Madera Community College

AJ 140 - CRIMINAL INVESTIGATIONS

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PREFACE

Welcome to Criminal Investigations at Madera Community College. This textbook was designed especially for Madera Community College Criminology students. It will examine the criminal investigation process. It will address the techniques, procedures, and ethical issues involved in investigating crime, as well as interview and interrogation techniques, case documentation, and court preparation.

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CHAPTER 1 – INTRODUCTION TO CRIMINAL INVESTIGATION

It is too bad we cannot just provide you with a basic template to follow every time you needed to conduct a criminal investigation; but it is not that simple. Criminal investigations can be imprecise undertakings, often performed in reaction to unpredictable and still-evolving events with incomplete information to guide the process. As such, it is impossible to teach or learn a precise methodology that can be applied in every case. Still, there are important concepts, legal rules, and processes that must be respected in every investigation. This chapter will cover the thought process that goes into being an investigator as illustrated in great part by Rod Gehl & Darryl Plecas (2017). At the conclusion of the chapter, there is a summary of the Supreme Court case of Brown v Mississippi.

CRIMINAL INVESTIGATION AS A THINKING PROCESS

Criminal investigation is a multi-faceted, problem-solving challenge. Arriving at the scene of a crime, an officer is often required to rapidly make critical decisions, sometimes involving life and death, based on limited information in a dynamic environment of active and still evolving events. After a criminal event is over, the investigator is expected to preserve the crime scene, collect the evidence, and devise an investigative plan that will lead to the forming of reasonable grounds to identify and arrest the person or persons responsible for the crime. To meet these challenges, police investigators, through training and experience, learn investigative processes to develop investigative plans and prioritize responses (Gehl & Plecas, 2017).

In this book, these investigative responses, information analyses, and plan-making skills are broken out using illustrations of both tactical and strategic investigative thinking. The aim of the book is to guide you into the structured practices of tactical investigative response and strategic investigative thinking.

Criminal investigation is not just a set of task skills, it is equally a set of thinking skills. To become an effective investigator, these skills need to be consciously understood and developed to the point where they are deliberately engaged to work through the problem-solving process that is criminal investigation. Trained thinking and response can be difficult to adapt into our personal repertoires because we are all conditioned to be much less formal and less evidence driven in our everyday thinking. Still, as human beings, we are all born investigators of sorts. As Taber (2006) pointed out in his book, *Beyond Constructivism*, people constantly construct knowledge, and, in our daily lives, we function in a perpetual state of assessing the information that is presented to us. Interpreting the perceptions of what we see and what we hear allows us reach conclusions about the world around us (Taber, 2006). Some people are critically analytical and want to see evidence to confirm their beliefs, while others are prepared to accept information at

face value until they are presented facts that disprove their previously held beliefs. Either strategy is generally acceptable for ordinary people in their everyday lives.

The Need to Think Through the Process

Diametrically opposing the analysis processes of everyday people, in the role of a police investigator, the process of discovering, interpreting, and determining the validity of information is different and this difference is critical. According to Gehl & Plecas (2017), as an investigator, it is no longer sufficient to use the strategies that ordinary people use every day. Instead, it is incumbent on investigators to critically assess all the information they encounter because every investigation is an accountable process in which the investigator is not just deciding about the validity and truth of the information for personal confirmation of a belief. Rather, the police investigator is responsible and empowered under the law to make determinations that could significantly affect the lives of those being investigated as well as the victims of crime.

The investigator's interpretation of information and evidence commonly requires answers to many questions that can lead critical of decisions, actions, and outcomes, such as:

- What must be done to protect the life and safety of persons?
- Should force, up to and including deadly force, be used to resolve a situation?
- Who will become the focus or subject of a criminal investigation?
- What is the best plan to apprehend the person or persons responsible for a criminal act?
- Will someone be subjected to a search of their person or of their home?
- Will someone be subjected to detention or arrest and questioning for a criminal act?
- Will someone have a criminal charge sworn against them?
- Will someone be subjected to a criminal trial?
- Will someone's liberty as a free person be at risk?
- Will justice be served?
- Will the community be protected?

Significant to these possible outcomes, the investigator must always be ready to explain their thinking and actions to the court. For example, when an investigator is asked by a court, "How did you reach that conclusion to take your chosen course of action?" an investigator must be able to articulate their thinking process and lay out the facts and evidence that were considered to reach their conclusions and form the reasonable grounds for their actions and their investigative decision-making process. For an investigator speaking to the court, this process needs to be clear and validated through the articulation of evidence-based thinking and legally justifiable action. Thinking must illustrate an evidence-based path to forming reasonable grounds for belief and subsequent action. Thinking must also demonstrate consideration of the statutory law and case law relevant to the matter being investigated (Gehl & Plecas, 2017).

Considering this accountability to outcomes, it is essential for police investigators to have both the task skills and the thinking skills to collect and analyze evidence at a level that will be acceptable to the criminal justice system. Investigation is the collection and analysis of evidence. To be acceptable to the court, it must be done in a structured way that abides by the legal rules and the appropriate processes of evidence collection. Additionally, it must be a process the investigator has documented and can recall and articulate in detail to demonstrate the validity of the investigation (Gehl & Plecas, 2017).

Obviously, it is not possible for someone to remain in a constant state of vigilance where they are always critically assessing, documenting, and determining the validity of every piece of information they encounter. However, when on duty, it is frequently necessary for a police investigator to do this. For a police investigator, this needs to be a conscious process of being mentally engaged and "switched on" to a more vigilant level of information collection, assessment, and validation while on duty. A police investigator must master this higher and more accountable level of analytical thinking for both tactical and strategic investigative response. The "switched on" police investigator must:

- Respond appropriately to situations where they must protect the life and safety of persons
- Gather the maximum available evidence and information from people and locations
- Recognize the possible OFFENSE or OFFENSEs being depicted by the fact pattern
- Preserve and document all evidence and information
- Critically analyze all available information and evidence
- Develop an effective investigative plan
- Strategically act by developing reasonable grounds to either identify and arrest those responsible for criminal acts, or to eliminate those who are wrongfully suspected

Most traditional police training provides new officers with many hours of instruction in the task skills of investigation. However, the learning of investigative thinking skills is expected to develop through field experience, learning from mistakes, and on the job mentoring. This learning does not always happen effectively, and the public expectations of the justice system are evolving in a model where there is little tolerance for a mistake-based learning.

The criminal investigation of serious crimes has always drawn a substantial level of interest, concern, and even apprehensive fascination from the public, the media, and the justice system. Police actions and investigations have been chronicled and dissected by commissions of inquiry and the media. From the crimes of the serial killers like Paul Bernardo (Campbell, 1996), and Robert Pickton (Oppal, 2013) to the historical wrongful convictions of David Milgaard (MacCallum, 2008) and Guy Paul Morin (Kaufman, 1998), true life crimes are scrutinized and the investigations of those crimes are examined and critically assessed.

When critiquing past investigations, the same types of questions are frequently asked:

- Is it possible that the wrong person was arrested or convicted?
- Is it possible that other persons were involved?
- Were all the possible suspects properly eliminated?
- Was information properly shared among police agencies?
- Did the investigators miss something?
- Was all the evidence found?
- Was the evidence properly interpreted?
- Were the investigative theories properly developed and followed to the correct conclusion?
- Was tunnel vision happening and misdirecting the investigation?

Today, transparency throughout the criminal justice system and public disclosure of evidence through investigative media reports make it much easier for the public and the media to examine the investigative process. Public and media access to information about police investigative techniques and forensic tools has created an audience that is more familiar and sophisticated about police work. The ability of both social and traditional media to allow public debate has created a societal awareness where a higher standard for the investigation of serious crimes is now an expectation.

One only needs to look at the historical and contemporary judicial reviews and public inquiries to appreciate that there is an expectation for police investigators and police organizations to maintain and demonstrate a high level of competency. In a judicial review, it is often too late if an investigator discovers that they have pursued the wrong theory or they have failed to analyze a piece of critical information or evidence. These situations can be career-altering or even career ending. A good investigator needs to be conscious of his or her-own thinking, and that thinking needs to be an intentional process (Gehl & Plecas, 2017).

Towards Modern-Day Investigation

Today, criminal investigation is a broad term encompassing a wide range of specialties that aim to determine how events occurred, and to establish an evidence-based fact pattern to prove the guilt or innocence of an accused person in a criminal event. In some cases, where a person is found committing the criminal act and apprehended at the scene, the criminal investigation is not a complex undertaking. However, in cases where the criminal event is discovered after the fact, or when the culprit is not readily apparent, the process of criminal investigation becomes more complex and protracted.

Although in both cases the criminal investigator must follow practices of identifying, collecting, recording, and preserving evidence; in the case of the unknown suspect, additional thinking skills of analysis, theory development, and validation of facts must be put to work.

The craft of criminal investigation has been evolving since the birth of modern policing in the mid-1700s when the Chief Magistrate of Bow Street, Henry Fielding, organized a group of volunteer plainclothes citizens and tasked them to attend the scenes of criminal events and investigate crimes. This group became known as the Bow Street Runners. Their existence speaks to an early recognition that attending a crime scene to gather information was a timely and effective strategy to discover the truth of what happened (Hitchcock, 2015).

From these early investigators, one of the first significant cases using forensic evidence-based investigation was recorded. To summarize the account by McCrery (2013) in his book *Silent Witness*; in one notable recorded case in 1784, the Bow Street Runners removed a torn piece of paper wadding from a bullet wound in the head of a murder victim who had been shot at pointblank range. In this early era of firearms, flintlock muskets and pistols required muzzle loading. To muzzle load a weapon, gunpowder would be poured down the barrel of the weapon, and then a piece of "wadding paper" would be tamped into place on top of the gunpowder using a long metal rod. The wadding paper used in this loading process was merely a piece of thick dry paper, usually torn from a larger sheet of paper kept by the shooter to reload again for the next shot. The musket ball bullet would be pushed down the barrel on top of the wadding paper. When the gun was fired, the wadding paper would be expelled by the exploding gunpowder, thus pushing the lead ball-bullet out of the barrel as a deadly projectile. This loading process required the shooter to be in possession of dry gunpowder, wadding paper, and musket balls to reload and make the weapon ready to fire. The Bow Street Runners considered this weapon loading practice and knew their shooter might be in possession of wadding paper. Upon searching their prime suspect, they did find him in possession of that kind of paper and, in a clever forensic innovation for their time, they physically matched the torn edges of wadding paper found in the victim's wound to a larger sheet of wadding paper found in the pocket of their suspect. From this evidence, the accused was convicted of murder (McCrery, 2013).

This use of forensic physical matching is an example of circumstantial forensic evidence being used to link a suspect to an OFFENSE. This type of early forensic evidence also illustrates the beginnings of what exists today as a broad variety of forensic sciences to aid investigators in the development of evidence. This is also the beginning of forensic evidence being recognized as an investigative tool. In 1892, not long after the Bow Street Runners investigation, Sir Francis Galton published his book on the study of fingerprints. In 1900, Galton's work was used by Sir William Henry who developed and implemented the Henry System of fingerprint classification, which is the basis of the fingerprint classifications system still in use today (Henry, 1900).

Only a few years earlier, in 1886, the use of photography for the first Rogues Gallery of criminal photographs was implemented by the New York City Police Department. This first Rogues Gallery was an organized collection of photographs of known criminals taken at the time of their most recent conviction for a crime (Byrnes, 2015). Prior to this organized collection of criminal photos, facial characteristics on wanted posters had been limited to sketch artists' renderings. With the advances evolving in photography, having the ability to preserve an actual picture of the suspect's

face amounted to a significant leap forward. With this innovation of photography, the use of mugshots and photographic identification of suspects through facial recognition began to evolve.

These early forensic innovations in the evolution of criminal investigation (such as physical matching, fingerprint identification, and facial recognition systems) demonstrate a need for investigators to develop the knowledge and skills to locate and utilize physical evidence that enables circumstantial links between people, places, and events to prove the facts of criminal cases. Physical evidence is the buried treasure for criminal investigators. Physical evidence can be collected, preserved, analyzed, and used in court to establish a fact. Physical evidence can be used to connect an accused to their victim or used at a crime scene to establish guilt or innocence. Forensic evidence may prove a point in fact that confirms or contradicts the alibi of an accused, or one that corroborates or contradicts the testimony of a witness.

Another significant development in forensic evidence from the 1800s started with the work of French criminal investigator Alphonse Bertillon who developed the Bertillon system of recording measurements of physical evidence (Petherick, 2010). One of Bertillon's students, Dr. Edmond Locard, a medical doctor during the First World War, went on to further Bertillon's work with his own theory that a person always leaves some trace of themselves at a crime scene and always takes some trace of the crime scene with them when they leave. This theory became known as "Locard's Exchange Theory" (Petherick, 2010). To this day, Locard's theory forms the foundational concepts of evidence transfer theory.

Today, the ability of forensic experts to identify suspects and to examine physical evidence has increased exponentially when compared to early policing. Scientific discoveries in a wide range of disciplines have contributed to the development and evolution of forensic specialties in physical matching, chemical analysis, fingerprints, barefoot morphology, odontology, toxicology, ballistics, hair and fiber, biometric analysis, entomology, and, most recently, DNA analysis.

Many of these forensic science specialties require years of training and practice by the practitioner to develop the necessary level of expertise whereby the courts will accept the evidence of comparisons and subsequent expert conclusions. Obviously, it is not possible for a modern-day investigator to become a proficient practitioner in all of these specialties. However, the modern-day investigator must strive to be a forensic resource generalist with an understanding of the tools available and must be specialist in the deployment of those tools to build the forensic case.

In a criminal investigation, there is often a multitude competing possibilities guiding the theory development of how a criminal incident occurred with circumstantial links pointing to who committed the crime. Competing theories and possibilities need to be examined and evaluated against the existing facts and physical evidence. Ultimately, only strong circumstantial evidence in the form of physical exhibits, testimony from credible witnesses, or a confession from the accused may satisfy the court beyond a reasonable doubt. Critically, the quality of an

investigation and the competency of the investigators will be demonstrated through the manner in which that evidence was located, preserved, analyzed, interpreted, and presented.

In the past, police officers generally took their primary roles as first responders and keepers of the peace. Criminal investigation was only a limited component of those duties. Now, given the accessibility to a wide range of effective forensic tools, any police officer, regardless of their assignment, could find themselves presented with a scenario that requires some degree of investigative skill. The expectation of police investigators is that they be well-trained with the knowledge and skills to respond and investigate crime. These skills will include:

- Critical Incident Response
- Interpretation of criminal law and offense recognition
- Crime scene management
- Evidence identification and preservation
- Engaging forensic tools for evidence analysis
- Witness assessment and interviewing
- Suspect questioning and interrogation
- Case preparation and documentation
- Evidence presentation in court

Gehl & Plecas (2017) further added, in addition to these task skills of process and practice, investigators must also have strategic analytical thinking skills for risk assessment and effective incident response. They must have the ability to apply deductive, inductive, and quantitative reasoning to examine evidence and form reasonable grounds to identify and arrest suspects.

Engaging these higher-level thinking skills is the measure of expertise and professionalism for investigators. As our current justice system continues to change and evolve, it relies more and more on information technology and forensic science. With this evolution, the need for investigators to demonstrate higher levels of expertise will continue to grow.

THE PATH TO BECOMING AN INVESTIGATOR

For many people, as relayed by Gehl & Plecas (2017) their idea of what an investigator does is based on what they see, hear, and read in the media, movies, TV, and books. These depictions characterize personas ranging from dysfunctional violent rebels fighting for justice by their own rules, to by-the-book forensic investigators who get the job done clinically using advanced science and technology. The truth is, good investigation and real-life investigators are unlikely to make a captivating fictional script. Professional investigators and competent investigations are about the tedious processes of fact-finding and sorting through evidence and information. It is about eliminating possibilities, validating events, and recording evidence, all the while engaging in an intentional process of thinking, analyzing, and strategically working towards predetermined goals; not to mention extensive note taking and report writing.

Sometimes, new police investigators are, at first, deluded by fictional representations, only to find out, by experience, that the real job, although having moments of action, satisfaction, and excitement, is more about hard work and deliberate attention to detail.

Another common misnomer about the job is the conception that investigation is the exclusive domain of a police officer. Although this may have been true in the earlier evolution of the investigative craft, it has become much less the case today. This change is a result of the enactment of many regulatory compliance statutes that require investigative knowledge, skills, and thinking. Compliance investigators maintain adherence to regulated activities which often involve legal compliance for industries where non-compliance can pose significant risks that threaten the lives and safety of people or the environment. These regulated activities are often responsibilities of the highest order. What starts as a regulatory violation can escalate into criminal conduct. The investigative skills of compliance investigators and inspectors must be capable of meeting the same tests of competency as the police.

Not just anyone can become an investigator. There are certain personal traits that tend to be found in good investigators. Among these traits are:

- Being passionate about following the facts to discover the truth, with a goal of contributing to the process of justice
- Being detail-oriented and observant of the facts and the timelines of events
- Being a flexible thinker, avoiding tunnel vision, and being capable of concurrently examining alternate theories while objectively using evidence as the measure to confirm or disconfirm validity of theories
- Being patient and capable of maintaining a long-term commitment to reaching a conclusion
- Being tenacious and not allowing setbacks and false leads to deter continued efforts
- Being knowledgeable and skilled at the tasks, process, and procedure while respecting legal authorities and the limitations to act
- Being self-aware of bias and intuitive responses, and seeking evidence to support gut-feelings
- Being trained in the processes of critical thinking that provide reliable analysis of evidence that can later be described and articulated in reports and court testimony

Considering this list of traits, we can appreciate that good investigators are people with particular attitudes, aptitudes, and intentional thinking processes. These traits all form part of the investigative mindset. Although you cannot teach someone to be passionate about discovering the truth, anyone who has these traits can work towards developing and refining their other traits and skills to become an investigator. Developing the mindset is a learning journey, and the first step of this journey is to become intentionally aware of and engaged in your own thinking processes (Gehl & Plecas, 2017).

Toward this point, the investigator must always be mindful of the proposition of Shah and Oppenheimer (2008) in their book *Heuristics Made Easy: An Effort Reduction Framework*. Shah and Opprenheimer remind us that people have learned to become quick thinkers using mental short cuts, known as heuristics, in an effort to make decisions quickly and problem solve the challenges we encounter. They offer the proposition that heuristics reduce work in decision making by giving the user the ability to scrutinize a few signals and/or alternative choices in decision-making, thus diminishing the work of retrieving and storing information in memory. This streamlines the decision-making process by reducing the amount of integrated information necessary in making the choice or passing judgment (Shah, 2008).

In this book, we will point out that these heuristic shortcuts are often instinctive or intuitive reactions, as opposed to well-reasoned, evidence-based responses. Although they may serve us well in our everyday thinking, they must be monitored and recognized for their short-falls when we are required to investigate matters where the outcomes are critical.

To achieve the investigative mindset and be an objective investigator, it is important to be aware of the heuristic shortcuts and other negative investigative tendencies that can become obstacles to successful outcomes. For example, a good investigator needs to be focused on the objective of solving the case and making an arrest in a timely manner, but becoming too focused can lead to "tunnel vision," which is the single-minded focus on a favorite suspect or theory to the extent that other suspects or alternate theories are ignored. Moreover, a good investigator needs to take responsibility and be accountable for the outcomes of the investigation; however, taken to the extreme, this can lead to an investigator taking complete ownership of the investigation to the exclusion of allowing the ideas of others to provide guidance and influence. Finally, a good investigator needs to be careful about how much information is shared with others. However, excessive secrecy can inhibit information sharing with those who might contribute to the successful conclusion of the case.

Thinking as an objective investigator, it is often necessary to consider and evaluate several competing theories or possibilities of how a crime was committed and who the suspect may be. Often, new investigators, or those uninitiated to the objective mindset, will focus on a favorite theory of events or a favorite suspect, and rush to be first to reach the conclusion and to make the arrest. There is a trap in shortcuts and the focused rush to make a fast arrest. In this trap, other viable suspects and theories are too quickly ignored or discarded. This sometimes leads to investigations being derailed by "tunnel vision." Worse yet, tunnel vision can lead to the misinterpretation of evidence, ultimately leading to charges against an innocent person, while the guilty remain undiscovered.

To summarize the observations made by Kim Rossmo (2009) in his book on criminal investigative failures, tunnel vision and lost objectivity have been part of the findings in many public inquiries. Commissioners at public inquiries have concluded that, at times, investigators relentlessly pursue a favorite suspect. Sometimes an alternate suspect should have been apparent, or exculpatory evidence was present that should have caused the investigators to stop and re-evaluate their

favorite suspect, but tunnel vision had set in and the objective investigative mindset had been lost (Rossmo, 2009).

Similarly, and not totally unrelated to tunnel vision, other negative thinking responses also come into play, and can be observed in the behaviors of case ownership and excessive secrecy. It may seem that an investigator taking ownership for his or her investigation, and maintaining some degree of secrecy in the management of case related information, is completely acceptable and perhaps even desirable. However, as happens with any human behavior, it can negatively influence the outcome of investigations. Information appropriately shared with the right people can often reveal connections that contribute to the evidence of a case, and investigators must remain open to this appropriate sharing. Many negative examples can be found where a police investigator, or even an investigative team, adopted the attitude that the conduct of an investigation is their own exclusive domain (Campbell, 1996). With that exclusive ownership, no one else is entitled or allowed to participate, and relevant information that needs to be shared with others can be jealously guarded. Opportunities are missed for other investigators to see details that could connect a similar fact pattern or make the connection to a viable suspect.

Understanding the Investigative Mindset

When we talk about the investigative mindset, in part, we are talking about the self-awareness and the organizational-awareness to avoid negative outcomes. Once learned and practiced, this awareness can be a safety net against destructive investigative practices (i.e. tunnel vision, case ownership, and excessive secrecy). Criminal investigation can require complex thinking where the investigator must assess and determine the validity of information and evidence to guide the investigative process. This thinking strives to move from a position of mere suspicion to one of reasonable grounds for belief to make an arrest and ultimately articulate evidence upon which the court can make a finding of guilt beyond a reasonable doubt. This is a conscious process of gathering and recording information, and thinking analytically to form reasonable grounds for belief supporting defendable actions of arrest and charges. From this conscious process, the investigator in court can articulate a mental map to describe how they derived their conclusions (Gehl & Plecas, 2017).

As we proceed towards learning the investigative thinking process, keep in mind that:

- Investigative thinking is disciplined thinking, and investigators must be consciously aware of and consciously in control of their own thinking
- This is a process of being intentionally engaged at a high level of analytical thinking
- This thinking process is strategically focused, prioritizing investigative plans and actions to achieve outcomes
- Developing a mental map, the investigator deliberately selects a path of the investigation will follow. He or she travels that path with the knowledge that the outcomes of the investigation will only be accepted by the court if the rationale for the path taken can be recalled accurately and articulated in detail

CASE STUDY: BROWN V MISSISSIPPI

Raymond Stuart, a white planter, was murdered in Kemper County, Mississippi on March 30, 1934. Arthur Ellington, Ed Brown, and Henry Shields, three black tenant farmers, were arrested for his murder. At the trial, the prosecution's principal evidence was the defendants' confessions to police officers. During the trial, however, prosecution witnesses freely admitted that the defendants confessed only after being subjected to brutal whippings by the officers:

> "... defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confessed, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed the crime, and, as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers. When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from that last stated, the perpetrators of the outrage would administer the same or equally effective treatment."[

> One defendant had also been subjected to being strung up by his neck from a tree in addition to the whippings. The confessions were nevertheless admitted into evidence, and were the only evidence used in the subsequent one-day trial. The defendants were convicted by a jury and sentenced to be hanged. The convictions were affirmed by the Mississippi Supreme Court on appeal. In Chief Justice Virgil Alexis Griffith's dissent, he wrote "the transcript reads more like pages torn from some medieval account than a record made within the confines of a modern civilization."

In a unanimous decision, the Court reversed the convictions of the defendants. It held that a defendant's confession that was extracted by police violence cannot be entered as evidence and violates the Due Process Clause of the Fourteenth Amendment.

Upon remand from the United States Supreme Court, the three defendants pleaded nolo contendere to manslaughter rather than risk a retrial. They were however sentenced to six months, two and one-half years, and seven and one-half years in prison, respectively. The prosecutor at the trial level, John Stennis, later served forty-two years as a United States Senator, including 2 years as President pro tempore. He ran for office in Mississippi thirteen times and never lost (Wikisource, 2021).

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CHAPTER 2 – THE CRIMINAL INVESTIGATION

An effective strategy for learning any new skill is to define it and break it down into logical steps, establishing a progression that can be followed and repeated to reach the desired results. The process of investigation is no exception and can be effectively explained and learned in this manner (Gehl & Plecas, 2017). In this chapter, you will learn how each of the following issues relates to the process of investigation and what goes into an undercover operation.

