown away.²²

All that remained was to print and cash the tickets. Caisse printed them after the evening program, when Autotote personnel customarily serviced the ticket-issuing machines behind each cashier's window. His presence was not unusual. With the ticket machines no longer hooked up to the computer, it was simple enough to insert a "date stick" (a plastic key that imprints the date and proper code letters on each ticket, with the letters changing from race to race to discourage counterfeiter) and manually run off the tickets.

For accuracy and accounting purposes, Caisse kept a record of the transfers on a small "code sheet," a list of the day's code sequences

18. *Id.* at 57.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

given to the tellers to code the machines, and totaled the trifecta payoffs on the sheet.²³

The following day Lavigne cashed the "winning tickets" at the track and distributed the proceeds.²⁴

The scam continued until Deal resigned one year later.²⁵ Watters worked the scam for one more year, at which time he was promoted to Southern District Manager of Autotote (in charge of overseeing the operation of all southern race tracks).²⁶ He remained in Florida and traveled from track to track.²⁷ The following year Lavigne recruited Richard Hudson, a Flagler computer manager. Watters showed Hudson how to manipulate the computer.²⁸ Hudson became very good at moving tickets; his skill resulted in an increasing number of payoffs.²⁹ Lavigne, however, could not keep appearing at the "outs window" (the past performance window), so he began using "ten-percenters." Ten percenters are "track hangers-on who cash tickets for high rollers and income-tax evaders."³⁰ These ten-percenters would also sign their own names to IRS form 5754, a form which must be filed when payoffs are greater than \$600.³¹ The ten-percenter most frequently used by Lavigne was Wayne Murray.³²

Lavigne was the mastermind of the whole scheme. Only Hudson and Caisse knew that Murray and the other ten-percenters were only getting five-percent. Hudson and Caisse had only Lavigne's word for what he paid the others, although they knew how many tickets were actually printed. Korn and Johnston, in the mutuels room, had only Lavigne's word on the number of tickets printed. Watters' travels prevented him from being fully informed.³³

Lavigne had warned all the conspirators about looking too flashy, looking as if they had extra money.³⁴ Hudson started doing a few things out of the ordinary, even after being warned. "One night Hudson came out of Flagler with \$10,000 in his pocket."³⁵ "He opened a safe-deposit box at a bank in Hollywood, Fla. and put the bulk of his money there. He stowed additional money in a plastic bag and buried it under

23. *Id.* at 57-58.

24. *Id.* at 58.

25. *Id.*

26. Watters Deposition, *supra* note 3, at 9.

27. Underwood, *supra* note 1, at 58.

28. *Id.*

29. *Id.* at 60.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 58.

35. *Id.* at 60.

the patio where he sometimes fed his dog.”³⁶ Hudson’s wife, Doris, did not know where the extra money was coming from, but she liked having it and began spending it. “When [Hudson] could no longer explain away his incredible good fortune” to Doris, he confided in her.³⁷ She became the first person outside of the Flagler conspiracy to learn about the scam. Unfortunately for the men, “Doris had a wide circle of friends and was not a reluctant conversationalist.”³⁸

C. THE INVESTIGATION

On September 2, 1977 a call came to the Dade County State Attorney’s Office.³⁹

[An] informer had contacted David Hecht, owner and general manager of Flagler, a week before, telling him somebody was “messing around with the outs book,” cashing what must be fraudulent tickets at the past-performance window. The informer said they were “using the computer.” He said he knew because he had a “close friendship” with the wife of one of the computer operators, a man named Hudson.⁴⁰

Hecht investigated, but found that counterfeit tickets could not be the problem since the track figures balanced and there were no deficits. Faced with no answer, the IRS,⁴¹ the Florida Division of Pari-Mutuel Wagering,⁴² and the FBI⁴³ were contacted for assistance.

The IRS stated, “It would take two years to run this down.”⁴⁴ Dan Bradley, the director of the Florida Division of Pari-Mutuel Wagering, said that his agency “doesn’t have an investigative staff he can call on for such matters.”⁴⁵ Julius Mattson, head of the Miami FBI office, said that the FBI had no jurisdiction since “there was no probable cause to believe that a federal crime had been committed.”⁴⁶ As a result, responsibility for the case fell on the Dade County State Attorney’s office, and Martin Dardis was assigned to the case.

Keith Dodwell, executive vice-president of Autotote, was flown in to help with the investigation. He and Dardis looked at the printouts from both Computer A and Computer B and noticed some discrepancies. There were discrepancies in the amount of the winning payoff

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 62.

