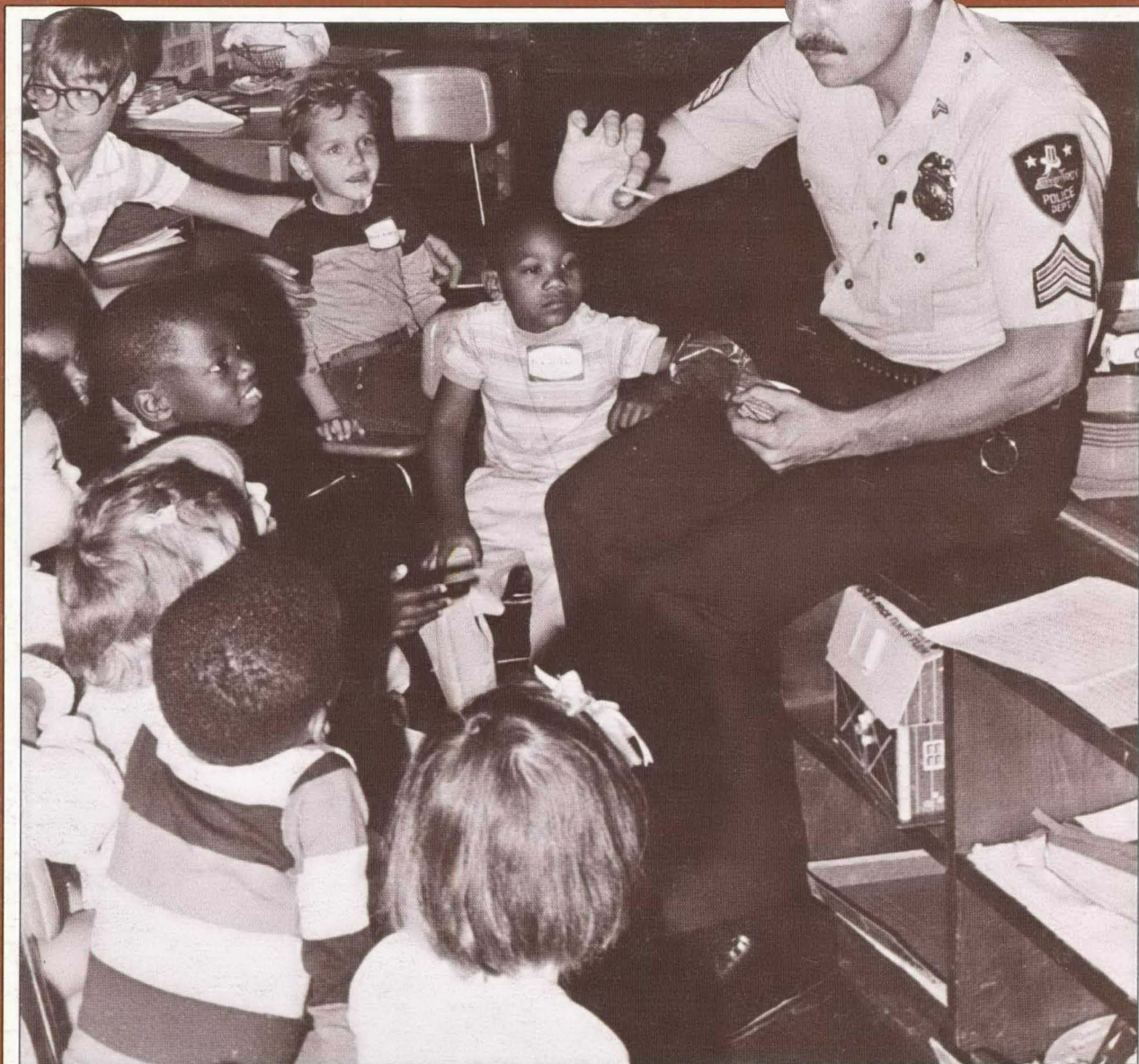




# FBI

November 1985

## ***Law Enforcement Bulletin***



***Building Bridges Between Police and Public***

# Contents

November 1985, Volume 54, Number 11

- |                            |           |   |
|----------------------------|-----------|---|
| Police-Community Relations | <b>1</b>  | <b>Building Bridges Between Police and Public</b><br>By Dr. Dorothy Guyot   |
| Investigative Techniques   | <b>9</b>  | <b>Special Care Questioning</b><br>By Dr. Bryan Tully   |
| Crime Problems             | <b>16</b> | <b>Chemscam</b><br>By Larry R. McCart   |
| Operations                 | <b>21</b> | <b>Perspectives on Negotiation in Local Jurisdictions</b><br><b>Part 1: A Different Typology of Situations</b><br>By Dr. Richard M. Gist and Jon D. Perry |
| Legal Digest               | <b>25</b> | <b>Investigative Detention:<br/>An Intermediate Response (Part I)</b><br>By John C. Hall  |
|                            | <b>32</b> | <b>Wanted by the FBI</b>  |

**The Cover:** Providing a wide range of human services to the community builds goodwill and enhances crime control efforts. See article p. 1.

# FBI

## Law Enforcement Bulletin

**United States Department of Justice  
Federal Bureau of Investigation  
Washington, DC 20535**

**William H. Webster, Director**

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of  
Congressional and Public Affairs,  
William M. Baker, *Assistant Director*

*Editor*—Thomas J. Deakin  
*Assistant Editor*—Kathryn E. Sulewski  
*Art Director*—Kevin J. Mulholland  
*Writer/Editor*—Karen McCarron  
*Production Manager*—Marlethia S. Black  
*Reprints*—Robert D. Wible



ISSN 0014-5688

USPS 383-310

## Police-Community Relations



# Building Bridges Between Police and Public

A 41-year-old woman with an 11th grade education living in a middle income neighborhood of Troy, NY, gave this reply when asked in a telephone interview about the police service she had received.

"Well, my son, he's 17, had supper with us and said he was going to the store—which would have been 6:00. It's very unusual for Donny not to come right back. We thought maybe he visited a friend, but at 10:00 he still never came home. We were concerned, so we called the Troy police. I've never had contact

with the police before. Two officers arrived in about 10 minutes, but I was very upset. They calmed me down and said it wasn't unusual and that 17-year-old boys do that, and the majority of boys come home. They took all his friends' names down. They asked what Don looked like and if he had been in trouble before. They were great. They were understanding. They made it seem like they were going to look for him. I was carrying on, but they understood and tried to calm me down. They made me feel

By  
**DOROTHY GUYOT, Ph.D.**  
*Research Director  
Children's Evaluation and  
Rehabilitation Center  
Albert Einstein College of Medicine  
Bronx, NY*



Dr. Guyot

better by telling me this happens to other people."

These officers are from a department of 120 officers and 20 nonsworn personnel serving an old industrial city of 55,000 located on the east bank of the Hudson. When this mother called the police for the first time in her life, her son had been gone only 4 hours. How would she have felt if the department's policy had been to refuse missing persons cases until 24 hours had elapsed? Such a policy, fairly common across the country, defines the solution to the problem as the reappearance of the missing person. Since the missing person almost always turns up within a day, this view holds that police need not waste their time trying to rush an immediate solution to a problem that most likely will soon solve itself. However, this narrow focus on efficient task accomplishment completely ignores the overwhelming fear and helplessness that parents may suffer when their child is missing. This mother clung to the reassurance in the officers' careful checking on the boy's habits and their words, "The majority of boys come home."

The leaders of the Troy Police Department view police-community relations as individual relations. That is, at every encounter when individual citizens receive assistance from individual police officers, the officers have an opportunity to build bridges between the police and the public. As officers help people solve their problems or at least live more comfortably with them, they establish the basis for future closer cooperation.

The most fundamental decisions for any work organization are selecting what goods and services it will produce. For members, the strongest and most persistent incentives come from the nature of work. To the extent that leaders of service delivery agencies can decide what services to provide and who the clients will be, they can influence strongly the satisfactions which come from performing the work.

The policy of the Troy Police Department since 1973 has been to provide a wide range of human services, many of which are unrelated to crime prevention and crime control. The department welcomes the fact that the 24-hour presence of police officers throughout the community gives them particular advantage as first responders to a broad range of social and individual problems. This policy holds that real police work includes assisting the injured, rescuing victims, calming landlord-tenant disputes, quieting noisy kids hanging out on the corner, and helping in numerous other situations in which people are endangered or merely inconvenienced. In sum, officers in patrol are seen as the professionals who safeguard the health of the social body.

As a department makes known its readiness to serve, calls for service increase. Within 2 years of the change in leadership, Troy's calls for service rose from about 300 a year for every 1,000 city residents to about 500. An interpretation of this rise is that initially, citizens had many unmet needs for police service. As citizens received prompt, helpful service in serious situations, they began calling about less serious crimes and less troublesome problems. The department's index crimes increased simultaneously, reflecting largely a change in reporting. Police management need not fear an endless escalation in the number of minor inci-

**"... when individual citizens receive assistance from individual police officers, the officers have an opportunity to build bridges between the police and the public."**

dents brought to police attention. Calls for service in Troy leveled off in the mid-1970's and have continued to date at an annual average of over 450 per 1,000 residents. Throughout this period, about 65 percent of the department's calls for service have been for incidents which are not crimes.

A policy to respond to a wide variety of needs among ordinary citizens differs greatly from a lack of policy that unthinkable sends officers on all sorts of ceremonial services and errands. Over a decade ago, the department terminated a number of ceremonial duties and protective services. In 1972, an estimated 6 percent of all calls had been to escort local merchants in making their bank deposits. The department discontinued merchant escorts because they could afford to employ private security services. The assignment of 18 officers to the polls on election day ended abruptly in 1973, and motorcycle escorts for funeral processions had ended months earlier. In declining to provide various special services benefiting individuals and businesses, the department freed resources that could serve a greater number of citizens.

Providing a broad range of services unrelated to crime appears to enhance crime control in four different ways.<sup>1</sup> One means is early intervention in conflicts which could escalate into criminal attack if left unattended. Common examples include neighborhood disputes, domestic disputes, and nuisance complaints. Research in this area included the 1977 Police Foundation finding that homicides and aggravated assaults were often preceded by domestic disputes.<sup>2</sup> A second means is through increasing officers' information which can be used in solving crimes. An information model of policing suggests that officers in continual

contact with citizens pick up facts and impressions useful in crime prevention and apprehension.<sup>3</sup> A third means is to work with youths in trouble to steer them toward socially acceptable behavior. William Muir, in *Police: Street-corner Politicians*, vividly describes an officer's success in getting youths to accept responsibility for their acts.<sup>4</sup> Individual officers have a rich store of recollections on how their personal rapport with citizens has enhanced

their own effectiveness in crime control. Rigorous research is now needed to test each of these contributions to crime control.

