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Victim-Witness Assistance



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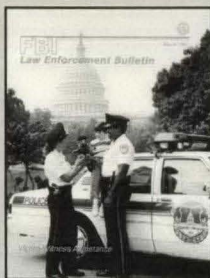
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Victim-Witness Assistance



BY
JOSEPH R. LUTERAN

A couple walking through a park on Capitol Hill is robbed at gunpoint by two subjects. The subjects flee the scene on foot. Both victims are extremely shaken and afraid, since the robbers threatened to shoot them during the robbery. The victims wave down a passing patrol car. Upon learning that they have been robbed, the officer immediately asks the communications dispatcher to have a Victim-Witness Assistance Coor-

dinator respond to the scene. The Watch Commander's Office is notified, and a coordinator is selected from the duty list.

Upon arriving on the scene, the coordinator meets with the investigating officer to determine the nature of the incident and the identity of the victims and/or witnesses. After introductions are made, the coordinator explains the program to the victims, then asks if they are all right and assures them that they are

safe now. The victims are then told that the coordinator will do whatever needs to be done to help them through this crisis.

The coordinator accompanies the victims to the Criminal Investigations Division offices. After being interviewed by detectives there, the victims are given a copy of the program's information pamphlet and the coordinator explains the kinds of assistance available to them.

Victim and Witness Protection Act

The enactment of the Victim and Witness Protection Act of 1982 directed all Federal law enforcement agencies to develop and implement consistent guidelines for the fair treatment of Federal crime victims and witnesses. Like most other Federal law enforcement agencies, the U. S. Capitol Police (USCP) did not have existing policies or uniform procedures for officers to follow when responding to the needs of crime victims and witnesses.

Faced with this predicament, the department set out to design an effective system to serve the victims and witnesses of serious crimes occurring on Capitol Hill, be they Congressional staff members, tourists, or local residents of the Washington, D.C., metropolitan area. Serious crime was defined as crimes of personal violence, at-

tempted/threatened personal violence, or significant property loss. The most recurring serious crimes on the Hill are armed robberies and aggravated assaults.

Manual Development

The first step taken to comply with the act was the development of the *USCP Victim-Witness Assistance Manual*. This comprehensive document states the Capitol Police's policy regarding victim assistance. It defines and governs the official responses and actions to be taken by officers assigned as Victim-Witness Assistance Coordinators, as well as other members of the department. The information contained in the manual is a point of reference for all USCP department members.

Information Brochure for Victims

The next step was to create an eight-page brochure entitled *Infor-*

mation for Victims and Witnesses of Crime. The brochure informs victims and witnesses of their rights under the act, what they can expect from the USCP, and what is expected from them in terms of cooperation. The brochure is given to each victim or witness contacted by a Victim-Witness Assistance Coordinator. It has sections explaining the following aspects of their case, such as:

- The criminal investigation process
- What will occur if an arrest is made
- Right-to-know status of case and defendant's custody status
- Crime victims compensation programs/restitution
- How a victim's recovered stolen property is handled
- Assistance with victim's employer
- Threats or harassment of victims or witnesses
- Available community resources to assist victims

The brochure also has a map showing the location of the various USCP stations and the department's Property Management Division, where property can be claimed by its owners. The back cover provides space for victims or witnesses to write down the names and phone numbers of officers and detectives involved in the case, as well as other



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[The program] ensures that victims and witnesses of crime...are treated fairly and courteously, and that they are provided with timely information and assistance.
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Captain Luteran serves as the supervisor of the Victim-Witness Assistance Program for the U. S. Capitol Police.

important information. It also indicates the program's hotline telephone number and mailing address in case questions occur or further action is necessary.

Victim-Witness Assistance Coordinators

Rather than establishing and staffing a full-time unit, USCP administrators decided that the Victim-Witness Assistance Program would use 18 specially trained officers and detectives, called coordinators, on an "as needed basis." The 18 coordinators, representing each division of the department, cover all shifts, 24 hours a day, 7 days a week. When a serious crime occurs, coordinators respond to the scene of the crime to assist the victim(s) and witnesses. When not serving in this capacity, coordinators work their regular assignments.

A selection process for coordinators was established, and a list of applicants was approved. In addition to other criteria, the evaluators looked for officers who were able to deal with the public in a concerned, sensitive, and professional manner. Officers with formal education in psychology, sociology, or social work and those with field experience in victim assistance or related social work were especially sought. After being selected for the program, each coordinator went through an intensive 40-hour, 1-week training course, during which representatives from regional law enforcement agencies shared victim-witness information concerning legal issues, available resources,

and cooperative measures with them.

It was decided that the program's supervisor should report directly to the Assistant Chief of Police for two reasons. First, because the program is staffed by officers from different bureaus within the department, reporting to a single source keeps matters unified. More

“***The first step in ensuring an effective program was to develop a specialized training course on victim assistance.***”

importantly, however, reporting directly to the Assistant Chief of Police eliminates the possibility of the program being stymied by a long chain of command or the policies becoming "watered down." Direct supervision of the program is provided by a captain, who is assisted by a sergeant.

Victim Hotline

Because the program is designed as a reactive unit and its coordinators are assigned to various divisions located in different stations, there was an apparent need for a central office to handle calls for assistance. The Watch Commander's Office, a headquarters-based, 24-hour operation, was selected as the site of the program's hotline number. Officers assigned there process all incoming

telephone calls for the program coordinators, either by transferring them to the on-duty coordinator, entering the message into the department's computerized electronic mail system, or if necessary, contacting requested off-duty coordinators.

U.S. Attorney's Office

After establishing the Victim-Witness Assistance Program within its own department, the USCP decided to ally itself with other sources in order to operate even more efficiently. Their cooperative efforts with the Victim/Witness Assistance Unit (VWAU) of the U.S. Attorney's Office for the District of Columbia has proved very beneficial.

In its unique role serving as both Federal and local prosecutor in most criminal cases in Washington, D.C., the U.S. Attorney's Office prosecutes some 35,000 cases involving about 90,000 victims and witnesses each year. The VWAU, established in 1979, is responsible for providing information and services to these victims and witnesses while they are involved in the criminal justice system.

The USCP's program parallels some of the services offered by the U.S. Attorney's VWAU. Each USCP coordinator works closely with the assigned VWAU coordinator to serve those who have been victimized on Capitol Hill. Because the programs complement each other, caseloads are lessened.

Prior to the USCP program, the U.S. Attorney's Office VWAU assisted only those victims whose



"Officer Bear" Program

The department decided to incorporate its new "Officer Bear" Program as a part of the Victim-Witness Assistance Program. A small, plush teddy bear dressed in a blue police officer's uniform, "Officer Bear" serves as an "emotional shock absorber" and has proven very effective in breaking down a child's fear and anxiety. They are given to children under certain circumstances, such as cases involving children under the age of 13 who have been the victim of a traffic accident, crime, disaster, or other distressing events that have produced serious emotional trauma. They are also used for children up to the age of 15 who are the victims of sexual assault. In addition to these general guidelines, bears may be distributed by coordinators in special cases that they deem appropriate.

cases resulted in the arrest of a defendant. Now, with the implementation of the USCP's program, cooperative efforts ensure that all victims are assisted.

Specialized Training

The first step in ensuring an effective program was to develop a specialized training course on victim assistance. In October 1989, the USCP, in association with the Office for Victims of Crime, the U.S. Department of Justice, and the Federal Law Enforcement Training Center (FLETC), hosted a regional training conference on Victim-Witness Assistance for Federal law en-

forcement agencies. The course was an intensive, state-of-the-art course in victim assistance taught by nationally recognized experts in the field. This course was the first of its kind for Federal law enforcement agencies in the Washington, D.C., area.

This 40-hour course served as basic training for new USCP coordinators and representatives of other agencies attending. The training course consisted of core modules of instruction centering on Federal law enforcement's responsibilities to victims and witnesses, as defined by the Federal Victim and Witness Protection Act of 1982. There were

also blocks of instruction presented by representatives of those local private and governmental agencies in the Washington, D.C., area that are responsible for providing a wide range of services to crime victims. The course was designed to be a fundamental program that would provide the officers with practical information and techniques to assist victims and witnesses effectively.

Agencies providing instruction to the class attendees included:

- D.C. Rape Crisis Center
- National Organization for Victim Assistance
- D.C. Crime Victims Compensation Program
- House of Ruth (a local domestic abuse shelter)
- D.C. Crime Victims Assistance Program
- National Resource Center on Child Sexual Abuse
- Delaware State Police, Victim Services Unit
- Office for Victims, U.S. Department of Justice
- American Association of Retired Persons
- Federal Bureau of Prisons
- Victim/Witness Assistance Unit, U.S. Attorney's Office
- National Sheriff's Association

All representatives explained the purpose of and the capabilities of their respective programs and

provided attendees with materials that would assist them.

Each attendee also received a *Community Services Directory* compiled by the Victim/Witness Assistance Unit of the U.S. Attorney's Office. This directory, which is updated annually, is a comprehensive listing of area services, including mental health counseling, alcohol and drug rehabilitation programs, emergency financial assistance, sources of emergency food and clothing, legal assistance, and emergency housing assistance. It serves as an excellent resource tool for coordinators when working with victims.

Case Management System

Another aspect of the USCP's Victim-Witness Assistance Program was to design a recordkeeping system for case information. All cases initiated by the program are entered into a specially formatted information management program built into the department's mainframe computer. The coordinators enter selected data on each case, including basic information taken from the original crime report, court dates, custody status of the defendant, referrals to other programs, notes on action taken by the coordinator, incidents of harassment/intimidation, and other pertinent information. Cases requiring followup action are noted in the system's calendar function to ensure prompt and efficient action.

Feedback From Victims

In order to evaluate the program's effectiveness, a system allowing feedback from victims and witnesses was developed. Ninety

days from the date of initial contact, a letter is mailed from the chief of police to each victim or witness assisted by the program. The letter is accompanied by a short survey form and a stamped self-addressed return envelope. The survey elicits victim and witness opinions of the program itself, the coordinator assigned to the case, and other referral agencies with which the victim came into contact.

Receiving constructive criticism, as well as compliments, serves as an effective mechanism to ensure that the program is satisfying its users and is performing its mission of effectively assisting victims of crime and their families in coping with and recovering from the effects

In addition to ensuring compliance with the letter of the law, the Victim-Witness Assistance Program provides the U. S. Capitol Police with the ability to comply with the spirit of the law effectively and cooperatively. It also ensures that victims and witnesses of crime on Capitol Hill are treated fairly and courteously, and that they are provided with timely information and assistance. As one part of the growing victims' rights movement, the USCP Victim-Witness Assistance Program is doing its part in restoring balance within the criminal justice system.

Though local and State agencies are not required to set up a Victim-Witness Assistance Program

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The main ingredients of the [USCP Victim-Witness Assistance Program] could be incorporated into programs on the local or State level.

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of crime. Comments from returned surveys have resulted in several useful changes in the program, as well as improved techniques by the coordinators.

Conclusion

Historically, Federal law enforcement took no active role in the area of victim and witness assistance. Passage of the Victim and Witness Protection Act of 1982 and the Victims of Crime Act of 1984 spurred action in this very important area.

under the 1982 act, a program such as this could certainly be developed by individual departments. The main ingredients of the Federal approach contained in this article could be incorporated into programs on the local or State level. By using victim-witness assistance coordinators, preparing guidelines and an information brochure, putting together a community services directory, and organizing victim-witness training programs, a department could create an effective victim-witness program.

LEB



Successful Interviewing

By JAMES R. RYALS

Interviewing is one form of communication used extensively by law enforcement. Whether used to screen applicants, to elicit information from a witness to a crime, or to obtain a confession, a good interview can have a significant impact on the organization. However, if conducted improperly, the interview may be rendered worthless or can result in serious negative consequences for all involved.