- The distinction between investigative tasks and investigative thinking
- The progression of the investigative process
- The distinction between tactical investigative and strategic investigative responses
- The concepts of event classification and offense recognition
- The threat vs. action response dilemma
- The distinction between active events and inactive events

THE PROCESS OF INVESTIGATION

To understand the process of investigation, it is necessary to comprehend the distinction between investigative tasks and investigative thinking. Investigative tasks relate to the information gathering processes that feed into investigative thinking and the results. Investigative thinking, on the other hand, is the process of analyzing information and theorizing to develop investigative plans. Let us consider this distinction in a little more depth.

Investigative Tasks Versus Investigative Thinking

Investigative tasks relate to identifying physical evidence, gathering information, evidence collection, evidence protection, witness interviewing, and suspect interviewing and interrogation. These are essential tasks that must be learned and practiced with a high degree of skill to feed the maximum amount of accurate information into the investigative thinking process. Criminal investigation is aimed at collecting, validating, and preserving information in support of the investigative thinking process. Accordingly, it is important to learn to do these evidence collection tasks well.

Investigative thinking is aimed at analyzing the information collected, developing theories of what happened, the way an event occurred, and establishing reasonable grounds to believe.

Those reasonable grounds to believe will identify suspects and lead to arrest and charges. Investigative thinking is the process of analyzing evidence and information, considering alternate possibilities to establish the way an event occurred and to determine if they are reasonable (Gehl & Plecas, 2017).

Progression of the Investigative Process

According to Gehl & Plecas (2017), the investigative process is a progression of activities or steps moving from evidence gathering tasks, to information analysis, to theory development and validation, to forming reasonable ground to believe, and finally to the arrest and charge of a suspect. Knowing these steps can be helpful because criminal incidents are dynamic and unpredictable. The order in which events take place, and the way evidence and information become available for collection, can be unpredictable. Thus, only flexible general rules to structured responses can be applied. However, no matter how events unfold or when the evidence and information are received, certain steps need to be followed. These include collection, analysis, theory development and validation, suspect identification and forming reasonable grounds, and acting to arrest, search, and lay charges.

In any case, as unpredictable as criminal events may be, the results police investigators aim for are always the same. And, you should always keep the desired results in mind to provide focus and priority to the overall investigative process. We will talk more later in this book about developing a mental map of the investigative process to assist in recording, reporting, and recounting events. It is mentioned now because a mental map is an appropriate metaphor to illustrate the investigative thinking process.
In this process, even though the path we will take to investigate may be unclear and unpredictable at first, the destination, *the results we seek in our investigation*, will always be the same and can be expressed in terms of results and their priorities.

Results and priorities focus first on the protection of the lives and safety of people. They focus second on the priorities of protecting property, gathering and preserving evidence, accurately documenting the event, and establishing reasonable grounds to identify and arrest offenders.

Priorities refer to Level One Priorities, as the protection of the lives and safety of people. This includes the protection and safety of the police officer's own life and the life and safety of other officers.

The Level Two priorities are the four remaining aforementioned results, and these may be considered equal value to each other. Depending on circumstances, a rationale can be made for choosing to concentrate on one Level Two priority at the expense of another depending on the circumstances presenting (Gehl & Plecas, 2017).

The critical point to be made here is that under no circumstances should an investigator ever choose to focus his or her efforts and attention to a Level Two priority if doing so would compromise the Level One priority of protecting the life and safety of a person, including police officers themselves. In the event that evidence is lost or destroyed, or that a suspect is not identified or apprehended because investigators were taking care of the Level One priority, that is a justifiable outcome. A response that would sacrifice the safety of people to achieve a level two priority would not be justifiable, and could even lead to civil or criminal outcomes against the investigators making such a choice.

Now that we have looked at the critical aspects of investigative tasks and the response priorities police investigators need to apply to decision making when they act, we can proceed to examine the two different types of investigative response. We will refer to these as the **Tactical Investigative Response** and the **Strategic Investigative Response**.

Distinction Between a Tactical Investigative Response and a Strategic Investigative Response

These two different types of investigative responses are defined by the nature and status of the event that the investigator is facing. If it is an active event, it will require a Tactical Investigative Response and if it is an inactive event it will require a Strategic Investigative Response. It is important for an investigator to understand these two different levels of response because they include different response protocols, different legal authorities, and limitations to authority.

Tactical Investigative Response is faced by operational officers who are engaged in the frontline response to criminal events. As mentioned earlier, police are often challenged to respond to events, sometimes life and death situations, where information is limited and critical decisions need to be made to take action. In these Tactical Investigative Responses, the responding officers often have little or no time to undertake the tasks of gathering information. They must rely on the information of a dispatched complaint, coupled with their own observations made once they arrive at the scene. If an officer takes the action of making an arrest or using force to bring the situation under control, they are accountable for the action they have taken, and they may be called upon by the court to articulate their thinking, albeit based on limited information.

Once an investigator has arrived at the scene of an event and has brought the event under control by either making an arrest or by determining that the suspect has fled the scene and no longer poses a threat to the life or safety of persons, the investigation becomes a strategic investigative response. With this expiration of life and safety issues, also comes the expiration of exigent circumstances and the additional authorities to detain persons suspected and to enter and search private property without a warrant.

Clearly understanding and being able to define and articulate the circumstances of either an active event and tactical response, or a controlled event and a strategic response is critical. In court, it becomes important for a police investigator to describe what they were told going into the complaint, what they saw and heard when they arrived at the complaint, and, most importantly, what they were thinking to justify the action that was taken. For the court to be satisfied that the investigator acted lawfully, the judge needs to hear the investigator describe their thinking process to form reasonable grounds, or in some emergency cases, to have a reasonable suspicion that justifies the action taken.

To properly articulate their thinking in these investigative responses, it is important for the officer to understand the situational elements that can help define their thinking process when they testify in court. Two of the most important situational elements to understand are **event classification** and **offense recognition** (Gehl & Plecas, 2017).

Event Classification and Offense Recognition

In order to enter any investigation in either the tactical or the strategic response mode, an investigator must engage their thinking processes and make decisions about the event they are confronting. Is it an *active event* in progress that requires immediate and decisive tactical actions; or is it an *inactive event* where a less urgent, slower, and more strategic approach can be taken? This slower and more considered approach is the strategic investigative response, and the situational elements of this approach will be discussed in detail later in this chapter. Thinking about these situational elements of active event or inactive event is call event classification.

Considering the possible crime being committed in the event is called "offense recognition," and this recognition of a specific offense activates the investigator's thinking to look for the evidence that supports the elements of that recognized offense (Gehl & Plecas, 2017).

Classifying the Event as Either an Active Event or an Inactive Event

According to Gehl & Plecas (2017), for each of these classifications of **active event** or **inactive event**, the investigator has some different legal authorities to put into action, as well as some immediate responsibilities for the protection, collection, and preservation of evidence. When attending the scene of any reported event, the investigator should assume that the event is active until it has been established to be inactive.

In many cases, an event can be re-classified as an inactive event when it is determined that the suspect has left the scene of the event, or the event has concluded by the suspect being arrested. In cases where the suspect is still at the scene of an active event, the investigator needs to be thinking about the possibility of detaining the suspect or making an arrest of that suspect for an

offense in progress. To make that detention or arrest, the investigator should be thinking about what possible offense they are being called to investigate by the initial complaint, and also by the evidence they are seeing and hearing upon arrival.

The classification of active event or inactive event is critical. It is a distinction that will guide an officer to determine what powers of detention, arrest, use of force, entry to property, and search may be relied upon to act. The defining elements between active event and inactive event are:

An Active Event

- The criminal act is or may still be in progress at the scene.
- The suspect is or may still be at the scene of the event.
- The situation is, or may be, a danger to the life or safety of a person, including the life or safety of attending police officers.

An Inactive Event

- The criminal act has concluded at the scene.
- The suspect or suspects have left the scene or have been arrested or detained.
- The situation at the scene no longer represents a danger to the life or safety of a person, including police officers.

Threat vs. Action Analysis Dilemma

The critical elements of this *Threat vs. Action Analysis Dilemma* were demonstrated in what became known as "Active Shooter calls" flowing from the incident at Columbine High School in 1999 (Police Executive Research Forum, 2014). In this incident, two armed teenagers went on a shooting spree in the high school killing 13 people and wounding 20 others before turning their weapons on themselves and committing suicide. Officers responding to that call followed departmental protocols of that era.

These protocols dictated they should wait for the arrival of their Emergency Response Team in events where armed suspect confrontations were taking place. The fact that these first responders waited despite ongoing killing taking place inside the high school led to a determination that police have a duty to act in such cases, and waiting is not the correct response. As a result of these determinations, active shooter response protocols were adopted across North America and police agencies re-trained their personnel to respond to active shooters with more immediate action and strategies to enter and confront the shooters in order to protect lives of possible victims.

The *Threat vs. Action Analysis Dilemma* response protocols in the active shooter response situations now provide the standard or benchmark that a responding officer must consider when faced with the decision to enter a dangerous situation alone and act, or to wait for back-up before

entering to act. For active shooter situations, the protocols across North America are now prescribed responses, where responding officers are trained to enter and confront with minimal back-up. That said, not every potentially dangerous *Threat vs. Action Analysis Dilemma* is going to be an active shooter. Responding officers will often be faced with other calls where danger exists to the safety of persons and the decision to enter or wait for back-up must still be made. In these cases, the responding officer must weigh the available information and respond or wait for back-up per their own threat vs risk assessment of the facts. The active shooter protocols have provided something of a calibration to this analysis where extreme ongoing threat to life and safety of person equals high duty and high expectation to act (Gehl & Plecas, 2017).

Rules of Engagement for an Active Event or an Inactive Event

Police officers may be called to action by many different means. It may be a radio dispatch 911 call to attend an emergency, a citizen flagging down the passing police car to report an incident, or an officer coming upon a crime in progress. Whatever the means of being called to action, this is the first step of the police officer becoming engaged in a thinking process to gather and evaluate information, make decisions, and act. The first step of this thinking process for the investigator is to make the evaluation and ask the questions:

- Is this an **Active Event** requiring a **Tactical Investigative Response?**
- Is this an **Inactive Event** requiring a **Strategic Investigative Response?**

As a subsequent part of this evaluation determining an Active Event or Inactive Event, the investigator should also be alert to the type crime being encountered. For example, is it an assault, a robbery, or a theft? From the perspective of police tactical investigative response, an investigator confronted with an active event must first assess the threat level. Is there a danger to the life or safety of persons that would require a **Level One Priority Result**, taking immediate action to protect life and safety of persons, including the life and safety of attending police officers?

In assessing these threat levels to life and safety, police are often faced with very limited information. Sometimes there is only a possible threat, or an implied threat to the life or safety of persons. In such cases, it is only necessary for the police to suspect that there is a threat to the life or safety of a person to evoke the extended powers provided by exigent circumstances. In these cases of implied threats, police are authorized to rely on the powers afforded by exigent circumstances to enter private property without a warrant and to detain and search suspects who may present a danger. These are significant powers and an investigator must be aware that if they use these powers, there is a strong possibility they will later be called upon to justify the exercise of those powers.

The investigating officer arriving at the scene of this event would treat this as a Level One priority because there is an ongoing danger to the life and safety of persons. Under these circumstances, the *Criminal Code* authorities of exigent circumstances would apply. The investigator would be justified in detaining all parties present, including the witness and the victim, on the reasonable suspicion that they may all have been involved in combative behavior and might each still pose a threat to the life and safety of others, including the investigator. The powers of exigent circumstances are significant in this kind of scenario, and provide authority to take immediate action that will neutralize threats to the safety of people. Even if the facts of this assault with a weapon had evolved to show that it was taking place inside the private home of the suspect with the bloody knife, the authority of exigent circumstances would permit the investigator to enter that home without a warrant to protect the life and safety of persons. A very significant point to be made here is that as soon as the event is under control the *extended powers of exigent circumstances expire.*

Once this event has been brought under control and the threat to the life or safety of persons had been eliminated by arresting or detaining all persons present, the investigator must reclassify this event as an inactive event. As soon as this occurs, some of the rules of engagement and legal authorities to act change, and the investigation must switch to a Strategic Investigative Response.

With the expiration of exigent circumstances and the switch to a Strategic Investigative Response, several factors change. If this assault with a weapon had been taking place in the suspect's private home, and the investigator had entered under the authority of exigent circumstance, the authority to remain in the private residence and search it would expire. If the investigator needed to collect additional physical evidence in that home, such as blood from the stabbing assault, a warrant or consent to search would now be required.

In this type of case, the residence of the suspect could be locked down externally and all persons removed until a search warrant was obtained to complete the investigation. Evidence obtained up to the point where the arrest was made and before exigent circumstances expired would be lawfully seized without a warrant. This would include the seizure of the bloody knife as plainview search or a search incidental to arrest. Anything else searched for and seized after the arrest could be challenged as an unlawful seizure if it was taken without a search warrant.

In addition to the requirement for search warrants, in some cases after exigent circumstances expire, other priorities and investigative must also change. As you will recall, the protection of life and safety of people is the Level One priority. With that priority, the court allows significant leeway to investigators in regards to the protection of crime scenes and the collection of evidence. If an investigator is attending any criminal event, the protection and collection of evidence always takes a backseat to the protection of life or safety of people. That said, once the life and safety issues have been resolved, the securing of the crime scene and the subsequent protection and collection of evidence becomes the number one priority.

Once the life and safety issues are resolved, it is time to lock down the crime scene and start protecting evidence for court. If it is possible to protect the life and safety of people and collect, protect, and preserve evidence, this is the preferred outcome. If it is not possible, the court will accept the fact that damage to evidence occurred prior to life and safety issues being resolved. Once those issues are resolved, the expectation is that a high level of care will be taken. If proper care is not taken, and evidence becomes contaminated, or continuity of possession is lost, the evidence may be ruled inadmissible at a trial. It is important for the investigator to fully grasp the construct that dictates when to transition from Tactical Investigative Response to Strategic Investigative Response (Gehl & Plecas, 2017).

Undercover Operations

An undercover investigation, as reported by Gehl & Plecas (2017), is the practice of a police officer posing as someone other than a police officer for the purpose of collecting evidence of criminal activity that would otherwise be difficult to acquire. The possible personas of the undercover investigator are almost limitless and can range from posing as a person seeking to purchase drugs from local traffickers to impersonating a vulnerable elderly citizen in a park to capture a purse snatcher preying on the elderly. There are also deep undercover strategies that may include establishing a longer-term identity with the purpose of infiltrating a criminal organization or a dissident political group to gain intelligence of organizational activities, culture, and membership.

Police investigators often find undercover strategies successful because criminal activity can be witnessed firsthand, and admissions of guilt made to undercover operators by criminals can be admitted to court without the need of the usual *voir dire* to test for admissibility. When conducting undercover operations, investigators must be careful to ensure that their presence and communication with the suspect is not the catalyst that causes that person to initiate a crime or carry through with a crime they would not otherwise have done. If these dynamics of initiating the crime occur, a defense of entrapment can sometimes be made on behalf of the accused person. New investigators may be given the opportunity to participate in minor undercover roles fairly early in their careers, and these can be valuable learning experiences.

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CHAPTER 3 – CRIMINAL EVIDENCE

The term “evidence,” as it relates to investigation, speaks to a wide range of information sources that might eventually inform the court to prove or disprove points at issue before the trier of fact. Sources of evidence can include anything from the observations of witnesses to the examination and analysis of physical objects. It can even include the spatial relationships between people, places, and objects within the timeline of events. From the various forms of evidence, the court can draw inferences and reach conclusions to determine if a charge has been proven beyond a reasonable doubt.

Considering the critical nature of evidence within the court system, there are a wide variety of definitions and protocols that have evolved to direct the way evidence is defined for consideration by the court. In this chapter, we will look at the types of evidence, meaning of criminal evidence, and the Hearsay Rule (Gehl & Plecas, 2017).

TYPES OF EVIDENCE

Real Evidence

Dostal (2014) conveyed that real evidence is also known as Physical Evidence. The court will also generally attribute a high probative value to physical exhibits. The court likes physical evidence because they are items the court can see and examine to interpret the facts in issue for proof beyond a reasonable doubt. Physical evidence can include just about anything, such as weapons, fingerprints, shoe prints, tire marks, tool impression, hair, fiber, or body fluids. These kinds of physical exhibits of evidence can be examined and analyzed by experts who can provide the court with expert opinions that connect the item of evidence to a person, place, or the criminal event. This allows the court to consider circumstantial connections of the accused to the crime scene or the accused to the victim. For example, in the case where the fingerprints of a suspect are found at a crime scene, and a DNA match of a murder victim’s blood is found on that suspect’s clothing, forensic connections could be made and, in the absence of an explanation, the court would likely find this physical evidence to be relevant and compelling evidence with high probative value (Dostal, 2014).

Direct Evidence

Direct evidence is evidence that is put forward to directly establish a fact which resolves a matter at issue. No inferences of fact need to be drawn to resolve the matter at issue. A firsthand eyewitness testifying to seeing a criminal OFFENSE take place is the most obvious example of direct evidence.

Direct evidence is evidence, if believed, resolves a matter in an issue." It is testimony on "the precise face which is the subject of the issue in trial." Lastly, it is for the trier-of-fact to determine how far the evidence may be believed (Dostal, 2014). An eyewitness who saw the accused shoot a victim would be able to provide direct evidence. Similarly, a security camera showing the accused committing a crime or a statement of confession from the accused admitting to the crime could also be considered direct evidence. Direct evidence should not be confused with the concept of direct examination, which is the initial examination and questioning of a witness at trial by the party who called that witness. And, although each witness who provides evidence could, in theory, be providing direct testimony of their own knowledge and experiences, that evidence is often not direct evidence of the offense itself.

Circumstantial Evidence

Circumstantial evidence, also called indirect evidence, indirectly proves a fact. Fingerprint evidence is usually circumstantial. A defendant's fingerprint at the scene of the crime *directly* proves that the defendant placed a finger at that location. It *indirectly* proves that because the defendant was present at the scene and placed a finger there, the defendant committed the crime. Common examples of circumstantial evidence are fingerprint evidence, DNA evidence, and blood evidence. Criminal cases relying on circumstantial evidence are more difficult for the prosecution because circumstantial evidence leaves room for doubt in a judge's or juror's mind. However, circumstantial evidence such as DNA evidence can be very reliable and compelling, so the prosecution can and often does meet the burden of proof using *only* circumstantial evidence (University of Minnesota Libraries Publishing, n.d.)

> *"When one or more things are proved, from which our experience enables us to ascertain that another, not proved, must have happened, we presume that it did happen, as well in criminal as in civil cases" (MacDonell, 1820).*

Circumstantial evidence demonstrates the spatial relationships between suspects, victims, timelines, and the criminal event. These spatial relationships can sometimes demonstrate that an accused person had a combination of intent, motive, opportunity, and/or the means to commit the offense, which are all meaningful features of criminal conduct.

Circumstantial evidence of intent can sometimes be shown through indirect evidence of a suspect planning to commit the offense, and/or planning to escape and dispose of evidence after the offense. A pre-crime statement about the plan could demonstrate both intent and motive, such as, "I really need some money. I'm going to rob that bank tomorrow."

Circumstantial evidence of conflict, vengeance, financial gain from the commission of the offense can also become evidence of motive.

Circumstantial evidence of opportunity can be illustrated by showing a suspect had access to a victim or a crime scene at the time of the criminal event, and this access provided opportunity to commit the crime.

Circumstantial evidence of means can sometimes be demonstrated by showing the suspect had the physical capabilities and/or the tools or weapons to commit the offense.

Presenting this kind of circumstantial evidence can assist the court in confirming assumptions and inferences to reach conclusions assigning probative value to connections between the accused and a person or a place and the physical evidence. These circumstantial connections can create the essential links between a suspect and the crime (University of Minnesota Libraries Publishing).

There are many ways of making linkages to demonstrate circumstantial connections. These range from forensic analysis of fingerprints or DNA that connect an accused to the crime scene or victim, to witness evidence describing criminal conduct on the part of an accused before, during, or after the offense. The possibilities and variations of when or how circumstantial evidence will emerge are endless. It falls upon the investigator to consider the big picture of all the evidence and then analytically develop theories of how events may have happened. Once a reasonable theory has been formed, evidence of circumstantial connections can be validated through further investigation and analysis of physical exhibits to connect a suspect to the crime.

MEANING OF CRIMINAL EVIDENCE

Judicial and Extrajudicial Evidence

According to Dostal (2016), in a criminal hearing, a trier of fact will generally determine facts based solely on admissible evidence given through witnesses, physical exhibits, and admissions by the parties. The adversarial system depends on the production of evidence by parties in order to guarantee that it is sufficient and trustworthy.

Evidence provides a means of allowing facts to be proved for the purpose of deciding issues in litigation. The trier of fact may only consider evidence that is admissible, material and relevant. Even then, evidence that creates undue prejudice may nonetheless be ruled inadmissible.

The purpose of the rules of evidence are to permit the trier-of-fact to obtain the truth and determine the issues. Admissibility is exclusively the responsibility of the judge while the findings of fact is exclusively the responsibility of the jury. The judge has a duty to exclude all inadmissible evidence, regardless of whether the issue is raised by counsel. For a trier-of-fact to receive evidence, the judge must be satisfied that the evidence is: relevant, material, not barred by rules of admissibility, or not subject to discretionary exclusion. Any evidence not admitted to court is considered extrajudicial evidence.

Inculpatory Evidence

Inculpatory evidence is any evidence that will directly or indirectly link an accused person to the offense being investigated. For an investigator, inculpatory evidence can be found in the victim's complaint, physical evidence, witness accounts, or the circumstantial relationships that are examined, analyzed, and recorded during the investigative process. It can be anything from the direct evidence of an eyewitness who saw the accused committing the crime, to the circumstantial evidence of a fingerprint found in a location connecting the accused to the victim or the crime scene.

Naturally, direct evidence that shows the accused committed the crime is the preferred inculpatory evidence, but, in practice, this it is frequently not available. The investigator must look for and interpret other sources for evidence and information. Often, many pieces of circumstantial evidence are required to build a case that allows the investigator to achieve reasonable grounds to believe, and enables the court to reach their belief beyond a reasonable doubt.

A single fingerprint found on the outside driver's door of a stolen car would not be sufficient for the court to find an accused guilty of car theft. However, if you added witness evidence to show that the accused was seen near the car at the time it was stolen, and a security camera recording of the accused walking off the parking lot where the stolen car was dumped, and the police finding the accused leaving the dump site where he attempted to toss the keys of that stolen car into the bushes, the court would likely have proof beyond a reasonable doubt.

If an abundance of inculpatory circumstantial evidence can be located for presentation to the court that leads to a single logical conclusion, the court will often reach their conclusion of proof beyond a reasonable doubt, unless exculpatory evidence is presented by the defense to create a reasonable doubt (Gehl & Plecas, 2017).

Exculpatory Evidence

Exculpatory evidence is the exact opposite of inculpatory evidence in that it tends to show the accused person or the suspect did not commit the offense. It is important for an investigator to not only look for inculpatory evidence, but to also consider evidence from an exculpatory perspective. Considering evidence from the exculpatory perspective demonstrates that an investigator is being objective and is not falling into the trap of tunnel vision. If it is possible to find exculpatory evidence that shows the suspect is not responsible for the offense, it is helpful for police because it allows for the elimination of that suspect and the redirecting of the investigation to pursue the real perpetrator.

Sometimes, exculpatory evidence will be presented by the defense at trial to show the accused was not involved in the offense or perhaps only involved to a lesser degree. In our previous

circumstantial case of car theft, there is strong circumstantial case; but what if the defense produces the following exculpatory evidence where:

- A tow truck dispatcher testifies at the trial and produces records showing the accused is a tow truck driver;
- On the date of the car theft, the accused was dispatched to the site of the car theft to assist a motorist locked out of his car;
- The accused testifies that he only assisted another male to gain entry to the stolen car because he could see the car keys on the front seat;
- The accused explains that, after opening the car, he agreed to meet this male at the parking lot where the car was left parked;
- He accepted the keys of the stolen car from the other male to tow the vehicle later to service station from that location;
- When approached by police, he stated that he became nervous and suspicious about the car he had just towed; and
- He tried to throw the keys away because he has a previous criminal record and knew the police would not believe him.

Provided with this kind of exculpatory evidence, the court might dismiss the case against the accused.

Having read this, you may be thinking that this exculpatory evidence and defense sounds a little vague, which is the dilemma that often faces the court. If they can find guilt beyond a reasonable doubt, they will convict, but if the defense can present evidence that creates a reasonable doubt, they will make a ruling of not guilty. Experienced criminals can be very masterful at coming up with alternate explanations of their involvement in criminal events, and it is sometimes helpful for investigators to consider if the fabrication of an alternate explanation will be possible. If an alternate explanation can be anticipated, additional investigation can sometimes challenge the untrue aspects of the alternate possibilities (Gehl & Plecas, 2017).