A fourth basis for improved crime control occurs whenever officers render assistance to citizens, which results in citizens getting to know officers personally and thus becoming more willing to get involved. In Troy the effect of knowing police officers personally has been measured as it influ-

Figure 1

**Questions on Six Situations  
Where Citizens Could Cooperate in Crime Control**

	Percentage saying "yes"	Proportion of those saying "yes" who took positive action
In the last year, have you seen any children or teenagers damaging property, such as throwing rocks at cars, defacing signs, or breaking windows?	37%	65%
In the last year, did you see anything happen that you thought was against the law, a crime or probably a crime? (PROBE) Did you see somebody hurt somebody deliberately? Did you see somebody's property being taken or damaged?	13%	57%
In the last year, did you see anything suspicious that made you think someone might be going to commit a crime?	13%	67%
In the last year, did a police officer ask you about some trouble that had just happened?	15%	97%
In the last year, did anyone in your neighborhood have an argument or fight that disturbed the peace?	22%	52%
In the last year, have you been away from home for a few days?	62%	75%

*This is the wording and order of the questions used in the survey. After individuals identified each opportunity for action, they were asked whether they did anything.*

ences the degree of citizen cooperation. A cross section of 950 residents over 13 years of age responded in the Spring of 1978 to long telephone interviews asking about their contacts with officers, their sense of safety, and their recent experiences with crime. The questionnaire asked whether the citizen had recently seen any of six crime-related situations and what they did about them. Figure 1 shows both the percentage of citizens who recalled each type of incident and the proportion who took some action on their own, with other citizens, or with the police. Over one-third of the citizens recalled witnessing some act of juvenile delinquency, while fewer recalled seeing a crime or a suspicious event. All together, only 46 percent of the population at large recalled seeing one of these three acts within the last year. An explanation why a somewhat smaller proportion took action over crimes than over kids doing damage and suspicious events is that most common occasions when citizens failed to call the police were minor—vandalism, speeding, running a stop sign, and smoking pot. These four types accounted for 60 percent of the crimes witnessed but unreported.

As might be supposed, younger people witnessed crimes more often than their elders, men more than women. Boys ages 14 to 17 had most opportunity of all; 85 percent of them had seen at least one instance of destructive acts by other teenagers, a crime occurring, or a suspicious event. The factor most clearly distinguishing boys who called the police from those who did not was knowing officers personally. Fifteen out of the 18 boys who sought police assistance in stopping a crime or delinquent act knew at least two officers. Five boys who admitted doing nothing did not know any officer.

Some insight into increasing citizen cooperation over a period of time can be obtained from the data departments routinely collect in their records of calls for service. When people give their names to police operators, they expect to become involved at least to the extent of giving additional information to the responding officer. Generally, citizens are more willing to give their names in criminal incidents because they expect to provide information for an official report. With non-criminal incidents, such as neighborhood disturbances, fewer are willing to identify themselves because they want to limit their involvement. Citizens can thus frustrate an officer who arrives at a scene and cannot locate a complainant.

Citizen involvement has increased over the years as a sample of calls for service indicates. Between 1972 and 1975, the number of citizens identifying themselves when calling for service rose from 34 percent to 65 percent. By 1983, 79 percent of those calling the police gave their names. The policy of the department is to encourage citizens to give their names, but not to demand a name from any caller who declines.

Once police-community relations are viewed as the bedrock of police service, it becomes apparent that the organizational structure of a department is crucial to enhancing these relations. The practical methods of encouraging officers to commit themselves to quality service in noncriminal matters must begin with adequate staffing of patrol and must include steady platoon and zone assignments.

If officers are shifted frequently from one patrol area to another, from one time of day to another, they will not become thoroughly familiar with any neighborhood. If the number of calls for service so overwhelm the available officers that they hurry without a break from one call to the next, the officers are likely to protect themselves from an unreasonable workload by giving cursory attention to some calls and then delay reporting their availability in order to create free time. With a patrol overload, the types of calls most likely to be disposed of quickly are so-called "low priority" calls, ones where no report is required.

A study by an Indiana University team, *Patterns of Metropolitan Policing*, provides national figures from 80 metropolitan areas on patrol staffing. Their 1973 data on the number of officers in the patrol division on the street at 10 p.m. per 1,000 population demonstrate that the smaller the department, the greater the patrol density. Figure 2 shows that the Troy PD climbed from below average patrol density in 1970 to near the top of the range in 1984 without an expansion in sworn personnel. From the mid-1970's through the early 1980's, Troy staffing at 2.4 officers per 1,000 population has been above average for departments of its size. Now with a substantial increase in nonsworn positions, officer staffing is near average. The Troy Police Department achieves a high density of patrol coverage by creating a high proportion of patrol positions and allocating them by tour in accordance with workload. (See fig. 3.)

As of 1985, the only support positions held by a police officer are the warrant officer and one position per tour in the radio room. The major method for achieving high patrol coverage is job enrichment for patrol officers, resulting in a need for fewer spe-

Figure 2

### Adequacy of Patrol Staffing in Troy Compared to Municipal Departments in 80 Metropolitan Areas

Agency Size, Number of Sworn Officers	Number of Officers on the Street per 1,000 Population		Number of agencies
	Median	Range	
Troy, 1970 (124 fulltime officers)	.19		1
Troy, 1973 (122)	.20		1
Troy, 1984 (117)	.29		1
Over 150 fulltime officers	.23	.16 to .32	45
51 to 149	.25	.17 to .34	77
21 to 50	.31	.22 to .34	121
11 to 20	.35	.25 to .47	124
5 to 10	.42	.28 to .65	209
1 to 5	.62	.42 to 1.15	

Definitions: For each of the 785 departments in the national study, a knowledgeable commander in patrol estimated the number of officers of all ranks in the patrol division who were working on an average evening at 10 p.m. in 1973.

Sources: Elinor Ostrom, Roger B. Parks, and Gordon P. Whitaker, *Patterns of Metropolitan Policing* (Cambridge, MA: Ballinger, 1978).

The Troy figures for the third platoon in 1970 are computed by excluding desk sergeants and radio room officers, then taking 67 percent of the sergeants and police officers and reducing that number by 15 percent for vacation, sick leave, and personal days. The 1973 figures are comparably derived. The 1984 are based on the staffing of squads 1 and 3 of the evening platoon, minus 15 percent for vacation, sick leave, and personal days.

cialists. Thus, officers in the patrol division work as evidence technicians, perform all traffic control functions beyond those provided by the meter attendants and crossing guards, and conduct full criminal investigations on midnights since no investigators are assigned to that tour.

The squad system within the patrol division provides officers continuity in their assignments, so that they have ample opportunity to learn the neighborhood they serve and its particular character during their steady tour. An officer now serves for at least a year at a time in the same zone, on the same platoon, and in the same squad. With sufficient seniority, an officer may choose to continue indefinitely in the same zone. Only officers who have chosen to work squad 3 (which covers for squads 1 and 2 on their days off), or to work the "extra" positions, alternate their work among different neighborhoods. Figure 4 gives the patrol

duty chart for police officers and sergeants, which provide a simple pattern of consistent service to neighborhoods. These structures, which permit every patrol officer to relate to the citi-

zens of his or her zone, are probably more important in encouraging quality service than explicit directives and exhortations.

Departmental commendations do set an obvious standard of what is important. The department gives awards of 1 or 2 days' leave to officers who save lives. Officers who rescue individuals from burning buildings, disarm mentally unbalanced individuals, or prevent suicides have received leave with pay. As for good arrests, the department expects them as part of the job and takes note of an exceptionally fine arrest through a written commendation.

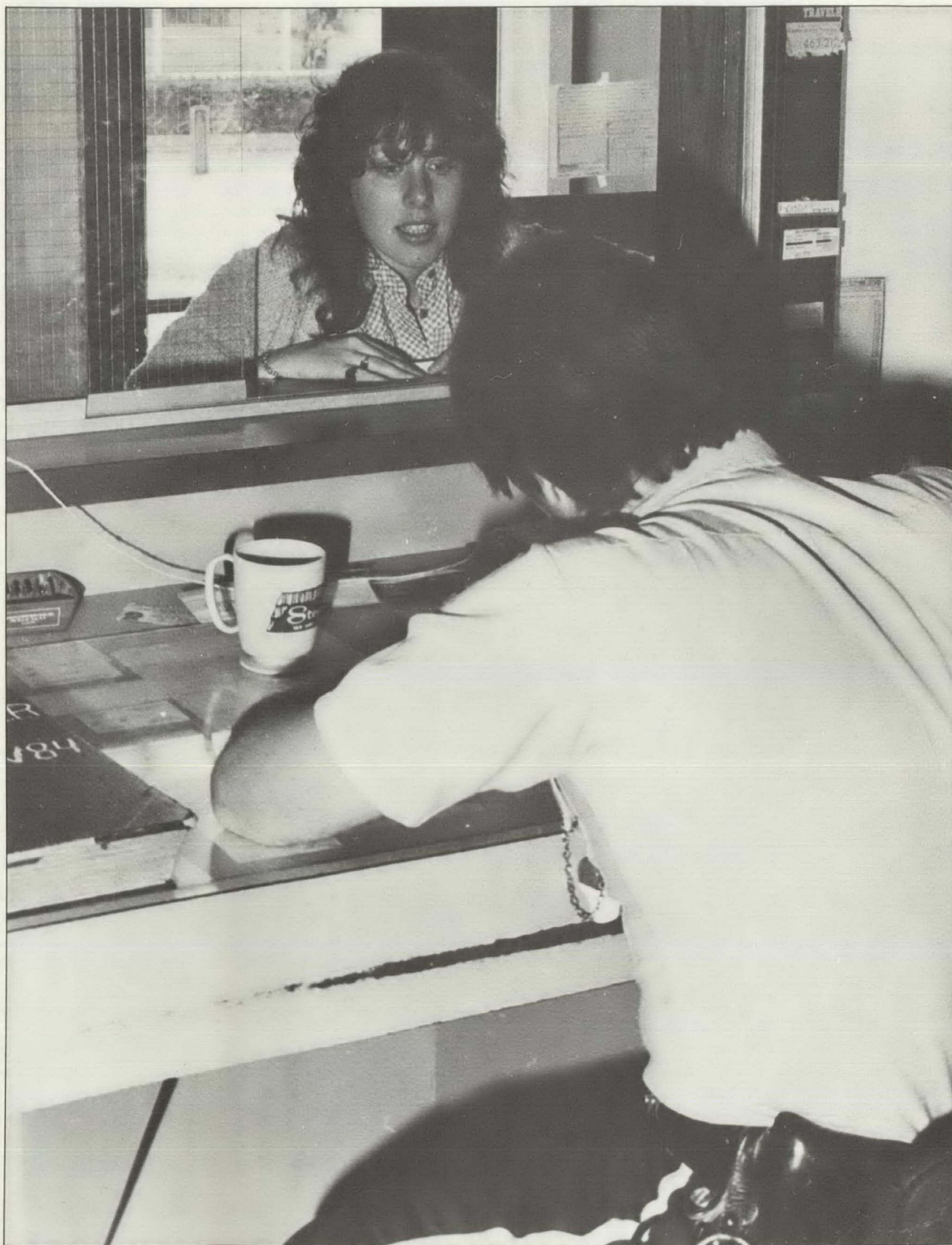
The most direct and quickest source of praise is citizens who have seen officers performing quality work. Direct thanks and praise to the officer are important citizen contributions. The residential survey in Troy shows that a large variety of actions witnessed by citizens is considered praiseworthy by them. (See fig. 5.)

