CRIMINAL JUSTICE

The "Squared" Suspect

A grisly crime, public outrage, pressured police. In Manhattan, the familiar pattern swirled about the twin murder of *Newsweek* Researcher Janice Wylie, 21, and Schoolteacher Emily Hoffert, 23. Yet last week the old pattern had a new result: a rare official admission of a near-miscarriage of justice.

The crime that frightened hundreds of New York career girls, not to men-

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GEORGE WHITMORE
What was all the shooting?

tion their parents, occurred on Aug. 28, 1963, when Janice and Emily were slugged, bound and stabbed to death around noon in their East Side apartment. Detectives questioned 1,000 persons, all to no avail, until April 24, 1964. On that day, George Whitmore, 19, a myopic, pock-marked Negro drifter with an IQ of 60, walked up to a Brooklyn cop in an area where a nurse had barely managed to frighten off a rapist the night before. "What was all the shooting about last night?" asked Whitmore carelessly. For days afterward, he was answering, not asking questions.

"Shakeing All Over." Whitmore was hustled to the station house and grilled for 26 hours. Next day, the city's top police brass triumphantly displayed the youth before TV news cameras as the confessed perpetrator of three crimes —the attempted rape, the unsolved killing of a Brooklyn charwoman, and the Wylie-Hoffert murders. The nurse, police said, had identified Whitmore. As to the double murder, police said that Whitmore diagramed the career girls' apartment for them and was even carrying a snapshot of Janice Wylie that he had snatched from her dresser. To be sure, Whitmore recanted his detailed, 60-page confession when he was arraigned. But Chief of Detectives Lawrence McKearney was unworried. "We've got the right guy," he said. "No question about it."

Manhattan D.A. Frank Hogan's investigators were soon less sure. Before signing his confession, Whitmore claimed that he had plucked the snapshot from his father's junkyard in Wildwood, N.J., to "show my friends I've got a white girl." Last fall the D.A.'s men displayed the picture around Wildwood; it was easily recognized as that of a local girl named Arlene Franco, who had thrown it away. Keeping this development to themselves, Hogan's men also secretly discovered a witness who saw Whitmore in Wildwood, about 150 miles away from Manhattan, calmly sitting in a local restaurant on the day of the murder.

As for the confession, during psychiatric examinations at Bellevue Hospital, Whitmore painfully wrote that he had been "hit many times" by police interrogators. "Then I was so squared that I was shakeing all over. And before I know it, I was saying yes. I was so squared if they would have told me my name was tom, dick or harry I would have said yes."

Three-Act Drama. When a man is accused of several crimes committed in a short period, many lawyers feel that fair practice is to try him first on the most serious charge. With only the now-suspect confession to go on, the prosecutors took a different tack. In the murder trials, if Whitmore took the stand to repudiate his confession, prior convictions would be admissible evidence to impeach his testimony. By arrangement between the Brooklyn and Manhattan D.A.s, Whitmore was thus tried first in Brooklyn, where the nurse's identification would help nail him for attempted rape; the Brooklyn and Manhattan murder trials were scheduled to follow in ascending dramatic order.

After Whitmore was convicted on the rape charge last November, his mother fired his court-appointed lawyer; two other lawyers took the case for no fee. In turn, they persuaded veteran Criminal Lawyer Stanley Reiben to join them. Reiben and enterprising newsmen soon began poking hole after hole in the prosecution case. N.A.A.C.P. lawyers also joined Reiben in charging that the jurors in the first trial were influenced by Whitmore's race and the Wylie-Hoffert charges.

Last week the payoff came when police arrested a new suspect in the Wylie-Hoffert murders: Richard Robles, 22, an ex-convict and narcotics addict, whose habit is said to require "about five bags of heroin a day." (Daily cost: roughly $100 or more.) The evidence against Robles reportedly rests on the word of a friend-turned-informer, Nathan Delaney, 35, another addict with three criminal convictions.

Under New York law, Delaney is subject to a life sentence if convicted of a felony for the fourth time. Perhaps by no coincidence, Delaney began talking about Robles on being arrested for killing a drug pusher. He was soon cleared ("justifiable homicide"). According to some stories, Robles readily admitted during bull sessions at Delaney's flat that he had "iced" (killed) the Wylie and Hoffert girls while burglarizing their apartment. To nail Robles, the police got a court order allowing them to bug Delaney's flat and record Robles' conversations. Delaney also wore an underarm recording device for monitoring other chats with Robles. Whether or not it stands up in court against Robles, the Supreme Court has held such evidence to be admissible in state criminal trials.

Revealing Statement. On the arrest of Robles, D.A. Hogan finally issued a 1,400-word statement clearing Whitmore of the Wylie-Hoffert murders, though not of the Brooklyn murder, which is not in Hogan's jurisdiction. One of Hogan's assistants declared: "I am positive that the police prepared the confession for Whitmore just as his lawyers charged." And he added: "If this had not been a celebrated case, if this case hadn't got the tremendous publicity, if this was what we so-called professionals call a run-of-the-mill murder, Whitmore might well have been

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RICHARD ROBLES
Who did the icing?

slipped into the electric chair and been killed for something he didn't do."

However honest, that was an oddly revealing statement, for according to the bar's canons of professional ethics, the great goal of prosecutors is always to seek justice rather than merely to compile convictions. Meanwhile, New York's Police Commissioner Michael J. Murphy has ordered a full investigation into just how Whitmore was persuaded to confess to the Wylie-Hoffert murders in the first place. As for Whitmore's other confessions, Murphy's men are apparently not going to inquire into the question of their validity.

CONSTITUTIONAL LAW

New Attack on *de Facto*

Faced twice with the possibility of ruling on the constitutionality of *de facto* school segregation, the Supreme Court has twice evaded the issue. By refusing to review a lower court decision that Gary, Ind., was not obliged to desegregate 17 *de facto* schools, and by refusing to review another decision that New York City was free to remedy racial imbalance, the court has left Northern school officials free to deal with local patterns as they see fit.

But last week U.S. District Judge George C. Sweeney all but assured the Supreme Court of one more chance to meet the question squarely. He ordered Springfield, Mass., to desegregate, and he ordered city officials to present a plan of action by April 30. Then he stayed his order to let school officials file an appeal.

The facts of the case were not in dispute. Of 46 elementary and junior high schools in Springfield, 29 have more than 90% white enrollment. Of the schools' 4,332 Negro pupils, 3,610 are confined to ten Negro-neighborhood schools that produce Springfield's worst students. Negro parents argued that where officials fail to act, *de facto* is perpetuated by what amounts to unconstitutional "state action."

The judge's uncompromising answer testified to the plaintiff's success. "Education is tax supported and compulsory," said Sweeney. "Public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood-school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact."

LAWYERS

Non-Discussion in Alabama

Wondering what "our brethren" in Alabama have concluded about the expanding consequences of the Supreme Court's landmark decision against school segregation, Columbia University Law Professor Marvin Frankel read straight through the 1954-64 issues of *The Alabama Lawyer*, official publication of the Alabama Bar Association. He found nothing but unmitigated blasts at the Court's "communistic, atheistic, nihilistic destruction of the Constitution." Not only was he unable to discover a single dissenting opinion, but *The Alabama Lawyer's* authors never once attempted to spell out the other side of the argument—even though, as Frankel noted, "the lawyer who cannot see his opponent's side or the difficulties in his own case gropes in a blindness that is often fatal."

An Answer Was in Order. Frankel first submitted his tactful, carefully documented report to *The Alabama Law-*