Hearsay Rule

Hearsay evidence, as the name implies, is evidence that a witness has heard as a communication from another party. In addition to verbal communication, legal interpretations of the meaning of hearsay evidence also include other types of person-to-person communication, such as written statements or even gestures intended to convey a message. As defined by John Sopinka in his book, *The Law of Evidence*, hearsay is:

> **"**Written or oral statements or communicative conduct made by persons otherwise than in testimony at the proceedings in which it is offered, are inadmissible if such statements or

conduct are tendered either as proof of their truth or as proof of assertions implicit therein" (Sopinka, 1999, p. 173).

Hearsay evidence is generally considered to be inadmissible in court at the trial of an accused person for several reasons; however, there are exceptions where the court will consider accepting hearsay evidence (Thompson, 2013). The reasons why hearsay is not openly accepted by the court include the rationale that:

- The court generally applies the best-evidence rule to evidence being presented and the best evidence would come from the person who gives the firsthand account of events;
- The original person who makes the communication that becomes hearsay, is not available to be put under oath and cross-examined by the defense;
- In hearing the evidence, the court does not have the opportunity to hear the communicator firsthand and assess their demeanor to gauge their credibility; and
- The court recognizes that communication that has been heard and is being repeated is subject to interpretation. Restatement of what was heard can deteriorate the content of the message.

The court will consider accepting hearsay evidence as an exception to the hearsay rule in cases where:

- There is a dying declaration
- A witness is the recipient of a spontaneous utterance
- The witness is testifying to hearsay from a child witness who is not competent

Exceptions to the hearsay rule include the dying declaration of a homicide victim. This type of declaration is allowed since it is traditionally believed that a person facing imminent death would not lie.

An interesting aspect of hearsay evidence that sometimes confuses new investigators is that during any investigation, the investigator is searching out and retrieving hearsay accounts of events from various witnesses. From these hearsay accounts, the investigator is considering the evidence and using that hearsay information to form reasonable grounds to believe and take action. This is a totally acceptable and legally authorized process, and, if ever questioned in court regarding the process of forming reasonable grounds on the basis of hearsay, the investigator can qualify their actions by pointing out their intent to call upon the original witness to provide the court with the unfettered firsthand account of events. Investigators are merely the people empowered to assemble the available facts and information from various sources found in witnesses and crime scene evidence. As an investigator assembles the evidence they are empowered to form reasonable grounds for belief and take actions of search, seizure, arrest, and charges to commence the court process. Once in court, the investigator's testimony will only relate to the things they have done in person or statements they have heard as exceptions to the hearsay rule while forming of reasonable grounds to act (Gehl & Plecas, 2017).

CASE STUDY: DENNIS RADER BTK KILLER

Dennis Lynn Rader (March 9th, 1945) is an American serial killer known for killing at least 10 people in and near Wichita, Kansas between 1974 and 1991. He was known as the **BTK Strangler** (or simply **BTK**), which stood for his *modus operandi*: "Bind, Torture, Kill". He would also send taunting letters to police and newspapers describing the details of his crimes.

After a decade-long hiatus, Rader resumed sending letters in 2004, leading to his 2005 arrest and subsequent guilty plea. He received 10 consecutive life sentences - one for each of his victims - and is currently incarcerated at the El Dorado Correctional Facility in Butler County, Kansas. His last communication with the media was in 2005.

On January 15th, 1974, four members of the Otero family were murdered in Wichita, Kansas. The victims were father Joseph Otero, aged 38, mother Julie Otero, age 33, and two children: Joseph Otero Jr. age 9, and Josephine Otero age 11. Their bodies were discovered by the family's eldest child, Charlie Otero, who was in 10th grade at the time, as he returned home from school. After his 2005 arrest, Rader confessed to killing the Otero family. Rader wrote a letter that had been stashed inside an engineering book in the Wichita Public Library in October 1974 that described, in detail, the killing of the Otero family in January of that year.

In early 1978, he sent another letter to television station KAKE in Wichita, claiming responsibility for the murders of the Oteros, Kathryn Bright, Shirley Vian and Nancy Fox. He suggested many possible names for himself, including the one that stuck: BTK. He demanded media attention in this second letter, and it was finally announced that Wichita did indeed have a serial killer at large. A poem was enclosed titled "Oh! Death to Nancy," a parody of the lyrics to the American folk song "O Death."

He also intended to kill others, such as Anna Williams, who in 1979, aged 63, escaped death by returning home much later than expected. Rader explained during his confession that he became obsessed with Williams and was "absolutely livid" when she evaded him. He spent hours waiting at her home, but became impatient and left when she did not return home from visiting friends.

Marine Hedge, aged 53, was found on May 5th, 1985, at East 53rd Street North between North Webb Road and North Greenwich Road in Wichita. Rader had killed her on April 27th, 1985 and he took her dead body to his church, the Christ Lutheran Church, where he was the president of the church council. There, he photographed her body in various bondage positions. Rader had previously stored black plastic sheets and other materials at the church in anticipation for the murder and then later dumped the body in a remote ditch. He had called his plan "Project Cookie".

In 1988, after the murders of three members of the Fager family in Wichita, a letter was received from someone claiming to be the BTK killer, in which the author of the letter denied being the perpetrator of the Fager murders. The author credited the killer with having done "admirable work." It was not proven until 2005 that this letter was, in fact, written by Rader. He is not considered by police to have committed this crime. Additionally, two of the women Rader

had stalked in the 1980s and one he had stalked in the mid-1990s filed restraining orders against him; one of them also moved away.

His final victim, Dolores E. Davis, was found on February 1st, 1991, at West 117th Street North and North Meridian Street in Sedgwick. She had been killed by Rader on January 19th, 1991.

Rader was arrested while driving near his home in Park City shortly after noon on February 25, 2005. An officer asked, "Mr. Rader, do you know why you're going downtown?" Rader replied, "Oh, I have suspicions why." Wichita Police, the Kansas Bureau of Investigation, the FBI, and ATF agents searched Rader's home and vehicle, seizing evidence including computer equipment, a pair of black pantyhose retrieved from a shed, and a cylindrical container. The church he attended, his office at City Hall, and the main branch of the Park City library were also searched. At a press conference the next morning, Wichita Police Chief Norman Williams announced, "the bottom line: BTK is arrested.

On February 28, 2005, Rader was charged with 10 counts of first-degree murder. Soon after his arrest, the Associated Press cited an anonymous source alleging Rader had confessed to other murders in addition to those with which he had been connected; the Sedgwick County district attorney denied this but refused to say whether Rader made any confessions or if investigators were looking into Rader's possible involvement in more unsolved killings. On March 5, news sources claimed to have verified by multiple sources that Rader had confessed to the 10 murders he was charged with, but no other ones.

At Rader's August 18 sentencing, victims' families made statements, after which Rader apologized in a rambling 30-minute monologue that the prosecutor likened to an Academy Awards acceptance speech. His statement has been described as an example of an often observed phenomenon among psychopaths: their inability to understand the emotional content of language. He was sentenced to 10 consecutive life sentences, with a minimum of 175 years. Kansas had no death penalty at the time of the murders. On August 19, he was moved to the El Dorado Correctional Facility, where he remains incarcerated (Real life villains wiki, 2021).

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CHAPTER 4 – STANDARDS OF PROOF, ADMISSIBILITY OF EVIDENCE, AND WARRANTLESS SEARCHES

STANDARDS OF PROOF

Probable cause

Many people assume that probable cause requires at least a 51% probability because anything less would not be "probable." While this is technically true, the Supreme Court has ruled that, in the context of probable cause, the word "probable" has a some- what different meaning. Specifically, it has said that probable cause requires neither a preponderance of the evidence nor "any showing that such belief be correct or more likely true than false, "and that it requires only a "fair" probability, not a statistical probability. Thus, it is apparent that probable cause requires something less than a 50% chance. How much less? Although no court has tried to figure it out, we suspect it is not much lower than 50% (Alvarez, 2020).

Reasonable suspicion

As noted by Alvarez (2020), the required probability percentage for reasonable suspicion is a mystery. Although the Supreme Court has said that it requires "considerably less [proof] than preponderance of the evidence" (which means "considerably less" than a 50.1% chance), this is unhelpful because a meager 1% chance is "considerably less" than 51.1% but no one seriously thinks that would be enough. Equally unhelpful is the Supreme Court's observation that, while probable cause requires a "fair probability," reasonable suspicion requires only a "moderate" probability. What is the difference between a "moderate" and "fair" probability? Again, nobody knows. What we do know is that the facts need not rise to the level that they "rule out the possibility of innocent conduct." As the Court of Appeal explained, "The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reason- able suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity." We also know that reasonable suspicion may exist if the circumstances were merely indicative of criminal activity. In fact, the California Supreme Court has said that if the circumstances are consistent with criminal activity, they "demand" an investigation."

Beyond a Reasonable Doubt

Evidence that is beyond a reasonable doubt is the standard of evidence required to validate a criminal conviction in most adversarial legal systems.[1] Generally, the prosecutor has the

burden of proof and is required to prove their case to this standard.[2] This means that the version of events being presented by the prosecution must be proven to the extent that there could be no "reasonable doubt" in the mind of a "reasonable person" that the defendant is guilty.[3] There can still be a doubt, but only to the extent that it would *not* affect a reasonable person's belief regarding whether or not the defendant is guilty. Beyond "the shadow of a doubt" is sometimes used interchangeably with beyond reasonable doubt. But this term extends beyond the latter, to the extent that it may be considered an impossible standard. The term "reasonable doubt" is most commonly used.

If doubt *does* affect a "reasonable person's" belief that the defendant is guilty, then the jury is not satisfied beyond "reasonable doubt". The precise meaning of words such as "reasonable" and "doubt" are usually defined within jurisprudence of the applicable country. A related idea is William Blackstone's formulation: "It is better that ten guilty persons escape than that one innocent suffer"[4] (Legal Burden of Proof, 2020).

Preponderance of Evidence

Burdens of proof vary, depending on the type of case being tried. The plaintiff's burden of proof in a civil case is called preponderance of evidence. Preponderance of evidence requires the plaintiff to introduce slightly more or slightly better evidence than the defense. This can be as low as 51 percent plaintiff to 49 percent defendant. When preponderance of evidence is the burden of proof, the judge or jury must be convinced that it is "more likely than not" that the defendant is liable for the plaintiff's injuries. Preponderance of evidence is a fairly low standard, but the plaintiff must still produce more and better evidence than the defense. If the plaintiff offers evidence of questionable quality, the judge or jury can find that the burden of proof is not met and the plaintiff loses the case (Legal Burden of Proof, 2020).

ADMISSIBILITY OF EVIDENCE

Relevant Evidence

Park & McFarland (2020) stated that Federal Evidence Rule 402 declares that irrelevant evidence is inadmissible. Under the Federal Rules, however, evidence is rarely irrelevant, because Fed. R. Evid. 401 deems evidence to be "relevant" if it has "[A]ny tendency to make the existence of any fact that is of consequence to determination of the action more probable or less probable than it would be without the evidence (para. 1)."

This definition of relevance is a broad one. Under it, almost every item of evidence that a rational lawyer might offer would be relevant. For example, evidence that a defendant has been in prior accidents tends slightly to support the inference that the defendant is not a careful driver and then the further inference that the accident at issue was defendant's fault. The prior accidents would therefore be relevant under the definition of Rule 401.

Such evidence is, however, normally excluded. In a civil case, the evidence would be inadmissible for two reasons. The evidence of other accidents is offered to prove defendant has a character trait of poor driving. Character evidence is not admissible in civil cases (Fed. R. Evid. 404(a)), and in any event character ordinarily may not be proved with evidence of specific acts of conduct (Fed. R. Evid. 405). Even without specific rules about character evidence, however, the evidence may be inadmissible because of Rule 403, discussed below.

Another example is the result of a polygraph test. Probably the result, if obtained by a reliable operator, has enough value to satisfy Rule 401's definition of relevance. Yet the jury might give the result undue weight or be confused, and the evidence attacking or supporting the validity of the test is likely to be lengthy and tangential. One would expect the result to be excluded under Fed. R. Evid. 403, which provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 403 is not the only rule designed to prevent the introduction of evidence that is prejudicial or a waste of time; it is merely the most general one. The Fed. R. Evid. also set forth specific rules for certain recurring situations in which the balance of probative value and prejudicial effect tips in favor of exclusion. *See, e.g.*, Fed. R. Evid. 404–405 (character evidence), Fed. R. Evid. 411 (evidence of liability insurance). For purposes of this exercise, you need not become acquainted with any of the relevance rules except Rules 401, 402, and 403. If you think that evidence ought to be excluded under Rule 403 in the computer exercise, say so. If you are right and there is also a more specific rule excluding the evidence, then the computer will tell you (Park & McFarland, 2011).

Maintained in a "Chain of Custody"

Based on Ashcroft, Daniels, & Hart, (2004) in the National Institute of Justice report, the Chain of Custody form document contains a history or chronology of the journey of evidence containing complete information such as subjects / objects involved in collection and analysis activities, date / time and place collection and analysis, full names and nicknames of victims and perpetrators, agency names and full description of evidence. There are 4 things that must be considered in handling Chain of Custody (Widatama, et al., 2018), namely: Flexibility and capability in the chain of custody documentation, Interoperability between evidence obtained with the chain of custody, Security in the chain of custody documentation, Chain making of custody must be understood by everyone, especially when the case is brought to court.

WARRANTLESS SEARCHES

According to *US Criminal Law: Search and seizure without a warrant* (2018), there are several categories of lawful searches that do not require a search warrant. The following are the most common exceptions to the search warrant requirement.

Consent

The simplest and most common type of warrantless searches are searches based upon consent. No warrant or probable cause is required to perform a search if a person with the proper authority consents to a search. A consent search requires the person being searched to freely and voluntarily waive their Fourth Amendment rights, granting the officer permission to perform the search.

The person has the right to refuse to give consent and except in limited cases may revoke consent at any point during the search. In Schneckloth v. Bustamante the U.S. Supreme Court found that officers were not required to warn people of their right to withhold consent in order for consent to be valid. However, the prosecution is required to prove that the consent was voluntary and not a result of coercion.

Officers are not required to conduct a search in a way that gives the individual an opportunity to revoke consent. In United States v. Dominguez, the court rejected the idea that, "officials must conduct all searches in plain view of the suspect, and in a manner slowly enough that he may withdraw or delimit his consent at any time during the search."

Vehicle Exception

The motor vehicle exception was first established by the United States Supreme Court in Carroll v. United States. The motor vehicle exception allows an officer to search a vehicle without a warrant as long as he has probable cause to believe that evidence or contraband is located in the vehicle.

The motor vehicle exception is based on the idea of a lower expectation of privacy in motor vehicles due to the regulations they are under. Additionally, the ease of mobility creates an inherent exigency. In Pennsylvania v. Labron the U.S. Supreme Court, stated, "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."

The scope of the search is limited to only what area the officer has probable cause to search. This area can encompass the entire vehicle including the trunk. The motor vehicle exception in addition to allowing officers to search the vehicle also allows officers to search any containers found inside the vehicle that could contain the evidence or contraband being searched for. The objects searched do not need to belong to the owner of the vehicle. In Wyoming v. Houghton, the U.S. Supreme Court ruled that the ownership of objects searched in the vehicle is irrelevant to the legitimacy of the search.

In United States v. Ludwig, The Tenth Circuit Court of Appeals found that a search warrant is not required even if there is little or no risk of the vehicle being driven off. The court stated, "[i]f police have probable cause to search a car, they need not get a search warrant first even if they have time and opportunity." In United States v. Johns, the U.S. Supreme Court upheld a search of a vehicle that had been seized and was in police custody for three days prior to the search.

The court stated, “A vehicle lawfully in police custody may be searched on the basis of probable cause to believe it contains contraband, and there is no requirement of exigent circumstances to justify such a warrantless search.”

The motor vehicle exception does not only apply to automobiles. The U.S. Supreme Court in California v. Carney found the motor vehicle exception to apply to a motor home. The court did however, make a distinction between readily mobile motor homes and parked mobile homes. A number of factors including, the home being elevated on blocks, whether the vehicle is licensed, and if it is connected to utilities determine if the motor vehicle exception applies. In United States v. Johns, the motor vehicle exception was applied to trucks. In United States v. Forrest, it was applied to trailers pulled by trucks. United States v. Forrest applied the exception to boats and in United States v. Hill to house boats. In United States v. Nigro and United States v. Montgomery the motor vehicle exception was found to also include airplanes.

Exigent Circumstances

The emergency exception allows officers to enter and search a residence in certain circumstances when these circumstances prevent them from obtaining a search warrant or consent. In Minnesota v. Olsen, preventing escape was found to be a valid emergency circumstance, In United States v. Santana, the court found that preventing the destruction of evidence and the hot pursuit of a criminal suspect, to also be valid reasons to conduct an emergency search. The right to perform legal warrantless searches to prevent harm to the officers or others was established in Warden v. Hayden. Thompson v. Louisiana and Mincey v. Arizona established the right for an officer to enter and search a residence in order to render immediate aid to a person in need of assistance.

Permitting officers to enter a residence to render immediate aid was upheld by the U.S. Supreme Court with the comment, “numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.” A “warrantless entry by criminal enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant.” The reason given for allowing these entries is that the police are acting to assist the person in need rather than make an arrest or collect evidence.

In order for the warrantless, consent less, entry and search to be legal, the officer must “reasonably believe” an emergency situation requiring immediate police intervention exists. The courts have often interpreted this to mean the officer must have probable cause. In Kerman v. City of New York, the court found “probable cause for a forced entry in response to exigent circumstances requires finding a probability that a person is in ‘danger.’”
The courts commonly apply a test known as the Mitchell Test in determining if an emergency search was valid. This test requires the officer to have had “reasonable grounds to believe” that there was an emergency and an immediate need for police assistance, the search was not motivated primarily by an intent to arrest or seize evidence and there must have been a

“reasonable basis approximating probable cause” to believe the area searched was associated with the emergency.

Emergency searches must be limited to searches for and to aid the injured. Officers may however, seize items in plain view during a lawful emergency search.

The most common emergency searches are as a result of a 911 call. Many of these calls are anonymous. In most cases the courts have found police response to anonymous calls to be unlawful unless additionally corroborating information is available. This information can include officer observations, such as sounds of violence, fighting, gun shots or cries for help.

An example of this can be found in Ohio v. Applegate. Officers were sent to the Applegate's home after receiving an anonymous call reporting domestic violence. The officers heard yelling, arguing and sounds of furniture being turned over. The officers entered the house and arrested the defendant. The court found “the movements of the officers were conservative, prudent, and reasonable.”

Courts generally only except “immediate” emergency searches to be valid. However, a few exceptions do exist. In State v. Kraimer, it was established that a reasonable delay to investigate, and corroborate an anonymous call does not invalidate the application of the emergency exception. Kraimer made three calls to a confidential police helpline stating that “he had shot and believed he had killed his wife 4 days earlier; that his wife’s body was in an upstairs bedroom near a bathroom; and that he had his four children, at home with him, who ranged in age from a 12-year-old male to a 2-year-old female.” Police attempted to locate the caller by checking school absences for children of matching ages. Police identified three families with matching absences. After checking the other two families, police arrived at Kraimer's house approximately four hours after the first call had been received. Neighbors told the police that they had seen the children playing in the yard, conflicting with the explanation of a vacation Kraimer had given the school. The officers called for backup and after a brief delay entered the house and found body of the Kraimer’s wife and other evidence. The court ruled the entry and search to be lawful and all evidence found to be admissible. The delay of the several hours while searching for the caller, did not eliminate the belief an emergency existed, nor did the wait for backup officers as it was a “reasonable precautionary measure.” Additionally, the court found the police are not required to accept a layperson's belief that a person is already dead.

Search Incident to Arrest

An exception to the warrant requirement is searches incident to a lawful arrest. This is also known as the Chimel Rule after the case that established it, Chimel v. California. This rule permits an officer to perform a warrantless search during or immediately after a lawful arrest. This search is limited to only the person arrested and the area immediately surrounding the person in which the person may gain possession of a weapon or destroy or hide evidence

Plain View

The plain view doctrine allows an officer to seize without a warrant, evidence and contraband found in plain view during a lawful observation. In order for the officer to seize the item, the officer must have probable cause to believe the item is evidence of a crime or is contraband. The police may not move objects to get a better view. In Arizona v. Hicks, the officer was found to have acted unlawfully. While investigating a shooting, the officer moved, without probable cause, stereo equipment to record the serial numbers. The plain view doctrine has also been expanded to include the sub doctrines of plain feel, plain smell, and plain hearing. In Horton v. California, the court eliminated the requirement that the discovery of evidence in plain view be inadvertent. Previously, "inadvertent discovery" was required leading to difficulties in defining "inadvertent discovery". A three-prong test is now used. The test requires the officer to be “engaged in lawful activity at the time”; “the object’s incriminating character was immediately apparent and not concealed”, and “the officer had lawful access to the object and it was discovered accidentally.”

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CHAPTER 5 – THE EXCLUSIONARY RULE, MIRANDA, AND THE BILL OF RIGHTS

THE EXCLUSIONARY RULE

The exclusionary rule is a legal principle in the United States holding that evidence collected or analyzed in violation of the defendant's constitutional rights is sometimes inadmissible for criminal prosecution (Boundless, The Exclusionary Rule). This may be considered an example of a prophylactic rule formulated by the judiciary in order to protect a constitutional right. However, in some circumstances, the exclusionary rule may also be considered to follow directly from the constitutional language. For example, the Fifth Amendment's command that no person "shall be deprived of life, liberty or property without due process of law (para. 3). "

The exclusionary rule is grounded in the Fourth Amendment and is intended to protect citizens from illegal searches and seizures. The exclusionary rule is also designed to provide disincentive to prosecutors and police who illegally gather evidence in violation of the Fifth Amendment of the Bill of Rights. The exclusionary rule furthermore applies to violations of the Sixth Amendment, which guarantees the right to counsel.

Most states have their own exclusionary remedies for illegally obtained evidence under their state constitutions and/or statutes. This rule is occasionally referred to as a legal technicality because it allows defendants a defense that does not address whether the crime was actually committed. In this respect, it is similar to the explicit rule in the Fifth Amendment protecting people from double jeopardy. In strict cases, when an illegal action is used by police/prosecution to gain any incriminating result, all evidence whose recovery stemmed from the illegal action can be thrown out from a jury.

The exclusionary rule applies to all persons within the United States regardless of whether they are citizens, immigrants (legal or illegal), or visitors.

Limitations of the Rule

The exclusionary rule was passed in 1917, and does not apply in a civil case, a grand jury proceeding, or a parole revocation hearing.

Even in a criminal case, the exclusionary rule does not simply bar the introduction of all evidence obtained in violation of the Fourth, Fifth, or Sixth Amendments.

The exclusionary rule is not applicable to aliens residing outside of U.S. borders. In United States v. Alvarez-Machain, 504 U.S. 655, the Supreme Court decided that property owned by aliens in a foreign country is admissible in court. Prisoners, probationers, parolees and persons

crossing U.S. borders are among those receiving limited protections. Corporations, by virtue of being, also have limited rights under the Fourth Amendment.

Criticism of the Rule

The exclusionary rule as it has developed in the U.S. has been long criticized, even by respected jurists and commentators. Judge Benjamin Cardozo, generally considered one of the most influential American jurists, was strongly opposed to the rule, stating that under the rule, "The criminal is to go free because the constable has blundered (Boundless, The Exclusionary Rule, para. 8)."

THE MIRANDA RIGHTS

The Miranda warning (also referred to as Miranda rights) is a warning given by police in the United States to criminal suspects in police custody (or in a custodial interrogation) before they are interrogated to preserve the admissibility of their statements against them in criminal proceedings (Boundless, The Miranda Warning).

In other words, a Miranda warning is a preventive criminal procedure rule that law enforcement is required to administer to protect an individual who is in custody and subject to direct questioning or its functional equivalent from a violation of his or her Fifth Amendment right against compelled self-incrimination. In Miranda v. Arizona, the Supreme Court held that the admission of an elicited incriminating statement by a suspect not informed of these rights violates the Fifth and the Sixth Amendment right to counsel.

Mirada refers to Ernesto Miranda. In 1963 Miranda was arrested in Phoenix and charged with rape, kidnapping, and robbery. Miranda was not informed of his rights prior to the police interrogation. During the two-hour interrogation, Miranda allegedly confessed to committing the crimes, which the police apparently recorded. Miranda, who had not finished ninth grade and had a history of mental instability, had no counsel present. At trial, the prosecution's case consisted solely of his confession. Miranda was convicted of both rape and kidnapping and sentenced to 20 to 30 years in prison. Miranda appealed to the U.S. Supreme Court and won his case. The Supreme Court devised a statement that must be read to those who are arrested.

