

Exhibit 53

Missing Women Commission
of Inquiry

Excerpts from *Criminal Interrogation and
Confessions*

Missing Women Commission of Inquiry	
EXHIBIT No: 53	
Date:	December 15, 2011
	Registrar

Index

Excerpts from *Criminal Interrogation and Confessions*- Fourth Edition

Tab	Description
1	Chapter 1- Distinctions between Interviews and Interrogations
2	Chapter 2- Obtaining and Evaluating Factual Information
3	Chapter 6- Qualifications, Attitude, and General Conduct of the Investigator
4	Chapter 7- Preparation and Starting the Interview
5	Chapter 8- Formulating Interview Questions
6	Chapter 10- Precautions when Evaluating Behavior Symptoms of Truthful and Untruthful Subjects
7	Chapter 13- The Reid Nine Steps of Interrogation

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 it lasted four hours and clearly involved 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 referred 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 interrogation so that the reader will have a clear understanding of what we mean by these terms as they appear in 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.

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. While 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, victim and witness interviews, and a review of investigative findings. 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

Twenty actual case scenarios involving two suspects were given to twenty-six 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 percent in correctly classifying the innocent or guilty person whereas the untrained students' average accuracy was 79 percent. The difference was statistically significant. D. Buckley. "The Validity of Factual Analysis in Detection of Deception" (master's thesis, Reid College of Detection of Deception, 1987).

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, while 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 occur-

ring 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

²In 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. B. Jayne, "The Significance of Suspect Personality Traits in Behavior Analysis and Interrogation," *The Investigator* 2, no. 4 (1986).

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 who is presenting the report. Otherwise, an interruption may result in a break in the continuity of the investigator'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. While 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 are 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, an extortion attempt, 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 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

- 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

- 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 customar-

ily 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, as discussed in Chapter 17 of this text, 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."

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, such as an arresting officer might. Finally, such a specialist would frequently testify in court on interrogation 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, as well as 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) there would be the expeditious and dependable elimination from suspicion of persons innocent of the crimes for which they have been incarcerated or subjected to questioning on a theory of their involvement in the offense.

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 his or 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 judgement 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 the deceptive subject may experience greater confidence in his ability to lie. 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 statement or implications one way or the other until the suspect has disclosed some information or indications pointing either to guilt or innocence

What are the advantages and disadvantages attending each one of these three possible approaches?

Assumption of Guilt

This approach possesses the desirable element of surprise. As a result, the guilty lack composure and may disclose the truth about certain pertinent information or perhaps even confess guilt. Another advantage of the approach is how the suspect generally reacts when treated as though he were considered guilty. A guilty person usually will display no resentment to such treatment; an innocent suspect usually will express resentment when being subjected to forceful or perhaps even highly insulting questions. A guilty suspect is also more likely to react nonverbally to the suggestion of guilt—fiddling with clothing, crossing and uncrossing legs, squirming in the chair, dusting off clothes, or turning the head away as the investigator talks. As will be discussed in Chapter 9, noting these differences in reaction can be helpful in determining whether or not the suspect is, in all probability, guilty.

There are two disadvantages to this approach when there is very little, if any, evidence to support the assumption of guilt. The guilty suspect who does not immediately make some incriminating “slip-up” or confess guilt will be on guard during the remainder of the interview, and if the suspect eventually senses the fact that the approach is nothing more than a bluff, he is that much more fortified, psychologically, to continue with lying and resistance to telling the truth. An innocent suspect may become so disturbed and confused that it will be more difficult for the investigator to ascertain the fact of innocence or even to obtain possible clues to helpful information that might otherwise have been obtainable.

Assumption of Innocence

This approach possesses two distinct advantages, but these are offset to some extent by an attending disadvantage. The advantages are:

1. The investigator's statement or implication of a belief in the suspect's innocence will undoubtedly place an innocent party at greater ease and, as a result, the fact of his innocence may become more readily apparent to the investigator. Moreover, under such circumstances, the investigator can more successfully elicit whatever pertinent information or clues the innocent suspect may be in a position to divulge.

2. This approach may cause a guilty suspect to lower his guard and become less cautious or even careless in answering the investigator. As a result, the individual is more apt to make a remark or contradiction that will make the fact of his guilt evident, and that also can be used to advantage during a subsequent interrogation.

The disadvantage of this approach is that once an investigator has committed himself as a believer in the suspect's innocence, he must more or less confine inquiries to those based upon an assumption of innocence; for to do otherwise would tend to destroy the relationship or rapport that was sought in using this approach. In other words, the investigator is handicapped to the extent that he cannot freely adjust methods and questioning to meet the suspect's changing attitudes or inconsistencies. This is not an insurmountable difficulty, but it is nevertheless a disadvantage that the investigator should consider before embarking upon this particular course.

Assumption of a Neutral Position

This approach possesses neither the advantages nor disadvantages of the other two. For this reason, therefore, it may be considered the best approach to use in the average situation where the investigator's case information and observations have given no encouraging indication that the suspect might be particularly vulnerable to either one of the other two approaches.