Figure 3

### Squad Chart Creating Consistent Working Conditions

	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
Squad 1	0				0			0	0					0		0	0			0	
Squad 2		0	0				0		0	0			0					0	0		
Squad 3			0			0	0				0			0	0				0		0
cycle starts over																					

This duty chart is used by all police officers and sergeants in the patrol division. Four weeks are shown across the top of the diagram and each day off of the three squads is indicated with an 0. Squads 1 and 2 have steady beats, while an officer in squad 3 alternates to cover the beats of an individual apiece in squads 1 and 2 on days off. In each squad, a few officers hold "extra" and "relief" positions and are the ones whose assignments vary to cover positions of officers off on sick leave, vacations, and the like. Note that officers receive 2 days off within every calendar week and a weekend every third week.



## "Assistance of all types evoked admiration more frequently than excellence in criminal investigation."

Assistance of all types evoked admiration more frequently than excellence in criminal investigation. Out of the 105 specific praises which are summarized in figure 5, only 12 concern crime control, while 93 are admiration in many other circumstances.

Since the typical American image of police officers is that of protectors of citizens from criminal attack, it is interesting that citizens of one city praise police assistance far more frequently than they praise crime control actions. This finding from Troy is consistent

with research results obtained by Indiana University in 24 jurisdictions in the Rochester, NY, St. Louis, MO, and Tampa, FL, areas, which revealed that citizens were more satisfied with service in noncriminal situations than in criminal ones.<sup>5</sup> Thus, an added benefit of devoting police resources to services unrelated to crime control is to build citizen goodwill. If broad categories of assistance were cut back in order to increase crime control efforts, the department would be paring down of the kinds of services which citizens

appreciate most.

In Troy, citizens pass praises among themselves much more often than giving them directly to officers. Only about 45 percent of the citizens who witnessed praiseworthy actions took the step of expressing their appreciation directly to the officers involved. For every time that an officer received words of praise, citizens were likely to have told 10 friends. Thus, a department can be gaining an excellent reputation among citizens, yet officers may seldom experience praises.

Figure 4

### Troy Police Manning Patterns—1977 thru 1985

BID PERIOD	Authorized Strength		Police Officer Actual (Bid Positions)	Police Officers in Field Assignments		% of Actual Police Officers in Field
	Total	Police Officer		Patrol	Investigation	
Spring '77	132	88	84	67	4	84.5%
Fall '77	136	92	82	71	1	87.8
Spring '78	134	91	88	61	0	69.3
Fall '78	136	93	90	78	2	88.9
Spring '79	136	93	92	77	2	85.9
Fall '79	131	89	84	72	2	88.1
Spring '80	130	86	78	63	11	94.9
Fall '80	130	86	82	60	12	87.8
Spring '81	130	86	82	60	12	87.8
Fall '81	130	86	79	60	9	87.3
Spring '82	130	86	78	66	8	94.9
Fall '82	130	86	75	63	8	94.7
Spring '83	123	83	72	61	7	94.4
Fall '83	123	88	78	66	7	93.4
1984	123	88	75	67	8	89.3
1985	123	88	83	70	8	93.4

Data Source: Table of Organization.



Sometimes words of praise return to officers at unexpected times. An officer who chose to serve in the neighborhood where he lived as a child, the poorest section of town, used these words to describe his work:

"One family where I had been perhaps ten times is a common law couple, who live in the projects. One evening, they were in the midst of a particularly bad family dispute. The 7-year-old son was taking in every move they made. It took me a long time, but eventually they came to a peaceable understanding. Some weeks afterwards, I went to lunch at the local convenience store. As I walked in the door, the kid sang out to friends, "There's Sam. There's Sam." He was dirty with summer sweat on his face, a runny nose, shining eyes, and a big grin. He was so cute he was adorable. I said, "How are you, pal?" He came right up to me, "Know what, Mister? When I grow up I want to be just like you."

FBI

#### Footnotes

<sup>1</sup>Stephen Mastrofski, "The Police and Non-Crime Services," eds. Gordon P. Whitaker and Charles David Phillips, *Evaluation of Performance of Criminal Justice Agencies*, criminal justice system annuals, no. 19 (Beverly Hills: Sage Press, 1983) pp. 33-61.

<sup>2</sup>Marie Wilt, James Bannon, Ronald K. Breedlove, John W. Kennish, Donald M. Sandker, and Robert K. Sawtell, *Domestic Violence and the Police: Studies in Detroit and Kansas City* (Washington: Police Foundation, 1977).

<sup>3</sup>James M. Edgar, "Information Model Policing—A Design for Systematic Use of Criminal Intelligence in a Team Policing Operation," *Journal of Police Science and Administration*, vol. 5, No. 3, September 1977, pp. 272-284.

<sup>4</sup>William Ker Muir, Jr., *Police: Streetcorner Politicians* (Chicago: University of Chicago Press, 1977), ch. 8.

<sup>5</sup>Mastrofski, *supra* note 1.

Figure 5

#### Specific Police Services Praised by 114 Citizens

Type of Action	Number of Citizens Praising that Action
Assistance	35
Resolving conflicts	13
Helping people who cannot care for themselves: Children, aged, intoxicated	11
After medical and fire emergencies	5
Other help	6
Facilitating Traffic	31
Individual drivers and pedestrians	22
General flow	7
Stopping dangerous drivers	2
Saving Lives	22
Medical emergency	10
Fire rescue	9
From other physical danger	3
Crime Control	17
Investigation	12
Assisting victims	3
Crime prevention	2
Generally good work	9
Total	114

## Special Care Questioning

This article details the foundation of "special care questioning" techniques which are being developed by the Psychology Unit of the Royal Hong Kong Police Force. Although a good deal of the referenced work has been conducted in European countries, it may be familiar to American readers.

The testimony to which we refer is that of witnesses, including that of victims, and in special cases, cooperative suspects. The latter have been identified as examples of "memory distrust syndrome," i.e., where an individual cannot remember clearly whether he committed a crime, considers there is a good chance he did so, and makes a false confession on that basis.<sup>1</sup> Such individuals can be considered witnesses to their own behavior.

In general, however, *precariously* accessible testimonial memories may pose problems in cases involving children, the mentally impaired, emotionally traumatized victims, and normal adults whose original memories of a particular incident are just not clear. This latter group may be candidates for examination with forensic hypnosis. The term "precarious," used in this context, refers to the fact that the way the individual is managed, and the manner in which his or her memory is examined by questioning, has a significant effect on the hazard of testimonial error and fabrication.

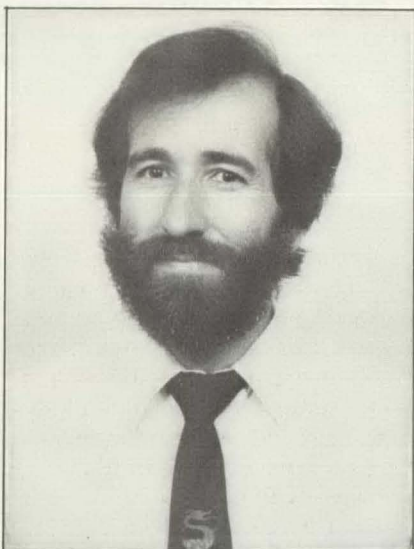
### Suggestibility

At one time, the above-mentioned categories of individuals had been considered defective or untrustworthy as witnesses because they were more "suggestible" than other people. This concept of "suggestibility" as an

unreliable attribute of certain persons is worth examining. Henry Abraham found there was some association between people's suggestibility on tests of sensory changes and their willingness to change their opinion by persuasion, but this association was very low.<sup>2</sup> Frederick Evans conducted a more thorough and extensive review and concluded there were at least three components to the general phenomenon of suggestibility—an ideometer component (responsiveness to suggestions as to how parts of the body will move), inability to overcome challenge (i.e., to be unable to move a part of the body), and an imagery/sensory component (responsiveness to suggestions of feelings through the senses).<sup>3</sup> Individuals who scored high on one component did not necessarily do so on another.

Recently, however, a scale has been developed in order to assess specifically the suggestible effects of questions on a person's uncertain recollections. This has been produced by Dr. Gisli Gudjonsson, a clinical psychologist at the Institute of Psychiatry in London who has worked with the Icelandic police.<sup>4</sup> The scale involves a subject attempting to remember a spoken passage concerning a crime. The subject is then questioned and the degree to which he or she is influenced by the suggestible nature of the questions provides a "yield" score. The subject is then put under mild pressure to do better, and the questions are repeated. The extent to which a subject

By  
BRYAN TULLY, Ph.D.  
Senior Force Clinical Psychologist  
Psychology Unit  
Royal Hong Kong Police Force



Dr. Tully



Raymon Anning  
Commissioner of Police

changes responses provides a "shift" score. In his studies, Gudjonsson found that higher scores of "interrogative suggestibility" were related to lower intelligence, worse memory, lower self-esteem in relation to the questioner, and to a lesser extent, neuroticism.<sup>5</sup> A British psychologist, Noel Sheehy, has discussed motivational sources of error in reports of accidents given by adults and children.<sup>6</sup> "Good" witnesses believe they have provided accounts in a concise, well-structured fashion. Where their competence or integrity seems under test, there is a tendency to avoid appearing foolish or unobservant. In these circumstances, the accounts they give under questioning may "bear only a superficial resemblance to the multiplicity of spontaneous events which contributed to the accident."

#### Testimony of Children

Since the turn of the century, commentators in the United States and Europe have assumed that children were more suggestible than adults. However, a recent major review by Elizabeth Loftus and Graham Davies indicates the truth is not so straightforward.<sup>7</sup> First of all, younger children's memories are not as detailed as older persons *with the same learning opportunity*, and therefore, contain *less* inaccuracies. However, insofar as a memory is poorer, it becomes more precarious to the manner of questioning. If children are involved in crimes, they may be questioned repeatedly by authoritative adults, some of whom may be none too careful

about strong prejudicial forms of inquiry. Where a young child's original memory is very adequate because of the nature and extent of experience, this age-related power of recall and precariousness can be overcome.

Another contrary effect has been identified by Loftus and Davies and that is memory is strongly affected by what is already known. With age and intellectual development, memory "encoding" becomes more sophisticated, as does rehearsal and the organization of memory. At the same time, this increased integrative power can result in generating inferences that go beyond what has explicitly been observed. In the case of accidents, Sheehy has pointed out that children can sometimes be more accurate when questioned, because they don't fill in "what must have happened," owing to their naiveness in this respect. In assessing how good a child's memory is, factors other than age and involvement in the original incident are important, including the extent of the child's interest and understanding of what was going on and how relevant it all was to the child.

Two English psychologists, Helen Dent and Geoffrey Stevenson, have found there are demonstrable differences in the skills of good police interviewers, as compared with those who tend to elicit erroneous recollections.<sup>8</sup> Allowing children to give "free recall," i.e., an account of the incident in their own words, without questions, provided the fewest inaccuracies. However, such accounts could lack completeness. Interviewers who formed strong impressions of how an incident probably happened and asked for *detailed* descriptions (of people or things) in answer to specific questions, even relatively "open" questions, tended to elicit many inaccuracies. These same "minimally prompting questions" could,

---

however, enhance narrative reports about what happened. In the case of younger and more mentally deficient children, there is an exception. They may lack organization in memory and may have to be upheld by organizing questions. For example, if a person is reading a list of creatures, he or she will place them in groups of birds, fish, mammals, and so on, regardless of the original order on the list. A young, mentally deficient child lacking the active organizational principle of "associative clustering" could be helped by questions such as "Can you remember any other birds?"