Thus, in theory, if law enforcement officials decline to offer a Miranda warning to an individual in their custody, they may still interrogate that person and act upon the knowledge gained, but may not use that person's statements to incriminate him or her in a criminal trial. However, in the pragmatic interactions between police and citizens, this is rarely true. In Berghuis v. Thompkins, the court held that unless a suspect actually states that he is relying on this right, his subsequent voluntary statements can be used in court and police can continue to interact with or question him.

The Miranda rule applies to the use of testimonial evidence in criminal proceedings that is the product of custodial police interrogation. The Miranda right to counsel and right to remain silent are derived from the self-incrimination clause of the Fifth Amendment.

It is important to note that immigrants who live in the United States illegally are also protected and should receive their Miranda warnings as well when being interrogated or placed under arrest. Aliens receive constitutional protections when they have come within the territory of the United States and have developed substantial connections with this country.

Assertion of Miranda Rights

If the defendant asserts his right to remain silent all interrogation must immediately stop and the police may not resume the interrogation unless the police have "scrupulously honored" the defendant's assertion and obtain a valid waiver before resuming the interrogation. In determining whether the police "scrupulously honored" the assertion the courts apply a totality of the circumstances test. The most important factors are the length of time between the termination of the original interrogation and commencement of the second and a fresh set of Miranda warnings before resumption of interrogation.

The consequences of assertion of Fifth Amendment right to counsel are stricter. The police must immediately cease all interrogation and the police cannot reinitiate interrogation unless counsel is present (merely consulting with counsel is insufficient) or the defendant contacts the police on his own volition. If the defendant does reinitiate contact, a valid waiver must be obtained before interrogation may resume.

In Berghuis v. Thompkins, the Court ruled that a suspect must clearly and unambiguously assert right to silence. Merely remaining silent in face of protracted questioning is insufficient to assert the right.

Exceptions of Miranda Rights

The Miranda rule would apply unless the prosecution can establish that the statement falls within an exception to the Miranda rule. The three exceptions are (1) the routine booking question exception (2) the jailhouse informant exception and (3) the public safety exception. Arguably only the last is a true exception–the first two can better be viewed as consistent with the Miranda factors. For example, questions that are routinely asked as part of the administrative process of arrest and custodial commitment are not considered "interrogation" under Miranda because they are not intended or likely to produce incriminating responses. Nonetheless, all three circumstances are treated as exceptions to the rule (Boundless, The Miranda Warning).

THE BILL OF RIGHTS

Many of the aspects of our nation's laws and criminal justice systems have been molded by the United States' founding documents. The foundation of civil liberties is the Bill of Rights, the ten amendments added to the Constitution in 1791 to restrict what the national government may do (Lumen).

The state conventions that ratified the Constitution obtained promises that the new Congress would consider adding a Bill of Rights. James Madison—the key figure in the Constitutional Convention and an exponent of the Constitution's logic in the Federalist papers—was elected to the first House of Representatives. Keeping a campaign promise, he surveyed suggestions from state-ratifying conventions and zeroed in on those most often recommended. He wrote the amendments not just as goals to pursue but as commands telling the national government what it must do or what it cannot do. Congress passed twelve amendments, but the Bill of Rights shrank to ten when the first two (concerning congressional apportionment and pay) were not ratified by the necessary nine states.

The first eight amendments that were adopted address particular rights. The Ninth Amendment addressed the concern that listing some rights might undercut unspoken natural rights that preceded government. It states that the Bill of Rights does not "deny or disparage others retained by the people." This allows for unnamed rights, such as the right to travel between states, to be recognized. We discussed the Tenth Amendment in module 2, as it has more to do with states' rights than individual rights.

The Rights

Even before the addition of the Bill of Rights, the Constitution did not ignore civil liberties entirely. It states that Congress cannot restrict one's right to request a writ of habeas corpus giving the reasons for one's arrest. It bars Congress and the states from enacting bills of attainder (laws punishing a named person without trial) or ex post facto laws (laws retrospectively making actions illegal). It specifies that persons accused by the national government of a crime have a right to trial by jury in the state where the offense is alleged to have occurred and that national and state officials cannot be subjected to a "religious test," such as swearing allegiance to a particular denomination.

The Bill of Rights contains the bulk of civil liberties. Unlike the Constitution, with its emphasis on powers and structures, the Bill of Rights speaks of "the people," and it outlines the rights that are central to individual freedom.

The main amendments fall into several broad categories of protection, as follow:

1. Freedom of expression (I)
2. The right to "keep and bear arms" (II)
3. The protection of person and property (III, IV, V)

4. The right not to be "deprived of life, liberty, or property, without due process of law" (V)
5. The rights of the accused (V, VI, VII)
6. Assurances that the punishment fits the crime (VIII)
7. The right to privacy implicit in the Bill of Rights

The Bill of Rights and the States

Later we discuss the Fourteenth Amendment, added to the Constitution in 1868, and how its due process clause, which bars *states* from depriving persons of "life, liberty, or property, without due process of law," is the basis of civil rights. The Fourteenth Amendment is crucial to civil liberties, too. The Bill of Rights restricts only the *national* government; the Fourteenth Amendment allows the Supreme Court to extend the Bill of Rights to the states.

The Supreme Court exercised its new power gradually. The Court followed selective incorporation: for the Bill of Rights to extend to the states, the justices had to find that the state law violated a principle of liberty and justice that is fundamental to the inalienable rights of a citizen. Table 1, "The Supreme Court's Extension of the Bill of Rights to the States," below, shows the years when many protections of the Bill of Rights were applied by the Supreme Court to the states; some have never been extended at all (Lumen).

Table 5.1 The Supreme Court's Extension of the Bill of Rights to the States

Date	Amendment	Right	Case
1897	Fifth	Just compensation for eminent domain	*Chicago, Burlington & Quincy Railroad v. City of Chicago*
1925	First	Freedom of speech	*Gitlow v. New York*
1931	First	Freedom of the press	*Near v. Minnesota*
1932	Fifth	Right to counsel	*Powell v. Alabama (capital cases)*

Date	Amendment	Right	Case
1937	First	Freedom of assembly	*De Jonge v. Oregon*
1940	First	Free exercise of religion	*Cantwell v. Connecticut*
1947	First	Non-establishment of religion	*Everson v. Board of Education*
1948	Sixth	Right to public trial	*In Re Oliver*
1949	Fourth	No unreasonable searches and seizures	*Wolf v. Colorado*
1958	First	Freedom of association	*NAACP v. Alabama*
1961	Fourth	Exclusionary rule excluding evidence obtained in violation of the amendment	*Mapp v. Ohio*
1962	Eighth	No cruel and unusual punishment	*Robinson v. California*
1963	First	Right to petition government	*NAACP v. Button*
1963	Fifth	Right to counsel (felony cases)	*Gideon v. Wainwright*

1964	Fifth	Immunity from selfincrimination	*Mallory v. Hogan*
1965	Sixth	Right to confront witnesses	*Pointer v. Texas*
1965	Fifth, Ninth, and others	Right to privacy	*Griswold v. Connecticut*
Date	**Amendment**	**Right**	**Case**
1966	Sixth	Right to an impartial jury	*Parker v. Gladden*
1967	Sixth	Right to a speedy trial	*Klopfer v. N. Carolina*
1969	Fifth	Immunity from double jeopardy	*Benton v. Maryland*
1972	Sixth	Right to counsel (all crimes involving jail terms)	*Argersinger v. Hamlin*
2010	Second	Right to keep and bear arms	*McDonald v. Chicago*
Rights not extended to the states			
Third	No quartering of soldiers in private dwellings		
Fifth	Right to grand jury indictment		

Seventh	Right to jury trial in civil cases under common law
Eighth	No excessive bail
Eighth	No excessive fines

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CHAPTER 6 – THE OJ SIMPSON DOUBLE MURDER CASE

With no witnesses to the murders of Nicole Brown Simpson and Ron Goldman, **DNA evidence in the O. J. Simpson murder case** was the key physical proof used by the prosecution to link O. J. Simpson to the crime.

Over nine weeks of testimony, 108 exhibits of DNA evidence, including 61 drops of blood, were presented at trial. Testing was cross-referenced and validated at three separate labs using different tests with no discrepancies found. The prosecution offered the defense access to the evidence samples to conduct their own testing, but they declined.

The defense summarized their reasonable doubt theory as "compromised, contaminated, corrupted." They argued that, during the collection phase of evidence-gathering, the evidence was compromised by mishandling and 100% of the DNA of the real killer was lost; and then contaminated during the processing phase, with Simpson's preserved DNA being transferred to all but three exhibits. They alleged that the remaining three were corrupted as the police planted that blood evidence.

Due to its abundance and exhaustive validation, the prosecution considered the DNA evidence infallible. However, at this time the public was unfamiliar with the precision and significance of DNA matching, and the prosecution struggled to get the jury to appreciate this. The defense, on the other hand, had to change strategies after neither of their forensic DNA experts would support their theory. The new strategy, according to defense attorney Alan Dershowitz, intended to elicit a cherry-picking response from the jury whereby they would discard all of the "mountain" of DNA evidence against Simpson if they could show "a few of the hills" were corrupted by police fraud resulting in a jury nullification for the murders via an error of impunity. Although three exhibits were allegedly planted, by his closing arguments, lead defense attorney Johnnie Cochran had focused on a single exhibit: the bloody glove found by detective Mark Fuhrman at Simpson's Rockingham home.

After his acquittal, all of the DNA experts returned to testify in the wrongful death civil trial.

"Compromised, Contaminated, Corrupted"

The defense stated the DNA evidence against Simpson was not reliable. They said the police compromised the evidence by committing several mistakes when collecting it including occasionally not changing gloves between evidence items, using one swatch to collect blood from three drops of blood on the bronco dashboard, packaging the swatches of blood evidence using plastic bags, not paper bags as recommended, and storing them in a police van for up to seven hours unrefrigerated. This resulted in 100% of the "real killers" DNA being lost. They argued that Simpson's blood found on the evidence samples resulted from contamination in

the LAPD crime lab with the reference blood in all but three exhibits. The remaining three exhibits that could not be explained by contamination were planted by the police. Although evidence of mistakes made during collection were shown at trial, no evidence of their contamination or corruption claim was presented.

The contamination claim was dependent on all the blood in the case being 100% degraded and the real killer's DNA lost. If that did not happen, contamination would only produce a mixture of Simpsons DNA and the killers. The contamination claim likewise would spread EDTA to the evidence samples which could be tested for as it was a preservative found in the reference vials of Simpson and the two victims. The contamination claim was also limited to just the LAPD crime lab as it was not alleged at the two consulting labs, the state department and Cellmarks diagnostics, were most of the DNA testing was done. The defense also declined to test the samples themselves for the “real killers” DNA or for EDTA.

Once the prosecution began showing evidence the samples were not completely degraded and no EDTA was found in levels seen from the reference vials, the defenses reasonable doubt theory became increasingly more dependent on the claim the evidence was corrupted by a police conspiracy to frame Simpson. The predominately African American jury was receptive to it.

Police conspiracy allegations

The defense conspiracy allegation of planted evidence primarily focused on three exhibits initially: the blood on the Bundy back gate, the blood on the sock from Simpson's bedroom and the glove found at his Rockingham estate. However, by the end of the trial the defense would eventually claim that virtually all of the blood evidence was planted by the police, including:

- the blood drops found next to the bloody footprints (match Simpson)
- the trail leading away from the victims (match Simpson)
- the blood on the back gate at Nicole Brown's home (match Simpson)
- the blood inside and outside Simpson's Bronco (matched Simpson and both victims)
- the glove found at Simpson's residence at Rockingham (match Simpson and both victims)
- the blood inside and outside of his home on Rockingham (match Simpson)
- the blood on the socks in his bedroom (match Simpson and Nicole Brown).

Bundy back gate

The defense claimed that one drop of blood on the back gate at Nicole Brown's Bundy Drive home was planted by the police. As evidence, they offered the blood contained EDTA, a

preservative found in purple top tubes used for blood draws, it was collected several weeks later on July 3, rather than on June 13, and 1.5 mL of Simpsons donated reference blood was unaccounted for. The officer who planted it was not named by the defense. The prosecution countered that the EDTA levels found in the blood was consistent with that found normally in unpreserved blood and not even close to the levels found in blood preserved in a purple top tube. A different photograph of the gate on June 13 shows the blood was already there and the claim of some of Simpson's reference blood missing from the vial was refuted during rebuttal by the nurse who drew it who clarified he believes he only drew the amount the records show was used for testing.

The sock

The defense claimed that blood found on a sock in Simpson's bed was planted there by Detective Vannatter. As evidence, they offered that Vannatter did have possession of Nicole Brown's autopsy blood briefly prior to booking it into evidence and the blood contained EDTA, a preservative found in the reference vial of Nicole Brown autopsy blood. The claim was refuted by the defense's own witness, FBI special agent Roger Martz who showed the level of EDTA in that blood drop is consistent with unpreserved blood and not even close to the levels that would be seen in blood from a purple top tube. The prosecution also countered that no blood was ever claimed to be missing from Nicole Brown's reference vial and that the records show Detective Vannatter booked the reference vials from the victims immediately into evidence right after receiving it from Deputy Medical Examiner Dr. Irwin Golden. Dr. Cotton conclusively refuted that claim by showing the blood in the reference vial is substantially more degraded than the blood on the sock, proving it did not come from that vial.

Rockingham glove

The defense claimed that the bloody glove found at Simpson's Rockingham estate was planted by Detective Mark Fuhrman who said he found it there. No physical or eyewitness evidence ever surfaced supporting that claim. The only reason given at trial for believing that it was planted was of Fuhrman having perjured himself when claiming he had never used the word "nigger" in the last ten years.

The glove contained DNA from Simpson and both victims, and since the blood did not contain EDTA, the possibility of it coming from the reference vials was ruled out. Thus, if Fuhrman planted the glove at Rockingham from the crime scene, Simpson's blood would have to have been at the crime scene, contradicting his claim of being home on the night of the murders. Fuhrman's DNA was also not found on the glove, thus supporting his claim that he did not plant it. The prosecution argued that Fuhrman did not plant the glove because he did not know if Simpson had an airtight alibi that night. LA County Deputy District Attorney Vincent Bugliosi concurred with the prosecutor's argument, noting as well that Fuhrman did not know whose blood was on it at the time either.

Acquittal and aftermath

All of the jurors were initially confident in their reasonable doubt about the DNA evidence. All maintain they understood the DNA evidence presented at trial and defended their decision in books and interviews. However, their confidence began eroding following events subsequent to the trial and acquittal of O. J. Simpson.

Civil Trial

A separate jury found Simpson to be liable for the murders in a civil trial one year after being acquitted in the criminal trial. Though civil liability has a lower burden of proof than guilty beyond a reasonable doubt, it is very rare for someone to be found liable for a crime after being acquitted for committing the crime (Turkcewiki.org).

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CHAPTER 7 – CRIME SCENE MANAGEMENT

According to Gehl and Plecas (2017) crime scene management skills are an extremely significant task component of investigation because evidence that originates at the crime scene will provide a picture of events for the court to consider in its deliberations. That picture will be composed of witness testimony, crime scene photographs, physical exhibits, and the analysis of those exhibits, along with the analysis of the crime scene itself.

PROCESSING THE CRIME SCENE

From this chapter, you will learn the task processes and protocols for several important issues in crime scene management. These include: Locking down the crime scene, setting up crime scene perimeters, protecting the evidence from contamination, creating the crime scene diagram and establishing crime scene security.

Locking Down the Crime Scene

Very often, when the change to strategic investigative response is recognized, first responders and witnesses, victims, or the arrested suspect may still be inside the crime scene at the conclusion of the active event. All these people have been involved in activities at the crime scene up to this point in time, and those activities could have contaminated the crime scene in various ways. Locking down the crime scene means that all ongoing activities inside the crime scene must stop, and everyone must leave the crime scene to a location some distance from the crime scene area. Once everyone has been removed from the crime scene, a physical barrier, usually police tape, is placed around the outside edges of the crime scene. Defining of the edges of the crime scene with tape is known as establishing a *crime scene perimeter*. This process of isolating the crime scene inside a perimeter is known as locking down the crime scene.

The Crime Scene Perimeter

The crime scene perimeter defines the size of the crime scene, and it is up to the investigator to decide how big the crime scene needs to be. The size of a crime scene is usually defined by the area where the criminal acts have taken place. This includes all areas where the suspect has had any interaction or activity within that scene, including points of entry and points of exit. The perimeter is also defined by areas where the interaction between the suspect and a victim took place. In some cases, where there is extended interaction between a suspect and a victim over time and that activity has happened over a distance or in several areas, the investigator may need to identify one large crime scene, or several smaller crime scene areas to set crime scene perimeters. Considering the three stages of originating evidence, an investigator may find that

pre-crime or post-crime activity requires the crime scene perimeter to surround a larger area, or there maybe even be an additional separate crime scene that needs to be considered.
For some crime scenes where there are natural barriers, such as buildings with doorways, it is easy to create a crime scene perimeter defining access. This becomes more complicated in outdoor venues or large indoor public venues, where fencing and barricades may be needed along with tape markers to define the perimeters.

Once the crime scene perimeter has been established and lock down has taken place, it becomes necessary to ensure that no unauthorized persons cross that perimeter. Typically, and ideally, there will only be one controlled access point to the crime scene, and that point will be at the entry point for the *path of contamination*.

Protecting Evidence from Contamination

It is not possible to eliminate all potential contamination of a crime scene. We can only control and record ongoing contamination with a goal to avoid damaging the forensic integrity of the crime scene and the exhibits. Once a crime scene has been cleared of victims, witnesses, suspects, first responders, and investigators, it is necessary to record, in notes or a statement from each person, what contamination they have caused to the scene. The information being gathered will document what evidence has been moved, what evidence has been handled, and by whom. With this information, the investigator can establish a baseline or status of existing contamination in the crime scene. If something has been moved or handled in a manner that has contaminated that item before the lock down, it may still be possible to get an acceptable analysis of that item if the contamination can be explained and quantified.

As an example, sometimes in cases of serious assaults or even murders, paramedics have been present at the scene treating injured persons. When this treatment is happening, non-suspect related DNA transfer between persons and exhibits can occur. Determining those possibilities is one of the first steps in establishing the level of existing contamination at the time of lock down.

With everyone now outside the crime scene and the perimeter locked down, the next step is to establish a designated pathway where authorized personnel can re-enter the crime scene to conduct their investigative duties. This pathway is known as a *path of contamination* and it is established by the first investigator to re-enter the crime scene after it has been locked down. Prior to re-entering, this first investigator will take a photograph showing the proposed area where the path of contamination will extend, and then, dressed in the sterile crime scene apparel, the investigator will enter and mark the floor with tape to designate the pathway that others must follow. In creating this pathway, the first investigator will avoid placing the pathway in a location where it will interfere with apparently existing evidence and will place it only where it is required to gain a physical view of the entire crime scene. As other investigators and forensic specialists enter the crime scene to perform their duties, they will stay within the path of contamination and, when they leave the path to perform a specific duty of investigation or examination, they will record their departure from the path and will be prepared to demonstrate

their departure from the pathway and explain any new contamination caused by them, such as dusting for fingerprints or taking exhibits.

Crime Scene Security

At the same time the crime scene is being defined with perimeter tape, it is also necessary to establish a security system that will ensure that no unauthorized person(s) enters the crime scene and causes contamination. For this purpose, a crime scene security officer is assigned to regulate the coming and going of persons from that crime scene. For the assigned security officer, this becomes a dedicated duty of guarding the crime scene and only allowing access to persons who have authorized investigative duties inside the crime scene. These persons might include:

- Forensic specialists
- Search team members
- Assigned investigators, and/or
- The coroner in the case of a sudden death investigation

To maintain a record of everyone coming and going from the crime scene, a document, known as a "Crime Scene Security Log," is established, and each authorized person is signed in as they enter and signed out as they depart the scene with a short note stating the reason for their entry. Any unauthorized person who enters or attempts to enter a crime scene should be challenged by the crime scene security officer, and, if that person refuses to leave, they can be arrested, removed from the scene, and charged for
obstructing a police officer. The assigned security officer is responsible for creating and maintaining the Crime Security Log, which can take various forms. In short term, small scale investigations, it may only require a single page in the security officer's note book; however, in a large scale, long term investigation, the log could include volumes of pages under the care of several assigned security officers working in shifts. Whatever the scale or format, the security log records who attended the scene, when they attended, why they were there, and when they left the scene. An example of a crime scene security log is shown in the following example (Gehl and Plecas, 2017).

Creating a Field Sketch and Crime Scene Diagram

According to Gehl and Plecas (2017), the next step is to document the crime scene as either a field sketch or a crime scene diagram. Either of these can be done to illustrate the physical dimensions and notable characteristics of the crime scene.

The difference between the Field Sketch and the Crime Scene Diagram is that the sketch, as implied by the name, is a quick rough depiction of the event. The field sketch, like notes in an investigator's notebook, serves as a memory aid. The crime scene diagram is a more formal representation of the same information, but is composed to scale using the assistance of the

field sketch and measurements. In either of these drawings of the crime scene similar core information will be represented.

- If it is a building, it will show the address of the location, entries, exits, windows, the position of rooms, the position of furniture, and the location of all exhibits relative to the crime.
- In an outdoor crime scene, establishing and documenting the location of the scene becomes more complex. The geographic location of an outdoor scene needs to be established relative to some known geographic location, such as a roadway intersection, a mile-marker, or even by way of fixing of GPS coordinates of latitude and longitude to a permanent fixed object at the crime scene. In some cases, such as a large open field, where no permanent fixed objects are available, it may become necessary to place a fixed object like a steel survey pin to mark a fixed point at the crime scene.
- After the initial diagram features are completed and evidence is collected within the crime scene, each of those exhibits will be shown on the diagram with an exhibit number. That number will be cross referenced to the exhibit log that will be completed by an assigned exhibit custodian as part of the crime scene management team. This process of showing each exhibit as a number eliminates the need to clutter the diagram with written description of each exhibit found. In some cases, where there are many exhibits, writing the description of each exhibit onto the diagram would make it unreadable, cluttered, and confusing.
- In addition to existing features and evidence at the crime scene, the diagram will also show the location of the path of contamination that has been established and the external perimeter of the crime scene.
- As part of accepted protocols, these diagrams are always drawn with an orientation to North at the top of the diagram, and all writing on the diagram is oriented in one direction, namely east to west

THREE STAGES OF CRIME

These three stages of crime can also mean there could be other locations outside the immediately crime scene area where criminal activities might have also taken place and evidence might be found. The point to remember about the originating stages of evidence is that each of these stages provides possibilities for collecting evidence that could connect the suspect to the crime. When considering theory development or making an investigative plan, each of these stages of the criminal event should be considered.

1. **The Pre-Crime Stage** occurs when evidence of preparation or planning can be found during the investigation. It can include notes, research, drawings, crime supplies or pre-crime

contact with the victim or accomplices. Sometimes items of pre-crime origin, such as hair and fiber, will be later discovered at the crime scene creating an opportunity to link the suspect back to the crime.

2. **The Criminal Event Stage** is when the most interaction takes place between the criminal and the victim, or the criminal and the crime scene. During these interactions, the best possibilities for evidence transfer occur. Even the most careful criminals have been known to leave behind some trace of their identity in the form of fingerprints, shoe prints, glove prints, tire marks, tool impressions, shell casings, hair or fiber, or DNA.
3. **The Post-Crime Stage** occurs when the suspect is departing the crime scene. When leaving the crime scene, suspects have been known to cast off items of evidence that can be recovered and examined to establish their identity. This post-crime period is also the stage where the suspect becomes concerned with cleaning up the scene. As much as a suspect may attempt to clean up, evidence transfers from the crime scene are often overlooked. These can range from hair and fiber on clothing to shards of glass on shoes. Frequently found post-crime are proceeds of the crime. These are often identifiable articles of stolen property with unique marks, victim DNA, serial numbers, or sometimes even trophies that the criminal takes as a keepsake (Gehl and Plecas, 2017).

CHAPTER SOURCES

CHAPTER 8 – CRIMINAL PROFILING AND SERIAL KILLERS

CRIMINAL/PSYCHOLOGICAL PROFILING

Criminal profiling according to Muller (2000) "is the process of using available information about a crime and crime scene to compose a psychological portrait of the unknown perpetrator of the crime" (as cited in Bartol & Bartol, p.56). Criminal profiling in this fashion is instrumental providing investigators with a psychological evaluation of relevant information of offender and his/her possessions and the technique for interviews (Bartol & Bartol, 2008). Additionally, the information from a crime scene of an unsolved homicide may offer legitimate information for the investigator; however not all offenses are appropriate for criminal profiling. Crime Scene Analysis (CSA) probably the most romanticized by the media is the most popular (Bartol & Bartol, 2008).