Approaching the interview from a neutral, objective perspective has another significant advantage. 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 explore 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, about 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's friend 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, star, 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 warnings of constitutional 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 they 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

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 nonaccusatory interview allows the investigator to develop a trusting relationship with the subject, which greatly benefits persuasive efforts during the accusatory interrogation. In addition, this is a matter of efficiency, since only a single investigator must be thoroughly familiar with 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.²

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

²Reported in C. Johns, “Untrue Confessions.” *The Arizona Republic*. February 7, 1993. Section C.

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.³

Whereas the qualified interviewer is a good 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.

³During 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).

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 nonsupportive 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 given the warnings of constitutional rights that were mandated in the United States Supreme Court's 5-4 decision in the 1966 case of *Miranda v. Arizona*.¹

After the issuance of the 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. While 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

¹394 U.S. 436 (1966).

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

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. While 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, 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 that may be appropriate for a suspect being questioned concerning a rape. While some

Exhibit 7-1 Sample Interview Sheet

MIRANDA?	Yes	No
Name	_____	
Address	_____	
DOB	_____	SS# _____
Employment	_____	Martial 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	_____	

of the questions 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.

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 communication skills, general nervous tension, normal level of eye contact, and a behavioral baseline.
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 establishing 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, social security number, and phone number. 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 but yet objective in his goal of ascertaining the truth.

Consider asking the victim, while being left alone, 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 be analyzed for truthfulness, as will be discussed in the next chapter.

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

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?

Contrary to 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) overquestioning 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 at the same time, increasing the apprehension of the guilty.

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, while others create greater anxiety within the deceptive subject if he chooses to lie to them 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.

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 or her 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.¹ 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

¹ 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.

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 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 percent 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.² 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 are questions that are 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 seek an explanation for events. For example:

- Could you explain more fully why you were in that neighborhood?

²For a more in-depth discussion of semantics and evaluation of an open account, see W. Rudacille, *Identifying Lies in Disguise* (Dubuque, Iowa: Kendall/Hunt, 1994); D. Rabon, *Investigative Discourse Analysis* (Durham, N.C.: Carolina Academic Press, 1994).

- 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 develop 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. While 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 the next chapter.

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 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. 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.

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 nonaccusatory. 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.³ 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. While 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-

³A 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, "I'm Innocent!: Effects of Training on Judgments of Truth and Deception in the Interrogation Room," *Law and Human Behavior* 23, 5 (1999).

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.

While 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 dried 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.

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 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. While 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 medical 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 his 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

Exhibit 10-1 Subject Data Sheet

Name: _____ Date: _____ Time: _____

- In the last 24 hours have you had any alcohol, medications, or illegal drugs? Yes No
If yes, please explain: _____
- Are you presently taking any prescribed medication? Yes No
If yes, what is the medication and what does it treat? _____
- 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
- In the last 24 hours, how many hours of sleep did you have? _____
- What time was the last full meal that you ate? _____
- Are you presently experiencing any type of physical discomfort? Yes No
If yes, please explain: _____
- In the last 12 months have you had any surgery or medical tests performed? Yes No
If yes, please explain: _____
- 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: _____
- In the last 12 months have you attempted suicide or threatened suicide?
Yes No

represents a reasonable effort by the investigator to obtain relevant information about the subject's suitability for interrogation.

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, while 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 postconfession 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)

While the incidence of psychopathy is relatively small in the population as a whole (3 percent for males, 1 percent for females), individuals with this personality disorder make up a disproportionate percentage of the prison population. One estimate indicates that 40 percent 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 since one of the diagnostic criteria involves ha-

bitual 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. While 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 frequently the victim 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

cene 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 since 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. While 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 (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 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 overdiagnose 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 ten 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 girl friend was interrogated and confessed. This suspect's knowledge and training in behavior analysis did not allow him to mimic those attitudes, 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 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 nonemotional 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.

Nonemotional 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 nonemotional offender to commit a crime may involve emotionality, but when interviewed he typically expresses an unconcerned, detached attitude. During interrogation, the nonemotional 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 nonemotional 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 nonemotional offender is a resistance to becoming emotionally involved in the interrogation.

The most effective tactic and techniques to use on the nonemotional 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 nonemotional offender. As a general rule, the majority of all offenders—emotional and nonemotional—possess emotional traits to some degree. For this reason, the sympathetic and factual analysis approaches often should be inter-

mingled. 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 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.

¹It 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 nonaccusatory interview will accomplish that goal.

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 com-

mitting 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 a 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 one and is presented later in this text.

