Fifth Edition

Criminal Interrogation and Confessions

Fred E. Inbau
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Preface

John E. Reid graduated from law school during the great depression and opened a private law practice. With clients being few and far between, he joined the Chicago police department walking a beat as a patrol officer. At this same time, Fred Inbau was a young professor of law at Northwestern Law School. The two of them became close friends and shared a common interest in developing scientific techniques to assist law enforcement agencies to learn the truth during criminal investigations.

On February 14th, 1929, two Chicago gangs engaged in a shootout in a Chicago alley which left an abundance of forensic evidence, but no means to analyze the evidence to identify the perpetrators of the crime. In response to the St. Valentine's day massacre, the Northwestern crime laboratory was established to assist police in fighting organized crime. In 1933, Fred Inbau became its first director.

While the focus of the crime lab was on ballistics, it also offered other forensic services, including lie detection. Initially, Leonarde Keeler was the crime lab's polygraph examiner but he left to open a private practice and taught Inbau the lie detection techniques he had developed. For a number of years Inbau was actively involved in conducting examinations and interrogations but his responsibilities as director frequently called him away from the polygraph lab. He believed that his friend John Reid would make a good polygraph examiner and offered Reid the position.

In the 1930s the polygraph technique was very crude and, more or less, represented a prop to obtain confessions. However, John Reid recognized the potential value of rendering opinions of truth or deception based strictly on recording physiological changes within a suspect. After experimenting with various questioning techniques, he developed what has been called the greatest single advancement in the polygraph technique, the control question. Reid also recognized the importance of obtaining respiration recordings from both the thoracic and abdominal regions and patented a device for detecting unobserved muscle movements by suspects who tried to "beat" the polygraph.

John Reid was a compassionate man and highly interested in studying human behavior. For example, he observed that truthful suspects appeared to display different attitudes and behaviors during their polygraph examinations than deceptive suspects. After many years of meticulous documentation, Reid developed categories of what he called "behavior symptoms" which seemed to be indicative of truth or deception. Reid also experimented with specialized interview questions he called "behavior provoking questions" because innocent suspects tended to answer these questions in a manner different from guilty suspects. These questions serve as the foundation for the structured Behavior Analysis Interview presented in this text.

While the polygraph technique was very beneficial to eliminate innocent suspects, polygraph results were not admissible as evidence to help convict a guilty suspect. To obtain

this evidence required a confession from the guilty party. In the 1930s criminal interrogation consisted of breaking the suspect's story down piece by piece after hours of intense and intimidating questioning with the hope of walking out of the room with a confession or partial admission. Inbau and Reid developed a completely different approach to interrogation—one in which the interrogator expressed understanding and sympathy toward the suspect's decision to commit the crime. Rather than try to frighten the suspect into confessing, the interrogator made statements designed to persuade the suspect that it is important for him to tell the truth. Reid was a master at using this approach and, during his career, obtained in excess of 300 murder confessions. Inbau's primary contribution, perhaps as a result of observing Reid's interrogations from behind the one-way mirror, was that deceptive suspects often went through predictable steps or stages during the course of an interrogation, eventually leading to the "Nine Steps of Interrogation."

In 1947 Reid left the crime laboratory to start his own firm, John E. Reid and Associates. He continued his interest in developing techniques to detect deception and to learn the truth through the interrogation process. For example, Reid went into prisons to interview convicts on death row in order to understand how these people thought about their crimes and why they confessed to him. This practice has continued—we have gone into prisons to interview gang members, child molesters, rapists, robbers, and other criminals to understand how they justify their criminal behavior and what their thoughts were when being interviewed or interrogated.

During the 1990s John E. Reid and Associates was awarded three research contracts by the National Security Agency to study detection of deception techniques. The company continues to contribute our expertise by publishing studies and articles in the field of interrogation and detection of deception, working with the Innocence Project in freeing individuals from prison who have been wrongfully convicted and sharing our knowledge by conducting training seminars.

The Reid Technique of Interviewing and Interrogation is now taught in seminars across the United States, Canada, Europe, and Asia. With hundreds of thousands of investigators having received this training, an updated authoritative text describing the proper and improper applications of the technique has become necessary. In recent years there has been an increased frequency in which investigators have been asked in court to describe specific interrogation techniques and the underlying principles surrounding the Reid Technique. To address these issues, this new edition of *Criminal Interrogation and Confessions* has been published. John E. Reid passed away in 1982. Tragically, during the early stages of the preparation of the fourth edition, Professor Fred E. Inbau died from injuries sustained in a traffic accident. Joseph P. Buckley, co-author of the third edition, continued on with the revisions. He enlisted the assistance of Brian C. Jayne, who also authored the psychology appendix in the third edition. Both Buckley and Jayne have been fortunate enough to study under the late John Reid and to work closely with Fred Inbau in various publications.

This fifth edition not only provides the investigator with updated information related to interviewing and interrogation (research findings, new case law, etc.), but also presents behavior symptom analysis from a slightly different perspective. In past editions we have listed behavior symptoms of "truth" or "deception." While we clearly indicated that assessments of truth or deception represent an inference made by the investigator which incorporates a number of underlying assessments, in the last several years researchers have ignored these underlying assessments presenting findings that misrepresent our categories of "truthful" or "deceptive" behavior symptoms. Hopefully, with this new perspective, investigators (and researchers) will have a better understanding of behavior symptom analysis. This edition also incorporates a number of new interrogation techniques that John E. Reid and Associates presents during their one day advanced training course. It is, indeed, the most contemporary version of The Reid Technique.

The authors would like to thank attorneys James Manak and Deborah Borman for writing the legal section of this text. We also offer our sincere thanks to current members of John E. Reid and Associates who have contributed to the development of the techniques presented in this text. These individuals are Louis Senese, Daniel Malloy, William Shrieber, James Bobal, David Buckley, Mark Reid, Michael Masokas, Michael Adamec, and the late Arthur Newey.

High-resolution, color versions of the photos found throughout this text are available for free download at http://www.jbpub.com/catalog/9780763799366

Introduction

In this introduction, we have deemed it advisable to present the following discussion of the practical need for interrogation as an investigatory process. Although the discussion is obviously not required for persons who are directly involved in or well acquainted with the practicalities of law enforcement or private security investigations, it deals with certain aspects of interrogation that should alleviate some of the reservations, or even the strong negative feelings, that some persons and groups have about the criminal interrogation process in general.

There is a gross misconception, generated and perpetuated by fiction writers, movies, and TV, that when criminal investigators carefully examine a crime scene they will almost always find a clue that will lead them to the offender; furthermore, once the criminal is located, he or she will readily confess or otherwise reveal guilt, as by attempting to escape. This, however, is pure fiction. As a matter of fact, the art and science of criminal investigation have not developed to a point where the search for and the examination of physical evidence will always, or even in most cases, reveal a clue to the identity of the perpetrator or provide the necessary legal proof of guilt. In criminal investigations, even the most efficient type, there are many instances where physical clues are entirely absent, and the only approach to a possible solution of the crime is the interrogation of the criminal suspect himself, as well as of others who may possess significant information. In most instances these interrogations, particularly of the suspect, must be conducted under conditions of privacy and for a reasonable period of time. They also frequently require the use of psychological tactics and techniques that could well be classified as "unethical," if evaluated in terms of ordinary, everyday social behavior.

To protect ourselves from being misunderstood, we want to make it unmistakably clear that we are unalterably opposed to the so-called third degree, even on suspects whose guilt seems absolutely certain and who remain steadfast in their denials. Moreover, we are opposed to the use of any interrogation tactic or technique that is apt to make an innocent person confess. We are opposed, therefore, to the use of force, threats of force, or promises of leniency. We do approve, however, of psychological tactics and techniques that may involve deception; they are not only helpful but frequently indispensable in order to secure incriminating information from the guilty or to obtain investigative leads from otherwise uncooperative witnesses or informants.

Private security officers are frequently confronted with the same type of problems encountered by the police. Commercial enterprises sustain enormous losses due to thievery on the part of employees. In addition, incidents of internal sabotage, arson, sexual harassment, and illegal drug use by employees are common in the workplace. A large percentage of those cases can only be resolved by the interrogation of suspected persons.

Our position, then, may be presented in the form of three separate points, each accompanied by case illustrations:

1. Many criminal cases, even when investigated by the best qualified police departments, are capable of solution only by means of an admission or confession from the guilty individual or upon the basis of information obtained from the questioning of other criminal suspects.[1]

As to the validity of this statement, we suggest that consideration be given to the situations presented by cases such as the following. A man is hit on the head while walking home late at night. He does not see his assailant, nor does anyone else. A careful and thorough search of the crime scene reveals no physical clues. Or, a woman is grabbed on the street at night and dragged into an alley and raped. Here, too, the assailant was not accommodating enough to leave his wallet or other means of identification at the crime scene, and there are no physical clues. All the police have to work on is the description of the assailant given by the victim herself. She describes him as about six feet tall, white, and wearing a dark jogging suit. Or consider this case: Three women are vacationing in a wooded resort area. They are found dead as a result of physical violence, alongside a foot trail, and no physical clues are present.

In cases of this kind—and they all typify the difficult investigation problems that the police frequently encounter—how else can they be solved except by means of the interrogation of suspects or others who may possess significant information?

There are times, too, when a police interrogation may result not only in the apprehension and conviction of the guilty, but also in the release of the innocent from well-warranted suspicion. The following is one such case within our own professional experience. The dead body of a woman was found in her home. Her skull had been crushed, apparently with some blunt instrument. A careful police investigation of the premises did not reveal any clues to the identity of the killer. No fingerprints or other significant evidence were located; not even the lethal instrument itself could be found. None of the neighbors could provide any helpful information. Although there was some evidence of a slight struggle in the room where the body lay, there were no indications of a forcible entry into the home. The deceased's young daughter was the only other resident of the home, and she had been away in school at the time of the crime. The daughter could not give the police any idea of what, if any, money or property had disappeared from the home.

For several reasons, the police considered the victim's husband a likely suspect. He was being sued for divorce, he knew his wife had planned on leaving the state and taking their daughter with her, and the neighbors reported that the couple had been having heated arguments and that the husband had a violent temper. He also lived conveniently near—in a garage adjoining the home. The police interrogated him and, although his alibi was not conclusive, his general behavior and the manner in which he answered the investigator's questions satisfied the police of his innocence. Further investigation then revealed that the deceased's brother-in-law had been financially indebted to the deceased, that he was a frequent gambler, that at a number of social gatherings he had attended money

disappeared from some of the women's purses, that at his place of employment there had been a series of purse thefts, and that on the day of the killing he had been absent from work. The police apprehended and questioned him. As the result of a few hours of competent interrogation—unattended by any abusive methods, but yet conducted during a period of delay in presenting the suspect before a committing magistrate—the suspect confessed to the murder. He told of going to the victim's home for the purpose of selling her a radio, which she accused him of stealing. An argument ensued and he hit her over the head with a mechanic's wrench he was carrying in his coat pocket. He thereupon located and took some money he found in the home and also a diamond ring. After fleeing from the scene, he threw the wrench into a river, changed his clothes, and disposed of the ones he had worn at the time of the killing by throwing them away in various parts of the city. He had hidden the ring in the attic of his mother's home, where it was found by the police after his confession had disclosed its location. Much of the stolen money was also recovered or else accounted for by the payment of an overdue loan.

Without an opportunity for interrogation, the police could not have solved this case. The perpetrator of the offense would have remained at liberty, perhaps to repeat his criminal conduct.

2. Criminal offenders, except those caught in the commission of their crimes, ordinarily will not admit their guilt unless questioned under conditions of privacy and for a period of perhaps several hours.

This point should be readily apparent not only to anyone with any criminal investigative experience, but also to anyone who will reflect momentarily upon the behavior of ordinary law-abiding persons when suspected or accused of nothing more than simple social indiscretions. Self-condemnation and self-destruction not being normal behavioral characteristics, human beings ordinarily do not utter unsolicited, spontaneous confessions. They must first be questioned regarding the offense. In some instances, a piece of information inadvertently given to a competent investigator by the suspect may suffice to start a line of investigation that might ultimately establish guilt. On other occasions, a full confession—with a revelation of details regarding a body, loot, or instruments used in the crime—may be required to prove the case. Whatever the possible consequences may be, it is impractical to expect any but a very few confessions to result from a guilty conscience unprovoked by an interrogation. It is also impractical to expect admissions or confessions to be obtained under circumstances other than privacy. Here again, recourse to everyday experience will support the basic validity of this requirement. For instance, in asking a personal friend to divulge a secret or embarrassing information, we carefully avoid making the request in the presence of other persons and seek a time and place when the matter can be discussed in private. The same psychological factors are involved in a criminal interrogation, and to an even greater extent. For related psychological considerations, if an interrogation is to be held at all, it must be one based upon an unhurried interaction with the suspect, the necessary length of which will in many instances extend to several

hours, depending upon various factors, such as the nature of the case and personality of the suspect.

3. In dealing with criminal offenders, and consequently also with criminal suspects who may actually be innocent, the investigator must of necessity employ less refined methods than are considered appropriate for the transaction of ordinary, everyday affairs by and between law-abiding citizens.

To illustrate this point, let us revert to the previously discussed case of the woman who was murdered by her brother-in-law. His confession was obtained largely by the investigator adopting a friendly attitude in questioning the suspect, when admittedly no such genuine feeling existed; feigning sympathy for the suspect because of his difficult financial situation; suggesting that perhaps the victim had done or said something that aroused the suspect's anger and would have aroused the anger of anyone else similarly situated to such an extent as to provoke a violent reaction; and resorting to other similar expressions, or even overtures of friendliness and sympathy, such as a pat on the suspect's shoulder. In all of this, of course, the interrogation was "unethical" according to the standards usually set for professional, business, and social conduct, but the pertinent issue in this case was no ordinary, lawful, professional, business, or social matter. It involved the taking of a human life by someone who abided by no code of fair play toward his fellow human beings. The killer would not have been moved one bit toward a confession by being subjected to a reading or lecture regarding the morality of his conduct. It would have been futile merely to give him a pencil and paper and trust that his conscience would impel him to confess. Something more was required—something that was in its essence an "unethical" practice on the part of the investigator—but under the circumstances involved in this case, how else would the murderer's guilt have been established? Moreover, let us bear this thought in mind: From the criminal's point of view, any interrogation is unappealing and undesirable. To him it may be a "dirty trick" to encourage him to tell the truth, for surely it is not being done for his benefit. Consequently, any interrogation might be labeled as deceitful or unethical, unless the suspect is first advised of its real purpose and told of the ploys the investigator will use to accomplish that purpose.

Of necessity, therefore, investigators must deal with criminal suspects on a somewhat lower moral plane than that upon which ethical, law-abiding citizens are expected to conduct their everyday affairs. That plane, in the interest of innocent suspects, need only be subject to the following restriction: Although both "fair" and "unfair" interrogation practices are permissible, nothing should be done or said to the suspect that is apt to make an innocent person confess.

There are other ways to guard against abuses by criminal investigators short of taking the privilege away from them or by establishing unrealistic, unwarranted rules that render their task almost totally ineffective. We could no more afford to do that than we could stand the effects of a law requiring automobile manufacturers to place governors on all cars so that, in order to make the highways safer, no one could go faster than twenty miles an hour.

Footnote

[1]Research indicates that forensic evidence is collected in less than 10 percent of cases investigated by the police. Of that collected, only about half undergoes scientific analysis. F. Horvath and R. Meesig, "The Criminal Investigation Process and the Role of Forensic Evidence: A Review of Empirical Findings" *J. Forensic Sci.* (Nov. 1996).

Part 1

Preliminary Considerations

Chapter 1

Distinctions Between Interviews and Interrogations

For the sake of brevity, the title of this text refers to "criminal interrogations," without mention of the interviewing process that often precedes an interrogation. Indeed, the terms *interview* and *interrogation* are often used interchangeably by investigators, depending on the audience being addressed. While testifying in court, the investigator inevitably describes his conversation with the defendant as an "interview." This is so even if the session lasts four hours and clearly involves repeated accusations of guilt. Conversely, a rookie police officer may be overheard telling a fellow officer about a traffic stop he or she made the night before: "Yeah, this guy initially claimed he didn't know he was speeding but after a little 'interrogation' he came up with some lame excuse for going over the limit—I got him to confess."

Too often these terms are interchanged as though they refer to the same process, when in fact, there are significant and important distinctions between the two. The first part of this chapter deals exclusively with the interviewing process, whereas the second part concerns the accusatory interrogation of a suspect. At the outset of the book we would like to describe some of the essential differences between an interview and an interrogation so that the reader will have a clear understanding of what we mean by these terms as they appear in the text.

Characteristics of an Interview

An interview is nonaccusatory. This should be the case even when the investigator has clear reason to believe that the suspect is involved in the offense or has lied to him. By maintaining a nonaccusatory tone, the investigator is able to establish a much better rapport with the suspect that will assist in any interrogation that might follow the

interview. A guilty subject is more likely to volunteer useful information about his or her access, opportunity, propensity, and motives if the questions are asked in a nonaccusatory fashion. In addition, the suspect's behavioral responses to interview questions can be more reliably interpreted when the questions are asked in a conversational, rather than challenging, manner. The investigator should remain neutral and objective throughout the interview process.

The purpose of an interview is to gather information. During an interview the investigator should be eliciting investigative and behavioral information. Examples of investigative information would be to develop the relationship between the suspect and the victim and to establish the suspect's alibi or access to the crime scene. During an interview the investigator should closely evaluate the suspect's behavioral responses to interview questions. The suspect's posture, eye contact, facial expression, and word choice, as well as response delivery may each reveal signs of truthfulness or deception. Ultimately, the investigator must make an assessment of the suspect's credibility when responding to investigative questions. This is primarily done through evaluating the suspect's behavioral responses during the interview, along with independent assessment of factual information. There may be occasions when the subject makes an incriminating admission or full confession during the interview process without any accusatory interrogation.

An interview may be conducted early during an investigation. Because the purpose of an interview is to collect information, it may be conducted before evidence is analyzed or all the factual information about an investigation is known. Obviously, the more information the investigator knows about the crime and the suspect, the more meaningful will be the subsequent interview of the suspect. However, on a practical level, the investigator should take advantage of any opportunity to conduct an interview regardless of sketchy facts or the absence of specific evidence.

An interview may be conducted in a variety of environments. The ideal environment for an interview is a room designed specifically for that purpose. Frequently, however, interviews are conducted wherever it is convenient to ask questions—in a person's home or office, in the back seat of a squad car, or on a street corner.

Interviews are free flowing and relatively unstructured. Although the investigator will have specific topics to cover during the interview, the responses a suspect offers may cause the investigator to explore unanticipated areas. The investigator must be prepared to follow-up on these areas because the significance of the information may not be known until later during the investigation.

The investigator should take written notes during a formal interview. Note taking during a formal interview (one conducted in a controlled environment) serves several important functions. Not only will the notes record the subject's responses to interview questions, but the investigator will be more aware of the subject's behavior by taking notes. Note taking also slows down the pace of the questioning. It is much easier to lie to questions that are asked in a rapid-fire manner. When faced with silence between each question and given time to think about his deceptive response, the deceptive subject experiences greater anxiety and is more likely to display behavior symptoms of deception. Furthermore,

an innocent suspect may become confused or flustered when a rapid-fire approach to questioning is used.

Note taking can inhibit information if it is done sporadically. For example, if the investigator has not taken any notes during the early stages of the interview but then, all of a sudden, writes down something the suspect has said, the suspect will attach significance to that statement and is likely to become much more guarded in subsequent answers. However, if at the outset of the interview the investigator establishes a pattern of taking written notes following each of the suspect's responses, note taking will not inhibit information.

Characteristics of an Interrogation

An interrogation is accusatory. Deceptive suspects are not likely to offer admissions against self-interest unless they are convinced that the investigator is certain of their guilt. Therefore, an accusatory statement such as, "Joe, there is absolutely no doubt that you were the person who started this fire," is necessary to display this level of confidence. If the investigator merely states, "Joe, I think you may have had something to do with starting this fire," the suspect immediately recognizes the uncertainty in the investigator's confidence, which reinforces his or her determination to deny any involvement in committing the crime.

An interrogation involves active persuasion. The fact that an interrogation is conducted means that the investigator believes that the suspect has not told the truth during nonaccusatory questioning. Further questioning of the suspect is unlikely to elicit the presumed truth. In an effort to persuade the suspect to tell the truth, the investigator will use tactics that make statements rather than ask questions. These tactics will also dominate the conversation; for someone to be persuaded to tell the truth that person must first be willing to listen to the investigator's statements.

The purpose of an interrogation is to learn the truth. A common misperception exists in believing that the purpose of an interrogation is to elicit a confession. Unfortunately, there are occasions when an innocent suspect is interrogated, and only after the suspect has been accused of committing the crime will his or her innocence become apparent. If the suspect can be eliminated based on his or her behavior or explanations offered during an interrogation, the interrogation must be considered successful because the truth was learned. Oftentimes an interrogation also will result in a confession, which again accomplishes the goal of learning the truth.

An interrogation is conducted in a controlled environment. Because of the persuasive tactics utilized during an interrogation, the environment needs to be private and free from distractions.

An interrogation is conducted only when the investigator is reasonably certain of the suspect's guilt. The investigator should have some basis for believing a suspect has not told the truth before confronting the suspect. The basis for this belief may be the suspect's behavior during an interview or inconsistencies within the suspect's account, physical evidence, or

circumstantial evidence, coupled with behavioral observations. Interrogation should not be used as a primary means to evaluate a suspect's truthfulness; in most cases, that can be accomplished during a nonaccusatory interview.

The investigator should not take any notes until after the suspect has told the truth and is fully committed to that position. Premature note taking during an interrogation serves as a reminder to the suspect of the incriminating nature of his statements and can therefore inhibit further admissions against self-interest. Only after the suspect has fully confessed, and perhaps after the confession has been witnessed by another investigator, should written notes be made documenting the details of the confession.

Benefits of Conducting an Interview Before an Interrogation

The majority of interrogations are conducted under circumstances in which the investigator does not have overwhelming evidence that implicates the suspect—indeed, the decision to conduct an interrogation is an effort to possibly obtain such evidence. Frequently, prior to an interrogation, the only evidence supporting a suspect's guilt is circumstantial or behavioral in nature. Under this condition, conducting a nonaccusatory interview of the suspect is indispensable with respect to identifying whether the suspect is, in fact, likely to be guilty. Furthermore, when there is sparse incriminating evidence linking a guilty suspect to the crime, the information learned during the interview will be needed to conduct a proper interrogation.

In those instances where there is clear and convincing evidence of a suspect's guilt, it may be tempting for an investigator to engage directly in an interrogation, bypassing the interview process. This is generally not advisable for the following reasons:

- The nonaccusatory nature of the interview affords the investigator an opportunity to establish a level of rapport and trust with the suspect that cannot be accomplished during an accusatory interrogation.
- During an interview the investigator often learns important information about the suspect that will be beneficial during an interrogation.
- There is no guarantee that a guilty suspect will confess during an interrogation. However, if that same guilty suspect is interviewed he or she may lie about his alibi, possessing a particular weapon, knowing the victim, or having access to a certain type of vehicle. During a subsequent trial the investigator may be able to demonstrate that the statements made during the interview were false and thus provide evidence contributing to the final verdict of guilt.
- There is a psychological advantage for the investigator to conduct a nonaccusatory interview before the accusatory interrogation. For the interrogation to be successful, the suspect must trust the investigator's objectivity and sincerity. This is much more easily accomplished when the investigator first offers the suspect an opportunity to tell the truth through conversational questioning.

An exception to the foregoing suggestion may be a situation in which the suspect is caught in an incriminating circumstance or clearly evidences a desire to tell the truth during initial questioning. Under this circumstance, an immediate interrogation may be warranted. As an example, a car that was recently reported stolen may be pulled over after a brief chase. In this circumstance, conducting a nonaccusatory preliminary interview of the driver makes little sense. If the suspect waives his *Miranda* rights, the arresting officer would certainly be wise to confront the suspect immediately, perhaps with a statement such as, "We know you took this car. Did you take it just for a joy ride or were you going to use it as a get-away car for a robbery?"

Conclusion

Traditionally, investigators have made little or no distinction between interviewing and interrogation. However, advancements in these specialized techniques suggest that clear differences exist and ought to be recognized. As will later be presented, some investigators are inherently good interviewers but lack the same intrinsic skills during an interrogation—and vice versa. An effective investigator will have gained skills in both of these related, but distinctly different, procedures.

Fundamental to any effective interview or successful interrogation are the analysis of investigative information, the environment in which the interview or interrogation is conducted, and the qualifications and demeanor of the investigator during an interview or interrogation. The remaining chapters in this first section will address these topics, as they relate to both interviews and interrogations.

Chapter 2

Obtaining and Evaluating Factual Information

Prior to conducting any interview or interrogation, the investigator must obtain the necessary background information upon which to proceed. This information will come from a variety of sources: records and documents, computer data, victim and witness interviews, and a review of investigative findings, including DNA, ballistics, fingerprints, bloodstains, and trace evidence. Collectively, this information is referred to as the "case facts."

Developing the Case Facts

"Fact analysis" is an important skill an investigator needs to develop. By "fact analysis" we mean the ability to identify from factual information the probable motivation for a crime, unique access requirements (for example, access to a particular type of weapon or vehicle, knowledge of a security code, or possession of keys), the window of time during which the crime was committed (to establish opportunity), and propensity characteristics about the person who committed the crime (for example, highly intelligent, emotional, or a drug user). Ultimately, this information is utilized in such a way as to locate possible suspects and to help identify which one probably committed the crime. Research has demonstrated that training and experience in the area of fact analysis significantly enhance a person's ability to accurately predict who is guilty or innocent of a crime.[1]

The following suggestions with respect to collecting and analyzing factual information refer to the investigator as the person who will actually conduct the interview and possible interrogation of a suspect. A "fact-giver" is any person who provides information about the case, whether that person is a witness, informant, victim, employer, or another investigator who has worked on the case.

Prior to an interview, and preferably before any contact with the suspect, the investigator should attempt to become thoroughly familiar with all the known facts and circumstances of the offense. This information should be obtained from the most reliable available sources because any inaccuracies will seriously interfere with the effectiveness of the interview or subsequent interrogation. If, for example, the investigator is misguided by another investigator's preconceived theory, or by an erroneous piece of information procured during the course of the investigation, the use of such information may place the investigator at a considerable disadvantage because the suspect who is guilty and realizes the inaccuracy of the investigator's information will be more confident about lying; if the suspect is innocent, he or she may feel insecure because of a lack of confidence in the investigator's demeanor.

The example that follows demonstrates the difficulty that can result when an investigator receives inadequate factual information or misconceived impressions from other investigators. A triple murder occurred one winter some years ago in a state park. The three victims were married women, each about 50 years of age, who were vacationing together and staying at the park's lodge. They had gone for a walk along a pathway not frequently used at that particular time of year. When all three were found dead, their bodies bore evidence of severe beatings, their hands were tied in "chain" fashion (a hand of each victim tied to a hand of another one), and their underclothing was torn, with consequent exposure of the genital areas.

Without any observable evidence indicative of possible robbery, the investigators settled upon a sex motivation as the only plausible explanation. However, after a six-month lapse and no solution to the crime, a different law enforcement agency began its own investigation. Only then was it discovered that among the clothing discarded at the scene was a glove that had been worn by one of the victims. Inside the glove were two rings, one an engagement ring and the other a wedding ring. This finding gave rise to the probability of a robbery rather than a sexually motivated offense because it revealed that one victim probably had attempted to save her rings by pulling them off along with her gloves to demonstrate to the robber that she had no jewelry on her person.

A 20-year-old dishwasher in the park's lodge had originally been questioned but was dismissed as a suspect primarily because of age—he was much younger than the victims and therefore presumably unlikely to be interested sexually in them. Once the motivation for the crime was shifted from sex to robbery, the dishwasher was interrogated again. This time he confessed to the triple murders, confirming that the motive was robbery. He said he had killed the lodge guests and to avoid being identified had torn their clothing to simulate evidence of sexual molestation, for which he thought he would not be considered a suspect. This decoy proved to be successful temporarily, as demonstrated by the erroneous surmise of the original investigators.

Another example of the difficulty experienced by investigators because of a misinterpretation of certain evidence is a case where the murder victim's body was found with his trousers and underwear below his knees. The assumption of sexual motivation was dispelled when the offender confessed that he had killed the victim as a result of an

argument in a car and then dragged the body through a field to the place where it was discovered. During the dragging process, the pants and underwear had become dislodged. There had been no sexual involvement.

The investigator should first interview those suspects who are least likely to be guilty and work toward the suspect most likely involved in the offense. The more information an investigator knows about the guilty suspect, the better the chances will be of eliciting the truth during an interrogation. Truthful suspects can provide valuable information about the guilty suspect. Because of their innocence, truthful suspects generally speak openly about other suspects' possible motives, propensities, or opportunity to commit the crime. Even when such information has not been obtained, the guilty suspect, aware that others have been interviewed, is concerned about what these people may have revealed to the investigator.

The following case illustrates the benefits of interviewing suspects believed to be innocent before conducting the interview of the suspect most likely believed to be guilty. A restaurant reported a break-in and theft of $4,600 from a safe. Crime scene evidence suggested that the person responsible staged the burglary and had the combination to the safe. Six managers were considered suspects because each of them had the combination to the safe. One manager stood out as the most likely to be guilty because he resigned shortly after the theft. Consequently, he was the last manager interviewed. During interviews with the other five managers it was learned that the suspected manager was a regular user of marijuana and also hung around with an ex-employee of the restaurant who had a prior conviction for auto theft. During the suspected manager's interview he denied any recent use of illegal drugs or a close relationship with the ex-employee.

The information learned from the innocent suspects was used to good advantage during the interrogation of the suspected manager. The investigator pointed out the suspect's earlier lies about his marijuana use and his relationship with the ex-employee, explaining that they were seen together the night before the theft. These tactics reduced the suspect's confidence in offering further denials. The manager eventually confessed when the investigator presented the possibility that his friend, the ex-employee, had suggested the staged break-in and that the theft was not solely the manager's idea.

In cases involving a victim, such as a robbery or assault, the victim should be the first person interviewed. The information a victim provides is essential to the investigation. The victim's statements become the sole basis for the questions asked of a possible suspect, especially in those instances when a victim's account is unsupported by physical evidence of trauma or when there are no witnesses to corroborate the event.

In some situations the victim does not report the complete truth and in other cases may completely fabricate the crime for various reasons. We have seen many investigations in which hundreds of hours of investigative time were wasted because the victim was never formally interviewed, and the alleged robbery, rape, stalking, or harassment was totally fabricated. In other cases, although victims were legitimately robbed or assaulted, they initially lied about their actions so as to minimize any negligence on their part that may have contributed to the robbery, or, in cases of assault, they may have exaggerated the

offender's statements or actions. This type of inaccurate information can greatly reduce the effectiveness of the subsequent interview of the guilty offender, as is illustrated in the following case, in which a student reported to her school that one of her instructors had made unwelcomed sexual advances toward her. In her harassment complaint she identified six specific incidents of sexual harassment occurring at the school over the past several months. The instructor was suspended and "interviewed" by attorneys representing the school. He was never actually questioned concerning any of the specific allegations, but rather was asked if he could think of any reason why a student would file a sexual harassment charge against him, to which he answered, "No."

Fortunately, when we got involved in the case we requested to interview the student before the instructor. During the complainant's interview we learned that she initially had a crush on the instructor and, in fact, voluntarily had sexual intercourse with him at his home on one occasion. Following that incident she realized that he was only interested in a sexual relationship, and she told him that she no longer wanted to date him. In truth, only the three most recent sexual advances occurred after she had broken off the relationship, and were, thus, unwelcomed. Armed with this knowledge we were able to conduct an effective interview of the instructor to the extent that he acknowledged the conversation in which the sexual relationship was terminated. He maintained his innocence of engaging in any sexual advances toward the student following that conversation. During a subsequent interrogation he acknowledged two of the referred to incidents as an attempt to "renew his relationship with the student." Had we conducted his interview with the original information provided in the student's complaint, it is unlikely that we would have ascertained the truth.

Do not rely upon a physician's estimate of the time of death of the victim or of the time when the fatal wound was inflicted. All too frequently such reliance leads to a futile interrogation of a suspect. Even the most competent of trained forensic pathologists report that it is very difficult, and even impossible in many instances, to estimate accurately the time of death or of the infliction of the fatal wound. Unfortunately, the ordinary physician who has not received specialized training in this field is the one who usually indulges in unwarranted speculations. In one case, for example, a physician who worked part time on a coroner's staff estimated that an elderly woman found murdered in an alley behind her home had been killed between 11:00 P.M. and midnight. Persons who knew her reported that she never would have been out alone at that time of night and her son, who lived in the victim's residence, acknowledged being home during that time period. Based on this information, the son became a prime suspect and was questioned persistently, without success, by a series of police investigators.

Finally, an experienced investigator who was called into the case became convinced that the son was innocent. The investigator suggested the possibility that death had occurred at an earlier time and that other suspects should be sought. Eventually the perpetrator was discovered and he made a confession, which was thoroughly verified by his revelation of details that would have been known only by the killer himself. The crime had occurred hours before the physician's estimate.

Remember that when circumstantial evidence or especially physical evidence points toward a particular person, that person is usually the one who committed the offense. This scenario may become difficult for some investigators to appreciate when circumstantial evidence points to someone they consider highly unlikely to be the type of person who would commit such an offense. For example, a clergyman is circumstantially implicated in a sexually motivated murder, but by reason of his exalted position he may be interviewed only casually or perhaps not at all. Yet it is an established fact that some clergymen do commit such offenses.[2]

An additional illustration of the consequence of assuming that a person of a certain status or good repute "could never do such a thing" is the case of the wife of a business executive who had accepted a job as a part-time bank teller and who, for various reasons, seemed to be the one most likely to have embezzled $6,500 from a customer's bank account. It seemed incongruous to the investigators that a person with her personal financial assets, including $10,000 in her own savings account at the same bank, would have committed such an act. Nevertheless, an experienced, effective investigator elicited a confession from her in which she revealed an unusual explanation. Her mother, whom her husband despised, needed money for surgery. Under no circumstances would the husband have allowed a contribution to be made to assist her. If his wife had withdrawn the necessary money from her own account, that fact would have come to the husband's attention. As an alternative source, she diverted $6,500 from the bank account of a depositor, who was a friend of hers and whose savings account could well stand a withdrawal of that amount without it being discovered soon or even noticed at all. As this case demonstrates, no one should be eliminated from suspicion solely because of professional status, social status, or any other comparable consideration when there exists strong circumstantial evidence of guilt.

After obtaining information from a fact-giver, consider the possibility that the fact-giver may have become so convinced of the suspect's guilt and so anxious to obtain a confession himself that he prematurely may have confronted the suspect with an accusation or may have indulged in some verbal abuse. These actions can severely hinder a subsequent interview by a competent investigator, particularly in a case situation where an impulsive investigator already had threatened physical abuse of the suspect. The trained investigator should recognize the immediate resentment and anger portrayed by the suspect and spend the time necessary to defuse the suspect's emotional state of mind, even to the extent of chiding the earlier investigator's treatment of the suspect.

Consider that a fact-giver may have worked so many hours or days on a case that, without any malicious intent, he may have withheld relevant information or even have supplied unfounded information to the investigator. When an initial investigator becomes emotionally involved in solving a case, it is not uncommon for him or her to lose the perspective of a truth-seeker and assume the adversarial role of a prosecutor, attempting to "build a case" against the person he believes responsible for the crime. In our role as consulting investigators, we conduct stipulated polygraph examinations in which the prosecution and defense both agree to accept the results in court. In gathering factual information we meet separately

with the two attorneys. In some instances, after listening to both versions, it sounds like the two sides are talking about different cases. The astute investigator should anticipate such biased reporting and orient questions around information that may speak favorably or unfavorably of the suspect.

Consider the possibility of rivalry between two or more investigative agencies (for example, a local police department and a sheriff's office). In such cases, the investigator should conduct separate interviews with the case investigators affiliated with each agency. In this way there is more likely to be a full disclosure of relevant details. The same may be true on occasions where two or more of a single agency's investigators on the same case have been working more or less independently of each other. Additionally, an ego factor may discourage a full exchange of information between the two investigative units or between individual investigators.

While listening to a fact-giver's report of the incident in question, jot down notes regarding dates, time, and nicknames of participants or witnesses and fill in the complete details later rather than interrupt the fact-giver presenting the report. Otherwise, an interruption may result in a break in the continuity of the fact-giver's thoughts or memory, and he may inadvertently fail to disclose some significant information. An effective technique, when obtaining initial facts, is for the investigator to reiterate what the fact-giver has told him and to follow-up by asking for clarification on missing or illogical information. The act of verbalizing an account in this fashion often will stimulate questions that would not have otherwise occurred to the investigator had he merely mentally absorbed the other person's statements.

In appropriate situations, encourage the person relating the details of a case to sketch the place of occurrence and to note on it any relevant points. If crime-scene photographs are available, they can be used, along with a freehand sketch, to trace the sequence of events. Usually, a sketch that is supplemented with notations is better for the investigator's purpose than photographs alone, even though the sketch may be drawn crudely. Photographs, unaccompanied by a full explanation from the investigator, may be inadequate or even misleading because usually they cannot, by themselves, fully portray a situation or event.

When interviewing a person regarding the facts of a case, ask what he believes may have happened, whom he believes to be the chief suspect, and why. The fact-giver, whether it is an employer, a loss-prevention specialist, or a relative of the victim, is often much more familiar with the possible suspects than the investigator. In one case, for example, a fact-giver made the following observation that proved to be of considerable value: "Jim was in love with Amy and Joe was fooling around with her and that's why I think Jim shot Joe." In another case, an investigator's inquiry of this nature drew the following response: "The word on the street is that Frank did it because he flashed a lot of money around right after the robbery." In another case, when referring to the suspect's behavior soon after the crime, one fact-giver said: "That guy Mike was so damn nervous he couldn't stand still!" In each of these cases, the information obtained proved to be helpful to the investigator in formulating interrogation tactics and techniques.

Regard cautiously the reliability of information submitted by a paid informer. There are times when such information is based only upon the informer's conclusions rather than upon actual facts or observations. Then, too, on many known occasions, false information is deliberately furnished by informants in order to obtain payment or to receive favorable consideration regarding their own criminal activities. Although many informers do reveal accurate and reliable information, the authors merely wish to urge a cautious evaluation.

View with suspicion any anonymous report implicating a specific person in a criminal offense. This is particularly true in instances where a reporter has experienced a personal problem with the accused, such as having been jilted or deserted by a spouse. Such a person might send the police an anonymous letter suggesting that the man who offended her committed a certain crime. This may be done out of spite, for the purpose of getting the man into a situation where he may need her help, or to delay a planned departure from the city or country—all for the purpose of "getting him back again." In summary, it is always good practice for an investigator to view with suspicion a "tip" or accusation based upon an anonymous report. To be sure, there are occasions when the report is well founded, but in the vast majority of instances there is some ulterior motive. (A male is capable of being equally vengeful with respect to a female who has jilted or deserted him, but his vented feelings are usually exhibited in a more blatant manner, such as damaging her property or physical abuse.)

Ask a child victim of a sexual offense involving a stranger to describe the scene of occurrence. For instance, if the crime is alleged to have occurred in the home of a particular individual, the child should be asked to describe the room—its curtains, wall colors, floor rug, bed, and other such objects. If the description is accurate, that fact will serve to corroborate that the child was, in fact, in the room. Often in these situations the molester will deny that the child was ever inside his car or apartment; when the child's revelation of such details is disclosed to the suspect, it will have a desirable impact during interrogation.

During an interview with the presumed victim or other reporter of a crime that involves money or property rather than physical offense, a skillful investigator may ascertain that no crime was in fact committed. For instance, an interview with the person who reports as a theft the disappearance of money, jewelry, or other property may reveal information that will subsequently establish that the missing item was either misplaced or perhaps deliberately disposed of by the owner in order to perpetrate a fraud on an insurance company. Such a "victim," upon being skillfully interviewed, may admit or otherwise reveal the claim to be false by reason of revenge, attempted extortion, or for some other purpose.

Specific Information of Value to Investigators

There are many kinds of information that an investigator should have available before conducting an interrogation of a suspect believed to be guilty. Some of this information will be developed through investigative efforts; some will be obtained during a nonaccusatory interview that precedes the interrogation.

Information about the Offense Itself
The following information about the offense itself should be obtained:

- the legal nature of offensive conduct (for example, forcible or statutory [underage] rape, robbery, burglary, or plain theft) and the exact amount and nature of the loss
- date, time, and place of the occurrence (in accurate detail)
- description of the crime area and of the crime scene itself
- the way in which the crime appears to have been committed and known details of its commission (for example, implement used, place of entry or exit)
- possible motives for its commission
- incriminating factors regarding a particular suspect

Information about the Suspect or Suspects
The following information about the suspect(s) should be obtained:

- personal background information (for example, age, education, marital status, financial and social circumstances, gang affiliation, and criminal record, if any)
- present physical and mental condition, as well as medical history, including any addictions to drugs, alcohol, or gambling
- attitude toward investigation (for example, hostile, cooperative)
- relationship to victim or crime scene
- incriminating facts or possible motives
- alibi or other statements (for example, oral, written, or recorded) that the suspect related to investigators
- religious or fraternal affiliations or prejudices
- home environment
- social attitudes in general
- hobbies
- sexual interests or deviation, but only if directly relevant to the investigation
- abilities or opportunities to commit the offense

Information about the Victim or Victims
The following information about the victim(s) should be obtained:

- companies or other institutions
  1. attitudes and practices toward employees and public
  2. financial status (for example, insurance against losses)

- persons
  1. nature of injury or harm and details thereof
  2. age, sex, marital status, and family responsibilities (number of dependents)
  3. social attitudes regarding race, nationality, religion, etc.
  4. gang affiliation
  5. financial and social circumstances
  6. physical and mental characteristics
  7. sexual interests or deviations, but only if directly relevant to the investigation
  8. blackmail potentialities

If, following an interview, the investigator believes that the information developed is inadequate for an effective interrogation, he should consider postponing the interrogation until the investigation has been resumed, in pursuit of further details. In some instances a delay for that purpose is not feasible, and the investigator may have to proceed on the basis of the limited information available.

The following case situation illustrates the value of the foregoing types of information. The office building of a corporation was partially destroyed by a nighttime fire. An investigation of the scene clearly established that the fire was deliberately set and that it started in the bookkeeping section of the company office, to which the entrance seems to have been effected by means of a door key rather than by force. Not only had the fire started in the bookkeeping area, but also the company's financial records had been burned outside the cabinet in which they were customarily kept. Moreover, the fire occurred the day before a scheduled audit was to have been made by an independent auditing firm. Although these facts clearly indicated that the fire had been deliberately set to conceal an embezzlement, the interviews of the personnel in the bookkeeping office were delayed until some background information became available. An investigation revealed that a recently employed cashier was considerably in debt and that his wife spent money excessively. Also, interviews with the cashier's previous employer disclosed that his accounts had been short on several occasions and that whenever the shortage was called to his attention, he readily offered to make up the deficit out of his own funds. Furthermore, the former employer had experienced a sizable loss, which had never been traced or otherwise explained.

Equipped with this information about the cashier, the investigator was in a far better position to conduct an effective interview than if such facts had been unknown or unavailable. In the latter situation, even if the investigator had detected the fact of deception or otherwise had suspected the cashier, the leads implicit in the information about the possible motive and the losses at the cashier's previous place of employment would have been lacking to the investigator's definite disadvantage. Moreover, and perhaps of equal importance, the investigator who is equipped with such leads is better able to avoid certain pitfalls that could have a detrimental effect during the interrogation

of the suspect. For instance, in the previous case, if the investigator had been unaware of the wife's extravagance as a possible reason for the embezzlement, he may well have questioned the cashier on the basis of unfounded references, such as gambling activities or "another woman," both of which may have justifiably angered the suspect. On the other hand, using information about the wife's conduct as a contributing factor permitted the investigator to invoke the effective technique of placing the moral blame for the offense upon someone else—in this case the wife.

In cases where a suspect has given an alibi, it is imperative that the alibi be checked, if at all possible, before the interrogation begins. Any known defects in it will assist the investigator materially. Moreover, an alibi check may actually establish the innocence of the suspect, despite other circumstances that may point to his guilt. In such instances, the investigator's full attention can be directed toward obtaining helpful leads from the suspect regarding other possibilities, or the interview may be abandoned altogether. All too often, time and effort are unnecessarily and unfairly expended in the interrogation of an innocent suspect where an alibi check would have readily established his innocence.

Another example with respect to a valid alibi possibility is the case where police investigators were so thoroughly convinced that a certain prostitute committed a murder that they proceeded to immediately interrogate her in an effort to obtain a confession. Eventually, when the date of the murder was mentioned, she said: "You're wasting your time on me; I was in jail at the time." A check revealed the truthfulness of her alibi. This type of incident occurs all too often.

Conclusion

When full credibility has been established regarding the victim, the accuser, or the crime discoverer, the facts that have been extracted may be extremely helpful in determining the procedure to be followed in the subsequent investigation leading to the interview and interrogation of the suspects themselves. In certain types of cases where the victim is in a position to influence the disposition to be made of a case solution, as in the case of a theft by an employee, the investigator should inquire about the victim's attitude with respect to what action, if any, he expects to take toward the perpetrator. The investigator should be mindful, however, that in some jurisdictions, it is a criminal offense to condition a restitution or compensation agreement upon a promise not to seek or participate in a criminal prosecution. Legally permissible, however, is the settlement of a civil claim for the loss or injury incurred by the victim.

One basic principle to which there must be full adherence is that the interrogation of suspects should follow, and not precede, an investigation conducted to the full extent permissible by the allowable time and circumstances of the particular case. The authors suggest, therefore, that a good guideline to follow is "investigate before you interrogate."

Footnotes

[1]One study demonstrated that when evaluators knew the context in which the interview took place (i.e., some of the background information) "they performed significantly better than chance and significantly better than 40 + years of research suggests they would. Clearly, knowledge of the environment in which deception occurs facilitates accurate deception judgments beyond what is possible based on observations of nonverbal leakage." Blair, J., Levine, T., and Shaw, A. (2010). Content in Context Improves Deception Detection Accuracy. *Human Communication Research, 36*, 423–442.

In another study, 20 actual case scenarios involving two suspects were given to 26 college students with no training in fact analysis as well as to seven investigators specifically trained in this skill. The investigators achieved an accuracy of 91% in correctly classifying the innocent or guilty person whereas the untrained students' average accuracy was 79%. The difference was statistically significant. Buckley, D. (1987). "The Validity of Factual Analysis in Detection of Deception" (master's thesis, Reid College of Detection of Deception).

[2]In documented cases, individuals who have displayed exaggerated traits of community service, helpfulness to others, or adherence to strict laws or religious beliefs are compensating for underlying guilt concerning hidden criminal activity. Jayne, B. (1986). The Significance of Suspect Personality Traits in Behavior Analysis and Interrogation. *The Investigator 2*(4).

Chapter 3

Case Solution Possibilities

As case information is being given, the investigator should begin thinking about possible solutions. He or she should raise many important preliminary questions, such as the possible method used to commit the crime, the probable suspect or suspects, the possibility of a false report of stolen money, and whether inside assistance may have been accorded the person or persons who burglarized a place of business. For instance, if a store manager has reported the theft of money from a safe, the following possibilities could be considered:

- Was there evidence of a forcible entry into the premises?
- Had the safe been locked?
- Who knew or might have known the safe's combination, and who had access to it?
- Was the combination to the safe written down where other employees may have seen it?
- Is there any reason why the manager or owner might have taken the money?
- Might the owner of the store have a motivation for a false theft report, such as dwindling income or business losses, that would be alleviated by insurance coverage?
- Was the store locked for the night?
- Could some customer or outsider have concealed himself or herself in the store after hours?
- Is it possible that an employee set up the burglary and helped thieves steal the money?

- Is it possible that an insider (employee) stole the money and lied about locking it in the safe?
- Was the money accidentally left out of the safe?
- Could the amount stolen be exaggerated to cover insurance deductibles?

The following examples illustrate some fundamental principles with respect to considering possible case solutions.

Evaluating Possible Motives

Consider each crime from several possible motivations. The nature of some crimes may reveal an apparent motive. For example, when a murder victim has been stabbed 30 times, the intensity of the crime suggests an underlying motive of anger and, thus, the killer is probably an acquaintance. When a small bomb has been placed in a victim's mailbox, and it appears not to be intended to cause personal injury, this suggests revenge or retaliation (a hate message). When a carefully planned robbery takes place at the home of a jeweler, with $40,000 in cash and diamonds stolen, this suggests greed and prior knowledge. However, many crime scenes do not reveal such obvious motives.

Traditionally, motivations for criminal behavior fall into three broad categories: need, greed, and power. Practically speaking, the first two motivations involve theft crimes. Either a theft suspect acted out of financial need, or took advantage of, or created, an opportunity to steal to advance his or her financial worth (greed). A suspect who steals out of need will be identified by his or her failing financial status, perhaps resulting from an addiction to drugs, alcohol, or gambling; recent unemployment; or unusual expenses. The suspect who steals out of need may have led a fairly "honest" life up to the theft and indeed acted out of desperation. Because of this, there may be no prior arrests or evident "propensity" to commit the crime. The following are indications of possible need-motivated thefts:

- stealing less than everything available (for example, the bank teller who needs medical attention and steals $800 from a cash drawer containing $5,000)
- bold thefts (for example, the suspect uses his own car in a robbery, or the suspect who fakes a robbery on the way to drop off a company deposit)
- one-person thefts
- witnesses who describe the robber as extremely nervous and hesitant

In comparison, suspects who steal because of greed will have an established propensity for theft (stealing from prior employers, juvenile shoplifting, riding in a stolen car), even though they may have no criminal record. The following are indications of possible greed-motivated thefts:

- stealing everything in sight
- carefully planned and executed thefts

- thefts involving multiple participants
- controlled and confident demeanor on the part of the robbers
- con games and manipulation of the victim

Power-motivated crimes encompass sex crimes, most physical assaults, some arsons and property damage crimes, as well as many homicides. They can be further divided into passive or aggressive power crimes. Any suspect who commits a power-motivated crime will have a propensity for that behavior—no one wakes up one morning and says to himself, "I think today I will sexually molest my niece." There is inevitably a chain of related behavior that leads up to the offense.[1] Consequently, past arrests, acquaintances' description of the suspect's temperament or sexual interests, and the suspect's acknowledgment of attitudes consistent with a power-motivated crime each serve as possible indications of guilt.

During a passive power crime the suspect will typically verbally manipulate the victim through threats or promises. There is generally no significant physical injury to the victim. Other related factors include:

- The offender almost always acts alone, although loved ones may suspect his criminal behavior.
- The victim is carefully selected for vulnerability.
- The victim is intoxicated or intimidated because of the offender's age or size.
- The offender often experienced early emotional pain (for example, abandonment, parental or social rejection).
- The offender may have identity insecurity (for example, sexual, parental, occupational).
- The perpetrator may hold a respected position of power and trust over the victim (for example, teacher, clergyman, chief of police, doctor).

During an aggressive power crime the victim will be unnecessarily brutalized, sometimes to the point of causing death. Offenders report experiencing an emotional "thrill" or "kick" from committing the crime. Characteristics of these crimes include:

- When the victim is random, offenders are more likely to act in groups or have a group affiliation.
- Victims are selected opportunistically.
- Rapes involve unusual or unnatural sex acts.
- The victim is humiliated and forced to perform unnecessary acts to degrade or debase.
- The perpetrator experienced early traumatic experiences of physical pain (for example, sexual or physical abuse).
- The perpetrator has a strict and oftentimes religious background, suggesting retaliation against a hated mentor (for example, parent, grandparent, or clergyman).

Evaluating Characteristics of the Crime

Identify characteristics of the crime or the offender to help focus the investigation around particular suspects. Analyzing the crime scene from the perspective of the offender—what the guilty person must have done or known to have committed this crime—often generates leads or, at the very least, areas of inquiry during an interview. Although the following list is hardly exhaustive, it indicates the types of questions an investigator should ask herself based on analysis of the crime scene:

- Were keys, a combination to the safe, or access codes to turn off security systems required?
- What is the nature of the wound? The type of wound on a homicide victim may indicate if the murder was committed professionally (such as an execution-style murder by a gunshot to the back of the head) or was an act of passion (as evidenced by multiple injuries while facing the victim).
- How much time was used in committing the offense? Does this suggest a perpetrator who was familiar with schedules or someone who picked the victim at random? Does this suggest the possibility of two or more participants?
- How did the suspect get to and from the crime scene? If a specific type of vehicle was described by witnesses, does the suspect have access to a similar vehicle?
- If a particular weapon was identified (for example, a 9mm automatic), does the suspect have access to such a weapon?
- Were there indications that the suspect was intoxicated or under the influence of drugs at the time of a crime? Evidence of this would include burglary where meaningless items are stolen or the victim's description of an assailant's demeanor. During an interview, guilty suspects, while maintaining their innocence, often acknowledge drinking or using drugs around the time the crime was committed.

Do not overlook the person who initially discovered or reported a crime as a suspect. For a number of reasons the person who commits a crime may also be the one to report it. In one circumstance, a suspect who may be on the verge of being caught in a criminal act might explain to the other person that he just witnessed the crime or came upon the crime scene. In another circumstance, the guilty person will report the crime out of necessity. In such a case, his relationship to the victim or crime scene is such that it would be suspicious if he was not the first person to report it. Perhaps most commonly, a guilty suspect may report his own crime as a tactic to divert attention away from himself.

An embezzlement investigation illustrates this latter motive. The manager of a savings and loan reported to the owner a recently discovered ongoing theft of more than $25,000. The thefts appeared to involve loan payments where a receipt was issued, but the funds were not accounted for in cash deposits. A young female employee, who recently had taken a maternity leave, was immediately suspected. Being single and without insurance, she

had a strong financial motive; in addition, the embezzlements stopped after she left. The manager, with his tenure and knowledge of the theft, was the first person interviewed. His behavior during the interview was such that the investigator did not feel confident eliminating him from suspicion. The manager was, therefore, informed that he may be asked to return for subsequent questioning. All other employees were then interviewed and eliminated. Evaluating factual information, the investigator was of the opinion that the manager's behavior during his interview was probably the result of smaller, unrelated thefts.

To resolve the manager's status he was asked to return to the interview office and was confronted on principal involvement in the current embezzlement, with the intention of stepping down the interrogation to ascertain the actual amount of smaller funds he stole. However, during the interrogation the manager never denied involvement in the embezzlement, so the investigator maintained the interrogation centered on that issue. After about 30 minutes the manager confessed to committing the embezzlement himself.

As is true with many embezzlements, the manager explained that the thefts had started out with a somewhat honorable intention. He had a number of customers who were delinquent in their accounts and this threatened his continued position as a manager. To keep his job he misapplied payments from timely customers to delinquent customers' accounts and kept a separate set of records, with the hope that eventually these people would pay and everything would balance. In the process of manipulating these records he discovered how easy it would be to steal, so he began to convert more and more customer payments to his own use. During his confession, not only did he provide the investigator with his delinquent account records, but he also acknowledged that he was concerned that an upcoming independent audit would reveal the thefts. The manager believed that if he was the one to report the theft then all investigative attention would be directed at the pregnant employee who recently left the establishment; as it turned out, she was never even aware of her status as a prime suspect!

In some cases, the guilty suspect will report his crime in an effort to seek attention and fame. These suspects are sometimes referred to as "glory grabbers." A common scenario is a security guard or volunteer fireman who sets a fire and becomes a local hero by reporting and extinguishing it.

The following case illustration of this type of suspect involves a homicide. A college student on leave from school was found shot to death in his bed at home. An older brother reported that he had discovered the body. The only person under suspicion was an elusive petty thief who had stolen a small item from one of the farms and who, on another occasion, had been suspected of attempting to burglarize the farmhouse where the victim lived. The investigation, however, eliminated him as a suspect in the murder.

The victim's older brother, who reported the discovery of the body, criticized the police for complacency and negligence in their efforts to solve his brother's murder. He even claimed that the police were "covering up" the murder and accused the city officials of sponsoring an inept police department and ignoring their responsibility. The prosecuting attorney of the county arranged for polygraph tests on various suspects, primarily as a defensive gesture. When they were cleared, the brother of the victim was asked by the

examiner to take the test. He failed the examination and, when confronted with the results, confessed that he had shot his brother as a result of an intense jealousy of him. He tearfully related how his father had favored his brother over him, had sent the brother to college, and had treated him better in every respect, even to the point of seeking his counsel on many matters. The confessor felt that he had been completely ignored and treated as just another farmhand. Reporting the homicide himself and castigating the police for not solving his brother's murder were final overt efforts by the killer to gain his father's favor and recognition.

In theft cases where the reported loss is covered by insurance, consideration must be given to the possibility of a fraudulent claim. The initial goal of the investigation should ascertain whether a loss or an offense did, in fact, occur. This principle is valid even in reported car theft cases because many such reported losses involve fraudulent claims for insurance, even to the extent of filing claims for nonexistent cars that had been insured on the basis of false credentials.

The following case also illustrates the value of applying this principle. A man moved into a suburban home next to the home of an insurance salesman, who became anxious to supply his new neighbor with all the various kinds of insurance he might need. Finally, the new neighbor agreed to insure a coin collection for $40,000. The agent was so elated over the sale that he arranged for an immediate issuance of the policy. When the insured individual inquired as to when the coin collection would be appraised, the agent replied, "eventually," and payment was made of the first annual premium. Eleven months later—without any appraisal having been conducted—the coin collection was reported stolen in the course of a burglary, and only then did the insurance company realize that the collection had not been appraised. The company's adjusters, operating on the assumption that perhaps the collection was overly valued, arranged for the insured person to submit to a polygraph examination. Following the examination, which disclosed deception even to the existence of a coin collection, the insured confessed that the claim was completely false and that obtaining the policy was done "in jest" due to the insurance salesman's pressuring him for business. Although the foregoing case involved polygraph testing, it illustrates the point that such possible solutions should not be overlooked even in the absence of polygraph examinations.

Always consider the possibility of complicity involving inside knowledge, preparation, or planning. Several burglars, all brothers, had effected arrangements with certain dishonest businessmen to burglarize the business premises for a sum to be paid off after insurance coverage had been received for the losses. In one instance, a furrier who had encountered a business reversal arranged for the group of brothers to burglarize the store, get into the storage vault, and carry off furs insured at a value of $40,000. After the furrier had collected the full coverage, the burglars were paid $30,000, which netted the furrier $10,000 plus a secret return of the $40,000 worth of furs—to be sold during the next season. This family team was known as "burglars by arrangement."

In this case, had no consideration been given to the possibility of a fraudulent scheme of this sort, employees of the fur shop would have been under suspicion and probably would

have been subjected to investigation and interrogation as to their possible involvement. Therefore, in instances of this type, the owner himself should be considered a possible suspect, and he should be questioned thoroughly before the employees are interrogated.

Employers or owners have been known to take advantage of an actual crime (such as a robbery or burglary) by stealing some of the money or goods that were left behind by the actual thief. An attempt to inflate the reported loss is demonstrated in the following example. Burglars broke though the skylight of a large supply company and stole $75,000 in merchandise. The first employee on the premises reported the burglary, and after a short, unsuccessful investigation the company fixed the skylight and replaced the supplies. Soon thereafter, burglars again broke the skylight and stole approximately the same amount in supplies. The discovery of both burglaries was made by the same employee.

At the time the second burglary was being investigated, a cashier reported $750 missing from her cashbox, which she kept concealed in a file cabinet. This theft clearly indicated the possibility that a company employee had stolen the money, and it aroused suspicion that the person who stole the $750 may have assisted in setting up the burglaries. An interrogation of the discoverer of the burglaries revealed that he had taken the $750, but he had not been involved in either of the burglaries. He explained that, unknown to the cashier, he had observed her placing the cashbox in the cabinet. He thought he could profit by stealing the money from the cashbox without detection and that the company officials would attribute the theft to the second burglary.

When all probable suspects with access have been eliminated, consider people with unusual access. A gang member obtained employment at a retail clothing store for the purpose of providing fellow members with merchandise through various theft schemes. He noticed that there was a locked cash box in the manager's office and, when the manager left for lunch one day, the gang member had the manager's keys duplicated. With the duplicate keys he was able to enter the store after hours and steal all the funds inside the cash box—three times over two months! Following each theft the manager became more suspicious of the two assistant managers who legitimately had keys to the cash box. When these two assistant managers displayed truthful behavior during questioning, the investigator considered the possibility that the keys had been copied by an employee who should not have had access to the box. During the course of questioning, the gang member acknowledged not only the thefts from the locked box but various other thefts, including false ringing of sales (scanning a $3.00 T-shirt twice but not scanning a $250 jacket); leaving merchandise outside a back door to be taken later; and falsifying the number of items taken into a changing room by a fellow gang member, thus allowing that person to wear stolen clothing out of the store.

When an internal theft is readily apparent (such as when all cash is stolen), and there is no effort to cover it up or disguise the theft, unusual access should be suspected. There are various examples of this type of theft: a janitor responsible for cleaning a bank discovered an open safe within one of the offices and stole its entire contents of $18,000; a friend of an employee was allowed in the back room of a store and stole an entire deposit bag containing $3,800; a salesman at an auto dealership observed the manager hide money behind a mounted

moose head in the show room, so the salesman returned later that night and stole the entire deposit bag. In each of these instances the thieves made no effort to conceal the theft because of a belief that their lack of apparent access would assure their innocence.

When there is an effort to disguise a theft through falsification of records or acknowledging violations of policy (such as leaving a cash drawer unlocked and unattended or processing several cash deposits at once), the employee with the best access is often responsible for the theft. These thefts tend to be even amounts (such as $1,000 or $2,500). This is because money is "strapped" in this amount (such as $1,000 from fifty $20 bills). Also, shortages in even amounts are more likely to be considered book-keeping errors.

In cases involving a human victim consider the possibility of an exaggerated claim. A woman reported that she had been raped by a man she met in a bar. The suspect was not difficult to locate because he was the spitting image of Abraham Lincoln, and, in fact, had won a Lincoln look-alike contest in his community. Questioned shortly after his arrest he denied knowing the victim or having any sexual relations with her. Following an interrogation the suspect acknowledged that, in fact, he did have sexual intercourse with her but denied that any force was involved. He explained that the woman was far from beautiful and that he was embarrassed about the encounter, which occurred only because his judgment had been distorted from drinking that night. The woman was re-interviewed and recanted the rape claim, explaining that she was very religious and had an inner fear of going to hell because of her sexual indiscretion.

A truthful victim's account will follow the guideline of adhering to "normal human behavior" both for the victim and the assailant. After hearing dozens of legitimate rape or robbery victims recount a crime, an investigator identifies certain common denominators within all these truthful accounts. One is that, despite the trauma of the event, most people who are victimized will respond, emotionally and behaviorally, in a manner consistent with normal human behavior. As an example of not engaging in normal human behavior consider the case of an employee who claimed to have been driving to a night depository when he was cut off by a car and robbed by two men. When describing the robbery the employee stated that he was aware that the robber's car had been following him in traffic for about 10 minutes prior to the robbery. He denied that there was anything suspicious about the car or its drivers at that point and explained that he was naturally observant of cars in front of and behind him. The employee then elaborated that the car cut in front of him on a deserted street and he slammed on his brakes to avoid hitting it. A man, who was possibly carrying a gun, got out of the car and ran back toward the employee's vehicle. The employee denied locking his doors, trying to reverse his vehicle, or doing anything else to escape. Following the robbery the employee did not discuss it with his best friend, even though he had seen him several times after the alleged robbery. The employee explained that it just was not any of his friend's business. These behaviors are not characteristic of normal human behavior. Following an interrogation, this employee confessed to fabricating the entire robbery story to cover his own theft of the funds.

Sometimes a victim who fabricates a crime does not describe the assailant's behavior or emotional state as typical of normal human behavior. Consider a 16-year-old high

school student who claimed to have been raped in a bathroom stall. According to her statement, the rapist followed her into a bathroom and forced her to have intercourse in a bathroom stall. Her description of the rape was somewhat credible, incorporating threatening statements made by the rapist, and so on. However, she explained that after the rape her assailant remained in the bathroom, allowing her to get dressed and leave the bathroom alone. After exiting the bathroom she went directly to her next class, without notifying anyone about the rape or watching the bathroom from a safe distance to see where her assailant might go. The failure to notify anyone immediately following a rape is not that unusual. What is highly unusual is the rapist allowing the victim to leave the bathroom first. Inevitably, rapists, like other criminals, are nervous and scared at the time they commit their crime and want to put as much distance as possible between themselves and the victim before authorities arrive. Following an interrogation, this student acknowledged making up the entire rape account.

When assessing the criteria of normal human behavior it is often useful for the investigator to ask himself, "Why was the crime committed the way (or when) it was?" Exploring answers to this question may suggest possible solutions, as in the case of a robbery of an armored truck. The robbery occurred at 9:30 A.M., within 30 minutes of the truck starting its morning route. The robbers stole more than $30,000 in cash, which is not unusual for such a robbery. However, the investigator knew that most armored trucks leave the terminal empty and pick up money during their daily route. For this reason, almost all armored trucks are robbed at the end of the shift when they are full of money. This peculiarity led him to ask why this truck started out with cash funds. The answer was that this particular truck was scheduled to resupply automatic teller machines. Arguing that outside robbers would not possibly know which one of a dozen trucks would have money in it when it left the terminal, the investigator believed that a present employee with that knowledge must be involved in the theft. An interrogation of the driver of the truck revealed his involvement in the robbery.

Do not allow a single piece of circumstantial evidence to focus the entire investigation around one suspect to the exclusion of other possibilities. The following case illustrates the advisability of proceeding with this precaution in mind. A big city department store was burglarized late one night, and a large amount of jewelry was stolen. The thieves had broken several jewelry display counters, which obviously would have caused considerable noise. A night watchman, who was supposed to have been in a nearby area at the time, disclaimed hearing any such noise. This rendered him suspect as an accomplice in the theft, and he was subjected to an interrogation based upon that theory. He steadfastly denied any such involvement, but he did admit that every night, including the one when the burglary occurred, he would, at a specific time, leave the store area unattended and go to a nearby diner for coffee and a sandwich. His account for the night in question was ultimately substantiated by the actual burglars after they were apprehended while attempting to sell their loot. They admitted that they had thoroughly cased the store, had learned about the watchman's coffee/sandwich routine, and had arranged to adjust the lock on the door he used so that it would not lock automatically when the door closed.

Do not discount any information developed during an investigation; what might appear initially as irrelevant information may provide a valuable lead. In the following example, a young man and woman were shot to death while they parked in the "lovers' lane" section of a city park. People in the area at the time reported having seen a young man riding a bicycle to and from the "lovers' lane." Also, a young boy had complained to the police that an older boy had knocked him off his bicycle not very far from the park and had taken the bicycle, saying that he wanted to ride it to the park. The police initially ignored this complaint, considering it unfounded. Later, however, the young boy was questioned, and he revealed the identity of the older boy who had taken the bike. When questioned about the theft and the shooting, the older boy confessed that he not only had shot and killed the two lovers in the park but also had robbed two other couples there on a previous occasion after "peeping" at their activities. The point of this case is that if the seemingly irrelevant initial information had not been pursued, the double murder may have remained unsolved.

In the investigation of the murder of a 3-year-old girl whose body was found in a creek, the police found a pair of shoes in those same waters and both shoes had printed in them the name of the man who was eventually identified as the killer several years later both by DNA testing and his own confession. However, due to the fact that the police were convinced at the time of the murder that the father killed his own daughter, they never followed up on the lead of the name found in the shoes.

General Suggestions to Investigators

It is important for the investigator to keep in mind some basic principles that often are overlooked:

- Start an investigation by asking three important questions:
  1. "What information did the guilty person have to know or possess to commit this crime?" (Did the killer know the victim? Did the person need to know a security alarm code? Did the person who did this know where the victim hid the key to her front door? Did they possess a particular caliber of weapon or specific type of vehicle?)
  2. "What did the guilty person do to commit this crime?" (How was entry made to the building? How did the person get the safe open? Why did the victim let the person into her apartment? Was there more than one perpetrator?)
  3. "Why was the crime committed the way it was and at the time it was?" (Why did someone break into that particular home instead of the neighbor's house? Why did the burglary occur at 10:30 in the morning instead of earlier or later? Why was this particular victim targeted to be robbed?)

- A suspect's alibi should be thoroughly checked out, whenever possible, prior to any interrogation.

- When a series of money thefts occurs within a single establishment or unit, usually only one person is the thief. The theft of merchandise may be an exception, especially if it is of a large quantity and presumably required two or more persons to remove it or direct it to where is was stolen.
- In thefts of money, where all available funds are stolen and detection of the theft is obvious, consider the possibility that the guilty suspect is someone with unusual access, who, under normal circumstances, should not have been able to gain access to the secured funds.
- The guilty person may create an excuse for being in the area in which the theft occurred. Under such a circumstance, it becomes critical to establish why the employee was in the area. For example, thefts have occurred when employees arrive to pick up their paychecks and find no one in the manager's office; an employee may stop after work to pick up a coworker and discover an unusual opportunity to steal.
- In thefts of money in which an employee acknowledges violating a company policy (for example, opening two night deposit bags at the same time, leaving a cash drawer unlocked or unattended, not verifying money straps), often this is the guilty employee. The strategy of claiming not to have followed company policy is used to cast suspicion on a number of other possible suspects.
- Former employees should always be considered as possible suspects in theft from a business. The ex-employee not only knows the operation, but he may also have friends who are current employees and who might allow him into sensitive areas.
- Crimes of homicide and arson are usually committed by a single individual. Exceptions are gang or terrorist killings.
- In some instances the reporter or discoverer of a crime should be given prime consideration as a suspect. Also, in some types of offenses, relatives or close friends of a victim should be interviewed before proceeding to an investigation of other possibilities.
- A sexually motivated arsonist will usually remain at the scene of a set fire or at least be a spectator long enough to achieve sexual gratification from the experience. For example, in one arson case the policemen at the fire repeatedly had to tell a bystander, "I told you to stand back; If I have to tell you again, I'll arrest you." This spectator later confessed to having set the fire.
- Before conducting an interrogation, an effort should be made to learn if the suspect has been previously interrogated by someone else investigating the case, and to ascertain how a custodial suspect had been treated during this period of incarceration. Was the individual actually accused of the crime or of other crimes? Was he or she physically abused in any way, threatened, or offered any promise of

leniency? Did he or she have a sufficient amount of rest, adequate food or drink, and an opportunity to use toilet facilities? Did the person make any significant admission or confess to the crime and then subsequently retract it? Did he or she retract after having talked to a parent, friend, member of the family, or some other person? If the investigator can find no evidence of abuse, threats, or promises that might have induced an innocent person to confess, then a prior confession is probably true. In the event that a suspect had been cleared of suspicion by the first investigation, this information will assist in evaluating the suspect's state of mind, and it will also be helpful in determining whether to proceed with an interrogation immediately or to wait for a more appropriate time.

- Does the suspect have any known physical, mental, or emotional impairments? Has she been taking any medication? This information is important to know in evaluating his reactions during an interview or subsequent interrogation. A physical, mental, or emotional condition may offer misleading behaviors.
- The investigator should ascertain the suspect's previous attitude about the anticipated interview. As discussed in Chapter 9, innocent suspects are usually cooperative during an investigation, whereas guilty suspects are usually uncooperative and try to avoid or delay being interviewed.

Conclusion

Some crimes are readily solved through lucky breaks, presence of irrefutable physical evidence linking the guilty suspect to the crime, or a guilt-stricken suspect who presents himself to the police to offer a full confession. Such instances are clearly rare occurrences. Most crimes are committed in a manner that makes detection of the guilty difficult and by a person who clearly intends to avoid punishment for his or her criminal behavior.

The case solutions discussed in this chapter illustrate how, during an investigation, applying logic, common sense, and experience (a sound understanding of criminal behavior) often will lead to the guilty person being interviewed. However, it is essential to understand that locating possible suspects is but one skill defining an effective investigator. The competent investigator must also possess the ability to interview these possible suspects and confidently identify which should be eliminated as suspects and which, in all likelihood, committed the crime. The ability to detect truth or deception during the interview process is fundamental to the ultimate solution of almost all criminal investigations.

Thinking back over the cases presented in this chapter, identifying the guilty suspect through the interview process alone would not have resolved the investigation. Under this circumstance, at best, a prosecutor (if so inclined) may be able to build a circumstantial case in court against the suspect. In most situations, with justification, prosecutors are reluctant to try a case on such merits. Most cases that do not offer an obvious solution are solved through a legally admissible confession and the subsequent evidence derived

from such a confession. Consequently, once an investigator correctly identifies the guilty suspect within a case, interrogation skills are required to ascertain the truth from the guilty person.

Footnotes

1. See Buckley, D. (2006). *How to Identify, Interview and Interrogate Child Abuse Offenders.* Chicago: John E. Reid and Associates. In Part One of the book the author discusses information provided by eight sex offenders who were interviewed about their history of abusive behavior and how they would target and approach victims.

Chapter 4

Initial Precautionary Measures for the Protection of the Innocent

An investigation should be conducted in an objective manner and follow close guidelines with respect to proper interview and interrogation techniques, including reasonable efforts to corroborate confessions. If any bias exists, it should be a bias of requiring a greater burden of proof to report a suspect as lying than of telling the truth. In this chapter we will look at evidence that may be misleading concerning the innocent.

Eyewitness Identifications and Motivations for False Accusations

In eyewitness identification cases, investigators should remember that there is a high degree of fallibility regarding such identifications, even in cases involving multiple identifiers. Indeed, of all the single factors that account for the convictions of innocent persons, the fallibility of eyewitness identifications ranks at the top, far above any of the others.[1]

Research and empirical evidence clearly indicates persistent problems with eyewitness testimony.[2] Of particular importance to criminal investigators are the following danger signals:

- The identifying witness *initially* had stated he or she would be unable to identify the perpetrator.
- The identifying witness had known the suspect prior to the crime but had made no accusation against him or her when first questioned by the police.
- A serious discrepancy exists between the identifying witness's original description of the offender and the actual appearance of the suspect.

- Before identifying the present suspect, the witness had identified someone else.
- Other witnesses to the crime had failed to identify the suspect.
- Before the crime was committed, the witness had a very limited opportunity to see the suspect.
- The identifying witness and the suspect are of different racial groups.
- During his original observations of the offender, the witness had been unaware that a crime situation was involved.
- A considerable period of time had elapsed between the time of the witness' view of the offender and his or her identification of the suspect.
- The crime had been committed by a number of persons.
- The witness fails to be "positive" in his identification.

We offer the following additional recommendations, which may be implicit in or auxiliary to the above suggestions:

- Consideration should be given to the possibility that the identifying witness may report what he perceives the offender to have looked like rather than what he actually looked like.
- The crime victim or witness may be biased not only as to race but also by reason of nationality, religion, organizational or fraternal affiliation, or, in an employer-employee situation, the factors of managerial or union status.
- Perception is psychologically affected by general attitudes and environmental factors. A traumatic experience in a prisoner-of-war or concentration camp, or even a prior favorable or unfavorable police experience, may affect the validity of an identification of a criminal suspect.

In cases of sexual abuse, if a child can identify the person suspected of being the abuser, and can also relate an account of the event itself, his or her eyewitness identification is rarely invalid; however, investigators should be aware of the possibility that the child may have been exploited by an adult with an ulterior motive. Classic examples of this are in cases where an influencing adult seeks vengeance against the suspect. An innocuous experience with a child could be embellished by such an adult so as to constitute a criminal act. For instance, an innocent touching of a female child by someone her mother dislikes—particularly an estranged or divorced husband exercising a visitation privilege with the child—may, with suggestive prompting, evoke a tale of criminal sexual conduct. The authors are aware of a number of such instances that could have resulted in tragic consequences were it not for skillful questioning of the person responsible for the false accusation.

Implausible motivations can be the basis for false sex offense charges. In one case a Congressman's daughter accused a man she had formerly dated of trying to rape her.

The accused male vehemently denied that any attempted rape had occurred or that he had ever indulged in sexual intercourse with her. He stated that after having advised the young woman he would discontinue dating her, she had vowed to "get even with him," and, indeed, she had made that effort. One night she concealed herself in his car, and after he had driven away she announced her presence and got into the front seat. As the driver stopped his car, she threw herself upon him. He stopped and tried forcibly to eject her, which he accomplished only after a considerable struggle. The girl then reported the event to the police as an attempted rape and displayed the torn condition of her clothing. The accused was arrested and formally charged. He insisted upon a polygraph examination, the results of which supported his truthfulness. Then the girl was examined, with results indicating deception. An ensuing interrogation resulted in her admission that she had been very much in love with the accused man and could not tolerate his rejection of her. She further explained that she herself had torn her clothing in order to lend plausibility to her false accusation.

In sex offense cases involving adolescent females who accuse their fathers of criminal sexual conduct, consideration should be given to possible motives on the part of the daughter. One actual case of this type involved a false accusation motivated by the father's restriction on his daughter's dating and her breaches of his curfew rules.

In summary, investigators should always exercise caution in evaluating eyewitness identification and the accusations of alleged victims in sex offense cases that are unsubstantiated by evidence beyond the accusations.

Repressed Memories

Allegations of past sexual or physical abuse that first surface during the course of psychotherapy or counseling should be considered as less reliable than those that are spontaneously reported to a loved one or friend. The mere fact that the individual recalling these incidents is being treated for a mental illness suggests that the individual may fall within a category of people vulnerable to thought distortions. In addition, people suffering from disturbing thoughts or behavior actively seek an explanation for those events and this often involves projecting blame or responsibility away from themselves. Finally, some health professionals whose therapy focuses on identifying underlying causes for a present condition may suggest the possibility of prior abuse that, in light of the previous two factors, a patient readily accepts as valid.

Not all repressed memories surface as a result of therapy. In a book entitled *Courage to Heal*, the authors offer the following suggestion: "If you think you were abused and your life shows the symptoms, then you were. If you don't remember your abuse you are not alone. Many women don't have memories, and some never get memories. This doesn't mean they weren't abused."[3] Obviously, many adults suffer symptoms of depression, anxiety, or depreciated self-worth and yet were never abused as a child. To imply that the absence of such recollections without any interaction with a therapist is further evidence of child abuse creates a cycle of self-doubt that could easily lead to false memories.

Sexual or physical abuse at a young age is clearly indicated as a precipitator to psychological problems later in life, and it is well documented that some traumatic experiences are temporarily or permanently forgotten. The *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV), which is widely used by psychiatrists to define mental diagnostic categories, recognizes the concept of repressed memories (dissociative amnesia).[4] Moreover, the concept of repressed memories has been accepted as valid in civil actions.[5]

There is no single explanation accounting for a victim's failure to remember early childhood sexual abuse. Repression, dissociation, and even physiological causes have each been suggested as playing a role in the process of blocking out memories.[6] Experts agree, however, that a single traumatic event is more likely to be forgotten than multiple traumatic events.

The investigator faced with this type of allegation must understand that such repressed memories are often not knowingly fabricated. Even in the event of a totally false memory, the "victim" comes to truthfully believe that she was sexually or physically abused as a child. Therefore, the following suggestions are offered when investigating allegations that surface as a product of repressed memories.

1. When interviewing the victim, elicit as much specific information as possible with respect to dates, locations, witnesses, doctor visits, other people who were abused, and other people to whom the victim disclosed the abuse.
2. When the victim reports multiple incidents of extensive abuse, a corresponding trail of associated problems and pathologies—such as poor attendance in school or changes in social interests or academic performance—supports the allegation. The absence of such a trail should warrant suspicion concerning the recovered memory.
3. Conduct interviews of family members, neighbors, friends, or anyone else who might be able to corroborate or refute the victim's account. In one case, the victim claimed that not only was she physically and sexually abused but also that her older brother was. The older brother adamantly denied being abused and was also able to identify factual inconsistencies in his sister's recollections.
4. When conducting the interview of the named abuser, focus on specific acts, dates, and locations. A guilty suspect experiences much less internal anxiety when denying broad allegations, such as, "Did you ever have sexual contact with your step-daughter's vaginal area," than specifically worded questions such as, "While giving your step-daughter a bath when she was about five years old, did you put your finger inside her vagina?"
5. Seek psychiatric advice before interrogating a victim who is believed to be suffering from false memories. The victim may have nothing to confess because in their mind the memories are real. Also, the investigator needs to be concerned with the victim's future mental health and possible civil liability issues to the department.

Intent Issues

In some investigations, a suspect will readily acknowledge being responsible for an action but deny wrongful intent. Examples of these cases include the suspect who admits "accidentally" starting a fire, the father who acknowledges touching a child's genitalia for hygiene purposes, or a homicide in which the suspect claimed that he did not know a handgun was loaded at the time it went off. These types of cases present a special difficulty for the investigator and can be difficult to prove in court.

On the one hand, it is common for a guilty person to deny wrongful intent in an effort to escape consequences associated with his actual crime. Indeed, as will be discussed in Part 3, many guilty suspects will confess to all the behavioral aspects of a crime but never fully acknowledge the true intent behind the crime. On the other hand, some claims denying wrongful intent are legitimate.

The interview of a suspect who is denying wrongful intent must be carefully constructed and the investigator must realize that a suspect guilty of wrongful intent may not reveal his deception through verbal or nonverbal behavior because he is telling 95% of the truth. Furthermore, a person's intentions are not fixed in time, as are behaviors. Physical actions or statements either occurred, or they did not. However, intentions can be subject to perceptual distortions, similar to beliefs or opinions. Because of this, a suspect may come to partially believe that a gun went off accidentally or that his contact with a child's genitalia was for hygiene purposes.

The following suggestions are offered when conducting an investigation concerning the issue of intent.

1. Evaluate the suspect's explanation in context of the crime scene, the victim's statements, and against the subject's normal behavior. A truthful account will fit physical and circumstantial evidence and also represent the suspect's normal behaviors.
2. Focus the interview on behaviors rather than intentions. A father who describes inadvertent contact with his daughter's vagina should be questioned with respect to how long his hand was in contact with the child's vaginal area. Did he insert his finger inside the vagina? How frequent was this contact? In what geographic locations did it occur? Did he ever ejaculate at the time of the contact? Did his penis become erect? Did he tell his daughter to keep the contact a secret?
3. A suspect who initially denies any involvement in the crime and, only after substantial interrogation, acknowledges that he did engage in the alleged behavior but couples that admission with a denial of wrongful intent is, in all probability, lying about his lack of intent.
4. If a polygraph examination is utilized during the investigation, make certain that the examiner is highly qualified. These are among the most difficult issues to address with the polygraph technique. The examiner's questions should, if

possible, avoid the words *intent, purposefully*, or *sexual gratification*. Rather, the questions should address such issues as, "Did you put your finger inside your daughter Gloria's vagina?" "Prior to leaving the store, did you know that the CD was inside your coat pocket?" "At the time you left the warehouse, did you know there was a fire inside of it?" "Just before the handgun went off, did you know that it was loaded?" "At the time you put the DVD player in the trunk of your car did you know that it was stolen?"

5. Because of the nature of intent issues, the investigator must take special care with respect to corroborating a confession. To illustrate the importance of corroboration, consider this actual case. A mother found her one-month-old child dead in his crib. An autopsy revealed that the child died from asphyxiation resulting from symmetrical pressure to the carotid arteries. This injury is consistent with holding the child high on the chest area and applying pressure, perhaps by shaking the child. During an interview, the father acknowledged holding the child in a manner consistent with the autopsy report. The father, however, denied applying abnormal pressure or knowing that his handling of the child resulted in his death. The father maintained that when he left the room, the child was alive.

If this father was interrogated and confessed to knowingly causing the injury to the child, it would be important to establish the father's emotional state at the time he picked the child up (for example, was he angry because the child was crying). It would be beneficial if the suspect also acknowledged that when he put the child back down, the child was not moving. If the father got up an hour later to check on the child because he was concerned about the child's health, discovered that the child was not breathing, but said nothing to his wife about it at that time, he would have a difficult time persuading a jury that this confession was false.

Circumstantial Evidence

There are many instances in which the initial discovery or presence of physical evidence at the scene of a crime seems to point convincingly toward some person as the perpetrator of the offense under investigation. This evidence may be in the form of an article of clothing (such as a hat, coat, glove, or handkerchief); or it may be in the form of other personal property (such as a wallet, pen, notebook, glasses, key, or even a firearm). Although evidence of that nature will often serve to identify the offender or at least lead to him as a suspect, it may on occasion give rise to a completely false assumption, and the investigator must always be mindful of that possibility.

A notable example of the risk of attaching investigative conclusiveness to finding circumstantial evidence is the famous case of Suzanne Degnan. Suzanne, age six, had been kidnapped from the bedroom of her home, and her dismembered body was later found in

a sewer. In her mouth was a handkerchief that contained the laundry serial number of a soldier stationed in the Chicago area, and the initials monogrammed on the handkerchief were the same as the soldier's. Moreover, the soldier's parents lived near the Degnan home and while on military leave, he had stayed with them shortly before and after the kidnapping. When questioned by the police, he stated that at the time the kidnapping occurred, he had been alone on one of Chicago's elevated trains and had been riding it for several hours—obviously not a convincing alibi. Subsequent developments completely exonerated him and revealed that the actual killer had committed a number of burglaries, many of which had occurred in living quarters of females, and that his entries into the places had been basically sexually motivated. Presumably, it was in the course of a burglary of the soldier's parents' home that the killer had acquired the handkerchief with the earlier suspect's initials on it.

Although circumstantial evidence against the soldier suspect was sufficient to warrant the suspicion that it had created, the same cannot be said for the appraisal that police investigators gave to certain circumstantial evidence against another suspect in the same case—a janitor of the apartment building in the basement of which Suzanne Degnan's body had been dismembered. First, the janitor, of course, had had a key to the basement, as well as keys to other adjoining buildings that he serviced. Second, these circumstances recalled to the police a case that had occurred in Chicago some years earlier, in which a janitor had murdered a woman in the basement of one of his buildings. Those were, however, the only two factors on which the police could base their deduction that the janitor in the Degnan case must be guilty. They were so convinced of the janitor's guilt that a police sergeant working on the case proceeded to attempt to extract a confession putting the janitor on what was referred to as a "trapeze." The trapeze device consisted of an adjustable horizontal bar over which the janitor's arms, handcuffed behind him, were placed at a height that allowed only his toes to lend him any support. Despite this unconscionable treatment, the janitor never confessed. Subsequently, the actual killer, 17-year-old William Heirens, was apprehended and convicted. The janitor filed a civil suit against police officials and others, which was settled for a sizable sum, but he did not live long thereafter to enjoy it. It is highly probable that the "interrogation" ordeal to which he had been subjected expedited his demise.

This unfortunate event could have been averted if the police had paused long enough to have tests made in the police department's newly acquired scientific crime detection laboratory to determine whether blood was on the janitor's clothing or in his fingernail scrapings or other parts of his body. The body or clothing of the person who had dismembered the child's body undoubtedly would have borne some trace of the victim's blood. Furthermore, a polygraph examiner had been available to test the janitor suspect. (Many suspects had been tested in the same case, including the previously mentioned soldier suspect.) However, the janitor was not examined through the polygraph technique.

Footnotes

[1]In 2011 on their website The Innocence Project states the following: "Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in more than 75% of convictions overturned through DNA testing." http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php

In one study (Wells et al., 1998) examined the first 40 cases where DNA exonerated wrongfully convicted people. In 90% of the cases, mistaken eyewitness identification played a major role. In one case, 5 separate witnesses identified the defendant. Wells, G., Small, M., Penrod, S., Malpass, R., Fulero, SD., and Brimacombe, C. (1998). Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads. *Law and Human Behavior, 22*, 603–647.

Bedau, A. and Radelet, M. (1987). Miscarriages of Justice in Potentially Capital Cases, *Stanford Law Review, 40*(21), 57. The authors cite 350 cases in which a probably or possibly innocent defendant was charged, and often tried for murder. In categorizing the source of errors they believe that 193 defendants (55%) were erroneously implicated because of witness error, compared to only 49 (14%) caused by a false confession.

[2]For a review of this research see Ross, D.F., Read, J.D., and Toglia, M.P., eds. (1994). *Adult Eyewitness Testimony: Current Trends and Developments*. New York: Cambridge University Press. Also see Gillen, J.J. and Thermer, C.E. (2000). DNA-based Exonerations Warrant a Reexamination of the Witness Interview Process. *The Police Chief*, December, 52–57. Publication of the International Association of Chiefs of Police.

[3]Bass, E. and Davis, L. (1994). *Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*, 3rd ed. New York: HarperCollins.

[4]DSM-IV is published by the American Psychiatric Association.

[5]*Shahzade v. Gregory*, U.S. District Court of Massachusetts (May 1996).

[6]Schacter, D.L. (2001). *The Seven Sins of Memory*. Boston: Houghton Mifflin. For a detailed description of recovered memories of sexual abuse see Schatner, D. (1996). *Searching for Memory, the Brain, the Mind, and the Past*. New York: HarperCollins, 248–279.

Chapter 5

Privacy and the Interview Room

Privacy

The principal psychological factor contributing to a successful interview or interrogation is privacy—being alone with the person during questioning. Investigators seem instinctively to realize this in their own private or social affairs, but they generally overlook or ignore its importance during an interview or interrogation. In a social situation, an investigator may carefully avoid asking a personal friend or acquaintance to divulge a secret in the presence of other persons; he instead will seek a time and place when the matter can be discussed in private. Likewise, if an investigator is troubled by a personal problem, he will usually find it easier to confide in one other person. Even a problem that concerns more than one other person is usually discussed with each of the persons on separate occasions. However, during an interview or interrogation, where the same mental processes are in operation, and to an even greater degree by reason of the criminality of the disclosure, investigators generally seem to lose sight of the fact that a suspect or witness is much more apt to reveal secrets in the privacy of a room occupied only by himself and the investigator rather than in the presence of an additional person or persons.

In the previously discussed Degnan murder case (see Chapter 4), the importance of privacy was impressively revealed by the 17-year-old murderer himself, William Heirens, whose fingerprints were found on a ransom note left in the Degnan home. The handwriting on the note was identified as his. There was also evidence that he had killed two other persons and had committed 29 burglaries. His attorneys, to whom he apparently had admitted his guilt, advised him to confess to the prosecuting attorney, thereby providing him an opportunity to be saved from the electric chair. Arrangements were made between Heirens's counsel and the Cook County state's attorney for Heirens to

make a confession. But at the appointed time and place, Heirens refused to confess. The reason for his last-minute refusal appears in the following headline from the *Chicago Daily News*: "Youth Asks Privacy at Conference. Blames Refusal To Talk on Large Crowd at Parley." The newspaper account further stated:

> It was learned that Heirens balked at a conference arranged for last Tuesday because [the state's attorney] had invited almost 30 law enforcement officers and others to be present. . . . It was at the conference between the youth and his lawyers that he told them for the first time that there were "too many" present on Tuesday. He said he would go through with the confession arrangements to escape the electric chair if it could be done under different conditions. The state's attorney told reporters that he had invited the police officials to the conference because they had all played a leading part in the investigation and he felt they should be "in on the finish."

The *Chicago Times* reported the Heirens confession incident in the following terms:

> It was hinted the original confession program was a flop because the youth was frightened by the movie-like setting in [the state's attorney's] office. Presumably he was frightened out of memory, too. To every question about the murders he answered, "I don't remember." His self-consciousness reportedly was deepened by the presence of several members of the police department, especially [the police officer] whose handiness with flowerpots as weapons brought about Heirens' exposure in a burglary attempt.

At the second setting for the taking of Heirens's confession, the number of spectators was reduced by about one-half, but a reading of the confession gives the impression that Heirens, although admitting his guilt, withheld—for understandable reasons—about 50% of the gruesome details and the true explanations for his various crimes, including the sexual motivation for the burglaries in the living quarters of females.

It is indeed a sad commentary upon police interrogation practices when a 17-year-old boy has to impart an elementary lesson to top-ranking law enforcement officials, that is, it is psychologically unsound to expect a person to confess a crime in the presence of 30 spectators.

It does not require a large number of people to violate a suspect's privacy, as illustrated by the following experience. An employee was interviewed in our office about the theft of $1,500 from her cash drawer. Prior to the interview, the subject signed a form consenting to be electronically recorded.[1] In this particular interview room the camera was located behind a one-way mirror and the microphone was attached (out of the subject's view) to the bottom of the desk top. During the interview the subject's behavior suggested deception, which necessitated interrogating her to learn the truth. After 45 minutes the subject gave every indication that she wanted to tell the truth, but continued to remain silent, until at one point she finally said, "I'll tell you what I did, but not in this room."

The subject was then moved to an interview room that did not have a one-way mirror and readily confessed that she had stolen the missing money.

Even though more than an hour had passed since the subject had signed the consent form and despite the fact that she could not see any of the recording equipment, the thought of having the confession recorded was so disturbing to her that it kept her from telling the truth in that environment. We have encountered similar experiences in which a subject refused to confess with a parent in the room or a supervisor down the hall.

The authors of this volume are fully aware of the practical difficulties that may be encountered in arranging for a private interview, even when the investigator is convinced of its desirability. In a case of any importance, each investigator wants to be included in the interrogation or at least be present when a suspect confesses or an informer or witness divulges valuable information. Each investigator wants to improve his efficiency rating or otherwise demonstrate his value to the department or office. In addition, the publicity in the community is considered desirable—to say nothing of the satisfaction to the individual's ego. All this is perfectly understandable and typical human behavior, but it must be controlled to conduct a productive interview or interrogation.

The person in charge of the investigation, or someone with command rank, should direct that the interrogation be conducted under conditions of privacy. In instances where all investigators are of equal rank, and each one seems to want to participate in the interrogation, the investigators should work out some arrangement among themselves to ensure the element of privacy. It is suggested that the interrogation be conducted by an officer who has demonstrated his skill as an interrogator or, under ideal conditions, by one who has received special training as a professional interrogator.

Privacy in an interview room can be maintained without denying due credit for the efforts of any investigator assigned to the case. An understanding should be reached among the various investigators that if a "break" comes when any of them have absented themselves from the interview room for the purpose of ensuring privacy between the investigator and the suspect or witness, they will all share the credit for whatever results the investigator obtains.

In personnel investigations, a security officer, or other investigator acting on behalf of the employer, might encounter a legal impediment to the achievement of the condition of privacy. The National Labor Relations Act has been interpreted as giving an employee the right to have, at his request, a union representative present whenever there is to be questioning about a matter for which there may be disciplinary action.[2]

Minimize Reminders of Consequences

One of the authors was assisting in the investigation of a $500,000 inventory shortage at a warehouse. The loss prevention department had recently installed a specific room for interviewing employees. The private room was custom built, containing an observation mirror and a recording device, and it adhered to other recommended standards. Yet, none

of the employees interviewed by the loss prevention investigators revealed any involvement in or knowledge of the ongoing thefts. Upon entering the room, it was apparent why these interviews were so unproductive. Taped to the wall directly in front of the person being interviewed was a two-by-four foot poster exclaiming, "We Prosecute Shoplifters." Depicted in the poster was a person in handcuffs being escorted by two police officers.

It must be remembered that the motivation for all deception is to avoid consequences for telling the truth; suspects lie to escape being prosecuted, being sent to prison, and having to face family and friends with the disgrace of their behavior. As obvious as this seems, there are still investigators who remind the suspect of the seriousness of the potential charges against him—how long he will sit in prison if he is convicted, and how his friends and family will abandon him once they find out what he did. After creating this dark and grisly description of what will happen to the suspect if he tells the truth, the investigator wonders why the suspect is so reluctant to confess! Clearly, during an interview or especially an interrogation, it is psychologically improper to mention any consequences whatsoever of the possible negative effects a suspect may experience if he decides to tell the truth.

Not all reminders of consequences are made verbally. As the previously mentioned poster demonstrates, there are visual reminders of consequences that can have the same devastating effect during an interview or interrogation. Police paraphernalia such as handcuffs, mace, or a badge should be covered or not worn at all during an interview. For safety reasons, as will be discussed in Chapter 6, the investigator should not be armed with a gun during an interview or interrogation of a suspect. The walls of the interview room should not contain police memorabilia, such as crime scene photographs, a display of agency patches, or certificates indicating attendance at interrogation seminars.

Suggestions for Setting Up the Interview Room

Establish a sense of privacy. The room should be quiet, with none of the usual "police" surroundings and with no distractions within the suspect's view. (If existing facilities permit, a special room or rooms should be set aside for this purpose.) The room should be as free as possible from outside noises and should also be a room into which no one will have occasion to enter or pass through during an interview. This will instill a sense of privacy. Also the less the surroundings suggest a police detention facility, the less difficult it will be for the suspect or arrestee who is really guilty to implicate himself. The same surroundings will also be reassuring to the innocent suspect. Therefore, there should be no bars on the windows. (There should be an alternative means of protection against any attempts to escape.) In a windowless room that has no air conditioning system, a mechanical blower or exhaust system may be installed without much difficulty to improve ventilation and to eliminate, or at least minimize, noises. (The room should have its own thermostatic controls.)

Remove locks and other physical impediments. For noncustodial police or private security interviews, there should be no lock on the door of the interviewing room, nor should there be any other physical impediment to an exit by the suspect if he desires to leave the

building. This will help minimize claims of false imprisonment. The room should also be devoid of any large objects or drapes that might cause the suspect to believe that a concealed third person can overhear his conversation with the investigator.

Remove all distractions. Interview rooms should be of plain color, with smooth walls, and should not contain ornaments, pictures, or other objects that would in any way distract the attention of the person being interviewed. Even small, loose objects, such as paper clips or pencils, should be out of the suspect's reach so that he cannot pick up and fumble with anything during the course of the interview. Tension-relieving activities of this sort can detract from the effectiveness of an interrogation, especially during the critical phase when a guilty person may be trying desperately to suppress an urge to confess. If pictures or ornaments are used at all, they should be only on the wall behind the suspect. If there is a window in the room, it, too, should be to the rear.

Select proper lighting. Lighting fixtures should be arranged in such a way as to provide good, but not excessive or glaring, illumination of the suspect's face. Certainly, any lighting that interferes with the investigator's full view of the suspect's facial features and expressions should be avoided. Also, there should not be any glaring light on the investigator's face. This will interfere with the investigator's observation of the suspect and may distort the investigator's facial indications of understanding or sympathy. Diffused, overhead lighting is more appropriate.

Minimize noise. No telephone should be present in the interview room because, among other disadvantages, its ringing or use constitutes a serious distraction. If the investigator wears a beeper or cell phone, it should either be put in the vibrator mode or turned off during the interrogation. In addition, any noise emanating from the heat or ventilating system should be minimized to reduce the distraction.

Arrange chairs properly. The chair for the investigator and suspect should be separated by about four to five feet and should directly face each other, without a desk, table, or any other object between them. The chairs should be the type normally used as office equipment without rollers. In a noncustodial interview, the suspect's chair should be placed so that he has access to the door (see Figure 5–1).

Straight-back chairs should be used for the suspect as well as the investigator. Other types of chairs induce slouching or leaning back, and such positions are psychologically undesirable. A suspect who is too relaxed while being questioned may not give his full attention to the investigator, and this will create an unnecessary hurdle. Similarly, this is no occasion for the investigator to relax. His full attention and alertness are highly essential. Whenever possible, the seating arrangement should be such that both the investigator and the suspect are at the same eye level. Avoid chairs with lowered front legs or other deviations that place the suspect in an "inferior" posture or prevent him from making normal changes in his posture.

Monitoring the interview or interrogation. Historically, the only means to monitor an interview or interrogation was to construct an observation room with a one-way mirror allowing a view into the interview room. This has largely been replaced with electronic monitoring through some form of audio or video system (see Figure 5–2). Regardless of

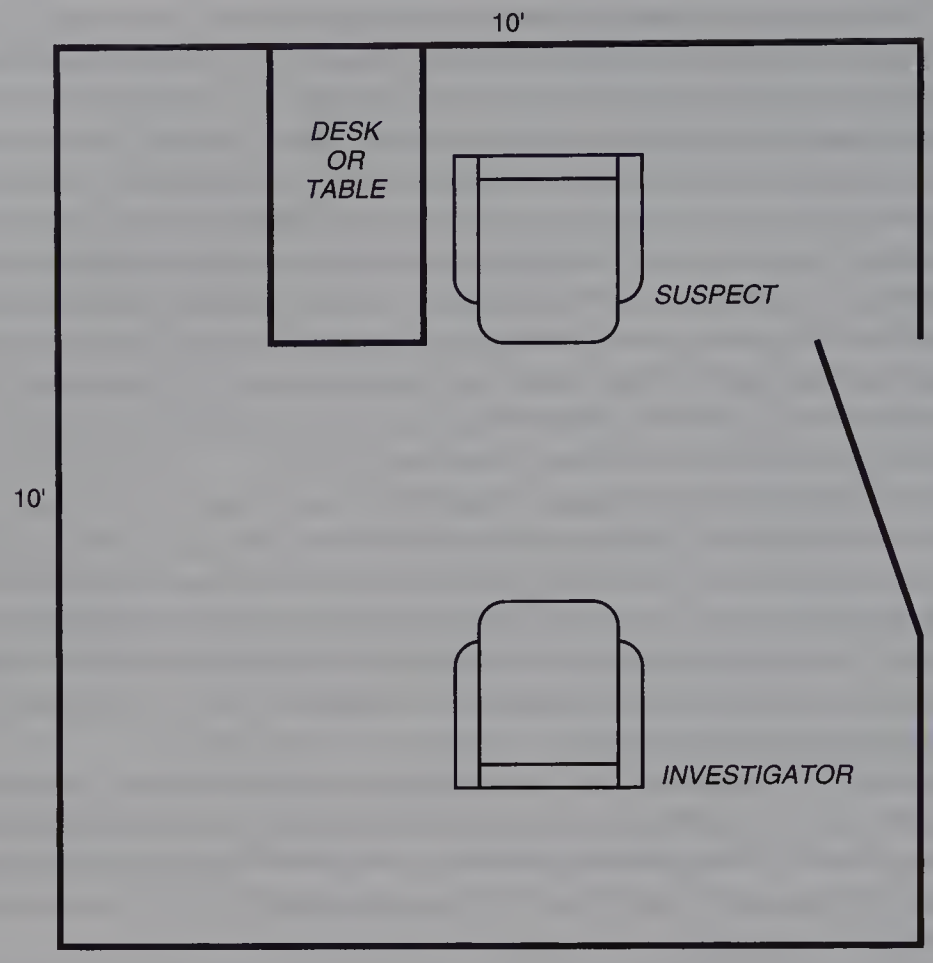

Figure 5–1 Room arrangement for suspect not in custody.

the method used, being able to monitor an interview or interrogation provides a number of advantages:

1. It affords an opportunity for investigating officers to observe and hear the interview while the necessary privacy is maintained.
2. The suspect's behavior symptoms (discussed in Chapter 9) can be evaluated by fellow investigators who have to prepare themselves for later involvement.
3. In cases where a female is the suspect, a policewoman or other female may be stationed in the observation room or at the monitor to witness the proceedings as a safeguard against possible false accusations of misconduct on the part of the investigator. The presence of any such witness, whether male or female, is also helpful in other types of situations as a safeguard against false accusations of physical abuse, threats, or promises on the part of the investigator.
4. When a suspect is left alone in the interview room, he can be kept under observation as a precaution against any effort to escape or perhaps even the remote

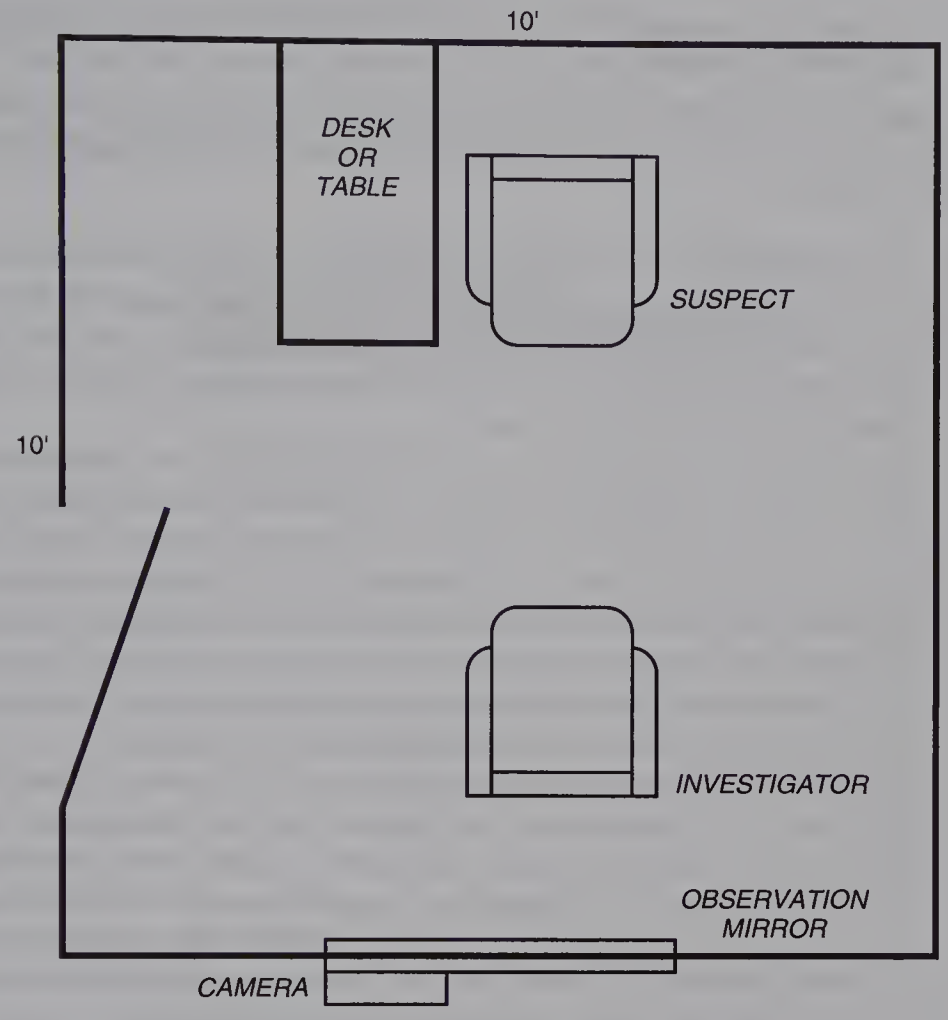

Figure 5–2 Interview room that is electronically monitored.

possibility of an attempt at suicide. Moreover, the observation room mirror arrangement or electronic monitoring system may protect the investigator from physical harm by a violence-prone suspect.

5. An investigator can monitor the behavior of two subjects when they are put together in the same room as illustrated by the following case:

   Two warehouse employees were suspected of being accomplices in the theft of tires from the company. During their individual interviews, guilt was evidenced by their behavior symptoms. However, neither made any incriminating statement, even following an interrogation. It was decided, therefore, to put them together in the interview room and to observe what occurred. Immediately, one of them placed a finger over his lips, signifying that silence was to prevail. Following the observation of this gesture, the investigator removed the signaling suspect from the room and advised him that his incriminating behavior had been observed from the adjacent room through the mirror. He thereupon confessed, and when

the other suspect was confronted with this development, he too confessed his participation in the theft.

6. Perhaps the most significant benefit an electronic monitoring system provides is the ability to electronically record the interview and interrogation session for court purposes.

A recent review indicted that 11 states require electronic recording via statutes or court decisions. In states that do not require electronic recording, more than 400 departments have established electronic recording as a standard practice.[3] This is a national trend and law enforcement agencies should accept that if electronic recording is not yet required in your state, it most likely will be in the future.

Required electronic recording of interviews and interrogations was not embraced with open arms by the law enforcement community. An early study from Tasmania reported a marked decrease in confessions when interrogations were tape-recorded.[4] Earlier editions of this text expressed concerns relating to mechanical failure of recording equipment and other mishaps relating to VHS or audio-tape technology. In the digital age, many of these issues have been resolved. Perhaps the biggest concern, however, was that electronically recorded interrogations would open the door to defense attacks and cause legitimate confessions to be suppressed. As it turns out, this fear was unwarranted.

In 1993, the National Institute of Justice (NIJ) funded a national survey of 2,400 law enforcement agencies to investigate the frequency in which the agencies utilized videotaping technology related to questioning of suspects and their experiences with the practice.[5] Most responding agencies expressed positive experiences with videotaping. Specifically, the videotape was (1) helpful in court to establish the trustworthiness and voluntariness of the confession, (2) beneficial to help an investigator prepare for testimony, and (3) defend against allegations of improper interrogation techniques.

Similar findings were reported 10 years later when 112 investigators trained in The Reid Technique of Interviewing and Interrogation completed an extensive survey relating to their experiences with required electronic recording.[6] These investigators were from law enforcement agencies in Minnesota and Alaska, the first two states to require that custodial interrogations be electronically recorded. The majority of these investigators reported positive experiences with electronic recording. For example:

- Only 7% indicated that electronic recording most benefits the defense
- 93% reported that electronic recording either decreased the length of trials or did not affect the length of trials
- 95% either supported the law or said that their interrogations were not affected by the law

There was one very significant finding from this survey that related back to the importance of privacy during an interview or interrogation. The survey not only elicited subjective impressions from the respondents, but also gathered hard data with respect to such

things as how many suspects in the last 12 months were interrogated, how many of those suspects confessed, how many confessions were challenged at trial, what was the outcome of the challenge, and so on. Conducting cross-analysis of that data with responses to other survey questions revealed findings listed in Table 5–1.

Table 5–1 Effect of Visibility of Recording Device on Confession Rates

Condition	Confession Rate
Never visible	82%
Sometimes visible	53%
Usually visible	50%
Always visible	43%

This finding echoes the earlier reported experience of the Tasmanian Police Department, which found that electronically recording an interview or interrogation inhibits the truth-telling process. Without question, when the suspect can see a tape recorder, camera, or third person in the room, it is more difficult for the suspect to tell the truth. The same effect will result when an investigator simultaneously types the suspect's responses into a laptop computer during the course of an interview. Consequently, although there are advantages to electronically recording an interview or interrogation, these advantages may be significantly negated if the recording device is visible to the suspect.

There are myriad topics involving electronic recording of interviews or interrogations. For example, What is the best camera angle?; How should the recording be backed up?; Should the suspect be notified that a recording is being made?; What procedural changes should be made to accommodate recording?; What internal policies should be enacted to accommodate electronic recording? Nevertheless, the following basic recommendations may be helpful:[7]

1. A good-quality audio recording has priority over a video recording that does not provide high-quality sound.
2. The recording device (camera lens, microphone) should be concealed or disguised.
3. Everything should be recorded, from the time the suspect is given *Miranda* rights to the conclusion of his confession.
4. All recordings should be backed up.

Other people in the room. As mentioned earlier, in certain case situations there may be a necessity to have a third person present in the interview room because no observation room or electronic monitoring system is available or because of some other factor. In a personnel case investigation, for instance, an employee may exercise his right to have a

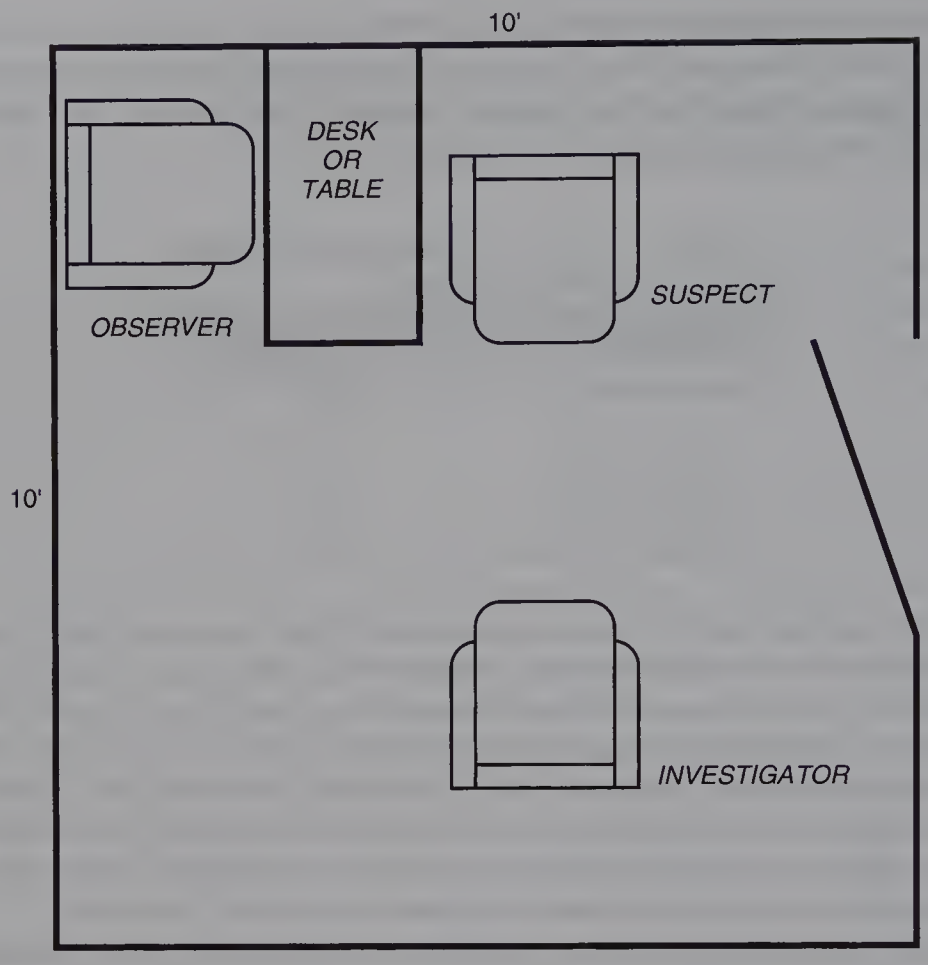

Figure 5–3 Interview room arrangement for suspect with observer present.

union representative present. An employer also may want to exercise the precaution of requiring that another female be present whenever a female suspect is interviewed by a male. Some police departments without an observation room or electronic monitoring system follow a similar practice, particularly when the female suspect is of an unsavory character and perhaps prone to falsely accuse a police investigator of making sexual overtures. Some state statutes specify that a juvenile suspect can only be interviewed in the presence of a parent or guardian. In all such instances, the third party should be seated in back and to the side of the suspect, as illustrated in Figure 5–3.

Whenever an interpreter is needed to assist in the interview, the interpreter should be seated alongside the investigator, who should be directly in front of the subject (illustrated in Figure 5–4). Ideally, the interpreter should be someone who is not familiar with the subject and someone who is fluent in the subject's language. The interpreter should be instructed to translate questions and responses in the first person, word-for-word and not summarize a response. At the outset of the interview, the investigator should instruct the subject to respond to him (with respect to eye contact and posture), not the interpreter. Because this is unnatural, the subject will tend to want to address the interpreter. When

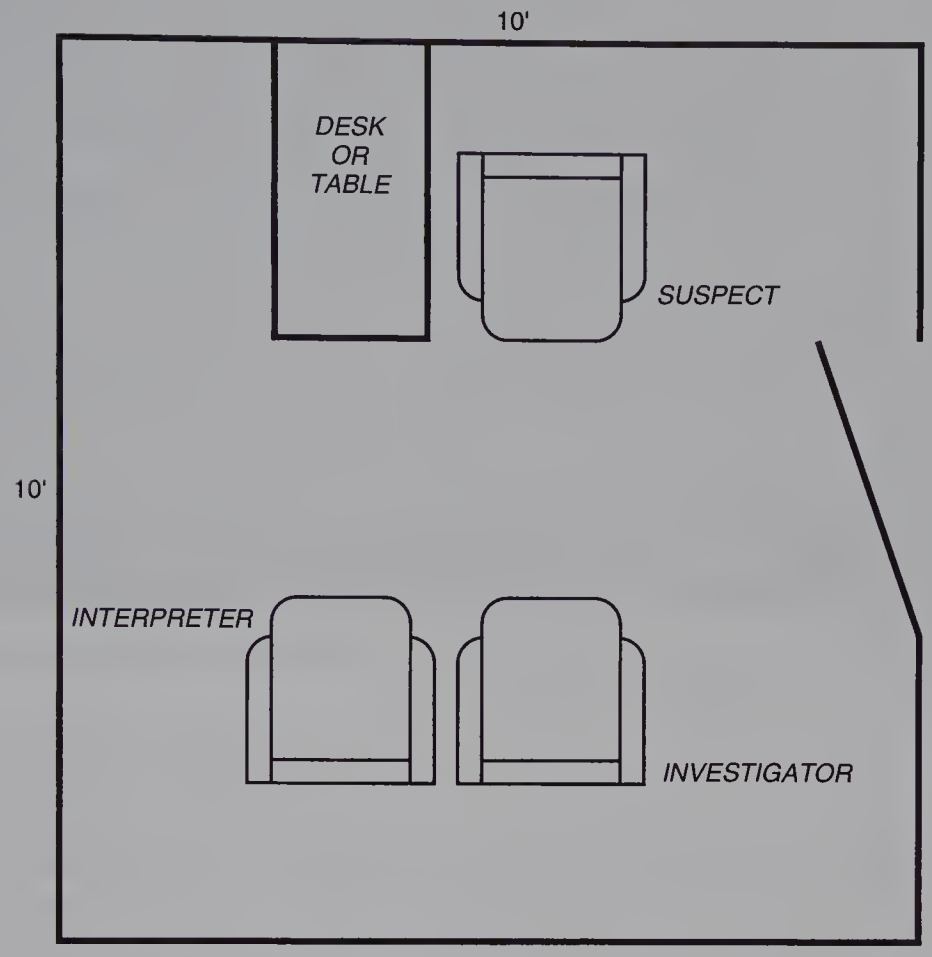

Figure 5–4 Interview room arrangement for suspect with interpreter.

this happens, the investigator should remind the subject to direct responses to him and not the interpreter.

