

FBI LAW ENFORCEMENT BULLETIN

MARCH 1984



The Uniformed Crime Investigator

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Contents

- | | | |
|-----------------------------|-----------|--|
| Operations | 1 | The Uniformed Crime Investigator: A Unique Strategy to Protect and Serve
By Gene N. Berry |
| Law Enforcement Role | 7 | The Forgotten Victim: Stress and the Police Dispatcher
By Dr. James D. Sewell and Linda Crew |
| Forensic Science | 12 | Fiber Evidence and the Wayne Williams Trial (Part I)
By Harold A. Deadman |
| Communications | 21 | Nonverbal Elements in Courtroom Demeanor
By Dr. John L. Waltman |
| The Legal Digest | 24 | Entrapment, Inducement, and the Use of Unwitting Middlemen (Conclusion)
By Michael Callahan |
| | 32 | Wanted By the FBI |



The Cover: As a means to control rising crime rates and provide improved service to the community, one police agency developed a Uniformed Crime Investigator Program. See article p. 1.

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William H. Webster, Director

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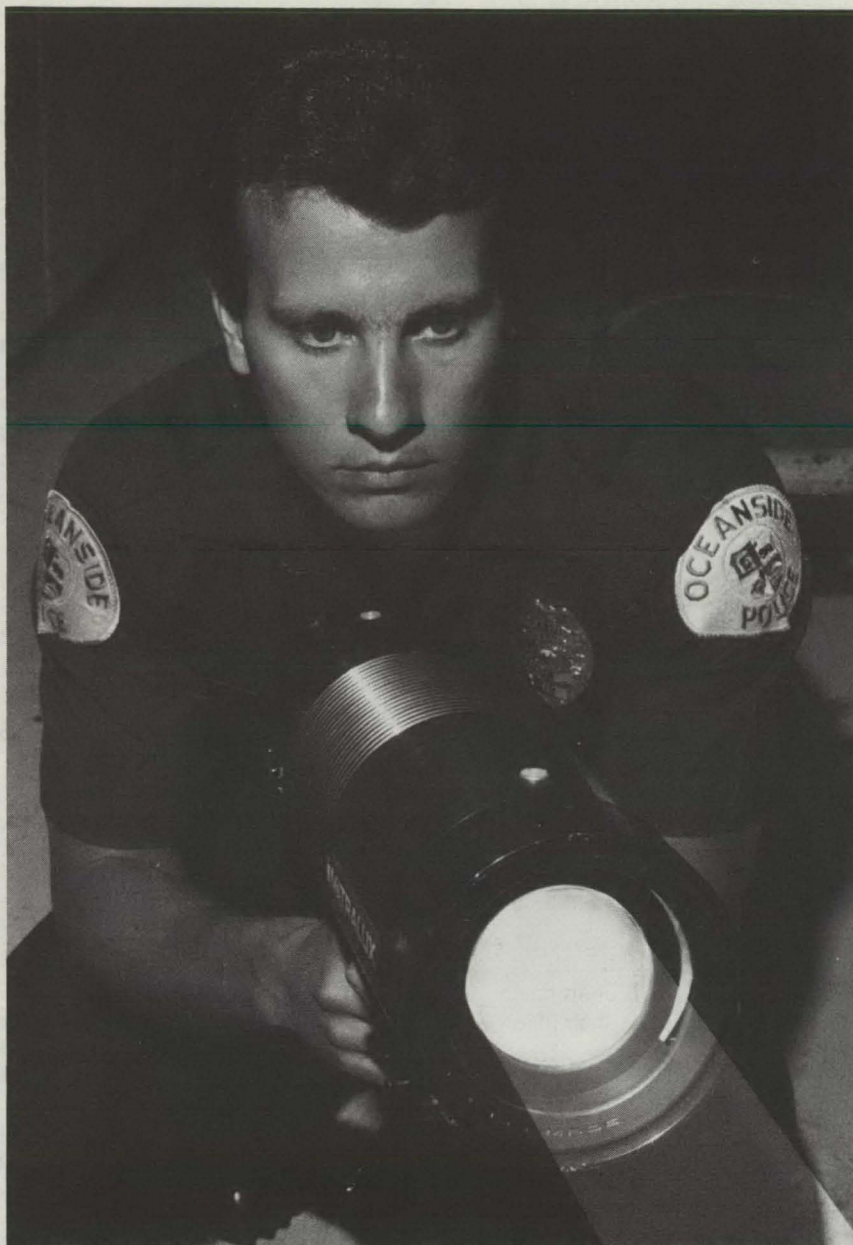
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How can my organization be more productive and cost-effective using existing manpower and equipment with minimal funding? This question is constantly on the minds of progressive law enforcement administrators. Historically, the prevailing tendency was simply to ask for additional funds to support added personnel or equipment. Administrators were not always forced to look within themselves to find solutions to field operational problems. However, State propositions and recent government financial problems have changed all of this. Law enforcement agencies are now required to continue a high level of service, maintain top productivity, and create programs to reduce crime statistics, while remaining within roll-over or reduced budgets.

Crime within a community is a primary concern of all citizens, but especially to law enforcement personnel and city administrators. Aware of general crime statistics and crime clearance rates, the Oceanside, Calif., Police Department was not able to state with confidence whether our preventive efforts were productive. Although the crime clearance statistics change from month to month and year to year, the fluctuating base line

The Uniformed Crime Investigator

A Unique Strategy to Protect and Serve

By
LT. GENE N. BERRY

*Commander
Operations Bureau
Police Department
Oceanside, Calif.*

“Cooperation and coordination are main ingredients to the success of the program.”



Lieutenant Berry

was not satisfactory. A program had to be developed that would stabilize these statistics and overcome the public's concern of crime.

Unfortunately, the following scenario is a common daily occurrence in cities and towns across the United States:

A house or business has been broken into and the victim calls for police assistance. The police arrive and begin their investigation. They ask a few questions, take photographs, and if fortunate, lift fingerprints from the scene. But in most cases, unless the case is of major importance, the officer files the report with the Investigations Division the following day, leaving the citizen confused, frustrated, and wondering why nothing else can be done.

Initial responses by law enforcement personnel have been limited traditionally because of their many and varied responsibilities. They are charged with handling calls for service, making arrests where appropriate, and performing lifesaving acts when necessary. Time does not allow the responding officer to do more than gather preliminary information. In addition, patrol officers investigating crime scenes usually do not possess the necessary equipment or specialized training required for a detailed crime scene analysis. This can be attributed to a lack of "job specific" training courses or budgetary restraints. For these reasons, the Uniformed Crime Investigator (UCI) Program was developed. Not only is it one answer to a community need, it also improved the department's response to a wide variety of crimes.

The UCI program is similar in one respect to training courses for field evidence technicians or crime scene investigators. However, in these programs, other "experts" are called in to assist if more than evidence collection, preservation, and cataloging is needed in an investigation. This, in turn, can generate an overtime cost factor if off-duty detectives or other personnel become involved.

The UCI program goes beyond these common practices. UCI's obtain search/arrest warrants, interview and interrogate victims or suspects, and make composites of wanted subjects. They are charged with the responsibility to do all that is necessary at the initial call to bring the case to a successful completion. For example, the UCI arriving at a crime scene evaluates the incident and determines what investigative action will be taken. He has total responsibility and control unless the incident is of such importance or magnitude that detectives and other investigating personnel are needed. If this occurs, the responsibility for the crime scene rests with the "call-out" detective and crime scene personnel will be given specific duties to perform. If the case does not require extensive followup, it will not be directed to the Investigations Division. In these instances, program personnel are responsible for total crime scene management and resolution. (See fig. 1.)

The Uniformed Crime Investigator Program was designed to accomplish three major goals:

- Raise the quality of "front end" investigations,
- Raise the quantity of prosecutable crimes, and
- Raise the level of service to the community.

Figure 1

Major Functions Performed by Uniformed Crime Investigators

- 1) Total crime scene management,
- 2) Crime scene photography,
- 3) Develop latent prints using powders and chemicals,
- 4) Conduct interviews/interrogations,
- 5) Obtain search/arrest warrants,
- 6) Collect, preserve, and catalog physical evidence,
- 7) Crime scene sketch,
- 8) Collect body fluids,
- 9) Make impressions,
- 10) Make composites using the "Identi-Kit" process,
- 11) Conduct neutron activation tests,
- 12) Attend autopsies,
- 13) Operate artificial lighting systems,
- 14) Maintain field activity records, and
- 15) Conduct followup investigations.

Quality of "Front End" Investigations

Without question, the most important aspect to a successful conclusion of a crime scene investigation is at the scene of the incident. Here is where the focus of attention is directed. If proper techniques are not applied or a thorough understanding of the ultimate goal is not clear, the end result will be manifested in higher crime statistics and lower crime clearance rates.

Once a crime scene has been contaminated or given only a cursory examination, the investigator's job becomes more difficult. It is more difficult to go back and reconstruct the scene, to return and relocate victims or witnesses, or to remember who said what about whom. The appropriate time is at the moment the responding officer first arrives at the scene. Total crime scene management and commitment of available resources begin here.

In today's law enforcement approach to solving crimes, merely taking an investigative report for detectives to follow up later is not enough. Whether they are the victim of a major crime or a simple theft, citizens expect the police to do all that we can immediately. In either event, the citizen believes he has been wronged and he expects a visible, concerted effort to help him.

Quantity of Prosecutable Crimes

If the first goal is met and preliminary investigations are upgraded, then perpetrators are more likely to be identified and connected to crimes. Physical evidence that has been collected, victim statements that were taken, composites that have been constructed, and search or arrest warrants that have been obtained all play a role at the front end of the investigation in identifying criminals.

Law enforcement personnel know that in many cases, several crimes are the end result of a few people. Repeat offenders are often directly responsible for a series of criminal events. By connecting those violators to crimes with good preliminary work, the number of prosecutable crimes will rise. This, in turn, will help to bring the arrest clearance rates up to an acceptable level.

Level of Service to the Community

The key feature of this program is that it is highly visible, action-oriented, and is received enthusiastically by the public. The citizens observe, first hand, a portion of the criminal justice system in motion. They see their law enforcement agency being responsive to their needs. Immediate, favorable, and positive reaction is the result of these improved crime control tactics.

Operations

Twelve officers were selected to participate in the program, including two women. The officers are uniformed patrol officers assigned to the field 7 days a week, 24 hours a day. Supervision of these officers is jointly coordinated between patrol field sergeants and Operations Bureau sergeants. Operations sergeants participated alongside UCI personnel during the training phase. While they also handle patrol duties, they monitor and supervise investigations handled by UCI officers, who are primarily responsible for crime scene investigation work. However, when not engaged in UCI work, they handle any and all patrol duties.

It is absolutely essential that the function of the UCI program be fully understood. On one hand, UCI officers are performing patrol duties; on the other, they are performing investigative functions. Cooperation and coordination are main ingredients to the success of the program. The emphasis of the program is placed on the goals to be achieved. If constantly guided by the end results, the major objectives of the program will be met. An interchange of ideas and information with constant updating is necessary among UCI personnel, investigative personnel, and patrol officers. Open channels of communication must be maintained.

For a program of these dimensions to be successful, it is crucial that lines of responsibility be well-known and recognized throughout the organization. But even this must be preceded by one other major factor—total support of the agency's administrator. Without his backing, a po-



"Training is the backbone of a successful UCI program—extensive training at the beginning, ongoing training as the program develops."



Above: Evidence collection methods and proper use of equipment are taught to UCI personnel.

Left: Crime scene photography is a major function of the uniformed crime investigator.

tentially high source of public approval and department satisfaction will wallow in a quagmire of confusion and laxity.

Although the UCI program was designed to raise the quality of preliminary investigations and to do whatever was necessary to complete the case at that time, certain crimes do not lend themselves to the actions of UCI personnel alone. Because particular crimes will always involve follow-up work, it is necessary to identify those crimes where investigators and other experts will always be needed.

Four major areas were identified—homicides, assaults where death is likely to occur, officer-involved shootings, and arson. These cases involve time-consuming, indepth investigations beyond the parameters of the UCI operation. They entail vast amounts of personnel, equipment, and expertise. It may be days, weeks, and months before they are dispositioned. This program was not designed to handle these types of incidents, although UCI personnel would be involved extensively in a support role at the initial crime scene.

Training

Training is the backbone of a successful UCI program—extensive training at the beginning, ongoing training as the program develops.

