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MAY 1984

Safetyrama

Teaching Our Children About Drunk Driving

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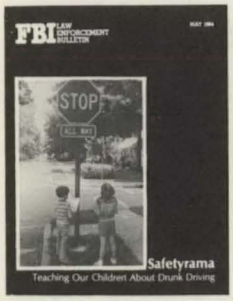

The Cover: Children can "talk" safe driving to their parents if they know traffic safety rules and regulations. See article p. 1.

Federal Bureau of Investigation
United States Department of Justice
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William H. Webster, Director

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Safetyrama

Teaching Our Children About Drunk Driving

By

ERNEST J. CIPULLO

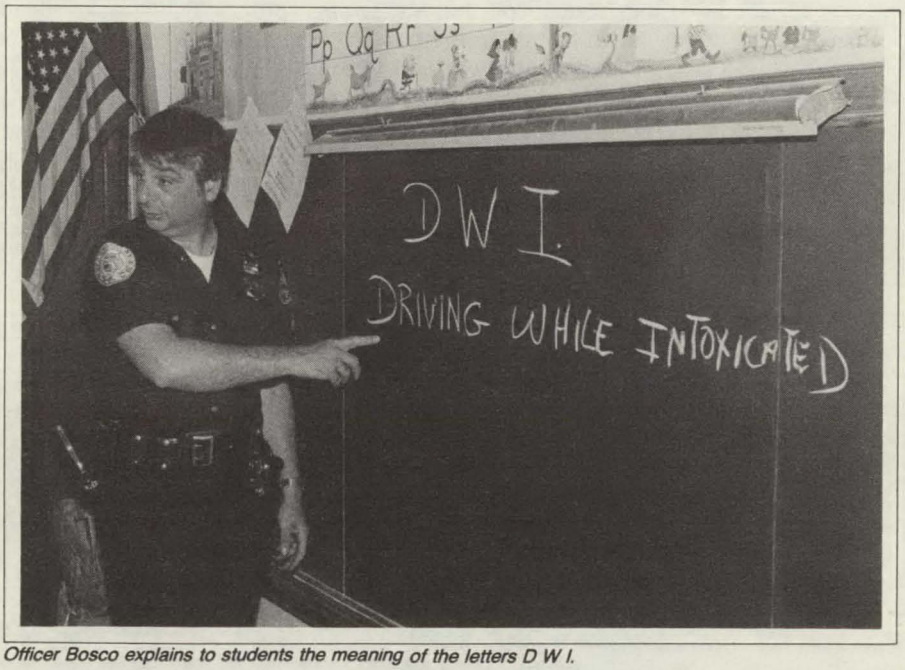
Commissioner

and

OFFICER JIM BOSCO

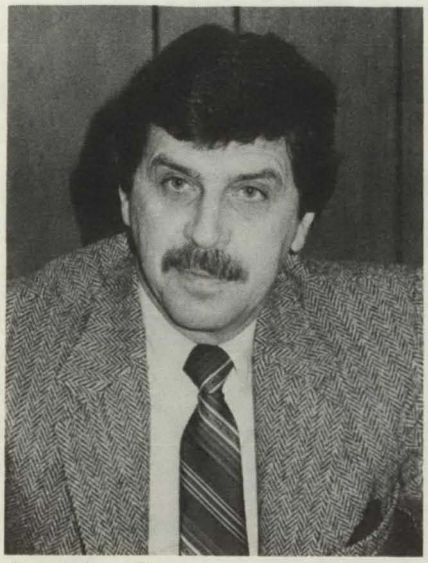
Police Department

Garden City, N.Y.



Officer Bosco explains to students the meaning of the letters D W I.

"By teaching [children] about one of the problems of the real world—drunk driving—at an early age and making them aware of the seriousness of the problems, [they] can be influential in decreasing the number of traffic-related injuries and deaths that occur on our Nation's streets and highways each year."



Commissioner Cipullo

If every child in every car would speak up when he sees an adult commit a driving violation, there would be fewer traffic accidents. This belief was the motivating force within the Garden City Police Department to develop and implement "Safetyrama," a program designed to educate children kindergarten through 2d grade on traffic safety and the effects of driving while intoxicated. Children are impressionable, receptive, and persuasive, and valuable lessons learned at an early age remain throughout the teen years and adulthood.

Officer Jim Bosco, a 22-year veteran of the police department who is the creator of the Safetyrama program, is a firm believer in "kid power." Many of the selling campaigns conducted by major manufacturers are geared to children who have an uncanny ability to convince parents to purchase a certain food product or toy. Officer Bosco also believes children can make their parents or other adults drive more safely or not drive at all if they have been drinking.

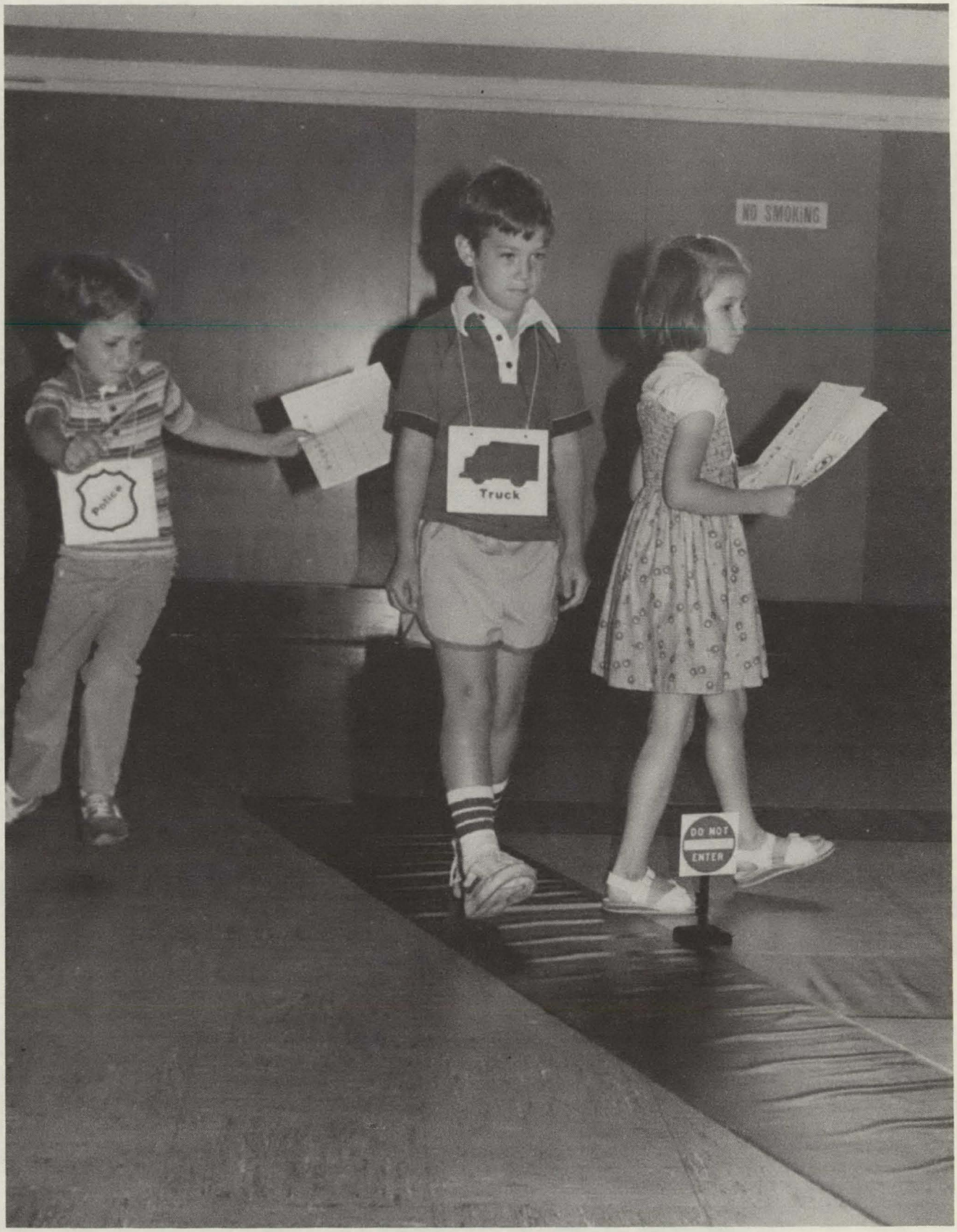
The New York State Governor's Traffic Safety Committee authorized a $55,000 grant in support of the Safetyrama concept. This grant enabled educators to institute the program in 127 classrooms throughout Nassau County, Long Island, N.Y.

Safetyrama is designed to help children become more aware of traffic safety. The program increases a student's sensitivity to the meanings of the regulatory traffic signs they see on the street. The goal of the program is to produce less reckless young pedestrians in the present and more careful drivers in the future.

Without leaving the classroom, students role play the parts of trucks, cars, bicycles, and even police officers. It is especially important that all students have an opportunity to role play a police officer, as this leads to a better understanding and respect for

Classroom discussion on DWI

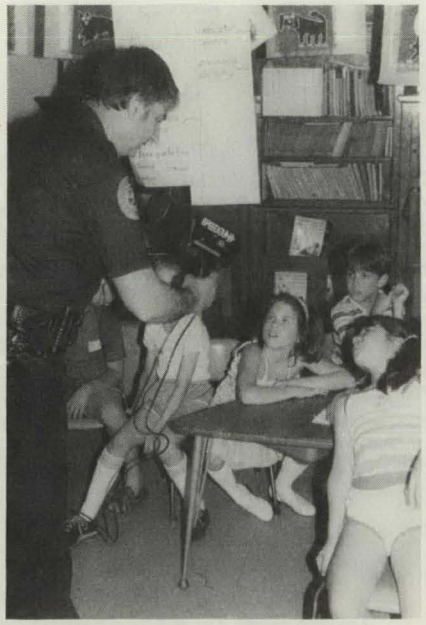
Far right: *Traffic safety role playing in the classroom.*


NO SMOKING
Police
Truck
DO NOT
ENTER

the police and their safety functions. Children score points for knowing the traffic regulations they are taught and obeying them in simulated drills. Upon successful completion of the course, each child receives a safety license, or as Officer Bosco states, "an official backseat driver's license."

Unlike most traffic safety programs designed for children, Safetyrama also teaches the youngsters the meaning of driving while intoxicated and the menace drunk drivers create.[1] The students of the program may be too young to drive, but they are old enough to learn that drinking and driving don't mix. Safetyrama teaches this old message with a new approach.

To help educate young people to the realism that alcohol and driving are dangerous, the program includes a special storybook on "The Misadventures of Wags, Freckles, and Spot," three dogs who find some spilled cans of beer in an alley. Two dogs drink the beer and become drunk and disorderly. These two dogs are found "sleeping it off" by the police and are eventually hauled away to the city pound, leaving their "sober" friend behind. The story is used to stress the effects of alcohol on judgment and physical movement and is followed by a question-and-answer period to make sure the message is clearly understood. It is especially important for the child to learn to distinguish what is safe and what is dangerous and what can happen to someone who is driving while intoxicated. When asked what beer can do to you, one second grader commented, "While you're driving, it can hurt your eyesight and you could hit another person or hit a tree and kill yourself."



Officer Bosco explains the principle of a radar gun to elementary school students.

As with the traffic safety portion of the program, the driving while intoxicated phase also includes role playing on the DWI course. The road course is set up in the classroom, and two students are selected to act as a truck driver and a driver who is intoxicated. Both students start on different roadways and go through the course at the same time. The DWI driver fails to obey the traffic signs, turning into the path of the truck. A discussion about the results of driving while intoxicated follows, including an explanation of why it is against the law to drive in such a condition. As one student stated when asked what he learned, "Drunk driving on the road is really dangerous and it can damage your brain."

At the end of the program, each student receives a STOP DWI safety pet that he can place on his bicycle or on the dashboard of his parent's car.

The DWI program does not stop at the elementary school level. At the high school level, an intensive DWI program starts with a procedure for a vehicle stop, relative to driving while intoxicated. Students participate in a role playing simulation of a street test, being placed under arrest, handcuffed, and transported to the central testing unit.

In conjunction with the DWI role playing, there is a DWI slide film presentation, which consists of a series of slides on car crashes, broken bodies, morgue scenes, arrests, and methods of survival. The narrative is bold, hard-hitting, and readily makes the high school students stop and take notice.

Conclusion

Children can "talk" safe driving to their parents or other adults if they know traffic safety rules and regulations. By teaching them about one of the problems of the real world—drunk driving—at an early age and making them aware of the seriousness of the problem, these children can be influential in decreasing the number of traffic-related injuries and deaths that occur on our Nation's streets and highways each year. **FBI**

Footnote

U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States—1982,* pp. 167–181. More than 1,750,000 total estimated arrests were made in 1982 for driving under the influence of alcohol or narcotic-related substances. Of those arrested, over 25,000 were under the age of 18 and 1 out of 10 were females. The number of males arrested under the age of 10 was 69; the number of females under 10 was 13.