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

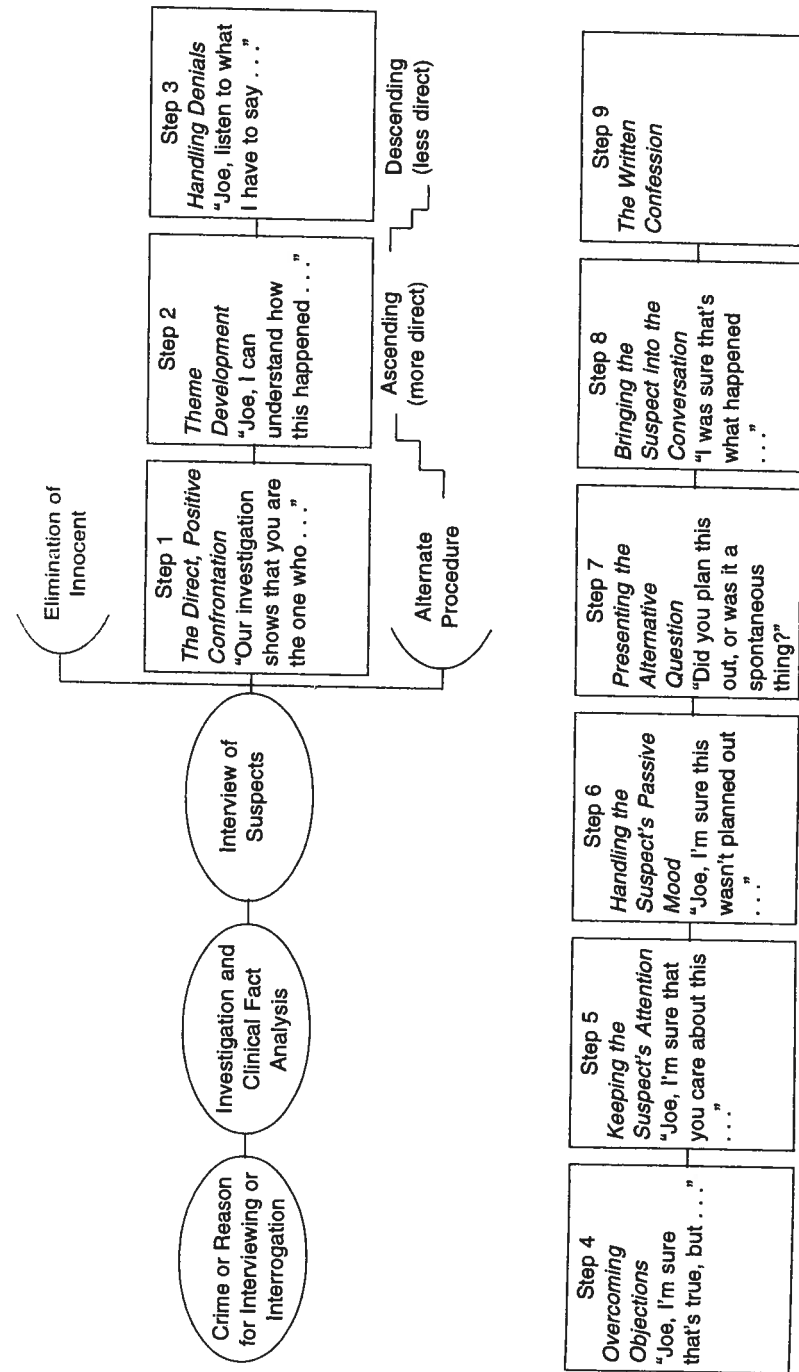


Figure 13-1 The Reid Nine Steps to Interrogation

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.

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 nonaccusatory 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. A

guilty suspect will rapidly try to review everything that is going to be said, and this preparation will cause him to become insecure. Additional doubts and concerns will arise in the suspect's mind and thereby further disorganize efforts at deception. Some guilty suspects 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. An 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 also 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 video or 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

²The investigator, however, should not prepare false incriminating documents that appear to have been generated through an official source (for example, a crime lab, the FBI). 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.

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 nonaccusatory 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 nonaccusatory 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.)

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



Figure 13-2 Interrogator's position during direct positive confrontation.

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 of 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 fingers through 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 (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 a second 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 postaccusatory 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 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. As 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.³

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

³With 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.

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.⁴ 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 estab-

⁴A 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 F. Horvath and R. Meesig, "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 (1998): 133-140.

lished 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 at the same time avoiding the risk of procuring a false confession from the innocent.⁵

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.⁶ 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

⁵Chapter 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.

⁶Psychologists refer to this internal process as techniques of neutralization. These 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 M. Lillyquist, *Understanding and Changing Criminal Behavior* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), 153–160.

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.

Since 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 15.)

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 brainwashing.⁷ 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.

⁷For an in-depth discussion of this argument see B. Jayne and J. Buckley, “Interrogation Techniques on Trial,” *The Prosecutor* (Fall 1990).

Procedures for Emotional Offenders

Since 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 would have 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 onto 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 did sabotage that computer system?

R: Maybe they were upset with the company for not updating their platform—the one we have is really out-dated. [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 18, 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). 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 iron clad 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 eight 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. While 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.

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 yourself 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 onto 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.

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 upon 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.

Although the theme under discussion is particularly suitable for emotional offenders, it also is effective on suspects who classify as nonemotional. 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 1983 U.S. Department of Commerce study concluded that one-third of all employees steal from their companies.
- Robert Half, an international consulting firm, reported that in 1989 the total cost of stolen time was \$170 billion.
- The Small Business Administration indicates that 60 percent 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 1990 study⁸ 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 percent 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.

⁸W. Urban, *The Silent Partner* (Minneapolis: Preyes Publications, 1990).

- Employees who worked two years or less were responsible for 76 percent 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 are 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.⁹

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.¹⁰ 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 a confession.