As asserted by Ressler, Burgess & Douglas (1988) CSA "Criminal profiling is a six-stage process" (p.58). The stages: Profiling Inputs and concerns, collection of all information; Decision Process Model in which the information is analyzed; Crime Assessment or in this stage is the term, getting into the mind of the criminal; Constructing the Profile is performed in this stage consisting of age, characteristics of the offender, race general appearance of offender, relationship to victim and any other notable features; Investigation whereby the profiler submits a report to the agency; and finally Apprehension assuming the correct offender is caught (Ressler et al., as cited in Bartol & Bartol, p.58-59).

Is criminal profiling of use to the police profession or perhaps in diagnosis of perpetrators for rehabilitation purpose, the evidence provided is scant however it does indicate promise (Bartol & Bartol, 2008). CSA is more reliant upon experience and intuition. Criminal profiling will be tested longitudinally as evaluation of offenders prove positive and providing testing is best available with the IP as more empirical studies can make its claim (Bartol & Bartol, 2008). Criminal profiling as described thus far has been primarily reserved for serial killers.

Maillette et al. (2001) insist that "one instrument developed to measure specific aspects of criminal thinking regardless of offender type, is the Psychological Inventory of Criminal Thinking Styles (PICTS)" (p.105). The PICTS assesses eight thinking styles including: Mollification rationalization; Cutoff-rapid elimination of deterrents to crime; Entitlement-ownership or misidentification of wants and needs; Power Orientation-aggressive behavior; Sentimentality compensating for previous conduct; Super optimism-ego to maintain criminal life style; Cognitive Indolence-lazy thinking; and Discontinuity-little premeditation (Maillette et al., 2001).

The PICTS instrument is a better fit than is the CSA as the former removes more of the assumptions and speculation from offender behaviors. Again, as previously stated CSA is made for television and big screen as compared to the latter that is descriptive and is more open to other criminal conducts unlike CSA which is restrictive to serial killers (Bartol & Bartol, 2008).

Thus, is descriptive of other types of profiling and providing a segue to the next portion of this discussion.

The longevity of CSA or IP is essential in long term investigations; however currently are without empirical studies of any magnitude; yet PICTS provides evidence that certain characteristics may be tested. It is incumbent upon police leadership to provide training and education and ethics guiding the conduct of officers so that profiling is of the legitimate form (White, 2007).

Getting into the minds of the criminal has its place, especially in treatment of offenders but not in the fast pace of policing from the street level. Again, it has come a long way; demonstrating merit nonetheless has not passed the empirical research test to date (Bartol & Bartol, 2008). On the other hand, Terry type profiling has been in place for over forty years and remains solidly situated based on court fashioned reasoning.

There are two other forms of profiling offered which will receive no other attention than honorable mention in this discussion. These are Investigative Psychology (IP) and Diagnostic Evaluation (DE) and as pointed out by Bartol & Bartol (2008) “CSA does have the potential to be scientific with some work, but the main problem seems to be that it does not want to be scientific. Unlike, CSA, IP was designed from the beginning with science in mind…IP has a great deal of potential to become a science, but it still has a long way to go before it will be recognized as a discipline in itself” (p.62).

Serial Killers

For the purposes of the present study, the term 'serial killer' will only be used to refer to men who committed three or more sexual serial killings, separated by intervals of varying duration. There are other forms of serial killing, such as murders committed by health professionals (nurses, physicians) who poison patients in hospitals or even in their residences, or killings committed by women, in which there is often no sexual element. As previously stated, the present study addresses crimes committed by men who killed for sexual reasons. There are various biological, psychological, and sociological factors that are relevant in sexual serial killings.

With regard to personality characteristics, in a study carried out by Stone, 86.5% of the serial killers met the Hare criteria for psychopathy, and another 9% presented only a few psychopathic traits (not enough to be classified as psychopaths). A remarkable finding of that study was the fact that approximately half of the serial killers presented schizoid personality, as defined in the DSM-IV. Some schizoid traits were present in another 4% of the research subjects. Sadistic PD, as described in the appendix of the DSM-III-R, were present in 87.5% of the men and discrete traits were found in 1.5% of them (Stone, 2001).

Finally, that study showed great superposition between psychopathy and sadistic PD: 93% of the serial killers with psychopathy also presented sadistic disorder. Half of the psychopaths were schizoid. Almost half presented criteria for the three types of PD: psychopathic, schizoid, and sadistic.

Whereas the schizoid personality might reflect a hereditary disposition in many instances, the sadistic personality seems more likely to be the result of severe aggression in childhood (physical,

sexual, or verbal) that were neglected. Throughout the development of the individual, sadism frequently appears as an "antidote" against the experience of having been abused, and those who were victimized in the past become victimizers as adults.
However, there are some serial killers with decidedly sadistic tendencies who do not have a history of having suffered abuse in childhood. Their path to sadism is not clear, although it may be a combination of extreme narcissism and a cerebral configuration in which regions related to empathy are significantly deficient, and this would lead the killers to be totally indifferent to the suffering of their victims. Among the most sadistic serial killers, there are various who experienced great violence and humiliation at the hands of one or both parents (Glatt, 2002, Michaud, 1994) although there are also those who did not experience such violence (Lasseter, 2002).

According to Hazelwood and Michaud (2001), most serial killers present sexually sadistic behavior. Although taking pleasure in the suffering of another is a common and important ingredient in sexual sadism, the desire to dominate the other person and for the complete subjugation of that person to the wishes of the perpetrator are crucial ingredients for many sexual sadists. Various findings indicate that serial killers can present a variety of sexual perversions, including necrophilia and cannibalism.

With regard to the possibility of treatment, most serial killers prove to be psychopaths. Many deceive their would-be victims and lure them to areas where they (the victims) cannot resist. When these serial killers are arrested, they deceive penitentiary employees, as well as mental health professionals, making them think, after a certain period of time, that they now understand where they were wrong and are ready to be re-introduced into society. The decisions made by such authorities lead to grave errors that can cost the lives of new victims. The literature is full of such examples (Stone, 2006).

In addition to the explicit danger of releasing these men, who have already concretely committed sadistic sexual killings, back in the community, there is a need for additional caution in terms of considering public sentiment. Releasing murderers who present this degree of risk for committing further violent acts would rarely be tolerated by society. Once individuals have been proven to be serial killers and have been identified as incorrigible enemies of the people, their permanent exclusion from the community by means of imprisonment seems to be the only prudent alternative.

CASE STUDY: GARY RIDGEWAY

Gary Leon Ridgway (born February 18, 1949) is an American serial killer known as the **Green River Killer**, convicted of 48 separate murders and confessed to nearly double that number. As part of his plea bargain, another conviction was added, bringing the total number of convictions to 49, which made him the most prolific serial killer in United States history according to confirmed murders until 2017, when Samuel Little was confirmed to have committed 50 murders.

He murdered numerous women and girls, most of whom were also alleged prostitutes, in Washington during 1982-1998, but it is believed that the real span of killings of Gary Ridgway was 1970-2001 and its believe that he skilled more than 100 women or even more than 200 women,

earning his nickname when the first five victims were found in the Green River. He strangled them, usually with his arm but sometimes using ligatures. After strangling the women, he would dump their bodies throughout forested and overgrown areas in King County, often returning to the dead bodies to have sexual intercourse with them.

On November 30, 2001, as he was leaving the Renton, Washington Kenworth Truck factory where he worked, he was arrested for the murders of four women whose cases were linked to him through DNA evidence. As part of a plea bargain wherein he agreed to disclose the whereabouts of still-missing women, he was spared the death penalty and received 49 life sentences - one for each of his victims - plus an additional 480 years for evidence tampering in each murder case, all with no possibility of parole. He is currently serving his sentences at Washington State Penitentiary in Walla Walla, Washington.

He was caught after Ted Bundy provided advice to catch the killer where he was dumping the bodies.

Ridgway grew up in what became SeaTac, Washington. After graduating from high school in 1969—at the age of 20—he served a two-year stint in the U.S. Navy and later settled in the Seattle area, where he worked as a truck painter. Over the next 30 years, he married three times and had a son.

In 1980 Ridgway was arrested for allegedly choking a prostitute, but no charges were filed after he claimed that the woman had bit him. Two years later he was arrested for solicitation. Ridgway was believed to have begun his killing spree shortly thereafter. His first victim was thought to have been a 16-year-old girl who went missing after leaving her foster home in July 1982. Her body was found a week later, in the Green River. Over the next two years, Ridgway raped and killed more than 40 women, many of whom were prostitutes or runaways. A number of Ridgway's early victims were later found in or near the river, giving rise to the nickname Green River Killer; other bodies were discovered in remote wooded areas. After 1984 he committed several more murders, the last occurring in 1998.

By August 1982 police believed that a serial killer was at work, and they eventually formed a special task force. Ridgway soon became a suspect. In 1983 he was questioned in the disappearance of a prostitute who a witness claimed had gotten into his truck. Ridgway denied the allegations and passed a polygraph in 1984. Detectives later discovered a 1982 report about police finding Ridgway with a prostitute in a parked car; two years later a body was found nearby. In 1987 law-enforcement officials obtained a search warrant for Ridgway's home and work. However, none of the items—including carpet fibers and ropes—could be linked to the victims. They also obtained a DNA sample from Ridgway, but the technology then available was unable to match it with semen recovered from the bodies. However, following the advent of more sophisticated tests, a match was made in 2001, and Ridgway was arrested later that year.

Although he initially proclaimed his innocence, Ridgway soon confessed to the crimes, stating that he wanted to kill as many prostitutes as possible. He targeted sex workers because he thought they might not be reported missing and because he "hated" most of them. In 2003 he accepted a plea deal in which he was sentenced to 49 consecutive life sentences without the possibility of parole. In addition, he agreed to reveal the location of undiscovered bodies. Many

speculated that he was responsible for more deaths, and in 2013 Ridgway said that he had murdered upwards of 80 women (Real Life Villains Wiki., 2021).

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CHAPTER 9 – WITNESS IDENTIFICATION

WHAT IS EYEWITNESS TESTIMONY?

According to Laney and Loftus (2008), eyewitness testimony is what happens when a person witnesses a crime (or accident, or other legally important event) and later gets up on the stand and recalls for the court all the details of the witnessed event. It involves a more complicated process than might initially be presumed. It includes what happens during the actual crime to facilitate or hamper witnessing, as well as everything that happens from the time the event is over to the later courtroom appearance. The eyewitness may be interviewed by the police and numerous lawyers, describe the perpetrator to several different people, and make an identification of the perpetrator, among other things.

Misinformation

In an early study of eyewitness memory, undergraduate subjects first watched a slideshow depicting a small red car driving and then hitting a pedestrian (Loftus, Miller, & Burns, 1978). Some subjects were then asked leading questions about what had happened in the slides. For example, subjects were asked, "How fast was the car traveling when it passed the yield sign?" But this question was actually designed to be misleading, because the original slide included a stop sign rather than a yield sign.

Later, subjects were shown pairs of slides. One of the pair was the original slide containing the stop sign; the other was a replacement slide containing a yield sign. Subjects were asked which of the pair they had previously seen. Subjects who had been asked about the yield sign were likely to pick the slide showing the yield sign, even though they had originally seen the slide with the stop sign. In other words, the misinformation in the leading question led to inaccurate memory.

This phenomenon is called the misinformation effect, because the misinformation that subjects were exposed to after the event (here in the form of a misleading question) apparently contaminates subjects' memories of what they witnessed. Hundreds of subsequent studies have demonstrated that memory can be contaminated by erroneous information that people are exposed to after they witness an event (see Frenda, Nichols, & Loftus, 2011; Loftus, 2005). The misinformation in these studies has led people to incorrectly remember everything from small but crucial details of a perpetrator's appearance to objects as large as a barn that wasn't there at all.

These studies have demonstrated that young adults (the typical research subjects in psychology) are often susceptible to misinformation, but that children and older adults can be even more susceptible (Bartlett & Memon, 2007; Ceci & Bruck, 1995). In addition, misinformation effects can occur easily, and without any intention to deceive (Allan & Gabbert,

2008). Even slight differences in the wording of a question can lead to misinformation effects. Subjects in one study were more likely to say yes when asked “Did you see the broken headlight?” than when asked “Did you see a broken headlight?” (Loftus, 1975).
Other studies have shown that misinformation can corrupt memory even more easily when it is encountered in social situations (Gabbert, Memon, Allan, & Wright, 2004). This is a problem particularly in cases where more than one person witnesses a crime. In these cases, witnesses tend to talk to one another in the immediate aftermath of the crime, including as they wait for police to arrive. But because different witnesses are different people with different perspectives, they are likely to see or notice different things, and thus remember different things, even when they witness the same event. So when they communicate about the crime later, they not only reinforce common memories for the event, they also contaminate each other’s memories for the event (Gabbert, Memon, & Allan, 2003; Paterson & Kemp, 2006; Takarangi, Parker, & Garry, 2006).

The misinformation effect has been modeled in the laboratory. Researchers had subjects watch a video in pairs. Both subjects sat in front of the same screen, but because they wore differently polarized glasses, they saw two different versions of a video, projected onto a screen. So, although they were both watching the same screen, and believed (quite reasonably) that they were watching the same video, they were actually watching two different versions of the video (Garry, French, Kinzett, & Mori, 2008).

In the video, Eric the electrician is seen wandering through an unoccupied house and helping himself to the contents thereof. A total of eight details were different between the two videos. After watching the videos, the “co-witnesses” worked together on 12 memory test questions. Four of these questions dealt with details that were different in the two versions of the video, so subjects had the chance to influence one another. Then subjects worked individually on 20 additional memory test questions. Eight of these were for details that were different in the two videos. Subjects’ accuracy was highly dependent on whether they had discussed the details previously. Their accuracy for items they had not previously discussed with their co-witness was 79%. But for items that they had discussed, their accuracy dropped markedly, to 34%. That is, subjects allowed their co-witnesses to corrupt their memories for what they had seen.

Identifying Perpetrators

In addition to correctly remembering many details of the crimes they witness, eyewitnesses often need to remember the faces and other identifying features of the perpetrators of those crimes. Eyewitnesses are often asked to describe that perpetrator to law enforcement and later to make identifications from books of mug shots or lineups. Here, too, there is a substantial body of research demonstrating that eyewitnesses can make serious, but often understandable and even predictable, errors (Caputo & Dunning, 2007; Cutler & Penrod, 1995).

In most jurisdictions in the United States, lineups are typically conducted with pictures, called photo spreads, rather than with actual people standing behind one-way glass (Wells, Memon, & Penrod, 2006). The eyewitness is given a set of small pictures of perhaps six or eight individuals

who are dressed similarly and photographed in similar circumstances. One of these individuals is the police suspect, and the remainder are “foils” or “fillers” (people known to be innocent of the particular crime under investigation). If the eyewitness identifies the suspect, then the investigation of that suspect is likely to progress. If a witness identifies a foil or no one, then the police may choose to move their investigation in another direction.

This process is modeled in laboratory studies of eyewitness identifications. In these studies, research subjects witness a mock crime (often as a short video) and then are asked to make an identification from a photo or a live lineup. Sometimes the lineups are target present, meaning that the perpetrator from the mock crime is actually in the lineup, and sometimes they are target absent, meaning that the lineup is made up entirely of foils. The subjects, or mock witnesses, are given some instructions and asked to pick the perpetrator out of the lineup. The particular details of the witnessing experience, the instructions, and the lineup members can all influence the extent to which the mock witness is likely to pick the perpetrator out of the lineup, or indeed to make any selection at all. Mock witnesses (and indeed real witnesses) can make errors in two different ways. They can fail to pick the perpetrator out of a target present lineup (by picking a foil or by neglecting to make a selection), or they can pick a foil in a target absent lineup (wherein the only correct choice is to not make a selection).

identification errors particularly likely. These include poor vision or viewing conditions during the crime, particularly stressful witnessing experiences, too little time to view the perpetrator or perpetrators, too much delay between witnessing and identifying, and being asked to identify a perpetrator from a race other than one’s own (Bornstein, Deffenbacher, Penrod, & McGorty, 2012; Brigham, Bennett, Meissner, & Mitchell, 2007; Burton, Wilson, Cowan, & Bruce, 1999; Deffenbacher, Bornstein, Penrod, & McGorty, 2004).

It is hard for the legal system to do much about most of these problems. But there are some things that the justice system can do to help lineup identifications “go right.” For example, investigators can put together high-quality, fair lineups. A fair lineup is one in which the suspect and each of the foils is equally likely to be chosen by someone who has read an eyewitness description of the perpetrator but who did not actually witness the crime (Brigham, Ready, & Spier, 1990). This means that no one in the lineup should “stick out,” and that everyone should match the description given by the eyewitness. Other important recommendations that have come out of this research include better ways to conduct lineups, “double blind” lineups, unbiased instructions for witnesses, and conducting lineups in a sequential fashion (see Technical Working Group for Eyewitness Evidence, 1999; Wells et al., 1998; Wells & Olson, 2003).

Kinds of Memory Biases

Memory is also susceptible to a wide variety of other biases and errors. People can forget events that happened to them and people they once knew. They can mix up details across time and place. They can even remember whole complex events that never happened at all.

Importantly, these errors, once made, can be very hard to unmake. A memory is no less "memorable" just because it is wrong.

Some factors have been shown to make eyewitness

Some small memory errors are commonplace, and you have no doubt experienced many of them. You set down your keys without paying attention, and then cannot find them later when you go to look for them. You try to come up with a person's name but cannot find it, even though you have the sense that it is right at the tip of your tongue (psychologists actually call this the tip-of-the-tongue effect, or TOT) (Brown, 1991).

Other sorts of memory biases are more complicated and longer lasting. For example, it turns out that our expectations and beliefs about how the world works can have huge influences on our memories. Because many aspects of our everyday lives are full of redundancies, our memory systems take advantage of the recurring patterns by forming and using schemata, or memory templates (Alba & Hasher, 1983; Brewer & Treyens, 1981). Thus, we know to expect that a library will have shelves and tables and librarians, and so we don't have to spend energy noticing these at the time. The result of this lack of attention, however, is that one is likely to remember schema-consistent information (such as tables), and to remember them in a rather generic way, whether or not they were actually present.

False Memory

Some memory errors are so "large" that they almost belong in a class of their own: false memories. Back in the early 1990s a pattern emerged whereby people would go into therapy for depression and other everyday problems, but over the course of the therapy develop memories for violent and horrible victimhood (Loftus & Ketcham, 1994). These patients' therapists claimed that the patients were recovering genuine memories of real childhood abuse, buried deep in their minds for years or even decades. But some experimental psychologists believed that the memories were instead likely to be false—created in therapy. These researchers then set out to see whether it would indeed be possible for wholly false memories to be created by procedures similar to those used in these patients' therapy.

In early false memory studies, undergraduate subjects' family members were recruited to provide events from the students' lives. The student subjects were told that the researchers had talked to their family members and learned about four different events from their childhoods. The researchers asked if the now undergraduate students remembered each of these four events—introduced via short hints. The subjects were asked to write about each of the four events in a booklet and then were interviewed two separate times. The trick was that one of the events came from the researchers rather than the family (and the family had actually assured the researchers that this event had not happened to the subject). In the first such study, this researcher-introduced event was a story about being lost in a shopping mall and rescued by an older adult. In this study, after just being asked whether they remembered these events occurring on three separate occasions, a quarter of subjects came to believe that they

had indeed been lost in the mall (Loftus & Pickrell, 1995). In subsequent studies, similar procedures were used to get subjects to believe that they nearly drowned and had been rescued by a lifeguard, or that they had spilled punch on the bride's parents at a family wedding, or that they had been attacked by a vicious animal as a child, among other events (Heaps & Nash, 1999; Hyman, Husband, & Billings, 1995; Porter, Yuille, & Lehman, 1999).

More recent false memory studies have used a variety of different manipulations to produce false memories in substantial minorities and even occasional majorities of manipulated subjects (Braun, Ellis, & Loftus, 2002; Lindsay, Hagen, Read, Wade, & Garry, 2004; Mazzoni, Loftus, Seitz, & Lynn, 1999; Seamon, Philbin, & Harrison, 2006; Wade, Garry, Read, & Lindsay, 2002). For example, one group of researchers used a mock-advertising study, wherein subjects were asked to review (fake) advertisements for Disney vacations, to convince subjects that they had once met the character Bugs Bunny at Disneyland—an impossible false memory because Bugs is a Warner Brothers character (Braun et al., 2002). Another group of researchers photoshopped childhood photographs of their subjects into a hot air balloon picture and then asked the subjects to try to remember and describe their hot air balloon experience (Wade et al., 2002). Other researchers gave subjects unmanipulated class photographs from their childhoods along with a fake story about a class prank, and thus enhanced the likelihood that subjects would falsely remember the prank (Lindsay et al., 2004).

Using a false feedback manipulation, we have been able to persuade subjects to falsely remember having a variety of childhood experiences. In these studies, subjects are told (falsely) that a powerful computer system has analyzed questionnaires that they completed previously and has concluded that they had a particular experience years earlier. Subjects apparently believe what the computer says about them and adjust their memories to match this new information. A variety of different false memories have been implanted in this way. In some studies, subjects are told they once got sick on a particular food (Bernstein, Laney, Morris, & Loftus, 2005). These memories can then spill out into other aspects of subjects' lives, such that they often become less interested in eating that food in the future (Bernstein & Loftus, 2009b). Other false memories implanted with this methodology include having an unpleasant experience with the character Pluto at Disneyland and witnessing physical violence between one's parents (Berkowitz, Laney, Morris, Garry, & Loftus, 2008; Laney & Loftus, 2008).

Importantly, once these false memories are implanted—whether through complex methods or simple ones—it is extremely difficult to tell them apart from true memories (Bernstein & Loftus, 2009a; Laney & Loftus, 2008).

WITNESS ID OF A SUSPECT – PHOTO ID OF A SUSPECT – PHOTO LINEUPS AND LIVE LINEUPS

According to Gehl and Plecas (2017), beyond taking a statement, one of the most common forms of obtaining information from a witness is the practice of having witnesses identify a suspect through the viewing of photographs or photo lineups. This kind of after the fact identification of a suspect will be subjected to scrutiny when it is presented in court. Strict protocols must be followed to demonstrate that the process was conducted in a fair and unbiased fashion. Under no circumstances would an investigator ever present the witness with only a single photograph or a single lineup suspect and ask if this is the suspect. Additionally, under no circumstances should an investigator ever state that the suspect is one of the persons in the lineup. In the practice of presenting photo lineups, the photos are arranged in a series of eight pictures or more that are permanently mounted into a series of numbered windows of a special photo lineup file folder.

The suspect's photograph is one of the eight pictures and the remaining seven photos are called "distractor photos." To be fair, these distractor photos need to be reasonably similar to the suspect photo in terms of gender, age, race, head hair, facial hair, and glasses. When the photo lineup is presented to the witness, there should be instruction by the investigator that the suspect of the investigation may or may not be in this photo lineup (i.e., "Please look at all the photos carefully and only select the number of a photo if you are certain it is the suspect you saw at the time of the event").

Like photo lineups, live persons may be used to conduct a suspect identification or a suspect in custody. These live lineups are more difficult to create because they require the cooperation of the suspect and if the suspect does something during the viewing that could draw attention to him; it could prejudice the lineup process. As with the photo lineup, the distractor subjects need to be selected to be fairly similar to the suspect; however, unlike photo lineups, the live lineup requires the additional elements of ensuring that everyone is of similar height, weight, body shape, and dress. You cannot put the suspect dressed in a shirt and tie into a lineup with distractors wearing blue jeans and tee shirts.

Another means of suspect identification is permitting the witness to page through volumes of criminal file photos that are part of the local police photo collection. This technique is sometimes used when there are no identifiable suspects and the witness is reasonably certain that they will recognize the face of the suspect if they see it again. The negative aspects of this strategy are that it can take a great deal of time, and a witness can sometimes become confused by the process and overloaded with the viewing of too many faces, causing an eventual loss of confidence in making a proper identification (Gehl and Plecas, 2017).

Conclusion

To conclude, eyewitness testimony is very powerful and convincing to jurors, even though it is not particularly reliable. Identification errors occur, and these errors can lead to people being falsely accused and even convicted. Likewise, eyewitness memory can be corrupted by leading questions, misinterpretations of events, conversations with witnesses, and their own

expectations for what should have happened. People can even come to remember whole events that never occurred.

The problems with memory in the legal system are real. But what can we do to start to fix them? A number of specific recommendations have already been made, and many of these are in the process of being implemented (e.g., Steblay & Loftus, 2012; Technical Working Group for Eyewitness Evidence, 1999; Wells et al., 1998). Some of these recommendations are aimed at specific legal procedures, including when and how witnesses should be interviewed, and how lineups should be constructed and conducted. Other recommendations call for appropriate education (often in the form of expert witness testimony) to be provided to jury members and others tasked with assessing eyewitness memory. Eyewitness testimony can be of great value to the legal system, but decades of research now argues that this testimony is often given far more weight than its accuracy justifies.