Although children's use of language to give an account may be less sophisticated than adults, for any given extent of recollection, there is no consistent evidence that children are hypersuggestible compared with adults. Marin and his co-workers found in a study of photo lineups that children performed as well as adults.<sup>9</sup> Concluding a review of mainly American studies in this area, Goodman and Michelli stated:

"...children can be excellent witnesses—if conditions in the courtroom are as supportive as those in the laboratory, if parents do not impose their own views on their children's statements, and if lawyers do not ask them leading questions on the stand."<sup>10</sup>

### Sex Crimes Against Children

Conviction rates for sex crimes against children are notoriously low worldwide. Frequently, cases are not even brought to trial because the court, prosecutor, or law enforcement officer does not consider the child's testimony to be credible, a conclusion that is often unjustified.

Many of the conditions already discussed will be present, which make for robust testimony. A child will have been *involved* over a period of time with the offender. Since the stages of luring, the use of threats or inducements, the assaults themselves, and the steps taken afterwards to minimize disclosure will have taken time, the child is likely to have paid the fullest attention. And in cases of sexual abuse, there may have been repeated incidents.

There are, nevertheless, some special hazards to questioning in these circumstances. The tendency to provide "socially desirable" responses has an added importance here. Many young persons believe that they were to some extent the blame for allowing themselves to be lured by a predator. They may have been in a forbidden place, or should have been elsewhere and were disobeying instructions. They may have agreed to initial suggestions and are now afraid to say so. Or, they may employ a fabrication just to avoid disclosure. Two cases which have come to my attention in Hong Kong illustrate this. In one case, the police arrested some young men for abducting and raping a 14-year-old girl. Her mother proclaimed there was no way her daughter would get involved in this sort of thing willingly, and so she must have been raped. In the presence of her mother, the girl duly provided a detailed statement of abduction and rape, being "helped" by the interviewing officer. In truth, because of her mother's strictness, the girl had run away, sought refuge, and engaged in sexual intercourse with full consent, as she had done 6 months previously. In another case, a little girl was lured away from her playmates and raped. Her 12-year-old sister, questioned with her mother present, stated that she had turned around and saw her sister

getting into a bus with a stranger. She said this to avoid censure from mother that she should have kept better watch of her little sister. The older girl's story wasted a great deal of detectives' time, as they sought the bus and passengers. Some police departments exclude parents as a matter of course from these kind of interviews.<sup>11</sup> Whatever the policy of individual police agencies, examining officers should recognize these hazards and control them accordingly.

The most substantial work which has been done to develop methods of interviewing and evaluating the testimony of victims of sexual abuse has come from Professor Udo Undeutsch of the University of Cologne, Federal Republic of Germany, and Professor Arne Trankell, head of the Laboratory of Witness Psychology at the University of Stockholm, Sweden. For several decades they have studied and testified on thousands of cases, and their systems are similar.<sup>12</sup>

Undeutsch's approach is to solicit testimony in a particularly careful manner, being aware of the issues considered so far in this article. The account has to fit the "cognitive" abilities of the informant with respect to perception, understanding, and powers of recollection. Undeutsch tests the veracity of the *text* of the testimony, rather than judging the overall truthfulness of the informant. Individuals with reputations for telling the truth may have the most to gain from careful lying!

The most important criteria applied by Undeutsch concern how the testimony develops over several interviews. Language and manner of delivery are noted, and the content of the statement is examined for particular detail. Tests for personal originality in expression and coherence are also applied. Some specific and unusual aspects of criminal-victim relationship are sought. Spontaneous accounts of the context and impact of the crime on the individual's life are examined for veracity. How complications in the execution of the crime, emotional reactions, and spontaneous corrections of getting the order of events mixed up (indicating truth-telling rather than fabrication) are recounted, constituting the chief basis of this kind of assessment.

Undeutsch has been involved in over 1,500 cases over 30 years. Where his findings indicate veracity, the West German courts convict 9 times out of 10. There has not been a single case where such a finding has been overturned when it concurs with his assessment.

These assessment techniques have been developed in some countries because their judicial systems have been more supportive of having experts advise the courts. Some European courts are inquisitorial rather than completely adversarial, as in the Anglo-American system. The judiciary and jurors may share a bench and conduct their own factfinding. Legal codes reflecting the proper use of this expertise exist in the Federal Republic of Germany, Austria, Switzerland, the German Democratic Republic, and Sweden.

### The Mildly Mentally Handicapped

In the United Kingdom over the past decade, there have been a number of highly publicized cases where individuals of limited mental ability have been convicted of very serious crimes, primarily on the basis of their confessions. Subsequently, these convictions have been overturned and the confessions shown to be "unreliable." Two researchers, Brandon and Davies, reviewing overturned convictions state simply:

"One striking fact which has emerged from cases of people whose convictions have been quashed, or who have [been] pardoned after having been convicted largely on the basis of their own confessions or statements, is how many of them are inadequate."<sup>13</sup>

This cause of concern about possible miscarriages of justice was considered by a royal commission on criminal procedure, which reported in 1982. It was noted that the British Home Office advises police to exercise "special care" when questioning mentally handicapped people. What "special care" meant has never been elaborated.

A mentally handicapped person can be a victim-witness. In 1981, Dr. Gisli Gudjonsson and Dr. John Gunn of the Institute of Psychiatry in London established a precedent by presenting a kind of experimental evidence for the first time to the Central Criminal Court (Old Bailey), London.<sup>14</sup> A young woman, legally defined as "mentally subnormal," had allegedly been sexually assaulted by a group of six young men and women at a party. The questions to be considered were whether the victim remembered what occurred and was she competent to distinguish genuine recollection from suggested creations. Like children, the mentally

handicapped were believed to be highly suggestible, and hence, unreliable. Gisli Gudjonsson conducted a variety of clinical tests and arranged for various people to bring items to his room. On a later occasion, he suggested to this woman that various events had happened, and when she acquiesced (as indeed she did even to false suggestions), he was able to persuade her that she was mistaken. At the same time, when she had a recollection grounded in real experience, she was unmovable. This *differential* suggestibility effect was described to the jury, who were thus assisted to assess her performance under gentle but thorough cross-examination.

Once again, suggestibility turned out not to be such a simple "trait" as one might have thought. In fact, the *interactional* nature of influential questions and other task demands have been clarified by the work of Zigler and his associates over many years.<sup>15</sup> First of all, those handicapped subjects who have suffered relatively greater social deprivation tend to prolong interaction with supportive adults by overpersistence in highly learned or stereotypically rigid behavior. This may be elaborated arbitrarily. Other subjects who experience negative and anxiety reactions with authority figures may seek to provide quickly what the authority figure seems to want, and therefore, bring the encounter to a close. If a handicapped person lives in a social world where his or her shortcomings are continuously manifest and personal solutions are experienced as poor, then that individual is more likely to rely on cues from others as to the "appropriate" way to make a response.

---

In order to clarify further the effects of police questioning style on the accuracy of mentally handicapped people's testimony, the newly established U.K. Police Foundation funded an experimental study in 1981, conducted by the author and an associate research worker.<sup>16</sup> We were interested in the mildly mentally handicapped, an "at risk" group for the problems we are discussing. These people live in the community, do simple work, and their "handicap" is neither blatant nor obvious. Basically, we are referring to people in the I.Q. range of 70 to 85. They represent about 12 percent of the population.

Our research subjects and average I.Q. "controls" observed an incident and were later questioned by police at London's Metropolitan Police Training Establishment. Gisli Gudjonsson's suggestibility scale was administered and susceptibility to suggestion was primarily related to the individuals' ability to remember and their general intelligence. The willingness of subjects to revalue their confidence after being told they had to try again showed no special pattern at all. Indeed, the confidence proclaimed for any memory was no guide whatsoever to its likelihood of being correct. Average I.Q. subjects remembered better, but the number of inaccuracies was only partly predictable from this and "suggestibility" scores. Errors were mostly generated through an interaction of memory weakness and the kinds of questioning certain police interviewers adopted. Fluency and confidence in demeanor frequently seduced

interviewers into overestimating the reliability of the information they received. This, in turn, undermined the various cautions and inhibitions they knew they should apply to *known* vulnerable witnesses. An *active* search for a plausible version of events through detailed cross-examination resulted in "flows" of error. Various forms of interview "driving" were noted.

We found 16 categories of error-producing question sequences. Included among these were overriding or upgrading inarticulate or ambiguous responses, erroneous compromise descriptions offered by the interviewers, offers of alternative answers by the interviewer (a particularly damaging form of question for precarious memories), eliciting a string of "don't knows" until the witness finally offers an erroneous guess, and ignoring an inconvenient or belated fragment qualification to an already-given coherent statement. Notwithstanding all this, there was good examinable memory available. Our less bright subjects remembered about three-quarters as much as our average control subjects.

#### Eye Witness Testimony

The fact that normal eye witnesses can make serious errors in perception, judgment, and recollection is now well-documented.<sup>17</sup> Elizabeth Loftus is noted for her classic studies of how false information embedded in questions to an eye witness can be incorporated into the subject's memory, and in subsequent questioning, may be produced as if it were part of the original recall,<sup>18</sup> depending on the information and circumstances. Determining the parameters of the "Loftus effect" is the subject of recent research,<sup>19</sup> although it is not certain if this "updating" is irrevocable or

whether it is still possible to return to the original memory after the Loftus effect has occurred.<sup>20</sup> The point to be considered here is that precariously accessible memories may vary extensively in anyone, depending on the circumstance. The hazards of their examination are not restricted to immature or mentally impaired persons.

#### Forensic Hypnosis

Normal witnesses whose memory of a particular incident is weak, but from whom the need for recollection is very important, may be candidates for forensic hypnosis. The hazards to these precariously accessible memories from the hypnotic procedures are controversial. Proponents of forensic hypnosis insist they regularly obtain useful and verifiable information which was not previously produced.<sup>21</sup> At the same time, the more strictly and carefully experimental psychologists control their studies, the more difficult it is to show that hypnotic induction *per se* enhances recall.<sup>22</sup> How can these apparently contradictory findings be explained?

A possible answer lies in what forensic hypnotists actually do apart from inducing hypnosis. Martin Reiser teaches that the setting for the interview should be free from noise and distractions. The subject's comfort and relaxation is attended to meticulously, and the interviewer consciously adopts an appropriate social distance, posture, and nonjudgmental stance. There is a good deal of preparation. The purpose and nature of the interview is explained, allaying fears and building rapport.

During the hypnotic interview, Reiser recommends gathering an uninterrupted narrative before asking specific questions. Extreme care is taken not to use suggestion or hints of coercion. The subject has time to respond, and the interview is conducted as much as possible in the vernacular of the subject. Certain ploys may be used, such as reinstating the scene of the crime in imagery, and the witness may be guided through the course of re-imagined events.