⁹In suggesting that intoxication may have been a factor underlying a suspect's criminal offense, a reference could be made to a study by the U.S. Department of Justice, which showed that nearly one-third of state prison inmates drank heavily just before committing the crimes that led to their imprisonment. U.S. Department of Justice, *Prisoners and Alcohol* (Washington, D.C.: Bureau of Justice Statistics, 1983).

¹⁰A study conducted by the U.S. Department of Justice, published in October 1983, contains statistics that reveal a high correlation between criminal offenses and the use of drugs by the offenders at the time of their crimes. See particularly p. 39 of the *Report to the Nation on Crime and Justice: The Data*, Document # U.S. J.-87068. (Washington, D.C.: Government Printing Office, October 1983).

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 on pulling 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.

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 accidentally 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.

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. While 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 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.¹¹

A caution is warranted concerning the use of this present theme concept. 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. While 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.

¹¹With 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, *Understanding and Changing Criminal Behavior*, p. 152.

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.¹²

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

¹²Child sexual abuse is medically known as pedophilia, the abnormal sexual desire or erotic craving of an adult toward children. A detailed discussion of the characteristics of such offenders and their victims appears in two publications of the International Association of Chiefs of Police (IACP): *Child Sexual Abuse* (Training Key # 323) and *Sexual Exploitation of Children—Chickenhawks* (Training Key # 311). The subject is also discussed in the January 1984 issue of the *FBI Law Enforcement Bulletin*. Two other IACP publications of value to criminal investigators are *Interviewing the Child Sex Victim* (Training Key # 224) and *Interviewing the Rape Victim* (Training Key # 210).

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 shakedown.

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:

Ye gods, 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 some place 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 investiga-

tor 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 than 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 fellow.

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 else 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 upon 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 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 percent of its value, after which he unloads it at a 90 percent 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 you 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, etc. 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 as regards 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, unselfishness, etc. 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 item of merchandise, tool, etc., "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 housebreaker. 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 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, many 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 what's the average amount of money that's 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 by 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 Nonemotional Offenders

As previously stated, the nonemotional 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 nonemotional 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 nonemotional 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 in polite fashion, 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 but 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 has nothing to do with this case, 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 nonaccusatory 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. While 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, involve clear trickery and deceit on the part of the investigator. The legal restrictions regulating this tactic are discussed in Chapters 17 and 18. As illustrated, an investigator, within limits, can legally make reference to false evidence implicating a suspect's involvement in a crime.

Tactic 3—Suggest a Noncriminal Intent Behind the Act

The theme concepts previously presented for the emotional offender primarily rely on the guilty suspect's natural tendency to justify his crime in some way. However, because of their personality make-up or the nature of their crime, nonemotional offenders do not appear to go through this same internal thought process. Therefore, after trying the previously mentioned themes, the investigator might try to persuade the suspect to accept physical responsibility for committing the crime by initially relieving him from the criminal intent for committing it.

As an example, the investigator may suggest that a theft or fire was accidental, that a killing was in self-defense, or that sexual contact with a child's vagina was inadvertent. These "themes" do not, in all probability, relate to how the suspect originally thought of his crime, but rather are designed to create a face-saving excuse for accepting the physical responsibility behind it. If the suspect acknowledges responsibility for the crime, the interrogation would then focus on the complete and actual circumstances behind the crime. Absent this critical information, a mere state-

ment accepting physical responsibility for an event does not necessarily constitute a confession. To reiterate, the objective of this approach is to initially have the suspect accept personal responsibility for the physical act in committing the crime as a stepping stone approach to eventually learning the complete truth.

This interrogation approach is considered controversial by some critics. Specifically, it has been claimed that, by suggesting a noncriminal intent behind the act, the investigator removes all consequences associated with the crime and, because of this, an innocent person would be inclined to accept physical responsibility for a crime he did not commit. One of these critics, while testifying on behalf of the defense, has gone so far as to testify that this interrogation approach is “designed to produce false confessions.”¹³

The investigator must appreciate that, unlike the other themes presented, suggesting a noncriminal intention behind an act does directly imply that *if* the behavior was accidental or inadvertent the suspect may not suffer negative consequences. This is an attractive escape route for the guilty suspect anxious to avoid facing consequences for his crime. However, a critical question to ask is whether an innocent suspect would be apt to accept physical responsibility for an act he knows he did not commit. Absent a full confession, this is a question a judge or jury will ultimately decide based on the background, experience, and cognitive abilities of the defendant. It is our contention, however, that an innocent suspect operating within normal limits of competency would not accept physical responsibility for an act he knows he did not commit. Furthermore, since this interrogation tactic is merely a stepping stone approach to eventually elicit the complete truth, this approach would not cause an innocent person to provide false evidence concerning his involvement in a crime.

To illustrate, consider a homicide in which the suspect was believed to have shot the victim to death. The suspect’s initial statement was that he attended a party at the victim’s home at the time of the killing. He denied seeing or handling a gun at any time on the night of the killing. During early stages of the interrogation, the investigator attempted to blame the victim’s behavior or other extraneous circumstances for causing the suspect to act “out of character.” None of these sympathetic themes had the desired effect, so the investigator described a situation wherein the suspect was anxious to show off a new handgun he had recently purchased. A situation was described where, during the course of showing off the handgun, it went

¹³*State v. Christoff* (Fla. Cir. Ct.) (1997).

off accidentally, resulting in his friend’s death. Accepting this presented theme, the suspect may now maintain this “accidental” shooting scenario is what really happened.