There are certain guidelines to follow when conducting an interview. By adhering to the following basic rules, the interviewer can reduce many of the problems that might arise because of a faulty interview.

- Develop a plan of action. The interviewer should review pertinent data and develop questions that will elicit the information required to complete the task at

hand. For example, for applicant interviews, questions should be tailored to gather information that accurately evaluates the potential employee. On the other hand, questions posed to witnesses of a crime should be designed to obtain facts to complete an accurate report. For the most part, interviews should prepare areas of inquiry in a general way to keep the interview flowing. Previously prepared questions tend to "drive" the interview in a particular direction, which limits the type and amount of information gathered.

- Conduct the interview privately. While this basic rule is oftentimes difficult to follow, depending on the circumstances, every effort should be made to minimize

distractions during the interview.

- Put the interviewee at ease. Emotions and stress play a big part in any type of interview, and the interviewer will have a difficult time evaluating a nervous person. Starting the interview casually with nonthreatening conversation can have a calming effect. By defusing negative feelings and reinforcing positive ones, the interviewer can deal with the emotions exhibited by the interviewee.
- Let the person being interviewed do the talking. One of the biggest mistakes the interviewer can make is to talk too much. Accurate evaluations of applicants or gathering crucial information regarding a crime depends on letting the interviewee talk

under controlled conditions. The interviewer should control the interview, not dominate it.

- Perfect questioning techniques. Knowing how to ask questions is just as important as knowing what questions to ask. Also, making questions easy to understand is critical. This allows the person being interviewed to concentrate on answering the questions, not on trying to decipher what they mean.
- Select questions carefully. Use closed-ended questions (yes/no answers) sparingly because they only require a short answer and usually only confirm factual data. Open-ended questions force the interviewee to talk and elaborate on the matter at hand. For example, when interviewing witnesses to a crime, the interviewer should ask the witnesses to relate in their own words what they saw. This allows the interviewer to better assess the reliability of the information obtained. Interviewers should refrain from asking hypothetical questions of potential employees. Such questions tend to evaluate the applicant's ability to guess what answer the interviewer wants to hear. The best guesser then gets the job. Questions posed to potential employees should center on what the person has already done that relates to the position applied for by the applicant. Leading questions,

which contain the answer, and loaded questions, which ask the person interviewed to choose the lesser of two evils, should always be avoided.

- Be a good listener. A good interviewer is a good listener. Interviewers must discipline themselves to focus on what is being said and how it is being said. They should not look ahead to subsequent questions or begin to analyze an answer before the person finishes. Nor should they anticipate what the answer will be.
- Don't challenge answers given. Interviewers must keep emotional reactions private and should not let personal feelings interfere with the interview. There is time to document problems after the interview.
- Stay in control. During an interview, some people try to digress from questions asked. Proper preparation is the key to maintain control of the interview and to ensure that it does not get off course.
- Take brief notes. Notes allow the interviewer to recall important details revealed during the interview. However, while making notes, the interviewer should not lose eye contact with the person. Excessive note-taking causes the person being questioned to slow down responses in



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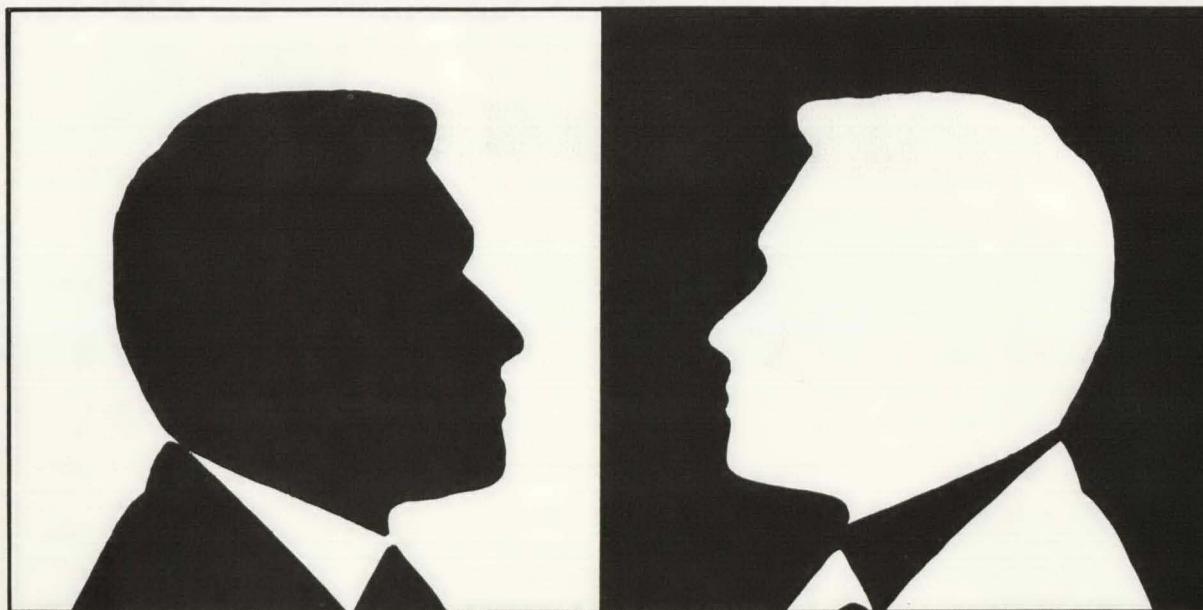
order to accommodate the interviewer.

- Conclude the interview properly. It is the responsibility of the interviewer to signal the end of the interview. This can be done by simply closing a notebook, standing up, or announcing that the interview is over.
- Write a summary immediately following the interview. This helps the interviewer to recall important information should questions arise later.
- Learn from experience. Critiquing helps to identify areas that need improvement and to develop interviewing techniques.

These basic rules are merely guidelines to follow when conducting an interview. While they will not alleviate all the problems that can arise during an interview, they will assist in developing the skills required of a successful interviewer.

LEB

Cognitive Interviewing



By
MARGO BENNETT, M.Ed.
and
JOHN E. HESS, M.Ed.

When interviewing crime victims, few investigators begin with questions such as: How tall was the subject? What color was his hair? Did he have any scars? Common sense, experience, and fundamental training lead investigators to the conclusion that such specific questions give witnesses little opportunity to tell what they know. Instead, open-ended questions tend to produce the best results. A question like, "What did he look like?" eliminates the

need for investigators to anticipate every detail of description victims may have noted. Investigators can always follow up the witness' statements with specific, direct questions to fill in gaps. At least, that is what many interview textbooks suggest. But what happens when even these direct questions fail to produce the details needed from witnesses? The cognitive interview method is a proven technique, effective because it provides interviewers with a structured approach

to help retrieve such details from the memories of witnesses.

Consider the following scenario: At a robbery scene, a uniformed officer briefs the investigating detective. Hoping to obtain additional information, the detective approaches the clerk, introduces himself, and sensing her anxiety, takes some time to assure her that she has nothing to worry about. He tells her he understands the trauma she has just undergone, gets her a cup of coffee, and delays

asking any questions until she has regained her composure. He then tells her that he needs her help and asks that she start at the beginning and tell him exactly what happened. She replies:

"I was behind the counter when all of a sudden, I heard a voice telling me to give him all the money, and I would not get hurt. I looked up and saw a man wearing a ski mask pointing a gun right at me. I just froze and stared at the gun. He told me to get a move on or there would be trouble. I opened the cash register and handed him all of the bills. There was just under a hundred dollars in the register. He then told me to lie on the floor and not move. I did as he told me and waited until I was sure he was gone. I yelled to Joe, the manager, who was in the office, who asked me if I was okay. He then ran to the phone and called the police. The next thing I knew, the police officer arrived, and I told him the same thing I just told you. I don't know what the guy looked like, where he came from, or how he got away. I'm sorry I can't be more help."

The detective tells her that she has been very helpful and that now he would like to go over the story again, and this time, if she doesn't mind, he will interrupt her with questions as she goes along. As she retells her story, he constantly probes for additional details, such as the possibility of additional witnesses, more descriptive data regarding the subject and his weapon, words he may have used,

noticeable accent, and the means of his escape. However, except for a bit more descriptive data, the victim was correct; she had told the responding officer everything she could remember.

THE PROBLEM: INABILITY TO REMEMBER

The above scenario illustrates a problem encountered by many investigators. That problem results not from investigators being unable to ask good questions but simply from witnesses who are unable to provide the answers. Responses such as, "I don't remember," "That's all I saw," or "I can't recall" frustrate many interviewers on a regular basis. In the past, this led investigators to try hypnosis as a means of enhancing witness recall.

"...the cognitive approach to interviewing witnesses increases the quantity of information obtained and does not jeopardize the witness' credibility in court, as hypnosis does."

Improved results verified what many investigators suspected—an inability of witnesses to remember, not a lack of observations, was the main problem.¹ Although investigators achieved some success through hypnosis, those successes did not last long. Courts, on a

regular basis, began ruling in favor of defense attorneys who alleged that hypnotically elicited information may contain flaws and that hypnosis as a means of refreshing recall lacks scientific acceptance.² Therefore, investigators now primarily reserve hypnosis for situations where the need for lead information supersedes all other considerations. They know full well that using hypnosis will probably disqualify a witness from testifying.

SOLVING THE PROBLEM: THE COGNITIVE INTERVIEW

To enhance witness recall without the stigma attached to hypnosis, Ronald P. Fisher and Edward Geiselman, professors at Florida International University and UCLA respectively, have developed a system they call the cognitive interview. Although their process contains few, if any, new ideas, they have systematized some techniques which have, for the most part, been used by investigators only in a sporadic, piecemeal fashion. Research indicates that the cognitive approach to interviewing witnesses increases the quantity of information obtained³ and does not jeopardize the witness' credibility in court, as hypnosis does.

This article compares the traditional interview with the cognitive interview. Specifically, this article deals with the cognitive interview technique as it assists witness memory retrieval by: 1) Reinstating the context of the event, 2) recalling the event in a different sequence, and 3) looking at the

event from different perspectives. It also deals with specific retrieval techniques and time factors that affect the interview.

Reinstate the Context

Traditional interviews of victims and witnesses, similar to the one described above, usually begin with interviewers first taking the time to make introductions and putting witnesses at ease before asking, "What happened?" or "What can you tell me about...?" Then, specific questions follow that are geared to fill in the gaps inadvertently left by witnesses. Proponents of the cognitive interview suggest this will not usually produce optimum results. Asking people to isolate an event in their minds and then to verbalize that event requires them to operate in a vacuum. Even without the trauma that often results from involvement in a crime, common sense says that human memory functions better in context. The cognitive interview process takes this into account.

What is meant by context and how do interviewers establish it? Simply put, interviewers make efforts to reestablish the environment, mood, setting, and experiences by asking witnesses to relive mentally the events prior to, during, and after the crime.

Let's return to the robbery scene described above with the detective who had already introduced himself to the victim and asked for her help. Instead of asking her what happened during the crime, using the cognitive interview approach, he proceeds as follows:

"It's only about 10:00, and it's already been a pretty full day for you. How about telling me how your day started. Tell me what time you got up, the chores you did, the errands you ran and anything else that happened before you came to work."

As she recounts her activities, he joins the conversation, discussing events with her, including the problems of a working mother, what she fixed for breakfast, and any other details that she mentions. Only when they have developed a clear picture of those events does the detective next suggest that the victim describe her travel to work. He handles this portion of the conversation in the same way. He does not ask perfunctory questions geared to getting her quickly to the

"During initial recollection, witnesses articulate from their personal perspectives and rarely vary from their point of view."

crime scene, but rather, he discusses her commute to work in depth. They discuss the route she took, weather and traffic conditions she encountered, events she may have noticed, and finally, where she parked her car and what she noticed at that time. He wants her not only to just describe her day in general but also to relive it.