42. LaBrecque, *Why Flagler Dog Track Was Easy Pickings*, MIAMI HER., Sept. 21, 1977, at 1, col. 3.

43. Underwood, *supra* note 1, at 62.

44. *Id.*

45. LaBrecque, *supra* note 42, at 17A, col. 2.

46. *Id.*

from a race as well as the number of tickets for the same race.⁴⁷

Computer "A," said Dodwell, dispensed three copies, one for the mutuels room to check against the cash brought in after each race, one for the state to verify tax revenue, the track's take, breakage, etc. and one as a permanent record. Computer "B," he said, was a backup, used only in emergencies. The "B" copy was generally thrown away.⁴⁸

Dodwell realized that it must be the trifecta winnings that were being tampered with and "if the figures were altered in the computer, that had to be done by the operator, a man named Richard Hudson. Or his assistant, a man named Gilles Caisse."⁴⁹

Both men began rummaging through the litter from the wastebaskets at the track. Dardis pieced together a paper which proved to be an official "code sheet." The code sheet contained columns of handwritten numbers. Dodwell compared the trifecta payoffs with the code sheet and found that they matched. The code sheet user had "won" over \$16,000.⁵⁰

Dardis stayed all weekend. He examined some 5754 forms signed by Wayne Murray, a man who had cashed trifecta tickets worth \$150,000.⁵¹ He sifted through boxes of computer printouts, cashed tickets, and 5754 forms.

In the columns of ciphers on the computer printout for the seventh race of the Flagler matinee of Aug. 30, he found that Machine No. 507, located in a trifecta ticket window in the grandstand, had sold no trifecta wheel tickets: the entry said "O." But when Dardis matched that figure against his collection of 5754 forms, he saw that Murray had cashed four trifecta tickets worth \$12,000 on that race—and each ticket wheel bore the signet of Machine No. 507.⁵²

Comparing these tickets with the machine test tickets kept on file, Dardis discovered that while the date and code numbers had been printed on the same machine, they had been printed at different times.

For Dardis, this proved two things: 1) Someone had come back to Machine 507 after the computers had been turned off, reinserted a code stick and manually printed the four tickets Murray had cashed; 2) The thief did not think to look on the printout to see whether any legitimate tickets were sold at Machine 507 for that race. This meant that Wayne Murray's tickets were fraudulent.⁵³

Monday morning, Labor Day, Dardis called the Dade County State At-

47. Underwood, *supra* note 1, at 62.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

torney and told them how the scam was being run.⁵⁴

Dardis had Wayne Murray picked up for questioning. Murray confirmed Dardis' suspicions that the tickets were fraudulent.⁵⁵ Dardis then investigated the fifteen people who had access to the mutuels and computers rooms at Flagler. He knew it would be difficult if not impossible to connect all the conspirators to the crime. The end of the dog racing season was approaching and the track would be closing down.⁵⁶

Dardis decided to "turn" a conspirator, one whose guilt he could prove—grant him immunity in order to implicate the others. He had divided the suspects into two general groups. The mutuels personnel were mostly itinerants who traveled from track to track like carnival people; Dardis thought of them, generically, as "angle shooters." The computer people, on the other hand, he found "more introspective" and "less likely to bluff or run for a lawyer." He decided to turn one of these. He decided to turn Richard (Rick) Hudson.⁵⁷

Dardis planned to approach Hudson, using the original informant, Irv Solotoff, who was a friend of Doris Hudson. Solotoff, under Dardis' instructions, wore a transmitter and went to see his friend Doris Hudson.⁵⁸ She and Solotoff talked about the State Attorney's investigation, her \$6000 Hummel collection and the money buried in her backyard. She asked Solotoff to take her figurine collection and \$15,000 in cash, and hide them.⁵⁹

Dardis subpoenaed Doris Hudson. He offered to give her husband, Rick, immunity in exchange for his assistance in rounding up the other conspirators and his return of the illegal gambling profits.⁶⁰

Doris and Dardis went to the house in Hollywood to get the money.⁶¹ When Rick came home, Dardis, who was outside his jurisdiction, told Rick he knew how the scheme worked. Rick decided to cooperate and agreed to take a polygraph test.⁶²

Hudson told Dardis that Lavigne was the leader. He also told Dardis of Watters' involvement, a connection which Dardis had not suspected. Hudson then agreed to wear a wire transmitter for a week. At that time Dardis was convinced he knew all of the involved conspirators. Within three weeks of the initial call to the State Attorney's office, all the conspirators, except Johnston, had been arrested.⁶³ The

54. *Id.* at 65.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 66.