Several field evidence technician courses were reviewed as the basis

for the training program. However, our needs greatly exceeded the standard courses available, since UCI personnel would do more than collect physical evidence, using all available resources to complete the case at the first response whenever possible.

It became evident that we would have to train our own personnel and design our own training curriculum. Although some classes offered by the California Department of Justice Commission on Peace Officer Standards and Training (P.O.S.T.) met our needs, the number of officers away from their regular duties while attending these courses would deplete patrol field strength. This was unacceptable. Also, budgetary considerations were another problem, since we were faced with a budgetary freeze. Reimbursements for P.O.S.T.-approved classes are returned to the city's General Fund, not the police department's training budget.

Our training had to be relevant to the needs of the department, instill confidence among the officers, public, and district attorney's office, and most of all, be reputable. We designed an 88-hour course of instruction which involved classroom instruction and extensive field work, drawing instructors from the Federal Bureau of Investigation, the San Diego District Attorney's Office, the San Diego County Crime Lab, and in-house experts such as identification technicians and investigators familiar with "Identi-Kit" composites.

Before the training began, we met with each of the instructors and discussed what we envisioned for our program so that they could tailor their training to our needs and goals. They were also asked to consider our capabilities.

"The Uniformed Crime Investigator Program . . . can enhance public relations and bring the community and law enforcement agency into a shared light of total crime scene control and community responsiveness."

Resistance

Any change within an organization, especially a major field operational change, provokes some resistance and negativism among the rank and file, and this was true with the conceptualization of the Uniformed Crime Investigator Program. General investigative personnel feared encroachment upon their investigative techniques and that their expertise would be challenged. Most of all, they feared that UCI field work would generate additional case workloads for them. These were legitimate concerns, but concerns which have not materialized, even though our program is still in its early stages of development. This is why it is important for close working relationships to be developed between division commanders and among divisional personnel to keep the intent of the program intact. Program personnel and others involved must be encouraged to establish a coordinated and cooperative working relationship if the specific program objectives and departmental goals are to be met.

Contrary to the beliefs of investigators, case loads have not increased substantially. Instead, significantly more physical evidence is collected and more extensive initial investigations are conducted. Efforts by UCI officers have alleviated followup work for investigators and thus freed them for other duties. Also the work of UCI's has enabled investigators to follow up immediately on leads which have been developed.

Program Monitoring

First-line supervisors need to be thoroughly familiar with the program

and its objectives. They must also be made aware of the type and extent of training given to UCI's and the limitations placed upon them by their equipment and experience. These supervisors must establish liaison with other departmental units, especially the investigative personnel, and UCI officers themselves should be encouraged to institute "lines of communications" with other support groups.

The program has been monitored closely and suggestions and criticisms evaluated to increase the program's effectiveness. Monthly meetings are used to identify operational field problems, reinforce program goals, and raise the efficiency of the unit and its individual officers.

Equipment

Full departmental support and suitable equipment go hand in hand for a successful end product. A significant community program that will impact the reputation of the law enforcement agency must be properly prepared and equipped. Several other law enforcement agencies, county crime laboratory personnel, knowledgeable camera experts, and other individuals associated with private laboratories were solicited for equipment suggestions. The final result was that we were able to combine several well-informed opinions into a feasible equipment inventory. This, coupled with the training, would meet the objectives of the program.

Conclusion

The Uniformed Crime Investigator Program became operational in March 1983, and since that time, UCI officers are handling 125 to 150 incidents a month. While most of the UCI field work does not initially produce a sus-

pect, thorough preliminary crime scene work has produced excellent results in connecting perpetrators to a series of crimes.

The major impact of the UCI program has been realized in the property crime section of the Investigations Division. A large amount of physical evidence has been collected, and arrests have been made as the result of these investigations. Additional side benefits of the program are the availability of UCI officers who have specialized training to act as instructors for other field officers, which has a positive effect on the quality of work produced. The program can also be viewed as an enhancement for career development.

Society's expectations are high whether it concerns what individuals expect of themselves or from others. These expectations, combined with budgetary problems for the public sector, make our jobs difficult but not impossible. We must look within ourselves and organizations for new ideas. We have a commitment to our communities to provide the best service possible without asking for additional monies. If added financial help must be requested, then we must be constantly aware that the public will expect a fair and equitable return.

The Uniformed Crime Investigator Program can bring positive feedback to the department. It can enhance public relations and bring the community and law enforcement agency into a shared light of total crime scene control and community responsiveness.

FBI

The Forgotten Victim ***Stress and the Police Dispatcher***

“... the immediate attention and decisive action required in law enforcement telecommunications is a source of critical stress for police dispatchers.”

By
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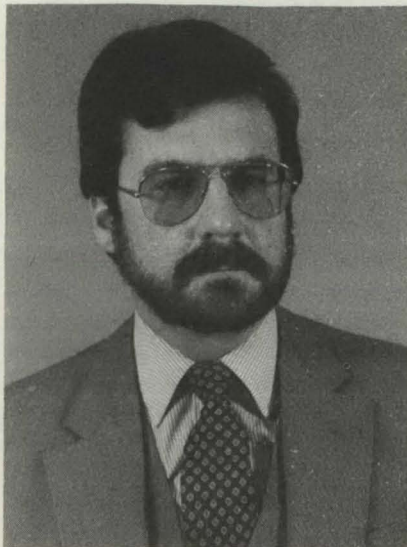
and
OFFICER LINDA CREW

*Police Department
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Over the past several years, the law enforcement community, and to a degree, society in general have turned their attention to the serious phenomenon of police stress. Significant research has been undertaken to explain the problem, identify specific stressors confronting today's officers, and suggest proper methods of stress management.¹

At the same time, however, little attention has been focused on the stress experienced by the law enforcement support system, i.e., dispatchers, complaint clerks, clerical personnel, crime scene and evidence technicians, and other nonsworn personnel who are so critical to the success of the law enforcement mission.





Dr. Sewell



*Robert A. Butterworth
Executive Director*

While the stressors experienced by these individuals may not be as life-threatening as those faced by sworn personnel on the street, emotional overload and physiological damage caused by this stress are just as real and as dangerous to all members of the profession.

Other occupations have taken significant steps to identify and address stress confronting their personnel. The experience of some can have implications for understanding that faced by certain segments of the police support system.

Stress in Air Traffic Control

The pressures brought on by the job of police dispatcher are not dissimilar to those experienced by the air traffic controller. David Martindale, for instance, describes a mock advertisement for the latter profession:

HELP WANTED: World's busiest airport seeks radar jockies for unusually stimulating, high-intensity environment. Must be able to direct at least 12 aircraft at one time and make instant decisions affecting the safety of thousands. No degree required, but prior experience as traffic cop, seeing-eye dog, or God helpful. Severe stress will jeopardize sanity and result in early termination from job, but employer will absorb cost of medical and psychiatric care.²

Martindale cites the research of Sidney Cobb of the University of Michigan and Robert Rose of Boston University, who compared the medical histories of 4,325 controllers and 8,435 pilots. Those researchers found that "not only was hypertension four

times more common among controllers, it also developed at an earlier age and was especially prevalent at busy fields. In addition, twice as many controllers suffered from peptic ulcers."³ In parallel research, Richard Grayson, a former president of the American Academy of Stress Disorder,

"... has examined many of the controllers in the Chicago area, and found remarkably similar symptoms: insomnia, loss of appetite, anxiety, irritability, and sexual dysfunction. Railroad dispatchers and sonar operators on nuclear submarines undergo similar stress, but their symptoms are seldom as severe. According to Grayson, air-traffic controllers have the highest incidence of peptic ulcers of any profession, ulcers aggravated by overtime work, high-density traffic, and fear of midair collisions."⁴

Others have also explored the phenomenon of stress within the air traffic control (ATC) function. Hurst and Rose, for instance, found that simultaneous peak traffic, i.e., the number of aircraft controlled over a limited period of time, was the most significant source of stress and "most potent index of workload at the ATC environment."⁵ Additionally, Crump's search cited workload as the most obvious source of stress for the controllers and further identified stress as originating from the duration of radio communication, number of planes expected, number of planes controlled, and pressures of time.⁶

Stress in Law Enforcement Communications

The police dispatcher experiences occupational stress which par-



Officer Crew



*Melvin L. Tucker
Chief of Police*

allels that of the air traffic controller. With significant time pressure, the dispatcher, too, is required to direct the activities of multiple field units; receive, assimilate, and dispatch information from a variety of sources; and effectively communicate with officers and citizens. To analyze effectively the resulting stress and implement programs of recognition and management, it is first necessary to identify those unique stressors which affect the communications environment.

Second-class Citizenship

It is not unusual for communications personnel to perceive themselves as "second-class citizens" within their department. Field needs receive administrative attention and priority in both personnel and budget, and even line officers are quick to criticize and slow to recognize the actions of these vital support personnel. The frustrations of this stressor are generated not only from field personnel but also from administrators and supervisors who are perceived to lack knowledge about the role and functions of a professional communications center.

Insufficient Training

In spite of efforts by professional organizations, such as the Associated Public Safety Communications Officers (APCO), training for communications operators is still primarily on the job. In too many departments, such training is conducted by senior personnel without benefit of a formalized training program, such as that fostered by a field officer training guide. Consequently, the operator lacks the training—and perceives the deficiency—which is necessary for the most efficient operation of the communica-

tions center and assures maximum safety of officers on the street.

Multiple Calls

As in the case of the air traffic controller, "simultaneous peak traffic" on the radio is a particularly significant source of stress for police dispatchers. Heavy volume of radio traffic and incoming telephone calls occurring within a short period of time place extreme physical and psychological demands on the individual operator.

Required Decisions

In his research on ATC stress, Crump identified one source as the number of required decisions, particularly "when a controller's decision-making capacity is stretched to the maximum."⁷ Similarly, the immediate attention and decisive action required in law enforcement telecommunications is a source of critical stress for police dispatchers. The potential life-threatening nature of many calls and the sense of urgency connected with handling people's problems magnifies the pressures created by multiple calls and constraints of time.

Anticipation

Like police officers who must experience their peers handling exciting or dangerous calls in another zone, the dispatcher responsible for communications must also endure the stress of anticipation and vicarious fear. As anticipation and concern build, the dispatcher feels as if he must reach through the microphone to determine the officer's status and confirm his safety.

Antiquated Systems

An out-of-date radio system, coupled with antiquated support systems,

such as an inadequate intrastate criminal information center, can cause the dispatcher as much stress as the officer on the street. The frustrations caused by the limitations on such a system and the fear of potential danger to officers and citizens as a result can be significant.

Low Control

Occupational stress research has identified as highly stressful those situations where a person is in a low-level job in the office hierarchy and has little control over the working environment. Unlike sworn personnel who exert more discretion and control over their responses to requests for police service, communications personnel are limited in the flexibility of their response to public and officer demands. In spite of the potential for "stark terror" associated with crisis situations, the routinization of communications work, coupled with boredom and lack of personal development in the job, fosters the sense that a dispatcher is an automaton with little, if any, control over his working life.

Confinement

One of the stress reducers for many officers, and an adjunct to control of the job situation, is the ability to get out on the road, out of the car, out of the office—in other words, to avoid the physical confinement of many contemporary jobs. The communications officer, however, has no such luxury. Periodic escapes from the confinement of the communications center are limited and can be taken only when traffic slows to a minimum. Consequently, pressures and frustrations build up without an easy "release valve."



Police dispatcher takes citizen report.

Inadequate Interpersonal Communications

In a field called "communications," it is surprising that the interpersonal communications between field officers and dispatchers is so limited. As is the case in many people-oriented professions, the efforts at communication skills are too often reserved for the public, and frustrations and conflicts between uniformed and support personnel are allowed to build without resolution.

Citizen Contact

The stress caused by dealing with citizens who themselves are under stress is, of course, intense. The dispatcher must deal with persons exhibiting a wide variety of emotions—from hysterical fear to anger to pain—allowing only a professional response and often without necessary training. The reactions are particularly complicated when citizens, unfamiliar with the system, provide inaccurate, incomplete, or inadequate information to communications personnel.

Lack of Professional Development

To most people, the ability to grow professionally and personally mitigates many of the distressful aspects of a job. In police communica-

tions, however, the opportunities to grow are limited. Little inservice training and few educational opportunities are offered for communications personnel, and the career path is limited to a few supervisory and senior worker positions. Although the advancement to a sworn position is often offered as an incentive, the actual number of such promotions, particularly in large departments, is probably small.