He uses the same interview technique regarding her arrival at work. By the time they finally get to the discussion of the robbery, they have put the event into context. In many instances, this process enhances measurably a person's retrieval of stored information. Thus, witnesses can see details of the robbery in their proper sequence and context. Concentration is more focused than during any previous interviews, which may have only consisted of isolated questions and answers. The response, "I can't remember," will occur less frequently.

Change Sequence

To continue the interview and further develop the witness' recall, another phase of the cognitive interview follows next in sequence. Initially, retrieving information from witnesses occurs in a normal, chronological flow of events. However, when recounting from memory, people tend to edit as memory playback occurs. This results in a summary based upon what witnesses regard as important. Therefore, interviewers should address this problem by prompting witnesses not to hold back even the most insignificant detail. Even so, most interviewers can cite experiences where valuable information went unmentioned because witnesses chose to omit it.

By changing the sequence of recall, witnesses can look at each stage of the event as a separate entity—much akin to looking at individual frames from a film.

Reverse or out-of-order recall also encourages an overly zealous witness to stick to the facts. Witnesses find it more difficult to embellish the event when they separate themselves from the natural flow of events and independently deal with each activity.

Returning to the eye-witness interview in the opening scenario, the detective might continue using the cognitive interview technique. Accordingly, he would discuss the conversation the victim had with the responding officer and ask where she was when the officer arrived. He wants to know exactly what she was doing at that time. What did she do immediately before that? Through this line of questioning, he gradually arrives back at the time of the robbery and before hand. Thus, he leads her through a second recounting of the crime, only in reverse sequence. This time, her information is a collection of pieces, each viewed independently. Just as looking at a portion of the landscape may reveal details missed while taking in the panoramic view, looking at stages of an event may enable witnesses to "see" previously unnoticed items.

Change Perspective

To further stimulate witness memory recovery, Fisher and Geiselman also suggest changing the perspective.⁴ Witnesses experience an event one time; however, they may perceive it from various views. During initial recollection, witnesses articulate from their personal perspectives and

rarely vary from their point of view. By prompting witnesses to physically change the positioning in their memories, interviewers give them the opportunity to recall more of their experiences.⁵ Interviewers can change perspective by asking witnesses to consider the view of another witness, victim, or an invisible eye on the wall.

Using the technique of changing the perspective of witnesses, the

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detective in the opening scenario might say: "You know those surveillance cameras they have in banks and some stores? Too bad there wasn't one on the wall over there. I wonder just what it would have recorded; it certainly would have had a different vantage point than you did." Through this opening statement, he can draw the victim into a discussion of what might have been recorded on the nonexistent camera. This technique not only provides her with an opportunity to "replay" the event from a different perspective but it also

serves to further detraumatize the situation. Reviewing a film is much less traumatic than reliving an armed robbery.

SPECIFIC RETRIEVAL

Interviewers can use additional techniques to promote memory retrieval, depending on the facts of the crime and witness information. After witnesses have recounted an event in its natural sequence, reverse sequence, and from different perspectives, the interviewer can induce specific retrieval by asking direct questions. One technique of specific retrieval includes associating witness recollection of physical appearance, clothing, and sound with something or someone familiar to them. Other areas of recall, such as remembering names and numbers, may be enhanced by dealing with individual components of the item, such as the first letter or number. Once established, interviewers direct concentration to the next letter or number and build the response.

Using this technique, the detective in the robbery scenario might have first reviewed the details obtained thus far. At certain points, he might have stopped to ask questions such as: "You say he had a scary voice. How so? Does it remind you of anybody you know, or perhaps somebody you've seen in a movie?" "The coveralls he was wearing—ever seen that type before? Where? Were they like a pilot's suit, or more like a carpenter's?"

This context-enhancing technique stems from realizing that the

victim did not experience this event as a clean slate. She had a lifetime of experiences that preceded this activity. Therefore, when getting a description of the subject, a detective's questions, "Does this person remind you of anyone you know? In what way?" likewise provide a context from which the victim can make comparisons. This removes her need to create, thus enabling her to draw on information with which she is comfortable.

TIME FACTORS

The cognitive interview encourages a witness' in-depth retrieval of memory. Success with this technique, although a time-consuming process, forces interviewers to avoid some traps normally associated with police interviews, specifically, rushing the recall of witnesses and interrupting their narratives.

Witnesses must feel confident that they have time to think, speak, reflect, and speak again as often as they need. Interviewers can instill this confidence by allowing sufficient time for the interview and by refraining from interrupting witnesses.⁶ All too often, interviewers say, "Tell me what happened," but before witnesses speak for 30 seconds, interviewers begin interrupting with specific questions. Those specific questions should be asked after witnesses have had the opportunity to recount the event fully. Allowing time to respond also applies when witnesses answer specific retrieval questions. Rushing witnesses sends a message to them that their information is trivial. This results in wit-

ness retrieval shutdown. If interviewers don't give them the time, witnesses cannot concentrate or remember.

The cognitive interview technique not only enhances witness recall but also addresses another common problem among interviewers—their inability to sustain the interview. Interviewers, particularly inexperienced ones, are often reduced to saying, "I can't think of anything else to ask. Is there anything you're leaving out?" If a

"Witnesses must feel confident that they have time to think, speak, reflect, and speak again as often as they need."

witness responds in the negative, the interview is over. Using the cognitive technique can help interviewers avoid prematurely reaching this point. Experience demonstrates that the cognitive interview technique allows interviewers to continue discussing events without sounding redundant. Indeed, continued conversation in a constructive, helpful direction often prompts additional information.

CONCLUSION

Despite significant advances in various forensic fields, most crimes are solved by information

furnished by people. The interview remains the foremost investigative tool for gaining information.

Although most victims and witnesses try to cooperate, their inability to recall vital details can be discouraging, and they need help in remembering. This help must come from investigators. Merely asking the right questions does not suffice; enhancing someone's memory requires active involvement. The cognitive approach to interviewing has proven more effective than the traditional one by increasing the quality and quantity of information obtained from witnesses and victims.

LEB

Footnotes

¹ John C. Yuille and N. Hope McEwan, "Use of Hypnosis as an Aid to Eyewitness Memory," *Journal of Applied Psychology*, 1985, vol. 70, No. 2, p. 389.

² Martin T. Orne, David F. Dinges, and Emily C. Orne, "The Forensic Use of Hypnosis," *National Institute of Justice*, December 1984, p. 1.

³ R. Edward Geiselman, Ronald P. Fisher, David P. MacKinnon, and Heidi L. Holland, "Eyewitness Memory Enhancement in the Police Interview: Cognitive Retrieval Mnemonics Versus Hypnosis,"

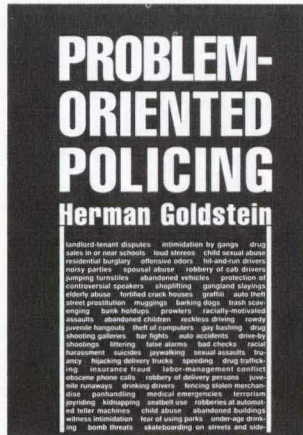
Journal of Applied Psychology, 1985, vol. 70, No. 2, p. 403.

⁴ R. Edward Geiselman, and Michael Nielsen, "Cognitive Memory Retrieval Techniques," *The Police Chief*, March 1986, p. 70.

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⁶ R. Edward Geiselman, Ronald P. Fisher, David S. Raymond, Lynn M. Jurkevich, and Monica L. Warhaftig, "Enhancing Eyewitness Memory: Refining the Cognitive Interview," *Journal of Police Science and Administration*, December 1987, vol. 15, No. 4, p. 292.

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Problem-Oriented Policing by Herman Goldstein, McGraw-Hill, New York, 1990.

This book expands and further defines the concept of problem-oriented policing as originally formulated by the author in the 1979 *Crime and Delinquency* article, "Improving Policing: A Problem-Oriented Approach." The leadership of four agencies were so inspired by what Goldstein wrote in his original article that they began dismantling their traditional policing practices and began applying his problem-oriented approach.

Now, more than a decade later, some 250 law enforcement agencies have found sufficient merit with the concept to undertake reinventing policing according to Goldstein's model. At the same time, a growing number of

professionals in both the academic and law enforcement communities were so impressed by Goldstein's concept that he was encouraged to expand, and in some ways, update his ideas. *Problem-Oriented Policing* is the result.

This book clarifies a number of misconceptions about problem-oriented policing (POP) and its variants. For example, POP is *not* a revitalization of the "cop on the street," nor is it a renovated version of the 1970s "team policing" approach. And, it is not simply another program to be added to what law enforcement is already doing. Problem-oriented policing is an entirely new way of policing that is nothing short of revolutionary.

Problem-Oriented Policing provides answers to the questions asked by cost-conscious citizens, politicians, and skeptics within police departments. Goldstein discusses what has been accomplished by law enforcement to date. He then critiques the state of progress and suggests factors leading to the need for problem-oriented policing. Next, he discusses the basic elements of the POP concept and presents some early experiences of departments employing problem-oriented policing.

Goldstein also discusses variations of the POP concept—community-oriented and neighbor-

hood-oriented programs—which have been implemented in several cities. He follows by stressing the importance of identifying and analyzing the problem, as well as the search for effective alternatives to the status quo.

Goldstein then turns his attention to the need for change in management's view of law enforcement's role in solving community problems. For the concept to succeed, management must create an environment supportive of problem-oriented policing. Goldstein concludes with a reflection on efforts to implement the POP concept, "At the heart of this more honest approach to policing is the realization that the objective in attempting to bring about change is not simply to improve the police, but rather to solve community problems."

This book is truly thought-provoking, and it challenges conventional wisdom in a way that prompts the reader to consider new ways of addressing old problems. *Problem-Oriented Policing* may be one of the most important law enforcement-related books of this decade.

Reviewed by
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Why Suspects Confess



By
DAVID D. TOUSIGNANT, M.A.

Many criminal cases, even when investigated by the most experienced and best qualified investigators, are ultimately solved by an admission or confession from the person responsible for committing the crime. Oftentimes, investigators are able to secure only a minimal amount of evidence, be it physical or circumstantial, that points directly to a suspect, and in many instances, this evidence is not considered strong enough by prosecutors to obtain a

conviction. In such cases, the interrogation of the suspects and their subsequent confessions are of prime importance.

This article addresses the question of why suspects speak freely to investigators, and ultimately, sign full confessions. The physical and psychological aspects of confession and how they relate to successful interrogations of suspects are also discussed, as is the "breakthrough," the point in the interrogation when suspects make an

admission, no matter how minuscule, that begins the process of obtaining a full confession.

Defining Interrogation

Interrogation is the questioning of a person suspected of having committed a crime.¹ It is designed to match acquired information to a particular suspect in order to secure a confession.² The goals of interrogation include:

- To learn the truth of the crime and how it happened

- To obtain an admission of guilt from the suspect
- To obtain all the facts to determine the method of operation and the circumstances of the crime in question
- To gather information that enables investigators to arrive at logical conclusions
- To provide information for use by the prosecutor in possible court action.³

Knowing the definition and objectives of the interrogation, the question then asked is, "Why do suspects confess?" Self-condemnation and self-destruction are not normal human behavioral characteristics. Human beings ordinarily do not utter unsolicited, spontaneous confessions.⁴ It is logical to conclude, therefore, that when suspects are taken to police stations to be questioned concerning their involvement in a particular crime, their immediate reaction will be a refusal to answer any questions. With the deluge of television programs that present a clear picture of the *Miranda* warning and its application⁵ to suspects, one would conclude that no one questioned about a crime would surrender incriminating information, much less supply investigators with a signed, full confession. It would also seem that once suspects sense the direction in which the investigators are heading, the conversation would immediately end. However, for various psychological reasons, suspects continue to speak with investigators.