Fighting Municipal Corruption

"This system of investigating municipal corruption has been so successful that law enforcement officials from around the world have studied the Investigative Squad's methods and tactics."

By
PATRICK W. McGINLEY
Commissioner of Investigation
New York, N.Y.

The Department of Investigation (DOI) is the law enforcement agency responsible for the detection and elimination of fraud and corruption within the New York City government. It is an independent agency, separate from the police department and the various district attorneys, with its own enforcement powers under the laws of the City and State of New York.

Specifically, the department conducts investigations into the following areas:

1) Criminal conduct by city employees committed in the course of their official duties;
2) Criminal or fraudulent conduct by private companies or citizens doing business with the city;
3) Misappropriation of city money, either in the form of fraudulent cash grants or improper contracts;
4) Negligence or mismanagement by city agencies or employees that create an atmosphere in which corruption can take place;
5) Conflicts of interest or other violations of provisions of the code of ethics by city employees or private citizens who have entered into contractual relationships with the city; and
6) Compliance with Federal, State, and city regulatory mandates by city agencies and contractor/vendors.

Origins of the Investigations

In a city of 7 million people with a municipal workforce of close to 200,000 employees and an annual budget of more than $16 billion, the forms that corruption or misconduct can take are unlimited.

Corruption-related crimes have certain elements that set them apart from other crimes. They are almost always committed in secrecy with sophistication. Corrupt officials know the strengths and weaknesses of the system and exploit them to their own advantage. Furthermore, successful corruption produces a mutuality of benefit. Participants rarely complain and are unwilling to appear as witnesses.

The department encourages the cooperation of the public, whether they be city employees or private citizens, to report acts of wrongdoing. Similarly, DOI relies heavily on the experience and imagination of its own employees. A minor case will frequently provide subtle hints of a much larger systemic problem.

DOI's cases fall into several categories: Bribery and bribe receiving, theft of city money or property, forgery of checks or official documents, impropriety in the awarding of contracts, and gross mismanagement or negligence resulting in wasted city resources.

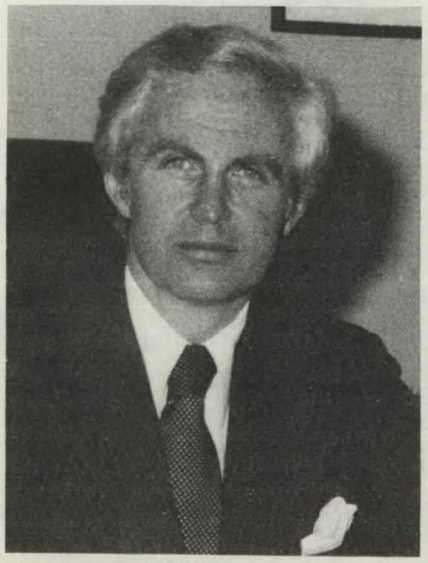
Such classifications are an oversimplification of the inventiveness and sophistication of the criminal mind.

The department receives more than 2,100 complaints each year from a variety of sources which reflect the myriad forms that corruption takes.

*The owner of a newly renovated home reports that a building inspector is demanding a $600 bribe before he will issue a certificate of inspection. A DOI staff member then poses as the sister of the homeowner and is filmed making the $600 payment. The inspector is arrested and his employment terminated.

*Intelligence reports indicate that collectors are stealing parking meter revenues. After a lengthy surveillance operation, seven collectors are arrested, and the contract with the private collection firm is cancelled.

*Examination of public assistance records indicates that certain clients are receiving an unusually large number of payments. Investigation reveals an



Commissioner McGinley

organized pattern of corruption involving a caseworker who is subsequently arrested.

*An agency commissioner is concerned with increased thefts of inventory and asks the department for assistance. An undercover officer assigned to the warehouse gathers the necessary information.

*The Board of Ethics asks the department to investigate a possible conflict of interest involving a former commissioner now working for a company receiving contracts from his former agency.

Specialized Units

In order to combat corruption-related crimes effectively, the department is organized into a number of specialized units that reflect the variety and diversification of the cases the agency handles.

Investigative Squad

DOI's criminal investigations are conducted by the 52 members of the Investigative Squad. The majority of these persons are assigned to the department from the New York City Police Department and other city law enforcement agencies; others are special investigators recruited directly from colleges and universities.

The squad is involved in both overt and covert operations, ranging from the apprehension of a single bribery suspect to the gathering of evidence against organized crime groups. Since secrecy is a key element in corruption-related crimes, the squad relies heavily on the use of undercover tactics and surveillance activities, both visual and electronic. Members of the squad frequently work undercover, sometimes posing as private businessmen to gather evidence against city employees seeking bribes. Others are assigned to city agencies to gather information on thefts of city property or money. In such cases, the squad uses concealed recording equipment to document evidence. While such operations are frequently time consuming and costly, they are often the only reliable way to gather the necessary evidence in white-collar crimes.

The deployment of the squad's investigative resources reflects the department's attempt to develop innovative and advanced tactics that will produce credible evidence to be presented in court and in administrative hearings. In the past 7 years, the investigative section has undertaken 10 long term major operations against organized crime and fraud-related groups that have led to the arrest and conviction of over 100 individuals in the business and government sectors. Many other individuals have been arrested and convicted of corrupt activities using more routine investigative techniques. Between 1978 and 1982, the squad was involved in the arrest and/or indictment of 559 individuals. The combined dollar amount from thefts and bribery attributed to these individuals was close to $9 million.

This system of investigating municipal corruption has been so successful that law enforcement officials from around the world have studied the Investigative Squad's methods and tactics.

"In order to combat corruption-related crimes effectively, the department is organized into a number of specialized units that reflect the variety and diversification of the cases the agency handles."

While the investigation of criminal corruption is a major part of the department's focus, DOI is much more than a police agency. The work of the other units of the department reflects the agency's multidisciplinary approach.

Examining Attorneys

The most important and vital area of responsibility for the examining attorneys is the legal supervision they provide to the other members of the investigative team. Since many of the department's criminal investigations are covert operations using electronic surveillance and undercover officers, examining attorneys are assigned to work closely with the investigative team to ensure that all procedures are conducted within the statutes and case law. During the course of the investigation, the examining attorney may be required to obtain subpoenas and conduct formal hearings in which testimony is elicited from witnesses and other concerned parties.

Once the investigation is completed, the case is turned over to the appropriate prosecutor for trial. Our cases are usually prosecuted by one of the five district attorneys in New York City or by a U.S. attorney. Cases are also referred to the IRS, the FBI, and the Secret Service.

Corruption Prevention and Management Review Bureau

Most cases of graft or official misconduct occur when there is a defect in the system. Ineffective policies and procedures, inadequate supervision, or poor security controls help create the opportunities for corruption.

The prosecution of corrupt individuals is an important part of the department's mission; however, it is only a short term solution. The elimination of programmatic defects is the long term goal.

To assist in this effort, the Corruption Prevention and Management Review Bureau was created. The bureau was the first of its kind established by a city government in this Nation.

The Corruption Prevention Bureau staff is composed of men and women with degrees in public or business administration. Essentially, they serve as internal management consultants to the city. They determine how a corrupt activity happened and what can be done to prevent its recurrence.

The Corruption Prevention Bureau focuses on three specific areas:

1) When things of value are generated by an agency or program, i.e., money, tax abatements, or exemptions;
2) When there is a singular relationship between a city worker and a member of the public, such as in public assistance cases and inspectional services; and
3) When a breakdown in the system leads to delays in providing a service. For example, delays in the issuance of building permits may lead to soliciting or offering bribes to expedite the process.

The Corruption Prevention Bureau evaluates the regulations, procedures, legal mandates, and day-to-day operations of an agency or program. By focusing on these areas, the bureau attempts to identify inadequacies and lack of controls in order to correct them before widespread abuses occur.

Over the past 5 years, the Corruption Prevention Bureau has identified over $40 million worth of preventable monetary losses to the city due to corruption and has successfully blocked opportunities for fraud or mismanagement in the city's collection of revenues, the purchase of goods and services, and the administration of social programs.

The diversity of the bureau's work is reflected in some of its projects in the past several years.

*After numerous arrests by DOI's Investigative Squad of clients and employees participating in food stamp frauds, the Corruption Prevention Bureau undertook a joint study with the Human Resources Administration's (HRA) Office of Loss Analysis Prevention to assess the fraud vulnerability of the food stamp program. This study found numerous procedural weaknesses in the program, including failure to document the financial condition, family composition, and true identity of clients adequately. Furthermore, no efforts were being made to determine whether the client was receiving similar benefits from another welfare center, and the forms which authorized the issuance of the food stamps were left in unguarded and unsecured areas of the centers where they

could easily be stolen. Among the study's recommendations were increased and improved security, the creation of a central clearing system, and the establishment of an online computer information system.

*The Industrial and Commercial Incentive Board was established to encourage construction and reconstruction of industrial and commercial buildings through exemptions from real property taxes. The board grants millions of dollars worth of exemptions a year. The bureau study found that the program was operating under vague unwritten policies and procedures, the financial analyses of the projects were inconsistent and poorly documented, and policy decisions were often made by the chairperson without public discussion or majority vote. Among the recommendations of the study were that the board develop written objectives, guidelines, and procedures, increase the number of inspections of the construction sites, and improve its methods for evaluating projects.

*The city is legally responsible for ensuring that foster children placed under its care are safeguarded from further neglect and abuse. In the face of rising complaints that foster children were being mistreated by those responsible for their care, the bureau reviewed the HRA's procedures for investigating these allegations. The study found significant breakdowns in the system from improper selection of foster parents and child care workers to inadequate detection of abuse, untimely and incomplete investigations, and lack of enforced sanctions to punish offenders and protect children from further abuse. In response to the report, HRA formulated a corrective action plan that included many reforms, including improved training of investigators, stricter screening of foster parents and child care workers, and prompt referral of serious cases to appropriate prosecutors.

*A joint study conducted by the Corruption Prevention Bureau and the department's Investigative Squad documented evidence that officials of the New York City Transit Authority's Car Maintenance Department had entered into oral agreements that allowed scrap metal dealers to take possession of valuable equipment (i.e., subway car motors) in exchange for services rendered beyond the dealer's original contract. The investigation revealed that the Transit Authority lacked proper controls over its inventory and that the alleged "excess services" may not have been performed. The investigation recommended the rewording of the scrap metal contracts, upgrading the physical security at the car yards, and full use of the authority's computer system to keep track of inventory.

Computer Security Services Unit

The city relies on its electronic data processing system to meet its operational, financial, and informational requirements. However, these computer systems are vulnerable to substantial losses from both intentional and unintentional abuse. Therefore, the department created the Computer Security Services Unit to help city agencies reduce the vulnerabilities of their computer system to such losses.

The unit has citywide responsibility for developing policies, procedures, and standards to meet this objective. It also has the direct responsibility for conducting audits and investigations where computer-related abuse or misuse is suspected. In addition, the unit provides technical assistance to other units within the department and to other city agencies.

Inspector General Program

Clearly, with a staff of fewer than 150 professionals, the department alone cannot monitor a city workforce of approximately 200,000 employees. However, since 1978, the department has had a strong ally in the inspector general (IG) program.

In 1978, an Office of Inspector General was established in all 24 mayoral agencies to investigate "corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and negligence within their respective agencies." The IG's report directly to the commissioners of their agencies and to the commissioner of investigation. In this respect, the program has extended DOI's investigative authority to every city agency.

Most IG's are experienced attorneys backed by a staff of professional investigators and support personnel. In many instances, an allegation originates in an IG's office and is then turned over to the department for criminal investigation. Similarly, some of the complaints received by DOI are forwarded to the IG's for investigation. Frequently, investigations are pursued jointly by DOI and IG staffs.

Because of their intimate knowledge of their own agencies, the IG's have conducted management studies that have saved the city significant sums of money and have complemented the work done by the department's Corruption Prevention Bureau.

In addition, DOI maintains a Marshals Bureau which regulates city marshals, a background section which conducts preappointment investigations of management personnel, a complaint bureau which processes phone and mail complaints from the public, and an accounting section which supplies support for all units.

Conclusion

Our staff of approximately 140 comprises one of the smallest New York City agencies; yet, our jurisdiction and influence are extensive. In many ways, we are an anomaly—an agency answerable to the mayor yet empowered to investigate the top levels of government.

In the final analysis, however, we are only as effective as the public permits us to be. It is the public's interest in corruption-free government and the public's retreat from the "business as usual" refrain that will prompt complaints and cooperation. **FBI**

Decline Recorded in Number of Law Enforcement Deaths

In 1983, fewer law enforcement officers were killed feloniously in the line of duty than in any other year of the past decade. This is according to preliminary figures compiled by the FBI's Uniform Crime Reporting Program. The number of law enforcement officers slain last year was 79, which was 13 less than the 1982 total.

Firearms were the weapons used in 73 of the slayings—53 murders were committed with handguns, 12 with rifles, and 8 with shotguns. The murder weapons in the remaining 5 incidents were vehicles, knives, or a blunt object.