Finally, in view of the foregoing guidelines, it becomes obvious that a suspect's own home or office is an inappropriate setting for an interrogation. It is advisable, therefore, to avoid an interrogation in a subject's residence or work site. A noncustodial suspect who refuses to voluntarily come to a police station may be persuaded to meet with the investigator in some neutral location, perhaps a meeting room rented for the purpose of conducting the interview and possible interrogation.

Footnotes

[1]In Illinois, an eavesdropping (listening or recording) device cannot be used to record or overhear a conversation without the consent of all parties to the conversation. 720 Ill. Compiled Stat. Ann. 5/14-1, -2.

[2]*National Labor Relations Board (NLRB) v. Weingarten*, 420 U.S. 251 (1975). In July 2000, the NLRB extended this right in a non-union environment for an employee to have a co-worker present

during an interview that could result in disciplinary actions to nonunionized workers. (Epilepsy Foundation of Northeast Ohio, in 331 *NLRB 134* [2000].) However, the NLRB reversed its position announcing that "the *Weingarten* right does not extend to a workplace where . . . the employees are not represented by a union." *IBM Corporation*, 341 NLRB No. 148, at 7 (June 9, 2004).

[3]See Sullivan T. and Vail. A. (2009). Recent Developments – The Consequences of Law Enforcement Officials' Failure To Record Custodial Interviews As Required By Law. *Journal of Criminal Law & Criminology*, 99, 215–234.

[4]Inbau, Reid, Buckley and Jayne; Published by Jones and Bartlett. *Scientific and Technical Aids to Police Interview-Interrogation*, 4th edition Criminal Interrogation and Confessions, p. 394. The report was prepared by Detective Sergeant Luppo Prins of the Tasmanian Police, who extensively explored the practices for recording interrogations and confessions in the United States and England in 1982–1983.

[5]Geller, W.A. (1993). *Videotaping Interrogation and Confessions*. National Institute of Justice Research in Brief, Washington D.C. March.

[6]Jayne, B. (2003). Empirical Experiences of Required Electronic Recording of Interviews and Interrogations on Investigators' Practices and Case Outcomes. *Law Enforcement Executive Forum*, 4(1), 103–112.

[7]These and other related issues are addressed in Buckley, D. & Jayne, B. (2005). *Electronic Recordings of Interrogations*. Chicago: John E. Reid and Associates.

Chapter 6

Qualifications, Attitude, and General Conduct of the Investigator

Ideally every police department and private security unit should have, among their personnel, investigators specially trained in conducting professional interviews and interrogations. This responsibility should not automatically go to the arresting officer or others who may not possess the required personality traits or may lack the special training needed to conduct effective interviews or interrogations. The same traits that make a police officer or private security officer highly efficient in locating witnesses, procuring evidence, and performing other investigative tasks may prove to be disadvantageous when it comes to interviewing and interrogating criminal suspects. For instance, impatience to complete an assignment may be a great asset insofar as investigations are concerned, but impatience is a handicap during the interviewing or interrogation process; an aggressive and authoritative demeanor may be necessary for street survival but is a clear detriment during an interview or interrogation.

In addition, a specialist whose primary responsibilities concern interviewing and interrogation will be more objective in assessing a subject's truthfulness if he has not had lengthy emotional ties with the victim or victim's family, as an arresting officer might. Finally, such a specialist would frequently testify in court on interrogations and confessions. This repeated experience would enhance his skills and credibility as a court witness. Investigators selected for training as professional interviewers and interrogators should fulfill certain general qualifications.

First, special personal attributes should be present. The person should be intelligent and should have a good practical understanding of human nature. He should possess suitable personality traits that are evident from a general ability to "get along" well with others, especially individuals from varying backgrounds or classes. As mentioned,

patience is another indispensable attribute. A high index of suspicion is another important attribute for the successful interviewer. This heightened level of suspicion should not be confused with cynicism. The cynical investigator believes everyone lies; the suspicious investigator actively looks for deceptive behavior or inconsistencies but recognizes that the majority of people police talk to tell the truth.

Second, the specialist should have an intense interest in his field. He should study textbooks and articles regarding behavior analysis, related areas of psychology and psychopathology, and interrogation techniques. He should understand how to conduct a proper interrogation and be able to explain to a judge or jury the underlying concepts involved at each stage of the interrogation process. The professional interviewer should also attend training seminars conducted by competent, experienced interrogators.

Third, it is essential for the specialist to become aware of the legal rules and regulations that govern interrogation procedures and the taking of confessions from persons upon whom these interrogation tactics and techniques have proved productive (such rules and regulations for interrogations are discussed in Chapter 17).

Professionalizing the interviewing and interrogation function within a police department would have three benefits: (1) there would be a considerable increase in the rate of confessions from criminal offenders; (2) the confessions will more likely meet the prescribed legal requirements; and (3) it will be less likely that innocent people will be detained for a crime they did not commit.

Interviewer Qualifications

Conducting a proper interview goes beyond just asking questions. Two investigators can question the same suspect, and yet one of those investigators may develop much more meaningful and useful information from the suspect than the other. The personality and demeanor of an interviewer play an important role in her success.

A person is more likely to divulge incriminating or sensitive information to someone who appears friendly and personable. Most of us have experienced a teacher or supervisor who approaches everyone as if they are guilty of something. The natural response is to be guarded and defensive toward that person. It is essential that the interviewer be perceived as objective and nonjudgmental. Investigators who are interested in obtaining "just the facts" generally make poor interviewers. Good interviewers have a genuine curiosity and concern about people, guilty or innocent, and sincerely enjoy talking to others. Perhaps most important, the effective interviewer is able to separate the suspect from the crime he may have committed; the interviewer perceives his role as ascertaining the truth, not passing judgment on the suspect's behavior or attitude.

The successful interviewer must feel comfortable asking questions. An investigator who is uncomfortable asking questions will telegraph that message through his nonverbal and paralinguistic behaviors. For example, when interviewing a victim who claims to have been raped, the investigator must be comfortable asking specific questions about the rapist's sexual contact with her. When questioning a person from an elevated status,

perhaps a physician or attorney, the investigator must be comfortable asking probing questions. An investigator who is obviously uncomfortable asking questions during an interview creates more nervous tension in the truthful subject and greater confidence in the deceptive subject. The effective interviewer should have an easygoing confidence that allows the subject to feel comfortable telling the truth but uncomfortable lying.

Initial Interview Procedures

In the early stage of a criminal investigation, frequently the available information is insufficient for an investigator to make even a tentative determination whether the suspect is guilty or innocent. In these case situations, therefore, there are three approaches available to the investigator:

1. interview the suspect upon the assumption of guilt
2. interview the suspect upon the assumption of innocence
3. assume a neutral position and refrain from making any implications until the suspect has disclosed some information pointing either to guilt or innocence

We recommend that the best approach to use is for the investigator to conduct the interview from a neutral, objective perspective. If the investigator interviews the subject with a preconceived expectancy of guilt or innocence, this bias can influence the questions asked during the interview and possibly the interpretation of a subject's behavioral responses to those questions. In essence, with a predisposed expectancy investigators may hear and see only those behaviors that fit their expectations.

The importance of interviewer objectivity can be illustrated in a case involving an employee who reported various incidents of receiving threatening phone calls, e-mail messages, and even written threats left on her car. The investigators who initially talked to this victim approached the investigation from the expectancy that she must be telling the truth, and therefore they never asked her if she was making up the story or explored with her possible motives for a false report. The company set up hidden surveillance cameras and took dozens of handwriting exemplars from coworkers, but they were unable to identify the harasser. At that stage of the investigation, we were asked to interview possible suspects. After interviewing, and clearing, approximately 60 possible suspects, we asked to interview the victim. After conducting an objective interview of the victim, it was apparent that she had made up the story. Following a brief interrogation, she acknowledged making up the story because she wanted the company to transfer her to the same location to which her coworker boyfriend had been transferred.

Investigator Demeanor During an Interview

Dress in civilian clothes rather than in uniform. Otherwise, the suspect will be reminded constantly of police custody and the possible consequences of an incriminating disclosure. If the uniform cannot be avoided altogether, the coat, badge, gun, and holster

should be removed for the duration of contact with the suspect. The investigator should wear conservative clothes (suit, jacket, or dress) and should avoid colorful ties or other conspicuous clothing accessories. Unless weather conditions demand otherwise, a male investigator should wear a coat or jacket throughout his contact with the suspect. An investigator dressed in a short-sleeved shirt with the top unbuttoned does not command the respect the situation requires.

In order to properly set the stage for the interview, someone else should escort the suspect into the interview room. That person should also point out the chair in which the suspect is to sit while waiting for the investigator to arrive. The escort should then say: "Mr. [Mrs. or Miss] _____ [naming the investigator] will be in to see you in a few minutes." (The escort also may be the one to issue the *Miranda* rights, a medical data sheet, or statement of voluntary consent to be interviewed.) Prior identification has two advantages: (1) it eliminates the need for the investigator to introduce himself to the suspect when the two meet, and (2) its formality tends to heighten the apprehension of a guilty suspect by reason of the apparent exalted status of the investigator, and whatever confidence the suspect may have had in his ability to evade detection will be somewhat diminished. At the same time, an innocent suspect will be favorably impressed by this professional arrangement and thereby will be relieved of any apprehension over the possibility of being falsely determined to be guilty.

During an interview the investigator should sit approximately four and one-half to five feet directly in front of the subject. If the investigator positions his chair off to one side of the subject, this may affect the subject's perceived frontal alignment and direction of breaks of gaze (which will be covered in Chapter 9). The investigator's posture should be relaxed and comfortable as opposed to forward or rigid. A forward posture by the investigator during an interview is likely to be perceived by the suspect as threatening. Figure 6–1 portrays the relaxed and comfortable posture of an investigator during an interview.

Avoid smoking in the suspect's presence. First, if the suspect is a nonsmoker, smoking by the investigator may be offensive. The guilty suspect actively looks for characteristics within the investigator he can dislike—it is psychologically easier to lie to someone disliked or despised than a person who is well respected and admired. At no time should the investigator engage in any behavior that would allow a guilty suspect to vent their guilt and apprehension through legitimate feelings of anger or resentment. Second, if the investigator is not smoking, the suspect who does smoke is less likely to attempt to smoke in an effort to relieve emotional tension or to bolster his resistance to telling the truth. If a request to smoke is made, the investigator may suggest, with justification, that the suspect postpone smoking until he leaves the interview room. Among the rationale for such a request might be that the building is declared nonsmoking, that the investigator suffers from asthma, and so on. To facilitate the avoidance of smoking by a suspect, it will be helpful if there are no ashtrays present as they represent a tacit invitation to smoke.

The investigator's interview questions should be asked in a conversational tone and always be nonaccusatory. A suspect may perceive a question as being accusatory because of the investigator's tone of voice, the word choices used in asking the question, or

Figure 6–1 Position of investigator during an interview.

the investigator's facial expressions, especially eye contact. It is important for the interviewer to maintain eye contact when asking questions, but he should avoid staring at the subject because this may be interpreted as a threat. With respect to eye contact, the investigator should not wear dark glasses. If the subject is wearing dark glasses, the investigator should ask whether or not they are prescription lenses. If they are not, the investigator should politely ask the subject if he would please remove his glasses during the interview.

Some suspects (generally deceptive ones) may come into the interview with a Bible, rosary beads, or other religious artifacts. Other subjects may use a brief case, purse, or newspaper as a barrier and hold the object in their lap during the interview. At the outset of the interview, the investigator should politely ask the subject to place any such articles to the side.

The investigator should take a written note following each response the subject offers. Active note taking during an interview does two very important things for the investigator. First, it slows down the pace of questioning by creating 5–7 seconds of silence following each response. On the other hand, if the investigator is not taking any notes and simply asks questions in a rapid fire manner, the guilty suspect's fear of detection is greatly reduced, which in turn minimizes behavior symptoms. Furthermore, a rapid fire approach can cause an innocent suspect to become confused and flustered, thereby resulting in inconsistent or misleading responses.

Truthful suspects are comfortable with the silence created by note taking. They told the investigator the truth and simply wait for the next question. Deceptive suspects are uncomfortable with this silence and it is not uncommon for them to break the silence by verbally modifying their earlier response, or engaging in anxiety-reducing nonverbal behaviors (presented in Chapter 9) while the investigator is writing out the suspect's response.

The second advantage offered by note taking is that it documents the interview. This is helpful for report writing, preparing for testimony or simply to review the suspect's behavior following the interview. In this regard, the investigator should not attempt to write out a verbatim account of the suspect's response, but rather the written notes should document key information (denials, times, names, dates, etc.) as well as behavior symptoms that occurred during the response. To capture this information in 5–7 seconds, note-taking abbreviations are helpful. For example, the investigator's question can be abbreviated with a couple of words and those words can be underlined to differentiate the question from the response, which is not underlined. The following are some abbreviations that can be used to document key behavior symptoms. The terminology and significance of these behaviors will be discussed in Chapter 9:

. . . (delayed response, each dot represents a second)

↑ (break of gaze)

D I-I (direct eye to eye contact)

SIC (shift in chair)

X lgs (crosses legs)

X arms (crosses arms)

Rpt Q (repeats question)

L (laugh, erasure)

Q (quick response)

Cl (request for clarification)

RPQ (repeats the question)

S/S (stop and start)

GRM (grooming)

Ill (illustrator)

Use language that conforms to that used and understood by the suspect. In dealing with an uneducated or unintelligent person, the investigator should use simple words and sentences. For instance, if the suspect uses slang or commonplace expressions and gives evidence of being unfamiliar with more acceptable terminology, the investigator should resort to using similar expressions. This can be done in a reserved manner without the loss of the suspect's respect for the position occupied by the investigator. No attempt should

be made, however, to imitate the suspect's style of speech (that is, efforts at street slang or other cultural speech styles not regularly used by the investigator).

When interviewing persons of low socioeconomic status, address them as "Mr.," "Mrs.," or "Miss" rather than by their first names. It is usually better to address persons of high socioeconomic or professional status by their first name or by their last name without attaching "Mr.," "Mrs.," or "Miss." However, to avoid seeming impertinent, in some instances—especially where a suspect is older than the investigator—it may be best to preface addressing the suspect by the first name by asking: "You don't mind if I call you Helen [or John], do you?" Thereafter, if no objection is voiced, the suspect can be referred to by the first name.

For the suspect of high socioeconomic or professional status, using the first name or last name only (without the accustomed "Mr.," "Mrs.," or "Miss") may defuse his or her usual feeling of superiority and independence. However, using "Mr.," "Mrs.," or "Miss" with someone of low socioeconomic status can be advantageous because it may flatter the person, and a feeling of satisfaction and dignity may accrue from such unaccustomed courtesy. By according the suspect this consideration, the investigator will enhance the effectiveness of whatever he says or does thereafter.

An exception to the foregoing practice would be made in a case involving the interview of a married female criminal suspect who is known to have been indulging in sexual relations with other men. It is better to address her by her first name rather than as "Mrs." In this way, the investigator minimizes to some extent the guilt feeling or embarrassment that may prevail because of the wife connotation of "Mrs."

If the investigator believes that a suspect is a prostitute, drug dealer, gang member, child molester, or other person of ill repute, the opportunity to conduct the interview is not an invitation to downgrade or demean the suspect. In fact, the investigator defeats his own purpose when that is done. The following two cases, which were encountered by one of the authors some years ago, serve well to illustrate this point.

In the first case, a woman of about 60 years of age was suspected of murdering a male boarder in her rooming house. She had called the police to report that the man had died, apparently of natural causes. An autopsy revealed, however, that he had been killed by a small-caliber bullet in his back. Suspicion was directed toward the woman for several reasons, one of which was the fact that she had been the deceased boarder's sleeping companion. Arrangements were made for one of the authors of this text to interview her. At the time of the scheduled interview, she was accompanied by a police captain with about 20 years of experience as a police officer. He related the case history to the investigator while the suspect remained seated in another room. Then, when the investigator was ready to proceed with the interview, the captain called out for the suspect to come to the interview room. As she approached, he pointed to the room and said, "Get on in there, you old whore; this man wants to talk to you!" She looked at him with considerable scorn as she entered the room. After the captain departed, the investigator proceeded to address her as "Mrs._____" and asked her to have a seat. He then inquired if she had been given any food while in police custody or while being questioned earlier by the police. She said "no" and readily accepted the investigator's invitation to have coffee

and a sandwich delivered to her in the interview room. Thereafter, the investigator treated her as a "lady" rather than as a "whore." She soon confessed to the killing of the boarder and supplied information that definitely established her guilt. Moreover, before she was through talking, she confessed to the killing, several years before that, of her husband, who was known to have died under suspicious circumstances.

In the second case, a prostitute was suspected of drugging and robbing a man in a bar. After the suspect removed her coat in the interview room, the investigator observed that a broken shoulder strap on her dress had caused one of her breasts to be exposed. Before proceeding with the interview, the investigator procured a towel and placed it over the prostitute's shoulder. After a relatively brief interrogation, during which she was addressed as "Miss" rather than by her first name, she confessed to the crime and disclosed the identity of her accomplice. The investigator's treatment of her as a "lady" undoubtedly facilitated his task, for here was a woman who preferred that status to her own calling.

When interviewing a homosexual, some police are prone to refer to them as "queers," "fags," or other derogatory labels. As a result, resentment develops, and the interview is rendered far more difficult. It is much more effective for the investigator to treat such suspects as though their sexual preference is morally acceptable to him. Derogatory labels should never be used when dealing with homosexuals or their companions.[1]

After catching a suspect in a lie during an interview, never scold or reprimand him using such expressions as, "Why in the hell did you lie to me?" or "You lied to me once and you'll lie to me again." It is much better to conceal any reaction of resentment or even surprise. In fact, the more effective handling of the situation is merely to convey the impression that the investigator knew all along that the suspect was not telling the truth.

Interviewing Approaches for Difficult Suspects

Interviewing the Nervous Subject

General nervous tension is common during an interview concerning an important issue. A truthful subject will offer much more information if he feels comfortable talking to the investigator. One effective technique to reduce a subject's general nervous tension is for the investigator to assume a relaxed posture and a calm tone of voice. The investigator who sits back comfortably in the chair, crosses his legs, and engages in preliminary small talk is sending the message to the subject that he is relaxed and, therefore, it is okay for the subject also to relax.

When interviewing a nervous subject, the first few minutes of the interview should not specifically address the issue under investigation but rather consist of obtaining background information about the subject or explaining the purpose for the interview. During this effort to establish rapport we suggest that the interviewer's questions appear to have a connection with the purpose for the interview, such as obtaining the spelling of the subject's name, address, and present employment. Conversely, if the investigator

asks opening questions that appear to have no bearing on the investigation, this forced effort to establish rapport can actually increase nervousness or suspicion in the subject. Examples of these types of questions include, "What hobbies do you enjoy?" "What was the last movie you saw?," or, "What is your favorite restaurant in town?" If irrelevant conversation is utilized to establish rapport, it should have a timely relevance, such as discussing the weather, the performance of a local sport team, or a national news event.

Interviewing the Angry Subject

A suspect who is angry during an interview is unlikely to offer meaningful information in that state of mind. Consequently, as soon as anger surfaces during an interview it needs to be addressed. A suspect who appears resentful or put off but does not openly express anger should be asked, "How do you feel about talking to me concerning this issue?" This question allows the suspect an opportunity to openly express and vent his emotions. The investigator should appropriately sympathize with the subject and attempt to resolve the anger through explanations. Sometimes simply reassuring the subject that he is one of many people who will be interviewed concerning the issue is sufficient. Some subjects may express anger because of the manner in which they were previously treated (for example, the suspect who was arrested at his job, handcuffed, and taken away in front of coworkers). In that instance, the interviewer may alleviate the subject's anger by condemning the arresting officers for their insensitive treatment of the suspect.

The investigator should realize that anger and hostility are commonly used by deceptive subjects to displace the anxiety from their deception and also help justify their lies. Psychologically, it is much easier to lie to someone we dislike. During an interview, deceptive suspects may challenge or antagonize the investigator in an effort to create an adversarial relationship. If the investigator responds to these challenges by exerting his authority or engaging in threats, the suspect has accomplished his goal. A good rule to follow when dealing with an angry suspect is to talk softer and slower and always remain composed. If the investigator does not accept the suspect's invitation to battle, the feigned anger rapidly dissipates.

Interviewing the Narcissistic Subject[2]

During an interview, some subjects will come across as acting superior and condescending to the investigator. This may be because of their social status (for example, doctor, attorney, or prominent politician) or it may simply be a personality trait. Such narcissistic subjects will fight the investigator for control and may attempt to rush the interview. Consequently, they should not be interviewed in their office or home where they feel in complete psychological control. Our experience has shown that maintaining an emotional detachment and professional demeanor is the best tactic for this type of subject. The investigator should avoid apologizing for "having to ask questions" because this will only increase the subject's feelings of superiority. Narcissistic personalities are more likely to

lie through omission than fabrication. Therefore, the investigator should be persistent in following up on evasive or incomplete answers.

A suspect from an elevated status who is guilty of the crime under investigation may remind the investigator of his position and possibly make veiled threats of retaliation as a result of the questioning. The investigator must not respond defensively to such intimidation. A much more productive response is to state, in a nonchallenging manner, "You're not the first [*physician*] I've interviewed and probably will not be the last. I'm sure you're very qualified at what you do, just as I am very good at what I do. If you had no involvement in [the issue], our investigation will clearly indicate that. But for me to make a fair assessment of your credibility and truthfulness, I need your full cooperation. For me to do my job, I need you to work with me and the department so that we can learn the full truth about this situation."

Interrogator Qualifications

Ideally, the investigator who conducted the interview of a subject should also conduct the interrogation of that same subject. The reason for this is that the non-accusatory interview allows the investigator to develop a trusting relationship with the subject, which greatly benefits persuasive efforts during the accusatory interrogation. This technique is more efficient because the single investigator is thoroughly familiar with both the case and the subject's background.

To conduct a successful interrogation, the investigator must have the ability to put aside any personal feelings of malice or resentment he may harbor toward the suspect or the crime he committed. An important interrogator qualification, therefore, is an even temperament and a great deal of emotional control. An investigator who is intensely interested in "making someone pay for this crime" will not approach the interrogation from a perspective of wanting to learn the truth. It is under these conditions that false confessions have resulted. For instance, in a well-publicized case involving the shooting deaths of nine monks at a Buddhist temple, the public pressure to solve the crime was so intense that investigators elicited confessions from four persons, who were later proved to be innocent.[3]

Along with putting aside personal feelings, the qualified interrogator must feel comfortable using persuasive tactics that may be considered morally offensive to some investigators. These include sympathizing with a suspect who has committed a heinous crime, lying to a suspect about the strength of evidence against him, or treating an arrogant or obnoxious suspect with respect and dignity in an effort to elicit the truth. As will be discussed in subsequent chapters, each of these persuasive tactics are sometimes required to learn the truth and interrogators must sometimes play the role of an actor or salesman to accomplish this goal.

The successful interrogator must possess a great deal of inner confidence in his ability to detect truth or deception, elicit confessions from the guilty, and stand behind decisions of truthfulness. Frequently a guilty suspect will confess simply because he perceives that the

interrogator appears to *know* that he is guilty. The suspect may not know exactly why the interrogator is so confident of his guilt, but in view of the interrogator's obvious confidence, a decision is made to tell the truth. In other instances, the investigator may recognize that the suspect's behavior during an interrogation is indicative of truthfulness and decide that the suspect is innocent. Under such circumstances, the qualified investigator must have the confidence to stand behind this decision and not buckle under pressure exerted by superiors to pursue the individual as a suspect.[4]

Whereas the qualified interviewer is a skilled listener, the qualified interrogator is a skilled communicator. These are not necessarily diametrically opposed traits, but many investigators simply do not know when to talk and when to listen. The skill to maintain an interrogation theme and patiently continue talking until the suspect exhibits symptoms that he is ready to tell the truth requires someone who can present a monologue lasting perhaps an hour or more, while retaining the suspect's attention. Some investigators are ineffective because they enjoy talking so much that, once they have a captive audience, they ignore the suspect's obvious behaviors of wanting to confess. Central to the communication processes of interviewing and interrogation is the investigator's ability to monitor a subject's behavior and respond effectively to the dynamics of the situation.

Investigator Conduct During an Interrogation

It is difficult to formulate or propose any set rules with regard to the attitude and conduct of an investigator during the interrogation, as much depends on the circumstances of each particular case. However, in general, these recommendations should be helpful, particularly with respect to the interrogation of the criminal suspect.

In the early stages of an interrogation, sit approximately four feet directly in front of the suspect. (Later, this distance can be shortened.) Also, as stated earlier, there should be no table, desk, or other piece of furniture between the investigator and suspect. Sitting or standing a long distance away, or the presence of an obstruction of any sort, constitutes a serious psychological barrier and also affords a guilty suspect a certain degree of relief and confidence not otherwise attainable. Unlike the relaxed and comfortable posture an investigator assumes during an interview, during the interrogation the investigator should lean forward in the chair, with both feet flat on the floor and hands extended. This posture, as depicted in Figure 6–2, portrays high confidence and attention.

The close seating arrangement also is reminiscent of such commonplace, yet meaningful, expressions as "getting next to" a person or "buttonholing" a customer, terms that signify that a person is close to another one not only physically but also psychologically. Anything, such as a desk or table, between the investigator and the suspect defeats this purpose and should be avoided.

To preserve and maintain the advantage of this close seating arrangement, it is very important that the investigator be free of any offensive breath odor, whether due to food or some other factor. As a precaution, it is advisable, whenever possible, to talk at close range to a fellow investigator or other colleague just before entering the interview

Figure 6–2 Position of investigator during an interrogation.

room. In this way, the investigator may be made aware of an offensive breath odor. In the event that any such odor is present, a mouthwash or breath cleanser should be used. An advisable precaution is to avoid eating food that will cause offensive odors. For example, garlic will cause offensive odors for many hours after its consumption and therefore should be avoided. Clearly, the professional investigator should not have the smell of alcohol or tobacco on his breath prior to conducting an interrogation.

An understanding should prevail among investigators, and others working with them, that if an offensive breath or body odor emanates from anyone, that condition will be brought to his attention. The same should be true in regard to any distracting facial appearance or clothing disarray. It is far better for an investigator to be told of this by a colleague than to have a suspect sustain the annoyance or distraction and thus be deterred from being persuaded to tell the truth.

Remain seated and refrain from pacing about the room. It is much more difficult for the suspect to evade detection of his deception when the interrogator is giving him undivided attention. Moreover, jumping up and down and walking around give evidence of the investigator's impatience, with its consequent encouragement to a lying suspect that if he continues to lie a little while longer, the investigator will give up. An entirely different impression is created by the investigator who remains seated throughout the interrogation. The investigator should also avoid fumbling with a pencil, pen, or other accessories.

This tends to create the impression that the investigator lacks confidence or even is seriously uninterested.

Avoid creating the impression that the investigator is seeking a confession or conviction. It is far better to fulfill the role of one who is merely seeking the truth, as it relates to some related aspect of the case (for example, whether the crime was entirely the suspect's idea, whether this is the first time the suspect has done something like this, or whether the suspect merely acted on the spur of the moment).

Keep pencil and paper out of sight during the interrogation. Unlike in interviewing, note taking is discouraged during the interrogation. Recording or making notes of the suspect's statements or comments during the course of an interrogation may grimly remind the suspect of the legal significance or implication of an incriminating remark. It is better to avoid note taking, or at least to postpone it until the latter stages of the interrogation. If the suspect mentions a name or an address that the investigator wants to be certain to remember, a pencil and paper can be used to note that information but then should be removed from the suspect's view.

Do not use realistic words, such as murder, rape, strangle, stab, *or* steal, *except in certain situations.* It is much more desirable, from a psychological standpoint, to employ inferential terminology by talking about the offense as, "this thing," "it," or "what happened." The suspect will know, of course, that the reference is to the offense, but the connotation is less disturbing than harsh legalistic labels. For similar reasons, a suspect should not be confronted with photographs that gruesomely display a victim's wounds or injuries.[5]

Treat the suspect with decency and respect, regardless of the nature of the offense. No matter how revolting or horrible a crime may be (such as a sexually motivated, brutal killing of a small child), the suspect should not be treated or referred to as a despicable, inhumane individual. A sympathetic, understanding attitude and interrogation approach is far more effective. In one of many cases that could be used to illustrate this point, a sex offender, after his confession, said, "I would have told the officers about this earlier if they had only treated me with some decency and respect."

Do not handcuff or shackle the suspect during the interrogation. Not only would this show fear of the suspect, but also under such circumstances a confession may be rejected as having been coerced. An inmate serving a life sentence for murder at a prison was suspected of stabbing to death a fellow inmate. One of the authors was retained to interview him. Because of the nature of his offense, he was held within a maximum security area, several floors below the prison itself. Upon walking into the interview room, the author found that the suspect was shackled, both hands and feet, to a chair bolted to the floor. An immediate demand (purposefully in front of the suspect) was made to have the suspect freed from the shackles, which the guards reluctantly agreed to do. This "hard-core" criminal eventually confessed to the stabbing, largely due to the investigator's expressed sympathy toward the convict's crowded living conditions and inhumane treatment. An act of compassion will always be more productive for learning the truth than an act of intimidation.

Do not be armed. The investigator should face the suspect "man-to-man" rather than as police officer-to-prisoner. Another, unrelated reason for not being armed is the chance that in close quarters the suspect might be able to seize the investigator's weapon for use on the investigator or others who may seek to prevent the suspect's escape.

Also, with respect to weapons, precautionary measures should be taken in certain types of situations to ensure that the suspect himself is not armed. If the suspect is a police officer or armed guard, the investigator should address immediately the issue of disarming the suspect. In these situations, we ask the suspect to empty the bullets from his gun (or clip) and allow him to keep the shells. We then take the unloaded gun and secure it in an area away from the interview room.

If in police custody, there is little likelihood of a suspect being in possession of a weapon, but the following case example underscores the advisability for such precautionary measures. A probationary city police officer was arrested for taking indecent liberties with small neighborhood children. The police had been investigating the murder of another child from a nearby locale. It was thought that the policeman under arrest may have been responsible, and he was asked to submit to a polygraph test. He was accompanied to the site of the testing laboratory by two police officers and a deputy superintendent of police. When the suspect was seated in the interview room, the examiner attempted to place the pneumograph tube around the suspect's chest and discovered a gun hidden under his armpit. Moving quickly, the examiner was able to remove the gun from the suspect. The police officers who witnessed the occurrence from the observation room rendered immediate assistance. After the disturbance and a stern reprimand to the officers by the examiner for their not searching the suspect previously, the examination was conducted.

What could have happened if that gun had not been accidentally discovered? The suspect could have (1) while alone, shot himself; (2) shot the examiner; or (3) used the gun to effect an escape. It was learned later that because the suspect was a fellow police officer, only a casual search had been made before he arrived for the examination. The camaraderie of the police in this instance may have caused a serious shooting incident or may have provided the necessary means for the suspect to escape.

Rather than an investigator being armed during an interview or interrogation, various other precautionary measures may be substituted to ensure that no escape will occur or that the investigator will sustain no physical harm. For instance, where circumstances warrant, a guard may be placed outside the door of the interview room, on the alert for an attempt to escape or for possible acts of violence toward an unarmed investigator.

Recognize that in everyone there is some good, however slight it may be. The investigator should seek to determine at the outset of an interview what desirable traits and qualities may be possessed by the particular suspect. Thereafter, the investigator can capitalize on those characteristics in an effort toward a successful interrogation. The following example may seem to be an implausible one, but it actually happened during an ultimately successful interrogation of the perpetrator of a brutal crime. Reference was made to the kind treatment he had rendered his pet cat! The suspect then was told that if he himself had

been treated similarly by fellow humans, he would not have developed the attitude that led to his present difficulty. This proved to be helpful in eliciting his confession.

Conclusion

As noted earlier, not everyone in law enforcement or private protective security has the qualifications for conducting effective interviews or interrogations. Conversely, some people qualified within this specialized field are ineffective as investigators. There should be no reluctance, therefore, on the part of anyone to make that differentiation, whether he is the administrator who controls the assignments or the person who is to express a preference for the kind of work to be performed. The authors believe that it is imperative that officers assigned or selected to be interviewers or interrogators function in the manner described.

Footnotes

[1]When dealing with any individual who represents a special segment of society, the investigator should be alert to the terms the particular suspect feels comfortable using by listening to the suspect's word use. For example, a homosexual may describe himself as "gay" and his significant other as his "lover" or "partner"; a member of a street gang may make a clear distinction that he is not a "gang-banger." During the interview, the investigator should accommodate the suspect's preferred terminology as much as possible.

[2]In the book, *The Investigator Anthology* (1999, published by John E. Reid and Associates, Inc.), authors Jayne and Buckley discuss interview and interrogation strategies for a number of personality types, including normal, paranoid, schizotypal, schizoid, histrionic, borderline, antisocial, avoidant, dependant, compulsive, and passive aggressive.

[3]Reported in Johns C., "Untrue Confessions." *The Arizona Republic.* (February 7, 1993. Section C).

[4]During an investigation into a series of rapes, investigators became so convinced that their prime suspect, Michael Cooper, was guilty that they decided to interrogate him despite that fact that he refused to waive his *Miranda* rights and repeatedly requested to speak with an attorney. After four hours of interrogation, the investigator became convinced of Cooper's innocence and reported his opinion to the chief of police. The chief, however, told the media that Cooper was properly identified as the offender. Subsequent evidence cleared Cooper of the rapes, and he successfully sued the department for considerable damages. *Cooper v. Dupnik* 963 F.2d 1220 (9th Cir., 1992).

[5]The use of crime scene photographs during an interrogation also should be avoided because they may reveal incriminating information about the nature of the crime that only the guilty suspect would know. Withholding such information is critical to help corroborate the details of a confession the suspect does offer.

Part 2

Interviewing Techniques

Chapter 7

Preparation and Starting the Interview

As a prelude to subsequent discussions of interviewing and interrogation techniques, the authors want to make unmistakably clear the sense in which the words *guilt* and *innocence* are used. Legally speaking, a person is "guilty" only after a judge or jury has made a determination of that fact. They start from the premise of a presumption of innocence and guilt can only be established by proof beyond a reasonable doubt. That obviously is not the prerogative of an investigator. Consequently, the words *guilt* and *innocence* are used here to signify nothing more than the investigator's *opinion* (and sometimes only a tentative one). This simply means that it is the investigator's belief that the suspect either committed the crime in question ("guilty") or he did not ("innocent"). The usage carries no legal implication whatsoever.

Part 2 of this section covers interviewing techniques, presented in six chapters. The first topic—discussed in this chapter—is the preparation for an interview, followed by formulation and selection of questions during an interview. Detailed information will then be offered about evaluating a subject's behavioral responses to interview questions in order to assess the person's credibility and truthfulness. A structured interview technique called the Behavior Analysis Interview will then be presented, and the unit will end with a discussion of specialized questioning techniques.

Formal Versus Informal Interviews

A formal interview is conducted in a controlled environment, ideally one that is not familiar to the person being interviewed, such as a police station, security office, or a neutral location. During a formal interview the investigator has many luxuries; among the most important is that the interview can be structured to allow for the gathering of the

most meaningful information. In addition, under this circumstance it becomes possible to conduct an accusatory interrogation immediately following the interview. The procedures outlined here primarily relate to the formal interview.

As discussed in detail in the legal section of this text, before a *custodial* suspect may be interviewed—even for the limited purpose of making a tentative determination of his whereabouts at the time of a crime, or other knowledge relating to a crime—he must be informed of his *Miranda* rights (the constitutional rights mandated in the U.S. Supreme Court's 5–4 decision in the 1966 case of *Miranda v. Arizona*).[1]

After the issuance of the *Miranda* warnings, no interview or interrogation of a person in police custody may be conducted unless he has waived the prescribed rights to remain silent and to have a lawyer present. Consequently, the interview procedures discussed in this section may be employed only when: (1) the suspect is not in custody or (2) the suspect is in custody and has waived both the right to remain silent and the right to a lawyer.[2] All that follows presupposes a fulfillment of either of these two conditions.

Many of the initial contacts that a police or security officer has with suspects, witnesses, or victims will occur informally. Although privacy should always be a primary concern, an informal environment rarely allows for a structured, in-depth interview. Interrogation under these circumstances should only be considered when the person being questioned evidences clear signs of wanting to confess or where the timing and evidence suggest that a confession is likely. For example, a police officer responds to a call from a store owner reporting that a customer shoplifted merchandise. Under this circumstance it would be appropriate for the officer to place the shopper in a private environment (perhaps the security office or even the back seat of a squad car), advise him of his *Miranda* rights, and conduct an interview or interrogation to learn the truth.

Typically, during an informal interview conducted at the scene of the crime or during follow-up investigation in a suspect's home or place of business, the interview is restricted to seeking basic facts about the crime that the person may possess. Information learned in such an informal setting, early in an investigation, can be beneficial later in the investigation, as contradictions between different versions of events offered by the subject can help identify the guilty party. Similarly, a false alibi offered during an informal interview conducted shortly after the commission of a crime may be easier to detect.

Arranging the Formal Interview

Whenever possible, an interview should be conducted in a noncustodial environment. This eliminates the need to advise the suspect of his constitutional rights under *Miranda*. Some investigators experience consistent success when inviting a suspect to voluntarily agree to be interviewed. Others meet with great resistance to any effort to set up a voluntary interview. Clearly, the manner in which the suspect is approached will influence the investigator's success. In this regard, the following suggestions should be kept in mind.

Do not tell a suspect that he is the prime suspect in the case. A guilty suspect is much more likely to agree to meet with an investigator if he believes that the investigator has not already

established a strong case against him. The investigator should avoid mentioning specific evidence against the suspect or contradictions in the suspect's earlier statement during the initial contact; the pretense for the interview should be fairly vague, such as, "I would like to clarify some information you reported earlier. Would it be convenient to stop by the station tomorrow morning?" However, when inviting the suspect to be interviewed, the investigator should not withhold the actual purpose for the interview. The suspect needs to be truthfully informed about the issue under investigation so that he can make a knowledgeable decision about whether to cooperate with the investigators. What is being suggested is that if a suspect is approached in a challenging and authoritative manner, he is unlikely to voluntarily submit to a subsequent interview.

Bring up the interview in a casual manner that appears beneficial to the suspect. As an example, the investigator might state the following:

> Tony, I am just completing our investigation into those cars that were taken from the dealership where you work. I've had a chance to meet with a lot of the employees there and I'm hoping you could stop by this afternoon after work to help fill in a few details. Would you be able to make it here by 4:30?

Another approach to consider is as follows:

> Tom, I've been able to eliminate a number of people in this case by having them come in to talk to me. I'd like to arrange a time to meet with you as well. Could you stop by and see me tomorrow around 9:00?

Imply that other people involved in the investigation have agreed to meet with you or have already been interviewed. This places the guilty suspect in a dilemma in that if he does not agree to be interviewed it may be perceived as evidence of his guilt. This approach will also be beneficial during the interview of an innocent suspect, who may not otherwise cooperate because of a belief that he is being singled out as the guilty person.

When a suspect voluntarily submits to an interview, it is our recommendation to advise the suspect that he is not in custody and is free to leave at any time. Although such a statement is not legally required, it can prove beneficial in court if a defense attorney attempts to argue that the interview was custodial and therefore *Miranda* rights should have been issued and waived.

During a voluntary interview that leads to an interrogation, the investigator must respect the suspect's right to leave or terminate the interrogation at any time. Statements that threaten or intimate possible arrest will nullify the voluntary nature of the interrogation. For example, an investigator who states, "Listen, Tom, you are not leaving until we get this thing clarified" must now advise the suspect of his rights under *Miranda.* In a private security situation the investigator should avoid any similar threats, such as, "You're not leaving this room until you tell the truth!" Such a statement could be used as evidence against the investigator in an attempt to establish false imprisonment.

Because arguments surrounding *Miranda* issues are so frequently encountered during suppression hearings, especially as related to the suspect's perceptions at the time of an

interrogation, we recommend that investigators remind the suspect who is voluntarily being interrogated of his right to terminate the interrogation. Such a statement should be made around step six of the interrogation process (discussed in Chapter 13). To remind a suspect earlier during the interrogation process that he is free to go will only serve as an invitation for the guilty suspect to leave the accusatory environment. On the other hand, if the reminder of the voluntary nature of the interrogation is made after the suspect has confessed, it leaves open the question of the suspect's perceived ability to terminate the interrogation prior to his confession. Our recommendation, therefore, is that once the suspect exhibits behavioral signs of wanting to tell the truth during the interrogation, the investigator should make a statement similar to the following:

> Jim, you came here today by yourself. No one forced you to talk to me and you know that door is unlocked and you can walk out anytime you choose. But the fact that you came in here voluntarily tells me you are basically an honest person who made a mistake and wants to clarify matters.

Such a statement made before the suspect confesses holds great weight in court establishing the voluntary nature of the interrogation.

Preparing for the Interview

Prior to meeting the suspect for the interview, the investigator should familiarize himself with dates, locations, people's names, and the suspect's background. These should be summarized on a cover sheet within the case file that the investigator can readily access. When an investigator spends time during an interview flipping through unorganized police reports or other documents in an effort to locate a person's name or particular date, the suspect is left with the impression that the investigator is not prepared and therefore is an easy target to lie to.

Key topics of the interview should be outlined on an interview form as a reminder to the investigator of what needs to be covered with the suspect. This procedure allows the investigator to mentally prepare for the interview before meeting the suspect and also serves as a "road map" during the interview to keep the investigator's questions on track.

The interview notes should not be refined to the extent that the investigator literally writes out each question he anticipates asking. To do so restricts the natural flow of information gathering as well as spontaneous interaction with the suspect, such as asking appropriate follow-up questions. Exhibit 7–1 is an example of an interview sheet outline that may be appropriate for a suspect being questioned concerning a rape. Although some of the question areas may be obvious (such as relationship with the victim), others (for example, purpose, you, credibility) may appear unfamiliar. These are behavior-provoking questions and will be covered in Chapter 11. The investigator's written notes during an interview should reflect each question asked (these should be underlined) as well as the essence of the suspect's response to the questions.

Exhibit 7–1 Sample Interview Sheet

MIRANDA? Yes No

Name _____ Address _____

DOB _____ SS# _____

Employment _____ Marital Status _____ Children _____

Additional bibliographical information _____

Purpose _____

You _____

Knowledge _____

Suspicion _____

Credibility _____

Relationship with victim _____

See her that night _____

Talk to her _____

Alibi _____

Attitude _____

Think _____

Objection _____

Results _____

Punishment _____

Second chance _____

Tell loved ones _____

Additional investigative information _____

Generally, there are three types of questions that should be utilized in most investigative interviews: non-threatening questions designed to develop rapport and a behavioral baseline; investigative questions to develop information from the subject about the issue under investigation; and, behavior-provoking questions designed to solicit behavioral responses. Each of these types of questions will be discussed in the next several chapters.

Establishing Rapport

The investigator should establish a rapport with the suspect before asking questions directly relating to the issue under investigation. Rapport has different meanings under different circumstances. It can mean establishing a level of comfort or trust; it may

connote a common ground or similarity between two people. During the interview of a person suspected of committing a crime, the definition of rapport that most accurately fits is "a relationship marked by conformity."

The goals of establishing rapport at the outset of an interview are:

1. The suspect is given an opportunity to evaluate the investigator. Hopefully, the suspect will conclude that the investigator is professional, nonjudgmental, and knowledgeable.
2. The investigator makes an initial assessment of the suspect. This would include such observations as the suspect's intelligence, understanding of the English language, emotional and physical condition, normal level of eye contact, and other behavioral baselines.
3. The investigator establishes a question-and-answer pattern for the interview.

Some investigators are skilled at small talk, where they can discuss sports, news events, or hobbies with almost anyone. For some suspects, this can be an effective approach to establishing rapport. A caution, however, should be kept in mind. If the suspect believes that the investigator is purposefully attempting to establish common ground, this technique can backfire and actually make the suspect more suspicious of the investigator's motives.

Efforts to establish rapport should appear natural and unassuming. One of the easiest ways to do this is to begin the interview by asking non-threatening questions to establish background information about the suspect, starting with the spelling of his last name. Further clerical information can be developed, such as the suspect's address, home phone number, cell phone number, and so on. The investigator may then ask about the suspect's present or past employment; if the suspect is a student, he may ask questions about classes or school activities. When obtaining background information from the suspect, the investigator should take a written note following each response. This will establish that pattern for the remainder of the interview.

The Use of an Introductory Statement

Before agreeing to be interviewed, the subject knows whether he is involved in the offense, is telling the truth about an occurrence, or possesses guilty knowledge. The guilty suspect has also made a tentative decision as to what he will admit and what lies he will tell. Once rapport has been established during a formal interview, the investigator should generally make an introductory statement. There are several purposes for offering such a statement:

- to clearly identify the issue under investigation
- to establish the investigator's objectivity concerning the suspect's truthfulness or deception
- to persuade the suspect that if he lies, that his deception will be detected

Our experience has shown that making such an introductory statement greatly increases behavior symptoms displayed by both truthful and deceptive persons. It is also beneficial in situations where the investigator conducts an interrogation following the interview because (1) the investigator has established his objectivity at the outset of the interview, and (2) the investigator has established his confidence in detecting deception.

Statements for Suspects

A suspect should be reassured that if he is innocent the investigation will indicate that, and, conversely, that if he committed the crime his involvement will also be identified. One of the greatest fears of an innocent suspect is that his denials of involvement will not be believed. Innocent suspects experience relief when they are convinced of the investigator's objectivity. A guilty suspect who has entered the interview with a mindset of "beating" the investigator experiences a greater fear of detection when the investigator convincingly states that the investigation will clearly indicate his involvement. The following is an example of an introductory statement suitable for any suspect:

> Joe, during our interview we will be discussing [issue]. Some of the questions I'll be asking you I already know the answers to. The important thing is that you be completely truthful with me today before you leave. If you had nothing to do with [issue], our investigation will indicate that. But if you did [issue], our investigation will clearly indicate that as well.

In most cases, the investigator should state, or intimate, that there are independent means to detect any lies told. In the above example, the investigator's statement that he already knows the answers to some of the questions he will be asking increases the deceptive suspect's fear of detection in that he is not certain in which areas the investigator has already established the truth. Another effective statement that accomplishes this same goal is to make reference to physical evidence that will shortly be available. For instance, "This morning we will be getting the results back from the crime lab on hair and fiber analysis found at the scene. At that point we will have definite information as to who [committed the crime]."

When interviewing a suspect who, in all probability, is guilty of the offense, the investigator should emphasize his objective role in the investigation. The following introductory statement may be appropriate for a suspect being interviewed concerning child sexual abuse, where the victim's statements appear to be truthful:

> George, during this interview we'll be discussing the allegations made against you. I want to make certain that you understand what my role is in this whole thing. My only concern today is establishing the truth—what did or did not happen. When I interview someone it really makes no difference to me one way or another what he did, as long as he tells the truth about it. What sometimes happens is that a person might be afraid to acknowledge certain statements or actions because, in his mind, he's afraid of how other people might view that.

> The problem, of course, is that if it can be proven that a person didn't tell the truth about small things, there is a natural tendency to think that he might also be lying about major issues. So again, the important thing for you is to tell the complete truth here today.

Statements for Victims

Exhibit concern and understanding toward sex crime victims, who generally are very reluctant to reveal the details of the offense. Such victims often have difficulty in relating precisely what the offender did and said. The investigator can ease this burden by suggesting, during the introductory statement, that the victim consider the investigator much in the same light as a doctor whom they might consult regarding a sensitive problem. This tends to relieve the victim's embarrassment. For the same reason, the investigator should be the first person to use sexual terminology during such an interview. For example, the investigator might state the following:

> Because of the nature of this incident we'll be talking about sexual terms like *penis* and *vagina*. I talk to women on a regular basis in these types of circumstances, about this sort of thing, so I'm not uncomfortable discussing sexual matters. But I realize that it can be difficult to discuss personal matters with a stranger. It might be helpful to think of me as a doctor who you wanted to talk to about a sensitive matter.

Allow the adult victim to tell her story without interruption, and then delicately ask specific questions concerning aspects of the occurrence that were unclear or incomplete. Care must be taken not to sympathize to the point where the investigator, in an effort to avoid upsetting the victim, asks leading questions, such as, "I'm sure you went along with him because you were intimidated by this man's size, is that right?" It is also improper to offer statements of sympathy to the victim, such as, "Oh, you must feel just terrible" or "I can't believe this guy did that to you!" Such statements send a clear message that the investigator accepts everything the victim says as true and can greatly increase a fabricating victim's confidence in telling lies. Similarly, the investigator should avoid nodding his head in agreement with the victim's statements. This, too, sends the message that the victim's statements are being accepted at face value. The investigator should remain sensitive yet objective in his goal of ascertaining the truth.

Consider leaving the victim alone and asking the victim to write out the details of what the offender did and said. Resorting to a written account of a reported offense or accusation may be of value in those instances where a doubt prevails as to the validity of the alleged victim's assertions (assuming, of course, that the victim is able to do the necessary writing). The victim may be requested to write a detailed account of his whereabouts, activities, and observations over a reasonable span of time before, during, and after the alleged event. For example, if a man claims to have been robbed, the investigator should ask him to

write (if he can) everything about what happened to him. If such a written statement is obtained, it can be used as the basis for subsequent interview questions and analyzed for truthfulness, as will be discussed in Chapter 8.

The investigator should not refer to the victim's account as a "statement" or "story"; the former terminology has legal connotations and the latter intimates that the victim's report is made up. An introductory statement appropriate in the above robbery example would be:

> Mike, in situations like this I've found that people sometimes feel more comfortable writing out what happened, so they don't feel pressured into answering a whole bunch of questions. If it's all right with you, what I'd like you to do is write out everything that happened to you last Saturday night. I will step out of the room for a couple of minutes so that you can concentrate on including everything in your account.

During the introductory statement to a child victim of a sex offense, the investigator should clearly identify himself and the purpose of the interview. The interviewer should exhibit a calm, patient, and casual manner, and it is usually advantageous to initiate the interview with a general discussion of the child's interests, daily activities, the names of brothers and sisters, and so on. Once a rapport has been developed and the interviewer has established some basic understanding of the child's level of speech and use of words, the child should be encouraged to describe the event in question in her own words.

An important question to ask initially of a child victim is, "Who have you already talked to about this?" When the answer involves someone who is not professionally trained in interviewing children (a parent, teacher, or close friend), the investigator should make a statement similar to the following:

> Julie, my job is to talk to people. Some of the people I talk to have done things wrong. Other people I talk to have been hurt or frightened by someone else. For me to do my job it is important that the person I talk to tells me the complete truth. Part of my training is to recognize when someone doesn't tell the complete truth. You know what a lie is, right? And you know what telling the truth is? During our conversation today it is important that you only tell me the truth. Why do you think that is important? I know that you have already talked to other people about what happened, and that's fine. What I sometimes find is that someone might tell their mother or best friend about something and, because of the person's reaction they change a little bit of what really happened. That's okay with someone else, but with me right now it's really important that you tell me only things that actually happened. Does that make sense to you?

Unlike eliciting an open account from an adult victim, with a child it is essential to develop the information "bit by bit" rather than to seek it in a full recitation. It is critical, however, not to suggest, within the investigator's question, that the child was victimized.

Therefore, the following question would be improper: "Anne, where did this man touch you?" Rather, the proper question would be, "Anne, did this man do anything that made you feel uncomfortable?"

When discussing parts of the body, it may be very helpful to have a doll or a book of illustrations available for reference. Extreme caution must be exercised, however, to avoid (1) suggesting what was allegedly done to or with those parts of the body, and (2) over questioning a child, especially by several persons on different occasions, because the child may ultimately feel obligated to supply information the questioner seems to want.

During an introductory statement for a witness, address the witness's fears openly and offer appropriate reassurances. A truthful witness may withhold information for a number of reasons. Primarily, these are (1) the fear of having to testify, (2) the fear of retaliation by the person being named or by his associates, and (3) a reluctance to get somebody else in trouble. A key point to keep in mind during the interview of a witness is that there is safety in numbers. That is, if the witness is led to believe that others have also come forward with similar information, the witness feels more comfortable "going along with the crowd" and the related fears of being a witness are greatly reduced.

The following introductory statement may be appropriate for a witness in a drive-by shooting that involved gang members:

> Mary, I really appreciate your willingness to talk to me about what you saw that day. A number of people have already talked to me or other investigators about their observations, so you may not have much more to offer than what we already know, but I like to be thorough and cover all bases. We have some great leads on this guy and between our efforts and cooperation from good citizens like you, I'm sure this case will be closed soon.

As this introductory statement illustrates, the investigator should not only imply that other witnesses have come forward, but also emphasize the witness's civic duty to help the police. Expressing optimism that the offender is already on the verge of being arrested is also reassuring for the reluctant witness. The issue of possible future testimony should never be brought up until after the witness has revealed verbally all that she knows. With respect to specific questions asked about possible retaliation, the investigator should respond truthfully based on the known circumstances of the case. Movies and television portrayals greatly exaggerate the incidence of offender retaliation against a witness, but it does occasionally occur and should be addressed truthfully, based on the investigator's judgment.

Conclusion

When conducting a formal interview of a suspect, witness, or victim, the investigator should spend time beforehand preparing and planning out the interview. In this regard it is helpful to prepare an interview sheet that lists specific questions or topical areas, in abbreviated form, to be covered during the interview. This interview sheet should allow

sufficient space for the investigator to document, in writing, the essence of the subject's response to each question and allow enough space to add additional questions asked.

The first several minutes of an interview are critical in that the subject forms first impressions of the investigator's objectivity, confidence, and general personality. Therefore, several minutes should be spent developing a rapport with the subject before the principal issue under investigation is introduced.

When the principal issue is introduced, it is often beneficial to use an introductory statement to get the subject in the proper "mind set" for the interview. Introductory statements will vary depending on circumstances, but in essence they should offer reassurance to the innocent person while increasing the apprehension of the guilty.

Footnotes

[1]394 U.S. 436 (1966).

[2]The *four* specific warnings that are required, and the sufficiency of *oral* waivers, are discussed in Chapter 17.

Chapter 8

Formulating Interview Questions

The manner in which questions are phrased during an interview can increase or decrease the value of the subject's response to the question. Some questions actually invite deception and are obviously undesirable, whereas others create greater anxiety within the deceptive subject if he chooses to lie and are therefore more productive to ask during an interview. For example, given the following two questions, the second is more likely to result in meaningful information:

1. In the last ten years, have you cheated on your tax returns?
2. In the last ten years, what tax deduction have you taken that you are most concerned about?

It is of interest to note that social learning teaches to ask questions in a delicate and sensitive manner, with the underlying assumption that the person responding will answer truthfully and volunteer the needed information. For example, two close friends may be sharing a drink and one of them asks, "How are things between you and Gloria [the friend's wife]?" Introducing this sensitive topic—known past marital problems—with this nonintrusive question is ideal between friends. In all probability, the question will stimulate significant information and further discussion. However, the witnesses, victims, and suspects whom an investigator interviews are not personal friends, nor do they generally experience an overwhelming desire to incriminate themselves or others. Because of this, an investigator must learn different questioning skills than those customarily used between friends and family, and he must give careful thought to exactly how inquiries are formulated during the course of an investigative interview.

This chapter will discuss the formulation and value of open, direct, and follow-up questions. Later, in Chapters 11 and 12, additional specialized questions will be presented that will expand an investigator's repertoire of questions to ask during an interview.

Asking an Initial Open Question

When evaluating an account, such as what happened to a victim, a suspect's alibi, or what a witness saw or heard, the investigator should elicit this information by asking an initial open question early in the interview. An open question is one that calls for a narrative response. The following are examples of open questions:

- Please tell me everything you know about the fire at your warehouse.
- Please tell me everything that happened to you after school last Friday night. (Question aimed toward a claim of rape, battery, or robbery.)
- Please tell me everything about the accident you witnessed.
- Please tell me everything you did from noon on Friday until you went to bed. (Question designed to evaluate an alibi.)

Too often, investigators elicit this type of information by asking closed questions. For example, in a case involving a robbery that occurred at 7:45 P.M., the investigator might ask a suspect, "Where were you last Friday at 7:45?" The guilty suspect is likely to lie to this highly focused question by providing a fabricated statement and the investigator is left with the difficult task of detecting deception based on a single observation of behavior.

There are a number of benefits of asking an initial open question early during an interview. First, because the subject is free to include or exclude whatever he wants to within his or her response, unless dealing with a fabricated victim's account, the subject is unlikely to include false information, as open questions do not invite fabrication. Information that is volunteered during a response to an open question—for example, a subject's alibi—will probably all be truthful, although perhaps incomplete. Second, the subject's response to an initial open question can be evaluated for editing, where the subject intentionally excludes specific information within the account. Finally, responses to open questions generally do not commit the deceptive subject to a position of denial, whereas a series of closed questions may cause the subject to stick to a lie he told early during the interview process.[1]

To illustrate these points, consider the following response to an open question concerning a subject's alibi, where the issue under investigation is a drive-by shooting that occurred at 6:45 P.M. The open question asked of the suspect was, "Please tell me everything you did from noon on Friday until you went to bed."

> Over the noon hour I was shooting buckets with some friends and we decided to go to the McDonald's on Sunset for lunch. We hung around McDonald's for a while and went over to a friend's house to see who was there. We were at her home for a while and sat and talked. After that we wanted to see a movie. The movie

ended at about 7:00. Eventually, we went over to Paul's house, talked and stuff and I walked home from Paul's house around 9:00. I spent the rest of the night on the phone and listening to CDs in my room. I probably fell asleep around 11:00 or so.

The above alibi does not include any false information, even though the subject was involved in the shooting incident (notice that the subject never stated that he *went to* the movie). As will be described shortly, this alibi can be analyzed for editing and, by asking clarifying questions, the investigator may be able to establish that the suspect, in fact, had no alibi at the time of the crime. Had the investigator elicited the alibi by asking a direct question—"Where were you at 6:45 last Friday night?"—the subject is likely to lie and is now committed to the position that he was at a movie when the drive-by shooting occurred, as illustrated by the following dialogue:

Question (Q): Where were you at about 6:45 last Friday night?
Response (R): I was with Paul and Greg at a movie.
Q: What movie was that?
R: *The Rock.*
Q: When did you leave the movie theater?
R: The movie ended around 7:00, so it would have been about 7:10 or 7:15.
Q: And then what did you do?
R: We were in Paul's car and he drove to his house where we talked for a while and I walked home at 9:00.

Eliciting an alibi in the above manner actually forces a guilty suspect to lie to the investigator's questions. It is an obvious principle of interviewing, but one worth mentioning: *It is always more advantageous to have a subject omit part of the truth than to fabricate information through a lie.* Developing truthful information that was omitted from a response is much easier than learning the truth from a subject who is committed to a lie already told (which generally requires interrogation). Open questions do not invite a guilty subject to lie to the investigator's question.

Phrasing Open Questions

Our social instincts teach us to ask open questions in a noninvasive manner (for example, "How was your day at work?" or "What happened at school today?"). These questions are certainly adequate to afford a person willing to disclose problems at work or school to reveal that information. However, they clearly are ineffective for the person motivated to deceive.

During the interview of a person suspected of involvement in a crime or fabricating an event, the initial open question should be phrased in the broadest sense possible (for example, "Tell me everything you did...."). The investigator also does not want to place any parameters within the question that might limit the subject's response. Therefore, when

questioning a wife concerning domestic violence, question 1 is improperly asked, whereas question 2 is properly asked:

1. Why don't you start off by telling me what your husband did to you?
2. Please tell me everything that happened here this evening.

The first question is improper because it assumes that the husband in some way injured the wife and also limits the response to her husband's physical actions. The second offers no direction to the wife and she can report whatever she chooses.

Typically, truthful accounts will start off at some point in time prior to the main event. Before responding to an open question, however, a deceptive subject may ask the investigator, "Where would you like me to begin?" or "What would you like to know?" The investigator should respond, "Wherever you want to begin" or "Everything that happened."

Eliciting a Full Response

Once the subject starts responding to the initial open question the investigator should allow him to continue with his response without asking any questions. If the investigator does interrupt the account by asking a question, the truthful subject may edit the account to provide what he believes the investigator wants to know. Also, interruptions as a result of questions break the subject's flow of ideas and continuity of the account, which restricts the investigator's ability to evaluate the account for edited information.

To encourage a full response to the initial open question, the investigator may use a technique called *forced silence*. After the subject pauses, the investigator might say something like, "all right" or "okay," followed by silence. Inevitably, the subject will break the silence and continue with his response. When the response is complete the subject will generally let the investigator know this with a statement such as, "And that's everything I did."

Evaluating the Response to an Open Question

When relating an incident such as being the victim of a robbery or sexual assault, the truthful account almost always contains three parts.[2] The account will start off with an introduction that sets the stage for the main incident. The second portion will be the incident itself, and the final stage will be an epilogue where the subject explains what he did after the incident or how the incident affected him emotionally. In a truthful account, the subject's actions, thoughts, and behaviors resulting from the incident become just as significant as the behavioral components. The following account of a car-jacking is typical of a truthful account.

> Well, I was on my way to pick up my two children, Dave and Laura, from preschool. I got off work at about 6:15 and I had to pick them up over on Lake Avenue before 7:00. Rush-hour traffic was pretty bad and I was afraid I might be

late. I was late picking the kids up last Tuesday and the teacher gave me a hard time about it so I decided to take a short cut through the neighborhood off of Lombard. [Introduction].

I was distracted by the time and wasn't really thinking too much about where I was. At any rate, I was stopped at a red light on Lombard and St. Paul and the car behind me bumped me. I was sort of startled, but it was just a bump and I didn't think there would be any damage. When I turned around I saw this guy approach my window so I opened the door to talk with him. He told me there was damage to the back of my car so I got out of my car to see the damage. He grabbed me over here by the shoulder and said, "Take a hike," and pushed me away. He got into my car and did a U-turn going down St. Paul Drive in the other direction. He squealed the tires and I had to jump out of the way. The car that bumped me then did the same thing. [Main Event].

This whole thing happened in just a matter of seconds. I feel like such a fool because I've read about car-jackings but I didn't think it would ever happen to me, you know. I wasn't physically hurt but was sort of in a daze and here I was in the middle of an unfamiliar neighborhood. I wasn't sure what to do. I walked to a Walgreens down the block and they had a pay phone where I called the police and then the day care center. The teacher agreed to wait for me and after I talked to the police I called a taxi and went and picked them up. And that's everything. [Epilogue].

A fabricated account often does not contain these three segments. The deceptive subject, who does not want to lie unnecessarily, may provide an introduction and a main event but offer a sketchy epilogue or skip the epilogue altogether. It is also suspicious when the amount of detail varies from one segment to the next. For example, if a victim spends 90% of the response offering a detailed explanation of the introduction and then glosses over the main event, this would be suspicious. Contrast the earlier truthful response to this fabricated statement:

Well, I was on my way to pick up my children from day care and decided to take a short cut off of Lombard down to St. Paul. As you know, that's a pretty bad neighborhood and when I was stopped at a light I thought I felt a jolt like someone hit me from behind and this guy comes out and grabs me and pulls me out of the car and jumps in and drives away. It all happened so fast I didn't get a good look at him. That's pretty much everything.

Indications of Truthfulness

In addition to evaluating segments of a subject's response to an initial open question, the investigator should listen for the following indications of truthfulness.

Similar detail throughout the account. Depending on the significance and recency of the event, along with a person's background, education, and communication skills, some

individuals will include much more detail within an account than others. However, if the account is factual, there should be similar detail throughout the account.

Out of sequence information. Memories are not stored in real time, the way a video camera records images. Rather, we have primary memories that may then stimulate secondary memories. These less important memories may occur to the subject out of sequence within the account. The fact that the subject includes out of sequence information offers support for the statement being derived from factual recall. In the first account of the previous car-jacking incident, the statement about being late picking the kids up last Tuesday is out of sequence. The subject decided to include the information in her account because it was factual; guilty suspects typically do not lie unnecessarily during a response to the investigator's question.

Expressions of thoughts and emotions. When relating a traumatic incident it is suspicious if the suspect does not include thoughts or emotional states because, psychologically, they are linked so closely with behaviors. The truthful account of the car-jacking incident includes a number of such thoughts including, "I didn't think there would be any damage," "I felt like a fool," and "I was sort of in a daze."

Indications of Deception

Conversely, when evaluating segments of a subject's response to an initial open question, the investigator should listen for the following indications of deception.

Varying levels of detail. The investigator should be suspicious that an account may be deceptive if it contains a great deal of detail leading up to the main incident but the description of the main incident lacks this level of detail. Similarly, if the introduction and epilogue are sketchy but the subject offers a very detailed main event, this should be viewed suspiciously as well.

Perfect chronology within the account. An account that goes from A to Z without ever skipping back in time is somewhat suspicious. This may be an indication that the account is rehearsed or is being generated spontaneously, as the subject makes up the story as it is being told. The absence of out-of-sequence information suggests that the subject is not relying on normal patterns of recall. A truthful account that has been retold many times, however, may be chronological.

The absence of thoughts or emotions. Deceptive accounts frequently are focused entirely on behaviors: what happened, when it happened, how it happened, what was said, and so on. Because the account is fabricated, these reported behaviors occur in isolation from the normal process of experiencing thoughts or emotions. In a case involving a fabricated robbery the subject was asked, "What was your reaction when you saw the man approach your vehicle?" His response was that he moved the money bags to one side. The investigator again attempted to elicit the subject's thoughts or emotions by asking, "What were your thoughts when he approached you?" to which the subject responded, "I just stepped on the brake and moved the bags." At no time did the subject state that

he was afraid or had thoughts of being hurt or killed. During an interrogation following this interview the subject admitted stealing the money himself and making up the story about being robbed.

Phrases indicating a time gap. There are key phrases to listen for during an open account that indicate that the subject has consciously edited information from the account. Examples of these phrases include, "The next thing I remember. . . ," "Before I knew it. . . ," and "Eventually. . . ." The following are two victim statements that contain time gap phrases. In both examples, clearly the "victim" has edited information leading up to the main event.

> *Example 1:* I got up from my chair and went into his house. When I came back outside he had spread a blanket on the ground and he asked me to join him. I sat down on a corner of the blanket and *the next thing I recall* is being on my back with my clothes up around my neck and him fondling me.
> *Example 2:* I asked the officer why we were stopped and he told me that if I say one more word he was going to kick my [expletive]. I said I was sorry and I was just asking. *The next thing I knew,* I was on the ground getting kicked.

In both of these accounts, common sense reveals that the precipitations for these attacks were omitted from the narrative. This does not necessarily mean that these are fabricated accounts, but rather that the victim chose not to include the events immediately leading up to the alleged sexual assault or police beating. This omission may have been because of embarrassment or shame, which may indicate possible truthfulness, or perhaps because the victim was responsible for the action, which may negate the claim. The point is, time gap phrases help direct the investigator's attention to a portion of an account that requires clarification.

Implied action phrases. Deceptive subjects rely extensively on the investigator making assumptions about what probably happened. A good rule to follow is that if the subject did not specifically state that something happened, the investigator should not assume that it did. Key phrases associated with implied actions include, "I thought about. . . ," "He started to. . . ," He began. . . ," and "I wanted to. . . ." In one case our office investigated, a 16-year-old student claimed that she was raped in a bathroom stall at her high school. When responding to the initial open question she stated, "And he starts to threaten me and tells me that if I scream or didn't cooperate he will hurt or kill me." Later during her response she stated, "And he starts pushing me up against the back of the stall so I was, kind of, you know pinned in." Of significance is that the student never said that the man actually made these statements or pushed her up against the back of the stall. Rather, she said that he "starts" to engage in these behaviors. Also of significance in this account is that the victim is using present tense verbs yet talking about something that should have occurred in the past.[3] Following an interrogation, this subject confessed to entirely making up the rape story to explain her absence from class.

Clarifying the Open Account

Once the subject has completed his response to the initial open question, the investigator should go back and ask clarifying questions. The following list can be used as a guide to help direct the interviewer to those areas that require further clarification:

1. sketchy details
2. illogical or unexplained behavior
3. time gap phrases
4. implied action phrases
5. people not identified (We went to the mall.)
6. conversations (I was on the phone for a while.)
7. qualifying phrases (I believe, I think, As I recall)

Clarifying questions are open-ended questions that can be divided into three categories: (1) questions that elicit more information, (2) questions that seek an explanation for events, and (3) questions that develop information about the subject's feelings or thoughts.

The first category of questions is designed to elicit further information within a section of the subject's account. For example:

- Please tell me more about the man who approached your car.
- Please describe the vehicle that hit you.
- What did you do after they drove away?
- Tell me more about the movie.

The second category of clarifying questions seeks an explanation for events. For example:

- Could you explain more fully why you were in that neighborhood?
- Why did you initially get out of the car?
- Why did you decide to go to that movie?
- Why did you wait for three days to report this?

The final category of clarifying questions develops information about the subject's feelings or thoughts. For example:

- What was your first reaction when you saw the man approach you?
- How do you feel toward the man who stole your car?
- With whom have you discussed this incident?

After the investigator has asked a series of clarifying questions and the subject has volunteered all the information that he is going to, the investigator should ask direct questions to develop details of the event or situation that were not included in the subject's response to open questions.

Asking Direct Questions

As the name implies, direct questions are usually closed questions that are asked to elicit a specific position or answer from the subject. Although direct questions are an efficient way to learn information, a deceptive subject is also more likely to lie to these questions. Essentially, direct questions force a deceptive suspect to either offer incriminating evidence or lie. Therefore, in addition to asking direct questions properly and evaluating the verbal responses, the investigator also must carefully monitor the subject's nonverbal behavior. The specific behavior symptoms to observe will be presented in Chapter 9.

When seeking a possible admission, use nondescriptive language. Subjects will instinctively take a position of denial when the investigator's question contains descriptive or legal terminology, such as *steal, rape, murder,* or *rob.* Therefore, the first question below is unlikely to elicit meaningful information whereas the second one may:

- Who do you think was involved in this robbery? [Improper]
- Who do you think may have been involved in taking the money from the gas station? [Proper]

When asking a series of questions that relate to a central issue, start out with the most narrow question and finish with the broadest. For example, in a homicide where a victim named Jeff was shot in his home last Friday evening, the investigator will probably want to ask a suspect the following interview questions:

1. Did you have any contact with Jeff at all last Friday?
2. Did you see Jeff at all last Friday?
3. Did you talk to Jeff at all last Friday?
4. Were you inside Jeff's home at all last Friday?
5. Did you have a gun in your hand at any time last Friday?
6. Did you fire a gun at all last Friday?
7. Did you shoot Jeff?

The problem with asking the questions in the order presented is that if the subject answers "No" to question number 1, he must also answer "No" to questions 2, 3, and 4; he is committed to a denial to any question concerning possible contact with the victim on that day. In fact, many investigators would not even ask those questions following a denial to the first question. Similarly, first asking the subject if he had a gun in his hand

last Friday, commits the subject to denial for questions 6 and 7. The proper order for asking these questions is:

1. Did you shoot Jeff?
2. Did you see Jeff at all last Friday?
3. Did you talk to Jeff at all last Friday?
4. Were you inside Jeff's home at all last Friday?
5. Did you have any contact with Jeff at all last Friday?
6. Did you fire a gun at all last Friday?
7. Did you have a gun in your hand at any time last Friday?

It is always easier to detect deception when a suspect lies to multiple questions asked during an interview rather than to just one or two isolated questions. By asking all the above listed questions, a suspect guilty of the killing is forced to lie many times during the interview and the investigator greatly increases his opportunity to detect deception. A truthful suspect who is asked this same series of questions is also afforded the opportunity to display multiple symptoms of truthfulness.

Do not predicate a question based on information the subject provided at some earlier point in time. Even though the investigator may have substantial knowledge of what the subject told another investigator or wrote in a statement, the investigator should ask each question as if he does not know the answer to it. By predicating a question based on earlier information, the investigator not only reminds the subject of what his previous response was but also makes it difficult for the subject to change his earlier statement, thereby possibly committing a guilty subject to further denial. For example, if an assault victim is asked, "I see here in your statement that the man who attacked you was six feet tall. Can you give me a more complete description of what he looked like?" she is unlikely to respond, "Well, after thinking about things I think his height was closer to 5′6″." Whereas, if the question is phrased "Please describe everything about the man who attacked you," the victim is more likely to change her original description of his height if, in retrospect, she believes he was shorter than six feet tall. Here is another example of an improper and proper question phraseology:

- You told the other investigator that you left the movie theater at about 7:10 that evening. Is it possible that it could have been closer to 6:30? [Improper]
- What time did you leave the movie theater? [Proper]

If the investigator has specific information about the suspect's past (for example, a prior arrest) or specific information that links the suspect to the crime scene (for example, an eyewitness who saw the suspect leave the scene of a fire), this information should not be revealed until the suspect is asked a question about it, such as "Have you ever been arrested?"; "Last Friday night, were you outside the building that burned?" A suspect who

lies about such matters (for example, denies any previous arrests or denies being in the area of the crime) is much more likely to be involved in the incident under investigation.[4]

Do not combine two issues within the same question. Consider the compound question, "Did you see Jim at all that night or talk to him that night?" If a subject answers "No," the investigator has no idea if the subject is denying both actions or just one. To complicate detecting deception, a guilty subject who talked to Jim over the phone but did not meet with him personally will psychologically focus on that portion of the investigator's question to which he is telling the truth (talking to Jim over the phone that day). As a consequence, his behavior will appear truthful. The following dialogue illustrates the benefit of separating these two issues by addressing them in different questions:

Q: Did you see Jim at all that night?
R: No, not at all.
Q: Did you talk to Jim at all that night?
R: Um . . . not in person.

Direct questions should be short and succinct. An investigator may start by asking a direct question that is short and to the point. However, if the investigator detects hesitancy on the part of the suspect, he may continue talking in an effort to ease the suspect's anxiety. The resulting question often is much more specific than the original one asked by the investigator. This is called "tagging" a direct question. Consider the following dialogue:

Q: Did Andrea ever see your bare penis?
R: Um. . . .
Q: You know kids that age are naturally curious and sometimes they might walk in when you're taking a shower, or when you're getting ready for bed, and see you naked under that circumstance. Has that happened at all?
R: No, not at all.

In this case, the subject allegedly walked into the victim's bedroom and exposed his penis to her. The investigator's first question was proper and addressed that possibility. However, once the investigator tagged the question with specific examples (being seen in the shower or getting ready for bed) the question became so specific that the subject was able to tell the truth to it without incriminating himself.

Do not include memory qualifiers within your question. Deceptive subjects will use memory qualifiers within their answer to a question to reduce personal responsibility within the response. An example of this is, "Not that I can recall." However, if the investigator's question contains a memory qualifier, the deceptive subject feels much more confident in his denial, as the following example illustrates:

Q: Do you remember if you had an argument with James that night? [Improper]
R: No.
Q: Did you have an argument with James that night? [Proper]
R: Not that I recall.

By removing the memory qualifier in the second question, the subject's response changes substantially. In effect, he now acknowledges the possibility of having an argument with the victim on the night of the crime.

Do not ask negative questions. A negative question is one that expects agreement with an implication contained within the question. These are the easiest questions to lie to and yet are frequently asked during interviews. The following are each examples of negative questions:

- You don't know who did this, do you?
- So you've never discussed sexual matters with your stepdaughter?
- You weren't using any drugs that night, were you?

Often negative questions are asked as an improper follow-up to an evasive response offered by the subject. The investigator recognizes that the subject's initial response was less than complete but incorrectly summarizes the subject's position by asking a negative question, as the following dialogue illustrates:

Q: This lady lives right downstairs from you. Have you ever been inside her apartment for any reason?
R: I'm sure I would remember being inside her apartment.
Q: So you've never been inside her apartment?
R: That's right.

Do not ask challenging questions. The interviewing process should be non-accusatory. With some subjects this is a difficult guideline to follow. However, the investigator must remember that once questions are asked in a challenging or accusatory manner, the subject will offer less and less information. Furthermore, questions asked in a threatening or offensive tone may produce misleading behavior from the suspect.[5] The following is an example of improper questioning:

Q: That evening, were you in a car on 5th Street at any time?
R: I told you, when this thing went down I was at a movie.
Q: That's not what I asked you. Listen to my question! Were you in a car on 5th Street?
R: I already told you where I was. If you have any more questions you can talk to my attorney!

A much better approach to this evasive response would be, "I understand, but what I was wondering is whether, at any time, you were in a car on 5th Street that evening?" Another approach to keeping interview questions nonchallenging is for the investigator to assume the blame for not understanding the subject's answer. The investigator may state, "I'm somewhat confused about something" or "I may have misunderstood your earlier statement."

Asking Follow-Up Questions

Asking proper direct questions is certainly no guarantee that a deceptive subject will tell the truth to the question. Rather, proper formulation of interview questions makes deception more apparent within the subject's response. Although the specific behavioral cues of deception will be covered in Chapter 9, it is important to appreciate that there are two distinct reasons for evaluating a subject's behavioral response to interview questions. The first is to form an opinion of the suspect's probable truthfulness. The second is to use behavior symptoms to help direct the selection of follow-up questions to ask. It is in this regard that the following suggestions are offered.

Because follow-up questions are specifically directed at some aspect of the subject's original response, they are instrumental in clarifying a subject's behavior. Therefore, a subject's responses to follow-up questions are often much more useful in identifying truth or deception than evaluating the initial response to the original question. The following example illustrates this concept, where the response to the follow-up question for the first subject is more typical of truthfulness. Conversely, the second subject offers a response to the follow-up question more indicative of deception:

Q: What do you think should happen to the person who stole this $2,000?

R: Well, that's not really my decision to make.

Q (follow-up): I understand, but if you could make the decision what do you think should happen to the person who did this?

R (Subject 1): Well, because this theft is hurting my share of the profits I would like to get my hands on him first. I think jail would probably be the best solution.

R (Suspect 2): I think you have to look at a person's record and stuff. You know, find out why he did it and consider all the circumstances.

Handling Evasive Responses

An evasive response is one that does not offer a definitive answer to a direct question. Often evasion is a symptom of deception, but some truthful subjects will evade a direct answer to the investigator's initial question for a number of reasons. In the case of an evasive response, the investigator should simply rephrase the same question, as the following dialogue illustrates:

Q: When is the last time you saw Sally?

R: Like I said, I drove her home and dropped her off around 7:30, or so.

Q: I understand that you drove her home around 7:30, but when is the last time you actually saw her?

R: Well, she invited me in for a drink and I accepted, but didn't stay that long. I would have to say that the last time I saw her would have been around 8:00 or 8:30—something like that.

Responding to Qualified Responses

A qualified response contains words or phrases that decrease the level of personal commitment or confidence within the subject's response. When such qualifiers are used, the investigator should consider asking a hypothetical follow-up question to clarify the subject's position. Hypothetical questions often start with the phrase, "Is it possible" or "Do you think that perhaps." The following dialogue illustrates this:

Q: At any time were you given the combination to the safe?
R: To the best of my knowledge I never had the combination.
Q: Is it possible that you were given the combination at some point in time?
R: Well, now that you mention it, there was an incident where Jim called in sick and I talked to him on the phone because I had to open that morning. I believe he did give me the combination to the safe when I talked to him.

Responding to Possible Omission

During the course of an interview a guilty subject may avoid lying to the investigator's question through omission. What the suspect offers within his response is the truth, but it represents only part of the truth. The investigator should always listen for possible omission when questioning a subject about frequencies of behavior or dates. In the following example the first suspect is telling the complete truth, whereas the second one has omitted important information:

Q: Has your driver's license ever been suspended?
R (Suspect 1): The only time that happened was back when I was 19. I didn't have enough money to pay a couple of parking tickets and my license was suspended for three months until I paid them.
R (Suspect 2): Yes it was. Back when I was 19 it was suspended for a few months for unpaid parking tickets.

Although the second subject has not lied during his response, he also has not told the complete truth. In fact, his license has been suspended on three occasions. Whenever a subject acknowledges that something happened, the investigator should ask, as an automatic follow-up question, "Besides that time, what other time has [it happened]." The following dialogue is from a case in which a suspect was being questioned concerning involvement in a robbery/homicide where the store owner was killed with a 9 mm handgun:

Q: When is the last time you fired a handgun?

R: A couple of years ago I went target shooting with a buddy and I used his gun—it was a .22 or something, but that goes back a long way.
Q: Besides for target shooting with that .22, what other handguns have you fired in the last couple of years?
R: Well, I take that back, there was another time I fired a .38 revolver with a friend, just in an alley fooling around. That had to be last year. It was the summer, I don't know, July or something.
Q: Besides for those two handguns what other handguns have you fired recently?
R: I didn't actually fire it, but back in November a friend had a 9 mm, and I sort of dry fired it. It was nothing.

This line of questioning was important in solving the case in that it established the suspect's access to the same caliber weapon that was used in the commission of the crime. Once the suspect gave the investigator the name of the "friend," it was developed that the suspect bought the 9 mm handgun from this person. Subsequent developments disclosed that this 9 mm handgun was the one the subject used during the murder of the robbery victim.

Conclusion

An investigator's ability to develop meaningful information from a suspect, witness, or victim relates directly to his skill in formulating questions properly and asking appropriate follow-up questions when they are needed. In this regard, we offer the following recommendations:

1. Early during the interview, ask the subject an initial open-ended question to elicit his or her version of events or to relate the details of an incident. Allow the subject to completely respond to that question, without interruptions, while taking written notes of key information.
2. Ask clarifying questions that relate back to the subject's response to the initial open-ended question. These should be open questions that allow the subject to expand on information already provided to the investigator.
3. Ask direct questions to elicit a definitive position from the subject in areas that remain unclear or to develop information that was not yet discussed.
4. If a response to a direct question contains symptoms of possible deception, the investigator should ask appropriate follow-up questions to further develop information or draw out behavior.

Footnotes

[1]Research has confirmed the value of using open-ended questions. The results of a study conducted by Dr. Brent Snook and Kathy Keating of the psychology department at Memorial University of

Newfoundland conclude, in part, that "officers interviewing witnesses are potentially reducing the amount of information retrieved by talking too much, asking too many closed-end questions, and failing to adhere to science-based methods for mining memory." The authors furthermore state that "only about 6% of the interviewers' questions were considered open-ended; that is, encouraging a broad range of response beyond a simple yes or no or other narrowly restricted replies. "We estimate that between 20 and 30% of all questions asked should be open-ended," the researchers state. The results of the study were published by Brent Snook and Kathy Keating. A field study of adult witness interviewing practices in a Canadian police organization. *Legal and Criminological Psychology,* 16(1) February 2011, 160–172. Article first published online : 17 JAN 2011, DOI: 10.1348/135532510X497258.

[2]Some of the guidelines suggested for evaluating an open account incorporate concepts from content analysis, a technique for evaluating a statement written by a victim, witness, or suspect. Our empirical experience in applying these guidelines to verbal accounts supports their usefulness in that situation as well.

[3]For a more in-depth discussion of semantics and evaluation of an open account, see W. Rudacille. (1994). *Identifying Lies in Disguise*. Dubuque, Iowa: Kendall/Hunt; D. Rabon. (1994). *Investigative Discourse Analysis*. Durham, N.C.: Carolina Academic Press.

[4]In "Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works" (published by *Law and Human Behavior*, 30(5), 603-619, DOI: 10.1007/s10979-006-9053-9 (Published in partnership with Maria Hartwig, Pär Anders Granhag, Leif A. Strömwall and Ola Kronkvist. *American Psychology-Law Society*, Division 41 of the APA. Original Article: *Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works.*)) the authors reported the value of following the above described interviewing strategy. In a mock crime scenario they found that it was more effective for the interviewer to conceal incriminating evidence against the subject (that there were eyewitnesses and that their fingerprints were found near the stolen item) when they asked them to tell their story, than when they revealed this information to the subject and then gave them a chance to explain the evidence away with a non-incriminating explanation.

[5]A good example of the misleading nature of behavior produced by accusatory questioning is a laboratory study in which college students were "interviewed" concerning their alibi during a mock crime. See S. Kassin and C. Fong (1999). I'm Innocent!: Effects of Training on Judgments of Truth and Deception in the Interrogation Room. *Law and Human Behavior*, 23, 5.

Chapter 9

Behavior Symptom Analysis

There is a kind of confession in your looks, which your modesties have not craft enough to color.

Hamlet to Rosencrantz and Guildenstern,
in Shakespeare's *Hamlet*, Act 2, Scene 2

Overview

Physicians, psychiatrists, psychologists, therapists, and many other professionals have long recognized the value of evaluating a person's behavior to assist in making diagnoses, judging the effectiveness of treatments, and making other assessments. The premise for making these clinical inferences is that there are several levels or channels of communication, and that the true meaning of the spoken word is amplified or modified by the other channels, including speech hesitancy, body posture, hand gestures, facial expressions, and other body activities. In other words, a person can say one thing while his body movements, facial expressions, or tone of voice may reveal something entirely different.

Pioneers in the field of criminal interrogation, as it is known today, gave little consideration to behavior symptoms. Overlooking the professional importance and potential value of such individual characteristics, the early investigators relied almost completely upon the content of what the suspect said. Some had nothing more than a "gut feeling" that the suspect was telling the truth or lying. Evidence of behavioral differences between truthful and lying suspects was thought to be of questionable merit and generally was not given conscious consideration. Most certainly, however, some investigators had developed

a skill for assessing behavior, but few disclosed it or perhaps lacked the ability to articulate or record their observations. It was not unusual for some of them to believe that they were endowed with a "sixth sense" when, in fact, their skill was derived from a special application of their natural five senses, developed through practice, and from a reliance upon a good memory bank.

Beginning in 1942, John Reid, the coauthor of the first three editions of this text, systematically recorded the behavior symptoms of all suspects who were given polygraph examinations at the Chicago Police Scientific Crime Detection Laboratory. In this research he compared behavior symptoms and polygraph test results. It was reasoned that because the polygraph records physiological changes during the time questions are asked, and because behavior symptoms are signs accompanying physiological changes, there may be a correlation between polygraph test results and the verbal and nonverbal responses of a suspect. Responses of the subjects were noted during the interview prior to taking the test, while taking the test, and during an interrogation that followed. Observations were also made by someone who watched each subject through a transparent wall mirror during the entire time the subject was in the polygraph examination room, either alone or with the examiner. When the polygraph test results were confirmed by evidence of guilt (for example, a confession or the finding of substantiating facts) or of innocence (for example, the investigator's definite diagnosis to that effect or the establishment of another person's guilt), a comparison was made between those results and the observed behavior symptoms of the suspects.

After a compilation of verified cases and a statistical analysis of the behavior symptoms exhibited by polygraph test subjects, it was encouraging to find that the majority of the verified truthful individuals had been tentatively identified as such by the polygraph examiner during the pretest interview, and a considerable number of the verified lying subjects also had been tentatively identified as liars, even before the polygraph tests had begun. It was established, however, that truthful suspects were easier to recognize from behavior symptoms alone and that lying suspects were more difficult to identify in this manner.[1]

Although this initial research offered promising results, a number of variables could have influenced the findings. Specifically, behavior symptoms may be more apparent during a polygraph environment than outside of one. Further, the behavioral assessments may have been biased because the examiner had investigative and background information about each subject. In the 1990s, John E. Reid and Associates was awarded two federal grants from the National Security Agency (NSA) to specifically investigate behavioral differences between truthful and deceptive suspects outside of the polygraph environment.[2] In those two studies a total of 80 videotaped interviews of actual suspects were prepared under different conditions; this permitted trained evaluators to evaluate the subject's verbal, paralinguistic, and nonverbal behaviors separately and together (discussed below). In the latter study, when evaluators were exposed to all three channels of communication together, their average accuracy, excluding inconclusive opinions, was 86% for truthful suspects and 83% for deceptive subjects.[3] It should be pointed out that

this finding was based on the evaluation of only 15 behavior-provoking questions asked during each interview, and that evaluators were not provided with any case information or background about the subjects.

The previously mentioned studies all utilized investigators with many years of experience in observing behavior symptoms. An important issue to address is whether persons without such experience can be trained to make behavioral assessments of criminal suspects. To investigate this effect, 53 college students with no previous training or experience in behavior symptom analysis were asked to evaluate 10 videotaped interviews of verified deceptive or truthful suspects. Twenty-seven of these students then received six hours of training in behavior symptom analysis. These students, along with the 26 others who received no such training, evaluated the 10 videotaped interviews a second time. The students who did not receive any training in behavior symptom analysis did not improve their ability to identify truthful or deceptive subjects. However, those who received training significantly increased their accuracy in identifying truthful and deceptive suspects, with an average accuracy of 82%.[4]

Recent research efforts that have more closely attempted to mirror real life interview circumstances have demonstrated a significant increase in an investigator's ability to evaluate accurately a subject's behavior symptoms. Consider the following:

- High-stake lies are detected at higher rates than low-stake lies.[5]
- When an investigator understands the context in which an interview is taking place (for example, the case facts and background information) accuracy in the assessment of a subject's behavior symptoms greatly increases.[6]
- Accuracy in detecting deception with real-life suspects is significantly higher than suggested by studies that use subject's in a mock crime scenario.[7]
- Training and experience in the field of behavior symptom analysis significantly increases the ability to detect true and false statements.[8]

Not all research conducted in the area of behavior symptom analysis has produced such favorable results. There are a number of laboratory studies that indicate nonverbal behavior (and to a lesser extent verbal cues) offers little value in assessing a suspect's credibility. These studies utilize a mock crime paradigm where, typically, college students are assigned to play the role of an innocent or guilty person. The students are then interviewed and instructed either to tell the truth or to lie during the interview. The videotaped interviews are then utilized as the data source to determine the validity of behavioral assessments.[9]

There are a number of probable explanations accounting for the rather dismal results of these laboratory studies including:

- The subjects had low levels of motivation to be believed (in the case of innocent suspects) or to avoid detection (in the case of guilty suspects). In real-life interviews, the consequences of not being believed or being detected as guilty are significant.

- The interviews of the subjects were not conducted by investigators trained in interviewing criminal suspects.
- The studies did not employ the type of structured interview process that is commonly utilized by investigators in the field.
- In most studies there was no attempt to establish behavioral baselines for each suspect so as to identify unique behaviors within a particular individual.
- The research was based on the faulty premise that there are specific behavior symptoms that are unique to truth or deception.
- There was little consideration given to evaluating behaviors in context. For example, identifying whether specific nonverbal behaviors are appropriate given the verbal content of the suspect's response, identifying the consistency of a suspect's statements across time and with known evidence, and so on.

Here are some examples of early laboratory studies. In a study reported by Kraut and Poe,[10] videotaped interviews of 62 volunteer suspects were evaluated by 49 lay people and 39 customs inspectors. Half of the "suspects" were instructed to lie about possessing contraband and the other half instructed to tell the truth. Neither lay judges nor the customs inspectors were able to identify truth-tellers from liars above chance levels.

In a similar study, Kohnken had 80 police officers review videotaped interviews of college students who were instructed to either tell the truth or lie about a crime scene they witnessed.[11] Even after receiving specific training in behavior symptom analysis, the police officers were not able to identify which college students were telling the truth and which were lying.

In a third laboratory-based study, Ekman and O'Sullivan selected 10 one-minute videotapes of women who were instructed to either lie or tell the truth about their feelings concerning a viewing of a traumatic event.[12] The videotapes were evaluated by members of various groups who have a professional interest in detecting deception, including the U.S. Secret Service, federal polygraph examiners, police officers, judges, and psychiatrists. Only the Secret Service agents were able to identify truth and deception above chance levels (64%).

In general, research based on artificially motivating subjects to lie or tell the truth does not identify the ability of appropriately trained investigators to assess the credibility of people or the information that they receive from real-life subjects during properly structured investigative interviews.

Underlying Principles of Behavior Symptom Analysis

Behavior symptom analysis involves the study of inferences made from observing another person's behaviors. On a daily basis we make dozens, if not hundreds, of inferences based on behavioral observations, such as that man is angry, that girl likes me, my child is hungry, my son did something wrong, that driver is lost, those two people don't like each

other, Aunt Martha is not taking her medications. This is such a natural phenomenon that it is easy to forget that there is an underlying process leading to these inferences. For example, a six-week-old child is heard crying in the nursery. The child was last fed four hours ago and eats about every four hours. The nature of the crying in the past has been relieved by feeding the child; ergo, the child is hungry. To be completely accurate, when making these behavioral assessments our mind should be thinking, "That man is *probably* angry," "*I think* that girl likes me," "*I believe* that my child is hungry."

This text addresses behavioral inferences relating to detection of deception, primarily in a clinical, controlled environment. Within the scope of detecting deception, there are two broad inferences that are made through behavioral observations. The first involves inferences of guilt or innocence, that is, "Did this person engage in a particular criminal act?" The second involves inferences of truth or deception, that is, "When this person says such and such, is he telling the truth?" For case-solving purposes, it is important for an investigator to appreciate the distinction between "guilt" and "lying." Consider the following exchange during an interview:

Q: "Have you ever thought about having sexual contact with your step-daughter?"
R: "Well sure. Anybody in my position would have those thoughts."

This suspect's verbal response to the investigator's question is truthful. Yet, the content of the response infers guilt with respect to sexually abusing his step-daughter. Research in the field of behavior symptom analysis generally indicates higher accuracies in identifying guilt or innocence, than truth and deception.[13]

Finally, it is important to understand that some behavioral inferences have a higher probability of being correct than others. Consider that a suspect can clearly be seen on a surveillance video leaving the hotel room in which a woman was found raped and murdered. Upon questioning, the suspect denies ever being in the room. The fact that the content of his verbal behavior is contradicted by the video evidence strongly suggests the suspect's guilt regarding the commission of the crime. During this interview, the suspect's posture was rigid and frozen and, when asked if he had ever met the victim, he dusted off imaginary lint from his trousers. Furthermore, the suspect was wringing his hands and sweating even though the temperature in the room was set at a comfortable temperature. Although these behaviors are suggestive of the subject's deception and possible guilt, they are much less so than the documented lie, as evidenced by the videotape.

To appreciate the nature of these inferences, it must be realized that communication occurs at three distinctly different levels:

1. *verbal channel*—word choice and arrangement of words to send a message
2. *paralinguistic channel*—characteristics of speech falling outside the spoken word
3. *nonverbal channel*—posture, arm and leg movements, eye contact, and facial expressions

When evaluating a suspect's behavior for detection of deception purposes, there are five essential principles that must be followed in order to increase the probability that subsequent inferences will be accurate. Failure to recognize any of these principles increases the probability of making erroneous inferences from a suspect's behavior.

There are no unique behaviors associated with truthfulness or deception. The behavioral observations an investigator makes of a suspect do not specifically correlate to truth or deception. Rather, they reflect the subject's internal emotional state, cognitive processes, and internal physiological arousal experienced during a response. The emotional states most often associated with deception are fear, anger, embarrassment, indignation, or hope (duping). The cognitive processes may reveal concern, helpfulness, and confidence versus offering an unrealistic explanation for the crime, being defensive, or being overly polite. There are also internal physiological responses that cause external behavioral responses such as a dry throat, skin blanching, pupillary dilation, or blushing. Observed in isolation, certainly none of these behaviors should cause an investigator to conclude that a subject is telling the truth or lying.

Evaluate the consistency between all three channels of communication. When a suspect sends behavioral messages that are consistent within all three channels of communication, the investigator can have greater confidence in his assessment of the credibility of the subject's response. However, when inconsistencies exist between the channels, the investigator needs to evaluate possible causes for this inconsistency.

Assume that the two subjects illustrated in Figures 9-1 and 9-2 were both asked, "How do you think our investigation will come out on you?" Both responded, "I'm sure it will show my innocence." The subject pictured in Figure 9-1 is communicating high confidence nonverbally. The nonverbal behavior of the subject in Figure 9-2 reflects uncertainty, as this subject is sending inconsistent messages.

Evaluate paralinguistic and nonverbal behaviors in context with the subject's verbal message. When assessing the probable meaning of a subject's emotional state, the subject's paralinguistic and nonverbal behaviors must always be considered in context with the verbal message. Consider the following two examples:

Question (Q 1): Mike, have you ever been questioned before concerning theft from an employer?

Response (R 1): Well, um, two years ago I worked at a hardware store and they had an inventory shortage so all of the employees were questioned and, in fact, I did take some things from there. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

Q 2: Joe, did you steal that missing $2,500?

R 2: No, I did not. [Subject crosses his legs, looks down at the floor, and dusts his shirt sleeve.]

Figure 9–1 Nonverbal behavior supportive of a verbal response

Figure 9–2 Nonverbal behavior contradicting a verbal response

These two subjects displayed identical paralinguistic and nonverbal behaviors during their responses. However, the interpretation of the behaviors is completely different. In the first example, the subject is telling the truth, but he feels embarrassed and possibly even threatened in revealing his prior theft. In the second example, the verbal content of the subject's response does not explain the accompanying nonverbal behaviors, so the investigator should consider these behaviors as reflecting possible fear or conflict—emotional states that would not be considered appropriate from a truthful subject, given the content of the verbal response.

Evaluate the preponderance of behaviors occurring throughout the interview. One of the findings learned through the previously mentioned research is the importance of rendering opinions based on evaluating the subject's behavior throughout the course of an entire interview. In the previously referenced NSA study, when evaluators were only exposed to individual questions within the interview, their accuracy was considerably less than when evaluating the subject's responses to all 15 questions. Similarly, the confidence of assessing behavior over a five-minute interview will be considerably less than if the behavioral assessments were made over a 30- or 40-minute interview.

Establish the subject's normal behavioral patterns. Certainly there are nondeceptive reasons for a suspect to exhibit poor eye contact, respond to questions quickly or slowly, to scratch themselves, yawn, clear their throat, or change their posture. Before any of these behaviors can be considered a criteria of deception, the investigator must first establish what the subject's normal behavioral patterns are. Consequently, at the outset of each interview the investigator should spend several minutes discussing nonthreatening information (perhaps casual conversation or collecting biographical information) so as to establish a behavioral baseline for the particular subject. Then, as the interview progresses and the subject exhibits behavioral changes when the issue under investigation is discussed, these changes may take on added significance.

Evaluating the Subject's Attitudes

A person going through a security checkpoint at an airport knows whether or not he is attempting to smuggle explosives or drugs onto the plane. Similarly, once an investigator announces the purpose for an interview the subject knows whether or not he committed the crime under investigation. This underlying knowledge of "guilt" or "innocence" will cause the suspect to form fairly predictable thoughts and perceptions, which are collectively referred to as the person's attitudes. These attitudes form the primary basis for inferences of guilt or innocence. They also affect the subject's verbal, paralinguistic, and nonverbal behaviors.

To illustrate the relationship between attitudes and behavior, consider two people sitting in the front lobby of a dentist's office. One person is a patient scheduled for dental surgery; the other is a mother waiting for her child, who is getting his teeth cleaned. These two people have different attitudes concerning their presence in the waiting room and, because of that, will predictably engage in different behaviors. The mother may chat at ease

with the receptionist or become engaged in a magazine article while she sits in a relaxed posture in the chair. The patient, however, may pace the floor, pick up a magazine, and absentmindedly flip through the pages without reading any particular article. At the sound of a door opening, the patient may show a startle reaction looking toward the doctor's suite and frequently check his watch. Simply by observing these two individuals' behaviors one could accurately infer which person was the parent and which one was the patient.

Some attitudes are common to both innocent and guilty suspects. For example, both innocent and guilty suspects may appear anxious or fearful during the interview, albeit for different reasons. The guilty suspect is fearful that the investigator may detect his guilt, whereas the innocent suspect may be fearful that the investigator will not believe him, or he may fear retaliation from the guilty person whom he may implicate to the investigator. Apparent anger may also be observed from both innocent and guilty suspects. If an innocent person has previously been accused of committing the crime it would be appropriate for that person to express anger during a subsequent interview. On the other hand, it is not unusual for a deceptive suspect to feign anger in an effort to convince the investigator of her innocence. Specific information on interviewing and evaluating nervous, fearful, or angry subjects was presented in Chapter 6.

Based on our years of observation, as well as specific research findings, we conclude that the attitudes described below are most commonly seen in truthful or deceptive subjects during an interview.

- *Spontaneous versus Guarded.* The innocent subject generally offers lengthy, free-flowing responses during an interview and volunteers information. The guilty subject may offer short responses containing only minimal information. This guarded attitude may represent the guilty suspect's caution in possibly being caught in a contradictory statement or merely be an anxiety-relieving effort to avoid telling unnecessary lies in response to a question.
- *Sincere versus Insincere.* The innocent subject openly expresses appropriate emotional states. If the subject is upset, anxious, or concerned, these emotions will be communicated on all three channels. A guilty subject may come across as phony during an interview, often being overly friendly and polite to the investigator. The subject may start the interview with a handshake and flatter the investigator in some manner, perhaps by complimenting the investigator's suit or mentioning the name of a fellow police officer. The insincere subject sells his innocence as if it is a product, whereas the sincere subject states his innocence as an irrefutable fact.
- *Helpful versus Unhelpful.* Innocent people going through a security checkpoint understand that it is in their best interest to cooperate with the inconvenience of screening to have a safe flight. The passenger who is not smuggling contraband follows the procedures and directly responds to screening questions. On the other hand, the person guilty of smuggling contraband past security appears uncomfortable and anxious. When security questions are asked he may become defensive or evasive.

Similarly, most innocent subjects are helpful. During an investigation, most innocent suspects go through a thought process called "playing mental detective." They know that they did not commit the crime so they ask themselves, "Who probably did?" "Who do I know who did not do this?" "Why was it done?" "How was it done?" Consequently, during the investigative interview the innocent criminal suspect is comfortable discussing possible suspects, speculating about possible motives to commit the crime or how it might have been committed. On the other hand, the guilty suspect does not play mental detective as he already knows who committed the crime. Because of this he is uncomfortable theorizing about possible suspects or motives. He does not like to talk about specific details of the crime he committed even if the questions are posed in a hypothetical sense.

- *Realistic versus Unrealistic.* Innocent suspects are realistic in their assessments of the crime. It is not threatening for them to conclude that the missing merchandise was probably stolen, that the fire next door was arson, or that someone did have sexual contact with their niece. On the other hand, guilty suspects would love to convince the investigator that the merchandise was mistakenly shipped to another location, that the fire next door was electrical in origin or that his niece probably was not sexually abused. Consider a homicide case in which there was no forced entry into the victim's home and no evidence of a struggle. A realistic assessment of this crime is that the victim probably knew the killer. It would not be realistic for a suspect to suggest that the killer was a stranger who somehow got a copy of the front door key and somehow surprised and overwhelmed the victim.
- *Concerned versus Unconcerned.* The innocent suspect comes across as being very concerned during an interview. He approaches the interview in a serious manner and pays close attention to the interviewer's questions—after all, his reputation, possible livelihood, and freedom are at stake. The guilty suspect, however, may approach the interview quite nonchalantly and downplay the significance of being a suspect in the investigation. The guilty suspect may engage in levity or answer questions inappropriately because he is not paying close attention to the interviewer's questions. A telling difference between the innocent and guilty suspect is that the innocent suspect will have given much thought about the guilty person—who that person might be, why and how he committed the crime; he will express harsh judgments toward the person guilty of committing the crime. The guilty suspect has not gone through that same thought process. When asked to speculate about the person who committed the crime, the guilty suspect may simply state that he has not given that issue much thought; he feels uncomfortable providing insight for the crime he committed. For much the same reason, he is unlikely to express harsh judgments against the person who committed the crime.
- *Cooperative versus Uncooperative.* An innocent truthful suspect perceives the interview as an opportunity to be exonerated, either by answering the investigator's questions

truthfully or by providing information helpful in catching the guilty person. Consequently, innocent suspects generally agree to be interviewed, will keep their interview appointment, and will provide reasonable documentation (such as phone bills, parking stubs, bank statements, or computer records) to support their statements. During the interview, they openly respond to the investigator's inquiries and make no attempt to rush the process. The guilty suspect may offer weak excuses as to why he is unavailable to be interviewed or fail to show up for scheduled interviews. During the interview itself, the guilty suspect may present a variety of complaints, ranging from the length of the interview to the room temperature being too warm or cold. The guilty suspect is unlikely to follow through with promised documentation requested from the investigator.

Evaluation of Verbal Behavior

A subject who is properly socialized and mentally healthy will experience anxiety when he lies. This anxiety may result from internal conflict the suspect experiences because he knows that it is wrong to lie, or from fear that his lie will be detected. Whatever the source, during an interview lies result in anxiety, and many of the behavior symptoms revealed by a deceptive suspect represent his conscious, or preconscious, efforts to reduce this internal anxiety. This fundamental concept forms the basis for evaluating a subject's verbal, paralinguistic, and nonverbal behaviors. In essence, the mind, and subsequently the body, work together to relieve the anxiety associated with a lie.

We can all relate to the common experience of having to lie to someone over the phone. For example, a boss may instruct a secretary not to put the call through if a particular person calls. When the person calls, the secretary certainly does not want to tell the person the complete truth—"Mr. Buckley doesn't want to talk to you"—so she must lie. She could tell any number of lies, such as "He was hospitalized this morning," "He's no longer with this firm," or "He's out of town." But these are "big" lies that unnecessarily generate a great deal of anxiety, especially if detailed follow-up information is requested. Most likely, she will choose a verbal response that causes the least amount of internal anxiety, such as, "I'm sorry, he's on the other line" or, better yet, "He's not available right now." Even the slight anxiety these responses cause may result in tell-tale paralinguistic behaviors, such as a delay before responding or nonverbal behaviors like a change in posture or a hand coming in contact with the face. Each of these behaviors, in its own way, helps reduce the secretary's internal anxiety experienced because she is not telling the complete truth.

When a deceptive subject is asked a direct question during an interview, he has essentially four verbal response options from which to choose: deception, evasion, omission, or truth. Figure 9-3 illustrates these options along with the important role internal anxiety plays in selecting the verbal response.

A truthful response ("Yes, I did"; "No, I didn't") does not cause internal anxiety. However, as the response moves further from the truth, the subject experiences more internal anxiety as a result of his deception.

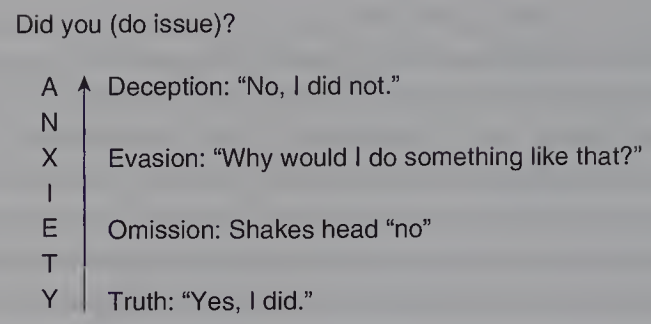

Figure 9–3 Verbal response options

An omissive response implies non-involvement without the use of words. The suspect may sit in the chair and nonverbally shake his head back and forth in response to the investigator's question. The implication is that the suspect did not engage in the behavior, but no lie is actually being told. The use of nonwords such as "uh uh" also represents omission in that the suspect is implying noninvolvement without stating it.

The next level, evasion, uses words to imply noninvolvement without stating it. The suspect is not lying but also is not accepting any physical responsibility within his response. Therefore, the subject experiences more internal anxiety through evasion than omission. Finally, the subject may choose to outright lie to the question. A deceptive response is associated with the greatest level of internal anxiety.

It is a tenet of human behavior that anxiety is unwelcomed and undesirable. Therefore, whenever possible during an interview, a suspect will engage in behaviors that reduce the level of internal anxiety experienced within his response. With respect to verbal response options, if given a choice the guilty subject would much rather engage in evasion or omission than outright deception. The truthful suspect, who experiences no conflict or fear within his response, expresses his responses in a definitive and emphatic manner. The guidelines below are useful when evaluating a suspect's verbal response to an interview question.

Truthful subjects respond to questions directly; deceptive subjects may answer evasively. Consider the following two responses to the question of a homicide suspect, "When is the last time that you saw Tom Smith?"

1. It was Friday at about 5:30. I drove Tom home from work because we car pool and that was my night to drive. I dropped him off at his house right around 5:30. That's the last time I saw him alive.
2. Tom and I car pool and Friday was my day to drive so I drove him home from work and I arrived at his house right around 5:30.

Response 1 offers a definitive response to the investigator's question. From this response, the investigator knows exactly what time the subject is claiming to have last seen the victim. The second response merely implies that the last time the subject saw the victim was 5:30. This response leaves open the possibility that he saw the victim later that night, that he came into the victim's house with him, or that he never actually

dropped the victim off. Deceptive subjects rely extensively on implication during verbal responses. The subject hopes that the investigator will make unwarranted assumptions about what he probably meant or intended to say. A rule we have previously presented is worth reiterating—if the subject does not state that something happened, the investigator should not make the assumption that it did.[14]

A second common type of evasive response is answering a question with a question. When a subject responds, "Why would I do that?" "Do you think I would risk going to jail by doing that?" or "Don't you think that would be a little ridiculous of me?" the investigator must recognize that the subject has not offered a definitive denial.

A final type of evasive response is called "lying by referral." Consider the following dialogue in which the subject is guilty of stealing a car:

Q: "Did you steal a blue Monte Carlo last Saturday night?"
R: "That other cop already asked me that. Like I told him, I don't know nothing about this."

Even though this subject did steal the car, he has not lied at all during his response. Another police officer did ask him that question and the subject told the officer that he did not know anything about the stolen car. What the suspect failed to include in his response is that he lied to the other officer. Whenever a response is predicated on some earlier communication, such as, "Like I wrote in my statement," "As I previously testified. . .," "You already asked me that and I told you before. . .," the investigator should suspect lying by referral.

Truthful subjects may deny broadly; deceptive subjects may offer specific denials. A truthful subject feels much more confident using broad and descriptive language during a denial than does a deceptive subject. Therefore, the following phrases would be more often used by truthful subjects:

- I'm absolutely sure.
- I didn't steal anything.
- I'm positive.
- I've never raped a woman in my life.
- There's no way.
- I had nothing whatsoever to do with this robbery.

As a caveat to this statement, it should be recognized that this behavior symptom only applies to spontaneous interview situations. Prepared statements containing broad language, such as those delivered to a media interviewer (for example, "I had absolutely nothing whatsoever to do with this heinous crime!") may be nothing more than a guilty suspect's carefully thought out, or prompted, rehearsed response.

During a spontaneous interview, deceptive subjects may deny some narrow aspect of the interviewer's question. It must be remembered that the deceptive subject knows exactly

what the truth is. If he can truthfully deny some narrow aspect of the crime, thereby implying total innocence, he will. The investigator should listen carefully to what the subject is not denying. The following are examples of specific denials heard from the guilty:

Q: Did you steal that night deposit?
R: I did not steal that deposit bag!
Q: Did you steal money from a man outside of the Stop and Go?
R: I don't have that man's money!
Q: Did you point a handgun at a man outside the Stop and Go?
R: I don't even own any handguns!

In the first example the subject may have disposed of the deposit bag after the theft. He is not denying stealing the money inside the bag. The subject in the second example probably spent the money and is, therefore, telling the truth when he denies having any of it. In the third example the subject may have stolen the handgun or borrowed it from a friend. He is not denying using the handgun, only that he owns one.

Truthful subjects offer confident and definitive responses; deceptive subjects may offer qualified responses. A truthful denial will stand on its own and it will be clear that the subject is accepting full responsibility within his response. Deceptive subjects may use phrases that qualify the response, thereby weakening it. One category of these qualifying phrases is called a *generalization statement.* If the investigator specifically asks the subject what he did at a particular point in time, the deceptive subject may use the following phrases to make the response truthful:

- as a rule
- generally
- typically
- as a matter of habit
- I like to
- the policy states

Consider the subject who is asked, "Were you inside the B & B Tavern at all on Saturday night?" and responds, "When I go out on Saturdays I usually go to the Breakaway because that's where most of my friends hang out." Because the subject's response includes the generalization statement "usually," he has avoided lying to the investigator.

A second category of qualifying phrases includes those that blame memory. Because memory does not exist in a measurable sense, and of course cannot be seen, a deceptive subject may reduce anxiety by blaming a poor memory. He realizes that it is impossible to prove what a person did or did not remember at a particular point in time. Some common phrases within this category include:

- as far as I recall
- at this point in time

- to the best of my knowledge
- if my memory is correct
- as far as I know
- I can't recall whether

With respect to memory qualifiers, the investigator must evaluate these phrases relative to the question asked. If the question requires the subject to rely on long-term memory, or addresses an everyday occurrence, it may be appropriate for a truthful subject to use memory qualifiers. But if the inquiry relates directly to a specific and distinct behavior, there should be no qualification from a truthful subject:

Q: Did you ever sabotage any of the computers at the company?
R: Not as far as I can recall.

A third category of this type of response is called an *omission qualifier*. These phrases indicate that the subject is omitting part of his answer within his response. For example:

- hardly ever
- not often
- not really
- mostly
- rarely
- nothing much
- pretty much
- nothing of significance

When an investigator asks the subject, "Did you and Gloria have an argument last Friday night?" and the subject responds, "We rarely argue," not only has the subject evaded a direct response but he also is acknowledging that, at least occasionally, he and Gloria do argue.

As a final category of qualifying phrases, consider the following two statements:

- I would have to say no.
- My answer would be that I did not.

These are called *estimation phrases* because they tell the investigator that the subject is providing an estimation rather than an exact statement. Estimation phrases may be appropriately heard from truthful or deceptive subjects. The key is to evaluate the response in relationship to the type of question that was asked. For example, if the investigator asks, "What time did you arrive home last night?" the subject might respond, "I would have to say 10:15." Where this phrase becomes inappropriate is when the subject uses it when responding to a more concrete question such as, "Were you inside a stolen car at all last night?" to which the subject responds, "My answer would be no." The subject

should know whether or not he was inside a stolen car and the fact that he is estimating that he was not should be viewed suspiciously.

A deceptive denial may be bolstered to make it sound more credible. A truthful denial will be vocalized, such as, "I didn't have anything to do with starting that fire." A deceptive denial may be merely implied, with the subject offering a weak, "Uh, huh" or he may just shake his head "no" and deny on the nonverbal level only.

Sometimes a deceptive subject feels the need to strengthen or bolster his denial to make it sound more convincing. A truthful subject will allow his denial to stand on its own. The following phrases are commonly used to bolster a deceptive denial during a nonaccusatory interview:

- as God is my witness
- I swear
- on my mother's grave
- honestly

It should be noted that bolstering phrases would be appropriate from an innocent suspect who has been wrongfully accused of committing a crime during an interrogation.

Another strategy the deceptive subject may use to reduce anxiety within a false statement is to introduce the lie with a statement against self-interest. Each of us have been in a conversation where the other person makes the statement, "Not to change the subject, but. . . ." It is clear what this person is about to do—change the subject. Declarations against self-interest are used to ease the guilt or anxiety that would otherwise result from the statement the person is planning to make. Consider each of the following:

- As crazy as it sounds . . .
- Not to evade your question, but . . .
- I don't know if this is true, but . . .
- I don't want to implicate anyone, but . . .
- You may not believe this, but . . .

Statements against self-interest decrease anxiety by alerting the investigator about the true intent behind a statement. For example, in the last statement the subject is explaining to the investigator that the response he is about to make is not credible, and therefore the subject feels less anxiety when offering the lie.

Truthful subjects will offer spontaneous responses; deceptive subjects may offer rehearsed responses. In preparation for an interview, truthful and deceptive subjects engage in different thought processes. As explained under the section on evaluating attitudes earlier in this Chapter, the truthful subject's thoughts are focused on such things as who may have committed the crime, what that person's motivation may have been, and how the crime was committed. The deceptive subject's thoughts are oriented toward concerns about

what evidence he may have left behind, what other people may have said about him, and whether or not he can lie convincingly. With respect to his ability to avoid detection, the deceptive subject may spend considerable time before the interview mentally rehearsing his responses. There are two verbal behaviors associated with rehearsed responses.

The first is a noncontracted denial. During spontaneous dialogue it is customary to contract verbs (for example, "No, I didn't," "I don't know," or "I wouldn't have"). When the subject responds with noncontracted denials, especially on multiple occasions during the interview, this is indicative of a rehearsed response, as the following excerpt from an interview of a confessed arsonist illustrates:

Q: Did you start that fire at the Dungeon Lounge?
R: No, I did not.
Q: Do you know who started that fire?
R: No, I do not.
Q: Were you at the Dungeon Lounge at all last Sunday morning?
R: No, I was not.

On the other hand, noncontracted denials are indicative of innocence when they occur during an accusatory interrogation. As the innocent suspect becomes more frustrated and angry during an interrogation, they will emphasize their denial through the use of a noncontracted phrase, such as "I ***did not*** falsify that document!"

A second example of a rehearsed response is called *listing*. A response that is offered as a list of possibilities—a, b, c or 1, 2, 3—is an indication that the subject has anticipated the question and spent time formulating credible explanations, particularly if it occurs during the initial interview. In the above arson example, the subject was asked, "Why wouldn't you start this fire?" The subject's response was, "Well, number one, the owners of the bar are friends of mine. Second, I'm already on probation and don't need more trouble from the police, and third, I'd have nothing to gain by doing it, that I know of." Following an interrogation the subject confessed to starting the fire after the son of the tavern owner agreed to pay him from the insurance settlement.

Evaluation of Paralinguistic Behavior

There are a number of speech characteristics during a subject's verbal response that can alter the meaning of the words. As a common example, we have all heard a friend or coworker make a sarcastic remark. Based on the pitch or tone of the comment, we know that the person does not really mean what was said. The paralinguistic channel of communication is under less conscious control than the verbal channel. It also is not as easily contaminated by outside factors as is the nonverbal channel. Consequently, paralinguistic cues during an interview may be the best source of detecting deception for a criminal investigator.