Almost all these factors might be expected to assist in recovering precariously accessible memories without invoking hypnotic effects. Simply preparing a subject for recall accuracy can sharpen their discrimination between what is true and false in their recollections, and carefully guided imagery procedures can enhance recall.<sup>23</sup> One group of researchers based at UCLA has devised a "cognitive interview" for normal eyewitnesses.<sup>24</sup> They developed a set of maneuvers for searching memory based on certain principles of contemporary memory theory, which included reinstating the original context and guided imagery through time, various perspectives, and looking at the sequence of events in different orders. They reported enhanced recall without undue error increase, at least for relatively well-remembered material. It is possible to develop special care questioning practices which make use of these effective variables and to dispense with the one component which is not only unproven experimentally but is dubious judicially.

### Special Care Questioning

The development of principles of special care questioning at the Psychology Unit of Royal Hong Kong Police Force can be viewed as deriving from a synthesis of the experimental psychology of human memory, the developmental psychology of childhood or mental immaturity, and the social psychology of the interview. In concept and application, special care questioning respects and *takes account of* the vagaries of human memory and the effects of various styles of questioning. Thus, in comparison with forensic hypnosis for example, it *constitutes* the best safeguards against damaging the veracity of testimony. Instead of being left as a last resort because of judicial doubts, it can be used as a *first option* of choice; taking "special care" is judicially commendable. Obtaining valid testimony is optimized when the techniques are used as soon as possible, while unwitting error production is minimized. This is just the opposite to "last resort" forensic hypnosis.

The essence of special care questioning lies in the assessment and preparation of the subject. Comfort, relaxation, establishing rapport, setting *appropriate* attitudes for accuracy, and dealing with fears, doubts, and misleading expectations on the part of the interviewer and subject are all part of this initial preparation. In the case of emotionally traumatized victims, the investigator must know how to deal with the victim's doubts about being questioned and about issues of shame, insensitivity, and defensiveness. If the emotional needs of the victim-witness are met, then the interview is likely to produce better quality information *and* a higher degree of subsequent cooperation between the victim and the criminal justice system.

The initial preparation sessions allow the investigator to assess the style and idiosyncrasies of the subject. What is his or her typical demeanor? Is it necessary to calm an initial acute phase of nervousness? In talking about the subject's background, an interviewer can get an idea of how well the individual seems able to grasp and reproduce accounts of his life appropriate with age and status. The tendency to be indiscriminating in confidence about what the subject knows and doesn't really know should be noted. Where precariously accessible memories are being examined and confidence is expressed indiscriminately, the investigator should check his tendency to ask "Are you sure?" In these cases, acquiescent "yes" responses are likely to be elicited, so the question becomes redundant, and the next time the subject is examined he may "remember" how sure he was regarding this item.

There is overwhelming wisdom in collecting a free narrative account without probing questions. This may be the least inaccurate of all statements. Such an account on a later occasion or elicited by a different interviewer may well result in a few extra details. These accounts provide forensic investigators with the best clues as to the subject's linguistic competence and how the amount and detail of recall compares with other individuals of like age and status. Where a child provides consistently poor "free narrative" accounts, and then proceeds to give an answer to most every question, there is cause to be wary.

During the interview, the questioner needs to be aware of all the potential hazards there are in questioning subjects with precariously accessible memories. Some means of monitoring the interview should be established. The various memory enhancement techniques discussed, guided fantasy, reinstatement of context, etc., can be used by those with proven ability to do so.

FBI

#### Footnotes

- <sup>1</sup>G. Gudjonsson and J.A. MacKeith, "False Confessions: Psychological Effects of Interrogation, A Discussion Paper," in *Reconstructing the Past: The Role of Psychologists in Criminal Trials*, ed. A. Trankell (Stockholm, Sweden: P. A. Norstedt & Soners Forlag, 1982).
- <sup>2</sup>Henry Abraham, "The Suggestible Personality: A Psychological Investigation of Susceptibility to Persuasion," *Acta Psychologica*, vol. 20, 1962, pp. 167-184.
- <sup>3</sup>F. Evans, "Suggestibility in the Normal Waking State," *Psychological Review*, vol. 67, No. 2, 1967, pp. 114-129.
- <sup>4</sup>G. Gudjonsson, "A New Scale of Interrogative Suggestibility," *Personality and Individual Differences*, vol. 5, 1984, pp. 303-314.
- <sup>5</sup>G. Gudjonsson, "Suggestibility, Intelligence, Memory Recall, and Personality: An Experimental Study," *British Journal of Psychiatry*, vol. 142, 1983, pp. 35-37; "Interrogative Suggestibility and its Relationship with Self-Esteem and Control," *Journal of the Forensic Science Society*, vol. 24, 1984, pp. 99-110.
- <sup>6</sup>N. Sheehy, "The Child as Witness," unpublished manuscript, 1983, University of Wales Institute of Science and Technology.
- <sup>7</sup>E. Loftus and G. Davies, "Distortions in Children's Memory," unpublished manuscript.
- <sup>8</sup>H. Dent and G. Stevenson, "An Experimental Study of the Effectiveness and Different Techniques of Questioning Child Witnesses," *British Journal of Social and Clinical Psychology*, vol. 18, 1979, pp. 41-51.
- <sup>9</sup>B. Marin, et al., "The Potential of Children as Eyewitnesses," *Law and Human Behavior*, vol. 3, 1979, pp. 295-305.
- <sup>10</sup>G. Goodman and J. Michelli, "Would You Believe a Child Witness?" *Psychology Today*, November 1981, pp. 82-95.
- <sup>11</sup>N. H. White, Child Abuse Unit, Houston, TX, Police Department, personal communication.
- <sup>12</sup>Udo Undeutsch, "Statement Reality Analysis," in *Reconstructing the Past: The Role of Psychologists in Criminal Trials*, ed. A. Trankell (Stockholm, Sweden: P. A. Norstedt and Soners, 1982); Arne Trankell, *Reliability of Evidence* (Stockholm, Sweden: Rotobekman, 1972).
- <sup>13</sup>R. Brandon and C. Davies, *Wrongful Imprisonment* (London: Allen & Unwin, 1973).
- <sup>14</sup>G. Gudjonsson and J. Gunn, "The Competence and Reliability of a Witness in a Criminal Court: A Case Report," *British Journal of Psychiatry*, vol. 141, 1982, pp. 624-627.
- <sup>15</sup>E. Zigler and D. Balla, *Mental Retardation: The Development-Difference Controversy* (New Jersey: Lawrence Erlbaum Associates, 1982).
- <sup>16</sup>B. Tully and D. Cahill, *Police Interviewing of the Mentally Handicapped: An Experimental Study* (London: The Police Foundation, 1984).
- <sup>17</sup>B. Clifford and R. Bull, *The Psychology of Person Identification* (London: Routledge and Kegan Paul, 1978); J. Shepherd, H. Ellis, and G. Davies, *Identification Evidence* (1982).
- <sup>18</sup>E. Loftus, *Eyewitness Testimony* (Cambridge, MA: Harvard University Press, 1979).
- <sup>19</sup>A. P. Yarmey, *The Psychology of Eyewitness Testimony* (New York: The Free Press, 1979); S. Lloyd-Bostock and Brian Clifford, eds., *Evaluating Witness Evidence* (New York: Wiley & Sons, 1983).
- <sup>20</sup>J. Bowers and D. Bekerian, "When Will Post-event Information Distort Eyewitness Testimony?" *Journal of Applied Psychology*, 1983.
- <sup>21</sup>M. Reiser, *Handbook of Investigative Hypnosis* (Los Angeles, CA: LEHI Publishing Co., 1980); R. Ault, "Hypnosis: The FBI's Team Approach," *FBI Law Enforcement Bulletin*, vol. 49, No. 1, January 1980, pp. 5-8.
- <sup>22</sup>G. Wagstaff and C. Maguire, "An Experimental Study of Hypnosis, Guided Memory, and Witness Memory," *Journal of the Forensic Science Society*, vol. 23, 1983, pp. 73-78; F. De Piano and H. Salzberg, "Hypnosis as an Aid to Recall of Meaningful Information Presented under Three Types of Arousal," *International Journal of Clinical and Experimental Hypnosis*, vol. 29, 1981, pp. 383-400.
- <sup>23</sup>S. Moeser, "The Effects of Accuracy Instructions given on a Second Questioning Session" IRHA Report No. 82-015, St. Johns Memorial University of Newfoundland; R. Malpass and P. Devine, "Guided Memory in Eyewitness Identification," *Journal of Applied Psychology*, vol. 66, 1981, pp. 343-350; Wagstaff and Maguire, *supra* note 22.
- <sup>24</sup>R. Gieselmann, et al., "Enhancement of Eyewitness Memory: An Empirical Evaluation of the Cognitive Interview," *Journal of Police Science and Administration*, vol. 12, 1984, pp. 74-80.

# Chemscam

By  
DET. SGT. LARRY R. McCART

*Investigator  
Indiana State Police  
Indianapolis, IN*



The chemical salesman totals the figures on a chemical order placed by the city superintendent. After handing the order to the superintendent for his signature, he excuses himself for the men's room. Upon returning, the salesman gathers up his orders and briefcase and shakes hands with the city employee. As the salesman walks out the door, the employee realizes that he is holding a crisp \$100 bill in his hand and the salesman is gone. The next orders come easier because of the expected handshake at the time the order is placed. A class C felony is committed each time.

A crafty salesman has been trying to gain new business with the city parks director. He arranges a meeting to discuss the possibilities of selling chemicals. Early in the meeting, the parks director closes the door and bluntly states, "Look, this other salesman is giving me a 10-percent kick-back on every order. If you can top that, we can do business; if not, forget it." The salesman replies, "I can create a phony company on paper and give you 40 percent of every order. Of course, I won't deliver any products and you will have to get the city officials to O.K. the claim form." It was

---

**“... monetary costs are not the only ramifications to come from the overpurchasing of chemicals.”**

agreed, and another series of felonies begins.

Another chemical salesman has been doing business with a municipal stadium manager for so long that they have an unwritten understanding. The salesman inquires how much cash the manager needs for her personal use and then writes the order based on that amount. The kickback is always 10 percent of the total order, and it is of no consequence to either person that the chemicals are not even needed for the maintenance of the facility. Thus, stockpiles of chemicals are still present 5 years after delivery.

Following a change in a city's administration, a decree was issued stating that all city purchases would be personally inspected at the time of delivery by the new mayor. This created a potential problem for the street commissioner and chemical salesman, but they soon figured a way around this new policy. When the order for \$5,000 worth of yellow traffic paint was delivered, the mayor inspected the delivery as per his decree. As the mayor was driving back to city hall, the street commissioner and salesman were loading

the cans of paint on a truck for delivery to another city that had also purchased them. The commissioner received his 20-percent kickback for the order, the salesman received his commission for selling the same product twice, and the city administration was not aware of this waste of public funds. More class C felonies are committed!

The above scenarios are examples of bribes which existed in several cities in Indiana. This pattern of bribery went unchecked for many years until a routine audit by the State Board of Accounts discovered irregularities.

In 1975, a city with a population of 9,000 spent \$6,000 for chemical purchases, and by 1979, chemical purchases sky rocketed to \$114,000. Notification of these practices to the Indiana State Police led to the birth of ChemsCam, a statewide investigation into official corruption and bribery.