Dealing with Dispatcher Stress

Successful efforts in preparing officers to deal with stress suggest a general response which could be effective for communications and other support personnel. Training in proper diet and regular exercise, of course, is critical to enable anyone to deal with the effects of occupational stress. Relaxation training, particularly when it can be used on the job, may be especially productive in allowing communications personnel to reduce their stress level during and after high-intensity periods.

However, some special efforts are necessary to increase the ability of communications personnel to cope with the stresses of their job. First, more adequate training is necessary to increase a dispatcher's understanding of the job role and appropriate responses to occupational pressures. Such structured training should include extensive procedural instruction in the use of radio and telephone equipment, role play to increase knowledge of specific situational responses, field training with patrol and investigative personnel to ensure mutual understanding of needs and problems and familiarity with the geographics of the department, and ad-

vanced training in specialized areas, such as telephone crisis intervention.

The facilitation of interpersonal communications is equally important to reduce stress experienced by communications personnel. With their perception of "second-class citizenship," it is critical that sworn and support personnel have regular exchanges which can mitigate the pressures caused by interpersonal conflict. Because of a human reluctance to communicate, administrative or structured encouragement may be necessary. As important, the department's administration cannot take any action which serves to discourage good police support relations.

Involvement in the departmental decisionmaking process is also necessary to reduce stress. Communications personnel, like all staff, must believe they have a voice in the direction and policies of the agency. For this reason, it is important to include dispatchers as part of interagency task forces, policy development and quality of work life working groups, and personnel selection and benefit committees.

The development and encouraged use of temporary "escape" facilities for communications personnel is also important in controlling stress. A breakroom located away from the communications center and equipped with food and beverage machines, comfortable furniture, and even exercise equipment can, with appropriate supervisory control, be extremely beneficial.

Other administrative efforts may further impact the occupational stress of communications personnel. The use of standard, nonrotating shifts or the increase in time between rotations



Dispatcher requests units to respond.

can reduce some of the physiological and psychological impact of shift work. The routine assignment of dispatchers to a specific shift or group of officers can be useful in improving the familiarity of working personnel and reducing the stress of working with "unknown quantities." A recognition by administrators of the personnel, budgetary, and equipment needs of an effective communications system is equally critical in eliminating some of the long term morale and effectiveness issues which contribute to the stress of the communications environment.

Finally, the dispatcher, like other staff, must perceive promotional alternatives within the agency. Step pay plans, such as those used for patrol officers, may be one alternative to meet the financial needs of these support personnel. Professional and personal development through department-sponsored education and increased inservice training offers another valuable incentive to reduce the effects of occupational stress. Additionally, the expanded use of communications personnel in paraprofessional positions, including walk-in report writing, telephonic investigations, and other nonsworn activities suggested by programs such as the Integrated Criminal Apprehension Program

(ICAP) and Managing Criminal Investigations (MCI) offers further professional growth and can stymie burnout and boredom effectively.

In summary, stress within law enforcement affects not only sworn personnel but also their civilian support system. The first step in dealing with the problem is to identify the unique stressors. Once described and acknowledged, administrators can begin effective programs of management and control through aggressive and innovative actions. **FBI**

Footnotes

¹ William H. Kroes, Bruce L. Margolis, and Joseph J. Hurrell, "Job Stress in Policemen," *Journal of Police Science and Administration*, vol. 2, No. 2, 1974, pp. 145-55; John Stratton, "Police Stress: An Overview," *Police Chief*, vol. 45, No. 4, 1978, pp. 58-62; William H. Kroes and Sam Gould, "Job Stress in Policemen: An Empirical Study," *Police Stress*, vol. 1, No. 2, 1979, pp. 9-10, 44; Terry Eisenberg, "Labor-Management Relations and Psychological Stress—View from the Bottom," *Police Chief*, vol. 42, No. 11, 1975, pp. 54-58; Joan Phillips Sandy and Donald A. Devine, "Four Stress Factors Unique to Rural Patrol," *Police Chief*, vol. 45, No. 9, 1978, pp. 42-44; James D. Sewell, "Police Stress," *FBI Law Enforcement Bulletin*, vol. 50, No. 4, 1981, pp. 7-11; A. Lad Burgin, "The Management of Stress in Policing," *Police Chief*, vol. 45, No. 4, 1978, pp. 53-54; Larry Moore and John T. Donohue, "The Patrol Officer: Special Problems/Special Cures," *Police Chief*, vol. 45, No. 11, pp. 41-43.

² David Martindale, "Sweaty Palms in the Control Tower," *Psychology Today*, vol. 11, No. 2, 1977, pp. 71-75.

³ *Ibid.*, p. 72.

⁴ *Ibid.*

⁵ Michael W. Hurst and Robert M. Rose, "Objective Job Difficulty, Behavioral Response, and Sector Characteristics in Air Route Traffic Control Centers," *Ergonomics*, vol. 21, No. 9, 1978, p. 707.

⁶ John H. Crump, "Review of Stress in Air Traffic Controllers: Its Measurement and Effects," *Aviation, Space, and Environmental Medicine*, vol. 50, No. 3, 1979, pp. 243-248.

⁷ *Ibid.*, p. 246.



Scanning electron micrograph (570X) of a nylon fiber removed from a sheet used to transport the body of a murder victim recovered in Atlanta in 1981. This fiber, associated with a carpet in Wayne Williams' residence, was only manufactured in 1971 in relatively small quantities.

Opposite page: Additional views of the same fiber.

Fiber Evidence and the Wayne Williams Trial (Part I)

By

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On February 26, 1982, a Fulton County, Ga., Superior Court jury returned a verdict of "guilty as charged" on two counts of murder brought against Wayne Bertram Williams by a Fulton County grand jury in July 1981. Williams had been on trial since December 28, 1981, for the asphyxial murders of Nathaniel Cater and Jimmy Payne in April and May of 1981. During the 8-week trial, evidence linking Williams to those murders and to the murders of 10 other boys or young men was introduced.

An essential part of this case, presented by the Fulton County District Attorney's Office, involved the association of fibrous debris removed from the bodies of 12 murder victims with objects from the everyday environment of Williams.

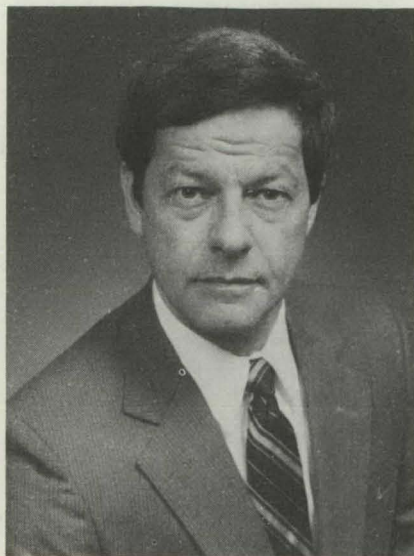
Fiber evidence has often been an important part of criminal cases, but the Williams trial differed from other cases in several respects. Fiber evidence has not played a significant role in any case involving a large number of murder victims. The victims whose deaths were charged to Williams were 2 of 30 black children and black young men who were reported missing or who had died under suspi-



cious circumstances in the Atlanta area over a 22-month period beginning in July 1979. During the trial, fiber evidence was used to associate Williams with 12 of those victims.

Fiber evidence is often used to corroborate other evidence in a case—it is used to support other testimony and validate other evidence presented at a trial. This was not the situation in the Williams trial. Other evidence and other aspects of the trial were important but were used to support and complement the fiber evidence, not the usual order of things. The "hair and fiber matches" between Williams' environment and 11 of the 12 murder victims discussed at the trial were so significant that in the author's opinion, these victims were positively linked to both the residence and automobiles that were a major part of the world of Wayne Williams.

Another difference between this case and most other cases was the extremely large amount of publicity surrounding both the investigation of the missing and murdered children and the arrest and subsequent trial of Williams. Few other murder trials have received the attention that the Williams case received.



Special Agent Deadman

Because of the extensive publicity and because the fiber evidence was so important, many questions about the significance of fiber evidence were brought to the attention of the public. There was considerable speculation concerning the fiber evidence. Questions concerning the meaning of a "fiber match" and about the proper procedures and techniques to be used in the characterizations and comparisons of textile fibers were discussed in newspapers and magazines.

Much of the pretrial speculation concerning the value of fiber evidence was negative. Comments such as "Fiber evidence just isn't reliable at all" and "... defense lawyers expressed skepticism about the legal impact of fiber evidence . . ." were published in the press.¹ There was also skepticism within the law enforcement community as to the meaning of the fiber findings, especially prior to Williams becoming a suspect. This skepticism was somewhat surprising because, as noted earlier, the introduction of fiber evidence at a criminal trial in order to link or associate a suspect with a victim or a suspect (or victim) with a crime scene is not new.

The FBI has conducted hair and fiber examinations and comparisons routinely for over 30 years at its Washington, D.C., Laboratory. Ten examiners in the Microscopic Analysis Unit of the FBI Laboratory work full time conducting these hair and fiber examinations for any law enforcement agency in the United States. In fiscal year 1981, these examiners conduct-

ed 43,043 examinations in 2,300 cases. During that time, they made 156 testimony trips to city, county, State and/or Federal courts. Many other laboratory systems worldwide routinely conduct hair and/or fiber examinations.

Why, then, should there have been this negative speculation about fiber evidence? Why is it that fiber examinations and their results have not been given the importance afforded other types of physical evidence?

This article presents the importance of forensic fiber examinations. It is a nontechnical overview of this field, discussing many aspects of a forensic fiber examination. Evidence presented at the Williams trial and testimony concerning this evidence are used to illustrate both the importance and use of fiber evidence in a trial situation. Many of the arguments discussed in this article were used to justify conclusions at the Williams trial and can be applied to fiber evidence in other trials. Problems and misconceptions concerning fiber examinations will also be addressed.

It is often difficult to get an accurate picture from press reports of the physical evidence introduced at a trial and the significance of that evidence. This article will also set forth in some detail the fiber evidence that linked Williams to the murder victims.

By discussing only the fiber evidence introduced at the trial, many other aspects of the case against Williams are being neglected. Additional evidence dealing with Williams' motivations—his character and behavior, his association with several of the victims by eyewitness accounts, and his link to a victim recovered from a river in Atlanta—was also essential to the case.

Fibers in the Environment

Many objects in our environment—clothing, ropes, rugs, blankets, etc.—are composed of yarns made of textile fibers. A textile fiber, defined as the smallest part of a textile material, can be classified into one of four categories.

The animal fiber category includes wool (hairs) from sheep, cashmere hairs from the Kashmir goat, and silk fibers (filaments) from silkworms, to mention a few. Silk fibers and animal hairs other than wool are seldom used. Even woolen fibers currently occupy less than 1 percent of all fibers used in the production of textile materials in the United States.²

Of the many fibers in the vegetable fiber category, only the cotton fiber is found to any large extent in items of clothing. Approximately 24 percent of the total United States textile fiber production in 1979 was cotton.³ Other plant fibers, such as jute and sisal, are used primarily for industrial purposes and are seen in various types of cordage and baggings.

Asbestos fibers are the only natural fibers found in the mineral fiber category. Seldom used in items of clothing or household objects, they are rarely found in either the composition of or the debris from items received in crime laboratories.

The majority of fibers seen in U.S. crime laboratories are from the manmade fiber type category. Manmade fibers represent approximately 75 percent of the total textile fiber production in the United States.

Those seen most often include acetate, rayon, nylon, acrylic, polyester, and olefin fibers. These are 6 of the 21 generic classifications that have been established by the U.S. Federal Trade Commission to include all manufactured textile fibers. It is important to emphasize that even when considering only these six common classifications, there is an extremely large number of different "fiber types" produced by the many fiber producers throughout the world. A manmade fiber type can be defined as a fiber of a particular chemical composition that has been manufactured into a particular shape and size, contains a certain amount of various additives, and has been processed in a particular way. Within these six common generic classifications, there are well over a 1,000 different fiber types, each differing from the other in one or more of the above-mentioned variations. Therefore, numerous fiber types can be present in the composition of textile materials. This is true even before considering differences in color.