In an actual interrogation, the investigator would pick apart the suspect’s statements and attempt to discover more of the truth. However, let’s stop the script at the point of acknowledging the accidental shooting. Would any mentally competent suspect, who was in no way involved in shooting the victim, buy into this accident scenario? Absolutely not! Granted, there is a remote possibility that the suspect did accidentally shoot the victim. But that sort of inadvertent truth is not even what the critics are arguing. Their position is that once a theme is offered that absolves the suspect from criminal responsibility, that a suspect who had nothing whatsoever to do with the crime will readily accept physical responsibility for its commission!

Suffice it to say, common sense and reason must be applied when evaluating the likelihood of an innocent suspect agreeing to be taken from a position of complete noninvolvement in a crime, to a position that he may have inadvertently or accidentally committed it.

When using this interrogation approach, the investigator should keep the following guidelines in mind:

1. The suggested scenario should involve direct knowledge or accountability for the crime, even though it may remove criminal intent. In an arson investigation, suggesting that a fire was the result of spontaneous combustion because of how the suspect stored rags does not involve direct knowledge or accountability and therefore is unlikely to be productive in eliciting a confession. A better approach would be that the suspect carelessly threw a cigarette butt onto rags that started to burn. The suspect then panicked and ran out of the building and did not report the fire because of fear.
2. Acknowledging the initial scenario does not constitute a confession of guilt. The investigator needs to take the initial acceptance of responsibility for committing the crime to the next level, which is a corroborated account of how the crime was committed, including the necessary intentions for committing it.
3. When using this technique the investigator should not emphasize the lack of punishment associated with accepting the suggested scenario (for example, “If that’s all that happened, you can go home this afternoon—no charges will be filed”). The primary reason for this is

that such a statement serves as a reminder of the consequences the suspect faces if he does accept criminal responsibility for the act, and developing the truth may be much more difficult.

The following case illustrates how this approach was used successfully to elicit a confession of sexual contact with a young relative who was staying at the suspect's home. The suspect came home around 1:00 A.M., after stopping off for a few drinks following his second shift job at a factory. Upon arriving home he went to the bedroom where the relative was sleeping and had sexual contact with her. During interrogation, the suspect was not relating to the themes that placed blame onto the victim or blamed affected judgment because of alcohol use. As a last resort the investigator suggested that because the suspect was tired after a long day of work and somewhat groggy as a result of the drinks he had consumed, that he mistakenly entered the wrong bedroom thinking it was his wife in the bed. The suspect acknowledged this scenario and initially stated that he thought he was having sex with his wife. Once he acknowledged the "mistaken" sexual contact, it was relatively easy to point out inconsistencies in his account. In his ultimate confession he stated that once he got into the relative's bed and started foreplay he realized that it was not his wife, so he did not continue to have intercourse. In his written confession the suspect acknowledged sexually touching the relative for about five minutes and apologizing to her at the end of the contact. While this statement, in all probability, still did not reflect the entire truth, it contains enough of the truth to be used as evidence to convict him of child molestation.

In the case of a homicide the investigator might, as a last resort effort, suggest that the killing occurred in self-defense. During an interrogation concerning arson, the investigator might suggest that the suspect started the fire accidentally by careless use of smoking materials and then panicked because he could not extinguish the fire. In the interrogation of an employee suspected of stealing money, an application of this approach would be to describe the employee's initial action as simply "borrowing" the money with full intentions of repaying it. Once the employee acknowledges spending the money and not repaying it, the original "borrowing" scenario becomes irrelevant to the final confession. The goal of each of these themes is simply to persuade the suspect to tell the truth concerning physical responsibility for the crime. Once that has been accomplished, the investigator can confront the suspect with evidence or logical arguments in an effort to establish the factual circumstances behind the suspect's crime.

Another good illustration of this theme's application is the case of a male, sex-motivated killer. The sexual feature of the killing is now not only extremely troublesome to him, but he also may realize that it will be viewed by others as more revolting than killings for most other reasons. Therefore, when he reaches the confession stage—when he feels a compulsion to admit the offense—it will be much easier for him to start by attributing the victim's death to an accident or to some other such factor. Therefore, in order to secure the initial statement to that effect, the investigator should suggest possible moral excuses. Here is the specific language the investigator may use: "Joe, what happened? Did this girl go along with you at first, and then she had a change of mind, and all of a sudden she let out a scream? You then had no alternative but to stop her yelling, and that's all you were trying to do. You did not want to hurt her seriously, just stop her yelling. That's how it happened, isn't it?"

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 in self-defense after the person being robbed had pulled a gun or knife. This self-defense excuse can also be used in other types of killings or near-killings for the purpose of obtaining an initial admission of guilt. For instance, where the known or presumed motive for a shooting was revenge, the investigator might say to the suspect:

Joe, you probably didn't go out looking for this fellow with the purpose of doing this. My guess is, however, that you expected something from him and that's why you carried a gun—for your own protection. You knew him for what he was—no good. Then when you met him, he probably started using foul, abusive language, and maybe he gave some indication that he was about to pull a gun on you. Then you had to act to save your own life. That's about it, isn't it, Joe?