This widespread bribery has cost the taxpayers of Indiana in excess of \$10 million, a conservative estimate. However, monetary costs are not the only ramifications to come from the overpurchasing of chemicals. Some cities have dumped huge quantities of toxic chemicals to dispose of them; others stored unneeded chemicals in areas that constituted a potential health hazard.



*Sergeant McCart*



*Superintendent John T. Settle  
Indiana State Police*



Since the chemical sales business is extremely competitive, the practice of giving premiums was instituted to gain business. The first step may involve giving a purchaser a cigarette lighter, a pen, or fishing equipment and escalate from there. With some companies, the premiums are illustrated in colorful catalogs that are left with the potential customer. The quality of the gift or premium is contingent upon the size of the order. Many salesmen travel with their car's trunk loaded with liquor, toasters, radios, etc., to bribe public officials into spending public funds for chemical products. These seemingly innocuous premiums break the ice for future cash kickbacks as purchases increase.

One salesman, who is cooperating in the investigation, stated that he was able to walk into a city street ga-

rage and talk with the street commissioner and quickly learn if he was a "buyer." If so, the gifts or cash bribes began on the first order. Soon, an effort was made to eliminate purchases from competing chemical companies by increasing the percentage of the kickback. Once a relationship was established, the bribes became a routine part of the business transaction.

Most salesmen who are involved in this scheme of kickbacks and bribes keep very detailed records, even to the extent of establishing a code for the cash payments. Each premium, no matter how small, is recorded along with the date and product sold. The agreement to pay cash on each purchase is never written, but the percentage of kickback, usually 10 percent of the total order, is well-established and understood by both the salesman and the official.

The old adage that there is no such thing as a free lunch is certainly true in the chemical sales industry.

The cost of the "free" gifts or cash is inflated prices and the waste of taxpayers' money. Chemical companies often realize a 66- to 90-percent profit. A salesman who will make \$300 to \$400 commission on a \$1000 order is not adverse to giving \$50 or \$100 to the buyer to continue getting the business and eliminate the competition.

Many salesmen sell for more than one company, and this allows them to write several orders on the same date to the same customer without arousing the suspicions of the city or county council. While a large order to one company each month would draw attention, three smaller orders to three seemingly separate companies goes through without difficulty.

In one investigation, Indiana State Police investigators learned that a salesman was selling cases of window deicer to the city street department. The deicer was purchased at a local department store a few blocks from the street garage and delivered by the salesman. The cans still had on them the department store's name and price tag of \$1.37 each. The chemical salesman, who sold the deicer on his company's invoice for \$3.17 per can, knew the street superintendent would not complain because of the years of receiving 10-percent kickbacks on every order. The city board of works would never see the product as they merely rubber stamped the claims presented.

A persistent defense attorney, trying to break down the story of a salesman/witness during a trial, asked how the salesman knew that the product he sold to his client was of inferior quality. The salesman replied that he had purchased a 5-gallon container of floor wax, mixed it with a 55-gallon

---

**"... to date there have been 1,038 indictments against 59 public officials and 24 salesmen."**

---

drum of water, put on his label, and delivered it to the city for a charge of \$900.

The chemical companies which operate by telephone across State lines present other problems for the investigator. The purchaser never meets the salesman, but receives his premiums or kickbacks at his home via parcel post. These telephone salesmen are paid based upon the number of calls they make and are given more money if the order is accepted and even more if a gift is accepted. Their kickbacks take the form of free airline tickets, microwave ovens, televisions, gift certificates, video recorders, etc.

The telephone-type sales operations need not have laboratories or warehouse storage facilities. There are numerous chemical companies that will make quantities of chemicals to the salesman's specifications and put any label requested on the containers. One of these New York-based companies with a subsidiary in Kansas City was found to be doing business in 48

States. When the company president was indicted by a grand jury in Indiana, he sold his interest in the company and fled.

Investigations into irregularities of chemical purchases have been undertaken by a team of Indiana State Police investigators formed specifically for this mission. The investigations have been greatly aided by the cooperation of chemical salesmen who have been granted immunity for their testimony.

As the investigation expanded, the potential targets list grew considerably. Salesmen who were indicted and given a lighter sentence and a future grant of immunity through plea negotiations would often provide a list of 10 to 15 counties where they had done business. In each county, they may have paid cash kickbacks to three or four public officials. Thus, the investigations snowballed throughout Indiana.

Public records provide valuable corroboration for the statements of the

cooperating salesman or cooperating public official. The city ledger is routinely examined, as well as purchase orders, claim forms, and checks issued for chemical purchases. The sales order forms, vouchers, and individual salesman's records are matched with the dates and amounts of these city records to complete the paper trail. Of course, numerous detailed statements are taken before the completed case is presented to the county grand jury.

During the grand jury testimony, a public official will often confess his guilt and give the names of others from whom he has received cash kickbacks. Consequently, the chain reaction continues, and the investigators are constantly given new leads.

The Chemsam investigation has been ongoing since December 1980, and to date there have been 1,038 indictments against 59 public officials and 24 salesmen. Six corporations have been indicted and one has pleaded guilty in three counties, acknowledging that their sales people are trained and encouraged to engage in kickbacks.

Chemsam has virtually ended bribery as a way of life between chemical salesmen and public officials in Indiana. By widespread publicity of meaningful convictions of mayors, street commissioners, sewage treatment plant superintendents, and chemical salesmen, this deterrent effect has been realized.

Although there has been a ripple effect and other misdeeds of public officials have been stifled by this series of investigations, many areas of public corruption still exist, of course. However, an inestimable amount of taxpayer money has been saved by the results of Chemsam.

**FBI**



# 1985 Preliminary Bombing Statistics

According to preliminary figures, bombing incidents decreased 6 percent during the first 6 months of 1985, as compared to the number of bombings during the same period of 1984. This year's bombings totaled 362, of which 299 were explosive and 63 were incendiary incidents. Actual detonation or ignition occurred in 306 of the incidents reported. One of the bombings was attributed by the FBI to a terrorist group, whereas 5 had been attributed to terrorist groups during the first 6 months of 1984.

The 362 bombings resulted in 10 deaths, 44 injuries, and \$3.6 million in property damage. The 10 fatalities represented an increase over the 3 deaths reported during the same

6-month period in 1984. Of those killed, 4 were the perpetrators, 3 were intended victims, and 3 were innocent bystanders. The 44 persons injured included 23 innocent bystanders, 14 perpetrators, 6 intended victims, and 1 fireman. Residential property was the most frequent bombing target, accounting for 29 percent of the attacks, with the remainder being directed at vehicles (20 percent), commercial operations or office buildings (17 percent), or various other targets.

Geographically, 128 bombing incidents were recorded in both the Western and Southern States. The Midwest registered 69 bombings; the Northeast, 32; and Puerto Rico, 5.

## A Rise in Crime

During the first 6 months of 1985, the number of Crime Index offenses reported to law enforcement rose 3 percent. This increase, based on a comparison of January-June 1984, figures, is the first semiannual rise since 1981. Both categories of the Crime Index, violent crimes and property crimes, recorded increases. Violent crime was up 4 percent, while property crime rose 3 percent.

Among the violent offenses, only murder showed a decline for the 6-month period, 2 percent. Robbery remained at the 1984 level, but the number of forcible rapes and aggravated assaults each rose 7 percent.

All property crime offenses increased in number. Motor vehicle theft was up 5 percent; larceny-theft, 4

percent; arson, 3 percent; and burglary, 1 percent.

When grouped by population segments, law enforcement agencies serving cities with more than 1 million inhabitants registered the only decline, 2 percent. Increases ranging from 2 to 7 percent were recorded for the other city groupings. Suburban county agencies jointly showed a 4-percent rise, while those in rural counties registered a 1-percent increase.

Regionally, the South and the West both recorded 6-percent upturns. The Midwest showed a 1-percent decline, while there was virtually no change in the Crime Index volume for the Northeast.

# ***Perspectives on Negotiation in Local Jurisdictions***

## **Part I: A Different Typology of Situations**

**“Negotiation as a specialized police activity has become an accepted component of tactical response in virtually every American jurisdiction.”**

Negotiation as a specialized police activity has become an accepted component of tactical response in virtually every American jurisdiction. The philosophy that successful resolutions are those which end without injury to subjects, officers, or hostages demands that the police response remain conservative in the exercise of its options, concentrating on the skillful application of behavioral and persuasive tactics to enforce police authority and gain compliance before resorting to coercive techniques which might endanger the lives and safety of those involved.<sup>1</sup>

The origin of negotiation has been directly linked to the rise of terrorist activity in the early 1970's.<sup>2</sup> As a direct consequence, much of the theory put forward and the preparation of personnel have assumed terrorist or terrorism-related motives—the so-called “siege mythology.”<sup>3</sup> The underlying assumptions seem to be that the subjects of such tactical operations would (1) have hostages, (2) have some more-or-less specific motivation for being in the situation, (3) have demands for the release of hostages and surrender which could form the basis for negotiation, and (4) would negotiate on the basis of those situation-specific demands.<sup>4</sup>

Investigation and reporting of actual situations have been similarly biased toward those operations which reflect the assumptions stated. Mirabella and Trudeau, in an attempt to analyze conditions prevailing in actual operations, limited their study to situations in which hostages were present.<sup>5</sup> Case studies cited within the articles reviewed for this paper were overwhelmingly dominated by similarly constructed situations. Where statements of the relative frequency of various types of situations have been offered, quantitative data to support the contentions has not accompanied the statements made.

### **The Problem of Typology**

While the psychologist's role in police negotiation operations remains controversial and problematic, the importance of psychological theory in the process is unquestioned.<sup>6</sup> Successful negotiation, whatever the genesis of the operation, will depend on understanding and relating to the motives and perceptions of the perpetrator and on the skillful use of that understanding in reaching the desired conclusion.

By

RICHARD M. GIST, Ph.D.

*Psychology Department  
University of Missouri  
Kansas City, MO*

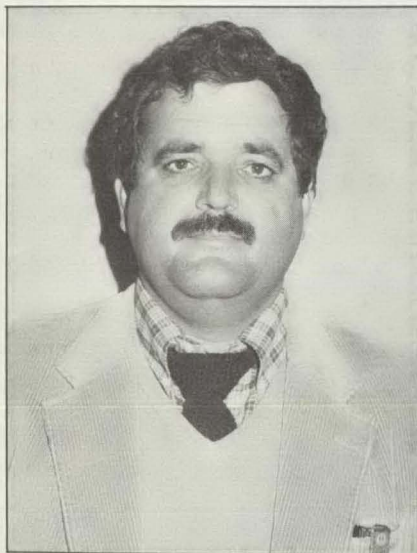
and

SGT. JON D. PERRY

*Supervisor of Instruction  
Regional Training Academy  
Police Department  
Kansas City, MO*



Dr. Gist



Sergeant Perry

The first key factor to be addressed in undertaking the negotiation is understanding the situation as it exists for the subject. Several typologies have been offered to assist in this preliminary classification. While differing at points in their treatment of specific cases, most hold in common the components in table 1.