Response latency. Response latency is defined as the length of time between the last word of the interviewer's question and the first word of the subject's response. During the

earlier mentioned NSA study, response latencies were measured and the average latency for truthful subjects was .5 second, whereas the average latency for deceptive subjects was 1.5 seconds. Clearly, delayed responses to a straightforward question should be considered suspicious. A subject should not have to deliberate on how to respond to a question such as, "Did you have sexual contact with any of your stepchildren?"

Because normal response latencies vary with different subjects, the investigator should establish at the outset of the interview how long it takes the subject to respond to straightforward questions like his address, the name of his employer, and the number of children he has. Once the subject's "normal" has been established, the investigator can identify latencies that are abnormally long for the particular subject.

Deceptive subjects are often consciously aware of their delayed latencies to the interviewer's question and may attempt to disguise the delay through stalling tactics. A common strategy in this regard is to repeat the interviewer's question or to ask for a simply worded question to be clarified. The following dialogue illustrates this behavior:

Q: Did you have sexual contact with any of your stepchildren?
R: . . . Did I have sexual contact with them? Um, no.
Q: Did you show them photographs of nude girls?
R: Um. . . . What, what exactly do you mean?

During both of these responses, the subject has bought time to formulate exactly how he should respond to the interviewer's question. A truthful suspect would not attempt to buy such time.

Early responses. Another category of paralinguistic behavior related to response timing is a response that is offered before the interviewer finishes asking his question. A truthful subject who is somewhat nervous may offer early responses, especially at the beginning of the interview. This is simply the result of the subject's general anxiety. Such early responses coming from the truthful subject will be repeated after the interviewer finishes asking his question.

Early responses emanating from the deceptive subject often are not repeated. Once the subject voices his denial while the interviewer is still asking the question, in the subject's mind he has answered it, even though the investigator has not completely finished asking the question. It is an especially reliable sign of deception when an early response occurs during the middle or end of an interview; by that time, general nervous tension from the truthful subject should have subsided and the early response is likely coming from the deceptive person anxious to get a prepared lie out of his mouth.

Response length. Statistically, truthful subjects offer longer responses to interview questions than do deceptive subjects. The truthful subject wants to completely respond to the question and often volunteers more information than called for in the question. The content of the truthful subject's more lengthy response will stay on track to the interviewer's question; the truthful subject does not start out saying one

thing and divert the interviewer's attention away from his initial response by talking off the subject.

Conversely, some deceptive subjects may respond by offering just enough information to satisfy the investigator's question. This subject is concerned that if he offers too much information he may contradict himself or other evidence that exists. The following actual responses, the first from a truthful subject and the second from a deceptive one, illustrate this:

Q: What is your understanding of the purpose of the interview with me today?
R: Well, on the 25th I balanced my cash drawer and it was $1,000 short. I went through all of my transactions but couldn't find an error. I then called over Peter, my supervisor, and together we reviewed everything. I even took the back of the drawer apart to see if money somehow got stuck behind it, but we couldn't find it. At this point I think someone stole it. They need to know if I'm being honest with them. And that's why I'm here. It's not that they don't trust me, it's just, actually, I'm kind of happy this is being done because I can prove to them that I didn't steal it.
Q: What is your understanding of the purpose of the interview with me today?
R: Some money was missing out of Keith Jones's drawer and they're just interviewing everyone who worked that day.

Talking is a natural behavior to relieve anxiety, and some deceptive subjects may ramble on in their response. In this instance, the subject's answer is likely to get off track by the time the response is complete.

Response delivery. The subject's rate, pitch, and clarity during a response can either be consistent or inconsistent with the verbal content of what is being said. A response said in sincere anger, for example, is often delivered in a very crisp manner, which is termed "clipped words." During an interrogation the suspect who states, "LISTEN I DID NOT STEAL ANY MONEY!" where each word is separated for emphasis, has offered behavior typical of an innocent person.

As a general guideline, when a subject is relating a truthful emotional account, his rate and pitch will increase as he relives the event. However, when rate or pitch decrease this may mean that the subject is editing information or is uncertain of what actually occurred. An alleged victim of a home invasion who relates the crime in a monotone, or even slows down his response delivery at certain points, is not offering a spontaneous account and fabrication or omission should be suspected.

A truthful subject wants the investigator to understand his responses and, therefore, will speak clearly and in an appropriate volume. A deceptive subject may mumble during a response or talk so quietly that the investigator has difficulty hearing the response.

Continuity of the response. A truthful response is spontaneous and free flowing but will maintain continuity in that one sentence, or thought, will naturally stem from an earlier one. A significant paralinguistic behavior of deception, however, is called "stop-and-start" behavior. In this instance, the subject begins his response in one direction but abruptly stops it and starts over again in a different direction. The following is an example of stop-and-start behavior from the previously mentioned arson suspect:

Q: You understand the police are saying that you were asked to do this.
R: They [the police] told me that supposedly me and Thomas both done it, which is a lie. I never even [pause] I did not see Thomas on Saturday night.

We cannot be certain what the subject was about to say; perhaps, "I never even started that fire" or "I never even saw Thomas at all." What we do know is that the subject did not feel comfortable completing that statement. To reduce anxiety within his intended response, he abruptly stopped and changed his statement to make it a specific denial that he did not see Thomas on Saturday night, which, as it turns out, was the truth. The subject met up with Thomas at a bar around 3:00 A.M. Sunday morning. Thomas agreed to pay him $2,000 and the suspect started the fire at 4:30 A.M.

Erasure behavior. There are nonverbal behaviors we all use to send the listener the message: "I'm only kidding—don't take my statement seriously." These are the use of the wink and the smile. Adding a wink or smile to a conversation has the effect of erasing the implied connotation of the statement. If a coworker makes the remark, "I heard you coerced another innocent suspect to confess last night," the speaker's facial expression will tell the investigator whether or not the statement was said in jest.

Within paralinguistic communication there are specific behaviors that can have the same effect as a wink or smile. These behaviors are laughs, coughs, or clearings of the throat immediately following a significant denial. The following interviewing dialogue is from a bank employee who eventually confessed to stealing $4,600 from cash deposits from the same customer:

Q: Did you steal that customer's $4,600?
R: No [laugh].
Q: Do you know who did steal it?
R: I don't even know that it was stolen [laugh].
Q: Do you think a bank employee did steal this money?
R: That's hard to say, you know. The customer may have just made a mistake on his deposit slip, you know [clears throat].
Q: How do you think the results of our investigation will come out on you?
R: Well, I hope it will come out, you know, okay . . . because I know I didn't take that money [laugh].

These laughs and clearing of the throat are only significant because they follow important denials the suspect made within his response. Certainly, truthful subjects will

engage in laughter, clearings of the throats, or coughs during an interview for a variety of reasons, ranging from general nervousness to cold symptoms. These behaviors should only be considered a possible symptom of deception when they immediately follow a significant denial.

Evaluation of Nonverbal Behavior

Nonverbal behaviors have two sources of origin. Some are *learned* behaviors such as how to ride a bicycle, play the piano, or to remove one's hand from a hot surface. Some learned behaviors are quite complex because of our developed dexterity and intelligence, such as painting a picture or writing a book. But others are very basic and subtly influenced through our culture or environment. Examples of these include eye contact, proxemics, and some hand gestures such as the OK symbol, the salute, a raised fist, or a wave.

Other nonverbal behaviors are *genetically inherited.* Birds are not taught by elders where and how to build a nest. The phoebe knows to build a nest on top of a protected post and the oriole knows exactly how to build a deep nest that resembles a sock. These same birds immediately recognize a cat as a threat even though they've never seen a cat before. Salmon are internally programmed to return to their birthplace to spawn while rose-breasted grosbeaks are hardwired to fly to Belize each winter. Some animals travel in herds, recognizing safety in numbers while others are genetically engineered to claim and defend a territory, maintaining a lone existence. The list of genetically inherited behaviors is endless.

Inherited behaviors are not restricted to lower animals. Humans also have internal programming that influences nonverbal behaviors. For example, all humans will respond to something shocking or unexpected by covering their mouth with a hand. This nonverbal behavior is seen across all cultures and is certainly not learned. Similarly, there are specific nonverbal behaviors associated with pain, grief, anger, fear, anxiety, elation, surprise, confusion, uncertainty, contemplation, dislike, and many other internal states. For detection of deception purposes, an investigator is primarily interested in nonverbal behaviors that reflect comfort versus anxiety, confidence versus uncertainty, and a clear conscience versus guilt or shame.

It may be appropriate at this point to reinforce a principle that was presented earlier in this chapter. It must be remembered that there are no specific behaviors associated with truth or deception. Assessments of credibility are made by making inferences. After observing a specific nonverbal behavior, the investigator must ask himself, "Is it appropriate for the suspect to be experiencing, fear, guilt, or decreased confidence?" When the answer is "no," this is suggestive of possible deception.

In particular, lying and engaging in acts of wrongdoing cause internal anxiety. The mind and body work together to relieve this anxiety. Physically, a person has three responses to a threatening situation; he can fight it, flee from it, or freeze (presumably to wait for the threat to pass). The first two responses—fight or flight—involve relieving anxiety through

physical activity. The benefit of exercise on reducing general stress levels is a good example of physical activity relieving anxiety. The physical activity of exercise in some way appears to displace internal anxiety. A freeze response, wherein the person under stress experiences a feeling of numbness and emotional detachment, is also common during an intense threat. In this situation the mind "turns the body off" to focus all efforts on intellectual activity. The resulting effect is a person who communicates only on the verbal level.

The true meaning of the spoken word may be amplified or modified by one or more of many nonverbal cues, such as posture, gestures, facial expressions, and other bodily activities; hence the commonplace expressions, "Actions speak louder than words" and "Look me straight in the eye if you're telling the truth." In fact, according to various social studies, as much as 70% of a message communicated between persons occurs at the nonverbal level.

This statistic does not mean that the interpretation of nonverbal behavior is significantly more accurate than other channels. Instead, it means that in comparison to the other channels, nonverbal behavior contributes disproportionately to the ultimate message being communicated. Because nonverbal communication is most distantly removed from the verbal content of a message, it serves as a double-edged sword with respect to behavior analysis. On the one hand, practiced liars may be unable to conceal their deception through nonverbal behaviors. On the other hand, nonverbal behaviors are most subject to outside factors such as personality, culture, or health problems and may provide misleading clues, especially if read in isolation from the verbal content of the speaker's message.[15]

Evaluating posture. In the context of interviewing and interrogation, a suspect's posture reveals three important assessments within the suspect: (1) his level of confidence, (2) level of emotional involvement, and (3) level of interest. The following aspects of posture reflect high levels of confidence, emotional involvement, and interest and, therefore, should be associated with truthfulness:

1. An open and relaxed posture: The subject has uncrossed arms, and appears comfortable in the chair. If his legs are crossed, it will be a relaxed crossing, not involving contracted muscles.
2. Frontally aligned: The subject is comfortable maintaining direct alignment with the investigator.
3. Occasional forward leans: The subject will feel comfortable reinforcing certain statements by leaning toward the investigator.
4. The posture will be dynamic: The subject will be comfortable responding to internal messages indicating the need to alter the posture to accommodate blood circulation and muscle tension within the body. During the course of a 30- to 40-minute interview, the subject should display a number of different postures.

Figure 9–4 Truthful open posture

Figure 9–5 Truthful occasional forward lean

Figure 9–6 Truthful relaxed, comfortable posture

Figure 9–7 Truthful frontally aligned posture

Conversely, the following postures are associated with decreased interest, diminished emotional involvement, and lack of confidence during an interview. In the context of an interview, they should be associated with possible deception:

1. Closed, retreated posture. Crossed arms, in this environment, are inappropriate and therefore reflect decreased confidence or lack of emotional involvement. The subject may cross their legs in such a way that anxiety is reduced through contracted muscles. The retreating posture appears to withdraw from the investigator. The subject may sit back in his chair, put his arms behind the chair, and tuck his feet under the chair or elbows into his stomach.
2. Non-frontal alignment: The subject is not comfortable facing the investigator directly, so he turns the lower portion of his body away from the investigator.
3. Constant forward lean: The subject who leans toward the investigator throughout the interview is assuming a controlling and defensive posture. Often the subject's arms will be extended between his knees and the subject will "stare the investigator down."
4. Frozen and static: The subject who is so intent on not incriminating themselves or making inconsistent statements may, essentially "shut down" nonverbally. Once the subject assumes an initial posture, the posture remains the same throughout the 30- to 45-minute interview. This same phenomenon is observed at check points where the driver, experiencing extreme fear, approaches the checkpoint looking straight ahead through the windshield with his hands locked at the 3 and 9 o'clock position on the steering wheel.

Figure 9–8 Deceptive withdrawn posture

Figure 9–9 Deceptive posture—barriers

Figure 9–10 Deceptive slouched posture

Figure 9–11 Deceptive non-frontal alignment

Figure 9–12 Deceptive constant forward lean

Figure 9–13 Deceptive closed, leg crossed, contracted muscles

Evaluating hands. During a response, the subject's hands can do one of three things. First, they can remain passively uninvolved. If this continues throughout the entire interview it is most likely part of the frozen and static posture more often associated with deception. Secondly, hands can move away from the body and gesture, which is called *illustrating* behavior. Finally, the hands can come in contact with some part of the body, which is referred to as *adaptor* behavior.

Illustrators are more often associated with truthfulness. When a subject is explaining a physical activity during an emotional event (such as being offered a bribe, raising an arm to thwart off a punch, or struggling with a rapist), the investigator should expect to see illustrators. In essence, the subject is not only communicating verbally what happened but is reliving the incident nonverbally (see Figure 9–14).

The *hand shrug* is an illustrator with the specific meaning of "I don't know" or "I don't care" (see Figure 9–15). This behavior may involve one or both hands being slightly extended from the body with the palms turned upward. Often the subject's shoulder will also rise. The hand shrug may reinforce the subject's verbal response or contradict it. Consider the following two verbal responses, each accompanied with a hand shrug. The first is indicative of truthfulness, the second of deception.

Q: Why do you think she's saying you did this to her?
R: I have no idea whatsoever. [hand shrug]
Q: Once we complete our investigation, how do you think it will come out on you?
R: I'm confident it will show I had nothing to do with this. [hand shrug]

Figure 9–14 Illustrators

Figure 9–15 Hand shrug

The absence of illustrators during a crime victim's account of a robbery or rape should be viewed suspiciously.[16] During an interview a subject described how a man approached his vehicle and demanded the cash deposit he was taking to the bank. The subject explained how he first tried to put the car in reverse and later held onto the door handle to prevent the robber's entry. Once the robber opened the door, the subject described fighting with the man over the bank bag. Throughout this very emotional statement, the subject's hands remained passively uninvolved in his lap. Following an interrogation, the subject confessed that he made up the story about being robbed and that he stole the cash deposit.

Adaptor behaviors are divided into three different categories. The first category is *personal gestures*. The investigator should associate personal gestures with anxiety or possible fear. As previously discussed, it is not uncommon for innocent suspects who are telling the truth to experience anxiety or even fear during an interview. But, depending on the context of the response, anxiety and fear can also be associated with deception. The following are each examples of personal gestures:

- Hand wringing, rubbing the hands together (also associated with impatience or cold room temperature)
- Pulling the nose or earlobes, hand contact with the face (touching the lips or stroking the chin prior to a response may be an indication of contemplation or judgment)
- Scratching any part of the body, for example the side of the face, neck, forearm, leg
- Wiping sweat from neck or brow (also caused by high humidity, some medical conditions)
- Repetitive hand behaviors such as knuckle popping or drumming fingers are often displacing anxiety (similar to reducing anxiety by pacing back and forth in the interview room or smoking)

The previously listed behaviors are called "personal" because they tend to be unique within an individual, similar to the "tell" a poker player unconsciously displays when bluffing. They are the most prevalent of the adaptor behaviors (because both truthful and deceptive suspects are anxious during an interview) and must be carefully evaluated. Before considering a personal gesture as a possible indication of deception, the behavior must (1) be inappropriate given the verbal content of the statement and (2) be consistent within the particular suspect.

The second category of adaptor behaviors is *grooming gestures* because these gestures are intended to improve a person's appearance. These behaviors are clearly genetic in origin and the investigator should associate them with guilt or shame. When a person lies, their fear of detection increases and they have a heightened awareness of how the investigator

views them. Consequently, the suspect may inappropriately feel the need to improve their appearance by engaging in some of the following behaviors:

- adjustment of clothing, jewelry, or accessories
- lint picking, dusting clothing, or pulling threads
- cleaning or inspecting fingernails
- attention to hair, beard, or moustache

As with all nonverbal behaviors, grooming gestures must be evaluated in the context of the verbal response, as the following two examples illustrate. The first involves a teller who was interviewed concerning an internal theft. When asked, "Who do you think stole this money?" she named two co-workers as possible suspects. During her response, she brushed lint from her skirt and adjusted the cuff of her blouse. The second case involved a woman who was interviewed concerning a claimed abduction at knife point. When asked about the details of the abduction, she became very interested in her necklace and eventually both hands were involved in straightening and adjusting the necklace. The presence of grooming behaviors indicates that both subjects experienced guilt or shame during

Figure 9–16 Personal gesture—scratching

Figure 9–17 Grooming behavior—inspecting fingernails

their response. Which one was inappropriate? The theft suspect's guilt was appropriate in that she felt guilt and maybe apprehension about casting suspicion toward her coworkers who may suffer disciplinary consequences based on the information she provided. On the other hand, it was not appropriate for the alleged kidnapping victim to experience guilt when relating her account to the investigator. She was experiencing guilt and anxiety because she was making up the entire abduction story.

The final category of adaptor behaviors consists of supporting or protective gestures. These behaviors should be associated with decreased confidence. The following are examples of supporting or protective gestures:

- The suspect resting his head on his palm while responding to questions
- The hand covering the suspect's mouth or eyes while answering a question (Figure 9–18)
- The suspect hiding his hands or feet (sitting on hands, putting hands in pocket, sitting on feet) (Figure 9–19)

It should be noted that just because a person lacks confidence does not mean that he is lying. For example, when teenagers first get braces on their teeth, they will naturally cover their mouth when they speak. This protective gesture eventually goes away once they are comfortable with their new appearance. Similarly, when inexperienced speakers address an audience, it is not uncommon for them to hide their hands behind a podium or perhaps put one or both hands in their pocket. However, when a subject is asked whether or not the car parked in his driveway belongs to him and the subject places his hand over his

Figure 9–18 Protective gesture—covering the mouth when answering

Figure 9–19 Protective gesture—hiding the hands

mouth and replies, "Yeah, it's mine," the investigator should recognize that the suspect's lack of confidence is inappropriate for the circumstance.

Evaluating feet. In the realm of nonverbal behavior, feet and leg behaviors take on a special significance because a person has the least conscious control over the lower parts of their body. Facial expressions, eye contact, and upper torso behaviors are easier regions of the body to control. For example, screen actors are able to present convincing facial expressions of any emotion called for by the script. But as one evaluates the lower extremities, there is more potential for behavioral leakage.

When a subject has his legs crossed with one knee over the other, he may continuously bounce his foot. Ongoing foot bouncing or other repetitive leg movements, which do not start on cue to a question, merely displace anxiety and are not indications of deception. However, changes in foot behavior—whether it be a start or stopping of bouncing, shuffling, arching, or swinging of the feet—that occur on cue to a verbal response, often indicate that the suspect experienced anxiety or fear at that point of the interview. In either case, the behavior will last a second or two and the subject will then resume his normal activity with his feet.

The feet are also involved in significant posture changes called "shifts in the chair." With this behavior, the subject plants his feet and literally pushes his body up, slightly off the chair to assume a new posture. Such a change of posture that precedes a response often is a stalling tactic by which the suspect is "buying time" to formulate a comfortable or credible response to the investigator's question. Shifts in the chair that occur during or immediately following a significant statement, such as a denial, often indicate fear of detection and should be associated with deception.

Facial expressions and eye contact. With the understanding that facial expressions are under more conscious control than other nonverbal behaviors, they are most reliable, with respect to reflecting internal emotions, in a highly motivated situation. For example, during an accusatory interrogation, facial expressions that reveal anger, resentment, disgust, ambivalence, acceptance, defeat, or resignation can be invaluable in helping an investigator confirm or refute the probable guilt of the suspect.

The degree and nature of eye contact displayed by the suspect during an interview can be a reliable indicator of confidence, certainty, guilt, or anxiety. This assumes, of course, that the suspect's eye contact is not affected by culture, neurological disorders, an introverted personality, or medications. (see "Establishing the subject's normal behavioral patterns" discussed earlier in this chapter).

In western culture there are certain learned rules that govern gaze and mutual gaze. For example, it is considered impolite to stare at another person. When engaged in conversation, it is socially proper to maintain mutual gaze with the other person, and when someone is being truthful and forthright it is expected for that person to maintain direct eye contact. As a result of these "social rules," if a person decreases the amount of mutual gaze offered during a conversation, this is a signal that the topic under conversation is no longer of interest. Similarly, when a person is being less than honest or forthright, he

may not maintain direct eye contact. Recognizing that poor eye contact is associated with lying, some deceptive suspect will attempt to disguise their lack of eye contact through some compensatory movement (rubbing the eyes, picking up an object, inspecting fingernails, dusting their clothes, etc.). Others may overcompensate by staring at the investigator in a challenging manner.

Truthful suspects are not defensive in their looks or actions and can easily maintain eye contact with the investigator. Even though they may be apprehensive, they show no concern about the credibility of their answers. Although attentive, their casual manner is unrestrained. They need no preparation because their answers are truthful.

The following five guidelines should be followed when using eye contact to assess whether the suspect is truthful or untruthful.

Generally speaking, a suspect who does not make direct eye contact is probably withholding information. However, some consideration should be given to the possibility of an eye disability, inferiority complex, or emotional disorder, any of which may account for the avoidance of eye contact. Also, some cultural or religious customs consider it disrespectful for a person to look directly at an "authority figure." Background information on the suspect may alert the investigator regarding these or similar nondeceptive causes of a lack of eye contact.

Under no circumstances should an investigator challenge the suspect to look him "straight in the eye." Many lying suspects will accept the challenge and will promptly do precisely that; they may even continue to stare at the investigator throughout the interrogation. Thus, the challenge and follow-up stare will destroy the chance for the display of any further meaningful behavior symptoms and may even render futile a continuation of the interrogation.

Instead of staring at the suspect, the investigator should somewhat casually observe his eyes and other behavior symptoms to avoid making the suspect feel uncomfortable. A casual glance or two at the suspect's eyes, followed by a sharp change in eye contact by the suspect, will be sufficient to determine that he is purposely avoiding a direct look. It provides an effective method for observing eye movement without making the suspect aware that his behavior is being studied. Otherwise, the individual may become more guarded in his actions, thus depriving the investigator of the observation opportunity.

An investigator should not expect a suspect to constantly look at him; in fact, it is unnatural for either party in a normal conversation to stare at each other with consistency. It is very important, however, for the investigator to maintain casual eye contact with the suspect, because the lying suspect himself may be watching the investigator for indications of insecurity or lack of confidence.

A suspect should not be permitted to wear dark glasses during the interview or interrogation unless there is a medical condition requiring their use indoors. A suspect wearing dark glasses should be requested to remove them at the outset, and the investigator should then set them off to the side, out of reach. Dark glasses during an interview will conceal eye contact and thereby permit the suspect to develop a feeling of confidence in his effort to avoid

detection. The investigator should not wear dark glasses because the suspect should be able to observe the appearance of sincerity and interest in the investigator's eyes, especially during an interrogation.

It is exceedingly important—indeed critical—that a suspect's behavior symptoms are assessed in accordance with the following general guidelines:

- Look for deviations from the suspect's normal behavior. The normal behavior may be established either from the background investigation or by questioning the suspect about matters unrelated to the offense under investigation. The assessment of normative behaviors should be based on the suspect's style of speech, mannerisms, gestures, and eye contact. Once normative behavior has been established, subsequent changes that occur when the suspect is questioned about the crime can be more effectively evaluated.
- Evaluate all behavioral indications on the basis of when they occur (timing) and how often they occur (consistency).
- To be reliable indicators of truth or deception, behavioral changes should occur immediately in response to questions or simultaneously with the suspect's answers. Furthermore, similar behavioral responses should occur on a consistent basis whenever the same subject matter is discussed.
- Always consider the evaluation of a subject's behavior symptoms in conjunction with the case evidence and facts. Behavior should only be one component in the decision-making process.

Footnotes

[1]For a detailed discussion of a similar later study, see Reid, J. and Arther, R. (1953). Behavior Symptoms of Lie-Detector Subjects. *Journal of Criminal Law, Criminology & Police Science,* 44, 104–108; Horvath, F. (1973). Verbal and Nonverbal Clues to Truth and Deception During Polygraph Examinations. *Journal of Police Science & Administration,* 1, 138–152.

[2]Horvath, F. and Jayne, B. (1990). A Pilot Study of the Verbal and Nonverbal Behaviors of Criminal Suspects During Structured Interviews. NSA grant 89-R-2323; Horvath, F., Jayne, B., and Buckley, J. (1992). Trained Evaluators' Judgments of Behavioral Characteristics of Truthful and Deceptive Criminal Suspects during Structured Interviews. NSA grant 904-90-C-1164.

[3]Horvath, F., Jayne, B., and Buckley, J. (1994). Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews. *Forensic Journal of Science,* 39(3), 793–806.

[4]Blair, J. P. (1997).The Effect of Training in Assessing Behavior Symptoms of Criminal Suspects Master's thesis, University of Western Illinois.

[5]O'Sullivan, M., Frank, M. G., Hurley C. M., and Tiwana, J. (2009). Police Lie Detection Accuracy: The Effect of Lie Scenario. *Law and Human Behavior,* 33, 6, 530–538 published February, 2009. The authors point out that their results "suggest that police professionals perform significantly better when they are judging material that is high stakes, and therefore, more similar behaviorally

to what they experience on the job. . . . The results suggest that it is a mistake to generalize from mean lie detection accuracy estimates obtained from college students. . . ."

[6]Blair, J., Levine, T., and Shaw, A. (2010). Content in Context Improves Deception Detection Accuracy. *Human Communication Research,* 36, 423–442. The study demonstrated that when evaluators knew the context in which the interview took place "they performed significantly better than chance and significantly better than 40 + years of research suggests they would. Clearly, knowledge of the environment in which deception occurs facilitates accurate deception judgments beyond what is possible based on observations of nonverbal leakage."

[7]In their research paper entitled, "Detecting True Lies: Police Officers' Ability to Detect Suspects' Lies," (*Journal of Applied Psychology*, 2004) Mann, S.; Vrij, A.; Bull, R., 137–149 asked 99 police officers to "judge the veracity of people in real-life high-stakes situations." The authors describe this study as unique because they tested "police officers' ability to distinguish between truths and lies in a realistic setting (during police interviews with suspects), rather than in an artificial laboratory setting." The results were that "the accuracy rates were higher than those typically found in deception research."

[8]Hartwig, M., Granhag, P. A., Strömwall, L.A. and Kronkvist, O. (2006). Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works. *Law and Human Behavior*, 603- 619, the authors report that trained interviewers "obtained a considerably higher deception detection accuracy rate (85.4%) than untrained interviewers." Also see Mann, S. and Vrij, A. (2006). "Police Officers' Judgments of Veracity, Tenseness, Cognitive Load and Attempted Behavioral Control in Real-Life Police Interviews," *Psychology, Crime & Law*, 307–319.

[9]Bond, C. and De Paulo, B. (2006). Accuracy of Deception Judgments. *Personality and Social Psychology Review,* 10(3), 214–234.

[10]Kraut, R.E. and Poe, D. (1980). On the Line: The Deceptive Judgments of Customs Inspectors and Laymen. *Journal of Personality and Social Psychology,* 39, 784–798.

[11]Kohnken, G. (1987). Training Police Officers To Detect Deceptive Eye-Witness Statements: Does It Work? *Social Behavior,* 2, 1–7.

[12]Ekman, P. and O'Sullivan, M. (1991). Who Can Catch a Liar? *American Psychologist,* Sept., 913–919.

[13]Horvath, F., Jayne, B., and Buckley, J. (1994). Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews. *Forensic Journal of Science*, 39(3), 793–806.

[14]For research investigating evasion, see Rudacille, W. (1994). *Identifying Lies in Disguise.* Dubuque, IA: Kendall/Hunt, 59–76.

[15]One of the conditions in the previously mentioned NSA-sponsored study involved trained evaluators making judgments of a suspect's truthfulness after hearing the interviewer's question and then only being exposed to the suspect's nonverbal response (the audio channel was not played). Under this condition, the evaluator's mean accuracy of detecting truth or deception was 72.5%.

[16]If a crime victim is still in shock or experiencing psychological or emotional trauma as a result of the event, extreme caution should be used in any attempt to assess the verbal or nonverbal behaviors as indications of truth or deception.

Chapter 10

Precautions when Evaluating Behavior Symptoms of Truthful and Untruthful Subjects

Although behavior symptoms can be helpful in differentiating truth from deception, they are not to be considered determinative of the issue. This is also true with respect to any diagnostic effort regarding human behavior, whether it be psychiatry or medicine. To be meaningfully interpreted, a subject's behavior must be considered along with investigative findings and the subject's background, personality, and attitudes.

In this chapter we will first present attitudes common to both truthful and deceptive subjects and then discuss factors that can influence the misinterpretation of behavior symptoms. Once an investigator has carefully evaluated the potential impact of these variables on the subject's behavior symptoms, he can then determine the confidence that can be placed on the behavioral assessments of the subject. This determination will be used as the criterion for either eliminating the subject from further suspicion or proceeding with further investigation or an interrogation.

Initial Assessment of the Subject

The inferences an investigator draws from a subject's behavior during questioning are based on an assumption that the subject is operating within a "normal range" relative to emotional, mental, cognitive, and physical health. Although the range of normalcy in these areas is quite wide, investigators need to be cognizant of the potential effects these variables can have on a subject's behavior.

With this in mind, it is important to establish a subject's normative behaviors at the outset of the interview, such as asking nonthreatening background questions. Examples of areas to initially evaluate include:

- *intelligence:* verbal communication skills, vocabulary, comprehension
- *influence of drugs:* slurred speech, pupillary dilation or constriction, disorientation, inappropriate emotional affect
- *general nervous tension:* frequent posture changes, nervous laughter, rapid changes in eye movement, hand wringing, repetitive hand or foot gestures
- *neurological disorders:* facial tics, rapid blinking, or hand tremor

To help evaluate and document a subject's suitability for behavior analysis (or interrogation) it is helpful to have the subject complete a data sheet prior to the interview, if practical. If the subject does not complete such a form it may be advisable for the investigator to develop this information with the subject during the initial stage of the interview. A sample data sheet is reproduced in Exhibit 10–1.

The subject data sheet serves several important functions. It allows a subject to present and discuss his medical and psychiatric background, which is often reassuring to subjects who are concerned about this. The data sheet permits the investigator to obtain a thumbnail sketch of the subject he is about to interview with respect to his lifestyle, education, and general health. Finally, by following up on medical or psychiatric information in a nonjudgmental way, the investigator can use the information within the data sheet as a means to establish further rapport with the subject.

The information learned from the data sheet is not only helpful for behavior analysis but also in making a decision as to whether or not to interrogate the subject if the interview results indicate deception. Investigators in private practice must be particularly concerned with liability issues when placing a subject under the stress of an interrogation. For example, great care should be exercised in the interrogation of a subject who is pregnant, who has undergone heart bypass surgery in the last six months, who has had recent episodes of angina, or who exhibits a limited mental capacity or appears to be emotionally or psychologically unstable.

Finally, the data sheet documents important information that may later be useful to refute some challenges to the validity of a confession during a suppression hearing. Examples of this information include the fulfillment of the subject's biological needs (sleep, food, certain medications), the subject's physical condition at the time of the interview or interrogation, as well as the potential impact of the subject's withdrawal from addictive drugs, psychiatric background, or intelligence. The subject data sheet represents a reasonable effort by the investigator to obtain relevant information about the subject's suitability for interrogation.

Exhibit 10–1 Subject Data Sheet

Name: _____ Date: _____ Time: _____

1. In the last 24 hours have you had any alcohol, medications, or illegal drugs? Yes No

   If yes, please explain: _____

   _____

2. Are you presently taking any prescribed medication? Yes No

   If yes, what is the medication and what does it treat? _____

   _____

3. What is the last full year of schooling you have completed:

6 7 8	9 10 11 12	13 14 15 16	17 18 19
Middle School	High School	College	Post-graduate

4. In the last 24 hours, how many hours of sleep did you have? _____
5. What time was the full meal that you ate? _____
6. Are you presently experiencing any type of physical discomfort? Yes No

   If yes, please explain: _____

   _____

7. In the last 12 months have you had any surgery or medical tests performed? Yes No:

   If yes, please explain: _____

   _____

8. In the last 12 months have you consulted a doctor, psychiatrist, psychologist, or counselor about an emotional or mental health concern? Yes No

   If yes, please explain: _____

   _____

9. In the last 12 months have you attempted suicide or threatened suicide?

   Yes No

Behaviors Common to Both Truthful and Deceptive Subjects

Reticence

Being reticent at the beginning of an interview is a behavior symptom common to both guilty and innocent subjects. A guilty subject who is afraid to speak because of a fear of being trapped will find it is much easier to defend himself by being as nontalkative as possible. Any comments usually will be very brief. Questions may be answered with a succinct "No," "I don't know," or "I couldn't say." The subject may attempt to seem casual about it, often not giving the question adequate thought. A truthful subject may be reticent because of an apprehension over being mistaken as guilty or may fear being unable to articulate his position properly. If the investigator is patient and understanding, even the most reticent truthful subject will become less apprehensive and more naturally responsive over time.

Nervousness

It is not uncommon for innocent, as well as, guilty subjects to exhibit signs of nervousness when questioned by a law enforcement or security investigator. Innocent persons may be nervous for several reasons: (1) the possibility of being erroneously considered guilty, (2) a concern as to the treatment they may receive, or (3) a concern that questioners may discover some previous, unrelated crime or act of indiscretion the subject committed. The third reason would be particularly true in those instances where the previous crime was of a more serious nature than the present one. The nervousness of guilty persons can be fully accountable by a personal awareness of guilt regarding the present crime, the possibility of it being detected, and the prosecution and punishment that may follow. The principal difference between the nervousness of the innocent and that of the guilty is in the duration of nervous symptoms. As the interview progresses, and the innocent subject understands that the questioning is nonaccusatory, he becomes more relaxed and composed. Conversely, the deceptive subject's nervousness is maintained or sometimes actually increases during the course of the interview.

Impertinence

Impertinence may be displayed by both truthful and untruthful subjects. This reaction is usually confined to youthful subjects who may resent authority in general and who may attempt bravado, especially if questioned when their peers are present or know of the investigation. Consequently, little significance can be placed upon this particular behavior as to whether such persons are lying or telling the truth. An act of impertinence by an adult subject can be a shield to fend off questions presented by the investigator. This trait is seldom displayed by a truthful subject, whereas a lying adult may be impertinent because of the awareness of being caught and the feeling of a need to show defiance and lack of fear.

Anger

Anger is a difficult behavioral reaction to evaluate. For instance, a resentful scowl may result from a guilty subject's feigned anger, but it may also be the genuine reaction of an innocent person. Although making a differentiation presents a problem for the investigator, it can usually be resolved by an awareness that a guilty person's "anger" is more easily appeased than the true anger of an innocent person. The innocent person will persist with his angry reaction, whereas a guilty person will usually switch to a new emotional state when he realizes that feigned anger has not deterred the investigator.

Whenever a subject is resentful of the fact that he is under suspicion, the investigator should allow for a venting of that feeling. This has the desirable effect of establishing more open communication as the subject realizes that the investigator is concerned about his emotional state. The investigator should respond to such resentment by rationally explaining why it is necessary to talk to the subject and, if possible, explain that no decision as to the subject's involvement in the offense has been made.

It is not uncommon for an innocent subject to express sincere resentment because of the belief that he is being singled out as the obvious guilty person. The investigator should assure such a subject that he is only one of many people being interviewed concerning the issue under investigation. In other instances, the subject may express resentment about treatment by others prior to the interview (for example, being taken away in handcuffs in front of his family and neighbors or being subject to derogatory and abusive questioning by another investigator). When appropriate, the investigator should empathize with the subject's feeling and distance himself from the "other people" who caused the embarrassment or mistreatment.

Despair and Resignation

If a subject adopts an attitude of despair and resignation (which is usually more common with the guilty) and says something like, "I don't care whether you believe me or not; I'd just as soon go to jail; there's nothing for me to look forward to anyway," he should be invited to talk about his general troubles and misfortunes. The investigator should then listen and console the subject with sympathetic understanding. The investigator may say, "Joe, I guess life has treated you rather roughly, hasn't it?" Such a question will likely "open up" the subject. He will probably begin with a simple "yes," after which the investigator can delve into the matter with specific questions regarding childhood and other difficulties. After a relatively brief period of attentive listening, the investigator can shift the discussion toward the offense itself.

The gravity of the offense under investigation will have a bearing on the extent and quality of a subject's behavior symptoms. For instance, a guilty subject will display greater and more reliable symptoms when questioned about a rape than when questioned about a petty theft or other relatively minor offense.

Factors That May Lead to Misinterpretation of Behavior Symptoms

Overwhelming Investigative Findings

Many of the previously discussed behavior symptoms of guilt are a product of the subject's psychological efforts to avoid detection of deception. In essence, during the course of an interview the guilty subject is actively trying to "get away with the crime" and these efforts can result in telltale signs of deception. However, we have encountered instances where guilty subjects have psychologically "given up" to the extent that they do not display attitudes common to the guilty, nor are their behavior symptoms necessarily indicative of deception.

An example of this occurred during a theft investigation involving a bank employee who reported a $2,100 shortage in her cash drawer. All the evidence clearly indicated that this employee simply grabbed the $2,100. There was no attempt to disguise the theft or other efforts to make the theft difficult to trace back to her. Despite the overwhelming evidence presented by her employer, she maintained that she was not involved in stealing the funds.

During this employee's interview in our office, she came across as fairly sincere and realistic. She openly acknowledged that she would have had the best opportunity to steal the money. She stated that the person who stole it should be fired and possibly prosecuted, and she would not give the person who stole the money a second chance. Other than appearing quiet and withdrawn, there were no clear indications of deception evident during her interview. Yet, based on the overwhelming evidence against her, she was interrogated and confessed shortly following the initial confrontation. Because of the inconsistent behavior displayed during her interview the investigator conducted a post-confession interview of this subject.

During this interview it was learned that the same night she stole the money she told her husband about the theft and he was supportive of her motives (being behind on bills). She also stated that she believed she would never get away with the theft, but also felt entitled to the money. Even though it was explained to her that prosecution was a real possibility, she doubted that the bank would prosecute.

The lesson this case teaches is that the investigator should not allow behavior analysis to outweigh the evidence and case facts. This is especially true when the subject knows that there is a strong case against him. In that circumstance, the subject may not be operating psychologically from the position of trying to actively avoid detection of deception, and the standard guidelines for behavioral assessments may not apply.

Use of Medications

The legitimate use of medication for physical or psychological problems can distort an innocent subject's behavior. For example, a sedative prescribed to reduce nervous tension

can cause a person to appear withdrawn and disinterested. Also, intentional abuses of other medication, drugs, or alcohol may cause an innocent subject to seem confused or disoriented in offering an alibi or some other disclosure, such as the sequence of events. Similar factors might also cause a display of misleading behavior symptoms. For example, withdrawal effects from drug addiction may cause a subject to appear nervous, sweaty, or shaky. The use of some drugs (whether for medical or nonmedical reasons) may cause a "dry mouth," and certain prescribed drugs can cause users to have a "clicky dry mouth." The same drugs may also affect the activity of the Adam's apple, causing it to move up and down. In summary, these reactions should be carefully evaluated in order to avoid misinterpretation of them as indicative of deception.

Mental Illness

Investigators should be highly skeptical of the behavior symptoms of a person with a psychiatric history. No matter how clear-cut the symptoms are, extreme caution should be exercised. Such a person who has committed a criminal act may display behavior suggestive of innocence; an innocent person with a psychological affliction may appear to be guilty. In particular, the investigator should be aware of the effects of clinical depression on a subject's behavior and thought process. Even though innocent, the severely depressed subject may appear lethargic, disinterested, immobile, and inattentive during an interview. His responses to interview questions may be disorganized or lack spontaneity. This is not to suggest that clinical depression should be associated with truthfulness. Indeed, we have elicited valid confessions from many guilty subjects with this diagnosis; in some of those cases the depression may have contributed to or manifested itself because of the subject's criminal behavior (such as child abuse, arson, or theft).

In instances where a subject has a mental history of delusions or hallucinations, little weight should be placed on the subject's behavior symptoms. The following case illustrates the risk that may be occasioned by such factors. A young woman reported to the police that she had received several indecent phone calls and finally an invitation was received to visit the caller in his hotel room. The police advised her to go to the hotel room and that they would follow her and afford her adequate protection. She went to the room, knocked on the door, and was let in by a man. Soon thereafter, the police entered and arrested him. He vehemently denied having made the phone calls and said that he had been under the impression that the woman who had knocked on his door was a prostitute, and he had been interested in procuring her services. As he was a member of a prestigious businessmen's club and an employee of a reputable oil company, his fellow club members and officials of the company came to his defense, assuring the police he could not possibly be the person who had made the phone calls. When he was subjected to an interrogation, his behavior symptoms were indicative of truth telling, and he persisted in his protestations of innocence. In view of the circumstantial evidence, the police investigators were advised to conduct a thorough investigation of his background. It revealed that he had a history of making sexually motivated phone calls of the type in

this case and had been in several mental institutions for treatment. None of this had been known by the individuals who had vouched for his good character. Upon the basis of the disclosures produced by the investigation, the accused was again interrogated. When confronted with his past record, he confessed to making the calls in the present case.

The following case produced the opposite effect. A policewoman was suspected of making obscene calls to a Catholic convent. The basis for the suspicion was a nun's report to the police department that soon after the policewoman's visit to the convent as the investigator assigned to the case, another call had been received from a woman whose voice sounded like that of the policewoman herself. On the basis of this and other circumstances that did not rule out such a possibility, the policewoman was interrogated. She seemed to be highly nervous and so distraught emotionally that the interrogation had to be suspended temporarily, despite some behavior symptoms of untruthfulness. Shortly thereafter, another call was traced to a different person, who admitted being responsible for all the calls. The policewoman's past history revealed an "unstable personality" that undoubtedly accounted for the misleading behavior symptoms.

A professional interviewer/interrogator should be familiar with the field of psychopathology—not to diagnose such disorders but to recognize their symptoms so as to assist in evaluating the suitability (and possible credibility) of interviews with individuals suffering from mental illness. In particular, investigators should be alert to witnesses or victims who may relate delusional accounts as a result of paranoid schizophrenia or from untreated bipolar disorders (for example, manic-depression). Such individuals are naturally attracted to people in authority, such as criminal investigators or polygraph examiners. We have had numerous encounters with such individuals who demand to be examined on important criminal issues. Actual examples of fabricated stories include describing physical and sexual abuse suffered as a youngster (most common); witnessing the governor of Wisconsin sell illegal drugs; exposing a crime syndicate working out of the University of Michigan; and identifying a dentist who was slowly poisoning patients. When such individuals come forward with their story, behaviorally they are quite credible. After all, in their mind, they are relating what they believe to be the truth. The process of patient questioning brings the delusion to light. In this regard, it is an effective technique to ask a person suspected of suffering from delusions whether or not he has further information concerning other unsolved crimes or criminal activity. Frequently the individual will offer, again in a credible manner, detailed information of an entirely unrelated event that is equally serious. Another productive question to ask such a person is whether they have ever been wrongly accused by someone in authority (parent, police, or judge). Many delusions, in one way or another, center on the person perceiving himself as a helpless victim and this question often opens doors for further useful information.

The Antisocial Personality (Psychopath)

Although the incidence of psychopathy is relatively small in the population as a whole (3% for males, 1% for females), individuals with this personality disorder make up a

disproportionate percentage of the prison population. One estimate indicates that 40% of convicted criminals are psychopathic or have psychopathic tendencies. Some of the diagnostic criteria applied to psychopathy are:

- a pattern of recurring antisocial behavior as a juvenile and continuing as an adult (abuse of animals, truancy, theft, fights, sexual offenses, arson, con games)
- impulsive behavior demonstrating lack of responsibility (inability to keep a job or maintain interpersonal relationships, poor credit record, frequent lying)
- inability to experience guilt or remorse

From these criteria it is apparent why many criminals are included in the psychopathic statistics because one of the diagnostic criteria involves habitual criminal behavior. It is important, however, to understand that not all habitual criminals are psychopaths and, conversely, not all psychopaths are habitual criminals. Some psychopaths are successful salesmen, politicians, and businessmen. The information in this discussion describes those individuals who are classified as clearly psychopathic as opposed to a much larger group of individuals who are classified as having psychopathic tendencies.

To appreciate the diagnosis of psychopathy requires an understanding and differentiation of the motivational drives that influence antisocial behavior. Most people who steal money, for example, do so because they want or need money. When the person later lies about the theft he does so to avoid the negative consequences associated with telling the truth. Those consequences may involve going to jail, losing a job, or loss of respect or self-worth.

The psychopath engages in antisocial behavior to increase his or her self-esteem. When the psychopath steals money, for example, the theft is motivated primarily by the pure excitement of stealing; the psychopath commits a crime for the sake of a thrilling experience. In doing so he demonstrates superiority over the victim. When the psychopath later lies about the crime, he is not lying to avoid going to jail but rather because he again is demonstrating intellectual superiority by fooling the investigator, judge, or jury. In other words, when the investigator is dealing with a psychopath, he must cast aside traditional motivations involving the commission of the crime and why the person is lying about it.

As previously indicated, the psychopath is not generally selective in the types of crimes he commits. Although some of the well-publicized psychopaths, such as Charles Manson, Edmund Kemper, or Hermann Goering, committed heinous crimes, the investigator should not necessarily associate brutal crimes with the psychopath. It is estimated that within 60 minutes of experiencing social rejection the psychopath will engage in some antisocial behavior (for example, lying, theft, or aggression). This relationship describes the most identifiable aspect of the psychopath's criminal behavior—it is impulsive and habitual.

Another aspect of the psychopath's crime is that the victim frequently is left feeling foolish or ashamed. The psychopath experiences a feeling of accomplishment when he has

"outsmarted" the victim or has talked the victim into doing something quite irrational, such as turning over a life's savings or accepting a ride from a total stranger. Another example of this would be using a water pistol during a robbery and leaving the pistol at the scene so the victim can be embarrassed when informed about the weapon used. Occasionally there are media reports of probably psychopathic individuals who obtained employment in responsible positions (such as attorney, university professor, or prison warden) using false credentials. The challenge of maintaining such a masquerade would greatly appeal to psychopaths because they again demonstrate their superiority over the victims.

The psychopath will appear glib and confident during a behavior analysis interview. He has the uncanny ability to say what others want to hear and reads other people's weaknesses at a glance. Because the psychopath is a practiced liar, the investigator should place less importance on upper body nonverbal behavior (eye contact, facial expressions, and hand gestures) than on behavioral leakage occurring in the lower body regions (posture, feet, and legs). The psychopath may also portray an attitude toward the investigation that is nonchalant, unconcerned, and disinterested. Certainly the subject who is overly friendly, offers well-timed smiles and accolades, is too willing to please the investigator, and is difficult to offend during interrogation must be looked upon suspiciously.

A psychopath may engage in testing behavior, where the subject attempts to assess the investigator's helpfulness early in the interview process. Examples we have encountered include the subject who, upon first meeting the investigator, immediately asks directions to a certain location, asks to use the phone, or requests a stamp for his parking ticket. It is not typical for a criminal suspect to request assistance immediately upon meeting the investigator. This type of testing behavior has also been documented in con men where the target is tested for susceptibility.

Another type of testing behavior is that psychopaths may lie during an interview about apparently insignificant facts, such as their address, age, educational level, or marital status. Although none of these areas directly relate to the issue under investigation, these small lies allow the psychopath to test the investigator's acceptance of misinformation. Therefore, when a subject is caught lying about seemingly irrelevant questions, psychopathy should be suspected. This same tendency can be explored during an interview by asking the subject whether he has ever impersonated another person (such as a police officer, attorney, or roommate). Impersonation is a common psychopathic behavior and the subject may acknowledge such behavior if it is not relevant to the issue under investigation.

The psychopath may be quite open during an interview about past acts of dishonesty, almost to the point where he appears to be bragging. For example, a subject we interviewed who claimed to be a witness to a homicide was proud to tell the investigator how he was able to avoid a parking fee that day by convincing the parking attendant that he was an employee of our building (getting away with a simple form of impersonation). In another investigation, the subject provided a great deal of information regarding an armed robbery he committed several years prior that was unsolved, while simultaneously maintaining

his denial of involvement in the robbery under investigation. When a subject offers information about past acts of dishonesty, the investigator should evaluate whether the subject feels remorse over these acts and is simply getting them off his chest, or if the subject is emphasizing his cleverness and ingenuity in getting away with the crimes, in which case psychopathy should be suspected.

Because the psychopath's crimes are impulsive, frequently factual analysis will point to his involvement in the criminal act. The investigator must, therefore, not allow apparent truthful verbal and nonverbal behavior to distort his analysis of the investigative findings. The rule, for any subject, is that when factual analysis indicates deception and behavioral analysis indicates truthfulness, factual analysis is more likely correct.

Intelligence, Social Responsibility, and Maturity

The evaluation of behavior symptoms in terms of truth or deception should take into general consideration the subject's intelligence, sense of social responsibility, and degree of maturity. As a rule, the more intelligent a subject is, the more reliable the behavior symptoms will be. The intelligent individual will usually possess a higher concern over the importance and consequences of the investigation; his or her appraisal of right and wrong will be more acute; and if the person is deceptive, he will experience a greater degree of internal conflict and anxiety. Social responsibilities, such as the person's family, job, and reputation, will affect his degree of emotional involvement in the interview process, which may be generally lacking or else prevail to a lesser degree in a person who is without such responsibilities. This will be especially true among subjects who have had a dependency upon alcohol or drugs. Without the usual values, they have little at stake and will exhibit fewer emotional reactions and behavior symptoms from which the investigator may assess guilt or innocence. Similar characteristics prevail in youthful subjects or others who lack maturity. Ordinarily it seems to matter rather little to these subjects whether what they say is truthful or untruthful; they tend to envision themselves as socially unaccountable for their conduct. As a consequence, their behavior symptoms tend to be unreliable.

Behavior Analysis in Young Children

Particular caution must be applied when evaluating the behavior symptoms of a young child (approximately less than nine years old). Children in this age group are generally not interviewed as suspects in an investigation, but rather as possible victims of physical or sexual abuse or witnesses to another person's actions. As any parent knows, young children can tell a convincing and persistent story, which later turns out to be totally fabricated. The psychological basis of these fabrications can range from fantasies to misinterpreting events. Because of this, such fabrications may not constitute a conscious effort on the part of the child to portray false information (that is, he might not be purposefully lying).

Just as some false stories children tell appear to be credible, other true stories a child tells may appear to be false based on behavioral observations. In such a case, the child may display misleading behaviors resulting from feelings of guilt, uncertainty in discussing

unfamiliar or sensitive topics, or inadequate communication skills. Statements from young children, therefore, present a dilemma with respect to both false positive or false negative evaluations. Consequently, the veracity of a young child's statements should not be assessed solely on the basis of his behavior.

Emotional Condition

In addition to precautions regarding the behavior symptoms of suspects, when doubt arises as to the validity of a crime reported by the purported victim it is imperative to consider that the traumatic experience of the crime itself may produce reactions of nervousness or instability, which might be misinterpreted as indications of nervousness of falsity. For example, a normally nervous-type victim who has just been robbed at gunpoint may be honestly confused or disoriented by the experience and consequently may seem to be untruthful about the report of the incident. A wife whose husband has been shot to death in her presence may have been so shocked by what she observed that her version of the incident soon thereafter may appear to be untruthful, when in fact she truthfully reported what occurred.

Another example of how misleading behavior symptoms may surface is one in which a male friend of a female murder victim was interrogated about her death. According to the initial investigators, he displayed a number of guilty symptoms. It was reported that he could not look them "straight in the eye," he sighed a lot, he had a disheveled appearance, and he seemed to be going through a great deal of mental anguish. An investigator reported that "he looked guilty as hell!" During a subsequent interview, conducted by a professionally competent investigator, it was ascertained that the subject was emotionally upset because of the young woman's death and that he had been crying uncontrollably over it. He simply had not verbally or demonstrably disclosed to the other investigators the extent of his grief. The investigators mistakenly confused his emotional behavior as indicative of guilt, and therefore he became the prime suspect. Later developments in the case produced factual evidence that totally exonerated him from any part in the murder.

Cultural Differences

Some behavior symptoms are directly caused by physiological changes (such as skin blanching, tremor, or pupillary dilation) occurring within the body as a result of an intense emotional state, and others appear to be genetically encoded (grooming behaviors, protective gestures, or a "freeze" response). However, other behaviors are clearly learned and therefore have cultural roots. An example includes eye contact. Individuals raised in Eastern culture are taught that it is disrespectful to establish direct eye contact with a person in authority. Western culture, conversely, teaches that direct eye contact represents candor, sincerity, and truthfulness. In the years following the Vietnam war, qualified Vietnamese immigrants experienced difficulty finding employment because human resource interviewers felt that they were untrustworthy because of their poor eye contact!

Social space is also culturally learned. In Western society interaction between two strangers is comfortable at about three to four feet. Individuals raised in the Middle East will interact with strangers between one and two feet. Unaware of cultural differences, an investigator may easily misinterpret this close proxemics as a challenge or an indication of anger.

An investigator, therefore, must be aware of possible cultural influences on a subject's behavior. As with many of the factors that influence a subject's behavior, establishing a behavioral baseline will be central to the accurate assessment of a subject's behavior. If a subject exhibits poor eye contact while providing background information, the lack of eye contact when discussing the issue under investigation should certainly not be considered a symptom of deception.

Training in Behavior Symptom Analysis

In some investigations, the subject may be a person who has received previous training in behavior symptom analysis or interrogation. On occasion we have encountered this situation and can express the following general observation: such training tends to accentuate paralinguistic and nonverbal indications of deception. The reason for this may be that the subject's awareness of telltale signs of deception creates a greater fear of detection during the interview. We often observe that a police officer, or other similar subject accustomed to conducting interviews and interrogations, presents dramatic behaviors of truthfulness or deception. A similar phenomenon is observed in medical students, who, upon learning symptoms of various diseases, tend to over diagnose their own normal physiological health.

In one case, the head of security at a retail store became a suspect in a robbery. The store in which he worked was robbed by a woman. During the robbery, the assistant manager tried to escape and was stabbed by the female robber. The suspect, who had a reputation for being brazen and aggressive during in-house arrests, was described by coworkers as unusually cooperative during the robbery. The day after the robbery the injured manager called the suspect at his apartment and a female answered the phone explaining that he was not home. The manager recognized the voice as being that of the person who robbed the store. When questioned by the police, the suspect initially denied living with anyone. Subsequent surveillance revealed that he had a live-in girlfriend who fit the physical description of the robber. Further, the suspect had attended our training course on behavior analysis and was certainly aware of the techniques used in the interview and our nine steps of interrogation.

During the interview, the suspect's verbal responses to the behavior-provoking questions were indicative of truthfulness. However, his posture was frozen and his hands remained in his lap even when describing the emotional robbery that had occurred. His paralinguistic behavior revealed hesitancy, stop-and-start behavior, and a decreased response rate during recollection of the robbery. The interviewer concluded with the question, "What were your thoughts when the robber stabbed the assistant manager?"

to which he responded, "She was stupid to try to escape. There was no reason for her to get hurt."

These thoughts are centered around the robber's perspective, which suggests that the suspect knew the robber. A person who did not know the robber would likely respond from his or her own perspective (for example, "I was scared and worried that she might be on drugs or something—she was a maniac out of control. I was frozen and I couldn't even react.")

Based on factual and behavioral analysis, the suspect was interrogated. The interrogation lasted less than 10 minutes and culminated in the suspect walking out of the room. His final words before leaving were, "I'd rather take a bullet in the head before admitting that I did this!" His guilt was later confirmed when his girlfriend was interrogated and confessed. This suspect's knowledge and training in behavior analysis did not allow him to mimic those attitudes and paralinguistic and nonverbal behaviors commonly seen in a person who is telling the truth. The training, however, may have made him less susceptible to the persuasion techniques employed during interrogation.

Conclusion

In summary, although the verbal and nonverbal behavior displayed by a subject during an interview may provide valuable and accurate indications of possible innocence or guilt, the investigator should evaluate the behavior according to the guidelines stated in Chapter 9. Furthermore, the following factors, which may affect the validity of behavior symptoms, should be considered: the perceived seriousness of the offense; the mental and physical condition of the subject; any underlying psychiatric or personality disorders; level of intelligence; degree of maturity; and the extent or absence of social responsibilities.

Chapter 11

The Behavior Analysis Interview

Introduction

The previous chapters discussed the fundamental principles of conducting an interview, such as establishing the proper interview environment, conducting the interview in a non-accusatory manner, and evaluating a suspect's behavior. The discussion provides the nuts and bolts of the interview process but does not build the proverbial car. To most effectively use this material requires that the basic interview concepts be applied within the context of a structured interview format.

Over the years, a number of interview structures have been proposed. In the 1970s, research conducted by Edward Geiselman culminated in a structured interview approach he called "Cognitive Interviewing."[1] The principles of cognitive interviewing rely on the developing science of memory retrieval and utilizing such techniques as having a witness recall information in reverse order or from a different person's perspective. Research has demonstrated that cognitive interviewing techniques generate more accurate memories from victims and witnesses, even across cultural or language barriers.[2]

The memory retrieval data was so impressive that in the 1990s Geiselman and Fisher developed an interview approach utilizing concepts of cognitive interviewing. They called their technique the PEACE model. The acronym stands for *Planning and preparation, Engage and explain, Account, Clarification, Challenge, Closure, and Evaluation.* The goal of this approach is to obtain the maximum amount of information from an interviewee in the shortest period of time. Although the approach is designed primarily to develop leads and information from cooperative witnesses, it is also advocated for use on individuals suspected of criminal behavior.

This chapter will present another structured interview approach termed *The Behavior Analysis Interview (BAI)*. The BAI involves establishing rapport, asking open-ended questions to develop investigative information, clarifying responses, and so on (elements incorporated by the PEACE model) but also incorporates specialized questions called behavior-provoking questions which are specifically designed to elicit behavior symptoms of a suspect's guilt or innocence.

The Behavior Analysis Interview

During the 1940s, when John Reid was experimenting with various procedures within the polygraph technique, he recognized that drawing inferences of truth or deception based on physiological arousal would never be a perfect science. To increase the accuracy of the examiners' diagnoses he wanted to develop an independent means to confirm the outcome of polygraph results. To do this, he relied upon his observation that innocent and guilty suspects tended to display different attitudes and behaviors during their interviews and set out to develop specialized interview questions that would elicit different responses from innocent and guilty suspects. Reid called these questions "behavior-provoking questions" and they became an integral part of the pretest interview within the Reid control question polygraph technique.

In the 1970s when individual states, and eventually the federal government, prohibited most private employers from using the polygraph technique, John Reid and Associates developed an alternative investigative procedure to offer clients in the form of a structured interview called a Behavior Analysis Interview (BAI). The interview consists of three types of questions: (1) non-threatening questions, (2) investigative questions, and (3) behavior-provoking questions. The 30- to 45-minute nonaccusatory interview is conducted in a controlled environment with the investigator sitting approximately 4.5–5 feet directly in front of the suspect. Throughout the interview, the investigator takes written notes following each of the suspect's responses if, for no other reason, than to create silence between questions (see Chapter 1). The interview starts with a series of nonthreatening questions, background information about the subject, and casual conversation. There is no special sequence to asking the behavior-provoking questions beyond the logical flow of developing information during an interview. The investigative questions are intermingled with the behavior-provoking questions, again without any specific sequence.

In Chapter 8 we discussed numerous guidelines for the formulation of investigative questions. Although standard investigative questions are for the primary purpose of obtaining information rather than evoking responses for behavior analysis, the responses should nevertheless be given analytical consideration. In other words, the investigator should look for clues of truth or deception from the outset of the interview.

There have been in excess of 25 behavior-provoking questions developed over the years but this chapter will only cover 14 of them that have shown to be quite effective in discriminating between innocent and guilty suspects. A fifteenth behavior-provoking question (the bait question) will be covered in Chapter 12. The goal of the behavior

analysis interview is to develop specific investigative and behavioral information to allow the investigator to (1) eliminate innocent suspects and (2) focus the investigation toward suspects who cannot be eliminated.[3]

Research has demonstrated that innocent subjects tend to respond differently to the behavior-provoking questions than do deceptive subjects. As mentioned in Chapter 9, evaluators were able to correctly identify innocent or guilty suspects far above chance values based on the evaluation of 15 behavior-provoking questions asked during each interview.[4]

Response Models for Behavior-Provoking Questions

The following hypothetical case illustrates the process of using behavior-provoking questions during the behavior analysis interview in an arson investigation. (The same process also is appropriate for all other types of criminal cases, ranging from homicide to employee theft.)[5] The behavior-provoking questions are introduced with a short reference term describing what information the interviewer is trying to extract from the subject. We will then present models of responses typical of innocent suspects and those who are guilty.

Assume that a fire was started in a warehouse and most of the inventory was destroyed. Entry was gained into the warehouse by prying open a side door. The security system indicated that this occurred at 9:40 P.M. on September 12. By the time police arrived, at 9:50 P.M., the warehouse was engulfed in flames. Subsequent investigation revealed that an accelerant, probably gasoline, was used to start the fire and that the source of origin was the inventory boxes themselves.

A review of personnel records revealed that two warehouse employees may have had a motive for starting the fire. One of them, Jim, was recently denied a promotion to assistant supervisor and the second, John, had just received a one-week suspension for time-card violations. There seems to be good reason, therefore, to interview these employees, but clearly there is no basis for an arrest.

At the outset of the interview the investigator should spend a few minutes asking the subject a series of background questions, such as his complete name, age, address, marital status, current place of employment, and other general background questions. The purpose for this is twofold: (1) to acclimate the subject to the environment and, at the same time, (2) to afford the investigator an opportunity to evaluate the subject's normal verbal, paralinguistic, and nonverbal behavioral patterns.

When the subject is not in custody (and therefore no *Miranda* warnings are required), but has been informed as to the general nature of the investigation, the investigator should ask the purpose question, which is phrased as follows:

> *Purpose:* Jim, what is your understanding of the purpose for this interview with me here today?

Because Jim is certainly aware of the fire, a naive or evasive reply to the purpose question should be viewed with suspicion. For instance, if Jim states that he has no idea what

the purpose of the interview was, or if he makes a vague comment such as, "I suppose you want to talk to me about what happened at the warehouse," that should be viewed in a different light than if he bluntly states, "I'm sure you want to find out what I know about the arson at work." The latter response, which is direct and contains realistic language (arson), is more characteristic of the innocent person.

It is important for the investigator to realize that the use of the purpose questions must be confined to noncustodial suspects. For those in custody, the *Miranda* warnings and waivers are required, and there can be no valid waiver without the subject being aware of the matter about which he has consented to be questioned.

Following the purpose question, the investigator should elicit general investigative information from the suspect. Examples of these questions would be to determine the suspect's whereabouts at the time a crime was committed (alibi) or, when appropriate, his relationship with a victim.

To develop the alibi, the subject should be asked a broad question, such as, "Please tell me everything you did from 6:00 P.M. on September 12th until the time you went to sleep." If Jim is innocent, he is thereby given an opportunity to divulge possibly helpful information that might not have been elicited by answering specific questions (that is, "Where were you between 9:00 and 9:45 on the 12th of September?"). A guilty suspect who is asked this very specific question is likely to provide a rehearsed alibi that may not reveal specific symptoms of deception. Numerous additional investigative questions will be asked in each interview that are relevant to the specific issue that is under investigation.[6]

The following are a series of behavior-provoking questions that are included in the BAI. The sequence in which the investigator intermixes investigative questions with the behavior-provoking questions will depend on a number of factors, including how often the subject has already been interviewed, if at all, about the issue under investigation.

During the interview the investigator should ask the history/you question. Essentially, the investigator should succinctly state the issue under investigation (history) and ask the subject if he was involved in committing the crime (you). In the hypothetical arson case, this question might sound as follows:

> *History/You:* Jim, as we have discussed, two days ago there was a fire at the 6th Street warehouse. If you started that fire, our investigation will clearly indicate that. If you had nothing to do with it, we'll be able to show that as well. Before we go any further, let me just say that if you had anything to do with starting that fire, you should tell me that now. (The question could also be phrased by asking the direct question, "Did you start that fire?")

This direct question often catches the deceptive subject off guard, which may be revealed by a bolstered, delayed, or evasive response. Examples of typical deceptive responses to this question would be, "Honest to God, I didn't—I swear," "Did I start it? No, I did not," or "That's where I work, why would I do something like that [laugh]?" Coupled with the verbal response, the subject may engage in revealing nonverbal behavior, such as crossing of the legs, shifting in the chair, or grooming behavior.

The truthful subject welcomes the opportunity to state his innocence early in the interview. When asked if he committed the crime, the truthful subject will respond with an emphatic and immediate denial such as, "No way. I had absolutely nothing to do with starting that fire." During this response, the innocent subject often will lean forward in the chair, establish direct eye contact, and may use illustrators to reinforce the confidence of his statement.

The subject should then be asked specifically whether or not he knows who did commit the crime.

> *Knowledge:* Jim, do you know who did start that fire?

A deceptive subject will typically distance himself geographically and emotionally from the crime and is likely to deny any knowledge of whom the arsonist might be, without giving the question much thought. Responses typical of the deceptive include, "No, I do not," a simple and quick, "No," or perhaps an evasive response such as, "I don't even know if the fire was purposefully set."

The truthful subject will have spent time thinking about who may be guilty of the crime and when asked the knowledge question may intimate a suspicion, such as, "Well, I don't know for sure, names have come up at work, but I don't have definite knowledge," or may couple his denial with a sincere apology such as, "I wish I did, but I have no idea whatsoever." Behaviorally, the innocent subject will sound sincere in his response and often indicate that he has given previous thought to who might be guilty of the offense.

Most suspects will deny knowing who committed the crime. It is then appropriate to inquire about possible suspicions the subject harbors toward others. Because it is often difficult for a subject to name possible suspects, the investigator should offer reassurance that the name will be kept confidential from the person whom they name, as the following example illustrates.

> *Suspicion:* Jim, who do you suspect may have started this fire? Now let me explain that a suspicion may just be a gut feeling on your part and you may be completely wrong. But I've found that in situations like this almost everyone will have thoughts about other people. Any name you give me will not be released back to that person. Who do you suspect may have done this?

When asked the suspicion question, a deceptive subject is unlikely to name someone he knows is innocent because to do so would be an unnecessary lie. Consequently, deceptive suspects generally deny having any suspicions about who the guilty person may be. The one exception to this is when the opportunity to commit a crime is limited to two people. In this instance, the guilty suspect is likely to cast suspicion onto the other person. When asked for the basis of his suspicion, however, he is unable to voice any credible grounds for it.

A truthful subject will often name one or more people whom they suspect possibly committed the crime. The subject will be able to offer a reasonable basis for his suspicion: "There are two people who come to mind. One is John White. I know that he was

suspended a few days before the fire started and he has an attitude problem at work. He's had verbal arguments with supervisors and loses his temper really easily. The other person is Bill Williams. The only reason I think of Bill is that I know he's had trouble with the police. I think he's on probation for stealing stuff from cars or homes—something like that. What I was thinking, and I could be way off base here, is that if he had stolen inventory he might have started the fire to cover the theft."

The subject should then be asked whom he could vouch for. The purpose of the vouch question is to evaluate the subject's helpfulness and assess whether the subject's thoughts concerning the crime are more typical of the guilty or innocent.

> *Vouch:* Jim, of the people who work at the warehouse, is there anyone you feel certain did not start this fire, where you could vouch for that person's innocence?

The vouch question is an implied invitation to the subject to assist in the investigation. If Jim is being truthful, he will readily name specific individuals who he feels would be above reproach or for whom he would vouch as not being involved in starting the fire. If Jim is guilty, his response might be noncommittal. Guilty suspects usually do not want to eliminate any one individual from suspicion; they much prefer to surround themselves with other possible suspects. A typical response from a guilty suspect to this question is, "Not really. . . . I don't get to know people that well" or, "I'd vouch for everyone." If the suspect vouches for himself alone, no absolute inference should be drawn, but it must be noted that this type of response is more typical of the guilty subject than of the innocent.

The subject then should be asked a credibility question, which evaluates whether or not the subject is realistic in his assessment of the crime.

> *Credibility:* Jim, do you think that someone purposefully started this fire?

In an employee theft investigation, the question may be phrased, "Do you think this money was really stolen?"; in a homicide, "Do you think the person who killed [victim] was an acquaintance?"; in a rape, "Do you really think that someone forced [victim] to have sex?" A truthful suspect will generally agree that a crime was committed, for example, "Yes, I do. The fire started right in the middle of the aisle. There's no electrical wires around there or anything else that might have accidentally caused the fire."

The credibility question offers the deceptive subject an opportunity to confuse the investigation. He may suggest unrealistic possibilities, such as an electrical cause for the fire or careless use of smoking material. In theft investigations the subject may bring up the possibility of a paper work error or that the money was accidentally thrown away. In a sexual allegation the deceptive subject may discredit the victim's reputation for truthfulness or comment on the prevalence of false allegations.

Another question that addresses whether the subject is realistic in his assessment of the crime is asking who he believes would have had the best opportunity to commit the crime.

> *Opportunity:* Jim, who would have had the best opportunity to start this fire if they wanted to? I'm not saying that this person did it, but who would have had the best chance to start the fire?

If a truthful subject had the best opportunity to commit the crime he will typically be open and realistic in disclosing that information. At the very least, the truthful subject should include himself as someone with possible opportunity to commit the crime. Typical truthful responses to the opportunity question include, "Any of us who had keys to the warehouse," or "Probably a third-shift employee which would be myself and five other people."

A deceptive subject does not like to point the finger at himself and therefore, when asked the opportunity question, may open up the investigation by naming unrealistic suspects. For example, "Gosh, it could have been any of the employees who work there or past employees. It might even have been someone from outside of the company." Some deceptive subjects may claim that no one had an opportunity to commit the crime. For example, "They lock the warehouse up at night. I don't think anyone would have had an opportunity to start that fire."

Innocent and guilty subjects approach the interview with different attitudes. When asked how the subject feels about being interviewed, the innocent subject generally expresses positive attitudes because he perceives the interview as an opportunity to be cleared from suspicion. The guilty subject, on the other hand, perceives the interview as a threat and is more likely to express negative feelings toward the experience.

> *Attitude:* Jim, how do you feel about being interviewed concerning this fire?

Typical truthful responses to this question include, "I don't mind at all . . . I'll do whatever it takes to get to the bottom of this" or "I'm happy to cooperate in any way I can—I don't want this hanging over my head."

Deceptive subjects are much more likely to voice negative feelings toward the interview. Typical of the guilty are responses like, "I feel like a criminal," "I'm nervous and scared," or "I don't understand why you are asking me these questions—a lot of people could have done this." This is a typical response even when the subject has been treated with full respect and has not been accused in any way of being guilty.

It is also often beneficial to ask a subject whether or not he has ever thought about doing something similar to the issue under investigation.

> *Think:* Jim, have you ever just thought about doing something to get even with the company?

The think question relies on the guilty suspect's internal need to talk about his crime in a way that relieves anxiety, while at the same time escaping consequences. Everyone knows that thoughts, fantasies, or beliefs cannot be used as evidence in a courtroom. They are, after all, just images in the mind, similar to memories that cannot be captured or reduced to evidence. Because such thoughts or fantasies do not exist in a real sense, deceptive suspects may relieve the anxiety associated with their guilt by acknowledging that they have had such thoughts.

The suspect who readily admits thinking about committing the crime (for example, "Well, sure. I'll bet most of the employees have had thoughts like that from time to time") should be considered more guilty than the suspect who adamantly denies such

thoughts or ideas, particularly on such a serious matter as arson. So should the suspect who qualifies his response to this question (for example, "Not really" or "Not seriously").

The typical truthful response to this question unequivocally rejects any possibility of the thought (for example, "Not at all, no"). This is so even when the issue under investigation is one that might be considered commonplace for a person to contemplate. The principal involved is that the innocent suspect perceives the question as relating to the present issue under investigation. Under a more casual or informal setting the innocent subject may discuss with friends or loved ones vague ideas similar to the issue under investigation. However, the level of motivation present during a formal interview with an investigator typically produces an immediate and emphatic rejection from the innocent person.

It should be noted that, in some crimes involving particularly heinous circumstances (such as perverted sexual contact with a child or the dismemberment of a homicide victim), it may be more productive if the think question is phrased, "Have you ever fantasized about [issue]" or "Have you ever had a dream about [issue]?" Needless to say, the suspect who claims to have dreams about engaging in perverted sex acts with children or cutting women with a knife should be carefully scrutinized.

Part of the innocent subject's thought process in preparing for the interview involves speculating about why the guilty suspect committed the crime. To develop this information, the motive question should be asked.

Motive: Jim, why do you think someone started that fire?

In most crimes, an innocent suspect can be expected to offer a reasonable motive for the crime. A reasonable response in the case of an arson would be anger, revenge, or insurance fraud. Perhaps even more significant, the innocent suspect appears comfortable discussing the possible motives for someone else's crime.

Conversely, the motive question is very threatening to the guilty suspect because he knows exactly why he committed the crime and does not want to reveal that information to the investigator. For this reason the guilty suspect may be unwilling to speculate as to possible motives, responding "How would I know? It could be anything," "I have no idea," or "I haven't given it much thought." In offering this response, the guilty suspect may shift posture in the chair and engage in other anxiety-reducing behaviors. However, some guilty subjects do discuss or reveal their true motive by offering an introspective response to this question. Whenever the subject's response to the motive question is very specific, for example, "Maybe he was unfairly treated by the company and was drunk so he did this to get even," the investigator should suspect that the subject is, in fact, talking about his own crime.

When asked about suitable punishment, an innocent subject will generally suggest a reasonably harsh treatment for the guilty, considering the seriousness of the offense.

Punishment: Jim, what do you think should happen to the person who started this fire?

Typical responses from an innocent subject are, "He should be sent to prison!" or "I hope they prosecute him and send him to jail." In private security investigations truthful suspects will typically respond, "He should be fired (or terminated)."

A guilty subject has a difficult time discussing possible serious consequences for his crime. Therefore, his response to the punishment question tends to be much more lenient, such as, "Well, I suppose it depends on the circumstances" or "He obviously needs psychological counseling." In private security investigations the deceptive suspect may respond, "I think he should pay the money back" or "I think the person should be reprimanded." Often, the deceptive suspect will evade offering a punishment of any sort and simply respond, "That's not up to me" or "That will be up to a judge to decide." In this instance, the investigator should ask as a follow-up question, "If it was up to you, what do you think should happen to the person who (committed the crime)?"

An innocent suspect can be expected to offer a negative response when asked whether the guilty party should be given a second chance.

> *Second Chance:* Jim, under any circumstances do you think the person who started that fire should be given a second chance?

A subject who knows that someone else committed the crime for which he is being questioned is not going to afford that person a second chance. Therefore, a typical truthful response to this question is, "No way. After what I've gone through I hope they throw the book at him!" or "Hell no! Whoever did this caused the warehouse to close down—I'm losing money because of that fire."

A deceptive suspect is much more likely to agree with the proposed second chance. Often this response will be evasive ("That's hard to say. . . .") or contain conditional language ("Well, I think it's important to find out all the circumstances that led up to something"). When a suspect mentions conditions or circumstances within his response, the investigator should ask as a follow-up question: "What circumstances would you consider before giving this person a second chance?" Whatever mitigating circumstances the suspect mentions should be considered as primary theme material during any subsequent interrogation.

It is often revealing to ask the subject why he would not commit the crime. This question presents a dilemma for the guilty subject in that he knows that he did commit the crime and must come up with some credible reason why he would not.

> *Objection:* Jim, tell me why you wouldn't do something like this?

There are two characteristics of an innocent subject's response to this question. First, he may mention a personal trait expressed in a first-person response, such as "Because I'm not an arsonist!" or "I could never live with myself if I did something like that!" Second, innocent subjects also may refer to present responsibilities or past accomplishments, such as, "I would never risk everything that I've worked for by doing something like that."

A deceptive subject may offer a third-person response to the objection question or offer a response that involves reference to future consequences, such as, "That's against the law," "I don't want to lose my job," or "I can't do anything that would send me to jail." Finally, some deceptive responses refer to external factors. In the hypothetical arson example, the subject may respond, "They've got security cameras all over the place—I'd get caught." In a child abuse investigation the objection question, "Tell me why you wouldn't

have sexual contact with one of your students?" may elicit a response like, "I know she would turn me in."

A question that assesses the subject's confidence in his already-stated innocence is to ask the subject to predict what the outcome of the investigation will be on him.

> *Results:* Jim, once we complete our entire investigation, what do you think the results will be with respect to your involvement in starting this fire?

Innocent suspects will express confidence in being exonerated. Typical responses from truthful suspects include, "It better show I had nothing to do with this!" "I know I didn't start that fire so I'm not worried," or "It will prove that I'm telling the truth about everything I told you."

A guilty subject does not experience the same level of confidence in being cleared. His mind, after all, is focused on avoiding detection. It is, therefore, common for deceptive subjects to answer this question with essentially one-word responses such as, "Clean," "Okay," or "Fine," or with a sense of uncertainty, "I hope it comes out okay," or "I don't have any idea, I guess we'll see." Some guilty subjects will respond evasively to this question by stating, "Well, I really don't have any control over your investigation, so I don't know." An amazing number of guilty suspects will predict that the investigation will show negative results for them. This will inevitably be coupled with a statement that places blame onto someone or something else, such as, "I'm always being blamed for things I didn't do. This will probably be no exception," or "I'm a real nervous-type person and people always think I'm lying when I'm not."

Being a suspect in a criminal investigation is clearly a novel and frightful experience. Some valuable insights can be gleaned from asking whom the subject has talked to about the crime.

> *Tell Loved Ones:* Who did you tell about your interview with me today?

It is human nature to seek out comfort and solace from loved ones at such a time. Therefore, it becomes very suspicious if the subject has not told any loved ones about the ongoing investigation or upcoming interview. It is theorized that the person conceals this information from loved ones in an effort to avoid having to lie to loved ones who will question him about the crime.

Out of necessity, some guilty subjects will have told a loved one about the interview. Consequently, when the subject acknowledges telling a loved one, the investigator should ask, "What was your [wife's] reaction when you told her?" The innocent subject will have discussed, at length, the issue under investigation with a loved one and this will generally be apparent from his response. The deceptive subject will usually play down the upcoming interview when discussing it with a loved one. When asked about the loved one's reaction to the interview, a typical deceptive response is, "Well, she was curious about what was going on and stuff, but had no real reaction one way or another."

When the subject has told a loved one about the upcoming interview it is often beneficial to ask, "When you mentioned this to [your father] at any time did he ask if

you did it?" A negative response to this question is heard equally from innocent and guilty subjects. However, the subject who acknowledges being asked by a loved one if he committed the crime has offered a significant behavior symptom of guilt. No one knows the subject better than a parent, spouse, or relative. For the loved one to be so uncertain as to the subject's guilt as to directly ask him this question indicates, at the very least, that this loved one perceives the subject as capable of committing the crime.

Actual Case Presentation

To further illustrate the value of behavior-provoking questions during an interview, the following transcripts from two interviews involving an actual case will be presented. This investigation concerned a reported shortage of $1,000 from a bank teller's drawer. Keith Jones, a three-year employee of the bank, discovered the shortage while balancing his cash drawer at the end of the day. Working on one side of Keith was a teller named Kathy, who had been employed at the bank for about 12 months. On Keith's other side was a brand new employee named Irene. Because Keith discovered the shortage and because of his longer tenure, he was scheduled first for the behavior analysis interview, followed by Kathy and then Irene. The following transcription represents only the behavior-provoking questions asked of Keith during his interview. In addition to the subject's verbal answer, key nonverbal behavior is noted within brackets. Excluded from this presentation are the investigative questions that also were asked during the actual interview.

> *Purpose:* Keith, what is your understanding of the purpose of the interview with me today?
>
> [forward lean] Well, on the 25th I balanced my cash drawer and it was $1,000 short. I went through all my transactions but couldn't find an error. I then called over Peter, my supervisor, and together we reviewed everything. I even took the back of the drawer apart to see if money somehow got stuck behind it, but we couldn't find it. At this point, I think someone stole it. They need to know if I'm being honest with them. And that's why I'm here. It's not that they don't trust me, it's just, actually, I'm kind of happy this is being done because I can prove to them that I didn't steal it." [sincere; comfortable; good eye contact]
>
> *History/You:* I've talked to Nancy over there and you're right. We'll be talking about the $1,000 shortage you had. During our interview I will be asking you questions about that shortage, some of which I already know the answers to. The important thing is that you be completely truthful with me. Keith, if you stole that money our investigation will clearly indicate that. If you did not steal it we will be able to show that as well. Before I go any further, let me just ask you, did you steal that $1,000?"
>
> No, I didn't. [direct eye contact, forward lean]

Knowledge: Do you know for sure who did?

Not for absolutely sure, no. [hesitant, thoughtful]

Suspicion: Who do you suspect may have done this?

I don't know for sure and I can't sit here and accuse anyone because I didn't see this person do it.

Follow-up: Understand that a suspicion may just be a gut feeling on your part and you may be wrong.

Well, the person I'm thinking of is Irene. She's brand new and I just don't know her as well as the other people. I've worked with everyone else there for quite a while and you get to know people after a while and trust them. Irene is brand new and I just don't know her that well. [sincere]

Vouch: Is there anyone you could vouch for, where you'd say there's no way so and so could have done this?

Peter . . . and Nancy, too. I feel I can trust both of them. [thoughtful]

Credibility: Do you really think this money was stolen by an employee?

Yes. I hate to say that. I'd like to think that I work with honest people but I'm afraid that there's one who isn't. [crosses legs, quiet]

Attitude: How do you feel about being interviewed concerning this missing $1,000?

Well, at first I felt like they didn't trust me, you know. And then I thought about it another way and said, yes, obviously they would have to start with me first because the money was out of my drawer. I have no problem with that. If I am only the first of others to be interviewed I have no problems. But at first it was like, do they trust me. [sincere]

Results: Once we complete the entire investigation, how do you think it will come out on you?

Well, I know I didn't take the money so it should come out fine. I'm not worried. [sincere, direct eye contact]

Motive: Why do you think someone took this money?

I don't know. I really haven't thought about it that much. I guess when I think of Irene I think of maybe extra spending money? Or money for clothes or something. I just don't know. [thoughtful]

Think: Did you ever just think about taking money from the bank even though it's not something you'd do?

No, not at all. [direct, good eye contact]

Objection: Why not? Tell me why you wouldn't take money from the bank?

Well, first, it's dishonest and second, it's just not right. I get paid my pay, which doesn't come out to be that much each month but they're trusting me with their money and that trust is more important to me than anything else. I guess I just wouldn't risk everything I've worked for by doing something stupid like that. [sincere, thoughtful, illustrators]

Punishment: What do you think should happen to the person who stole this $1,000?

Fire them. I mean, talk to them first, but fire them. I don't think there should be any exception. [direct, sincere]

Second Chance: Under any circumstances do you think the person who took this money should be given a second chance?

No. If they came forward and explained that they needed the money for something really important, I guess I could understand that. But the fact is that they did this without giving any consideration to the person who was going to get burned on the thing. They crossed that line when they took it and what's to say that they wouldn't do it again. I wouldn't want to work next to that person. [sincere, illustrators]

Tell Loved Ones: Did you mention this interview to any family members?

Yeah, I told my dad about it. I was concerned and wanted to talk to someone so I did talk to my dad.

Follow-up: What was his reaction?

Well, he sort of saw things the same way I did and said it's not like they're firing you, it's just an interview, you know. So I felt better about that.

Follow-up: When you talked to your dad about this at any time did he ask if you took the money?

Well, no! [direct]

During the early portions of his interview Keith appeared somewhat nervous, but he became more comfortable as the interview progressed. His posture was forward and open during the first several minutes of the interview and then he sat back and became relaxed, using occasional illustrators. He displayed consistent attitudes of sincerity, concern, and helpfulness. Based on the investigative information, coupled with Keith's responses to the behavior-provoking questions, he was eliminated as a suspect. We then arranged to interview Kathy.

Purpose: Kathy, what is your understanding of the purpose of the interviews we're conducting?

Some money was missing out of Keith Jones's drawer and they're just interviewing everyone who worked that day? [hesitant; drawn out]

History/You: Kathy, I'll be asking questions today about that missing money. Some of the questions I'll be asking you I already know the answers to, but the most important thing is that you be completely truthful with me before you leave today. Let me just start out by asking, did you steal that $1,000?

No, I did not. [on time, direct eye contact]

Suspicion: Who do you suspect may have taken this money. Keep in mind that a suspicion may just be a feeling on your part and you may be wrong. Any name you give me will not be released back to that person, but who is it that you just suspect?

Really, no one. [quick, little thought]

Credibility: Do you think an employee stole that money?

Do I think it was stolen by an employee? No. I don't think it was stolen. [unconcerned]

Follow-up: Why don't you think it was stolen?

I just can't see anyone who was working there that day taking money from someone else's drawer.

Opportunity: Who would have had an opportunity or a chance to take this money if they wanted to?

I don't think anyone would have an opportunity. I mean, there's always at least one or two other people around. [poor eye contact]

Vouch: Who could you vouch for and say for sure this person did not steal the money?

No one. I don't think it was stolen.

Follow-up: That's not what I'm asking.

Oh, who could I vouch for. Um . . Peter. [confused, inattentive]

Attitude: How do you feel about being interviewed concerning this shortage?

I don't know, just . . . you know. . . . It's like. . . . Well, I understand their position and if this is what it takes to figure out what happened, I'm willing to do whatever . . . you know to help out. [hesitant, inaudible at end]

Results: Once we complete our investigation, how do you think it will come out on you?

Clean. [laugh]

Motive: Why do you think someone stole this money?

I don't know. Greed. [shift in chair, look down]

Think: Did you ever just think about taking money from the bank? Not that you would do it, but has the thought ever just crossed your mind?

Not really, no. [Laugh]

Objection: Tell me why you wouldn't take this money.

It's not right. I'm not going to steal from something that's not mine. It's not morally or ethically right. [direct]

Punishment: They've gone through the paper work, and certainly it's been our experience that when they are unable to account for missing funds it means that someone stole the money. What do you think should happen to the person who took this $1,000?

Be let go. Pay the money back. Be reprimanded. I don't know. [quiet, poor eye contact]

Second Chance: Kathy, under any circumstances would you give that person a second chance?

I don't know. Maybe. Maybe if. . . . [response fades out]

Follow-up: Under what circumstance?

Under what circumstance? Maybe if they were not put in a cash-handling position again. I don't know. [laugh]

Tell Loved Ones: Did you tell anybody about your interview here today?

Lots of people, my boyfriend, my parents. A lot of people know about it.

Follow-up: Did you tell them what was missing?

Sure. Parents are, like, curious what's going on, why do they want to talk to you and stuff.

Follow-up: You know, I find that it's common when a person tells a parent about something like this that the parent will ask them if they took the money. Did either of your parents ask you if you took this money?

No. [big laugh]

Throughout the interview Kathy kept her legs crossed and, except for engaging in occasional grooming behaviors, her hands remained in her lap. Her posture was rigid and frozen. She displayed attitudes of being unconcerned and unhelpful. Based on her attitudes and specific responses elicited through the behavior-provoking questions, she was interrogated and confessed to stealing the $1,000 to pay medical bills. She did not steal the money out of Keith's cash drawer, but rather was given an extra $1,000 by the vault, which she did not report. Irene, the suspect initially presumed to be guilty on this case, was never interviewed.

Analyzing the Suspect's Responses

As is true with all the information presented on behavior analysis in this text, not every behavior or response to a behavior-provoking question will consistently match the models

or descriptions presented for guilt or innocence. Consequently, the investigator must evaluate the preponderance of responses occurring across the entire interview.

In the majority of interviews conducted where a suspect is asked a series of behavior-provoking questions (perhaps 10 to 15), the investigator will generally be able to classify the overall responses to those questions as either fitting the description of an innocent or guilty suspect.[7] The investigator should complete the interview in an objective manner, step out of the interview room, and review the entirety of the suspect's behavior displayed throughout the course of the interview—his posture, the attitudes revealed, specific responses to behavior-provoking questions, and behaviors relative to investigative questions. After a global assessment of the suspect's behavior has been completed, along with an evaluation of the factual and circumstantial evidence connecting the subject to the crime, the investigator should be able to make one of three decisions.

The first decision is to eliminate the suspect from suspicion. Under this circumstance the investigator should return to the interview room and thank the suspect for his cooperation but not tell him that he is clearly telling the truth concerning the issue under investigation. The danger in doing so is that in some cases the investigator's initial assessment of the suspect's truthfulness may be in error, as revealed by subsequent investigative information. A premature statement that "clears" the suspect of any involvement in the crime creates unnecessary difficulties if the suspect needs to be interviewed a second time. Rather, the investigator should make a statement such as: "Jim, I'd like to thank you for your time and cooperation today. I will get back to you if we need anything else clarified."

A second decision the investigator may make, based on the results of the BAI, is that the suspect cannot be eliminated but, for a variety of reasons, should not yet be interrogated. Under this circumstance, considerations to put off the interrogation may center around additional suspects to be interviewed, a concern about company morale, waiting for additional analysis of physical evidence, verifying an alibi that the suspect has offered, and so on. Under this circumstance the suspect should be told something similar to the following: "Jim, thank you for your time and cooperation here today and, as you know, we will be interviewing others about [issue]. It may be necessary to talk to you again. You would be willing to come back and talk to me, wouldn't you?"

Under this circumstance it is important to elicit a verbal, social commitment from the suspect to talk to the investigator again in the future. Such a commitment makes it more difficult for the suspect to refuse to meet with the investigator at a later date and also provides the investigator with a basis for the follow-up call. The investigator should ask the suspect to agree to another meeting with a request such as, "Jim, as I mentioned earlier we are waiting for additional [forensic] results to come in on the investigation. When those results come in I am sure you would agree to come back and to talk with me further, wouldn't you?" The follow-up call for the second interview/interrogation can then be, "Jim, when we spoke last week I mentioned that we were waiting for additional results to come in on the investigation and you agreed to talk with me further once we had those. Those results have come in and I was wondering if you would have a chance to stop by this afternoon to review a few things with me?"

The third decision an investigator may make following a BAI is to directly confront the suspect and conduct an interrogation. When the investigator is unable to eliminate a suspect based on behavioral assessments or investigative findings, it is our strong recommendation to conduct an interrogation within a short period of time following the BAI. The benefits of following this advice are:

- The suspect is accustomed to the interview room and the investigator's nonjudgmental personality, both of which will be advantageous to the transition to the accusatory interrogation.
- The guilty suspect is most vulnerable to interrogation immediately following the interview because of his concern that the investigator detected his deception. To put off the interrogation may leave the suspect with the impression that the lies told during the interview were initially believed, thereby reinforcing his confidence to lie during the interrogation.
- If the suspect is in custody, he has already waived his *Miranda* rights and the investigator does not have to reissue them at the outset of the interrogation.

Footnotes

[1]Fisher, R. and Geiselman, E. (1992). *Memory-Enhancing Techniques for Investigative Interviewing: The Cognitive Interview*. Springfield: Charles C. Thomas.

[2]Stein, L. and Memon, A. (2006). Testing the Efficacy of the Cognitive Interview in a Developing Country. *Applied Cognitive Psychology*.

[3]The behavior analysis interview is not a clinical psychometric assessment of truth or deception. To illustrate the fallacy of using it as such, see Vrij, A. (2006). An Empirical Test of the Behavior Analysis Interview. *Law and Human Behavior*, 30(3).

[4]See Horvath, F., Jayne, B., and Buckley, J. (1994). Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews," *Forensic Journal of Science*, 39(3), 793–806.

[5]For an example of the behavior analysis interview in a homicide investigation, see Appendix A. Also, John E. Reid and Associates, Inc. has produced several video tape examples of behavior analysis interviews. Go to www.reid.com for details.

[6]See Horvath, F., Blair, J.P., and Buckley, J. (2007). The Behavioural Analysis Interview: Clarifying the Practice, Theory and Understanding of its Use and Effectiveness. *International Journal of Police Science & Management*, 10(1), for a detailed discussion of the BAI, the use of investigative questions, and research on the effectiveness of the BAI.

[7]For court purposes, it is not recommended that the investigator categorize a suspect's response to behavior-provoking questions as truthful or deceptive at the time each question is asked. This practice may invite a defense attorney to ask the investigator to explain exactly why he classified each response as he did, to explain the research findings supporting his classification, and to comment on the differential diagnosis of the response. This type of testimony is best left for an expert in behavior analysis.

Chapter 12

The Use of Specialized Questioning Techniques

Around 250 B.C. the Hindus developed an interviewing strategy to help identify which person from a group of possible subjects was guilty of an offense. The subjects were lined up outside a barn and told that within it was a sacred ass. It was explained that the donkey had magical powers and would bray when a guilty person pulled its tail. Each subject was then instructed to go into the barn alone and pull the donkey's tail. Innocent subjects, of course, were anxious to pull the donkey's tail so they could be exonerated. The guilty subject, while alone with the donkey, would not pull its tail for fear that the donkey would bray.

Unbeknownst to the subjects, the donkey's tail was coated with lamp black, which would transfer onto the hand of a person who pulled its tail. Investigators identified the guilty person by observing which subject came out of the barn with clean hands. This early lie detection technique utilized the sound principle that innocent and guilty subjects respond differently when presented with possible evidence that might implicate them. This concept is illustrated in a questioning technique known as "baiting."

The Use of the Baiting Technique

The bait question is one of the standard behavior-provoking questions used in the behavior analysis interview (BAI). It is nonaccusatory in nature but at the same time presents to the subject a plausible probability of the existence of some evidence implicating him in the crime. Its intended purpose is to entice a deceptive subject to change, or at least to consider changing, an earlier denial of opportunity or access to commit the crime. The following example illustrates its application.

In the arson case presented in Chapter 11 assume that Jim, the subject, had stated that he was home at the time of the crime. The investigator may ask, "Jim, is there any reason you can think of why one of your neighbors would say that they saw you drive into your driveway around 10:00 that evening?" Without waiting for an answer, the investigator should state: "Now, I'm not accusing you of anything; maybe you had to leave to run an errand." If Jim is innocent and was home all evening, he will emphatically deny the possibility. If Jim is guilty, he must pause to evaluate the possibility that someone did see him drive home after starting the fire. He must decide whether to lie about it or to take his chances on an acknowledgment of that fact and consider what explanation he should offer. In any event, there will be a delay in his response. Most often, the forthcoming answer would be a denial, but it will be accompanied by the significant nonverbal behavior described in Chapter 9. However, on some occasions a guilty person in Jim's position will change his denial and say, "I'm sorry, I forgot; I now remember that I did run to the store for a short period of time that evening."

Presenting a Bait Question

A bait question may be used in almost any type of case situation. When using it the investigator must avoid any positive, challenging statement, such as, "You were seen coming out of the back door!" First, this type of question is clearly accusatory and therefore inappropriate during an interview. Second, the premise for such a direct question may be incorrect and thus not reveal significant behavior symptoms from the guilty subject. For example, the guilty subject may have exited through a side door. Similarly, a statement that the subject's fingerprints were found on a bedroom dresser will evoke a truthful denial from a subject guilty of burglary but who knows that he did not touch the dresser. The investigator who issues such unfounded statements is going out on the proverbial limb, which will be easily sawed off by the subject's awareness that the evidence could not exist. Moreover, once the investigator is caught in a lie, further effectiveness is minimized since he has lost credibility with the subject. There is no risk, however, in asking a nonspecific, nonchallenging question, such as, "*Is there any reason why* we would find your fingerprints inside that person's home?"

A bait question should only be used *after* the subject has made an appropriate commitment of denial; otherwise it will serve no useful purpose. For instance, in the case of the warehouse fire, if the investigator had presented the bait question before Jim stated that he was home alone all evening, a subsequent acknowledgment that he left home would not have had the same significance as when he changed his story from a prior statement that he did not leave his home that evening.

When a bait question is used, the investigator must present it as a plausible, sincere inquiry. It also should be accompanied by what the subject may perceive to be a nonincriminating excuse for explaining away the evidence presented in the bait itself. The following examples, from interviews during which the subject eventually confessed, are illustrative of effectively using the bait question.

A teacher was accused by a student of making unwanted sexual advances toward her in a freight elevator where, according to the student, he stopped the elevator between floors and said, "Who's going to take their clothes off first, you or me?" Shortly thereafter he pinned her to a wall, kissed her, and placed his hand up her blouse. During his interview the teacher acknowledged stopping the elevator between floors and consentually kissing the student. He denied making any statement about undressing. The following bait question was asked:

> Jeff, are you familiar with security systems in big buildings? Often they have microphones in elevators where, if the elevator stops unexpectedly, a light flashes on the security console and the guard can listen in to see if someone needs help. We are in the process of talking to the security guard who was on duty that afternoon. Would there be any reason, when he switched on the microphone, that he would have heard you say, "Who's going to take their clothes off first, you or me?" I'm not saying that you forced yourself on her or anything, but do you think he would have heard you make that statement?

After a period of silence, the teacher responded, "I said, well. . . . I don't remember saying who's going to take their clothes off first. In fact, I'm sure I never told her to undress. Yeah, I never told her to take her clothes off." Notice that the teacher's final denial involved an allegation that was not made.

In another incident $18,000 was stolen from a bank safe that was left unlocked. An outside contractor, who vacuumed the office where the safe was kept, was immediately suspected. During his interview he denied ever touching the safe and explained that his hands were on the vacuum cleaner the whole time he was in the office. He was asked the following bait question:

> Jim, the police have lifted a number of fingerprints from the outside of the safe. Some of them have already been matched to bank employees. Once they complete all the matches, is there any reason why they would find your fingerprints on that safe? Now I'm not saying you took this money, but maybe while you were vacuuming you pushed your hand against the front of the safe. Do you think they will find your fingerprints on that safe?

After a couple seconds in which the janitor shifted position in the chair he responded, "You mean where my fingerprints would be on the safe? Well, gee, I don't remember. . . . I think I may have leaned against it while I was vacuuming. It's hard to say." This acknowledgement is essentially a contradiction of his earlier denial, supporting the opinion that he stole the money.

A fire was set underneath a propane storage tank located at the side of a farm field, resulting in a huge explosion. For a variety of reasons, the investigation focused around a group of juveniles who lived in the area. During one of these interviews, the following bait question was asked, after the subject had denied being anywhere near the propane tank on the day of the explosion:

> Carl, do you know very much about spy satellites? Well, these things circle the earth and take pictures from miles above the earth. The pictures are so clear that you can read newspaper articles or easily read a license plate from a car. Now the satellites are not only used for spying but for population counts and economic issues as well. Every spring the satellites pass over farm fields looking for pre-emergent weeds to help farmers time their planting and fertilizing. I have requested the photographs from the farm field where this propane tank exploded and will have those very shortly. When I receive that photograph, will it show you near the propane tank before that explosion? I'm not suggesting you had anything to do with the explosion, but if you were hanging around that tank that afternoon, that would explain the photograph. Do you think it's possible that the photograph would show you near that propane tank that day?

After pausing for several seconds, the subject asked again on what day the explosion occurred and then explained that he may have been there that afternoon with some friends, but he was not certain. (The explosion occurred three days prior to the interview!) Following an interrogation this subject acknowledged being present when the fire underneath the propane tank was set.

As these examples illustrate, a bait question can deal with either real or nonexistent evidence. It may refer to such real items as footprints, tire tracks, bite marks, personal belongings left at the scene, or trace analysis of dirt, hair, DNA, or fibers that would place the subject at the scene of a crime. Examples of fictitious evidence would include such things as high-resolution photographs from spy satellites, laser technology to identify fingerprints even though a person wore gloves, or sophisticated blood tests involving electrophoresis to identify ratios of hormones to determine whether or not sexual intercourse was consensual or forced. The two criteria affecting the usefulness of the bait question are (1) that the guilty person could have left the evidence and (2) that the investigator presents the possible evidence in a plausible and credible manner. Moreover, the investigator should ask only one bait question during the course of an interview. Experience has shown that the technique loses its effectiveness if multiple bait questions are asked of the same subject.

Evaluating the Subject's Response to the Bait Question

An innocent subject carefully follows the implications presented in the bait question and when finally asked if the evidence may point to him, immediately and emphatically denies that possibility. If he was telling the truth earlier, when denying any possible opportunity or access to commit the crime, there should be no concern in his mind that the evidence could exist.

When a guilty subject considers the possibility of the evidence linking him to the crime scene, he must first make a decision as to how best to respond to the question. Consequently, the most frequent behavioral response heard from guilty subjects is a delay before answering or other stalling tactics, such as repeating the question himself or asking the investigator to clarify the question. During the guilty subject's ultimate response to

the bait question he may qualify his confidence with phrases such as, "To the best of my knowledge. . . ," "I believe," or "As far as I remember. . . ." In other words, the subject is not portraying 100% certainty that the evidence could not exist.

In our experience, approximately 20% of guilty subjects fully accept the implications of the bait question and contradict their earlier denial in an effort to innocently explain away the evidence. The majority of guilty subjects, however, engage in one or more of the previously mentioned behaviors without changing their original statement denying access or opportunity.

Use of the Bait Question To Evaluate an Alibi

Unquestionably, the best way to check an alibi is by actual investigative methods. In other words, if a subject states that he was at a certain place during the time the offense was being committed elsewhere, the best way to determine whether or not this is the truth is for an investigator to check with the place named by the subject to obtain information or evidence that will either substantiate or disprove the subject's alibi. There are, however, occasions when this procedure is not feasible or even possible and, therefore, reliance must sometimes be placed on interview methods alone.

Whenever an alibi is couched in general terms, such as, "I was out driving in my car that evening," it is advisable for the investigator to have the subject relate all his activities during the period covered by the alibi, to name the places visited, to state the route traveled, and also to give the approximate time for each activity or when each place was visited or each route was traveled. In other words, suppose the crime was committed at 8:00 P.M. and the subject states he was driving in his car from 7:00 to 9:00 P.M. He should then be asked to trace the route he took, name the places he visited, and give the time at which he arrived or left. In this manner, he may be placed in a position of being unable to account for the full period from 7:00 to 9:00 or else may find it necessary to offer fictitious details that could easily be detected and proven as false.

Another method for testing an alibi that is given in general terms is to ask the subject if he had observed a certain occurrence that supposedly happened at the place and time mentioned. The subject, assuming that the investigator is referring to an actual occurrence, may acknowledge having observed it, thereby exposing deceit and probable guilt. Assume, for example, that in the warehouse fire case, instead of Jim saying he was home at the time of the fire he states that he had been out driving in his car. After the disclosure of the details, the investigator should leave the interview room for a few minutes, explaining to Jim that he is going to check out a few things. Upon his return, he should describe a fictitious occurrence on the route that Jim said he had traveled. The description of the occurrence may be something along the following lines:

> From what you told me, Jim, you drove on Highway 66 past Central City at about 9:30. I understand that this was the time a semi-truck had overturned, and traffic was delayed for about an hour. How long were you stuck there? How did you manage things?

If Jim is lying, he is thereby presented with a dilemma. He must pause before he either acknowledges or disclaims knowledge of the occurrence. He may then respond in one of three ways: (1) admit that he did not see the accident, implying, therefore, that the investigator must have erroneous information (a very bold move); (2) state that he forgot to mention earlier that he had turned off Highway 66 before reaching Central City, or (3) state that he only had to wait a short time before the traffic cleared. The second or third selections are strong indications of guilt. However, even if Jim is smart enough to sense a trap, his delay in making one of the three selections may, in itself, indicate guilt. If, however, Jim is innocent, there will be no delay in saying that he saw no evidence of an accident on Highway 66 at the time he was near Central City.

Other Specialized Questioning Techniques

Asking an Assumptive Question

In some case situations, the investigator may consider asking an assumptive question. As the name implies, this question is phrased in such a manner that there is a strong implication that the answer is already known, when in fact it is not. Its purpose is to dissuade the subject from responding falsely and to encourage him to reveal the truth. For example, when the investigator has reason to believe that the subject possesses or knows the whereabouts of an instrument or article that might have had some connection with the crime, instead of merely asking, "Do you have such-and-such?" or "Do you know where such-and-such is?" it is much better to assume in the question that the subject does have it or else knows where it is. The effectiveness of this approach is well illustrated by the following case.

During the course of an interview with a rape-murder subject, and based upon information developed by talking to others, the investigator received the impression that, regardless of guilt or innocence, the subject was a sex deviant (in a very substantial sense). The investigator's previous experience in interviewing sex deviants of various sorts brought to mind the possibility that the subject may have been keeping a diary of his sex affairs and practices. Because such a document might be of some value in an interrogation, the investigator was interested in finding out if one existed. Toward this end, he asked the question: "Where is your diary?" The subject paused momentarily then replied, "It's home—hidden underneath my desk." His permission was obtained to pick up the diary. Officers dispatched to his home discovered an extraordinary and almost unbelievable diary, replete with entries about numerous sexual experiences. Some of the entries referred to "struggles" with girls he had picked up in his car, usually at places where they had been awaiting public transportation under inclement weather conditions. Other entries pertained to struggles with a few willing girlfriends, who had feigned resistance to accommodate his particular desire in that respect. Other recorded experiences concerned sexual conduct in the privacy of his home, whereby he would reach a climax by the mere reading of his recorded sex acts.

When confronted with diary entries of the "struggles" with the girls he had picked up, the subject readily admitted that they had been actual rapes. Although the diary contained no mention of the latest rape-murder, the investigator became thoroughly convinced that the subject was in fact responsible for it. During an interrogation the investigator reminded the subject of his previous offenses, particularly one in which the modus operandi was similar in many respects to the principal offense. The investigator also stated that, morally speaking, the subject's latest offense was "no worse" than his previous nonfatal rapes. This and other techniques resulted in a confession to the rape-murder.

There is every reason to believe in the foregoing case that, if the issue of the diary had been brought up in any way other than by the question, "Where is your diary?" the subject probably would not have divulged its existence or whereabouts, and the investigator would have been deprived of a valuable means of eliciting the rape-murder confession. Had the investigator merely asked, "Do you have a diary?" the suspect probably would have inferred that its existence was not already known and, therefore, would have denied having one. With the question phrased in such a way as to imply a certainty of its existence, however, it became difficult for the suspect to make a denial because, for all he knew, the investigator or other investigators might have already been aware of its existence or actually had it in their possession.

Another possible application of an assumptive question is in cases where the investigator seeks to establish the identity of an accomplice or another person who is in some way connected with the offense under investigation. Rather than confine the inquiry to "Who is the person?" it is often much more effective to supplement the inquiry with, or perhaps use as a substitute, certain "piecemeal" questions, such as, "What part of the city does he live in?" or "What's his first name?" In this way the questions seem rather innocuous and render much less difficult the subject's divulgence of the requested information of the individual's complete identity.

Assumptive questions are also appropriate in a situation where a relevant issue in a case is whether the subject knew "John Jones." Rather than asking, "Do you know John Jones?" there is greater potential to the question: "How long have you known John Jones?" The former question carries no indication of possible awareness that the subject knew Jones; consequently, a denial may be made rather comfortably. With the question presented in the latter form, a subject who is motivated to lie about knowing Jones is placed in a dilemma; he becomes concerned over the possibility that the investigator has evidence of the fact of acquaintance with Jones and is thus more likely to acknowledge it. Similarly, in a case where the subject's presence in the company of John Jones at a particular time would be of incriminating significance, but the investigator does not know that the subject was in fact there, it is advisable to ask, "How long were you with John Jones that night?" This kind of question is more apt to produce a truthful answer, such as "Only for a few minutes," than if the question were phrased: "Were you with John Jones that night?" The latter question may draw a simple "no" answer.

Two cautions should be kept in mind when deciding whether to ask an assumptive question during an interview. The first is that the information sought by the question should not require a full confession from the subject. Examples of improper questions, therefore, would be, "Where did you go after you raped that lady?" (where the subject has not acknowledged raping the victim) or, "What did you do with the knife you used to stab him?" (where the subject has not admitted the stabbing). Asking these incriminating questions in an assumptive manner, where the subject has not confessed, will only lead to a denial and animosity felt by the subject at the investigator's implications. A better selection of assumptive questions in these cases would be, "About what time did you arrive at the Holiday Inn that evening?" (the location where the rape took place) or "What were you and Larry arguing about that night?" (where the investigation indicates that the stabbing death was preceded with an argument).

The second caution is to only use assumptive questions when the investigator is relatively certain of the subject's guilt. An innocent subject who is asked a question such as, "Where did you get the extra spending money you've been seen with?" (during an interview of a robbery suspect) may well express resentment because of the implication of the investigator's question. Under this circumstance, the subject's resulting anger and mistrust of the investigator may significantly interfere with subsequent evaluations of the subject's behavior symptoms.

An adjunct to the assumptive question, and at times an effective one, is the prefacing of a question with the statement: "Think carefully before you answer the next question." This admonition is apt to provoke a truthful reply from a guilty subject because of the concern that the truth is already known. It can be rendered even more effective if the investigator has some written papers in his hand or starts looking through his file at the time the admonition is given.

Whenever the desired acknowledgement does not result from the use of the "think carefully" warning, it is sometimes effective for the investigator to express skepticism about the reply by asking, "Are you sure about that?" In this way, an opportunity is afforded a lying subject to reconsider the possible risk entailed by not telling the truth about a fact that seems to be already known to the investigator.

Trapping the Subject in a Lie

Another specialized questioning technique involves, more or less, inviting a subject to lie in response to a relevant question, if he is inclined to do so. This may occur in a case where the investigator knows what a truthful answer should be to a certain question, but he asks it in a manner that implies a lack of knowledge. Assume, for instance, that in a robbery case the investigation disclosed that shortly after the robbery the subject made a substantial payment on his car, paid off a large debt, or deposited money in a bank under a fictitious name. Instead of first calling the occurrence to the subject's attention and asking for his explanation, the investigator should casually inquire: "Except for your salary (or other usual income) have you come into possession of any other money

recently?" If the subject readily admits he has, and offers a satisfactory explanation of it, such a disclosure may serve to exonerate him from further suspicion. However, a lie to the question will be a strong indication of possible guilt and, at the same time, it will be of valuable assistance to the investigator during an interrogation.

The following case illustrates the use of the above questioning technique. A store owner was believed to have set fire to his store at about 10:00 P.M. The investigation revealed that at 9:45 the owner was seen leaving his house through the back door and walking down an alley in the direction of the rear exit of his store. In this case situation, nothing is apt to be gained by confronting him with this information because, if he were guilty, he would immediately offer a false explanation for his actions. He may even say, for example, that he had gone to the store to get something he had forgotten to bring home when he closed the store earlier. It is far better to give him an opportunity to lie about his actions. For instance, the investigator may ask him to state what time he arrived home after having closed the store and to tell what he did thereafter (for example, ate dinner, watched television) up to the time he was notified of the fire. Only after the subject has committed himself to having remained in his home all evening should he be confronted with the evidence of the walk down the alley at 9:45. Once caught in such a lie, a subject will have considerable difficulty avoiding telling the rest of the truth.

Evaluating Memory

When attempting to verify the accuracy of an alibi during an interview, the investigator may consider the following specialized technique. Ask the subject for a detailed account of his activities before and after, as well as during the crime period. Lawyers occasionally use a similar technique in the cross-examination of a witness whose testimony they seek to discredit by showing that, although the witness's memory of activities prior to and since the event in question is very bad (or perhaps is very good), his memory of occurrences at the time when the offense was committed is, by comparison, unreasonably good (or unreasonably bad) and is, therefore, an apparent indication of untruthful testimony. Criminal investigators also may obtain indications of a subject's guilt or innocence by using this technique. (The investigator should be mindful, however, of the possibility that some special event, such as a birthday or a parent's death may explain a subject's accurate recall of the date of his activities on or about that time.)

With respect to a subject's activities prior to the crime, it may not be necessary, in the average case, to go back much further than a few hours or a few days prior to the offense, but there are occasions when it is helpful to obtain information about the subject's activities over a longer period of time. In any event, the investigator should gradually lead the subject up to the day and time of the offense and then let him continue beyond that point, covering whatever subsequent period is deemed desirable.

Recollection of considerable detail as to activities before and after the offense, in contrast to the absence of a similar quality of recollection for the period of the offense itself, may signify an effort to deceive. Also of significance is any contrast between a

recollection of considerable detail at the time of the offense and the lack of it with regard to previous and subsequent events. A third situation might arise, to the ultimate advantage of the investigator. A subject, while falsifying a detailed alibi, may realize the need for a comparable recollection of previous and subsequent activities and may proceed to manufacture a set of details that may be easily recognized as false and may be proved to be such by known facts either already in the possession of the investigator or discovered by subsequent investigation.

Another tactic to consider when an investigator doubts the veracity of an alibi or a victim's account of an alleged crime is to first elicit a detailed description of activities as previously described. The investigator should then ask the victim to retell the account in reverse order. A person who has related a truthful account will have little difficulty doing this, because their memories are based on factual occurrences.[1] A person who has offered a false alibi or a victim who has fabricated a crime experiences difficulty in relaying the rehearsed information in reverse order. Often the reversed account from the deceptive person is much more abbreviated and may contain chronological inconsistencies when compared to the original statement.

Some investigators follow the practice, at the early stage of an interview, of having a subject's detailed alibi statement reduced to writing and signed by him. Then, if the investigator's subsequent efforts do not produce any specific indication of guilt or innocence, another statement regarding the alibi is obtained at the conclusion of the interview. This second statement is compared with the first one. If both statements generally agree in their various details, that fact is considered indicative of truth telling because few liars are able to remember all the details of a previous lie. If inconsistencies are present, that fact can be used to good advantage in the course of an interrogation.

Contrary to the generally prevailing notion, when two or more persons relate a bona fide alibi for themselves or give a truthful version of an occurrence, there will be some variations in the details. This occurs because two persons ordinarily do not observe an occurrence with equal accuracy or recall or describe the incident in identical fashion. Therefore, an investigator should view with suspicion an alibi, account, or occurrence given by two persons with a full coincidence of all details. The following case is an example. A husband and wife, who were suspects in a murder committed several weeks prior to their interview, related as an alibi their presence together at a dinner in a neighborhood restaurant. They each told in detail the time of arrival, the means used to get there, and what they had ordered for dinner that night. Their stories were the same with respect to all the details, but they were also too good to be true. It subsequently developed that the subjects were guilty of the murder. They had decided upon the restaurant alibi because they were frequent diners at this particular restaurant and were familiar with the menu served there on the various nights of the week. They realized that the restaurant manager, waitresses, and others probably would not remember whether they were there on the particular night in question and, therefore, probably would be unable to discredit the alibi.

Another illustration of the same psychological principle is a case involving the disappearance of a large sum of money from an armored money truck, to which four men

had been assigned as guards. An investigation revealed that there had been no forced entry into the truck, and this fact cast suspicion on the four guards. At the outset of the investigation each one admitted that—in violation of company orders—they had left the truck unguarded for a period of time while all had gone to a restaurant together for lunch. The statements that were taken from the guards varied with respect to some of the details about the events and activities during this lunch period, and that fact had convinced the investigators that the guards were lying. However, when one of the authors of this text was engaged to interview the guards, he viewed the minor discrepancies in their statements as evidence suggestive of truthfulness rather than deception. Thereafter, a recently discharged guard was interviewed and he confessed that, while still in the employ of the company, he had managed to have a duplicate key made for the truck door and had awaited an appropriate time for using it to steal some money. He was familiar with the guards' habit of occasionally leaving the truck unguarded during the time they were eating together, and this afforded him the timely opportunity to take the money. Following his confession, he led the investigator to the place where he had concealed the money, and the entire sum was recovered intact.

Footnote

[1]The technique of reverse recall is used during a procedure known as *cognitive interviewing*. Research has demonstrated that truthful witnesses or victims may recall new events or memories when relating an observed or experienced incident in reverse order. Consequently, when a witness or victim recalls additional events not revealed when relating his initial account, this should not be considered indicative of deception. See Fisher, R.P., Geiselman, R.E., and Amadir, M. (1989) Field Test of the Cognitive Interview: Enhancing the Recollection of Actual Victims and Witnesses of Crime. *Journal of Applied Psychology,* 74, 22–727. Also see Fisher, R.P. and Geiselman, R.E. (1992). *Memory Enhancement Techniques for Investigative Interviewing.* Springfield, IL: Thomas.

Part 3

Interrogation Techniques

Chapter 13

The Reid Nine Steps of Interrogation®

The authors again wish to make clear that the word *guilt*, as used in this text, only signifies the investigator's opinion. In no way does it connote legal guilt based upon proof beyond a reasonable doubt. Accordingly, it is in that context this part of the text presents the tactics and techniques for the interrogation of suspects whose guilt, in the *opinion* of the investigator, seems definite or reasonably certain. Among them are the nine steps of interrogation.

General Classification of Offenders

The selection of interrogation procedures depends to a considerable extent upon the personal characteristics of the suspect himself, the type of offense, the probable motivation for its commission, and the suspect's initial behavioral responses to questioning. On the basis of these considerations, criminal offenders are subject to a rather broad, yet flexible, classification as either emotional or non-emotional offenders.