Fibers and the Crime Laboratory

Why is the crime laboratory interested in textile fibers? In 1928, Edmond Locard first published his ideas concerning the transference of trace materials resulting from contact between people and objects. The exchange principle of Locard may be briefly summarized as follows: "When any two objects come into contact, there is always a transfer of material from each object on to the other."⁴ Certainly, this is valid with many types of textile materials because of the ease with which fibers can be both lost (shed) and picked up. Since all people are closely associated with items containing fibrous materials,

e.g., in their houses, automobiles, and on their person, the transference of textile fibers comes into play in many different types of criminal activity, especially in crimes of violence. When it is important to show that contact has taken place, textile fiber evidence can be invaluable.

Though fibers would seem to offer a wealth of evidence, their importance is often not fully appreciated, and sometimes, they are not even collected in criminal cases. There are several reasons for the general "low regard" attributed to fiber evidence, as compared to other types of physical evidence. In most cases, fibers are small in size and are often not easily seen or detected with the naked eye. They can be easily overlooked by someone not specifically looking for them. Even if crime scene investigators were aware of the presence of fibrous materials, special precautions to locate and preserve them are often necessary.

The small size of textile fibers should not be a problem to the investigator during evidence collection. The actual recovery of fibers from an object can be accomplished in the laboratory if the object is handled properly by crime scene personnel.

It should be noted that the size of fibers, as well as other features, such as the ease of transfer, actually benefit the investigator because perpetrators of crimes are not aware that they have been left behind or picked up evidence. Even if one were aware of fibrous materials being transferred, their small size would normally prevent one from doing anything about it.

A more serious problem is the lack of understanding about the significance of an association based upon a fiber match. Often, fiber evidence is dismissed in the courtroom as being meaningless by defense attorneys and defense experts. The degree of the significance of a fiber match, therefore, is of primary con-

Figure 1

MICROSCOPICAL CHARACTERISTICS EXHIBITED BY TEXTILE FIBERS

- 1- COLOR
- 2- SIZE (Diameter, coarseness)
- 3- SHAPE (Cross section)
- 4- FIBER OR YARN PROCESSING
- 5- FIBER INCLUSIONS
 - (A) Voids
 - (B) Delustering agent
 - a- Size
 - b- Shape
 - c- Concentration
 - d- Distribution
- 6- SURFACE CHARACTERISTICS
- 7- SURFACE DEBRIS
- 8- DAMAGE
- 9- VARIATIONS IN ABOVE CHARACTERISTICS WITHIN A FIBER

deemed a positive association, as in the case of a fingerprint, what can be the significance of such a match?

Let us consider what a forensic fiber examiner is concerned with when conducting a comparison in a crime laboratory. He must determine that a "questioned fiber" is similar to or the same as fibers in the composition of a particular object. There can be no significant differences detected by the examiner when matching such fibers. In making this determination, the fiber examiner must compare various characteristics and properties which can be observed and/or determined. Visual characteristics include color, size, cross-sectional shape, and surface appearance. Other properties are dependent upon a fiber's composition, the conditions under which it was manufactured or processed, and the dye formulation used to color it. Also, environmental and consumer handling effects, such as fading and abrasion, may be the cause of changes in these characteristics.

Many techniques are available to the forensic scientist for the examination and comparison of these properties. It would be unrealistic and unnecessary for the forensic scientist to use all of them. There are several relatively simple but very discriminating microscopical procedures that should be performed first. A combination of microscopical procedures is especially discriminating in the comparison of colored manmade fibers. Equipment used in the fiber examinations in the Williams case included a comparison microscope, a polarized light microscope, a fluorescence microscope, and a microspectrophotometer. Fiber properties and characteristics can be studied and compared with the use of

Figure 2

OPTICAL PROPERTIES OF TEXTILE FIBERS

- 1- ISOTROPIC REFRACTIVE INDEX
- 2- REFRACTIVE INDEX WHERE FIBER IS PARALLEL TO PLANE OF POLARIZED LIGHT (N_{\parallel})
- 3- REFRACTIVE INDEX WHERE FIBER IS PERPENDICULAR TO PLANE OF POLARIZED LIGHT (N_{\perp})
- 4- BIREFRINGENCE ($N_{\parallel} - N_{\perp}$)
 - (A) Interference colors
 - (B) Quantitative birefringence
- 5- SIGN OF BIREFRINGENCE
- 6- DICHROISM
- 7- FLUORESCENCE
- 8- ABSORPTION SPECTROSCOPY

cern to prosecutors and investigators, as well as to those forensic scientists having little experience in fiber comparisons.

Establishing Significance

An association made by matching a single fiber or several loose fibers, all similar in their properties to the fibers in a designated object, is not a positive association. An association of this type does not associate those fibers with a particular object to the exclusion of all other similar objects. Objects containing a particular type of fiber and dyed in a certain manner may have been manufactured by the

thousands either at one time or at different times. Likewise, the same type of dyed fiber could be present in several different types of objects. The "questioned fibers" (fibers of unknown origin) in a case could have originated from any of these many objects containing the same fiber type. It should be pointed out that these many objects would normally not all be located in one area.⁵ If an association is to be made, it must be possible for an object that could be the source of a transferred ("questioned") fiber to be at or linked to the location where that fiber was found. If, then, a single "fiber match" cannot be

the microscopical equipment mentioned above. (See figs. 1 and 2.)

Whether other comparison procedures are necessary and the sequence in which they should be performed are important considerations to the fiber examiner, but they are beyond the scope of this article.

Once it has been determined that there is a fiber match, the significance of the resulting association depends considerably upon whether the fiber type involved in that fiber match is uncommon or unusual. The more uncommon the fiber type, the smaller the chance of finding that particular fiber type in a specific location (either in the composition of a particular fibrous object or in the fibrous debris removed from a particular object).

How is one to determine whether a fiber can be considered common or uncommon? An experienced forensic fiber examiner who has examined the composition of numerous materials can usually make an intuitive, yet accurate, determination as to whether a fiber type is uncommon. In some instances it is also possible for the examiner to develop information about a particular fiber type to establish that it is uncommon. In addition, forensic laboratories in England are presently accumulating data about the fiber types and fiber colors that they see in the various fibrous materials they examine. By classifying all fibers found in the composition of objects received in many of England's crime laboratories, they will eventually have sufficient data to make a statistically based determination as to whether a particular fiber type is common or uncommon. Until sufficient data is obtained from the above-mentioned project, the major criterion for determining what is uncommon is the judgment of an experienced examiner.

The significance question can be addressed by dividing fiber types into four groups, based primarily upon what the experienced examiner has determined and/or has come to recognize as being common and uncommon.

The first group consists of common types of fibers used in the construction of large numbers of objects. An example is undyed or off-white (lightly dyed) cotton. Most white cotton fibers, even though from different sources, will be very similar in appearance, as well as in other properties and characteristics. Because the sources of these fiber types are numerous and because it is usually impossible to distinguish these fibers from different sources, an association based on this type of "fiber match" has little, if any, meaning. A white cotton fiber would be expected to be found not only in the composition of many textile items, but also in the debris removed from many items. Other common fibers which are of limited value for significant comparison purposes include many of the white and off-white polyester fibers often used in sheets, pillowcases, underwear, and men's dress shirts. Still others include various colors of cotton fibers, such as blue cotton fibers, found in many types of blue jeans.

The second group consists of "uncommon fiber types" and can be further subdivided into three categories. The first category includes colored fiber types used in the construction of a relatively small number of items. Normally, it would be difficult and very time consuming to obtain the data necessary to show that a fiber type has been used in only a small number of items.⁶ In the Williams' case, many victims were linked to the carpet in Williams' bedroom. These

associations were very significant because it was possible to show that the bedroom carpet was manufactured in comparatively small amounts and for only a short period of time. These conclusions were arrived at from sales records and other information obtained from the carpet manufacturer.

The second category of uncommon fiber types includes those in objects manufactured many years ago. As time passes, these objects become fewer and fewer in number. The Williams bedroom carpet also falls into this category because similar carpet has not been manufactured since December 1971.

The third category of uncommon fiber types includes those which, while they may be present in a large number of different items, occur in items with which people do not normally come in contact. Accordingly, these fiber types would not usually be found in debris from someone's clothing. Only the experienced forensic fiber examiner could determine whether a fiber type would fit into this group. This is because only the forensic fiber examiner is concerned with the identification and comparison of fibrous debris removed from clothing and other objects.

Fibers from all three categories of uncommon fiber types were present in items from Williams' environment and were found to match fibers present in debris removed from the bodies or clothing of various victims.

The carpet in Williams' 1970 station wagon is uncommon because similar carpet was last installed by the vehicle's manufacturer in 1973. It is composed of rayon and nylon fibers,

a blend which has not been used in any type of carpet for a number of years. Even though this style and color of carpet was installed in many cars prior to 1974, the existing amount of this carpet gets smaller and smaller each year. Rayon fibers presently used for purposes other than for carpet are not as coarse as those used in automotive carpet and therefore could not be confused with rayon carpet fibers.

Trunk liners in two other cars that Williams had access to in 1979 and 1980 were composed of fibers that are not normally seen by crime laboratory personnel. This is true even though the manufacturers of these cars would have used trunk liners similar to those in Williams' automobiles in thousands of cars. The trunk liners in Williams' cars were composed of undyed manmade fibers that had a black adhesive material on their surfaces. Even though many similar trunk liners are in existence, the trunk liner fiber type is generally not seen in debris removed from clothing. Since these fibers are apparently not used for purposes other than trunk liners, someone would essentially have to be inside a trunk to have these fibers appear on his clothing.

The majority of other fibers fall into the third group, which includes all manmade fiber types dyed with particular dye formulations. Associations based on matching these fiber types are meaningful, even though these fiber types could not be shown to be unusual or uncommon, because considerable additional variety is present due to the fibers being colored. Dyed manmade fibers can be the basis for strong associations, since any one

type of these colored fibers is an extremely small percentage of all the fiber types that exist. The chance of randomly finding any one manmade fiber type of a specific color in a particular location is extremely low; however, it would be nearly impossible to obtain actual probability estimates. There is enormous variety within the six common generic classes considering only undyed fibers. When color is added to these manmade fiber types, the variety is increased tremendously, thereby increasing the significance of a fiber match. There are about 7,000 dyes in existence, many of which are used to color either natural fibers or manmade fibers.⁷ Although these dyes can be used individually, they are often mixed together in combinations of two or more individual dyes. This mixing of different dyes results in a colored fiber having a particular dye formulation (a listing of the type and amount of each individual dye). These dye formulations are usually unique to a particular manufacturing company and change often as the popularity of colors and shades changes. Even though there may be only several hundred different colors that the eye can distinguish, there are many different ways in which these colors can be obtained. Companies seldom, if ever, attempt to exactly duplicate another's dye formulation.

If there are well over a 1,000 different manmade fiber types produced and if each textile producer uses different dye formulations to color its textile materials, the result is an extremely large number of fiber types that could be distinguished from one another. Each individual colored manmade fiber type would then be a very small percentage of all the fiber types that exist.

A preliminary study conducted in England illustrates the small chance of finding a particular fiber type in a randomly selected location. It was conducted to determine the likelihood of finding fibers in debris like those in a particular garment by pure coincidence. In this study, four control sweaters were selected that had been produced in large numbers over a long period of time and had been distributed widely throughout England. These sweaters were composed of woolen fibers and/or different types of manmade fibers. The fibrous debris from 250 garments that had been submitted to the laboratory system were searched and only 6 woolen fibers were found that matched 1 of the 4 sweaters (the most common of these sweaters). A maximum of two fibers consistent with this woolen sweater was found in the fibrous debris from any one garment. No fibers consistent with the other three sweaters (composed in part of dyed manmade fibers) were located. The authors of this study concluded that although many more garments should be examined, it appears that to find more than a small number of fiber matches by pure coincidence would be extremely unlikely.⁸

Obviously, there will be an overlapping within the three groups described as "common," "uncommon," and "colored manmade." Some fiber types that fit none of these groups fall into a fourth group. This fourth group would include colored cotton fibers and colored woolen fibers. With natural fibers, color is the most important characteristic used for comparison.