When the suspect admits the shooting, the investigator can then proceed to point out that the circumstantial evidence (location of the wound, position of the body, etc.) negates the self-defense explanation. Thereafter, with relative ease, the investigator will be able to secure the complete explanation. Even if the investigator fails to do so, the inconsistency between the suspect's original denial of the shooting and his present

admission of at least doing the shooting will serve to preclude a self-defense “out” at the time of trial.

Tactic 4—Point out the Futility of Resistance to Telling the Truth

With all offenders, in particular the nonemotional 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 Chapter 15. 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 percent 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. 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

next 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 noncustody 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 stimulation. 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 meeting with 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 pencil 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 sharpen her pencils, 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. She used legal-size paper and also provided for carbon copies: again, within 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 took the paper and carbons from the typewriter, and, after sorting out the carbon sheets, departed with the typewritten material 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, etc. 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 patterns 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 a 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.

A few 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 18.) 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 diagrammed 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.

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 prevent 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 are 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 dissent.

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 that gaze is elevated to the speaker's eyes, a clear message is being sent: "I am no longer listening to you, I have something to say."

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 interruption gestures.



Figure 13-3 Interruption gestures preceding a denial.

- 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 completing of the denial statement. This type of comment should first include an accentuated reference to the suspect's first name

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:

(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.”

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



Figure 13–4 Investigator’s nonverbal response to discourage denials.

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 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

Table 13-1 Elements of Dialogue in Step 3

Actual Dialogue	Element
<i>Investigator:</i> Joe, the results of our investigation clearly indicate that you are the person who broke into Jason's Jewelry Store last week.	Positive confrontation statement
<i>Joe</i> [After pause]: You think . . . I could do something like that?	Suspect's initial denial during behavioral pause
<i>Investigator:</i> 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
<i>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 . . .</i>	Theme development
<i>Joe:</i> Could I just say something?	Permission phrase for denial
<i>Investigator</i> [interrupting Joe]: Joe, just listen to me for a minute. I want you to know how important this is.	Discouraging denial
<i>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 . . .</i>	Returning to theme and discouraging further denials
<i>Joe</i> [interrupting the investigator] If you let me talk I'll tell you what happened.	Permission phrase for denial
<i>Investigator:</i> 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
<i>Joe</i> [interrupting the investigator]: I understand what you're saying, but . . .	Permission phrase for denial
<i>Investigator</i> [interrupting Joe]: Let me just finish this thought because this is so important for you to understand. [Continue on with theme.]	Discouraging further denials and returning to theme

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 embellished 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 vs. 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 falsely 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 respecting 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."¹⁴

¹⁴Whenever 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, II. 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.

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.¹⁵ 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.

¹⁵The 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.

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 reinterview 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 an 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. (See cautions for reference to evidence in Chapter 18).

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 fifteen 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.

While it is perfectly legal 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 auto theft illustrates this:

S: I didn't hot wire no Chevy Camaro!

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, "I know you didn't hot wire that car. That's the whole reason I'm talking to you. A guy who would hot wire a car is obviously a professional car thief. I don't see you as that at all [continue with theme] . . ."

This second response leaves open the various possibilities that the car was left running by the owner, that an accomplice hot wired the car, or that the suspect somehow obtained the ignition keys for the stolen vehicle. 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 to be 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 else 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.

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.



Figure 13–5 When a suspect gets out of his chair, the investigator should remain seated.

One successful technique in this regard is to explain to the suspect that it is against departmental policies 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.¹⁶

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

¹⁶ While it should be obvious, during a custodial interrogation a specific request by the suspect to talk with his attorney must be honored.

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 attempt to stop the suspect from voicing them and, if they do surface, to refute the suspect's statements. 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.

S: 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.

S: 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 percent 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.

S: 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.

S: Fine. I'm sure she'll love it. How about calling her and have 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*¹—"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 in 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 of 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 explanation 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 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

Table 13-2 Elements of Dialogue in Step 4

<i>Actual Dialogue</i>	<i>Element</i>
<p><i>Investigator:</i> 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.</p> <p><i>Suspect:</i> But that's ridiculous.</p> <p><i>Investigator:</i> Why is it ridiculous, Joe?</p> <p><i>Suspect:</i> Because I don't even own a gun.</p> <p><i>Investigator:</i> 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 . . .</p> <p>[Continuation of dialogue]</p>	<p>Theme development</p> <p>Follow-through</p> <p>Objection</p> <p>Overcoming objection by agreement and understanding, and by pointing out negative aspects of situation if objection was untruthful</p> <p>Continuation of theme development</p>

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.¹⁷

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

¹⁷Some 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.

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, 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



Figure 13-6 Posture of suspect who has withdrawn.

natural result of the investigator's interest and sympathy. It would be inappropriate and unnecessarily distracting 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 usually be aware of an increased feeling of uneasiness 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 in on 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 Hypothetical 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 hypothetical questions. The principle in using hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 hypothetical 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 employers, 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 begins 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.

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 a 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 investigator. The classic posture of surrender 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.



Figure 13–7 Classic posture of surrender.

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.