Emotional offender refers to an offender who would predictably experience a considerable feeling of remorse, mental anguish, or compunction as a result of his offense. This individual has a strong sense of moral guilt—in other words, a "troubled conscience." Emotional offenders can be identified behaviorally during an interrogation in that they tend to be emotionally moved by the investigator's words and actions. As the interrogation progresses, the emotional offender may develop watery eyes and his body posture will become less rigid and more open, without crossed arms and legs. The suspect's eye contact with the investigator will become less frequent, eventually culminating in a vacant stare at the floor. Because of the "troubled conscience" feeling, the most effective

interrogation tactics and techniques to use on such a suspect are those based primarily upon a sympathetic approach—expressions of understanding and compassion with regard to the commission of the offense as well as the suspect's present difficulty.

Non-emotional offender refers to a person who ordinarily does not experience a troubled conscience as a result of committing a crime. This emotional indifference may be the product of an antisocial personality disorder, a conditioned response where the suspect has experienced repeated prior success in escaping punishment through lying, or the career criminal who perceives committing crimes as a business in much the same way as a legitimate businessman who sells a product. In the latter case, the suspect approaches arrest, prosecution, and possible conviction as an occupational hazard and experiences no regret or remorse as a result of exploiting victims—he psychologically insulates himself from his victims.

The motive for a non-emotional offender to commit a crime may involve emotionality, but when interviewed he typically displays an unconcerned, detached attitude. During interrogation, the non-emotional offender may offer token, weak denials of guilt that are stopped easily (in the suspect's mind, the interrogation is a game and he readily accepts the investigator's premise of his guilt). The non-emotional suspect is content to allow the investigator to talk, but the words fall on seemingly deaf ears as the suspect maintains a defensive, closed posture, including crossed arms, erect head, and a cold, hard stare. A remarkable characteristic of the non-emotional offender is a resistance to becoming emotionally involved in the interrogation.

The most effective tactic and techniques to use on the non-emotional offender are those based primarily upon a factual analysis approach. This approach means appealing to the suspect's common sense and reasoning rather than to his emotions; it is designed to persuade him that his guilt is established or that it soon will be established and, consequently, the intelligent choice to make is to tell the truth.

A common mistake many investigators make when formulating an interrogation strategy is to assume, based on the offender's criminal record or demeanor during the interview, that he must be a non-emotional offender. As a general rule, the majority of all offenders—emotional and non-emotional—possess emotional traits to some degree. For this reason, the sympathetic and factual analysis approaches often should be intermingled. Greater emphasis will be placed, however, upon one or the other, depending on the type of offender.

Regardless of the interrogation approach used, the investigator's goal is to persuade a suspect to tell the truth. Largely because of movie and television portrayals of interrogation, the average citizen has little appreciation for the persuasive efforts required to convince a guilty suspect to offer admissions against self-interest. The basic concepts of interrogation, however, are familiar to any consumer, as found in some common experiences. For example, one of the author's sons wanted to earn some extra spending money, so he became a paper delivery boy. During the orientation session the route manager explained that the only way for the boys to earn more money was by increasing the

number of customers on their route. He then outlined a five-step approach to persuade new customers to order the newspaper:

1. Get inside the front door. A person will not decide to buy the paper if you talk to them through a screen door. Once you are inside the home, you have their attention.
2. Have a sales pitch prepared and keep talking. Overwhelm the customer with the benefits of buying our paper rather than the competitor's. Even though the paper you are selling is more expensive than the competition, emphasize all the benefits of your paper.
3. Overcome objections. Customers will usually come up with some excuse or reason why they do not want to buy your paper. Be prepared to respond to these and turn them around with reasons why the customer should buy your paper.
4. Close the sale by forcing a decision. Offer the customer two choices of either signing up for a trial one-month offer or, for greater savings, a six-month offer. Never ask, "Do you want to buy the paper?"
5. Get the customer's signature on the sign-up card. Once he signs his name, the customer is committed to the sale.

With just a few minor changes of terminology, the boys attending that orientation session also got basic training in criminal interrogation. Indeed, the principles involved in selling a product door to door are similar to those described in this text for eliciting confessions from criminal suspects. The investigator's "product" is the truth, and a successful interrogator sells it in quite the same way as these boys were taught to sell newspaper subscriptions.

Brief Analysis of the Nine Steps of Interrogation

As a result of many years of experience, primarily on the part of the staff of John E. Reid and Associates under the guidance of the late John E. Reid, the interrogation process has been formulated into nine structural components—the nine steps of criminal interrogation. These nine steps are presented in the context of the interrogation of suspects whose guilt seems definite or reasonably certain.[1] It must be remembered that none of the steps is apt to make an innocent person confess and that all the steps are legally as well as morally justifiable. For those investigators who have qualms or reservations about utilizing some of the steps, our discussion of the interrogation process will include explanations as to why these approaches are necessary to persuade a guilty person to tell the truth and would not be apt to cause an innocent suspect to confess.

Presenting interrogation as a nine-step approach is done not only because it facilitates learning the concepts, but also because persuasion occurs in fairly predictable stages. Guilty suspects who eventually confess often start out offering verbal statements

intended to dissuade the investigator's confidence of their guilt, then they psychologically withdraw in an effort to outlast the investigator, and then go through a stage of mentally debating the possible benefits of telling the truth. In utilizing the nine-step approach to an effective interrogation, the investigator should keep in mind two points:

1. The numerical sequence does not signify that every interrogation will encompass all nine steps or that those that are used must conform to a specific sequence.
2. As each step is used, the investigator should be on the alert to evaluate whatever behavioral responses the suspect may be displaying; the responses themselves may be suggestive of the next appropriate step, and in some instances may reveal the suspect's actual innocence.

Step 1 involves a direct, positively presented confrontation of the suspect with a statement that he is considered to be the person who committed the offense. At this stage, the investigator should pause to evaluate the suspect's verbal and nonverbal response. A suspect who says nothing and looks down to the floor will be approached somewhat differently than the suspect who crosses his arms and leans back in the chair while stating, "You're crazy. I swear, I didn't do it." Regardless of the suspect's initial response to the direct positive confrontation, the investigator will proceed to offer a reason as to why it is important for the suspect to tell the truth. This *transition statement* introduces the interrogation theme.

In Step 2 (the Interrogation Theme) the investigator expresses a supposition about the reason for the crime's commission, whereby the suspect should be offered a possible moral excuse for having committed the offense. To accomplish this, the investigator should generally attempt to affix moral blame for the offense upon some other person (for example, an accomplice or the victim) or some particular circumstance such as an urgent need by the suspect of money in order for the suspect to support himself or family. If a suspect seems to listen attentively to the suggested "theme," or seems to be deliberating about it, even for a short period of time, that reaction is strongly suggestive of guilt. If the suspect expresses resentment over the mere submission of such a suggestion, this reaction may be indicative of innocence.

During development of the interrogation theme, a guilty person, as well as an innocent one, can be expected to offer denials of involvement in the offense. The investigator should then embark upon Step 3, which consists of suggested procedures for handling the initial denials of guilt. Basically, this step involves discouraging the suspect's repetition or elaboration of the denial and returning to the moral excuse theme that comprises Step 2. An innocent person will not allow such denials to be cut off; furthermore, he will attempt more or less to "take over" the situation rather than to submit passively to continued interrogation. A guilty person usually will cease to voice a denial, or else the denials will become weaker, and he will submit to the investigator's return to a theme.

Step 4 involves the task of overcoming the suspect's secondary line of defense following the denial—offering reasons as to why he would not or could not commit the crime.

These excuses will consist of what may be viewed as "objections" from the suspect, presented in the form of explanations oriented around economic, religious, or moral reasons for not committing the crime. These excuses are normally offered only by the guilty suspect, particularly when they come after the denial phase of the interrogation. They are significant in that they constitute evasions of a bold denial by the substitution of the less courageous statement as to why the suspect did not or could not commit the offense under investigation. Such an objection causes less internal anxiety than the utterance of an outright denial.

When a guilty suspect's verbal efforts (denials and objections) are ineffective in dissuading the investigator's confidence, the suspect is likely to mentally withdraw and "tune out" the investigator's theme. Step 5 consists of the procurement and retention of the suspect's full attention, without which the interrogation may amount to no more than an exercise in futility. During Step 5 the investigator will clearly display sincerity in what he says. Helpful in achieving this is an increase in the closeness of the previously described seating arrangement between investigator and suspect and physical efforts by the investigator to maintain eye contact with the suspect.

Step 6 involves recognizing the suspect's passive mood. During this stage the suspect is weighing the possible benefits of telling the truth, and this is generally reflected in changes within the suspect's nonverbal behavior (tears, a collapsed posture, eyes drawn to the floor).

Step 7 is the utilization of an alternative question—a suggestion of a choice to be made by the suspect concerning some aspect of the crime. Generally, one choice is presented as more "acceptable" or "understandable" than the other. This choice will be in the form of a question, such as: "Was this the first time, or has it happened many times before?" Whichever alternative is chosen by the suspect, the net effect of an expressed choice will be the functional equivalent of an incriminating admission.

Following the selection of an alternative, Step 8 involves having the suspect orally relate the various details about the offense that will serve ultimately to establish legal guilt. These details can include where the fatal weapon was discarded or where the stolen money was hidden and the motive for the crime's commission.

Finally, Step 9 relates to the confession itself. This step involves the recommended procedure for converting an oral confession into a written or electronically recorded one.

Figure 13-1 illustrates the nine steps. Again, the authors wish to make clear that many cases do not require the utilization of all nine steps. Some guilty suspects may be very verbal during early stages of the interrogation and, once the investigator overcomes these denials, quickly move to the passive stage. Other guilty suspects may not utter a word and psychologically withdraw almost immediately upon being confronted and remain in that state for a long period of time. What is essential for success, however, is for the investigator to recognize what stage a suspect is in and to respond appropriately to the suspect's behaviors and psychological orientation at any given stage of the interrogation process.

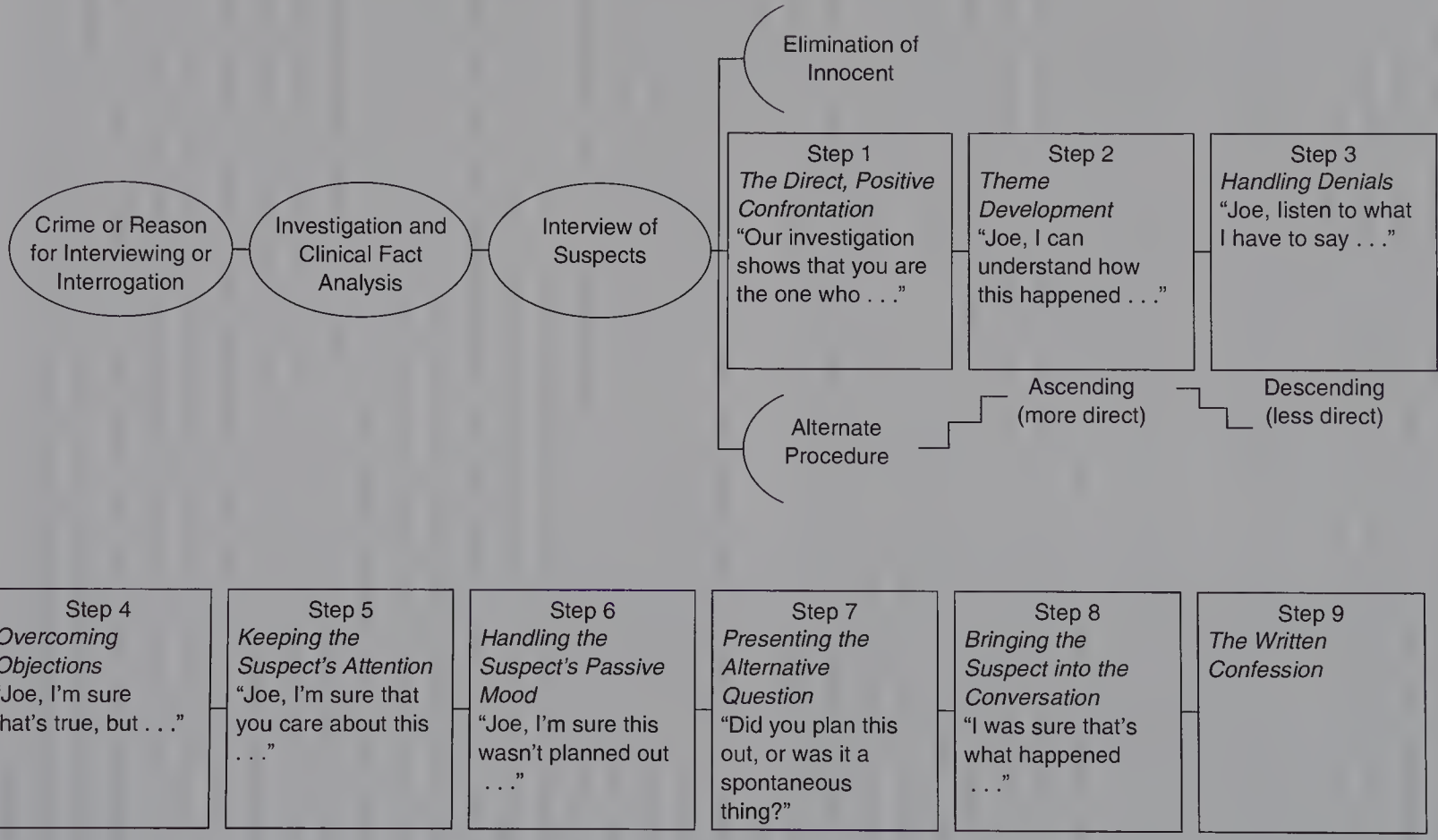

Figure 13–1 The Reid Nine Steps of Interrogation

Preliminary Preparations for Applying the Nine Steps

Before proceeding to apply any of the nine steps, the *Miranda* warnings must be given to a custodial suspect and a waiver must be obtained. In custodial cases, this must occur before the interview. Unless the investigator knows that this has already been done by the person who presented the suspect for the interview, or by someone else in authority prior to the interview, the investigator should give the warnings and obtain the waiver. It is preferable, however, that the investigator be spared this responsibility so that he may immediately proceed with the behavior analysis interview and interrogation without the diversion occasioned by the warning procedure. (The form and nature of the required warnings and of the waiver are fully described in Chapter 17.)

Two points are worth repeating here:

1. The words *guilty, innocent, definite,* and *reasonably* certain, with respect to the issue of guilt or innocence, represent nothing more than labels for interrogation purposes. A final determination of a suspect's status is the province of the judge or jury at a criminal trial.
2. Before the investigator begins an interrogation, he should have knowledge of all available relevant investigative information concerning the crime, witnesses, discoverer of the crime or accuser, and also regarding the persons under suspicion, including the one who is about to be interrogated. In the majority of cases, it is our strong recommendation to conduct a non-accusatory interview with the suspect before proceeding with an interrogation.

Prior to embarking upon the actual interrogation, it is advisable to allow the suspect to sit in the interview room alone for about five minutes. While alone in the room, the guilty suspect will think about the crime he committed, what possible evidence the investigator may have connecting him to the crime and the possible consequences he faces as a result of committing the crime. This period of introspection will tend to increase the level of insecurity and apprehension the suspect experiences at the outset of the interrogation. Some guilty subjects will be so deep in thought and so concerned with their plight that when the investigator enters the room, they will become startled and immediately indicate by their eyes and general appearance that they expect their deception to be revealed. On the other hand, the innocent suspect, even though somewhat apprehensive, will usually turn easily toward the investigator when he enters; although understandably interested, there will be an "at ease" look in the suspect's eyes and the appearance will be a favorable one.

Before entering the interview room, the investigator should prepare and have on hand an evidence case folder, or a simulation of one. Then, at the outset of the interrogation, and at appropriate times during the various steps that follow the initial confrontation, the investigator can make visual reference to the evidence folder. This is to lead the suspect to believe that the folder contains information and material of incriminating significance, even though, in fact, the file may contain nothing but blank sheets of paper. The mere

sight of the file has a desirable effect on both guilty and innocent suspects because of the impression of preparedness on the part of the investigator.

In addition to an evidence file, depending on the nature of the case, the investigator may consider bringing into the interview room other visual props, such as a DVD disc, CD-ROM, audio tape, a fingerprint card, an evidence bag containing hair or other fibers, spent shell casings, vials of colored liquid, and others.[2] No verbal reference needs to be made at all concerning these items of apparent physical evidence. The visual impact of seeing the implied evidence can have a desirable effect on a guilty suspect.

After the suspect has been waiting about five minutes, the investigator's entrance into the interview room should be very deliberate and should be accompanied by an air of confidence. The success or failure of an interrogation depends to a large extent upon the investigator's initial approach and the first impression that is created. If the suspect is not seated, the investigator should direct him to sit. If the suspect is seated and starts to rise, there should be a direction to remain seated.

One of the advantages of conducting a non-accusatory interview before an interrogation is that the investigator can contrast his friendly, approachable demeanor displayed during the interview to a much more serious and firm demeanor at the outset of the interrogation. This apparent contrast within the investigator's comportment will help instill a sense of confidence and sincerity so fundamental to a successful interrogation.

The investigator should be polite but at the same time should maintain a degree of professional detachment as he enters the room. It is well to emulate somewhat the conduct and behavior of a busy medical specialist who calls upon a hospitalized patient to whom the specialist has been previously identified and who anticipates the specialist's arrival. Although the specialist will extend a brief greeting, usually no handshaking or other social gestures occur. The physician proceeds with his professional duties, such as examining the patient's chart and then interviewing and examining him. It is a strictly professional event.

In those rare instances where no interview precedes the interrogation, once the investigator enters the interview room he should not volunteer any handshaking; if, however, the suspect extends his hand to the investigator, the response should be a casual handshake. If the suspect inquires about the investigator's name, only the last name should be mentioned, for example, Mr. Kingston. If the investigator includes an authoritative title, such as Detective Kingston, this not only reminds the suspect of the seriousness of his crime but also psychologically puts the investigator on a different level than the suspect—both effects are undesirable. Furthermore, if the investigator identifies himself as Jack Kingston, this may encourage the suspect to refer to him as "Jack," thereby establishing an emotional familiarity that will serve as a psychological handicap to the investigator.

Step 1—Direct, Positive Confrontation

Principles

At the outset of the interrogation the guilty suspect is closely evaluating the investigator's confidence in his guilt. If the suspect perceives that the investigator is not certain of his

guilt, he is unlikely to confess. Consequently, we recommend that the investigator initiate the interrogation with a direct statement indicating absolute certainty in the suspect's guilt. At the same time, when an innocent suspect is directly accused of committing a crime, he recognizes immediately that the investigator's statement is incorrect and will offer behaviors helpful in identifying his truthfulness.

During testimony, a defense attorney may argue that approaching his client in this accusatory fashion prevented his client from presenting his side of the story. When the interrogation followed an interview, the investigator should respond that a non-accusatory interview was conducted prior to the interrogation at which time the suspect was provided with ample opportunity to tell the truth. Defense attorneys have also argued that the investigator's presumption of his client's guilt was improper for the purpose of establishing the truth. The investigator should explain that, based on all the available evidence, he formed an opinion that the suspect was involved in committing the crime and knew from experience that persuasion would be necessary to learn the truth.

An important part of the direct positive confrontation is the transition statement. This statement offers a reason for the interrogation other than to elicit a confession. Since the interrogation begins by the investigator telling the suspect that there is no doubt as to his involvement in the crime, the investigator must develop a reason for the interrogation other than to elicit a confession. An example of a transition statement is that the purpose for the discussion (interrogation) is to establish why the suspect committed the crime.

Procedures

The Confrontation Statement

In those instances where the investigator has had no prior contact with the suspect, the investigator, while still standing in front of the seated suspect and using the case folder as a prop, should state clearly and briefly something along the following lines: "You're Joe Burns? I'm in here to talk to you about the break-in at Jason's Jewelry Store last week." As that comment is being made, the investigator should finger through the case folder to create the impression that it contains material of an incriminating nature about the suspect.

Although the investigator in this instance has already been insulated from having his own first name used, he has gained a psychological advantage by addressing the suspect by his first name. This is particularly so when the suspect is a person with a professional title, or someone of social, political, or business prominence. Such suspects are thereby stripped of the psychological advantage they may assume they have by virtue of their position. It is a disarming tactic. There are exceptions, however. Whenever there is a significant disparity between an investigator's young age and the older age of the suspect, it may be inappropriate to call the suspect by his first name. Then too, as discussed earlier, a psychological gain may accrue to the investigator by addressing a person of low socioeconomic status by his or her last name (prefaced in appropriate instances by Mr., Mrs., or Miss).

The direct, positive confrontation in the aforementioned hypothetical burglary case should be "Joe, the results of our investigation clearly indicate that you broke into Jason's Jewelry Store last week." In those instances where a behavior analysis interview was conducted prior to the interrogation, upon returning to the interview room the investigator's statement might be something like (using the previous hypothetical arson case), "Mike, I have in this folder the results of our entire investigation. After talking to you and reviewing our results, there is no doubt that you started the fire in that warehouse." This direct, positive statement should be emphatically expressed in a slow, deliberate, and confident manner. The respective positioning of the investigator and suspect are illustrated in the photograph (Figure 13–2). The words *broke into* or *started the fire* have an unmistakable meaning; at the same time, legal or realistic words, such as *burglary* or *arson* should be avoided. (As earlier stated, there is a psychological disadvantage in using words or expressions that conjure up in the suspect's mind the legal consequences of a confession of guilt.)

Figure 13–2 Direct positive confrontation

Note that in the example of a direct confrontation, the investigator referred to "our" investigation. This carries the implication that several investigators have contributed evidence to the case and also share in the belief of the suspect's guilt. The statement, therefore, is more impressive than if the investigator merely had said: "It looks like you broke into. . . ." or "I believe that you started that fire."

In the event that the confrontation in Step 1 seems too strong and, therefore, inappropriate for use in a given situation (for example, by private security personnel—because of cautionary company policy, the security officer's personal relationship with the suspected employee, or some other reason), the confrontation statement can be rephrased in the following ways: (1) "Joe, the results of our investigation clearly indicate that you have not told the whole truth about that missing $2,000" or (2) "Joe, as you know, we have interviewed several people here concerning that fire and, right now, you are the only one we cannot eliminate from suspicion."

This same modification of the confrontation statement may also be advisable in police interrogations if the investigator is not certain as to whether the suspect committed the crime, was present during its commission, or simply has guilty knowledge. Similarly, in a custodial interrogation where the investigator is concerned that the suspect will immediately invoke his rights under *Miranda* if a direct accusation of involvement is made, the less direct confrontation statement may be preferred.

The Behavioral Pause

Immediately following the direct positive confrontation, the investigator should make a statement similar to the following, "I want to sit down with you so that we can get this straightened out. Okay?" While saying nothing further, the investigator should place the evidence folder, and any other accompanying props, off to the side, and position his chair approximately three to four feet directly in front of the suspect. This activity should create a period of intentional silence called the *behavioral pause*. The pause should only last three to five seconds, even though it may seem longer to the suspect.

The purpose for this intentional period of silence is to evaluate the suspect's initial reaction to the direct positive confrontation. This behavioral pause serves two important purposes. First, it provides the investigator with an initial indication as to whether the suspect is, in fact, guilty of the offense under investigation. Second, the suspect's initial response to the direct positive confrontation often renders insight as to how the investigator should proceed with the interrogation.

If, after the first accusation, the suspect responds by asking the investigator, "What do you mean?" or "What did you say?" he is probably stalling for time or trying to reorganize his thoughts that were disrupted by the direct accusation. (The inference is valid only if the accusation was unmistakably clear.) An innocent person will usually have no reason to ask a question as to what the investigator said or meant, and may immediately express resentment over being accused.

During the behavioral pause, a guilty suspect probably will look at the floor or to the side as much as possible in order to avoid direct eye-to-eye contact. This will afford him the time to develop a verbal response, which, in many instances, may not in fact represent an answer at all. The suspect may at this stage also exhibit physical signs of guilt—shifting posture, crossing legs, brushing clothing as if to remove dust, slouching in the chair, or moving back in the chair in order to get as far away as possible from the investigator. To the contrary, the innocent suspect may move forward in the chair, displaying none of the aforementioned gestures. The innocent suspect's face may become flushed, the eyes may concentrate on the investigator, and he may also respond verbally in an angry, blunt manner. No attempt will be made to conceal resentment over the accusation. Some innocent suspects, however, will seem completely surprised and taken aback by the accusation or else will exhibit a moment or two or disbelief. Then, a sincere, spontaneous, and even vehement denial may follow, accompanied by direct eye-to-eye contact. The innocent person may look truly offended and may attempt to stop the false accusation. A guilty person will usually be passive; he may respond with a rather pleading look and answer in the form of a soft denial or a rather vague inquiry to the investigator.

A guilty suspect may attempt to evade detection by employing dramatic physical gestures—moving the head back and forth and running their fingers through their hair in an effort to create the impression of complete desperation. By this means, the suspect can also avoid looking the investigator straight in the eye. He may speak loudly upon the assumption that this will intimidate the investigator into terminating the interrogation. These pretenses should not be permitted to mislead the investigator.

The Transition Statement

As previously indicated, a guilty suspect will not easily be persuaded to offer incriminating statements that could potentially lead to losing his job or a prison sentence. The investigator, therefore, must provide a perceived benefit to the suspect for telling the truth. This benefit can in no way involve a promise of leniency in exchange for a confession. Nor can this benefit center around avoiding inevitable consequences[3] (see Chapter 15). Consequently, the transition statement, which is offered immediately following the direct positive confrontation, must offer a legally permissible reason for the suspect to want to tell the truth.

Furthermore, if the investigator appears too anxious to elicit a confession from the suspect, the credibility of the initial confrontation statement is lost. After all, if there is no doubt as to the suspect's involvement in the crime, the investigator should not require any further statements from the suspect to prove his case. Therefore, not only does the transition statement have to offer a legally permissible reason for the suspect to confess, but it also must establish a pretense for the interrogation other than to elicit a confession. The following statements are examples that can be used effectively to create a pretense for the interrogation.

Comment on the suspect's redeeming qualities. Regardless of the suspect's background, there is usually something positive that can be said about the suspect. It may be that the suspect does not have a lengthy police record or that the suspect appears to be decent and intelligent. In other cases, the suspect may be a responsible parent or hard-working individual. In essence, the investigator tells the suspect that because of these redeeming qualities he feels obligated to offer the suspect an opportunity to explain his side of the story. The following is an illustration of this transition statement:

> John, at this stage of an investigation, I have a choice. I can turn in my report and allow my supervisors to act on the evidence or I can sit down with the person who did something and give that person an opportunity for input in my final report. When I deal with someone who has been cooperative in answering my questions and he doesn't give me a hard time I feel that he deserves a chance to explain his side of the story. That's how I feel about you. You strike me as a decent person and have certainly shown me respect today. On the other hand, if you came in here with an attitude and you were taking the position, "hey if you think I did this prove it!" I wouldn't even bother sitting down with you now.

Explain that the only unanswered question is why the suspect committed the crime. Especially when dealing with an emotional offender, the investigator should focus the interrogation around the circumstances that led up to the commission of the crime. The emotional offender is likely to have morally justified the motive for the crime in some way and is often responsive to this technique. The following is an example of this transition statement:

> Peter, as I said there is absolutely no doubt that you did have sexual contact with your stepdaughter. The reason I wanted to sit down and talk with you about this is to find out what the circumstances were surrounding this thing. The reason why someone did something is often much more important than what he did.

Explain that you need to find out what kind of person the suspect is. Even the most hard core, dishonest suspect perceives himself in a positive manner. No sane person who commits a crime believes that he is fundamentally a no-good criminal. The investigator can take advantage of this distorted perception by creating a concern in the suspect's mind that if the truth is not learned that others may believe that the suspect is basically dishonest, a child molester, a thief, or a hard-core criminal. The following illustrates this approach to the transition statement:

> Sam, in my experience there are two types of people who take money from another person. The first type is a common criminal who is greedy and gives no thought to his actions. He acts impulsively because the only person he cares about is himself. Now the second type of person who would do something like this is basically honest but acts out of character because of pressures in his life. These people oftentimes act spontaneously, on the spur of the moment, and after

> it happens they really feel bad about what they did. Now Sam, there is absolutely no doubt that you did this. What I need to establish with you right now is what kind of person you are.

Explain that you need to establish the extent or frequency of the suspect's involvement. It is effective to use a transition statement that addresses the frequency of the suspect's criminal activity, especially when the issue under investigation is an ongoing crime. With this tactic, the investigator credibly exaggerates the suspect's possible involvement in other crimes. The types of cases where this approach would be applicable are burglaries, auto theft, drug sales, and embezzlements. The following is an illustration of this approach:

> Joe, the only reason I'm talking to you now is that we don't know how many other homes in that area you have entered. There's no question that you went into the home on Wilson Avenue last weekend. My concern is that we have over 20 unsolved burglaries within a two-mile radius of that home. These homes were broken into in the same way the Wilson Avenue home was entered, and at about the same time of day. Now, if you're involved in all of those other 20 burglaries, quite frankly, I wouldn't expect you to say anything. But, Joe, if you're not involved in all of those others, if it was a lot less than 20, we need to know that because it means that there is someone else out there responsible for those. The last thing I want to have happen is for you to be blamed for something you didn't do. That's why I'm talking to you now.

In establishing this pretense for the interrogation, the investigator should not mention the possible consequences associated with being potentially charged with all 20 burglaries. This approach is not designed to place the suspect in the dilemma of having to choose between going to jail for three years or fifteen years, for example. Such a technique is inappropriate and could lead to challenges during a subsequent suppression hearing. Rather, the technique is intended to motivate the suspect to tell the truth by refuting false allegations (see Theme 6).

Misleading Behavior Symptoms Following Accusatory Confrontations

As cautioned in Chapter 9, the investigator, when assessing guilt or innocence, must always be mindful of the risk involved in a reliance solely upon the initial behavior symptoms. Even though a guilty suspect will usually react to the accusatory confrontation in a passive, evasive, and insincere manner, or an innocent suspect usually will react in a sincere, aggressive, and perhaps even hostile manner, there are exceptions, as the following cases illustrate. Cases 1 and 2 concern innocent suspects; cases 3 and 4 concern guilty suspects.

Case 1

In this case, investigative information was strongly suggestive of the suspect's guilt. A female employee, suspected of stealing $2,000 from a bank, seemed distraught. Her eyes were evasive, and she was somewhat disorganized in her speech. The total appearance was

one of guilt. When confronted, she began to cry. However, during her crying she blew her nose, looked the investigator straight in the eye, and sternly said: "But I didn't steal the money!" Each time she made this denial, she became more intense, but she continued to look dejected. However, because she was so direct, and because of her greater intensity in saying, "I did not steal the money!" the investigator said: "Something is on your mind. What is it?" She answered, "I can't tell you, I can't, I can't!" After some persuasion, she disclosed she was pregnant by her boyfriend, who also worked at the bank, and he had agreed to marry her, but his mother, who was not informed of the pregnancy, wanted a large church wedding in several months. The suspect's shame of being pregnant, coupled with the boyfriend's mother insisting on a large wedding at a later date, seemed to be the reason why the girl appeared worn down and dejected, and why her concern about the entire matter portrayed the appearance of guilt.

After postponing any further interrogation, the suspect and her boyfriend disclosed the pregnancy to the mother, and the matter was satisfactorily resolved. A subsequent interview brought forth symptoms of innocence and, indeed, further investigation revealed the identity of the actual thief.

Case 2

In the following case, the suspect's post-accusatory confrontation behavior symptoms were also misleading. An official of a company was suspected of embezzling $150,000. His behavior symptoms were strongly suggestive of guilt, but the reason for this, as was subsequently ascertained, was the fact that he had been convicted of a theft 20 years previously and had served time in a penitentiary. After his release, he had been employed by the company and had become so successful that he had advanced to a managerial position. The president of the company, the only person who knew about the previous conviction, had interceded successfully on his behalf to obtain a pardon. This fact had not been disclosed to anyone else until the investigator, concerned over the suspect's possible guilt as to the $150,000 embezzlement, was confidentially informed by the company president of the suspect's previous record. After this disclosure, and after the suspect was told about it, his whole behavior changed noticeably. He was at ease, his eyes became clear, and he was subsequently reported as innocent, an opinion later verified by another employee's confession.

Case 3

Cash totaling $350,000 was reported stolen in a burglary from a wealthy lawyer's home. Polygraph examinations were given to each of the household employees. An ex-police officer, who was employed as a chauffeur, was identified as deceptive. Confronted with the results, he vehemently denied being implicated and buttressed his loud outbursts of indignation with various portrayals of innocence. The investigator refused to retract the accusation. Although the outbursts were consistent and loud, they did not seem to be sincere indications of innocence; moreover, the suspect was embellishing his denials by dramatic gestures. The investigator continued the interrogation under the assumption of guilt. The suspect finally confessed and hastened to add that, because of a spending spree

with friends, only $69,000 could be returned. Fortunately, some of the remainder of the full amount was recoverable from assets purchased with the stolen money.

Case 4

A comparatively small sum of $180 was missing from an automatic teller machine at a bank. A seven-year employee was reported as deceptive during a polygraph examination and was then confronted regarding the missing $180. His response, loud and clear, was: "I did not take that money!" The investigator then sat down in front of the suspect and again advised him that there was no doubt that he did take the money. The suspect slammed his hand down and again said with anger, "I did not take that $180!" The suspect looked the investigator in the eye while making this additional denial and then looked around the room in disgust as if to say, "I can't believe this!" The investigator then began to offer some justification for the theft, but he was stopped by the suspect's loud response: "You're ruining my life and career. I did not take that money!" The investigator, ignoring this statement, said, "I'm sure if you were dishonest you would have been doing things like this from the first day you started, but you're not basically dishonest. You're like me or anyone else who gets into a jam, and without thinking does a crazy thing, and I'm sure you're sorry for it now." At that point, the suspect, almost in tears, got up suddenly from his chair and walked toward the door of the room. The investigator continued to talk to the empty chair as if the suspect had not left and said, "Joe, if you needed the $180 for some legitimate expense, I can understand you doing this!" The suspect, still standing and staring at the door, buried his head in his arms against the wall and shouted, "I did not take the money." Then he punched his fist against the wall, actually causing slight damage to it. Immediately thereafter, he dropped to his knees and said, "I'm sorry!" The investigator responded excitedly: "Look what you've done to the wall. Now sit down and let's get this matter straightened out." The suspect again stated he was "sorry" and meekly sat down. Once more, he denied, but meekly, that he had stolen the $180. With tears in his eyes, he admitted that a few months previously, he had stolen $500 from the automatic teller machine, but he continued to deny that he had taken the $180. The investigator, persuaded by his earlier behavior symptoms, coupled with the contradictory indications between the wall slamming and the utterance of "I'm sorry," continued with his accusation regarding the $180, but to no avail. However, subsequent developments in the case clearly established that the suspect had, indeed, stolen the $180, in addition to other money beyond the admitted $500. In this case, the suspect had been so committed to his original denial regarding the $180 that he could not reverse himself. Such a reaction is not uncommon in cases where the investigator permits the suspect to become repetitious with the denial.

Justification for Accusatory Confrontation

At the outset of this text we stated that the purpose for an interrogation was to learn the truth. As illustrated, there are occasions when the person on whom an accusatory confrontation has been used is then considered by the investigator to be innocent of

the offense under investigation, even though circumstances were indicative of his guilt. Indeed, we have encountered a number of instances where, through the interrogation process, a suspect initially believed to be guilty was eliminated from suspicion and further investigation identified the true perpetrator of the crime.

The accusatory technique nevertheless can be justified, not only on broadly based considerations but even regarding the particular individual suspect. First and foremost, as to an innocent suspect, recognition must be given to the fact that were it not for the interrogation that ultimately terminated in a conclusion of innocence, the person may well have always remained under a cloud of suspicion. In some situations, incriminating circumstantial evidence may have been used successfully to convict the innocent suspect. Moreover, in a personnel security situation, that suspect may actually have been fired as an employee—if not at that particular time, then at a later date. Between the latter possibilities and the hurt feeling from being wrongly accused (in a strictly private setting), the authors submit that the interrogation experience is the less onerous one.

Once again, the accusations comprising Step 1 are confined to those interrogations where the suspect's guilt seems to the investigator to be definite or reasonably certain. They are also utilized under conditions of absolute privacy, which should minimize the suspect's discomfort. The privacy factor, incidentally, is also one that is protective to the investigator personally because it provides immunity from a subsequent civil suit for slander or defamation of character. That claim can only arise when a false accusation is made in the presence of some third party.[4]

There are many situations where public welfare requires relinquishment of some personal comfort or even a sacrifice of a measure of protection from governmental intrusion. Examples of this are found in instances where the police are legally permitted to stop and even to frisk a person whom they reasonably suspect of having committed, or being about to commit, a criminal offense. The fact that subsequent developments definitely show that the stop-and-frisk was conducted on an innocent person does not have the retroactive effect of rendering the police action illegal. The same is true where the police, acting on reasonable grounds (probable cause), make an actual arrest, including the taking of a person to a detention facility until released by court order. Subsequent proof of innocence does not subject the police to any liability; the only requirement that must be fulfilled is that they acted upon reasonable grounds.

Not only are reasonably based police procedures sanctioned in the public interest, even at the risk of discomfort and embarrassment to potentially innocent persons, but comparable legal sanction also prevails regarding security officers functioning in the private sector. Consider, for instance, the statutory and case law that permits a merchant or a security officer to temporarily detain a person reasonably suspected of shoplifting for the purpose of determining whether the merchandise is in his lawful possession. Where there are reasonable grounds (probable cause) to believe that a person has actually committed the theft by shoplifting, many state statutes specifically authorize an actual arrest by the merchant or security officer. That also is the common law in many states where there is no statute.

An often overlooked factor with respect to the interrogation of suspects is that many criminal offenses can only be solved by the interrogation process, regardless of the availability of sophisticated, scientific investigative aids or highly skilled police or private security investigators.[5] Stripped of the opportunity to interrogate suspects, the investigative process would be emasculated in numerous types of situations. Consider, for instance, a brutal nighttime rape of a woman who had been dragged into an alley. If she is unable to adequately describe her assailant except in a general way (white or black, tall or short, wearing a coat or coatless, blue or white shirt, etc.), there would be no way to lawfully establish the guilt of a suspected assailant who is apprehended in the vicinity of the rape except by the process of interview and interrogation. The fact that the suspect matched the general description of the assailant would not, by itself, be sufficient probable cause to arrest the suspect and subject him to involuntary forensic tests such as DNA or hair fiber analysis. Similarly, cases involving multiple possible suspects such as a monetary theft from an employer, or a child who shows symptoms of sexual molestation, would often remain unsolved were it not for the opportunity to conduct interrogations of a suspect or suspects.

Public welfare, in both police case situations and in private security investigations, renders vitally necessary the legal approval of interrogation efforts, subject always to the constraint of reasonableness under the particular circumstances. The public can ill afford deprivation of interrogation opportunities from either the police or the operators of business enterprises. Providing immunity from criminal conduct is intolerable within both public and private sectors.

An additional factor for consideration with respect to the utilization of the accusatory technique, and particularly on persons who are later established to be innocent, is that in a properly conducted interrogation, an investigator will not extend an accusation beyond the point where mental distress becomes a reasonable probability. There should be no prohibition, however, upon the utilization of the accusatory confrontation that is designed and applied only for the purpose of persuading the guilty to tell the truth, while avoiding the risk of procuring a false confession from the innocent.[6]

Step 2—Theme Development

Principles

Immediately after the direct, positive confrontation described in Step 1, the investigator should begin the development of a "theme." This involves, in large measure, presenting a "moral excuse" for the suspect's commission of the offense or minimizing the moral implications of the conduct. Some themes may offer a "crutch" for the suspect as he moves toward a confession.

Most interrogation themes reinforce the guilty suspect's own rationalizations and justifications for committing the crime. As part of an offender's decision to commit a crime or, in the case of a spontaneous crime, following it, it is natural for him to justify

or rationalize the crime in some manner.[7] The average person can relate to this instinctive mechanism when thinking back over the last time he exceeded the speed limit while driving. The illegal behavior may be explained away by believing that speed limit signs were poorly posted or that a perceived emergency existed where the driver could not afford to be late to a scheduled appointment; justification may be realized in the fact that the driver was not going that much over the speed limit and other drivers were going much faster than he was or the driver may blame his passenger for engaging him in conversation that was distracting. The principle being expressed here is that it is human nature to project blame away from oneself and to create excuses for behaviors that cause anxiety, loss of self-esteem, or guilt.

Similarly, the suspect guilty of a criminal act recognizes that committing the crime was wrong, so he also needs to reduce feelings of guilt, anxiety, and loss of self-esteem. This justification process is one of the most significant differences between an innocent and guilty suspect; the guilty suspect has justified the crime in some manner, whereas the innocent person has not. In justifying the crime, the guilty suspect experiences much less of a troubled conscience when he later lies about committing it.

Because most themes reinforce the suspect's own justifications and rationalizations, it is relatively easy to overcome the deceptive suspect's denials during an interrogation—because the suspect relates to the theme concepts being presented. The innocent suspect, who has not justified the crime, does not relate to the investigator's suggested justifications and rationalizations; he actively rejects such preposterous statements and becomes stronger and more persistent in his denials. It is imperative, however, that the investigator limit theme concepts to moral justifications or rationalizations concerning the crime. If the theme presents threats of inevitable consequences coupled with promises of leniency, it could jeopardize the validity of the confession. Similarly, an interrogation theme should, in no way, attempt to convince the suspect that he is guilty of the crime under investigation. (These, and other factors that potentially affect the voluntariness or trustworthiness of a confession, are presented in Chapter 17.)

A defense attorney may claim that the interrogation theme was presented in an effort to plant false ideas in his client's mind, similar to brain-washing.[8] As evidenced by the innocent suspect's rejection of the investigator's theme concepts, an interrogation theme does not plant new ideas in the suspect's head. The guilty suspect relates to the theme because these ideas, or ones of a similar nature, have already occurred to him as a natural by-product of committing the crime. Just as an innocent suspect will reject theme concepts because he has not justified the crime, if an investigator's theme does not fit the guilty suspect's justification of the crime, that suspect will also reject the theme.

Procedures for Emotional Offenders

Because emotional offenders often experience shame and guilt, themes centered around excusing their criminal behavior are effective because such themes permit the suspect to accept physical responsibility for committing the crime while relieving their emotional

guilt. The selected theme may be based upon a simple, common sense analysis of the suspect's background and probable motive that triggered the criminal conduct. Oftentimes, a guilty suspect will reveal insights as to his own justifications when responding to behavior-provoking questions during a behavior analysis interview. The following questions and responses offer possible direction with respect to theme selection during an interrogation:

Question (Q): What do you think should happen to a person who had sexual contact with a young girl?

Response (R): Well, if it was a very young girl I think the guy probably has severe psychological problems and needs counseling badly. [Suggested theme: Having sexual contact with a child the age of the victim (who was nine years old) is much more understandable than if the suspect had the same contact with a two-year-old girl.]

Q: Under any circumstances do you think the person who killed George should be given some consideration?

R: Well, depending on why it happened, perhaps. [Suggested theme: The suspect did not plan to kill the victim but rather acted on the spur of the moment because of the victim's behavior.]

Q: Have you ever just thought about forcing a woman to have sex with you?

R: Well, sure. I mean, all men have those thoughts. [Suggested theme: The victim initially came on to the suspect and he acted the way any man would under that circumstance.]

Q: Under what circumstances might you be tempted to take money from someone at gunpoint?

R: I'd have to be real desperate for money. [Suggested theme: The suspect committed the robbery out of dire financial need or possible drug addiction.]

Q: Has anyone ever approached you with the idea of taking merchandise from the warehouse?

R: Well, sure. Some employees have talked about how easy it would be to take stuff from here because of the poor security. [Suggested theme: Blame another employee for talking the suspect into stealing merchandise and blame the company for their poor security.]

Q: Why do you think someone sabotaged that computer system?

R: Maybe they were upset with the company for not updating their platform—the one we have is really outdated. [Suggested theme: Blame the company for not keeping up with technology and, thus, making its employees frustrated.]

Approaches To Be Avoided

During the presentation of any theme based upon the morality factor, caution must be taken to avoid any indication that the minimization of moral blame will relieve the suspect of *criminal responsibility*. (In Chapter 17, we discuss how to handle a situation where the suspect asks the investigator: "What would happen to me if I tell you I did this?")

It is important to avoid spending excessive time in presenting a theme in instances where the suspect gives early indications of being on the verge of confessing. When that occurs, the investigator should immediately invoke Step 7 (Presenting an Alternative Question). On the other hand, if the suspect seems resolute in his denials, a considerable amount of time may be required to develop an appropriate theme.

A mistake that criminal investigators frequently make is revealing to the suspect at the outset of the interrogation all the specific evidence that implicates him. Once the investigator reveals such evidence, the suspect knows the strength (or weakness) of the case against him. If the evidence is extremely convincing and strong, the suspect may psychologically withdraw and take the position, "Go ahead and prosecute me." If the evidence is merely circumstantial the suspect may argue the significance or fallibility of the evidence and, thus, relieve anxiety, through this discussion. Further, the introduction of evidence during the early stage of an interrogation may inhibit the investigator's ability to develop an interrogation theme.

A good example of this is the interrogation that follows a polygraph examination. If the examiner bases the premise for the interrogation solely upon deceptive polygraph charts, frequently the suspect will argue the validity and reliability of the polygraph technique.

However, in some instances, it may be advantageous for the investigator to make a passing remark about evidence, but it should not be the focus of the interrogation, nor should the investigator reveal to the suspect all the known evidence. For instance, in a hit-and-run automobile case, the investigator might comment about the dent in the front fender of the suspect's car and that human hair and blood have been found around the dent. Once this is brought to the suspect's attention, the investigator should move directly to a theme and discourage the suspect from offering any explanation for the evidence. If the investigator builds his interrogation around that single piece of circumstantial evidence, the suspect is likely to excuse away the evidence by claiming that someone else was driving his car; he may demand to see the crime lab report or state that he wants to talk to an attorney before answering any more questions. Guilty suspects generally require a face-saving excuse to tell the truth. The threatening approach of bombarding them with evidence of their guilt is likely to invoke a fight-or-flight response where they (1) engage in persistent denials or (2) flee from the interrogation by invoking their rights under *Miranda* or terminate a voluntary interrogation.

Interrogations focused around evidence also have the tendency to lead to statements that threaten inevitable consequences or promises of leniency. In essence, the investigator tells the suspect that the case against him is ironclad and that he certainly will be found

guilty of the crime. The only issue to resolve is the length of sentence the suspect will receive. Under the guise of "offering full cooperation" the investigator tells the suspect that the court will view favorably a confession with respect to sentencing. This statement could render a subsequent confession inadmissible.

Another form of theme development that is unproductive is "high pressure salesmanship," whereby the investigator goes into a rapid-fire monologue, indulging in accusations and perhaps telling the suspect all the investigator knows about the case and about the circumstances pointing toward the suspect's guilt. In such instances, the suspect is apt to respond defensively by offering denials and little of what the investigator says will have any persuasive impact on the suspect.

Basic to any theme application is confidence on the part of the investigator and, more important, a conveyance of sincerity in whatever is said. With respect to the investigator's self-confidence, the fact that a suspect has a criminal record, or even an extensive one, should not be assumed to present an insurmountable barrier to securing a confession. Persons of that type often are persuaded to tell the truth through the tactics and techniques described in this text. In any event, if an investigator becomes concerned over the fact that the suspect has a criminal record and is probably too "wised up" to confess, the investigator will have encountered defeat before even starting.

Also with regard to investigator self-confidence, a suspect with a background as a law enforcement officer is usually not any more difficult to interrogate than anyone else; in fact, such a person is frequently more susceptible to interrogation techniques than individuals without a similar background. Perhaps the reason for this is the suspect's acute awareness of the significance that will be attached to even minor contradictions or slip-ups in a false story; he also knows from his own professional experiences that a guilty person may exhibit symptoms of deception by his behavior and general conduct. The suspect may even be aware of the particular investigator's skill in obtaining confessions. In short, a suspect with a background in the field of law enforcement may have less confidence as a liar than the ordinary criminal suspect.

During theme development, an investigator should never adopt or drift into an indifferent, passive, or lethargic attitude. During the time in which the suspect is being interrogated, the investigator needs to maintain high energy levels throughout the persuasion process. A danger in having lulls or even gaps of time during the interrogation is that the length of the interrogation may become so excessive as to invite later claims of duress. If a guilty suspect is going to be persuaded to tell the truth through the techniques described in this text, he will generally do so within several hours. After three or four hours, unless the suspect is showing clear potential for telling the truth (changing his story, admitting knowledge but not principal involvement in a crime, stating that he cannot tell the truth because of some outside fear, etc.), the investigator should consider terminating the interrogation session and perhaps re-interrogating the suspect at a later time using a different technique.

The most effective attitude is generally one that reveals a calm confidence, wherein there is a patient display of a vital, intense interest to learn the truth, but one that,

at the same time, implies an understanding, considerate, and sympathetic feeling toward the suspect. In conveying a sympathetic, understanding attitude, an investigator must not indulge in fast or glib talk. Except when actually feigning impatience or displeasure, the investigator should talk slowly—even to the point of occasionally hesitating or even seemingly stuttering—in his attempt to formulate a theme.

Identifying the Proper Theme

During theme development the investigator should closely monitor the suspect's behavioral responses to the themes that are presented. If the investigator's suggested moral or psychological justifications are not already present in the suspect's mind, the suspect will often reject the implications of the theme. Obviously, this occurs when an innocent suspect is offered justifications for a crime he did not commit. However, a guilty suspect may also reject a theme because he may have justified his crime in a manner inconsistent with the interrogator's theme. In the following example, a guilty suspect rejects the investigator's "wrong" theme.

A high school student, who was overweight and not very popular, reported to a friend, and eventually the police, that she had been raped while inside a bathroom stall at a high school. The local police department conducted an investigation based on her description of the rapist. As investigative efforts continued, she became less cooperative and began to change her description of the rapist. At that point she was interviewed by one of the author's colleagues and it was clear from her behavioral responses during the interview that she had made up the story about being raped.

During her interrogation, the investigator decided upon a theme centered around fabricating the false claim of rape for attention from her family and schoolmates. This theme was emphasized for more than 30 minutes, but the suspect maintained her story that she was raped. The investigator then tried a theme that placed blame onto the friend, whom she first told about the rape, for causing the suspect to exaggerate her story. At this point the suspect's behavior changed remarkably and shortly thereafter she confessed. What she ultimately confessed to was that she had been sexually harassed in the hallway that morning and was unable to cope with the harassment, so she cried in a bathroom stall during her first class. When she attended her next class a friend asked her why she was so upset. Being embarrassed by her emotional response to the harassment, she told her friend that "something" happened to her that morning. Her friend's persistent questions eventually led to the false claim of being raped.

A fairly reliable behavior symptom that suggests that a suspect is not relating to the investigator's theme is persistent efforts to deny the crime. The investigator needs to assess the strength of the denials to determine whether they are indicative of truthfulness or deception. These guidelines will be covered during the discussion of Step 3. In addition to denials, verbal agreement with theme concepts, such as "I see," "All right," or "Okay," is often a sign that the suspect is not relating to the investigator's theme—a suspect absorbed in the theme is likely to be quiet or express agreement on the nonverbal level, such as nodding of the head.

The suspect's posture and eye contact may also indicate whether he is relating to concepts presented in the theme. A suspect who crosses his arms and leans back in the chair may be offering nonverbal rejection of the investigator's concepts. A suspect who is able to maintain eye contact with the investigator for extended periods of time is probably not relating to the theme. A suspect who turns his body slightly away from the investigator's chair and stares off to the side is probably relating to the theme.

It must be realized that almost all guilty suspects show symptoms of rejecting the investigator's theme during early stages of the interrogation. Because of this, the investigator must spend sufficient time with a single theme to determine whether the concepts of the theme are truly being rejected or if the suspect is simply offering resistance to telling the truth. However, if the previously mentioned behaviors of rejection persist for more than 10 minutes, the investigator should consider changing themes.

When switching to a different theme, the investigator should not indicate disappointment for having presented the first theme. He should just quickly embark upon another, all the while maintaining, or even accentuating, eye contact with the suspect and displaying confidence in the achievement of his ultimate objective—to identify how this particular suspect has justified or rationalized his criminal behavior.

Third-Person Themes

Following the transition statement in Step 1, the investigator may feel awkward immediately developing a theme directly addressing the suspect's crime. A suggested approach is to initially develop a third-person theme wherein the investigator talks about some person or situation that is removed from, but similar to, the suspect's present case. This third-person theme provides a foundation for the eventual presentation of a theme centered around the suspect's crime. It is also advisable to use a third-person theme for suspects who are quite vocal during Step 1—a suspect is less inclined to offer denials when the investigator talks about a situation not directly relating to his crime. The following example illustrates a third-person theme.

> Joe, the reason I want to talk with you today is that you remind me of a fellow we had in here a couple of weeks ago. He was young and ambitious and a real go-getter. By working his way up the ladder at a bank, he went from clerk to teller, and finally he was promoted to auditor within a period of 8 or 10 months. Everything seemed to be going well for him. He had a loving wife, two lovely children, and they were in the process of moving to a newer home in a nice subdivision. One day, while he was balancing the books, he noticed a teller had failed to record a $6,000 deposit. This was the amount the fellow I'm talking about needed to complete a down payment on his new home. On the spur of the moment a decision was made to take the money. I don't think I have to tell you what happened next. The bank noticed the shortage after the customer called. This young auditor came under suspicion, and I remember him sitting right where you are, telling me how sorry he was for taking the money. The reason

you remind me of him is that, just like him, you have a lot going for you. You are intelligent, ambitious, and are basically very honest. I think what happened to you is that on the spur of the moment you decided to do this to help pay bills for food or maybe clothes for your family. . . .

As this example illustrates, the third-person theme should somewhat parallel the present suspect's circumstances or motivation. Although the story should have a "happy ending," such as the person deciding to tell the truth, the investigator should not imply leniency as a result of the other suspect's confession. For instance, it would be *improper* in the above example had the investigator stated: "After this fellow told the truth and explained his side of the story, the bank agreed to make the $6,000 out as a loan and to give him a raise to help support his family."

Specific Themes That Can Be Used

The themes for Step 2 that are presented in this chapter do not constitute the entire interrogation process; they represent the common thread that continues through the remaining four steps until the alternative question is presented. Moreover, as a theme is presented, the suspect may not remain quiet and just listen; instead, he may interrupt with a denial, objection, or other statement. When this occurs, his responses must be handled in the particular manner described in either of the two subsequent interrogation steps (Steps 3 and 4). Following successful application of these steps, there may be a return to one or more of the earlier themes of Step 2 or the investigator may have to utilize other specialized tactics. In other words, the themes only represent a general step among the various other specific steps that follow. In order to explain the themes presented in this chapter, each one will be illustrated by some examples that disclose the very interrogation tactics and techniques that have been used to render the themes effective. The examples themselves may seem to consume only a few minutes each; however, a considerably longer period of time may be required in order to adequately develop and elaborate upon the basic idea.

Throughout the theme presentation process, the investigator should not lose sight of the fact that the moral or psychological excuses offered to the suspect may not represent the actual motivation underlying the offense. In fact, the true motivation for committing a crime may be too psychologically difficult for the guilty suspect to acknowledge, which is precisely why it is so common for deceptive suspects to justify criminal behavior through the process of distorting their actual intentions.

A good example of the foregoing principle was a case in which a male attendant at a hospital was suspected of having sexual contact with a female comatose patient. The hospital set up a hidden video camera in the patient's room and videotaped the sexual encounter. When the attendant was shown the videotape he had no choice but to acknowledge having the sexual contact with the patient. However, he maintained that his motive for doing so was, in no way, for his own sexual gratification but, rather, that he was trying to stimulate the patient to awaken her from the coma.

Suffice it to say, just as when a person who is stopped for speeding justifies his illegal activity (if not to the police officer, at least to himself), the suspect responsible for committing a more serious crime engages in the same mental process of reducing the personal responsibility for commission of his crime. The interrogation theme represents a persuasive effort on the part of the investigator to reinforce those existing excuses or rationalizations within the guilty suspect's mind in an effort to make it easier for the suspect to tell the truth.

Theme 1: Sympathize with the Suspect by Saying That Anyone Else Under Similar Conditions or Circumstances Might Have Done the Same Thing

A criminal offender, and particularly one of the emotional type, derives considerable mental relief and comfort from the investigator's assurance that anyone else under similar conditions or circumstances might have done the same thing. The suspect is thereby able, at least in part, to justify or excuse in his own mind the offensive act or behavior. Yet the person still realizes that a wrong or mistake has injured or damaged another person or the public in general. Self-condemnation, therefore, does not completely satisfy the offender's desire for relief from a troubled conscience. As a matter of fact, the comfort derived from the investigator's assurances that another person might have committed a similar offense merely offers an added incentive to obtain the greater degree of relief and comfort that would be provided by telling the truth. While the suspect is in such a frame of mind, the solicitations of a sympathetic investigator may allow the suspect to believe that if the investigator can understand the reasons for his crime, others too may be more understanding.

A case example involving a hit-and-run accident illustrates how this technique may be used effectively. A hit-and-run driver was told that anyone else under similar conditions of panic might also have fled the scene. He was, therefore, afforded an opportunity to "square himself" with his own conscience. Meanwhile, his realization that the investigator did not perceive his leaving the scene as savage-like rendered his task of telling the truth much easier than would have otherwise been the case. The following line of conversation depicts how this central theme concept was presented to the hit-and-run suspect:

> I'm sure in my own mind that a man like you wouldn't deliberately do a thing like this. I think I know what happened; your car hit something. You were not sure what it was, but you had some doubts; so you got excited and drove away. Now you realize you did wrong. You are no different than anyone else and, under the same circumstances, I probably would have done what you did. Now the shock is over and you, as a good citizen, should tell the truth as to what happened. You certainly did not do this deliberately!

In hit-and-run cases, it is helpful for the investigator to bear in mind the various factors that may account for a person's behavior. The published literature on hit-and-run automobile cases lists a number of reasons why a person may have fled from the scene of an accident, including: (1) experiencing panic or psychological numbness from shock, (2) being under the influence of alcohol, (3) driving without a license, (4) fearing

financial loss or public shame, (5) having a passenger in the car whose presence would have caused the driver or passenger considerable embarrassment, (6) having stolen goods or other evidence of a crime in the car, or (7) fearing exposure for some other criminal offense. Suggesting to the suspect any appropriate one of these reasons, and equating the possibility that anyone under similar circumstances, including the investigator, probably would have done the same thing, will contribute greatly to the success of the interrogation.

In sex offense cases, it is particularly helpful to indicate to the suspect that the investigator has a friend or relative who indulged in the same kind of conduct as involved in the case under investigation. In some situations, it may even be appropriate for the investigator himself to acknowledge that he has been tempted to indulge in the same behavior. During an interrogation of a suspected rapist, one of the authors used the following dialogue to successfully elicit a confession:

> Jim, I think what happened here is that this gal came on to you in the bar and was flirting with you, leaving the clear impression that she was interested in a sexual relationship. But when it came down to it, she changed her mind at the last second. I've got a sister who used to get all dressed up and go to these singles bars. She'd pick a guy out and talk real intimately with him while he was buying her drinks. At the end of the evening the guy, of course, would try to get her alone in his car or apartment. She usually ended up driving herself home, which, obviously, made the guy pretty upset. I think in your situation this gal allowed the relationship to get much closer than what my sister did and, we both know, guys reach a certain point of no return.

Once again, investigators are cautioned that in utilizing the presently discussed theme, they should not make a promise of immunity from prosecution or a diminution of punishment as an inducement for a confession. There is no legal objection to extending sympathy and understanding, to feed into the suspect's own justifications for his criminal behavior as described here, in an effort to elicit the truth.[9]

Theme 2: Reduce the Suspect's Feeling of Guilt by Minimizing the Moral Seriousness of the Offense

It is common for guilty suspects to experience mental relief by believing that what they did could have been much worse and that many other people have committed similar crimes. This is particularly true in sex crimes. In such cases, it is desirable for the investigator to pursue a practice of having a male suspect believe that his particular sexual irregularity is not an unusual one, but rather one that occurs quite frequently, even among "normal" and respectable persons. In this connection, it has been found effective to comment as follows:

> We humans are accustomed to thinking of ourselves as far removed from animals, but we're only kidding ourselves. In matters of sex, we're very close to most animals, so don't think you're the only human being—or that you're one of very few—who ever did anything like this. There are plenty others, and these

> things happen every day and to many persons, and they will continue to happen for many, many years to come.

In sex crimes, it is also helpful for the investigator to state that he has heard many persons tell about sexual activities far worse than any the suspect himself may relate. This will serve to encourage the suspect to admit a particularly "shameful" kind of sexual act. His embarrassment will be minimized.

Whenever referring to the particular sexual act about which the suspect is being questioned, the investigator should not use vulgar terms unless the suspect is incapable of understanding more acceptable terminology. If, in connection with the offense under investigation, homosexuality on the part of the person being questioned becomes an issue, it should never be discussed or referred to as "abnormal" behavior. To the contrary, the investigator should convey the impression (irrespective of his own values) that homosexuality of a consensual nature is within the bounds of normality.

The following case involving a suspect who killed his wife illustrates the application of minimizing guilt feelings. Investigation of the case had revealed that the deceased wife had treated her husband miserably over the years. The investigator proceeded to say:

> Joe, as recently as just last week, my wife made me so angry with her nagging that I felt I couldn't stand it anymore, but just as she was at her worst, there was a ringing of the doorbell by friends from out of town. Was I glad they came! Otherwise, I don't know what I would have done. You were not so lucky as I was on that occasion. Was it something like that, Joe? Or did you find out she was running around with some other man? It must have been something of this sort that touched you off, or maybe it was a combination of several things like that. You've never been in trouble before, so it must have been something like what I've just mentioned—something that hit you on the spur of the moment and you couldn't stop yourself. Anyway, she's gone, so we must depend on you to find out the reason for what happened. You're the only one who can tell us.

Not only is it effective to compare the suspect's conduct with that of "many other people," including the investigator, but, when circumstances permit, it is also helpful to compare the suspect's present offense with prior similar (or lesser) offenses committed by the suspect. This serves to minimize the moral seriousness of the present offense. The application of this theme in the interrogation of a rapist-murderer was instrumental in eliciting his confession of the killing of his last rape victim. In this case, the investigator told the suspect that his rape-murder was no worse than the many other nonfatal rapes he had committed (and to which he had confessed during an earlier period of his interrogation). He was told that in the one case, where death had resulted, he merely "got a tough break"—as was true to a considerable extent because, from all indications, he apparently only had wanted to subdue his victim's resistance rather than to kill her. (He had choked the victim in a fit of passion, which was his usual practice with others, but in this particular instance the girl failed to recover consciousness soon enough. As a result,

he had assumed she was dead and had disposed of her body by throwing it from his car. Her life might have been spared if he had only given her sufficient time to recover from the effects of his earlier violence.) During an interview with one of the authors of the text a few days before the suspect's execution, the rapist-killer stated that at the time of his interrogation, just prior to his confession, he had been comforted by the investigator's remarks regarding the "no worse" aspect of his present offense in comparison with his previous ones.

As earlier stated, the investigator must avoid any expressed or specific statement to the effect that, because of the minimized seriousness of the offense, leniency will be afforded. Through wishful thinking a suspect might surmise in his own mind that, because his crime could have been much worse, he is due some leniency in court. An investigator cannot be held accountable for a guilty suspect's wishful thinking. But at no time should the investigator state, or imply, that the suspect will receive such leniency.[10]

Although the theme under discussion is particularly suitable for emotional offenders, it also is effective on suspects who classify as non-emotional. For instance, in a case of employee theft, a suspect's attention may be called to published reports on the high incidence of larceny and embezzlement among employees. Some actual statistics to consider are:

- A U.S. Department of Commerce study concluded that one-third of all employees steal from their companies.
- Twenty-two major retailers lost more than $6 billion to shoplifters and dishonest employees in 2008, according to the 21st Annual Retail Theft Survey conducted by Jack L. Hayes International.
- From this same report, one out of every 30 employees was apprehended for theft from their employer in 2008.
- The Small Business Administration indicates that 60% of business failures are a direct result of internal theft.
- A Justice Department study, "Theft by Employees in Work Organizations," reported that at least 1 out of 3 employees has stolen from their job in the previous twelve months.

A study[11] involving 345 employees who confessed to stealing from their employer revealed the following statistics:

- These employees confessed to stealing a total of $1,031,970 in money and merchandise.
- Part-time employees are almost twice as likely to steal as full-time employees.
- Employees between the ages of 15 and 23 years old were responsible for 65% of all thefts.

- There was no significant difference between the frequency of thefts by males or females. Males were more likely to steal money, whereas females were more likely to steal merchandise.
- Employees who worked two years or less were responsible for 76% of all thefts.
- The total dollar value of thefts by employees who worked more than two years was more than twice as much as newly hired, short-term employees.
- The most common reason for stealing cited by these employees was that it was easy to steal from the employer.
- The employees' reported greatest concern during an interrogation was the humiliation and shame of admitting the theft.

Theme 3: Suggest a Less Revolting and More Morally Acceptable Motivation or Reason for the Offense Than That Which Is Known or Presumed

The true reason people steal is because they are basically dishonest. The true reason a man sexually molests a child is because he has a sexual perversion. The true reason a gang member kills a rival gang member in a drive-by shooting is because he has not developed the social consciousness to respect life. Yet, even within the deepest core of each of these people's minds, few of them accept the actual motive behind their crime. Rather, the thief believes that he steals because he is desperate; the child molester believes that his conduct represents an act of affection; and the gang member believes it is necessary to kill as a matter of his own survival. Whenever a person lies about a criminal act he committed, it can be safely assumed that, in his own mind, he has also distorted the true motive behind his crime. Because of this, the investigator should always consider theme concepts that describe the motive of the crime in a morally acceptable manner.

A good example of the utilization of this theme is cases of sex-motivated arsonists, especially where deaths result from the fire. Upon reflection, an arsonist may find his conduct highly reprehensible, and his conscience can become greatly troubled. The investigator may diminish that feeling by starting off with a theme centered around starting the fire to get even with parents (where the fire was started in a parent's home) or to get a day off from school (where the fire was set inside a school). It is far easier to admit starting the fire for these reasons than the deliberate act of sexual gratification. Once again, the objective is to have the suspect acknowledge intentionally starting the fire.

Intoxication is a guilt-diminishing factor, which can be used for suspects who are interrogated regarding the crimes that are, to say the least, embarrassing to the suspect. For example, consider the case of a respected citizen who is guilty of taking indecent liberties with a neighborhood child. The suggestion that alcohol affected his judgment permits the suspect an opportunity to "save face" by blaming alcohol for his conduct. Although intoxication usually is not a legal defense, except in certain specific intent types of crime (for example, theft), the investigator can submit it as a reasonable explanation

and as a "face saver" for an otherwise respectable citizen. This approach affords the suspect some comfort with regard to the reaction from relatives, friends, and other persons when they hear about his confession, particularly when a child victim is involved.[12]

A suspect's use of drugs may be approached in the same way as alcohol consumption. It, too, will serve to render a crime less reprehensible in the offender's mind. Moreover, drug addiction can also be presented as the actual motivation for a crime such as robbery or burglary—the impelling need for money to support the drug habit.[13] In other words, the suspect had to rob, burglarize, or commit some other money-objective crime in order to physically survive. The investigator may also point out that when an addict is without drugs, his perceptions and judgments are clouded, causing him to do things that otherwise would not have been done. Furthermore, the person may be told that he is not someone who would seek to commit crimes just for the sake of committing them or who would earn a living that way; what happened was the result of the mistake of becoming dependent on drugs, for which taking another person's money was the only available means to obtain them. By accepting the excuse, the suspect becomes more amenable to tell the truth.

When using a theme that blames alcohol or drug intoxication it is important that the investigator describe a situation wherein the suspect's intoxicated state affected his judgment or impulse control. At no time during this theme, or any other, should the investigator suggest or state that the suspect's use of alcohol or drugs caused him to "black out" and forget that he committed the crime (see "Coerced Internalized Confessions" in Chapter 15).

In a robbery-killing case, the investigator might suggest that the suspect had not intended, or had not planned, the killing, and that the only motive was to get some needed money; nevertheless, the shooting was necessary when the victim resisted the robbery attempt. Another effective theme for shootings that occur during the course of a robbery is to blame the suspect's emotional state at the time of the robbery. In essence, the investigator explains that the suspect is not a hard-core criminal and, because of that, was scared and may have been literally shaking when he pulled out the gun. Because of his nervous condition, the gun went off even though he did not specifically intend to pull the trigger.

In the interrogation of a suspected embezzler, the suggestion may be offered that there was only the intent to "borrow" the money rather than to steal it and that, had it not been for the untimely discovery of the shortage, he would have replaced the money somehow. Another approach with an embezzler, or any other suspect who has stolen money, is to suggest that the money was taken for the benefit of a spouse, child, or another person. This is particularly effective when the investigator knows that another person had been in need of financial aid and had actually received aid from some source. For instance, in one case, a suspected bank teller was known to be financing his son's attendance at a theological seminary, which the teller could not have afforded on his bank salary. The investigator suggested that the teller's desire to assist his son was the motive for the embezzlement, although the investigator knew that the embezzled funds far exceeded the money needed

for tuition. The face-saving motive, however, served the purpose of securing the initial admission, after which the suspect eventually disclosed the real reason for the theft—his gambling activities.

The list in Exhibit 13–1 of distorted motives for committing crimes that suspects have used is derived from the authors' experience with confessed criminal suspects as well as reports from newspaper articles, television accounts, and other investigators who have related their confessions to us. Investigators may find this list beneficial to help gain insight to the criminal mind.[14]

Exhibit 13–1 Common Distorted Motives Presented During Confessions

Arson

- The fire was started as a joke.
- The fire was started merely to point out a fire hazard in the apartment.

Auto Theft

- The car had a "for sale" sign in it and I just wanted to see what kind of shape the engine was in before I bought it.
- I needed transportation really badly to get to work or I would have been fired.

Bribes

- I accepted money from him because I was conducting my own investigation and then I was afraid people might not believe me.

Burglary

- I initially entered the home just to ask directions (use the phone).
- That guy owed me money so I just took what was owed me.

Child Molestation

- I was merely showing love and affection toward the child.
- I was teaching the child about sex because her parents failed to do this.
- The child engaged in all of the sexual contact, not me.
- I was molested as a child and was brought up to believe this was normal behavior.

Hit and Run

- I thought the victim was okay—In the rear-view mirror it looked like he was moving.
- I kept going in order to call the police, but realized I could get in trouble for leaving the scene.

Homicide

- I only meant to scare the victim.
- I only wanted to wound the victim.
- I figured the fire would be contained to the kitchen area.
- Even though I helped buy the explosives and plan the bombing, I didn't really think he would go through with it.
- If I did kill her it was only because I loved her so much.

Indecent Exposure

- What the kids saw was just me urinating.
- I didn't think anyone could see me masturbating.
- I was just scratching my penis when it got hard.

Insurance Fraud

- I only exaggerated the theft to pay off the deductible.
- I staged that accident but really did kind of hurt myself in the fall.

Rape

- She asked me to rough her up as part of a sexual fantasy.
- I had the knife in my hand (during intercourse) to make sure she would not be accidently cut if I had left it on the bed.
- Most women like spontaneous sex, including some level of force.

Theft

- I took the money to help out my family.
- I took the money to pay bills.
- I just wanted to show how easy it was to steal from them.

Upon reviewing this list the reader may legitimately ask, "How does the investigator know these were not the true motives behind the offender's crime?" In many circumstances it is impossible to prove or disprove the suspect's actual motivation. Fortunately, for many crimes, the suspect's motivation is not a necessary legal element to prove guilt; for example, a suspect who acknowledges having sexual intercourse with his 12-year-old stepdaughter under the pretense of introducing her to responsible sexual practices is, nonetheless, guilty of child sexual abuse and statutory rape.

For some crimes, however, establishing "criminal intent" is a necessary element of the crime. In these situations, during Step 8 of the interrogation process, the investigator should attempt to elicit sufficient corroborative details of the crime to demonstrate

the required element of criminal intent. In some cases this is easily accomplished by pointing out the illogical nature of the suspect's earlier statements. Other suspects will be so committed to their original beliefs that they will resist any revised explanation for their crime and maintain the more honorable intention previously expressed. Under this circumstance, the investigator should realize that the suspect's subsequent written confession may contain a false motive, and the investigator should readily acknowledge this during testimony. This acknowledgment should, in no way, distract from the truthful acknowledgment of the suspect's personal responsibility for committing the crime. An integral part of such cases will be whether the jury believes the defendant's stated justifications. Under this circumstance, the investigator is advised to explain to the jury that the confession represents the extent of responsibility the suspect was willing to accept during the interrogation.

The primary importance of securing an accurate explanation for the offense lies in the fact that, in some isolated cases, the real reason or motivation may be subject to corroboration by subsequent investigation (by both prosecution and defense). Consequently, an untruthful motive may be identified and have to be acknowledged at trial. As previously stated, many guilty suspects will adhere to the face-saving explanation suggested by the investigator. This risk, however, is not serious, particularly in view of the fact that many guilty persons will resort to this face-saving device even absent such suggestions by an investigator—the guilty suspect often mentally distorts the actual motivation for committing his crime to the point that he comes to believe the face-saving excuse. Intentions, unlike behavior, represent beliefs and opinions and do not exist in a concrete sense. Fondling a young boy's penis represents a behavior that either did or did not occur; fondling a penis to show love and affection (as opposed to the more reprehensible motive of achieving power or sexual gratification) represents a belief that does not exist in a physical or material sense and therefore is subject to interpretation and perceptual biases.

To further illustrate this concept consider the following case. A busload of elderly citizens who were on their way to a baseball game reported that a man driving a car pulled up alongside the bus, pulled down his pants, and masturbated in front of the elderly ladies. Several of them wrote down his license plate information and he was subsequently arrested. During his interview the suspect stated that he may have been driving down the particular interstate at the time in question and could have passed the bus. However, he denied ever exposing his bare penis or having any physical contact with his penis while on the freeway. During a subsequent interrogation the suspect confessed to "scratching" his bare penis while passing the bus. The suspect explained that he had a medical problem in the genital area that caused irritation. He acknowledged that his penis could have been erect because of the scratching and estimated that the ladies could have seen his bare penis for up to a minute. Although this confession did not accept any sexual fulfillment, when contrasted with his earlier denials and considering the improbability of his account, it was sufficient for a conviction.

Moreover, as stated earlier, it is also a fact that most confessors to crimes of a serious nature will lie about some aspect of the occurrence, even though they may have disclosed the full truth regarding the main event. They will lie about some detail of the crime for which they have a greater feeling of shame than that which they experience with respect to the main event. For instance, a sex-motivated murderer may make a complete and truthful disclosure of the killing, but, at the same time, he may lie about the nature of his actual sexual acts with the victim. A burglary-murderer may freely reveal all the details of the killing but may lie about taking a gold crucifix from the victim's home.

The foregoing are psychological realities and it is advisable for judges, prosecutors, defense counsel, and criminal investigators to be aware of them in evaluating the trustworthiness of confessions that are obviously lacking in completely accurate disclosures of the details of the admitted offense.[15]

A caution is warranted concerning the use of a theme that suggests a morally acceptable motive for the crime. As previously indicated, an interrogation theme should not absolve the suspect from legal consequences associated with his crime. Consequently, an investigator should not suggest, as a *primary theme*, that the crime was committed accidentally. Examples of this include describing sexual contact with a minor as "inadvertent," that an arsonist started the fire as a result of careless use of smoking materials, or that a homicide was committed accidentally. Opponents of interrogation refer to this as "the accident scenario" and argue that once an investigator removes criminal consequences from an act, many innocent suspects will falsely accept responsibility for an act because, in their mind, they believe that no negative consequences will result if they admit doing something accidentally.

There are also guilty suspects who will only be persuaded to talk about their crime if the interrogator, after exhausting other themes, suggests the possibility that the event took place in the context of an accident. Although the suspect's acceptance that he did something accidentally may have minimal use as evidence, it may serve as a precipitator to learn the full truth from the suspect about the actual circumstances surrounding the act. For a more detailed discussion of this technique, see Tactic 3 on page 243.

Even when the investigator does not introduce the possibility that a crime was committed accidentally, the guilty suspect may incorporate that explanation on his own accord. It is not unusual, especially when interrogating a suspect on a particularly heinous or embarrassing crime, for the guilty suspect to accept physical responsibility for the crime but deny wrongful intent by claiming that his actions were inadvertent or accidental. Under this circumstance, the suspect has offered an admission that must be converted to a confession, which will be discussed under Step 8 of the interrogation process. Of significance to this discussion, however, is that the suspect presented the accident explanation on his own volition. Because of this, the acceptance of physical responsibility for the act is, in all probability, truthful. If the suspect maintains his position that the act was committed accidentally, it will be up to a jury to evaluate the credibility of his explanation.

Theme 4: Sympathize with Suspect by Condemning Others

This theme is three-pronged: (1) condemn the victim, (2) condemn the accomplice, or (3) condemn anyone else upon whom some degree of moral responsibility might conceivably be placed for the commission of the crime under investigation. The psychological basis for these approaches can be appreciated quite readily by anyone who has committed noncriminal wrongdoings and has had to "own up" to them. There is a natural inclination to preface an admission with a condemnation of the victimized person or thing, or with a statement purporting to place part or even all the moral blame upon someone else. The same mental forces are in operation in matters involving criminal offenses—and to an even greater degree because of their more serious nature.

In view of the fact that self-condemnation of this type so frequently accompanies a confession of guilt—with the offender seeking by this means to more or less justify or excuse the offense in his own mind—it seems only reasonable to presume that an investigator's condemnation of the offender's victim, accomplice, or others would prove to be effective in persuading a suspect to tell the truth. Moreover, actual experience has demonstrated this to be so. The following case situations illustrate the manner in which this technique can be applied.

Condemning the Victim. The propensity of a wrongdoer to put all or part of the moral blame for his conduct upon the victim will be readily apparent by a reflection upon the childhood experiences of most individuals. The following event, which assumes the participation of two young boys (one of whom the reader should take the part of), is illustrative:

One Sunday morning you see little Johnny, your next door neighbor, standing on the sidewalk all ready for Sunday school or church. Just because of your own disagreeable mood, and for no other recognizable reason, you push Johnny down. The fall tears a hole in the knee of his trousers. He runs crying to his mother, and then your mother has you before her for an explanation of the event and a possible reprimand or punishment. What was your initial reaction? To deny it all; to deny you pushed Johnny. But that cannot be done under present circumstances because his mother, or perhaps your own mother, saw you push Johnny, and she only inquires of you, "Why did you do it?"

If you conducted yourself according to the usual pattern, you probably responded somewhat as follows: "Mother, he pushed me first" or "He called me a bad name"—or, better yet, "Mother, he called you a bad name! That's why I pushed him." All this was untrue, of course, but you defended your actions in this manner. You condemned the victim, and in doing so you reacted in a perfectly normal way.

Even adults resort to an equivalent kind of blame-escaping tactic. What does the normality and prevalence of this victim-blaming characteristic in wrongdoers suggest for criminal interrogation purposes? It suggests that the investigator use it in the interrogation of criminal suspects—in other words, during the course of an interrogation, the investigator should develop the theme that the primary blame, or at least some of the blame, for what the suspect did rests upon the victim.

Consider, for instance, the case of a man suspected of killing his wife. The investigation reveals that the wife had treated the suspect miserably over the years. Under such

circumstances, it is recommended that the investigator should let the suspect know that the investigator is aware of what the suspect had been up against. The investigator should condemn the wife for her conduct, making the point that, by her own conduct, she herself had brought on the incident of the killing.

In the type of case just described, much can be gained by the investigator's adoption of an emotional ("choked up") feeling about it all as he relates what is known about the victim's conduct toward her spouse. This demonstrable attitude of sympathy and understanding may be rather easily assumed by placing one's self "in the other fellow's shoes" and pondering this question: "What might I have done under similar circumstances?"

Some outstanding examples of the effectiveness of this technique are to be found in sex crimes where the victims are children. In such cases, when a male adult offender confesses, he frequently places the blame upon his victim, even though the victim may be a very young child. The presence of this trait in itself should suggest the technique to be used in the interrogation of offenders of this type—the condemnation of the victim; the placing of the blame upon the child for doing something that triggered the suspect's emotional outburst. This suggested technique may be viewed with skepticism by some persons who either cannot conceive of themselves as committing such an offense or who, even if they could get past that first hurdle, would never blame a child. However, persons who commit offenses of this type are basically moral cowards; in their mind they believe the child is at least partially to blame for some aspect of their own sexual behavior.

In one case that involved the interrogation of a 50-year-old man accused of having taken indecent liberties with a 10-year-old girl, the suspect was told: "This girl is well advanced for her age. She probably learned a lot about sex from the boys in the neighborhood and from the movies and TV; and knowing what she did about sex, she may have deliberately tried to excite you to see what you would do."

The offender then confessed, but, true to the characteristics of his group, he proceeded to place the blame on the child. Even if this had been so, he would have been just as guilty in the eyes of the law.[16]

Whenever a sex offense involving a very young female has resulted in some actual physical harm to her, it is advisable for the investigator to supplement the placing of blame on the child with a statement that the suspect must have been only trying to please her—just trying to make her happy—and that any harm to her was purely inadvertent.

The interrogation technique of condemning the victim can also be used advantageously in other types of sex crimes—for example, a forcible rape—by suggesting to the suspect that the victim was to blame for dressing or behaving in such a way as to have unduly excited a man's passions. The discussion might go somewhat as follows:

> Joe, no woman should be on the street alone at night looking as sexy as she did. Even here today, she's got on a low-cut dress that makes visible damn near all of her breasts. That's wrong! It's too much of a temptation for any normal man. If she hadn't gone around dressed like that you wouldn't be in this room now.

If the forcible rape occurred in the suspect's car or in his or the victim's residence, she can be blamed for behaving in such a way as to arouse the suspect sexually to a point where he just had to have an outlet for his feelings. For instance:

> Joe, this girl was having a lot of fun for herself by letting you kiss her and feel her breasts. For her, that would have been sufficient. But men aren't built the same way. There's a limit to the teasing and excitement they can take; then something's got to give. A female ought to realize this, and if she's not willing to go all the way, she ought to stop way short of what this gal allowed you to do.

Where circumstances permit, the suggestion might be offered that the rape victim had acted like she might have been a prostitute and that the suspect had assumed she was a willing partner. In fact, the investigator may even say that the police knew she had engaged in acts of prostitution on other occasions; the question may then be asked, "Did she try to get some money out of you—perhaps more than you actually had, but once you were that close to her you couldn't help but complete what she started?" Any such condemnation will make it easier for the suspect to admit the act of intercourse or at least his presence in the company of the victim.

The degrading of the character of the victim can also be used in cases such as one in which the suspect is being interrogated regarding the killing of a fellow criminal or even a police officer. The victim can be pictured as "no good" and as one who has always been involved in crooked deals and shakedowns.

In assault cases, the victim may be referred to as someone who had always "pushed other people around," and that perhaps he finally got what was coming to him. Furthermore, the victim may be blamed for having initiated an argument or perhaps for even having threatened physical harm.

The main objective of the investigator in many instances is to have the suspect place himself at the crime scene or in some sort of contact with the victim. Once that is accomplished, the investigator will later be able to have the suspect relate the complete facts of what occurred. For instance, in an assault case, once the suspect admits having been involved in the incident, the exercise of a little patience will ultimately result in a disclosure of a guilty person's full responsibility for the occurrence.

In a robbery case, the victim may be blamed for having previously cheated the suspect or perhaps for stealing some property from him, and it may be brought out that the suspect's intent had been merely to settle the account. In a case where the victim was an assumed stranger, the victim can be blamed for "flashing money" or putting the suspect down in front of friends and the robbery described as merely an effort to teach the victim a lesson.

In theft cases involving employees, particularly first offenders and those whose motives arose from an actual need for money rather than from some other circumstances, the employer should be condemned for having paid inadequate and insufficient salaries or for some unethical or careless practice that may have created a temptation to steal. For example, in interrogating a bank teller, the suspect might be asked, "How much money

do you make, Joe?" after which the investigator could mention a purposely overstated amount. Then, when the suspect states the actual salary figure, the investigator may say:

> Egads, man, how in the world can anybody with a family the size of yours get along on that kind of money in this day and age? Look at the temptations you face every day! You handle thousands upon thousands of dollars for a salary like that! And you're not only supposed to live on it, but be a first-rate dresser as well. That's something common laborers don't have to do. They can go around in old, dirty clothes, and they make twice as much money a day as you do. I know how financially pressed you were. You were so hemmed in you could see no way out except to do what you did. Anyone else confronted with a similar situation probably would have done the same thing, Joe. Your company is at fault. You work hard but can't get by on your small salary; so you arranged for a loan and of course you had a hard time paying it back and you missed some payments. Then you probably tried to get another loan someplace else to pay off the previous one. So you're forced to do something like this to pay your bills and now you're being questioned about it. I can tell you this—if you received a decent salary in the first place, you wouldn't be here and I wouldn't be talking to you. Joe, I'm sure that's the answer. Now tell me, was it because you couldn't get along on your salary, Joe, or was it because you were looking after some woman on the side? I'm sure you couldn't get by on your salary alone. I'm also sure that if you received an adequate salary in the first place, you wouldn't have had to get a loan and you wouldn't be here now." [The preceding three sentences actually represent the "alternative question" technique discussed in Step 7.]

In certain case situations, an employer may be blamed for some perceived unfair treatment of the suspect, such as a demotion, a promotion with additional responsibilities but without commensurate pay, or the denial of a promised raise in salary.

Following is an example of how the technique of condemning the employer for his carelessness may be used with employees such as household maids. Assume that the missing item under investigation is a fur coat.

> Helen, your employer had several fur coats and I'll bet she threw them down all around the house or else treated them like they were cheap pieces of cloth. Many times you probably had to pick them up and put them away yourself. You probably got the idea she didn't much care for the coats and wouldn't even miss one if it did disappear. That's probably what gave you the idea. Then after you did this, maybe you got to thinking about what you had done and would like to have brought it back but couldn't.

The following case illustrates a variation of this concept of blaming the victim. A man was found decapitated in his bed at home. He had been an unruly alcoholic for several years, living with his wife and 15-year-old son. The wife became the chief suspect, and the investigator attempted to blame her husband for having mistreated her and their son,

for having spent all the money on alcohol, and for having made their lives miserable. The wife remained impassive and emotionally distant. As a last resort, the investigator told the suspect, "Okay, if you say you did not do it, then it must have been your son." As the investigator made a move toward the door, the suspect said, "Leave my son alone. He had nothing to do with it. I did it myself." Thereafter, the suspect gave a detailed account of the murder.

Condemning the accomplice. For much the same reason that a youngster with a baseball bat in hand alleges to an irate homeowner near the playing field that "we" (he and his teammates) broke the window rather that stating "I" did it (meaning the boy who struck the ball its damaging blow), the criminal offender is naturally inclined to have someone else share the blame or even be blamed altogether for the commission of the crime in question. Any line of interrogation, therefore, that tends to lift from him some of the burden of guilt for the criminal act will make the suspect that much less reluctant to confess.

It has always been a temptation, or even an instinctive reaction, for children to blame their playmates, in full or in part, for the mischief they themselves did, either alone or with their help. For instance, recall such an occurrence as this. A youngster and his friends were at a loss as to what to do some summer afternoon. The youngster gazed at a neighbor's tomato patch and got the idea that it would be fun for everyone to engage in a "tomato war"—plucking the ripe tomatoes and throwing them at each other. This they did, all as a result of the one youngster's own bright idea, but when his father began to question him about the event after receiving the neighbor's complaint, what did the boy say? Did he own up to the deed and accept responsibility for leading his playmates into the tomato patch? He did not! First, he tried to lie about it all, to deny any participation whatsoever in the act of destruction. But someone saw him throwing the tomatoes, and this his father knew. So what next? He instinctively tried to put the blame on "the other fellows." "Dad, I didn't pull any tomatoes off the bushes. The only ones I threw were the ones that had been thrown at me." Adults often seek the same way out when confronted with an accusation of wrongdoing that involved the participation of other persons. Therefore, when interrogating a suspect in a case involving another participant or participants, it is advisable to suggest that the primary blame, or at least some of the blame, belongs to the other person.

The manner in which the technique of condemning the accomplice may be utilized is aptly illustrated in the following description of an interrogation of a property owner accused of arson. The suspect had invested heavily in a real estate project that, as it neared completion, seemed doomed as a financial failure. In charge of the property in question was a handyman whose mental capacity was somewhat deficient. After a fire of suspicious origin, in which a large and heavily insured building was destroyed, the handyman, upon being questioned by investigators, confessed that he had set fire to the place at the request of the owner. On the basis of this confession, together with the evidence that the fire was of incendiary origin, the owner was arrested. At first he denied his guilt, and he continued to do so even when confronted with the testimony of his employee. Then,

the investigator proceeded to apply the above-suggested technique of condemning the accomplice. The investigator's expressions in this respect were as follows:

> We all know—and you know—that there's considerable truth to what your employee says about the fire. We also know that a man of your type may not have done such a thing had it not been suggested or hinted at by someone else. It looks to me as if this fellow you have working for you may be the one who conceived the idea. He knew you were having a tough time financially, and he probably wanted to be sure his pay would go on, or perhaps he was looking for even more than that. For all I know, he might have done this just for the purpose of getting you in trouble. Maybe he wanted to get even with you for something he thought you had done to him. That I don't know, and we won't know the true explanation unless you tell us. We know this much: The place was set on fire: your employee did it; he says you told him to do it. We also know you haven't told the whole truth.

The suspect admitted that he had known that the property was to be set afire and had approved of the burning. At first he insisted, as the investigator had indicated as a possibility, that it was the employee's idea, but this version was false. Nevertheless, for a few minutes the investigator permitted the suspect to bask in the sunshine of this partial admission and reflected guilt and to derive therefrom the attending mental comfort and relief. However, soon thereafter the investigator began to point out the lack of logic and reasonableness in the suspect's fixation of primary blame upon his employee. The suspect was told that he still did not look as relieved as a man should look after telling the truth. Then the investigator proceeded to explain sympathetically that by coming out first with only part of the truth, he had done what all human beings would do under similar circumstances. Finally, as a climax to such comments, the investigator urged him to tell the whole truth. The suspect then admitted that the idea of burning the building was his own. For the purpose of inducing him to begin his confession, however, it was necessary and effective for the investigator to start off by first blaming the accomplice.

Another example of the "condemning the accomplice" technique is the following case of a robbery-murder, in which the police were convinced of the guilt of a 72-year-old man and a 30-year-old accomplice. The younger man, during his interrogation, was told, "That guy's always getting younger people into trouble. He's been in trouble all his life, but he's never been in jail himself, although he's certainly been responsible for some younger fellows going there. It's time he got what was coming to him; he's long overdue."

Another example of the "condemning the accomplice" technique is the case of the robbery-murder of an old recluse that had remained unsolved for 20 years, even though the police were convinced that a certain known hardened criminal was responsible along with two unidentified young men. The police finally learned the identity of one of the two young men. When he was arrested, it was noticed that his hair was partially gray, and he seemed nervous and apprehensive. The investigator was informed that for many years, the older, experienced criminal had lured young men into his robbery gang and had trained them to commit robberies such as the one in which the old recluse was shot to death. In

the interrogation of the suspect, the investigator first commented about the suspect's prematurely gray hair and said:

> I'll bet ever since that day 20 years ago, that old man stands as a ghost at the end of your bed, which prevents you from sleeping and scares you to death so that you don't even want to go to bed. You're feeling miserable, Jim, because you are living with that man's death on your conscience. If it wasn't for that old reprobate who got you into this, your hair wouldn't be gray at your age and you would not be feeling as you do all the time. Your life has been ruined by that old S.O.B. He got lots of young guys like you into trouble. Everyone out there knows that, but you got the unlucky break of being with him when he shot that fellow. Jim, you won't get any rest until you get that off your conscience by telling the truth about it.

After the investigator had commented several times about the color of the suspect's hair and why he was prematurely gray, and after he had berated the old "reprobate" partner for getting the younger suspect into this trouble, the suspect confessed and substantiated that the older man had led him and another young man to the cabin of the recluse, where, without warning, the older man had shot the recluse because he had not moved fast enough in giving up his money; then they set fire to the cabin in an attempt to cover up the murder.

Another case in point is one that also indicates how to select the first of two joint offenders for interrogation. A man was being robbed in a wooded area and, as he resisted, the bigger and more forceful of two robbers grabbed an ax and split the victim's head wide open. A witness reported that the other robber, the smaller of the two, had searched the victim thoroughly and had stolen his watch, wallet, and ring. It was quite evident that the more forceful robber seemed too stern to be the first one to be interrogated because when any preliminary questions were put to him, he answered with a grunt or merely exhibited an angry look. It was then decided to interrogate the smaller robber who had stolen the valuables after the victim had been hit on the head and left to bleed to death.

The investigator confronted the suspect with the fact that basically he was only a thief but had been made into a killer because of his partner's conduct. The investigator stated that practically everyone in the world steals, but few persons are murderers. "Your partner is a murderer," stated the investigator, "whereas you only wanted to take something. It is important, however, for you to get the truth in as to what you did and show that you yourself did not kill this man." The investigator concentrated on this theme of having the suspect reveal exactly what he himself had done. The suspect then told how he had stolen the man's watch, wallet, and ring after the victim was on the ground. Following this, the suspect told what he had done with the watch, wallet, and ring. He was then asked about the ax-slaying by his partner. The investigator was convinced that the ax-wielding robber probably would not give a detailed confession, but, after indicating his disgust with his babbling partner, he did reluctantly acknowledge his guilt and confirmed the smaller man's formal confession.

In applying this technique of condemning the accomplice, the investigator must proceed cautiously and must refrain from making any comments to the effect that the blame cast on an accomplice thereby relieves the suspect of legal responsibility for his part in the commission of the offense. Related to this concept is our strong recommendation to avoid any mention of a "plea bargain" in exchange for testifying against the accomplice. Any discussion of a possible reduced sentence or other favorable treatment should be instigated by the prosecutor, not the investigator. To reiterate, by suggesting the application of this technique, the authors merely recommend a moral condemnation in the form of expressions of sympathy for the suspect's "unfortunate" experience in having been influenced by a "criminally minded associate."

Condemning anyone else upon whom some degree of moral responsibility might conceivably be placed. In addition to victims and accomplices, there are others who may be condemned to good advantage. Sometimes the investigator may find it effective to place blame on government and society for permitting the existence of social and economic conditions that are conducive to the commission of crimes such as that for which the offender is accused. On other occasions, even the offender's parents may be alleged worthy of blame for the offender's conduct. Numerous other possible recipients of the investigator's condemnation might also be mentioned, but the following case descriptions will suffice to illustrate the application and effectiveness of this technique.

In the interrogation of an accused wife-killer the investigator proceeded to condemn the wife's relatives, who were known to have meddled in the offender's marital affairs. They were blamed for having deliberately set out to render the suspect's married life unhappy. At one point, the investigator remarked that probably the relatives themselves deserved to be shot. During the discussion, the investigator did not spare the wife, nor wives in general. The suspect's wife was alleged to be a provocative, unreasonable, and unbearable creature and was portrayed as a woman who would either drive a man insane or else to the commission of an act such as the present one in which she herself was the victim. In this respect, however, the investigator stated that the suspect's wife was just like most other women. He was also told that many married men avoid similar difficulties by becoming drunkards, cheats, and deserters, but unfortunately the suspect tried to do what was right by "sticking it out," and it got the better of him in the end. All this rendered the offense less reprehensible in the suspect's own mind, thereby overcoming his desire to avoid an exposure of guilt.

In an arson case, an ambitious young man, who had worked hard to accumulate a sizable amount of money, was anxious to become successful in merchandising a new product. Some promoters led him to believe it was a "sure thing," and he was so convinced by them that he purchased a substantial amount of it, rented a store, and invested in a sizable unused warehouse with a long-term lease. Within a short time, the merchandise proved worthless. The young man attempted to cancel his lease, but the landlord refused. A friend of the young man suggested he soak the premises with gasoline and set fire to it so as to terminate the lease. He followed this advice, but, when he set the warehouse afire, an explosion blew him out of a first-floor window. By quickly removing his clothing

he survived with a few bodily wounds. He left town until his wounds had healed. Upon his return, he was interrogated about the occurrence. The investigator proceeded to place the blame on the landlord for not releasing him from the lease, whereas the suspect was lauded for his ambition and his honest desire to become successful. He was told that he should be grateful for still being alive and in good health. The suspect then disclosed the facts about setting the fire. He also stated that his anger toward the landlord was a factor in his use of an excessive amount of gasoline, which resulted in the explosion that caused him to be blown out the window.

During the interrogation of a married rape suspect, sometimes blame may be cast effectively upon the suspect's wife for having not provided him with the necessary sexual gratification. The discussion may proceed upon the following lines:

> If your wife had taken care of you sexually, as she should have done, you wouldn't be here now. You're a healthy male; you needed and were entitled to sexual intercourse. And when a fellow like you doesn't get it at home, he seeks it elsewhere. Moreover, since you're not able to search for and date a female as a single man is free to do, a fellow like you has to take what he finds; and sometimes, because of his terrific, pent-up urge, he has to go about it in a rather hurried-up fashion, as you did here. That's the reason, isn't it Joe?

When the offense is theft or embezzlement, a spendthrift wife or the financial burden of a child may be blamed for the suspect's thievery. He may be told:

> Your wife [or daughter, or son, if such is the case] had been pressuring you for more money than you were earning. You cared enough for her so that you wanted her to have all she asked for—even though you didn't have it to give, Joe. What you did here was for her, not for your own selfish interests. She shouldn't have asked for all she got from you. Now she will probably understand, and she should stick by you in your present difficulty. It's time now, Joe, for you to tell the truth.

A person who has taken indecent sexual liberties with a young girl may be told that her parents are to blame for letting her roam around by herself as they did. In circumstances where the suspect had lured the child into his car or elsewhere by offering candy, or something else in the way of a gift, the parents may be blamed for not providing such things themselves. Along with the blame-fixing upon the parents, the child herself may be blamed, as was suggested in the discussion of the earlier technique of condemning the victim. A moral coward of this type finds it comforting to have his conduct understood on the basis of one or more of these considerations.

A burglar or robber may be told that if there were no "fences" who bought and sold such stolen goods, the thief probably would not have done what he did. The investigator may talk to the suspect somewhat as follows, particularly where the principal objective is to build up a case against the "fence" himself:

> Men like you wouldn't do the things you do if there were no fences. Fellows like that are making monkeys out of people like you. You go out and risk your neck

> doing the job and taking all the chances of getting shot and killed. Then you bring what you took to one of these jerks and he gives you about 10% of its value, after which he unloads it at a 90% profit, minus, of course, what he has to give to the police as a payoff. He makes a big haul. You take the chances; he makes the money. If there were no such people like that, men like you probably wouldn't get into this kind of trouble, because if you couldn't get rid of the stuff, there would be no use taking it. Did any of these fences ever help you or any other men like you when you got in trouble? Hell, no! When a fellow like you gets put away, the fence gets himself someone else to do business with, and when that one gets sent away, he finds another replacement. Everyone knows this, but when a fence is questioned, he grins and says, "You don't have anything on me; I didn't do anything." We want to get at these fellows. If we can shut them off, you and a lot of others wouldn't be getting in trouble. They've been making suckers out of you guys long enough. It's time they be put out of business. They've been riding in Cadillacs long enough. What's this guy's name, Joe?

Blame may be cast on high-interest moneylenders (the so-called loan sharks) for pressuring a suspect for the payment of his loan at a time when he was unable to pay; in other words, his creditors "forced" him to steal. In such instances, the suspect may be told:

> Joe, I know that it's hard today to get by without going into debt. I'm in debt myself, but fortunately I'm not over my head and my creditors are not loan sharks. You, however, have those fellows breathing down your neck, and they don't give a damn about men like you. All they're interested in is the big interest rates they get. And they suck people like you into believing that they are giving you a pretty good, easy-to-handle deal when they make a loan to you. I can't understand why they are allowed to get by with that kind of operation. They know damn well at the time a loan is made that you can't possibly keep up with it. It's hard enough just to make the high-interest payments, to say nothing of the loan itself. You end up working for the loan sharks, and finally, when they have you backed to the wall, you find that the only way out is to do something just like you did the other day. Joe, I'm sure that's how you were forced to do this; you got in over your head and didn't know what to do, so you did this.

In an arson case, blame may be placed upon the insurance company for permitting the accused and others to take out excessive insurance and to insure property far in excess of its actual value. The point to be made by the investigator is that by this excessive insurance practice, the insurance company presented too much of a temptation to set property afire for the insurance money, particularly in those cases where the owner was hard-pressed financially.

When a person has committed an embezzlement or other theft because of the apparent or surmised necessity of replenishing losses sustained as a result of his own gambling activities, it is advisable for the investigator to blame the police, prosecuting attorney, or

community as a whole for permitting gambling opportunities to exist. For instance, a suspect may be told:

> Joe, I know you've been doing a bit of gambling and you got into the habit through little or no fault of your own. Too much temptation was put in front of you. The police and politicians are the ones to blame for permitting illegal gambling to exist. Now a complete blessing is even being placed on gambling by state lotteries and the like. The authorities are to blame; they should know that this only increases the temptation to take money from employers and others. If you have a tendency to gamble, and all of us do, and if you do gamble, you are forced to make up for your losses because gambling is a losing game. If it were stopped, you wouldn't be here now. We ought to put the blame where it really belongs!

A suspected embezzler can be told, to good advantage, that everyone is living in times when money is treated rather casually, particularly by the national government. Therefore, the old-time regard for the money or possessions belonging to others is lost. As an illustration, a suspect may be told that since the government squeezes citizens with burdensome taxes to obtain money to waste on foreign countries, it is no wonder that individuals like him lose their own sense of values with respect to the money and property of other persons.

When a suspect's home or neighborhood environment seems to be a factor accounting for his criminal conduct (as is so often the case), the investigator should point out that fact. The application of this technique is illustrated later in this chapter when theme development of youthful (juvenile) suspects is discussed.

In a burglary or robbery case, a theme may be developed on the basis that the suspect's life circumstances (for example, unemployment for many months with a family to support) are to blame for driving the person to do what he did out of frustration and desperation.

Theme 5: Appeal to Suspect's Pride by Well-Selected Flattery

It is a basic human trait to seek and enjoy the approval of other persons. Whether in professional activities or in ordinary, everyday living, most individuals receive a satisfying amount of approving remarks or compliments. However, those who engage in criminal activities, particularly those who operate alone, may seldom receive approving remarks and compliments; moreover, the need for such attention and status is just as great or even greater than it is with everyone else. In the course of the interrogation of a criminal suspect, therefore, the establishment of effective rapport between investigator and suspect may be aided considerably through praise and flattery.

Consider the case of a juvenile or even an adult who is being interrogated as the suspected driver of a "getaway car" used in the robbery-murder of a gas-station attendant. Assume that a police patrol car had given chase but was outdistanced by the fleeing vehicle because the officers could not run the risk of injuring innocent

pedestrians or motorists. The driver of the fleeing vehicle had no such consideration, and his reckless driving made the escape possible. In such cases, there is much to be gained by speaking to the subsequently apprehended suspect somewhat as follows: "Joe, the officers who were chasing that car tell me that in all their years on the force, they have never seen a car maneuvered like that one was. It really took the corners on two wheels."

Why is flattery of this type helpful? Perhaps the explanation rests upon the following considerations and, again, for purposes of illustration, the case of the driver of the "getaway car" is used. The driver may have developed into a criminal offender by reason of parental neglect or other such circumstances. At home, he had been accorded no attention, love, affection, or status. In school, the only way he could attract attention or acquire any status was by being unruly and mischievous. To further distinguish himself, he may have resorted to destructive acts, such as breaking windows; he then started stealing store merchandise and then automobile tires, automobiles, and so on. A natural development beyond that was robbery—and murder. Here, then, may be a person starved for attention, recognition, and status. Such suspects are, in many instances, particularly vulnerable to an investigator's compliments and flattery.

Compliments about the suspect from the investigator also serve to defuse the natural adversarial relationship that exists between the two. As any salesman will tell you, it is difficult to dislike someone who offers a sincere compliment and this serves to reduce the guilty suspect's natural tendency to perceive the investigator as his enemy. Psychologically, it is much easier to justify lies told to someone whom we resent than a person whom we respect, admire, and feel an emotional attachment.

This does not mean that ordinarily a confession is immediately forthcoming because of flattering remarks. However, along with all else the investigator says and does, it can be helpful in obtaining a confession of guilt, and even though one is not obtained soon, or perhaps not at all, if the suspect gives clear indications of lying, the investigator nevertheless will have achieved a considerable measure of success because other investigative efforts can be concentrated on that particular suspect.

In one case involving a robbery suspect, the suspect was told, with good effect:

> I've been in investigative work a long time and I've talked to a lot of people who have done things like what you did, but I've never seen or talked to anyone who had as much guts as you do. I don't know how you could be as calm as you were under those circumstances. Moreover, this was the best planned job I've ever come across for a guy working alone. It's amazing how you found out where those materials [the stolen articles] were kept. And then when you got into action, you made John Dillinger look like a piker. [The reference here is to a notorious gunman in the early 1930s, but there are other, more current names the investigator may select.] He had all kinds of help from others, but you worked alone. Joe, how did you feel before you pulled off that job? I guess your nerves of steel didn't have any room for nervousness.

In one case involving a rapist who was in military service and had aspired to an advanced military career, the investigator flattered him regarding his desire for public service and suggested that his interest in a military career was good evidence of his basically honorable character. The investigator then urged that the suspect should be honorable in regard to the case under investigation and should tell the truth. A confession followed shortly thereafter.

In another case involving a jail chaplain accused of taking indecent liberties with a child, the investigator commented upon the chaplain's "dedication to God" and all the sacrifices he had made as "a man of God." It was then suggested that basically, he had the same human frailties as everyone else and that on this unusual occasion, he just could not sufficiently suppress his feelings. He was then advised to go into the chapel of the jail where the interrogation was being conducted and there, while alone "with God," to write out an account of what had happened. Within an hour, he presented the investigator with a fully detailed confession. (A result of this type is exceedingly rare, regardless of whether the suspect is a clergyman. It does illustrate, nevertheless, the potential of flattery, as well as of one of the previously discussed themes.)

Flattery is especially effective when it is in reference to a person's youthful appearance, attire, family background, good reputation, or unselfishness. Also, the uneducated and underprivileged are more vulnerable to flattery than the educated person or the person in favorable financial or social circumstances. With the latter types, flattery should be used sparingly and discreetly.

Occasionally, a suspect may attempt to utilize flattery toward the investigator in order to make a favorable impression. He may address the investigator by a title obviously beyond that which the investigator actually possesses—"Captain" instead of "Sergeant" or "Doctor" instead of "Mr." In such instances, the suspect should be immediately corrected. Suspects should never be allowed to think that they can manipulate the investigator. Therefore, in a title promotion situation, the investigator should inject the appropriate correction—"I'm Sergeant [or Mr.]_____" without making any further comments. The suspect who has consciously indulged in the flattery will get the point.

Theme 6: Point out Possibility of Exaggeration on Part of Accuser or Victim, or Exaggerate Nature and Seriousness of the Event Itself

It is exceedingly common for guilty suspects to perceive themselves as victims of an unjust system. The guilty suspect is quick to point out any error, however slight, in a victim's account (for example, "She said the guy who did this had brown eyes, mine are closer to black"). It is common for the guilty suspect to claim that he was "set up" or "framed" for the crime he committed. They perceive the police and court system as corrupt and actively seek loopholes from which to escape the pending consequences for their crime. This "victim mentality" also accounts for the ease at which they place blame onto others.

It is human nature to find fault in another person's apparent "unfounded accusations." This instinct is so strong that, in an effort to prove the other person wrong, the

person defending his position may make incriminating admissions. To illustrate this, one of the authors' sons was sent home from school with a missing assignment notification that had to be signed by a parent. The son strongly maintained that he had turned in the referenced assignment and that the teacher was old and forgetful and should retire. To fortify his position, he boldly asserted that the actual assignment that he missed was for the day before.

Similarly, when a suspect who is guilty of a crime is presented with false allegations concerning some elements of that crime or other possible crimes he committed, his victim mentality makes him vulnerable to confessing what he did do in an effort to disprove the erroneous allegations. Perhaps the reason for this is that he is willing to accept the possibility of receiving punishment for what he did do to maintain his self-esteem (for example, "I beat the system by not copping to something I didn't do"). The motivation here is no different than when negotiating the "best" price for a new car. As long as the salesman reduces the original asking price the customer feels that he has won some sort of moral victory, even though inevitably the final cost for the car is more expensive than what was expected. Whenever circumstances permit credible exaggeration of the crime, the investigator should consider a theme centered around that concept.

In some instances in which an offender is accused by the victim, or by a witness to the crime, the investigator should tell the suspect that even though there must be a basis for the accusation, there is the ever-present possibility of exaggeration, and that the truth can only be determined by first obtaining the suspect's own version of the occurrence. For example, in a rape accusation case in which the suspect denies not only the rape but even the act of intercourse itself, it is effective to talk to the suspect in the following terms:

> Something you need to realize is that right now all she is saying is that you had normal vaginal intercourse with her, just like a husband would have with his wife. What I don't want to see happen is for her to start claiming things that aren't true to make you look a lot worse. What happens sometimes with these women is that they start looking for sympathy and try to beef up their case by claiming that the man engaged in all sorts of perverted sex acts with them, and made them do things that are totally reprehensible. The problem you're in right now is that people will believe whatever she says. If you don't get your side in now, down the road she may make you sound like some sort of sex pervert from a different planet and people might believe her. I don't want her to get away with lies because that's not fair to you. If this was just normal vaginal intercourse that got a little rough, let's establish that now so if she makes further claims in the future I can stop her and say, "Hey, that's not true!"

Pointing out the possibility of exaggeration on the part of the accuser is not only helpful in obtaining confessions from the guilty, but it may also serve the purpose of exonerating the innocent. A good illustration of the point is a case in which the 35-year-old daughter of a police lieutenant accused a taxicab driver of rape. The investigator was

satisfied that the accused was telling the truth when he denied the rape, but he surmised that the cab driver was lying when he denied having the accuser as a passenger. The investigator then talked to him as follows:

> Joe, you're not telling the whole truth. We also know that this woman is at least telling part of the truth. It may well be that she's grossly exaggerating what happened. But she was in your cab, and she may have had intercourse with you voluntarily. Then when she left, she may have feared a pregnancy or a sexually transmitted disease, or she may have had some other reason for coming up with this rape story. But unless you tell us the truth as you know it, we'll just have to take what she says at its face value. My advice to you, Joe, is to tell the truth.

To this the suspect responded: "All right. Now that you put it up to me that way, I'll tell you what actually happened." He then related that the woman had hailed his cab from in front of a tavern; that she had been intoxicated; that, as he approached the address she had given him, she directed him to go into an alley in back of her family home and told him to stop at a particular place and to turn the lights out; and that she invited him to have sexual intercourse with her, which he did.

Following this disclosure, the investigator confronted the woman with the driver's statement, whereupon she admitted that he had told the truth. She explained her false accusation by saying that after the affair she had been concerned over the possibility that a member of her family had seen her get out of the cab in the alley and that her ruffled clothing would provoke suspicion. Furthermore, she had not thought the cab driver would be located because she had only hailed a passing cab and was not in one sent to the pick-up location by the cab company, which probably would have had a record of the driver who was sent out on the call. Once she started with her lie, however, it had been difficult for her to retract her accusation. In this case, therefore, had it not been for the utilization of the exaggeration technique, the accused may have been prosecuted for a crime he had not committed.

Following are a number of cases where the theme of exaggeration on the part of the investigator may be useful. In the interrogation of a person suspected of the offense of having sexual intercourse with a female under the prescribed age of consent (that is, "statutory rape"), the investigator may state that the girl has said she had been forced to submit. The offender will usually react immediately by making a denial of force, thereby admitting by implication the intercourse itself. This same principle is applicable in child sexual molestation cases where the suspect is presented with the possibility that he used physical force to engage the child in sex.

Where the case involves a theft of money or property by means of larceny, embezzlement, or burglary, the investigator should refer to the reported loss in terms of just about double or triple the actual amount involved. For instance, where the amount is reported to be $500, the investigator may talk in terms of $1,000 or $1,500. He may also say that at the time the money was taken, other items of value were also carried away (for example,

a diamond ring or negotiable bond), according to the statement of the victim of the loss. The investigator should then suggest that the actual amount of the loss may be much less than reported, that perhaps nothing but money was taken, or that the person or company reporting the loss may be trying to cheat the insurance company covering the risk by adding to the loss actually sustained. As an alternative, the investigator may suggest that perhaps the person who reported the loss—for example, a company manager—may have stolen some money or property himself and is now trying to cover his own thievery by adding that amount to the actual loss in question. The suggestion that the manager or other boss may be dishonest will frequently strike a responsive chord because of the employee's dislike of him for one reason or another. In some instances, the suggestion that a manager or other boss may be covering up his own thievery by exaggerating the loss is well founded in fact.

For an idea of the specific conversation that may develop between the investigator and an embezzler during the application of the exaggeration technique, consider the following case situation. A company sustained a considerable loss of merchandise over a period of several months. An audit of inventory disclosed the amount to be about $20,000. The manager of the company warehouse was strongly suspected. He had been observed in the warehouse on a Sunday night in the company of two other men, but the warehouse was closed for business, and there was no reason in the interest of the company for the presence of anyone there at that time. Furthermore, auditors ascertained that carbon copies of a number of invoices were missing. The safekeeping of such carbon copies had been the manager's responsibility.

When the manager was interrogated, on the well-founded assumption that he was responsible for all or part of the loss, the investigator began by saying:

> Joe, there's a big shortage of merchandise here at the company, and it looks like you're in the middle of it. You were seen at the warehouse with two other men on Sunday night, February 16th, and the auditors found that a lot of carbon copies of your invoices were missing. I know you're a fair man and you will want to make up for what you did. [Here the investigator should pause briefly, then follow with the question:] Did you steal all $40,000 worth of merchandise that's missing? [The harsh word *steal* is here used deliberately.]

"Hell no!" was Joe's reply, and the questioning thereafter was along the following lines:

Q: Was it about $30,000?
R: No way. Not at all!
Q: Was it about $20,000?
R: [speaking less firmly now]: No.
Q: Was it as little as $15,000?
R: Not even that much.
Q: Well, how much was it, Joe? Be fair and honest about it. Was it $14,000?

R: It's not even $10,000 worth. [By this statement, Joe has, in effect, admitted the theft.]

Q: Joe, it's certainly more than $10,000 worth!

At this stage of the interrogation, and without pursuing the amount issue, the investigator asked Joe to relate the details of the thefts—the ways and means employed, the specific items taken, and the disposition made of them or their present location. Then Joe was confronted with the actual audit of the loss—$20,000. The point was also made that because all the merchandise had disappeared in the same manner, Joe must be responsible for the entire loss. He soon thereafter admitted a total theft of $20,000. He also revealed that he had set up a store of his own as an outlet for the stolen merchandise!

Where the exact amount of a loss is not presently known, the figure-lowering procedure may furnish a clue as to the amount known to the suspect. For instance, acting on the assumption that the theft loss of merchandise in a particular case is a five-digit figure below $30,000, the investigator may receive a firm response, such as "Hell no!" when that particular figure is mentioned. The investigator should then lower the amount by about one-third by asking if it could be $20,000. The response to this may still be "No," but it will be stated less firmly than when the larger amount was mentioned. Then, when the figure is further lowered by $5,000 to the amount of $15,000, the suspect may say, with an air of uncertainty: "It couldn't be that much." At this point, the investigator should begin to reduce the figure in $1,000 steps. If the answer to questions about $14,000, $13,000, $12,000, and $11,000 is "No," the investigator should then say in a somewhat irritated tone of voice: "Could it be as little as $10,000?" The answer, stated rather squeamishly and hesitatingly, may be, "It's not even that much." This will indicate that the amount stolen was approximately $10,000. In this type of case situation, the investigator should be mindful of the fact that a person who steals over a period of time and disposes of the "loot" immediately may not actually know how much has been stolen; the suspect may really believe that the value was only $10,000, whereas it could have been twice that much.

In cases where the figure-lowering "peak of tension" technique is used, the investigator should carefully observe the suspect's physical activities—squirming about in the chair, the dusting of trousers, the crossing and uncrossing of legs, the picking of fingernails, and the fumbling with a ring or other object. Activities of this sort, along with the suspect's verbal responses, will furnish some indication of a forthcoming incriminating admission.

Also to be considered is the revealing difference between the response of an innocent person and that of the thief when an inflated amount as to how much may have been stolen appears in the question. A response such as: "Hell, no; they don't have that much around the whole place" is not the response of an innocent person; the innocent one will almost always respond by saying, in a resentful way: "I didn't steal anything!"

Relative to the investigator's task when using this technique are several important factors. First, the person who becomes involved in a series of losses is usually one who

is well liked by fellow employees and who has been in a position to give them or let them take company property, or to permit them to violate company rules. For that "benevolence," there is a strong ulterior motive—to seek immunity from other employees against the probability of their reporting his own irregular activities, such as violating various company rules or even his own thievery. The person may say to a new employee, as he hands over some merchandise, tool, or other item, "Here, take this home with you." If the new employee says, "But that would be stealing," or words to that effect, the response is apt to be: "This company's rich. And you're a damn fool if you don't take something; all the rest of the employees do." On rare occasions, such efforts may backfire. The employee may become conscience-stricken and confess to the employer his own wrongdoing and at the same time reveal what he knows about the other employees, too.