Forty of the victims were city policemen, 25 were county officers, 11 were employed by State law enforcement agencies, and 3 were Federal officers. Law enforcement agencies cleared 73 of the 79 slayings.

Ten officers were attempting to thwart robberies or were in pursuit of robbery suspects when slain; 4 were handling burglary-in-progress calls or were pursuing burglary suspects; 11 were attempting other arrests. Fifteen officers were murdered upon responding to disturbance calls, 12 while enforcing traffic laws, and 9 while investigating suspicious persons or circumstances. Nine were ambushed, 5 were investigating drug-related matters, 3 were handling or transporting prisoners, and 1 was dealing with a mentally deranged individual.

Geographically, 37 officers were slain in the Southern States, 18 in the Western States, 13 in the North Central States, 5 in the Northeastern States, 4 in Puerto Rico, 1 in Guam, and 1 in the Mariana Islands.

Fiber Evidence and the Wayne Williams Trial (Conclusion)

By
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Microscopic Analysis Unit
Laboratory Division
Federal Bureau of Investigation
Washington, D.C.

Part I of this article dealt with the importance of forensic fiber examinations. The conclusion discusses the use of fiber evidence in the Williams case.

Development of Williams as a Murder Suspect

Before Wayne Williams became a suspect in the Nathaniel Cater murder case, the Georgia State Crime Laboratory located a number of yellowish-green nylon fibers and some violet acetate fibers on the bodies and clothing of the murder victims whose bodies had been recovered during the period of July 1979, to May 1981. The names of those victims were included on the list of missing and murdered children that was compiled by the Atlanta Task Force (a large group of investigators from law enforcement agencies in the Atlanta area). The yellowish-green nylon fibers were generally similar to each other in appearance and properties and were considered to have originated from a single source. This was also true of the violet acetate fibers. Although there were many other similarities that would link these murders together, the fiber linkage was notable since the possibility existed that a source of these fibers might be located in the future.

Initially, the major concern with these yellowish-green nylon fibers was determining what type of object could have been their source. This information could provide avenues of investigative activity. The fibers were very coarse and had a lobed cross-sectional appearance, tending to indicate that they originated from a carpet or a rug. The lobed cross-sectional shape of these fibers, however, was unique, and initially, the manufacturer of these fibers could not be determined. Photomicrographs of the fibers were prepared for display to contacts within the textile industry. On one occasion, these photomicrographs were distributed among several chemists attending a meeting at the research facilities of a large fiber producer. The chemists concurred that the yellowish-green nylon fiber was very unusual in cross-sectional shape and was consistent with being a carpet fiber, but again, the manufacturer of this fiber could not be determined. Contacts with other textile producers and textile chemists likewise did not result in an identification of the manufacturer.

In February 1981, an Atlanta newspaper article publicized that several different fiber types had been found on two murder victims. Following the publication of this article, bodies recovered from rivers in the Atlanta metropolitan area were either nude or clothed only in undershorts. It appeared possible that the victims were being disposed of in this undressed state and in rivers in order to eliminate fibers from being found on their bodies.[11]

On May 22, 1981, a four-man surveillance team of personnel from the Atlanta Police Department and the Atlanta Office of the FBI were situated

Special Agent Deadman

under and at both ends of the James Jackson Parkway Bridge over the Chattahooche River in northwest Atlanta. Around 2:00 a.m., a loud splash alerted the surveillance team to the presence of an automobile being driven slowly off the bridge. The driver was stopped and identified as Wayne Bertram Williams.

Two days after Williams' presence on the bridge, the nude body of Nathaniel Cater was pulled from the Chattahoochee River, approximately 1 mile downstream from the James Jackson Parkway Bridge. A yellowish-green nylon carpet-type fiber, similar to the nylon fibers discussed above, was recovered from the head hair of Nathaniel Cater. When details of Williams' reason for being on the bridge at 2:00 a.m. could not be confirmed, search warrants for Williams' home and automobile were obtained and were served on the afternoon of June 3, 1981. During the late evening hours of the same day, the initial associations of fibers from Cater and other murder victims were made with a green carpet in the home of Williams. Associations with a bedspread from Williams' bed and with the Williams' family dog were also made at that time.

An apparent source of the yellowish-green nylon fibers had been found. It now became important to completely characterize these fibers in order to verify the associations and determine the strength of the associations resulting from the fiber matches. Because of the unusual cross-sectional appearance of the nylon fiber and the difficulty in determining the manufacturer, it was believed that this was a relatively rare fiber type, and therefore, would not be present in large amounts (or in a large number of carpets).

The Williams Carpet

Shortly after Williams was developed as a suspect, it was determined the yellowish-green nylon fibers were manufactured by the Wellman Corporation. The next step was to ascertain, if possible, how much carpet like Williams' bedroom carpet had been sold in the Atlanta area—carpet composed of the Wellman fiber and dyed with the same dye formulation as the Williams' carpet. Names of Wellman Corporation customers who had purchased this fiber type, technical information about the fiber, and data concerning when and how much of this fiber type had been manufactured were obtained.

It was confirmed that the Wellman Corporation had, in fact, manufactured the fiber in Williams' carpet and that no other fiber manufacturer was known to have made a fiber with a similar cross section. It was also determined that fibers having this cross-sectional shape were manufactured and sold during the years 1967 through 1974. Prior to 1967, this company manufactured only a round cross section; after 1974, the unusual trilobal cross section seen in Williams' carpet was modified to a more regular trilobal cross-sectional shape. A list of sales of that fiber type during the period 1967 through 1974 was compiled.

The Wellman Corporation described the fibers used in the construction of Williams' carpet as being composed of a nylon 6,6 polymer called Wellman 181B. The Wellman 181B fiber was sold to 12 companies from 1967 to 1974 in undyed sections, each 6 inches in length. The purchasers, for the most part, were carpet yarn spinners (companies that prepare yarn from loose fibers). After a carpet yarn is prepared, it is then used to manufacture the face (pile) of the actual carpet. In order to determine the manufacturer of Williams' carpet, it was necessary to contact all purchasers of Wellman carpet fiber like that used in his carpet. These companies, normally those who prepare carpet yarn only, were asked to furnish the names of carpet manufacturers who had purchased carpet yarn made of Wellman 181B fibers.

At the outset, a problem arose. A number of companies either having purchased Wellman 181B fibers or having manufactured carpet from yarn composed of Wellman 181B fibers were no longer in business. Therefore, it was necessary to locate former employees of the defunct companies to see if they could recognize the fibers in Williams' carpet or recognize an actual piece of the carpet from Williams' room. In each of these contacts, a sample of the carpet from Williams' home was made available for display by investigators.

Through numerous contacts with yarn spinners and carpet manufacturers, it was determined that the West Point Pepperell Corporation of Dalton, Ga., had manufactured a line of carpet called "Luxaire," which was constructed in the same manner as the Williams' carpet. One of the colors offered in the "Luxaire" line was called "English Olive," and this color was the same as that of the Williams' carpet (both visually and by the use of discriminating chemical and instrumental tests).

It was learned that the West Point Pepperell Corporation had manufactured the "Luxaire" line for a 5-year period from December 1970 through 1975; however, it had only purchased Wellman 181B fiber for this line during 1970 and 1971. In December 1971, the West Point Pepperell Corporation changed the fiber composition of the "Luxaire" line to a different nylon fiber, one that was dissimilar to the Wellman 181B fiber in appearance. Accordingly, "Luxaire" carpet, like the Williams' carpet, was only manufactured for a 1-year period. This change of carpet fiber after only 1 year in production was yet another factor that made the Williams' carpet unusual.

It is interesting to speculate on the course the investigation would have taken if the James Jackson Parkway Bridge had not been covered by the surveillance team. The identification of the manufacturer of the nylon fibers showing up on the bodies could still have occurred and the same list of purchasers of the Wellman fiber could have been obtained. The same contacts with the yarn and carpet manufacturers could have been made; however, there would not have been an actual carpet sample to display. It is believed that eventually the carpet manufacturer could have been determined. With a sample of carpet supplied by West Point Pepperell—which they had retained in their files for over 10 years—it would have been possible to conduct a house-by-house search of the Atlanta area in an attempt to find a similar carpet. Whether this very difficult task would have been attempted, of course, will never be known. A search of that type, however, would have accurately answered an important question that was discussed at the trial—the question of how many other homes in the Atlanta area had a carpet like the Williams' carpet. An estimation, to be discussed later, based on sales records provided by the West Point Pepperell Corporation indicated that there was a very low chance (1/7792) of finding a carpet like Williams' carpet by randomly selecting occupied residences in the Atlanta area.

Only the West Point Pepperell Corporation was found to have manufactured a carpet exactly like the Williams' carpet. Even though several manufacturers had gone out of business and could not be located, it was believed that considering the many variables that exist in the manufacture of carpet and the probable uniqueness of each carpet manufacturer's dye formulations, it would be extremely unlikely for two unrelated companies to construct a carpet or dye the carpet fibers in exactly the same way. A large number of other green fibers, visually similar in color to Williams' carpet, were examined. None was found to be consistent with fibers from the Williams carpet.

Probability Determinations

To convey the unusual nature of the Williams residential carpet, an attempt was made to develop a numerical probability—something never before done in connection with textile materials used as evidence in a criminal trial.[12] The following information was gathered from the West Point Pepperell Corporation:

1) West Point Pepperell reported purchases of Wellman 181B fiber for the "Luxaire" line during a 1-year period. The Wellman 181B fiber was used to manufacture "Luxaire" carpet from December 1970, until December 1971, at which time a new fiber type replaced that Wellman fiber.
2) In 1971, West Point Pepperell sold 5,710 square yards of English Olive "Luxaire" and "Dreamer" carpet to Region C (10 southeastern States which include Georgia). "Dreamer" was a line of carpet similar to "Luxaire" but contained a less dense pile. In order to account for the carpet manufactured during 1971, but sold after that time, all of the "Luxaire" English Olive carpet sold during 1972 to Region C (10,687 square yards) was added to the 1971 sales. Therefore, it was estimated that a total of 16,397 square yards of carpet containing the Wellman 181B fiber and dyed English Olive in color was sold by the West Point Pepperell Corporation to retailers in 10 southeastern States during 1971 and 1972. (In 1979, existing residential carpeted floor space in the United States was estimated at 6.7 billion square yards.)[13]
3) By assuming that this carpet was installed in one room, averaging 12 feet by 15 feet in size, per house, and also assuming that the total sales of carpet were divided equally among the 10 southeastern States, then approximately 82 rooms with this carpet could be found in the State of Georgia.
4) Information from the Atlanta Regional Commission showed that there were 638,995 occupied housing units in the Atlanta metropolitan area in November 1981.[14] Using this figure, the chance of randomly selecting an occupied housing unit in metropolitan Atlanta and finding a house with a room having carpet like Williams' carpet was determined to be 1 chance in 7,792—a very low chance.

To the degree that the assumptions used in calculating the above probability number are reasonable, we can be confident in arriving at a valid probability number. The assumptions made included:

1) The sales records provided by the West Point Pepperell Corporation were complete and accurate;
2) The carpet sold by West Point Pepperell containing Wellman 181B fiber dyed English Olive in color was distributed and installed equally throughout the 10 southeastern States;
3) All the carpet sold to retailers in Georgia was installed in the Atlanta metropolitan area.
4) Each residential unit contained only 20 square yards of the carpet in question;
5) All English Olive carpet sold in 1972 contained the Wellman 181B fiber, even though the use of that fiber type was discontinued in December 1971.
6) None of the English Olive carpet installed during 1971 and 1972 had been discarded; and
7) No other carpet manufacturer would produce a carpet containing Wellman 181B fiber dyed with essentially the same English Olive dye formulation.

With the exception of #2 and #7, the assumptions are conservative. In other words, the real probability number is likely to be smaller than 1 in 7,792. For example, if it were assumed that 60 square yards of the carpet had been installed in each house, then the probability number would become 1 in 23,406. (Williams' residence had over 60 square yards of the carpet).

If assumption #2 were changed so that one-half of the 16,397 square yards sold to the 10 southeastern States was sold (and subsequently installed) in metropolitan Atlanta, the probability of finding a residence containing 20 square yards of carpet like Williams' carpet would become 1 in 1,559.

The probability figures illustrate clearly that the Williams' carpet is, in fact, very uncommon. To enhance the figures even further, it is important to emphasize that these figures are based on the assumption that none of the carpet of concern had been discarded during the past 11 years. In fact, carpet of this type, often used in

commercial settings, such as apartment houses, would probably have had a normal lifespan of only 4 to 5 years.[15]

The validity of assumption #7 is arguable. However, considering the comparatively small amount of Wellman 181B fiber used to produce carpet, the nature of the coloring process used by the carpet industry, and the actual comparisons of many green carpet fibers, it is believed that no companies using Wellman 181B fiber would duplicate the dye formulation used by West Point Pepperell. (Four individual dyes were mixed to color the Wellman fiber in Williams' carpet.)