GENERAL CONSIDERATIONS— FIBER EVIDENCE CRIME SCENE

1. Obtain and package as soon as possible
 - a. Before it is lost
 - b. Before contamination
2. Look for the obvious
 - a. Clumps of fibers
 - b. Pieces of fabric, tape, rope, yarns, thread, individual filaments
 - c. Fabric impressions (possibility of fibers being present)
3. Locate logical sources for fibrous evidence found on a victim or at a crime scene
 - a. Carpet and rugs
 - b. Upholstery
 - c. Bedding
 - d. Suspect's clothing
 - e. Wigs, hairpieces, fake fur
 - f. Cordage and tape
4. Miscellaneous considerations
 - a. Photograph locations of fibers, pieces of fabric, and fabric impressions
 - b. Obtain entire item, if possible
 - c. Obtain lifts of impressions when entire item is not obtainable

PACKAGING FIBROUS EVIDENCE

1. PROTECT EVIDENCE from:
 - a. Contamination
 - b. Loss of trace evidence
 - c. Further damage
2. PROTECT stab holes, bullet holes and impressions (in blood, soil, etc.)
DO NOT FLATTEN!
3. Remove fibers, yarns, etc. which may become dislodged (noting exactly where removed from item)

4. Cover area of an item (e.g. baseball bat) which contains fibers (etc.) with paper (seal edges)
5. Wrap *fabric impressions* so that: (1) they cannot be rubbed or scratched, (2) fibers cannot be lost, (3) no contamination can take place and (4) impression is not flattened.
6. Use *separate boxes* to package containers of evidence from *different people* and/or from *different locations*.
7. Identify (mark) and seal each container
8. Do not place fibers, yarns, etc. *directly* into plastic or glass containers

Use *paper* (folded in druggist fold) or *paper envelopes* (seal all 4 corners); these paper containers can then be placed into a plastic envelope and sealed.

CASES WHERE FIBER AND FABRIC EVIDENCE CAN BE IMPORTANT

1. Crimes of violence (murder, rape, assault)
 - a. Transfer of individual fibers between suspect objects and victim objects
 1. Items of clothing
 2. Carpet (residential and automotive)
 3. Bedding
 4. Hair combings (head and pubic)
 5. Fingernail scrapings
 6. Adhesive surfaces of tape

- b. Fibrous materials left behind at crime scene by suspect or victim
 1. Clothing, wigs, masks, hats
 2. Gloves
 3. Portions of fibrous materials (cut or torn)
 4. Pieces of tape and cordage
 5. Button (with attached fibrous materials)
 - c. Weapons and damage from weapons
 1. Guns, knives, clubs, ice picks
 2. Stab and bullet holes
 - d. Impressions on fabric (shoe or hand print in blood)
2. Arson
 - a. Portions of fuses
 - b. Fabric in bottles
 - c. Charred portions of garments
 3. Robbery, burglary, breaking and entering
 - a. Items left at crime scenes
 1. Masks, hat, wigs, clothing
 2. Pieces of fabric
 - b. Items and fibrous material along getaway route
 - c. Fibers and fabric found at point of entry and exit
 4. Extortion
 - a. Fibers under envelope flap, tape, and stamps on envelope
 - b. Glove impressions
 5. Hit and Run
 - a. Fibers and fabric on vehicle
 - b. Fabric impressions on vehicle
 6. Explosive Devices
 - a. Fibrous debris from tape
 - b. Tape, cordage, and fabric comparisons

Associations with these fibers can be meaningful if the laboratory uses a discriminating technique such as thin-layer chromatography or microspectrophotometry to compare color.

There are other factors that must be considered when assessing the significance of a fiber match.⁹ These conditions will be discussed when the results of the fiber examinations in the Williams case are discussed. Apart from the frequency of the fibers involved, various circumstances can measurably add or detract from the strength of an association.

Recovery of Fibrous Materials

Collection of fibrous materials may be from the scene of a crime, from a body, or from any setting where fibers of importance may be present. In the majority of cases, the investigator has the responsibility of obtaining fibrous evidence or at least maintaining the actual evidence in such a way that loosely adhering fibrous debris will not be lost. When a murder victim is involved, a crime scene search must be conducted at

the recovery site. Also, a thorough examination must be made of the body away from the crime scene, preferably before and during the autopsy.

Human and animal hairs, as well as textile fibers, can be important. All fibrous materials should be collected at the same time. It is also important to realize that procedures used to collect fibrous evidence may interfere with or prevent the recovery of other types of evidence and vice versa. The crime scene search must be organized to prevent the loss of all types of evidence.

Figure 3

RECOVERY OF FIBER EVIDENCE FROM CRIME SCENE OF A MURDER VICTIM

1. Limit access to crime scene
2. Photograph body
3. Visual inspection (special lighting) of body and surrounding area
4. Use of transparent tape on exposed body areas
5. Place bags over victim's hands
6. Use new white sheets to transport body
7. Obtain all clothing and sheets; place each item into a separate paper bag at morgue or hospital
8. Close visual inspection of body at autopsy (best with magnification)
9. Use of white cotton packed into teeth of comb to collect fibrous debris from head hair and pubic hair areas, at autopsy
10. Consider evidence associated with transportation of body to crime scene
11. Consider use of vacuum cleaner for large amounts of fibrous debris

Figure 4

VALUE OF FIBER EXAMINATIONS

1. Establish a sequence of events
2. Link a murder weapon with a victim or suspect
3. Help to corroborate a victim's account of circumstances surrounding an assault
4. Provide leads to investigators about murder victim's surroundings at time of murder
5. Link together a number of different (sometimes apparently unrelated) victims or criminal activities
6. Establish a high probability that contact or some other association has taken place between people and/or objects

The investigator must be aware that in virtually all criminal situations, fiber evidence will be involved. This is particularly true in crimes of violence, especially in murder cases where the victim's body has been moved. All items of clothing and other items of importance should be obtained as quickly as possible and secured in paper bags. If hairs and fibers are seen by the investigator, they should be placed inside a sheet of paper which, after folding and labeling, can be placed inside another container.

The actual methods of fiber recovery used depend upon individual circumstances. Since many of these procedures are best carried out at the medical examiner's or coroner's laboratory, the investigator should coordinate his activities with one of these laboratories. It should be the responsibility of the investigator to remind those conducting the autopsy to be aware of fibrous materials and also to conduct their examinations in a manner that would prevent contamination. (See fig. 3.)

There are a number of procedures and techniques that can be used in the crime laboratory for the collection of fibrous material from items received, including removing of debris with tweezers, scraping fibrous debris from objects with a spatula, using tape to remove fibrous debris, and vacuuming. Some of these techniques have been discussed in forensic science literature and a study of the efficiency of these techniques has also been published.¹⁰ The technique selected normally depends upon the circumstances of the case, as well as the equipment, space, and facilities of the crime laboratory. An important aspect of the fiber recovery procedure in the crime laboratory, regardless of the procedures used, is a program of contamination prevention.

When properly done, the collection process is laborious and time-consuming. However, many benefits can result in evidence obtained from a thorough search. (See fig. 4.) These benefits are nowhere more apparent than in a review of the Williams case. However, before discussing the actual trial, it is interesting to see how Williams was developed as a suspect in the Nathaniel Cater murder. Part II of this article will deal with this subject and the fiber evidence presented at his trial.

FBI

(To be continued)

Footnotes

¹ *The National Law Journal*, vol. 3, No. 43, July 8, 1981, p. 1.

² *Man-made Fiber Fact Book Update: Statistics* (Man-made Fiber Producers Association, Inc., 1980).

³ *Ibid.*

⁴ L. C. Nickolls, "The Identification of Stains of Nonbiological Origin," *Methods of Forensic Sciences*, ed. Frank Lundquist, vol. 1. (N.Y.: Interscience Publishers) 1962, p. 335.

⁵ To illustrate this point, assume that 200,000 automobiles were manufactured, each containing a carpet with a particular type of carpet fiber. These automobiles were then sold and distributed evenly throughout the United States. The population of the United States in 1980 was around 220 million. It could be argued that a metropolitan area in the United States with a population of 2,200,000 would have approximately 2,000 automobiles containing the carpet of interest. These 2,000 automobiles would be a very small percentage of all of the automobiles in that particular metropolitan area.

⁶ This category would include silk fibers, cashmere fibers, nylon fibers, and aramid fibers, as well as other fiber types that are very expensive, which were never fully commercialized or are not used in common textile materials. These fiber types are rarely seen by crime laboratory examiners.

⁷ *Encyclopaedia Britannica*, 15th ed., vol. 5, 1974, p. 1105; see also *The Analytical Chemistry of Synthetic Dyes*, ed. K. Venkataraman (N.Y.: John Wiley and Sons), p. 2.

⁸ R. Cook and C. P. Wilson, "The Significance of Finding Extraneous Fibers in Contact Cases," *Metropolitan Police Forensic Science Crime Laboratory, Report, No. 5* (1981). London, England.

⁹ Max Frei-Sulzer, "Coloured Fibres in Criminal Investigations," *Methods of Forensic Science*, ed. A. S. Curry, vol. IV, 1965, p. 172, for a brief discussion of the evidential value of fiber evidence.

¹⁰ C. A. Pounds, "The Recovery of Fibers from the Surface of Clothing for Forensic Examinations," *Journal of the Forensic Science Society*, vol. 15, 1975, p. 127.

Nonverbal Elements in Courtroom Demeanor

**"Through careful attention
to the nonverbal
messages being sent,
you can instill
confidence in the
testimony you are
giving."**

By

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Police officers experienced in courtroom testimony know the value of professional courtroom demeanor. Probably the most important aspect of that demeanor is professional, competent, nonverbal communication. A number of studies have shown that nonverbal signals are the largest source of information in interpersonal communications. In fact, the actual words spoken may account for as little as 7 percent of a message, while the other 93 percent comes from nonverbal elements.¹ The actual words used in courtroom testimony probably carry more weight than these statistics indicate, but nonverbal signals still carry the bulk of the message.

Nonverbal communication is simply that part of communication that is not verbal. Thus, tone of voice is considered a nonverbal element along with rate of speech, gestures, posture, eye contact, distance, and dress.

These nonverbal signals may be consciously or unconsciously sent and are sometimes sent even when we try to avoid doing so. The knowledgeable communicator who knows what meaning people can give to nonverbal signals controls those signals as much as possible.

Law enforcement professionals use nonverbal cues in their work everyday. Drug enforcement officials and airport security personnel use profiles of potential offenders for screening. Police officers develop a sixth sense that is actually an acute awareness of nonverbal signals sent by suspicious persons.

A jury "reads" an officer's nonverbal messages during testimony, and these signals can color their perception of him. Officers should be aware of how positive signals can be sent and how negative signals can be avoided.

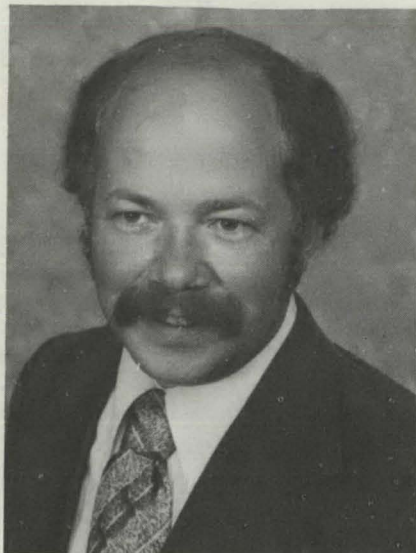
Dress

The clothing you choose to wear while testifying may affect the jury's perception of your testimony. The officer who testifies in civilian clothes should dress conservatively—preferably in a suit with a shirt and tie. Sport coats with open-necked shirts and leisure suits are too informal. For women, a conservative dress is more advisable than a pants suit.

The jury may not take seriously a person who cannot dress properly. When choosing clothes, beware of big plaids. Plaids should not be mixed with stripes or checks. Beware of flashy colors or mixing clashing colors. Do not wear white socks with a suit, wrinkled clothes, clip-on ties, or ties that are too long or too short.

Proper dressing also demands close attention to details. People perceive a sloppy dresser as a person who is also careless in the details he reports during testimony.

An officer usually appears in uniform since the uniform generally makes a person seem more believable. The uniform should be neat and pressed with all brass polished. To make the best impression, an officer should not wear unnecessary equip-



Dr. Waltman

ment. A belt with loops filled with a flashlight, mace, a night stick, handcuffs, keys on a chain, and a radio makes the officer appear to be ready for quelling a riot rather than testifying in court. The extras look cumbersome, make sitting difficult, and make rising even more of a challenge. If you are uncomfortable when sitting, you will not look your best.