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CHAPTER 10 – INTERROGATION AND FALSE CONFESSIONS

In this chapter, we will examine the interviewing, questioning, and interrogation of suspects as information gathering techniques police use to aid them in investigations. In modern day policing, interviewing, questioning, and interrogation techniques are measured, objective, and ethical. They are aimed at the goal of discovering the truth; not just getting a confession to a crime. This is a contrast to earlier times of policing, when techniques called the "third degree" sometimes involved threats, intimidation, coercion, and even physical violence. Fortunately, these "third degree" techniques were identified in the United States by the Wickersham Commission in 1931, as being unlawful police practices that caused false confessions and miscarriages of justice, where suspects were sometimes wrongfully convicted and imprisoned (Head, 2010).

Emerging from this, police forces across North America, who were using the "third degree" techniques to varying extents, started moving towards less oppressive and less aggressive methods of interrogating suspects (Gubrium, 2002).

INTERROGATION

While there has been a significant evolution to more objective and ethical practices, according to Gehl and Plecas (2017), the courts still remain vigilant in assessing the way police interview, question, and interrogate suspects during criminal investigations. The courts expect police to exercise high standards using practices that focus on the rights of the accused person and minimize any physical or mental anguish that might cause a false confession. In meeting these expectations, the challenges of suspect questioning and interrogation can be complex, and many police agencies have trained interrogators and polygraph operators who undertake the interrogation of suspects for major criminal cases. But not every investigation qualifies as a major case, and frontline police investigators are challenged to undertake the tasks of interviewing, questioning, and interrogating possible suspects daily. The challenge for police is that the questioning of a suspect and the subsequent confession can be compromised by flawed interviewing, questioning, or interrogation practices. Understanding the correct processes and the legal parameters can make the difference between having a suspect's confession accepted as evidence by the court or not.

Police investigations can be dynamic, and the ways in which events unfold and evidence is revealed can be unpredictable. This premise also holds true for interviewing, questioning, interrogating suspects. Players in a criminal event may be revealed as suspects at different stages of the investigation. To properly secure and manage the statement evidence that is gained during interactions with suspects or possible suspects, it is important for investigators to understand the actions that should be taken at each stage, while remembering that

interviewing, questioning, and interrogating are terms that refer to separate stages in the process of gathering verbal responses from a suspect or a possible suspect. But each stage is different in relation to when and how the information gathering process can and should occur. The differences between these three stages needs to be defined in the mind of the investigator since they will move through a process of first interviewing, then questioning, and finally interrogating a suspect. When this progression occurs, the investigator needs to recognize the changing conditions and take the appropriate actions at the correct junctures to ensure that, if a confession is obtained, it will be admissible at trial. Given this, let us examine the operational progression of these three stages and identify the circumstances that make it necessary to switch from one stage to the next (Gehl and Plecas, 2017).

Interviewing

Interviewing a possible suspect is the first stage and the lowest level of interaction. In fact, the person is not even definable as a suspect at this point. As pointed out in our chapter on witness management, suspects often report criminal events while posing as witnesses or even victims of the crime. The investigator receiving a statement report from such a person may become suspicious that they are not being truthful; however, until those suspicions are confirmed by evidence that meets the test of forming reasonable grounds for belief, the investigator may continue to talk to this possible suspect without reading the Miranda Rights. There is a unique opportunity at that point to gather the poser's version of events, including any untrue statements that may afford an opportunity to later investigate and demonstrate a possible fabrication, which is by itself a criminal OFFENSE. The transition point for an investigator to move from interviewing a witness or victim to detaining and questioning the person as a possible suspect should occur when real evidence is discovered giving the investigator reasonable grounds to suspect that the person is involved in the event. Discovering real evidence and gaining "reasonable grounds to suspect" creates an obligation for the investigator to stop interviewing the person who then becomes a suspect. At this point, the person is a suspect and should be detained for the suspected offense and read the Miranda Rights before proceeding with the questioning of the suspect (Gehl and Plecas, 2017).

Questioning

Questioning a suspect is the next level of interaction. For a suspect to be questioned, there will be some type of circumstantial evidence that allows the investigator to detain that suspect. In our previous scenario of the young man found at 3AM standing under the tree in a residential area at the boarder of an industrial complex one block away from the building where a break-in was confirmed to have taken place, that young man was properly detained, chartered, and warned for the investigation of the break-in. However, there was no immediate evidence that could link him to that actual crime at that point. He was only suspected by the circumstantial evidence of time, conduct, and proximity to the event. He was obligated to provide his name and identification. If he had tried to leave, he could have been arrested for obstructing a police

officer in the execution of duty. The investigator at the scene of that incident would have questioned this suspect, and by his rights under the Constitution of the United States, the suspect would not be obliged to answer questions.

This right to not talk does not preclude the investigator from asking questions, and the investigator should continue to offer the suspect an opportunity to disclose information that may be exculpatory and enable the investigator to eliminate that person as a suspect in the crime being investigated. As an example of this, again, consider our young man who was detained when found standing under the tree near a break-in. If that man had answered the question, "What are you doing here?" by stating that he lived in the house just across the street, and when he heard the break-in alarm, he came outside to see what was happening, this would greatly reduce suspicion against the young man once this statement was confirmed. Subsequent confirmation by a parent in the home that they had heard him leave when the alarm sounded could eliminate him as a suspect and result in his release (Gehl and Plecas, 2017).

Interrogating

Interrogation is the most serious level of questioning a suspect, and interrogation is the process that occurs once reasonable grounds for belief have been established, and after the suspect has been placed under arrest for the OFFENSE being investigated. Reasonable grounds for belief to make such an arrest require some form of direct evidence or strong circumstantial evidence that links the suspect to the crime (Gehl and Plecas, 2017).

FALSE CONFESSION

As noted at the beginning of this chapter, the goal of ethical interviewing, questioning, and interrogation is to elicit the truth, and the truth can include statements that are either inculpatory confessions of guilt or exculpatory denial of involvement in a crime. Whenever an investigator has interrogated a suspect, and a confession of guilt has been obtained, that investigator needs to take some additional steps to ensure that the confession can be verified as truthful before it goes to court. These additional steps are required because, although the investigator has not used any illegal or unethical techniques, the court will still consider whether the accused, for some reason, has confessed to a crime they did not commit. A skilled defense lawyer will often present arguments alleging that psychological stresses of guilt or hopelessness from exposure to overwhelming evidence have been used to persuade a suspect to confess to a crime they did not commit. In such cases, it is helpful for the court to hear any additional statements made by the accused, such as those that reveal that the suspect had direct knowledge of the criminal event that could only be known to the criminal responsible (Gehl and Plecas, 2017).

Explanations for False Confession

In police investigations, there are many details of the criminal event that will be known to the police through their examination of the crime scene or through the interview with witnesses or victims. These details can include the actual way the crime was committed, such as the sequence of events, the tools used in the crime; or the means of entry, path of entry/exit, along with other obscure facts that could only be known by the actual perpetrator. There are opportunities in a crime scene examination for the investigator to observe one or more unique facts that can be withheld as "hold back evidence." This hold back evidence is not made part of reports or media release and is kept exclusively to test for false confessions. Confessing to the crime is a step, but confessing to the crime and revealing intimate details is much more compelling to the court. Regardless of the effort and care that investigators take to not end up with a false confession, they still occur, and there are some more common scenarios where false confessions happen. It is important for an investigator to consider these possibilities when a confession is obtained. These situations are:

1. *The confessor was enlisted to take the blame* — On occasions where persons are part of organized crime, a person of lower status within the group is assigned or sacrificed to take the blame for a crime in place of a person of higher status. These organizational pawns are usually persons with a more minor criminal history or are a young offender, as they are likely to receive a lesser sentence for the OFFENSE.

2. *The Sacrificial Confessor* — Like the confessor enlisted in an organized criminal organization, there is another type of sacrificial confessor; the type who steps forward to take the blame to protect a friend or loved one. These are voluntary confessors, but their false confession can be exposed by questioning the confessor about the hold back details of the event.

3. *The Mentally Ill False Confessor* — This type of false confessor is encountered when there is significant media attention surrounding a crime. As Pickersgill (2015) noted, an innocent person may voluntarily provide a false confession because of a pathological need for notoriety or the need to self-punish due to guilt over an unrelated past OFFENSE. Additionally, those suffering from psychosis, endogenous depression, and Munchausen Syndrome may falsely confess to a crime they did not commit (Abed, 2105)**.** As with other false confessors, these people can be discovered using hold back detail questioning.

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CHAPTER 11 – CRIMINAL STREET GANGS

Many jurisdictions have statutes, both criminal and civil, that address the ongoing dilemma of criminal gangs. However, gang activity remains a problem in major cities and even smaller, rural areas. Criminal gangs can create a stigma that attaches to a location, affecting property values and residents' attitudes about the effectiveness of law enforcement and the justice system in general. Commentators and legislators differ as to the most effective remedies for the gang problem, leading to a plethora of diverse statutory responses.

CRIMINAL GANGS

It is important for a jurisdiction's gang statute to define criminal gang and criminal gang member precisely, to avoid constitutional challenges under the First Amendment or void for vagueness and overbreadth. This is because gang membership involves assembly, which, if *peaceful,* is protected under the First Amendment.

Criminal Gang Definition

Federal law defines a criminal street gang as an ongoing group, club, organization, or association of five or more that has as one of its primary purposes the commission of specific criminal offenses or activities that affect interstate or foreign commerce (18 U.S.C. 521(a), 2011). Federal law defines a gang member as someone who participates in a criminal street gang with the general intent or knowledge that its members engage in a continuing series of specified crimes, or an individual who intends to promote or further the felonious activities of the criminal street gang (18 U.S.C. 521(d), 2011). One representative state statutory definition of criminal gang is a group of three or more persons who have in common a name, identifying sign, symbol, tattoo, style of dress, or use of hand signs and who have committed or attempted to commit specified crimes for the benefit of the group (Alaska Stat. § 11.81.900, 2011). Criminal gang member could be statutorily defined as any person who engages in a pattern of criminal gang activity and who meets two or more of the following criteria: (1) admits to gang membership; (2) is identified as a gang member; (3) resides in or frequents a particular gang's area and adopts its style of dress, use of hand signs, or tattoos; (3) associates with known gang members; or (4) has been arrested more than once in the company of identified gang members for offenses consistent with gang activity (Idaho Code Ann. § 18-8502(2), 2011).

Example of Criminal Gang Definitions

The North Side Boys are a group of fifty-five members who have a special tattoo, wear the colors black and white daily, and pride themselves on their illegal controlled substances

distribution. Mike decides he wants to be a North Side Boy. Mike participates in a special initiation process that includes selling a specified quantity of an illegal controlled substance in a certain location over a period of two weeks. After Mike completes the initiation, he gets the North Side Boys' tattoo, wears the North Side Boys' colors daily, and spends all his time with the North Side Boys, hanging out and also contributing to their illegal activities. The North Side Boys probably meets the criteria for a criminal gang, and Mike is most likely a criminal gang member under many modern statutes. The North Side Boys has an identifiable tattoo and style of dress and furthers a criminal activity, which is the distribution of illegal controlled substances. Mike can be identified as a gang member by other North Side Boys members, frequents the North Side Boys' gang area, and adopts the gang's style of dress and tattoos along with furthering its criminal enterprise. Thus, the North Side Boys and Mike fit the definition of criminal gang and gang member in many jurisdictions, and Mike may be subject to prosecution for and conviction of criminal gang activity if he commits crimes at the direction of or in furtherance of the gang.

Criminal Gang Activity

States generally criminalize gang participation (Ohio Rev. Code Ann. § 2923.42, 2011), *enhance* the *penalty* for a crime when it is committed in furtherance of a gang (Fla. Stat. Ann. § 874.04, 2011), or both (Cal. Penal Code § 186.22). If a state enacts a gang participation statute, the criminal act element is generally described as actively participating in a criminal gang and promoting, furthering, or assisting in any felony, with the general intent or knowingly that members of the gang engage in a pattern of criminal gang activity (Del. Code Ann. tit. 11 § 616, 2011). Gang participation is generally graded as a felony (Del. Code Ann. tit. 11 § 616, 2011). Gang enhancement statutes enhance the defendant's sentence for actually committing a misdemeanor or felony with the specific intent or purposely to benefit, promote, or further the interests of the criminal gang (Fla. Stat. Ann. § 874.04, 2011). Some jurisdictions only provide gang enhancement for the commission of a felony (Del. Code. Ann. tit. 11 § 616, 2011).

Example of Criminal Gang Activity

Review the example with Mike and the North Side Boys given in Section 12 "Example of Criminal Gang Definitions". Assume that Mike resumes selling illegal controlled substances *at the behest* of the North Side Boys after his initiation and is arrested. If the state where Mike sells illegal controlled substances has a gang participation statute and grades the crime of sale of illegal controlled substances as a felony, Mike could be prosecuted for and convicted of this crime. He furthered and assisted in the North Side Boys' sale of illegal controlled substances with the general intent or knowingly that members of the North Side Boys engaged in this pattern of criminal gang activity. If the state also has a gang enhancement statute, Mike could have his sentence for sale of illegal controlled substances *enhanced* because he committed the sale of illegal controlled substances in furtherance of the criminal gang. In either situation, Mike

will be punished *more severely* for the sale of illegal controlled substances than an individual defendant who sells illegal controlled substances on his or her own, rather than at the direction or in furtherance of a criminal gang.

Civil Responses to Gang Activity

As stated previously, the problem of criminal gangs is challenging and has proven resistant to criminal remedies. Thus, many jurisdictions have also enacted civil gang control statutes, along with resorting to the remedy of civil gang injunctions to try to curb the multitude of harms that gangs inflict.

Civil gang control statutes generally provide for damages, often enhanced, for coercion, intimidation, threats, or other harm caused by a gang or gang member (Fla. Stat. Ann. § 874.06, 2011). A common provision of civil gang control statutes is the ability of a resident *or state agency* to sue as a plaintiff (Fla. Stat. Ann. § 874.06, 2011).

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CHAPTER 12 - CHILD ABUSE, SEXUAL ASSAULT, AND DOMESTIC VIOLENCE INVESTIGATION

CHILD ABUSE

The Child Abuse Prevention and Treatment Act (United States Department of Health and Human Services, 2013) defines Child Abuse and Neglect as: *Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act, which presents an imminent risk of serious harm* (p. viii). Each state has its own definition of child abuse based on the federal law, and most states recognize four major types of maltreatment: neglect, physical abuse, psychological maltreatment, and sexual abuse. Each of the forms of child maltreatment may be identified alone, but they can occur in combination (University of Minnesota.).

Victims of Child Abuse

During 2013 (the most recent year data has been collected) Child Protective Services (CPS) agencies received an estimated 3.5 million referrals involving approximately 6.4 million children, and 2.1 million referrals (60 percent) were investigated. This is a rate of 28.3 per 1,000 children in the national population. Professionals made three-fifths (61.6%) of alleged child abuse and neglect reports, and they included legal and law enforcement personnel (17.5%), education personnel (17.5%) and social services personnel (11.0%). Nonprofessionals, such as friends, neighbors, and relatives, submitted 18.6% of the reports. Approximately 3.9 million children were the subjects of at least one report, and 678,932 were found to be victims of child abuse and neglect (victim rate of 9.1 per 1,000 children). Victims in their first year of life had the highest rate of victimization (23.1 per 1,000 children of the same age). The majority of victims consisted of three ethnicities: White (44.0%), Hispanic (22.4%), and African-American (21.2%). The greatest percentages of children suffered from neglect (79.5%) and physical abuse (18.0%), although a child may have suffered from multiple forms of maltreatment. Nationally in 2013 an estimated 1,520 children died from abuse and neglect, and nearly three-quarters (73.9%) of all child fatalities were younger than 3 years old. Boys had a higher child fatality rate (2.36 per 100,000 boys), while girls died of abuse and neglect at a rate of 1.77 per 100,000 girls. More than 85 percent (86.8%) of child fatalities were comprised of White (39.3%), African American (33.0%), and Hispanic (14.5%) victims, and 78.9% of child fatalities were caused by one or both parents (United States Department of Health and Human Services, 2013).

Childhood Sexual Abuse

Childhood sexual abuse is defined as any sexual contact between a child and an adult or a much older child. Incest refers to sexual contact between a child and family members. In each of these cases, the child is exploited by an older person without regard for the child's developmental immaturity and inability to understand the sexual behavior (Steele, 1986). Research estimates that 1 out of 4 girls and 1 out of 10 boys have been sexually abused (Valente, 2005). The median age for sexual abuse is 8 or 9 years for both boys and girls (Finkelhorn, Hotaling, Lewis, & Smith, 1990). Most boys and girls are sexually abused by a male. Although rates of sexual abuse are higher for girls than for boys, boys may be less likely to report abuse because of the cultural expectation that boys should be able to take care of themselves and because of the stigma attached to homosexual encounters (Finkelhorn et. al., 1990). Girls are more likely to be abused by family member and boys by strangers. Sexual abuse can create feelings of self-blame, betrayal, and feelings of shame and guilt (Valente, 2005). Sexual abuse is particularly damaging when the perpetrator is someone the child trusts and may lead to depression, anxiety, problems with intimacy, and suicide (Valente, 2005).

Stress on Young Children

Children experience different types of stressors. Normal, everyday stress can provide an opportunity for young children to build coping skills and poses little risk to development. Even more long-lasting stressful events, such as changing schools or losing a loved one, can be managed fairly well. Children who experience toxic stress or who live in extremely stressful situations of abuse over long periods of time can suffer long-lasting effects. The structures in the midbrain or limbic system, such as the hippocampus and amygdala, can be vulnerable to prolonged stress during early childhood (Middlebrooks and Audage, 2008). High levels of the stress hormone cortisol can reduce the size of the hippocampus and affect the child's memory abilities. Stress hormones can also reduce immunity to disease. The brain exposed to long periods of severe stress can develop a low threshold making the child hypersensitive to stress in the future. However, the effects of stress can be minimized if the child has the support of caring adults.

SEXUAL ASSAULT INVESTIGATION

Susan Griffin (1971) began a classic essay on rape in 1971 with this startling statement: "I have never been free of the fear of rape. From a very early age I, like most women, have thought of rape as a part of my natural environment—something to be feared and prayed against like fire or lightning. I never asked why men raped; I simply thought it one of the many mysteries of human nature" (p. 26). When we consider interpersonal violence of all kinds—homicide, assault, robbery, and rape and sexual assault—men are more likely than women to be victims

of violence. While true, this fact obscures another fact: Women are far more likely than men to be raped and sexually assaulted. They are also much more likely to be portrayed as victims of pornographic violence on the Internet and in videos, magazines, and other outlets. Finally, women are more likely than men to be victims of *domestic violence*, or violence between spouses and others with intimate relationships. The gendered nature of these acts against women distinguishes them from the violence men suffer. Violence is directed against men not because they are men per se, but because of anger, jealousy, or some other sociological reason. But rape and sexual assault, domestic violence, and pornographic violence are directed against women precisely because they are women. These acts are thus an extreme manifestation of the gender inequality women face in other areas of life.

The Extent and Context of Rape and Sexual Assault

Our knowledge about the extent and context of rape and reasons for it comes from three sources: the FBI Uniform Crime Reports (UCR) and the National Crime Victimization Survey (NCVS), and surveys of and interviews with women and men conducted by academic researchers. From these sources we have a fairly good if not perfect idea of how much rape occurs, the context in which it occurs, and the reasons for it. What do we know?

According to the UCR, which are compiled by the Federal Bureau of Investigation (FBI) from police reports, 88,767 reported rapes (including attempts, and defined as forced sexual intercourse) occurred in the United States in 2010 (Federal Bureau of Investigation, 2011). Because women often do not tell police they were raped, the NCVS, which involves survey interviews of thousands of people nationwide, probably yields a better estimate of rape; the NCVS also measures sexual assaults in addition to rape, while the UCR measures only rape. According to the NCVS, 188,380 rapes and sexual assaults occurred in 2010 (Truman, 2011). Other research indicates that up to one-third of US women will experience a rape or sexual assault, including attempts, at least once in their lives (Barkan, 2012). A study of a random sample of 420 Toronto women involving intensive interviews yielded an even higher figure: Two-thirds said they had experienced at least one rape or sexual assault, including attempts. The researchers, Melanie Randall and Lori Haskell (1995, p. 22), concluded that "it is more common than not for a woman to have an experience of sexual assault during their lifetime."

Studies of college students also find a high amount of rape and sexual assault. About 20–30 percent of women students in anonymous surveys report being raped or sexually assaulted (including attempts), usually by a male student they knew beforehand (Fisher, Cullen, & Turner, 2000; Gross, Winslett, Roberts, & Gohm, 2006). Thus, at a campus of 10,000 students of whom 5,000 are women, about 1,000–1,500 women will be raped or sexually assaulted over a period of four years, or about 10 per week in a four-year academic calendar.

The public image of rape is of the proverbial stranger attacking a woman in an alleyway. While such rapes do occur, most rapes actually happen between people who know each other. A wide

body of research finds that 60–80 percent of all rapes and sexual assaults are committed by someone the woman knows, including husbands, ex-husbands, boyfriends, and ex-boyfriends, and only 20–35 percent by strangers (Barkan, 2012). A woman is thus two to four times more likely to be raped by someone she knows than by a stranger.

In 2011, sexual assaults of hotel housekeepers made major headlines after the head of the International Monetary Fund was arrested for allegedly sexually assaulting a hotel housekeeper in New York City; the charges were later dropped because the prosecution worried about the housekeeper's credibility despite forensic evidence supporting her claim. Still, in the wake of the arrest, news stories reported that hotel housekeepers sometimes encounter male guests who commit sexual assault, make explicit comments, or expose themselves. A hotel security expert said in one news story, "These problems happen with some regularity. They're not rare, but they're not common either." A housekeeper recalled in the same story an incident when she was vacuuming when a male guest appeared: "[He] reached to try to kiss me behind my ear. I dropped my vacuum, and then he grabbed my body at the waist, and he was holding me close. It was very scary." She ran out of the room when the guest let her leave but did not call the police. A hotel workers union official said housekeepers often refused to report sexual assault and other incidents to the police because they were afraid they would not be believed or that they would get fired if they did so (Greenhouse, 2011, p. B1).

Explaining Rape and Sexual Assault

Sociological explanations of rape fall into cultural and structural categories similar to those presented earlier for sexual harassment. Various "rape myths" in our culture support the absurd notion that women somehow enjoy being raped, want to be raped, or are "asking for it" (Franiuk, Seefelt, & Vandello, 2008). One of the most famous scenes in movie history occurs in the classic film *Gone with the Wind*, when Rhett Butler carries a struggling Scarlett O'Hara up the stairs. She is struggling because she does not want to have sex with him. The next scene shows Scarlett waking up the next morning with a satisfied, loving look on her face. The not-so subtle message is that she enjoyed being raped (or, to be more charitable to the film, was just playing hard to get).

A related cultural belief is that women somehow ask or deserve to be raped by the way they dress or behave. If she dresses attractively or walks into a bar by herself, she wants to have sex, and if a rape occurs, well, then, what did she expect? In the award-winning film *The Accused*, based on a true story, actress Jodie Foster plays a woman who was raped by several men on top of a pool table in a bar. The film recounts how members of the public questioned why she was in the bar by herself if she did not want to have sex and blamed her for being raped.

A third cultural belief is that a man who is sexually active with a lot of women is a stud and thus someone admired by his male peers. Although this belief is less common in this day of AIDS and other STDs, it is still with us. A man with multiple sex partners continues to be the source of

envy among many of his peers. At a minimum, men are still the ones who have to "make the first move" and then continue making more moves. There is a thin line between being sexually assertive and sexually aggressive (Kassing, Beesley, & Frey, 2005).

These three cultural beliefs—that women enjoy being forced to have sex, that they ask or deserve to be raped, and that men should be sexually assertive or even aggressive—combine to produce a cultural recipe for rape. Although most men do not rape, the cultural beliefs and myths just described help account for the rapes that do occur. Recognizing this, the contemporary women's movement began attacking these myths back in the 1970s, and the public is much more conscious of the true nature of rape than a generation ago. That said, much of the public still accepts these cultural beliefs and myths, and prosecutors continue to find it difficult to win jury convictions in rape trials unless the woman who was raped had suffered visible injuries, had not known the man who raped her, and/or was not dressed attractively (Levine, 2006).