The Williams Trial

To any experienced forensic fiber examiner, the fiber evidence linking Williams to the murder victims was overwhelming. But regardless of the apparent validity of the fiber findings, it was during the trial that its true weight would be determined. Unless it could be conveyed meaningfully to a jury, its effect would be lost. Because of this, considerable time was spent determining what should be done to convey the full significance of the fiber evidence. Juries are not usually composed of individuals with a scientific background, and therefore, it was necessary to "educate" the jury in what procedures were followed and the significance of the fiber results. In the Williams case, over 40 charts with over 350 photographs were prepared to illustrate exactly what the crime laboratory examiners had observed. Several types of charts were prepared, including:

1) Educational charts to illustrate different classifications of textile fibers and to show the variety that can exist within one fiber classification. Charts listing the microscopes used, as well as the fiber properties and characteristics that are compared during microscopical comparisons.
2) A series of charts showing objects in Williams' environment which were linked to the various victims. These were used to facilitate reference to and discussion of particular objects.
3) Charts where photomicrographs of foreign fibers removed from a particular victim were shown next to photomicrographs of similar fibers from known objects in Williams' environment.

Each of the fiber photomicrographs was enlarged to an 8-by 10-inch color print to give a final magnification of approximately 600X. These 8- by 10-inch prints were cropped to a final size of 5-by 7-inches. As many as 16 prints could then be displayed on a standard size 30-by 40-inch chart.

Considerable time and expense were involved in the preparation of the charts used in the Williams trial. This was because of the tremendous amount of evidence linking Williams to the many victims. In a more typical case, where the fiber evidence is not so voluminous, charts and photographs could more easily be prepared.

Representatives of the textile fiber industry, including technical representatives from the Wellman and West Point Pepperell Corporations, were involved in educating the jury regarding textile fibers in general and helped lay the foundation for the conclusions of the forensic fiber examiners. The jury also was told about fiber analysis in the crime laboratory.

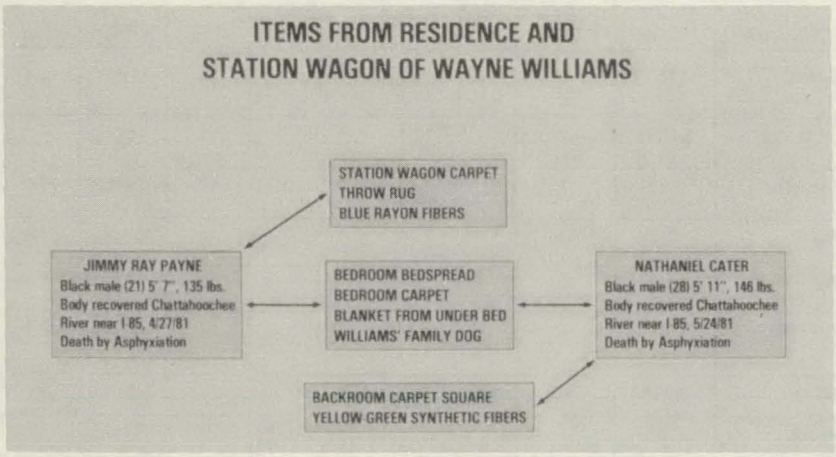
The trial, as it developed, can be divided into two parts. Initially, testimony was given concerning the murders of Nathanial Cater and Jimmy Ray Payne, the two victims included in the indictment drawn against Williams in July 1981. Testimony was then given concerning Williams' association with 10 other murder victims.

The fiber matches made between fibers in Williams' environment and fibers from victims Payne and Cater were discussed. The items from Williams' environment that were linked to either or both of the victims are shown in the center of the chart. (See fig. 5.) Not only is Payne linked to the Williams' environment by seven items and Cater linked by six items, but both of the victims are linked strongly to each other based on the fiber matches and circumstances surrounding their deaths.

In discussing the significance or strength of an association based on textile fibers, it was emphasized that the more uncommon the fibers, the stronger the association. None of the fiber types from the items in Williams' environment shown in the center of figure 5 is by definition a "common" fiber type. Several of the fiber types would be termed "uncommon."

One of the fibers linking the body of Jimmy Ray Payne to the carpet in the 1970 station wagon driven by Williams was a small rayon fiber fragment recovered from Payne's shorts.

Figure 5



Data were obtained from the station wagon's manufacturer concerning which automobile models produced prior to 1973 contained carpet made of this fiber type. These data were coupled with additional information from Georgia concerning the number of these models registered in the Atlanta metropolitan area during 1981. This allowed a calculation to be made relating to the probability of randomly selecting an automobile having carpet like that in the 1970 Chevrolet station wagon from the 2,373,512 cars registered in the Atlanta metropolitan area. This probability is 1 chance in 3,828, a very low probability representing a significant association.

Another factor to consider when assessing the significance of fiber evidence is the increased strength of the association when multiple fiber matches become the basis of the association. This is true if different fiber types from more than one object are found and each fiber type either links two people together or links an individual with a particular environment. As the number of different objects increases, the strength of an association increases dramatically. That is, the chance of randomly finding several particular fiber types in a certain location is much smaller than the chance of finding one particular fiber type.

The following example can be used to illustrate the significance of multiple fiber matches linking two items together. If one were to throw a single die one time, the chance or probability of throwing a particular number would be one chance in six. The probability of throwing a second die and getting that same number also would be one chance in six. However, the probability of getting 2 of the same numbers on 2 dice thrown simultaneously is only 1 in every 36 double throws—a much smaller chance than with either of the single throws. This number is a result of the product rule of probability theory. That is, the probability of the joint occurrence of a number of mutually independent events equals the product of the individual probabilities of each of the events (in this example—$\frac{1}{6} \times \frac{1}{6} = \frac{1}{36}$). Since numerous fiber types are in existence, the chance of finding one particular fiber type, other than a common type, in a specific randomly selected location is small. The chance then of finding several fiber types together in a specific location is the product of several small probabilities, resulting in an extremely small chance.

Probability theory has previously been used to some extent in determining the significance of evidence, but has often been used incorrectly. In most cases, an adequate foundation had not been laid for the individual probability estimates—a foundation that would include the validity of reasonableness of the figures used and a demonstration that individual probabilities are independent of one another. In the Williams case, it was believed that the probability numbers obtained were based on valid data and were, in fact, conservative estimates. However, no attempt was made to use the product rule and multiply the individual probability numbers together to get an approximation of the probability of finding carpets like Williams' residential carpet and Williams' automobile carpet in the same household. The probability numbers were used only to show that the individual fiber types involved in these associations were very uncommon.[16]

It should be noted that carpet is one of the few types of fibrous material that is suitable for statistical analysis. This is because manmade carpet fibers are usually dyed and have much larger diameters than textile fibers from most other sources. Most carpet fibers have cross-sectional shapes which are only used in carpet fibers and which often are unique to a particular fiber manufacturer. Therefore, a large diameter fiber, especially those that are colored, can usually be identified as having originated from a carpet. Additionally, because carpet is generally a high-cost item, accurate and complete sales records are more likely to exist.

Figure 6

VICTIM'S NAME	DATE VICTIM MISSING	DAYS MISSING	BODY RECOVERY AREA	CAUSE OF DEATH	AGE	WEIGHT	HEIGHT
EVANS	7/25/79	3	WOODED AREA S.W. ATLANTA	PROBABLE ASPHYXIATION/ STRANGULATION	13	87 LBS.	5'4"
MIDDLEBROOKS	5/18/80	1	NEAR STREET S.E. ATLANTA	BLUNT TRAUMA TO HEAD	14	88 LBS.	4'10"
STEPHENS	10/9/80	1	NEAR STREET S.E. ATLANTA	ASPHYXIATION	10	120 LBS.	5'0"
GETER	1/3/81	33	WOODED AREA FULTON COUNTY	MANUAL STRANGULATION	14	130 LBS.	5'4"
PUE	1/22/81	1	NEAR HIGHWAY ROCKDALE CO.	LIGATURE STRANGULATION	15	105 LBS.	5'5"
BALTAZAR	2/6/81	7	NEAR HIGHWAY DEKALB CO.	LIGATURE STRANGULATION	12	125 LBS.	5'4"
BELL	3/2/81	31	SOUTH RIVER DEKALB CO.	ASPHYXIATION	16	100 LBS.	5'2"
ROGERS	3/30/81	10	NEAR STREET N.W. ATLANTA	ASPHYXIATION/ STRANGULATION	20	110 LBS.	5'3"
PORTER	4/10/81	1	NEAR STREET IN S.W. ATLANTA	STABBED	28	123 LBS.	5'7"
PAYNE	4/22/81	5	CHATTAHOOCHEE RIVER FULTON COUNTY	ASPHYXIATION	21	135 LBS.	5'7"
BARRETT	5/11/81	1	NEAR STREET DEKALB CO.	LIGATURE STRANGULATION (3 PUNCTURE WOUNDS)	17	125 LBS.	5'4"
CATER	5/21/81	3	CHATTAHOOCHEE RIVER FULTON COUNTY	ASPHYXIATION/ STRANGULATION	28	146 LBS.	5'11"

If so, an accurate estimation of the total amount of carpet produced or sold by a manufacturer in a particular area could be determined. This may not be an easy task, but is possible, as shown in the Williams case. It is assumed that each of the carpet manufacturers is using dye formulations unique to its company, for reasons explained earlier.

Refer again to figure 5. In addition to the two probability numbers already discussed (bedroom and station wagon carpets), each of the other fiber types linking Williams to both Cater and Payne has a probability of being found in a particular location. The chance of finding all of the fiber types indicated on the chart in one location (seven types on Payne's body and six types on Cater's body) would be extremely small. Although an actual probability number for those findings could not be determined, it is believed that the multiple fiber associations shown on this chart are proof that Williams is linked to the bodies of these two victims, even though each fiber match by itself does not show a positive association with Williams' environment.

Studies have been conducted in England that show that transferred fibers are usually lost rapidly as people go about their daily routine.[17] Therefore, the foreign fibers present on a person are most often from recent surroundings. The fibrous debris found on a murder victim reflects the body's more recent surroundings, especially important if the body was moved after the killing. Accordingly, the victims' bodies in this particular case are not only associated with Williams, but are apparently associated with Williams shortly before or after their deaths.

It was also pointed out during the trial that the locations of the fibers—on Payne's shorts and in Cater's head hairs and pubic hairs—were not those where one would expect to find fibrous debris transferred from an automobile or a house to victims who had been fully clothed.

Although from these findings it would appear that the victims were in the residence of Williams, there was one other location that contained many of the same fibers as those in the composition of various objects in his residence—Williams' station wagon. The environment of a family automobile might be expected to reflect, to some extent, fibers from objects located within the residence. This was true of the 1970 station wagon. With one exception, all of the fiber types removed from Payne and Cater, consistent with originating from items shown in the center of figure 5, were present in debris removed by vacuuming the station wagon. The automobile would be the most logical source of the foreign fibers found on both Payne and Cater if they were associated with Williams shortly before or after their deaths. It should also be pointed out that two objects, the bedspread and the blanket, were portable and could have at one time been present inside the station wagon.

Both Payne and Cater were recovered from the Chattahoochee River. Their bodies had been in the water for several days. Some of the fibers found on these victims were like fibers in the compositions of the bedroom carpet and bedspread except for color intensity. They appeared to have been bleached. By subjecting various known fibers to small amounts of Chattahoochee River water for different periods of time, it was found that bleaching did occur. This was especially true with the carpet and bedspread fibers from Williams' bedroom.

Two crime laboratory examiners testified during the closing stages of the first part of the trial about Wil-

liams' association with Payne and Cater. They concluded that it was highly unlikely that any environment other than that present in Wayne Williams' house and car could have resulted in the combination of fibers and hairs found on the victims and that it would be virtually impossible to have matched so many fibers found on Cater and Payne to items in Williams' house and car unless the victims were in contact with or in some way associated with the environment of Wayne Williams.

After testimony was presented concerning the Payne and Cater cases, the Fulton County District Attorney's Office asked the court to be allowed to introduce evidence in the cases of 10 other victims whose murders were similar in many respects. Georgia law allows evidence of another crime to be introduced " . . . if some logical connection can be shown between the two from which it can be said that proof of the one tends to establish the other as relevant to some fact other than general bad character." [18] There need be no conviction for the other crime in order for details about that crime to be admissible.

It was ruled that evidence concerning other murders could be introduced in an attempt to prove a "pattern or scheme" of killing that included the two murders with which Williams was charged. The additional evidence in these cases was to be used to help the jury ". . . decide whether Williams had committed the two murders with which he is charged." [19]

There were similarities between these additional victims and Payne and Cater. (See fig. 6.) Although some differences can also be seen on this chart, the prosecution considered these differences to fit within the "pattern of killing" of which Payne and Cater were a part. The most important similarities between these additional victims were the fiber matches that linked 9 of the 10 victims to Williams' environment. The fiber findings discussed during the trial and used to associate Williams to the 12 victims were illustrated during the trial. (See fig. 7.)