The extra paraphernalia may also remind the jury of the unpleasant aspects of your job and the force that occasionally lies behind an arrest. When you're testifying in a case that involves aggravated circumstances, extra equipment could make you look like you are on the offensive. A smart defense attorney might ask to examine some of your equipment as you discuss your role in an arrest. He may make you sound like a pathological monster bent on maiming anyone who gets in your way. He may hit the "slapper" on the witness box or lift your flashlight as if it were lead-lined.

An officer is often required to wear a sidearm when in uniform, although such a departmental policy should be modified for courtroom appearance. If the sidearm is optional, it should be securely stored with the rest of the unnecessary gear. Not only does the gun make sitting uncomfortable, it is also seen in a negative light by the jurors. It is important to build an image of a sensible, objective observer/reporter. To many, guns suggest emotionality or violence, and a gun control advocate on the jury may pay more attention to your sidearm than to you.

Body Language

Of course, dress is not the juror's only source of nonverbal data. Nonverbal communication also comes from manual and facial gestures, posture, trunk movement, and distance. Perhaps the most efficient way to discuss nonverbal messages is to follow your path during the courtroom experience, noting what should or should not be done at each step.

Perhaps the best general suggestion that can be made is to remember

that first impressions are everything. You want to look like an expert the first time the jury sees you—the jury will be evaluating you from the moment you enter the room. It pays to be familiar with the room you are entering so that you know where you are going rather than hesitating at the door as if unsure. You should not be chewing gum or smoking.

Walk confidently to the witness chair. If you're carrying your notes or a report, carry them in a fresh file folder in your left hand. That way, when you swear in, you won't have to switch the folder to your other hand. Imagine trying to regain your composure after dropping the folder's contents on the floor.

Sit down carefully in the witness chair. Do not dive into it as if it were a last refuge or an easy chair.

After sitting down, place the folder in your lap and assume the appropriate listening posture. Rather than leaning back in the chair with your legs apart, look attentive by leaning the trunk slightly forward, keeping your arms on the chair's arms and the legs close together.

Try not to appear nervous. Rearranging back in the chair or rocking side-to-side betrays your nervousness. You should occasionally check your posture which may be sending negative messages. For example, some officers may suggest that they wish to flee by leaning far forward with their feet together and under the edge of the chair. Only the hands touch the chair arm and the elbows spread outward as if the officer were about to spring. Occasionally, an officer will show fear by sitting sideways in the chair with the center of gravity far back. Another officer, dealing with challenging or hostile questions from a defense attorney, might assume a stiff-back posture with clenched fists, suggesting that the officer is about to pounce. If you find yourself in any one of these telling postures, try to shift back to the attentive one.

During testimony, you should limit your gestures to only those necessary for emphasis. When we are nervous,

we sometimes begin to use random gestures that distract from the message.

One should use gestures only when appropriate. Pointing can be quite emphatic, especially when identifying victims or defendants. Counting on the fingers helps emphasize main points. Holding your hands in a steeple fashion with the fingertips touching is a gesture that suggests confidence.

Be sure to maintain good eye contact with the attorney as you are being questioned, even when the questioning gets difficult. Our culture places a great deal of value on eye contact, which we equate with sincerity. Those who cannot maintain eye contact suggest that they have something to hide.

The hands and eyes are not the only source of clues from the body. Nervousness will "leak" unless checked. Nervousness appears in knee pumping (for women, rapid kicking of a crossed leg), finger-drumming, fist-making, knuckle-cracking, cuticle-picking, and fingernail-biting. These signs are more likely to appear during difficult questioning. Avoid these, as well as the body cross—sitting upright or leaning back with the arms folded tightly across the chest. This indicates an effort to protect ourselves. Another sure sign of nervousness is the officer reaching for his cigarettes and stopping in midreach.

Some nonverbal signals can suggest nervousness brought on by deception. Although their presence does not necessarily mean deception, they should still be avoided. The most telling of these signals is the mouth cover. The speaker covers his mouth while talking, almost as if to keep the words from getting out. A modified mouth cover is the nose rub. The speaker rubs the ridge of the nose while speaking. Similar nonverbal signals that others might perceive as deception are preening—straightening the hair or brushing lint off the clothes—and closing up—buttoning a coat, tightening a tie, or tugging at a pants leg. A woman will button her

top button or pull on her dress hem, suggesting an attempt to cover up. While you may simply be feeling uncomfortable—or maybe there is lint on your uniform—the jury may not perceive it to be innocent.

It is also important to behave the same way toward the defense attorney as you do toward the prosecuting attorney. Clearly these individuals have different objectives, but you should exhibit your own objectivity and sense of fairplay by presenting the same demeanor to both. Altering your approach with the change in lawyers suggests that you have a personal interest in the case and are not being objective. Some may also read the shift in demeanor as discomfort—perhaps something is being hidden. When the defense attorney approaches, avoid shifting, giving the body cross, or turning sideways. False sincerity and hollow manners will also be obvious.

"Some nonverbal signals can suggest nervousness brought on by deception."

Attorneys are often knowledgeable in nonverbal tactics. Do not allow these tactics to pressure you into saying or doing more than you actually intend. For example, the officer who is beginning to show his anger might find the defense attorney pointing at him almost accusingly or pounding his fist on the railing to further agitate the officer.

A tactic that is quite effective when "fishing" for details or when attempting to get a witness to qualify what he has said is the use of silent treatment. After the officer has answered the question posed, the attorney will merely stand there. When there is silence, we are tempted to begin talking again. If, however, the answer you gave reflected what you intended to say, say no more. Phrases such as "Anyway, that's what

I thought he said" or "It was something like that, if it wasn't that exactly, you know, I mean . . ." weaken your original position.

After being dismissed, you should leave looking as professional as you did entering. Unfortunately, once the pressure of testifying is over, some officers let their relief show. They saunter out of the courtroom, occasionally chatting with people they pass. Some plainclothes officers will light up a cigarette or even start loosening their tie as they walk out. This shift in demeanor is harmful because it can suggest to some that the officer's testimony might similarly have been "dressed up" for the occasion. The jury begins to wonder how much of his testimony was true and whether the officer's sincerity can be put on or taken off at will.

Through careful attention to the nonverbal messages being sent, you can instill confidence in the testimony you are giving. Competent, professional appearance and bearing automatically affect others' perception of the veracity and significance of the testimony being given.

Nonverbal messages, which can comprise up to 93 percent of a message's content, can be read from dress, posture, gestures, and eye contact. The knowledgeable police officer realizes the potential of these sources and uses them to maximum benefit.

FBI

Footnote

Albert Mehrabian, "Communication Without Words," *Psychology Today*, vol. 2, 1968, p. 53.

Entrapment, Inducement, and the Use of Unwitting Middlemen (Conclusion)

“ . . . a person should be able to assert the entrapment defense when it is clear that he was specifically targeted by police for a criminal inducement through a middleman.”

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

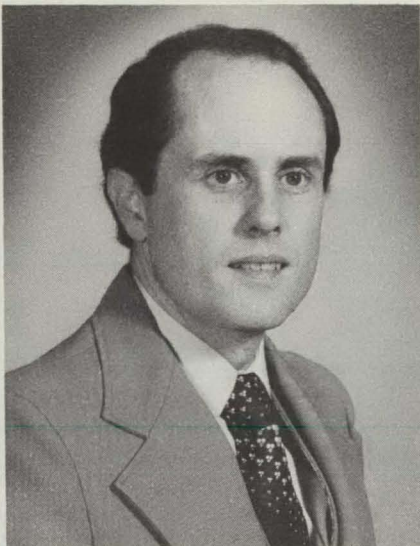
Part I of this article reported the law with respect to the concept of inducement in the entrapment context. This included a discussion of whether a person could assert entrapment when induced to commit a crime by a private party. Moreover, the concept of Government inducement was examined. Finally, the question of whether a person could be induced to commit a crime by an unsuspecting middleman was considered. The examination of this latter question, begun in Part I, will be expanded, and a separate “due process” defense will also be discussed.

Caused Inducement

A, an informant, induces B, a middleman, to commit a crime. C becomes involved through B. C cannot show either that B transmitted A's inducement to him or that B independently induced C to become involved. Can C argue entrapment on the ground that he would not have become involved if the Government had not caused the crime to occur by inducing B?

This argument is based upon the notion that because the Government set in motion a chain of events by inducing the middleman to commit a crime, it is responsible for all subsequent unknown parties who participate. *United States v. Mayo*³⁶ addresses this question. Chamady, an informant for the Bureau of Alcohol, Tobacco and Firearms (ATF), approached Cleary and claimed to be a wealthy firearms collector. Cleary made illegal purchases of two guns from Chamady and offered to introduce him to Mayo. Mayo subsequently met Chamady and made an unlawful sale of guns to him. Chamady did not suggest to Cleary or Mayo that he wished to purchase the particular weapons offered for sale by Mayo. There was no indication that Cleary passed on Chamady's inducement to Mayo. Mayo offered no proof that Cleary independently induced him.

Mayo was indicted for violation of assorted Federal firearms laws. At trial, he requested a jury instruction on entrapment. The trial judge ruled that sufficient evidence of Government inducement existed but denied the request because Mayo had produced no proof of nonpredisposition. Mayo was convicted, and a Federal appellate court affirmed. The court agreed with the trial judge that since Mayo produced no evidence of nonpredis-



Special Agent Callahan

position, he was not entitled to an entrapment instruction. Moreover, the court agreed with the trial court that Mayo had met his burden of proof on Government inducement. The court observed:

"Mayo brought the derringers with him . . . the night he first met Chamady. There was no evidence that Chamady had solicited the derringers or had expressed any interest in buying modern weapons from Mayo. *Nevertheless, Chamady did set in motion the chain of events that led to his purchase . . . from Mayo.*"³⁷ (emphasis added)

The court appeared to approve of the idea that Government inducement can be established based upon a causation theory alone.

Another example of the causation approach is found in *Johnson v. United States*.³⁸ An undercover police officer furnished a small sum of money to Turner to purchase narcotics. Turner and the officer drove to a specific location and Turner left the officer's car. He returned later with Johnson. Johnson handed Turner heroin, which Turner gave to the officer. Johnson was indicted and convicted for selling narcotics. The trial judge denied his request for a jury instruction on entrapment and Johnson appealed. The court of appeals reversed, holding that Johnson's burden of proof on inducement was met by establishing that the officer gave Turner the money to purchase heroin. No showing that Turner passed on the officer's inducement to Johnson was necessary. Moreover, no showing that Turner independently induced Johnson was required. The court held by implication that the officer caused Johnson to become involved by giving Turner money to buy narcotics.

The caused inducement theory is incorrect for all of the reasons set forth in the preceding section of this article. Moreover, it virtually eliminates the third-party defendant's burden of establishing inducement. The defendant need only point to evidence that the Government induced the middleman and his burden of establishing inducement is met. This vicarious inducement theory is not persuasive. The Supreme Court has recently held in several cases that a criminal defendant has no standing to take advantage of an alleged police violation of the constitutional rights of another.³⁹ Similarly, a person not induced by the police should not be able to take advantage of police inducement of the middleman unless the police directed the middleman to him or to a class of people which included him.

Instructed Inducement—Specific Person Target

A, an undercover agent, induces B, an unsuspecting middleman, to commit a crime. Part of the inducement from A to B involves instructions that B should draw C into the offense. A has specifically targeted C through B. Should the entrapment defense be available to C in this circumstance?

Case law is in general agreement that a person should be able to assert the entrapment defense when it is clear that he was specifically targeted by police for a criminal inducement through a middleman. For example, in *United States v. Anderton*,⁴⁰ Pittman began paying bribes to two law enforcement officials whom he incorrectly believed were corrupt. He did this

"The purpose of the entrapment defense is to offer protection to innocent individuals who are lured into the commission of criminal acts by agents of the Government."

at the suggestion of one of the officials. These payments resulted in Federal gambling charges being dismissed against him. Later, one of the officers, Lebrede, asked Pittman if he knew Anderton. Pittman responded affirmatively, and Lebrede told him to try and convince Anderton to make illegal payments as well. Pittman approached Anderton and suggested that he could receive protection for his bookmaking operation by paying off Lebrede. Anderton began paying Lebrede \$500 every 2 weeks. Anderton was later convicted of bribery. At trial, he admitted making the payments but claimed he did so out of fear that his wife and children would be harmed if he refused. He asserted entrapment at trial, and the judge allowed the jury to consider the defense. Anderton was convicted, and a Federal appellate court reversed. He successfully argued on appeal that the trial judge improperly instructed the jury on entrapment. The instruction read in pertinent part as follows:

"... nor is it possible for a defendant to be entrapped by a private citizen who is neither a government officer nor an agent of a government officer..."⁴¹

Anderton claimed that this instruction misled the jury into believing that entrapment was impossible unless the inducement comes from an officer or informant. The court agreed and noted that a finding of entrapment is possible when the inducement to commit a crime comes to a targeted defendant through a middleman.