While 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?” or “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.”¹⁸

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

¹⁸H. Gross, *Criminal Investigation* (1907), 120.

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 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.

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, was hurting this guy part of your original plan, or did it just happen on the spur of the moment? If you went in there with the full intention of pulling that trigger, it tells me that you have no regard for human life and that you are capable of doing anything. If that's the case we might as well end this right now because I know people like that are not capable of telling the truth. But, Joe, I think that the gun just went off. I think all you wanted was a few bucks; you didn't want to hurt him, Joe. But because this is out of character for you, you panicked and the darn thing went off. Gosh, if that's what happened you've got to let me know, because I'm no mind reader. The guy who plans something like this for months in advance and walks into a store knowing full well that he's going to shoot and kill any possible witness looks the same to me as the fellow who acts out of desperation and, on the spur

of the moment, finds himself with a gun in his hand and in the heat of the moment panics and ends up doing something he really regrets. Joe, this wasn't part of the plan, was it? It just went off, didn't it, 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.

While 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, therefore, 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 potential 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.

It is important to note that even the most experienced and skilled investigators achieve a confession rate of about 80 percent. Of the approximately 20 percent of suspects who do not confess after being offered an alternative question, it might be argued that a small percentage of them could have been innocent. However, the vast majority of suspects who have exhibited the previously described behaviors indicative of deception throughout the course of the interrogation are, in fact, guilty of the offense.

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. While 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 percent 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, the investigator should not make any attempt, at this stage, to bring out a tape recorder or video camera to electronically record the confession.

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 twofold: (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. She 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 moment and without any



Figure 13–8 Position of investigator and witness during the verbal witnessing of a confession.

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 else 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 18.¹⁹)

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), 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 18.)

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

¹⁹*North Carolina v. Butler*, 441 U.S. 369 (1979).

by the confessor. Such confessions may be written by hand, typed by the investigator, or taken down by a stenographer and transcribed into type-written form.

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.

A preference generally prevails for having a stenographer record the confession in shorthand or steno-typed for later transcription into a typewritten document that will be read to, or by, the confessor, and then signed by him. Moreover, 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, etc. (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 even 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 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 carbon or photocopy 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 well 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 typewritten 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 a sound recording of their confessions, even though, as previously stated, written confessions are generally preferable.

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 a 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, that 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 two or more crimes, separate confessions should be taken of 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 several robberies or burglaries, or a robbery and a burglary, a separate confession should, as a rule, be taken of 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, etc., 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, 1998, 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 was begun 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 postconfession investigation will produce enough incriminating evidence to render unnecessary the use of the confession itself. In some instances, the investigator may find that the postconfession 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 postconfession 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.

Postconfession 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 postconfession 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 postconfession 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 postconfession interviews on numerous occasions over the years. In fact, postconfession 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 postconfession interview, but the opportunity eventually presented itself after the offender’s trial, at which he unsuccessfully pleaded insanity and after which became recon-

ciled 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 postconfession 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 postinterrogation 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

Over the last decade there has been increased interest within the legal community to require that criminal interrogations and confessions be audio or videotaped. In this day and age of digital cameras, and affordable camcorders, where criminal trials are nationally broadcast for public viewing and syndicated television shows allow the public to watch police officers chase suspects and make arrests, the obvious question arises: Why are criminal interrogations and confessions not routinely videotaped?

A National Institute of Justice (NIJ) study involving surveys and interviews of almost 2,400 agencies reported that only 16 percent of police

agencies in the United States videotape interviews, interrogations, and confessions. Clearly, this practice is more common with larger agencies (serving a population of more than 100,000).²⁰ Because of the expense involved, not only in purchasing and up-keeping the equipment and tapes, but in devising a room suitable for videotaping, smaller agencies were less likely to engage in this practice. The reported primary benefits of videotaped confessions were, 1) to help reduce doubts as to the trustworthiness or voluntariness of a confession, 2) to help jog the investigator's memory while testifying, and 3) to defend against allegations of improper interrogation tactics.

A concern raised by agencies that did not videotape is that such a practice may increase defense claims of improper interrogation techniques. The NIJ report indicated that the use of videotaped confessions resulted in only an 18 percent increase of such claims. The remaining 82 percent of respondents reported that such claims remained the same or actually decreased. Another argument against videotaping was that it would inhibit a suspect's willingness to tell the truth. Thirty percent of the agencies surveyed agreed with this finding. This is consistent with an earlier study, where the author concluded: "Significantly, since the tape-recording experiment commenced, the number of persons interviewed at the station has decreased; the number of persons making confessions during interrogation has decreased, and the number charged has decreased. As a result, the crime clean-up rate has also decreased. Increases have been shown of the following: 1) refusal of suspects to speak at all, 2) refusal to admit other offenses, and 3) refusal to nominate co-offenders."²¹ However, 60 percent of the NIJ respondents reported no significant difference between a suspect's willingness to tell the truth whether or not the conversation was videotaped. As will be pointed out shortly, it is not known whether these agencies videotaped the interrogation or only the confession that resulted after the suspect had been persuaded to tell the truth in a private setting, without being videotaped.