The 12 victims were listed in chronological order based on the dates their bodies were recovered. The time period covered by this chart, approximately 22 months, is from July

Figure 7

NAME OF VICTIM	VIOLET AND GREEN BEDSPREAD WILLIAMS' BEDROOM	GREEN CARPET WILLIAMS' BEDROOM	DOG HAIRS WILLIAMS' DOG	YELLOW BLANKET WILLIAMS' BEDROOM	BLUE RAYON FIBERS DEBRIS FROM WILLIAMS' HOME	TRUNK LINER 1978 PLYMOUTH	CARPET 1978 FORD	CARPET 1970 CHEVROLET	ADDITIONAL ITEMS FROM WILLIAMS' HOME, AUTOMOBILES OR PERSON
Alfred Evans	X	X	X			X			
Eric Middlebrooks	X		X				X		YELLOW NYLON FORD TRUNK LINER
Charles Stephens	X	X	X		X				YELLOW NYLON WHITE POLYESTER BACKROOM CARPET FORD TRUNK LINER
Lubie Geter	X	X	X					X	KITCHEN CARPET
Terry Pue	X	X	X						WHITE POLYESTER BACKROOM CARPET
Patrick Baltazar	X	X	X	X				X	YELLOW NYLON WHITE POLYESTER HEAD HAIR GLOVE JACKET PIGMENTED POLYPROPYLENE
Joseph Bell	X				X				
Larry Rogers	X	X	X	X				X	YELLOW NYLON PORCH BEDSPREAD
John Porter	X	X	X	X	X			X	PORCH BEDSPREAD
Jimmy Payne	X	X	X	X	X			X	BLUE THROW RUG
William Barrett	X	X	X	X	X			X	GLOVE
Nathaniel Cater	X	X	X	X					BACKROOM CARPET YELLOW-GREEN SYNTHETIC

1979, until May 1981. During that time period, the Williams family had access to a large number of automobiles, including a number of rental cars. Three of these automobiles are listed at the top of figure 7. If one or more of the cars was in the possession of the Williams family at the time a victim was found to be missing, the space under that car(s) and after the particular victim's name is shaded.

Four objects (including the dog) from Williams' residence are listed horizontally across the top of figure 7, along with objects from three of his automobiles. An "X" on the chart indicates an apparent transfer of textile fibers from the listed object to a victim. Other objects from Williams' environment which were linked to various victims by an apparent fiber transfer are listed on the right side of the chart. Fiber types from objects (never actually located) that were matched to fiber types from one or more victims are also listed either at the top or on the right side of the chart. Fourteen specific objects and five fiber types (probably from five other objects) listed on this chart are linked to one or more of the victims. More than 28 different fiber types, along with the dog hairs, were used to link up to 19 objects from Williams' environment to 1 or more of the victims. Of the more than 28 fiber types from Williams' environment, 14 of these originated from a rug or carpet.

The combination of more than 28 different fiber types would not be considered so significant if they were primarily common fiber types. In fact, there is only 1 light green cotton fiber of the 28 that might be considered common. This cotton fiber was blended with acetate fibers in Williams' bedspread. Light green cotton fibers removed from many victims were not considered or compared unless they were physically intermingled with violet acetate fibers which were consistent with originating from the bedspread. It should be noted that a combination of cotton and acetate fibers blended together in a single textile material, as in the bedspread, is in itself uncommon.

The only other natural fiber of the 28 types discussed was a rust-colored woolen fiber removed from the body of Patrick Baltazar. This fiber was consistent with woolen fibers in the composition of a leather jacket recovered from Williams' home. Additionally, a rayon fiber of the type also present in this leather jacket was removed from Baltazar's body.

Some of the objects contained more than a single fiber type. Many of the different fiber types within each of these objects were recovered from at least one victim.

Williams was strongly linked to all the victims except Joseph Bell. Bell was a "river victim," whose body was recovered from the South River in Atlanta 31 days after he was reported missing. The body was recovered wearing only a pair of undershorts, and as would be expected, very few fibers were located.

The bodies of the nine victims were recovered near streets and highways in the Atlanta metropolitan area. It appeared that in all of these cases, the bodies had been moved from the murder scene to the recovery sites. A considerable amount of fibrous debris was recovered from these nine victims. As would be expected, the number of individual fibers within a fiber type linking any one of these victims to Williams' environment was much larger than in the cases of Payne and Cater.

The previous discussion concerning the significance of multiple fiber matches can be applied to the associations made in the cases of all the victims except Bell, but especially to the association of Patrick Baltazar to Williams' environment. Fibers and animal hairs consistent with having originated from 10 sources were removed from Baltazar's body. These 10 sources include the uncommon bedroom carpet and station wagon carpet. In addition to the fiber (and animal hair) linkage, two head hairs of Negroid origin were removed from Baltazar's body that were consistent with originating from the scalp area of Williams. Head hair matches were also very significant in linking Williams to Baltazar's body. In the opinion of author, the association based upon the hair and fiber analyses is a positive association.

Another important aspect of the fiber linkage between Williams and these victims is the correspondence between the fiber findings and the time periods during which Williams had access to the three automobiles listed on the chart. Nine victims are linked to automobiles used by the Williams family. When Williams did not have access to a particular car, no

fibers were recovered that were consistent with having originated from that automobile. Trunk liner fibers of the type used in the trunks of many late model Ford Motor Company automobiles were also recovered from the bodies of two victims.

One final point should be made concerning Williams' bedroom and station wagon carpets where probability numbers had been determined. Fibers consistent with having originated from both of these "unusual" carpets were recovered from Payne's body. Of the nine victims who were killed during the time period when Williams had access to the 1970 station wagon, fibers consistent with having originated from both the station wagon carpet and the bedroom carpet were recovered from six of these victims.

The apparent bleaching of several fibers removed from the bodies of Payne and Cater was consistent with having been caused by river water. Several fibers similar to those from Payne and Cater were removed from many of the victims whose bodies were recovered on land. Consistent with the bleaching argument, none of the fibers from the victims found on land showed any apparent bleaching. The finding of many of the same fiber types on the remaining victims, who were recovered from many different locations, refutes the possibility that Payne's and Cater's bodies picked up foreign fibers from the river.

The fact that many of the victims were involved with so many of the same fiber types, all of which linked the victims to Williams' environment, is the basis for arguing conclusively against these fibers originating from a source other than Williams' environment.

It is hoped that this article has provided valuable insight concerning the use of fiber evidence in a criminal trial, has provided answers to questions from those in the law enforcement community about textile fiber evidence in general, and has presented convincing arguments to establish Wayne Williams' association with the bodies of the murder victims. **FBI**

Footnotes

[11] Prior to the publication of the February 11, 1981, newspaper article, one victim from the task force list, who was fully clothed, had been recovered from a river in the Atlanta area. In the 2½-month period after publication, the nude or nearly nude bodies of seven of the nine victims added to the task force list were recovered from rivers in the Atlanta area.

[12] E. J. Mitchell and Holland, "An Unusual Case of Identification of Transferred Fibers," *Journal of the Forensic Science Society,* vol. 19, 1979, p. 23. This article describes a case in which carpet fibers transferred to a murder victim's body in England were traced back to the carpet manufacturer and finally to an automobile owned by the person who eventually confessed to the murder.

[13] This information was taken from a study by E.I. du Pont de Nemours & Co. concerned with the existing residential floor space with carpet in the United States. This study was reported in the marketing survey conducted by the Marketing Corporation of America, Westport, Conn.

[14] Information regarding the number of housing units in the Atlanta metropolitan area was obtained from a report provided by the Atlanta Regional Commission. The report, dated November 11, 1981, contained population and housing counts for counties, super districts, and census tracts in the Atlanta metropolitan area.

[15] Information about carpet similar to Williams' carpet was developed through contacts with carpet manufacturers and carpet salesmen in Georgia. It was determined that this type carpet was often installed in commercial settings, such as apartments, and in those settings, had an average life span of 4 to 5 years.

[16] Joseph L. Peterson, ed. *Forensic Science* (New York: AMS Press, Inc., 1975), pp. 181–225. This collection of articles, dealing with various aspects of forensic science, contains five papers concerned with using statistics to interpret the meaning of physical evidence. It is a good discussion of probability theory and reviews cases where probability theory has been used in trial situations.

[17] C. A. Pounds and K. W. Smalldon, "The Transfer of Fibers between Clothing Materials During Simulated Contacts and their Persistence During Wear," *Journal of the Forensic Science Society,* vol. 15, 1975, pp. 29–37.

[18] *Encyclopedia of Georgia Law,* vol. 11A (The Harrison Company, 1979), p. 70.

[19] *The Atlanta Constitution,* "Williams Jury Told of Other Slayings," Sec. 1–A, 1/26/82, p. 25.

1982, p. 25.

Managing Hazardous Roadblocks

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Roadblocks have long been a staple of "cops and robbers" movies and television dramas. As is the case with high-speed chases and long-range continuing gunfights, also media staples, roadblocks are uncommon occurrences, are full of risks, and are best not used at all. The tragic deaths of two U.S. marshals in North Dakota [1] amply illustrate the pitfalls that may befall law enforcement personnel who attempt to halt and arrest armed suspects at roadblocks. The death of an officer in Armstrong, Iowa,[2] who was crushed to death when his own patrol car overturned onto him after being deliberately rammed by a suspect vehicle, similarly illustrates the perils of manning roadblocks.

Surprisingly, there is virtually no up-to-date material on operating a roadblock. A survey of journals and available media by the author turned up only one source of information. There is, however, available material on how to run, evade, or break through roadblocks.

Concerned with protection against kidnaping and hostage taking, some of the books on executive protection have lengthy chapters and checklists on evasive driving techniques. Antiterrorist and security-oriented books have noted that a majority of politically motivated kidnapings take place while the victims are in their cars. These vehicles are frequently stopped through ruses, such as "official" roadblocks, or through the staging of armed or impassable blockades.[3]

The tactics for countering roadblocks, as well as other means of stopping vehicles, are fully discussed in *Terrorist Attacks.*[4] Interested readers should pay careful attention to the chapter on "Defensive and Offensive Driving." [5]

Those interested in defeating attempts to force their vehicles to stop may use:

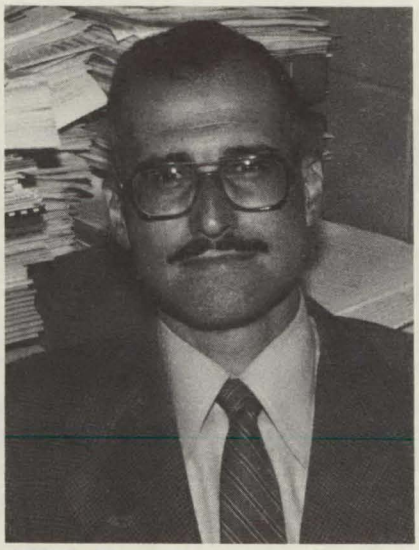
1) Evasive action techniques;
2) Ramming; or
3) Armed resistance.

Evasive action techniques are likely to occur when the subject becomes aware of the blockade on the road. If the block, typically one or more patrol cars placed across the road, does not totally barricade the roadway, the suspect driver may choose to continue. He will either seek to drive around the blockade, perhaps on the road shoulders or grassy median, or will attempt evasion by driving over the curb. Striking a curb at an angle between 30° to 45° at medium speeds, even in excess of 30 mph, will enable the driver to maintain control of the vehicle.

Other suspect drivers may attempt to drive off the main road onto side roads by making hard right or left turns. This option is viable only if the blockade is poorly situated with respect to relatively long-distance visibility and the availability of exits.

More likely, the subject will attempt some variety of 180° turn, such as the "bootleg" turn, "Y" turn, the "U" or sweeping 180° turn. (See fig. 1.) Practiced defensive drivers may attempt to carry out high-speed variations, such as the "forward 180° turn" or the "reverse 180° turn." Any pursuing police vehicles may suddenly find themselves facing an ongoing vehicle moving toward them at high speed.

If the suspect vehicle cannot swerve around the blockade or turn around, its driver may choose the more risky escape technique of ramming. Experienced high-speed drivers know that they should seek a controlled strike at a selected point, not merely hit the blocking vehicles at random. They will attempt to hit the barricading automobile at the end



Dr. Pockrass

which does not contain the engine compartment, they will ram at a speed high enough to move the blocking vehicle, and they will attempt to hit at a 45° angle and continue straight through the vehicle.[6]

An inexperienced driver may come directly at the blocking automobile(s) without slowing, usually with disasterous results to all parties concerned. Trained drivers, however, will stop or slow drastically and then accelerate from a very short distance to about 20 mph before ramming. It is possible for relatively light automobiles to move through one and even two heavier blocking cars using this method. An obvious caveat to officers is not to stand behind, in front of, or beside blocking vehicles.