Second, in the interrogation of an employee suspected of being the principal thief, the investigator should seek acknowledgment that he knew of minor thievery of other employees. That acknowledgment is helpful in obtaining the suspect's own confession to a larger amount of thievery.

Third, when an investigation of a series of losses involving a substantial sum of money or merchandise is being conducted, it is advisable to first interrogate the newly employed personnel, telling them that: "Someone is a big thief around here and it's got to be stopped." New employees confess their own wrongdoings more readily than the long-term employee who has been stealing, and they are less reluctant to reveal what they know about those who are responsible for the much larger thefts.

The investigator, however, must be careful in evaluating a readily forthcoming minor admission from a newly employed person because he, too, may have already stolen a considerable amount and may assume that by making minor admissions or by identifying an even bigger thief, suspicion will be diverted from his own substantial thefts. Therefore, when an admission is made rather quickly, without much prodding, the investigator must be concerned as to the extent of truthfulness. A good investigator will take into account the haste with which a suspect makes an admission as well as how he looks while making that admission. An admission reluctantly given is more reliable than a volunteered admission; the latter may be an attempt to cover up a much larger theft.

The exaggeration theme also may be utilized by exaggerating the intent of the suspect with respect to the offense. For instance, a suspected burglar may be told that a rapist has been terrorizing residents in their homes in the same neighborhood, and that the investigator is concerned over the possibility that the burglary suspect may be a rapist as well as a burglar. Another example of exaggeration of intent is to suggest that the burglary suspect may have been the person who attempted to set fire to one of the burglarized houses. In general, the psychological principle to employ is to minimize in the suspect's mind the act that he committed when compared with more offensive behavior possibilities. Stated another way, the idea to be conveyed is that the suspect is not so bad a person after all.

Theme 7: Point out to the Suspect Grave Consequences and Futility of Continuation of Criminal Behavior

During the course of their criminal careers, may offenders experience a fleeting desire or intention to reform. This is particularly true with youthful offenders, or with adults who are first offenders or in the early stages of their careers of crime. Such a mood at times is manifested during an offender's period of failure, that is, when he is accused or under arrest and thus brought face to face with the stark realities on the debit side of such activities. During this time, the suspect can become quite vulnerable to comments regarding the future consequences and futility of a continuation of the criminal behavior, especially when the offense is not of the most serious sort and when the offender is not too well seasoned by a long series of offenses and police experience. Under these circumstances, the individual might be convinced (momentarily, anyway) that for his own sake, it is a good thing to have been caught "early in the game" because this experience may serve to avoid much more trouble later. In a larceny case, for instance, the investigator might say:

> You know what will happen to you if you keep this up, don't you? This time you've taken a relatively small amount of money; next time it will be more, and then you'll do it more often. You'll finally decide it's easier and more exciting to get what you're looking for at the point of a gun. Then someday you'll get excited and pull the trigger when the muzzle's resting against somebody's belly. You'll run away and try to hide out from the police. You'll get caught. There'll be a trial, and when it's all over, despite the efforts of your parents and relatives, who in the meantime have probably spent their last dime trying to save your neck, you'll probably have to spend the rest of your life in the penitentiary. Now's the time to put the brakes on—before it's too late. And remember this too, Joe: Do you know the average amount of money taken in robberies? About $18. So for a lousy $18, a guy puts his life on the line. It's downright crazy. Joe, there are better ways to live.

It is advisable, whenever possible, to point out the relative insignificance of the offense in terms of how much worse it could have been. In a burglary case, for instance, the investigator might say to the suspect:

> Joe, all that happened the other night was the taking of money. But if you keep this up, some night you'll crawl in a window thinking that no one is home, but someone is home, and he comes at you with a gun or a knife. To save your own life, you grab the gun or the knife and you have to use it on him; or, if you don't kill someone yourself, eventually someone may kill or cripple you for life. One of your intended victims, or perhaps a policeman, may do this to you. Let me give you an actual example of this. [Here the investigator may incorporate a "third-person theme" relating to a past suspect or perhaps a personal experience.] When I was a kid, there were two young fellows in my neighborhood who were always doing flashy things. They were well dressed and dated the best-looking girls around. Yet neither one of them worked, and their families had no money to

> support their style of living. Well, the mystery was solved one night when a tavern owner who had been robbed twice decided to be prepared for the next attempt. When the two young men I told you about entered the tavern, the owner, who suspected what they were up to, ducked behind a partition where he had a pistol, and as the two fellows drew their guns and forced the cashier to hand over money, he shot and killed both of them. Had they been caught when they were new at the stealing game, their young lives would have been saved. Joe, you may not fully realize it now, but getting caught early like this may prevent something like that from happening to you. Put the brakes on now before it's too late.

Youthful offenders or adults who are not confirmed criminals, or who have not committed serious crimes, may be told:

> Everyone makes mistakes, and we can all profit from such mistakes. A person with any brains at all can look upon them as lessons regarding his future conduct. And, after all, that's really what the judicial system is all about—to teach a fellow a lesson, in the hopes that he'll straighten himself out. Joe, if you don't own up to your present mistake and you think you've gotten away with something, you're bound to get yourself in worse trouble later on, and maybe then you won't have a chance to straighten yourself out. The police may do it for you when they catch you in a burglary or robbery; you may end up straightened out on a marble slab in the morgue. What a heartbreak that would be for your mother to go to the morgue and identify your body with a tag on your big toe and nothing else but the bullet in your head.

Interrogations that are handled in the manner of the above examples tend to make an offender feel that he is indeed rather fortunate in having escaped more serious difficulty. Once in that frame of mind, the suspect may become less reluctant to tell the truth about his present criminal activity.

The basic validity and effectiveness of the present technique may be explained by the fact that many offenders do have some awareness of the ultimate consequences of their continued criminal behavior. Moreover, when an offender vows that he will go straight, he usually means it at that time. Perhaps that is the reason for the appealing effect of pointing out the grave consequences and futility of continuing with a criminal career.

Procedures for Non-emotional Offenders

As previously stated, the non-emotional offender attempts to avoid becoming emotionally involved in the interrogation; in effect, he insulates himself from the investigator's words and actions. This form of defensiveness often renders the previously discussed sympathetic themes ineffective when used alone.

Psychologically, the non-emotional offender perceives the interrogation as a contest of endurance, pitting his own willpower against the investigator's persistence. To this type of offender, the consequences of lost pride or embarrassment weigh somewhat as

heavily as would any consideration about losing a job or going to prison. Regardless of the investigator's sincerity or credibility, the non-emotional offender tends to be suspicious of anyone offering assistance or seeking his trust. For these reasons, the use of sympathy, exaggerations of the crime, or condemning other persons for the crime are themes that, by themselves, are unlikely to persuade the suspect to tell the truth.

Tactic 1—Seek Admission of Lying about Some Incidental Aspect of the Occurrence
A suspect who has been caught in a lie about some incidental aspect of the occurrence under investigation loses a great deal of ground; thereafter, as the suspect tries to convince the investigator that he is telling the truth, he can always be reminded that he was not telling the truth just a short while ago. Under no circumstances, however, should the suspect be told, "You lied to me once, and you'll lie to me again." The reminder of lying should be expressed as a factual statement, not in the form of a reprimand. To state it otherwise may result in a defiant attitude.

A simple example of this tactic is a case that involved a male suspect who, having been accused of indecent liberties with a child, denied to the investigators that he had even seen the child. In such instances, the investigator should try to get the suspect to admit having seen, and having talked to, the child. The investigator may say: "Joe, there's no question that you were in this kid's presence and that you talked to her, and there's nothing wrong with that! There's also nothing wrong with giving her candy, or even patting her on the head. Joe, what did she say to you?"

If Joe is guilty, he may think he can avoid any further suspicion by acknowledging the conversation with the child. Thereafter, the investigator can proceed to utilize other appropriate techniques, such as blaming the child. (Here is a reversion to earlier discussed techniques.)

In the application of this technique, the investigator should bear in mind that there are times and circumstances when a person may lie about some incidental aspect of the offense without being guilty of its commission. Here is a case illustration. An investigation of the murder of a married woman disclosed that the suspect, who was also married, had been having an affair with her. When questioned by investigators about his whereabouts at the time of the murder, the suspect gave an alibi, which was quickly established to be a falsehood. This so convinced the investigators that he was the murderer that one of them subjected him to physical abuse in an effort to obtain a confession. He did not confess. Subsequently, however, a professionally skilled and ethical investigator, seeking to ascertain the reason for the false alibi, was able to elicit from the suspect the fact that, at the time of the murder, he had been in bed with another married woman. This was the reason for his having lied when he gave his previous alibi; in other words, he lied in order to avoid exposure of his latest indiscretion. The second alibi proved to be the truthful one.

Whenever a suspect seems to be telling the truth regarding the issue under investigation but is reluctant to tell where he was at the time of its occurrence, the investigator may say: "Joe, if what you were doing at the time was not criminal in nature, I give you my word

I'll treat whatever you tell me as confidential. I'm not interested in your personal affairs. So tell me where you were at the time." [Whatever an innocent person says in response should, of course, be kept confidential.]

The following case illustrates that a person may be telling the truth about a principal offense but lying about some particular aspect of it. As earlier described with respect to the "preliminary preparations" of an investigator, the case involved a delivery truck driver who reported to the police that he had been robbed of his employer's money collections. Because of the driver's general behavior and certain other factors, the police suspected him of making a false report and of having taken the money himself. He finally admitted that although a robbery had actually occurred, only a small amount of money had been taken because he had previously hidden most of the collected money in the truck as a precaution against just such an eventuality; however, after the robbery, he had decided to steal the remaining funds himself.

Another practical consideration that must be kept in mind regarding this tactic is that in the investigation of a particularly large one-time theft (for instance, stealing $25,000 in used bills from a bank vault), an employee suspect who will admit taking a much smaller sum or sums of money is rarely the one who is guilty of taking the principal sum under investigation. The guilty party, however, will seldom admit any smaller thefts or even any kind of wrongdoing; the person knows he is guilty of taking the large sum and assumes that any minor admission will create a presumption of guilt regarding the principal sum. An exception to this general rule occurs in cases involving a series of losses, such as stock shrinkage of merchandise over a period of time or a series of money shortages; in these types of cases, the minor admissions of any employee are of considerable significance regarding his possible responsibility for all, or a large part of, the accumulated losses.

Tactic 2—Have the Suspect Place Himself at the Scene of the Crime or in Contact with the Victim or Occurrence

When a guilty suspect places himself far from the scene of the crime, or denies any contact with the victim, it becomes much more difficult for him to eventually tell the truth about commission of the crime—not only does he face the consequences for committing the crime, but also the embarrassment of having to acknowledge his other related lies. Consequently, it is always to the investigator's advantage to have the suspect place himself in proximity to the crime scene or victim. The initial attempt at doing this should be during the non-accusatory interview, as presented in Part 2 of this text.

The technique's basic validity is illustrated in the questioning of a child regarding mischievous conduct, or even the taking of something that did not belong to him. If the child admits having been present when the act occurred or having seen the missing object earlier, acceptance of full responsibility is not remote. For instance, if a boy is thought to have taken some money or some object from his parents' bedroom, he may first be asked, "Johnny, did you see a dollar bill on the dresser in my room a while ago?" An admission that he had seen the money, and especially one that he picked up the dollar bill to look

at it, warrants his being questioned further. His admission of seeing the money and touching it will constitute a substantial step toward a disclosure of the truth.

In a homicide interrogation, where the suspect was accused of stabbing to death a 12-year-old girl who was babysitting for friends, standard themes were unproductive in capturing the suspect's attention. The suspect maintained that, at the time of the killing, he was several miles away attending a party, and that he did not know the victim. The following tactic, which resulted in the suspect's acknowledgment of being inside the victim's home on the night of the killing, was crucial in eventually eliciting a full confession from the suspect:

> Joe, for a minute I will entertain the thought that you did not do this. However, it is clear that you have not told the complete truth about seeing this girl that evening. A neighbor has identified you as the person who stopped by her house earlier that evening. [This statement was only partially true. A neighbor did see a man fitting the general description of the suspect earlier in the evening.] If you were there for some other purpose such as to ask directions, or maybe you thought you knew someone who lived in the house and you went there to ask for that person, that would explain a lot. But there's no question that you were there. How long were you at that house that evening, hours or just a short while?

The bait question asked during a behavior analysis interview can serve as a credible link during an interrogation to establish the suspect's presence at the crime scene or knowledge of a victim. During the interview, the question is phrased as a hypothetical one (for example, "Is there any reason why. . . ."). During an interrogation, however, the investigator often must express more confidence that the evidence, in fact, does exist or will shortly become available. The investigator should carefully assess the suspect's behavioral response to the bait question asked during the interview. If the suspect responds with a confident denial, the evidence suggested in the bait question may represent a poor selection of evidence to bring up again during the interrogation. However, if the suspect's behavioral response indicates a lack of confidence or uncertainty as to whether the evidence might exist, during the interrogation the investigator can present that same evidence in a more definitive manner.

The following case involved a female employee who forged her manager's signature on a cash drop that the employee had stolen. During her behavior analysis interview she was asked a bait question concerning the possibility of a document examiner identifying her as the person who forged the manager's signature. Although she eventually denied this possibility, her behavior in doing so clearly indicated lack of confidence and great concern that such evidence existed. During her interrogation, the suspect, who was already on probation for battery, was resistant to telling the truth. The investigator decided to try to get her to acknowledge forging the manager's signature and used the same evidence that had been successfully used in the earlier bait question:

> Julie, when I stepped out of the room following our earlier interview I had a fax waiting for me from the crime lab. The report I received from the document

examiner indicated that indeed it was your handwriting on that drop slip—not your manager's. There's no question that you signed his name on that drop slip. As far as I know it may have been a situation where he wasn't around and you were in a hurry and couldn't wait for him so you wrote his name down before dropping the deposit. If that's what happened, it would be important as an explanation for that report I received. Have you written his signature many times or was this unusual when it happened?

Once the employee acknowledged forging her manager's signature, her game plan of denying all involvement quickly fell apart and she admitted the theft shortly thereafter. This illustration, as well as the previous one, involves clear trickery and deceit on the part of the investigator. The legal restrictions regulating this tactic are discussed in Chapters 17. As illustrated, an investigator, within limits, can legally make reference to false evidence implicating a suspect's involvement in a crime.

Tactic 3—Discuss the Benefits of Telling the Truth

During the early stages of an interrogation a guilty suspect thinks about how he can avoid the consequences of his crime. As the interrogation continues, the guilty suspect accepts the fact that his guilt is known and he starts to think about his future. Will he go to jail or lose his job? What will his friends or family think about him?

Although an investigator cannot suggest possible leniency in an effort to obtain a confession from a suspect, there are no prohibitions preventing an investigator from suggesting possible benefits to the suspect's decision to tell the truth. In essence, these themes paint a possible bright future for the suspect's life, but in no way offer a promise of leniency.

1. Indicating that the suspect will receive treatment for alcohol, drug, or gambling additions (if this was the motivation behind his crime) and after he is out of jail he will be able to live a productive life.
2. The suspect will be afforded the opportunity to achieve a GED and perhaps technical training where, in the future, he will have a job that will pay a considerable salary and he will not have to commit crimes to pay his bills.
3. The suspect will be able to start over. He made some errors in judgment that led to his crime but this is an opportunity to start over with his life and follow a different path.

When using a theme based on the benefits of telling the truth, the investigator must not state or imply that drug treatment, for example, would be in lieu of prison or other punishment.

Tactic 4—Point out the Futility of Resistance to Telling the Truth

With all offenders, in particular the non-emotional type, the suspect operates from a belief that if he says nothing he will avoid suffering any consequences associated with

his crime. As discussed under Step 1 of the interrogation process, the investigator must portray high confidence in the suspect's guilt. On occasion, though, merely expressing certainty in the suspect's guilt will not overcome the guilty suspect's resistance to tell the truth and it will become necessary to further bolster this confidence by direct statements designed to allow the suspect to realize the futility of resistance to telling the truth. The authors wish to make clear, however, that at no time should an investigator attempt to convince a suspect who claims not to recall whether he committed the crime, that he must have committed it. However, an innocent suspect, even one who is uncertain of his possible involvement in a crime, is not apt to confess to a crime merely because the investigator expresses high confidence in his guilt and even points out logical statements explaining why continued denials will not necessarily prevent a guilty person from suffering consequences of his crime.

A second caveat must also be kept in mind with respect to using this interrogation technique. The investigator should not attempt to persuade a suspect that, regardless of his stated innocence, he will be found guilty of the crime and sentenced to jail or prison. Under this circumstance, the interrogation inevitably boils down to nothing more than the issue of how long the suspect will be sentenced (for example, "Do you want to go to jail for a long time or for a lesser period of time?") This type of statement is termed, "threatening inevitable consequences" and will be thoroughly discussed in Chapters 15 and 17. Again, the purpose for the present tactic is to merely point out the futility of resistance to telling the truth.

A central component of this tactic is for the investigator to "argue against self-interest." That is, the investigator should not appear anxious to get the suspect to confess or portray to the suspect that a confession is necessary in order to resolve the case. Quite to the contrary, the investigator wants to present the interrogation as an opportunity for the suspect to explain his side of the story or to offer the reasons for his commission of the crime. Most of us have encountered high-pressured salesmen who are immediately recognized as someone interested only in obtaining a sales commission. We tend to despise such people. A skilled salesman speaks favorably of his competition but offers subtle reasons to buy his own product while at the same time, clearly leaving the perceived choice of making a purchase up to the customer. By removing himself from any personal benefit resulting from the customer's decision to buy his product, he tremendously increases, in the customer's mind, the few benefits his product offers. A forthcoming sale is likely.

One approach to accomplish this goal may be to reveal to the suspect several of the various pieces of incriminating information or evidence already in the investigator's possession, and then to ask the suspect, "Joe, if you yourself had this information, or evidence against some other person, you'd believe he was the one who did it, wouldn't you?" Without waiting for a response, the investigator should continue: "Whether or not you acknowledge your involvement makes no difference to me; the evidence will speak for itself! My only reason for spending this time with you is to give you the opportunity to explain why this thing happened." The investigator may then suggest various "acceptable reasons" that may have led to the suspect's commission of the act.

In other situations it may be helpful to appeal to the suspect's logic by making the following statement:

> Jim, I don't need someone to tell me that they did something for me to know that they did. Go down to the state penitentiary and talk to the inmates. Ninety-nine percent of them will tell you they're innocent. Do you think that 99% of the felons in this state were wrongly convicted by a jury of their peers? Every day defendants are found guilty based strictly on evidence presented to twelve members of a jury. A jury doesn't need to have someone tell them that they did it for them to vote guilty. The only reason I'm talking to you now is that I thought you deserved an opportunity to explain your side of the story. [continue with a sympathetic theme]

Instilling a sense of urgency upon the suspect can have the effect of pointing out the futility of resistance to telling the truth. The statement maybe somewhat as follows:

> Joe, as I said earlier, the investigation clearly indicates that you did [cause the death of your wife]. The only reason I came in to talk to you is that I thought if I was in your shoes that I would want to have some input in the final report. My captain has been bugging me for this report all day and by 5:00 this afternoon it has to be on his desk, with or without your explanation. I can't tell you how many times I've offered a person a chance to tell the truth but they thought if they kept their mouth shut nothing would happen. Two or three days later they call me and want to explain things—but by then it's too late because my report has already been sent out.

If the offense under investigation was committed by two or more persons, and the suspect under interrogation presumes or knows that he is the only one in custody or the first to be questioned, it can be helpful to talk to him along the following lines:

> You know as well as I do, Joe, that in all cases like this where two or more persons are involved, sooner or later somebody talks, and in your case it should be you. So let's get going before some other guy leaves you holding the bag. Don't let him get his oars in first and splash all the blame on you. What you say now, before that happens, we can believe. People always believe whoever talks first. But later on, no one is likely to believe what you say, even though at that time you may be telling the absolute truth.

By thus stirring up the already existing concern that eventually an accomplice may talk, the investigator again achieves a sense of urgency to tell the truth within the suspect. In other words, if the suspect does not decide to tell the truth now, an accomplice may eventually implicate him anyway. This particular theme can achieve either of two objectives. The initial and immediate one is to evoke the truth now; the other is to lay the groundwork for the next tactic of "playing one against the other" at a later time, when the accomplice or accomplices are being interrogated.

Tactic 5—When Co-Offenders Are Being Interrogated and Previously Described Themes Have Been Ineffective, "Play One Against the Other"

When two or more persons have collaborated in the commission of a criminal offense and are later apprehended for questioning, there is usually a constant fear on the part of each participant that one of them will "talk." Individually, each of them may feel confident of his own ability to evade detection and to avoid confessing, but not one of them seems to experience a comparable degree of confidence with regard to the co-offender's ability or even willingness to do so. Uppermost in their minds is the possibility that one of them will confess in an effort to obtain special consideration.

This fear and mutual distrust among co-offenders can be made the basis for the effective interrogation technique of "playing one against the other." Since this tactic involves largely a bluff on the part of the investigator, however, it should be reserved as a last resort, to be used only after other possible tactics have failed to produce the desired result.

There are, in general, two principal methods that may be used in playing one offender against another. The investigator may merely intimate to one offender that the other has confessed, or else the investigator may actually tell the offender so. In either event, there are two basic rules to follow, although they are subject to exceptions: (1) keep the suspects separated from sight and sound of each other (except in regard to the one variation subsequently discussed); and (2) use, as the one to be led to believe the other has confessed, the less criminally hardened, or the follower rather than the leader of the two or more offenders, or the one who acted out the lesser role in the crime—in short, use the one who is likely to be more vulnerable to the ploy. At times, however, the reverse procedure is warranted; perhaps the leader may be the more vulnerable one because of concern that if he does not talk first, he may be left "holding the bag" after the weaker one confesses first. The choice to be made is a judgment call that the investigator must make on the basis of the particular case circumstances.

If the co-offenders seem to be naive—for example, young first offenders unfamiliar with the possibility of interrogation trickery—a simple form of intimation may consist of the practice of taking one suspect into the interview room soon after the interrogation of the first one and then telling him: "This other fellow is trying to straighten himself out; how about you? Or do you want to let this thing stand as it is? I'm not going to tell you what I now know about your part in this job. I don't want to put the words in your mouth and then have you nod your head in agreement. I want to see if you have in you what it takes to tell the truth. I want to hear your story—straight from you own lips." Many are the occasions when this admonition has triggered a confession.

The intimation tactic may be dramatized to add to its effectiveness. Following is an example of this, as it was used by one of the authors of this text on a number of occasions over a period of years. In relating this example, and the others that follow, it is assumed that the *Miranda* warnings will be, or already have been, appropriately administered to custodial suspects. When the suspects are not in custody, there need be no such warnings; moreover, in non-custody cases, the time available for the dramatization is not restricted

by the legislative requirement that persons actually under arrest must be taken before a judicial magistrate "without unnecessary delay." Also, although a duplication or approximation of the physical surroundings or circumstances described may not be available to most investigators, what is related illustrates the potential of dramatized intimation. Complexity is not a prerequisite. It may be achieved in a rather simple setting.

An investigation of a burglary clearly indicated that it was committed jointly by two suspects (called A and B here), and both of them were to be interrogated by the same investigator. Furthermore, the investigators unsuccessfully questioned both of them, reporting that neither one was likely to confess; particularly A, who was presumably the leader of the two. Both A and B sat in a spacious waiting room with a secretary who was busily typing. The secretary had been coached for her subsequent role.

Suspect A was taken to the interview room, which was adjoined to the waiting room by a door. After no success in interrogating A, except for a reinforced belief that A was guilty, the investigator returned him to the waiting room and then escorted B into the interview room. His interrogation was also nonproductive, except for a reinforcement of the belief that he, too, was guilty. The investigator left B in the interview room and returned to the waiting room alone. There, he instructed the secretary: "Please come in the back with your pen and notebook" (or he signaled her to that effect). This instruction was given within view of A, but in such a natural manner that it did not seem to be an act performed for his benefit. The secretary then proceeded to gather a few pens, turned back some pages of her stenographic notebook—all within the observation of A—and then departed in the direction of the interview room. After absenting herself for the period of time that would ordinarily be required for the actual taking of a confession, she returned to the waiting room and began typing what seemed to be shorthand notes taken during the period of her absence, within the view of A. After several minutes, she paused and inquired of an officer seated near A, "How does the man [referring to A] spell his last name?" (If the name is a simple one, then the inquiry should be directed to his address or some other basic fact.) After receiving the information, she continued with her typing. When finished, she printed the "statement" and departed in the direction of the interview room. Thereafter, she returned to her desk without the papers and assumed her usual secretarial duties.

After a lapse of 15 or 20 minutes, the investigator entered the waiting room and escorted A back into the interview room (now vacated by B, who had been taken to another room). After A was seated, the investigator said: "Well, what have you got to say for yourself?" At this point, A confessed, being under the impression that his co-offender had done so already. Even if A had not immediately confessed, the investigator was not foreclosed from resuming his interrogation of him and, if A had inquired about what B had said, he should have been told, "Never mind what he said, you tell me what happened; I want it from your own lips."

Whenever several persons are suspected of committing a series of offenses, such as a number of robberies, and one of them confesses to one or two of the offenses, the confession may be effectively used in obtaining confessions from others regarding the entire series, even when the initial confessor has been involved in no more than the

one or two to which he has confessed. The investigator can try to elicit further confessions by applying the following technique.

Equipped with the first confession (in writing, time permitting), the investigator then selects for interrogation one of the suspects who was named by the first one as an accomplice. While holding the written confession (or notes of an oral one), the second suspect is told that what is being held is the statement of one of the other fellows. Joe is then asked: "What do you have to say for yourself?" If Joe makes a vague denial or evinces a quizzical look, the investigator should say: "I'll give you a start, and you tell the rest." At this point, only scant information should be revealed—just enough to satisfy the suspect that this is no bluff. Very likely, an admission will be forthcoming about the one offense, following which the investigator should say, "Now, what about the others you were in on?" Another one or more, beyond the one or two contained in the initial confession, probably will be revealed. Upon sensing that the present suspect has probably told all he did or knows about, the investigator should briefly write out the confession and have him sign it. This will then be available for use with the remaining suspect or suspects in the same way the first confession was used.

In one of the many cases where the foregoing technique was used, one of the authors of this text cleared up a series of a considerable number of offenses committed by a group of five young men. The offenses consisted of burglaries, robberies, and even rapes committed upon some of the robbery victims.

Another kind of intimation that may be employed is illustrated by a case in which a father and son are involved in the commission of a crime, and they have consistently maintained that they were innocent, even when questioned separately. In such a case situation, the investigator may say to the father, "Okay, if you are both telling the truth, as you say you are, here's a piece of paper and a pencil. Write a note to your son; tell him that you have told the truth and that he, too, should tell the truth. You don't have to say anything else." As this is said, the actions and facial expressions of the suspect should be carefully observed. If he delays in responding, or if he equivocates in his answer, this will be further assurance of deception because, if he and his son are telling the truth, there should be no reluctance or unwillingness to write out such a message. The dilemma that is thereby presented to the suspect may result in his writing and signing the message to his son. Then, when the message is presented to the son, his actions, facial expressions, and verbal responses will be of helpful significance. If he is innocent, he will respond, unruffled and with confidence, by saying something to the effect of: "I am telling the truth, and so is my father; I don't know what you're trying to do. Why don't you bring him in here?" If the two are guilty, a confession from the son is apt to be forthcoming. If the son is guilty and confesses, his subsequent written confession can then be shown to the father, or the investigator may have the son orally relate to the father what he has already stated in his signed confession.

The following case is an excellent illustration of the advisability of having some sound basis for any statement offered to one offender by way of proof that the co-offender has confessed; otherwise, the investigator may get himself out on the proverbial limb and

have it sawed off. Several years ago, one of the authors interrogated two boys (brothers) who were suspected of committing a series of burglaries. Each one persisted in his denial of participating in any of the offenses, including the particular offense that brought about their arrest and that was the chief object of the present interrogation. Finally, the younger of the two boys made an admission concerning one burglary. He stated that he had assisted the other offender, his older brother, in throwing into a river some of the loot from a burglary. Equipped with this bit of information, the investigator resumed his interrogation of the other suspect, this time with a view to making him believe that his younger brother had made a complete confession of all the burglaries. The suspect was told, "Well, your kid brother has told us everything; now let's see if you can straighten yourself out." Since the suspect seemed unimpressed with what the investigator had said, he was then told, "Just to show you I'm not kidding, how about that job when you and your younger brother unloaded the brass metal in the river when things got too hot for you?" Thereupon, the suspect smiled and said, "You're bluffing; my brother didn't say that because it isn't true." Feeling quite confident that the younger boy had told the truth about the brass disposal job, the investigator decided to have him repeat the statement in the presence of the older boy. This was done, and the two then began to argue over who was telling the truth. However, soon thereafter, the younger boy stated that he was mistaken about this particular job—adding that in regards to this one particular offense, he had his brother confused with another boy, whom he named and identified as his confederate in the theft of the brass. Nevertheless, he did implicate his brother in several other burglaries. When confronted with such admissions, the older boy also acknowledged his guilt.

In this case, the boy to whom the investigator had transmitted the incorrect information had every reason in the world to believe it was a bluff. Quite naturally, he was not influenced by such a statement, and the same would be true in any case in which an investigator was inaccurate in his guess as to some detail submitted as proof of the fact that a co-offender had already confessed.

Whenever the more direct bluff is attempted—that is, whenever the suspect is actually told that his co-offender has confessed—the investigator must be careful not to make any statement purporting to come from the co-offender, which the person to whom it is related will recognize as an inaccuracy and, therefore, as a wild guess and a falsehood on the part of the investigator. Once the investigator makes such a mistake, the entire bluff is exposed, and then it becomes useless to continue with the act of playing one against the other. Moreover, the investigator is then exposed as a trickster, and thereafter there is little that can be done to regain the suspect's confidence. Therefore, unless the investigator is quite certain of the accuracy of any detail of the offense that he intends to offer to one suspect as representing a statement made by his co-offender, it is better to confine statements to generalities only.

An exception to the foregoing precautionary measure is to be made in a case where one of the offenders is definitely known to have played a secondary role in the commission of the offense. In such a case, the one may be told that the other offender has put

the blame on him for the planning of the offense, or for the actual shooting, or some similar aspect of the crime. At the same time, the investigator may add, "I don't think this is so, but that's what he says. If it's not the truth, then you let us have the truth." In this way, the investigator can avoid any danger to his bluff because he concedes the possibility of the statement being a falsehood.

In addition to its application to the "playing one against the other" technique, there is a basic utility in emphasizing to an offender that he performed the less offensive role in the commission of the crime, as illustrated in the previous discussion of condemning the accomplice.

Themes for Youthful (Juvenile) Offenders

In the interrogation of youthful (juvenile) suspects, the principles and many of the case examples that have been discussed with respect to adult suspects are just as applicable to the young ones. There are, however, several additional theme developments and guidelines particularly applicable to them.

To prepare for the interrogation of a youthful suspect, the investigator should attempt to learn from the case investigators whatever information is available regarding the suspect's background, such as parental relationship and general attitude as observed by the investigators. Often a youthful offender has been deprived of proper parental guidance, love, or affection. The investigator's awareness of such facts can be of considerable assistance in the interrogation.

As earlier suggested in the text, caution must be exercised in evaluating a youthful person's behavioral responses. Due to immaturity and the corresponding lack of values and sense of responsibility, the behavior symptoms displayed by a youthful suspect may be unreliable. Nevertheless, they are deserving of cautious consideration.

One theme that the investigator may utilize is that all young persons have a tremendous amount of restless energy, but they experience considerable boredom; consequently, consideration must be given to their propensity for making mistakes and doing things that are morally or legally wrong. This factor is one reason why the judicial system separates adult offenders from juvenile offenders. Automobile insurance companies reflect this differentiation by the much higher liability rates charged for youthful drivers. A 26-year-old man, for instance, is viewed to have learned to control his conduct beyond that which prevailed when he was 17; therefore, he presents a much safer risk.

Another theme may be based upon the many temptations to which the youth of today are exposed because of the easy availability of alcohol and drugs, and also upon the fact that, in many instances, youthful persons are in homes where both parents are working and, therefore, their supervision and guidance may be practically nonexistent. Such conditions and circumstances place youths in a much more vulnerable position for wrongdoing than most of their counterparts in former times.

Consistent with the earlier discussion of placing blame on someone other than the suspect when interrogating a youthful person (provided the parent is not present),

the investigator may place the blame for the suspect's conduct on his family life and ensuing difficulties. The application of this technique may be illustrated by the following statements, made to a young robbery-murder suspect who had actually encountered many of the experiences to which the investigator referred:

> Joe, you started out about the same way as a lot of kids, and I myself had a similar problem when I was a kid. You had a mother and father, and then things changed when your father died when you were 10. Your mother had other children, too, with very little to live on. You had to scratch around as best you could. Whatever you got by way of money or things to eat you had to share or give to your mother and brothers. A child is a child, and soon you probably had to take things from other people; otherwise, you got nothing. That became a habit when you were a kid and it looked easy, and then this thing happened [referring to the offense under investigation]. This would not have happened to you if your father had lived and been able to care for you, to provide for you, your mother, and your brothers the necessities of life. If he had lived, you probably wouldn't be in this room today. Society should be blamed for not having found some way to help your poor mother when your father died so that it would have been unnecessary for you to develop the habits you did.

In a case where one or both parents were alcoholics, drug addicts, or for some other reason neglected the suspect as a child, the investigator may say:

> I can pretty well understand what would have happened to me if that condition existed in my home. No one to cook meals or perhaps even care if I lived or died. No wonder you finally got into something like this. You were worse off than an orphan. There are good homes of one sort or another for orphans, but you couldn't have gotten into one because you were supposed to already have a home and a father and mother. Actually you didn't, and that's why you have this problem now.

The neighborhood in which the suspect lived as a child may be blamed for not providing suitable alternatives to mischievous conduct. In other words, there were no activities such as baseball or basketball, and not even any park facilities, and this contributed to the vulnerability to peer pressure from other kids involved in unlawful conduct who wanted the suspect to join them in those activities. He was left with no other choice.

Along with the presentation of any of these themes, the youthful suspect should be told that despite background experiences, he must embark upon restraints and corrective action before more serious consequences develop. This entails the utilization of the previously described tactic of pointing out the grave consequences and futility of a continuation of relatively minor criminal behavior.

A fairly characteristic trait of youthful offenders is their tendency to present an alter-ego defense by claiming to have knowledge of the person who committed the offense. When pressed for a description of that person, the guilty suspect's usual reaction makes

apparent the fact that the so-called offender is none other than the suspect himself. The investigator should view any such claim with considerable caution.

Several states provide by statute that a youthful (juvenile) suspect cannot be interrogated unless one parent or guardian is present. (The law pertaining to this subject is discussed in Chapter 17.) Under this requirement, the investigator should spend some time with the parent before questioning a son or daughter. During this session, the investigator should take a positive approach and impress upon the parent that the only interest in talking to the youth is to ascertain the truth. The investigator should emphasize that he is just as much interested in establishing innocence as responsibility. The investigator should also advise the parent that there is a basis for wanting to conduct the interrogation, and one or more reasons may be mentioned without revealing all that is known.

In dealing with a parent who has an overprotective attitude toward his or her child, an investigator should emphasize three primary points: (1) no one blames the parents or views them as negligent in the upbringing of their child, (2) all children at one time or another have done things that disappoint their parents, and (3) everyone—the investigator as well as the parent—has done things as a youth that should not have been done. Once the investigator has effectively gained the cooperation and support of the parent for the task of ascertaining the truth from the child, any subsequent interview or interrogation, particularly if the parent is going to be in the room, should be that much easier.

A parent who is present during the interrogation should be advised to refrain from talking, confining his or her function to that of an observer. The parent should be asked to sit in the chair set aside for an observer as described in Chapter 5. The investigator should then proceed with the interrogation as though he were alone with the suspect, utilizing not only the themes specifically applicable to juveniles but any that are deemed appropriate from among the ones earlier discussed for the interrogation of adults.

The following case illustration may help to further clarify the utilization of some of the themes for the youthful offender. Someone had set fire to a bundle of paper products in a company warehouse in the early afternoon of a normal workday. The perpetrator had disarmed the ceiling fire-fighting system so that the fire spread before several employees were able to stop it with fire extinguishers. Subsequent investigation focused on a 17-year-old employee, whose father was an executive with the company. The father had been portrayed as a hard-driving business executive, and the son was said to have had an unsatisfactory relationship with his father. The investigator based his primary interrogation theme upon the cold relationship that had evolved between a rebellious teenager and his goal-oriented parent. Specifically, it was the investigator's intention to focus upon the excessive amount of time and effort the suspect's father invested in his career at the sacrifice of the personal development of his 17-year-old son. The language the investigator employed was somewhat as follows:

> Jimmy, there is a fence that divides the hardened criminals, who have no respect for the lives and property of others, and a misunderstood kid who becomes involved in an act of vandalism that gets a little out of hand. Right now you

stand on top of that fence teetering toward one side or the other, and it is your choice as to which side of the fence you will finally fall on. The fact you now have an opportunity to explain your reason for doing this [starting the fire] and state what was actually in your head at the time this happened will determine where you land.

It is not uncommon for teenagers to experience feelings of uncertainty and rebelliousness that put them at odds with their parents. Just as often, a parent who is achievement-oriented may lose touch with the uncertainties experienced by an adolescent. Sometimes, in an all-out effort to provide for the material needs of their children, a parent, by concentrating almost exclusively on a career, might unwittingly neglect the emotional needs of a son or daughter. Under those circumstances, it is easy to understand how a child may feel neglected by a parent and do something drastic to try to gain that parent's attention. After a period of time in which an adolescent is subjected to this type of pressure, he might react in a manner such as this, like you did, Jimmy.

It's human to make errors in judgment, and you made a mistake when you decided that by getting involved in this thing, you could make your father stand up and take notice of you. But the critical question is whether you did this out of malice to try to kill someone or whether, in fact, you did it out of an impulse of desperation in trying to gain the respect of your father.

It may be a difficult thing to admit to your parents that you did something wrong, but you should look ahead to those times in the future when you will ask your father to rely upon your word against those who might make false accusations against you. How are you to be believed then if you don't resolve this cloud of suspicion over your head now? Furthermore, consider that time in the future when you will be the father of a teenager who might get into trouble. Wouldn't you expect your son or daughter to level with you? If not, how could you expect to rely on them in the future? You should not be hypocritical; instead, you should set an example of the same standard of honesty that you will expect your own children to maintain.

The difference between a hypocrite and an essentially honest person is that the latter has guts enough to stand up for the truth when he gets caught. Although everyone has something in the "closet" of his life, only a strong person is able to tell the truth about it.

A person's family relationship is the most important thing to preserve and your relationship with your parents is clearly at issue here. The fact that people sometimes hurt those they love the most has been proven in this instance. While your father was preoccupied with his business, you were hurt by his subsequent lack of attention. And while you truly loved him, you saw no way of commanding the desired attention other than by subconsciously hurting your father. Don't allow this incident to permanently break your family relationship by continuing to live a lie.

At this point, the suspect began crying and, as he raised his head up to look at the investigator, the alternative question was presented: "Did you do this thing out of malice to try to kill someone, or did you do it out of love for your parents and trying to gain their respect?" The suspect answered: "Love."

Before discussing the remaining steps, the authors reiterate the statement made earlier that an investigator need not utilize the steps in the exact order in which they appear in this text. In fact, it would be impossible to do so in any given case situation, since various developments in the early stages of an interrogation may require a shifting in the sequence of the remaining recommended steps. Moreover, there may be times when two or more steps will have to be intermingled so that they may seem to represent only a single step; consequently, the themes comprising Step 2 will have to be reused from time to time during the course of an interrogation. In other words, it is impossible in a text of this nature to compartmentalize or categorize the various tactics and techniques as though each one was self-supportive and exclusive of the others—they are all interrelated. Unavoidably, however, they must be discussed individually; otherwise, any discussion of them would be rambling and confusing. It is, therefore, essential for the investigator to exercise his own ingenuity when embarking upon an interrogation. This text must be used only as a set of principles rather than as a set of fixed, inflexible rules.

Precautionary Considerations

A general distinction can be made between childhood (1–9) and adolescence (10–15). While both groups will be motivated to lie to avoid consequences associated with acts of wrongdoing, psychologically they are operating at quite different levels. It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during interrogation (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to interrogation is the child's undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around "here and now" concepts.

On the other hand, most adolescents have developed a sense of social responsibility to the extent that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational interrogation may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.

When a child is taken into custody and advised of his or her *Miranda* rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly a child under the age of 10 is incapable of fully

understanding the implications of waiving *Miranda* rights. Younger adolescents also may fall into this category. When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his *Miranda* rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no interrogation should be conducted at that time. The same is true for a person who is mentally or psychologically impaired.

Courts routinely uphold the use of deception during interrogations of adult suspects who are not mentally impaired. Within the area of deception, clearly the most persuasive of these tactics is introducing fictitious evidence which implicates the suspect in the crime. As we state in Chapter 15, this technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime. Factors such as the adolescent's level of social responsibility and general maturity should be considered before fictitious evidence is introduced.

The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, "I shot and killed Mr. Johnson" or, "I forced Susie Adams to have sex with me" may be elicited from an innocent juvenile (or adult) suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified.

Step 3—Handling Denials

Principles

Confessions usually are not easily obtained. Indeed, it is a rare occurrence when a guilty person, after being presented with a direct confrontation of guilt, says: "Okay, you've got me; I did it." Almost always, the suspect, whether innocent or guilty, will initially make a denial. It may be "No, I didn't do it" or a similar expression, or perhaps a meaningful gesture to that same effect. A denial is basically a response that an allegation is false. It is an indicated refusal to believe, recognize, or acknowledge the validity of a claim. This denial phase of an interrogation is one of the most critical stages for the investigator. Unless it is handled with expertise, the investigator's subsequent efforts may be exercises in futility.

The following childhood experience illustrates the importance of skillful handling of a suspect's denial. Two children are involved in a dispute over the breaking of a toy, such as a water gun. They confront each other: "You broke my gun!" "No I didn't!" "Yes you did!" "No I didn't." And on it goes. Theoretically, the last speaker wins, but in actuality,

there is no winner in that kind of combat of words. The same is often true in a criminal case setting—a meaningless exchange of words.

Consequently, one of the primary goals of Step 3 is to discourage the suspect from engaging in unnecessary denials that distract from the investigator's theme and subsequent efforts to persuade the suspect to tell the truth. Furthermore, it is important for an investigator to appreciate a fundamental principle of interrogation, which is that the more often a guilty suspect denies involvement in a crime, the less likely he will be to tell the truth. This tenet of human nature not only applies during the interrogation process, but prior to it as well. A guilty suspect who has already denied involvement in the crime to his wife, parents, and friends is much less likely to eventually tell the truth than one who has not offered such preliminary denials. Simply stated, if the investigator allows the guilty suspect to voice multiple denials during an interrogation, it is much more difficult for the suspect to eventually tell the truth.

Consider another type of childhood experience—a child's intuitive denial of wrongdoing results in no small measure from the impact of parental admonitions, such as, "You know what will happen if you do that again!" Similarly, in the adult world, there is a considerable amount of social conditioning toward denials of wrongdoing. There is, in fact, a certain amount of conditioning even toward the refusal to answer questions at all—for example, the awareness of the constitutional privilege against self-incrimination, and the judicially imposed requirement that before persons in police custody can be interrogated, they must be advised that they have the right to remain silent and that anything they say may be used against them. Then, too, adults learn from their own experiences, or from the experiences of others, that denials in many case situations do result in a successful avoidance of unfavorable consequences that might otherwise accrue from an admission of guilt.

For the foregoing reasons, as well as others, no investigator should be disturbed over a criminal suspect's denial of an accusation, even when the circumstances of the offense clearly seem to warrant an admission of some sort. He should recognize the normalcy of denials.

Step 3 of the interrogation process is important for another reason. Depending on the nature and persistence of the suspect's denials, the investigator may become convinced of the suspect's actual innocence and bring to a close the interrogation session. In some instances, the suspect's denials may indicate secondary involvement in the offense under investigation, such as guilty knowledge or perhaps involvement in a similar, but unrelated act as the one under investigation. In short, the nature and extent of a suspect's denials (or lack thereof) form an important basis for how the investigator will proceed with the interrogation.

During testimony a defense witness may attempt to describe this stage of the interrogation as one in which an innocent defendant was prevented from telling the truth because of the investigator's efforts to stop denials. It must be made clear that the suspect was not physically restrained from offering denials, but rather, procedures were used to socially discourage the suspect from offering denials. Further, it can be emphasized that

during interrogation an innocent suspect will not be concerned with social protocol and will vehemently state his case; it is the guilty suspect who allows his denial to be put off because he knows it is a lie.

Procedures

Denials Following the Direct Positive Confrontation

The investigator should expect the first denial of guilt immediately after the direct positive confrontation (Step 1), when the suspect is accused of having committed the offense under investigation. The suspect will have been told, in no uncertain terms, something like this, "The results of our investigation clearly indicate that you are the person who broke into Jason's Jewelry Store." The investigator should then allow for a three- or five-second pause, during which he should listen to and carefully observe the manner in which the suspect makes a denial, if one is offered at all. This will give the investigator an early clear indication of the suspect's probable guilt or innocence.

A weak denial following the direct positive confrontation should be ignored by the investigator; it represents nothing more than the suspect following through with the mental game-plan "If I am accused of doing this, I will deny it." Without giving any heed to the offered denial, the investigator should immediately embark upon the transition statement to establish the purpose for the interrogation (for example, to find out why the suspect committed the crime).

However, when the suspect offers a more forceful, stronger denial to the direct positive confrontation, the investigator should reassert his confidence in the suspect's guilt as the transition statement is introduced. The following dialogue illustrates this process:

Q: Joe, I have in this folder the results of our entire investigation. There is no doubt that you are the person who started that fire! I'd like to sit down with you this morning so we can get this clarified, okay?

R: That's crazy. I didn't start that fire!

Q: As I said Joe, the results of our investigation clearly indicate that you did start the fire, but the most important thing to establish right now is the circumstances that led up to this. A while back I was talking to a man who was under investigation for starting a fire in his home. . . . [continue with a third-person theme]

The reason for ignoring the weak denial and responding to the more forceful one is that, in the first instance, the investigator implies that he expected the denial and will not even waste his breath by responding to it. This nondefensive response has the effect of inhibiting further denials from such a suspect. With the more forceful denial, however, the investigator cannot be certain if it is coming from an innocent or guilty suspect and a restatement of the investigator's confidence in the suspect's guilt has two desirable effects: (1) if the suspect is innocent, there will be no mistake about the investigator's position

and the innocent suspect will be highly motivated to prove him wrong; (2) if the suspect is deceptive, the investigator's response indicates high confidence in the suspect's guilt, which is required for any successful interrogation.

Denials Made During the Theme

From the initial accusatory confrontation (Step 1) and throughout the development of the theme (Step 2), the investigator should have conveyed to the suspect the attitude and position that the investigation into the case has clearly indicated his guilt, and, consequently the only reasons for the investigator to be talking to him at all are to determine the circumstances of the crime and to obtain an explanation for its commission (or whatever the investigator's transition statement may have been).

Once the theme has been introduced and the investigator starts to develop it, there are three primary objectives with respect to handling denials:

1. anticipate denials before they are voiced
2. discourage weak denials from being voiced
3. evaluate denials that are voiced

Because these goals represent the essence of Step 3, each will be discussed separately, with specific recommended procedures offered at each stage.

Anticipating Denials before They Are Voiced

It is significant to note that truthful and deceptive suspects frequently differ in their behavior just before a denial is offered. As a general statement, truthful suspects offer their denial in an outright fashion and display appropriate nonverbal cues reflecting the confidence of their verbal statement. Deceptive denials are often preceded with verbal or nonverbal cues that allow the investigator to anticipate when the suspect is about to deny involvement in the offense under investigation.

Nonverbal Indications of an Upcoming Denial

On the nonverbal level deceptive suspects often employ "interruption gestures" before voicing a denial. These are so named because they are universally recognized social signals to let a speaker know, "Hey, it's my turn to talk. I have something to say!" Truthful suspects rarely engage in such nonverbal behaviors before expressing a denial—their denial is truthful and they don't feel a need to be polite or socially proper when voicing it.

To help visualize interruption gestures, the investigator might picture himself involved in a conversation with a co-worker. The co-worker is dominating the conversation, seeming to go on endlessly with accounts about his vacation or son's accomplishments in sports. You want to say something but do not want to appear offensive in interrupting your friend. You will likely accomplish this by sending nonverbal signals to the co-worker essentially expressing a desire to talk.

One such nonverbal behavior is to extend a hand between the two of you as an illustrator preceding the spoken word. Sometimes this gesture is expressed by placing a forefinger of one hand on the finger of the other hand, in anticipation of expressing specific points of dissention.

A forward lean in the chair often precedes a denial. The suspect first prepares himself mentally to express the verbal denial and in doing so may lean slightly forward in the chair.

The suspect makes an effort to establish "eye contact" with the speaker. During normal conversation the listener focuses his gaze on the speaker's mouth. When the suspect elevates his gaze to look at the investigator's eyes, he is seeking permission to speak.

Finally, the suspect may open his mouth and take a breath, waiting for a pause in the investigator's theme to get the statement out. This should alert the investigator to his desire to speak.

These nonverbal symptoms—an extended hand, a forward lean, an effort to make eye contact, and the open mouth—each indicate that the suspect desires to interrupt the theme. Deceptive suspects will not interrupt the investigator to confess. They interrupt the investigator to offer a denial. The photograph (Figure 13-3) depicts a suspect using an interruption gesture.

Figure 13-3 Interruption gesture

Verbal Indications of an Upcoming Denial

Innocent suspects disclose little warning during the theme development stage that they are about to verbally deny involvement in the crime. They may give some general nonverbal signs that they are about to speak, such as shaking the head or leaning forward in the chair while making some hand gesture or arm movement, but they will usually give no verbal clues that a denial is forthcoming. Instead, they simply voice the statement, "I did not do it," without any prefatory remarks.

A guilty suspect may preface the denial with a "permission phrase." The suspect knows that his anticipated denial is a lie and so introduces it by asking permission to speak. The following each represent common permission phrases:

- May I say one thing?
- Could I just explain something to you?
- Would you please let me tell you something?

Other verbal statements that often precede a deceptive denial might be described as pleading phrases, such as, "But honestly, sir," "Please, sir," or "I understand what you're saying, but. . . ."

Discouraging Weak Denials from Being Voiced

Following the permission phrase or a pleading phrase, a guilty suspect will be impelled to add: "I didn't do it." The investigator should seek to prevent this from occurring. It is incumbent upon the investigator to recognize the significance of the permission phrase and then, upon hearing it, he should interject a comment that will get the suspect's attention and discourage the completion of the denial statement. This type of comment should first include an accentuated reference to the suspect's first name (for example, "Joe!"), to be followed by: "Before you say anything else, let me explain how important this is" or "Jim! Listen, I want you to understand this."

To emphasize the investigator's confidence in his position, the above-mentioned verbal assertion should be accompanied by the investigator engaging in appropriate nonverbal gestures. First, he should turn his head away from the suspect, denying him eye contact. This social gesture expresses disinterest in what the suspect is about to say and has the effect of discouraging the statement to be completed. At the same time, the investigator should hold up his hand to make the well-recognized "stop" gesture. This will further assert the investigator's confidence. Finally, the investigator may move his chair in slightly toward the suspect when continuing on with his theme. Another tactic to maintain control over the situation is for the investigator to change the tone of voice by either speaking louder or, in some instances, by speaking softly; in addition, the rate of speech may be changed to underscore the significance of the statement. The photograph in Figure 13–4 illustrates the investigator's nonverbal response while saying to the suspect, "Dan! Hear me out. What I'm saying is important."

Figure 13–4 Discouraging weak denial

The statement, "Joe, before you say anything else, let me explain how important this is," will often stop a guilty suspect from completing a denial statement. Following this remark of "importance," and the subsequent silence of the suspect, the investigator should immediately return to the development of his theme. As the investigator proceeds with theme development, often the suspect will attempt to re-enter the conversation with a denial. Once again, as the guilty suspect attempts to introduce a denial with a permission phrase (for example, "Can I just say something?") the investigator should immediately interject a statement advising the suspect to "just give me a minute" because of the importance of what the investigator is saying. The dialogue presented in Table 13–1 illustrates this process.

This type of exchange may take place several times during the early stage of the interrogation. Usually, a guilty suspect can be stopped from voicing denials by the investigator's response, which may be physical gestures, such as the "stop" hand gesture, the mention of the suspect's first name, or a reference to the importance of what the investigator is saying. However, there may be occasions where those tactics will not stop the suspect from denying the crime. In such instances, the investigator may have to escalate his response statement to include comments that imply more incriminating evidence coming, such as, "Joe, I haven't finished! Let me tell you the whole story [or, exactly what we have against you] before you say anything else!"

A guilty person is always interested in hearing the whole story or in finding out exactly what may be known about him so that an assessment may be made of the situation. As a

Table 13–1 Elements of Dialogue in Step 3

Actual Dialogue	Element
Investigator: Joe, the results of our investigation clearly indicate that you are the person who broke into Janson's Jewelry Store last week.	Positive confrontation statement
Joe [After pause]: You think . . . I could do something like that?	Suspect's initial denial during behavioral pause
Investigator: Joe, there isn't any doubt about it. What I would like to do now is to sit down with you to see if we can get this thing straightened out.	Restatement of accusation
You see, Joe, in situations like this, the most important thing for us is to understand the circumstances that led into this kind of thing. Now I know how tough things have been for you since you got laid off last year. The way the . . .	Theme development
Joe: Could I just say something?	Permission phrase for denial
Investigator [interrupting Joe]: Joe, just listen to me for a minute. I want you to know how important this is.	Discouraging denial
Joe, the way today's economy is destroying so many lives with inflated prices and unemployment, we see people like you making mistakes like this all the time. You see, Joe, I know you would have never done something like this had you not felt that there was no alternative. Your family . . .	Returning to theme and discouraging further denials
Joe [interrupting the investigator]: If you let me talk, I'll tell you what happened.	Permission phrase for denial
Investigator: Joe, let me finish this because I know the pressure you must have been under to pay your family food bills, the rent, and to buy clothes for your kids.	Discouraging further denials and returning to theme
Joe [interrupting the investigator]: I understand what you're saying, but . . .	Permission phrase for denial
Investigator [interrupting Joe]: Let me just finish this though because this is so important for you to understand. [Continue on with theme.]	Discouraging further denials and returning to theme

result, most guilty suspects become quiet when told, in essence, that more incriminating information is coming.

As a general rule, this tactic will either terminate a guilty suspect's denial attempts or at least cause him to do so less frequently as the interrogation continues. The investigator will have thereby thwarted the suspect in relying upon the protest, "I didn't do it." A guilty

suspect soon realizes that the attempt to deny committing the crime has been fruitless and has not discouraged or stopped the investigator in pursuit of the truth. As a result, the guilty suspect will usually develop a change in tactic in an effort to achieve some control over the conversation. At this point, the investigator should move on to Step 4 (Overcoming Objections).

As stated earlier, an innocent suspect will generally make a direct, sincere, and spontaneous denial after the investigator's first positive confrontation. Nevertheless, in order to minimize the risk of an erroneous diagnosis, the investigation should continue a short while with the assumption that the suspect may be guilty. Again, the focus here is on suspects against whom there is reasonable evidence or certainty of guilt. In other words, before the investigator ever accuses a person of committing a crime, there should at least be reasonable basis for believing that the person actually committed it. Furthermore, *none of what is recommended is apt to induce an innocent person to offer a confession!* (This point is detailed in the earlier discussion of Step 1.)

An innocent suspect usually will not let the investigator continue for long before forcefully interjecting a denial into the conversation. Unlike guilty suspects, the innocent ones, as previously mentioned, will not "preface" their denials with permission phrases; rather, they will unequivocally state something to the effect of, "You're wrong; I did not do it!" Nevertheless, the investigator should attempt to discourage denials in much the same way as was done with the denials of persons displaying symptoms of guilt.

In the majority of instances, innocent suspects will not allow the investigator to stop their denials; in fact, the intensity and frequency of denials from the innocent will increase as the interrogation continues. An innocent suspect will become angry and unyielding and often will attempt to take control of the interrogation by not allowing the investigator to talk until the suspect has made clear the point that he did not commit the crime under investigation.

There are exceptions to the general "innocent" pattern of resistance when dealing with suspects from certain cultural backgrounds or lower mental capacities. Some individuals, because of ethnic, environmental, or intrinsic characteristics (such as age), harbor such a respect (or fear) for authority that it is difficult for them to indulge in forceful or disrespectful denials, and they may meekly allow the investigator to stop their attempts at denial. They may seem to listen to the investigator and may even nod their heads in apparent agreement as the investigator develops the theme. Only when finally asked an incriminating question will they deny any involvement in the crime, or will they finally express frustration with a statement such as, "What kind of conversation is this—it's all one way!" At this point, such an individual will seem genuinely offended and sincere in his denials, but this attitude will be slow in development.

Evaluating Denials That Are Voiced

The previously discussed procedures to put off a suspect's attempts to deny will not always be successful. This will be true of all innocent denials, but many guilty suspects also persist in their efforts to voice their denial.

The final goal of Step 3 is to evaluate denials that are voiced and respond to them effectively. To do this the investigator must carefully evaluate exactly what the denial is actually saying. In this regard, a denial may offer significant insight as to how the investigator should proceed with the interrogation. Beyond the broad category of innocent versus guilty denials, the investigator needs to assess the strength and content of the denial, inasmuch as this will assist in knowing how to best handle it.

Denials from the Innocent

By far, the easiest denials to identify during an interrogation are those emanating from an innocent suspect. Such a suspect will generally respond to the investigator's first accusation (Step 1) with a spontaneous, direct, and forceful denial of guilt. He will likely express or otherwise indicate anger and hostility over the accusation and may even insult the investigator because of it. While making the initial denial, the innocent suspect will look the investigator "straight in the eye" and may lean forward in the chair in an assertive or even aggressive posture. The verbal content of his denial may be something like: "You're wrong. You've got to be crazy if you think I did something like that!"

As the investigator continues on with his transition statement and eventual theme development, the symptoms of an innocent suspect's denials become even more obvious. Nonverbally, the suspect becomes more and more agitated and focused (clearly emotionally involved in the process), and his attempts to deny are more frequent and persistent. The suspect eventually engages in similar nonverbal gestures an investigator uses to "put off" a denial. That is, he leans forward, extends a hand, and may look away when the investigator tries to talk; a verbal battle is likely to ensue and the innocent suspect will win. This is such a significant sign of the innocent denial that it needs to be emphasized: when an investigator attempts to discourage denials by using the previously mentioned tactics but the suspect wins the verbal battle and the investigator becomes the silent listener, strong consideration should be given to the probability that the suspect is innocent.

Innocent suspects often emphasize their denials by distinctly enunciating their words. Their denials often contain descriptive language such as, "I did not *murder* anyone!" or "I did not *steal* any money from work!" While making this statement, the innocent suspect's eyes may convey an injured or angry look similar to that of a person who has been deeply offended. Furthermore, they will rarely move past this state of denials during an interrogation; they will remain adamant in their position and refuse to allow the investigator to continue with an unchallenged development of the interrogation theme.

Denials from the Guilty

Guilty denials range from being weak and apologetic to persistent but lacking conviction. The content of a denial may also identify it as coming from a guilty person. Frequently, a suspect's guilt will be apparent from his initial reaction during Step 1 (the Positive Confrontation). One category of common deceptive responses to the confrontation statement involves asking a question such as, "Why do you think I did that?," "Are you sure?," "How can that be?," or "It does?" A second category of common deceptive responses to

the direct positive confrontation involve qualified or bolstered phrases. Examples of these include, "On my mother's grave I swear I didn't do that!" "Honestly sir, I've been telling you the truth" or "As God is my witness, I don't know anything about this."

Upon being confronted with their crime, some guilty suspects will take a defensive stance and make a statement such as, "I knew this would happen" or "You're just out to get me. I'm being framed!" Perhaps the most revealing example of this defensive strategy was exhibited by a suspect confronted with falsifying a deposition in a sexual harassment investigation. Upon being told by the investigator that he clearly lied during his deposition the suspect, with a smile on his face, got out of his chair, shook the investigator's hand, and in a civil manner stated, "Well, I figured you wouldn't believe me. It's been nice talking to you but I have an attorney to see." As quickly as he could, he exited the interview room.

It has been our experience that innocent suspects are not at all anxious to leave the interview room after being mistakenly accused—indeed they will insist on remaining to make certain that the investigator understands the truth. This is true even after the investigator has stepped down the interrogation (a procedure presented in the next section) and has specifically told the person that other suspects will be pursued. The innocent person does not want to leave the interview room without substantial assurance that he is no longer considered a suspect.

Denials offered by a guilty suspect during theme development may be recognized by the suspect's avoidance of descriptive language. For instance, "I didn't do *that*!" or "I didn't *take* that money!" The deceptive denial may be preceded with a statement indicating theme acceptance, such as, "I understand what you're saying, but honestly I wasn't even there." The mere fact that the suspect acknowledges relating to the theme concepts serves as an indication of his guilt—innocent suspects are much more likely to challenge theme concepts, "What difference does it make if I was behind on bills? I never robbed anyone in my life!" Similarly, a deceptive denial may incorporate an apology, such as, "I'm really sorry to have caused you this trouble, but honestly, I didn't do this."

In conjunction with the guilty suspect's verbal denial, he will usually engage in such nonverbal actions as avoiding eye contact with the investigator, slouching in the chair, moving the chair away from the investigator, or shifting posture, including crossing and uncrossing arms and legs. Evaluating a suspect's paralinguistic behavior during a denial often will reveal the deceptive nature of the denial. In this regard, deceptive denials can be described as weak or pleading. The statement, "Oh really, sir, you've got to believe me," said in a pleading fashion is typical of the guilty. The denial that is said softly or passively, also lacks the strength and conviction typically heard from an innocent person.

Some denials offered by the guilty suspect will be directed toward some narrow aspect of the allegation against them. These are termed *specific denials*. Examples of these denials are: "I did not steal $1,400!," "I don't own a gun!," "I don't even know that lady!," or "I was not inside that liquor store!" These denials are offered forcefully and may appear to have characteristics of an innocent person's denial. Of significance, however, is that the statement is *not* denying involvement in the crime, but rather denying some narrow aspect of it. In the first example, the suspect may have stolen $1,350 or $1,500, but probably

not exactly $1,400. In the second, the gun the suspect used could have been stolen or have belonged to an accomplice—he is merely denying ownership of the gun. In the third example the suspect is not denying the rape but merely that he knows the victim. In the fourth example, the suspect is not denying involvement in the robbery; he may well have been a look-out or the driver of the getaway car used.

Responding Effectively to Denials That Are Voiced

The following procedures for responding to denials that are voiced should be considered as general guidelines offering suggested approaches that have frequently been found to be effective. Ultimately, a number of factors enter into the investigator's approach as to how to handle a suspect's voiced denial, including the level of rapport established with the suspect, the strength of evidence against a suspect and the investigator's personality.

Persistent denials of uncertain origin. When the investigator is unable to stop the suspect from making denials, and the investigator may still be somewhat uncertain as to the suspect's guilt or innocence, a considerable advantage may be gained in a theft case by asking the suspect if he is willing to make restitution. Except for a most unusual case situation, no innocent person will agree to pay the victim the amount of the loss or even any part of it. A guilty person who is able or who has the ultimate potential to make any kind of restitution may be quite willing to do so. Therefore, the investigator should ask the suspect the following question regarding a willingness to make restitution: "Joe, this fellow [or the company] is entitled to the return of that money. How about seeing that he gets it back?" An innocent person might respond, "I know he is, but I didn't steal it!" The guilty person may hesitate and ponder an answer before saying "no," but he will seem uncertain, as though evaluating the benefits of such an act; or he or she may immediately say, "All right, I'll see that he is reimbursed, even though I didn't take it."[17]

In instances where an ordinary thief or an embezzler agrees to make restitution for the loss of the missing sum (for example, $1,000), the investigator should then say, for the purpose of more complete self-satisfaction regarding a conclusion of guilt: "Now, what about paying back the other loss, the $500 one?" (Here the investigator refers to a fictitious loss, which should always be of a lesser sum or value than the actual loss.) In such a situation, the suspect will probably respond by saying, "No, I will not!" Then, when the investigator says, "Why not?" the typical reply is, "Because I didn't take it!" Such a response will confirm the reasonable inference warranted by the suspect's initial willingness to make restitution for the actual loss; consequently, the investigator should continue with the attempt to develop an appropriate theme for the eventual admission of guilt.

An innocent person will remain steadfast in denying guilt, regardless of the attitude or statements of the investigator. A guilty person, however, may try to placate the investigator by expressing a willingness to admit the offense while at the same time denying that he committed it. For instance, the suspect may say: "All right, I'll tell you what you want to hear, but I didn't do it." An investigator, therefore, may be materially assisted

by an awareness that a statement of this type is characteristic of the guilty suspect. The psychological factors that prevail are comparable to those involved when a suspect in a theft case expresses a willingness to make restitution to the victim.

On some occasions, it may be appropriate at this stage of the interrogation to provide the suspect with a means of demonstrating "innocence" by offering him an opportunity to take a polygraph examination.[18] The investigator may say: "I can arrange right now for a polygraph examination to be given to you." The suspect's reaction to this may be helpful. If he agrees and seems willing to take the examination as soon as possible, this usually is an indication of possible innocence. On some occasions, however, a guilty person may initially agree to a test because he thinks the proposal is a bluff. In either event, an effort should be made, if possible, to obtain a polygraph examination. However, if an examination is to be conducted, there should be a reasonable time delay between the interrogation experience and the examination.

A guilty person to whom a proposal has been made for a polygraph examination will usually seek to avoid or at least delay submission to the examination by offering such comments as, "I'm not taking a lie detector test; they say lie detectors makes mistakes" or "Hold on—I've got to talk to my lawyer first." Responses of this nature are usually strong indications that the suspect is guilty. However, a refusal may be made by an innocent person who is aware of the importance of examiner competence and will therefore insist upon first knowing something about the examiner.

Following a suspect's refusal to take a polygraph examination, the investigator can (at least for its effect upon the suspect) point out the incriminating significance of a refusal. This, as well as the mere suggestion of a polygraph, or undergoing hypnosis in an effort to learn the truth, may well lead to a confession from the guilty.

When a suspect maintains innocence, and the investigator is unable or prefers not to arrange for a polygraph examination, the suspect should be advised that arrangements may be made for a subsequent interview in the near future. Upon arriving home and relating the interrogation experience to a spouse or other family members or friend, a suspect may be urged to prove his truthfulness and to offer to take a polygraph examination. If the suggestion is met with evasion by the suspect, the spouse or other person may become suspicious and then insist that the suspect make a clean breast of the situation with the promise that he will receive that person's support. Such developments have occurred with some frequency. Moreover, a troubled conscience, or an augmented concern over forthcoming proof of guilt, may prompt a guilty suspect to return to the investigator without encouragement from anyone and then to proceed to confess.

It is wise for the investigator to follow up on the suggested re-interview of the suspect. Often, because of the previously mentioned factors, a suspect who returns for a second interview, and subsequent interrogation, will confess. Once the investigator decides to set the suspect up for a second interview, the following procedures should be kept in mind: first, the ultimate goal is to get the suspect back into the interview room. To do this the investigator must leave the suspect on "good terms" and also offer an incentive to return.

The following statement has proved to be effective in encouraging suspects to return for a second interview:

> Listen Joe, the last thing I want to have happen is for an innocent person to be blamed for something he didn't do. We have a number of people yet to be interviewed and I'm still waiting on two results from the crime lab. You're telling me that you had nothing to do with this. I will accept that as the truth and hold off on submitting my report until we completely finish our investigation. Now if it becomes necessary to talk to you again, perhaps to explain some of our findings, you'd be willing to come back, wouldn't you?

By eliciting a social commitment for the suspect to return, the investigator is in a much better position when later contacting the suspect to arrange for the second interview. Upon reminding the suspect of his promise to return, the investigator may set up, as a pretense for the second interview, that "a few loose ends need clarification."

Denials coming from a probably innocent suspect. When the investigator senses that the suspect may be innocent, he should begin to diminish the tone and nature of the accusatory statements. Rather than concentrate on the fact that the suspect committed the act in question, the investigator should soften the accusation to the point of indicating that the suspect may not have actually committed the act but was only involved in it in some way, perhaps merely has some knowledge about it, or else harbors a suspicion as to the perpetrator. This process of "stepping down" the intensity of the accusation is a deliberate one; the investigator should continue with the evaluation of the suspect's verbal and nonverbal behaviors. Moreover, he should look for indications of something the suspect may have done of a less relevant nature that evoked the suspicion about his commission of the principal act. For example, in a $5,000 embezzlement case, the investigator should explore the possibility that the suspect stole a smaller amount of money, unrelated to the larger amount and that this could account for the behavior symptoms displayed during the initial phases of the interview regarding the $5,000.

The investigator may find it advisable to expand the interrogation into such areas as the possibility that the suspect gave a false alibi for some personal reason unrelated to the crime under investigation. Perhaps the alibi that was offered, which proved to be false, may be accountable to an impelling need to prevent the disclosure of an indiscretion, such as having been in the company of an individual other than the suspect's spouse at the time of the commission of the crime in question. The possibility of the suspect's commission of some other crime similar to, but unrelated to, the one under investigation might also be explored.

Whenever the verbal and nonverbal behavior exhibited by the suspect during an interrogation seems sincere and indicates that the suspect was not involved in the offense under investigation, no statement should be made immediately that he is clear of any subsequent investigation. The suspect should merely be told that as a result of his cooperating with the investigator, other leads will be pursued in an attempt to substantiate the suspect's claim of innocence. Similarly, if the investigator is convinced of a suspect's

guilt, but is unable to move him past the denial phase of the interrogation, the suspect should be advised that, in a effort to establish the suspect's true status, the investigation will continue.

Weak, qualified, or apologetic denials coming from the guilty. An investigator has a number of options from which to choose when responding to weaker denials. All involve a statement telling the suspect that there is absolutely no doubt as to his guilt. The investigator then attempts to redirect the suspect's attention away from his guilt or innocence and back to the stated purpose for the interrogation (for example, to find out what kind of person the suspect is). The following statements illustrate this effort:

Suspect (S): But honestly, sir, I don't know anything about this.
Investigator (I): Joe, there's absolutely no doubt that you did this. That's in the past; you can't change that and I can't change that. The only reason I'm talking to you now is to find out what kind of person you are. I don't think you have a criminal mind, where you carefully planned this thing out for months in advance and calculated it down to the second. I think you are basically an honest person who acted out of character. That's what we need to establish. [return to theme]

Some suspects will not be content simply being told that there is no doubt as to their involvement—they want to know what the evidence against them is before deciding to tell the truth. Furthermore, the vast majority of cases involving criminal interrogation involve no overwhelming evidence of a suspect's guilt; that is precisely why the interrogation is being conducted—in an effort to obtain such evidence. For many guilty suspects, before the decision is made to tell the truth about their crime, they must be convinced that the truth is already known or will be established shortly. In this situation, the investigator must make a decision as to whether to introduce evidence during the interrogation.

One motivation for guilty suspects to offer denials during an interrogation is to evaluate the strength of the investigator's case. Consequently, once the investigator brings up evidence, he is playing into the suspect's hand because the suspect now knows precisely how strong the case is against him and he has something tangible to attack and argue. For this reason, mentioning specific evidence against a suspect during an interrogation should be a carefully considered tactic to overcome persistent denials.

The foregoing statement assumes that the investigator does not have clear and convincing evidence of the suspect's guilt. If the investigator actually has in his possession prima facie evidence of the suspect's involvement in a crime, some of that evidence could be presented with good effect at this stage of the interrogation to overcome the suspect's persistent denials.

As previously mentioned, most interrogations typically do not include physical evidence that clearly indicates the perpetrator of the crime. Therefore, the investigator may have only circumstantial evidence to present as "proof" of the suspect's involvement. In many cases, the best indication of a suspect's guilt may be the investigator's analysis

of the suspect's behavior during the interview. Consequently, when a suspect responds, "Hey man, I swear on my mother's grave, I don't know nothing about this," the investigator would be unlikely to persuade the suspect to tell the truth by explaining that his alibi appears a little weak and his nonverbal behavior is consistent with others who have withheld information.

If an investigator chooses to present evidence during an interrogation, the first attempt should be through implication. The following dialogue, from an interrogation, illustrates this technique. The issue under investigation was the theft of $600 from a hotel safety deposit box. The investigator knew going into the interrogation that whoever stole the money used the manager's key to open the box and that the thief left the key by a bell stand. Further, it was known that the envelope containing the money was left in a trash can near the safety deposit boxes. The denials by the suspect were weak but persistent at this stage of the interrogation:

S: But honestly, I didn't even see that money. I don't know why you think I did this.

I: Listen, Sam, we know that you used Margie's key to open that safety deposit box and we know you left the key by the bell stand after you took the money. We already know that. We also know that you removed the money from the deposit box and removed it from the envelope and threw the envelope away in a trash can down the hall from there—we know all that. What we don't know is how you got the key and that's important. . . . [return to theme]

The suspect's denials stopped at this point and, within 15 minutes, he offered a full confession of the theft. The investigator never presented any evidence against the suspect except that he ambiguously stated that he knew certain things. It was never stated how the investigator knew them, only that he did. In any crime an investigator can be certain of specific things the guilty person must have done. This technique of implication simply involves telling the suspect that the investigator already knows he did those things without explaining how or why he knows them.

Some guilty suspects will not be satisfied with the investigator's statement that, "We know you handled that knife in her apartment." They will demand to know specifics about the evidence. In this situation the investigator has two choices. The first is to evade the issue of documented evidence entirely (covered in the next section); the second is to fabricate a response. An outright lie about evidence implicating a suspect should be an investigator's last effort to persuade the suspect to tell the truth. It must be remembered that the guilty suspect knows exactly what he did and did not do during the commission of a crime. For example, if an investigator lies about finding the suspect's fingerprints at a crime scene where the suspect knows he wore gloves, the investigator's credibility is lost and, under that circumstance, a confession will be unlikely.

Although it is generally acceptable to verbally lie about evidence connecting a suspect to a crime, it is a risky technique to employ. Before presenting such evidence, careful consideration should be given to the level of rapport established with the suspect, the

probable existence of the evidence, and the investigator's ability to "sell" the existence of the evidence. A miscalculation of any of these principles may cause the technique to backfire and fortify a guilty suspect's resistance. Furthermore, fictitious evidence implicating the suspect in the crime should not be used when the suspect takes the position that he does not remember whether he committed the crime because of being intoxicated, for example. Under that unusual circumstance, it may be argued that the introduction of evidence was used to convince the suspect of his guilt. For these reasons, introducing false evidence during an interrogation should be considered only when other attempts to stop the suspect's persistent but weak denials have failed.

Specific denials. A specific denial (one that denies some narrow aspect of the crime), if recognized as such, can be handled effectively to help persuade a guilty suspect to tell the truth. Often, the specific denial tells the investigator what the suspect *did not do*, relative to his commission of the crime. Consequently, when a suspect offers the following specific denial in a theft case, "Listen, I don't have that money!" the investigator should direct his theme around the fact that the suspect obviously needed the money badly to pay bills or another unusual expense, and that is the reason he no longer has the money.

The investigator's response to a specific denial is similar to that of responding to an objection, which is covered in Step 4. In essence, the investigator should recognize that the specific denial is probably a truthful statement, if taken in isolation. Consequently, any attempts to argue its validity will only be met with further resistance. The following response from a suspect accused of burglarizing a home illustrates this:

S: I did not break into that house! (the door was unlocked and therefore there was no forced entry)

If the investigator retorts with a strong statement, "There's no doubt that you did, let's get this thing straightened out now," the suspect immediately realizes that the investigator's evidence is incorrect or weak and will become further fortified in his denials. Under such a circumstance, learning the truth becomes a remote possibility.

A much more effective approach is for the investigator to respond to the above specific denial in a manner that acknowledges the limited truth of the statement, such as, "That's exactly my point! I don't think you broke that door down, I think it was left open or unlocked. If you broke into that house by jimmying the door or breaking a window that tells me you've probably committed dozens of burglaries. But I don't think that's the case." [continue with the theme]

This second response leaves open the various possibilities that the house was unlocked or perhaps an accomplice broke into the home and the suspect simply followed him in. The lesson learned is *do not refute specific denials*; in all probability in a narrow sense, they represent a truthful statement.

Stronger, persistent denials from the guilty. When the various techniques of sympathy and understanding have proven ineffective in stopping the denials of a suspect whose guilt is definite or reasonably certain, the investigator may consider using a so-called friendly-unfriendly act. This act may involve two investigators or one investigator working alone.

The following procedure applies when two investigators are involved: Interrogator A, after having employed a sympathetic, understanding approach throughout his interrogation, expresses regret over the suspect's continued lying. A then leaves the room. Interrogator B enters and proceeds to make uncomplimentary statements to the suspect, by pointing out his objectionable characteristics or behavior. (Or B may enter while A is still in the room, and B can start his efforts by admonishing A for wasting his time on such an undesirable person; whereupon A will leave the room with pretended hurt feeling over the suspect's refusal to tell him the truth.)

After Interrogator B (the unfriendly one) has been in the interview room for a short while, Interrogator A (the friendly one) reenters and scolds B for his unfriendly conduct. A asks B to leave, and B goes out of the door with a pretended feeling of disgust toward both the suspect and A. A then resumes his friendly, sympathetic approach.

This technique has been effectively applied by using a detective as the friendly investigator and a police captain as the unfriendly one. As the captain leaves the room after plying his unfriendly role, the detective may say:

> Joe, I'm glad you didn't tell him a damn thing. He treats everybody that way—individuals like yourself, as well as, people within the department. I'd like to show him up by having you tell me the truth. It's time he learns a lesson or two about decent human behavior.

The psychological reason for the effectiveness of the friendly-unfriendly act is the fact that the contrast between the two methods used serves to accentuate the friendly, sympathetic attitude and thereby renders that approach more effective. Investigators must bear in mind that in the employment of the friendly-unfriendly act, the second (unfriendly) investigator should resort only to verbal condemnation of the suspect; under no circumstance should physical abuse or threats of abuse or other mistreatment ever be employed.

Although the friendly-unfriendly act is usually performed by two persons, one investigator can play both roles. In fact, the authors are of the opinion that this is the more effective way to apply the technique. When a single investigator acts out both parts, he feigns impatience and unfriendliness by getting up from his chair and addressing the suspect somewhat as follows: "Joe, I thought that there was something basically decent and honorable in you but apparently there isn't. The hell with it. If that's the way you want to leave it, I don't give a damn." The investigator sits down on the chair again and after a brief pause, with no conversation at all, may say, "Joe, you'd tax the patience of a saint the way you've been acting. But I guess there is something worthwhile in you anyway." Or, the investigator may even apologize for his loss of patience by saying, "I'm sorry. That's the first time I've lost my head like that." The investigator then starts all over with the reapplication of the sympathetic approach that formed the basis for his efforts prior to the above-described outburst of impatience. Now by reason of the contrast he has seen, the suspect finds the investigator's sympathetic, understanding attitude to be much more appealing. This places him in a more vulnerable position for a disclosure of the truth.

The friendly-unfriendly act is particularly appropriate in the interrogation of a suspect who is politely apathetic—the person who just nods his head, as though in agreement with

the investigator, but says nothing in response except a denial of guilt. With a suspect of this type, a change in the investigator's attitude from friendly to unfriendly and back to friendly again will at times produce a change of attitude. The suspect may then become more responsive to the investigator's efforts to seek the truth.

Responding to a suspect's attempt to leave the interrogation room. A suspect who is not in custody is free to walk out of the interview room at any time he chooses. Furthermore, the investigator cannot physically restrain him from doing so. This behavior is much more often observed from guilty suspects than ones who are innocent. The guilty suspect wants to leave the interview room to reduce anxiety from having to further lie to the investigator.

Once the suspect gets out of the chair and approaches the interview room door, the investigator should continue to address the now empty chair. Initially, he should not even acknowledge that the suspect has gotten up out of the chair and should certainly not get out of his own chair. To do so forces the suspect to make the next move, which is oftentimes to open the door and leave.

After talking to the empty chair for 30 or 60 seconds, the investigator should turn to the suspect and politely ask him to have a seat so that the matter can be straightened out. In many cases, by following this procedure, the suspect will sit back down and eventually confess. The photograph (Figure 13–5) illustrates the procedure to use when the suspect stands during an interrogation.

Figure 13–5 When a suspect gets out of the chair, the investigator should remain seated

Responding to Other Statements Made by the Deceptive

Deceptive suspects may dispense with denials and ask more direct questions such as, "What proof do you have that I did this?" or "What makes you think I did this?" These really are nothing more than disguised deceptive denials. The innocent person will not inquire about the strength of the evidence against him. Upon hearing such requests, the investigator should avoid the suspect's invitation to discuss specific evidence. Rather, we recommend that the investigator put off such requests.

One successful technique in this regard is to explain to the suspect that it is against departmental polices to discuss specific evidence at this stage of the investigation. The dialogue between the suspect and investigator might sound something like the following:

S: What proof do you have that I did this?

I: Jim, I'm not going to sit down and tell you piece by piece all the evidence we have against you because my department won't let me do that. Down the road there will be a time and place when that will happen. Our attorneys will lay out physical, forensic, and circumstantial evidence that will directly tie you in with this thing. That's not what I'm talking to you about right now. The only reason I'm talking to you is to establish why this thing happened. [return to theme]

Another tactic to consider in this situation is to develop a third-person theme to support the investigator's statement as to why he will not reveal evidence. This theme might be presented as follows:

> Brian, a couple of weeks ago I was talking to a young man who had robbed a gas station. At one point he asked me why I thought he did it. Now, I didn't tell him that we got a call from his roommate turning him in and that we could easily identify him through video surveillance tapes. Because if I told him all of the evidence we had I wouldn't be able to evaluate what kind of person he is. And that's why I'm not going to tell you about all the evidence we have.

During an interrogation some suspects may be on the verge of telling the truth but, as a final effort to escape consequences, may offer a bargaining statement. Often this is voiced as follows, "What would happen to me if I told you I did this?" The investigator must recognize that once such a bargaining statement is made, the suspect has decided to confess. It is ill-advised to try to work out some sort of agreement for a confession with a suspect who is in this state of mind. Rather, the investigator should proceed to elicit a full confession without any mention of possible leniency. The following dialogue is from an interrogation of a suspect who offered a bargaining statement:

S: What would happen if I told you I did this?

I: Jim, I'm not in a position to tell you what might happen. I can't tell you that if you tell the truth about this here is what's going to happen because I don't have that authority, and I'm not going to lie to you. My only job is to gather

evidence and turn it over to my boss. My report will be on his desk at 5:00 this evening with or without an explanation from you. I would like to be able to say that this is the first time that you did something like this, but I can't put that in my report unless it's the truth.

Some guilty suspects will attempt to avoid confessing by promising to tell the truth to someone else. This is a stalling tactic, and rarely will the suspect keep his promise. Early in his career one of the authors was interrogating a suspect on behalf of a loss prevention department. After considerable effort to persuade the suspect to tell the truth, the suspect stated, "Listen, I feel terrible about this whole thing. I'll walk across the street right now and tell [the loss prevention investigator] the truth." At that point the suspect was dismissed without confessing. The loss prevention investigator was called and advised that the suspect would be there shortly to confess. A while later the investigator called back and said that the suspect stopped by but insisted that he was innocent and that he had no involvement in the offense.

Suffice it to say, when a suspect promises to tell the truth at some later point in time, the investigator should put off the request and continue with the interrogation. The following dialogue illustrates an approach to use:

S: I'll tell the truth, but first I want to talk to my wife.[19]
I: Randy, it's entirely up to you if you want to tell your wife about this. As far as I'm concerned, that's between you and your wife. My problem is that I've got to complete my report and right now I can't do that without your assistance. [continue with theme]

A final example of statements made by guilty suspects to escape responsibility for their crime is the claim that they cannot remember committing it. In our experience, claims of a faulty memory almost always occur while obtaining the full confession (Step 8). The suspect, not wanting to face the embarrassment of his crime or to further incriminate himself, may claim that he does not remember why he stabbed the victim, what he said during a robbery, or exactly what he bought with stolen money.

However, there are rare cases where the suspect, prior to offering any admission of guilt, tells the investigator that it is possible he committed the crime but he has no recollection of doing so. To defend against possible claims of a coerced-internalized confession (covered in Chapter 15), the investigator should avoid any theme centered around the suspect's inability to remember committing the crime (being intoxicated, repression, multiple personality, etc.). Rather, this statement should be handled as an objection (Step 4), as the following dialogue illustrates:

S: You say I did this, but I swear I don't remember doing it. Do you think I could have somehow blocked it from my memory?
I: Joe, I'm sure there are parts of this that you may not be able to specifically recall right now. That's human nature. On the other hand, I know that you

remember a lot of what happened that night. That's all I'm interested in—what you can remember. The big question I have is whether this was planned out months in advance or if it just happened on the spur of the moment. [continue with theme]

Step 4—Overcoming Objections

Principles

The guilty suspect who realizes the futility of uttering a simple denial may resort to a change in tactic in order to achieve some control over the situation and dissuade the investigator's confidence in his guilt. This change will ordinarily take the form of a reason as to why the accusation is wrong. It will fall far short, however, of presenting evidence of innocence, but the guilty suspect offers it in the hope that it will lend support to his denial and to engage the investigator in an argument and thus distract from the focus of the theme. Statements of this type may be termed *objections*. For instance, in an armed robbery case situation, the objection may be: "I couldn't have done that; I don't own a gun!" In offering this objection, the guilty suspect hopes that the investigator will argue the point and thus allow him to reduce anxiety through engaging in verbal comments.

A denial is a natural defensive strategy that both innocent and guilty suspects use. Objections, however, represent an offensive strategy and are heard, almost exclusively, from guilty suspects. Step 4 of the interrogation process involves turning the objection around to use it as a reason why the suspect should tell the truth.

With respect to the manner in which the investigator handles objections, a defense attorney may claim that the investigator used his client's own words against him. There is nothing illegal about using logic and rational statements during persuasion and the investigator should openly acknowledge that he recognized the defendant's statement as an excuse and not a denial, and therefore, he incorporated the defendant's excuse within his theme. As an analogy, consider the suspect who claims that on the night his girlfriend was murdered he was home watching television. During the interrogation the investigator presents neighbors' accounts of the suspect driving out of his driveway at the time he claims to have been watching television. The investigator would certainly be within permissible limits to tell the suspect that because he lied about his alibi it supports his probable involvement in the murder.

Procedures

Whenever the suspect resorts to voicing an objection, the investigator's efforts up to this point clearly have had a desirable impact. Moreover, the suspect's move from a denial to an objection is a good indication of a concealment of the truth. An innocent suspect will usually remain steadfast with the denial alone and will feel no need to embellish it at all. He considers "I didn't do it" to be entirely adequate.

During interrogation there is a tendency by investigators to view objections in the same way as denials and to deal with them in the same manner. That is, to discourage the suspect from voicing weak denials and if denials do surface, to evaluate the credibility of the denial. If the denial is typical of a deceptive person, the investigator restates confidence in the person's guilt.

It must be recognized that the objection signifies a different frame of mind than when a suspect simply denies commission of the crime; consequently, instead of stopping the suspect, the investigator should permit an indulgence in the voicing of an objection. The reason for this is that it will provide the investigator with helpful information for the development of interrogation themes. Instead of discouraging objections, the investigator should let the suspect voice an objection and then seek to overcome it.

Before proceeding with a presentation of the detailed procedures for overcoming a suspect's objections, it is helpful to consider the terms used by an effective automobile salesperson in overcoming a prospective purchaser's reluctance to commit himself to a sale. Some salespeople actually refer to the tactic as "overcoming objections."

A person enters a sales display room and starts to look at a particular car. If, when a salesperson says, "I see you're interested in the SUV," the response is, "I'm just looking," a sale is unlikely to result; the conversation stalls at this point of a denial. The same will be true even after the following limited conversation occurs between the salesperson and the potential customer:

Salesperson (SP): You know, this is the last week we are giving $500 rebates on that model; it's a real buy.
Customer (C): I'm just looking.
SP: What kind of package would you like me to put together on this baby so you could drive it home today?
C: I'm just looking.

Suppose, however, that the potential buyer begins to offer reasons (objections) for not buying. The dialogue might continue as follows:

C: Even with a rebate, I couldn't afford it.
SP: I know what you mean, but you see, after this week is over, not only is the rebate off, but we will have a 10% increase across the board. You'll never see a price like this again. Come on over here and I'll show you how we can work something out.
C: But even if I could afford it, I'd be interested in some different options than this one has.
SP: No problem, we have over 50 on the lot. Let's see what kind of package we can put together so you can drive one of these home today.
C: Well, we can talk about it, but I'm not saying I'll buy it. I'd have to talk to my wife first.
SP: Fine. I'm sure she'll love it. How about calling her and having her come over?

Obviously, considerable progress was made toward a sale. By using comparable tactics, an investigator may overcome the objections that are offered by a guilty suspect in response to the accusation by the investigator. The investigator, too, is on the way to making a sale—selling the suspect on the idea of telling the truth.

There are three objectives at this stage of the interrogation. The first is to recognize the suspect's statement as an objection and to draw it out if it is not fully voiced. Second, the investigator should reward the objection and, finally, turn the objection around by incorporating it back within the interrogation theme. Each of these stages will be presented separately.

Recognizing the Objection

Some objections will be stated outright. For example, during an interrogation of a theft suspect he may come right out and say, "But I've got money in the bank!" or "I can get money from my parents any time I want." On other occasions, the suspect may offer an "introductory phrase" as a prelude to voicing his objection. This may take the form of such expressions as "I couldn't have done it," "I wouldn't do a thing like that," "That's impossible," "That's ridiculous," or "How could I ever do something like that?"

Because of the significantly different way in which the investigator handles a suspect's attempt to deny, as opposed to the way in which objections are handled, the investigator must listen closely to the suspect's statements. As previously stated, the investigator wants to discourage the denial but encourage and draw out the objection.

Upon hearing such introductory phrases, the investigator should seek an elaboration by asking the suspect such questions as: "Why couldn't you have done this?" or "Why would it be ridiculous?" The importance of doing this is similar to the reason the automobile salesperson allowed the prospective customer to express his objections to committing himself to the purchase of a car; the investigator may thereby ascertain the specific nature of the objection.

The majority of objection statements that suspects offer can be categorized into the following general groups:

1. *Emotional*—"I'd be too scared (nervous) to do something like that"; "I loved her"; "I like my job"; "I could never hurt someone"; "I have too much to lose by doing something like this."
2. *Factual*—"I don't even own a gun"; "I wasn't even there that day"; "I don't even know him"; "It's impossible because the security is too good"; "I wouldn't even know how to do something like that"; "I don't need money, I have $5,000 in my account"; or "I don't even have the combination to the safe."
3. *Moral*—"I'm a good Catholic [Protestant, Jew, etc.] and that kind of thing is against our religion"; "I wasn't brought up that way"; or "A person who would do something like this is really sick."

Rewarding the Objection

Statements of this type are feeble explanations, even in those instances where they may be partially true. In any event, the investigator should not argue with the suspect over the statement, nor should there be any indication of surprise or irritation. The investigator should act as though the statement was expected. Such a reaction will have a discouraging effect upon the suspect, who will perceive that he made the wrong statement, or at least an ineffective one.

The following—again using the armed robbery suspect situation—illustrates the inappropriateness and ineffectiveness of an argument by the investigator with the suspect over a statement that offers an objection to the accusation:

I: You said it's ridiculous. Why, Joe?
S: Because I don't even own a gun.
I: Sure you do, and you used it that night!
S: Hey, I just said I don't own a gun; I've never bought or owned one. You think I own a gun? Prove it!
I: Look, fellow, you used your damn gun that night. Quit being a wise guy!
S: I don't own a gun, damn it!

This type of exchange allows the suspect to gain control of the interrogation, while at the same time allowing him to relieve pent up anxiety through talking. It puts the investigator on the defensive and causes a great deal of unnecessary hostility and frustration for the investigator to overcome.

In contrast to the foregoing expressions by the investigator, the appropriate response would have been a statement of agreement or understanding, such as: "I hope that's true," "I'm glad you mentioned that," "I was hoping you'd say that," "I certainly understand what you're saying," or "I know that may be true."

Turning the Objection Around

Immediately after rewarding the suspect's stated objection, the investigator should attempt to reverse the significance of the suspect's objection and return to the interrogation theme without delay. Table 13-2 shows an example of the dialogue that should occur between the investigator and the suspect in a case situation involving the armed robbery of a liquor store.

Another example of Step 4 (Overcoming Objections) is the following case situation where a suspect's objection comes after the investigator has presented the essence of his selected interrogation theme. Assume that the case under investigation involves a series of neighborhood burglaries. Although no sex offenses were connected with any of them, the suspect under interrogation is told that there had been some recent rapes in the area and that the description of the assailant, as given by two young female victims, matched the suspect. At this point, the suspect says: "But I could never do something like that. I'd

Table 13-2 Elements of Dialogue in *Step 4*

Actual Dialogue	Element
Investigator: Joe, I don't think this was your idea or something you planned well in advance. I think that you and some of your buddies went into that liquor store, saw that there weren't any customers around and one of your buddies told you to go up there and get the money. You just didn't know how to stop it. Then this whole thing happened with the gun and everything else.	Theme development
Suspect: But that's ridiculous.	
Investigator: Why is it ridiculous, Joe?	Follow-through
Suspect: Because I don't even own a gun.	Objection
Investigator: I'm glad you mentioned that, Joe, because it tells me that it wasn't your idea to do this; that one of your buddies talked you into this, handed you the gun, and then the whole thing happened. You see, Joe, if you did own a gun and carried it in that night, ready to use it, to kill somebody if they got in your way, that's one thing. But if the other guy stuck it in your hand, to use it just to scare everybody, that's something else again . . .	Overcoming objection by agreement and understanding and by pointing out negative aspects of situation if objection was untruthful
[Continuation of dialogue]	Continuation of theme development

be too scared just by being in the home." The investigator then expresses his agreement and begins to discuss the negative aspects of the fictitious situation as though it were a true one:

> I believe that's true, Joe, because if you wouldn't be scared that tells me you're capable of anything, even those rapes. But the fact that you were scared tells me that you're not the kind of guy who would be climbing in windows to attack girls, but you just went in there to pick up a few things for some money only because you were desperate. I know how tough it can be these days. . . . [continue with theme]

On occasion, the investigator may be confronted with an objection that is difficult to deal with or to transpose into material for development of the theme. For example, in a child molestation case, it would be inappropriate for the investigator to accept or agree with a suspect's objection, such as, "I'd never do something like that because whoever did that is a pervert." The investigator's response should be one of a general nature, perhaps

describable as an "absolute declaration," such as: "Exactly, Joe, don't you see, that's why we should get this thing cleared up." In effect, this declaration is merely a vehicle by which the investigator sidesteps the objection. It actually does not mean anything to the suspect, but it creates the impression that the investigator is encouraged by the suspect's statement, and this is the opposite effect from that which the suspect anticipated when he offered the objection. The guilty suspect is usually not perceptive enough to question the investigator's statement at this point. The investigator can then resume the interrogation theme.

A second method of sidestepping difficult objections is to use a response such as, "That's possible, I suppose, Joe, but let me tell you this. . . ." or "That may be true, Joe, but the important thing is this. . . ." An example of sidestepping and then properly overcoming a difficult objection is illustrated in the following sequence by the investigator and suspect during an interrogation in a child molesting case:

I: Many times I've seen people, including myself, do things under the influence of alcohol that we would never do on our own.

S: But I'd never do anything like that because whoever did that is a pervert.

I: Exactly, Joe. Don't you see? That's why we should get this thing cleared up, because I don't want anyone to think that about you. I know that you would never do something like this when you're sober. The people who might do that when sober have a real problem. But all of us do things when we're drinking that are totally out of character, like this thing you did. This isn't like you normally; I know that. This thing happened because you weren't yourself. . . .

When multiple objections are offered during the course of an interrogation, the suspect is probably guilty. As previously mentioned, innocent suspects usually remain steadfast with their denial statements. If an innocent person is going to offer an objection, it usually occurs early in the interrogation, not after numerous attempts to deny the crime. Furthermore, objections coming from innocent suspects almost always involve factual information such as, "I couldn't have done that—I was at work the whole evening!"

At this stage of the interrogation, when a guilty suspect's objections have been properly handled and even used as a reason why the suspect should tell the truth, the suspect may become uncertain about the situation and may become withdrawn. This development requires the utilization of procedures in Step 5 of the interrogation process.

Step 5—Procurement and Retention of a Suspect's Attention

Principles

As previously noted, most guilty suspects will not initially sit back and allow the investigator to dominate the conversation during presentation of the interrogation theme. The suspect may deny involvement in the offense (Step 3) or offer objections (Step 4). If the investigator successfully discourages the suspect's denials and turns around the suspect's

objections, there is one primary strategy left for the suspect who does not want to tell the truth (other than to invoke his *Miranda* rights or leave the room)—to psychologically withdraw from the interrogation and ignore the investigator's theme.

We can all relate to situations where we have psychologically tuned out a speaker. Perhaps as a student, when we were not interested in the subject matter being taught, we would allow our mind to drift off in class. Even during a face-to-face social interaction when the other person is dominating the conversation with tiresome rhetoric, we may find ourselves "zoning out" and thinking about something else in an effort to escape the boredom.

A guilty suspect who has abandoned verbal efforts to dissuade the investigator's confidence can remain emotionally detached for hours, if necessary, in an effort to resist telling the truth. Because of this, it is important for the investigator to recognize symptoms of psychological withdrawal and to employ specific techniques in an effort to maintain the suspect's attention to the theme.[20]

It is important to note that innocent suspects who have been accused of committing a crime will not psychologically withdraw. This response goes against every basic instinct for someone who realizes that he may be wrongly facing severe consequences. Provided the investigator has not threatened the innocent suspect, or offered promises of leniency, an innocent suspect will remain at the denial stage during an interrogation or, out of frustration and anger, terminate the interrogation by leaving the room or invoking his rights under *Miranda*.

Procedures

Recognizing the Suspect at This Stage of the Interrogation

The suspect who has psychologically turned off the investigator's theme is generally quiet. His thoughts are turned inward and he is no longer interacting with the investigator—verbally or mentally. He does not have the confidence or persistence to further argue his innocence. In essence, he is quite content to sit back and allow the investigator to continue with his monologue. The suspect's thoughts during this withdrawal may be centered on the consequences of his crime or, more likely, are unfocused, where the investigator's words are like background music that is present but not specifically being heard.

Because eye contact signals a mental connection with another person, during withdrawal the suspect will generally not establish eye contact with the investigator. Typically, the suspect will look up or to the side (not downward) and his eyes will appear vacant and expressionless. Facial expressions will also be noticeably flat or absent. The suspect's eyebrows, forehead, and mouth are fixed and set—they fail to register any changes of emotion or thoughts within the suspect.

A suspect may assume a number of different postures during withdrawal. Most common is one that is nonfrontally aligned, rather, he is turned to one side or the other,

Figure 13–6 Withdrawn suspect

away from the investigator. Frequently, the suspect will have crossed legs, but there will be minimal foot bouncing. Occasionally, the suspect may have crossed arms. More likely, one arm will be involved in a supporting posture, where the hand comes in stationary contact with the head. In summary, the suspect who has withdrawn is immobile—verbally, mentally, and nonverbally, as illustrated in the photograph (Figure 13-6).

Chair Proximity

Once the investigator recognizes that the suspect is psychologically withdrawing from the interrogation, one effective technique to procure the suspect's attention is for the investigator to move his chair physically closer to the suspect's. As stated in Chapter 5, it is a recognized fact that the closer a person is to someone physically, the closer he becomes to that person psychologically. In essence, it is more difficult for the suspect to turn off the investigator's theme when it is being presented in this closer, more intimate, proxemics.

At the outset of the interrogation, the investigator should be seated approximately four feet from the suspect. Once signs of withdrawal are apparent, the investigator should slowly move his chair in closer to the suspect's. The investigator's physical action of

moving closer to the suspect should be a gradual, unobtrusive process and should seem to be the natural result of the investigator's interest and sympathy. It would be inappropriate and unnecessarily distractive for the investigator to suddenly pick up his chair and place it directly in front of the suspect, as though for a "nose-to-nose" confrontation.

The investigator should first move his body to the front edge of the chair and lean forward. This posture change immediately reduces the distance between the investigator and suspect. From that point on, movements by the investigator should consist of pulling his chair forward in small increments.

As the forward movements are made, the investigator should not focus attention on them by pausing in his conversation. The investigator should continue to talk and to maintain eye contact with the suspect, without looking down at the chair as it is moved. A guilty suspect will experience an increased awareness of the investigator's statements as the investigator moves closer but often will not consciously recognize that the cause for it is the physical proximity of the investigator. The suspect simply senses or perceives that lying is becoming more uncomfortable.

Before the investigator contemplates moving closer to a suspect, the situation must be carefully evaluated. Any premature action may destroy the atmosphere created to this point. In general, moving closer to the suspect in this fashion should take place only when the suspect is not looking directly at the investigator, when he is quiet and past the stage of making denials and offering objections.

As the investigator gradually moves his chair in closer to the suspect's, he should carefully monitor the suspect's behavioral response to the closer proxemics. Any defensive behaviors, such as establishing tighter barriers, movement of the suspect's chair backwards, or a defiant facial expression should alert the investigator to maintain his distance. The purpose for establishing closer proxemics is not to intimidate the suspect or assume an authoritative position over him. If either of these motives are perceived by the suspect, he may engage in a natural fight-or-flight response and return to denials (fight) or terminate the interrogation (flight). Again, the investigator's intent in establishing closer proxemics is to maintain the suspect's attention and to become emotionally closer to the suspect.

Establishing Eye Contact

Eye contact is one of the most reliable social signals of attention—either the want or avoidance of it. As a participant in a training class, most people can relate to the experience where the instructor asks a question of the class. Participants who do not want to be called upon immediately look down, as if searching through their notes for the correct response—their purposeful break of gaze with the instructor is sending the clear message: "I don't want to interact with you; please don't call on me." A participant who wants to respond to the instructor's question engages in quite different behavior. He makes efforts to catch the instructor's eye and may even raise his hand in an effort to bring further attention to himself. He is clearly communicating a desire to interact with the instructor.

From this common personal experience, the following principle of interrogation should be evident: if a suspect is not looking at the investigator, he is not relating to him. It is inappropriate and ineffective to verbally challenge a suspect to "look the investigator in the eye" at this stage of the interrogation. Other, more subtle efforts can be made in an effort to make this nonverbal connection.

As the investigator moves his chair gradually closer to the suspect's, he should also direct his own body to a position where he moves into the suspect's line of vision. In essence, the investigator should attempt to direct his interrogation theme while looking at the suspect's eyes. If the suspect switches posture, allowing his gaze to focus away from the investigator, the investigator should again gradually switch his posture so as to establish mutual gaze with the suspect.

The same precautionary measures relating to moving closer to the suspect apply when making attempts to establish eye contact. If the suspect responds in a negative fashion to this attempt, the investigator should immediately cease such efforts and continue with his theme. At a later time, after some of the theme concepts have registered with the suspect, the investigator may again attempt to establish eye contact.

The Use of Visual Aids

One technique that may be effective in maintaining the suspect's attention and also beneficial in establishing eye contact is for the investigator to use visual aids at this stage of the interrogation. Ordinarily, these aids should not be in the form of photographs. For example, an investigator should not show the suspect crime scene photographs that might reveal information only the guilty person would know. Also, showing the suspect gruesome autopsy pictures may negate the sympathetic and understanding demeanor the investigator has worked so hard to develop.

However, the investigator may produce and make reference to physical evidence such as a weapon, plaster cast of a footprint, or spent shell casings recovered at the scene of the crime. The purpose in doing so is not to reinforce the investigator's confidence in the suspect's guilt (this will have been done during Step 3), but rather to attract the suspect's visual attention toward the investigator's statements.

A visual aid can be used to good advantage on many occasions (particularly in sex or embezzlement cases). The suspect is advised that, by telling the truth, he can perform somewhat of a mental operation on himself—an operation equally as important and necessary as the removal or destruction of injurious tissue in a cancer patient. In this respect, it may be helpful to draw a circle on a piece of paper, mark off a small area on the rim of it, and tell the suspect that, in effect, the marked-off portion represents a piece of infected tissue on his mind or soul that, if untreated or not removed, will continue to spread and produce other and more serious offenses than the present one. The suspect should then be told that there is only one way that the necessary mental operation may be performed, and only he can do it—and that is by telling the truth.

In a homicide or rape case, where it is known that the suspect was under the influence of alcohol at the time of the offense, the investigator should draw two equal circles on

a piece of paper to represent the normal balance between behavior and emotions, and emphasize to the suspect that under normal conditions our emotions will not overpower our behavior. A second diagram is then drawn, with the emotional circle much larger than the circle representing behavior. It is explained to the suspect that, when a person is under the influence of alcohol, emotional drives become greatly exaggerated to the extent that they overpower and control behaviors.

Asking Rhetorical Questions

The interrogation theme, as described in Step 2, is intended to be a monologue transmitted by the investigator. However, when the suspect is turning off this monologue by psychologically withdrawing, an effective technique to maintain some mental involvement in the theme is to ask rhetorical questions. The principle in using rhetorical questions is that we are all conditioned to respond to questions. From earliest childhood, we know that questions asked by parents, teachers, or in a written examination require an answer. An asked question begs an answer at some level. The rhetorical questions used at this stage of the interrogation encourage the suspect to make internal decisions that either agree or disagree with the stated principle.

In the following example, rhetorical questions (in italics) are used in an effort to maintain a suspect's attention and interest during Step 5 of the interrogation.

> Brian, I realize how difficult it is to tell the truth sometimes, *but we all make mistakes, right?* I don't think you've ever done anything like this before in your life. In that respect, you're kind of like a young student in grade school. *Back when you were in grade school the teachers had you use a pencil when you took tests, right?* The reason for that is that pencils have erasers on them so learning students can correct their mistakes. *Well, even as adults, we still make mistakes, right?* I know I'm not perfect and I can't judge someone harshly because they've made a mistake, as long as that person has the willingness to correct it. *The first step in correcting a mistake is to admit the mistake; wouldn't you agree, Brian?*

As this example illustrates, the investigator does not necessarily want to elicit a verbal acknowledgment from the suspect through the use of rhetorical questions. In fact, forcing a verbal agreement from the suspect at this stage of the interrogation is likely to result in a denial. Rather, the rhetorical questions are thrown out as "food for thought." The investigator should look for subtle signs of acknowledgment, such as a nodding of the head or changing eye contact.

The following rhetorical questions can be effective when interrogating a suspect (especially a female) who has young children:

> Julie, I don't know you real well but I know you've got two young children at home. My guess is that you're a pretty good mother. You love and care for your children and teach them moral values. Or at least I assume you do. I don't think you're the type of mother who tells her kids, go ahead and steal and rob people—just don't get caught. *No, I'm sure you teach them that when they do something wrong*

they should tell the truth about it, right? But as a parent, you probably are aware that your greatest influence on your children is through being a good role model. *What kind of role model are you setting for your children right now?* You know eventually the truth will come out—it always does. When you look back on today you're going to ask yourself, what example did I set for my children? Did I teach them to lie whenever they did something wrong, or did I teach them to tell the truth? I really do believe you are a good parent and want to raise your children to be honest and do the right thing. *But that would be pretty hard to do if you, yourself, couldn't set the proper example, wouldn't you agree?*

As a final example of rhetorical questions, the investigator may introduce to the interrogation theme the suspect's parents, spouse, or anyone else the suspect respects or holds in regard. The following example illustrates this use:

> Randy, I know you want to get this thing straightened out for yourself. It's not the end of the world. Just this week I have talked to three other people who have done things similar to this. So, it's not like you're the first person on this planet to have contact like this with a girl. It happens all the time! I think what's on your mind is how your parents or friends might view what you've done. Keep in mind that your parents will love you no matter what. I'm sure when you were growing up you did things, as any child would, that did not please your parents—*but they continued to love you, didn't they?* What's really hard for parents is when they know that their son has done something wrong and can't own up to it. In a situation like that it's really hard to develop trust. *And, Randy, that's ultimately what you want, isn't it?* For people to be able to trust you again. They won't be able to do that unless we get this cleared up today.

The rhetorical questions asked of a suspect should address positive personal traits or real-life expectations. For psychological reasons, the investigator should not inquire as to possible real consequences the suspect may want to avoid. Examples of inappropriate questions that address real consequences are, "Do you really think you're going to beat this thing in court?" "Do you want a criminal record for the rest of your life?" or "How long do you think a young man like yourself will last in prison?" By addressing these real consequences, the investigator is simply reminding the suspect of what faces him if he decides to tell the truth.

Step 6—Handling the Suspect's Passive Mood

Principles

At the conclusion of Step 5, the investigator should have achieved a desirable rapport with the suspect. As a consequence, the suspect, if guilty, will have become reticent and quiet. He becomes more willing to listen, attributable in part to an increasing awareness that the deception does not possess its anticipated effectiveness. The suspect may begin to assume

a defeatist posture—slumped head and shoulders, limp legs, and glassy eyes. In general, the guilty suspect will seem downcast and depressed. At this stage, the investigator should begin to concentrate on the central core of the selected theme, while preparing the groundwork for the possible alternative question, which will be presented in Step 7.

Procedures

Content of Statements

Whereas earlier the investigator merely suggested the possible reasons why the suspect committed the offense and coupled them with embellished statements designed to offer psychological escapes, the investigator should now start to distill those reasons from the general framework of the theme and concentrate his verbal statements on the specific basic one implicit in the theme. The following example of this procedure is useful because of its factual simplicity, although the same principle may be utilized in more serious cases, such as a robbery-murder. A suspect is being interrogated about a theft of money from his employer. The investigator may have developed a theme along the following lines:

> Joe, I know how tough it is in today's economy to make ends meet. Every paycheck you get has to stretch farther and farther to cover the costs of the basic things we all need: food, home, car, and other necessities. But what has happened over the last few years is that as prices have gone up, more money is needed just to buy the same things we bought earlier. And it seems like the people we work for forget this. Instead of getting the pay raises we need just to keep up with things, we are stuck with the same pay month after month. Pretty soon an honest person like you finds himself in a position where his pay just doesn't cover the necessities, and he begins to wonder how he'll ever make ends meet. Then one day, when someone leaves work in a hurry and money is accidentally left out, you begin to give in to the temptation that you've been able to fight off up until that time. The pressure becomes unbearable, and in one split second you give in and make a mistake in judgment and do something like this. We all face these pressures and have to scramble these days to make ends meet.

The investigator should continue with the development of this specific theme as long as the suspect maintains interest, even though he may have committed the theft in order to purchase alcohol or drugs, to gamble, or to provide entertainment for himself that he could not afford with his legitimate income. Throughout it all, the investigator must fend off the suspect's denials and objections in the manner previously described.

As the suspect drifts into a passive mood, the investigator should move closer to the suspect (if this has not occurred thus far) to recapture attention to the theme. Then, when the suspect beings to display the indications of being about to give up, the investigator must focus more intently on his statements about the possible central reason for the theft, as in the following example: "Joe, I'm sure you were just over your head in bills at home, and this money appeared to solve your problem; it seemed to be the only way out,

or maybe someone in the family was sick and needed an operation or some medical attention that you couldn't take care of, but yet you couldn't ignore it. And so this money was there and this seemed to be the solution to an impossible situation."

The various reasons that the investigator offers for the motive of the theft are designed to prepare the suspect for the alternative question, which is discussed in Step 7. As each reason is presented, the investigator must closely observe the suspect's behavior for signs of acceptance or rejection, to determine whether the offered reason presents an acceptable possibility for the commission of the act.

At this time, it is important for the investigator to continue displaying understanding and sympathy in urging the suspect to tell the truth. As the investigator repeats and reiterates reasons for the commission of the offense, it may be appropriate to interject statements that, if the suspect were his own brother (or father, sister, etc.), the investigator would still advise telling the truth. The investigator may also urge the suspect to tell the truth for the sake of his own conscience, mental relief, or moral well-being, as well as "for the sake of everybody concerned."

During a noncustodial interrogation it is often effective, at this stage, to remind the suspect of the voluntariness of his presence. This serves as an impetus to tell the truth, and also can be beneficial later in court when the investigator can testify that shortly before the suspect confessed, he was reminded that he was free to leave. The following is an example of this type of statement: "Joe, no one forced you to come in today to talk to me. You know that door is unlocked and you can leave at any time. The fact that you did choose to come in to talk to me about this tells me you are sorry about what happened and want to get it straightened out. If you were a hard-core criminal you never would have even agreed to see me. The fact that you are here now tells me that you want to tell the truth."

In urging or advising an offender to tell the truth, the investigator must avoid expressions that are objectionable on the grounds that they constitute illegal promises or threats. However, by speaking in generalities, such as "for the sake of your own conscience" or "for the sake of everybody concerned," the investigator can remain within permissible bounds.

"For the sake of everybody concerned" is an expression that lends itself to many interpretations conducive to truth telling. It reminds the suspect of the suffering of the victim and family or of the harm caused to other persons affected by the offender's conduct. It is advisable, therefore, to briefly mention these consequences for the purpose of placing the suspect in a more regretful mood.

The expression, "It's the only decent and honorable thing to do," constitutes somewhat of a challenge for the offender to display some evidence of decency and honor. This is particularly applicable in sex crimes where, in the absence of a plea of guilty, it would become necessary for the victim to undergo the ordeal of publicly relating the details of the offense committed against the victim; in such instances, it is occasionally helpful to ask a male suspect how he would like to have his own sister or mother appear in court as his victim may have to do. In playing upon this potential weakness, if the suspect happens to mention that he is a religious person, discuss with him the tenets of his particular

creed. Mention to him the fact that his religion becomes meaningless until he tells the truth with regard to the offense in question. Likewise, if he belongs to a fraternal order, appeal to him in its name. It is also quite helpful if the investigator can state that he or his parents or close friends belong to the same church or fraternity and that, therefore, he, the investigator, knows and appreciates what the suspect's moral obligations are in the present situation.

In a sex-murder case, in which the investigator knows that the suspect has an invalid mother, the appeal to his "decency" can be as follows: "Joe, a mother—and particularly one like yours—is the most understanding person in the world. Her real concern is about the reason for your doing this. That's what we all want to know—the reason. And your mother, in particular, is entitled to know." In one such case, the suspect eventually responded by saying, "I'll tell you the whole story if I can first talk to my mother." Playing along with this request, the investigator said that he would send a car for the mother, but within a few minutes after making the request to see his mother, the suspect made a full confession.

Another tactic to consider using at this stage of the interrogation is called *Role Reversal.* This tactic involves placing the suspect in the position of a decision maker who must decide something about two people who have both done the same thing wrong. As the following dialogue illustrates, the first person tells the truth, the second challenges the suspect to prove his guilt:

> "Joe, let's say that you were a science teacher here at the local High School and that you gave a test to your class. You observed two students cheat on the test. You saw it with your own eyes - there was no doubt they were cheating. So you bring in the first student and ask him, 'Charlie, why did you cheat on my test?' and Charlie explains that his father has threatened to ground him if he doesn't do better in science and that is why he cheated. You then bring in the second student and ask him, 'Don, why did you cheat on my test?' Don looks you in the eye and says, 'You think I cheated? Prove it!'"

Role reversal is concluded by asking the suspect a question such as, "Which person do you have more respect for?" or "Which of those two students would you be willing to listen to?" If the suspect does not answer out loud the investigator should answer for him, "Don't you have more respect for the first one, the one who is willing to be honest with you?"

Investigator's Demeanor

While making the above statements, at this stage of the interrogation, the investigator's tone of voice should be at its peak of sincerity. The investigator should talk slowly and perhaps more quietly than before in an effort to sell the suspect on his genuine interest in having the matter resolved. The investigator's tone of voice should also be emotional, sometimes to the extent of seeming to stammer or stutter in an effort to relay the importance of what he is saying. The well-known actor, Jimmy Stewart, comes to mind. During

a particularly emotional scene he would engage in similar paralinguistic behaviors to convey these feelings to those watching.

The investigator's eye contact with the suspect should be soft and warm. At times, it will be appropriate for the investigator to look down at the floor while speaking, again in an expressed effort to appeal to the suspect's emotions. The clergyman who offers comfort to the bereaved family after a recent death often will speak in softened tones, with his hands clasped in front of him while looking down. He represents the epitome of sincerity.

At this stage of the interrogation, the investigator should already have moved his chair to within a foot or so of the suspect's. In conjunction with the above recommendations, it is beneficial for the investigator himself to assume a head and body slump. Oftentimes, the suspect will mirror the investigator's posture and follow his lead.

Recognizing the Signs of Resignation

The investigator should continue with the above-mentioned procedures until the suspect shows some physical sign of resignation, at which time Step 7 (Presenting an Alternative Question) should immediately be employed. The change in the suspect's behavior from withdrawal in Step 5 to the signs of resignation indicate that the suspect is mentally debating whether to tell the truth. If the investigator misses these signs and continues on with the theme, the opportunity to develop the first admission of guilt by asking an alternative question may be lost.

The following descriptions of physical signs of resignation may occur in isolation from each other, or several may occur simultaneously.