All the agencies surveyed used a selective method to determine whether a particular confession or interrogation would be videotaped. Under this

²⁰W. Geller, "Videotaping Interrogations and Confessions" *National Institute of Justice Research in Brief* (March 1993).

²¹"Scientific and Technical Aids to Police Interview-Interrogation." The report was prepared by Detective Sergeant Luppò Prins of the Tasmanian Police, who extensively explored the practices for recording interrogations and confessions in the United States and England in 1982-1983.

circumstance, there is concern that if an agency known to use videotapes did not offer a videotaped confession as evidence, that defense counsel would imply that the nonvideotaped interrogation was somehow flawed. This occurred in 30 percent of the agencies surveyed. However, 70 percent reported that getting a standard written confession admitted as evidence, where it was known that some confessions are videotaped, was no more difficult.

As these experiences indicate, there can be some clear benefits of videotaping a suspect's confession. The survey did not report separately on findings when the interrogation was also videotaped. It would appear that the most common circumstance in which a videotape was made was following a confession (Step 9). During this process, the investigator would recap the interrogation in the presence of the suspect and continue with the formal confession being recorded. Defense attorneys, who were interviewed as part of the study, expressed a strong preference for the interrogation to also be videotaped. Reasons offered by agencies for not doing so include decreasing the likelihood of obtaining a confession, the time required to make a transcript of an interrogation that may have lasted several hours, and the additional costs of videotapes, both for purchase and storage.

Deciding whether to use a videotaped medium to document the interrogation process involves a number of important issues that have not been specifically resolved through research. From current practices, there is good reason to believe that the videotaped confessions chosen to be admitted as evidence are those that support the prosecutor's case. In other words, the positive influence these agencies report may reflect the fact that the videotaped confessions were not random or representative. A blanket ruling that *all* confessions must be videotaped may result in a different finding.

In addition, the most common grounds defense attorneys argue in an effort to suppress a confession relate to the interrogation itself—whether the *Miranda* rights were properly administered and waived, whether the suspect was promised leniency or threatened in some way, or whether the investigator's demeanor was such that a confession was coerced. When the confession alone is videotaped, little benefit is offered to a judge who must decide whether to suppress the confession based on events that occurred, perhaps hours before, during the interrogation.

Consequently, while the videotaping of selected confessions may certainly be beneficial to the prosecution, the practice opens the door for wider

sweeping court rulings or standards that could eventually require the videotaping of the entire interrogation along with its subsequent confession for each and every suspect interrogated. In the final analysis, would this be good for the criminal justice system?

Such a requirement may help resolve concrete issues judges face during suppression hearings with respect to alleged occurrences of improper interrogation techniques. For instance, the defendant may claim that he was promised probation if he told the truth, yet the investigator testifies that he never made such a promise, and the videotape supports that claim. However, for every concrete instance of this nature, the authors predict there would be numerous occurrences where a defense expert would offer the opinion that, based on analysis of the videotaped interrogation, the defendant's will appeared to be overcome, or that in the defendant's mind he perceived a promise of leniency or a threat to his well being (even though none were actually stated).²² Are such expert opinions helpful in deciding whether to suppress a confession, or do they boggle the process and have minimal probative value?

A requirement that every interrogation be videotaped places a much greater burden on the prosecution and police with respect to preserving and presenting evidence. As every prosecutor can attest, in even ordinary cases it is not uncommon for evidence to be misplaced or lost. In ordinary cases such occurrences do not significantly affect the prosecutor's case. However, when a confession is obtained, that confession, and the subsequent evidence derived from it, is oftentimes the linchpin of the prosecutor's case. With videotaped evidence the chances of an otherwise perfectly legally obtained confession being tainted (because of absence of a video recording) increase substantially. Consider some of the eventualities that can occur under this requirement:

- The electronic device failed to record the conversation.
- Portions of the recording were faded or entirely lost due to mechanical failure.
- The tape had to be changed, leaving gaps of unrecorded interrogation.
- The tape was properly made but lost.

²²These two issues were raised by a defense expert in a videotaped homicide confession. During the interrogation no threats or promises were made, but the defense nonetheless argued successfully that the videotape provided evidence that the suspect's will was overcome. (*People v. DeLisle*, 183 Mich. App. 713, 455 N.W.2d 401 (1990)).

- A second interrogation was inadvertently taped over the first.
- The incriminating statements were made at a location unavailable for electronic recording.

If any of these circumstances existed, any competent defense attorney would try to place, in the judge or jury's mind, a belief that the absence of the tape recording was contrived to cover illegal practices carried out during the interrogation. This condition clearly gives the defense an upper hand in a circumstance over which the prosecutor has no control.

Aside from the argument of "tainted evidence," perhaps the most important consideration, as it relates to the criminal justice system, is the effect that electronic recording would have on the efficacy of interrogations. Throughout this text the authors have stressed the importance of privacy during interrogation and the confession. The previously alluded two studies both found that some suspects were less likely to tell the truth when electronically recorded. At present, because the authors practice in a state that requires two-party consent for electronic recording, less than 30 percent of the suspects we interview agree with this condition. Clearly the thought of having one's statements permanently recorded on tape is inhibiting. Through judicial ruling, the enforcement of electronic recording could be imposed, but would guilty suspects ultimately be as likely to tell the truth? We think not.