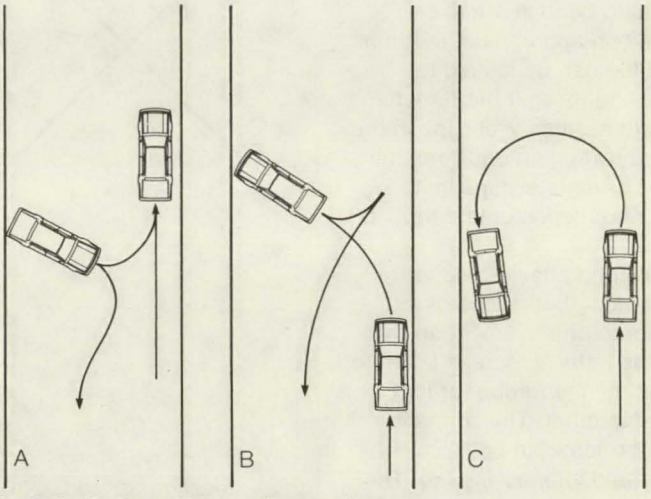
The third option for the suspect motorist and his companions is to resort to armed resistance. With gangs of armed robbers or terrorists, the presence of firearms, including rifles, shotguns, and automatic weapons, is likely. Armed confrontations involving desperate felons or terrorists can be deadly to peace officers.

The alternatives available to criminals seeking to avoid being stopped by the police, and the attendant risks to police officers, suggest the first rule regarding roadblocks—if at all possible, don't! Unfortunately, there are times when the use of roadblocks cannot be avoided. Officers should remember that the dangers to innocent bystanders or motorists, hostages, and the police are great. In urban or heavily traveled areas, roadblocks pose such serious problems to the public safety that they should rarely be considered.

When roadblocks are used, they should be set up like military ambushes, not as if they were turnpike toll booth operations. The U.S. Army defines an ambush as "surprise attack" from a concealed position upon a moving or temporarily halted target.[7]

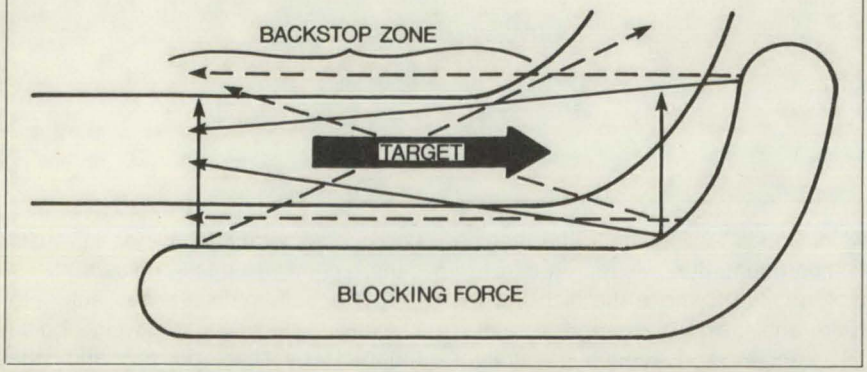
Blockades require careful site selection. The site is selected with an

Figure 1



Conventional methods of turning a vehicle around in the roadway. A) Bootleg Turn. B) "Y" Turn. C) "U" Turn.

Figure 2—"L" Formation



eye toward cover for the officers, clear fields of fire, and a safe "backstop zone," as well as terrain that will facilitate the stopping or slowing of the enemy. Surprise is a key element in successful police roadblocks.

There are two military ambush formations, the L formation and the V formation, which may be easily adapted to the local terrain for hazardous roadblock situations. (See figs. 2 and 3.)

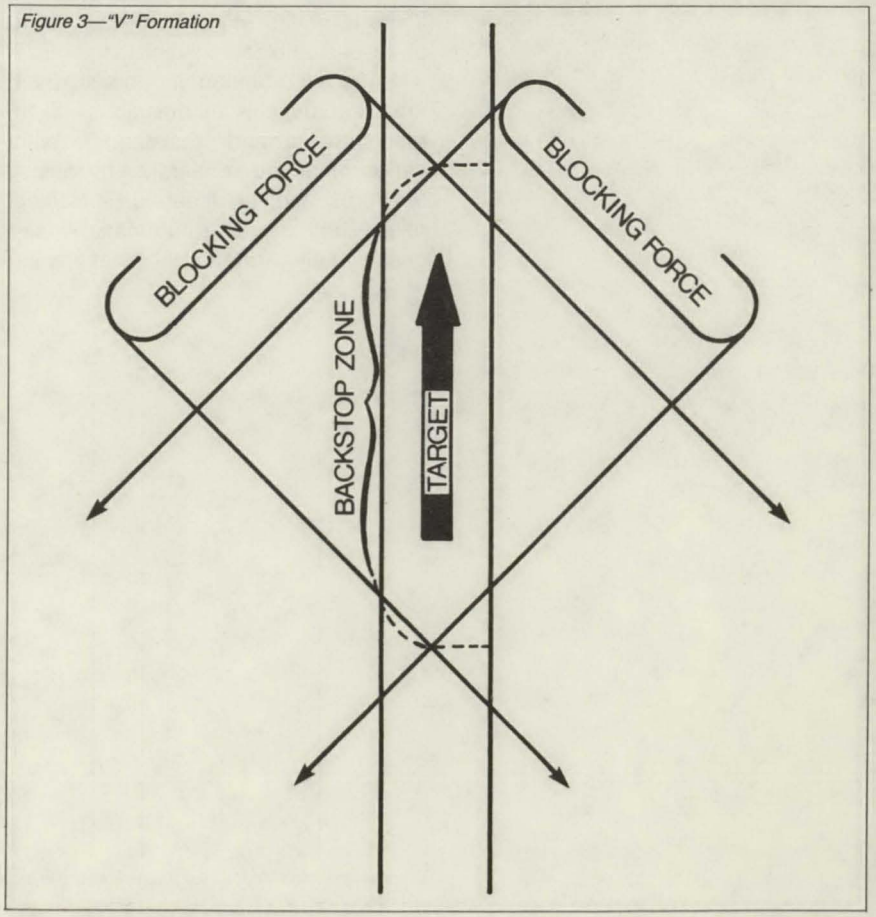
"The L-shaped formation is a variation of the line formation. The long side of the attack force is parallel to the killing zone and delivers flanking fire. The short side of the attack force is at the end of, and at right angles to, the killing zone and delivers enfilading fire which interlocks with fire from the other leg. This formation is very flexible. It can be established on a straight stretch of a trail or stream, or at a sharp bend in a trail or stream. When appropriate, fire from the short leg can be shifted to parallel the long leg if the target attempts to assault or escape in the opposite direction. In addition, the short leg prevents escape in its direction and reinforcement from its direction.

"The V-shaped attack force is deployed along both sides of the target's route of movement so that it forms the letter V; care is taken to insure that neither group (or leg) fires into the other. This formation subjects the target to both enfilading and interlocking fire. The V formation is best suited for fairly open terrain. Its main advantage is that it is difficult for the target to detect the ambush until well into the killing zone.[8]

Typically, police units have preferred to set up their blocks at the exit end of a bridge. This method makes it impossible for suspect vehicles to escape by curb jumping or by making evasive turns onto side roads. The major drawbacks of this method are that this technique does not preclude ramming or discourage armed resistance. The end-of-the-bridge technique may be made safer by the use, modified for local terrain, of the V formation.

When setting the block, the element of surprise should be maximized. A blockade set up at a bend in the road or in a dip on a hilly roadway reduces the warning time afforded the suspect driver. Additionally, a bend or curve will force the driver to slow down. If the block is set up at the bottom of a hill or road dip, the backdrop of the descended hill affords a

Figure 3—"V" Formation



measure of safety should the police fire their weapons. Pursuing officers can stop on the top of the hill and not get into a crossfire situation with their blocking comrades.

Because of the possibility of ramming, squad cars are best not used as barricades. An effective barricade should both block the road from ramming and be impervious to damage. Buses, large trucks, or roadgrading or earthmoving equipment serve the purpose far better than do 3,500-pound automobiles. Officers should never stand behind or near the blocking vehicles. They should seek positions of cover as circumstances and the chosen formation dictate.

Pursuit vehicles should stop far back enough to be out of the line of any potential fire. The suspect driver, knowing that he is being chased, will realize that his chances for retreat are cut off. The truly desperate may try an evasive 180° turn. The tailing police cars, if they have kept a sizeable (one-half mile or more) distance, will have time to react, even if that reaction is to pull over to avoid a head-on crash. In this case, squad cars are usually the only blocking machines available, and they are inadequate for the task. Fleeing felons will more likely attempt to fight their way out, or if they have hostages, bluff or bargain for an escape.

When armed confrontation seems a likely possibility, the positioning of police at the block site to provide for a "backstop zone" becomes important. The advantage of the L formation is that police may be able to set up effective fields of fire. In rural areas and on some freeways, hillsides may form an effective backdrop for the "backstop zone." Despite the grim sound of this term, the purpose of the zone is to convince the criminals to surrender due to the impotence of their position. Should resistance be offered, law enforcement personnel can offer controlled fire from positions of cover and from more than one direction. The V formation would be effective in open or mountainous terrain or at the end of a bridge or freeway exit ramp. The potential for devastating crossfire will hopefully convince the suspects that surrender is the only alternative.

Police should use large trees, light or power poles, high road curbs, or the engine compartment section of motor vehicles for cover. They should not leave cover until the incident is clearly over.

Once the suspect vehicle has stopped, the police should treat the matter as a felony stop. From behind cover, the officer in charge should use the bullhorn to order the suspects from the vehicle. No one should leave cover until the situation is secured and then only on command.

Summary

Criminals fleeing from the police in motor vehicles have a number of options when they are confronted by a roadblock. Depending on the circumstances and on the skill and nerve of the driver, the suspects may take evasive action, try to break through the blockade, or resort to firearms. By viewing the roadblocks as a form of ambush, police can more safely and effectively cope with this type of incident. A basic knowledge of the military concepts of surprise, cover, and fields of fire can also be an aid to police charged with stopping a vehicle driven by armed and dangerous persons. Finally, the ambush formations of the L and V types are offered as tactical alternatives.

Footnotes

[1] "Manhunt Continues for Suspects in Shootout," *Mankato Free Press,* Feb. 14, 1983, p. A1.

[2] "Chase Starts in Fairmont, Kills Policeman in Iowa," *Minneapolis Tribune,* Aug. 9, 1981, p. 5A.

[3] Reber & Shaw, *Executive Protection Manual,* MTI Teleprograms, pp. 68–69.

[4] Raymond P. Siljander, *Terrorist Attacks* (Springfield, Ill.: Charles C. Thomas, 1980).

[5] Ibid., pp. 45–92.

[6] *Executive Protection Manual,* p. 167.

[7] ST 31–201, *Special Forces Operational Techniques,* HQ U.S Army.

[8] FM 21–75, *Combat Training of the Individual Soldier and Patrolling,* Department of the Army, pp. 136, 140.

Interrogation after Assertion of Rights (Part I)

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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.

In *Miranda* v. *Arizona,*[1] the Supreme Court ruled that a confession obtained as the result of custodial interrogation is not admissible unless the Government first proves that before the confession was obtained, the defendant was advised of his "*Miranda* rights"[2] and freely, intelligently, and voluntarily waived them. The Court also held that if an individual who has been afforded the rights indicates in any manner, at any time prior to or during the questioning, that he wishes to remain silent, the interrogation must cease, and if an attorney is requested the interrogation must cease until a lawyer is present.

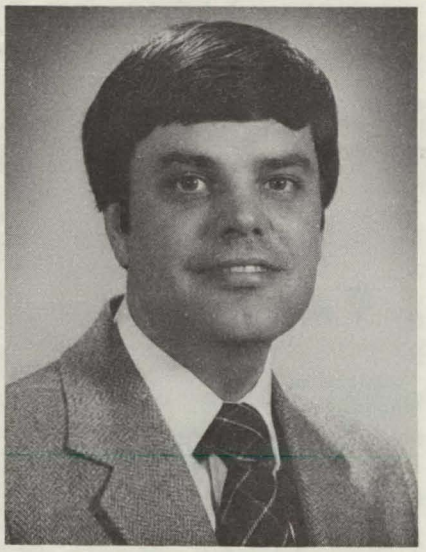
This article considers the development of confession law since *Miranda* with emphasis on what the courts have found to be an assertion of the rights requiring immediate termination of an interrogation and when, following assertion of the rights by a defendant, law enforcement officers can attempt a second interrogation without running afoul of the rule.

Assertion of Miranda Rights

An in-custody subject who states that he does not want to waive his rights and answer questions, or wants to consult a lawyer before proceeding with the interview, has invoked his *Miranda* rights and the interrogation must cease. However, law enforcement officers frequently find themselves confronted with situations where it is not altogether clear whether the subject has invoked his rights. For example, a subject may be uncertain about whether he wants to waive his rights and answer questions and may vacillate between wanting and not wanting to cooperate. Other subjects may request to speak with friends or relatives during the interrogation or ask the interrogator for advice about whether it would be in their best interest to answer questions, remain silent, or request to speak with an attorney. Because these problems occur with some frequency, officers confronted with such situations should be aware of the controlling legal principles.

Requests to Speak with Friends and Relatives

Requests by subjects to speak with probation officers, clergy, friends, and relatives have not been found to constitute an assertion of the right to remain silent or a request for counsel.[3] Consequently, *Miranda* does not require that a custodial interrogation be discontinued simply because such a request is made. There are, however, several potential problems in this area of the law.



