

ASSESSMENT OF THE FBI'S VIOLENT CRIMINAL APPREHENSION PROGRAM (VICAP)

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FOUNDATION FOR REPORT

The following report was developed using available information supplied to the examiner by Attorney Priarone and FBI Agent Mark Safarik. This included three VICAP case reports.

PURPOSE OF REPORT

In the previous Steve Fortin trial the DA hired retired FBI profiler Roy Hazelwood of the Academy Group, Inc. to review whether the Melissa Padilla and Vicki Gardner cases were committed by the same offender. Mr. Hazelwood's job was basically to determine if there were behavioral similarities between Padilla's murder and the Gardner assault. Did Steven Fortin commit both of the crimes? Mr. Hazelwood determined that his analysis, based on the similarities, the same person had committed both crimes. Fortin was convicted of murder and later appealed. The New Jersey Supreme Court overturned the conviction and ruled that Hazelwood's use of 'linkage analysis' is not a science.

There are no guidelines regarding which commonalities might be the most important, how many links are necessary to be sufficient to charge a person with the crime or even which dissimilar features might negate a link. The Supreme Court ruled that linkage analysis was not reliable enough to be used as part of a capital murder case. Mr. Hazelwood's statement later confirmed the court's ruling by pointing out that

“linking of crimes is based on training, education, and experience, not any quantified set of rules.”

In this examiner’s opinion VICAP has no quantified set of rules.

RELIABILITY OF VICAP

VICAP is a computer data base which depends on local and state police agencies to complete a check list of questions about solved and unsolved crimes in their jurisdictions. The computer system is supposed to flag similarities that might otherwise go unnoticed. However, most jurisdictions do not participate in VICAP, and in the 1990s only 3 to 7 percent of the total homicides in the USA were being recorded in the VICAP database.¹ Statistically, due to the low number of crimes that are represented in the VICAP database makes VICAP results skewed and unreliable.

How accurate is VICAP in linking crimes? No one knows, because the FBI does not keep records on the success or failure rate of the system. FBI Agent Mark Safarik acknowledged this fact in our meeting on July 22, 2005.

Another reliability problem with VICAP, there is no empirical operational definitions for the questions being asked on the questionnaires. For example, no attempts have been made to explore to see if the right questions are being asked or if too many of the same questions are being asked. In this examiner’s opinion grand theories about relationships between crimes are rather useless from a scientific point of view if they do not include an *a priori* definitional system for observations.

¹ Witzig, E., The new ViCap: More user-friendly and used by more agencies, The FBI Law Enforcement Bulletin, June 2003, Volume 72, Number 6.

Information that originates from VICAP questions, is supposed to provide investigators clues on what behaviors the instrument really measures. It appears that the VICAP questionnaire, fails to measure the differences between offenders. Recent attempts to improve the reliability of the VICAP questionnaire have not made any significant improvements because no attempt has been made to empirically validate the questions on the questionnaire. VICAP questions require investigators and/or crime analysts to answer with subjective opinions, hunches, and these personal biases could lead to extravagant claims regarding what a particular question truly says about an offender's behavior. For example, question 11 on the VICAP form asks about the 'motive' of Steve Fortin is one example of personal bias. In the Melissa Padilla murder the motives listed for the murder were 'drug related' and 'sexual motivation, for the Vicki Gardner offense 'sexual motivation.'

In the examiner's opinion the motives checked on the VICAP form are unverifiable – that is, there would be no way to really prove or disprove them. For example, the offender holds repressed rage against women. Because there is no way to prove or disprove repressed rage, this is a throwaway line designed more for emotional impact than for moving the investigation forward. It helps no one.

UTILITY OF VICAP

Essentially, the VICAP database is built on assumptions that have never been tested. There are also weaknesses with relational database like VICAP. One reason is that relational data bases are unlikely to pick-up on one to one variable comparisons or variations between offenders and offences. In other words, there might be crimes in the database carried out by one offender but merely relying on one to one crime scene

comparisons would fail to pick up on the additional crimes. It also works in the reverse order; that is, some offenses may be linked to a particular offender when no such links exists. The problem is further exacerbated when comparisons between group averages are made. The second reason has to do with how questions are designed and what behaviors are being measured.

VALIDITY OF VICAP

Is FBI Agent Mark Safarik's use of VICAP different from the linkage analysis performed by Mr. Roy Hazelwood? Agent Mark Safarik's use of VICAP was an attempt to analyze the Melissa Padilla and Vicki Gardner crimes using a relational (content-oriented) data base process (VICAP) rather than the previous personal opinion of Mr. Hazelwood. In the opinion of this examiner the two attempts (VICAP and Hazelwood) to link the crimes are no different and VICAP does not add a scientific edge to the linkage analysis.

In this examiner's opinion crime data entered in the VICAP data base seems to originate from *post hoc* reasoning by few selected investigators without any attempt to validate the assumptions. For instances, the relationships between crime variables in the Fortin case were produced by a few key individuals using work experience and intuition as a foundation. What is derived from this process is the investigator and analyst's assumptions about what historical events might be connected to the crimes under review will determine what crime scene actions are, for example, entered in VICAP. Consequently, no framework has been empirically established for identifying what the crucial or salient behaviors are for linking cases and, as a result, VICAP has been a qualified failure in linking previous cases.

In this examiner's opinion the steps used by Roy Hazelwood and Agent Mark Safarik to link the crimes, are no different. In both instances it is the human not the VICAP system who frames the questions of the database, and evaluates the possibilities set for cases exhibiting similarities. The human element was confirmed by Retired FBI profilers Robert Ressler and John Douglas in their book *Sexual Homicide: Patterns and Motives* where they pointed out that "VICAP staff determines if pattern characteristics exist among the individual cases in the VICAP system." In this examiner's opinion it was Agent Safarik who personally determined if the cases were linked and not the VICAP computer system. In this examiner's opinion this is rather an unscientific and informal approach in determining if crime scene actions have a relationship or not. Consequently, the VICAP results in the Steven Fortin case should not be used due to personal biases and the unreliability of the database.

There are no scientific 'laws of linkage' that would allow all profilers to come to the same conclusion. This lack of rules means that training and education might differ from place to place, profiler to profiler, crime analyst to crime analyst. Depending on skill and experience of the expert, linkage might vary in terms of degree of sophistication, accuracy, and completeness, but they should at least be based on the same general principles. For example, in the Fortin case, there were many non-linkage variables: the women were in different states; one was a law enforcement officer, the other was a single mother leaving a convenience store. There were differences in age, race, weight, and height of the victims. One victim was attack on the Interstate while the other was attacked in an overgrown grassy lot.

VICAP as a linking system is purely graphical not statistical. The more statistical a linking system becomes the more processed the information becomes and less bias exist. The more statistical the more pre-determined the decision to link or not. Conversely, the more graphical approach like VICAP, the less processing is carried out on the crime data, and the less pre-determined the decision. Hence, the less pre-determined process requires more assumptions about the linkage from the investigator.

In this examiner's opinion what data are entered in VICAP and how the results are interpreted and by whom suggests that there is 'no' consistency in opinions or techniques. Like Hazelwood's previous linkage analysis Agent Safarik's analysis using VICAP offers nothing new or scientific to the Steve Fortin case.

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