Suspect Paranoia

Suspects are never quite sure of exactly what information investigators possess. They know that the police are investigating the crime, and in all likelihood, suspects have followed media accounts of their crimes to determine what leads the police have. Uppermost in their minds, however, is how to escape detection and obtain firsthand information about the investigation and where it is heading.

Such "paranoia" motivates suspects to accompany the police voluntarily for questioning. Coupled with curiosity, this paranoia motivates suspects to appear at police headquarters as "concerned citizens" who have information pertinent to the case. By doing this, suspects may attempt to supply false or noncorroborative information in order to lead investigators astray, gain inside information concerning the case from investigators, and remove suspicion from them-

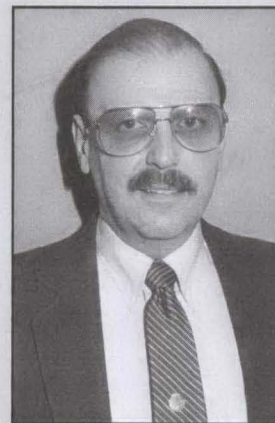
selves by offering information on the case so investigators will not suspect their involvement.

For example, in one case, a 22-year-old woman was discovered in a stairwell outside of a public building. The woman had been raped and was found naked and bludgeoned. Investigators interviewed numerous people during the next several days but were unable to identify any suspects. Media coverage on the case was extremely high.

Several days into the investigation, a 23-year-old man appeared at police headquarters with two infants in tow and informed investigators that he believed he may have some information regarding the woman's death. The man revealed that when he was walking home late one evening, he passed the area where the woman was found and observed a "strange individual" lurking near an adjacent phone booth. The man said that be-

"Suspects confess when the internal anxiety caused by their deception outweighs their perceptions of the crime's consequences."

Inspector Tousignant is with the Lowell, Massachusetts, Police Department.



cause he was frightened of the stranger, he ran back to his home. After reading the media accounts of the girl's death, he believed that he should tell the police what he had observed.

The man gave police a physical description of the "stranger" and then helped an artist to compose a sketch of the individual. After he left, investigators discovered that the sketch bore a strong resemblance to the "witness" who provided the information.

After further investigation, the witness was asked to return to the police station to answer more questions, which he did gladly. Some 15 hours into the interrogation, he confessed to one of his "multiple personalities" having killed the woman, who was unknown to him, simply because the victim was a woman, which is what the suspect had always wanted to be.

This case clearly illustrates the need for some suspects to know exactly what is happening in an investigation. In their minds, they honestly believe that by hiding behind the guise of "trying to help," they will, without incriminating themselves, learn more about the case from the investigators.

Interrogation Setting

In any discussion concerning interrogation, it is necessary to include a review of the surroundings where a suspect is to be interrogated. Because there is a general desire to maintain personal integrity before family members and peer groups, suspects should be removed from familiar surroundings and taken to a location that has an

atmosphere more conducive to cooperativeness and truthfulness.⁵

The primary psychological factor contributing to successful interrogations is privacy—being totally alone with suspects.⁶ This privacy prompts suspects to feel willing to unload the burden of guilt.⁷ The interrogation site should isolate the suspect so that only the interrogator is present. The suspect's thoughts and responses should be free from all outside distractions or stimuli.

“
***[Interrogation] is
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to a particular suspect
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confession.***
”

The interrogation setting also plays an important part in obtaining confessions. The surroundings should reduce suspect fears and contribute to the inclination to discuss the crime. Because fear is a direct reinforcement for defensive mechanisms (resistance), it is important to erase as many fears as possible.⁸ Therefore, the interrogation room should establish a business atmosphere as opposed to a police-like atmosphere. While drab, barren interrogation rooms increase fear in suspects, a location that displays an open, you-have-nothing-to-fear quality about it can do much to break down interrogation defensiveness, thereby eliminating a

major barrier.⁹ The interrogators tend to disarm the suspects psychologically by placing them in surroundings that are free from any fear-inducing distractions.

Psychological Factors

More than likely, suspects voluntarily accompany investigators, either in response to a police request to answer questions or in an attempt to learn information about the investigation. Once settled in the interrogation room, the interrogators should treat suspects in a civilized manner, no matter how vicious or serious the crime might have been. While they may have feelings of disgust for the suspects, the goal is to obtain a confession, and it is important that personal emotions not be revealed.¹⁰

Investigators should also adopt a compassionate attitude and attempt to establish a rapport with suspects. In most cases, suspects commit crimes because they believe that it offers the best solution to their needs at the moment.¹¹ Two rules of thumb to remember are: 1) "There but for the grace of God go I"; and 2) it is important to establish a common level of understanding with the suspects.¹² These rules are critical to persuading suspects to be open, forthright, and honest. Suspects should be persuaded to look beyond the investigators' badges and see, instead, officers who listen without judging. If investigators are able to convince suspects that the key issue is not the crime itself, but what motivated them to commit the crime, they will begin to rationalize or explain their motivating factors.

At this stage of the interrogation, investigators are on the brink

of having suspects break through remaining defensive barriers to admit involvement in the crime. This is the critical stage of the interrogation process known as the breakthrough.

The Breakthrough

The breakthrough is the point in the interrogation when suspects make an admission, no matter how small.¹³ In spite of having been advised of certain protections guaranteed by the Constitution, most suspects feel a need to confess. Both hardcore criminals and first-time offenders suffer from the same pangs of conscience.¹⁴ This is an indication that their defense mechanisms are diminished, and at this point, the investigators may push through to elicit the remaining elements of confession.

In order for interrogators to pursue a successful breakthrough, they must recognize and understand certain background factors that are unique to a particular suspect. Many times, criminals exhibit psychological problems that are the result of having come from homes torn by conflict and dissension. Also frequently found in the backgrounds of criminals are parental rejection and inconsistent and severe punishment.¹⁵ It is important that investigators see beyond the person sitting before them and realize that past experiences can impact on current behavior. Once interrogators realize that the fear of possible punishment, coupled with the loss of pride in having to admit to committing mistakes, is the basic inhibitor they must overcome in suspects, they will quickly be able to formulate questions and analyze



“ Investigators should...adopt a compassionate attitude and attempt to establish a rapport with suspects. ”

responses that will break through the inhibitors.

Successful Interrogations

Investigators must conduct every interrogation with the belief that suspects, when presented with the proper avenue, will use it to confess their crimes. Research indicates that most guilty persons who confess are, from the outset, looking for the proper opening during the interrogation to communicate their guilt to the interrogators.¹⁶

Suspects confess when the internal anxiety caused by their deception outweighs their perceptions of the crime's consequences.¹⁷ In most instances, suspects have

magnified, in their minds, both the severity of the crime and the possible repercussions. Interrogators should allay suspect anxiety by putting these fears into perspective.

Suspects also make admissions or confessions when they believe that cooperation is the best course of action.¹⁸ If they are convinced that officers are prepared to listen to all of the circumstances surrounding the crimes, they will begin to talk. The psychological and physiological pressures that build in a person who has committed a crime are best alleviated by communicating.¹⁹ In order to relieve these suppressed pressures, suspects explain the circumstances of their crimes—they confess.

And, finally, suspects confess when interrogators are able to speculate correctly on why the crimes were committed. Suspects want to know ahead of time that interrogators will believe what they have to say and will understand what motivated them to commit the crime.

Conclusion

It is natural for suspects to want to preserve their privacy, civil rights, and liberties. It is also natural for suspects to resist discussing their criminal acts. For these very reasons, however, investigators must develop the skills that enable them to disarm defensive resisters established by suspects during interrogation. Before suspects will confess, they must feel comfortable in their surroundings, and they must have confidence in the interrogators, who should attempt to gain this confidence by listening intently to them and by allowing them to

Police Practices

verbalize their accounts of the crimes.

Interrogators who understand what motivates suspects to confess will be better able to formulate effective questions and analyze suspect responses. Obviously, more goes into gaining a confession than is contained in this article. However, if the interrogator fails to understand the motivations of the suspect, other factors impacting on obtaining the confession will be less effective.

LEB

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¹ Charles E. O'Hara and Gregory L. O'Hara, *Fundamentals of Criminal Investigation*, 5th ed. rev. (Springfield, IL: Charles C. Thomas, 1988), p. 117.

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³ John J. Horgan, *Criminal Investigations*, 2d ed. (New York, NY: McGraw-Hill Book Company, 1979), p. 78.

⁴ Fred E. Inbau, John E. Reid, and Joseph P. Buckley, *Criminal Interrogation and Confessions*, 3d ed. (Baltimore, MD: Williams & Wilkins, 1986), p. 16.

⁵ Robert F. Royal and Steven R. Schutt, *The Gentle Art of Interviewing and Interrogation: A Professional Manual and Guide* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1976), p. 56.

⁶ Supra note 4, p. 24.

⁷ Charles R. Swanson, Jr., Neil Chamelin, and Leonard Territo, *Criminal Investigation*, 4th ed. (New York, NY: Random House, 1988), p. 210.

⁸ Supra note 5, p. 57.

⁹ Ibid.

¹⁰ Supra note 2, p. 12.

¹¹ Ibid., p. 13.

¹² Ibid., p. 13.

¹³ Supra note 5.

¹⁴ Supra note 7.

¹⁵ James C. Coleman, James N. Butcher, and Robert C. Carson, *Abnormal Psychology and Modern Life*, 7th ed. (Glenview, IL: Scott Foresman and Company, 1984), p. 261.

¹⁶ Supra note 7, p. 209.

¹⁷ John Reid and Associates, *The Reid Technique of Interviewing and Interrogation* (Chicago, IL: Reid & Associates, 1986), p. 44.

¹⁸ Supra note 5, p. 115.

¹⁹ Supra note 7, p. 209.



Community Outreach Program

In an effort to improve police-community relations, the City of Delray Beach, Florida, Police Department created the Community Outreach Program (COP). This program allows police officers to be active in police-community relations. It not only facilitates the effective performance of the department but it also encourages citizen involvement. The specific goals of the program are to solicit citizen support in dealing with community problems, listen to the concerns of the citizens, and promote goodwill toward the department.

The Program

COP officers initiate positive, unsolicited contact with residents. Uniformed officers meet regularly with both residents and merchants to inform them that officers are in the neighborhood to make the com-

munity both safe and drug free. Officers ask citizens to relay information about suspicious or illegal activity and give the citizens an information guide that answers frequently asked questions. Some of the questions addressed include:

- Why are citizens who call in to make a complaint asked multiple questions?
- What are the citizens' responsibilities to report criminal or suspicious activity?
- How can citizens give information anonymously by calling a TIPS hotline?
- How can residents help reduce crime in their neighborhoods through Crime Watch groups?

The guide also includes information on home security and crime prevention, as well as other relevant topics.

COP officers contact citizens and merchants only during day-time hours—the 8:00 a.m. to 4:00 p.m. shift and the early hours of the 4:00 p.m. to 12:00 a.m. shift. Officers working these shifts are required to make two unsolicited contacts with residents, as time permits. The visits usually last no more than 20 minutes; the goal is to open the lines of communication between police officers and citizens.

Log Books

In order to reduce the chance of duplicating citizen contacts, officers list their contacts in log books that are provided for each patrol zone. Shift supervisors assign the log books to patrol officers at daily briefings. When the

shift ends, the log books are returned to the supervisor, who reviews the officers' contacts.

Results

During the first 3½ months of the Community Outreach Program, approximately 5,500 contacts were made with local residents and merchants. Initially, citizens were surprised to find an officer at their doors. Now, they are getting to know police officers, and as a result, officers are given valuable information that may

have been disregarded or forgotten had positive contacts not been made.