Another illustration of the third-party target can be found in *United States v. Williams*.⁴² Harrison A. Williams, Jr., at the time a U.S. Senator from New Jersey, was convicted after a jury trial on bribery and related charges arising from the ABSCAM investigation. ABSCAM was the code name for an FBI undercover operation which resulted in the convictions of several Federal and local public officials. Williams' indictment alleged that he promised to use his official position as a U.S. Senator to help obtain Government contracts for the purchase of titanium from a mining venture in which he held a hidden interest. These promises by Williams were made in connection with two transactions. The first was a proposed loan of \$100,000,000 to his enterprise by a fictitious entity known as Abdul Enterprises. This entity, purporting to be an enterprise operated for two wealthy Arab sheiks, was the cover of the ABSCAM operation. The second transaction involved an offer by undercover FBI Agents to purchase the mining venture from Williams for a sum that would have yielded an estimated \$70,000,000 profit. The Government produced evidence at trial which disclosed that Angelo Errichetti, then mayor of Camden, N.J., and a member of the New Jersey Senate, mentioned to Williams that he had established contact with wealthy Arab investors. Throughout the ABSCAM investigation, Errichetti acted as an unsuspecting middleman. Williams' reaction to Errichetti's comment was to tell his friend, Feinberg, to contact Errichetti to see what was going on. Feinberg subsequently met with Errichetti, FBI informant Mel Weinberg, and an undercover FBI Agent and told them that Senator Williams was inter-

ested in funding for a mining project. He stated that the senator had an undisclosed interest in the venture. Later, another friend of Senator Williams, Sandy Williams, proposed to the undercover agents that Abdul Enterprises lend \$100,000,000 to the group that Senator Williams was associated with for the purpose of purchasing the titanium mine. Senator Williams subsequently met with the undercover agents and told them that he was interested in having the mine funded and would assist them in any way possible in getting the project going. Senator Williams expressed a willingness to try to obtain Government contracts for the purchase of titanium from the mining venture. Later, informant Weinberg endeavored to make sure that when the Senator met with the sheik, he would make his willingness clear for the benefit of the television cameras which were to record the meeting. To achieve this objective, Weinberg enlisted Errichetti and told him in a recorded conversation: "... you speak to the Senator ... all we want to hear from him is that he is going to get us some government contracts."⁴³ Later, in another recorded conversation, Weinberg again told Errichetti that Senator Williams must be told that he must get Government contracts for the titanium. A third recorded conversation between Errichetti and Weinberg disclosed that Errichetti had spoken with Senator Williams. Errichetti claimed to have told Williams that he (Errichetti) had a chance to make a million dollars out of the deal and that Williams should tell the sheik that he would try to get Government contracts for titanium.

Based in part upon the above evidence of Government inducement through the middleman, Williams received a jury instruction on entrapment. The Government did not contest the fact that Williams had made a sufficient showing of Government inducement to receive a jury instruction on entrapment. During trial, the Government produced substantial evidence of Senator Williams' predisposition to commit the offenses charged. The jury found Williams guilty, and by implication, predisposed beyond a reasonable doubt to commit the offenses charged. Williams filed an appeal, and a Federal appellate court affirmed. Williams argued that the trial judge erred in allowing the jury to consider the entrapment defense at all. He contended that the Government failed to prove predisposition beyond a reasonable doubt, and therefore, he should have received a directed verdict of acquittal based on finding of entrapment as a matter of law. The court of appeals rejected this contention and observed that although the evidence of Government persuasion was substantial, the jury was fully entitled to find from the totality of the evidence that Williams was predisposed to commit the offenses charged.

The purpose of the entrapment defense is to offer protection to innocent individuals who are lured into the commission of criminal acts by agents of the Government. The entrapment defense should be available to any criminal defendant who is the specific target of a Government inducement

as long as that defendant can show some evidence of nonpredisposition. The fact that the Government inducement was relayed to the defendant from an unsuspecting middleman is immaterial. The Government has selected its target and furnished to the unsuspecting middleman specific instructions on how to bring the quarry in. The fact that the Government inducement was not relayed to the target directly by a Government agent or informant should not prevent him from asserting the defense. The availability of the entrapment defense in this circumstance does not operate to automatically enable the target to prevail. The Government is often able to overcome the defense by showing that the defendant was predisposed to commit the crime beyond a reasonable doubt. Such targets should not be required to offer proof that the middleman specifically transmitted the Government inducement to them. The fact that the Government provided specific instructions to the middleman to bring in the target, coupled with the fact that he was actually brought in, should be sufficient proof that the Government inducement was transmitted to the target.

Instructed Inducement—Specific Group Target

A, an undercover agent, induces B, an unsuspecting middleman, to become involved in a bribery scheme. Part of this inducement involves instructions that B should pass along the bribery inducement to a specified group of Federal public officials. C, a Federal public official, is brought into the scheme by B. Should the entrapment defense be available to C under these circumstances?

Case law is not in agreement on this point. In *United States v. Comi*,⁴⁴ an undercover agent for the Internal Revenue Service met with Anapa and offered to pay him for information regarding illegal gambling. The agent specifically requested that Anapa provide him with the telephone numbers of any individual who would take illegal bets over the telephone. The agent did not specify any particular telephone numbers but told Anapa he was interested in all the telephone numbers he could supply in this category. One of the numbers Anapa supplied was that of the defendant. The agent subsequently placed illegal bets with the defendant over the telephone. The defendant was indicted for illegal gambling. At trial, the defendant testified that he had agreed to accept the bets from the agent only after the continued insistence and pleading of Anapa, who worked for him as a repairman. The trial judge refused to submit an entrapment instruction to the jury, and a conviction followed. The court of appeals affirmed, stating that although the defendant's action in accepting the bets may have been due to Anapa's insistence, Anapa was not a Government agent. The court held that because the defendant had no direct contact with a Government agent, the entrapment defense was not available to him.

“ . . . the ‘due process’ defense . . . involves claims that Government conduct . . . was so outrageous that principles of fundamental fairness were violated and that the conduct . . . violated the Due Process Clause of the Constitution.”

By contrast, in *United States v. Jannotti*,⁴⁵ the defendants received a jury instruction on entrapment under similar circumstances. The *Jannotti* case was one of several cases that developed out of the FBI ABSCAM investigation. The key figure in the *Jannotti* case was Philadelphia lawyer Howard Criden. Criden was an unsuspecting middleman. At the time of his involvement with *Jannotti*, he had already shared in money illegally paid to public officials in connection with other facets of the ABSCAM investigation. Criden was contacted by FBI informant Mel Weinberg. Weinberg claimed to represent the interests of wealthy Arab sheiks and informed Criden that the sheiks had expressed interest in establishing a base of operations in Philadelphia. Weinberg arranged a meeting between Criden and an undercover FBI Agent.

At the meeting, the Agent explained that the sheiks were interested in building a hotel complex in Philadelphia, but only if they could be assured of the friendship of important government officials. The Agent inquired about the extent of Criden's knowledge concerning local Philadelphia public officials. Criden responded that his law partner, Johanson, was a member of the Philadelphia City Council. During this meeting, Criden reviewed with the Agent the identities of various important persons in city government, including defendants Schwartz and Jannotti. The Agent asked if it was possible to meet and deal with these individuals. Criden answered that he would have to find out whether Schwartz and Jannotti were interested.

During this initial meeting, it was agreed that \$30,000 would be paid to Schwartz, the president of the city council, if he was agreeable to the proposal of the undercover Agent. Lesser sums were agreed upon for any other member of the council who was brought into the operation by Criden. Criden assured the Agent that unless each local public official agreed in advance to accept the money, no meeting would be arranged. Eventually, defendant Schwartz accompanied Criden to a meeting with the undercover Agents. A video tape of that meeting demonstrated that Schwartz knew he would be paid \$30,000 and that the payment would be shared in some way with Criden. Schwartz was paid \$30,000 during that meeting. Later, defendant Jannotti, a city council member, met with the undercover FBI Agents and Criden, and at the conclusion of that meeting, received \$10,000.

Both defendants were indicted on Federal charges relating to the alleged unlawful receipt of money in exchange for assurances that they would use their official positions to pave the way for completion of the hotel project. At trial, the Government argued that no entrapment instruction should be given regarding Schwartz and Jannotti because they were induced by Criden to commit the crime. The trial judge rejected this contention and instructed the jury regarding entrapment. The judge ruled that Criden acted with the knowledge and direction of Government agents. Moreover, the agents were the source of the representations which created the inducement. In addition, the agents ratified Criden's representations to the defendants. The jury returned guilty verdicts against both defendants.

The defendants, thereafter, made postconviction motions for judgments of acquittal notwithstanding the verdict. These motions were granted by the trial judge because entrapment was established as a matter of law. The Government appealed, and the court of appeals reversed. The court reinstated the convictions and held that the trial judge erred when he ruled that there was entrapment as a matter of law. The court did not disturb the trial judge's decision to give both defendants a jury instruction on entrapment. By implication, this decision supports the notion that the entrapment defense should be available to a defendant when a middleman is specifically instructed to pass on a Government inducement to a targeted group of which the third party is a member.

*United States v. Myers*⁴⁶ provides yet another example of group inducement. One of the principal defendants in *Myers* was former U.S. Congressman Raymond F. Lederer. Lederer was indicted on Federal bribery charges based upon his alleged receipt of a portion of a \$50,000 bribe. Lederer's indictment came as a result of the ABSCAM undercover operation.

Mel Weinberg, an FBI informant, spread word that he had contact with Arabs who had virtually inexhaustible funds. Soon, Angelo Errichetti, the city mayor and State senator previously described, was drawn into the picture. He had no idea that he was dealing with an FBI informant, and therefore,

fit the classic unsuspecting middleman role. Errichetti brought Philadelphia lawyer Criden to FBI Agents posing as representatives of Arab sheiks. Later, Errichetti, Criden, Weinberg, and the undercover Agents met in Florida. During that meeting, the group discussed a problem that the sheiks might face if a revolution were to occur in their country. It was suggested that the sheiks might want to come to the United States as permanent residents if such an event were to happen. Trial testimony was disputed regarding who initiated this idea. An undercover FBI Agent told Errichetti that he thought cooperation of public officials would be needed and that money would be no problem. Criden returned to Philadelphia and told his law partner, Johanson, that they could make substantial sums of money if they knew any congressman willing to deal with the sheik. Criden suggested that Johanson contact U.S. Congressmen Myers and Lederer, since he knew both of them.

Trial testimony disclosed that Johanson met Lederer and briefed him on the sheiks' immigration problems and on a requirement that the congressman personally receive a \$50,000 payment. Later, Lederer and Errichetti met with Weinberg and an undercover FBI Agent. During that meeting, Lederer agreed to introduce legislation which would allow the sheiks to come to America and accepted a bag containing \$50,000.

At trial, Lederer's sole defense was entrapment. At Lederer's request, the trial judge instructed the jury on entrapment. The jury returned a guilty verdict, and by implication, found Lederer predisposed. A Federal appellate court affirmed. On appeal, Lederer argued that the Government's proof of predisposition was insufficient as a matter of law. The court observed that the trial evidence fully entitled the jury to find Lederer predisposed beyond a reasonable doubt. It is noted that the trial judge instructed the jury on Lederer's entrapment claim even though the initial inducement came to him through unsuspecting middlemen.