Changes in Arm and Leg Position

One symptom of resignation is the suspect who drops leg or arm barriers, essentially uncrossing the legs or dropping the arms to the side. This less defensive posture indicates that the suspect is mentally prepared to "open up" to the investigator. During withdrawal it is not uncommon for suspects to engage in a supporting posture, where the chin rests on the hand or even covers the mouth. A movement of the hand, perhaps to the side of the face or especially away from the face, also signifies a desire to "open up."

Nonverbal Agreement

A suspect who begins to nod his head in silent agreement with the investigator's theme concepts is sending the message that he has internalized the investigator's statements and, thus, is psychologically in a desirable state of mind for the alternative question.

A Change in Posture

A suspect who changes posture in an attempt to establish frontal alignment with the investigator is showing a clear sign that he is mentally prepared to tell the truth. This may be the turning of the body toward the investigator or a gentle lean forward toward the

Figure 13–7 Head and body slump

investigator. The classic posture of resignation is the head and body slump, illustrated in the photograph (Figure 13–7).

A Change in Eye Contact

One of the most reliable indications that a suspect is considering telling the truth will be observed in the suspect's facial expression, especially eye contact. A suspect who has been looking up to the ceiling or to the side and suddenly drops his gaze to the floor is signaling resignation. This change of eye contact downward indicates that the suspect is in a "feeling" mode and is experiencing significant emotions.

Another type of change in eye contact to carefully monitor at this stage of the interrogation is teary or watery eyes. The signal may be the suspect's movement of a hand to the eyes to cover or wipe away tears. Occasionally, a sob or sniff may also signify that the suspect is on the verge of crying.

When a suspect starts to cry outwardly, the investigator should not leave the room and give the suspect a chance to "cry it out"; the suspect who is given that opportunity may fortify himself and return to the denial stage. When a suspect begins to cry, the investigator should commiserate with the suspect and offer encouragement by attempting to relieve his embarrassment. Crying is an emotional outlet that releases tension. It is also a good indication that the suspect has given up and is ready to confess. The suspect's emotional outburst is evidence of remorse and often is perceived by the suspect as exposing

his inner feelings of guilt. A positive attitude on the part of the investigator will cause the suspect to feel that a confession is expected at that time.

Sometimes female suspects cry as a ploy, or as a final, yet insincere effort to gain sympathy. This "manipulative" crying will most likely be seen much earlier during an interrogation, typically during the denial stage. In essence, the tearful denial is nothing more than the previously mentioned "pleading" denial often heard from the guilty suspect or, in some instances, represents the histrionic behaviors of an adult tantrum.

When a male suspect cries, which is usually tantamount to an admission, it is suggested that the investigator proceed as follows:

> You know, Joe, the problem today is that men are too ashamed to cry and everything is bottled up inside. They are afraid to let it out. That's why men have so many more heart attacks than women. I'm glad to see those tears, Joe, because they show me that you care about this and that you want to get it straightened out.

Quite the opposite effect will be realized if the investigator criticizes the male suspect who cries. For example, an investigator who admonishes the behavior (by saying something like, "Come on Joe, don't be a baby about this. You didn't cry when you killed her, did you?") is likely to alienate the suspect beyond the point of wanting to tell the truth.

Step 7—Presenting an Alternative Question

Principles

Some waitresses are skilled at encouraging customers to order dessert. It is to their advantage when dessert is ordered, since the bill and then the tip will be larger. An unskilled waitress may ask the customer a question such as, "Can I interest you in dessert today?" If she is really unskilled, this request will be followed up with the question, "Or are you full?" Obviously, this technique is unlikely to produce many dessert orders.

A skilled waitress describes the dessert options and, after closely watching the customer's behavior, will focus her next question upon the two most likely offerings. She will then ask the customer, "What shall it be today, the pie or the cake?" This strategy is much more likely to result in an order.

Although it may be a bit unfair to draw a comparison between ordering dessert and confessing to a crime, a similar principle is involved. A person is more likely to make a decision once he has committed himself, in a small way, toward that decision. This is precisely what the alternative question accomplishes during an interrogation. It offers the guilty suspect the opportunity to start telling the truth by making a single admission.

The alternative question is one that presents to the suspect a choice between two explanations for possible commission of the crime. It is a face-saving device that renders easier the burden of the suspect's start toward telling the truth. For example, in an issue

involving theft, the suspect may be asked, "Did you blow that money on booze, drugs, and women and party with it, or did you need it to help out your family?" The investigator encourages the suspect to accept the latter explanation. If the suspect agrees that the money was taken to help his family, he understands that the acknowledgment is tantamount to a confession and that he will still face consequences for the crime. However, the alternative question has allowed him the opportunity to tell the truth while saving face.

Beyond just offering a face-saving circumstance, in some circumstances the alternative question also provides an incentive for the suspect to want to tell the truth. The incentive created is the suspect's inner concern that if he does not tell the truth about the circumstances of the crime, other people might believe something much worse. In particular, the suspect may be concerned about how family members, friends, or coworkers might view his criminal behavior. As will be later emphasized, at no time should the investigator state that if one alternative is true then the suspect may, or will, face lesser punishment for his crime.

A defense attorney may criticize the use of an alternative question, arguing that the investigator offered his client only two choices and that his client was forced to incriminate himself. The investigator should explain that the defendant had three possible choices. He could have accepted either one of the alternatives presented or, as happens frequently, reject them both. Further, the investigator certainly does not force a suspect to accept one of the alternative choices. Tactics are used to encourage the suspect to accept one or the other, but no force, whatsoever, is involved in the suspect's agreeing that the one alternative is true. When questioned on the stand about the use of the alternative question, it may also be beneficial for the investigator to explain that the purpose for asking an alternative question is merely to elicit an initial admission of guilt. From that point on, through the questioning process, the defendant offered details about the crime that eventually constituted the full confession.

Procedures

Selecting the Alternative Question

An investigator should always be mindful of the fact that when a criminal offender is asked to confess a crime, a great deal is being expected of him. First of all, it is not easy for anyone to "own up" to wrongdoing of any kind. Furthermore, in a criminal case, the suspect may be well aware of the specific serious consequences of telling the truth—the penitentiary or even a death sentence. Therefore, the task of confessing should be made as easy as possible for the suspect. Toward that end, the investigator should avoid a general admission of guilt question, such as, "You did kill him, didn't you?," "You raped her, didn't you?," "You did hit him with your car, didn't you?," or "Tell us all about it, Joe." Any such question will recall to the suspect's mind a revolting picture of the crime itself—the scream of the victim, the blood spurting from a wound, or the pedestrian's body being thrown over the hood of an automobile or dragged along the street. No person should

be expected to blurt out a full confession of guilt; the investigator must ease the ordeal. As the great Austrian criminal investigator, Hans Gross, stated in his book, *Criminal Investigation*: "It is merciless, or rather psychologically wrong, to expect anyone boldly and directly to confess his crime. . . . We must smooth the way, render the task easy."[21]

The following suggestions are offered for selecting the appropriate alternative question for a given suspect.

A properly formulated alternative question must not offer a promise of leniency to the suspect nor threaten the suspect with inevitable consequences. When presenting an alternative question the following guidelines should be followed:

- *The alternative question should not make any mention of legal charges.* An alternative question that violates this guideline, and is therefore *improper*, is: "Did you plan on killing her, in which case it will mean first-degree murder and life in prison, or did this just happen in the heat of passion, which would just be manslaughter?" This suspect is essentially being told that he will face reduced charges if he confesses to manslaughter rather than first-degree murder. A *proper* alternative question to ask in this case is, "Did you plan on doing this since the day you got married or did it pretty much happen on the spur of the moment because of the fight you had?" With this latter question, no mention whatsoever of a possible consequence is made and the suspect cannot later argue, with legitimacy, that he confessed to obtain a reduced sentence.
- *The alternative question should not threaten inevitable consequences.* A suspect must be able to reject both sides of an alternative question without fear of facing adverse consequences because of that decision. During an interrogation these negative consequences are often presented as a threat of inevitable consequences. In other words, confess to me or suffer this negative consequence. An *improper* alternative question that threatens inevitable consequences in a noncustodial interrogation is, "Do you want to cooperate with me and confess or do you want me to lock you in jail where you can sit for the next two or three days?" The choice this suspect faces is to either confess or lose his freedom; he is not being offered the choice of rejecting both sides of the alternative question without facing a real negative consequence. A *proper* alternative question to consider in this case may be, "Are you sorry this happened or don't you care?"

Another example of an *improper* alternative question that threatens an inevitable consequence is, "If you don't tell me about the sexual contact you had with your daughter, your kids will be taken away and you will never see them again." One of the guidelines governing confession admissibility is that the confession must be essentially the product of the suspect's free will. When the impetus for confessing is to avoid a jail cell or to be able to see one's children, the statement is clearly the result of compulsion. A good rule to follow in this regard is to use alternative choices that address some aspect of the crime

(for example, "Did you force your daughter to touch your bare penis or did she do it on her own?").

- *The alternative question should not offer a promise of leniency.* Courts have consistently ruled that a confession obtained in conjunction with a promise of leniency was improperly obtained. Therefore, the following alternative question is *improper:* "If you've done this dozens of times before, that's one thing. But, if this was just the first time it happened I can explain that to the prosecutor and work out a deal for you." Not only is it psychologically improper to bring up legal terminology during an interrogation (possible charges, the judge or prosecutor), but the mere mention of legal issues may invite a claim of an actual or perceived promise of leniency. A *proper* way to ask the previous alternative question is, "If you've done this dozens of times before, that's one thing. But if this was just the first time it happened, that would be important to establish."

An alternative question must be based on the assumption that the suspect actually committed the crime under investigation. In other words, if the suspect accepts the alternative question, it must represent an admission of guilt. It would, therefore, be improper to ask a suspect who was being interrogated concerning involvement in a drive-by shooting, "Did you fire that gun or do you just know who did?" Given this choice, the suspect guilty of firing the gun will certainly accept the latter choice because it allows him to escape consequences of his crime. Under this circumstance, the investigator has spent considerable time during the interrogation eliciting a non-incriminating statement from the suspect. If the investigator now re-confronts the suspect concerning principal involvement in the offense, the interrogation may last several more hours, which could result in the suppression of any subsequent incriminating statements under the grounds of duress. To reiterate, both sides of the alternative question must represent a choice that would result in an admission of involvement in the offense if the suspect accepts either one e.g., "Were you carefully aiming at that little boy, or was this just a wild shot from your gun?".

In selecting the alternative question, primary consideration should be given to the theme that the investigator has been using. The alternative should be a natural extension of the theme. It puts into focus, in one question, the central core of the theme that was emphasized by the investigator, especially in Step 6. For example, while questioning a suspected embezzler, the investigator may have used the theme that the suspect had originally intended to merely borrow the money for a short period of time. The alternative question may then be, "Joe, did you plan to keep that money all along, or did you only borrow it with the plan of paying it back?"

When interrogating a burglary suspect, where the primary theme has placed blame onto an accomplice, the alternative question that naturally grows out of this theme is, "Was this whole thing your idea, where you were the master mind and you planned everything out, or did someone talk you into it?" A child molester may be interrogated with a primary theme minimizing the number of victims he has molested. In this event, the alternative question should be: "Larry, are we looking at hundreds of kids here, where you

have done this to almost every child you've ever had contact with, or would the total be a lot less? It's not over 500, is it?"

The alternative question usually focuses on the reason why the suspect committed the act, but it does not necessarily have to be limited to just this element of the offense. The alternative question may focus on some detail of the offense, preferably something preceding or following the occurrence itself. A "detail" question is based on the *where, when*, or *how* of an act or event pertinent to the crime under investigation, but yet is removed in point of time or place from the main occurrence itself. In an armed robbery case, for instance, the question may be: "Did you bring the gun yourself, or did one of your buddies give it to you?" In a rape case, where the suspect has denied ever seeing the victim, an appropriate question would be: "Were you with her for a long time before this happened or for just a few minutes?" In an arson case, the question may be: "Did you use a match or a lighter?"

Depending upon the nature of the crime and the suspect's demeanor during the interrogation, occasionally it becomes advisable to use a one-sided alternative question, for example, "You are sorry about this, aren't you, Joe?" The negative possibility—the absence of any feeling of remorse—is not stated, but the implication of its presence is readily apparent to the suspect.

Even though the alternative question may be directed toward some detail of the crime, or may be of a one-sided nature, generally speaking, the most effective format of the alternative is when it deals with the reason for the commission of the act. Its effectiveness is founded upon the basic principle that even in ordinary, everyday, noncriminal experiences, it is much easier to admit a mistake or any kind of wrongdoing if, at the time of the admission, a person is permitted to explain *why* it was done. Similarly, in a criminal case situation it is much easier for a criminal offender to confess a crime if given an opportunity to couple his admission with an explanation or excuse for the conduct. The alternative question offers the suspect that opportunity.

The alternative question, when asked at the proper psychological moment, has a number of advantages that makes it much more effective than inquires or solicitations calling for an outright or general admission of guilt. First, by delving into details of where, when, how, or the reason for the offense, the investigator effectively displays a greater certainty of the suspect's guilt; otherwise there would be no interest in details. This, in itself, has a tendency to weaken the suspect's resistance to telling the truth. Second, there is the desirable element of surprise in a question of this type. It catches the suspect off guard at a crucial time, and it stimulates to greater activity the already aroused impulse to tell the truth. Third, a question with respect to the reason for the crime, when asked of a suspect who feels impelled to confess but who is thwarted by the task of bursting forth with the complete admission all at once, offers an opportunity to preface or combine an admission of guilt with whatever excuses or explanations the person cares to make in an effort to ease his conscience, as well as to have the investigator believe that the crime is less odious or less reprehensible than is actually the case. Fourth, an inquiry into a detail of the offense implies a rather sympathetic attitude on the part of the investigator. It gives the impression that the investigator is not particularly interested in a confession

but rather in ascertaining and understanding the reasons for the offender's behavior, or in being informed of the circumstances or conditions that contributed to the commission of the act.

Presenting the Alternative Question

In using the alternative question, the investigator must bear in mind the need to phrase it in terms of a clear contrast between two opposite choices; for instance, "Joe, is this the first time you did something like this, or has it happened many times before?" In other words, the question must not be phrased in such a manner as to expect the suspect to offer a full confession, as would occur if he is merely asked, "You did do it, didn't you?"

In phrasing the alternative question, the investigator should avoid any emotionally charged words that would recreate a revolting recollection of the event. For example, in a rape case, there should be an avoidance of expressions like: "Is this the first time you raped a girl, or have you raped a lot of girls before?" Instead, the question should be phrased: "Is this the first time something like this has happened, or has it happened a lot of times before?" The suspect will know what the investigator means when reference is made to the event as "this."

Harsh or descriptive language may be utilized, in some cases, when speaking of the "negative" side of the alternative question. For instance, the investigator may ask, "Did you rob that guy because you enjoy that sort of thing; where you get a kick out of scaring people, or did this thing happen just because you were desperate for money?" By using the contrasting words *rob* and *this thing* the suspect is further encouraged to accept the more understanding "positive" side of the alternative question—committing the robbery out of desperation.

When the alternative question is first presented, the suspect may not make any comment, in which event the question should be repeated in basically the same form, unless the suspect's behavioral responses are suggestive of a total rejection. If that occurs, a different alternative question should be introduced and developed.

Repeated rejections of the positive side of the alternative question may be an indication that the alternative question selected was the improper one. In an investigation involving the theft of $1,150, the female suspect, who had a young son at home, was asked the following alternative question: "Did you take this money and spend it on drugs, or did you take it to help out your son?" Each time the investigator suggested, "It was for your son, wasn't it?" the suspect became more persistent in her denials. When the alternative question was changed to, "Have you taken other money from the company, or was this just the first time?" she readily agreed that this was the first time. During Step 8, when asked what the money was spent on, she tearfully replied, "Heroin."

When the investigator presents the alternative question to the suspect, it is not enough simply to ask the question and then wait for the suspect to answer. The investigator must encourage the suspect to select one of the two options. This is accomplished through the use of positive and negative "supporting statements."

A *positive supporting statement* is one in which the investigator reinforces the belief that the correct choice is the one that seems to be morally excusable or at least one that represents a less socially revolting reason for committing the act. The investigator should state that if the positive alternative is true, it is something he can understand.

The *negative supporting statement* paints a disturbing picture of the suspect if the negative alternative is true. The investigator may effectively state (in reference to the negative alternative), "If that's why you did this, I don't even want to talk to you further because it means I've really misread you today!"

The supporting statements close with a leading question that calls for a one-word answer or a nod of the head in acceptance of the less offensive of the two options. In appropriate instances, the supporting statement should be coupled with a gesture of understanding and sympathy, such as a pat on the shoulder. This indication of sincerity, coupled with the timing of the supporting statement, is the key to success in this particular procedure.

Generally speaking, at least several minutes must be spent on developing both positive and negative supporting statements. However, the technique culminates in asking the positive or negative alternative in a leading manner. The following example illustrates this process in abbreviated form:

- *Alternative question:* Joe, was this money used to take care of some bills at home, or was it used to gamble?
- *Negative supporting statement:* You don't seem to be the kind of person who would do something like this in order to use it for gambling. If you were that kind of person, I wouldn't want to waste my time with you, but I don't think you're like that.
- *Positive supporting statement:* I'm sure this money was for your family, for some bills at home. That's something even an honest person might do, if he was thinking of his family.
- *Presenting a leading question:* It was for your family's sake, wasn't it, Joe?

To better illustrate the interchange between negative and positive supporting statements, consider the following presentation of an alternative question in a case where a clerk was shot by an armed robber:

> Joe I think what happened here is you had your gun pointed at that clerk and it looked like he was going in slow motion, deliberately keeping you in the liquor store. I think you heard the sirens and you knew the police were going to be there any second. At that point, you wanted to get the heck out of there and you told the clerk to hurry up. To let him know you were serious I believe it was your intention just to wing him - you know hit him in the shoulder. But you were nervous and your aim was off and you ended up hitting him in the chest. Joe, this is very critical. When you pulled that trigger were you just trying to slightly injure him or were you aiming for his heart? You were just trying to wing him, weren't you Joe?

An important part of the supporting statements is to develop a concern in the suspect's mind that if he does not accept the understandable alternative, that others may believe the reprehensible one. As an example, the investigator may state, "If you want your family and friends to believe that you are dishonest and can never be trusted, my advice to you is to say nothing!" This implication represents the incentive for a guilty suspect to accept the positive alternative. In other words, a guilty suspect understands full well that accepting either side of the alternative question represents an admission of guilt and, with it, the subsequent consequences for committing the crime. However, even the most hard-core criminal will take positive action to preserve his dignity or reputation, even at the cost of a confession that may well result in an incarceration.

Although it is only speculation, it may be that for some suspects an important psychological factor operating during the presentation of the alternative question is that the guilty suspect accepts the positive alternative in an effort to refute the implications of having others believe the negative alternative. One might think of the process as "the victim syndrome." Almost every guilty suspect perceives himself somewhat as a victim—it may be apparent through his responses to behavior-provoking questions or stated outright during the interview or interrogation. At this stage of the interrogation the guilty suspect may feel an internal desire to confess but intellectually still wants to escape the consequences associated with his crime. Once the alternative question is presented, the suspect may appreciate that others could misinterpret the actual circumstances behind the commission of his crime and experience a strong desire to set the record straight—to not be misjudged by others.

The incentive offered the guilty suspect through the alternative question should not be, in any way, based on leniency if the more understanding alternative question is accepted. As an example of an *improper* presentation of an alternative question, consider this actual case that came to the attention of one of the authors. The suspect was being interrogated on the issue of starting a fire at his place of employment. The alternative question was presented as follows:

> Bill, if you did this on the spur of the moment because you were angry with your employer I can charge you with just criminal damage to property, which is not that bad. On the other hand, if you want to play hard ball with me and say nothing, that's fine, too. In that case I'll charge you with first-degree arson, which has a 15-year sentence attached to it. What'll it be, Bill—criminal damage or first-degree arson? The choice is yours.

Under this circumstance an innocent suspect might be persuaded to offer a false admission of guilt because the negative alternative question presented an unambiguous threat of a prison sentence. However, consider the following proper presentation of the alternative question: "Bill, have you started fires all over town, where you're responsible for dozens of arsons, or did you just act out of anger, where this is the first time you've ever done something like this? This was the only time, wasn't it?" Under this circumstance, an innocent suspect is not apt to accept responsibility for starting the fire under investigation

or any others that may be mentioned during the interrogation, but the guilty suspect is provided with an incentive to tell the truth—he knows that he only started the fire under investigation but does not want others to believe that he may be responsible for starting fires all over town.

The effect of contrasting the clearly disapproving connotations of the negative alternative with the more understanding circumstances presented with the positive alternative, should be transmitted at all three levels of communication. While presenting the negative alternative, the investigator should use descriptive language, express a demeaning tone of voice, and use judgmental nonverbal behavior. The opposite behaviors should be used when discussing the more understandable, positive side of the alternative question. An attempt will be made to illustrate this interaction during the following transcript from a teenage boy being interrogated concerning the stabbing death of his neighbor:

> Mark, I think that she simply misinterpreted some of your behaviors and overreacted to the situation. [compassionate, gentle] But I could be wrong. If you went over to her house that day fully intending to kill her, I think that's despicable and I'm probably wasting your time and mine trying to get this clarified. [louder voice, strong language, harsh facial expressions, chopping hand motion] But I don't think that is the case. I think this happened on the spur of the moment and you're sorry about it. [compassionate, soft, warm eyes] Either you're sorry or you're not. I think you're sorry you did this, aren't you? [compassionate]

At this point, the suspect said, "Yeah."

Step 7 is frequently the key to a successful interrogation. Just as there are sales people who are good at selling the benefits of a product but unable to "close" the sale, many investigators simply do not know what to do at this stage of the interrogation in order to trigger an admission. In many unsuccessful interrogations, the use of an alternative question along with its supportive statement would probably have produced a favorable result.

In the following case example, Jack was suspected of stabbing to death his estranged wife, along with their three children. The interrogation clearly illustrates the value of the alternative question. Note the focus on a detail of the crime. The investigator used the theme that every man's patience has a breaking point, and that the suspect probably went over to the wife's apartment with the best of intentions, but the more he attempted to be reasonable, the less reasonable she became. The investigator then said:

> Jack, you're an honest guy and I am sure you wanted to be fair to your wife. You went over to her apartment with the intention of talking to her about the marriage separation and money settlement like normal human beings, but she probably started an argument with you, and she got so mad and unreasonable that she eventually backed you up to the kitchen table. Now, if you were backed up to the kitchen table, and she was raising complete hell with you, and your

> hand rested on a knife, and you used it without thinking, I can understand that, and I can easily see how this could happen. That's one thing, but if you took the time to look in several drawers to find one and then you used it, that's different; if that's what happened, I don't want to talk to you further. However, if it was on the table and not in the drawer, and in backing up while she was sticking her finger in your face and screaming at you, your hand then landed on it and you used it on her without thinking, I can well understand how this happened. Now, Jack, was it on the table or in a drawer? I'm sure it was on the table and not in the drawer. It was on the table, Jack, wasn't it? I'm sure you didn't have to look through all sorts of drawers to find it! Jack, was it on the table or in a drawer? This is a most important point, Jack. Was it on the table or in the drawer?

After proposing the alternative question—"on the table" or "in the drawer"—a number of times, and indicating the importance of his decision, the suspect finally mumbled, "Table." This was the first admission and the start of his confession. (Later the suspect revealed that he had actually reached in the drawer for it.)

An important point is that the investigator in the case made no mention of the death of the children. Psychological justification was only assessed toward the wife. Obviously, the children were blameless for the tragic event. Placing blame on them during the theme would have had an adverse effect on the interrogation.

Conclusion

The alternative question represents the culmination of theme development. Through Step 6 of the interrogation, the investigator attempts to maintain a sympathetic monologue wherein he essentially suggests morally acceptable reasons that may account for the suspect's commission of the crime (the theme). This control over the interrogation is essential to convince the suspect of the investigator's confidence in his guilt and to respond effectively to any resistance offered. Not to be overlooked during the first three steps of the interrogation process is the investigator's awareness of the behavior offered by an innocent suspect.

Once the suspect exhibits symptoms of resignation in Step 6, the investigator condenses the theme down to central elements and introduces the alternative question. The alternative question contrasts two possible aspects of the crime, one of which is presented as clearly less understandable and more reprehensible than the other. The suspect is encouraged to accept the more understandable alternative.

The most experienced and skilled investigators achieve a confession rate of only about 80%. With respect to the remaining 20%, it is important to remember that there was evidence or other investigative findings which already indicated their probable guilt. Furthermore, this 20% of suspects who did not accept the alternative question had engaged in behaviors earlier during the interrogation that were typical of guilty suspects. In other words, there is a high probability that most, if not all of this group were guilty

of the crime, and yet refused to accept the alternative question. The investigator must accept that not every guilty person will confess during a legally permissible interrogation.

Given this fact, the investigator must appreciate that the prescribed efforts to obtain a confession from a truly guilty person would, in no way, be apt to cause an innocent person to confess. More to the point, no innocent suspect, with normal intelligence and mental capacity, would acknowledge committing a crime merely because the investigator contrasted a less desirable circumstance to a more desirable one and encouraged the suspect to accept it—the underlying reason for a guilty suspect's willingness to accept the alternative question comes from his basic desire to confess, while saving face, coupled with his need to disprove the psychological implications of the negative alternative. Although both guilty and innocent persons desire to avoid punishment, the drive of an innocent person toward this goal operates much stronger. Absent specific threats and promises, an innocent person certainly would not be apt to accept responsibility for committing a crime when offered contrasting reasons for committing it. The innocent person, similar to 20% of the guilty suspects interrogated, would reject both choices and maintain his innocence.

Step 8—Having the Suspect Orally Relate Various Details of the Offense

Principles

In movie portrayals of criminal interrogations, once the suspect "cracks" the investigator sits back and says, "Okay, tell me all about it." The suspect then proceeds to offer a fully detailed and elaborate confession, often in the presence of a number of investigators. This is pure fiction.

During an actual interrogation, out of necessity, the investigator has dominated the conversation to the extent that the suspect is quite content to sit back and listen. At the point of accepting an alternative question, the suspect has merely offered an admission of guilt. The investigator now needs to draw the suspect into the conversation to develop a full confession. Because of the psychological impact of accepting full responsibility for his crime, the suspect will be reluctant to provide details necessary to constitute a confession. Therefore, the investigator must employ a great deal of patience with the suspect, allowing him to relate the details of his crime at his own pace. This is a gradual effort done in stages. Once a full confession has been elicited, it is generally advisable to have the suspect's confession witnessed by a second party.

Procedures

The Statement of Reinforcement

When the suspect accepts one of the choices presented in the alternative question, he has, in effect, made an admission of guilt. The objective of Step 8, then, is to develop

this admission (which only tends toward proving the suspect's guilt) into a legally acceptable and substantiated confession that discloses the circumstances and details of the act.

As stated in the discussion of Step 7, the alternative question and its supporting statements should be phrased so that the suspect only needs a nod of the head or a one-word response to indicate acceptance of one or the other of the alternative choices. At the precise moment when the suspect accepts an alternative, it is critical that the investigator immediately proceed to have the suspect further commit himself to a discussion of the details of the crime. If the investigator gives the impression of being uncertain or hesitates after the suspect accepts one of the alternative choices, the suspect will then have an opportunity to retract his statement. The investigator should encourage the suspect to continue beyond the acceptance of an alternative by making *a statement of reinforcement,* such as, "Good, that's what I thought it was all along" or "I was hoping that was the case."

If the suspect accepts an alternative that the investigator does not believe to be the truth, it is inadvisable to challenge him at this particular time. A correction of the alternative choice should be sought, however, after the suspect has first given a general description of the criminal act. (The manner of doing this is described later in this chapter.)

As the investigator makes a statement of reinforcement, he should appear to share the suspect's relief and should, while still looking directly at the suspect, ask a question calling for some additional detail regarding the suspect's act, such as: "Do you have any of the money left?," "Have you ever done anything like this before?," or "Have you told anyone else about this?" These types of initial questions should not delve into sensitive areas of the crime that are difficult to talk about, such as the true motivation, the extent of planning involved, or the names of accomplices. Furthermore, the suspect should be able to answer them with a short verbal answer. The purpose, here, is simply to further commit the suspect to his admission of involvement in the offense.

Developing the General Acknowledgment of Guilt

Once the suspect is fully committed to his admission, the investigator should begin to develop the confession by asking questions that call for somewhat longer responses. These questions should avoid emotionally charged terminology, such as *stab, rape, rob,* or *sexually molest.* As examples of possible questions, the investigator may ask, "Then what happened?" or "What happened next?" Once the suspect starts talking about his crime, the investigator's questions should attempt to develop a general description of the criminal act. The questions presented to the suspect during this initial phase of the confession should be brief, clear, and, to the extent possible, call for a short narrative response as opposed to simply agreeing with the investigator's statement. An example of this is the case discussed in Step 7 in which the husband, Jack, was suspected of having stabbed to death his wife and three children. When Jack mumbled "Table" in response to the alternative question, "Was the knife on the table or in the drawer?" the investigator

followed with a statement of reinforcement: "Good, Jack, that's what I thought all along." The following dialogue ensued:

Q: Then what happened?
R: [after a pause]: I did it to her.
Q: What did you use?
R: The knife.
Q: How many times did you use the knife, Jack?
R: A couple of times.
Q: Where on her body did the knife cut her?
R: The chest.
Q: Did you cut her on the back at all, Jack?
R: No. [The investigator knew from the facts in the case that she was only stabbed in the front, but several times. The details of the number of times she was stabbed should be left to a later time when it will be much easier for the suspect to tell the number of times he estimates that she was stabbed. Also, the investigator should bear in mind that, in the suspect's frenzy, he may not know the exact number of times he stabbed his wife.]
Q: Then what happened?
R: The kids were crying.
Q: And what did you do?
R: I put them in the tub.
Q: What tub?
R: The bathtub.
Q: What did you do then?
R: I used it on them.
Q: What did you use on them, Jack?
R: The knife.
Q: What did you do then?
R: I thought about using it on myself, but I didn't have the guts, so I left.
Q: What did you do with the knife, Jack?
R: I left it in the bathroom.
Q: Where in the bathroom?
R: With them in the bathtub.

At this point, the investigator has the suspect, Jack, totally committed to the murders. The investigator should then pursue in detail the circumstances of the act, as well as what the suspect did before and after he committed the crime. The investigator would now use, for the first time, fully descriptive, incriminating words such as *stab* (or, in other cases, *shoot, steal, rob, burglarize*, etc.) so that when these words are used in the formal written confession, the suspect will be accustomed to them. It is also at this point that the suspect (in this case, Jack) should be asked more details about the manner and number of times he stabbed his wife.

During the initial phase of eliciting the full confession, the suspect may not be psychologically prepared to talk about some aspects of his crime. When asked a question that is too difficult to discuss, the suspect may simply not respond or, more commonly, state that he cannot remember or does not know about the circumstances. The investigator should not pursue this sensitive area until later; he should move on to another question, such as, "What is the next thing you remember doing?"

While developing the general acknowledgment of guilt, the investigator should refrain from taking any written notes. To do so may discourage the suspect from continuing with his confession. For the same reason, if the interrogation has not been recorded up to this point, the investigator should not introduce a tape recorder or video camera at this time—that should be done in Step 9.

Eliciting the Corroborated Confession

After a suspect has related a general acknowledgment of guilt, the investigator should return to the beginning of the crime and attempt to develop information that can be corroborated by further investigation. He should seek from the suspect full details of the crime and also information about his subsequent activities. What should be sought particularly are facts that would only be known by the guilty person (for example, information regarding the location of the murder weapon or the stolen goods, the means of entry into the building, the type of accelerant used to start the fire, and the type of clothing on the victim, etc.).

When developing corroborative information, the investigator must be certain that the details were not somehow revealed to the suspect through the questioning process, news media, or the viewing of crime scene photographs. In this regard, it is suggested that early during an investigation a decision be made by the lead investigator as to what evidence will be withheld from the public, as well as from all suspects. This information should be documented in writing on the case file so that all investigators are aware of what information will be withheld.

The best type of corroboration is in the form of new evidence that was not known before the confession, but yet could be later substantiated. Prior to conducting the interrogation, the investigator should consider what types of independent corroborative information should be sought. Examples include the present location of a murder weapon or the suspect's bloody clothing, where stolen goods were fenced, and who the suspect talked to about the commission of his crime.

At this stage of the process, the investigator may return to the alternative question that was used to develop the first admission of guilt. If it is believed that the alternative question does not represent the whole truth, an attempt should be made, at this point, to obtain a correction from the suspect because of his present penitent frame of mind, whereas previously it would have been inadvisable to do so. Most suspects will usually now answer any question as truthfully as they can. In other words, typically once a suspect begins to confess, he will continue to do so unless the investigator becomes abrasive, offends the suspect by an impertinent attitude, or violates the suspect's privacy by bringing additional

people into the interview room or equipment to electronically record the conversation. Of course, there are exceptions to this rule where a guilty suspect, for a number of reasons, will be reluctant to offer a full and complete disclosure of his crime.

Consider once again the homicide case illustration in which Jack killed his wife and three children. Jack accepted the alternative choice that the knife was on the table. If the investigator believed that the knife was actually in the drawer, and that the suspect carefully looked for and chose the knife he was going to use, then it may become important to correct his original alternative choice so as to establish his actual purpose and intent. The suspect should be confronted with the investigator's belief that the knife was in the drawer. He may do this by utilizing a second alternative in which the location of the knife in the drawer becomes the more acceptable choice. For instance: "Jack, you said earlier that the knife was on the table and not in the drawer. Now, Jack, it is important to get to the whole truth. We know the knife was not on the table. My concern is whether it was just in the drawer, or if you brought it there with you, knowing all along that you were going to use it. Now, Jack, was the knife in the drawer or did you bring it with you? It was in the drawer, wasn't it?"

If the investigator is accurate in his belief that the knife was in the drawer and not on the table, then, when first confronted with this statement, the suspect will seem uncomfortable, perhaps look down to the floor and change his posture or move around in the chair. This deceptive nonverbal behavior would be a clear signal for the investigator to seek an admission that the knife was in the drawer and not out on the table.

To further illustrate this procedure for rectifying the suspect's acceptance of an incorrect alternative choice, consider the case of a man who is accused of taking indecent sexual liberties with a child by placing his finger into her vagina. As discussed in Step 2 (Theme Development), the investigator may develop the theme that the victim's parents were at fault for not expressing any love, affection, or concern for the child. As the investigator approaches the alternative question stage of the interrogation, he may say:

> Art, did you only rub her down there or did you put your finger into her? I'm sure you only rubbed her a little bit down there and then stopped immediately. I know who's to blame. It's her mother for letting that girl run around like that. Art, tell me, did you put your finger in all the way or did you only rub her a little bit down there? Did you put your finger into her as far as you could, or just rub her a little bit? You just rubbed her, didn't you, Art?

After the suspect nods his head signifying yes, the investigator compliments the suspect for telling the truth and then proceeds to obtain the details of the act. Later, a correction can be obtained for an untruthful choice by the investigator, saying:

> Art, I know you're trying to tell the whole truth, and that's very important. But I'm sure that you did put your finger into her. Art, when you put your finger inside of her, were you trying to hurt her or did you just want to see how she would react? I know you weren't trying to hurt her. Did you put it in all the way, or just a little bit? Art, I want the truth. How far did you put your finger into her, all the way or just a little bit?

The suspect may respond by saying, "A little bit." Thereafter, the investigator should ask: "Up to the first joint or to the second one?" He should then have the suspect so indicate by pointing to the appropriate joint on his own finger. If the suspect in this child molesting case had told the truth originally about just rubbing the victim, he would not have allowed the investigator to proceed with his questioning without making a strong denial of anything other than "rubbing."

Having the Oral Confession Witnessed

When initially eliciting an oral confession, it is important that the investigator be the only one in the room with the suspect. The presence of any other persons may discourage suspects from giving details about their actions. Later, however, when the investigator is satisfied that adequate details surrounding the commission of the crime have been obtained, he may decide that it would be appropriate to have another person witness the oral confession. In such cases, the suspect should be told that the investigator is going to step out of the room for a minute, but will return shortly. The investigator should then locate someone to witness the suspect's acknowledgment of guilt. This should be done without delay; otherwise, the suspect will have time to reconsider what was said and may decide to retract his confession.

The purpose of having the suspect's oral confession witnessed is two-fold: (1) after he has told two persons, instead of just one, that he did commit the crime, he has so fully committed himself that he will be less likely to refuse to give and sign a written statement; (2) in the event the suspect refuses to give or sign a formal statement, there will be two persons available—the investigator and the witness—to testify at trial to the fact that the suspect did confess orally. This will be more effective than the testimony of the investigator alone.

Before the investigator returns to the interview room with the witness, the witness should be told what the suspect's statements were and what the witness should do after the investigator and the witness enter the room together. The witness should also be told not to say anything at the outset, that the investigator will initially do all the talking. Furthermore, the witness ought to be instructed to stand to the side, near the seated suspect, to look directly at the investigator rather than at the suspect, and that the investigator will relate to the witness the fundamental points of the suspect's confession. The relative positioning of the investigator, witness, and suspect is illustrated in Figure 13–8.

When the suspect's oral confession is witnessed, he should not be asked to repeat the details; to do so would create an added burden for the suspect, who may then reassess his situation and retract the confession. Therefore, upon entering the room with the witness, the investigator should say, "This is Officer Smith. He has been working with me on this case." Following this brief introduction, the investigator should then repeat to the witness (Officer Smith) the essential elements of the suspect's confession. To illustrate this approach, in the previously described wife-killing case, the investigator would state: "Jack said that he stabbed his wife last week, that the whole thing happened on the spur of the

Figure 13–8 Witnessing the subject's confession

moment and without any previous planning; in fact, he said he went to her apartment to get some information for his lawyer about the divorce and that she started an argument with him. He also told me that he stabbed the children but only because they were crying and he didn't know what to do. He also said he intended to stab himself, but didn't do it and then left." Following this statement by the investigator, the witness, pursuant to an earlier instruction to him, would ask a few confirmatory questions. The ensuing dialogue would be as follows:

Q: Now, Jack, is what Mr. _____ [investigator's name] just told me the complete truth?
R: Yes, it is.
Q: Jack, did you plan on doing this before you went to the apartment?
R: No sir. It just happened. I can't even believe it happened.
Q: Was anybody with you when you stabbed your wife and kids?
R: No, I was alone.

The purpose of having the witness ask a few questions is to have the suspect actually verbalize to the witness what had already been told to the investigator. This will be more effective than a mere acknowledgment of the truth of what the investigator told the witness.

In some cases, the witness may function as a supplementary investigator to elicit, with more extensive questioning, details not disclosed to the principal investigator.

For instance, in an employee theft case the witness may ask questions about additional company thefts to the one or ones already admitted.

After the suspect has fully committed himself, the witness should leave the room and the investigator should then proceed to obtain a full written confession. The essential elements necessary in a written confession and the appropriate procedural considerations are discussed in Step 9.

After having first heard the suspect's oral confession, if the investigator senses that the suspect may change his mind if left alone while the investigator goes for the witness, a short, handwritten, and signed confession should be obtained from him before leaving the room for any period of time.

Step 9—Converting an Oral Confession into a Written Confession

Principles

As illustrated during the previous eight steps of the interrogation process, an interrogation is not a psychological counseling session whereby the suspect is encouraged to accept full responsibility for his behavior, to himself and others, and to understand the relationship between his thoughts and abhorrent behavior so it can be modified accordingly. Achieving such objectives often takes weeks or even months of therapy—a luxury no investigator has.

The interrogation, simply stated, represents an effort by an investigator to persuade a suspect to tell the truth about alleged involvement in a criminal offense. If too much time is spent on this endeavor, defense counsel may argue duress, and therefore it must be accomplished in a relatively short period of time. Because of this, once the suspect has told the truth and now reflects back on the possible consequences of deciding to do so, he is likely to retract his confession—if not shortly after making it, certainly by the time his court date approaches and the defense attorney points out how damaging the confession will be to his case.

The investigator, therefore, must attempt to not only preserve the confession as a court-admissible document, but also as one that will stand up under the court's scrutiny and the challenges of a defense attorney. Step 9 of the interrogation involves the procedures and legal considerations of converting the oral confession into a written one.

Procedures

The Importance of Documentation

Many confessed criminal offenders will subsequently deny their guilt and allege that they either did not confess or were forced or induced to do so by physical abuse, threats, or promises of leniency. Occasionally, the defendant in a criminal case will even go so far as to say that he was compelled to sign a written confession without reading it or having had

it read to him, or that he was forced to place his signature on a blank sheet of paper and all that appears above it was inserted later.

In a community or jurisdiction where the police enjoy the respect and confidence of the public, false claims of that nature are rather easily overcome; the prosecution may even secure a conviction on the basis of an oral, unwritten, or unrecorded confession with little corroborating evidence. In most cases, however, the problem is much more difficult, and a written or recorded confession is considered far preferable to an oral one. When the confession is in writing, the controversy between the prosecution and the defense becomes more than merely a matter of whether the court or jury is to believe the oral testimony of the police or the accused; the written statement also lends considerable support to the prosecution's contention that the accused did, in fact, confess.

It is essential that an oral confession be reduced to writing and be signed as soon as possible. The next morning, or even a few hours after the oral confession, may be too late, because the confessor may reflect upon the legal consequences of his confession and retract it. No time should be lost, therefore, in preparing for and obtaining a written, signed confession. If time and circumstances do not afford the opportunity for a stenographic transcription, or even for writing out a detailed confession, the investigator should write or type a brief statement of what the suspect orally related—even if only two or three sentences long—and present it to the confessor for signature. Once an offender has committed himself in writing, regardless of its brevity, there is a reduced probability that he will refuse later to make and sign a more detailed version of the crime.

Many good cases have been lost because an investigator assumed that the next morning, or a few hours later, would be time enough to have a confession written and signed, only to find that, in the meantime, the offender had changed his mind about admitting guilt. It is a safe practice, therefore, to lose no more time than is absolutely necessary in obtaining some kind of signed statement. It may even be in the form of a suggested note or letter addressed to a relative, friend, or employer, explaining why the writer committed the offense. Such a document will serve as security against a change of mind or a denial during the period before the taking of a formal, detailed statement.

In addition to avoidance of a time delay with respect to a written admission, it is also advisable to obtain the statement, or even the complete written confession itself, in the same room where the interrogation was conducted. A change to another place, or even to another room close by, may have the psychological effect of a retraction of the oral confession.

Warning of Constitutional Rights

During custodial interrogations, where the warnings required by *Miranda v. Arizona* have already been issued before the interrogation or interview began, it is advisable, nevertheless, to repeat the warnings at the beginning of the written confession, making reference to the fact that the suspect had received and waived them earlier. One reason for this

reference is to establish further evidence that the warnings had been given at the required time, prior to any questioning, rather than only at the time of the taking of the formal confession. Then, too, because a suspect has a right at any time to revoke his waiver of rights, the incorporation of the warnings in the confession itself will thereby preserve evidence of the fact that the waiver was a continuing one up to the time of the signing of the confession. Moreover, at this stage, because the suspect has already confessed orally, the incorporation of the warnings into the written confession is not likely to deter him from signing the document with the warnings in it. The psychological factors are now different from those prevailing at the time when the investigator sought a waiver of *Miranda* rights before an interview or interrogation even began.

Printed forms are usually available for the typing or handwriting of a confession for submission to the confessor for his signature. It should start with a statement such as the following:

> Having been told, before being questioned about the following offense, of my right to remain silent, that anything I say could be used against me, and that I had a right to a lawyer, without cost if I could not afford one, I nevertheless was willing to talk and I also am now willing to give this written statement.

In the event the confessor informs the investigator that he does not wish to make or sign a statement, or that a lawyer is wanted, the investigator must cease any further questioning or recording. Nevertheless, the oral confession is still usable as evidence. (A U.S. Supreme Court decision to that effect is discussed in Chapter 17.[22])

If the oral confession has been made to the police by a person not in custody when the interrogation began, and to whom, therefore, the warnings did not have to be issued initially, but the suspect is to be taken into custody following the writing and signing of the confession, it is advisable, as a precautionary measure, that they be given now at the start of the written confession in the way and manner just described, including the statement of waiver.

If the suspect is to be released and presumably arrested later (after further investigation confirms his confession or an arrest warrant is obtained), no *Miranda* waiver is required. Furthermore, a private security officer does not have to issue the warnings to any suspect unless the security officer is empowered with full police authority or is acting in conjunction with the police, and the suspect is in custody. (The legal authority in support of that proposition is presented in Chapter 17.)

The Preparation and Form of the Written Confession

A written confession may be prepared in the form of questions (by the investigator) and answers (by the confessor), or in the form of a narration by the confessor. Such confessions may be written by hand, typed by the investigator, taken down by a stenographer and transcribed into typewritten form or electronically recoded.

Most prosecutors prefer the question-and-answer format of confession; others prefer the narrative form. Perhaps the best procedure is to effect a compromise whereby the

preliminary and concluding aspects of the offense are elicited by means of specific questions from the investigator, but the details of the actual occurrence are given by the confessor in narrative form. For instance, the suspect may be asked specific questions as to his name, whether he is known by any alias, his address, age, place of employment, whether (in some types of situations) he understands and reads the English language, the time he arrived at the scene of the crime, and the names of persons who were with him up to that time; then, after the investigator's questions have brought the suspect right up to the time and place of the crime, he may be asked, "What happened then?" Thereafter, as long as the suspect confines himself to an orderly recitation of the occurrence, he should be permitted to continue to narrate what happened. If he hesitates or seems to be relating events out of sequence, the investigator can interpose a specific question in order to have the suspect continue in an orderly fashion. At the same time, however, some irrelevant talking should be permitted, because its very irrelevancy may be considered as evidence of the voluntariness of the confession.

After the main occurrence has been covered in the confession, the investigator may return to the use of specific questions, such as, "Where did you go then?" or "What time did you get there?" Specific questions may also be used to bring out previously revealed facts that were omitted from the suspect's narrative portion of the statement.

In addition to the previously mentioned advantages, a question-and-answer format of confession also lends itself more readily to the deletion of certain parts, if the trial court should consider any deletion necessary before the confession is read to the jury. All the investigator's questions should be short, simply worded, and "to the point"; the use of lengthy, complicated questions and the kind of answers that are likely to follow will render the document much less impressive.

Under no circumstances should a confessor be put under oath by a notary public, justice of the peace, or anyone else before the taking of a confession. Such a practice has been viewed by some courts as a coercive influence that will nullify the legal validity of the confession.

In some cases it may be desirable to have a stenographer record the confession in shorthand or stenotyped for later transcription into a typewritten document that will be read to, or by, the confessor, and then signed by him. Some investigators, including the authors, prefer that the stenographer be a woman rather than a man, and that she also sign the confession as a witness. Women stenographers can be excellent safeguards against false claims of brutality or other improper conduct on the part of the investigator. A jury is not apt to believe that she would be a participant or observer in any such impropriety. In fact, a male defense counsel is sometimes completely dissuaded from making such a claim once he knows that the stenographer was a woman. In other words, a confession that is taken down and transcribed by a woman can be a much more unassailable piece of evidence than one taken by a male stenographer or typist. In a sex offense case situation, if the confessor seems too embarrassed to talk in the presence of a female stenographer he should be told that she has heard hundreds of statements equal to or far worse than anything he may say.

The stenographer who has a confession assignment should be briefed about the case and be given the suspect's name and other such information before entering the interview room. She should also be instructed to sit off to the side of the suspect rather than in front of him and refrain from talking to the investigator or asking any questions other than perhaps to have the investigator or suspect speak louder or more slowly, or to repeat something that was not sufficiently audible for recording purposes.

For the psychological effect on the jury when the written confession is read, it is advisable to ask the confessor, early in the confession, a question that will call for an acknowledgment that he committed the crime. This can be done after initial questions about name, address, age, and so on. (For example, "As regards the fire in the store at First and Main streets, do you know who started it?" Answer: "I started it.") Then, after the acknowledgment, the investigator can continue with further preliminary questions as he leads up to the main event and asks the suspect to narrate the details of what occurred.

Early acknowledgment of guilt in a confession will serve to arouse immediate interest in the document by the jury as it is read. It makes clear to the jury at the outset that what is being read is a confession of guilt, and jury members will then follow more closely the details that are subsequently disclosed. An additional advantage of early acknowledgment of guilt is the effect it has on the confessor personally. The suspect who has thus committed himself is far less likely to balk at continuing with the details.

The details of a confession should not only contain the details of the offense itself, such as the date, time, place, motive, and manner of its commission, but also such things as the places where the confessor had been before and after the crime, and the names of individuals he saw and talked to before and after the event. In some instances, the confessor should also be asked to describe the clothing he wore at the time because this may be an important factor with respect to the courtroom identification testimony by victim or witnesses.

During the taking of a confession, no one should be in the interview room other than the confessor, investigator, and stenographer. In addition to the previously discussed psychological reasons for such privacy, there is a persuasive legal factor. In some jurisdictions, each person present during the interrogation or the taking of a confession will have to be produced as a witness at the trial whenever the defendant contends that improper methods were used to obtain his confession. This obviously imposes a burden upon the prosecution that can and should be avoided.

Even in those instances where the investigator himself writes or types the confession, there is no need to have a third person present to actually witness its preparation or signing. The confessor's subsequent acknowledgment to a witness or witnesses that the written confession and signature are his will be sufficient.

The person who types the confession should avoid placing a signature line at the end of it for two reasons: (1) the line connotes too much legalism and may discourage the confessor from affixing his signature to the document; and (2) in the event that a confessor refuses to sign the confession, the document will look far better without

the unused signature line on it. An unsigned confession has been held to be usable as evidence, as long as the investigator can testify that it accurately represents what the defendant said. Moreover, a preceding oral confession will still be usable, even if a typed one is rejected.

Readable and understandable language. Throughout the taking of the confession, the investigator must always be on guard to see that its contents will be readily understood and easily followed by a reader or subsequent listener who has no other independent knowledge as to what occurred. All too often the investigator neglects to realize that although what is going into the confession is perfectly clear to him, its contents may be vague and indefinite to others, including the judge or jury who will hear the case. For instance, when a person has orally confessed to a rape, the investigator who takes the written confession knows full well what the confessor means when he admits he did "it," but "it" may be rather meaningless to someone else. Also, when a confessor says he set fire to "the place," and that it was on "that night," the person who does not have the benefit of other independent knowledge about "the place" or "that night" is at a loss to comprehend the confession. Moreover, when a confession is that vague and indefinite, a trial judge may refuse to let it be used at all.

The way to clarify indefinite words or phrases is to interrupt the confessor and ask a question that will explain away the uncertainty. For instance, in a rape case, if the confessor speaks in terms of "it," he may be asked, "What do you mean "it?" or "By 'it,' you mean sexual intercourse [or the suspect's equivalent terminology]?" In an arson case, the suspect may be asked, "What do you mean by 'place'?" "By the 'place' you mean the house at the corner of First and Main Streets in this city?" or "What do you mean by 'that night'?" or "By 'that night,' you mean the night of July 10th of this year?" Furthermore, the language of the statement should clearly identify the legal nature of the act. For example, in a theft case, the word *steal*, rather than *take*, should be used. In a rape case, the confession should indicate "forced sexual intercourse" rather than "had sex with."

Avoidance of leading questions. A confession in which the investigator does most of the talking, and which consists primarily of "yes" or "no" answers, is not nearly so convincing and effective as one in which the investigator plays the minor part and the confessor the leading role of both informer and confessor. It is highly important, therefore, that the investigator let the confessor supply the details of the occurrence and, to this end, the investigator should avoid or at least minimize the use of leading questions.

To illustrate the point, suppose a person is in the process of confessing a murder in which it is a known fact that the gun involved in the crime was thrown away under a certain house. The confessor has been giving various details of the crime and the investigator is about to inquire regarding the disposal of the gun. At this stage, some investigators may say, "Then you threw the gun under the house, didn't you?"—a question calling merely for a "yes" answer. Far more convincing to a court or jury is to have the gun details appear in answer to a nonleading question, such as: "Then what did you do with the gun?"—a question calling for detailed information from the confessor himself.

In addition to the foregoing advantages attending nonleading questions, there is another factor to be considered. An investigator may encounter a situation—although its occurrence will be exceedingly rare—where subsequent to the confession he may become skeptical as to its validity, particularly when there is some suspicion that the confessor is suffering from a mental illness and may be innocent of the crime to which the confession was made. In such instances, the investigator will find considerable comfort in being able to evaluate the confession in the light of certain known facts, and this can ordinarily be done, unless during the interrogation those facts were disclosed to the suspect in the form of leading questions. In other words, in the above-stated hypothetical case situation regarding the gun under the house, the investigator who asked the suspect what he had done with the gun, and who was told, "I threw it under the house" (where the gun was actually found), is in a far more desirable position than the now skeptical investigator who asks the suspect, "Then you threw the gun under the house, didn't you?" and merely receives a "yes" answer.

Another case illustration of the advisability of not disclosing all the details of a crime to the suspect is one in which an elderly woman was brutally assaulted sexually and killed while in the kitchen of her home. The suspect who confessed to the offense did so rather quickly and in such a manner that the investigator wondered whether the confession was genuine. Fortunately, no one had told the suspect the details of the offense, such as the exact nature of the victim's injuries and the place where certain objects had been thrown; nor had anyone described the kitchen itself to the suspect. An accurate revelation by him of these various details, including an accurate description of the kitchen, quickly allayed the investigator's doubt as to the validity of the confession. Had the suspect been told all this before his confession, the case would have given the investigator considerable concern.

Confessor's own language. In the preparation of the written confession, no attempt should be made to improve the language used by the confessor himself. That language used represents that person's confession and should be in the confessor's original words; otherwise, a judge or jury may be reluctant to believe it emanated from a defendant whose education may have ended at the third grade but whose confession contained the language of a college graduate. Also, in a sex offense case, the confessor's own terminology should go into the written confession without any attempt being made by the investigator to "clean it up." For instance, the words *sexual intercourse, vagina*, or *anal penetration* should not be substituted for the crude language used by the confessor, provided that the crude language accurately describes the sexual behavior. Along the same line, if the suspect is to write out a confession, the investigator should not assist in the spelling of any of the words, even if asked to do so. The suspect should be told to do the best he can with the spelling.

Personal history questions. At the trial, the offender may allege that the confession represents only what he had been told to say—that the investigator "put the words into my mouth." An excellent precautionary measure to effectively meet such a defense is the

practice of incorporating in the confession a number of more or less irrelevant questions calling for answers known only to the offender. For instance, the suspect may be asked to give the name of the grade school he attended, the place or hospital in which he was born, or other similar information. Care must be exercised, however, to avoid questions that call for answers about which the confessor may not be sure (for example, the name of his grade school principal).

When accurate personal information is included in a confession, the prosecutor may point to it as evidence that the accused actually gave the information contained in the confession and was not merely accommodating the investigator by repeating what he was told to say.

On occasion, the confession should reflect the fact that the suspect had the opportunity to satisfy such physical needs as being able to use the washroom facilities or having something to eat or drink, particularly if the circumstances surrounding the interrogation involved his being held for several hours. For similar reasons, if the suspect requires regular medications (insulin, heart medications, etc.) it may be helpful to indicate in the confession that he was allowed to take his normal medications. It also may be important in some situations to clarify with the suspect whether any drugs or alcohol had been consumed within the previous 12 hours. This may become relevant in those cases where the defendant later claims to have been under the influence of drugs or alcohol at the time of his alleged confession.

Intentional errors for correction by the confessor. For many of the same reasons that personal history data are incorporated into the confession, it is a good practice to purposefully arrange for the inclusion, on each page of the confession, one or two errors, such as an incorrect name of a person or street, which will be subject to later correction by the confessor when the document is read by or to him. Any such corrections should be in the confessor's own handwriting, accompanied by his initials or signature in the margin alongside the corrections. When confronted at the trial with a confession bearing corrections of this nature, the confessor will encounter considerable difficulty in denying having read the document before signing it.

Reading and signing the confession. It is advisable for the investigator to read aloud a copy of the confession as the confessor follows the original one word for word. When the previously described intentional errors are reached, the suspect will usually call them to the investigator's attention. To play it safe, however, the investigator should keep the errors in mind and raise a question about them in the event the suspect neglects to do so.

In addition to placing of initials or signature alongside corrections, the suspect should be requested to place an "OK," followed by his initials or signature, at the bottom of each page after the contents have been read by or to him. Then, at the end of the confession, it is advisable to have the offender write out, in his own hand, some such statement as the following: "I have read this _____-page statement of mine and it is the truth. I made it of my own free will, without any threats or promises having been made to me by anyone." After this should appear his signature.

When the time comes for the signing of a confession, the investigator should never say, "Sign here." It is much better, psychologically, to say, "Put your name here" or "Write your name here" while pointing to the place for the signature. The word *sign* connotes too much legalism.

A suspect who balks at signing the confession may be told that he already disclosed information that only the offender could know, that he has already acknowledged the content of the statement to be true, and that both the investigator and stenographer can testify that the statement was made. The suspect also may be told that his signature would demonstrate sincerity and that the suspect cooperated in the investigation.

In the event that the confessor is illiterate, there is little purpose to be served by having him sign or even place his mark (an X) on a printed confession. Nevertheless, an unsigned typewritten copy may be helpful at the trial. The investigator would be permitted to testify not only that the copy accurately represents what the accused said, but also that after it was read to him he acknowledged it to be true. In such instances, it is advisable for the prosecutor to offer as a witness the stenographer who recorded the confession and who could testify directly from the shorthand notes.

Another possibility in cases involving illiterate confessors is to make an electronic recording of their confessions.

Witnesses. In most instances where the offender does not object to the oral confession being reduced to writing, he will readily sign it in the presence of one or more witnesses in addition to the investigator. As already stated, however, it is better to maintain the element of privacy throughout the taking of the confession. Moreover, there are some occasions when a hesitating and wavering confessor may balk at signing the confession if other persons, and particularly uniformed police officers, enter the room for the obvious purpose of witnessing the signature.

A written confession actually need not be signed by any witnesses. All that is required is to have one person authenticate it—someone who can testify that he saw the defendant sign it and acknowledge its truthfulness. Testimony by the investigator that the accused voluntarily made the confession and that the written document was read by or to him before it was signed will be indispensable.

With respect to all these various considerations regarding written confessions, the fact should be borne in mind that an oral confession is as admissible in evidence as a written one, the only difference being the greater weight and credibility usually given to the written, signed confession.

Only one written confession. An investigator should always seek to take as full and complete a confession as may be necessary for use as evidence at the trial. This does not necessarily mean that it must be lengthy; as a matter of fact, the ordinary crime can be—and should be—adequately related within relatively few pages if the investigator is aware of the essential requirements of a confession. A relatively short, although complete, written confession is a much more persuasive document than one that is cluttered with unnecessary verbiage and a lot of irrelevant facts. Also of importance is that the more information

contained within a confession, the more information a defense counsel has to attack, if some of it turns out to be slightly incorrect (times, sequence of events, nature of conversations, etc.).

If the investigator's written confession is inadequate, the prosecuting attorney may have to take a second one. This duplication may add to the prosecutor's trial court difficulties, because defense counsel may demand an inspection of the first one, and an attempt will be made to capitalize on whatever differences, even minor ones, may be present between the two. In fact, unfavorable inferences may be drawn by the jury itself, without any aid from defense counsel.

Whenever an investigator is unskilled in the taking of an adequate written confession, or lacks the time or facilities to do so, a suitable alternative is to merely write out, and have the suspect sign, a brief statement acknowledging the commission of the offense, or else have the suspect write it himself, and then leave to the prosecuting attorney the preparation of the one that will incorporate the full details.

On those occasions when a written confession is later considered inadequate, such as those lacking in some essential details, the investigator should prepare an entirely new confession rather than one that merely supplements the first confession. This will serve to minimize the controversies and legal difficulties that would otherwise be presented by each document's dependence upon the other for completeness.

In the evaluation of a written confession, either by the investigator or by a prosecuting attorney, consideration should be given to the fact that it is a rather common occurrence for the confessor to a major crime to lie about some incidental aspect(s) of the offense. For instance, a murderer may deny that he indulged in a certain sex activity prior to the killing of a female victim, when the evidence clearly established that sexual contact preceded the killing. The reason for this is that in the suspect's own mind, the killing is not nearly so revolting as the forcible sexual act itself. Therefore, a discrepancy of this kind between the confessor's statement and circumstantial evidence of this type should not be considered as discrediting an acknowledgment of guilt. Chapter 15 will present other types of misinformation that may be contained within an otherwise trustworthy confession.

In an effort to minimize the possibility of the extent of a confessor's lying about some incidental aspect of the occurrence, the investigator should follow the practice of having the confessor relate all the details of the crime before any effort is made to reduce the confession to writing (Step 8); if there seems to be any false statement or any withholding of pertinent information, then is the time to try to obtain the complete truth rather than during the taking of the written confession.

In instances where the written confession is to be taken by someone other than the investigator who obtained the oral confession, or where the taking of a second confession is considered necessary because of some shortcoming or defect in the original one, the second investigator (for example, a prosecuting attorney) should first familiarize himself thoroughly with the case and also with whatever is known about the suspect. Following this, he should, as a rule, talk to the suspect alone and listen to the confession before

any attempt is made to reduce it to writing. In this way, the investigator will become acquainted with the suspect and therefore be better prepared to question him at the time when the confession is to be reduced to writing.

Although the authors have referred to the procedure whereby prosecutors exercise the responsibility of taking a second or final statement of the confession, prosecutors must be mindful of the problem they may encounter if circumstances later require their own testimonies as witnesses to authenticate the confession. This is particularly so with regard to those instances where, in a small community, there may be only one prosecutor. The courts view with considerable disfavor the appearance of a prosecutor as a witness in the very case he is prosecuting.

Confining confession to one crime. When a person confesses to two or more crimes, separate confessions should be taken for each one, unless the crimes are so closely related in point of time, place, or other circumstances that the account of one crime cannot be related without referring to the others. For instance, if a suspect confesses to several robberies or burglaries, or a robbery and a burglary, a separate confession should, as a rule, be taken for each offense. The exceptions occur when several persons are robbed at the same time, or when the occupant of a burglarized home is also robbed by the burglar, or when a kidnapped person is also murdered. In such instances, the crimes are so closely related that it is practically impossible to describe one offense without referring to the other offense or offenses. The situation is different as regards the robbery of John Jones on Monday night and a robbery of Frank Smith on Wednesday night. Either of such offenses can be described without a reference to the other. Moreover, the courts hold that it is improper, because of the inherent prejudicial effect, to offer evidence to a jury about a crime other than the one for which the defendant is on trial. There are certain exceptions where, at trial, evidence of another crime or crimes may be presented to establish motive, lack of accident, and so on, but those situations are of no practical concern to the person taking a confession. Consequently, each offense should be treated separately when taking written or recorded confessions.

For similar reasons, a confession should never contain any reference to the fact that a suspect had previously been arrested or convicted, or that he has taken (or refused to take) a polygraph examination. Any such statement would have to be deleted from the confession before it could be accepted in evidence at the trial.

Physical evidence, photographs, and sketches. When a crime weapon is referred to in a confession, and the weapon has been recovered and is available (either at the time of, or subsequent to, the written confession), a separate, supplemental statement may be obtained about the weapon itself. It should be shown to the suspect, who should be asked if it is the weapon he used. Following an affirmative answer, the suspect should be asked to put an identifying mark on it—his initials, for instance. Then a written statement should be prepared in which the suspect merely states and signs something to this effect: "This 38-caliber (Colt) revolver [or knife] with my initials (J.B.) on the handle is the gun I used in the robbery and shooting [or in the stabbing] of John Jones last Monday, March 14, 2011,

at First and Main Streets in this city of Hamlet." Such a statement may be put on a card and actually tied to the weapon itself.

A separate statement of this type may be more effective than a similar statement incorporated in the confession itself because the latter would break the continuity of the account of what occurred. Then, too, if the weapon is a bloody knife or other such instrument, and it is shown to the suspect during the taking of the written confession, it may cause him to balk at continuing with the confession. Moreover, in the reading of a confession to the jury, the pause for the weapon identification may interfere with an otherwise orderly recitation of the facts of the occurrence.

Photographs of the crime scene may also serve as the basis for a supplemental statement. For instance, if a photograph shows the location where an arson fire started, and it also shows the container in which the flammable fluid was transported, the suspect may be asked to point them out on the photograph and to place a number alongside each one. Then, on the back of the photograph or on a separate sheet of paper that can be attached to the photograph, the confessor should be asked to write out: "On this photograph of the interior of the house at First and Main Street, A is where I started the fire; B is the can in which I carried the gasoline." Such a statement should then be signed.

If no photographs are available, there may be occasions when it will be advisable to have the confessor make a sketch of the crime scene and include in it the location of certain objects of the place where something of significance occurred. Accompanying the sketch should be a signed statement such as has been suggested for use with a photograph.

The value of having a suspect make a sketch of the crime scene is well illustrated by the following case. An elderly recluse was murdered and his cabin was burned in an effort to conceal the murder. Six years later, one of the authors interrogated a suspect and obtained a confession from him. He was then asked to make a sketch of the cabin—locating the bed, the stove, and other such objects. His sketch located these various objects just as they appeared in a photograph that investigators had made immediately after the crime. It proved to be of considerable value as further evidence of the confessor's guilt.

Safeguarding the Effectiveness of the Confession

Preservation of stenographic notes. Although a confession written and signed as previously outlined will be difficult to attack in court, there may be occasions when it will become necessary to refute certain objections to it by calling as a witness the stenographer who prepared the typewritten copy from her shorthand notes. The only way this can be done is to have the stenographer read to the court and jury the original shorthand notes. It is advisable, therefore, that these notes be preserved until the case has been finalized in court.

Notes regarding conditions and circumstances under which the oral and written confession were obtained. At the time of trial, usually several months after the confession, an investigator may be cross-examined at considerable length regarding the conditions and circumstances under which the confession was obtained. To meet such a contingency, he should never

rely solely upon memory. It is desirable, therefore, to keep notes regarding such matters as the issuance of the *Miranda* warnings, the time when the interrogation began and ended, the time when the confession was signed, the names of the persons who witnessed the confession, and also information as to the general condition of the interview room, particularly with reference to its lighting arrangements and approximate temperature.

Photograph and medical examination of confessor. In communities where defense counsel indulge in a rather routine practice of attempting to show that the police investigators employ "third-degree" methods to obtain confessions, much can be gained, if time and circumstances permit, by photographing the confessor after the confession. The photographs should include not only a front view but also both side views of him. However, the photographs should not be taken of the suspect in a posed position; it is much better to take them while he is talking to someone and perhaps also while smoking.

Moreover, whenever such defense tactics are anticipated in important cases, it may be well to have a physician examine the confessor so as to be able to establish at his trial the lack of bruises or other alleged evidence of the "third degree."

Confession is not the end of the investigation. Many investigators have the impression that once a confession has been obtained, the investigation is ended, but seldom, if ever, is this true. A confession unsubstantiated by other evidence is far less effective at the trial than one that has been investigated and subjected to verification or supporting evidence. For instance, assume that a confessed murderer has revealed when and where he purchased the knife used in a killing. He also identified a gas station where he had obtained a washroom key so he could wash his bloody hands, and he told of a chance meeting he had had with an acquaintance as he left the gas station. There should then be an immediate investigation regarding the purchase of the knife. If the seller remembers the transaction, he should be asked to give a signed statement about it. This will serve to ensure his cooperation at the time of the trial; furthermore, it will minimize the risk of his possible appearance as a witness for the defense to deny any such transaction. For similar reasons, interviews should be conducted with, and written statements obtained from, the gas station attendant who gave the suspect the key and who may have observed blood on the suspect's hands. Perhaps the suspect may have even made a significant comment about the blood. Then, too, the suspect's acquaintance should be interviewed and a written statement should be sought from him also.

A confession thus supported and substantiated will be far more valuable than the bare document itself. Moreover, there will be many occasions when a thorough post-confession investigation will produce enough incriminating evidence to render unnecessary the use of the confession itself. In some instances, the investigator may find that the post-confession investigation contradicts minor information provided in the suspect's confession. This is not that unusual of an occurrence, but the investigator should review with the prosecutor the best manner in which to handle the inconsistency at trial.

In murder, and other serious cases where a post-confession investigation has resulted in the discovery and procurement of overwhelming physical and circumstantial evidence

of guilt, the prosecuting attorney of the jurisdiction should anticipate a possible plea of insanity. It is advisable, therefore, for him to arrange for the immediate taking of signed statements from the offender's relatives and friends, in which they express themselves as to his mental condition (for example, whether he was normal or whether he had ever sustained a head injury). At this stage of the case, the truth will be more prevalent than at the time of trial.

Another matter that deserves a prosecutor's serious consideration is the advisability of trying the case without even using the confession. Many prosecutors are of the view that if there is sufficient other evidence of guilt, procured either before or after the confession, it is better to rely upon such evidence and not to use the confession as part of the prosecution's case in chief. The confession will be available for rebuttal purposes or for the impeachment of the confessor if he takes the stand and testifies.

The principal reason for the foregoing practice of omitting the confession from the prosecution's proof of guilt is the fact that an attack on the confession and on the investigator who obtained it—however unfounded the attack may be—might divert the jury's attention from the significance and weight of all the physical or circumstantial evidence presented by the prosecution. Each case will present its own separate problem, and, consequently, a prosecutor should not follow any set rule about the use or nonuse of a confession as evidence.

Post-Confession Interviews

After a person confesses a crime, he usually is willing, perhaps even anxious to talk further with the investigator—to talk about his troubles generally. The confessor is also usually willing to discuss the reasons why he confessed, even to the extent of answering the investigator's specific questions as to the impact of particular techniques that the investigator employed to obtain the confession. Here, then, is an excellent opportunity for an investigator to improve upon his knowledge and skill. The authors suggest, therefore, that whenever time and circumstances permit, the investigator should conduct a post-confession interview. It will be a highly rewarding experience in several respects.

First, what the investigator learns from one confessed offender can be employed to good advantage in the interrogation of others, particularly those who have committed similar offenses. Second, and of even greater importance, such post-confession interviews will permit the investigator to obtain an insight into human nature that cannot possibly be obtained in any other way or from any other source. Moreover, the greater the insight, the more understanding and sympathetic he will become regarding all criminal behavior and all criminal offenders. Eventually the investigator will develop an attitude that will prevent him from ever "hating" anyone—regardless of the kind of crime committed. This attitude is a prime requisite for effective interrogation. Criminal offenders will intuitively recognize whether an investigator has such an attitude, and they will find it easier to talk and to confess to an understanding, sympathetic investigator than to one who lacks these qualities.

A person who aspires to become a skillful interrogator need not be concerned over the possibility that the development of an understanding, sympathetic attitude will make a "softy" of him and thereby ultimately destroy the very skill that must be achieved. That will not happen—at least not as a consequence of an understanding, sympathetic attitude. Not one investigator known by the authors who was effective during interrogation has ever sustained a diminution of effectiveness by reason of the development of such attitudes. To the contrary, it has always produced a higher degree of interrogation skill.

The authors have conducted post-confession interviews on numerous occasions over the years. In fact, post-confession interviews are the source of much of the information upon which many of the foregoing techniques are based. The authors even followed the practice to the extent that, on one occasion, while obtaining case materials for the original (1942) predecessor of the present text, a rapist-murderer was interviewed in his death cell a few days before his execution—for the sole purpose of ascertaining why he confessed. In that death cell, one of the authors obtained the most valuable lesson in criminal interrogation he had ever received from any single source. His "instructor" was well qualified. He had committed a series of rapes that had culminated in the murder of his victim. The night he confessed, there was no opportunity for a post-confession interview, but the opportunity eventually presented itself after the offender's trial, at which he unsuccessfully pleaded insanity and after which became reconciled to the fate that awaited him. He not only talked freely, but also frankly specified and discussed the various interrogation techniques that were most effective in persuading him to confess. He also supplied the interviewer with information that permitted the formulation of a new technique, which has been used effectively ever since in other similar cases.

The post-confession interview may be conducted during the time when the stenographer is typing up the confession. In addition to the factor of time conservation, it is advisable to keep the confessor occupied during this period as a safeguard against a change of attitude and a possible retraction of the oral confession or a refusal to sign the typewritten one.

A post interrogation interview should consist of asking such questions as:

1. What did you think about most during the interview?
2. Did you attempt to say or do anything to throw the interviewer off track?
3. What was the most difficult obstacle for you to overcome in telling the truth?
4. Could the interviewer have said or done anything differently that would have made it easier for you to tell the truth?
5. Was anything said or done during the interview that prompted you to hold back the truth for a while?
6. What was the most significant thing the interviewer did or said that led you to tell the truth?
7. Are there any other comments or observations you would like to make about your interview today?

Electronically Recorded Confessions

In Chapter 5 we discussed the value of electronically recording interrogations and confessions. If a suspect's confession is electronically recorded the same guidelines in taking the statement as outlined above should be followed. There is no doubt that there is considerable value in electronically recording interrogations and confessions to demonstrate, among other things, that nothing improper was said or done by the investigators or that the suspect made a knowing and intelligent waiver of his rights.[23] Furthermore, 11 states require electronic recording of a suspect's interrogation and confession, and numerous law enforcement agencies have voluntarily adopted the practice of electronically recording suspect interrogations and confessions.[24]

Footnotes

[1]It has been suggested that the reason for this guideline is because the interrogation techniques presented are so psychologically sophisticated that they could induce an innocent person to confess (*20/20*, ABC news, June 18, 1999). This is not the concern. Rather, the guideline is offered to discourage investigators from using accusatory interrogation techniques as the primary means to establish the truthfulness of a suspect. In most situations, a non-accusatory interview will accomplish that goal.

[2]The investigator, however, should not prepare false, incriminating documents that appear to have been generated through an official source (for example, from a crime lab, the FBI, etc.). The reason for this is a concern that such falsified documents may find their way into the court system, see *State v. Cayward*, 552 S.2d. 971 Flo. 1989.

[3]The dangers of threatening a suspect with inevitable consequences was illustrated in the case of the Norfolk Four. These four innocent suspects all confessed, and two plead guilty at trial, in an effort to avoid the death penalty. The Confessions, PBS 2010.

[4]With respect to third parties, however, there is what the law terms a "qualified privilege" that protects the speaker when the third party (or parties) is someone who is an official participant in the investigation (for example, a fellow police or security officer) or someone who has a financial interest in the subject matter of the investigation (for example, a merchant or one of his associates or other representative). Such a third person's overhearing an investigator's accusatory statements is not viewed as a "publication" for purposes of a suit for slander or other defamation. The references in support of this legal principle are presented in Chapter 17.

[5]A gross misperception exists within the public, and possibly judicial system, of the significance that forensic evidence plays in identifying a guilty suspect. For a thorough discussion of this see Horvath, F. and Meesig, R. (1998). A Content Analysis of Textbooks on Criminal Investigation: An Evaluative Comparison to Empirical Research Findings on the Investigative Process and Role of Forensic Evidence. *Journal of Forensic Science* 43(1):133–140.

[6]Chapter 17 discusses in detail the legal distinction between mental distress induced intentionally and the relatively minor stress that may result from a legitimate, well-intentioned interrogation during the course of an investigation of a criminal offense.

[7]Psychologists refer to this internal process as techniques of neutralization. Those classifications are remarkably similar to what we refer to as themes (for example, "denial of responsibility," "denial of injury," "denial of victim," and "condemnation of the condemners"). See Lillyquist, M. (1980). *Understanding and Changing Criminal Behavior*. Englewood Cliffs, N.J.: Prentice-Hall, 153–160.

Also see Copes, H., Vieraitis, L., Jochum, J.M. (2007). Bridging the Gap Between Research and Practice: How Neutralization Theory Can Inform Reid Interrogations of Identity Thieves. *Journal of Criminal Justice Education* 18(3): 444–459.

[8]For an in-depth discussion of this argument see Jayne, B. and Buckley, J. (1990). Interrogation Techniques on Trial. *The Prosecutor* (Fall).

[9]It is interesting to note that in the case *R. v. Oickle* (2000), the Canadian Supreme Court overturned a lower court's suppression of an arson confession and expressed implicit approval of many of the interrogation techniques utilized in The Reid Technique. In *Oickle*, the Court of Appeals suggested that the interrogator's understanding demeanor improperly abused the suspect's trust. The Canadian Supreme Court disagreed stating, "In essence, the court [of appeals] criticizes the police for questioning the respondent in such a gentle, reassuring manner that they gained his trust. This does not render a confession inadmissible. To hold otherwise would send the perverse message to police that they should engage in adversarial, aggressive questioning to ensure they never gain the suspect's trust, lest an ensuing confession be excluded."

[10]In the *Oickle* case the Court of Appeals had concluded that the police improperly offered leniency to the suspect by minimizing the seriousness of his offense. The Supreme Court again disagreed stating, "Insofar as the police simply downplayed the moral culpability of the offence, their actions were not problematic."

[11]Urban, W. (1990). *The Silent Partner*. Minneapolis: Preyes Publications.

[12]In suggesting that intoxication may have been a factor underlying a suspect's criminal offense, a reference could be made to a study by the National Institute on Alcohol Abuse and Alcoholism of the National Institutes of Health, which showed that 38% of offenders were drinking at the time of the offenses for which they were convicted. Greenfeld, L.A. and Henneberg, M.A. (2001). *Victim and Offender Self-Reports of Alcohol Involvement in Crime*. http://pubs.niaaa.nih.gov/publications/arh25-1/20-31.htm

[13]In one study "49 percent (Washington, DC) to 87 percent (Chicago) of all arrestees interviewed test positive for at least one substance [illegal narcotics] in their system at the time of arrest." ADAM II 2008 Annual Report, Arrestee Drug Abuse Monitoring Program II, April, 2009.

[14]See Senese, L. (2005). *Anatomy of Interrogation Themes*. Chicago: John E. Reid and Associates, Inc., for theme examples for over 60 types of criminal acts.

[15]With respect to rationalization, psychologist Michael Lillyquist writes: "The person (criminal) distorts what was done and the motives for doing it until the behavior is consistent with self-concept." Lillyquist, M. (1989). *Understanding and Changing Criminal Behavior*. Prentice-Hall, Englewood Cliffs, NJ., 152.

[16]Child sexual abuse is medically known as pedophilia, the abnormal sexual desire or erotic craving of an adult toward children. See U.S. Department of Justice. (1997). *Understanding and Investigating Child Sexual Exploitation*. Washington, DC: U.S. Department of Justice; Buckley, D. (2006). *How To Identify, Interview and Interrogate Child Abuse Offenders*. Chicago: John E. Reid and Associates, Inc.

[17]Whenever the matter of restitution is discussed, the investigator, and particularly one who is acting on behalf of an employer or other private person who has been the victim of a financial loss, must carefully avoid making any statement to the effect that if restitution (of any amount) is made, there will be no report or formal complaint of the matter to law enforcement authorities. To do so would be in violation of the statutory law in some jurisdictions. For instance, in Illinois, Section 32–1 of its Criminal Code (Ch. 38, Il. Rev. Stats.) contains the following provisions regarding "Compounding a Crime": "A person compounds a crime when he receives or offers to another any consideration for a promise not to prosecute or aid in the prosecution of an offender." It is punishable by a $500 fine.

[18]The investigator working on behalf of private industry should be aware of legal restrictions set forth in the Federal Employee Polygraph Protection Act of 1988. Specifically, a private employee cannot be asked to take a polygraph examination unless (1) the issue involves monetary loss from the employer, and (2) the employer has reasonable suspicion that the employee is responsible for the loss.

[19]Although it should be obvious, during a custodial interrogation a specific request by the suspect to talk with his attorney must be honored.

[20]Some guilty subjects psychologically withdraw at the outset of an interrogation, immediately following the direct, positive confrontation. These individuals have developed this response to any threatening situation because it has been effective in the past for avoiding punishment from parents, teachers, or law enforcement.

[21]H. Gross, *Criminal Investigation* (1907), 120.

[22]*North Carolina v. Butler*, 441 U.S. 369 (1979).

[23]Visit John E. Reid and Associates website at www.reid.com for a detailed list of cases that point out the value of electronically recording interrogations.

[24]See Sullivan, T. and Vail, A. (2009). Recent Developments – The Consequences of Law Enforcement Officials' Failure To Record Custodial Interviews As Required By Law. *Journal of Criminal Law & Criminology* 99: 215–234.

Chapter 14

Recommendations for Interrogators

An investigator should never lose sight of the fact that, when a criminal offender is asked to confess a crime, a great deal is being requested. A confession may mean the loss of liberty or even life. Moreover, it is ordinarily difficult for most people to admit even a simple mistake involving no penal consequences or social stigma. There is no logical reason why a criminal offender should be expected to confess without hesitation and reluctance, particularly when the case has little or no provable evidence of guilt at the time of the interrogation. It is necessary, therefore, that an investigator possesses the quality of patience. A driving urge to get the job done quickly may be an asset in certain other types of police work (e.g., field investigations), but such characteristics during an interrogation are definitely undesirable.

The Exercise of Patience and Persistence

Once a suspect senses that an investigator is impatient, the suspect is thereby encouraged to persist in his deception. The suspect develops the attitude that, if he holds out, the investigator will soon give up. The emotional factor of impatience will interfere with the investigator's exercise of the sound judgment and reasoning, which the task at hand demands. Impatience may lead to anger, and the investigator will then become personally involved in what should be strictly a professional undertaking. That anger may produce threats or the use of physical force, endangering the welfare and security of the innocent or eliciting from the guilty a confession that is legally inadmissible as evidence.

Not only must an investigator have patience, but patience must also be displayed. It is advantageous to get the idea across, in most case situations, that the investigator has "all the time in the world." He may even express those exact words. (In some cases of a minor

nature, the opposite impression should be given—that the case is not deserving of a lot of time and effort and that the investigator has more important tasks to perform.)

Another prime requisite for a successful interrogation is persistence. In this respect, the following rule of thumb is helpful for an investigator to follow: *Never conclude an interrogation at a time when you feel discouraged and ready to give up; continue for a little while longer—if only for 10 or 15 minutes.* The authors have observed many instances in which an offender confessed, or later said he had decided to confess, at the very time when the investigator was ready to abandon, or did abandon, his efforts. The reason for this occurrence is the fact that, ordinarily, the time when an investigator becomes discouraged coincides with the time when the suspect fully realizes the futility of continued lying.

During these "overtime" periods, an investigator should devote attention to the main aspects of the case. Aimless, irrelevant talking at this point will prove fruitless.

When an investigator feels he has expended all possible techniques, in many instances, it is helpful to leave the suspect alone in the interview room for a while, but only after saying to him before departing: "Think it over, Joe; I'll be back in a few minutes." Upon returning to the interview room, an investigator should take a seat and then resume the interrogation by first saying something like: "Well, Joe, what about it?" During the period the suspect is left alone, he will probably do a lot of thinking and may conclude that the time is at hand for telling the truth.

With respect to persistence, an investigator should bear in mind that many times the suspect who seems defiant and "tough" and not likely to confess is actually more vulnerable to an effective interrogation than some suspects who give the impression of being rather amenable and "easy" to get talking. In considering the suggestion of persistence, it is important for investigators to be mindful of the fact that they are not privileged to conduct unreasonably long interrogations. An unduly prolonged interrogation may render a confession unusable as evidence (see Chapter 15).

Make no promises when asked: "What will happen to me if I tell the truth?" Whenever a suspect under interrogation makes an inquiry such as this or asks: "Do you think I'll go to jail if I tell you I did this?" under no circumstances should the investigator suggest any possibility of reduced consequences if the suspect confesses, nor should the investigator hold out any inducement whatsoever. Any such reply could nullify the legal validity of the confession that may follow, because a promise of leniency, especially when coupled with a threat of inevitable consequences, may induce an innocent person to confess. The following dialogue illustrates an *improper* response to the suspect's question:

Suspect: What would happen to me if I told you I did this?

Investigator: Joe, if you told the truth, I think a judge would look upon that very favorably and would probably consider probation or maybe even supervision. Now, if you don't admit this and the judge acts on the evidence we have, he may decide to make an example out of you and give you the maximum prison time—the choice is yours.

The investigator should realize that, whenever a suspect raises a question of this sort, the suspect is, in effect, beginning a confession. Therefore, the investigator's reply should be something like the following: "Joe, I can't tell you what will happen. I'm in no position to say. I don't have the authority, and it wouldn't be fair if I made any commitment to you. Joe, my advice is to tell the truth—and tell it now. Then, if you think you have a break coming, talk it over with the district attorney or the judge." Immediately thereafter, the investigator should ask a detail question, such as where, how, when, or why the suspect did the act in question.

By responding to the suspect's "what will happen to me" question in the suggested way, the investigator displays an attitude of fair play, which is impressive. If the offender later attempts to suppress the confession on the grounds that it was obtained as a result of promises and inducements, the investigator can in all sincerity relate the foregoing comments to good advantage.

Avoid interrogations centered on "helping" the suspect. In expressing sympathy and understanding toward a suspect during an interrogation, it is tempting for an investigator to state that it is his desire to "help" the suspect in some way. This may be in the form of an ambiguous statement, such as, "I want to help you out on this thing," or "I can't help you unless you help me first." In other instances, the reference to help may be quite specific, such as, "If you tell me what happened, I can get you psychological help," or "I can get you help for your addiction, if you work with me on this." Some courts have ruled that such statements represent an implied promise of leniency and, therefore, investigators should refrain from any references to "helping a suspect out."

Similar rulings have been made concerning the words *better* and *best.* Statements such as, "You'd be *better off* telling me the truth," or "The *best thing* you can do for yourself right now is tell the truth" both imply possible leniency in exchange for a confession. In Chapter 17 we discuss specific court decisions on such references.

The investigator should not suggest any positive reward or gain concerning possible punishment associated with a suspect's crime. This does not preclude an investigator from making statements concerning a suspect's perception of himself or how others may perceive him. Consequently, the following statements would all be permissible, because they do not imply possible leniency:

- Let's put this thing behind you, so it doesn't keep you up at night.
- For the sake of everyone concerned, tell the truth.
- You've got a long life ahead of you. Don't let a single mistake like this haunt you for the rest of your life.
- You're the only one who can tell the truth about why this happened.
- Without your explanation, people will believe whatever they want to.

When a suspect has made repeated denials of guilt to previous investigators, first question him, whenever circumstances permit, about some other, unrelated offense of a similar nature and for which

he is also considered to be guilty. An investigator should make every possible effort to keep the suspect from uttering repeated denials of guilt, because such denials make it all the more difficult for the suspect to tell the truth later. In other words, a suspect who has repeatedly claimed his innocence will find it hard to then tell an investigator, in effect, "I've been lying to you, and to the other investigators, but now I'll tell the truth." With this consideration in mind, when called upon to interrogate someone who is believed to be guilty of a crime and who has repeatedly denied guilt, an investigator should first try to obtain an admission regarding another, similar, although unrelated, offense for which the suspect is also guilty, and regarding which he is presently under suspicion. For instance, if a person is believed to have committed a theft, such as stealing a purse in a school, office, or hospital, and repeated denials of guilt have been made, it is far easier to tell the truth about other purse stealing than to admit to the one to which repeated denials have been made. For this reason, the investigation should first concentrate efforts on an admission about some other, similar, but unrelated offense that was committed either in the same or in some other school, office, or hospital. After obtaining an admission for that prior offense, the investigator can proceed with an interrogation about the main offense in question.

An unintelligent, uneducated criminal suspect should be interrogated on a psychological level comparable to that usually employed in the questioning of a child, in respect to an act of wrongdoing. Such an offender presents a different interrogation problem from that encountered with other types of suspects. In some essential respects, this type of offender must be dealt with on a psychological level comparable to that invoked during the questioning of a child who has committed a wrongful act.

A guilty suspect of this general type is ordinarily able to indulge in some effective acting. He has the capacity with such acting to deceive an inexperienced investigator into believing that the truth is being told. Another common characteristic is that this type of offender ordinarily does not exhibit the observable symptoms of deception that are so helpful to investigators with respect to other types of suspects. Moreover, an unintelligent, uneducated offender is usually able to sit and listen very calmly to what an investigator says and may even nod his head as though in agreement—but then a comment, such as, "I understand what you're saying, but I don't know anything about this thing," will be made.

This type of offender presents special difficulties to an investigator, because he may have a distorted sense of moral or ethical values, developed around his own life experiences, as opposed to a wider view that incorporates concepts of morality on a societal scale. Like a child, this type of offender believes that the world revolves around him and that the role of others is, essentially, to help him out of predicaments because of his disability. Although these suspects understand right from wrong, they may not fully appreciate the likelihood of suffering consequences resulting from criminal behavior or even have a real sense of what those consequences entail. In short, when lying, they do not experience a significant fear of consequences and, when interrogated, do not experience the same levels of guilt, remorse, or shame typical of ordinary suspects guilty of a criminal offense. It should be noted that, in a significant number of documented false confession

cases, suspects had a very limited mental capacity. This issue is discussed in greater detail in Chapter 15.

It is necessary with this type of suspect to speak in simple terms. Care must be exercised as to tone of voice, because a soft voice may lull him into a state of tranquility to such an extent that he may become unmindful of what the investigator is saying. In fact, the investigator may have to resort to dramatic tones and gestures. It may even become necessary at times to invoke some feigned displays of impatience.

In instances when an unintelligent or uneducated suspect happens to be a member of a minority race or group, an investigator must never make a derogatory remark about that race or group, even in jest. Nor should it be assumed that a person's attitude, conduct, or even criminality are the result of skin color or nationality. To the contrary, an investigator should, and in good conscience always can, eulogize some outstanding member of that race or group and suggest that the suspect try to measure up to the conduct exemplified by that particular individual. If the investigator is personally acquainted with the individual example to whom he refers, that fact should be made known to the suspect by further emphasizing the person's commendable qualities.

Throughout the interrogation of an unintelligent, uneducated offender with a low cultural background, the investigator must maintain a positive attitude, without ever relenting in the display of a position of certainty regarding the suspect's guilt, unless there are clear behavioral indications reflecting truthfulness. It is only a matter of how, when, where, or why the offender did the act in question. Frequently, the crimes committed by this type of offender will be impulsive, and emotions will play a key role. For this reason, with a suspect of this type, considerable emphasis should be placed upon possible moral justifications for his conduct. In other words, in a burglary case, the homeowner may be blamed for not locking a patio door and, thus, creating an overwhelming temptation; in a rape case, the victim can be blamed for leading the suspect on and possibly making fun of him; and in a homicide case, blame could be placed onto the victim for causing the suspect to lose emotional control.

With this type of suspect an investigator should anticipate efforts by a defense attorney to suppress any confession on the grounds that the suspect was particularly vulnerable to the investigator's persuasive efforts. The other side of this coin, however, is that many persons who are unintelligent, uneducated, and come from a low cultural background engage in criminal behavior. The investigator must particularly avoid any theme or interrogation technique designed to persuade such a suspect (or any suspect) that he is guilty of the offense, despite his alleged lack of recall committing it or statements that threaten inevitable consequences or offer promises of leniency. Each of these are common defense theories used to question or challenge the validity of a confession with this class of offender.

Interrogation of Witnesses and Other Prospective Informants

The basic principles underlying the previously described techniques for interrogating suspects and offenders are, in general, equally applicable to cases involving the interrogation of witnesses and other prospective informants.

The Potentially Cooperative Witness or Informant

Here is an illustration of the basic psychological factors involved in the interrogation of a potentially cooperative witness or informant. Although this example describes an automobile accident investigation, the principles developed are equally applicable to a murder case or any other type of offense.

Some officers seem never to be able to find witnesses; others have little difficulty: One officer in the former category would shoulder his way through a crowd. "Did anybody see this accident?" he would shout. "How about you?" "How about you?" He would all but push the people about. Naturally, he found very few witnesses. In reporting back to his partner, he would say, "There weren't any witnesses. I went through the crowd four times, asking everybody, but nobody saw the accident." An adroit officer uses his head, rather than his lung power. He goes about the job quietly. Perhaps he spots a talkative individual--at least one such person is to be found at most accidents. "How do you do, madam," he says. "Did I understand you to say that you saw this accident?" "Why, no, officer," she replies, probably feeling flattered that he singled her out, "I didn't see it, but that man in the grey hat over there was telling me all about it. He was right here when it happened." In approaching the man, the officer is still very courteous but just a little more brisk and businesslike. He plans his question carefully. He does not say, "Did you see the accident?" but rather, "Pardon me, sir, would you mind telling me what you saw in connection with this accident?" This officer seldom has difficulty in finding witnesses.

He listens carefully to their accounts of the accident. Then, if they are willing to write out a statement, he provides them with notebook and pencil and asks them to sign what they write. If they will not write the statement, he writes it, reads it to them aloud, and then has them sign it. If they refuse to sign, he does not insist; they are still his witnesses, and he wants their good will when they appear on the stand in the trial, if a trial follows.

In brief, the good investigator usually seeks his witnesses indirectly. He finds somebody who knows that somebody else saw the accident. Getting the witness' name, if possible, he addresses him by it. He is quiet and courteous. In requesting the witness write and sign a statement, or merely sign it, he puts his question positively, not negatively. Instead of saying, "Won't you sign this, please?" he hands the pencil to the person and says, "Please put your name here. It will make our investigation complete." If the witness does not want to sign, the investigator should be pleasant, not resentful.

In addition to the foregoing, the investigator should adhere to the following general guidelines when questioning a witness:

- *Encourage a narrative version of the witnesses' story and then follow up with specific questions for clarification.* If an investigator interjects too many questions during the narration, the flow of the witnesses' thoughts may be disrupted.
- *To ease a reluctant witness, approach the witness as a secondary source of information.* The investigator may state, "Some people have already told me what happened, would you tell me what you saw to help verify their statements?" There is always safety in

numbers, and a witness may be much more forthright believing that other people have already come forward with information.

- *Offer the witness support and encouragement by interjecting such comments as "That's very good," "That's going to help us," or "You seem to have an excellent memory."*
- *Protect a witness from embarrassment by separating him from the others.* Do not force a witness into a position of revealing something personal (e.g., his reason for being in the area) in front of others or of not offering information that may be accurate but contradictory to what others have said.
- *Do not ask a witness for any personal information (such as name, address, or telephone number) until after the witness has given a statement.* The greatest fear most witnesses face is "getting involved." An investigator can greatly relieve this fear by gathering the witness's observations completely before asking for personal identification.
- *Avoid leading questions that suggest the information being sought (e.g., "Was the car yellow with a white top?").* Ask open-ended questions and use words that are compatible with the witness's ability to speak and understand.
- *Appear to be interested in the witness and what the witness has to say.* Avoid sarcasm, criticism, or any display of anger or animosity.
- *Avoid emotionally provocative words, such as* kill, murder, *or* rape.
- *Be patient.* If a witness senses that the investigator is getting impatient, the witness may stop talking.
- *Use sketches to establish further details.*
- *Be careful to distinguish fact from inference.*
- *Be aware of verbal and nonverbal behavior symptoms the witness displays.* These symptoms may indicate an area of discussion that requires further probing or that there may be something about which the witness has not been completely candid.
- *Be aware of factors that may inhibit a witness' desire to talk, such as a fear that some previous illegal act may be exposed or that his presence in the area will be disclosed to the embarrassment of the witness.* The witness, therefore, should be reassured that the investigator is only interested in what was seen or heard.

The Reluctant Witness or Informant

Although a criminal investigator ordinarily will experience little difficulty obtaining information from witnesses to a crime or from persons in possession of information derived from some other source, there are instances when a witness or prospective informant will attempt to withhold whatever information is known concerning another's guilt. In the interrogation of such a person, the following suggestions should be helpful in obtaining the desired information.

Assure a willing but fearful witness or other prospective informant that he will not be harmed by the offender or the offender's relatives or friends and that police protection will be received in the event such protection becomes necessary. It is quite natural that, under certain conditions and circumstances, a witness or prospective informant might want to assist the police yet refrain from doing so because of a fear of retaliation at the hands of the offender or the offender's relatives or friends. In such instances, it is advisable to give the subject the following assurances:

- Retaliation is an extremely rare occurrence when a witness or informant is acting in good faith and without any selfish motive, such as receiving pay for information or seeking personal revenge on the offender. In this connection, it is wise to ask the subject if he knows of any case of which an honest court witness or an honest police officer or prosecuting attorney was ever subsequently harmed by an offender or by someone else acting on the offender's behalf.
- Information will be kept confidential and, where circumstances permit, for example, where court testimony from the witness or informant may not be necessary, the offender and others will never know of the subject's cooperation with the police.
- If it becomes necessary for a witness to testify in court, the witness' previous cooperation will not be disclosed by the police, because the witness will be subpoenaed; thus, the witness can justify the act of testifying on the ground of having been ordered to do so by the court.
- An adequate police guard will be assigned to the witness, if so desired or deemed necessary.

Along with the foregoing attempts to secure the proper degree of cooperation from a witness of this type, it is advisable to point out to the witness that the investigator is asking no more than would be expected of any person in the event that the witness or a member of the witness' family were the one against whom the offense had been committed. Moreover, it is effective to impress upon the witness his obligation as a citizen of the community to render such cooperation to the police.

In the event that none of these suggestions elicit the desired information, the willing but fearful witness or other prospective informant may be treated as an actual suspect in the manner subsequently described . Ordinarily, however, resorting to this method is unnecessary.

Whenever a witness or other prospective informant refuses to cooperate because he is deliberately protecting the offender's interests or because he is antisocial or antipolice, an investigator should seek to break the bond of loyalty between the witness and the offender or accuse the witness of the offense and proceed to interrogate the witness as though he were actually considered the offender. Occasionally, it is possible to break the bond of loyalty between a witness and the offender he is attempting to protect by convincing the witness of disloyalty on the part of the offender. For instance, in the interrogation of a witness who is the mistress of the offender, she may

be told that the offender was unfaithful to her and in love with another woman, whose true or fictitious name should be given. By this method, the subject may be induced to change her attitude toward the investigator's request for helpful information. It is also possible, on occasion, to change a subject's antisocial or antipolice attitude by patiently pointing out the unreasonableness and unsoundness of his views. Ordinarily, however, more effective measures are necessary.

There is one consideration that a subject of this type is likely to place above all others: the protection of his own interest and welfare. When all other methods have failed, the investigator should accuse the subject of committing the crime (or of being implicated in it in some way) and proceed with an interrogation as though that person was, in fact, considered to have involvement in the crime. A witness or other prospective informant, thus, faced with a false accusation, may be motivated to abandon his efforts to protect the offender or to maintain antisocial or antipolice attitudes.

As previously stated, it is wise to bear in mind that, occasionally, the reporter of a crime—a "witness," for instance—may actually be the offender. In certain instances, or even as a routine procedure, the statements of important witnesses should be checked for accuracy and truthfulness. For instance, if a witness states that someone was with him shortly before the offense or that he was at a certain place immediately before the offense, the truthfulness of that statement should be checked. Otherwise, an offender who is seeking to conceal guilt by representing himself only as a witness may well succeed in the efforts to evade detection.

Chapter 15

Distinguishing Between True and False Confessions

The impact of a confession on a jury in a capital case is so powerful that a defense attorney who does not attempt to suppress the confession risks charges of providing inadequate counsel. Although there are legal safeguards afforded a defendant at trial to refute whether a professed confession was voluntary or is truthful, a false confession should be recognized long before it is entered into evidence against an innocent defendant. Ultimately, the responsibility of determining whether a confession is true or false falls upon the investigator who obtained it.

A widely known critic of police interrogation addressed an audience, stating that, in his years of reviewing confessions, he has seen both noncoerced, reliable confessions and confessions from innocent people who were convinced by the police that they were guilty. This critic went on to state that, if he distributed ten of those confessions to everyone in the audience and had the audience place the confessions into two piles, five of which were true confessions and five of which were false, that everyone could do it accurately.[1] Perhaps theoretically the task of distinguishing between true and false confessions is obvious. However, in the real world, tens of thousands of hours are spent each year during suppression hearings to resolve that very issue.

There is no question that interrogations have resulted in false confessions from innocent suspects. However, the reported incidence of false confessions varies widely.[2] Even critics of police interrogation agree that most confessions are true. The issue, therefore, is identifying those characteristics that might help investigators identify confessions that are likely to be false.

To identify a false confession, it might be tempting to look directly at the confession itself. However, for psychological and legal reasons, a confession should not be separated

from the interrogation that produced it. To understand factors that may result in a false confession, we begin by looking at several categories of false confessions. Next, factors influencing whether a confession is voluntary and trustworthy are presented, as well as the importance of corroborating a confession. This chapter ends with an overview of research and studies that have investigated the issue of false confessions and how the issue of expert testimony on false confessions is viewed by the courts.

Categories of False Confessions

Coerced Compliant Confessions

An allegation of a coerced compliant confession occurs when the suspect claims that he confessed to achieve an instrumental gain. Such gains include being allowed to go home, bringing a lengthy interrogation to an end, or avoiding physical injury. In a review of 350 trials occurring during the twentieth century, involving persons believed to have been innocent, 49 of those cases (14%) involved a possible false confession. Of those 49 confessions, the coerced compliant was the most prevalent category (45%).[3]

An example of a coerced compliant confession was related to us by a gang member who, at age 14, while under the influence of drugs, shot his best friend in the head. During his interrogation, he maintained his innocence until the detective beat him with a phone book. After no longer being able to tolerate the pain, he "gave up" and led the detective to where he had hidden the gun.

As this example illustrates, not all coerced compliant confessions are false. However, even if a confession is undoubtedly true, it may still be suppressed if it was illegally obtained. The issue involved in a coerced compliant confession is not whether the confession is true, but rather what motivated the suspect to confess. The mere presence of a motivation or incentive in conjunction with a confession does not remove the subject's "free will," nor does it render the confession involuntary. Indeed, the only true "voluntary" confession is one that the suspect offers independent of any police questioning.[4]

Consequently, almost all trustworthy confessions are the result of police questioning and, oftentimes, interrogation. Therefore, the interrogation process must provide some incentive or motivation for these suspects to choose to tell the truth, and there are legally permissible incentives to persuade a suspect to confess. There are others, however, that are not permissible, because they are apt to cause an innocent person to confess.

Voluntary False Confessions

Criminal offenders, whose guilt is unknown to the police, will rarely surrender themselves and confess their guilt. The instinct for self-preservation stands in the way. An investigator should view, with considerable skepticism, any "conscience-stricken" confession. Especially following well-publicized heinous crimes, it is common for individuals who had nothing to do with a crime to come forward and confess. The Bedau and Radelet study referenced in Footnote 3 reported that 34% of false confessions fall within this category.

The following is an example of a voluntary false confession: A high school reported a burglary in which electronic equipment was stolen from a band room. A student came forward and told police that another student was bragging about the burglary. This second student was subsequently interviewed and readily admitted responsibility for the burglary. His confession, however, contained incorrect information about the crime, and he offered a feeble explanation as to what became of the electronic equipment, which he could not produce. Further investigation of the case revealed that this student was in no way involved in the burglary and theft of the electronic equipment. The student later stated that his motive for his false confession was to impress his girlfriend.

In some of these cases, a voluntary false confessor suffers from an underlying organic or functional mental disorder.[5] In other cases, a confession may stem from an otherwise normal person's effort to incur a temporary police detention to gain some other deliberately conceived objective. Among these possible objectives are instances in which an individual is merely seeking free transportation back to the state or community where the crime was committed. In other instances, the purpose may be that of being incarcerated, either for a brief or a relatively long period, to evade police consideration as a suspect for a more serious crime. A suspect with knowledge of who committed the crime may come forward and confess to protect a loved one. There are also instances when the only motive of a voluntary false confession is the publicity and esteem the confessor seeks to achieve, as was the case of the student who confessed to stealing from the school to impress his girlfriend. In view of the foregoing, we reiterate the caution of believing confessions offered in the absence of questioning, unless there is conclusive corroboration to prove the confession true.

Coerced Internalized Confessions

Coerced internalized confessions are allegedly false confessions that occur when an investigator successfully convinces an innocent suspect that he is guilty of a crime he does not remember committing. This condition has been referred to in the literature as the "memory distrust syndrome,"[6] or "faulty memory syndrome," and, according to Bedau and Radelet, accounts for 21% of false confessions.

There are three categories of suspects who may claim that a faulty memory affected the trustworthiness of their confession. The first is the guilty suspect who has given a voluntary and trustworthy confession but is anxious to discredit the validity of his confession. The second is the suspect who is guilty of the crime but legitimately does not remember committing the crime. Even though during his confession the suspect accepts responsibility for the crime, the confession must be considered untrustworthy, because it is not derived from factual recollections. A final category is the innocent suspect who has no recollection of committing the crime because of memory loss, but, during an interrogation, is convinced by the investigator that he did commit the crime.

A claim that a confession was coerced internalized is an inviting defense for a guilty defendant who chooses to retract his confession. Unlike the coerced compliant confession,

where a defendant must claim that the investigator used threats or promises to extract a confession, all a defendant has to do, when claiming a coerced internalized confession, is take the position that he believed he was guilty of the crime at the time of the confession. As a defense strategy, this is similar to the "temporary insanity plea" that a defendant may claim when the prosecutor has a very compelling case.

The most often cited example to support the incidence of coerced internalized confessions is the 1986 case of Tom Sawyer.[7] Sawyer's next door neighbor's body was found nude, in her bed, murdered by manual strangulation. Sawyer was considered a suspect because of the "nervous demeanor" he displayed during initial questioning. Following a full day's work, Sawyer was asked to go the police station to make a formal statement. Questioning started at 4:00 P.M. and culminated in a confession, following a polygraph examination, at 8:00 A.M. the next morning. During questioning, Sawyer revealed that he had an anxiety disorder and had also been a severe alcoholic for more than 10 years. After treatment through Alcoholics Anonymous, he had maintained sobriety for the previous 12 months. Following an interrogation, which centered on "why Tom didn't remember the killing," Sawyer accepted responsibility for the murder. During his confession, Sawyer suggested that, because the aftershave lotion he used contained alcohol, it might have caused some sort of post-alcoholic-related blackout, during which time he must have committed the murder. As part of his confession, he also related specific corroboration of the crime, such as the fact that he vaginally and anally sexually assaulted the victim and that he removed one of the victim's kitchen knives from the scene of the crime. A subsequent autopsy, however, revealed that the victim was not sexually assaulted. In addition, witnesses reported that the kitchen knife had been missing before the murder occurred. Partially based on the faulty corroboration, Sawyer's confession was suppressed.[8]

The Nonexistent Confession

The nonexistent confession is a statement made by a suspect in which there is no acceptance of responsibility for committing the offense. Although the statement may contain information that is incriminating, such as a false alibi, acknowledgements of opportunity or access, or unreasonable explanations for being in possession of incriminating evidence, there is no statement, involuntary or otherwise, in which the suspect acknowledges committing a crime.

To illustrate the nonexistent confession, consider the following case: The owner of a small retail clothing store experienced a theft from a deposit. There were only two employees who worked at the time of the theft. The employee who reported the theft was the manager and had worked at the store for more than a year. The other employee had only worked at the store for several months and was younger than the manager. Based on these investigative facts, the younger employee was interrogated. After about 20 or 30 minutes of interrogation, she broke down and said, "Listen, I'll pay the money back, but I didn't steal it!" Despite further efforts, the investigator could not persuade the employee to acknowledge stealing the missing money.

Because the younger employee did not confess, it was suggested that the manager be given a polygraph examination, if for no other reason than to eliminate her as a possible suspect. The manager's polygraph examination, however, indicated deception, and a subsequent interrogation of the manager resulted in a full confession. In her written statement, the manager explained that she had been stealing money from the store for several months and was concerned that her thefts may be discovered. She believed that, by "setting up" the younger employee for the one reported theft, the owner would also blame the younger employee for the other thefts.

The younger employee, who turned out to be innocent, certainly did not confess, and her willingness to repay the stolen funds could not be considered a false confession. Similarly, a defendant who maintains innocence but agrees to plead guilty to a crime cannot be considered a false confessor if, at some later time, innocence is proven; the defendant never offered a confession.

Confession Voluntariness

Coercion

As previously noted, no confession following interrogation is completely voluntary in the psychological sense of the word. When applying a legal characterization of voluntariness, a common concept is "overbearing the suspect's free will."[9] The point at which an investigator's words, demeanor, or actions are so intense or powerful as to overcome a suspect's will cannot be universally defined. Each suspect must be considered individually, and consideration must be given with respect to such factors as previous experience with police, intelligence, mental stability, and age.

To illustrate the ambiguous nature of overbearing a suspect's free will, consider a burglary suspect who, during interrogation, is presented with the following factual information: The suspect's fingerprints were found inside the victim's home, a search of the suspect's apartment revealed articles stolen from the victim's home, and a surveillance camera filmed the suspect carrying the stolen property into his apartment. Given this substantial physical evidence of guilt, has the suspect's free will to maintain his innocence been impaired? In light of the overwhelming evidence, any reasonable suspect would perceive no choice but to confess. However, to argue that the suspect's confession to the burglary ought to be suppressed on the grounds that his will was overborne would be absurd.

As this example illustrates, even though overbearing a suspect's free will could, in a broad sense, incorporate cognitive elements, the legal essence of coercion involves real or threatened physical activities. These tactics include harming a suspect or subjecting a suspect to threats of such harm. A similar claim may be made if the investigator threatens the suspect with inevitable real consequences (e.g., "With the evidence we have, there is no doubt that you are going to prison. The only question is for how long."). Promises of leniency in which the suspect is reassured that he will face less severe consequences with

a confession may also fall under the category of a coerced confession, because physical activities are referenced, such as freedom to leave or less prison time.

Psychologically, a promise of leniency has much less persuasive impact on a person's decision to confess than when the promise is coupled with a threat. That is, a suspect who is improperly told that, because this is his first offense, he will not go to jail, under ordinary circumstances, will not be sufficiently motivated to confess. However, when this stated promise is followed by the threat, "If you just sit there and say nothing, I will not only charge you with this offense but also with obstruction of justice, which involves a mandatory prison sentence," the suspect now has a real and tangible motive to offer a confession. Because this incentive could cause an innocent person to confess, it is improper.

As a general guideline, tactics that are considered impermissible as topics entail threats or promises during an interrogation that address *real consequences*. Real consequences affect the suspect's physical or emotional health,[10] personal freedom (i.e., arrest, jail, or prison), or financial status (i.e., losing a job or paying large fines). It should be emphasized that merely discussing real consequences during an interrogation does not constitute coercion.[11] It is only when the investigator uses real consequences as leverage to induce a confession through the use of threats or promises that coercion may be claimed. Our long-standing position has been that interrogation incentives that are apt to cause an innocent person to confess are improper.

An example of a confession that clearly resulted from coercion involved a female who was interrogated concerning the theft of money from her employer. Three off-duty male police officers who were moonlighting as security personnel for the company the woman worked for conducted the interrogation. They sat the woman down in a small room, stood over her, and purposefully exposed their firearms. The three officers took turns asking accusatory questions, including threats of going to jail, but she maintained her innocence. The impetus for the confession was when one officer stated that, if she did not confess, they would spread a rumor around town that she was a thief and she would never work again. At this point, she agreed to sign a confession written by one of the officers.

After being discharged for theft, the woman sued the employer for false imprisonment and wrongful discharge. We were subsequently contacted to offer expert testimony on behalf of the employer. Needless to say, after reviewing the case, we were unable to defend the voluntariness of the confession. It is not known whether this employee did steal the money, but the manner in which the confession was obtained cannot be justified.

Permissible Incentives for a Confession

The purpose of an interrogation is to learn the truth and persuade a suspect whom the investigator believes to be lying about involvement in a crime to tell the truth about the crime that they committed. The only way this can be accomplished is by allowing the suspect to believe that he will benefit in some way by telling the truth. Ordinary people

do not act against self-interest without at least a temporary perception of a positive gain in doing so. There are a number of possible benefits an investigator can offer a suspect during an interrogation for telling the truth that, in no way, address the real consequences the suspect faces and, therefore, would not be apt to cause an innocent person to confess. These include:

- The suspect will experience internal relief by reducing feelings of guilt associated with committing the crime.
- The suspect will be respected by others for having the courage to face the truth.
- By telling the truth, the suspect will learn from his mistake and not commit more severe crimes in the future.
- By telling the truth, others will not believe things about the suspect, or his crime, that are not true (e.g., that the crime is typical of the suspect or that he is a greedy or hurtful person).

For some suspects it is unlikely that the previously listed incentives offer sufficient motivation to tell the truth. In fact, many suspects probably develop more tangible incentives as part of their decision to tell the truth. These incentives may include the following thoughts:

- a vengeance motive whereby the suspect believes that he "beat the system" by distorting or withholding certain information relative to his crime;
- a belief by the suspect that he is likely to suffer consequences, regardless of a confession, and, by offering the confession, he has control over the presentation of his crime to loved ones (e.g., providing an acceptable motive or minimize the amount of planning); or
- a belief that the suspect will receive a lesser sentence if he fully cooperates, confesses, and expresses remorse for his crime.

Communicating incentives in a legal manner is an important consideration of confession admissibility. Courts will generally reject confessions wherein the investigator directly tells the suspect, "Listen, Joe, if this is the first time you did something like this, I'll talk to the judge and make sure that he gives you probation." This statement clearly reflects a promise of leniency. In contrast, the following statement is acceptable: "Joe, if this is something that happened on the spur of the moment, that would be important to include in my report." In this example, the suspect is allowed to attach his own interpretation as to why it would be important to tell the truth. The suspect could select any of the previously mentioned incentives as to why it would be important to include his explanation in the investigator's report. The key is that the suspect arrives at the reason through his own thought process. Perhaps of more importance, such an ambiguous statement would not cause an innocent suspect to believe that it would somehow be in his best interest to confess.

The distinction between statements that offer outright threats or promises to a suspect and statements that are ambiguous in nature is considered insignificant by some opponents of contemporary interrogation. One writer refers to such ambiguous statements as "communicating promises and threats by pragmatic implication."[12] The chain of logic is as follows: (1) Threats and promises may cause false confessions; (2) ambiguous statements may be perceived as a threat or promise; therefore, (3) ambiguous statements cause false confessions.

The fallacy of this argument lies within defining the concept of "threats and promises" as they relate to a suspect's decision to confess. Not every belief that results in a favorable feeling is the result of a "promise," nor is every anxiety state necessarily the result of a "threat." For example, if during a homicide interrogation the investigator places blame onto the victim for causing the suspect to become angry and lose emotional control, could that statement cause some suspects to believe that they might be sentenced less severely? Does the investigator's sympathetic and understanding approach imply to some suspects that a judge will also be understanding and sympathetic?[13] Will the investigator's intentional avoidance of mentioning negative consequences lead some suspects to believe that the consequences of their crime are not that severe? In truth, we cannot answer any of these questions with definite certainty, but we have to acknowledge the possibility that some suspects may form these beliefs. However, the important question to ask is, "Would an innocent suspect be likely to form these beliefs and decide to confess because of them?" To this, the answer is clearly "No!"

All persuasive efforts center on a basic concept: saying the right thing to the right person. Because persuasion requires interpretation and perceptual distinctions, it must be oriented toward the right audience to be effective. Advertisers spend thousands of dollars every year identifying characteristics about potential buyers of a particular product to identify who to expose the persuasion to and what message to deliver. For example, researchers may discover that the "right" target for a toothpaste advertisement is someone who is relatively educated, single, interested in dating, and self-conscious about his appearance. People falling outside this profile would not be persuaded to buy the toothpaste with the message presented. This difference introduces an extremely important element of the persuasion process: A person's expectations and orientation significantly impact the way in which an ambiguous message is perceived.

To understand the distinction between messages that are implied versus stated outright, a person must remember that innocent and guilty suspects have completely different expectations and orientations during an interrogation. Consequently, when they are exposed to the same ambiguous message, they will interpret it differently. An innocent suspect who is told that it is important to explain the reason behind committing the crime will predictably reject the investigator's entire premise and explain that he had no involvement in the crime whatsoever. A guilty suspect who hears exactly this same message may start to entertain possible benefits as to why it might be important to tell the truth. Because of the fundamental differences between innocent and guilty suspects, each respond differently to the investigator's persuasive efforts during an interrogation,

provided those efforts do not explicitly state promises of leniency in exchange for a confession or threaten inevitable harm in the absence of a confession.

In summary, the concept of pragmatic implication is meaningless unless it can be demonstrated that innocent criminal suspects would be likely to interpret the investigator's statement as such a significant incentive (i.e., a promise of leniency or threat of inevitable consequence or physical harm) as to cause a false confession. There are absolutely no data, empirical or statistical, to support such a claim, and, in fact, the theory is rejected by the courts.[14]

Duress

To evaluate the probable effect of interrogation on whether a suspect's confession is voluntary requires the assumption that the suspect is functioning in a normal psychological and physiological manner. When fatigue, withdrawal, hunger, thirst, or a craving for other biological needs serve as the *primary incentive* for a confession, duress may be claimed.

Holding a suspect who is addicted to heroin and waiting until the suspect shows signs of withdrawal before starting the interrogation would be an example of a circumstance that may invite a defense claim of duress. This argument would be strengthened considerably, if the investigator had also promised methadone treatment if the suspect confessed. When considering duress, the severity of physical discomfort must be taken into consideration. For example, a suspect who claims that he was not allowed to smoke until after he confessed has not offered a compelling argument of duress.

The most common circumstance supporting a claim of duress is the length of an interrogation. The length at which an interrogation approaches the level of duress associated with an involuntary confession is individually defined. A guideline to follow, in this regard, is whether or not investigators intentionally prolonged the interrogation and kept the suspect isolated as an interrogation tactic to "break his will." Such a claim may be difficult to refute, if the suspect was purposefully moved miles away from contact with others and left alone for an extended period of time between questioning sessions. Similarly, duress may be alleged, if a tag-team approach is used during an interrogation in which one investigator questions the suspect for hours and is then relieved by a second "fresh" investigator.