This program has also resulted in positive media attention for the department. It has built citizen trust and confidence in the police, and most importantly, it has built positive police-community relations citywide. **LEB**

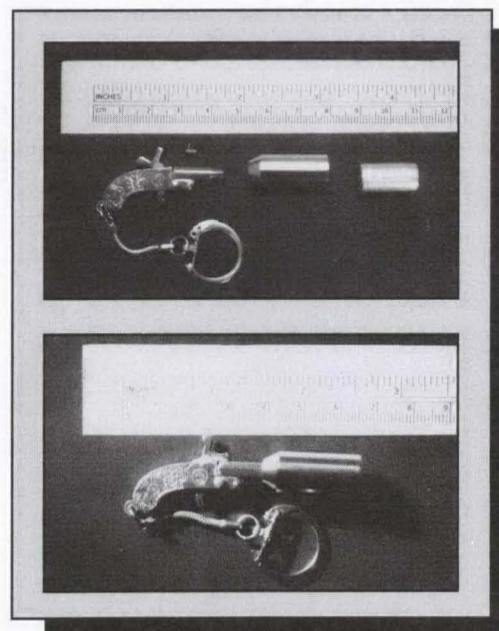
Information for this column was obtained from Sgt. Ross Licata, Delray Beach, Florida, Police Department.

Police Practices serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

Unusual Weapon

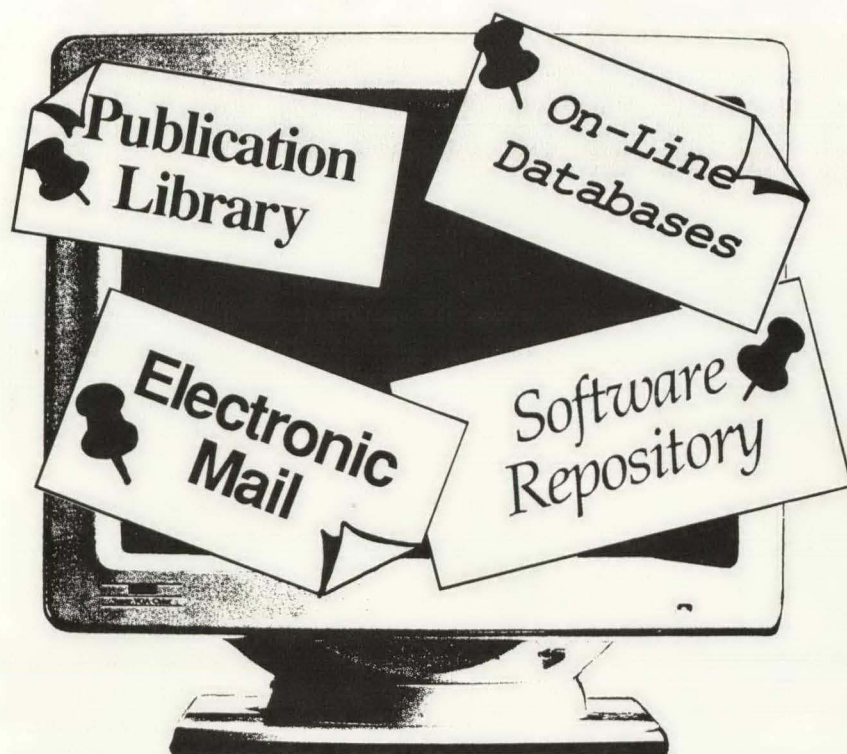
Keychain Pistol

The Chief of the Upper Providence Township, Pennsylvania, Police Department confiscated this unusual weapon during a routine vehicle stop. Manufactured in Germany, the weapon has a 38-caliber screw-on barrel and is well made, with detailed finishings requiring precision tooling. When assembled, it is only 2½ inches in length. **LEB**



Electronic Bulletin Boards

A New Resource For Law Enforcement



BY
SETH F. JACOBS
and
DAVID J. ROBERTS

The past decade witnessed an unprecedented growth in the power and speed of microcomputers, while the size and cost of this technology diminished steadily. The convergence of these seemingly contradictory trends (increasing power, decreasing price) enabled even small law enforcement agencies to implement sophisticated microcomputer systems.

At the same time, the technical expertise of law enforcement personnel grew significantly. In addition to using a broad range of com-

mercially available computer hardware and software, law enforcement personnel increasingly developed their own software applications for such police functions as records management, crime analysis, fleet maintenance, and manpower scheduling, to name but a few.

And in the years to come, as computer usage in law enforcement continues to expand, and personnel become technologically sophisticated, the use of microcomputers as vehicles for information exchange

will increase significantly. One key area of growth in this regard is the electronic bulletin board system geared to the needs of criminal justice practitioners.

WHAT A BBS CAN PROVIDE

An electronic bulletin board system (BBS) enables users to exchange information, post notices, send and receive electronic mail, share software, and query online databases. Like the traditional wall-bound bulletin board, a BBS serves as a central meeting place for in-

formation exchange and resource sharing.

With no more than a microcomputer, a modem, and a communications package, criminal justice agencies, regardless of size or location, can access a variety of BBS systems, which serve as national communication networks. By providing easy access and remote communication, BBS systems foster the development of an informal technical assistance network through which criminal justice practitioners of all levels of expertise can assist each other on a broad range of topics.

Thousands of these bulletin board systems exist in the United States, supporting everything from computer games to the information needs of major corporations. Among these systems are hundreds of criminal justice-oriented bulletin boards. (See tables 1 and 2 on the following pages.)

Local police departments, Federal agencies, nonprofit organizations, private companies, and private citizens operate these bulletin board systems, which were identified through an informal survey conducted by the authors. The availability of low-cost, shareware bulletin board packages that operate on microcomputers enables small agencies, or even individuals, to access bulletin boards.

Electronic Mail

Electronic mail, or "e-mail," enables users to exchange (i.e., both send and receive) messages with other bulletin board users. Messages can be addressed to a specific person, or to all system users. Most bulletin boards have a central mes-

sage area for exchange of e-mail on general topics. Some bulletin boards also maintain one or more specialized "conferences" that users can join to exchange information on specific topics (e.g., DNA profiling and artificial intelligence). These conferences operate as mini-BBS systems, sharing messages only among registered conference members, and typically have chairpersons or moderators, who keep messages focused on the specific agenda of the conference.

Electronic mail dramatically expands the technical assistance resources available to users by linking criminal justice practitioners throughout the Nation. The operational experience of users on a variety of issues can easily be shared, creating an "institutional memory" that allows departments to build upon each other's work.

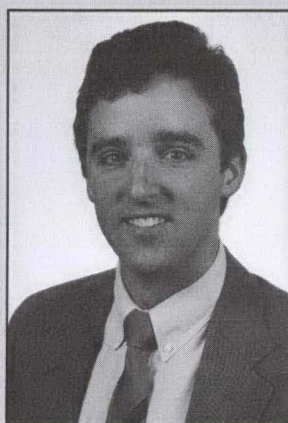
Unlike structured information systems, there are few restrictions

on the substance or format of electronic mail messages. Any questions or ideas that can be expressed in written form can be entered.¹

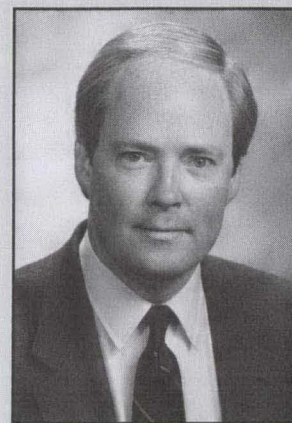
Bulletin board systems function as effective delivery mechanisms for technical assistance among criminal justice agencies throughout the Nation. However, BBS systems do more than just facilitate communication. They encourage the development of an "electronic community" through which users can freely exchange information that may not otherwise be available, or would be too time-consuming to obtain through conventional channels.

Software

Bulletin board systems also serve as a central repository for software applications developed by operational users. Typically, such programs are not broadly disseminated, though they frequently have



Mr. Jacobs



Mr. Roberts

Mr. Jacobs is the Director of the Research Statistics Program of SEARCH Group, Inc., the National Consortium of Justice Information and Statistics in Sacramento, California. Mr. Roberts serves as Deputy Director, Programs, of SEARCH Group, Inc.

Table 1
Police-Oriented BBS Systems

BBS Number	City and State	E-Mail	Shareware	Databases	Publications	Restrictions
	CALIFORNIA					
(415)644-6806	Berkeley	X	X		X	
(818)405-4242	Pasadena	X				
(408)287-8399	San Jose	X	X			
(415)877-5341	So. San Francisco	X	X			
	COLORADO					
(303)987-7388	Lakewood	X	X		X	
	CONNECTICUT					
(203)753-8351	Waterbury	X	X			
	FLORIDA					
(813)772-7585	Cape Coral	X	X			
(305)251-2698	Miami	X	X			
	GEORGIA					
(404)738-3626	Augusta	X				\$
	IDAHO					
(208)323-8626	Boise	X	X	X	X	
	MISSOURI					
(816)761-4039	Kansas City	X	X		X	
	NEW JERSEY					
(201)254-8117	Sayreville	X	X	X		\$
	NEW YORK					
(716)889-2016	Rochester	X	X		X	
(315)451-7148	Syracuse	X	X			@
(315)865-4070	Marcy	X	X			
	NORTH CAROLINA					
(919)886-8826	Thomasville	X	X		X	\$
	OHIO					
(216)545-0093	Girard	X	X			
	TEXAS					
(409)779-2936	Bryan	X	X			
(214)205-2129	Garland	X	X		X	

Symbols

X - Feature Available
\$ - A fee may be charged for full or partial access to the board
@ - Access may be restricted in whole or in part to law enforcement personnel

Note:

The list of bulletin board systems in tables 1 and 2 were compiled from several sources, including electronic mail left on the SEARCH-BBS. This list is not exhaustive; there may be many other similar systems that are not contained in this list. The information regarding features and restrictions was obtained by calling each board.

application beyond the agency for which they are developed.² Since law enforcement agencies frequently face similar information management issues, a solution developed by one agency may be relevant to the operation of others.

Practitioners who develop their own software often share it with others at little or no cost. Some developers leave their software in the public domain, free to anyone who may find it of value, while others request payment through a nominal registration fee. The registration fee may also entitle the user to system documentation and free upgrades. This latter form of

software is commonly referred to as "shareware."

Although the cost of shareware systems is typically very low, the quality sometimes rivals commercial software applications. Examples of effective criminal justice shareware packages currently available include a traffic citation system, a patrol car allocation package, and an intelligence database.

Bulletin boards also provide direct communication among software users, and between users and developers. This communication encourages users to share utilities and other routines developed as adjuncts to operating

systems, as well as the modification and development of shareware packages along lines most useful to the criminal justice community. Over several years, the cumulative impact of this increased feedback and reduced duplication could dramatically improve the quality of criminal justice shareware.

Database "Doors"

Another feature of bulletin board systems is their ability to provide users with online access to databases through "doors" that link the two systems. A database is an organized collection of data, such as mailing lists, field interrogation

cards, or crime reports. Properly constructed, a computerized database functioning as part of an information storage and retrieval system allows authorized users to obtain needed information quickly. Although the criminal justice system is just beginning to exploit this capability, it is clear that almost any information that can be stored in a database can be accessed through a bulletin board.

A database currently available to criminal justice practitioners is the Automated Index of Criminal Justice Information Systems.³ The automated index enables criminal justice practitioners to identify quickly and easily information systems appropriate to their needs. It contains detailed information on

criminal justice agencies (e.g., size and structure, computer hardware and operating systems, automated functions, and the criminal justice software packages used by each agency), as well as commercial and shareware information systems (e.g., required hardware and operating systems, support services and product features, modules available, and a list of agencies currently using the software). The automated index enables users to identify systems that meet specific criteria and to talk with agencies currently using those systems.