State Attorney said "It's the most clever criminal scheme I have ever seen."⁶⁴

Caisse and Watters, the Autotote employees, turned state's evidence and "agreed to plead out."⁶⁵ Korn, Johnston and Lavigne, the track employees, hired lawyers,⁶⁶ although Korn and Johnston later plead out as well.

William Deal, the original computer skinner, who had resigned and was rehired by Autotote in 1977 as its northern district manager, was not arrested. The statute of limitations had run out. This time, however, he was fired.⁶⁷

As for the recovered money, claims flooded Dardis' office. The money was placed in an interest-bearing account while the claims were processed.⁶⁸

II. CRIMINAL CASES

Warrants for the arrests of Samuel Korn, Albert Sidney Johnston and Jacques Lavigne were sworn out on September 19, 1977. They were arrested and charged with one count of conspiracy, sixty-three counts of grand larceny, and sixty-three counts of receiving stolen property. All three plead guilty to all of the counts. Both Johnston and Korn agreed to make full restitution.⁶⁹ Lavigne, however, refused to cooperate.⁷⁰

Johnston was sentenced to one year for each count, to be served concurrently, and two years probation. Korn was sentenced to eighteen months for each count, to be served concurrently, and one-half year probation. Jacques Lavigne was sentenced to two and one-half years concurrent time and two and one-half years of probation.⁷¹

III. CIVIL CASES

There were three civil cases arising out of the Flagler Dog Track case. These cases were consolidated on appeal as *State of Florida v. Uller, Kneale and Weiss*.⁷² The case was originally heard upon a joint petition to distribute the funds held by the State Attorney's office.⁷³ The fund was the money Dardis had put in the interest bearing account. The causes of action were: to defraud, to conspire, to cheat and to

64. Malone, *Dog Players Bilked Via Computer*, MIAMI HER., Sept. 20, 1977, at 1, col. 1.

65. Underwood, *supra* note 1, at 66.

66. *Id.*

67. *Id.*

68. *Id.*

69. *State v. Johnston*, No. 77-79622 (Fla. Cir. Ct. April 7, 1978).

70. Underwood, *supra* note 1 at 66.

71. *State v. Johnston*, No. 77-79622 (Fla. Cir. Ct. April 7, 1978).

72. *State v. Uller*, No. 84-732, slip op. (Fla. 3d Dist. Ct. App. Dec. 4, 1984).

73. *Id.*

deceive the plaintiffs out of correct winnings on trifecta tickets by illegally rigging and manipulating the computers at Flagler Dog Track.⁷⁴ The original defendants were Automatic Totalisators (USA), LTD., West Flagler Associates, LTD., and the State of Florida. The state was ultimately dropped as a defendant. Defendants St. Paul Fire and Marine Insurance Co., Autotote's insurance company, and Old Republic Insurance Co., West Flagler's insurance company, were added.⁷⁵

The major argument of the case, however, centered around the recovered money. Distribution of all but \$19,673.02 of the \$214,362.40 available in Dardis' fund was made to the 242 persons who claimed their winnings. The \$19,673.02 is what Uller, Kneale and Weiss were claiming as theirs.⁷⁶

On appeal the lower court's decision was affirmed.⁷⁷ The state argument that the money was part of an unclaimed or abandoned parimutuel pool, and therefore was either abandoned property under section 717.09⁷⁸ of the Florida Statutes which would belong to the state, or was unclaimed moneys used as evidence in a criminal case under section 116.21⁷⁹ or 116.23⁸⁰ of the Florida Statutes which would belong to Dade County,⁸¹ lost.