Structural explanations for rape emphasize the power differences between women and men similar to those outlined earlier for sexual harassment. In societies that are male dominated, rape and other violence against women is a likely outcome, as they allow men to demonstrate and maintain their power over women. Supporting this view, studies of preindustrial societies and of the fifty states of the United States find that rape is more common in societies where women have less economic and political power (Baron & Straus, 1989; Sanday, 1981). Poverty is also a predictor of rape; although rape in the United States transcends social class boundaries, it does seem more common among poorer segments of the population than among wealthier segments, as is true for other types of violence (Truman & Rand, 2010). Scholars think the higher rape rates among the poor stem from poor men trying to prove their "masculinity" by taking out their economic frustration on women (Martin, Vieraitis, & Britto, 2006).

DOMESTIC VIOLENCE INVESTIGATION

According to Gehl and Plecas (2017), domestic violence and stalking are modern crimes that respond to societal problems that have escalated in recent years. Domestic violence statutes are drafted to address issues that are prevalent in crimes between family members or individuals living in the same household. Stalking generally punishes conduct that is a *precursor* to assault, battery, or other crimes against the person.

Domestic violence statutes generally focus on criminal conduct that occurs between family members. Although family cruelty or interfamily criminal behavior is not a new phenomenon, enforcement of criminal statutes against family members can be challenging because of dependence, fear, and other issues that are particular to the family unit. In addition, historical evidence indicates that law enforcement can be reluctant to get involved in family disputes and

often fails to adequately protect victims who are trapped in the same residence as the defendant. Specific enforcement measures that are crafted to apply to defendants and victims who are family members are an innovative statutory approach that many jurisdictions are beginning to adopt. In general, domestic violence statutes target crimes against the person, for example, assault, battery, sex offenses, kidnapping, and criminal homicide.

The purpose of many domestic violence statutes is equal enforcement and treatment of crimes between family members and maximum protection for the domestic violence victim (RCW § 10.99.010, 2011). Domestic violence statutes focus on individuals related by blood or marriage, individuals who share a child, ex-spouses and ex-lovers, and individuals who reside together (Ariz. Rev. Stat. § 13-3601(A), 2011).

Various approaches have been made to criminalize stalking, and a plethora of descriptors now identify the stalking criminal act. In the majority of jurisdictions, the criminal act element required for stalking includes any course of conduct that credibly threatens the victim's safety, including following (Tex. Penal Code § 42.072, 2011), harassing (Cal. Penal Code § 646.9, 2011), approaching (Md. Code Ann. § 3-802, 2011), pursuing, or making an express or implied threat to injure the victim, the victim's family member (Ala. Code § 13A-6-90, 2011), or the victim's property (Tex. Penal Code § 42.072(a), 2011). In general, credible threat means the defendant has the apparent ability to effectuate the harm threatened (S. D. Codified Laws § 22-19A-6, 2011). The stalking criminal act is unique among criminal acts in that it must occur on more than one occasion or repeatedly (Colo. Rev. Stat. Ann. § 18-3-602, 2011). The popularity of social networking sites and the frequency with which defendants use the Internet to stalk their victims inspired many states to specifically criminalize cyberstalking, which is the use of the Internet or e-mail to commit the criminal act of stalking (Alaska Stat. § 11.41.270, 2011).

The criminal intent element required for stalking also varies, depending on the jurisdiction. In most states, the defendant must commit the criminal act willfully or maliciously (Cal. Penal Code § 646.9, 2011). This indicates a specific intent or purposeful conduct. However, in states that require the victim to experience harm, a different criminal intent could support the harm offense element. States that include bad results or harm in their stalking statutes require either specific intent or purposely, general intent or knowingly, reckless intent, negligent intent, or strict liability (no intent) to cause the harm, depending on the state (Ncvc.org, 2011).

STAIR Tool for Investigation

We will now work through a domestic violence investigation using the steps of the **STAIR** tool (Situation, Tasks, Analysis, Investigation, Results) to demonstrate the required investigative awareness required to transition from the tactical investigative response to the strategic investigative response. Once in the strategic response mode we will practice applying theory development to conduct our analysis of the evidence and information found and we will create investigative plans.

Scenario

You are working as a uniform patrol officer in a one-person marked police unit. It is 9 PM on Saturday evening, and you receive a radio call from dispatch assigning you to attend a domestic dispute complaint in a residential neighborhood. Dispatch advises you that the call has been received from a neighbor to the home where the domestic dispute is taking place.

The caller, Bill Murphy, reports to dispatch that he heard a woman screaming and, when he went outside, he saw his neighbor, Randy Smith and Randy's wife, Jane, standing on their front lawn yelling at each other. He then saw Randy strike Jane in the face with his fist, and drag her by the hair back into the house. He can still hear them yelling, and he heard some crashing noises coming from their house. He does not know if there is alcohol involved, although he does know that Randy often drinks heavily. No weapons were seen, and the neighbor does not know if Smith owns any firearms. The Smiths have two young sons, eight years and four years of age. The neighbor did not see the two boys.

Situation

In this **Situation** phase of our **STAIR** tool, you have been provided with a limited amount of information. You start by breaking down the information into components:

- A witness, Bill Murphy, has identified his neighbor as having assaulted a woman, identified as the suspect's wife, Jane
- Suspect identified is Randy Smith
- Victim identified as Jane Smith
- Randy Smith may be a heavy drinker, and alcohol may be a factor
- This is an active event and it may still be in progress as noise from the house continues
- The OFFENSE recognition would define this as an assault and possibly forcible confinement
- Persons who may have their safety in danger are Jane Smith and her two young sons
- The incident is reported as being currently confined to inside the house; however, the incident was, at one point, on the front lawn of their home

Keep in mind that to investigate this incident and to act in the execution of your duties, each piece of the foregoing information may be considered and acted upon as the truth, until it has been verified. Each piece of information here can contribute to the forming of reasonable grounds to enter onto private property or to make an arrest. Each piece of information you have can assist in forming beliefs regarding the safety of persons.

Remember that we begin with our end in mind considering our **Results.** At this stage of the investigation, there appears to be an immediate threat to the safety of Jane Smith. Domestic disputes are always emotionally charged situations, and it is reasonable for attending police officers to consider that their own personal safety will also be at risk. This is definitely a Level 1 Results priority.

Tasks

As you proceed to attend to the area of the call, you embark upon the **Tasks** portion of the **STAIR** tool.

Task 1: *Responding in the Correct Mode*

In this case, the report identifies an active event where the suspect is still at the scene and criminal activity may still be in progress. You will be responding in Tactical Investigative Response mode.

Task 2: *Identifying the Players in the Event*

- Randy Smith
- Jane Smith
- Two sons – ages 8 years and 4 years old
- Witness Bill Murphy

Task 3: *Breaking out the Facts of the Event*

In this case, possible criminal actions witnessed by the neighbor indicate that an assault has taken place. The wife was struck in the face and dragged into the house. There may be a forcible confinement taking place. Your OFFENSE recognition, in this case, is focused on two possible OFFENSEs: assault and forcible confinement. You recognize that each of these OFFENSE types is an indictable OFFENSE for which an arrest can be made if you form reasonable grounds to believe the OFFENSE(s) have been committed by Randy Smith.

Task 4: *Gathering All Additional Information That Might be Available*

Faced with these circumstances, additional information would assist in making a risk/threat assessment. You proceed to the CPIC and PRIME – RMS databases to determine:

- Criminal record information on both Randy and Jane Smith
- History of previous calls to this residence

From CPIC, you determine that Randy Smith, of this address, has a record for Impaired Driving. There is no criminal record for Jane Smith. Police Records Information Management Environment (RMS) shows a previous complaint of a domestic dispute at this same residence 11 month ago. At that time, Randy Smith was arrested but not charged with assault. Jane Smith, the complainant in that case, would not proceed with charges, and there were no independent witnesses to the assault.

Analysis

For a police officer attending the scene of an in-progress event, it is important to consider the issues of safety and ongoing threats to safety to know how best to approach the scene and what immediate actions can be taken. As is the case with many in-progress events, there is a concern for the safety of all persons. In this case, the wife, Jane Smith, has reportedly been assaulted and dragged back into the premises. There are possibly two young sons also at the premises. Whenever there is a concern for the safety of persons, exigent circumstances exist and a police officer has extensive powers for the entry onto private property, if necessary, to detain any persons present to secure the scene and stop the continuation of an OFFENSE.

Investigation

Considering the explicit threat to the safety of Jane Smith, and a possible implied threat to the safety of the two sons, the issue of the safety of persons here is clear. Since this is a domestic violence complaint, there is also an implied danger to all police officers attending that must also be considered. In this case, you call for a backup patrol unit to attend. Your *tactical investigative response* plan is to approach the premises using concealment and cover as you and your backup unit assess what you can hear and see as you approach the scene.

You decide that if you do not hear or see any ongoing immediate threat, you will approach by knocking on the front door and making contact. If you do see or hear evidence to indicate there is an ongoing threat to the safety of a person (e.g. ongoing assault), you know you can enter the premises without a warrant under exigent circumstances to protect the safety of persons. You know you have an eyewitness to the OFFENSE of assault, and, with this piece of witness evidence alone, you have formed reasonable grounds to believe the OFFENSE of assault has taken place. The added information of possible alcohol involvement and past record of domestic assault complaints can be considered in the evaluation of the threat level to engage the extended authorities of exigent circumstances.

As you walk towards the house, the neighbor/witness, Bill Murphy, approaches you and states that Randy Smith just left the premises alone in his blue Dodge truck. You can see a woman and two young boys looking out the front window of the premises.

Results

Your event classification now must change to an inactive event, and you transition to a *strategic investigative response* mode.

1) Gather and preserve evidence:
    a) Interview witness Bill Murphy
    b) Interview the victim Jane Smith
    c) Take photographs of any injuries to the victim
    d) Determine if there are other witnesses available
    e) Determine if other physical evidence, weapons, and/or liquor bottles are present
2) Accurately document the event
    a) Take the statement of witness Bill Murphy
    b) Take statement of the victim, Jane Smith
    c) Make personal notes
    d) Complete an occurrence report
3) Establish reasonable grounds to identify and arrest an offender
    a) Verify that an OFFENSE has occurred
    b) Verify the type of OFFENSEs (e.g. assault, or assault causing bodily harm, and/or forcible confinement, and possibly impaired driving)
    c) Verify the identity of Randy Smith as the person responsible for identified OFFENSEs
    d) If an OFFENSE and an identity of the suspect are verified, broadcast a “Be on Lookout” (BOL) to arrest Randy Smith for assault

In this case, the offender was easily identifiable. This is true of many in progress occurrences that police attend. These types of cases are often handled in the progression described above, starting off as a tactical investigative response and transitioning to a strategic investigative response mode (Gehl and Plecas, 2017).

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CHAPTER 13 – ROBBERY INVESTIGATION

ROBBERY INVESTIGATION

In cases where the offender is not immediately identifiable, or the fact pattern of the event is not clear, the investigation becomes more complex and protracted. These are the cases where the strategic investigative response will include analyzing the information and evidence to develop theories, to identify possible suspects, and to test possible fact patterns against the physical evidence and timelines.

To examine this process of strategic investigative response, we will look at a more complex scenario where additional skill sets and strategies need to be considered within the **STAIR** Tool (Gehl and Plecas, 2017).

Scenario: Robbery

You are in a marked patrol vehicle, and you are dispatched to attend a local jewelry store where a robbery has just taken place. It is August 15, 2017, 4 PM on Saturday. The store is in a strip mall complex on the main street of your city. You arrive at the scene to take the complaint and investigate.

The store manager reports that at approximately 3:30 PM, three suspects entered through the front door of the store from the front parking lot. All three suspects were wearing ski masks, gloves, blue jeans, and dark jackets. All three were armed with handguns. One suspect stood guard at the front door and the other two entered the store yelling at everyone to lay face down on the floor. There were three customers in the store: two elderly women shopping together and one young woman approximately 25 years of age.

There were also two store employees working at the time. One is the store owner/manager and the other is a female sales clerk. After everyone was on the floor, the two men started smashing glass display cases and dumping the contents into white cloth bags that they had with them. One robber demanded that the manager open the cash register, which he did. There was only approximately $350 in the cash register, which was typical because most customers use credit or debit cards. The manager estimates that approximately $120,000 worth of inventory was stolen. The most valuable items taken were diamond rings and high-end designer wrist watches. Watches have serial numbers and are identifiable, and some of the diamonds are identifiable by laser micro-engraving.

The entire robbery happened in just under five minutes and, when the robbers left the store, they ran south around the corner of the building. No vehicle was seen.

STAIR Tool for Investigation

Situation

Using the **STAIR** tool, as you approach the scene, you are aware that the suspects have left the crime scene and this is an inactive event. Although aware of the possibility that you may see suspects leaving the area of the crime scene, your arrival and approach to the crime scene do not require the tactical investigative response of an active event. The immediate danger to the life and safety of persons at the crime scene has passed. You are in the strategic investigative response mode. Beginning with your end in mind, you now consider what will be the **Results** for this case:

- Protecting the life and safety of persons at this crime scene is no longer an issue because the armed suspects have now left the scene
- Protecting property will be an issue because $120,000 worth of merchandise and $350 in cash have been taken and need to be recovered
- Gathering and preserving evidence will be an issue because there are witnesses to interview at the scene and possibly physical evidence left behind by the suspects
- Accurately documenting the event will be necessary
- Establishing reasonable grounds to identify and arrest offenders will certainly be the desired outcome

Tasks

With our **Results** priorities clearly in mind, you now undertake some specific **Tasks** of the **STAIR** tool:

- Secure the crime scene
- Examine the crime scene and call upon forensics for evidence collection
- Broadcast a description of the suspects and incident details as a BOL
- Identify all witnesses and victims present
- Run each witness and victim through police databases to determine any criminal records, history of criminal conduct, or association to known criminals
- Take individual statements from each witness and victim

After completing your victim and witness interviews and your database searches, you have the first pieces of information from which the **Analysis** component can begin. Your forensic team is at the scene dusting for fingerprints and photographing the damage.

Analysis

As mentioned above, **STAIR** will assist in developing strategies to guide **Investigation** efforts. Based on the Strategic Investigative Response Funnel, all incoming information is flowed into the top of the funnel to start the process of analysis. The analysis begins by considering each of the individual known facts about the incident. In this case, the facts to be considered include:

- Date of OFFENSE: Saturday August 15, 2012
- Time: 4 PM
- Location: jewelry store in down town strip mall
- Owner/manager and one employee present (witnesses)
- Two elderly women shopping together present (witnesses)
- One 25-year-old female shopper present (witness)
- Three apparently male suspects entered the store through front door
- All suspects were wearing ski masks, gloves, blue jeans, and dark jackets
- Each suspect had a handgun
- One suspect stood guard
- Two suspects entered the store
- Suspects told everyone to lay on the floor
- Suspects smashed display cases and loaded jewelry and watches into bags
- Each suspect carried away the stolen goods in white bags
- One suspect had the manager open the cash register and took $350 cash
- Approx. $120,000 worth of jewelry was taken
- Some of the watches and diamonds stolen are identifiable by serial numbers
- Suspect fled out the front door and south around the corner of the building
- No vehicle was seen
- Entire robbery took under five minutes

To continue this **Analysis,** we start by reflecting on some of the theories we might evolve considering the facts of this case. This will begin the process of developing theories and formulating investigative plans to identify suspects and search for new evidence that either confirms or disproves those theories.

1. What theories might you have about the time and location of this OFFENSE?
2. Can you develop any theories about the level of planning that went into the robbery?
3. Consider theories about how well these three suspects know each other.
4. Is it possible that the suspects had been at the store sometime prior to this robbery?
5. What relevant theories might be considered from the way the suspects were dressed?

6. What relevant theories might be considered from the fact that the robbers carried handguns?
7. What theories might be considered from the way the robbery was carried out?
8. What theories might be considered regarding the items taken?
9. Theorize and consider if these three suspects were working alone.
10. Theorize who else might be involved.

Think about the fact pattern of this incident and answer these questions. In this process, you will engage your imagination and your deductive reasoning skills to consider the possibilities and develop theories to guide your investigative plan going forward. In this step of the **Analysis** process in the **STAIR**, what logical theories can you develop to explain how this crime may have been committed, and who may have been involved? Try and develop at least two or three alternate theories. As you answer each question, consider different avenues of investigation you might follow to confirm or disprove some of your theories. Can aspects of your theories be confirmed or disconfirmed against an examination of the existing physical evidence?

Investigation

As you proceed through the **STAIR** tool, the process of **Analysis** and **Investigation** can become somewhat circular, as the investigation reveals new information, and new information is analyzed to confirm, disprove, or modify the theories of suspects and events that you are considering.

Do your theories present any avenues where you can investigate further to gain additional information?

Outline your own analysis, assumptions, deductions, and theories. Outline the further avenues for investigations that you can undertake in this case. After you have completed your own analysis, theory development, and investigative plans, move to the end of this chapter and check your assumptions, analysis, theories, and investigative plans against the answers provided there.

1. **What theories might you consider about the time and location of this OFFENSE?**
    - The fact that the jewelry store is in a strip mall may have been a factor in the robbers selecting this location as a target. This type of business premises allows for drive by viewing of the inside of the premises, as well as quick access and exit to the outside parking area. This location also allows for the suspects to maintain an ongoing look-out for approaching police response.
    - The time of the OFFENSE could have been intentionally chosen closer to the end of the day on a Saturday in the hope that more cash would be in the store. Depending on the typical customer traffic volume in the mall area on a Saturday, the suspects may have hoped for more traffic volume to assist with their escape.

2. **Can you develop any theories about the level of planning that went into the robbery?**
    - Since the suspects arrived in disguise, armed with handguns, and carrying bags to take away the proceeds of the robbery, it might be theorized that they took some time to put together this special equipment to carry out the crime.
    - The precision with which the robbery was carried out (e.g. completed in five minutes, one suspect guarding the door, all persons ordered onto the floor) would indicate a high level of planning to orchestrate this robbery.
3. **How well did these three suspects know each other?**
    - It is very likely that the three suspects knew each other well enough to establish the level of trust required to carry out the robbery.
    - The type of goods taken in this robbery, except for the cash, would need to be converted to cash to be divided up later. This could indicate that a longer-term relationship exists between these robbers.
    - The planning that is apparent would indicate that the suspects spent some time together to plan, collect the necessary equipment, and divide up the proceeds of the robbery.
4. **Is it possible the suspects had been at the store sometime prior to this robbery?**
    - To plan this robbery and execute it with this level of precision, it is very likely that the suspects spent at least some time looking over the premises and the surrounding area to plan their approach, execute the robbery, and plan their escape.
5. **What relevant theories might be considered from the way the suspects were dressed?**
    - It appears that all three suspects were wearing similar outfits with dark jackets, blue jeans, and ski masks. This may indicate that the suspects deliberately purchased specific gear for committing a crime.
    - This clothing might be considered somewhat non-descript, and not easily distinguishable or unique for a witness to accurately or specifically describe the fleeing suspects. The use of masks and non-descript outfits might indicate that the criminals were experienced.
    - The fact that they are all wearing jackets on a summer day in August might indicate that they were covering up tattoos, scars, or other distinguishing features that might otherwise assist in identifying the suspects.
    - The fact that all suspects were wearing gloves would indicate that they are aware that any fingerprints left behind could identify them.
6. **What relevant theories might be made from handguns being carried by the robbers?**
    - Handguns are more easily concealed and may be the weapon of choice for more professional criminals. Handguns are more difficult to obtain, and legal handguns are generally registered, so it is likely that these were unregistered or stolen handguns.
7. **What might be theorized from the way they carried out the robbery?**

- From the overall planning and precision in the execution of the robbery, it might be theorized that this is not the first robbery that these three have done together. This method may have been used elsewhere.

8. **What might be theorized considering the items taken?**
    - Considering that the items taken were specialty items and that some were marked with identifying serial numbers, it might be theorized that the robbers have a prearranged or preplanned means of disposing of the items or otherwise converting them to cash.
9. **Were these three suspects working alone?**

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CHAPTER 14 – BURGLARY AND ARSON INVESTIGATION

BURGLARY

Although burglary is often associated with theft, it is actually an enhanced form of trespassing. At early common law, burglary was the invasion of a man's castle at nighttime, with a sinister purpose. Modern jurisdictions have done away with the common-law attendant circumstances and criminalize the unlawful **entry** into almost *any structure* or *vehicle*, at *any time* of day. Burglary has the elements of criminal act, criminal intent, and attendant circumstances.

Burglary Act

The **criminal act** element required for burglary varies, depending on the jurisdiction. Many jurisdictions require breaking and entering into the area described in the burglary statute (Mass. Gen. Laws ch. 266 § 14, 2011). Some jurisdictions and the Model Penal Code only require entering (Model Penal Code § 221.1). Other jurisdictions include **remaining** in the criminal act element (Fla. Stat. Ann. § 810.02(b)).

When criminal breaking is required, generally *any* physical force used to enter the burglarized area is sufficient—even pushing open a closed door (Commonwealth v. Hallums, 2011). **Entry** is generally partial or complete intrusion of either the defendant, the defendant's body part, or a tool or instrument (People v. Nible, 2011). In some jurisdictions, the entry must be *unauthorized* (State v. Hall, 2011), while in others, it could be *lawful* (People v. Nunley, 2011). The Model Penal Code makes an exception for "premises…open to the public" or when the defendant is "licensed or privileged to enter" (Model Penal Code

§ 221.1(1)). **Remaining** means that the defendant lingers in the burglarized area after an initial lawful or unlawful entry (State v. Allen, 2011).

Example of Burglary Act

Jed uses a burglar tool to remove the window screen of a residence. The window is open, so once Jed removes the screen, he places both hands on the sill, and begins to launch himself upward. The occupant of the residence, who was watching Jed from inside, slams the window down on Jed's hands. Jed has probably committed the criminal act element required for burglary in many jurisdictions. When Jed removed the window screen, he committed a **breaking**. When Jed placed his hands on the windowsill, his fingers intruded into the residence, which satisfies the **entry** requirement. Thus, Jed may be subject to a prosecution for burglary

rather than *attempted* burglary, even though he never actually damaged or broke the barrier of the residence or managed to gain complete access to the interior.

Burglary Intent

Depending on the jurisdiction, the criminal intent element required for burglary is typically the **general intent** or **knowingly** to commit the criminal act, with the **specific intent** or **purposely** to commit a felony (Mass. Gen. Laws ch. 266 § 14, 2011), any crime (Connecticut Criminal Jury Instructions §53a-102, 2011), or a felony, grand, or petty theft once inside the burglarized area (Cal. Penal Code § 459, 2011). The Model Penal Code describes the criminal intent element as "purpose to commit a crime therein" (Model Penal Code § 221.1(1)).

Example of a Case Lacking Burglary Intent

Hans dares Christian to break into a house in their neighborhood that is reputed to be "haunted." Christian goes up to the front door of the house, shoves it open, steps inside the front hallway, and then hurriedly dashes back outside. Christian probably does not have the criminal intent element required for burglary in this scenario. Although Christian committed the criminal act of breaking and entering, Christian did not have the intent to commit a crime once inside. Christian's conduct is probably criminal, but it is most likely a **criminal trespass**, *not* **burglary**.

Burglary Attendant Circumstances

Depending on the jurisdiction, burglary often includes the **attendant circumstance** that the area entered is a structure, building, or vehicle belonging to another (Oklahoma Uniform Jury Instructions No. CR 5-13, 2011). However, modern jurisdictions have eliminated the requirement that the property belong to another (Cal. Penal Code § 459, 2011) and prohibit burglarizing property owned by the *defendant*, such as a landlord burglarizing a tenant's apartment. Some jurisdictions require a structure or building to be occupied (Iowa Code § 713.1, 2011), or require it to be a dwelling (Connecticut Criminal Jury Instructions §53a-102, 2011), and require a vehicle to be *locked* (Cal. Penal Code § 459, 2011). A few jurisdictions also retain the common-law attendant circumstance that the burglary take place at nighttime (Mass. Gen. Laws ch. 266 § 15, 2011).

Structure or building generally includes a house, room, apartment, shop, barn, or even a tent (Cal. Penal Code § 459, 2011). The Model Penal Code expressly excludes *abandoned* structures or buildings (Model Penal Code § 221.1(1)). A dwelling is a building used for lodging at night (Connecticut Criminal Jury Instructions § 53a-102, 2011). Occupied means that the structure or building can be used for business or for lodging at night and does not necessarily require the actual presence of a person or victim when the criminal act takes place (Iowa Code § 702.12).

Nighttime means the time after sunset and before sunrise when it is too dark to clearly see a defendant's face (State v. Reavis, 2011).

Example of Burglary Attendant Circumstances

Susan breaks down a door and steps inside a building with the intent to commit arson, a felony, once inside. If the building is an empty child's tiny plastic playhouse, the attendant circumstance that the structure be **occupied** or a **dwelling** is lacking. If it is twelve noon, the attendant circumstance that the criminal act takes place at **nighttime** is lacking. If it is pitch black outside and 10 p.m. and the building is Susan's ex-boyfriend's residence, then Susan has most likely committed burglary and may be subject to prosecution for and conviction of this offense.