Publications

Electronic bulletin boards also function as extremely low-cost disseminating points for publications.

Published periodicals, court opinions, and administrative orders can be placed on the system as soon as the text is finalized. Users may read articles online or download any or all articles of interest. While the actual layout of an electronic version may differ slightly from the hardcopy (e.g., photographs will not be included), the substance of each article—the text—is the same.

Electronic dissemination of reports is especially effective for governmental agencies whose principle goal is to maximize dissemination of information rather than generate sales. In fact, several criminal justice agencies already disseminate their publications through a bulletin board.⁴ Their readers gain immediate access to

Table 2
Criminal Justice-Oriented BBS Systems

BBS Number	Name	E-Mail	Shareware	Databases	Publications	Restrictions
(800)322-4638(voice)	ABA Net	X		X	X	\$
(800)825-2665(voice)	ACA-NET	X	X	X	X	\$
(904)423-1312	APCO	X	X		X	\$@
(608)849-9796	Canine Corner	X	X	X	X	
(414)761-2582	C.A.T.C.H.	X	X		X	
(615)899-4714	"City of Greyhawk"	X				
(517)483-9615	CJT BBS	X	X		X	
(800)848-8990(voice)	CompuServe	X	X	X	X	\$
(708)972-3275	HMIX BBS	X	X			
(305)360-2991	House of Ichthys	X	X	X	X	\$@
(419)435-8335	Judges Conference	X	X	X	X	@
(701)224-9807	LegalNet	X	X		X	\$@
(202)466-7820(voice)	MetaPol	X			X	\$
(301)738-8895	NCJRS	X	X	X	X	
(906)227-2658	N. Michigan Univ.	X				@
(703)256-7516	NWIS	X	X		X	
(215)568-0356	Philadelphia Court	X	X	X		@
(916)392-4640	SEARCH-BBS	X	X	X	X	@
(603)352-0194	Tactical Edge	X	X		X	@
(714)873-9547	Whistle Blower BBS	X	X			

Symbols

X - Feature Available
\$ - A fee may be charged for full or partial access to the board
@ - Access may be restricted in whole or in part to law enforcement personnel

Example of Electronic Mail Messages

Q Does anybody have any information that they can forward to me about the use and operation of in-car computers? (Fayetteville, NC)

A The Los Angeles Police Department is using Mobile Digital Terminals in our vehicles to receive calls. We have a pilot program underway using laptops. Call me at.... (Los Angeles, CA)

Q Has anyone heard of a new form of drug testing called RIAH (Radioimmunoassay of hair)? It's supposed to be more accurate and less intrusive than urinalysis. (Warrensburg, MO)

A While RIAH can be more accurate than urinalysis under some circumstances, some argue that it is more intrusive than urinalysis because it detects drug use months or even years in the past. A national expert on RIAH you may want to contact is.... (Washington, DC)

Q Does anyone know of any micro- or mini-based informations systems related to intelligence operations? (Sacramento, CA)

A You may be interested in the New Jersey State Police NOMAD narcotics and intelligence system that runs on a Unisys mini. For more information call.... (Albany, NY)

(These examples were obtained from the SEARCH-BBS, and they have been edited slightly for publication.)

publications, and this dissemination is accomplished at a much lower cost than for printed materials.

EQUIPMENT

To access a bulletin board system, a user must have a microcomputer or terminal, a modem, a communications package, and a telephone line. As long as the communications package is properly configured,⁵ virtually any microcomputer can be used to log onto any bulletin board system without regard to the hardware in use by the

host. It might not be possible, however, for a local microcomputer to take full advantage of a bulletin board system operating on a radically different host computer.

CONCLUSION

Microcomputer-based bulletin board systems dedicated to the criminal justice profession offer a responsive and cost-effective means of addressing the information needs of law enforcement agencies. Available 24 hours a day, criminal justice bulletin boards provide a

computer-based forum for officers to communicate, receive, and provide technical assistance, share software, review articles, and query criminal justice databases. By creating this "electronic community," bulletin boards enable law enforcement professionals to work together to find common solutions to their information needs. **LEB**

Footnotes

¹ Message length limitations, however, do exist, but vary, among systems. Additionally, some BBS administrators may impose content limitations on messages.

² Shareware packages occasionally are infected with computer viruses. While recipients should always check software and ensure that adequate protections exist, the risk of such problems can be greatly reduced by obtaining shareware only from reputable bulletin board systems.

³ The Automated Index of Criminal Justice Information Systems is available via the SEARCH-BBS (916) 392-4640. In addition, data from the automated index has been compiled in a publication, *1990 Directory of Automated Criminal Justice Systems, Volumes I-V*. Each volume is dedicated to a specific discipline in criminal justice: Corrections (vol. I); courts (vol. II); law enforcement (vol. III); probation and parole (vol. IV); and prosecution (vol. V). The directories are available from the National Criminal Justice Reference Service at (800) 851-3420.

⁴ Selected reports of the U.S. Department of Justice are available through the NCJRS BBS, which can be reached at (301) 738-8895. The *FBI Law Enforcement Bulletin* is available through the SEARCH-BBS, as are press releases and selected publications of the U.S. Department of Justice, Bureau of Justice Statistics, and the Bureau of Justice Assistance. Selected articles from the *Court Technology Bulletin*, a publication of the National Center for State Courts, are also available on the SEARCH-BBS.

⁵ A communications package is a software program that establishes the linkage between the local and remote computer by setting several parameters. Most users will be able to log onto a bulletin board system if the databit, stopbit, and parity parameters are set properly. Most bulletin board systems use 8 databits, 1 stopbit, and no parity. A few, CompuServe for example, use 7 databits, 1 stopbit, and even parity.

The Bulletin Reports

Drug Reduction Guide

The National Crime Prevention Council developed a handbook designed to help law enforcement reduce the demand for drugs. The handbook, entitled ***Challenges and Opportunities in Drug Prevention: A Demand Reduction Resource Guide for Law Enforcement Officers***, provides police and other law enforcement officials with practical information on implementing demand reduction programs.

The 240-page guide emphasizes tools useful for law enforcement personnel working in drug prevention. It suggests a variety of roles that law enforcement can take in working with schools, neighborhoods, families, workplaces, task forces, and community groups. Included are numerous program examples that can be adapted to local needs. In addition, a comprehensive resource section points to Federal, national, regional, and State sources for technical assistance, training, materials, and other help.

Copies of the guide are available from the National Crime Prevention Council, 1700 K Street NW, #200, Washington, DC 20006.

Capital Punishment

According to a Bureau of Justice Statistics report, ***Capital Punishment—1989***, eight States executed 16 criminal offenders in 1989, raising the number of people executed to 120 since 1976, the year in which the U.S. Supreme Court reinstated the death penalty. The 16 males executed (8 black, 8 white) spent an average of 7 years and 11 months on death row. Also noted in the report was the fact the 250 State offenders were added to death row, 96 prisoners were removed, and 6 died while awaiting execution. Alabama and Texas each executed four offenders, Florida and Nevada each executed two offenders, and Georgia, Mississippi, Missouri, and Virginia each executed one offender.

All of the 2,250 State death row inmates being held as

of December 31, 1989, had been convicted of a murder, except for one man being held in Mississippi for the capital rape of a child. About 58 percent of the death row inmates were being held in the Southern States, 21 percent in the West, 15 percent in the Midwest, and just under 6 percent were in the Northeastern States of Connecticut, New Jersey, and Pennsylvania. At the end of 1989, the death penalty was legal in 36 States and in the Federal system, and 34 of these States held prisoners under a death sentence.

Single copies of the bulletin may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850, 1-301-251-5500.

The Bulletin Reports, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7262, J. Edgar Hoover Building, 10th & Penn. Ave., NW, Washington DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)

Emergency Searches of Effects

By
JOHN GALES SAULS



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A police department receives an anonymous tip that a bomb is concealed in a package addressed to a foreign embassy located in its jurisdiction. The package has been sent via a package delivery service. The police contact the delivery service, which has five packages addressed to the embassy. The police converge on the delivery service, immediately subject each package to X-ray examination, and seize one package that appears to contain explosives. This package is then taken to a safe disposal area,

where it is opened, and the explosive device is disarmed. No warrant is obtained for the X-ray examination, the seizure, or the search performed when the package is opened.

Other officers of the department receive a tip that a package arriving by bus contains a large quantity of cocaine. The tipster provides a description of the package, including the name of the addressee. Officers locate the package at the bus station and detain it for several minutes until a trained drug

detection dog is able to sniff it.¹ The dog alerts, and the police maintain a surveillance until a man comes to claim the package. The man is held while the police open the package, discovering the cocaine. The man is then arrested. No warrant was obtained for the search of the package or the man's arrest.

In each of these situations, officers have made on-the-spot decisions to conduct searches and seizures without warrants. In the prosecutions that follow, the defendants will likely challenge

the admissibility of the seized evidence, claiming it was obtained in violation of their constitutional rights. Because the searches and seizures were performed without warrants, the burden of establishing their legality will rest upon the government.²

What emergency circumstances justify an officer searching or seizing, without a warrant, items of personal property—effects?³ This article seeks to answer that crucial question through an exploration of the “emergency” or “exigent circumstances” exception to the fourth amendment warrant requirement.⁴

Courts commonly recognize three threats as providing justification for emergency warrantless action—danger to life, danger of escape, and danger of destruction or removal of evidence. The presence of any one of these threats may provide justification for a warrantless search or seizure of personal property. There are different legal standards for emergency action based upon danger to life and that involving the danger of escape or destruction of evidence. Awareness of the type of emergency present in a particular situation is the key to correct on-the-spot decisions.

This article will first examine U.S. Supreme Court and lower court decisions considering the legality of warrantless searches of effects based upon suspected threats to life. It will focus on the legal standard for such emergency searches and the circumstances courts commonly deem sufficient for establishing a threat to life and the allowable scope of action for dealing with that threat. The article will then examine cases involving warrantless searches of

effects based upon emergency threats of destruction or removal of evidence.

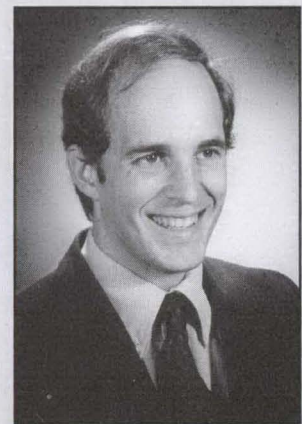
THE EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT DEFINED

The fourth amendment protects persons in the United States from “unreasonable” searches or seizures of their effects.⁵ The U.S. Supreme Court, in determining what government intrusions are reasonable under the fourth amendment, has expressed an emphatic preference for searches and seizures made pursuant to judicially issued warrants.⁶ As the Court has stated, the “Constitution requires that the deliberate, impartial judgment of a judicial officer be interposed between the citizen and the police... [and] searches conducted outside the judicial process, without prior

approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment—subject to a few specifically established and well-delineated exceptions.”⁷

In most situations then, a “reasonable” search or seizure is one performed with a valid warrant. Consequently, for fourth amendment purposes, “reasonable” is a legal term with a meaning different from that attached to the word as it is commonly used. There are exceptions to the warrant requirement—“reasonable” warrantless searches and seizures—but these exceptions are created not by what a police officer might believe to be reasonable but by a court’s assessment of necessity. The “exceptions are ‘jealously and carefully drawn,’ and there must be ‘a showing by those who seek exemption [from the warrant requirement]...that the exigencies of the situation made that

“
**...three threats [provide]
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danger of escape, and
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evidence.**”



Special Agent Sauls is a legal instructor at the FBI Academy in Quantico, Virginia.

course imperative' ''(citations omitted).⁸ The Court has recognized the need to provide for emergency situations "...where the societal costs of obtaining a warrant, such as danger to law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate,"⁹ but the government bears the burden of showing the warrantless action was necessary.¹⁰

DANGER TO LIFE EMERGENCY

Because of the high value our society places on life, a circumstance that has a profound impact on the reasonableness of a warrantless search or seizure is whether such action is taken to neutralize a suspected threat to human life. The U.S. Supreme Court has stated that "[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."¹¹ In fact, the Court has approved a lower standard of proof—reasonable suspicion—for justifying warrantless searches based upon a perceived danger to life, so long as the action taken is no greater than necessary to eliminate the danger.¹² Therefore, where a warrantless search or seizure is made in response to a perceived threat to life, the government must be prepared to show that at the time of the action:

- 1) Facts were known that would cause a reasonable person to suspect that prompt action was necessary to protect human life; and
- 2) that the action taken was no more intrusive than necessary to eliminate the suspected threat.