The typologies currently available concentrate on describing the characteristics of the individual perpetrators and generally assume that hostages are involved in the encounter. Maher proposes four types: The *criminal* who is thwarted in escape; the *mentally disturbed* person acting from irrational motives; the *unorganized group*, such as jail rioters or participants in a civil disturbance; and the *organized terrorist group* with political motives.<sup>7</sup>

Goldaber offers three major classifications focusing on the perpetrator's motives.<sup>8</sup> Each major category includes three subcategories: The *psychological* motive, including the suicidal individual, the vengeance seeker, and the disturbed individual; the *criminal* motive, including the concerned perpetrator, the aggrieved inmate, and the extortionist; and the *political* motive, including the social protestor, the ideological zealot, and the terrorist extremist.

Fuselier presents a typology with four major categories: The *mentally disturbed* perpetrator, in which he includes the paranoid schizophrenic, the manic depressive (depressed type), antisocial personalities, and inadequate personalities; the *criminal* trapped in the commission of a *crime*; the *prisoner* involved in revolt; and the *terrorist* seeking social change through violence.<sup>9</sup>

Table 1

### Standard Typologies of Subjects

TYPE	Characteristics
Criminal	Cornered Perpetrators Aggrieved Inmates Felony Extortionists
Political	Social Protestors Ideological Zealots Terrorist Extremists
Psychological	Suicidal Individuals Vengeance Seekers Disturbed Individuals Antisocial Personalities

While perhaps fitting for classical hostage situations, each of these typologies assumes to some extent the four-part assumption described earlier. The Kansas City experience, however, has run contrary to these assumptions. Analysis of *Operation 100* calls, tactical operations involving barricaded subjects and/or hostages in which negotiators and tactical units are dispatched, was undertaken to determine the characteristics of situations encountered by Kansas City units and to evolve a more-complete typology which would assist in developing effective negotiation strategies in the field.

### Method

An *Operation 100* may be initiated by any field supervisor upon determining that a barricaded subject or hostage situation exists. (The term "Operation 100" derives from the approximate number of officers generally deployed). The response will include at least two tactical support units (a cover team and an arrest/entry team), at least two negotiators, a mobile command post, and sufficient personnel to establish and maintain perimeters,

## **"The ... key factor to be addressed in undertaking the negotiation is understanding the situation as it exists for the subject."**



Larry J. Joiner  
Chief of Police

control traffic, and such. Command of the operation is assumed by the captain responsible for the arrest/entry team.

Each operation is followed by an after-action critique, a debriefing session in which key personnel and command staff review the operation and the performance of all units involved. Subsequent to this session, a report summarizing the operation and any recommendations for future application is issued. Since mid-1982, these reports have also contained a narrative prepared by the negotiator, detailing the negotiation process and the negotiator's appraisal of the individual involved.

While the department has conducted more than 85 operations since the program began in the mid-1970's, only those where the negotiator's report was included were selected for study. Of 34 such reports, 10 were ex-

cluded because the operation was completed prior to negotiation (surrender of the subject during assembly, immediate compliance with the initial request to surrender, early determination that the call was unfounded, or the like). Twenty-four reports were used for analysis and form the data base for the study.

Reports were first reviewed for conformance of the situation to the assumptions cited earlier, particularly the presence of hostages. While a number of calls contained information about possible hostages, only two cases were reported in which a hostage was actually present. In each of these cases, the hostage escaped or was released early in the confrontation, removing the issue of the hostage from the substantive portions of the negotiation. In all cases, then, negotiation centered not around the hostage but around the surrender of an individual subject.

Reports were next reviewed to classify the encounters according to existing typological models. The synthesis model presented in table 1 formed the basis for this classification. As indicated in table 2, only about one-third of the situations studied could be conveniently classified within the categories available. A fourth classification, considering the characteristics of the situation as well as the individual, was necessary to account for the remaining 62.5 percent of the cases studied.

### **Results**

Goldaber named the cornered perpetrator, one of his categories under criminal motives, as the most frequent type to be encountered.<sup>10</sup> Classical examples of this type are rare in Kansas City. The frequency within this category might arguably be increased by including misdemeanors like simple

assault, as in a domestic dispute, as an interrupted crime. Taking only those situations clearly consonant with the definitions and examples offered in the literature,<sup>11</sup> only three such cases were encountered, or 12.5 percent of those examined.

Maher posits the mentally disturbed perpetrator as the most frequent encounter, while Fuselier cites FBI research as indicating 52 percent of all situations involve this type of subject, particularly cases falling within the diagnostic categories he notes.<sup>12</sup> While one might again arguably increase representation within this category by including as mentally disturbed those whose anger is out of control or those in whom despondency is a contributing factor, clear cases of

**Table 2**  
**Categorization of KCPD Operations**  
**100's**  
**(N = 24)**

Type	N	Percent
Criminal	3	12.5
Terrorist	0	0.0
Mental	6	25.0
Escalated	15	62.5

gross mental disturbance account for only one-fourth of the situations studied in Kansas City. In only 6 of the 24 cases examined was the situation clearly the result of delusional thinking, grossly suicidal intention, or similarly pronounced psychological aberration.

## "Negotiators ... have begun to direct their training toward more general conflict resolution and crisis intervention approaches to the barricaded subject."

It is particularly pertinent to note that the terrorist motive, the original impetus for the evolution of negotiation as a tactical response and the focus of much of the negotiation literature, has yet to be encountered by Kansas City teams. Like most local jurisdictions, Kansas City contains few prime terrorist targets. Events which might attract terrorist activity do occur, e.g., the 1976 Republican National Convention or the 1984 Presidential debate, but these are generally the subject of extremely tight security.

**Table 3**

### Sources of Dispute in Escalated Situations

Type of Dispute	n	Percent
Domestic	9	60.0
Suicide Gesture	4	26.6
Neighborhood	1	6.7
Alcohol Engendered	1	6.7

Nearly two-thirds (62.5 percent) of actual encounters examined in Kansas City could not be appropriately classified under current typologies without forcing cases into marginally applicable categories. Upon more-detailed examination, these cases appeared to develop from the escalation of some conflict situation from a typical dispute into one involving a subject holding a weapon. As shown in table 3, these disputes were most commonly (and certainly not surprisingly) domestic, with this category representing 60 percent of the otherwise unclassified cases. Suicidal gestures, separated

here from immediate or overt threats, accounted for 26.6 percent of the unclassified cases. The two remaining cases involved the escalation of a neighborhood dispute and an alcohol-engendered incident. (Alcohol or drug intoxication played a contributing role in many other cases but was the primary factor in the case cited).

### Discussion

Central to the escalated situation type of encounter is that it is the situation which creates the confrontation rather than the desire of the individual involved to achieve some end through a confrontation with the police. The confrontation with the authorities is an unconsidered side effect of an unplanned dispute, not the result of any action in which the perpetrator had expected such an encounter as an outcome. The result is a person-situation interaction in which the perpetrator finds himself or herself locked into an encounter with the police which was unplanned, unexpected, becomes highly threatening, and for which he or she has no clear basis in experience or expectation.<sup>13</sup> A chain reaction of events has placed the perpetrator, already highly stressed from the precipitating events, in an even more-threatening and stressful situation from which all exits are blocked.

Negotiators have become increasingly aware of this type of situation and have begun to direct their training toward more general conflict resolution and crisis intervention approaches to the barricaded subject. In the subsequent parts of this series, specific strategies for approaching the escalated situation will be described, and effective disposition of the subjects (against whom criminal charges are often dropped or never filed) will be discussed.

(To be continued)

FBI

### Footnotes

<sup>1</sup>R.W. Taylor, "Hostage and Crisis Negotiation Procedures: Assessing Police Liability," *Trial*, vol. 19, No. 3, 1983, pp. 64-69.

<sup>2</sup>Ibid.; S. Gettner, "Hostage Negotiators Bring Them Out Alive," *Police Magazine*, vol. 6, No. 1, 1982, pp. 11-28.

<sup>3</sup>G.P. Davidson, "Anxiety and Authority: Psychological Aspects for Police in Hostage Negotiation Situations," *Journal of Police Science and Administration*, vol. 9, No. 1, 1981, pp. 35-38.

<sup>4</sup>Cf. F. Bolz and E. Hershey, *Hostage Cop* (New York: Rawson, Wade, 1979); G.D. Fuselier, "A Practical Overview of Hostage Negotiations," *FBI Law Enforcement Bulletin*, vol. 50, Nos. 6&7, June and July 1981, pp. 2-6, pp. 10-15; G.F. Maher, *Hostage: A Police Approach To Contemporary Crisis* (Springfield, IL: Charles C. Thomas, 1977); A.F. Maksymchuk, "Strategies for Hostage Taking Incidents," *Police Chief*, vol. 49, No. 4, 1982, pp. 58-64; J.G. Stratton, "The Terrorist Act of Hostage Taking: A View of Violence and the Perpetrators," *Journal of Police Science and Administration*, vol. 6, No. 1, 1978, pp. 1-9; J.G. Stratton, "The Terrorist Act of Hostage Taking: Considerations for Law Enforcement," *Journal of Police Science and Administration*, vol. 6, No. 2, 1978, pp. 123-133.

<sup>5</sup>R.W. Mirabella and J. Trudeau, "Managing Hostage Negotiations," *Police Chief*, vol. 48, No. 5, 1982, pp. 45-47.

<sup>6</sup>Davidson, supra note 3; R.J. Powitzky, "The Use and Misuse of Psychologists in a Hostage Situation," *Police Chief*, vol. 46, No. 6, 1979, pp. 30-32; N.G. Poythress, Jr., "Optimizing the Use of Psychological Data: Assessment and Prediction in the Hostage Situation," *Police Chief*, vol. 47, No. 8, 1980, pp. 34-36.

<sup>7</sup>Maher, supra note 4.

<sup>8</sup>I. Goldaber, "A Typology of Hostage Takers," *Police Chief*, vol. 46, No. 6, 1979, pp. 34-36.

<sup>9</sup>Fuselier, supra note 4.

<sup>10</sup>Goldaber, supra note 8.

<sup>11</sup>Fuselier, supra note 4; Goldaber, supra note 8; Maher, supra note 4; Maksymchuk, supra note 4.

<sup>12</sup>Maher, supra note 4.

<sup>13</sup>A. Bandura, *Social Learning Theory* (Englewood Cliffs, NJ: Prentice-Hall, 1977).

# ***Investigative Detention***

## **An Intermediate Response**

### **(Part I)**

**"... there is a legitimate law enforcement function in the investigation of criminal activity where an officer may detain an individual short of making an arrest."**

In the landmark 1968 decision of *Terry v. Ohio*,<sup>1</sup> the U.S. Supreme Court noted that a law enforcement officer "may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest."<sup>2</sup> The Court noted that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person"<sup>3</sup> within the meaning of the fourth amendment to the U.S. Constitution.