IV. COMPUTER CRIMES STATUTE

In 1978 Florida passed the country's first Computer Crimes Act.⁸² If the Flagler criminals could have been charged under this act, they could have been charged and sentenced as second degree felons, a crime punishable by a maximum of fifteen years imprisonment and a fine of \$10,000 for each infraction. They could have been sentenced to five years imprisonment and a maximum fine of \$5000 for each infraction as third degree felons. They could also have been charged and convicted as first and second degree misdemeanants. All these computer crime sanctions could have been imposed without precluding "the applicability

74. *Id.*

75. *Id.* Old Republic denied the allegations and said their contract with West Flagler did not permit West Flagler to be indemnified by Old Republic. There was also a contractual dispute between Autotote and West Flagler. West Flagler said their lease contract with Autotote provided that Autotote was to hold West Flagler harmless and to indemnify it. *Id.*

76. *Id.* It was established that the money had not been received in 1974, 1975 or 1976. This fact should have eliminated Weiss and Kneal's claim for those years. Uller argued he had won numerous trifecta tickets between July 1, 1977 and August 30, 1977. *Id.*

77. *Id.*

78. FLA. STAT. ANN. § 717.09 (West 1969).

79. *Id.* § 116.21 (West 1982 & Supp. 1986);

80. *Id.* § 116.23 (West 1982).

81. *State v. Uller*, No. 84-732, slip op. (Fla.3d Dist.Ct.App. Dec. 4, 1984).

82. FLA. STAT. ANN. §§ 815.01-815.07 (West Supp. 1986).

of any other provision of the criminal laws of [Florida]. . . ."⁸³

V. DIVISION OF PARI-MUTUEL WAGERING UPDATE

Florida race tracks are governed by the Division of Pari-Mutuel Wagering, a Florida agency run by the Board of Business Regulation. It is "responsible for knowing whether Florida's tracks and frontons are run properly. . . ."⁸⁴ But according to Dan Bradley, the director of the agency at the time of the Flagler case, "Florida is ill-equipped to verify the honesty of the figures supplied by the state's 37 horse and dog tracks and jai-alai frontons and unable to certify the honesty of the races themselves."⁸⁵ In 1977 the department had no full-time auditors or computer experts. Flagler's "part-time state auditor using a \$49.95 calculator was no match for a manipulated multimillion-dollar computer system spewing out fraudulent pari-mutuel tickets worth thousands."⁸⁶

There have been continual efforts to step up security at the frontons and tracks. Robert M. Rosenberg, the present director of the Division of Pari-Mutuel Wagering, stated that there has been a lot of effort to regulate the totalisator industry, largely as a result of the Flagler Dog Track case.⁸⁷ He said,

Price Waterhouse was commissioned by the State to create rules which would avoid recurrence of that type of thing. Rules were drafted, filed but not promulgated. The majority of the extensive package of rules, about two-thirds, will place certain obligations on the track to implement certain controls, safeguards and procedures. The other one-third obligates the tote companies to build safeguards into their systems.⁸⁸

Florida enacted a totalisator licensing statute in 1978 which allows the state to license totalisator operators and to set a standard for licensure; an amendment to this bill makes totalisator companies strictly liable for losses on state revenues for their acts.⁸⁹ Other actions taken after the Flagler Dog Track case include the addition of three compliance auditors.⁹⁰ These auditors serve two functions. They perform ticket audits and they test totalisator systems before the systems are al-

83. *Id.* § 815.07.

84. LaBrecque *supra* note 42, at 1, col. 3.

85. *Id.* at 1, col. 4-5.

86. *Id.* at 1, col. 3.

87. Telephone interview with Robert M. Rosenberg, Director of the Florida Division of Pari-Mutuel Wagering (January 3, 1985).

88. *Id.*

89. FLA. STAT. ANN. § 550.48 (West Supp. 1986).

90. Telephone interview with Michael Gouge, Assistant Director of Florida Division of Pari-mutuel Wagering (January 2, 1985); telephone interview with Rosenberg, *supra* note 87.

lowed to be set up at tracks.⁹¹ Tests are routinely run on every tote system in the state. Imaginary wagers and imaginary pools are created to check the results and the accuracy of the totalisator equipment.⁹² The agency has tried to look at the computer programs owned by the tote companies in order to review the accuracy of these programs but the tote companies have claimed proprietary rights, arguing the computer code is confidential.⁹³

Recently, Florida, in an unprecedented case, refused to relicense a major totalisator company, Western Totalisator, which had contracts at the Pensacola and Seminole tracks, and Palm Beach Jai-Alai, on the basis of Florida Statute § 550.48.⁹⁴ Additionally, the new regulations have led to a number of criminal prosecutions under the Florida Computer Crimes Act. Three people in Pensacola, Florida, were charged with grand theft, computer fraud and conspiracy. They plead guilty to the counts of grand theft and computer fraud.⁹⁵

Marilyn Hochman

91. Telephone interview with Gouge, *supra* note 90.

92. *Id.*

93. Telephone interview with Rosenberg, *supra* note 87.

94. *Id.*

95. *Id.*