Suspected Presence of Dangerous Instrumentalities

In *Michigan v. Long*,¹³ two officers patrolling a country road late at night saw a car being driven erratically and at excessive speed. Before they could stop the car, it turned onto a side road and swerved

“...the action permissible to prevent the destruction or removal of evidence is substantially less than that allowed to protect life.”

into a ditch.¹⁴ Mr. Long, the sole occupant of the car, met the officers at its rear. The driver's door was left open. After two requests, Long produced his driver's license, and after a second request for the vehicle's registration, he started walking toward the open driver's door. The officers followed, and before Long could enter the car, they saw a large hunting knife on the car's floorboard. Now suspecting that Long might have weapons on his person, the officers stopped him and performed a patdown search.¹⁵ This search revealed no weapons. Suspecting that there might be other weapons in the car, one officer shined his flashlight into the interior, saw a pouch protruding from beneath the center armrest, and entered the car and raised the

armrest to examine it. The pouch was open and contained marijuana. This discovery prompted Long's arrest.

In assessing the reasonableness of this warrantless entry and limited search of Long's car, the Supreme Court approved the officers' actions, noting both the factual justification for suspecting the presence of weapons and the circumscribed nature of their search.¹⁶ The Court held that where officers reasonably suspect the presence of *readily accessible* deadly weapons in a lawfully stopped vehicle, they may make a limited search of the vehicle's interior for the purpose of locating and controlling the weapons.¹⁷ In performing such a search, officers must restrict their examination to those places where readily accessible weapons might be concealed.¹⁸

The officers in *Long* were able to protect themselves and the public with a cursory search of the car's interior. Different facts will support a search with a broader scope. For example, in *Cady v. Dombrowski*,¹⁹ the Supreme Court assessed the legality of a search of the trunk of an arrestee's car that had been impounded and stored at an unsecured private lot. The car's owner was arrested for murder, and after the car had been towed from the arrest scene, the police learned facts causing them to suspect that a handgun might be in the car. Officers went to the private lot where the car was located and found a revolver (which was later determined to be the murder weapon) in the car's trunk. In approving the reasonableness of this warrantless search, the Court cited its "...concern for the safety of the

general public who might be endangered if an intruder removed a revolver from the trunk of the [unsecured, unattended] vehicle.”²⁰

The interior of a suitcase,²¹ briefcase,²² handbag,²³ or package suspected to contain a dangerous instrumentality may also be searched without a warrant where necessary to protect persons. For example, in *United States v. Sarkissian*,²⁴ officers had reason to believe that explosives were concealed in luggage arriving on a commercial airline flight. Suitcases unloaded from the plane were sniffed by a dog trained in detecting explosives and examined by X-ray. A suitcase, appearing on X-ray to contain explosives, was opened and searched. These warrantless actions were held reasonable based upon the peril posed by unsecured explosives.

In *United States v. Miller*,²⁵ a limited search of the interior of a purse was approved as a reasonable protective measure. On a day Miller’s husband was to be arraigned for a felony, she entered the courtroom with a coat draped over her arm concealing a large handbag. She sat near the rear of the courtroom along the center aisle, where her husband, who was in custody, would soon be walking. She rested her hand upon her partly opened bag. A marshal, aware of these facts and having been informed that a report had been received that Miller’s husband might attempt an escape, opened Miller’s bag further, locating a firearm. In holding the marshal’s actions reasonable under the fourth amendment, the court noted that, coupled with the report that an escape might occur, “...Miller’s con-

cealment of her handbag upon entry, the strategic seat she selected, and the convenient placement of her open bag made reasonable the belief that she might be armed.”²⁶

Suspected Presence of Information Crucial to Preserving Life

Officers occasionally are confronted with facts that cause them to reasonably suspect that information necessary to preserve the life of a person is contained in an effect. For example, in *United States v. Dunavan*,²⁷ officers responded to a report of a disabled car that had set the grass beneath it on fire. In the driver’s seat, they found Dunavan, who was “foaming at the mouth and unable to talk.”²⁸ Dunavan was

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The goal of a temporary detention of an effect is the development of facts amounting to probable cause to search that item.
”

rushed to the hospital, and the officers then sought to determine the cause of his malady in the hope of providing information that would aid in his treatment. In the course of this effort, they opened two briefcases belonging to Dunavan, revealing evidence of crime. This action was held to be a reasonably limited

search responsive to the emergency at hand.

DANGER OF DESTRUCTION OR REMOVAL OF EVIDENCE EMERGENCY

In addition to danger to life, the U.S. Supreme Court has also recognized the danger of destruction or removal of evidence as embodying exigent circumstances sufficient to justify warrantless action.²⁹ In regard to effects, the action permissible to prevent the destruction or removal of evidence is substantially less than that allowed to protect life. Generally, only a warrantless seizure of an effect will be allowed to preserve evidence, not a warrantless search of the effect’s contents.

The factual justification required to support a warrantless seizure of an effect to prevent the destruction or removal of evidence depends on the extent of control exercised by the government over the item. The Supreme Court has recognized two distinct types of seizures of effects: 1) Temporary detention, which requires a showing of reasonable suspicion to believe the item contains evidence or contraband; and 2) a more absolute seizure, which must be justified through a showing of probable cause to search the interior of the item for evidence or contraband.

Temporary Detention of Effects

In *United States v. Place*,³⁰ the Supreme Court approved temporary detention by the police of luggage reasonably suspected³¹ to contain illegal drugs. Place was an airline traveler who aroused the suspicion of police based upon his ap-

pearance, travel itinerary, and conduct. Officers took Place's two suitcases from him, stating that they would seek a search warrant for the bags. They then transported the suitcases from New York's La Guardia Airport to Kennedy Airport, where they were sniffed by a trained drug detection dog 90 minutes after the seizure. Although the Court approved the initial seizure of Place's suitcases, it held the seizure ultimately involved too great an interference in Place's possessory interest in his property to be reasonable. Citing the length of time of the seizure as unnecessarily long, the Court also noted "...the failure of the agents to accurately inform [Place] of the place to which they were transporting his luggage, of the length of time he might be dispossessed, and of what arrangements would be made for the return of the luggage if the investigation dispelled the suspicion."³² This holding is premised, in part, on the fact that luggage frequently contains necessities to which travelers need ready access. Less lengthy temporary seizures of luggage have been upheld as reasonable.³³

Other types of effects may be detained for greater periods of time without the seizure becoming unreasonable. For example, in *United States v. Van Leeuwen*,³⁴ the Supreme Court upheld as reasonable a detention of a mailed package that lasted several hours. In *United States v. LaFrance*,³⁵ a 4-hour detention of a package shipped via Federal Express was approved. These decisions are founded on the premise that the sender or addressee of a package shipped or mailed has a substantially reduced expectation of ready access to that item.³⁶

Probable Cause Seizures

The goal of a temporary detention of an effect is the development of facts amounting to probable cause to search that item. This is accomplished through investigation performed during the period of temporary detention, and in drug cases, frequently includes the use of drug detection dogs. Once probable cause to search has been established, a more absolute seizure becomes reasonable.³⁷ Officers may take control of the effect to prevent the destruction or removal of evidence for a reasonable period

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”**

while application is made for a search warrant.³⁸ This allows them to protect the evidence until judicial authorization may be obtained to open the item and examine its contents.

SUMMARY

Returning to the hypothetical situations presented at the beginning of this article, in each case, the officers were confronted with circumstances they believed required an immediate search. The officers

who reasonably suspected that a bomb was present in a package bound for an embassy needed to verify or dispel the suspicion as quickly as possible to prevent unnecessary danger to life. The warrantless actions they performed—the X-ray examinations followed by the opening of the package that appeared to contain explosives—were appropriate based upon reasonable suspicion and were reasonably limited to accomplish their purpose, that is, eliminating the threat posed by the explosives.

The officers investigating the suspected drug activity were also justified in performing certain prompt warrantless actions. Their initial seizure was lawful, based upon their reasonable suspicion that the package contained illegal drugs. The canine sniff was also lawful, since it was promptly accomplished. However, once probable cause to search was established, the emergency threat of removal or destruction of evidence could have been eliminated merely by taking control of the package pending issuance of a search warrant. Consequently, the examination of the contents of the package without a warrant was not a valid emergency search.³⁹

CONCLUSION

This article has set out requirements for emergency searches and seizures of effects based upon: (1) Threats to life; and (2) threats of destruction of evidence. Because the scope of warrantless action allowed under the fourth amendment differs depending upon the category of emergency threat involved, it is essential that officers considering the lawfulness of a proposed emergency search evaluate the type of

threat presented. Once that determination is made, the appropriate legal standard may be applied to the facts known. Where warrantless searches and seizures are necessary, clear awareness of the type and nature of the threat involved will also facilitate limitation of the scope of the warrantless action to only that which is necessary to eliminate the threat.

LEB

Footnotes

¹ For an excellent discussion of the legal issues associated with the use of drug detection dogs, see Kingston, "Hounding Drug Traffickers: The Use of Drug Detection Dogs," *FBI Law Enforcement Bulletin*, August 1989, pp. 26-32.

² *McDonald v. United States*, 335 U.S. 451 (1948); *Katz v. United States*, 389 U.S. 347 (1967).

³ The fourth amendment to the U.S. Constitution provides: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated...." Effects include such personal property as packages, suitcases, handbags, etc., as well as vehicles.

⁴ For a discussion of emergency searches of premises, see Sauls, "Emergency Searches of Premises," *FBI Law Enforcement Bulletin*, Part I, March 1987, pp. 23-30, Conclusion, April 1987, pp. 24-30. For a discussion of emergency searches of persons, see Sauls, "Emergency Searches of Persons," *FBI Law Enforcement Bulletin*, January 1988, pp. 24-30.

⁵ See, e.g., *Arkansas v. Sanders*, 442 U.S. 753 (1979).

⁶ See *Katz v. United States*, *supra* note 2.

⁷ *Id.* at 357.

⁸ *Coolidge v. New Hampshire*, 403 U.S. 443, 445 (1971).

⁹ *Supra* note 5, at 759.

¹⁰ *Supra* note 2.

¹¹ *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967).

¹² *Maryland v. Buie*, 110 S.Ct. 1093 (1990); *Michigan v. Long*, 463 U.S. 1032 (1983); *Terry v. Ohio*, 392 U.S. 1 (1968). The U.S. Supreme Court has yet to decide whether reasonable suspicion is the standard by which the reasonableness of all danger to life emergency searches should be measured. The Court has stated, however, that probable cause is not always the standard by which the legality of a search should be measured, even where the search constitutes a substantial intrusion into a

person's privacy. See *New Jersey v. T.L.O.*, 469 U.S. 325, 340-41 (1984).

¹³ 463 U.S. 1032 (1983).

¹⁴ For a discussion of the legal issues associated with vehicle stops, see Sauls, "Traffic Stops: Police Powers Under the Fourth Amendment," *FBI Law Enforcement Bulletin*, Part I, September 1989, pp. 26-31; Conclusion, October 1989, pp. 27-32.