Burglary Grading

Burglary is typically divided into degrees (Iowa Code §§ 713.3, 713.5, 713.6A, 2011). Firstdegree burglary is generally a serious felony that can serve as the predicate felony for firstdegree felony murder (Cal. Penal Code § 189, 2011) and a strike in states that have three strikes statutes (Cal. Penal Code § 1192.7, 2011). Factors that can elevate burglary grading are the use or possession of a weapon, the entry into a residence, dwelling, or building where people are present, the commission of burglary at nighttime, or the infliction of injury or death (Mass. Gen. Laws ch. 266 § 14, 2011). Second- and third-degree burglary generally are still felonies, although less serious than first-degree burglary (Ala. Code § 13A-7-7, 2011). The Model Penal Code grades burglary as a felony of the second degree if perpetrated in the dwelling of another at night, or if the actor purposely, knowingly, or recklessly inflicts or attempts to inflict bodily injury or is armed with explosives or a deadly weapon. Otherwise, the Model Penal Code grades burglary as a felony of the third degree (Model Penal Code § 221.1(2)).

Keep in mind that a defendant can be prosecuted for burglary even if the felony or crime intended after entry *never takes place*. In addition, if the defendant actually commits the felony or crime after entry, the defendant can be prosecuted for *both* burglary and the completed crime without violating the protection against double jeopardy in the Fifth Amendment to the federal Constitution. The Model Penal Code states that a "person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry…unless the additional offense constitutes a felony of the first or second degree" (Model Penal Code § 221.1(3)).

ARSON ACT

The criminal act element required for arson is typically setting fire to or burning real or personal property specified in the arson statute (Cal. Penal Code § 451, 2011). This could include buildings, structures, land, and vehicles (Tex. Penal Code § 28.02, 2011). Some states define the criminal act element as "damaging" the specified property by fire or explosives (Ga. Code tit. 16

§ 16-7-60, 2011). The Model Penal Code describes the criminal act element as starting a fire or causing an explosion (Model Penal Code § 220.1(1). The type or value of the property the defendant burns or damages can enhance grading. Grading is discussed shortly.

Example of Arson Act

Clark and Manny are bored and decide to light a fire in the woods near their houses. The grass is damp from a recent rain, so the fire does not spread and burns only a small circle of grass. Clark and Manny give up and walk home. Clark and Manny have probably committed the criminal act element required for arson in most jurisdictions. Although a large destructive fire was not set by Clark and Manny, the two did burn or damage real property and start a fire, which satisfies the criminal act requirement in most jurisdictions and under the Model Penal Code.

Arson Intent

The criminal intent element required for arson in many jurisdictions is the general intent or knowingly to commit the criminal act (Ga. Code tit. 16 § 16-7-60). Thus, the defendant only needs the intent to burn or damage property specified in the arson statute; the defendant does not have to intend to burn a specific structure or personal property, even if that is the end result (People v. Atkins, 2011). The Model Penal Code requires starting a fire or causing an explosion "with the purpose of destroying a building or occupied structure of another; or destroying or damaging any property…to collect insurance for such loss" (Model Penal Code § 220.1(1)).

Example of Arson Intent

Review the example with Clark and Manny in the "Example of Arson Act". Change this example so that Clark and Manny leave the area and a tiny spark from the fire they set begins to ignite. After a few hours, a large and powerful fire starts and burns thousands of acres in the forest. Clark and Manny most likely have the criminal intent element required for arson in many jurisdictions. Although Clark and Manny did not necessarily want to burn thousands of acres of forest land, they did intentionally or knowingly start a fire in the forest, which is all that many modern arson statutes require. Thus, even though Clark and Manny did not intend the end result, Clark and Manny are probably subject to prosecution for and conviction of arson for their conduct.

Arson Attendant Circumstances

In most jurisdictions, arson must burn a specific type of property. Although this can be interpreted as an attendant circumstance, it is also a function of grading. Thus, first-degree arson may focus on arson of a dwelling (Vt. Stat. Ann. tit. 13 § 502, 2011), while second-degree

arson focuses on arson of other property (Vt. Stat. Ann. tit 13 § 503, 2011). Many jurisdictions do not require the attendant circumstance that property "belongs to another," and therefore the defendant can burn his or her own property and still be guilty of arson. However, the defendant must generally burn his or her property with the specific intent or purposely to defraud for the burning to constitute arson (Ga. Code tit. 16 § 16-7-62, 2011). The Model Penal Code requires "destroying or damaging any property, whether his own or another's, to collect insurance for such loss" (Model Penal Code § 220.1(b)).

Example of a Case Lacking Arson Intent for Burning the Defendant's Property

Tim decides he wants to get rid of all the reminders of his ex-girlfriend. Tim piles all the photographs, gifts, and clothing items that are connected to his relationship with his ex into his fireplace and burns them. In this scenario, Tim probably does not have the criminal intent element required for arson in most jurisdictions. Although Tim burned or damaged property, the property belongs to Tim, not another. Thus, Tim must burn the property with the specific intent or purposely to defraud—most likely an insurance carrier. Tim burned his own property with only general intent or knowingly, so Tim may not be charged with and convicted of arson in most jurisdictions.

Arson Causation

The criminal act must be the factual and legal cause of arson harm, which in the "Example of Arson Causation" defines. As stated previously, the defendant does not have to intend to burn a specific structure or personal property, even if that is the end result in many jurisdictions. However, there must be a causation analysis in every arson case because arson is a crime that requires a bad result or harm. Thus, the arson harm must be reasonably foreseeable at the time the defendant commits the criminal act with the accompanying criminal intent.

Example of Arson Causation

Review the example with Clark and Manny in the "Example of Arson Intent". In this example, Clark and Manny try to light a fire in the forest, but the grass is too damp, so they give up and leave the area. Hours later, a spark from their fire ignites, burning thousands of acres. Clark and Manny could be the factual and legal cause of this harm in many jurisdictions. Even though the grass was damp and difficult to burn, a trier of fact could find that it is reasonably foreseeable when lighting a fire in the forest that the fire could turn into a massive and destructive blaze. Thus, Clark and Manny's act accompanied by the general intent or knowingly to burn caused significant harm, and Clark and Manny may be subject to prosecution for arson in this case.

Arson Harm

The harm element required for arson is burning, charring, or damage to the property specified in the arson statute. Damage could be damage to even a small part (California Criminal Jury Instructions No. 1515, 2011), and in the most extreme cases, even smoke damage without burning or charring is sufficient (Ursulita v. State, 2011). The Model Penal Code only requires starting a fire or causing an explosion with the appropriate criminal intent, regardless of whether damage to real or personal property ensues (Model Penal Code § 220.1(1)). Some states follow the Model Penal Code approach (Tex. Penal Code § 28.02, 2011).

Example of Arson Harm

Review the example with Clark and Manny in the "Example of Arson Act". In this example, Clark and Manny started a fire in the woods that burned a small circle of dead grass. This damage is probably sufficient to constitute the harm for arson in most jurisdictions. Although the value of the damaged forest land is not excessive, excessive damage is not typically a requirement under modern arson statutes—any damage is enough. Thus, Clark and Manny may be subject to a prosecution for and conviction of this offense in most jurisdictions.

Arson Grading

Arson is typically divided into degrees (Ga. Code tit. 16 § 16-7-60, 2011), or simple and aggravated (Cal. Penal Code § 451.5, 2011). Factors that can elevate grading are the burning or damage of another's dwelling (Ga. Code tit. 16 § 16-7-60, 2011), bodily injury or death (Connecticut Criminal Jury Instructions § 53a-111, 2011), extensive property damage, or damage to property of high value (Cal. Penal Code § 451.5, 2011). As stated previously, arson is a serious felony that can result in a sentence of life in prison and mandatory registration requirements similar to serious sex offenses (730 ILCS § 10, 2011). Arson is also generally a strike in states that have three strikes statutes (Cal. Penal Code § 1192.7, 2011) and a predicate felony for first-degree felony murder (Cal. Penal Code § 189, 2010). Many jurisdictions grade even simple arson or second or third-degree arson as a felony (Cal. Penal Code § 451, 2011). The Model Penal Code grades arson as a felony of the second degree (Model Penal Code § 220.1).

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Ala. Code § 13A-7-7, 2011

California Criminal Jury Instructions No. 1515, 2011

Cal. Penal Code § 189, 2011

Cal. Penal Code § 451, 2011

Cal. Penal Code § 459, 2011

Cal. Penal Code § 1192.7, 2011

Commonwealth v. Hallums, 2011

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Fla. Stat. Ann. § 810.02(b)

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Iowa Code § 702.12

Iowa Code § 713.1, 2011

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Mass. Gen. Laws ch. 266 § 14, 2011

Model Penal Code § 220.1(1).

Model Penal Code § 221.1

Model Penal Code § 220.1(b)

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People v. Atkins, 2011

People v. Nible, 2011

People v. Nunley, 2011

State v. Allen, 2011

State v. Hall, 2011

State v. Reavis, 2011

Tex. Penal Code § 28.02, 2011

Ursulita v. State, 2011

CHAPTER 15 – IDENTITY THEFT

Identity Theft is the attainment of a person's private identifying information, and is often used for personal gain through identity fraud. Identity theft has become a serious problem in recent years in the U.S. and other countries. According to a study done by Javelin Strategy & Research (2013), on average, there was a new identity theft victim every two seconds. In addition, it is estimated that nearly two out of three ID theft victims never discover the source of the crime (ITAC, 2012). It is unknown where ID theft originated because, in its simplest form, it is only defined as impersonating someone else, with no mention of intent. Jacob's story, in chapter 25 of the Book of Genesis, highlights one of the earliest known versions of identity theft (Holy Bible).

TYPES OF IDENTITY THEFT

Financial Theft

Financial theft is defined as the stealing of economic resources or information. Information may include name, bank account number, credit card number, Social Security number, or other financial data. According to the Lieberman Research Group's UNISYS Security Index study, "Most Americans are concerned with credit and debit card fraud and is the #1 area of worry," with about two-thirds (68%) of Americans being 'Extremely' or 'Very' concerned (AllClear ID, 2014). It is the most pervasive type of identity theft today and accounts for 28% of all identity fraud.

How Financial ID Theft Occurs

- *Theft*: stolen wallets or purses make up 43% of identity theft.
- *Trash*: Known as "Dumpster Diving," thieves rummage through personal and public trashcans looking for sensitive documentation.
- *Bribery*: Thieves entice insiders in an organization to release private information.
- *Cons*: Through phone calls, letters, or emails, many thieves use elaborate schemes designed to trick the victim into revealing personal or account information.
- *Skimming*: Credit card information is swiped through a storage device during transactions (McNeal, 2014).

Criminal Theft

Criminal theft occurs when one assumes the identity of another using the victim's name, date of birth, SSN and/or law enforcement data. Criminal theft may not always be used for financial

gain. The most famous case of criminal theft is that of Frank Abagnale, a con-man who impersonated dozens of people in a variety of professions, and stole an estimated 2.5 million dollars.

Medical Theft

Medical theft occurs when one uses a another's medical information (i.e. an insurance policy) to obtain drugs or medical treatment, and often results in false medical records and incorrect diagnoses. In 2013, the health care industry made up 44% of all identity theft reported throughout the U.S. (McNeal, 2014). In April 2014, the FBI informed health care providers of their public security flaws with a private industry notification entitled “Health Care Systems and Medical Devices at Risk for Increased Cyber Intrusions for Financial Gain."

Synthetic Theft

Synthetic theft occurs when the criminal alters some aspect of the victim’s identifiable information (DOB, SSN, etc.). For example, one may take a real Social Security number and combine it with a fake name, address, and/or phone number (Brintell, 2008). Synthetic theft criminals may remain undetected for long periods of time if not noticed by institutions or the victim (Experian, 2014).

THE ROLE OF TECHNOLOGY

Due to sociological and technological developments, forms and uses of identity theft are dynamic, making it difficult for government agencies to curb ID theft. The pattern of identity theft and fraud is often caused by a combination of factors, which includes but is not limited to (Experian, 2014):

- a lack of consumer knowledge about how to protect identity theft online
- a developing trust/comfort in social platform providers
- a need for these platforms to make money
- a lack of policing

Phishing

One common way that thieves acquire personal information is through Phishing, which utilizes bulk e-mail messages to entice recipients into revealing personal information. In 2005, a Gartner Phishing Study showed that 73 million Americans who used the Internet had received, on average, 50 phishing e-mails in the last year (Brody, Mulig, and Kimball, 2017). The message

often urges the recipient to "verify" personal information by clicking on a link embedded in the message, which brings the user to a website that appears to be secure (often with logos from government institutions i.e. the FTIC), and prompts the user to confirm account numbers or passwords (FDIC, 2014).

Pharming

Pharming is a more technologically advanced form of phishing where a virus or malicious program is secretly installed on a computer. Computer users unintentionally download the malicious program without clicking on a link or opening an attachment. Opening a pharmer's email message is all that is required to install the stealth application redirecting the browser to a counterfeit web site (Brody, et al, 2017).

Snapcash

Snapchat has recently released an additional feature to their app called "Snapcash" (SnapChat, 2014), which allows users to quickly send money to friends by placing a '$' in front of the amount of money they desire to send. The user must link the app to their debit card, and the money sent is taken directly from their bank account. Controversy surrounds this new feature because of recent security breaches where hackers captured photos and phone numbers from an estimated 4.6 million users (Touch Reviews, 2014).

Mobile Banking Applications

Mobile banking is quickly becoming the new norm for making banking transactions. According to Javelin Strategy, mobile banking has increased an estimated 40 percent in 2013, with 74,000 new users a day. However, the same study shows that the lack of security is the number one fear among potential customers (Javelin Strategy and Research, 2014). In reality, this technology may be a blessing in disguise- banks place a huge investment in security technology, and many banks, such as Bank of America, offer zero liability and cover 100 percent of mobile fraud losses if no protection rules were broken (Howard, 2014). That being said, it may be safer for customers not to know that mobile banking is safer because that could cause them to be more careless with their data/account information when using it.

PARTICIPANTS

Criminals

The role of criminals is simple - cheat the system and gain access to personal information for personal gain.

Identity Theft Prevention Agencies

Companies such as LifeLock and LegalShield exist to monitor and restore identities in the case of ID theft (LegalShield, 2014). The LifeLock website states their mission: "to search for potential misuse of your SSN, name, address or date of birth in applications for credit or services" (LifeLock, 2014). These agencies may not support identity theft; however, it is clear that they stand to profit from it- as ID theft grows, these companies naturally gain clients. After several Target stores suffered a security breach earlier in 2014, Todd Davis, the CEO of LifeLock, stated, "I don't get excited when a breach occurs, despite the fact LifeLock will experience a tailwind after a breach happens" (Lowery, 2014).

Federal Institutions

Federal institutions such as the U.S. Dept. of Justice, Securities and Exchange Commission and the Federal Trade Commission all have the ability to pass federal programs on a nationwide scale which could seriously combat identity theft. The problem is, that these criminals can be very hard to identify. Since ID theft can occur in many different ways across a variety of different industries, it is easy for a small time criminal to fly under the radar. Instead of finding small criminals, larger institutions have taken to fighting the larger cases where significant amounts of money or information are stolen (Mathews, 2013).

Social Media Institutions

Internet services such as Amazon and Facebook generate revenue through targeted advertising using people's personal information and online trends (Facebook, 2014). For example, if a person is online shopping for a guitar, Facebook can place guitar ads on his or her Facebook page after they log in. One area of concern lies in the information given on people's Facebook pages, which of often contains possible answers to security questions prompted for logging into another accounts (i.e. pets names, hometown, etc.) (Lewis, 2014). Facebook also has no method of verifying the identity of a user, which can allow criminals to become "friends" with others and access information on their pages.

CONTROL AND PREVENTION

Personal Protection

For most types of identity fraud, the best defense for preventing financial ID theft is awareness. Common sense and deliberate actions can go a long way when it comes to protecting one's identity, but additional actions can always be taken to minimize risk. A few common ways to do this are:

- Keeping a record of account numbers and contact information for each piece of identity in the event they're stolen. This record should be stored separately and in a safe place.
- Retrieving mail promptly. A full mailbox provides thieves access to account numbers and other personal data.
- Being wary of any promotional offers asking for personal information.
- Regularly reviewing credit reports and requesting them for free annually.
- Avoiding simple or common passwords such as date of birth, phone number, or children's names or birthdays (AllClear, 2004).

Laws Regarding Identity Theft

Identity theft became an official federal crime in the United States in 1998 when Congress passed the Identity Theft Assumption Deterrence Act. This act helped deal with the rapid increase in identity theft and the expansion of the use of the Internet and technology as a method to defraud innocent victims (Mathews, 2013). Identity theft legally became a crime and provided penalties for individuals who either committed or attempted to commit identity theft.

Since then there have been several important laws established by federal institutions in order to combat ID theft nationwide. The Right to Financial Privacy Act (RFPA) and the Electronic Communications Privacy Act (ECPA) are two of the most common policies which are often cited in connection with data protection and identity theft issues. However, these statutes are getting outdated and are not particularly helpful to identity theft victims. According to Mathews (2013), it is clear the federal government acknowledges the growing presence of identity theft, yet it is unclear if the actions taken will be enough to quell this crime's rising popularity.

Conclusion

Identity theft is a matter of risk vs. reward. One should balance the risk of having his or her personal identity stolen with the reward of being able to instantaneously access his or her personal information. One should not necessarily fear new technologies, but be wary of them. If a product requires personal information and has prompts only one security question for a forgotten password, it may not be trustworthy.

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CHAPTER 16 – DNA THE FUTURE OF CRIMINAL INVESTIGATION

The following article entitled, *Next Generation Forensics: Changing the role DNA plays in the justice system*, was written by Mary May and published November 9, 2018 for Harvard University.

CHANGING THE ROLE DNA PLAYS IN THE JUSTICE SYSTEM

As anyone who has watched an episode of CSI can attest, catching a killer is only a DNA sample away. Due to advances in DNA testing technology and its omnipresence in forensics (as portrayed on TV and in pop culture), the public has come to expect and trust genetic testing as evidence in criminal trials. As these methods become more sophisticated and more difficult for the general public to understand, the proper role for DNA testing in forensic science remains undefined. It is key that the public understands the potential—as well as the limitations—of DNA-based evidence to best determine the role that genetic testing should play in the justice system.

DNA forensics: Creating a DNA fingerprint

Our DNA is a genetic code made up of 4 letters (A, T, G, C), called DNA bases, that are interpreted by our cells to make the molecules and structures that allow our bodies to function. Regions of DNA that encode molecules known as "proteins" are called genes. The unique code in every person results in physical differences—such as brown or blonde hair and blue or brown eyes—between individuals. It can also be used for identification purposes. Although the vast majority of DNA (99.9% on average) between two individual humans is the same, scientists have characterized regions of DNA that are different between people who are not closely related.

The most commonly used method of genetic testing in forensics looks at these variable sections of DNA. Forensic labs look at 20 DNA regions that vary between individuals, called short tandem repeats (STRs), to create a DNA "fingerprint" (***Figure 1***)**.** These STRs are located in stretches of DNA between gene-coding regions and consist of short DNA sequences (*e.g.* "TATT") that are repeated different numbers of times in different people. For example, in person A, the stretch of DNA may be "TATTTATTTATT" (three repeats), but in person B, the same region of DNA may be "TATTTATTTATTTATTTATT" (five repeats). Labs can then compare the number of repeats at each of these STRs to a sample taken from a crime scene and calculate the probability that the DNA from a suspect matches that sample. The chance that

two people who aren't closely related have the same DNA profile is 1 in 1,000,000,000,000,000,000.

***Figure 1*: Creating a DNA "fingerprint."** DNA profiles made from STR analysis are like a fingerprint or very long social security number. We can use them to calculate the statistical likelihood that different DNA samples came from the same person. Because each person inherits two copies of each gene in a cell (one from their mother and one from their father), they can have two numbers of repeats at each STR. The chances that two unrelated people have the same number of repeats at all 20 STRs is extraordinarily small. **figures by Rebecca Clements**

Progress in DNA sequencing technology

As technology has progressed, scientists have been able to create these DNA fingerprints with much smaller DNA samples, meaning that a suspect can be identified from a drop of blood instead of a pint. One new technological development, Next Generation Sequencing (NGS), sequences, or reads through, many small fragments of DNA at the same time, giving results much more quickly and at a lower cost than older methods. Accordingly, the number of regions used in STR analysis was increased from 13 to 20 in 2017, increasing the accuracy of DNA testing.

Scientists have also developed methods to analyze mixtures of DNA samples, as might occur when DNA is collected from a rape victim. For example, sophisticated software uses probabilistic genotype matching to determine the chances that two samples come from the same person. Analysts use this software to calculate the likelihood ratio, which measures how much more a suspect matches the data than a random person would.

The future of genetics in forensics: Using DNA to predict appearance

Scientists have developed models that can predict either blue or brown eyes over 90% of the time and brown, red, or black hair 80% of the time by looking at the variation in different genes between individuals. Scientists are now working on models that can predict complicated facial features which may be affected by hundreds of genes (***Figure 2***).

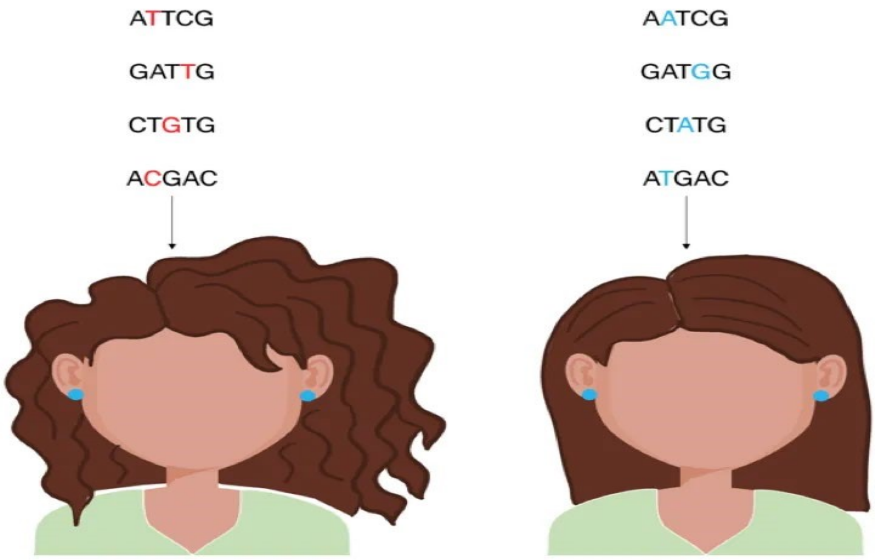

Figure 2: Translating DNA to appearance. Small differences in many genes interact to give rise to differences in physical appearance. Companies such as Parabon Nanolabs and Identitas hope to exploit our growing knowledge of genetics to create portraits of victims and suspects from DNA samples alone. **figures by Rebecca Clements**

In the future, we may go much further than just comparing evidence from a crime scene to a known suspect. Instead, we may use DNA from crime scenes to create descriptions of potential suspects or unidentified victims from scratch via a method called DNA phenotyping. In a racially biased criminal justice system, this technique has the potential to help reduce discrimination by preventing police from targeting the wrong people due to racial bias. Police have already used the technique to help identify victims from cold cases.

Although the technology supporting forensic genetics is improving, the science behind DNA phenotyping is still controversial, with many scientists saying companies such as Parabon Nanolabs and Identitas promise far more than they can deliver. Although police may use these companies to open new leads and identify suspects, evidence from DNA phenotyping is not currently permitted in courts to convict defendants. As technology improves and police increasingly use DNA phenotyping, it's important to consider what role it should eventually play in the justice system.

The limitations of DNA testing and its role in the justice system

The complexity of the statistical methods used to analyze DNA samples and draw conclusions poses a challenge to attorneys and judges, who must understand how they work to reliably assess their validity in court. DNA samples are fragile and can degrade over time, which can lead to errors during the sequencing process, especially if the amount of sample material is small. Inconsistent methods for interpreting DNA sequencing data, especially that of DNA mixtures, leads to inconsistent verdicts on the identities of DNA donors. Complicating matters further, incentives for labs to find matches could lead to bias on the part of the forensics labs performing genetic testing. It is essential both that those evaluating DNA evidence understand these caveats and that the government continues to promote the improvement of these technologies to reduce uncertainty and error in the analysis of DNA evidence.

DNA testing in forensics science has proven to be a powerful tool for both catching criminals and exonerating innocent people. As technology improves and the applications of DNA sequencing expand, we must ensure that the science underlying the analysis used to make decisions in court remains transparent and validated by the broader scientific community. Soon, we may witness DNA testing in the forensics lab catch up to the science fiction of television (May, 2018).

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