Many guilty suspects who confess after several hours of interrogation will claim: "The pressure was so intense I would have said anything to bring it to an end." A properly conducted interrogation that lasts 3 or 4 hours, for the ordinary suspect, is certainly not so long as to cause the levels of emotional or physical distress that constitute duress. However, if physical coercion is involved, even a 30-minute interrogation may warrant such a bona fide claim. The following guidelines are offered to evaluate claims of duress:

1. Can the excessive length of interrogation be explained by the suspect's behavior? For example, did the suspect offer a series of different versions of events, before offering the first incriminating statement? A suspect who has maintained his

innocence and made no incriminating statements for 8 or 10 hours has not offered any behavior to account for this lengthy period of interrogation.

2. Did the suspect physically or verbally attempt to seek fulfillment of biological needs? If so, were such requests denied or used as leverage to obtain the confession (e.g., "You can use your asthma inhaler after you confess."). A suspect who made no such verbal requests or physical efforts to bring the interrogation to a close has a much weaker case. In this instance, it would appear that only in retrospect, after reviewing the interrogation in his mind, or with an attorney, did the suspect decide that the conditions of the interrogation were intolerable.
3. Were there any threats made with respect to denying the suspect basic biological needs unless he confessed (e.g., "You're not leaving here until you confess—no matter how long it takes.").

Summary

For a confession to be admissible as evidence, it must, essentially, be the product of a suspect's free will. All interrogations that result in a confession involve an incentive. There are legally permissible incentives, which would not be apt to cause an innocent person to confess, and others that are not permissible, such as threats to the suspect's physical well-being.

How incentives are communicated during an interrogation forms an important basis as to the perceptual choices available to interpret that message. A direct statement, such as, "If you don't confess right now, I'm locking you up until you do!" leaves little room for interpretation—the suspect, regardless of guilt, has to believe that he will suffer negative consequences through his silence. Such is not the case with the following statement: "If this is something that you didn't plan out long in advance and it just happened on the spur of the moment, I want to be able to include that in my report." Although this ambiguous statement may cause the guilty suspect to perceive some benefit of confessing, upon hearing this same message, an innocent suspect is not apt to decide that it would somehow be in his best interest to falsely confess to committing the crime.

Confession Trustworthiness

Whether a confession is voluntary is a separate and distinct legal test from whether it is trustworthy; an involuntary confession may be true or false. However, for a confession to be considered trustworthy, the admission of criminal involvement must be factual. In this section, we will look at voluntary confessions, coerced internalized confessions, the impact of trickery and deceit, and the influence of psychological impairment or diminished mental capacity on the trustworthiness of a confession. The section concludes with guidelines to help identify whether a confession is trustworthy.

Voluntary Confessions

The trustworthiness of a voluntary confession (i.e., one that occurs without any questioning) should be viewed with skepticism. A genuine conscience-stricken confessor will give the appearance of a person who has been broken in health and spirit as a result of a troubled conscience, depending on the crime for which the person is confessing. Perhaps with the exception of the mentally ill person, the false confessor is apt to appear and act rather untroubled. The false confessor readily acknowledges all elements of the crime and fully accepts the pending consequences for the crime—in short, the false confessor lacks the emotional turmoil and expressions of remorse associated with the true confessor who comes forward voluntarily.

One method for checking the authenticity of a voluntary confession, or one that seems to be the result of mental illness, is to introduce some fictitious aspects of the crime and test whether the suspect will accept them as actual facts relating to the occurrence. This tactic presupposes that all the true facts of the case have not already been disclosed to the subject and media. As stated elsewhere in Chapter 13, such disclosures should be withheld for this very reason, as well as for other considerations.

The following guidelines may provide assistance in assessing whether a voluntary confession is trustworthy:

1. Evaluate the suspect's stated motives for confessing. Almost all truthful voluntary confessors will be able to articulate a specific and reasonable motive that led them to come forward. Consider, for example, a hit-and-run suspect who turns himself in after first being questioned by his wife, who heard about the hit-and-run after it was reported on a local news program and knew that her husband's vehicle recently sustained front-end damage. Conversely, a person offering a voluntary false confession is apt to respond in vague terms as to why he decided, on this date and at this time, to confess. The explanation may reference a guilty conscience or that he felt that he deserves punishment.
2. If the confessor first told a loved one about his crime, this would be typical of a truthful confession. Often, in fact, the loved one is instrumental in convincing the suspect to come forward and confess. It would be suspicious, however, if a police investigator is the only person the suspect has confessed to when the confessor had earlier opportunities to talk to family members, friends, or a clergyman about his crime.
3. When the suspect is able to provide independent corroboration of his crime, it must certainly be true. Consider, for example, the actual case of a distraught man in Japan who shot and killed his wife and three children; the man then loaded the bodies into the family car and drove to the police station and confessed. This example offers substantial corroborating evidence to accept the man's

confession. The truthfulness of a confession should be questioned, however, when the suspect is unable to provide any corroboration beyond the statement, "I did it."

Coerced Internalized Confessions

Defendants have argued with increased frequency that their confessions are false because, at the time of the interrogation, they were persuaded by the investigator that they must be guilty of the offense under investigation. In other words, they claim to be victims of a faulty memory.

The basic concept of faulty memory is familiar to us all. For example, two adult siblings may discuss the same vacation they took as children. One sibling mistakenly attributes an event from a different vacation to the one being discussed, and, through distorted recollections, eventually, both siblings falsely associate that event with the wrong vacation. Not surprisingly, under low motivational circumstances, false recollections have been demonstrated to occur. Consider the laboratory study in which college students were persuaded by evidence that they had pushed the ALT key on a computer keyboard when, in fact, they had not.[15] Interrogation opponents frequently cite this study as proof that coerced internalized confessions can occur. However, it is a tremendous leap in logic to go from persuading someone that he accidentally pushed a computer key when he did not to persuading a criminal suspect that he intentionally killed his neighbor or sexually molested his child when, in fact, he did not.

There are three important prerequisites to consider when dealing with the claim of a coerced internalized confession. The first is that the suspect must believe, on some level, that it is possible for him to have committed the crime. To illustrate this concept, the reader may ask, "Is it possible that last night I killed my next door neighbor but have no memory of it?" The vast majority of readers would reject this possibility. In the true case of a coerced internalized confessor, this inclination for self-doubt suggests some underlying psychopathology that goes beyond a simple lack of self-confidence or self-esteem—through introspection the suspect must believe that he is capable of committing the act. As a second prerequisite, the reader must account for memory loss. This may involve alcoholic or drug-induced blackouts, multiple personality disorder, or amnesic episodes resulting from a neurological disorder, such as epilepsy. As the final prerequisite, during the interrogation, an investigator must have laid the foundation for the suspect to ultimately accept responsibility for a crime that he does not remember committing.

Considering these prerequisites in order, certainly some innocent suspects may have a motive, and others even a propensity, to commit the crime under investigation. Second, some individuals do suffer from mental or physical health problems that produce periods of amnesia. The likelihood of both of these conditions existing within the same suspect is, at best, rare—but not implausible. Under this circumstance, the investigator must be certain not to add the third prerequisite, which is to suggest that the suspect committed the crime even if he has no recollection of doing so.

Although this concept has been addressed frequently in this text, it is worth repeating again—at no time should an investigator attempt to persuade a suspect that he is guilty of a crime he claims not to remember committing. It is one thing to express high confidence in a suspect's guilt, which will not cause an innocent person to confess, but it is quite another to make statements designed to convince a suspect, who claims to have no recollection of committing the crime, that he must be guilty of the offense.

Absent these criteria, a defendant's claim of a coerced internalized confession should be viewed with extreme skepticism by the court. However, the ultimate test of the trustworthiness of any confession is the degree and kind of corroboration included within the confession itself.

Deception

Many of the interrogation techniques presented in this text involve duplicity and pretense. To persuade a guilty suspect to offer an admission against self-interest, the investigator may have to falsely exaggerate confidence in the suspect's guilt, sympathize with the suspect's situation, and display feelings toward the suspect or his crime that are far from genuine. The investigator may suggest a face-saving motive for the commission of the crime, knowing it is not true. In some cases an investigator may falsely imply, or outright state, that evidence exists that links the suspect to the crime.

As these examples illustrate, deception represents a continuum of false representations, ranging from demeanor and attitude to outright lies concerning the existence of evidence. The latter behavior has been most criticized. Specifically, critics of interrogation argue that lying to a suspect about incriminating evidence may cause an innocent suspect to offer a false confession.[16]

The important question to answer is whether it is human nature to accept responsibility for something we did not do in the face of contrary evidence. Upon checking a sales receipt, a customer may discover that the clerk rang up the same item twice. Under this circumstance, certainly the customer would challenge the evidence (i.e., the sales receipt), rather than pay for something not purchased. When Internal Revenue Service correspondence indicates an error within a tax return that the taxpayer knows did not occur, he will challenge the evidence, rather than pay the requested back taxes. The ordinary citizen is outraged and indignant when presented with supposed "evidence" of an act he knows he did not commit.

These common experiences involve relatively minor consequences. The same principle applies, to an even greater extent, when the fictitious evidence implicates the suspect in a crime that may involve years of incarceration. Consider an innocent rape suspect who is falsely told that DNA evidence positively identifies him as the rapist. Would this false statement cause an innocent person to suddenly shrink in the chair and decide that it would be in his best interest to confess? Would a suspect, innocent of a homicide, bury his head in his hands and confess, because he was told that the murder weapon was found during a search of his home? Of course not!

However, consider that such false statements were then used to convince the suspect that, regardless of his stated innocence, he would be found guilty of the crime and would be sentenced to prison. Further, the investigator tells the suspect that, if he cooperates by confessing, he will be afforded leniency. Under these conditions, it becomes much more plausible that an innocent person may decide to confess—not because fictitious evidence was presented, but because that evidence was used to augment an improper interrogation technique (i.e., the threat of inevitable consequences coupled with a promise of leniency).[17]

It is our clear position that merely introducing fictitious evidence during an interrogation would not cause an innocent person to confess. It is absurd to believe that a suspect who knows he did not commit a crime would place greater weight and credibility on alleged evidence than his own knowledge of innocence. Under this circumstance, the natural human reaction would be one of anger and mistrust toward the investigator. The net effect would be the suspect's further resolution to maintain innocence. This presumes that the investigator does not engage in any of the previously mentioned improper interrogation techniques, which would be apt to cause an innocent person to confess. This statement also assumes that the suspect is not mentally, emotionally, or intellectually impaired.

We offer these recommendations with respect to introducing fictitious evidence during an interrogation:

1. Introducing fictitious evidence during an interrogation presents a risk that the guilty suspect may detect the investigator's bluff, resulting in a significant loss of credibility and sincerity. For this reason, we recommend that this tactic be used as a last resort effort. Clearly, there are disadvantages to introducing evidence, real or fictitious, during early stages of an interrogation.
2. This tactic should not be used for the suspect who acknowledges that he may have committed the crime, even though he has no specific recollections of doing so. Under this circumstance, the introduction of such evidence may lead to claims that the investigator was attempting to convince the suspect that he, in fact, did commit the crime.
3. This technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement, if the police tell them evidence clearly indicates they committed the crime.

The Influence of Psychological Factors on Confession Trustworthiness

Research suggests that there are identifiable psychological differences between suspects who confess during an interrogation and those who do not.[18] These differences appear to

be intrinsic, as opposed to social or economic. A study of 182 interrogations found that variables, such as age, race, gender, or economic background, did not predict interrogation outcomes.[19]

That there are fundamental intrinsic psychological differences between suspects who confess and those who do not is hardly a surprising finding. The mere fact that a guilty suspect confessed, because he was susceptible to the interrogation technique used or was somewhat careless or unlucky (e.g., being caught with stolen property in his car), should, in no way, impact the decision to admit the confession. Although it may be unfair, some guilty suspects experience greater levels of guilt and anxiety over their crimes and are, thus, more likely to confess than other suspects who perceive the entire interrogation process as a game. A good example of this inequity within the criminal justice system is that suspects with prior criminal records are more likely to invoke their *Miranda* rights than first-time offenders.

It is important to point out that studies investigating these characteristics consist entirely of suspects believed to be guilty, as opposed to a comparison of interrogations of innocent suspects with the same intrinsic characteristics. There is no question that some guilty suspects have a low stress tolerance, lack self-confidence, and more easily form dependencies on others. Many of these individuals may have legitimate psychiatric diagnoses or personality disorders. However, the question left unanswered by researchers is whether any of these psychological characteristics offer a meaningful predictor as to which are likely to cause a false confession.

It is an unfortunate reality that many people guilty of criminal acts also suffer from personality disorders, symptoms of which can include poor impulse control and substance abuse. When the majority of these people confess, their confession represents the truth. It is, therefore, an insupportable argument to state that the mere presence of a psychological disorder necessarily caused a false confession. Although underlying psychopathology, in some cases, may contribute to a false confession, something else within the interrogation process must have occurred to stimulate the false confession (e.g., coercion or duress).

Certainly there are some suspects who suffer from such severe mental disorders that they are inherently unreliable sources of information. Such people include individuals who are obviously suffering from delusions or hallucinations. Individuals who are significantly mentally retarded and unable to distinguish between what is true and what is false would also fall into this category. However, absent severe diminished mental capacity, the causal relationship between false confessions and underlying psychopathology becomes much less clear. Consider the following case involving a 14-year-old girl with no psychiatric history and an average IQ:

The 14-year-old girl babysat grandchildren of an elderly couple on a number of occasions. Following one of the visits, the grandmother claimed that some jewelry was missing from her bedroom and immediately called the police. That same night the 14-year-old girl was visited by the police, and she gave them permission to search her room and clothing; her parents were not home. The missing jewelry was not found. The girl was

then transported to the police department, where she was interrogated. According to the girl, the investigator told her that, because she was a juvenile, her record would be sealed for life and the only way to avert public scandal against her parents would be to sign a confession, which she did. The confession was merely an acknowledgement that "I, K.K., do admit stealing two emerald earrings from the premises of . . . ." There was no corroboration of her "confession" whatsoever.

The girl never acknowledged to anyone, including the police, that she stole the jewelry. She simply signed a prepared confession to that effect. This resulted in a guilty plea and court supervision. It is not known if the girl did, in fact, steal the jewelry. However, the suspect's young age or vulnerability to persuasive techniques is not at issue. The nature of the interrogation involved a clear promise of leniency (i.e., that the record would be sealed) and threats (i.e., public scandal if she did not confess). Furthermore, this is an example of a nonexistent confession. A signed statement—"I did it"—does not constitute a confession.

A review of anecdotal accounts reporting false confessions includes a high proportion of mentally handicapped suspects.[20] A suspect with legitimate mental disabilities lacks assertiveness and experiences diminished self-confidence. In many cases, such a suspect will have a heightened respect for authority and experience inappropriate self-doubt. Each of these traits, *if actually present*, may make such a suspect more susceptible to offering a false admission when exposed to active persuasion.[21] Conversely, such suspects are not skilled or confident liars and will often reveal the truth through simple questioning. If accusatory interrogation is deemed necessary, the investigator should cautiously employ persuasive tactics and rely, primarily, on simple logic to convince the suspect to tell the truth. The investigator should take great care in obtaining corroborative information to verify the trustworthiness of the statement by this type of suspect and should approach the investigation in a manner similar to that used to obtain a confession from a young suspect.

Confession Corroboration

Types of Corroboration

Proper corroboration of a confession has been emphasized throughout this chapter, as it represents the best measure of the trustworthiness of a confession. It is extremely convincing to a judge or jury to hear a confession that contains information only the guilty person could know, but there are many factors that influence the detail and accuracy of a confession. These factors must be carefully considered, especially when relying on a suspect's signed confession as the primary proof of trustworthiness.

There are three types of corroborative information a confession may contain. The first is called *dependent corroboration*. This consists of information about the crime purposefully withheld from all suspects and the media. In other words, the only people who should know this information are the investigators and the person guilty of committing the crime. Examples of dependent information include the denomination of currency stolen

in a theft, the origin of a fire in an arson , the nature and location of injuries to a homicide victim, or the type of murder weapon used in a homicide.

Upon arriving at a crime scene, the lead investigator should decide and document on the case folder what information will be kept secret. The reason for this formal documentation is to refute the defense attorney's question in court, "Isn't it possible that you inadvertently released this information to my client during your questioning of him?" If this information has been documented, the investigator can more confidently refute the implication within the attorney's question.

Dependent corroboration does have a weakness in that sometimes the information is unknowingly released to innocent suspects. For example, a group of Buddhist monks were found shot to death during an apparent robbery. During the course of the investigation, police obtained confessions from four suspects, all of whom turned out to be innocent of the crime.[22] The verified false confessions from these four suspects contained specific details about the crime scene that should have only been known to the guilty person. How were the innocent suspects able to provide these details? In part because crime scene photographs were used extensively during these lengthy interrogations, and the suspects memorized, or had internalized, the crime scene.[23]

The second type of corroborative information is called *independent corroboration*. This describes information about a suspect's crime that was not known until the confession and was independently verified by the investigator. Examples include the location of a confirmed murder weapon, the recovery of stolen property, or verification of the suspect's activities before or after the crime was committed. Every investigator should strive to not only develop independent corroboration within a confession, but to actually go out and verify it as well. Once this type of information is documented, it is difficult for a defense attorney to refute it.

Unfortunately, not all crimes offer obvious or verifiable independent corroboration. Consider a rape case in which the victim claimed that her date broke down the door of her apartment, undressed her, and penetrated her two times. The suspect openly acknowledged breaking down the door (accidentally, in an effort to talk to the victim) and admitted removing some of the victim's clothing (at her request). Absent DNA or other physical evidence, the confession of having sexual intercourse with the victim, essentially, boils down to a statement of "I did it." Under this circumstance, what can the investigator do to help validate the credibility of the confession?

In such a case, there may be dependent corroborative information to develop; for example, a verbal threat to the victim or the placement of the suspect's hands around the victim's throat. In this particular case, however, the victim related only that she was undressed while in an intoxicated state and that her date had sex with her. To corroborate this confession, the investigator may be left with nothing more than the suspect's recounting of the crime. This is referred to as *rational corroboration*. Elements of rational corroboration include a statement accepting personal responsibility for committing the crime, as well as a detailed description of how the crime was committed, why it was

committed, and, perhaps, how the suspect felt after committing the crime. In other words, the credibility of the confession is assessed by evaluating whether the described behaviors appear rational. This represents the weakest form of corroboration, and courts should view it with the most scrutiny.

Under this circumstance, an investigator should pursue some mundane aspect of the crime that lends credibility to its trustworthiness. For instance, a burglary suspect confessed that, while kicking through a homeowner's front door, his foot got caught in the door panel, and he stumbled on the front porch. Although there was no way to verify his account, other than the existence of a broken door panel, this out-of-the-ordinary description lent credibility to his confession. In this regard, investigators should attempt to include not only the legal elements of the crime within a written confession, but the human elements as well. Almost every suspect who offers a truthful confession will be able to tell the investigator something unique or memorable about his crime. Including this spontaneous information within a confession greatly contributes to its credibility.

Accuracy of Corroboration

It is not reasonable to require everything a suspect includes in his confession represent the absolute and complete truth, but rather that his admission of criminal involvement be factual. Individuals who are not involved in actual criminal interrogations may fail to understand why a guilty suspect would tell the truth about committing a crime but withhold other information related to his crime or even lie about certain aspects of the crime. The most common element of a confession for a guilty suspect to lie about is his true motivation for committing the crime.

The truthful confession of a child molester may contain accurate information with respect to the room in which the abuse occurred, the approximate length of time spent alone with the child, and the statement made to the child eliciting a promise not to tell anyone about their "secret." However, when discussing the specific sexual behaviors engaged in with the child, the suspect may offer less detail. He may acknowledge touching the girl's vagina and that his bare penis also touched her lips, but there may be little elaboration beyond the basic elements of sexual contact. The reason for this is that, at the stage of confessing (Step 8, see Chapter 13), although a suspect is willing to discuss the crime, he does so selectively. He will predictably avoid details that are embarrassing or difficult to personally acknowledge. If the investigator attempts to pin him down by asking specific questions, he may then choose to lie by minimizing some of his actions or claim not to remember. Again, using the child molesting example, it would be rare indeed for the confessor to state, "I manipulated this young girl to undress and forced my erect penis in her mouth, until I ejaculated and experienced the orgasm I found could only be achieved with children." Inclusion of such details should not be a requirement for confession admissibility.

Beyond embarrassment, there are other, more tangible motivations for a guilty suspect to lie during portions of his confession.[24] For example, a robbery suspect may lie about

where he got the gun used in the robbery as to not be implicated in a burglary during which the gun was stolen. During a confession, a suspect may lie about how he left the scene of the crime in an effort to protect an accomplice who drove the getaway car. Theft suspects may lie about how stolen money was spent. For example, part of the money from a robbery may have gone toward paying bills, but the rest may have been spent on illegal drugs. In the confession, conveniently, the suspect explains that all the money was spent to pay bills or outstanding debts. In a gang rape confession, the suspect may acknowledge having forced sex with the victim but lie about the dominant role in selecting and abducting the victim.

Rarely will a suspect tell the complete and absolute truth during a confession. If a confession lacks details in certain areas, or even contains information that turns out to be false, this alone should not serve as a clear indication that the entire confession is false. However, when a judge decides whether to admit a particular confession, the import of that decision will center on corroboration. Because of this, an investigator must make every reasonable effort to develop corroborative information within a confession to assure its trustworthiness.

Based on the foundation presented thus far, the following guidelines are offered to assist in identifying probable true or false confessions:

A confession that was not retracted until days or weeks after it was made is probably truthful. When a significant period of time elapses before a confession is retracted, it is much more typical of a guilty person who is anxious to prepare a legal defense. An innocent suspect will know at the time of the confession that it is false, except in the case of the alleged coerced internalized confession.[25] As soon as the threat of the interrogation has been removed, it would be expected that the innocent suspect would denounce the confession and protest innocence to anyone willing to listen. Therefore, a suspect who has visited with family members or loved ones after the confession but does not retract it until he meets with his attorney sometime later is offering a suspicious statement.

However, no opinion should be drawn based on a suspect's immediate retraction of a confession. As we emphasized in Step 9 of the interrogation (see Chapter 13), it is not uncommon for guilty suspects to immediately retract their confession, even if left alone for too long after confessing and being asked to sign the written confession. The same behavior would be expected from an innocent person who confessed. Consequently, the fact that a confession was retracted shortly after it was made does not offer guidance, one way or the other, as to the confession's validity.

The suspect's explanation for offering a false confession should be carefully scrutinized. In addition to the retraction of a confession, the court must recognize that something must have occurred during the interrogation to cause an innocent suspect to confess. It is not unreasonable to ask the suspect what happened, or was said, to cause him to offer a false confession. The explanation for offering a false confession becomes a critical determinant of the confession's validity.

Typical of a guilty suspect are excuses based on perceptions, rather than specific statements or actions (e.g., "I felt I had no choice but to confess," "I just told them what they

wanted to hear," or "I was confused and didn't know what I was saying"). A suspect who truly offered a false confession should be able to articulate a specific cause for doing so. Examples of such causes include statements that threatened the suspect's well being, a clear promise of leniency, or a confession motivated to protect the guilty person.

In our experience, the vast majority of retracted confessions are, in fact, trustworthy statements coming from the person who committed the crime. However, the following case illustrates a retracted confession that was indeed false: A man was shot to death at a New Year's Eve party. When the police arrived at the scene, the host's 16-year-old son came forward and voluntarily confessed to the killing, offering details that were consistent with the crime scene. The boy was charged with murder and, eventually, upon discussing the incident with his public defender, explained that he had witnessed his father shoot the victim. The boy related that his father talked him into confessing, by explaining that little would happen to him, because he was a juvenile, but that, if the father confessed, the boy would have no home to live in or food or clothes. The attorney arranged to have the boy take a polygraph examination, which indicated his truthfulness. The father was then scheduled for a polygraph examination but confessed before the examination was administered. The father later pled guilty to the homicide. In this case, the suspect's explanation for offering the false confession was specifically articulated and reasonable.

The absence of any specific corroboration within the confession should be viewed suspiciously. A confession that merely acknowledges involvement in a crime but contains no additional details should be viewed suspiciously. Three issues to be considered are:

1. Did the investigator fail to elicit such information?
2. Was the suspect unable to provide such information?
3. Did the subject refuse to provide such information?

In the first two instances, the statement may be what we refer to as a "nonexistent confession" and, appropriately, may not be given much weight as evidence. In the third instance, the guilty suspect may have had second thoughts about further incriminating himself, once the first admission of guilt was offered, in turn deciding to no longer cooperate with the questioning process. Under this circumstance, the investigator may be able to credibly explain the absence of the corroboration, but an obvious question arises: What caused the suspect to acknowledge, yes I did this, and shortly thereafter refuse to further discuss the crime? Our experience has been that, if a guilty suspect can be persuaded to admit committing the crime, then he will also discuss the details of the crime, at least to some extent.

It is not unusual for a true confessor to accept full responsibility for committing the crime but omit specific emotional details, especially when blamed on memory failure. It is not at all uncommon for a guilty suspect to claim, during a confession, not to remember certain elements of the crime.[26] This lack of memory may be convenient on the suspect's part (e.g., when the suspect does not want to reveal the location of stolen money or property). However, it is

possible that guilty suspects are legitimately unable to recall their crimes in full detail, especially when confessing to a particularly traumatic or emotional crime.

A number of factors can inhibit a guilty suspect's ability to recall specific details of a crime during a confession. Among the most common are being under the influence of drugs or alcohol at the time the crime was committed or when many months or years have passed since the commission of the crime. In addition, during the commission of a crime, the suspect will suffer attention biases as a result of being nervous, angry, or excited. These biases will result in the suspect's mind storing certain focused memories and ignoring peripheral events. In a particularly heinous crime, natural defense mechanisms may account for legitimate memory loss where the suspect's mind has repressed certain unpleasant memories.

One study revealed that 26% of men who had been convicted of murder or manslaughter stated that they could not remember committing the crime; in other studies, between 25 and 65% of convicted murderers report some level of amnesia associated with their crime.[27] Most experts agree that numerous alleged amnesias for violent crimes are feigned, but there is no general agreement concerning how to tell genuine cases of limited amnesia from the simulated ones.

It is unreasonable to expect that all guilty suspects offer a fully detailed description of their crime, from the planning stage, through its commission, to postcrime behavior. For a number of reasons, the suspect simply may not be willing or able to offer all these details. However, the confession should contain enough corroborative information to demonstrate that the suspect is, in fact, telling the truth when he accepts personal responsibility for committing the crime.

Faulty corroboration within a confession needs to be evaluated with respect to reasonable motivations. In the absence of identifying such motivations, faulty corroboration may be an indication of a false confession. The most common reason for faulty corroboration is to achieve some type of secondary gain. A rape suspect may lie about elements of his modus operandi for the present crime, as to not implicate himself in other rapes for which he is not yet a suspect. A suspect who was given the combination to a safe from which funds were stolen may lie and state that the safe was unlocked, in an effort to protect the identity of the accomplice who gave him the combination. Similarly, a rapist may claim that he met his victim at a bar, when, in fact, he had stalked her upon leaving the bar and abducted her in the parking lot.

When the confession contains specific details of the offense that turn out to be false, and these details would have been emotionally difficult to disclose, it suggests the possibility that the suspect may have been simply agreeing with suggestions offered by the investigator, and the confession was not the product of spontaneous recall on the part of the suspect. Consider, for example, a homicide that the police initially believed to be sexually motivated. If a suspect's confession includes sexual intercourse with the victim, but this is later refuted by crime lab evidence, which states that there was no sexual contact whatsoever, it is appropriate to question why a guilty suspect would falsely include

such an emotional and intimate detail about the crime that was untrue. The implication is that the inclusion of this highly sensitive information was suggested by the investigator, and the court has to wonder what other incriminating information contained within the confession may be false.

The opposite scenario, where a suspect's confession fails to include emotional elements, certainly does not suggest a false confession. Suppose, in the previous case, that the suspect confessed only to killing the victim and provided corroborative details of the killing. The fact that a subsequent crime lab report indicates that the victim was sexually assaulted just prior to her death does not, by itself, diminish the trustworthiness of the suspect's statement that he killed her. In fact, this is precisely the type of information a guilty suspect would attempt to withhold during a factual and trustworthy confession.

Inconsistencies between the confessor's statement and those of the victim are commonplace in true confessions. For a number of reasons, a guilty suspect may report activities during his crime somewhat differently than the victim's account to the police. In addition to the already mentioned factors of embarrassment or attention biases, it must be remembered that a legitimate victim sometimes exaggerates certain behaviors or may fabricate statements in an effort to better "fit the model" of the truthful victim.

We have encountered numerous cases involving suspects who confess 90% of what the victim reported but vehemently deny the other 10%. The portions denied are incidental, such as who unzipped the victim's pants, whether a verbal threat of retaliation followed a rape, or whether a robber walked away from the scene or rode a bike. Suffice it to say, a perfect match between the victim's account and the suspect's confession should not be required to support the validity of the acknowledgment of the criminal act.

This guideline applies not only to statements by victims or witnesses, but also covers inconsistencies within the crime scene as well. Consider the confession of a suspect who was able to tell police that the rope used to strangle a young girl is in the trunk of his car. The crime lab matched the recovered rope as the murder weapon. However, the suspect's description of the victim's clothing was not accurate. The victim was found wearing a white T-shirt and black jeans, but, in the confession, the suspect described the victim wearing a tan sweatshirt and blue jeans. In this case, the faulty corroboration should, in no way, taint the credibility of the confession.

Such discrepancies may be accounted for by what psychologists call "mood-congruent" retrieval. According to one expert, "When a person has actually experienced a trauma, the central core of the experience is almost always well remembered; if distortion does occur, it is most likely to involve specific details."[28]

When a suspect offers multiple confessions to the police that contain substantial differences, the confession should be viewed with skepticism. Often, under this circumstance, the police learn that a suspect's initial confession cannot be substantiated by the facts of the case, so the suspect is reinterrogated to obtain either a new statement or one that is consistent with the known facts. For example, in the Norfolk Four case, one of the innocent defendants gave the police a total of seven different confessions.[29]

Summary

This chapter began by quoting a social psychologist that the average person could easily identify a true or false confession with the admonition that the task is more difficult than suggested. To identify the probable trustworthiness of a confession clearly requires analysis of the circumstances and content of the interrogation, as well as intrinsic factors within the suspect who offered the confession. Because confessing to a crime runs contrary to survival instincts, when a false confession does occur, something must have caused it. If a defense expert is unable to specifically identify conditions, statements, or circumstances that caused, or would be likely to cause, a particular suspect to falsely confess, a signed confession acknowledging personal responsibility for committing a crime, regardless of its inadequacies, is likely to be trustworthy.

An investigator should attempt, in every case, to obtain a confession that contains independent and/or dependent corroboration. It must be remembered, however, that the same instincts that cause most guilty suspects to initially deny their crime also result in confessions that contain missing or erroneous information. The requirement that a confession perfectly match the crime scene, the victim's account, or be completely verified in every detail, would invalidate most confessions. Rather, a balance of interests must be achieved wherein the court, when deciding the trustworthiness of a confession, considers the totality of circumstances surrounding the confession.

With the discussion of whether a confession is trustworthy in mind, the following represents some factors to consider in the assessment of the credibility of a suspect's confession. These factors are certainly not all inclusive, and each case must be evaluated on the "totality of circumstances" surrounding the interrogation and confession, but, nevertheless, these are elements that should be given careful consideration:

1. The suspect's condition at the time of the interrogation
   a. Physical condition (including drug and/or alcohol intoxication)
   b. Mental capacity
   c. Psychological condition
2. The suspect's age
3. The suspect's prior experience with law enforcement
4. The suspect's understanding of the language
5. The length of the interrogation
6. The degree of detail provided by the suspect in his confession
7. The extent of corroboration between the confession and the crime
8. The presence of witnesses to the interrogation and confession
9. The suspect's behavior during the interrogation

10. The effort to address the suspect's physical needs
11. The presence of any improper interrogation techniques

The interrogation process outlined in this book, often referred to as The Reid Technique, is in full and complete compliance with all judicial guidelines and decisions regarding acceptable interrogation practices. When a false confession occurs, it is not the technique that is the genesis, but rather the introduction of an element, most frequently a threat of harm and/or promise of leniency, that violates the best practices described in this text.

Interrogation Research

There exists no controlled study investigating the validity or reliability of field interrogations. The only meaningful approach to address these issues would be to subject actual persons, who had essentially the same personalities and backgrounds, to identical interrogation techniques. If half of the sample was known, without a doubt, to be innocent of the crime, and the other half was known to be guilty, statistical analysis could be performed to establish the effectiveness of the interrogation techniques on innocent and guilty suspects who confessed. Not only is this an immensely impractical methodology, but it would clearly violate ethical research standards established by the American Psychological Association.

Consequently, statistics on interrogation practices must be collected indirectly. Existing research in the area of criminal interrogation can be divided into the following three categories:

- *anecdotal reports*: a collection of data selected because it supports a hypothesis
- *laboratory studies*: a simulated situation is created to study the incidence or frequency of a particular phenomenon (e.g., false memories or suggestibility)
- *surveys*: data collected on actual interrogations or confessions either through observation, review of documents, or self-reporting

Anecdotal reports are useful to demonstrate that something can happen. For example, reports of 10 patients who died from being prescribed the same medication may be cited to demonstrate that the medication is dangerous and should not be on the market. Although such reports may have great emotional impact, they fail to disclose the incidence of an occurrence, because the sample studied is selective. Conversely, if random sampling of 1000 patients who had taken the medication reflected that 30% died, that would be a meaningful statistic. Anecdotal reports are chosen, precisely because they appear to support an underlying hypothesis that may or may not have any statistical significance.

Anecdotal reports also fall short in that they do not establish causal relationships. In the previous example, although it is true that 10 patients who had taken the medication

died, this does not necessarily mean that the medication caused their death. This approach of collecting data does not control for dependent or independent variables to help ascertain what may have caused or influenced a particular finding.

Finally, an inherent weakness of many anecdotal reports is a failure to establish ground truth. In the instance of false confessions, for example, how does a researcher go about proving that any given confession is actually false? Earlier in this chapter, we cited an anecdotal report concerning 350 cases of miscarriages of justice. While the authors of the study spent a great deal of time explaining how they established the innocence of these people, a retort argued that a number of the suspects considered as innocent were, in all probability, guilty.[30]

A social psychologist named Richard Ofshe, who offers testimony for the defense on confession cases, establishes the platform of his testimony around anecdotal accounts of presumably false confessions. In a study Ofshe coauthored, he identified 60 possible false confessions.[31] Thirty-four of these were allegedly proven to be false, 18 were presumed to be false and 8 were considered to be highly probable false confessions.[32] Even though these 60 cases occurred over a 24-year time period (in which tens of thousands of confessions would have been obtained by police in the United States), Ofshe maintained that the 60 cases represent proof that "police-induced false confessions regularly occur." Further, without any basis, the authors concluded that these false confessions were caused by the "illegitimate use of psychological methods of interrogation." No attempt was made to objectively assess, let alone statistically test, for such a variable.

Anecdotal reports of false confessions have emotional appeal to the uninformed audience. However, they offer no insight as to the actual frequency or cause of false confessions. As such, they offer no scientific basis for drawing any conclusions as to false confessions, other than that some suspects historically have falsely confessed.

Laboratory studies attempt to reproduce, under controlled circumstances, what goes on in real life. A significant weakness of such studies is that, in the laboratory, it is impossible to reproduce the real life motivational incentives of someone facing serious consequences, as in an actual interrogation (see Chapter 9). The level of motivational incentives operating within guilty and innocent suspects, during an actual interrogation, would be impossible to ethically replicate in the lab. Nonetheless, laboratory studies purporting to study interrogational phenomena have been conducted.

In one such study previously described, investigators demonstrated that subjects, suffering no significant negative consequences, could be convinced that they mistakenly pressed the "ALT" key on a computer keyboard.[33] In another study, it was demonstrated that college students produced significant errors of recall involving which words within a list were crossed off.[34] These studies attempted to support the prevalence or possibility of coerced internalized confessions. Even the naive observer should recognize the inherent motivational differences between a laboratory subject who is unable to recall which words within a list were crossed off and a criminal suspect who may face life in prison if he acknowledges committing a crime.

Another weakness of laboratory studies is their failure to reproduce actual field practices. An excellent example of this occurred in a study in which researchers reported that lying to a suspect about having incriminating evidence actually encourages innocent suspects to confess during an interrogation.[35] The study used a cheating paradigm, where participants (college students) were instructed not to help another person (a confederate) with a particular task. In one-half of the cases, the confederate asked the participant for help, which most provided. All participants were then accused of helping the confederate. None of the innocent participants confessed, but 87% of the guilty participants did acknowledge their guilt.

A second group of one-half innocent and one-half guilty participants were not only accused of cheating, but also told that there was a hidden video camera in the room, which would eventually reveal their guilt or innocence. Under this circumstance, 93% of the guilty participants confessed, as well as 50% of the innocent participants.

To anyone who has conducted actual interrogations, this finding makes absolutely no sense, and the explanation can be found within the procedures used during the mock interrogation. As it turned out, these innocent participants did not confess to helping the other person at all. Rather, they signed a prepared statement to that effect. Further, and of most importance, the participants were reassured that, if the hidden camera exonerated them, they would not get into any trouble by signing the statement. According to the study, the participants were told, "Stop wasting my time and sign this," which almost all of the guilty suspects did, as well as one-half of the innocent suspects.

If this interrogation tactic were used during an actual criminal interrogation, the confession would be suppressed in a heartbeat. Encouraging suspects to sign a prepared confession by offering them a promise that, if future evidence exonerates the suspect, the confession will not be used against the suspect, clearly shocks the conscience of the court (a legal test of confession admissibility discussed in Chapter 17). In other words, the innocent participants, in this study, were manipulated to believe that signing the confession would not result in any negative consequences. The tactic falls just short of having the suspect sign a blank document that the investigator later fills in with a confession. To reiterate, laboratory findings cannot be generalized to field situations, unless they replicate what actually happens during real-life interviews and interrogations.

Perhaps because of ethical considerations, many laboratory studies approach the issue of criminal interrogation in such a removed sense that the phenomenon being studied is so remotely related to the actual event that, regardless of the statistical significance reported, one is left with the question, "What does this prove?" An example of this is a study conducted by S. Kassin and K. McNall in which the effects of different interrogation techniques on levels of perceived guilt or responsibility were investigated. Kassin and McNall had students read five different interrogation transcripts of a murder suspect. In the first, the investigator made an explicit promise of leniency; in the second, the suspect was threatened with a harsh sentence; in the third, the victim was blamed; and, in the fourth, the suspect was falsely told that his fingerprints were

found on the murder weapon. The fifth transcript contained none of these variables. After reading each transcript the students rendered opinions as to how long the suspect would be sentenced.[36]

The researchers found it significant that the students believed the sentence would be less severe in the condition in which the victim was blamed for the homicide. What does this tell us about real-life themes that place blame on the victim? The authors of this study argue that the perceived leniency attributed to such a theme could cause false confessions through "pragmatic implication."

Statistics arrived at through opinion data are highly susceptible to evaluator bias. It would be anticipated that judges and police investigators would probably hold different opinions toward interrogation practices than college students or defense attorneys. As the authors of this study correctly point out, "because our findings are based on inferences drawn by college students, relatively uninvolved but highly educated observers, it remains to be seen whether similar inferences are drawn by real crime suspects."

The fundamental problem with laboratory studies is the inability to generalize those findings to the field situation. For example, just because pragmatic implication can be suggested in the laboratory, does not suggest any level of certainty, or even probability, that the same phenomenon occurs during an actual interrogation. An important distinction between the innocent and guilty suspect during an interrogation is their respective motivational states. The innocent person actively avoids being wrongly punished for a crime he did not commit, whereas the guilty suspect actively seeks psychological or real remedies to reduce the consequences associated with the crime that he did commit. Laboratory studies in the field of interrogation will undoubtedly continue but, by their nature, will be inherently inadequate to answer relevant questions addressing actual field interrogations.

Surveys offer, perhaps, the best source of raw data on the effects of the interrogation process, because they have the potential of reporting what actually happens in the real world of interrogation. When interpreting survey results, there are a number of important considerations. First is the sample studied. A small sample (e.g., less than 120) or a restricted sample (e.g., two or three police departments) greatly limits the ability to generalize those findings to all interrogations. This is especially so when the sample is not collected randomly, that is, there is a purposeful effort, or unavoidable circumstance to exclude or include certain data.

Second, the nature of the data collected is most valid, if it is objective. Objective statistics do not require interpretation and are subject to irrefutable verification. For example, a suspect either waived his *Miranda* rights or he did not, he either attempted to suppress his confession at trial or he did not, he either pled guilty or he did not, and so on.

Impressionistic data, in such a survey, weaken the conclusions that can be drawn, because such data are easily influenced through researcher bias, to support a particular hypothesis. Examples of impressionistic data include whether an interrogator "appealed to the suspect's pride" or "attempted to minimize the crime." One way to lessen the biases

involved when evaluating impressionistic data is to have a number of different people render judgments or interpretations relative to the assessment. For example, if three out of four evaluators agree that an investigator was sympathetic and understanding toward the suspect during the interrogation, it holds much greater weight than if the researcher alone made this assessment.

If survey data are collected in a random and representative manner, it offers the greatest possible insight on factors that are important to consider within real-life confessions. One such study is reported by R. Leo, who surveyed 182 interrogations conducted by three metropolitan police departments.[37] Among the cases analyzed, not a single false confession was reported within the somewhat random sample. He did, however, report that 2% of the interrogations involved coercive techniques.[38]

Another example of survey data involved 112 investigators from the states of Alaska and Minnesota who received training in the Reid Technique of Interviewing and Interrogation. These investigators reported obtaining a total of 3162 confessions during the previous 2 years. Of these confessions in which the Reid Technique was presumably used in whole or part, only 18 (0.56%) were suppressed at trial.[39]

When the focus of research is on actual police interrogation practices, as opposed to anecdotal accounts of possibly false confessions or laboratory fabrications of "police interrogations," survey results indicate that the vast majority of confessions obtained through interrogation are noncoercive and held to be admissible as evidence. This is not to suggest that the issue of possible false confessions be ignored, but rather that it be kept in perspective.[40]

Conclusion

There is no question that innocent suspects have been induced to confess to crimes they did not commit. The most prevalent form of a false confession is coerced compliant. Although the *Miranda* ruling and education of interrogators has undoubtedly decreased the incidents of "third-degree" tactics used since 1966, abusive interrogation practices continue into the twenty-first century. These tactics have been admonished by the courts and correctly used as grounds to suppress confessions. However, a small group of psychologists and sociologists would like to expand the grounds for excluding confessions, by persuading courts to suppress confessions obtained through the use of "psychologically sophisticated" interrogation techniques.

The studies and research citing support of the belief that psychologically sophisticated interrogations routinely produce false confessions, in our opinion, offer no substantive evidence to support this claim. To the contrary, our experience has been that such interrogation techniques, if used in accordance with the guidelines offered in this text, greatly reduce the risk of an innocent suspect confessing.

The self-preservation instincts of an innocent suspect during an interrogation, conducted in accordance with the techniques taught in this text, are sufficient enough to

maintain the suspect's stated innocence. When an innocent suspect accepts responsibility for a crime he did not commit, it strongly suggests that improper inducements, such as threats and promises or deprivation of biological needs, were used.

When evaluating the trustworthiness of a confession, a key question to ask is: "What motivated the suspect to confess?" Some incentives are much more likely to result in false confessions than others. In addition, the nature of the confession itself may offer helpful insight. A confession that contains no corroborative information, beyond merely accepting personal responsibility for committing the crime, suggests the possibility that improper inducements were used to elicit the confession and the confession may well be false.

The research conducted on false confessions offers little specific direction to courts when deciding whether a particular confession is true or false. A summary of the research findings presented in this chapter reveals that false confessions do occur but that they are rare occurrences, even when "coercion" is judged to have been present during an interrogation. Finally, as a population, suspects suffering from diminished mental capacity or mental illness appear to be more likely to offer false confessions.

The Issue of False Confessions in the Courtroom—The Testimony of Expert Witnesses

Oftentimes, at a suppression hearing, the defense will offer the testimony of an expert witness on the issue and circumstances surrounding the issue of false confessions. In many of those instances, the expert offers a description of the interrogation process, which entirely misrepresents and is completely inconsistent with the procedures we have outlined in this book.[41] The following is taken from a report prepared by Dr. Richard Leo on a contested confession case in Wisconsin (Brendan Dassey). It is representative of how many defense experts describe the interrogation process:[42]

A. "The sole purpose for custodial interrogation is to elicit a confession. Contemporary American interrogation methods are structured to persuade a rational person who knows he is guilty to rethink his initial decision to deny culpability and instead choose to confess."

B. "The first step of successful interrogation consists of causing a suspect to view his situation as hopeless. The interrogator communicates to the suspect that he has been caught, that there is no way he will escape the interrogation without incriminating himself, and that his future is determined-that regardless of the suspect's denials or protestations of innocence, he is going to be arrested, prosecuted, convicted, and eventually incarcerated."

C. "The second step of successful interrogation consists of offering the suspect inducements to confess-reasons or scenarios that suggest the suspect will receive some personal, moral, communal, procedural material, or other benefit

if he confesses to some version of the offense." There are three forms of such inducements:

- "Low-end inducements refer to interpersonal or moral appeals the interrogator uses to convince a suspect that he will feel better if he confesses."
- "Systemic inducements refer to appeals that the interrogator uses to focus the suspect's attention on the processes and outcomes of the criminal justice system in order to get the suspect to come to the conclusion that his case is likely to be processed more favorably by all actors in the criminal justice system if he confesses."
- "High-end inducements refer to appeals that directly communicate that the suspect will receive less punishment, a lower prison sentence, and/or some form of police, prosecutorial, judicial, or juror leniency if he complies with the interrogator's demand that he confess."

This portrayal of the interrogation process clearly describes techniques that are illegal and, if used, will cause a confession to be suppressed. It certainly does not describe The Reid Nine Steps of Interrogation (The Reid Technique), as detailed in this text. In fact, this description of the interrogation process, as well as many others offered by defense experts, contain a number of procedures that we specifically teach are improper and should never be used.

At the outset, we certainly take issue with the statement that the purpose of an interrogation is to elicit a confession. On page 5 of Chapter 1 of this book, we state the following:

> "The purpose of an interrogation is to learn the truth. A common misperception exists in believing that the purpose of an interrogation is to elicit a confession. Unfortunately, there are occasions when an innocent suspect is interrogated, and only after the suspect has been accused of committing the crime will his or her innocence become apparent. If the suspect can be eliminated based on his or her behavior or explanations offered during an interrogation, the interrogation must be considered successful because the truth was learned."

In describing the interrogation process, as previously illustrated, the expert witness often states that the first step of an interrogation is to convince the suspect that his situation is helpless. This is a completely inaccurate statement. We have stated numerous times in this text (as well as in our seminar training materials) that it is improper to tell the suspect that he is facing inevitable consequences. In fact, in this chapter, we have referenced several cases in which innocent people falsely confessed, because the investigator convinced the suspect that he would suffer consequences regardless of denials.

As to the second step of the interrogation process, theme development, every successful interrogation technique must offer the guilty suspect a real or perceived benefit to telling the truth. This is fundamental to persuasive communication.

As described in this chapter, and Chapter 17 on Interrogation and Confession Law, our courts have long recognized that promises of benefit or threats of adverse consequences may cause an innocent person to confess. Examples include promises to avoid a lengthy sentence or threats of physical pain, if the suspect does not confess. These threats and promises fit the description of what defense experts call "high-end inducements." These high-end inducements are clearly improper, and we teach investigators never to use them.

The "systemic inducements" previously described are designed to create an environment in which the suspect reaches the conclusion or creates the hope that, if he confesses, the case may be processed more favorably by the criminal justice system. From the interrogator's perspective, of course, this is desirable, yet the interrogator cannot mention or imply a benefit of more favorable treatment in exchange for telling the truth. It is perfectly legal, however, to allow the suspect to form his own conclusion that he may benefit in some way by telling the truth.[43]

To allow a suspect to believe that it may be beneficial if he tells the truth, the Reid Technique takes advantage of one of the fundamental principles of human nature: namely, that criminal suspects justify their crime in some manner (e.g., blaming the victim, an accomplice, intoxication, financial pressure, redescribing the intentions behind their crime, contrasting their crime to worse behavior). During the development of the theme (Step 2), we express understanding toward the suspect's crime and offer the suspect moral justifications and excuses for committing the crime. The theme is intended to reinforce the existing justifications already present in the guilty suspect's mind. The guilty suspect who hears the interrogation theme may well conclude, "The investigator is right. I did have a good reason for robbing that store. I'm not a bad person, and I really did need that money to help out my family. If the investigator can understand why I robbed that place, maybe others will too."

An innocent suspect who has not gone through the process of justifying the crime will not relate to the interrogator's theme and will reject the interrogator's suggested justifications. When presented with a theme, most innocent suspects offer persistent denials of involvement in the offense.

The theme culminates in the presentation of an alternative question (Step 7), which offers the suspect two choices concerning some aspect of his crime, both of which are an admission of guilt. For example, "Did you plan on doing this for months in advance or did it just happen on the spur of the moment?" or "Did you steal that money to buy drugs and booze or did you need it to take care of your family?"

The perceived benefit offered through the use of an alternative question is twofold: First, by stating that there was a "good reason" for committing the crime, the suspect hopes that he will receive greater consideration and understanding, and, secondly, the suspect may keep others from believing something about him or the crime that was not true (e.g., that he planned the crime out for months or that he blew the money on drugs and booze). When presented with the alternative question, the suspect, of course, always has a third choice, which is to state that neither alternative is true—that he did not commit the crime.

The Issue of False Confessions in the Courtroom—Court Decisions

In the opinions on this topic, the courts generally reject the testimony of the false confession experts presented by the defense for a variety of reasons. Several examples of these reasons include:

> "Dr. Ofshe's testimony at the Daubert hearing suggested that there was no methodology about false confessions that could be tested, or that would permit an error rate to be determined. In this area of research, the result of the lack of any reliable testing format to establish predictors of when a false confession might occur is a methodology consisting of analyzing false confessions only after a confession has been determined to be false. . . . The trial court did not err in finding Dr. Ofshe's proposed trial testimony inadmissible under Daubert." *State v. Lamonica*, 2009-1366 (La. App. 1 Cir. 7/29/10); 44 So.3d 895, 906-07.

> "Dr. Ofshe's testimony did not contain sufficient evidence to confirm that the principles upon which the expert based his conclusions are generally accepted by social scientists and psychologists working in the field. Therefore, his anticipated testimony that psychological coercion was employed during the interrogation of defendant, Argelis Rosario, which in his opinion would induce a person to falsely confess, does not meet the Frye standard for admissibility." *People v. Rosario*, 862 N.Y.S.2d 719, 726 (N.Y. Sup. Ct. 2008) (citation omitted).

> "In essence, the military judge found that Dr. Ofshe's theory regarding coercive interrogations was not based on rigorous scientific analysis or even subject to scientific testing but was rather Dr. Ofshe's own subjective review of a group of particularly selected cases. By way of example, at one point Dr. Ofshe testified that his theory concerning the impact of certain police interrogation techniques on the danger of false confessions was as intuitive as the fact that the sun will come up each day. Essentially he argues that we can't necessarily prove causation but we just know how it works." Id. at 5, Record at 1202. *U.S. v. Wilson*, No. NMCCA 200300734, 2007 WL 1701866, at *4 (N.M. Ct. Crim. App. Feb, 13, 2007) (citation omitted).

> The lower court had found that "Dr. Leo's testimony would not appreciably aid the jury in determining whether Vent made a false confession." The trial court judge was also "troubled by the fact that there was no way to quantify or test Dr. Leo's conclusions that certain techniques might lead to a false confession. He also concluded that jurors would be aware that some people do make false confessions and that this proposition could be developed by questioning and argument." *Vent v. State*, 67 P.3d 661, 669 (Alaska Ct. App. 2003).

"Of particular significance to the *Daubert* analysis here, Dr. Leo has not formulated a specific theory or methodology about false confessions that could be tested, subjected to peer review, or permit an error rate to be determined. Dr. Leo's research on false confessions has consisted of analyzing false confessions, after they have been determined to be false. . . . Given the evidence before the trial court that Dr. Leo's expert testimony did not include a reliable scientific theory or anything outside the understanding of the jury that would assist it in assessing the reliability of Wooden's confession, the trial court did not abuse its discretion in refusing to admit Dr. Leo's testimony." *State v. Wooden*, No. 23992, 2008 WL 2814346, at *4, 6, 2008 - Oh - 3629 (Ohio Ct. App. July 23, 2008).

"The judge concluded that [Saul] Kassin's testimony did not meet the requirements set forth in the *Lanigan* case. We agree. As the judge stated, Kassin conceded that his opinions are not generally accepted, require further testing, and are not yet a subject of 'scientific knowledge.' One of his own publications admitted as much. Accordingly, his proposed testimony that certain interrogation techniques have previously produced false confessions does not meet either the general acceptance or reliability criteria established by the *Lanigan* case. The judge did not abuse her discretion in refusing to admit Professor Kassin's testimony." *Commonwealth v. Robinson*, 864 N.E.2d 1186, 1190 (Mass. 2007).

"'Expert opinion is not admissible if it consists of inferences and conclusions which can be drawn as easily and intelligently by the trier of fact as by the witness.' . . . A trial court may exclude the testimony of a false confessions expert where the defendant's testimony about why he falsely confessed is easily understood by jurors." *People v. Martinez*, No. B196971, 2008 WL 803403, at *3 (Cal. Ct. App. Mar. 27, 2008) (citation omitted).

"Based on our evaluation of the testimony and application of the *Kelly* factors for reliability of scientific theory, we find that the Appellant did not meet his burden of providing by clear and convincing evidence that Dr. Wright's testimony was reliable and therefore relevant. Dr. Wright's testimony [on false confessions] could not have assisted the jury in understanding the evidence or in making a determination of a fact issue." *Munoz v. State*, No. 08-07-00325-CR, 2009 WL 2517664, at *7 (Tex. App. Aug. 19, 2009).

In the case of *People v. Crews*, (February 2008) the defense sought to call Dr. Solomon Fulero as an expert witness on the issue of false confessions. The Court held "that the subject of whether a person has falsely confessed 'does not depend upon professional or scientific knowledge or skill not within the range of ordinary training or intelligence,' and therefore, 'there is no occasion to resort to expert testimony.'" *People v. Crews*, No. 2353A-2006, 2008 WL 199887, at *2 (N.Y. Co. Ct. Jan. 24, 2008). The Court also rejected the

arguments by Dr. Saul Kassin who wrote in one of his articles that there are three reasons why jurors need the assistance of expert testimony in this area:

1. First, generalized common sense leads us to trust confessions, a behavior that breaches self-interest in a profound way (most people believe they would never confess to a crime they did not commit and they cannot image the circumstances under which anyone would do so.)
2. A second basis for pessimism is that people are typically not adept at deception detection.
3. A third basis for pessimism is that police-induced confessions, unlike other types of verbal statements, are corrupted by the very process of interrogation that elicits them—designed for persuasion, even if false.

Id. at *3.

"The Court finds these rationale are totally unpersuasive as to the need for jurors to receive expert testimony on this subject. The reasons set forth ignore the fundamental foundation upon which our adversarial system of justice is based. As already discussed, the Criminal Jury Instructions clearly contemplate that these are areas which jurors are fully capable of evaluating. The issues and arguments that are cited by Dr. Kassin are potential areas to cross examine a law enforcement witness that is testifying about an admission or confession." *Id.* at *4.

In the case of *People v. Nelson* (2009), the Illinois Supreme Court upheld the trial court's decision to refuse to allow Dr. Bruce Frumkin to testify concerning his use of the Gudjonsson Suggestibility Scale (GSS) in evaluating defendant's susceptibility to giving a false confession. The trial court found "that the test was not a valid and reliable test to determine a person's suggestibility to admit to a crime. The court found it difficult to accept that a test taken nearly three years after the murders regarding a subject that was not autobiographical in nature could be presented as evidence. The court further stated that it was unaware of any court in Illinois that had allowed the GSS to be presented to a jury on the issue of the defendant's interrogative suggestibility. Thus, the court concluded that the GSS did not meet the standard for admissibility under *Frye*." *People v. Nelson,* 922 N.E.2d 1056, 1078 (Ill. 2009).

To be sure, there have been cases in which the courts have found that it was important to hear from experts on the issue of false confessions.[44] In the case of *U.S. v. McGinnis* (August 2010), the US Army Court of Criminal Appeals agreed with appellant's claim that "the military judge abused his discretion in denying the defense request for expert assistance in the area of coercive law enforcement techniques which may lead to a false confession." *U.S. v. McGinnis*, No. ARMY 20071204, 2010 WL 3931494, at *1 (Army Ct. Crim. App. Aug 19, 2010).

Footnotes

[1]Ofshe, R. (1996). I'm Guilty If You Say So. In D. S. Connery (ed.), *Convicting the Innocent* (pp. 95–108). Cambridge, MA: Brookline Books.

[2]The most extreme example of this is the statement that "police routinely elicit false confessions." *See* Leo, R. & Ofshe, R. (1998) The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation. *Journal of Criminal Law & Criminology 88*, 429–496. Conversely, some research suggests that false confessions are extremely rare. *See* Blair, J. (2005). What Do We Know About Interrogation in the United States? *Journal of Police & Criminal Psychology 20* (2), 44–57, in which the author states, "However, using national estimates of interrogations, arrests, convictions, and error rates of wrongful convictions resulting from false confessions range from a low 10 (.001% of all convictions) to a high of 840 (.04% of all convictions) per year."

The issue is further complicated by defining exactly what constitutes a false confession. *See* Blair, J. (2005). A Test of the Unusual False Confession Perspective: Using Cases of Proven False Confessions. *Criminal Law Bulletin 41* (2) 126–144.

[3]Reported in Bedau, A. & Radelet, M. (1987). Miscarriages of Justice in Potentially Capital Cases. *Stanford Law Review 40*, 21–179.

[4]*See State v. Perez*, No. 2009 AP 2773-CR, 2010 WL 3860630, at *4 (Wis. App. Oct. 5, 2010) (noting that a misrepresentation by police, while relevant to the voluntariness inquiry, does not by itself make a defendant's statement involuntary). After balancing Perez's personal characteristics against the police tactic of lying about the existence of inculpatory evidence, the court concluded Perez's statements were voluntary. *Id.* at *7.

[5]Mental illnesses associated with voluntary false confessions include psychosis, endogenous depression, and Munchausen syndrome. For a review of the latter, *see* Abed, R. (1995). Voluntary False Confession in a Munchausen Patient: A New Variant of the Syndrome? *Irish Journal of Psychological Medicine 12* (1), 24–26. *See also* Redlich, A. (2004) Law & Psychiatry: Mental Illness, Police Interrogations, and the Potential for False Confession. *Psychiatric Services 55*, 19–21.

[6]Gudjonsson, G. (2003). *The Psychology of Interrogations and Confessions: A Handbook.* West Sussex, England: John Wiley & Sons, Inc. *See also* Gudjonsson, G. & MacKeith, J. (1982). False Confessions—Psychological Effects of Interrogation: A Discussion Paper. In Trankell, A. (Ed.), *Reconstructing the Past: The Role of the Psychologist in Criminal Trials.* Stockholm: P.A. Norstedt and Soners Forlag.

[7]Reported in Ofshe, R. (1989) Coerced Confessions: The Logic of Seemingly Irrational Action. *Cultic Studies Journal 6* (1), 1–15.

[8]It should be noted that the judge suppressed Sawyer's confession based on coercion, as well as violation of the suspect's *Miranda* rights.

[9]Ironically, the concept of "overbearing a person's will" has no foundation in psychology. Provided a person is free to make a choice—any choice—he is still in possession of his will. *See* the amicus curiae brief filed by the American Psychological Association in *Connelly vs. U.S.*, U.S. 85–660 (March 1986).

[10]An example of a tactic that threatens a suspect's emotional health was revealed by a criminal investigator who operated in a Middle East country. Prior to an interrogation, a suspect would be asked to complete a written psychological test. The thrust of the interrogation was that the suspect's test scores indicated that he was on the verge of a psychiatric breakdown that could

only be avoided through confession. Furthermore, if the suspect would not confess, the test results would be used to send him to a mental institution.

[11]*United States v. Dominguez-Gabriel*, 09 CR 157 RPP, 2011 WL 1545105 (S.D.N.Y. Apr. 25, 2011).

[12]Kassin, S. & McNall, K. (1991). Police Interrogation and Confessions: Communicating Promises and Threats by Pragmatic Implication. *Law and Human Behavior 15*, 233–251.

[13]In the case of *State v. Parker*, the Court of Appeals of South Carolina stated that "Few criminals feel impelled to confess to the police purely of their own accord without any questioning at all . . . . Thus, it can almost always be said that the interrogation caused the confession . . . . It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect . . . . These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." "Excessive friendliness on the part of an interrogator can be deceptive. In some instances, in combination with other tactics, it might create an atmosphere in which a suspect forgets that his questioner is in an adversarial role, and thereby prompt admissions that the suspect would ordinarily only make to a friend, not to the police." *Miller v. Fenton*, 796 F.2d at 604 (3d Cir. 1986), cert. denied, 479 U.S. 989, 107 S.Ct. 585, 93 L.Ed.2d 587 (1986). "Nevertheless, the 'good guy' approach is recognized as a permissible interrogation tactic." *Id.* (holding confession admissible despite interrogating officer's "supportive, encouraging manner . . . aimed at winning [appellant's] trust and making him feel comfortable about confessing."). *See also Beckwith v. United States*, 425 U.S. 341, 343, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976) (interrogator had sympathetic attitude but confession voluntary); *Frazier v. Cupp*, 394 U.S. 731, 737-38, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (confession voluntary when petitioner began confessing after the officer "sympathetically suggested that the victim had started a fight.").

[14]In the case of *People v. Benson* (2010), the Court of Appeal, Third District, California, the premise of the theory of pragmatic implication was rejected. In this case the court found the following:

"Here, Detective Rodriguez did tell defendant there was 'a big difference between . . . someone getting hurt and trying to shoot someone.' However, the detectives made no promises or representations that defendanr's cooperation would garner more lenient treatmenr or lesser charges. "No specific benefit in terms of lesser charges was promised or even discussed, and [the detective's] general assertion that the circumstances of a killing could 'make a lot of difference' to the punishment, while perhaps optimistic, was not materially deceptive." (*People v. Holloway* (2004) 33 Cal.4th 96, 117.) The general assertion that the circumstances of a killing could make a difference was not materially deceptive. It is not deceptive to state that an accomplice to murder may be better off than the shooter. (*People v. Garcia* (1984) 36 Cal.3d 539, 546–547.) Also, the Supreme Court of Canada has established a quid pro quo guideline in evaluating promises of leniency. In other words, only statements that clearly offer the suspect leniency in exchange for a confession are prohibited. *See also R. v. Oikle*, (2000) SCC, 38.

[15]Kassin, S. & Kiechel, K. (1996). The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation. *Psychological Science* 7(3), 125–128.

[16]This view is strongly expressed in Kassin, S., Drizin, S., Grisso, T., Gudjonsson, G., Leo, R., & Redlich, A. (2010). Police-Induced Confessions: Risk Factors and Recommendations. *Law and Human Behavior 34* (1), 3–38. *See also* Perillo, J. & Kassin, S. (2010) Inside Interrogation: The Lie, The Bluff and False Confessions. *Law and Human Behavior* 1-11-11. doi:10.1007/s10979-010-9244-2 Key: citeulike:7773907. *See also* Kassin, S. (1997). The Psychology of Confession Evidence.," *American Psychologist 52* (3), 221–231. In addition, the interviewing technique used in Britain, referred to as the PEACE Model (Prepare and plan; Engage and explain; Account; Closure and Evaluate) prohibits lying to the suspect about evidence.

[17]Two studies suggest that it is not the misrepresentation of evidence that is the cause of false confessions with normal individuals, but rather coercive behaviors, such as threats of harm and promises of leniency. *See* Blair, J. (2005). A Test of the Unusual False Confession Perspective: Using Cases of Proven False Confessions. *Criminal Law Bulletin 1* (2), 126–144. *See also* Blair, J. (2007). The roles of interrogation, perception, and individual differences in producing compliant false confessions. *Psychology, Crime & Law 13* (2), 173–186.

[18]Gudjonsson, G. (2003). *The Psychology of Interrogations and Confessions: A Handbook.* West Sussex, England: John Wiley & Sons, Inc. *See also* Gudjonsson, G. (1989). Compliance in an Interrogative Situation: A New Scale. *Personal Individual Differences 10* (5), 535–540.

[19]Leo, R. (1996). Inside the Interrogation Room. *Journal of Criminal Law and Criminology 86* (2), 266–303.

[20]It must be recognized that a defense attorney may present a perfectly normal client as suffering from a mental handicap, in an effort to persuade a judge to suppress a confession. Because this statement, or testimony to this effect, is then on the record, the case could be included in the anecdotal reports compiled by Radelet, Bedau, Leo, Ofshe, and others. In the last 10 years, a number of books have been published that list false confession cases, including some involving individuals with limited mental capacities—*See* Warden, R. & Drizin, S. (2009). *True Stories of False Confessions.* Evanston, IL: Northwestern University Press. and Leo, R. (2008). *Police Interrogation and American Justice.* Cambridge, MA: Harvard University Press.

[21]Laboratory based research supports the belief that 12- and 13-year-old children are more likely to falsely acknowledge being negligent than 15–16-year-old children or young adults. Redlich, A. & Goodman, G. (2003). Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility. *Law and Human Behavior 27* (2), 141–156.

[22]Reported in Leo and Ofshe, "Consequences of False Confessions." *See* Leo, R. & Ofshe, R. (1998) The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation. *Journal of Criminal Law & Criminology 88,* 429–496

[23]Showing the suspect morbid crime scene photographs is rarely appropriate during an interrogation. The supposed purpose of doing so is to increase the suspect's guilt regarding the crime. More often, however, such morbid photographs remind the suspect of the seriousness of the crime and, thus, reinforce the consequences for committing it, as well as reveal details about the crime scene, the condition of the victim, and other details that should be concealed from the suspect.

[24]For additional suggestions on these motives, *see* Cassell, P. (2000). The Guilty and the Innocent: An Examination of Alleged Cases of Wrongful Conviction from False Confessions. *Harvard Journal of Law & Public Policy 22* (2), 594–595.

[25]A suspect who claims that he provided a coerced internalized false confession would not be expected to retract the confession until sometime after the confession was made, if at all. After all, the suspect's position is that, at the time of the confession, he believed that he was guilty.

[26]This statement should not be confused with the previously described coerced internalized confession in which the suspect takes the position *before* making any admission, "If I did commit this crime, I don't remember doing it."

[27]*See* Taylor, P. & Kopelman, M. (1984). Amnesia for Criminal Offenses. *Psychological Medicine 14,* 581–588; Schacter, D. (1997). *Searching for Memory: The Brain, the Mind, and the Past.* New York: HarperCollins.

[28]Schacter, D. (1996). *Searching for Memory: The Brain, the Mind, and the Past.* New York: Basic Books.

[29]PBS Frontline documentary. (2010). The Confessions.

[30]Marksman, S. & Cassell, P. (1988). Protecting the Innocent: A Response to the Bedau-Radelet Study. *Stanford Law Review 22* (2), 121–161.

[31]Ofshe, R. & Leo, R. (1998). The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation. *Journal of Criminal Law and Criminology 88*, 429–496.

[32]Paul Cassell reexamined a number of these cases and argued that these defendants, in all probability, were guilty of the crime. *See* Cassell, P. (2000). The Guilty and the Innocent: An Examination of Alleged Cases of Wrongful Conviction from False Confessions. *Harvard Journal of Law and Public Policy 22* (2), 526–603.

[33]Kassin, S. & Kiechel, K. (1996). The Social Psychology of False Confessions. *Psychological Science 7*(3), 125–128.

[34]Bem, D. (1966). Inducing Belief in False Confessions. *Journal of Personality and Social Psychology 3* (6).

[35]Perillo, J. & Kassin, S. (2010). Inside Interrogation: The Lie, The Bluff and False Confessions. *Law and Human Behavior* 1-11-11. doi:10.1007/s10979-010-9244-2 Key: citeulike:7773907

[36]Kassin, S. & McNall, K. (1991). Police Interrogations and Confession: Communicating Promises and Threats by Pragmatic Implication. *Law and Human Behavior 15* (3), 233–254.

[37]Leo, R. (1996). Inside the Interrogation Room. *Journal of Criminal Law and Criminology 86*, 266–303.

[38]Leo developed a list of 10 possible conditions that he believed constituted coercion. If any of these conditions were present, he considered the interrogation to be coercive. A number of the criteria are certainly questionable, such as failing to read *Miranda* rights, an interrogation lasting longer than 6 hours, or when the suspect's will appeared to be overborne (282).

[39]Although specific grounds for these suppressed confessions were not elicited during the survey, supplemental notes from the respondents indicated that many of the confessions were suppressed due to *Miranda* issues or the mandated requirement of electronic recording.

[40]Jayne, B. (2004). Empirical Experiences of Required Electronic Recording of Interviews and Interrogations on Investigators' Practices and Case Outcomes." *Law Enforcement Executive Forum 4* (1).

[41]In the 2007 case of *State v. Dassey*, Cir. Ct. WI, 2010, Case No. 06 CF 88, a 16-year-old, Dassey, was convicted of first-degree intentional homicide, sexual assault, and mutilation of a corpse in the October 31, 2005, killing of Halbach. Dassey's new attorneys as of the appeal, the Center for Wrongful Convictions at Northwestern University, claim that Dassey's original attorneys were deficient and said that Dassey's statements to police should be suppressed because they were coerced. *Judge denies new trial for Brendan Dassey in Teresa Halbach murder*, HERALD TIMES REP, Dec. 16, 2010, at A01, *available at* 2010 WLNR 24850431.

[42]A perfect example can be found in the testimony of Dr. Richard Ofshe in the case *State v. Tapke*, No. C-060494, 2007 WL 2812310, at *6 (Ohio App. Sept. 28, 2007) in which Dr. Ofshe testified that, as part of The Reid Technique, ". . . what police have learned to do is to communicate the message through a series of suggestions . . . the idea being to communicate the understanding that there's a deal on the table, but without ever explicitly saying here's the deal." He then went on to give the following example of what the investigator would tell the suspect: "[Y]ou're not a sexual predator; you're someone who needs treatment. What would you rather do, go to prison as a sex offender, or get some therapy in treatment." *Id.* As detailed in this text, the exact opposite is the case—we teach interrogators not to make any statements that refer to punishment, threats, or promises of leniency.

[43]*R. v. Oikle*,[2000] 2000 SCC 38 (Can.). *See also R. v. Amos*, [2009] 202 C.R.R. (2d) 106, ¶ 19 (Ont. S.C.J.) in which the Ontario Superior Court stated the following:

> There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility. *At no time did he suggest that a confession by the subject would result in reduced or minimal legal consequences.* Those questions did not minimize the offence anywhere close to the extent of oppression within the meaning of Oickle and other authorities. *In using the words "this is your opportunity" to tell your story, and statements to the effect that "your credibility is at its highest now", and in asserting to the accused that he would not be as credible ten months down the road at trial when he had "spoken to lawyers"*, and the like, the detective was making an approach to the accused's intellect and conscience.

[44]*See People v. Cason*, 2007 WL 891292 (Cal. App. 2007); *U.S. v. Belyea*, 159 Fed. App'x 525 (4th Cir. 2005); *Boyer v. State*, 825 So.2d 418 (Fla. Dist. Ct. App. 2002).

Chapter 16

Testifying on a Confession

Even when an investigator has conducted a proper interrogation and has carefully adhered to all required laws, the act of testifying is still anxiety provoking. This anxiety is primarily caused by fear of the unknown. Understanding that the job of a defense attorney is to attack the credibility of the prosecution witness, even a competent investigator often creates fears in his own mind about what might happen in court. These fears are almost always unwarranted.

It is important for the investigator to understand exactly what his role is as a witness in court. The investigator typically testifies as a lay witness, as opposed to an expert witness. This means that the investigator must restrict his testimony to known facts, without drawing conclusions. The sole function of any witness is to educate the court. It is not the role of an investigator to help the prosecutor convict a defendant. An investigator places undue pressure on himself if he tries to establish himself as a "good" prosecution witness. A good witness is one who communicates the truth effectively to a judge and jury. It is not the witness's responsibility or role to compensate for weaknesses in the prosecution's case or to cover for another investigator's mistakes in an effort to obtain a conviction.

Just as conducting a proper interview involves much more than simply asking a subject questions, offering effective testimony is a learned skill that goes beyond just telling the truth. This chapter offers techniques to more effectively communicate truthful testimony. Our position is clear: An investigator who testifies on a confession should respond truthfully to the prosecution and defense attorneys' questions. However, with our adversarial form of justice, a defense attorney will attempt to distort the truth and create misperceptions in the jury's mind; the more experience an investigator has testifying, the more effective his testimony will be. As a simple example, during cross-examination, a defense

attorney may ask the witness, "Isn't it true that you interrogated my client without having any real evidence establishing his guilt?" Consider the following three responses:

Response (R) 1: Yes, I suppose you could say that.
R 2: Sir, I acted properly on the evidence available to me at the time.
R 3: No, that is not true.

Although these responses appear to be contradictory, ranging from a "yes" to a "no," none of them are false responses. The reason for this is that the attorney's question contains the ambiguous phrase "real evidence." Deceptive behavior symptoms are certainly real evidence, just as fingerprint, eyewitness, or handwriting evidence is "real." As this example illustrates, many questions asked by an attorney can be answered with multiple truthful responses. However, some of these truthful responses are less desirable than others when accurately portraying the circumstances and occurrences of an interrogation to a judge or jury.

In the previous example, the first response is certainly undesirable, because the defense attorney will argue that the interrogation was somehow improper, because it was conducted in the absence of "real evidence." The second response is clearly defensive on the part of the witness and is bound to leave an unfavorable impression. The third response refutes the unfounded notion that interrogating a suspect based on behavioral responses is improper. It is the "best" response for the purpose of communicating truthful information to the judge and jury. Consequently, much of the following discussion concerns a witness's choice of possible truthful responses when testifying.

Testimony Preparation

Proper Documentation

In a homicide investigation, or investigation of another serious crime, it is not unusual for the trial to occur many months or even a year after a confession was obtained. Because of this time lapse, the investigator can expect to be thoroughly questioned about the accuracy of his recollections. In this regard, the most effective testimony offered will be based on notes written at the time of the occurrence. An ancient Chinese proverb states that the faintest ink is superior to the best memory. Any notes taken to the witness stand are subject to discovery, so the investigator should make certain that the notes contain only information that he would feel comfortable sharing with the defense.

With respect to an interrogation, an investigator's notes should reflect the following:

- Were *Miranda* rights given? If so, when and by whom?
- If *Miranda* rights were not given, was the suspect advised that he was not under arrest and free to leave?
- When did the interview begin and end?

- When did the interrogation begin and end?
- Were the suspect's biological needs satisfied? Sleep? Food? Medications? Bathroom?
- What was the suspect's psychological state at the outset of the interrogation?
- What was the principal theme used?
- What alternative question did the suspect ultimately confess to?
- What time did active persuasion stop (the end of Step 7)?
- What was the suspect's demeanor during his confession?
- Who witnessed the confession?

Defense attorneys will rely extensively on two documents for cross-examination purposes: the written confession and police reports. With respect to the written confession, the investigator should follow closely our suggestions offered in Step 9 of the interrogation process. In particular, the defense attorney will look for leading questions, language that the suspect would not customarily use, or evidence that the defendant may not have known what he was signing, or the defense attorney may insinuate that additional information was added after the defendant signed a relatively benign statement.

With respect to police reports, minor inconsistencies between two investigators' reports, as to when *Miranda* rights were administered, who was present during the interrogation, or related sequences of events, may be introduced in court as evidence of a major conspiracy or gross incompetence. Consequently, when two or more investigators write a report on the same case, *each investigator should carefully read the other investigator's report before appearing in court*. Any detected inconsistencies should be resolved in a manner consistent with the truth. If a supplemental report is filed, the investigator can expect cross-examination attacking the haphazard nature in which the original report was written. However, these allegations are much easier to overcome in court than the insinuation that inconsistencies between two different reports clearly indicate that one or both of the witnesses are lying.

With respect to preparation, the witness should always remember that, because he was present, he knows more about the suspect's interrogation and the circumstances surrounding it than the defense attorney does. Furthermore, the investigator knows much more about interrogation practices than most attorneys. This knowledge should enhance the investigator's confidence when testifying.

Reviewing Testimony

Offering testimony in court can be thought of as taking a final examination in a school course. The witness is expected to know everything learned and will be quizzed for weaknesses in that knowledge. To do well on a final examination for school requires preparation and study. The same is true when it comes to testifying. As soon as the investigator is aware that a case is coming to trial, he should review his written reports and those of other possible witnesses. These should be organized in such a fashion that

he can quickly locate dates, times, people's names, and other information that may be requested by an attorney.

As part of court preparation, the investigator should also meet with the prosecutor who will present him as a witness. During this meeting, it is important that the investigator candidly advise the prosecutor of concerns regarding the case. Aware of these weaknesses, the prosecutor will be better prepared to handle them in court. No attorney likes surprises during a trial. If the investigator asked a few preliminary questions before the *Miranda* rights were read, the prosecutor needs to know that. If, at one point during the interrogation, the investigator's partner entered the room and threatened the suspect with inevitable consequences, this needs to be brought to the prosecutor's attention.

Finally, the investigator should discuss the case with other witnesses, especially opinions that may not be documented in a written report. One investigator may describe the suspect's postconfession state as reticent and quiet, whereas another may describe the same suspect as remorseful and feeling guilty. We are not suggesting that the investigators agree on common adjectives to describe the suspect. In fact, it would be more credible to have different descriptions offered, provided they are similar. The importance of sharing information of this nature is for anticipating a defense attorney's question, such as, "Mr. Buckley, would it surprise you if I told you that Mr. Jayne previously described the defendant's state of mind quite differently than you?" A prepared witness will know the essence of other witnesses' testimony and can confidently respond, "It certainly would, because we were both there and we saw the same thing."

The Court's View of the Witness

Despite a wide range of backgrounds and experiences, or perhaps because of this, juries tend to be pretty good at ferreting out issues and evaluating evidence. It is clearly a mistake to treat a jury like a group of lay people who cannot possibly understand the difficulties investigators face because "they have never been there." During a trial, before any deliberation begins, the juror's primary goal is to understand a witness's testimony and assess that person's credibility.

The Perception of the Witness as an Adversary

Although the duties of an investigator are much more closely associated with the prosecution than the defense, when in court, the investigator should not allow himself to be perceived as an agent of the prosecution. If the police witness sounds anxious to prove the prosecution's case, this will be evident to the jury and the witness will lose credibility and be perceived as biased and perhaps even dishonest. Our recommendation is that an investigator assume a neutral position on the stand; he should make no attempt to slant his testimony to favor the prosecution or discredit the defense.

With every witness called, the prosecution and defense involve themselves in a tug-of-war, with the witness in the middle. The prosecutor is much more interested in securing

a conviction than worrying about an investigator's reputation or even future employment within the department. As many witnesses can attest, loyalties are generally left outside the courtroom door. If the prosecutor perceives a weakness in his case, he may well set up his own witness to cover that weakness. Similarly, the defense will use various tactics, in an attempt to "trap" the witness in a contradictory statement or to discredit the witness's credibility. The only way an investigator can avoid either of these situations is by refusing to become involved in the adversarial system.

The only concern an investigator should have while testifying is whether or not the judge or jury fully understands the issues presented by the attorneys. It is clearly to the investigator's advantage to separate himself from the prosecution. An effective way to do this is to appropriately disagree with suggestions offered by the prosecutor's questions and to openly acknowledge certain elements presented by the defense. Most confession cases hinge on a central element (e.g., whether the defendant really confessed or the confession was legally obtained). Both prosecution and defense attorneys will introduce related issues in an effort to bolster their positions. Appropriately agreeing or disagreeing with those propositions will not materially impair the weight of evidence but will bolster the witness's credibility.

Witness Demeanor on the Stand

It has been stated of witnesses in court that what they say is not as important as how they say it. Unfortunately, an anxious, rambling, absentminded witness who is telling the truth is less likely believed than a lying witness who comes across as confident, unyielding, and certain. The witness must appreciate what lawyers have known for years: The courtroom is a stage where attorneys carefully direct a drama wherein witnesses unfold their story before the jury's eyes. The jury represents the audience of this production, and the witnesses become the players. In this carefully constructed arena, a witness needs to fit the jury's image of someone who is telling the truth.

A witness's attire is the first element the jury evaluates. A witness who offers testimony dressed in a plaid suit coat with a striped tie, while wearing faded jeans and tennis shoes, sends the immediate message that he does not care about his job or his role in the criminal justice system—regardless of the truthfulness of his testimony. A witness who is involved in undercover work and appears unshaven should immediately let the jury know that his present appearance is not typical. It is not happenstance that most attorneys wear $800 suits to court and dress their defendants in similar clothing. Juries associate hygiene to care and attire to integrity and truthfulness. Consequently, on the day an investigator testifies, he should dress in his best suit and portray an image of success and credibility. His shoes should be shined and his tie straight, with the collar buttoned. Female investigators should dress in business attire.

The color and texture of a witness's clothing also impact a jury's image of the witness. Dark colors, such as blue, black, or brown, are psychologically associated with authority and power (typical uniform colors) and are, thus, less desirable than lighter shades.

Clothing texture also has a psychological impact. Textures, such as nylon, rayon, or leather, send the message: "Keep off—I'm very private." Loose fabrics, such as wool, send the opposite message: "I'm approachable and open."

Attitude

The witness's attitude should portray confidence, sincerity, and professionalism. He should not come across as smug, arrogant, or argumentative. A defense attorney will quickly pick up on a witness who is a "know it all" and will lead the witness on, providing him with just enough rope to hang himself. A common defense tactic is to criticize the investigator on the stand, in hope that the investigator will lose his temper. Under such a circumstance, the attorney, during closing arguments, will tell the jury, "You saw the aggressive way he acted toward me in a courtroom full of witnesses—can you imagine what he did while alone in a small room with my client?"

The witness should never spar with the defense counsel. To do so is like playing tennis against a wall. A person may have many good returns, but, inevitably, the wall always wins. An attorney has the luxury of asking many more questions than a witness can answer, or an attorney may address the witness's demeanor in closing arguments in the witness's absence. Verbal sparring matches with a defense attorney should always be avoided.

Nonverbal expressions, such as a smug smile or rolling of the eyes, or paralinguistic behaviors, such as a sigh or inappropriate laugh preceding a response, are just as undesirable as verbal arguments with defense counsel. Each of these behaviors sends a message to the jury that the witness considers himself superior to the defense attorney. This behavior is likely to result in sympathy toward the defense and animosity toward the witness.

The witness should be perceived as polite to the judge and both attorneys, regardless of personal attacks made. A defense attorney may challenge the witness in an attempt to make him defensive or flustered. In this emotional state, the witness may make an erroneous statement or become confused. However, if the witness maintains his composure and comes across as polite and concerned that the jury understands his testimony, the defense strategy fails. It is psychologically difficult to dislike a person who is courteous and appears to want to cooperate with opposing counsel. The opposite impression is relayed by a smug or arrogant witness; even though he is telling the complete truth when responding to outrageous defense claims, the judge or jury will resent his superior attitude and will tend to discredit his testimony.

The witness should not appear rushed or anxious. Nervousness is considered a sign of deception by many lay people. A witness who speaks rapidly and appears to be anxious to leave the witness stand sends the message that he is uncomfortable and possibly withholding information. If the witness consciously slows down his speaking rate and includes appropriate pauses between statements, the overall impression is one of being composed and comfortable responding to the attorney's questions.

The witness should feel free to address the judge appropriately during testimony. Consider the following questioning by the attorney:

Question (Q): The reason for presenting your interrogation theme was to make the suspect believe that, if he confessed to this crime, that the consequences would somehow be less, isn't that true?

Response (R): Actually, there are a number of....

Q: Mr. Jayne, true or false. You present a theme in the hope that the suspect will believe that the consequences of confessing will be less?

R: Your honor, this question cannot be answered truthfully with a yes or no response. May I offer a narrative response?

A judge, who is charged with the responsibility to assure that witnesses offer truthful testimony, will certainly grant the witness's request to offer a narrative response.

The Witness's Behavioral Responses to Questions

Attorneys are not interested in making clinical assessments of a witness's truthfulness. They will not attempt to put an adversarial witness at ease or establish baseline behaviors. Quite to the contrary, they will attempt to make the witness feel uncomfortable and experience stress on the witness stand. This stress can cause nonverbal behaviors that can be misinterpreted by a jury as deception.

When making clinical assessments of a subject's behavior, we emphasized the importance of evaluating a person's behavior in a private environment with minimal distractions and interaction occurring just between two people. A courtroom is anything but a private environment. During a trial the witness is in the spotlight and is judged by possibly dozens of other people, each of whom scrutinize every word and nonverbal behavior displayed throughout the offered testimony. Furthermore, witnesses are well aware that a court reporter is permanently documenting every word uttered. For these reasons, even the most truthful witness may exhibit signs of anxiety that may be misinterpreted as symptoms of deception when testifying. The following suggestions are, therefore, offered to assist witnesses in developing behavioral habits or patterns that will assist their perceived credibility when offering truthful testimony.

Nonverbal Behavior

Nonverbal behaviors generally occur on a preconscious level, to the extent that often our mind is so focused on other matters that we are not aware of the messages we send nonverbally. In this regard, it is beneficial to have fellow officers observe a witness's nonverbal behavior to provide feedback. Videotaped testimony serves as an excellent opportunity for critiquing a witness's nonverbal behavior on the stand.

Posture

A witness should initially assume a relaxed posture in the chair and avoid the rigid and frozen posture associated with fear. Although a witness may assume a crossed-leg posture during general background questions, when key questions are asked concerning important areas of testimony, both feet should be on the ground. Intense fear will often result in a frozen posture, where, over a period of 20 or 30 minutes, the subject maintains a single posture. This should be avoided while testifying. It is appropriate to cross or uncross the legs, lean forward on occasion, and have the hands folded, extended, or relaxed on the arm rests of the chair. Changes in posture should appear comfortable and fluid; a witness should avoid gross changes of posture immediately preceding or during a response. When answering important questions, during direct testimony, it is oftentimes effective for the witness to turn toward the jury, or the judge if there is no jury present. Direct testimony is intended for the judge or jury to consider, and the witness should establish eye contact with that audience during his response. During cross examination, the witness should, generally, direct his responses toward the defense attorney. When asked a question that seems inappropriate, or if the witness is not certain how to respond, he should avoid turning toward the prosecutor, as this can be perceived as seeking help. The nature of cross-examination is a challenge to previously offered testimony, and it is important that the witness confidently face his challenger alone.

Hands and Feet

A witness's hands should be visible to the judge or jury. A witness who keeps his hands in his lap or hides them under a table top portrays lack of confidence in his verbal response. A witness should avoid hand contact with facial areas during a response, especially covering the mouth or eyes. Appropriate gestures of the hands away from the body (illustrators) tend to reinforce the credibility and substance of a verbal remark, provided that illustrators are not overused, in which case they will send the message of a rehearsed and insincere response.

Depending on the arrangement of the witness box, a witness's feet may be visible to the attorneys or jury. Witnesses should avoid repetitive foot bouncing or tapping, which may signal underlying anxiety. Foot bouncing is most likely to occur only during a knee-to-knee leg cross, which is another reason to keep both feet flat on the floor, especially during early periods of testimony.

Verbal Behavior

Verbal behavior plays a disproportionate communicative role during court trials. A trial transcript that appellate judges rule on contains only words. Differences during jury deliberation will, generally, be resolved based on statements made; contradictions between different witnesses' testimony will be based on the words used. The emphasis placed

on the spoken word during court trials should alert a witness that the words used in a response are extremely important.

General anxiety and fear of being "tripped up" on the stand may cause verbal behavior symptoms that a jury may interpret as deception. Furthermore, the manner in which attorneys phrase questions may cause uncertainty or doubt as to what the truthful answer is. In this regard, a witness should feel comfortable asking the attorney to clarify a question or to offer a specific example of a concept referred to within the question. When an ambiguous concept is contained within the question, the witness may appropriately ask the attorney to define how he is using the concept. The following are suggestions to keep in mind and be aware of when offering testimony.

Establish a pattern of delaying your response to questions. An investigator knows that a suspect who delays his response is often stalling for time to formulate the most credible answer. Similarly, a witness must sometimes make decisions as to how to best formulate a response, so that it is not misleading. A tactic used by many expert witnesses is to establish a pattern of delaying all responses, so every answer is preceded with a short period of silence. In addition to "buying time" to formulate the best response, this delay also gives the jury the impression that the witness is thoughtful and sincere in his answers. Moreover, this period of silence provides the prosecution an opportunity to object to an improper question before it is answered.

A witness should avoid anticipating where the attorney's question is going and offering an early response to the question. Although the early response may be the result of anger or resentment, the jury may perceive it as a defensive effort to quickly leave the area under discussion.

Avoid responses that sound rehearsed. A problem inherent with any testimony is that, once a witness is notified of the upcoming testimony, it is human nature to anticipate certain questions and mentally rehearse responses to those questions. Although this process is unavoidable, the witness should remember that offering a rehearsed response will be perceived as less credible than a spontaneous one. The following suggestions are intended to minimize the inevitably rehearsed nature of responses that occur during testimony.

Police officers have a language of their own, when it comes to writing reports or making a public statement. They do not "handcuff a suspect and put him into the back seat of a squad car." Rather, they "apprehend the suspected perpetrator, place him under arrest, and restrain him with handcuffs, whereupon the suspect is escorted to a vehicle for transport." This "police-speak" is clear and concise and is an efficient way to express actions in a written report. However, when used in court it also conveys the lack of spontaneity associated with truthfulness.

Consider an alleged rape victim who describes the assault in the following manner: "The man's erect penis entered my vagina without my consent or permission. After repeated thrusts, he ejaculated and withdrew his penis, whereupon he pulled up his underwear and pants and fled the scene on foot." An investigator hearing this description

would certainly have doubts about the victim's truthfulness, or mental health. And yet, that same investigator may testify in court in the following manner:

> I advised him of the mandated *Miranda* warnings at 10:07, and he verbally informed me, in the presence of my partner, that he understood his rights and desired to waive them. At that time, we executed the *Miranda* Waiver form, which he voluntarily signed.

Upon hearing this description, the jury may easily reach the same conclusion the investigator did when hearing the rape victim's rehearsed account. The following statement conveys the same information, but sounds truthful, because it is more spontaneous:

> At around 10:00, I read him his constitutional rights, and I asked him if he was willing to talk to me without an attorney, and he said sure. At that point he signed a form, indicating that he had waived his rights. My partner witnessed this.

An investigator should also be aware of the interpretation of noncontracted denials. It may be appropriate to use an occasional noncontracted denial to a challenging question: "Mr. Jayne, isn't it true that you threatened my client with a prison sentence during your interrogation?" "No, I did not." However, if most responses are offered with noncontracted phrases, the responses sound rehearsed.

A common behavior associated with a rehearsed response is "listing." When mentally preparing a response to an anticipated question, most people will come up with several possible answers to that question. In almost every situation, there is one central reason something was done. An investigator should offer that central reason as the response. The following dialogue illustrates the dangers of listing:

Q: Why did you decide to interrogate my client, when you knew full well that he had been awake for 16 hours straight?

R: Well, first of all, he didn't seem very sleepy to me, and, second, this is an important case and we felt we had to act immediately on the information we had, and, third, I was just doing what my captain told me to do.

This response opens all sorts of doors for the defense to pursue, from what the investigator means by "very sleepy" to violating a suspect's rights at the direction of another. The following response would offer the defense much less to work with:

> We first took Mr. Johnson into custody at 11:30 P.M., and I know from experience that suspects are most likely to tell the truth if they are questioned shortly after being taken into custody.

During a spontaneous response all-encompassing, broad denials, such as "Absolutely not, "At no time. . . ," or "Never, no way," are clearly more associated with truthfulness. However, these same responses take on a different meaning, when offered during an anticipated statement in which they are perceived as a form of a bolstered denial, which is more indicative of deception. Consequently, we recommend avoiding such broad denials,

unless they truly do naturally emanate from an unexpected accusation, in which case the accompanying paralinguistic and nonverbal behaviors will clearly support the witness's truthfulness. The following is an example of an inappropriate, rehearsed broad denial:

Q: Isn't it true that you talked my client into believing he was guilty of this offense, when, in fact, he had no recollection of committing this crime?
R: That is absolutely, utterly ridiculous!

The above response sounds rehearsed and somewhat defensive. A more credible response to the attorney's question would have been to state in a calm, but firm manner, "No sir, that's not true." The witness's confident composure when responding to this allegation leaves the jury with the impression that the attorney's question was outlandish and, perhaps, even one that he routinely asks during every trial.

Do not be unnecessarily specific in your response. Some witnesses try so hard to tell the truth that they lose credibility in the process. The witness should listen carefully to the attorney's question and not offer information beyond what was asked, including possible explanations, as the following example illustrates:

Q: Have you ever received formal training in conducting interviews or interrogations?
R: Well, yes I have. It was only a 3-day course that I attended a number of years ago, but it addressed those two topics.

In this example, the witness's response should have simply been, "Yes, I have." It is up to the attorney to ask further questions to find out the length of the training or how long ago it was received.

When considering exactly how to respond to an attorney's question, the best rule to follow is to listen carefully to what the attorney is asking and answer only what is being asked. The witness should not anticipate where the question might lead. The following is an example of an improper response:

Q: Did you advise the defendant of his *Miranda* rights?
R: Well, not right away, but, eventually, I did.

The attorney in this case may not have pursued the issue of a delayed warning had the witness not anticipated that line of questioning. The response should have simply been the truth, "Yes, I did."

Avoid memory qualifiers. Memory qualifies, such as "I believe," "to the best of my knowledge," "at this point in time," and "as I recall," weaken the impact of the witness's statement. There are occasions when a memory qualifier is appropriate to include in a response, such as when the witness is asked to recall a relatively minor incident that happened many months before. However, memory qualifiers should not be used when a witness believes that he is certain of his testimony.

This point reiterates the value of making a written documentation of specific elements of an interrogation immediately following a confession. When the trial date finally

approaches, the investigator can state with certainty whether something did or did not happen.

Avoid evasive responses. Especially during cross-examination, when the defense attorney attempts to get the witness to acknowledge that something improper occurred during the interrogation, the witness may come across as evasive. The following line of questioning is typical of this:

Q: Isn't it true that the defendant would have said anything just to end the interrogation?
R: I can't speak for the defendant.
Q: But isn't it possible that he confessed just to get out of that room?
R: He never told me that.
Q: But you would admit that possibility.
R: I'm not a mind reader. You would have to ask him.

These evasive responses, clearly, leave the impression that the defendant, in fact, did confess to end the interrogation. The following responses would be more productive in this area:

Q: Isn't it true that the defendant would have said anything just to end the interrogation?
R: At no time did he say anything or do anything in an effort to terminate the interrogation.
Q: But isn't it possible that he confessed just to end the interrogation?
R: In my opinion, no, it is not. After he told the truth, he was very conversant, and we talked about things going on in his life, his family, and his job, including his crime. There was no indication that he was anxious to leave.

Direct Testimony

During direct testimony, the witness should efficiently walk the judge and jury through principal aspects of the interview and interrogation procedure. The witness should remember that any issue introduced during direct examination is subject to cross-examination, because the prosecution has opened the door to that topic.

If it is anticipated that the defense will introduce a technical aspect of interrogation (e.g., a coerced internalized confession), then the prosecution will benefit by first introducing the concept in its proper perspective during direct testimony. Often, it is advisable to have an expert witness address these technical topics, during direct examination, rather than the investigator who obtained the confession. One reason for this is that the expert will be more knowledgeable within the challenged area; also, because of his expert status, he will be granted more leeway during cross-examination. It is psychologically persuasive for a jury to hear an independent expert's explanation of a concept, followed by the

actual investigator's description of the interrogation, which conforms to the expert's previous testimony.

In a straightforward confession case, the following listed questions provide a sample of questions to establish a foundation for the confession's admissibility. The listed responses are merely suggestions. During actual testimony, a witness would respond in a manner consistent with the circumstances and events of a particular interrogation.

- On [date] when did you first meet with the defendant?
- Before you asked [defendant] any incriminating questions, was he advised of his *Miranda* rights?
- [If yes] Did he voluntarily waive those rights? [Introduce *Miranda* waiver form.]
- [If no] Why didn't you advise him of his *Miranda* rights?
- Did you tell him he was not under arrest and free to leave?
- What was the defendant's emotional and physical health, at the time you met with him? [Introduce subject data sheet.]
- Describe the room environment in which your conversation with the defendant occurred?
- Who was present with you during this conversation?
- Why did you choose to talk to the defendant alone? [Witness would cite the importance of privacy in eliciting the truth.]
- Describe the nature of this conversation. [Witness would describe an interview consisting of nonaccusatory questions.]
- When did your interview with the defendant end?
- Following this interview, did you conduct an interrogation?
- What is the purpose of an interrogation? [It is an attempt to elicit the truth from someone who is believed to have lied.]
- Why did you believe that the defendant had lied to you during the interview? [If possible, the witness should cite objective grounds, such as inconsistent statements. In the absence of objective grounds, the witness may respond as follows: "This opinion was based on my experience in interviewing other suspects who were later verified as having lied during an interview."]
- At what time did you start the interrogation?
- Briefly describe the interrogation procedure you used. [A typical response might be: "I began with a direct accusation of guilt. Because the defendant did not offer any (strong) denial to this statement, I talked about possible factors that may have contributed to his decision to commit the crime. Eventually, he told me that the

robbery was not his idea and that his friends talked him into joining them in the robbery."]

- About what time was it when the defendant made this initial admission of guilt?
- Describe what happened after the defendant told you that committing the robbery was not his idea. [For example, "I returned to the nonaccusatory question-and-answer format and elicited from him the details of the robbery he was willing to discuss."]
- Did the defendant sign a confession of any sort? ["Yes. After he told me about the robbery, I wrote out what he told me, and, after reading this description, he signed the confession acknowledging that it was true and voluntary."]
- Please read for the court the confession the defendant signed.
- How do you know the defendant understood what he signed? ["I read it, word-for-word, to him. During that process, he changed two parts of the confession. He crossed these sections out, corrected them, and initialed the changes."]
- At any time while you were with the defendant on [date], did you tell him that he would receive a lesser sentence or other forms of leniency if he confessed?
- At any time while you were with the defendant on [date], did you threaten him with physical harm if he did not confess?

During a suppression hearing, when it is known that the confession will be attacked, it is oftentimes beneficial to anticipate, during direct examination, some of the issues the defense will raise. This allows the judge to first hear these issues from the prosecution's perspective and may diffuse the "shock value" the defense hopes to generate. Depending on circumstances, the following issues may be appropriate to address during direct examination.

- Approximately what percentage of people who you interrogate confess? [A lower figure will help refute the defense argument that the interrogation technique was so psychologically sophisticated that almost everyone confesses.]
- Have you ever obtained a confession from a person who was later proven to be innocent? [A key concept in this question is the level of evidence required to prove innocence. Merely having a confession suppressed or a defendant who had confessed and was acquitted is not proof of a false confession.]
- Have you ever interrogated a suspect who was innocent? [If this is true, the investigator should openly acknowledge this. Most seasoned investigators have.]
- What were the results of those interrogations? ["The person was no longer considered to be a suspect, and the investigation was redirected toward other possible suspects."]
- In your experience, do innocent suspects respond differently, during an interrogation, than guilty suspects? ["Most certainly. Innocent suspects are adamant and

persistent in their denials, to the extent that they no longer listen to my accusations. Guilty suspects are much more reticent during the interrogation. If they do offer a denial, it is weak and easily put aside. They are quite content to allow me to do most of the talking."]

- During the course of this interrogation, did you physically move your chair closer to the defendant's? ["Yes, I did. I moved closer to him to portray empathy and sincerity in my statements."]
- Did you lie to the defendant at all during the interrogation? ["I'm sure I did. Persuading a person to tell the truth often requires making statements that are not entirely true."]
- Give me an example of a statement you made during the interrogation that was not true. ["I told the defendant that I felt he was basically an honest person and that this crime was out of character for him."]
- Did you lie to the defendant at all about the possible consequences he would face if he told the truth? ["No, not at all."]
- Why isn't there an electronic recording of this interrogation? ["Our department does not have concealed recording equipment in any of our interviewing rooms."]

Cross-Examination

During cross-examination, a witness should be prepared to address specific topics related to interrogation, including offering definitions for commonly used terms that can be found earlier in this text. Whenever appropriate, a witness should talk in terms of the defendant "telling the truth," rather than confessing, and describe the "interrogation" as a "conversation." Also, descriptive or legal terminology should be used when discussing the defendant's crime.

The following are sample dialogues applicable to any testimony concerning a confession. The responses are merely suggestions, and the investigator should modify them accordingly to fit the specific circumstances of the confession.

Impetus for the Confession

Q: During your interrogation, what did you say and do to make the defendant confess?
R: I didn't say or do anything to make the defendant confess. He chose freely to tell the truth.
Q: What made him decide to confess?
R: I have no idea what, specifically, motivated him to tell the truth. It could have been a number of things.
Q: What sorts of things could have made him decide to confess?

R: Some people experience a feeling of relief once they tell the truth. Others just get tired of lying about what they've done. Some suspects may acknowledge their crime to save face with family members or colleagues.

Possibility of a False Confession

Q: Isn't it true that police elicit false confessions on a regular basis from innocent suspects?
R: No. I'm not aware of any study or research finding that supports that statement. I would also disagree with that statement, based on my personal experience in police work.
Q: But you would agree that police have elicited false confessions?
R: Certainly.
Q: How do you know that this isn't a false confession?
R: The defendant was able to provide information about the crime that only the guilty person would know.
Q: How do you know that this confession was voluntary?
R: Because I did not do or say anything that would be apt to cause an innocent person to confess.

Implying a Prosecutorial Conspiracy

When the prosecution's case is strong, but the defendant maintains his innocence, a common defense theory is that the prosecution or, more specifically, the police "set up" and framed the defendant. These claims can range from planting evidence to obtaining a false confession. To sell this theory to the jury, the defense will try to catch a prosecution witness in a lie. The lie may have nothing whatsoever to do with the actual interrogation of the suspect, but, once a witness lies about even unrelated issues, the door is opened for allegations of widespread corruption.

The following are questions designed to entice a witness to lie because of the implications of a positive response. The witness should recognize this effort and use it to his advantage in not being perceived as an adversarial witness.

Q: Did you previously meet with the prosecution to rehearse your testimony in court today?
R: I did meet with Attorney [name], and I told him what my testimony would be on this case. There was, however, no rehearsal of my testimony.
Q: Prior to testifying, did you get together with other investigators to plan out your testimony?
R: I did meet with some of the other investigators to review our recollections. We did not, however, plan out what our testimony would be.

Q: Wasn't considerable pressure placed upon the department and you to get a confession on this case, no matter what?

R: Since this was a high-profile case, I certainly was aware of pressure by the media and demands by the department to try to resolve it. However, at no time was there any sort of directive or pressure to get a confession on the case no matter what.

These are standard defense attorney questions to "test the waters" of a witness's credibility. In major cases, a witness should assume that the defense attorney has thoroughly researched past cases the investigator has worked on and knows a great deal about the investigator's personal life. Under this circumstance, the attorney may ask questions about past false confessions obtained, confessions that were suppressed, or even about factors that may have influenced poor judgment during an interrogation, such as denied promotions or citizen's complaints filed against the investigator. Although some of these inquiries may be overruled by a judge, the witness should be prepared to answer truthfully all questions asked of him.

Hypothetical Questions

When a witness does not testify in a manner consistent with the defense theory, the defense attorney may ask hypothetical questions, in an effort to weaken the witness's position. These questions may be prefixed with the statement, "Isn't it possible . . . ," or asked as a hypothetical situation, "Consider the possible facts. . . ." The witness must be cautious in agreeing that something is possible, because, during closing arguments, the attorney can transform a possibility into a probability, and finally a certainty. Conversely, in some situations, "Isn't-it-possible" type questions obviously deal with true possibilities, and a witness should acknowledge that the suggestion is possible, but not likely. In the following dialogue, the attorney attempts, first, to discredit the witness's training in the area of evaluating human behavior, and then seeks agreement with a suggested possibility.

Q: Do you have a graduate degree in psychology or criminology?

R: No.

Q: So you are not an expert in human behavior, is that correct?

R: I am not licensed or certified to render professional opinions about human behavior.

Q: So, with your lack of formal training, you would not know whether or not this confession was false?

R: That's not true. I have received formal training in many areas of my job, including interviewing and interrogation.

Q: But isn't it possible, because you do not have a degree in psychology or criminology, that you may not recognize a false confession?

R: Depending on the information I was provided, there may be some false confessions that I wouldn't recognize, but, because I was involved in all aspects of this particular confession, I firmly believe that it is true.

When an attorney sets up a hypothetical situation for the witness to comment on, he frequently manipulates small factors that are not analogous to the actual interrogation. In the subsequent example, the attorney describes the interrogation theme as offering "mitigating circumstances." This, of course, is not true. The theme offers "moral justifications." Therefore, when responding to a hypothetical question, it is often beneficial to have the attorney further define the circumstances being presented, as the following dialogue illustrates:

Q: Hypothetically, if an investigator describes mitigating circumstances to a suspect during an interrogation, wouldn't you agree that the suspect may come to believe that he will be punished less severely?
R: That would depend on how the mitigating circumstances were communicated.
Q: Well, let's suppose, hypothetically, that the investigator told the suspect that the victim was to blame, because he got the suspect angry and caused him to act out of character. Wouldn't a suspect, under that circumstance, believe that, if he confessed to that scenario, that he might be afforded some leniency?
R: No. He is still acknowledging the murder, and I think it is common knowledge that murder is a serious crime with serious consequences.

Baiting Techniques

A defense attorney may "bait" a witness by suggesting the possibility that another witness or other source of information will contradict his testimony. A frequent way to ask such a question is, "Would it surprise you if . . . ." Under this circumstance, the witness should listen carefully to exactly what the attorney is suggesting and then respond appropriately, as the following examples illustrate:

Q: Would it surprise you if we were able to produce two witnesses that place the suspect 3 miles from the scene of the crime at the time he allegedly committed it?
R: If the witnesses were friends or relatives, no it would not surprise me.
Q: Why is your description of the interrogation different from your partner's?
R: We both saw and heard the same thing, so our descriptions should be essentially the same. If there is a particular difference you had in mind, I would be happy to address that.

Making a Mountain Out of a Mole Hill

The defense attorney may find a small discrepancy between a witness's testimony and a report or within information contained in the confession. The defense attorney will then attempt to blow this error or omission way out of proportion, in an effort to put the witness on the defensive. When errors of this nature come up, the investigator should openly acknowledge them, as the following dialogues illustrate:

Q: The suspect's confession indicates that he left the scene on foot, yet a witness claims that the person who did this rode away on a bicycle. How do you explain this obvious discrepancy?

R: During our conversation, he told me that he left the scene on foot, so that's what I wrote down. I have no explanation for the discrepancy.

Q: You earlier testified that you conducted this interrogation alone, yet the defendant tells me there was another investigator in the room. Did you lie during your earlier statement?

R: No. I told you the truth. I was alone with the defendant throughout the interrogation. After he confessed, I brought in another police officer to witness the confession.

Q: In your written report, you make no mention of trying to call the defendant's mother at home or work, and yet you testified that you did make this effort. How is it that this information is not in your report?

R: At the time I wrote the report, I didn't realize that it would be an important issue at trial. In retrospect, I wish I would have put it in the report, but I told the truth when I said that I tried to call the defendant's mother first at home and next at her work number.

Conclusion

With our adversarial system of criminal justice, defense attorneys routinely attempt to influence a judge or jury's perception of the defendant. They clean their client up, give him a professional haircut, and buy him a conservative suit, so that he does not match the visual image of a person guilty of the charge against him. In an effort to suppress a confession, a defense attorney may try to present his client as a feeble-minded person with low self-confidence, who is easily misled and intimidated. The vast majority of guilty or innocent suspects do not fit this profile. Nonetheless, it is the defense attorney's role to discredit an interrogation and attempt to have the confession suppressed.

As many of the testimony examples in this chapter illustrate, the investigator who has a solid understanding of interrogation techniques is much better equipped to respond to questions during direct and cross-examination. The investigator who has elicited a

confession but is uncertain as to the legality or permissibility of the techniques used to elicit that confession is most vulnerable to defense challenges (perhaps, rightfully so).

Without a doubt, the greatest risk at trial involves an investigator who believes that the suspect must be guilty and, consequently, justifies improper interrogation techniques used to elicit a confession. This investigator, operating under such a pretense, is most likely to elicit a false confession and have that confession suppressed. A professional investigator is knowledgeable about laws regulating interrogation and the underlying principles of interrogation. The professional investigator relies on the general principle: "Could what I am about to say or do during this interrogation be apt to cause an innocent person to confess?"

Chapter 17

Interrogation and Confession Law

Introduction

The interrogation of a suspect and the suspect's ultimate confession are inextricably intertwined in the pursuit of solving a crime. The law regarding interrogation and confessions are similarly connected, and interrogators must possess a working knowledge of both the law surrounding interrogation and confessions to protect a suspect's constitutional rights and to build a sustainable case for the prosecution.

Both interrogation and confessions are subject to strict requirements under the many rules adopted by the United States Supreme Court, federal courts and state courts regarding the protection of an individual's constitutional rights. Confessions obtained in violation of an individual's rights against self-incrimination and the due process of law are inadmissible in court, and will destroy the case the investigator has worked hard to build in an effort to solve a crime. In terms of interrogation, investigators must, therefore, comply with the provisions of the United Supreme Court case *Miranda v. Arizona,*[1] and cases decided after *Miranda*, prior to undertaking a custodial interrogation in order for the confession to be admissible in court.

This chapter provides a brief overview of the relevant law regarding interrogations and confessions along with an indication of what the interrogator must do to ensure that confessions are valid.

Constitutional Rights

Miranda Warnings

In *Miranda v. Arizona*, the U.S. Supreme Court established that the police must advise a suspect in custody of a series of warning rights and obtain the appropriate waiver before they begin the interrogation of that suspect. The required rights, a mainstay of television legal dramas familiar to most Americans, are as follows:

- You have the right to remain silent.
- If you do say anything, what you say can be used against you in a court of law.
- You have the right to consult with a lawyer and have that lawyer present during any questioning.
- If you cannot afford a lawyer, one will be appointed for you if you so desire.

These rights set forth in *Miranda*, however, need not be stated word-for-word.[2] Courts accept a "fully effective equivalent" as prerequisites to the admissibility of any statement made by a defendant.[3]

In fact, in *Florida v. Powell*, the Supreme Court held that a variation on Miranda warnings that provided that the suspect had "the right to talk to a lawyer before answering any of [the officers'] questions," but also contained a catch-all provision stating that, with respect to the various rights recited in the warnings, "[y]ou have the right to use any of these rights at any time you want during this interview," adequately conveyed to the suspect that the right to counsel applied "during" interrogation.[4]

"Interrogation" Defined

The Supreme Court defines interrogation for purposes of *Miranda* as encompassing not only "express questioning, but also any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police know are reasonably likely to elicit an incriminating response."[5]

Although asking a question specifically related to the suspect's guilt or innocence constitutes interrogation, there are certain conditions and circumstances where *Miranda* does not prohibit this specific questioning.[6]

"Threshold questions," and "booking questions,"[7] contrast with questions asked of a custodial suspect, such as "Do you know why you're here?" or "Do you know why I'm here?" which are considered to be interrogational in nature.[8] However, if the suspect himself inquires about the reason for his arrest and the officer says, "You know why," which is followed by a confession, the interchange is not considered interrogation.[9]

Functional Equivalent Test

Courts apply the "functional equivalent test" to determine whether police comments or actions in custodial interrogation situations are prohibited by *Miranda*. In *Brewer v.*

Williams,[10] police arrested Williams on suspicion of child abduction and murder. Williams exercised his *Miranda* rights and revealed that he already had an attorney. Police told Williams that they hoped to find the child's body before it became covered with snow, and Williams revealed the body's location.[11]

The Supreme Court held Williams' statement to be the functional equivalent of an interrogation, entitling him to the assistance of counsel at the time he made the incriminating statements. Consequently, neither the statement nor the fact that police found the body was admissible as evidence.[12]

In *Rhode Island v. Innis*, a police officer commented to another officer while in a police car with an armed robbery arrestee that he hoped that the suspect's discarded weapon could be found before some children in a neighborhood school came across it, whereupon the arrestee disclosed its location.[13] The Supreme Court held that there was no functional equivalent to interrogation.

Courts arrive at different results in applying the functional equivalent test. In *United States v. Bennett*,[14] a police officer commented to an arrestee that a gun was in his car. The court found the officer's comment was not the equivalent of interrogation, and upheld the arrestee's acknowledgment of gun ownership as admissible for the interstate transportation of a prohibited firearm. However, the same court found interrogation implicit in the question "What is this?" with regard to a powdered substance discovered during the search of an arrestee suspected of dealing in drugs.[15]

An interrogator's exhortation to "tell the truth" and "be honest" constitutes interrogation.[16] Likewise, a request of a custodial suspect to take a polygraph test, prior to receiving *Miranda* warnings and having waived any rights, constitutes interrogation and is, thus, impermissible.[17]

Courts also arrive at different results in determining whether showing a custodial suspect crime-scene evidence or police investigative reports constitutes the functional equivalent of an interrogation. Some courts hold that the "display" is not the equivalent of interrogation,[18] while other courts hold that display does constitute interrogation.[19]

The issue surrounding the display of evidence or police reports only arises where a custodial suspect either is not advised of the required warnings or exercises his right to silence or to see a lawyer. No display restriction applies to noncustodial suspects or to custodial suspects who waive their rights.

In *United States v. Gomez*,[20] federal agents arrested the suspect for drug conspiracy and read him his *Miranda* warnings. Gomez requested a lawyer. An agent advised Gomez that he did not have to answer any questions or speak, but informed Gomez that he might want to consider cooperating with the authorities because that was the only way that Gomez could receive a lighter sentence.[21]

The Eleventh Circuit held that the agent's comments to Gomez after he requested an attorney constituted further interrogation and occurred immediately prior to Gomez's request to cooperate, rendering doubtful the voluntariness of Gomez's "initiation" of the conversation and his desire to cooperate. Following *Innis*, the Court held that for purposes of *Miranda*, "interrogation" can be any comment or even conduct of an officer that the

officer should reasonably know is apt to prompt a defendant to make an incriminating statement. Gomez's subsequent inculpatory statements were therefore inadmissible at trial.[22]

Illinois v. Perkins,[23] involved an undercover investigation of an unsolved murder in a suburb of East St. Louis, Illinois in 1984. In 1986, prison inmate Donald Charlton told police that he had learned about a homicide from Lloyd Perkins, a fellow inmate at the Graham Correctional Facility. On hearing Charlton's account, the police recognized details of the murder that were not well known, and placed an undercover government agent in Perkins's jail cell. Perkins was incarcerated on unrelated charges. Perkins made statements that implicated him in the crime that the agent sought to solve. The U.S. Supreme Court held that an undercover law enforcement agent need not give *Miranda* warnings to an incarcerated suspect before asking him questions that may elicit an incriminating response: "[t]he essential ingredients of a 'police-dominated atmosphere' and compulsion are not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate."[24]

"In Custody"

Meaning of "Custody"

Under *Miranda*, an interrogator must advise a suspect of his *Miranda* rights only when the suspect is "in custody," in other words, when the suspect is under "custodial interrogation." The Supreme Court defines custodial interrogation as: "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[25] Custody does not necessarily mean that the suspect is taken to a police facility for questioning, however; the Supreme Court has affirmed state and federal court rulings establishing that a suspect was in custodial interrogation in the suspect's home or in other locations.[26]

Likewise, police need not advise a suspect of *Miranda* rights when the suspect is not in custody and voluntarily agrees to provide information.[27] Courts have held that a suspect is not in custody, even *within* a police facility, when the police do not place any restrictions on the suspect.[28] Additionally, police need not give *Miranda* warnings to a suspect who is the *focus* of an investigation ("focus test"), but where the suspect is not in custody. Moreover, an interrogating officer's subjective opinion regarding the custodial status of the suspect is irrelevant.[29] Individual states, however, may require that police give *Miranda* warnings to suspects who are the focus of investigation if those states have stricter state constitutional provisions, as long as the state provisions do not contradict federal law.[30]

For example, in *Chavez v. Martinez*, the Supreme Court held that a police interrogator's failure to read *Miranda* warnings to the suspect before questioning him at a hospital where the suspect was being treated for bullet wounds he received from another officer in a shootout did not violate suspect's constitutional rights, and thus could not be grounds

for a civil rights action against the interrogator. The suspect was not charged with a crime, and his answers were not used in a criminal proceeding.[31]

Non-Custodial vs. Custodial Interrogation

During the interrogation of a noncustodial suspect (for whom *Miranda* warnings are not required), a question may arise as to whether a noncustodial situation may develop into a custodial one that requires the issuance of the warnings. For instance, suppose a suspect makes an incriminating statement or says that he will reveal how he committed the crime, must the interrogator interrupt him in order to issue the *Miranda* warnings? An analysis of the Supreme Court's opinion in *Miranda* rather clearly indicates that once a noncustodial suspect has made an incriminating statement or has expressed a willingness to confess, he should be permitted without interruption to continue to make a full confession. Moreover, there should be no legal impediment to the interrogator asking questions at that time relating to the details of the crime.[32]

Foremost among the reasons in support of the foregoing conclusion is the fact that the *Miranda* decision was based upon the Fifth Amendment provision that no person shall be compelled to incriminate himself. The opinion of the Court in *Miranda* clearly revealed that its concern was over the interrogation of a suspect after he has been taken into custody (or otherwise deprived of his freedom). The Court was of the view that, in order to dispel the aura of compulsion created by such taking into custody, the suspect has to be advised of his right to remain silent.