Special Agent Riley

First, if a subject requests to speak with a friend or relative and it turns out that the friend or family member is an attorney, it is likely that a reviewing court will view the request as one for a lawyer, even though the subject did not make this known and the investigator was not otherwise aware of it.[4] As a result, if the status of the person requested is not apparent from the request itself, the investigator may want to seek clarification before proceeding with the interrogation. If further inquiry reveals that the person requested is an attorney, the interrogation should be ended.

Second, requests for family or friends made by juvenile offenders are closely scrutinized by the courts. Because of this close scrutiny, some courts may treat such requests as assertions of the right to remain silent or as requests for a lawyer. This is especially true where the juvenile is very young or the request is made more than once and is not honored.[5]

Third, while *Miranda* does not mandate that an interrogation be ended simply because there has been a request to speak with a family member or friend, such a request is one factor that a defendant can later point to as evidence his "will was overborne," thus making the confession involuntary and inadmissible under the traditional due process/voluntariness test.[6] Such unhonored requests, standing alone, are unlikely to be viewed as sufficiently coercive to result in an involuntary confession. If there are other coercive factors present in a case, however, it may be prudent for an investigator to honor the request before proceeding with the interrogation.

The Unsure Defendant

A subject's uncertainty about whether he should waive his rights and answer questions without a lawyer present has not been found, without more, to constitute an assertion of the right to remain silent or a request for counsel.[7] Likewise, such uncertainty does not evidence that a subject has waived his rights and agreed to answer questions. Consequently, while the interrogation need not be terminated at this point, it is recommended that the investigator immediately focus the interview on clarifying the subject's wishes. If further inquiry determines that the subject is willing to waive his rights and answer questions, the interrogation can proceed. On the other hand, if the subject then decides that he wishes to remain silent, or after a reasonable period of time he is still not certain whether he wants to waive his rights and answer questions, the interview should be ended. Additionally, since it is unknown how far the courts will go in allowing such clarifying questions before finding there has been an assertion of the right to remain silent, investigators should refrain from making any promises or statements that could later be interpreted as an attempt to influence the subject's decision. Although truthful, unembellished statements to a subject concerning the evidence the police have in a given case have been allowed by some courts in these situations, promises of creature comforts or opinions about benefits to be obtained by cooperating with the police should be avoided.[8]

". . . officers frequently find themselves confronted with situations where it is not altogether clear whether the subject has invoked his rights."

The Equivocal Request

How courts will later view equivocal assertions of the right to remain silent and requests for counsel is difficult to predict.[9] For example, in *United States* v. *Webb,*[10] the Court of Appeals for the Fifth Circuit ruled that the statement, "Yes, I want you to tell me what I'm charged with and then I'm going to call my lawyer," was not an invocation of the right to counsel. Continued interrogation that resulted in a confession in that case was found not to be in violation of *Miranda.* Other courts have found similar statements to constitute requests for counsel and have suppressed confessions obtained after such statements were made.[11] Because of the uncertainty about how courts will later view these types of equivocal requests, it is recommended that law enforcement officers clarify such requests as soon as they are made and not return to the general interrogation unless and until it is determined that the statement was not intended as an assertion of *Miranda* rights. At least one Federal circuit court has ruled that in these circumstances, any continuing interrogation must be restricted to such clarifying questions and that a return to the general interrogation without first clarifying the request violates *Miranda.*[12]

As was noted earlier, it is important that investigators faced with an equivocal request refrain from making promises or statements that could later be interpreted as attempts to influence the subject's decision. Furthermore, investigators should not give advice to subjects about whether they need a lawyer or should answer questions, even though the subject may request such advice. A subject who requests this information should be told in no uncertain terms that the investigator cannot provide legal counsel and that the decision to answer questions without a lawyer present is one that only the subject can make.

Finally, in determining if a subject has invoked his *Miranda* rights, it is important that the investigator determine which right, if any, is being asserted—the right to remain silent or the right to the assistance of counsel. While the assertion of either right requires that the interrogation cease, it will be seen later in this article that the particular right being asserted dictates when law enforcement officers can attempt a second interrogation without violating *Miranda.*

Partial Invocation of Rights

Subjects sometimes put limits on an interrogation. For example, a subject may state that he does not want to talk until the next day, or he is willing to waive his rights and talk without a lawyer present about certain topics, but does not want to discuss others. Such limitations have been viewed by the courts as a prerogative of the defendant, and questioning can continue so long as the limitations are respected by the investigator.[13] In these circumstances, investigators should establish clearly and make a record of any limits placed on the interrogation by the defendant and then make certain that these limits are respected. An investigator who attempts to return to topics that the subject has refused to discuss can expect a reviewing court to find a violation of *Miranda.*[14]

Of course, a subject's later volunteered statement relating to matters not previously discussed because of his assertion of *Miranda* rights will be admissible. In such instances, the Government bears the burden of proof to show that the statement was not *elicited* by the interrogator.[15]

Appointment of Counsel

The fact that a subject is represented by counsel does not necessarily mean that he is unwilling or unable to legally waive his rights and provide a statement without counsel being present. Likewise, it does not follow that because a defendant is represented by counsel he has asserted his right to have counsel present during an interrogation. In *Jordan* v. *Watkins,*[16] the Court of Appeals for the Fifth Circuit addressed a situation where the defendant had appeared at a judicial hearing shortly before the interrogation took place and requested that the court appoint counsel to assist him in future judicial appearances. Ruling that the request that counsel be appointed did not equate with the assertion of the right to have counsel present during the later interrogation, the court found that Jordan's request for an attorney when he was brought before the court for arraignment was unrelated to the *Miranda* right to confer with or have counsel present before answering questions. The admission of his confession was therefore upheld as not having been obtained in violation of *Miranda.*

While the court saw a clear distinction between the two requests in *Jordan,* another fifth circuit case held that a request for counsel at a judicial hearing can, under certain circumstances, be considered a request for counsel at a later interrogation. In *Silva* v. *Estelle,*[17] the court reviewed the transcript of a judicial hearing that was conducted shortly before Silva was interrogated and confessed. The transcript revealed that while Silva had not requested that counsel be appointed to assist him in future judicial proceedings, he had specifically requested that the judge allow him to telephone his lawyer. Concluding that Silva's very specific request constituted an exercise of his right to counsel, the court ruled that Silva's confession was obtained in violation of *Miranda* since the request for counsel was not honored prior to the interrogation.

The Court in *Silva* found a *Miranda* violation even though the interrogating officer was not aware of the prior request and Silva did not mention the prior request before waiving his rights and confessing to the crime. Consequently, cautious investigators attempting to interrogate a subject who has had a prior judicial appearance may want to begin the interview by inquiring about, and clarifying, any such prior request.

Interrogation After Right Asserted—Silence

While *Miranda* requires that a custodial interrogation cease once a subject invokes his fifth amendment right to remain silent, there is no discussion in the opinion of when, if ever, law enforcement officers can attempt a second custodial interrogation without violating the rule. It was not until 1975, in *Michigan* v. *Mosley,*[18] that the Supreme Court specifically addressed this issue. In *Mosley,* the defendant was arrested by Robbery Detective Cowie of the Detroit Police Department in connection with a series of robberies. Mosley was transported to the police station and advised of his rights, at which time he stated that he did not want to answer any questions. The interrogation was immediately stopped, and Mosley was placed in a cell. A little over 2 hours later, Homicide Detective Hill removed Mosley from his cell and took him to the Homicide Bureau in order to question him about the fatal shooting of a man named Leroy Williams. Mosley had not been arrested on this charge, and Detective Cowie had not attempted earlier to question him concerning it. Prior to this second interview, Mosley was again advised of his rights. He first denied involvement in the Williams' murder; however, after being told that another individual had named him as the "shooter," he made an incriminating statement that was used against him at trial.

Mosley was convicted of first degree murder but a Michigan Court of Appeals reversed his conviction, holding that the second interrogation was a *per se* violation of *Miranda* since Mosley had previously invoked his right to remain silent.

In reviewing this case, the Supreme Court admitted the statement in *Miranda* that "the interrogation must cease" once a subject invokes his right to remain silent was subject to various interpretations. For example, the statement could be read as prohibiting all future attempts at custodial interrogation regardless of the topic, or as only requiring the police to stop momentarily before attempting a second interview.

Rejecting both these interpretations because they would lead to what was described as "absurd" and "unintended" results, the Court held that "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.' "[19] Concluding that Mosley's right to cut off questioning had been scrupulously honored, the Court pointed out that the first interview was immediately ended once he invoked his rights, and the second interview, which took place more than 2 hours after the first, was conducted by a different officer at a different location and concerned a different crime. Moreover, the Court found that Mosley had been readvised of his rights prior to the start of the second interview and "was carefully given a full and fair opportunity to exercise these options." [20]

The *Mosley* decision is important to law enforcement; yet one crucial question was not considered in that case. Can law enforcement officers ever be said to have scrupulously honored a subject's right to cut off questioning when they go back to interview him a second time on the same charge? This question has still not been ruled on by the Supreme Court; however, several lower courts have decided that such second interrogations of persons in custody can be squared with the *Mosley* holding.

". . . in determining if a subject has invoked his *Miranda* rights, it is important that the investigator determine which right, if any, is being asserted—the right to remain silent or the right to the assistance of counsel."

In *United States* v. *Bosby,*[21] the Court of Appeals for the 11th Circuit was presented a case where the defendant, Calvin Bosby, was arrested and advised of his rights. He immediately invoked his right to remain silent, and the questioning ended. Approximately 2 weeks later, while still in custody, Bosby was approached by a different officer concerning the same crime for which he had previously asserted his right to silence. He was again advised of his rights, only this time he waived his rights to silence and to counsel and made incriminating statements. In concluding that the second interrogation did not violate *Mosley,* the court relied on three factors. First, the initial interrogation was ended as soon as Bosby invoked his right to remain silent. Second, there was over a 2-week break between the first and second interrogations. Finally, Bosby was readvised of his *Miranda* rights at the beginning of the second interrogation and he voluntarily executed a waiver of these rights.

Similarly, in *United States* v. *Terry,*[22] the Court of Appeals for the Second Circuit upheld the use of a confession obtained after the subject had invoked his right to remain silent. In *Terry,* the defendant was arrested by Drug Enforcement Administration (DEA) agents and advised of his rights. When asked whether he wished to waive them, he invoked his right to remain silent. Approximately 40 minutes later, at the DEA office, an assistant U.S. attorney approached the subject in order to discuss the charge for which he had been arrested. After being readvised of his rights, the subject made an exculpatory statement and then abruptly ended the interrogation by stating that he would have nothing further to say until he spoke with an attorney. The exculpatory statement was later used to impeach his testimony at trial, and he was convicted. Holding that the second interrogation did not violate *Mosley,* the court found that the immediate cessation of the first interrogation, coupled with the 40-minute break and the readvisement of rights and waiver, evidenced that the subject's rights had been scrupulously respected at every stage.

The opposite result was reached by the U.S. District Court for the Eastern District of Wisconsin in *Shaffer* v. *Clusen.*[23] In that case, the defendant was arrested in connection with a robbery and shooting that occurred at a local tavern. He was advised of his rights, answered questions for approximately 5 minutes, and then invoked his right to remain silent. The questioning was immediately discontinued, and the subject was transported to the police station. Almost immediately, another officer brought the subject into an interrogation room and readvised him of his rights. The subject stated that he was willing to answer questions about the robbery and proceeded to make a detailed oral confession. Pointing to the short period of time that elapsed between the two interrogations, the court ruled that the subject's invocation of his right to cut off questioning was not scrupulously honored as required by *Mosley*; hence, his confession was wrongfully admitted against him at trial.

What is interesting about the above cases is that the courts paid little attention to the fact that the second interrogations concerned the same crimes for which the subjects had previously claimed their right to remain silent. Instead, when deciding whether the subject's right to cut off questioning had been scrupulously honored, the courts focused on other factors, placing special emphasis on the amount of time that elapsed between the two interviews.

Based on the case law, second custodial interrogations even on the same charge should not be found to violate *Mosley* so long as the following guidelines are followed:

1) The subject's initial invocation of his right to remain silent must be immediately honored, i.e., the first interrogation must cease as soon as the subject asserts his right to remain silent.
2) A significant period of time must elapse before a second custodial interrogation is attempted. (Investigators should remember that the Supreme Court has held that 2 hours is a significant period; however, some lower courts have ruled that shorter periods may suffice.)
3) The subject must be readvised of his rights and provide a waiver at the beginning of the second interrogation.
4) If the subject again invokes his right to remain silent, the second interrogation must cease.