The entrapment defense exists to protect innocent citizens from being drawn into a criminal act by the Government. In *Lopez v. United States*,⁴⁷ Justice Harlan wrote:

"[B]efore the issue of entrapment can fairly be said to have been presented in a criminal prosecution there must have been at least some showing of the kind of conduct by *government agents which may well have induced the accused to commit the crime charged.*"⁴⁸ (emphasis added)

In the cases examined above, Government agents or informants specifically instructed unwitting middlemen to convey inducements to unspecified persons within a targeted group. There is little doubt in these circumstances that the middlemen become agents of the Government for purposes of the entrapment defense. When the entrapment defense is raised, the Government can hardly deny that these middlemen were

acting on its behalf. Nevertheless, predisposition is still the key element in the entrapment formula. Thus, the availability of the defense does not mean automatic victory for the defendant. The defense may still be overcome by proof that the accused was predisposed to commit the crime beyond a reasonable doubt.

Due Process and Middlemen

In recent years, a separate defense, similar to entrapment, has become available to criminal defendants. It is known as the "due process" defense, since it has a constitutional foundation and focuses upon the conduct of Government agents. Generally, the defense involves claims that Government conduct in particular cases was so outrageous that principles of fundamental fairness were violated and that the conduct was so excessive and flagrant that it violated the Due Process Clause of the Constitution. Predisposition of a defendant does not preclude him from asserting the defense.

Although the due process defense has been raised on numerous occasions in recent years, it has been rarely successful.⁴⁹ The Supreme Court of the United States recognized the viability of the defense in two separate decisions within the past 10 years.⁵⁰ However, in both cases, the Court rejected the defense for the particular defendants based on the facts presented. In *United States v. Russel*,⁵¹ the Court rejected a due process argument where an undercover agent provided a scarce but otherwise lawful chemical to the defendant which assisted him in making a controlled substance. Moreover, in *Hampton v. United States*,⁵² the Court refused to find a due process violation

"Undercover operations are doomed to failure if informants and middlemen cannot be used."

when a Government informant allegedly provided heroin to the defendant and introduced him to undercover agents who arrested him when he sold it back to them.

This defense was asserted by former U.S. Congressman Michael O. Myers in *United States v. Myers*.⁵³ On appeal of his Federal bribery conviction arising out of the ABSCAM investigation, Myers argued that FBI informant Weinberg gave instructions to two unsuspecting middlemen, Errichetti and Criden, regarding what Myers should say when he met with undercover FBI Agents. Moreover, Myers claimed the middlemen then instructed him on what to say when he met the Agents. In assessing the validity of Myers' due process argument, the court of appeals examined the transcript of a recorded conversation between informant Weinberg and former U.S. Senator Harrison Williams. This conversation was recorded in connection with another portion of the ABSCAM investigation.

The court concluded that Weinberg unquestionably pursued a course of conduct with Williams that revealed precisely the sort of coaching that Myers claimed happened to him. During the recorded conversation, Weinberg told Williams how to conduct himself when he met the sheik. Weinberg said to Williams: "You gotta tell him how important you are, who you are, what you can do, and you tell him in no uncertain terms without me there is no deal, I'm the man. I'm the man who's gonna open the doors." ⁵⁴

The court observed that Weinberg was later admonished by Federal prosecutors for having made these comments to Williams. The court noted that there was a substantial risk that Weinberg, having been admonished for coaching Williams, decided to encourage Errichetti and Criden to undertake similar coaching ventures with Myers. Because of this risk, the court decided to consider the substance of Myers' due process claim. The court rejected the argument, observing:

"Even if all of the appellants' evidence is credited, a generous assumption that strains credulity, it shows at most that Errichetti and Criden, perhaps prompted by Weinberg, laid out before each Congressman a scheme for pocketing \$50,000 for falsely promising to introduce private immigration bills. Suggesting how easy it is to commit a crime hardly establishes a due process violation." ⁵⁵

The court explained that the bare suggestion to a congressman that he take a bribe does not violate a constitutional standard that forbids outrageous behavior. Moreover, the public has the right to expect that their public officials have sufficient integrity not to capitulate to such a suggestion. The conviction was affirmed.

A different Federal appellate court rejected a due process argument made by Senator Williams with respect to the above-mentioned recorded conversation between himself and Weinberg.⁵⁶ The court concluded that Weinberg's coaching tactics did not rise to the level of outrageous Government conduct which would violate the Due Process Clause of the Constitution. Weinberg's comments

simply spelled out for the senator how to commit a crime, but the coaching involved neither pressure nor persistent exploitation of personal weakness. Moreover, Williams' own trial testimony was to the effect that he scarcely paid any attention to what Weinberg said to him.

Crimes involving narcotics violations and political corruption are extremely difficult to detect. In bribery transactions, as with a sale of drugs, all the participants are criminals and all are generally satisfied with the result. There is no victim in the traditional sense, one who comes forward and reports to the police what occurred. The impact of these crimes on American society is nevertheless severe. Judge Pratt, the trial judge in *United States v. Myers*,⁵⁷ perhaps said it best when he declared:

"The ultimate victims of drug sales are the users who become addicted and enslaved to an extra-legal system that forces upon many of them a life of crime, misery, and death. While less dramatic, the consequences of bribery are more insidious. No one suffers immediate pains; indeed, with a successful bribe, only the participants know it occurred. The overall consequences to society, however, are very dangerous." ⁵⁸

In order to detect the existence of crimes carried out in secret, use by law enforcement of imaginative investigative techniques such as undercover operations, informants, and middlemen is imperative. Drug dealers and public officials willing to accept bribes do not deal with strangers. Undercov-

er operations are doomed to failure if informants and middlemen cannot be used. In *United States v. Russell*,⁵⁹ the Supreme Court rejected a due process argument and recognized the difficulty that police encounter in attempting to detect drug-related crimes. The majority opinion specifically approved of police infiltration of drug rings and sanctioned at least limited participation in the unlawful act, including providing some item of value to the defendants in order to gain their confidence. Moreover, a majority of Justices in *Hampton v. United States*⁶⁰ implicitly approved of law enforcement providing heroin to a defendant and arresting him when he sold it back to them.

Nevertheless, law enforcement use of middlemen should proceed with caution. Generally, middlemen are criminals whose prime motivation is greed. When they carry a message of criminal opportunity from Government agents or informants to prospective defendants, the Government is not in a position to control what they say. The *Myers* case, set forth above, is evidence of the fact that the use of middlemen as a conduit can result in the assertion of a due process defense by a defendant. The Government's ability to overcome due process claims may ultimately depend on whether and to what degree the Government exercised control over middlemen when it had the opportunity to do so. Unscrupulous defendants can take the stand at trial and untruthfully claim that middlemen passed on to them outrageous inducements that originated with Government agents or informants. One way to successfully counter this tactic is for the Government to record all conversations that its undercover agents and informants

have with middlemen. Recording all such contacts, absent safety considerations for the informant or undercover agent, will establish that the Government is not responsible for outlandish inducements that the defendant claims were communicated to him through the middleman. Moreover, such a procedure would operate to overcome defense claims that the Government deliberately failed to record meetings between middlemen and operatives, during which improper inducements were furnished to the middleman for transmittal to the defendant.

Summary

A fundamental component of the subjective view of entrapment is the concept of inducement. Inducement by a private person, absent Government direction and control, will not result in the accused being able to establish a claim of entrapment. While Federal appellate courts disagree on the meaning of Government inducement, they all agree that the entrapment defense can be raised by one who is solicited to commit a crime by Government agents or informants so long as some evidence of nonpredisposition is proffered.

Defendants are sometimes induced into the commission of criminal acts by unwitting criminals known as "middlemen." There is widespread disagreement in the courts as to whether the Government should be responsible for inducements made to

the accused by middlemen. Given the purpose of the entrapment defense, a defendant should be able to assert it when the Government selects him as a target and directs a middleman to pass on a specific inducement. Moreover, the same rationale should control when the Government directs the middleman to take an inducement to unspecified persons within a targeted group. Conversely, the defense should not be available to a defendant brought into the picture by a middleman without Government guidance and direction. Finally, the use of middlemen by the Government can raise constitutional due process questions. For this reason, use of middlemen should be carefully controlled and managed and should be done only under the guidance of legal counsel.

FBI

Footnotes

- ³⁶ 705 F.2d 62 (2d Cir. 1983).
- ³⁷ *Id.* at 68.
- ³⁸ 317 F.2d 127 (D.C. Cir. 1963).
- ³⁹ *Rawlings v. Kentucky*, 448 U.S. 98 (1980); *United States v. Salvucci*, 448 U.S. 83 (1980); *Rakas v. Illinois*, 439 U.S. 128 (1978).
- ⁴⁰ 629 F.2d 1044 (5th Cir. 1980). See also *People v. McIntire*, 23 Cal.3d 742, 591 P.2d 527, 153 Cal. Rptr. 237 (1979); *United States ex rel. Hassell v. Mathues* 22 F.2d 979 (E.D. Pa. 1927).
- ⁴¹ *Id.* at 1046.
- ⁴² 705 F.2d 603 (2d Cir. 1983).
- ⁴³ *Id.* at 615.
- ⁴⁴ 336 F.2d 856 (4th Cir. 1964).
- ⁴⁵ 501 F.Supp. 1182 (E.D. Pa. 1980); *rev'd en banc*, 673 F.2d 578 (3d Cir. 1982).
- ⁴⁶ 692 F.2d 823 (2d Cir. 1982).
- ⁴⁷ 373 U.S. 427 (1963).
- ⁴⁸ *Id.* at 435.
- ⁴⁹ See Callahan, "Entrapment, Due Process, and the U.S. Constitution," *FBI Law Enforcement Bulletin*, vol. 51, No. 2, February 1982, pp. 25-31.
- ⁵⁰ *United States v. Russell*, 411 U.S. 423 (1973); *Hampton v. United States*, 425 U.S. 484 (1976).
- ⁵¹ 411 U.S. 423 (1973).
- ⁵² 425 U.S. 484 (1976).
- ⁵³ *Supra* note 46.
- ⁵⁴ *Id.* at 839.
- ⁵⁵ *Id.* at 842.
- ⁵⁶ 705 F.2d 603 (2d Cir. 1983).
- ⁵⁷ 527 F.Supp. 1206 (E.D.N.Y. 1981).
- ⁵⁸ *Id.* at 1236.
- ⁵⁹ *Supra* note 51.
- ⁶⁰ *Supra* note 52.

WANTED BY THE FBI



Photograph taken 1978



Photograph taken 1981

Wai-Chiu Ng

Wai-Chiu Ng, also known as Ng Wai Chow, Ng Wai Chiu, Tony Eng, Tony Wai Chiu Ng, "Tony," (CTC)
0124-0251-6389

Wanted For:

Interstate Flight—Murder

The Crime

Ng is being sought in connection with the mass slayings of 13 individuals which occurred during the robbery of a private club. The victims had their hands and feet tied, and each was shot in the head numerous times.

A Federal warrant was issued on March 31, 1983, in Seattle, Wash., charging Ng with unlawful interstate flight to avoid prosecution for the crime of murder.

Description

Age..... 27, born
November 26,
1956, Hong Kong
(not supported by
birth records).
Height..... 5'7".
Weight..... 120 pounds.
Build..... Slight/medium.
Hair..... Black.
Eyes..... Brown.
Complexion..... Olive.
Race..... Asian.
Nationality..... British.
Occupations..... Machinist, painter.
Remarks..... Speaks
Cantonese; an
avid bowler and
gambler.

Social Security No.

Used..... 219-70-2014.
FBI No. 757 533 AA4.

Caution

Ng should be considered armed and extremely dangerous.

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Classification Data:

NCIC Classification:

CIPMCQPM0902SR111005

Fingerprint Classification:

2	I	25	W	MOM	9	Ref: 25
	S	27	W	MOI		25

I.O. 4931



Right thumbprint

Change of Address

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FBI LAW ENFORCEMENT BULLETIN

Complete this form and return to:

Director
Federal Bureau of
Investigation
Washington, D.C. 20535

Name

Title

Address

City

State

Zip

Questionable Pattern

In the Identification Division of the FBI, this questionable pattern is given the preferred classification of a loop with seven ridge counts. However, a closer examination reveals there is a possibility of a complete circuit located in the center of the pattern. A reference search would be conducted as an accidental-type whorl.



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Federal Bureau of Investigation

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JUS-432

Second Class



Washington, D.C. 20535

The Bulletin Notes

that Deputy Scott Penrose of the Maricopa County Sheriff's Office, Phoenix, Ariz., received the Distinguished Service Award from the sheriff's office for saving a human life. Deputy Penrose is credited with disarming (at great personal risk) a suicidal person who was threatening members of his family and other officers. The Bulletin joins Deputy Penrose's superiors in recognizing his courageous action.