At the time a noncustodial suspect is interrogated, he is not under the compulsion the Court attributed to an arrest situation. When the suspect makes an incriminating statement or expresses a willingness to confess, the mere fact that the interrogator at that time determines that an arrest will be made does not constitute compulsion under *Miranda*.

The situation is comparable to two other circumstances under which various appellate courts have held that the warnings are not required. One is where a suspect enters a police station or approaches a police officer and states that he wants to confess a crime. The *Miranda* warnings flag need not be raised; the police may listen to the suspect's confession and ask questions about the details of the offense without prefacing them with the warnings. The compulsion factor is not present.

Another similar circumstance is one in which the police seek to question a person upon whom suspicion has merely focused and there is no taking into custody. The Supreme Court itself, as already stated, has specifically ruled that focus of suspicion is not the test as to whether the warnings are required; the test is custody. This differentiation between focus and custody would be practically meaningless if the courts were to hold that a noncustodial suspect who started to confess, or stated that he wanted to confess, had to be interrupted with the administration of the *Miranda* warnings; the cases holding that focus is not the test are usually ones involving confessions made without the benefit of the warnings.

Although there need be no interruption for the issuance of the warnings as a noncustodial suspect proceeds with the oral confession, it is suggested that in the preparation of the written confession, a statement should be inserted at its beginning, somewhat as follows:

> I have been advised that I have a right to remain silent; that anything I say may be used against me; that I have a right to a lawyer; and if I cannot afford a lawyer, one will be provided free. Nevertheless, I am willing to give this written statement.

Break in Custody Ends Effectiveness of Warnings

Once a custodial suspect requests an attorney, any subsequent waiver of his rights in response to police attempts to elicit information is involuntary. This presumption holds true even if there is a break in custody. In *Edwards v. Arizona,*[33] the suspect was arrested at home and advised of his *Miranda* rights. Edwards began to confess to police, but then stopped talking and requested an attorney. The police ceased questioning Edwards and brought him to the county jail. The next day police again advised Edwards of his *Miranda* rights and Edwards gave a confession without having talked to an attorney. Edwards' confession was used against him at trial and he was convicted.

In overturning Edward's conviction, the Supreme Court explained that "the integrity of an accused's choice to communicate with police only through counsel," must be preserved[34] by "prevent[ing] police from badgering [him] into waiving his previously asserted *Miranda* rights.[35] However, in *Maryland v. Shatzer*[36] the Supreme Court determined that the *Edwards* presumption did not apply to a prison inmate who, while serving a sentence for one offense, was given his *Miranda* warnings and questioned about an unrelated offense. After being interrogated about the crime, Shatzer invoked his right to counsel and was released back to the "general prison population." Two-and-one-half years later, detectives re-opened the investigation, advised Shatzer of his *Miranda* rights, Shatzer waived his rights and gave incriminating statements to the police. After incriminating himself, Shatzer requested counsel. Shatzer was tried and convicted.

The Maryland Court of Appeals reversed the decision, finding that Shatzer's confession should have been suppressed under *Edwards,* and held that the passage of time alone did not trigger the "break in custody" exception to *Edwards.*

The Supreme Court reversed again, deciding that the period of time defining a "break in custody" is 14 days. The Supreme Court reasoned that Shatzer's release back into the general prison population constituted a break in *Miranda* custody and enough time "to get reacclimated to his normal life, consult with friends and counsel, and shake off any residual coercive effects of prior custody."[37]

Right to an Attorney

A custodial suspect who specifically states or otherwise indicates that he is unwilling to be questioned has obviously exercised his constitutional privilege against self-incrimination. This was the right of all criminal suspects even before *Miranda,* and certainly since then.

Under *Miranda*, if a suspect states that he wants a lawyer, there can be no interrogation, at least until such time as he initiates a waiver of that right. The consequences of continuing an interrogation after a suspect's request for counsel include not only exclusion of any incriminating statement following therefrom, but also a possible civil rights action under 42 U.S.C. Section 1983 as well as the rights spelled out in the Fifth Amendment to the Constitution. In *Cooper v. Dupnik* the U.S. Court of Appeals for the Ninth Circuit held that a relentless interrogation of a rape suspect, which featured officers' deliberate disregard of the suspect's repeated requests for counsel, was actionable under this theory.[38]

Problems have arisen, however, as to what constitutes a claim of the right to a lawyer in those instances where some statement made by the suspect is later alleged to have been the "functional equivalent" of that claim. A suspect who requests to talk to someone other than a lawyer is not considered to have asserted the *Miranda* rights. For instance, the courts have held that a request to talk to a parent or other relative, probation officer, or an alleged accomplice also under arrest is not the equivalent of a request for a lawyer.

There are cases where a warned suspect makes a rather ambiguous remark in which he mentions the word lawyer, such as "Maybe I need a lawyer" or "I would like a lawyer, but it wouldn't do any good."[39] In 1994 the U.S. Supreme Court held in *Davis v. United States* that unless the suspect clearly and unambiguously asserts his right to counsel, police need not cease questioning and need not even ask clarifying questions.[40] In that case the suspect said, "Maybe I should talk to a lawyer," after which the police asked him to clarify whether he wanted a lawyer or not. He then said he was not asking for a lawyer and made incriminating statements. Later, the suspect asked for an attorney and claimed the early questioning should have stopped when he made his ambiguous statement. The confession was found to be admissible. The courts have also found statements such as "What if I want my lawyer present first"[41]; "I need to talk to somebody[.] I don't know if I need a lawyer or not"[42]; and, "I probably need to talk to a lawyer"[43] to be ambiguous requests for a lawyer. On the other hand, the statement "I really need an attorney to ... talk with, and for me" was viewed by the court as an unambiguous request for an attorney.[44]

In light of *Davis*, the authors suggest that the prudent course for an interrogator to follow after receiving an ambiguous request for counsel is to say to the suspect, "It's up to you; do you want a lawyer or not?" If the suspect responds with a "yes," that will preclude any interview; if he says "no" and also acknowledges a willingness to talk, the interrogator may proceed to inquire about the matter under investigation.[45]

The courts often find that clarifying questions by interrogators, where suspects use ambiguous language in referring to the waiver of *Miranda* rights, are permissible and do not in and of themselves constitute coercion. A New Jersey court considered the following exchange between a murder suspect and the arresting officers, after the suspect signed a waiver of his *Miranda* rights at the stationhouse and then made these statements:

> Mr. Alston: I feel like I'm signing my life away.
>
> Detective Muhammad: Not signing your life away.
>
> Mr. Alston: Should I not have a lawyer in here with me?

Detective Muhammad: You want a lawyer?

Mr. Alston: No, I am asking you guys, man. I don't-I'm just-I see you guys, man.

Detective Muhammad: I can't make you.

Mr. Alston: Sir, if I did want a lawyer in here with me how would I be able to get one in here with me?

Detective Muhammad: That's on-that's on you. If you want a lawyer, then we-stop and you going to get your lawyer. That's why he read that clearly to you and your waiver. If you want to stop at this time then we stop at this time. It's either yes or no, Damu.

Mr. Alston: I'm already waist-deep, why?

Detective Muhammad: Huh?

Mr. Alston: I'm already waist-deep, about to drown, why?

Detective Muhammad: You've got to answer yes or no.

Mr. Alston: I already did.

Detective Muhammad: Do you want a lawyer? No - that's what you're saying?

Mr. Alston: When I go to court, I guess.

Detective Smith: Do-do you want to continue answering questions-answering our questions?

Mr. Alston: Sure. Why not?

Defendant then confessed that he shot the victim to "get away from him and get him off me."[46]

The entire interview, including the recitation of rights, the above-quoted colloquy, and defendant's confession, lasted 24 minutes and 41 seconds. The court held that the detective's response was a fair recitation of the right to counsel and the right to have the interrogation cease. The officer's questions did not exceed the scope of permissible clarification and defendant's statements, when clarified, were not an assertion of his right to counsel, but, rather, were requests for advice from the police, followed by a hypothetical query about the mechanics relating to accessing counsel if he chose to assert a right he plainly knew was within his power to assert.[47]

Even where a suspect unambiguously requests a lawyer, police are not always obliged to refrain from questioning that suspect. In 1991 the U.S. Supreme Court decided *McNeil v. Wisconsin,* holding that the invocation of the Sixth Amendment right to counsel at an arraignment did not preclude police questioning on unrelated offenses in all cases.[48] The six-member majority found that the Sixth Amendment right to counsel is "offense specific" and applies only to the offense for which it is invoked. Furthermore, it does not automatically invoke the Fifth Amendment right to counsel which *Miranda* makes applicable to interrogation.

In an Indiana case, officers advised a murder suspect of his *Miranda* rights, the suspect signed a waiver of his rights, and then the officers began questioning the suspect. The suspect requested an attorney and the officers ceased interrogation and returned the suspect to his holding cell. The suspect asked an officer what he was being charged with and the officer responded that he was being charged with murder. The suspect replied: "I don't think that's right." The officer stated that they could not talk to the suspect without his attorney and the suspect replied that he wanted to continue talking. The court held that because the officers had elaborately informed the suspect about his *Miranda* rights prior to the interview and verified that he understood his rights, the officers' caution that the suspect's rights still applied when he restarted the interrogation was sufficient to establish waiver of his right to counsel upon resumption of the police interview.[49] Police must inform a custodial suspect when his attorney arrives at the police station.[50]

Waiver of Rights

As noted above, *Miranda* requires that in order for the interrogation to proceed, the custodial suspect must validly waive his constitutional rights contained in the warnings given to him by the interrogator.[51] A suspect has not waived his constitutional rights unless the interrogator has communicated the *Miranda* warnings to the suspect. Courts will find that a suspect has relinquished his constitutional rights only when the suspect waives his rights "knowingly and intelligently."[52]

As a general rule an interrogator cannot initiate further conversation with a suspect after a suspect has validly invoked his rights.[53] On the other hand, if a suspect who has earlier invoked his *Miranda* rights changes his mind and indicates a desire to talk to the investigator, a new conversation may commence.[54]

Failure to give *Miranda* warnings and obtain a waiver of rights *before* custodial questioning, however, generally requires exclusion of any statements obtained in that second interrogation. In *Missouri v. Siebert,*[55] the Supreme Court invalidated a confession obtained via the so-called "two-step interrogation process."[56] In this case, Seibert's disabled son died in his sleep. Siebert was concerned that she would be charged with neglect and was present when two of her sons and their friends discussed burning her family's mobile home to conceal the circumstances of her disabled son's death. The family proceeded to burn the home and Donald, an unrelated, mentally ill 18-year-old living with the family, was left to die in the fire to avoid the appearance that Seibert left her son unattended. Five days later, the police arrested Seibert, but did not advise Siebert of her *Miranda* rights. At the police station, an officer questioned Siebert for 30 to 40 minutes, obtaining a confession that "the plan was for Donald to die in the fire." The officer then gave Siebert a 20-minute break, returned to give Siebert her *Miranda* warnings, and obtained a signed waiver. The officer then resumed questioning Siebert, confronted her with her prewarning statements and Siebert repeated her confession.

The District Court suppressed Siebert's prewarning statement but Siebert's postwarning statement was admitted at trial, and Seibert was convicted of second-degree

murder. Siebert's conviction was affirmed on appeal based on *Oregon v. Elstad*,[57] in which the Supreme Court held that a suspect's unwarned inculpatory statement made during a brief exchange at his house did not make a later, fully warned inculpatory statement inadmissible.

The Supreme Court reversed the decision, holding that because the interrogation was nearly continuous, Siebert's second statement, which was the product of the invalid first statement, should be suppressed. The Supreme Court distinguished *Elstad* on the ground that the warnings there had not intentionally been withheld.

On the other hand, the Supreme Court noted that when police properly warn a suspect of his or her rights and obtain a waiver from the suspect, the resulting confession is a "virtual ticket of admissibility"[58] at trial.

Form of Waiver

Although the *Miranda* opinion does not specify the kind or form of waiver necessary to obtain from a suspect, in a subsequent case, *North Carolina v. Butler*,[59] the Supreme Court held that the waiver does not have to be in written form. In this case, Butler orally waived his rights to silence and to have an attorney present, but he refused to sign a written waiver to that effect. The Supreme Court ruled that despite his refusal, the oral waiver was sufficient.[60]

Common sense, along with the rulings of the Supreme Court in *Duckworth v. Eagan*[61] and *North Carolina v. Butler*, as well as what the Court said in the *Miranda* opinion itself, warrants a simplification of the required warnings and waiver. It is recommended, therefore, that the warnings be issued orally as follows: "You have a right to remain silent; anything you say may be used against you; you have a right to a lawyer; and if you cannot afford a lawyer one will be provided free." After an appropriate pause to permit the suspect to respond, he should be told: "I would like for you to talk to me about this matter [specifying the case under investigation]. Okay?"[62] If the suspect expresses or otherwise indicates a willingness to talk, even by an affirmative nod of his head, the interrogator may proceed with the interrogation.[63] If the suspect states or nonverbally indicates an unwillingness to do so, as by a negative shake of his head, or if he requests a lawyer, no interrogation is permissible.

In suggesting the foregoing type of oral warnings and waiver, the authors believe that it is not only supportable by what the Supreme Court has held and said, but that it also comports with the element of fairness. Although *Miranda* prohibits talking a suspect out of a claim of silence or the assistance of counsel, it does not require that a suspect be *talked into* the exercise of those rights, which may be the practical effect of the ritualistic warnings and written waiver procedures that have been so frequently used.[64]

As stated previously, there are instances where an apparent waiver will be ambiguous or indecisive. When this occurs, the interrogator should ask for a clarification of what the suspect means or intends to do; however, caution must be exercised to avoid crossing the line into an interrogation, which is impermissible until a waiver of *Miranda* rights becomes obvious or can reasonably be implied.[65]

Right to Remain Silent

As explained above, *Miranda* requires that a suspect be informed of the "right to remain silent." The Supreme Court recently determined, however, that a suspect's actual silence does not invoke the right to silence, but, rather, constitutes consent to interrogate. In *Berghuis v. Thompkins,*[66] the Court held that a defendant's silence during the first two hours and 45 minutes of a three-hour interrogation was insufficient to invoke his right to remain silent under *Miranda,* where the defendant never stated that he wanted to remain silent or that he did not want to talk with the police. The Court observed that at no point during the interrogation did Thompkins *say* that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney.[67] About 2 hours and 45 minutes into the interrogation, the detective asked Thompkins, "Do you believe in God?" Thompkins made eye contact and said "Yes," as his eyes "well[ed] up with tears." The detective asked, "Do you pray to God?" Thompkins said "Yes." The detective asked, "Do you pray to God to forgive you for shooting that boy down?" Thompkins answered "Yes" and looked away. Thompkins refused to make a written confession, and the interrogation ended about 15 minutes later.

On appeal, Thompkins argued that he "invoke[d] his privilege to remain silent by not saying anything for a sufficient period of time, so the interrogation should have 'cease[d]' before he made his inculpatory statements."[68] The Supreme Court disagreed, reasoning that:

> If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong.' Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity.[69]

Consent for Interrogation

Interrogators must obtain a waiver of rights from a custodial suspect in order to begin interrogation. If police do not comply with *Miranda* a confession obtained from the suspect will be suppressed, regardless of the voluntariness of the suspect's statement.[70] *Miranda* warnings are unnecessary, however, to interrogate a non-custodial suspect.

A suspect's agreement to be brought to a police facility or to go to the police facility on his own, for example, avoids problems with inadmissible confessions such as those encountered in *Dunaway* v. *New York*[71] because the fact that the suspect voluntarily consented to go to the police facility is strong evidence that his presence there was not *Miranda* "custody." In this case, the proprietor of a pizza parlor was killed during an attempted robbery. The investigating officer received a lead from a police informant implicating Dunaway in the crime. The detective questioned the informant, a jail inmate, but learned nothing that supplied "enough information to get a warrant"[72] for Dunaway's arrest. The detective nevertheless ordered police to "pick up" Dunaway and "bring him

in."[73] Three detectives found Dunaway at a neighbor's house and took him into custody, but did not tell him he was under arrest. The police drove Dunaway to police headquarters in a police car and placed him in an interrogation room, where officers questioned him after giving him his *Miranda* warnings. Dunaway waived counsel and eventually incriminated himself.[74]

The Supreme Court held that Dunaway's confession was inadmissible because the police picked up Dunaway without probable cause for a lawful arrest, in effect tainting the subsequent interrogation.[75]

Other Miranda Considerations

Delay in Presentment of Arrestee before a Judicial Officer

Arresting officers must not unduly delay in presenting an arrestee to the court, that is, bringing the arrestee before a judge. Any undue delay in a suspect's detention, or a delay that exceeds the specified state statutory time limitation, may void admissibility of a confession in court.

The law prohibiting delay in presentment is well settled. Historically, both state and federal law have required an arresting officer to bring a prisoner before a magistrate as soon as reasonably possible.[76] This "presentment" requirement was designed to prevent "secret detention" and served as a means to inform a suspect of the charges against him.[77]

In *McNabb v. United States*, the Supreme Court examined a number of federal statutes codifying the presentment rule, which provided that " '[i]t shall be the duty of the marshal . . . who may arrest a person . . . to take the defendant before the nearest . . . judicial officer . . . for a hearing' ").[78] There, federal agents flouted the requirement by interrogating several murder suspects for days before bringing them before a magistrate, and then only presented the suspects after they gave confessions that ultimately led to their convictions.[79] The Supreme Court held that confessions are inadmissible when obtained during unreasonable presentment delay.

Shortly after *McNabb*, Congress enacted Federal Rule of Criminal Procedure 5(a), which combined the several statutory presentment provisions into one law.[80] As first enacted, the rule required "[a]n officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant [to] take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States."[81] The rule remains much the same today: "A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge. . . ."[82]

McNabb and Rule 5(a) were applied together in *Upshaw v. United States*,[83] where the Supreme Court held the defendant's voluntary confession was not admissible: "In the McNabb case we held that the plain purpose of the requirement that prisoners should promptly be taken before committing magistrates was to check resort by officers to 'secret interrogation' of persons accused of crime."[84] The upshot of *Upshaw* was that

even voluntary confessions are inadmissible if given after an unreasonable delay in presentment.[85]

The Supreme Court applied Rule 5(a) again in *Mallory v. United States*, and held that a confession given seven hours after arrest was inadmissible for "unnecessary delay" in presenting the suspect to a magistrate.[86] The Court again repeated the reasons for the rule and explained that delay for the purpose of interrogation is the epitome of "unnecessary delay."[87] The rule against delay in presentment became known simply as the *McNabb-Mallory* Rule, and generally rendered inadmissible confessions made during periods of detention that violated the prompt presentment requirement of Rule 5(a) in federal cases.[88]

In *Corley v. United States*,[89] the United States Supreme Court ruled that ". . . § 3501 modified McNabb-Mallory without supplanting it." Under the rule as revised by § 3501(c), a district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was "reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]"). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was "made voluntarily and . . . the weight to be given [it] is left to the jury." If the confession occurred before presentment and beyond six hours, however, the court must decide whether the delay was unreasonable or unnecessary under the McNabb-Mallory cases, and if it was, the confession is to be suppressed.

Premature and Repetitive Warnings

Except where the law specifies the stage at which *Miranda* warnings must be given,[90] interrogators should not in general issue warnings until beginning an interview.[91] If the suspect fails to make an exculpatory statement, such as "I killed in self-defense," the fact that the suspect said nothing upon arrest may be used against him at trial, but only if the suspect testifies on his own behalf.[92]

Issuing repetitive warnings can create problems with admissibility of evidence at trial. For example, following John Hinckley's arrest for shooting President Ronald Reagan, a Secret Service agent and local police officer unnecessarily read Hinckley his rights three times within a two-hour period.[93] Hinckley indicated that he had received his rights and understood them and requested to speak to an attorney. No further attempt was made to interrogate Hinckley, and Hinckley was arrested for violation of the President Assassination Statute. However, the agents read Hinckley his *Miranda* rights for a fourth time after transporting him to an FBI field office. Hinckley signed his name to the FBI waiver form but did not waive his right not to answer questions before consulting counsel. Nevertheless, Hinckley answered various "background" questions.[94]

The D.C. District Court ruled that the "background" information obtained from Hinckley could not be used as evidence because it was obtained as a result of an interrogation conducted after Hinckley requested an attorney.[95] Hinckley was ultimately found not guilty by reason of insanity.

Repeating the *Miranda* warnings is often grounded in the hope that a suspect who hears the warnings repeatedly may change his mind about refusing to talk or requesting

counsel, when in fact it may amount to badgering a suspect into waiving previously invoked rights. For example, in *People v. Hammock,*[96] a suspect received warnings and requested counsel. Later, police and assistant States Attorneys gave the suspect several "fresh" sets of warnings and the suspect eventually confessed. The suspect was convicted based on his confession, but the conviction was reversed on appeal because of the improperly admitted confession obtained after the suspect's request for a lawyer.[97]

After giving a suspect *Miranda* warnings, and the suspect has waived his rights, the warnings need not be repeated unless there has been a considerable lapse of time since the first time the warnings were originally given to the suspect, for example, after a day or more.[98] Interrogators also need not repeat the warnings after obtaining a waiver and shifting the interrogation to inquire about an unrelated offense.[99]

Public Safety Exception to Miranda

In *New York v. Quarles,*[100] the Supreme Court carved out a public safety exception to *Miranda's* rule that a suspect in custody must be advised of the rights of silence and counsel before being interrogated by law enforcement officers. This public safety exception allows law enforcement authorities to ask questions before advising the suspect of individual rights for the limited purpose of protecting the police or the general public from possible harm, and responses to such questioning are admissible in evidence at the suspect's trial. The exception has been extended to permit such questioning even after the suspect invoked his right to counsel.[101]

The Public Safety exception is designed to ensure officer safety, as well as public safety. Thus, when a police officer asked a non-custodial suspect if there was anything in his house that could harm the officer, and the suspect replied: "I have a revolver but I found it,"[102] the suspect's statement was admissible in court. The public safety exception encompasses questions necessary to secure the safety of police officers, so long as the questioning (1) "relate[s] to an objectively reasonable need to protect the police or the public from any immediate danger," and (2) is not "investigatory in nature or 'designed solely to elicit testimonial evidence from a suspect.' "[103] Although the public safety exception is "narrow," it does not depend on the distinction between officer safety and public safety. Rather, its limits derive from "the exigency which justifies it" and the distinction "between questions necessary to secure their [police officers'] own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect."[104]

For example, the public safety exception is necessary when the police are attempting to locate a kidnapped person and are about to interrogate a suspect whom they reasonably believe has committed the kidnapping or knows the location of the victim. Time is a critical factor. The suspect's refusal to talk, which might result from giving the *Miranda* warnings and a request for a waiver, and the attending delay occasioned in locating the victim could result in the loss of life.[105]

The public safety exception also applies where a police officer inquires, upon arresting a suspect known to have had a gun, "Where is the gun?" The primary purpose of asking

about the location of the weapon is to learn the location for the protection of the officer and other persons.[106]

As a result of the continuing threat of terrorism, federal legislation expanding the public safety exception to include suspicion of terrorism is in process. In 2010, the United States House of Representatives issued a Resolution extending the *Quarles* public safety exception to persons under suspicion of terrorism. The Resolution provides that:

> [t]he responses of a person interrogated in connection with an act of terrorism who has not been administered the warnings described in *Miranda* are admissible as evidence against that person in a criminal prosecution, to the extent that the interrogation is carried out because of a reasonable concern that the person has information about other threats to public safety.[107]

Private Security Officers Exempt from Miranda

Miranda is expressly limited to "questioning initiated by law enforcement officers." Private security officers, therefore, are not generally required to issue the warnings before their interrogation of persons whom they have arrested pursuant to the officers' arrest privileges as private citizens.[108] Security personnel are required to issue warnings only in situations where: (1) state statute or local ordinance confers the same powers upon them as possessed by the police; (2) private security personnel are actual police officers working part time ("moonlighting") in private security; or (3) private security officers cooperate with the police and function as agents of the police.[109]

Similarly, probation officers are not required to issue *Miranda* warnings to probationers. In *Minnesota v. Murphy*,[110] Murphy, a probationer, was called in for questioning after a treatment counselor informed the probation officer that Murphy abandoned a treatment program and admitted to a rape-murder. The Court found Murphy's admission to the probation officer admissible and that Murphy was not in custody "for purposes of receiving *Miranda* protection."[111]

Corrective Measures for Failure to Provide Miranda Warnings

When an interrogator has failed to advise a suspect of his *Miranda* warnings in the mistaken belief that the warnings were not required, corrective measures may be employed to salvage an interrogation opportunity. In *Oregon v. Elstad*,[112] discussed earlier, police officers went to the residence of the suspect's parents with a warrant for his arrest in connection with a burglary. After the defendant's mother admitted the police and directed them to Elstad's bedroom, police waited for him to dress, then one of the officers took him to the living room while the other officer went to the kitchen with Elstad's mother. The officer sat down with Elstad on a sofa and asked him if he knew why the officers were there. Elstad said he did not know. The officer inquired whether Elstad knew the victim of the crime. Elstad said he did, and also said that he had heard about the crime. The officer replied that he thought Elstad was involved in the burglary, and asked him what he knew

about it. Elstad responded, "I was there." The officer did not ask any further questions of Elstad at that time, nor did the officer otherwise attempt to clarify the nature or extent of Elstad's participation in the crime.

Police took Elstad to a police station and advised him of his *Miranda* rights by reading from a standard card. The officer then asked Elstad if he understood the rights, and he answered yes, signed the *Miranda* waiver form, and gave a written confession.

The trial court denied Elstad's motion to suppress the written confession, finding the confession was given freely and voluntarily, and that the pre-*Miranda* warning admission did not taint the subsequent confession. The Oregon Court of Appeals reversed, however, finding that the police action in obtaining an admission from Elstad in violation of *Miranda* exerted a coercive impact on his later confession, despite the fact that *Miranda* advice and a waiver of rights preceded the subsequent confession.

The Supreme Court reversed, holding that a suspect who has once responded to unwarned yet noncoercive questioning is not disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings.[113]

Permissible Interrogation Regarding Unrelated Offense

The Supreme Court in *McNeil v. Wisconsin* held that when an accused invokes his right to the assistance of counsel at his first court appearance, he does not automatically invoke his *Miranda* rights as to other, uncharged offenses.[114] A defendant "might be quite willing to speak to the police without counsel present concerning many matters, but not the matter under prosecution."[115]

McNeil was charged with an armed robbery that occurred in West Allis, Wisconsin. He did not request an attorney, but was represented by a public defender at a bail hearing. While in jail awaiting his official charge for the West Allis robbery, McNeil was questioned by police about a murder and related crimes in Caledonia, Wisconsin. At that time, police advised McNeil of his *Miranda* rights, he signed forms waiving his rights and made incriminating statements in the Caledonia offenses. McNeil was then formally charged with the Caledonia crimes, his pretrial motion to suppress his statements was denied, and he was convicted. McNeil's conviction was affirmed on appeal. The following question was then certified to the Wisconsin Supreme Court: "Does an accused's request for counsel at an initial appearance on a charged offense constitute an invocation of his fifth amendment right to counsel that precludes police-initiated interrogation on unrelated, uncharged offenses?" The Wisconsin Supreme Court answered the question "no."

The U.S. Supreme Court affirmed, holding that the Sixth Amendment right, which does not attach until the initiation of adversary judicial proceedings, is offense specific.[116] Therefore, McNeil's invocation of that right with respect to the West Allis robbery did not bar admission of his statements regarding the Caledonia crimes, even though he had not been charged at the time he made the statements. The Court declined to declare as

a matter of policy that assertion of the Sixth Amendment right implied invocation of an arrestee's *Miranda* right:

> If a suspect does not wish to communicate with the police except through an attorney, he can simply tell them that when they give him the *Miranda* warnings. There is not the remotest chance that he will feel "badgered" by their asking to talk to him without counsel present, since the subject will not be the charge on which he has already requested counsel's assistance * * * and he will not have rejected uncounseled interrogation on any subject before * * * . The proposed rule would, however, seriously impede effective law enforcement.[117]

Permissible Interrogation Techniques

Confession Voluntariness: Historical Context

Early abusive practices of extorting confessions from accused persons led to the development of certain precautionary rules regarding the admissibility of confessions.[118] The basic rules provided that before a confession could be used against an accused person, the confession must have been shown to represent a voluntary acknowledgement of guilt, or the confession must have been obtained under conditions or circumstances that could not reasonably be considered as rendering it untrustworthy. This rule became known as the "voluntary-trustworthy" test for confession admissibility, and prevailed in both federal and state courts until the Supreme Court set forth the restrictive *McNabb-Mallory* rule for federal cases, and modified the conventional test for admitting confessions in state cases.

The *McNabb-Mallory* rule, described previously, that prohibited unreasonable delay in presentment also provided that the confession resulting from interrogation must be voluntary. *McNabb-Mallory* remained effective until 1968, when Congress enacted 18 U.S.C. § 3501[119], in an effort to overturn *Miranda* and to end the application of *McNabb-Mallory* in federal courts. Section 3501 directed federal trial judges to admit statements of criminal defendants if they were made voluntarily, without regard to whether the defendant had received the *Miranda* warnings.[120] Subsections (a) and (b) of § 3501 were designed to effectively abolish *Miranda*. Subsection (a) provided that "[i]in any criminal prosecution brought by the United States ***, a confession *** shall be admissible in evidence if it is voluntarily given," while subsection (b) listed several considerations for courts to address in assessing voluntariness. Subsection (c), which focused on *McNabb-Mallory*, provided that a confession made by a defendant while under arrest "shall not be inadmissible solely because of delay in bringing such person before a magistrate judge *** if such confession is found by the trial judge to have been made voluntarily *** and if such confession was made within six hours" of arrest.[121] The statute extends the six hour time limit when further delay is "reasonable" considering the means of transportation and the distance to be traveled to the nearest available magistrate.[122]

Applying § 3501 in *United States v. Alvarez-Sanchez*, the Supreme Court held that a delay between a defendant's arrest on state narcotics charges and his presentment to a federal magistrate on subsequent federal charges did not require the suppression of the defendant's incriminating statement to federal agents made while the defendant was in custody on state charges.[123]

In 2000, however, in *Dickerson v. United States*,[124] the Supreme Court held that §3501 unconstitutionally attempted to overrule *Miranda*. The Court established *Miranda* firmly as a rule of constitutional law that could not be abrogated by statute. More recently, in *Corley v. United States*,[125] the Supreme Court affirmed the effectiveness of *McNabb-Mallory*, and reversed a conviction in a case where 29.5 hours passed between the time the suspect was arrested and interrogated, and the time he was presented by federal authorities to a magistrate. The Supreme Court held "[w]ithout *McNabb-Mallory*, federal agents would be free to question suspects for extended periods before bringing them out in the open," even though "custodial police interrogation, by its very nature, isolates and pressures the individual," inducing people to confess to crimes they never committed.[126]

Trustworthy and Coercion-Free

In the 1940s, courts defined "voluntary" as free of coercion, and considered the duration of the interrogation in making its determination. For example, in *Ashcraft v. Tennessee*,[127] the defendant was arrested for the murder of his wife and was interrogated intermittently for 36 hours before police obtained a confession. The Tennessee Supreme court affirmed Ashcraft's conviction. The U.S. Supreme Court reversed Ashcraft's conviction, finding that 36 hours of interrogation, during which time the defendant was held incommunicado and without sleep or rest, was "inherently coercive" and a violation of "due process," holding that in order for a confession to be admissible it must be both trustworthy and free of any "inherent coercion." Under such circumstances the confession was inadmissible, regardless of the effect of the police practices upon the particular defendant and regardless of the confession's trustworthiness.[128] Even a five-hour period of questioning, devoid of threats was held coercive and the resulting confession inadmissible. In *Haley v. Ohio*,[129] the Supreme Court reversed the conviction of a 15-year-old boy who had been questioned by several police officers for five hours, without the use of force, threats, or promises, "in relays of one or two each."[130] The Court found Haley's interrogation "inherently coercive," stating that in any case where the undisputed evidence "suggested" that coercion was used, the conviction would be reversed "even though without the confession there might have been sufficient evidence for submission to the jury." [emphasis added].[131]

However, in 1949, the Supreme Court redefined "voluntary," abandoning *Ashcraft's* "inherent coercion" test in favor of the original voluntary-trustworthy test of state court confession admissibility.[132] Within a couple of years, in the 1951–1952 cases of *Gallegos v. Nebraska*[133] and *Stroble v. California*,[134] the Court reverted to the voluntary-trustworthy test. In *Gallegos*, the Court held that "so far as due process affects admissions before trial. . . the accepted test is their voluntariness."[135] In both *Gallegos* and *Stroble* the Court refused

to categorically outlaw confessions obtained during a period of "unnecessary delay" in arraignment, holding that such delay was merely one factor among many to be considered in determining the voluntariness of a confession.[136]

Totality of the Circumstances

In 1957 the Court introduced the "totality of the circumstances" approach to evaluating the admissibility of confessions in *Fikes v. Alabama*.[137] The Court ruled inadmissible a confession made by an uneducated man, who had been questioned intermittently over a 10-day period of detention, during which time he had been isolated from other prisoners and denied visits from his father and a lawyer who had tried to see him. The Court held that the "totality of these circumstances" went beyond allowable limits.

In *Spano v. New York*,[138] the Supreme Court appeared to abandon the totality of the circumstances approach in favor of voluntariness or trustworthiness. The Court appeared ready to impose upon the states, as a due process requirement, the same kind of "civilized standards" rule it had imposed on lower federal courts and federal officers in *McNab*b and *Mallory*:

> The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent trustworthiness. It also turns on the deep rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.[139]

Then, in 1991, in *Arizona v. Fulminante*,[140] the Court held that a federal prisoner, set up by an FBI informant to obtain a confession in a crime unrelated to his confession was coerced into confessing. The informant offered Fulminante "protection" from other prisoners who allegedly suspected him of child murder. The Court concluded that Fulminante's confession was plainly motivated to confess by a fear of physical violence, absent protection from the informant, posing as his "friend."

In *Rogers v. Richmond*,[141] the Court expressed a clear "general test" for confession admissibility in state courts, holding that a confession's admissibility should be determined on the basis of "whether the behavior of the State's law enforcement officials was such as to overbear [the suspected person's] will to resist and bring about confessions not freely determined,"[142] and that this question was to be answered "with complete disregard of whether or not [the accused] in fact spoke the truth."[143]

The Supreme Court returned to a voluntariness test in *Culombe v. Connecticut*,[144] holding that "the ultimate test" of confession admissibility in the state courts "remains that which has been the only clearly established test in Anglo-American courts for two-hundred years: the test of voluntariness."[145]

The variations in the tests applied by the Supreme Court to determine whether a confession is voluntary reveals considerable uncertainty over the years regarding the precise test to be employed by state and federal district courts. Judging the voluntariness

of a confession in even the simplest of cases is tricky: "voluntary" does not equate with volunteered:

> Taken seriously [the standard we employ to judge the voluntariness of confessions] would require the exclusion of virtually all fruits of custodial interrogation, since few choices to confess can be thought truly 'free' when made by a person who is incarcerated and is being questioned by armed officers without the presence of counsel or anyone else to give him moral support. The formula is not taken seriously. . . . In any event, very few incriminating statements, custodial or otherwise, are held to be involuntary, though few are the product of a choice that the interrogators left completely free.[146]

Juvenile Interrogations and the Issue of Competency

Miranda applies to the interrogation of juvenile suspects, absent specific laws that specify different rights and procedures for juvenile offenders.[147] In determining whether a confession of a juvenile was voluntary, courts consider the totality of the circumstances including the respondent's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises.[148] In *J.D.B. v. North Carolina*, the Supreme Court ruled a child's age is instrumental to a *Miranda* custody analysis, as long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.[149] The Court noted that a child is likely to feel that questioning by the police is a threatening experience and therefore this may make the setting "custodial" for *Miranda* purposes, where it might not otherwise be "custody" for an adult. The police must gauge the child's condition in this regard; if in doubt, give the *Miranda* warnings.

Other courts have noted that the "inherent coercion" in the atmosphere of a police station may be a substantial factor with respect to the issue of voluntariness of the confession of a youthful suspect.[150] Considering the totality of the above factors, courts have upheld the murder confessions of a 15-year-old who had an I.Q. of 62 and a mental age of nine,[151] and of an 18-year-old, despite the interrogator's lies to the suspect regarding a positive identification and the existence of the suspect's fingerprints in the victim's purse.[152]

Juvenile suspects in custody may waive *Miranda* rights in the same manner as adult suspects. In *Fare v. Michael C.*,[153] police advised a 16-year-old defendant of his *Miranda* warnings and questioned him. Although the defendant asked to talk to his probation officer, he did not request an attorney. The Supreme Court held that the defendant's request for a probation officer was not the equivalent of a request for a lawyer and applying the totality of the circumstances, the defendant waived his right to request an attorney.[154]

In addition to its specific holding, *Michael C.* is of general value to police interrogators of youthful suspects. In its opinion, a majority of the Court made the following

comments, after stating that the "totality of circumstances" approach was the one to use in such cases:

> We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.[155]

A test comparable to the foregoing one was set forth by Massachusetts' highest court in a case involving the validity of a waiver by a 17-year-old. It stated that the issue was to be determined by "the totality of all the surroundings—both the characteristics of the accused and the details of the interrogation."[156] In other words, youthful age is but one factor to be considered.

Although most courts have declined to adopt a fixed rule that renders youthful suspects incapable of waiving *Miranda* rights,[157] some state courts apply the "concerned adult factor," or "interested adult rule," frequently found in state statutes, which provides that there can be no waiver by a youth under a certain age (16, 17, or 18) unless he has been afforded consultation with "an interested, informed, and independent adult,"[158] or, the presence of a parent, guardian or an attorney.[159]

In *People v. Bernasco* the Illinois Supreme Court found inadmissible the burglary confessions of a 17-year-old, ninth-grade drop out who had an I.Q. of 80.[160] The court concluded that the suspect was incapable, according to the testimony of a psychologist, of making a "knowing and intelligent" waiver of the *Miranda* warnings given to him by the police.

An Indiana court found that *Miranda* warnings were not required where a juvenile was detained at school by a police officer moonlighting as a security officer while dressed in his city police uniform and questioned about drug use in the presence of the school principal, even if the youth was ultimately charged, because the interrogation process was for "educational purposes," and a school environment is not coercive.[161]

Apart from statutory requirements prescribed in a few states, and except for particular rules established by a few state courts, such as the statutes and decisions discussed, the interrogation of juvenile suspects may be conducted in essentially the same way as for adults (See Chapter 13 for juvenile safeguards). For example, where a 12-year-old juvenile was read his *Miranda* warnings, had no difficulty understanding and communicating with police officers, and nothing in the record showed that the juvenile lacked the intelligence or capability to understand the right to remain silent, the court upheld his delinquency adjudication for committing burglary and theft.[162] The basic guideline in all cases is that interrogators should not do or say anything that is likely to make an innocent person confess.

Courts consider whether the suspect is capable of mature judgment in determining the voluntariness of the statement. In *Gallegos v. Colorado*,[163] the Supreme Court reversed

the murder conviction of a 14-year-old boy based on admission of a confession obtained while the boy was being questioned without a parent or guardian. According to the majority the defendant had "no way of knowing what the consequences of his confession were without advice regarding his constitutional rights from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself."[164] "Adult advice would have put him on a less unequal footing with his interrogators."[165] The Court set forth the general rule protecting persons of a young age from any interrogation conducted outside the presence of counsel or other "friendly adult advisor."[166]

The reduced competency or mental instability of the suspect may have an effect on the voluntariness of his confession. In *Smith v. Duckworth* the defendant had a consistent pattern of mental instability, being in and out of various institutions.[167] He was incarcerated for 30 days without being charged, and he had been housed with members of a gang he had implicated in his earlier statements. He was found incompetent to stand trial five weeks after his confession, and he spent six years in the custody of the Department of Mental Health. The U.S. Court of Appeals for the Seventh Circuit held that a finding of involuntariness cannot be predicated solely upon mental instability, yet a defendant's mental state is relevant to the extent it makes a suspect more susceptible to mentally coercive police tactics.

There have been numerous courts which have addressed the issue of competency in the last several years—here are a few of their decisions:

In the case of *State v. Kenney,*[168] the Superior Court of New Jersey, Appellate Division, upheld the trial court's opinion to admit the confession of the defendant who had an I.Q. of 65.[169]

In the case of *State v. Griffin,*[170] the Court of Criminal Appeals of Tennessee affirmed the trial court's decision to admit the defendant's confession. The Appeals court found that "The totality of the circumstances support that while the defendant was mildly mentally retarded, he had the ability to understand his Miranda rights as they were presented to him."

In the case of *People v. Harris,*[171] the court found that the defendant did make a knowing and intelligent waiver of her Miranda rights, even though she was diagnosed as schizoid paranoid affective schizophrenia.

In the case *State v. Moses,*[172] the court upheld the trial court's decision not to suppress the defendant's confession. Moses had argued that under the totality of the circumstances, the statement, taken from a learning-disabled student, unaccompanied by his parents, was improperly admitted into evidence.

It must be noted, however, that regardless of these court decisions, a high percentage of verified false confessions come from suspects with a diminished mental capacity, so that when questioning such an individual, extreme care should be exercised in the development of corroborating information (see Chapter 15).

In *People v. Moore* the police interviewed the defendant after finding his children injured in the snow.[173] The defendant first denied that he had any children. When detectives pointed to the photographs of the defendant's children on the walls, he changed his story, revealing that he and his wife, while high on cocaine, had thrown their children off the porch. He later confirmed only what he had originally told the detectives.

The Illinois Appellate Court found the confession voluntary, holding that a confession is not automatically inadmissible merely because the accused is under the influence of drugs when the confession is made. In this case there was testimony that the defendant was calm when making the confession. The court said it was "unlikely that a person whose will was overborne would be able to fabricate a story about his children and instantaneously change his story in response to a specific question in order to tailor his response to the evidence" about his children's photographs.

Generally, courts will hold that a defendant's waiver of rights is knowing if he understands that he can refuse to talk to the people asking him questions or stop the questioning once it begins; that the people asking him questions are not his friends but are police or law enforcement personnel who are trying to show he is guilty of a crime; that he can ask for and get a lawyer who will help him; and that he does not have to pay for that lawyer.[174] Only when the evidence shows that the defendant could not comprehend even the most basic concepts underlying the *Miranda* warnings do courts find an unintelligent waiver, for example, where a defendant has such a poor command of English that police might as well have been speaking gibberish.[175]

Promises of Leniency

Although the general rule is that a promise of leniency will nullify a confession, certain kinds of promises are permissible. An example of this is a promise to recommend to the judge a light bail bond or to report that the suspect cooperated in the investigation. In *United States v. Harris* the U.S. Court of Appeals for the Seventh Circuit ruled that "it is well settled that police may use small deceptions while interrogating witnesses."[176] The court continued, "Police are free to solicit confessions by offering to reduce the charges, so an offer of leniency was not coercion." *Nevertheless, a safe practice for interrogators to follow is to avoid making any promises other than the clearly innocuous ones.*

Expressions such as "It would be better to confess," not only have been the subject of allegations that they constitute threats, but they also have been challenged in a number of cases on the ground that they amounted to promises of *leniency* and therefore nullified the confessions that followed. As with threats, although to a lesser degree, a promise of leniency may have the effect of inducing an innocent person to confess. This is a risk, particularly in case situations where there is strong circumstantial evidence or perhaps even positive eyewitness identification pointing to the suspect as the offender. Under such circumstances, a promise of a lighter sentence than the one that seems probable may be an appealing alternative to the risk of incurring a much greater punishment.

The case law regarding confessions following expressions containing the word *better* has been divided on the issue of whether a promise of leniency is to be inferred. The majority of such decisions have declined to assume that the word itself necessarily implies leniency; there must be additional factors to support such a conclusion.[177]

The tone of the interrogator's voice and his behavior when uttering the word *better* can be meaningful to the suspect. For instance, if "better" is stated in a friendly tone, and perhaps even accompanied by a pat on the shoulder or some other comparable gesture, an inference of favorable disposition of the case on the part of prosecutor or judge is not an unreasonable one. The mere word itself, therefore, should not be the determining fact; all the surrounding circumstances are deserving of consideration. As one court stated, "even if a suspect . . . influenced perhaps by wishful thinking . . . assumed he would get more lenient treatment . . . [this] would not, as a matter of law, make the confession inadmissible. . . ." "It is not every inducement," added the court, "that vitiates a confession, but only such inducement as involves any fair risk of a false confession."[178]

To be contrasted with expressions containing the word better are exhortations "to tell the truth"[179]or advice to the suspect that he will "feel better" for doing so.[180] Both have been considered permissible because they have been determined to be free from the influence of stimulating false confessions.

At the same time, efforts to minimize the moral seriousness of the suspect's criminal behavior have been supported by the courts. In the case of *R. v. Amos*[181] the Ontario Superior Court, when discussing the interrogator's efforts to minimize the suspect's moral responsibility, stated the following:

> There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility. At no time did he suggest that a confession by the subject would result in reduced or minimal legal consequences. Those questions did not minimize the offence anywhere close to the extent of oppression within the meaning of [case law]. In using the words "this is your opportunity" to tell your story, and statements to the effect that "your credibility is at its highest now," and in asserting to the accused that he would not be as credible ten months down the road at trial when he had "spoken to lawyers", and the like, the detective was making an approach to the accused's intellect and conscience.

In *R. v. Oickle*,[182] the lower court suggested that the interrogator's understanding demeanor improperly abused the suspect's trust. The Canadian Supreme Court disagreed stating, "In essence, the court [of appeals] criticizes the police for questioning the respondent in such a gentle, reassuring manner that they gained his trust. This does not render a confession inadmissible. To hold otherwise would send the perverse message to police that they should engage in adversarial, aggressive questioning to ensure they never gain the suspect's trust, lest an ensuing confession be excluded."

Also discussed in the *Oickle* case was another technique that interrogators use to reduce perceived consequences of a crime. In *Oickle*, the Court of Appeals concluded that the police improperly offered leniency to the suspect by minimizing the seriousness of his offense. The Supreme Court again disagreed, taking the position that insofar as the police simply downplayed the moral culpability of the offense, their actions were not problematic.

Consistent with these Canadian court decisions, is the U.S. case of *State v. Parker*,[183] in which the court stated that

> Excessive friendliness on the part of an interrogator can be deceptive. In some instances, in combination with other tactics, it might create an atmosphere in which a suspect forgets that his questioner is in an adversarial role, and thereby prompt admissions that the suspect would ordinarily only make to a friend, not to the police. Miller v. Fenton, 796 F.2d at 604 (3d Cir.1986), cert. denied, 479 U.S. 989, 107 S.Ct. 585, 93 L.Ed.2d 587 (1986). Nevertheless, the "good guy" approach is recognized as a permissible interrogation tactic. Id. (holding confession admissible despite interrogating officer's "supportive, encouraging manner . . . aimed at winning [appellant's] trust and making him feel comfortable about confessing."). See also Beckwith v. United States, 425 U.S. 341, 343, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976) (interrogator had sympathetic attitude but confession voluntary); Frazier v. Cupp, 394 U.S. 731, 737-38, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (confession voluntary when petitioner began confessing after the officer "sympathetically suggested that the victim had started a fight.").

Telling the suspect the nature of the charge—capital murder—and that he can help himself by telling the truth does not render the confession inadmissible.[184]

In the case of *People v. Vance*,[185] the court found that the statement "we are here to listen and then to help you out," was not an implied promise of leniency.

In the case of *People v. Atencio*,[186] the court ruled that statements like "try to get something going"; I want to help you put your "best foot forward" did not constitute promises of leniency.

In *United States v. Dominguez-Gabriel*,[187] the United States District Court, S.D. New York rejected the claim that a coercive environment was created when the investigators mentioned the gravity of the offense and the possibility of a lengthy prison sentence and then told the suspect that if he cooperated he might benefit.

In *People v. Garcia*,[188] the court found that while the officers certainly urged appellant to tell the truth and represented to the defendant that it could be in his benefit to do so, these exhortations, however, were within the permissible bounds of telling him that it would be to his advantage to be truthful because the officers did not attach a promise of leniency with the exhortations.

An interrogator's statement that he will "go to bat" for the suspect may nullify a confession.[189] This also is true as to a specific statement that the interrogator will do

whatever can be done to persuade the proper authorities to grant immunity or a reduced sentence.[190]

In the case of *Redd v. State*,[191] the court rejected the defendant's claim that his "will was overborne by false promises and threats"—specifically claiming that the investigators told him that "(1) he would not get life in prison if he cooperated; (2) they were there to help him; and (3) they were the only ones who could help him." The Appeals court ruled that the "General statements by an officer that he is there to help defendant and is the only one who can help defendant do not indicate the "if-then" relationship required to establish a promise."

Mere advice by the police to a suspect is admissible. For example, if an officer points out that a suspect will benefit from being honest and truthful, a resulting confession has been upheld.[192] And certain promises to a suspect are also permissible. For example, a defendant's confession to third-degree sexual assault, made after submitting to a polygraph test, was deemed voluntary even though the police officers repeatedly told defendant before he took the test and before he confessed, that probation was a possible punishment.[193]

The courts have rather uniformly held that a confession's validity is not adversely affected by the interrogator's statement that a report will be made to the prosecutor or judge that the suspect did "cooperate." In a 1983 case the Supreme Judicial Court of Massachusetts approved the making of such a statement. "What is prohibited," said the court, "is not a statement about the value of cooperation, but a promise that cooperation . . . will aid the defense or result in a lesser sentence being imposed."[194]

Whenever an interrogator tells the suspect that the authorities will be advised of his cooperation, it is advisable to couple the statement with the comment: "I can't promise you anything, of course, but I will report that you did cooperate." At least one court attached a favorable significance to that added statement.[195]

During the course of an interrogation, a suspect may ask: "What will happen to me if I told you I did this?" or "What will happen if I told you the truth?" The advisable response, as suggested earlier in this text, is to say: "I can't tell you. It is not within my power to make any promise, and it wouldn't be fair for me to tell you anything as to what may happen to you. My advice to you is to tell the truth now, and if you think you have a break coming, you talk to the prosecutor or the judge."

If a suspect inquires: "What is the maximum penalty I could receive for this?" the interrogator may tell him if he knows for a fact what it is.[196] Even then, however, the safer practice is to advise the suspect to address his inquiry to the prosecuting attorney, because once such a question is asked, the suspect is beginning a confession anyway, and there is no reason to entangle the interrogation procedure in an unnecessary legal controversy at a later time.

One promise that is generally recognized as permissible is the promise of secrecy.[197] Here the fact that a suspect is interested in having an incriminating statement kept secret

is an added assurance of its truthfulness. The clearest example of a case situation when the secrecy promise is apt to occur is one where the suspect asks: "If I tell you about this, will you not tell my mother [or some other relative or friend]?" This is a promise that the interrogator can conscientiously make, for there obviously is no need to tell anyone other than the authorities about the matter until courtroom testimony is required.

If an interrogator promises a suspect that he will be released or receive a lenient sentence in exchange for a confession the confession will be nullified, despite its "voluntary" nature. Promises of leniency historically tend to provoke an innocent suspect to confess to a crime.

Threats

A basic fact that must be considered with respect to the legal requirement of confession voluntariness as a prerequisite to admissibility as evidence is the inevitability of some degree of perceived "coercion" in any police interrogation of a criminal suspect. As stated by the U.S. Supreme Court in the 1977 case of *Oregon v. Mathiason:* "Any interview of one suspected of crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of the law enforcement system which may ultimately cause the suspect to be charged with crime."[198]

There can be no legal test, therefore, that will provide complete freedom from a suspect's perceived coercion during the course of a police interrogation. That could only be achieved by an absolute prohibition upon all police interrogations—an unaffordable societal protection.

The clearest example of an interrogation practice that would void a confession is the infliction of physical force or pain upon the person under interrogation, because it is an uncontestable fact that harm of this nature may produce a confession of guilt from an innocent person. This is also true for indirect physical harm (for example, an unduly prolonged continuous interrogation, especially by two or more interrogators working in relays, or the deprivation of food, water, or access to toilet facilities for an unreasonable period of time).

A threat of physical harm may have a similar effect—the extraction of confessions from innocent persons. In the case of *State v. Evans,*[199] the Supreme Court of New Mexico discussed what constituted a threat, stating that:

> The critical difference in the case law between impermissibly coercive threats and threats which do not cross the line is in how credible and immediate the accused perceives the threat to be. Threats which the accused may perceive as real have been held to be impermissibly coercive. . . . On the other hand, threats that merely highlight potential real consequences, or are 'adjurations to tell the truth,' are not characterized as impermissibly coercive. (holding that police threat

> to the defendant that the court would 'hang [your] ass' if the defendant did not confess, a comment which was disputed by the State, did not render confession involuntary). It is not per se coercive for police to truthfully inform an accused about the potential consequences of his alleged actions.

In the case of *Smith v. State*[200] the court upheld the admissibility of the defendant's confession even though he was told by the interrogator that "I'll get you the death penalty or you can tell me the truth and help yourself."

In the case of *People v. Atencio*,[201] the court admitted the defendant's confession, rejecting the defendant's claim that he was threatened when the investigator told him that the only way he could help himself was to tell them what happened. In their opinion the court stated that "No constitutional principle forbids the suggestion by authorities that it is worse for a defendant to lie in light of overwhelming incriminating evidence."

On the other hand, in the case of *State v. Pies*,[202] the court found that the defendant's confession was actually the result of the "not-so-subtle threat of a long burglary sentence and by the promise of a potential lesser penalty upon confession." and therefore inadmissible.

In the case *Revis v. State*,[203] the court found that ". . . .any statements that the investigators made indicating that Revis was lying or accusing him of lying did not cross the boundaries of impropriety by becoming threats."

In *People v. Fuentes*,[204] a California appellate court invalidated a confession of a suspect where, after a long period of interrogation with several breaks, the interrogator obtained a confession after asking:

> Don't you care about your own freedom? What do you prefer? Spend the rest of your life in jail? Or spend five or six years in jail? What do you prefer? What is best? All of your life in jail? Or some years of your . . . life in jail?" Defendant responded, "I'm going to be sincere. I'm going to tell you.[205]

Deception

In order to ensure that interrogation is valid, and the resulting confession is admissible in court, police and other interrogators must engage in techniques that: (1) ensure that the opportunity to interrogate a suspect is lawfully obtained; (2) avoid force, threat of force, or promise of leniency; and (3) comply with the law. The courts recognize that deception is permissible in obtaining confessions[206] - the general rule in such cases is that courts will consider the totality of the circumstances in determining the voluntariness of a confession.[207] The totality of the circumstances determines whether "the conduct of law enforcement officials was such as to overbear petitioner's will to resist and to bring about a confession that was not the product of a rational intellect and a free will."[208]

In *Moran v. Burbine*,[209] the Supreme Court held that police failure to inform a suspect of an attorney's efforts to reach him, and misinforming counsel that the suspect would not be questioned, did not invalidate a suspect's waiver of the self-incrimination privilege or

his right to counsel or due process. Failure to inform a suspect that his attorney tried to reach him did not invalidate a waiver of the suspect's constitutional rights:

> Granting that the "deliberate or reckless" withholding of information is objectionable as a matter of ethics, such conduct is only relevant to the constitutional validity of a waiver if it deprives a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them. Because respondent's voluntary decision to speak was made with full awareness and comprehension of all the information *Miranda* requires the police to convey, the waivers were valid.[210]

In *Colorado v. Spring*,[211] a suspect agreed to waive his *Miranda* rights, believing that the interrogation would focus only upon a minor crime. After Spring incriminated himself, the police began asking him about an unrelated murder for which he was a suspect. The police did not inform Spring that they would question him about a murder investigation and Spring confessed to the murder ("[t]he agents asked if Spring had ever shot anyone else. Spring ducked his head and mumbled, 'I shot another guy once'"). The Supreme Court held that Spring's waiver was not nullified by the fact that he mistakenly believed that the interrogation would focus only on the minor crime; mere silence by police as to the subject of their interrogation did not negate a valid *Miranda* waiver.[212] The Court also made it clear in this case and in *Burbine* that the police are under *no obligation* to inform a suspect of things that would be in his best interest, other than the basic *Miranda* warnings.

In *Commonwealth v. DiGiambattista*[213] the interrogating officers deceptively suggested to the suspect that his presence at the scene of the fire had been captured on videotape, while at the same time expressing sympathy for his actions and suggesting counseling for his alcoholism. In his subsequent confession, DiGiambattista described how and where he started the fire, completely contradicting forensic evidence, and other details of his confession were ultimately shown to be impossible.[214]

Using the "totality of the circumstances" test the Massachusetts Supreme Court noted that misrepresenting evidence did not necessarily compel suppression, but the court expressed a preference for recorded interrogations, and held that in the absence of such recordings, the jury should be instructed to weigh evidence of the defendant's alleged statement cautiously. The court was most disturbed by the interrogators' apparent reference to "counseling," noting that the reference implicitly suggested to the defendant that counseling would be an appropriate avenue of pursuit following a confession: In other words, if he confessed he would get counseling instead of jail.[215]

Some state courts treat deception *intrinsic* to the facts of the offense as *one* of the circumstances to be considered in assessing voluntariness, but deception *extrinsic* to the offense, "which [is] of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt, will be regarded as coercive *per se*, thus obviating the need for a 'totality of circumstances' analysis of voluntariness." *State v. Kelekolio*.[216] There, the court illustrated examples of *acceptable*, intrinsic deception, including an untrue statement that a murder victim was still alive, and various

false testimonial evidence.[217] The Hawaii court's examples of *impermissible* extrinsic deception included promises of favorable treatment or the misrepresentation of legal principles. Other courts have reached the opposite conclusion, holding that extrinsic deception, such as promising not to prosecute another burglary, is acceptable.[218]

Some courts have also distinguished deceptive oral statements about physical evidence from fabricated physical evidence, deeming fabricated evidence unacceptable *per se*, as a violation of due process. For example, in *State v. Cayward*,[219] a sexual assault case, police fabricated scientific reports stating that semen in the victim's underwear came from the suspect, showed the suspect the reports in an interview and the suspect confessed. In affirming the trial court's suppression of the statement the court found "an intrinsic distinction between verbal assertions and manufactured documentation."[220]

The following are additional examples of court decisions that have addressed the issue of deception during interrogation and the boundaries that the interrogator must observe. In the case of *Mata v. Martel*,[221] the court upheld the confession which was the result of an interrogation in which the investigators "used two ruses." The investigator told the suspect that his saliva provided a DNA match with sperm found on the victim's underwear and that the victim's sister had seen him having sex with the victim. Similarly, the confession was upheld in the case of *People v. Garcia*[222] in which the officers falsely told the suspect that witnesses had identified him as walking up to the victim, shooting the victim, running toward a van driven by his brother, and leaving in that van. In fact, the eyewitnesses for the prosecution testified only that the person they saw running after the gunshots shared the same physical build as the suspect.

In discussing the issue of deception during the interrogation, in *People v. Rubio*[223] the court stated "Of the numerous varieties of police trickery * * *, a lie that relates to a suspect's connection to the crime is the least likely to render a confession involuntary. . . . Such misrepresentations, of course, may cause a suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because 'it can almost always be said that the interrogation caused the confession.'. . . .Thus, the issue is not causation, but the degree of improper coercion * * *. Inflating evidence of [the defendant's] guilt interfered little, if at all with his 'free and deliberate choice' of whether to confess. . . . , for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime. In other words, the deception did not interject the type of extrinsic considerations that would overcome [the defendant's] will by distorting an otherwise rational choice of whether to confess or remain silent."

In the case of *People v. Mays*,[224] the court found that a "mock polygraph test administered to defendant after he requested a lie detector test during detective's questioning, and fake test results, did not render involuntary defendant's incriminating statement, after he received the fake test results. . . ." In discussing the issue the court offered the following:

> As summarized in *People v. Chutan*: Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and

> violate the state or federal due process clause. Why? Because subterfuge is not necessarily coercive in nature. And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made. So long as a police officer's misrepresentations or omissions are not of a kind likely to produce a false confession, confessions prompted by deception are admissible in evidence. [Citations.] Police officers are thus at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion: [officer falsely told the suspect his accomplice had been captured and confessed]; [officer implied he could prove more than he actually could]; [officers repeatedly lied, insisting they had evidence linking the suspect to a homicide]; [wounded suspect told he might die before he reached the hospital, so he should talk while he still had the chance]; [police falsely told suspect a gun residue test produced a positive result]; [officer told suspect his fingerprints had been found on the getaway car, although no prints had been obtained]; and [suspect falsely told he had been identified by an eyewitness].

In *People v. Smith*,[225] the court held that it was not impermissibly coercive for a police officer to tell the defendant that a "Neutron Negligence Intelligence Test" (a sham) indicated he had recently fired a gun. Additionally, the sham did not elicit a full confession, but only incriminating statements.

In *People v. Farnam*,[226] the court held the defendant's confession to robbery and assault of hotel occupants was voluntary, despite the police having falsely informed the defendant that his fingerprints were found on the victim's wallet.

While the courts have consistently upheld the interrogator's use of deceptive evidence ploys, the interrogator should exercise great caution in utilizing them. In general courts recognize the practical necessity in allowing such tactics so long as they do not result in involuntary or false confessions. As noted earlier in this text, however, deceptive tactics should not ordinarily be used with individuals who have significant mental limitations or with young children.

There is also a very practical issue to consider in the use of deception during an interrogation. If, for example, the suspect is told that he was seen running out of the building just before the fire started, when in fact his partner went into the building and he stayed outside as a lookout, he will then know that the interrogator is lying to him and as a result, the investigator has lost all credibility with the suspect.

Readers are counseled to consult the law of their particular state or federal district courts to determine the particular rules used by the courts in their jurisdiction, which may be different from these cases.

References to Polygraph

Despite the general rule of inadmissibility of polygraph examination results at trial, if a suspect in custody agrees to submit to a polygraph examination and has waived *Miranda*

rights, incriminating statements made before, during, or after a polygraph are generally admissible as evidence.[227]

Admissibility of statements made during a polygraph examination, at trial, however, are subject to the condition that neither the pretest interview nor a post-test interrogation involved any force, threats, or promises of leniency. Defense counsel has the prerogative as to whether evidence of a polygraph test should be admitted for the purpose of showing that the polygraph experience was a coercive factor behind the confession.

Summary

This chapter provides a general legal background required to understand the history and current status of the law surrounding interrogation and the admissibility of confessions, as well as cases in the courts showing the general trend of the law. Over time, as indicated in the historical section, courts will interpret long-standing legal principles in a variety of ways, as the law is ever-changing. The authors recommend that investigators utilize this chapter to gain a basic understanding of the law, but always defer to your local courts, case law, state or federal statutes and rules, and agency legal advisors, if applicable.

Footnotes

[1]*Miranda v. Arizona*, 384 U.S. 532, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2]*Miranda* does not require a "talismanic incantation * * * to satisfy its strictures." *California v. Prysock*, 453 U.S. 355, 359-60, 101 S. Ct. 2806, 2809, 69 L. Ed. 2d 696 (1981); Lack of any express reference to the right to counsel *during* interrogation does not undermine the validity of a *Miranda* warning, but interrogators should follow warning cards when available. *United States v. Warren*, 10-1598, 2011 WL 1496986 (3d Cir. Apr. 21, 2011) (emphasis added).

[3]*Id.*, at 476, 86 S.Ct., at 1629 (emphasis added); see also *Duckworth v. Egan*, 492 U.S. 195, 198, 109 S.Ct. 2875, 2878, upholding the following advisory warning as consistent with the strictures of *Miranda*:

> "1. Before making this statement, I was advised that I have the right to remain silent and that anything I might say may or will be used against me in a court of law.
> 2. That I have the right to consult with an attorney of my own choice before saying anything, and that an attorney may be present while I am making any statement or throughout the course of any conversation with any police officer if I so choose.
> 3. That I can stop and request an attorney at any time during the course of the taking of any statement or during the course of any such conversation.
> 4. That in the course of any conversation I can refuse to answer any further questions and remain silent, thereby terminating the conversation.
> 5. That if I do not hire an attorney, one will be provided for me."

[4]*Florida v. Powell*, — U.S. —, 130 S.Ct. 1195 (2010).

[5]*Rhode Island v. Innis*, 446 U.S. 291 (1980).

[6]See, e.g., *People v. Savage*, 102 Ill. App. 2d 477, 242 N.E.2d 446 (1968)(A man voluntarily walked into County Sheriff's headquarters with his hands raised above his head, and stated, 'I done it;

I done it; arrest me; arrest me.' Asked by Deputy what he had done, the man replied, 'I killed my wife.' Deputy asked, 'What did you kill her with?' The man answered: 'With an axe, that's all I had.' Without further questioning, Deputy Sheriffs took the man to his home, conducted an on-the-scene investigation not involving interrogation and, upon entering, found the body of a woman on the living room floor, severely lacerated about the head and neck, and an axe lying near the body).

[7]See, e.g., *United States v. Hackley*, 636 F.2d 493 (D.C. Cir. 1980); *State v. Branch*, 298 N.W.2d 173 (S.D. 1980); *United States v. Downing*, 665 F.2d 404 (1st Cir. 1981).

[8]See *People v. Lowe*, 200 Colo. 470, 616 P.2d 118 (1980) ("know why" question constituted interrogation).

[9]See, e.g., *State v. Ladd*, 308 N.C. 272, 302 S.E.2d 164 (1983) (Defendant answered police officers' knock at the door, was informed that he was under arrest and asked, "What for?" Police responded, "You know why," and the defendant commented: "Yeah, just don't wake up my family. I don't want them to know."); *United States v. Guido*, 704 F.2d 675 (2d Cir. 1983) (suspect asked for and was given the details of the crime and confessed).

[10]430 U.S. 387 (1977).

[11]*Brewer*, 430 U.S. at 387.

[12]Williams' conviction was later sustained on the grounds that the child's body would have been found, even if he had not disclosed its location under the "inevitable discovery" doctrine.

[13]*Innis*, 446 U.S. 291 (1980).

[14]626 F.2d 1309 (5th Cir. 1980).

[15]*Harryman v. Estelle*, 616 F.2d 870 (5th Cir. 1980).

[16]*State v. Finehout*, 136 Ariz. 226, 228, 665 P.2d 570, 572 (1983); see also *United States v. Warren*, No. 10-1598, 2011 WL 1496986 .

[17]*People v. Johnson*, 671 P.2d 958 (Colo. 1983), 681 P.2d 524 (Colo. 1984).

[18]*State v. Grisby*, 97 Wash. 2d 493, 647 P.2d 6 (1982); *State v. McLean*, 242 S.E.2d 814 (N.C. 1978); *Vines v. State*, 285 Md. 369, 402 A.2d 900 (1979).

[19]*People v. Ferro*, 63 N.Y.2d 316, 472 N.E.2d 13 (1984), cert. denied, 105 S.Ct 2700 (1985); *In re Durand*, 206 Neb. 415, 293 N.W.2d 383 (1980).

[20]927 F.2d 1530 (11th Cir. 1991).

[21]*Gomez*, 927 F.2d at 1533.

[22]*Gomez*, 927 F.2d at 1539.

[23]496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.243 (1990).

[24]496 U.S. at 296, 110 S.Ct. at 2397.

[25]*Miranda*, 384 U.S. at 444.

[26]See, e.g., *Orozco v. Texas*, 394 U.S. 324 (1969) (custodial interrogation in suspect's bedroom); *Mayberry v. State*, 600 S.E.2d 703 (Ga.App. 2004) (statements made by a defendant while on police stretcher constituted custodial interrogation).

[27]*State v. Quick*, 334 S.W. 3d 603 (Mo. App. 2011) (child pornography suspect interviewed in his apartment not in custody when he made incriminating statements); *Morales v. United States*, 866 A.2d 67 (D.C. 2005) (defendant not in custody when police questioned her at her home); *Pennsylvania v. Bruder*, 488 U.S. 9, 11, n.2, 109 S.Ct. 205, 207, n.2, 102 L.Ed.2d 172 (1988); *United States v. Teemer*, 394 F.3d 59 (1st Cir. 2005) (car passenger not in custody after being asked by the police to exit the car prior to his formal arrest); *State v. Guzman-Gomez*, 690 N.W.2d 804 (Neb. App. 2005) (defendant not in custody when he made statements to a police officer at a hospital).

[28]*Oregon v. Mathiason*, 429 U.S. 492 (1977) (burglary suspect voluntarily met officer at police station, was advised that he was not under arrest and gave inculpatory statement in unlocked facility

office); *California v. Beheler*, 463 U.S. 1121 (1983) (murder suspect voluntarily agreed to accompany officers to station house, made a brief statement, was permitted to leave and was arrested five days later); *State v. Edwards*, 299 Conn. 419, 11 A.3d 116 (2011) (murder suspect voluntarily agreed to accompany police to station was told by police that he was free to leave anytime, and stated that he "played rough" with 10-month old child victim).

[29]See, *e.g.*, *Minnesota v. Murphy*, 465 U.S. 420, 431, 104 S.Ct. 1136, 1144, 79 L.Ed.2d 409 (1984) ("The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings, and the probation officer's knowledge and intent have no bearing on the outcome of this case"); *Beckwith v. United States*, 425 U.S. 341 (1976) (Internal Revenue Agents not required to give *Miranda* warnings to taxpayer suspected of filing false return when questioned in his home and office). In *Stansbury v. California*, 511 U.S. 318, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994) the U.S. Supreme Court held, in a per curiam opinion, that the subjective but un-communicated opinions of the police officer regarding the defendant's custodial status are irrelevant to the issue of custodial interrogation

[30]States are permitted to impose greater restrictions on police activity than those necessary under the federal constitution, but may not impose such greater restrictions as a matter of federal constitutional law when the Supreme Court specifically refrains from imposing them. *Oregon v. Hass,* 420 U.S. 714, 719 (1975) (Upholding admission of suspect's incriminating statements obtained by police *after* defendant indicated desire to call attorney solely for impeachment purposes, notwithstanding Oregon's constitutional provision against compulsory self-incrimination in any criminal prosecution).

[31]*Chavez v. Martinez*, 538 U.S. 760, 123 S.Ct. 1994 (2003).

[32]The following quotations from the Supreme Court's opinion in *Miranda*, 384 U.S. at 478, are particularly relevant:

> To summarize, we hold that when an individual is *taken* into custody or otherwise deprived of his freedom . . . in any significant way *and* is subjected to questioning, the privilege against self-incrimination is jeopardized [emphasis added by authors]. In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily *without any compelling influences* is of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today. [Emphasis added.]

[33]*Edwards v. Arizona,* 451 U.S. 477, 479, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378 (1981).

[34]*Patterson v. Illinois*, 487 U.S. 285, 291, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988)

[35]*Michigan v. Harvey*, 494 U.S. 344, 350, 110 S.Ct. 1176, 108 L.Ed.2d 293 (1990).

[36]—U.S. —, 130 S.Ct. 1213 (2010).

[37]*Shatzer*, 130 S.Ct. at 1223. "Shatzer's release back into the general prison population constitutes a break in *Miranda* custody. Lawful imprisonment imposed upon conviction does not create the coercive pressures produced by investigative custody that justify *Edwards*. When previously incarcerated suspects are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they

had over their lives before the attempted interrogation. Their continued detention is relatively disconnected from their prior unwillingness to cooperate in an investigation. The 'inherently compelling pressures' of custodial interrogation ended when Shatzer returned to his normal life." *Shatzer,* 130 S.Ct at 1224-1225.

[38]963 F.2d 1220 (9th Cir. 1992).

[39]See, for example, *United States v. Lame*, 716 F.2d 515 (8th Cir. 1983) (the latter statement was not a request for a lawyer, but rather a waiver).

[40]512 U.S. 452 (1994).

[41]*Cornelison v. Motley*, 2010 WL 5321951 (6th Cir. 2010).

[42]*Blakeney v. State*, 29 So.3rd 46 (Miss.App 2009).

[43]*Scott v. Epps, et al.*, (U.S. N.D. Miss.2008).

[44]*Carr v. State*, 934 N.E.2d 1096 (Ind. 2010).

[45]A case illustrative of the need for clarification of an equivocal statement is *Tompson v. Wainwright*, 601 F.2d 768 (5th Cir. 1979). Also see *State v. Moulds*, 105 Idaho 880, 673, P.2d 1074 (1983).

[46]*State v. Alston*, 204 N.J. 614, 10 A.3d 880 (2011).

[47]Id. at 887.

[48]501 U.S.171,111 S.Ct. 2204 (1991).

[49]*Murphy v. State*, 941 N.E.2d 568 (Ind. 2011) (Unpublished, noncitable).

[50]*State v. Stoddard*, 206 Conn. 157, 163, 537 A.2d 446 (1988); *State v. Mitchell*, UWYCR08374011, 2011 WL 726113 (Conn. Super. Ct. Feb. 3, 2011) (unpublished opinion).

[51]*Miranda* 384 U.S. at 476.

[52]Id. at 444.

[53]*Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

[54]Defendant, who had initially asserted his *Miranda* rights and then reinitiated contact with police, knowingly and intelligently waived his rights. *People v. Rivera*, 947 N.E.2d 819 (Ill. App. Ct. 2011), rehearing denied (Apr. 25, 2011).

[55]542 U.S. 600, 124 S.Ct. 2601 (2004).

[56]The Court noted that the technique of interrogating in successive, unwarned and warned phases and drawing out a confession was consistent with a national police training organization's teachings:

> [t]he Police Law Institute, for example, instructs that "officers may conduct a two-stage interrogation. . . . At any point during the pre-Miranda interrogation, usually after arrestees have confessed, officers may then read the Miranda warnings and ask for a waiver. If the arrestees waive their Miranda rights, officers will be able to repeat any subsequent incriminating statements later in court." Police Law Institute, Illinois Police Law Manual 83 (Jan. 2001-Dec. 2003) * * * The upshot of all this advice is a question-first practice of some popularity, as one can see from the reported cases describing its use, sometimes in obedience to departmental policy.

In a series of detailed foot notes the Court explained that the trend in police training at that time regarding the questioning of suspects, including references to prior editions of this book, never endorsed the type of 2-step interrogation process promoted by the Police Law Institute as cited by the Court. See, *Siebert*, 468 U.S. at 610-11, notes 2, 3.

[57]470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985).

[58]*Siebert*, quoting *Berkemer v. McCarty*, 468 U.S. 420, 433, n. 20, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

[59]*North Carolina v. Butler*, 441 U.S. 369 (1979). See also *State v. Murphy*, 91 Ohio St. 3d. 516, 747 N.E. 2d 765 (Ohio 2001) (where police advised suspect of *Miranda* and suspect acknowledged rights

and spoke freely with officer despite no formal waiver of the rights, suspect implicitly waived his rights).

[60]441 U.S. 369 (1979). See also, *State v. Clark*, 592 S.W.2d 709 (Mo. 1979) (defendant waived right to silence by freely talking and answering questions); *State v. Shifflett*, 508 A.2d 748 (Conn. 1986) (refusal to sign a written waiver outweighed by affirmative conduct indicative of a knowingly and intelligently made decision not to remain silent).

[61]492 U.S. 195 (1989).

[62]In 1987 the Supreme Court decided *Colorado v. Spring*, 479 U.S. 564 (1987) in which a suspect agreed to waive his Miranda rights, believing that the interrogation would focus only upon a minor crime. After he incriminated himself as to this minor crime, the police switched to asking him about a murder he was suspected of committing. Police had not told the defendant that the murder charges would be part of the interrogation. The defendant later confessed to the murder. The Court held that the defendant's waiver was not nullified by the fact that he mistakenly believed that the interrogation would focus only on the federal arms charges. The Court simply refused "to require that the police supply a suspect with a flow of information to help him calibrate his self interest in deciding whether to speak." The Court found that standard warnings in all cases preserve the ease and clarity of applying Miranda.

[63]In one "nod of the head" case, the Colorado Supreme Court stated: "In law, as in life generally, there are cases where actions speak louder than words, and this, in our opinion, is such a case." *People v. Ferran*, 196 Colo. 513, 591 P.2d 1013 (1978). Also see *Bliss v. United States*, 445 A.2d 625 (D.C. App. 1982). In *People v. Williams*, 464 N.E.2d 1176 (Ill. App. 1984), the warnings were issued to a group of four suspects. The nods of their heads were considered adequate waivers.

[64]"Investigating officers are not required to convince a defendant that he needs an attorney." *Delap v. State*, 440 So.2d 1242, at 1248 (Fla. 1983), cert. denied, 104 S.Ct. 3554. In a federal case, *United States v. Duke*, 409 F.2d 669, 670-671 (4th Cir. 1969), the court said: "*Miranda* does not require law enforcement officials to insist upon or to suggest the refusal of cooperation. As long as the suspect is clearly told and clearly understands that he need not talk, that he may consult a lawyer, before deciding whether or not to talk, and that he may have one present when he talks, if he decides to talk, all of the requirements of *Miranda* are met."

[65]See, for example, the following cases: *Kennedy v. Fairman*, 618 F.2d 12 1/2 (7th Cir. 1980); *United States v. Charlton*, 565 F.2d 86 (6th Cir. 1977); *State v. Weinacht*, 203 Nebr. 124, 277 S.W.2d 567 (1979).

[66]130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010) rehearing denied, 08-1470, 2010 WL 2889133 (U.S. July 26, 2010).

[67]Thompkins was "[l]argely" silent during the interrogation, which lasted about three hours, although Thompkins did give a few limited verbal responses, however, such as "yeah," "no," or "I don't know," and on occasion he communicated by nodding his head. *Thompkins*, 130 S.Ct. at 2256-57.

[68]130 S.Ct. at 2260.

[69]Id., at 2260.

[70]*Miranda*, 384 U.S. at 444.

[71]442 U.S. 200, 99 S.Ct. 2288 (1979).

[72]442 U.S. at 203, 99 S.Ct at 2251, 60 L.Ed. 2d at 824.

[73]Id.

[74]442 U.S. at 202-03, 99 S. Ct. at 2251-52, 60 L. Ed. 2d 824 (1979).

[75]*Dunaway*, 442 U.S. at 216.

[76]See *County of Riverside v. McLaughlin*, 500 U.S. 44, 61-62, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991).

[77]Id., at 60-61, 111 S.Ct. 1661; *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 (1943).

[78]318 U.S., at 342, 63 S.Ct. 608 (citing, *inter alia*, 18 U.S.C. § 595 (1940 ed.)).

[79]318 U.S., at 334-338, 344-345, 63 S.Ct. 608.

[80]See *Mallory v. United States*, 354 U.S.449,452, 77 S.Ct. 1356 (1957) (describing Rule 5(a) as "a compendious restatement, without substantive change, of several prior specific federal statutory provisions").

[81]Fed. Rule Crim. Proc. 5(a) (1946).

[82]Fed. Rule Crim. Proc. 5(a)(1)(A) (2007).

[83]335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 100 (1948).

[84]Id., at 412, 69 S.Ct. 170 (quoting *McNabb* at 344, 63 S.Ct. 608).

[85]335 U.S., at 413, 69 S.Ct. 170.

[86]354 U.S., at 455, 77 S.Ct. 1356.

[87]Id., at 455-456, 77 S.Ct. 1356; see also *McLaughlin*, 500 U.S., at 61, 111 S.Ct. 1661 (Scalia, J., dissenting) ("It was clear" at common law "that the only element bearing upon the reasonableness of delay was not such circumstances as the pressing need to conduct further investigation, but the arresting officer's ability, once the prisoner had been secured, to reach a magistrate"); *Upshaw*, 335 U.S. at 414, 69 S.Ct. 170.

[88]*United States v. Alvarez-Sanchez*, 511 U.S. 350, 354, 114 S.Ct. 1599, 128 L.Ed.2d 319 (1994).

[89]_US_, 129 S. Ct. 1558 (2009).

[90]Louisiana has a constitutional provision (Article I, Section 13) requiring the issuance of the warnings at the time of arrest.

[91]*Miranda* warnings not required at a traffic stop, where officers asked general questions and squad cars' flashing lights were necessary to insure safety of persons and vehicles stopped on and traveling on the road at 2 a.m. *People v. Havlin*, 947 N.E.2d 893 (Ill. App. 2011). See also, *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 (1984).

[92]See, *i.e., Jenkins v. Anderson*, 447 U.S. 231, 100 S.Ct 2124, 65 L.Ed.2d 86 (1980) (defendant's prearrest silence proper to impeach his credibility as a witness at trial). See also, *Doyle v. Ohio*, 426 U.S. 610,96 S. Ct. 2240 (1976).

[93]525 F.Supp. 1342 (D.C. 1981), aff'd 672 F.2d 115 (1982).

[94]*Hinckley*, 525 F.Supp at 1352.

[95]*Hinckley*, 525 F.Supp at 1354.

[96]121 Ill. App. 3d 874, 460 N.E.2d 378 (1984).

[97]Id., at 880. "If our constitutional rights and guarantees are to be in fact enjoyed equally by all our citizens, we, as judges, must ensure that those suspected of crimes do not relinquish their constitutional rights and guarantees solely because they become matched up against a more sophisticated but uncaring law enforcement officer, or an overzealous assistant State's Attorney who may be bent on obtaining a conviction without regard to the suspect's constitutional rights and guarantees."

[98]The passage of six hours after warnings did not require fresh warnings before defendant's confession, even where the defendant was confronted with his initial false statement before confessing. See, *e.g.*, *Commonwealth v. Martinez*, 458 Mass. 684, 940 N.E.2d 422 (2011).

[99]*Berghuis v. Thompkins*, _U.S._130 S. Ct. 2250, 176 L. Ed. 2d 1098, rehearing denied, 131 S. Ct. 33, 177 L. Ed. 2d 1123 (2010).

[100]467 U.S. 649, 104 S. Ct. 2626 (1984).

[101]*United States v. Mobley*, 40 F.3d 688 (4th Cir. 1994) cert denied, 131 L Ed 2d 1005, 115 S Ct 2005.

[102]*Lamb v. State*, 251 P.3d 700 (Nev. 2011).
[103]Id., citing *United States v. Estrada*, 430 F.3d 606, 612 (2d Cir. 2005) (quoting United *States v. Newton*, 369 F.3d 659, 677 (2d Cir.2004), and *Quarles*, 467 U.S. at 658–59 & n. 8, 104 S.Ct. 2626).
[104]*Quarles*, 467 U.S. at 658–59.
[105]*People v. Manning*, 672 P.2d 499 (Colo. 1983).
[106]*State v. Roadenbaugh*, 234 Kans. 474, 673 P.2d 1166 (1983); *State v. Hein*, 138 Ariz. 360, 674 P.2d 1358 (1983).
[107]H.Res. 1413, 111th Cong. (May 27, 2010). While the legislation has not been enacted, the Federal Bureau of Investigation instructs agents to interrogate suspected "operational terrorists" about immediate threats to public safety without advising them of their *Miranda* rights, justified by the "magnitude and complexity", of the terrorist threat. *The New York Times*, "Delayed *Miranda* Warning Ordered for Terror Suspects," March 25, 2011, p. A16.
[108]*People v. Deborah C.*, 30 Cal.3d 125 ,177 Cal. Rptr 852, 635 P.2d 446 (1981); *see also*, *People v. Ray*, 65 N.Y.2d.282, 480 N.E.2d 1065 (1985).
[109]Id.; see also *Pratt v. State*, 9 Md. App. 220, 263 A.2d 247 (1970).
[110]465 U.S. 420 (1984).
[111]Id. See also, *People v. Racklin*, 195 Cal. App. 4th 871 (Cal. App. 1st Dist. 2011) (*Miranda* not applicable in probation revocation hearings).
[112]470 U.S. 298, 105 S.Ct 1285 (1985).
[113]*Elstad*, 470 U.S. at 314; See also *Siebert*, *supra*, p. 405.
[114]*McNeil v. Wisconsin*, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991); *Flamer v. Delaware*, 68 F.3d 710 (3d Cir.1995).
[115]*McNeil*, 501 U.S. at 178.
[116]501 U.S. 171, 111 S.Ct. 2204 (1991).
[117]*McNeil*, 501 U.S. at 180.
[118]J. H. Wigmore, *Evidence in Trials at Common Law*, 3d Ed. (Boston: Little, Brown, 1940), Section 822, 865, 2266.
[119]Omnibus Crime Control and Safe Streets Act of 1968, Title II § 701 (a), 82 Stat. 210.
[120]As an act of Congress, § 3501 applied only to federal criminal proceedings and criminal proceedings in the District of Columbia.
[121]§3501 (c).
[122]Id.
[123]511 U.S. 350, 114 S.Ct. 1599 (1994).
[124]530 U.S. 428 (2000).
[125] — U.S. —, 129 S.Ct. 1558 (2009).
[126]*Dickerson*, 530 U.S. at 435, 120 S.Ct. 2326, 147 L.Ed.2d 405.
[127]322 U.S. 143 , 64 S.Ct. 921 (1944).
[128]*Ashcraft*, 322 U.S. at 154.
[129]332 U.S. 596, 68 S.Ct. 302 (1948).
[130]*Haley*, 332 U.S. at 598.
[131]Id., at 599.
[132]*Watts v. Indiana*, 338 U.S. 49 (1949); *Turner v. Pennsylvania*, 338 U.S. 62 (1949); and *Harris v. South Carolina*, 338 U.S. 68 (1949).
[133]342 U.S. 55 (1951).
[134]343 U.S. 181 (1952).
[135]Gallegos, 342 U.S. at 65.
[136]Id., 342 U.S. 55; 343 U.S. 181.

[137]352 U.S. 191 (1957).
[138]360 U.S. 315 (1959).
[139]Id. at 320-21.
[140]*Arizona v. Fulminante*, 499 U.S. 279 (1991).
[141]365 U.S. 534 (1961).
[142]Id.
[143]Id. at 544.
[144]367 U.S. 534 (1961).
[145]Id.
[146]*United States v. Rutledge*, 900 F.2d 1127, 1129 (7th Cir. 1990).
[147]The Federal Juvenile Delinquency Act (18 U.S.C.A. §§ 5031-5042) provides a variety of exceptions related to the treatment of juveniles in the federal criminal justice system.
[148]See, e.g., *People v. Gilliam*, 172 Ill.2d 484, 500, 218 Ill.Dec. 884, 670 N.E.2d 606 (1996).
[149]*J.D.B. v. N. Carolina*, ___ U.S. ___, No. 09-11121, 2011 WL 2369508 (June 16, 2011).
[150]See, e.g., *State ex rel. J.E.T.*, 2009-67 La. App. 3 Cir. 5/6/09, 10 So. 3d 1264 writ denied, 2009-1245 La. 7/1/09, 11 So. 3d 498. (Juvenile's purported confession to aggravated incest was not made knowingly and voluntarily where juvenile turned 11 years old one week prior to confession and was about to finish fourth grade, he did not have interested adult present with him, nor did interested adult explain rights to him before he waived his rights and admitted to offense; adults with whom juvenile's welfare rested had conflict of interest between protecting his rights and protecting victim; stepfather's interest in juvenile's welfare was highly questionable, as he was biological father of victim; record did not show that adults attempted to protect juvenile's rights; and evidence showed highly questionable behavior by detectives to influence juvenile to confess).
[151]*Vance v. Bordenkircher*, 692 F.2d 978 (4th Cir. 1982), *cert denied,* 464 U.S. 833 (1983).
[152]In re D.A.S., 391 A.2d 255 (D.C. Ct. App. 1978).
[153]442 U.S. 707 (1979).
[154]Id., at 727-28.
[155]442 U.S. 707 at 725.
[156]*Commonwealth v. Williams*, 388 Mass. 846, 448 N.E.2d 1114 (1983). Also see *In Re M.A.C.*, 761 A2d 32 (D.C. 2000) (Low IQ of 64, standing alone, does not render confession of 15-year-old suspect inadmissible).
[157]*Quick v. State*, 599 P.2d 712 (Alaska 1979); *State v. Hunt*, 607 P.2d 297 (Utah, 1980); *Dutil v. State*, 93 Wash.2d 84, 606 P.2d 269 (1980).
[158]*In re G.O.*, 191 Ill. 2d 37 (2000), *In re Marvin M.*, 383 Ill. App. 3d 693, 890 N.E.2d 984 (2008); *Lewis v. State*, 259 Ind. 431, 288 N.E.2d 138 (1972); See also *Massey v. Indiana,* 267 Ind. 504, 371 N.E.2d 703 (1978) (no parent or guardian required where defendant, 17 years old when he committed armed robbery, passed 18th birthday before making incriminating statement to probation officer); *Cf. Commonwealth v. Williams*, 470 A.2d 1376 (Pa. 1984)(totality of circumstances test governs validity of a juvenile's waiver and the voluntariness of his confession).
[159]See, e.g., *In re Jerrell C.J.*, 283 Wis. 2d 145, 699 N.W.2d 110 (2005) (failure to call 15-year old juvenile's parents deprived juvenile of opportunity to receive advice and counsel); *People v.* Westmorland, 372 Ill. App. 3d 868, 866 N.E.2d 608 (2007) (suppressing confession of 17-year old for failure to contact juvenile's parents); *People v. Saiz*, 620 P.2d 15 (1980) (murder conviction of a 16-year-old reversed because confession obtained when parents not present).
[160]562 N.E.2d 958 (1990).
[161]*State v. C.D.*, No. 55A01-1007-JV-342, 2011 WL 1640164 (Ind. App. 2011).
[162]*State v. F.G.H.*, 152 Wash. App. 1058 (Wash. Ct. App. 2009).

[163]370 U.S. 49 (1962).

[164]Id. at 54.

[165]Id. This language by the Court led to the adoption by some states of the "adult advisor- parent" statutes in connection with juveniles, as previously referenced.

[166]Id.

[167]910 F.2d 1492 (7th Cir. 1990).

[168]2009 WL 196196 (N.J.Super.A.D. 2009).

[169]Also see, e.g., *Sweet v. State,* 210 Ark 20 (2011) (spontaneous confession of mildly-retarded suspect accused of robbery and false imprisonment upheld where suspect understood rights and was not coerced by police); *United States v. Vinton*, 631 F.3d 476 (8th Cir. 2011) (confession of suspect with "borderline I.Q, and history of drug abuse, who could not read or write was voluntary; suspect had interacted with police on prior occasions and was familiar with police procedures.); *Collins v. Gaetz* 612 F.3d 574 (7th Cir. 2010) (confession of defendant with an IQ of 63 and organic brain damage from an aneurysm was upheld). On appeal, the Seventh Circuit affirmed the conviction, finding that Collins understood enough of the police and prosecutor's warnings to satisfy *Miranda's* requirements:

> "*Miranda* warnings represent a balance between the desire to obtain truthful confessions and the desire to protect some of our most fundamental rights. To strike this balance effectively, we do not require that a criminal suspect understand every consequence of waiving his rights or make the decision that is in his best interest."

[170]2009 WL 4642604 (Tenn.Crim.App. 2009).

[171]2010 WL 2625767 (Cal.App. 1 Dist. 2010).

[172]702 S.E.2d 395 (S.C. App. 2010).

[173]567 N.E.2d 466 (1st Dist. 1990).

[174]See, e.g., *Smith v. Mullin*, 379 F.3d 919, 933-34 (10th Cir.2004) (mentally disabled defendant gave intelligent waiver where he understood "the role of police officers and the concept of a criminal charge," "comprehended the questions the officers presented," and had been arrested and served time in prison before); *Henderson v. DeTella*, 97 F.3d 942, 948-49 (7th Cir.1996) (waiver was intelligent where defendant had below-average IQ but understood the nature of the charges, initially declined to speak, and had been prosecuted as a juvenile); *United States v. Frank*, 956 F.2d 872, 877-78 (9th Cir.1991) (no clear error in admitting statement where a Navajo man who knew nothing about the American legal system understood that he could remain silent, that a defense lawyer is "someone who helps you," and that a prosecutor "does not help you").

[175]See, e.g., *United States v. Alarcon*, 95 Fed.Appx. 954, 955-57 (10th Cir.2004) (defendant understood only "bits and pieces" of English and often pretended to understand English out of embarrassment and a desire to cooperate); *United States v. Garibay*, 143 F.3d 534, 537-38 (9th Cir.1998) (no evidence that defendant spoke enough English to understand warnings, and several witnesses testified that he spoke only a few words of English).

[176]914 F.2d 927 (7th Cir. 1990).

[177]Examples of leniency inferred: *State v. Linn.*, 179 Ore. 499, 173 P.2d 305 (1946); *Kier v. State*, 213 Md. 556, 132 A.2d 494 (1957). Examples of no inference of leniency: *People v. Klyaczek*, 305 Ill. 150, 138 N.E. 275 (1923); *People v. McGuire*, 39 Ill.2d 244, 234 N.E.2d 772 (1968); *Frazier v. State*, 107 So.2d 16 (Fla. 1958).

[178]*State v. Nunn*, 212 Ore. 546, 321 P.2d 356 (1958).

[179] *People v. Hill*, 58 Cal. Rptr. 340, 426 P.2d 908 (1967). The innocuous nature of the exhortation will be dissipated, however, by the addition of comments that the suspect (in a murder case) could get the police "working for him" and he would also "get the people on his side."

[180]*People v. Jackson*, 168 Cal.Rptr.603,618 P2d. 149 (1980).
[181]*R. v. Amos* (2009) CanLII 63592 (ON S.C.).
[182]*R. v. Oickle* (2000), 2 S.C.R. 3 (S.C.C.).
[183]2008 WL5381510 (S.C.App).
[184]*Smith v. State* (2010) WL 3787576 (Tex.Crim.App.).
[185]188 Cal.App.4th 1182, 116 Cal.Rptr.3d 98 (Cal. App. 2010).
[186]2010 WL 1820185 (Cal.App. 3 Dist.) Not Officially Published.
[187]2010 WL 1915044 (S.D.N.Y.).
[188]2009 WL 2450673 (Cal.App. 2 Dist.) Not Officially Published.
[189]*Hillard v. State*, 406 A.2d 415 (Md.Ct.App. 1979). See also *State v. Tardiff*, 374 A.2d 598 (Me. 1977), in which exhortations to tell the truth were considered proper, but not a promise that if the suspect told the truth the number of charged offenses would be reduced.
[190]*People v. Martorano*, 359 Ill. 258, 194 N.E. 505 (1935). In fact, an intimation of such assistance will also nullify a resulting confession. See *Edwards v. State*, 194 Md. 387, 72 A.2d 487 (1950), where the interrogator showed the accused a letter from a convict that stated: "Next time you get a smart guy . . . show him this letter, from another wise guy, and don't forget to tell him what it cost me for not listening to you."

The Arkansas Supreme Court adopted a strict rule regarding promises of the type under discussion. In *Tatum v. State*, 585 S.W.2d 957 (Ark. 1979), an interrogator's statement that he would "do all he could to help" nullified the confession and resulted in an aggravated robbery conviction reversal, even though, said the court, there was sufficient evidence to otherwise sustain the conviction. In *Freeman v. State*, 527 S.W.2d 909 (Ark. 1975), the court stated that "the burden is upon the state to show the statement [of the accused murderer] to have been voluntarily, freely, and understandably made, without hope of reward or fear of punishment."
[191]2009 WL 4810190 (Tex.App.-Hous.2009).
[192]*People v. Spencer*, G042637, 2011 WL 683879 (Cal. Ct. App. Feb. 28, 2011) (unreported and not for publication); See also *Dunson v. State*, A11A0158, 2011 WL 1678400 (Ga. Ct. App. May 5, 2011) (offer to obtain counseling involved a collateral benefit, a promise that does not impact a statement's admissibility); *State v. Featherhat*, 2011 UT App. 154 (May 12, 2011) (suspect's assertion that he understood rights, detective's reminders that statements would be shared with the judge and prosecutor, suspect's silence in response to certain questions indicating awareness that he need not speak and that doing so might not be in his best interest, supported finding that his *Miranda* waiver was voluntary); *Smith v. State*, 281 Ga.App. 91, 94(3), 635 S.E.2d 385 (2006); OCGA § 24-3-51 ("The fact that a confession has been made under . . . a promise of collateral benefit shall not exclude it.")
[193]*United States v. Mashburn*, 406 F.3d 303 (4th Cir. 2005) (officer's statement "you can help yourself by acceptance of responsibility and giving substantial assistances," not a promise of leniency). See also, *People v. Ramos*, 18 Cal.Rptr.3d 167 (Cal.App. 2004) (advising defendant that his cooperation in the investigation would benefit defendant during the judicial process not improper); *Getkate v. State*, 604 S.E.2d 611 (Ga.App. 2004) (statements by police detectives during an interview that they wanted to know the truth and that, if in fact all of defendant's acts with a minor victim were consensual, that was what they wanted to hear, did not constitute a "hope of benefit").
[194]*Commonwealth v. Williams*, 388 Mass. 846, 448 N.E.2d 1114 (1983). The court referred to an earlier Massachusetts case in which the statement was made that the interrogator may state in general terms that "cooperation has been considered favorably by the courts in the past." Also see, with respect to approval of a report of cooperation: *People v. Eckles*, 470 N.E.2d 623 (Ill. App. 1984), citing *People v. Hubbard*, 55 Ill.2d 142, 302 N.E.2d 603 (1973); *State v. Finehout*, 136 Ariz. 226, 665 P.2d 570 (1983). Telling an 18-year-old who was beyond the state's statutory age for juveniles

that he might receive juvenile court treatment, or that the murder charge against him might be reduced to a lesser offense, rendered his confession involuntary. *State v. Biron*, 266 Minn. 272, 123 N.W.2d 392 (1963).

[195]*People v. Bulger*, 382 N.Y. Supp.2d 133 (App. Div. 1976).

[196]A case in which an answer was considered proper, even when accompanied by a statement of the possibility of lenience in return for his cooperation, is *United States v. Reynolds*, 532 F.2d 1150 (7th Cir. 1976). Also see *United States v. Guido*, 706 F.2d 675 (2d Cir. 1983).

[197]*Commonwealth v. Edwards*, 318 Pa. 1, 178 Atl. 20 (1935); *Markley v. State*, 173 Md.2d 309, 196 Atl. 95 (1938); *People v. Stadnick*, 207 Cal. App.2d 767, 25 Cal. Rptr. 30 (1962). Also see *Commonwealth v. Fournier*, 361 N.E.2d 1294 (Mass. 1977). One early case held that a promise not to tell anyone was impermissible because it implied a promise not to prosecute. *White v. State*, 70 Ark. 24, 65 S.W. 937 (1901). It is of interest to note that a Georgia statute specifically provides that a confession shall not be excluded because of a promise of secrecy.

[198]424 U.S. 492 (1977).

[199]10P.3d 216 (N.M. 2009).

[200]2010 WL 3787576 (Tex.Crim.App. 2010).

[201]2010 WL 1820185 (Cal.App. 3 Dist. 2010).

[202]2009 WL 3051754 (Table) (Iowa App. 2009).

[203]2011 WL 109641 (Ala.Crim.App. 2011).

[204]2006 WL 2102898 (Cal. Ct. App. 2006) (Unpublished non-precedential opinion). Also see *Commonwealth v. Novo*, 442 Mass. 262, 812 N.E.2d 1169 (Mass. 2004) in which defendant's confession to first degree murder, relating to the death of a two-year old child of his girlfriend, was ruled involuntary. The police repeatedly used a "now-or-never" theme in their interrogation technique. This technique involved telling the defendant, untruthfully, that if he did not explain now why he hit the child, the jury would never hear his explanation later. While this statement was grossly improper, the court said that a statement that if the defendant did not tell the police his side of the story now, he would not be able to tell the police later, would be proper.

[205]Id. at *5.

[206]The Court addressed convictions where confessions were obtained at least in part by police deception in *Brewer v. Williams*, 430 U.S. 387 (1977) (confession obtained after deeply religious murder suspect heard "Christian burial" speech)this was a *Miranda* issue; *Oregon v. Mathiason*, 429 U.S. 492 (1977) (per curiam) (confession obtained after police falsely told suspect that his fingerprints had been found at the scene of the crime); *Michigan v. Mosley*, 423 U.S. 96 (1975) (confession obtained after police told suspect that another suspect had named him as the gunman which was not true).

[207]See, e.g., *Frazier v. Cupp*, 394 U.S. 731 (1969) Frazier was indicted jointly for murder with co-defendant, Rawls. After both were arrested, police falsely told Frazier that Rawls had confessed. As police persisted in questioning Frazier, he grew reluctant to speak further without a lawyer. At one point Frazier stated, "I think I had better get a lawyer before I talk any more. I am going to get into more trouble than I am in now." The police then stated "You can't be in any more trouble than you are in now." Frazier then gave a full, signed confession. The Court held that the misrepresentations were relevant, but that they did not make an otherwise voluntary confession inadmissible. In reaching this conclusion, the Court judged the materiality of the misrepresentation by viewing the "totality of the circumstances."

[208]*Robinson v. Smith*, 451 F. Supp. 1278, 1284-85 (W.D.N.Y. 1978). An alternative statement of the test is whether the suspect's "will was overcome" or whether the suspect's "capacity for self-control (was) vitiated." *United States v. Velasquez*, 885 F.2d 1076, 1089 (3d Cir. 1989), cert. denied, 494 U.S.

1017 (1990). The Third Circuit has stated the test not as whether deception caused the confession, but whether it was "so manipulative or coercive that [it] deprived (the defendant) of his ability to make an unconstrained, autonomous decision to confess." *Miller v. Fenton*, 796 F.2d 598, 605 (3d Cir. 1986), cert. denied, 479 U.S. 989 (1986).

[209]475 U.S. 412, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986).

[210]*Moran v. Burbine*, 475 U.S. 412, 423-24, 106 S. Ct. 1135, 1142, 89 L. Ed. 2d 410 (1986). However, in *State v. Stoddard*, 206 Conn. 157, 163, 537 A.2d 446 (1988), the Connecticut Supreme Court held that the police must provide such information to a suspect undergoing custodial interrogation.

[211]479 U.S. 564 (1987).

[212]Id., at 576.

[213]813 N.E.2d 516 (Mass. 2004).

[214]Id. at 427-30.

[215]Id. at 525.

[216]849 P.2d 58, 73 (Haw. 1993).

[217]Id.

[218]*State v. Aguirre*, 579 P.2d 798, 801 (N.M. Ct. App. 1978), cert. denied, 580 P.2d 972 (N.M. 1978).

[219]552 So. 2d 971 (Fla. Dist. Ct. App. 1989).

[220]Id. Other examples of fabricated evidence deeming confessions inadmissible include an audiotape of an investigator pretending to be an eye-witness to the suspect's crime (*State v. Patton*, 826 A.2d 783 (N.J. 2003), and a crime lab report purporting to show the suspect's DNA on a rubber glove recovered from the crime scene. *State v. Chirokovskcic*, 860 A.2d 986 (N.J. Super. 2004).

[221]2009 WL 3485951 (N.D.Cal. 2009).

[222]2009 WL 2450673 (Cal.App. 2 Dist. 2009).

[223]2009 WL 2004058 (Ill.App. 2 Dist. 2009).

[224]174 Cal.App.4th 156, 95 Cal.Rptr.3d 219 (2009).

[225]40 Cal.4th 483, 54 Cal.Rptr.3d 245, 150 P.3d 1224 (2007).

[226]28 Cal.4th 107, 121 Cal.Rptr.2d 106, 47 P.3d 988 (2002).

[227]One exception to this is *State v. Johnson*, 193 Wis.2d 382 (1995) (polygraph inherently coercive and must be clearly separated from subsequent interrogation before considering incriminating statement admissible).

Appendix A

The Behavior Analysis Interview in a Homicide Case

Interview in a Homicide Case

Assume that Mary Jones was found stabbed to death in her apartment at 9:00 A.M., December 7 of last year. All the circumstances clearly indicate that the homicide occurred about midnight, and there was no evidence of a forcible entry. Subsequent investigation disclosed that, on a number of recent occasions, Mary and a male friend of hers, Jim Smith, were overheard having loud arguments, primarily about Mary's relationship with several of her male coworkers. There seems to be good reason, therefore, to interview Jim, but clearly there is no basis for an arrest. At the outset of the interview, the investigator should spend a few minutes asking the suspect a series of background questions, such as his complete name, age, address, current place of employment, and other questions designed to establish behavioral baselines and rapport. Following such initial questions, the investigator should ask a "know why" question: "Do you know why you are here?" or "Do you know why we're here?" Since Jim knew Mary and very probably had read or heard about her death, a naive or evasive reply to the "know why" question would be viewed with suspicion. For instance, if Jim states that he had no idea of the purpose of the interview, or if he makes a vague comment such as "I suppose you want to talk about what happened to Mary," that should be viewed in a different light than if he very bluntly states, "You are trying to find out who murdered Mary." The latter response is more characteristic of that of an innocent person.

Following the "know why" question, it is generally appropriate to say: "Jim, we have interviewed many people regarding Mary's death and the pieces are falling together quickly. Jim, if you had anything to do with this, you should tell me that now." This seemingly casual statement will afford him an opportunity to readily admit his involvement, if

that be the case. In the absence of the unlikely occurrence of a sudden admission of guilt, the investigator's statement will nevertheless serve the purpose of inducing a display of behavior symptoms suggestive of either guilt or innocence.

If Jim was involved in Mary's death, he may respond verbally to the investigator's statement by saying, "You mean, did I do this? No." Coupled with the verbal response there will probably be a nonverbal response, such as shifting in his chair, avoiding eye contact, or crossing arms or legs. If Jim is innocent, he very likely will immediately say something like, "I had nothing to do with it! I loved Mary. I never hurt her and never would have." As these words are being spoken, he probably would be leaning forward and looking the investigator straight in the eye, using appropriate hand gestures to emphasize his point.

The next step for the investigator would be to ask a series of investigative questions regarding Jim's knowledge about the event, the victim, and possible suspects. If Jim is innocent, he is thereby given an opportunity to divulge possibly helpful information that might not have been disclosed if his discussion had been confined to answering specific questions. If guilty, he is placed in a vulnerable, defensive position. He may make a remark that would be indicative of guilt or would lead to a specific line of questioning. Listed below are some preliminary investigative questions to ask in this case. Obviously, depending of the suspect's response to these initial questions, appropriate follow-up questions would be asked:

Alibi/Access

- Tell me everything you did from 6:00 P.M. on December 6th until you went to sleep.
- Who can verify your whereabouts?
- When was the last time you saw Mary?
- Did you have keys to Mary's apartment?
- When you were at Mary's apartment, how did you get there? [car, bus, walk]

Relationship with Victim

- Describe your relationship with Mary.
- What kind of person was Mary?
- What were her best/worst traits?
- Occasionally all couples fight. What did you and Mary most disagree about?
- On a scale of one to ten, with one being a terrible relationship and ten being wonderful, how would you rate your relationship with Mary?
- What changes would have brought it up to a ten?

Propensity

- Have you ever been questioned before concerning causing injury to another person?
- When was the last time you have struck someone in anger?
- When was the last time you've had a heated verbal argument with another person?
- What is the worse thing you've done to someone else when you lost your temper?

Judgment Effectors

- On December 6th did you have anything alcoholic to drink?
- Did you use any drugs that evening?
- Did anything happen on December 6th that upset you or caused you to become angry?

The following series of questions, which should be intermingled with the investigative questions, are asked for the purpose of evoking behavioral responses indicative of either guilt or innocence:

Jim, why do you think someone would do this to Mary? The purpose of this question is to ascertain the suspect's perception of the motive for the crime. If Jim is guilty, he will be faced with a dilemma when asked the question because, in essence, he is being asked to reveal why he killed Mary. In an effort to conceal any indication of his involvement, he may hesitate or repeat the question as a stalling tactic in order to construct what he believes to be an acceptable answer. On some occasions, a guilty suspect may even reveal his true motive by offering an explanation, such as, "Maybe there was an argument, or maybe someone was drinking or on drugs." If the guilty suspect does not offer such an excuse, he usually will respond with, "I never thought about it." When a person's spouse, family member, or close friend is killed, it is only natural to think about a possible motive or cause for the incident. In conjunction with this type of verbal response, the guilty suspect may engage in a variety of nonverbal gestures suggestive of his discomfort and concern over the question.

If Jim is innocent, when asked why someone would kill Mary, he might say, without hesitation, that the killer must be insane or "I can't imagine why anyone would do this. Mary didn't have an enemy in the whole world." In making those comments, he would maintain direct eye contact and would probably lean forward in his chair.

Jim, of the people that you and Mary knew, whom do you feel would be above suspicion regarding Mary's death? In other words, who among them would never do anything like this? This question is an implied invitation to the suspect to assist in the investigation. If Jim is being truthful, he will readily name specific individuals whom he feels would be above reproach or for whom he would vouch as not being involved in Mary's death. He will not be afraid

to eliminate certain persons from suspicion. If Jim is guilty, his response might be noncommittal. Guilty suspects usually do not want to eliminate any one individual from suspicion because that would tend to narrow the search down to them. They might respond, therefore, by saying, "I don't know; it's hard to say what people might do." Meanwhile, they may shift around in the chair or engage in some other type of movement.

If a suspect responds to this question by naming himself alone as being above suspicion, no absolute inference should be drawn, but it must be noted that this type of response is more typical of the deceptive suspect than of the innocent. An innocent suspect may include his name among other people for whom he would vouch for, but rarely vouches only for himself.

Jim, who do you think might have done something like this to Mary?
Whereas the previous question called for the elimination of suspects, this one seeks information of an affirmative nature. By asking Jim to reveal his suspicions as to the guilty person, the investigator may thereby evoke a significant and reliable indication of guilt or innocence. This is particularly true of cases where any one of several persons, all acquainted with each other, may have committed the offense.

A guilty suspect usually will not reveal a suspicion about anyone else, no matter how much effort is made to have him to do so. In other words, when asked, "From among the people you and Mary knew, which one of them do you think might have done this?" Jim probably would say, "I don't know" or "I haven't the faintest idea." No matter what the investigator says, thereafter he probably will remain adamant in his denial of harboring any suspicion.

On the other hand, if Jim is innocent, he may, after some persuasion, tell of his suspicion, even though it has a flimsy basis or is perhaps based upon nothing more than a dislike or prejudice toward another individual. When first asked the question regarding his suspicion, he may respond, in a rather unsure manner, "I don't know. I can't believe anyone I know could do something like this." The investigator should then say:

> Jim, I'm not talking about actual knowledge or proof. Here's what I mean. There is no question that someone you know may be involved in this. That being so, which one, from among all the people you and Mary ever knew, do you think could or might have done such a thing? Now, let me assure you that I will not reveal to him that you told me anything. My primary purpose in asking the question is to give you an opportunity to relieve yourself of any thoughts along that line, so that your holding back won't make it look like you're the one who's involved in this. If you had no part in it, I want to know that, without having any doubt about it. So let me now ask you, Jim, who do you think might have done this?

If Jim is innocent, such persuasion will probably cause him to disclose a suspicion about someone else. However, if Jim is guilty and previously had failed to mention any

suspicion, he probably will maintain that attitude, regardless of the investigator's persuasion efforts.

Jim, do you think the person who did this to Mary was someone she knew? An innocent suspect will offer a realistic explanation of the crime (based on his knowledge of the crime). If the suspect knew the basic case facts, an innocent suspect would be expected to readily agree with this statement by responding, "I'm convinced that this was done by someone who knew her. Her apartment was not broken into so she must have let the person in. She's too cautious to let a complete stranger into her apartment."

A guilty suspect is motivated to open up the investigation and may suggest improbable solutions for its resolution. If Jim is guilty, he may respond to this question by saying, "I suppose that's possible, but she lived in a really bad neighborhood, plus there are stalkers and serial killers out there. It really could have been anybody."

Jim, how do you feel about being interviewed concerning Mary's death? An innocent suspect looks upon the interview as a chance to be exonerated and as an opportunity to help the investigator catch the guilty party. Therefore, he tends to express positive feelings in his response to this question such as, "I don't mind at all. If this will help catch the person who murdered Mary, I'm willing to do whatever it takes." If Jim is guilty, he will perceive the interview as a threatening experience designed to detect his guilt. Consequently, the guilty suspect tends to express either negative or ambivalent feelings toward the interview. Characteristic responses from a guilty suspect to the *feel* question include, "It makes me feel like a criminal," "It makes me nervous and scared," "I don't have any feelings one way or another. I know you're just doing your job."

Jim, what do you think should happen to the person who did this to Mary? In responding to this question, if Jim is innocent, he probably will indicate some significant punishment, such as going to the penitentiary or receiving the death penalty. In contrast, if he is guilty, he will try not to answer the question. He likely will say, "It's not up to me" or "I'm not a judge," or he may indicate that the offender should be asked the reason for committing the crime. The underlying explanation for this evasion is that were he to suggest a penalty, he would in effect be prescribing his own punishment. In the event a guilty suspect does indicate severe punishment, any accompanying nonverbal behaviors will likely belie the sincerity of the answer.

Jim, did you ever think about hurting Mary, even though you didn't go through with it? If Jim acknowledges that he had thought about hurting Mary, this is suggestive of possible guilt, even if in his acknowledgment he very likely would have added to his "yes" answer, "but not seriously." If Jim is innocent, his response probably would be a simple "no." This is so even if Jim had previously entertained the thought of possibly hurting Mary. The innocent suspect perceives the *think* question as pertaining directly to the issue under investigation, in this case, the killing of Mary.

Jim, tell me why you wouldn't do something like this to Mary? If Jim is innocent, he is likely to make reference to a personal trait that would keep him from killing someone. Common responses to this question heard from innocent suspects include, "I could never live with myself if I ever did something like that!" or "I've got too much respect for life to ever do something like this!" Conversely, if Jim is guilty, he may offer a thirdperson response such as, "Well, it's wrong" or "That's a serious crime." Some guilty suspects, in answering this question, will make reference to future consequences, such as, "I wouldn't want to go to jail."

Jim, would you be willing to take a polygraph examination to verify that what you have told me is the truth? Both guilty and innocent suspects will generally agree to take a polygraph examination. However, it should be viewed with suspicion when a suspect balks at agreeing to take a polygraph test. In this event it is typical of the guilty suspect to come up with some sort of excuse for not agreeing to take the examination. These include shallow statements, such as that the polygraph is not infallible and that the refusal of courts to admit test results in evidence is proof of its lack of accuracy.

When the suspect does agree to take a polygraph examination, he should be asked, "What would the results of your polygraph examination be if you were asked questions about killing Mary?" A guilty suspect's response to this question often lacks confidence or certainty in his ability to pass a polygraph test. He may respond with qualified confidence such as, "Well, I hope it would show I was telling the truth" or evade a definite response by offering the excuse that he has never had one so he does not know how they work or that he is a nervous individual, even when he tells the truth. He may even say that he might fail the test, adding that he had a friend who failed a test although that friend was telling the truth. While answering this question, the guilty suspect is likely to exhibit poor eye contact, engage in grooming behavior or other anxiety-reducing behavior symptoms. The innocent suspect will confidently predict truthful results when asked this question, such as, "It better show that I'm telling the truth because I had nothing whatsoever to do with causing her death!" During his response, the innocent suspect will maintain direct eye contact and perhaps even lean forward in the chair.

In all instances where suggestions are made about taking a polygraph examination, the investigator should carefully avoid creating the impression that the suspect is required to take the test. Indeed, it is essential that the proposal be presented in a hypothetical way so that the suspect knows that it is only an invitation or an opportunity to establish truthfulness. Upon a suspect's expressed willingness to take a polygraph examination, it may be advisable to ultimately arrange for one whenever the investigator may be uncertain as to guilt or innocence.

Jim, did you discuss Mary's death with your family [or close friends]? Experience has indicated that if Jim is guilty, he may say "no" to this question. Not only will he want to conceal the fact that an event occurred for which he anticipated to be questioned, but he probably also wanted to avoid actually being asked by a family member or friend any probing questions

bearing on his possible involvement. He may account for his failure to disclose the event to family and friends on the grounds that he did not want to cause them any worry or concern. If Jim is innocent, he probably has discussed the matter with a family member or friend and will acknowledge the fact to the investigator. He also may relate the reactions of those persons.

Out of necessity, a guilty suspect may have told a family member or close friend about Mary's death. When a suspect indicates that he has told a loved one about the issue under investigation, it is often productive to ask, "What was your [friend's] reaction when you told him?" Innocent suspects will probably have initiated the conversation with a friend and will have discussed the crime in some detail. Consequently, the innocent suspect's answer to the reaction question will indicate an in-depth conversation, such as, "He was very supportive and upset just like I was. We talked about who might have done it and why it happened." The guilty suspect's response to the reaction question often reflects that the conversation was shallow or the comment was brought up in passing. A typical guilty suspect's response to this question is, "Nothing really. He was just curious about what happened and stuff."

Jim, if we can establish who the person is who did this to Mary, do you think that person should be given a second chance? This is a question similar in principle to the punishment question. A truthful person rarely is in favor of giving the offender a second chance; the guilty suspect, on the other hand, will often indicate some type of leniency or be noncommittal about it. If truthful, Jim might say something to the effect of "Hell no! Whoever did this should get as much of a chance as they gave Mary!" If Jim is guilty, however, he may respond by saying, "That's hard to say. . . ." Again, consideration must be given to the nonverbal behavior symptoms that accompany the verbal response to determine the credibility of the spoken answer.

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