Interrogation After Right Asserted—Counsel

The problem of custodial interrogation conducted after a subject has invoked his right to counsel was not addressed in *Miranda* except for the statement that once a subject requests counsel, "the interrogation must cease until an attorney is present." [24] Likewise, the Supreme Court in *Mosley* refrained from examining this issue. In the absence of clarification, many lower courts, from 1975–1980, treated invocations of the right to counsel in much the same fashion as the Supreme Court considered the right to silence matter in *Mosley.*

For example, in the 1979 decision of *White* v. *Finkbeiner,*[25] the Court of Appeals for the Seventh Circuit ruled that *Miranda* did not create a *per se* rule prohibiting all custodial interrogations after an accused has invoked his right to counsel. Instead, the court chose "to adopt a case-by-case analysis in which the concerns which are reflected in *Miranda* and *Mosley* are incorporated into the analysis." [26] Using this approach, the court concluded that the Government has a heavy burden of proving waiver once a subject invokes the right to counsel. In *White,* the Government met its burden since there was a 2-day break between the interrogations, the officer conducting the second interrogation did not know that the subject had previously asserted his right to counsel, and the subject was readvised of his rights and executed a written waiver at the outset of the second interrogation.

In 1981, perhaps in response to the growing number of courts willing to interpret *Miranda* as not prohibiting second custodial interrogations after invocation of the right to counsel, the Supreme Court decided *Edwards* v. *Arizona.*[27] The defendant in that case, Robert Edwards, was arrested for robbery, burglary, and first-degree murder and transported to the police station. After being advised of his rights, Edwards agreed to be questioned and gave a taped statement in which he denied involvement in the crimes and presented an alibi defense. Edwards then stated that he wished to "make a deal," but requested to speak with an attorney first. Officers ended the interrogation.

The next morning, two different detectives came to the jail in order to question Edwards about the crimes for which he had been arrested. Edwards indicated to the jail guard that he did not want to speak with them, but was told "he had" to talk. The detectives advised Edwards of his rights, and he agreed to talk on the condition that he first be allowed to listen to a taped statement of an accomplice who had implicated him in the crime. The tape was played, and Edwards agreed to answer questions. He proceeded to implicate himself in the crimes and his statements were used against him at trial.

Appealing his subsequent conviction to the Arizona Supreme Court, Edwards argued that since he had invoked his right to counsel at the first interrogation, the second interrogation constituted a *per se* violation of *Miranda.* As the Court of Appeals for the Seventh Circuit had done in *White,* the Arizona Supreme Court rejected the argument, concluding that *Miranda* did not establish a *per se* rule and that confessions obtained in this manner were admissible so long as the Government met the heavy burden of establishing waiver. Ruling that Edwards had voluntarily, knowingly, and intelligently waived his rights at the second interrogation, the court affirmed his conviction.

Reversing the decision of the Arizona Supreme Court, the Supreme Court stated that special safeguards are necessary once an accused asks for counsel. The Court held that "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." Furthermore, the Court ruled that an accused like Edwards, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." [28]

While *Edwards* creates a general rule prohibiting police-initiated custodial interrogation after invocation of the right to counsel, nothing in the opinion prevents a police officer from recontacting a subject for the limited purpose of determining whether he has had access to an attorney. If, during such a limited recontact, the accused says that either he has not had the

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opportunity to consult with counsel or he has done so and decided not to answer questions, all efforts to seek a waiver of counsel and to interrogate should cease.

A different situation exists where the accused states that he has consulted with counsel and is now willing to answer questions without a lawyer present. In *United States* v. *Halliday,*[29] the Court of Appeals for the Sixth Circuit confronted this issue and found that the Supreme Court in *Edwards* had emphasized the necessity of counsel being made "available" and the defendant having "access" to counsel rather than holding that once the accused requests counsel he may thereafter be questioned only in the presence of counsel. Since the defendant in *Halliday* had access to two attorneys after the first interrogation and had actually spoken to one of them, the court held that the second custodial interrogation, which was preceded by a warning and waiver of rights, did not violate *Edwards.*

A more difficult problem is presented where a police officer recontacts an accused who states he had the opportunity to consult counsel but decided not to exercise it; however, he is now willing to waive his rights and answer questions without a lawyer present. Although the Supreme Court has not decided whether an opportunity to consult counsel is sufficient, by itself, to satisfy the *Edwards* rule, one Federal circuit court has suggested that *Edwards* only requires the "opportunity" to consult counsel, not actual exercise of the right.[30]

Should an investigator decide to conduct a second interrogation under these circumstances, it is recommended that he only do so after determining that the accused had a realistic opportunity to consult with appointed or private counsel, consciously opted not to exercise that opportunity, and is now willing to voluntarily, freely, and intelligently waive his rights and answer questions without a lawyer present.

FBI

(Continued next month)

Footnotes

[1] 384 U.S. 436 (1966).

[2] The warnings required before custodial interrogation are: (1) the accused has the right to remain silent; (2) anything he says may be used against him; (3) he has a right to consult with a lawyer before or during questioning; and (4) if he cannot afford an attorney, one will be provided without cost.

[3] *Fare* v. *Michael C.,* 442 U.S. 707 (1979); *Riley* v. *Franzen,* 653 F.2d 1158 (7th Cir. 1981), *cert. denied,* 454 U.S. 1067 (1982); *United States* v. *Botero,* 589 F.2d 430 (9th Cir. 1978), *cert. denied,* 441 U.S. 944 (1979).

[4] *Riley* v. *Franzen,* 653 F.2d 1158 (7th Cir. 1981), *cert. denied,* 454 U.S. 1067 (1982).

[5] *Fare* v. *Michael C.,* 442 U.S. 707 (1979).

[6] *Brown* v. *Mississippi,* 297 U.S. 278 (1936); *Payne* v. *Arkansas,* 356 U.S. 560 (1958); *Chapman* v. *California,* 386 U.S. 18 (1967); *Mincey* v. *Arizona,* 437 U.S. 385 (1978).

[7] *Nash* v. *Estelle,* 597 F.2d 513 (5th Cir.), *cert. denied,* 444 U.S. 981 (1979); *Thompson* v. *Wainwright,* 601 F.2d 768 (5th Cir. 1979); *Gorham* v. *Franzen,* 675 F.2d (7th Cir. 1982).

[8] *United States* v. *Rodriguez-Gastelum,* 569 F.2d 482 (9th Cir.), *cert. denied,* 436 U.S. 919 (1978); *United States* v. *Wicson,* 571 F.2d 455 (9th Cir. 1978); *United States* v. *Pheaster,* 544 F.2d 353 (9th Cir. 1976), *cert. denied,* 429 U.S. 1099 (1977); *United States* v. *Davis,* 527 F.2d 1110 (9th Cir. 1975), *cert. denied,* 425 U.S. 953 (1976).

[9] *Gorham* v. *Franzen,* 675 F.2d 932 (7th Cir. 1982).

[10] 633 F.2d 1140 (5th Cir. 1981).

[11] *United States* v. *Clark,* 499 F.2d 802 (4th Cir. 1974); *Maglio* v. *Jago,* 580 F.2d 202 (6th Cir. 1978).

[12] *Thompson* v. *Wainwright,* 601 F.2d 768 (5th Cir. 1979); *Nash* v. *Estelle,* 597 F.2d 513 (5th Cir.), *cert. denied,* 444 U.S. 981 (1979).

[13] *United States* v. *Madison,* 689 F.2d 1300 (7th Cir. 1982), *cert. denied,* 103 S.Ct. 754 (1983); *United States* v. *Thierman,* 678 F.2d 1331 (9th Cir. 1982); *United States* v. *Lorenzo,* 570 F.2d 294 (9th Cir. 1978); *Shriner* v. *Wainwright,* 715 F.2d 1452 (11th Cir. 1983).

[14] *United States* v. *Lopez-Diaz,* 630 F.2d 661 (9th Cir. 1980).

[15] *United States* v. *Johnson,* 516 F.Supp. 696 (E.D. Pa. 1981), *affirmed,* 709 F.2d 1496 (3d Cir. 1983).

[16] 681 F.2d 1067 (5th Cir.), *petition for rehearing denied,* 688 F.2d 395 (1982).

[17] 672 F.2d 457 (5th Cir. 1982).

[18] 423 U.S. 96 (1975).

[19] *Id.* at 104.

[20] *Id.* at 105.

[21] 675 F.2d 1174 (11th Cir. 1982).

[22] 702 F.2d 299 (2d Cir.), *cert. denied,* 103 S.Ct. 2095 (1983). *See also, United States* v. *Smith,* 608 F.2d 1011 (4th Cir. 1979); *Nelson* v. *McCarthy,* 637 F.2d 1291 (9th Cir. 1980), *cert. denied,* 451 U.S. 940 (1981).

[23] 518 F.Supp. 963 (E.D. Wis. 1981).

[24] *Miranda* v. *Arizona,* 384 U.S. 436, 474 (1966).

[25] 611 F.2d 186 (7th Cir. 1979), *remanded,* 69 L.Ed.2d 738 (1981), *reversed on remand,* 687 F.2d 885 (7th Cir. 1982).

[26] *Id.* at 191.

[27] 451 U.S. 477 (1981).

[28] *Id.* at 484.

[29] 658 F.2d 1103 (6th Cir.), *cert. denied,* 102 S.Ct. 978 (1981). *See also, United States* v. *Bentley,* 34 Cr.L. 2361 (6th Cir. Jan. 31, 1984).

[30] *Id. See also, United States* v. *Skinner,* 667 F.2d 1303 (9th Cir. 1982), *cert. denied,* 103 S. Ct. 3569 (1983).

Uniform Crime Reporting Program Survey

A joint Federal Bureau of Investigation/Bureau of Justice Statistics task force has begun a complete review of the Uniform Crime Reporting (UCR) Program through a contract with a private firm. Meetings have already taken place with members of the International Association of Chiefs of Police and National Sheriff's Association UCR committees, State UCR program directors, UCR staff members of the FBI, and other interested persons and organizations. With their assistance, a law enforcement agency survey questionnaire on UCR has been developed to provide law enforcement with an opportunity to make its views of the program known.

The survey will be sent to a sample of chiefs of police, sheriffs, and other executive heads of law enforcement agencies across the country. In addition, any chief of police, sheriff, or other agency head can be assured of inclusion in the sample by completing and mailing the coupon at the bottom of this page. (Heads of agencies serving populations in excess of 10,000 need not apply since these will be included in the sample.)

I would like my agency to be included in the voluntary UCR Law Enforcement Agency Survey.

Name _____

Title (check one)

Chief ( ) Sheriff ( ) Other Agency Head ( )

Agency _____

Address _____

_____

_____

Agency ORI Number _____

Signed _____

Clip or photocopy and mail to:

UCR Law Enforcement Agency Survey
Abt Associates Inc.
55 Wheeler Street
Cambridge, Mass. 02138

Attention: Ms. Diane Stoner

WANTED BY THE FBI

Photograph taken 1981 *Photograph taken 1982* *Date photograph taken unknown*

Luvenia Marie Carter

Luvenia Marie Carter, also known as Francine Acosta, Rose Marie Archie, Lavenia Marie Carter, Leuvenia Marie Carter, Francine Gallina, Lynette Humphrey, Jean McGrath, Crystal Angela Owens, Victory Renee Powers, Lynette Stewart, and others

Wanted for:

Bank Robbery; Interstate Transportation of Stolen Property

The Crime

Carter is being sought by the FBI in connection with an armed bank robbery in which her alleged accomplice, Samuel Marks Humphrey, took a customer hostage.

Federal warrants were issued on March 8, 1983, in Atlanta, Ga., and on March 18, 1983, in Rochester, N.Y., charging Carter with armed bank robbery. A Federal warrant was also issued on March 24, 1983, in San Diego, Calif., charging her with interstate transportation of stolen property.

Description

Age	28, born November 28, 1955, Louisville, Ky.
Height	5′1″ to 5′2″.
Weight	102 to 110 pounds.
Build	Medium.
Hair	Black.
Eyes	Brown.
Complexion	Light.
Race	Black.
Nationality	American.
Occupations	Cocktail waitress, hostess.
Remarks	Uses rental and leased automobiles.
Scars and Marks	6-inch scar on left side of neck.
Social Security No. Used	401-82-7451.
FBI No.	683 057 P2.

Caution

Carter is a reported drug user and should be considered armed and dangerous.

Notify the FBI

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:

221213CO121211121514

Fingerprint Classification:

22 L 9 U 000 12
M 1 U 000

I.O. 4933

Right ring fingerprint

U. S. GOVERNMENT PRINTING OFFICE : 1984 O - 436-210 : QL 3

Change of Address

Not an order form

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 unusual pattern is given the preferred classification of a central pocket loop-type whorl with an outer tracing. A reference search would be conducted in the loop group.

U.S. Department of Justice
Federal Bureau of Investigation

Official Business
Penalty for Private Use $300
Address Correction Requested

Postage and Fees Paid
Federal Bureau of Investigation
JUS–432

Second Class

Washington, D.C. 20535

The Bulletin Notes

that Det. Sgt. Clarence O. Brickey of the Maryland State Police has been awarded the 1983 National Auto Theft Bureau/International Association of Chiefs of Police (NATB/IACP) award for his work in vehicle theft prevention.

Currently assigned to the Investigation Division, he has gained nationwide recognition for his work in the field of auto theft prevention. Along with the superintendent of the Maryland State Police, the Bulletin commends Detective Sergeant Brickey for his outstanding achievements in fighting this serious crime problem.

Sergeant Brickey