¹⁵ For an excellent discussion of investigative detention and frisk searches, see Hall, "Investigative Detention: An Intermediate Response," *FBI Law Enforcement Bulletin*, Part I, November 1985, pp. 25-31; Part II, December 1985, pp. 18-23; Conclusion, January 1986, pp. 23-29.

¹⁶ *Supra* note 13, at 1051.

¹⁷ *Id.*

**“
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”**

¹⁸ *Id.* The scope of such a search includes the interior of unlocked containers that might conceal deadly weapons. See *United States v. Williams*, 626 F.2d 697 (9th Cir. 1980), *cert. denied*, 449 U.S. 1020 (1980) (purse in suspected bank robber's car that was suspected to contain a bomb); *United States v. Glenna*, 878 F.2d 967 (7th Cir. 1989) (suitcase in van suspected to contain a bomb); *United States v. Longmire*, 761 F.2d 411 (7th Cir. 1985) (purse in car suspected to contain deadly weapons); *United States v. Williams*, 822 F.2d 1174 (D.C. Cir. 1987) (tactile examination of exterior of paper bag in car suspected to contain deadly weapons).

¹⁹ 413 U.S. 433 (1972).

²⁰ *Id.* at 447.

²¹ *United States v. Sarkissian*, 841 F.2d 959 (9th Cir. 1988). See also, *United States v. Pulido-Baguerizo*, 800 F.2d 899 (9th Cir. 1986).

²² *United States v. McClinnhan*, 660 F.2d 500 (D.C. Cir. 1981). *McClinnhan* is

noteworthy for its discussion of the dilemma faced by an officer who has reasonable suspicion that a dangerous instrumentality is contained in an effect, but who has no way of verifying or dispelling his suspicions other than an examination of the interior of the effect. Seizing the effect will not neutralize the dangerous instrumentality, and no warrant can be obtained since the suspicions do not rise to the level of probable cause to search. Consequently, a prompt examination of the effect's interior is the least intrusive measure to neutralize the threat.

²³ *United States v. Miller*, 468 F.2d 1041 (4th Cir. 1972), *cert. denied*, 410 U.S. 935 (1972).

²⁴ *Supra* note 21.

²⁵ *Supra* note 23.

²⁶ *Id.* at 1045.

²⁷ 485 F.2d 201 (6th Cir. 1973).

²⁸ *Id.* at 202.

²⁹ See *Schmerber v. California*, 384 U.S. 757 (1966); *Vale v. Louisiana*, 399 U.S. 30 (1970).

³⁰ 462 U.S. 696 (1983).

³¹ For examples of facts held to constitute reasonable suspicion that contraband is present, see *United States v. Sokolow*, 109 S.Ct. 1581 (1989); *United States v. Sharpe*, 105 S.Ct. 1568 (1985).

³² *Supra* note 30, at 710.

³³ See, e.g., *United States v. Pantazis*, 816 F.2d 361 (8th Cir. 1987); *United States v. Alpert*, 816 F.2d 958 (4th Cir. 1987).

³⁴ 397 U.S. 249 (1970).

³⁵ 879 F.2d 1 (1st Cir. 1989).

³⁶ See also, *United States v. Hillison*, 733 F.2d 692 (9th Cir. 1984), approving a 9-hour warrantless seizure of a mailed package.

³⁷ *United States v. Place*, *supra* note 30.

³⁸ Although considerable latitude is generally allowed, at least some diligence in promptly applying for a search warrant is required. See *United States v. Dass*, 849 F.2d 414 (9th Cir. 1988).

³⁹ Since the officers have acted without a warrant, as a practical matter, the officers and their prosecutor should consider the potential application of other exceptions to the warrant requirement, such as Search Incident to Arrest. These considerations, however, are beyond the scope of this article.

Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Minnick v. Mississippi

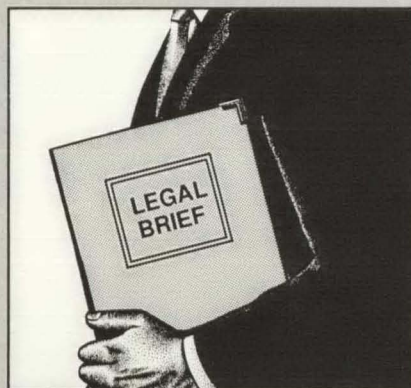
U.S. Supreme Court Decision

On December 3, 1990, in *Minnick v. Mississippi*, the Supreme Court established a new rule concerning the interview of *in-custody* suspects who have asserted the right to consult with counsel. In a 6-2 ruling (Justice Souter not participating), the Court held that "when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney."

Minnick and a companion escaped from a county jail in Mississippi and committed a house burglary looking for weapons. They were surprised by the arrival of the occupants of the house and murdered two of them. Minnick fled and was ultimately apprehended in California 4 months after the murders. FBI Agents sought to interview Minnick in jail in California. Minnick was advised of his *Miranda* rights, and though he refused to sign a written waiver, agreed to answer some questions. During the interview, Minnick told the Agents he would make a full statement in a few days when his lawyer was present. The Agents then terminated the interview. Three days later, an investigator for the State of Mississippi sought to interview Minnick in California. Again, Minnick declined to sign a written waiver of his *Miranda* rights, but agreed to talk with the investigator. State-

ments given to the investigator led to Minnick's prosecution and conviction for murder.

Minnick challenged the admissibility of his statements, claiming that his invocation of his right to counsel to the FBI Agents precluded his subsequent waiver



of rights given to the Mississippi investigator, even though he had consulted with his court-appointed counsel on two or three occasions in the interim. The Mississippi Supreme Court in *Minnick* ruled that once a suspect has consulted with his attorney, the suspect may thereafter be contacted, waive his rights, and be interviewed by the police.

In reversing the Mississippi Supreme Court, the U.S. Supreme Court established a bright-line rule barring police-initiated interviews following an invocation of the right to counsel by an *in-custody* suspect. The Court ruled the actual presence of counsel is necessary before police-initiated inter-

rogation may resume and that a bright-line rule prohibiting re-interrogation of a suspect who has requested counsel without the presence of his attorney would best protect the fifth amendment privilege against self-incrimination. In addition, a bright-line rule approach saves judicial resources otherwise expended in making determinations of voluntariness and provides specificity for police, prosecutors, and suspects as to acceptable police practice.

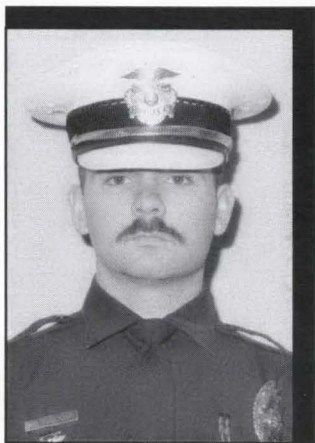
The Court's rule announced in *Minnick* does not disturb the previous holding that if a suspect initiates the dialogue with the police, a valid waiver and confession may follow. *Minnick* specifically recognizes that courts may still find a "a waiver of Fifth Amendment protections after counsel has been requested, provided the accused has initiated the conversation or discussions with the authorities."

Minnick is a significant change in the law of confessions and interrogations. Police officers should be aware of this expansion of the right to counsel in custodial interrogations and the need to ensure the presence of an attorney if police-initiated re-interrogation is desired after an initial invocation of the right.

This legal brief was written by Special Agent Jeffrey Higginbotham, a legal instructor at the FBI Academy in Quantico, Virginia.

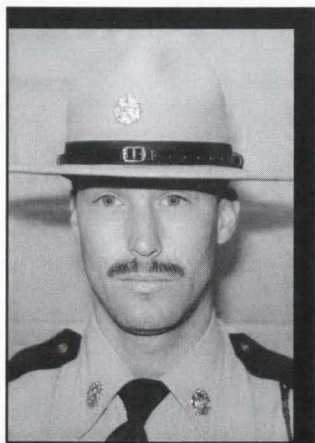
The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



Officer Dexter

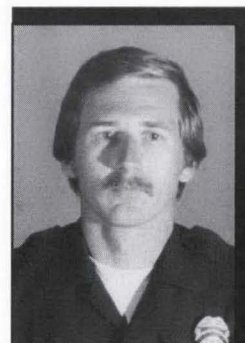
Officer Thomas Dexter of the Union Township, Ohio, Police Department responded to a report of an auto accident with injuries. When he arrived on the scene, Officer Dexter found a vehicle that had rolled onto its top and was burning. The driver was tangled in his safety belt and trapped inside. Officer Dexter broke a side window, freed the driver, and pulled him to safety only moments before the vehicle became engulfed in flames.



Patrolman Neske

Patrolman John Neske of the Missouri State Water Patrol was patrolling the race area on Lake of the Ozarks during a speed boat competition. At the start of one of the races, a competing boat became airborne and then crashed, submerging bow first in the water. The operator of the boat was knocked unconscious and was unable to stop the twin engines, which continued to run at full power. Patrolman Neske maneuvered his craft alongside the vessel, jumped into it, and shut the power off. He then administered first aid to the operator. His quick action prevented the boat from possibly taking off at high speed and causing further damage and injuries.

While on a robbery surveillance assignment, Detectives Ronald Pavek and Dennis Weaver of the Long Beach, California, Police Department observed an armed masked suspect entering a liquor store. The detectives immediately positioned themselves outside the premises and waited for the gunman to exit. When the detectives announced themselves and ordered the suspect to surrender his weapon, he fired at them. Both detectives returned fire, mortally wounding the assailant. It was later determined that this individual, dubbed the "Ski Mask Bandit," had committed 18 armed robberies between March 1 and June 12, 1990.



Detective Pavek



Detective Weaver

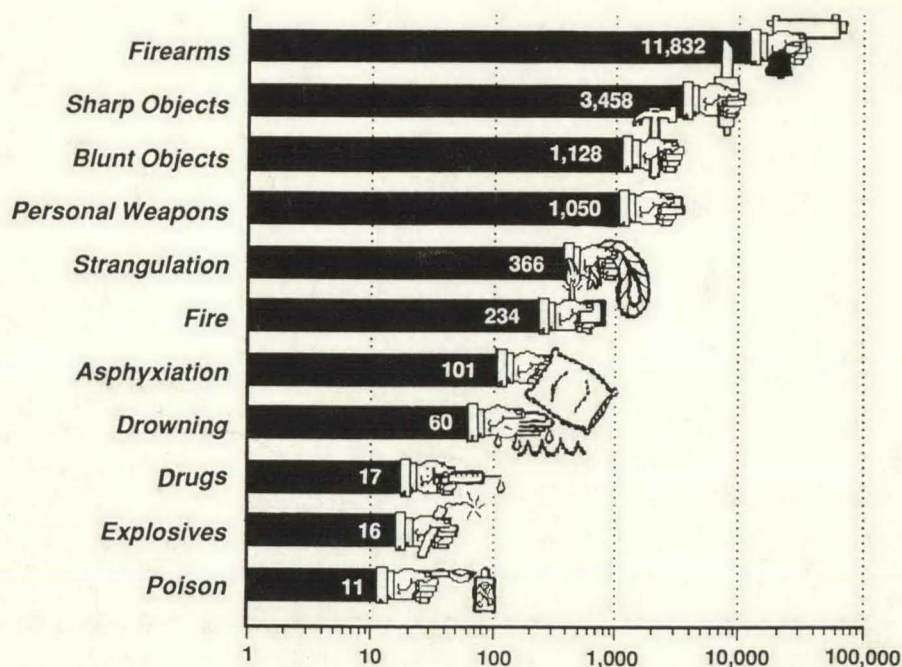
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Murder Victims
Types of Weapons Used—1989



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