Rejecting the notion that every seizure of a person is an arrest requiring probable cause, the Court recognized that there is a legitimate law enforcement function in the investigation of criminal activity where an officer may detain an individual short of making an arrest. Moreover, the Court noted that as a practical matter, this police function cannot be governed by either the warrant or probable cause standards of the fourth amendment, but must be measured against that amendment's general proscription against unreasonable searches and seizures.<sup>4</sup>

In the 1972 case of *Adams v. Williams*,<sup>5</sup> the Court explained its rationale in allowing the limited seizure of a person for investigative purposes, in the absence of probable cause to make an arrest:

"The Fourth Amendment does not require a policeman who lacks the precise level of information

necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an *intermediate response*. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."<sup>6</sup> (emphasis added)

This article examines factors which justify this intermediate response—the investigative stop—and reviews the relevant cases which provide some guidance as to its permissible scope. It should be emphasized at the outset that not every encounter between the police and citizens is a seizure. Determining precisely when police action restrains a person's freedom to walk away depends on the

By  
**JOHN C. HALL**

*Special Agent  
FBI Academy  
Legal Counsel Division  
Federal Bureau of Investigation  
Quantico, VA*

*Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed 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.*



Special Agent Hall

facts and circumstances of each case, and the Supreme Court has indicated that there is no "litmus paper" test<sup>7</sup> which can make the task easier. The issue turns on neither the subjective intentions of the police nor the subjective view of the person encountered. The standard is an objective one, based on what a "reasonable person" would believe in a given case. In other words, if the show of authority is such that it would cause a reasonable person to believe that he is not free to leave, then a seizure has occurred.<sup>8</sup>

Once a stop has occurred, the Supreme Court has identified two important questions to be addressed: (1) Whether the stop was justified at its inception, and (2) whether the intrusion was reasonably related in scope to the circumstances which justified the interference in the first place.

#### **LEGAL JUSTIFICATION: REASONABLE SUSPICION**

Even though an investigative detention of a person is not an arrest within the meaning of the fourth amendment, it is nevertheless "a serious intrusion . . . and is not to be taken lightly."<sup>9</sup> The Supreme Court has adopted a balancing test in which the governmental interests in making the intrusion are weighed against the privacy interests of the individual. The burden rests with the law enforcement officer to justify the intrusion by pointing to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."<sup>10</sup> Thus, the

concept of "reasonable suspicion" has been established as the standard of justification for an investigative detention. It is an objective standard, subject to later scrutiny by a neutral magistrate—less than the standard of probable cause necessary to justify an arrest, but more than a mere hunch. Much like probable cause, it may be based upon the firsthand knowledge of an officer or upon secondhand information derived from other sources. Also, like probable cause, it may be more helpful to describe it than to simply define it. Several Supreme Court cases, beginning with *Terry*, provide useful illustrations.

#### **Firsthand Knowledge**

As the facts of *Terry v. Ohio* are well known to most law enforcement officers by now, a brief summary should suffice to illustrate the use of firsthand knowledge, gained through an officer's observations. In *Terry*, an experienced officer, familiar with the business area to which he had been assigned, observed two men on a street corner over a period of several minutes alternately walk by a store window, peer inside, and return to the corner. When they were joined by a third individual, the officer intervened, made some inquiries, and finally arrested the individuals when a patdown of their clothing disclosed weapons on two of them (including *Terry*).

In assessing the officer's actions, the Supreme Court stated that they were part of a "legitimate investigative function"<sup>11</sup> and concluded that it would have been "poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further."<sup>12</sup> The officer's observations aroused his suspicions, and those suspicions were objectively reasonable.

---

**"... if the show of authority is such that it would cause a reasonable person to believe that he is not free to leave, then a seizure has occurred."**

---

In a recent airport stop case, *United States v. Rodriguez*,<sup>13</sup> police officers experienced in narcotics investigations observed three men at the Miami airport acting in an "unusual manner" as they left the ticket counter. The two plainclothes officers followed the three men to the airport concourse. When one of the men turned and saw the detectives behind them on the escalator, he quickly spoke to one of the others in a low voice. The second man turned, looked at the detectives, and quickly turned his head back. As the three stepped from the escalator, the officers overheard one of them say, "Let's get out of here," and then again in a lower voice, "Get out of here." One of the officers subsequently testified that as the defendant, Rodriguez, tried to leave, "his legs were pumping up and down very fast and not covering much ground, but his legs were as if the person were running in place."<sup>14</sup> The officers then identified themselves and asked Rodriguez if he would talk to them. Rodriguez agreed to talk with the officers and to move about 15 feet to where the other two suspects were now standing. The suspects gave conflicting information regarding their identities. A consent search of the defendant's luggage revealed three bags of cocaine, and the three men were arrested. A Florida court suppressed the evidence, in part, on the ground that there was no reasonable basis for the initial stop of the suspects.

The Supreme Court reversed. The Court declared that the initial contact between the officers and the suspect Rodriguez was nothing more than a consensual encounter with no fourth amendment implications. Furthermore, assuming (without deciding) that a "seizure" did develop sometime after

the initial contact and before the consent to search was given, the Court held that "any such seizure was justified by 'articulate suspicion.'"<sup>15</sup> The Court summarized the salient facts as follows: (1) The suspect's furtive movements, (2) the overheard statements to "get out of here," (3) Rodriguez' strange movements in his attempt to evade the officers, (4) the contradictory statements regarding their identities, and (5) the training and experience of the officers.

As the Court noted in *Terry*, a series of actions observed by an officer may be innocent in themselves, but when taken together can justify further investigation.<sup>16</sup>

Both *Terry* and *Rodriguez* illustrate that personal observations of a law enforcement officer must be interpreted in light of the officer's overall training and experience. The mission of the officer, as well as the knowledge of unique patterns of criminal behavior acquired through training and experience, become very important in the assessment of reasonable suspicion.

#### **Secondhand Information (Hearsay)**

Just as probable cause to arrest or search may be based on secondhand information, so may reasonable suspicion to conduct an investigative stop. For example, in *Adams v. Williams*,<sup>17</sup> a police officer on patrol in a high-crime area received a tip from a person known to the officer that Williams was carrying narcotics and had a gun. The officer approached Williams' parked automobile and ordered him to step out. When he responded by rolling down his window, the officer reached into the car and removed a loaded revolver from his waistband. Williams was then arrested, and the subsequent search of his car uncovered additional weapons, as well as substantial quantities of heroin.

The Court apparently assumed that Williams was seized the moment the officer ordered him to exit the car. In evaluating the officer's justification in seizing Williams, the Court rejected the defense argument that a stop and frisk can be based only on an officer's personal observations. Rather, the information from the known informant "carried enough indicia of reliability to justify the officer's forcible stop of Williams."<sup>18</sup> Recognizing that informant tips vary greatly in their reliability, the Court, nonetheless, declined to preclude their use by police. The Court suggested that some, completely lacking any indicia of reliability, "would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response."<sup>19</sup>

In *Adams*, the secondhand information came from a reliable informant whose identity was known to the officer. Lower Federal court cases have also found reasonable suspicion to exist when the initial information was provided by an anonymous tip and then corroborated by an officer's firsthand observations. For example, in *United States v. Aldridge*,<sup>20</sup> a police officer responded to a radio call at approximately 3:00 a.m. that suspicious persons were in the vicinity of a construction site tampering with vehicles.

---

**“... the totality of the circumstances—the whole picture—must be taken into account’ when assessing the information necessary to authorize police to conduct an investigative stop.”**

---

The information originated from an anonymous source who gave a detailed description of a suspect vehicle, including the fact that it had a broken tail light. While heading toward the location of the construction site, the officer observed a vehicle with a broken tail light going in the opposite direction which matched the description. The officer stopped the car and arrested the occupants after discovering a weapon in plain view inside the vehicle.

One of the issues the defendant raised on the appeal of his conviction was the legality of the stop which led to the discovery of the weapon. The defendant contended that the officer observed nothing suspicious prior to the stop and was acting solely on the information from the anonymous tipster. The Federal appellate court reviewing the case concluded that based on the totality of circumstances, the stop was justified. Even though the officer did not actually observe any suspicious behavior, the court held that an investigative stop will be upheld “if the officer observes facts corroborating even the innocent details of tips from informers.... This is true even when the informant is anonymous.”<sup>21</sup> In this case, what the officer did observe coincided in detail with the description given by the anonymous tipster and was sufficient to justify the stop of the vehicle.

### **Collective Knowledge**

Recently, the Supreme Court applied the principles of the “collective knowledge” rule to the concept of reasonable suspicion. “Collective knowledge” is the term used to describe the process by which the courts impute the knowledge possessed by one officer to another. For example, one officer may

make an arrest or conduct a search at the request of another officer or agency, without having full knowledge of all of the facts which prompted the request. The information possessed by the requesting officer or agency would be imputed to the second officer who acted upon it and would be considered on the issue of probable cause.<sup>22</sup>

In *Whiteley v. Warden*,<sup>23</sup> the Court considered the arrest of burglary suspects based on a police radio bulletin that a warrant had been issued. Although the warrant was held invalid for lack of probable cause, the Court suggested that if the sheriff who issued the radio bulletin had possessed probable cause for arrest, then the arresting officers could have properly arrested the suspects, even though they were unaware of the specific facts that established the probable cause. The question is whether those issuing the bulletin possess the probable cause, not whether those relying on the bulletin are aware of the specific facts which led their colleagues to seek their assistance.

Similarly, in *United States v. Hensley*,<sup>24</sup> police officers in Kentucky, acting on a “wanted flyer” issued by a police department in Ohio, stopped Hensley’s car while attempting to determine if a warrant has been issued for his arrest. The flyer stated that Hensley was wanted for investigation of an aggravated robbery and included some details of the crime, but gave no reasons for suspecting Hensley. When the car was stopped, one officer recognized the passenger as a convicted felon and observed the butt of a revolver protruding from beneath the seat. Following the passenger’s arrest, a search of the car uncovered two other weapons, resulting in Hensley’s arrest and subsequent conviction for being a convicted felon in possession of firearms.

Because the discovery of the weapons attributed to Hensley hinged upon the plain view discovery of the gun protruding from beneath the car seat, the defense challenged the initial stop of the car. A Federal appellate court reversed the conviction, based in part on the contention that the Kentucky officers lacked specific information which led the Ohio department to issue the flyer, and therefore, lacked a reasonable suspicion sufficient to justify the stop.

The Supreme Court reversed. Noting the importance of police being able to act promptly in reliance on information from another jurisdiction, the Court held:

“... if a flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop. ...”<sup>25</sup>

The Court made clear that this rule would not validate an otherwise unconstitutional stop:

“If the flyer has been issued in the absence of a reasonable suspicion, then a stop in the objective reliance upon it violates the Fourth Amendment. In such a situation, of course, the officers making the stop may have a good-faith defense to any civil suit ... (cites omitted). It is the objective reading of the flyer or bulletin that determines whether other police officers can defensibly act in reliance on it.”<sup>26</sup>

Applying these principles to the facts of the case, the Court concluded that the police department issuing the

flyer possessed a reasonable suspicion—based on specific and articulable facts—that Hensley was involved in an armed robbery. Noting that the facts included information from an informant that Hensley had driven the getaway car, the Court reasoned that “the wealth of detail concerning the robbery revealed by the informer, coupled with her admission of tangential participation in the robbery, established that the informer was sufficiently reliable and credible” to justify an investigatory stop of Hensley.<sup>27</sup>

The flyer twice stated that Hensley was wanted for investigation of an aggravated robbery; it described Hensley as well as the date and location of the robbery; and it warned other departments to consider Hensley armed and dangerous. The Court concluded:

“An objective reading of the entire flyer would lead an experienced officer to conclude that Thomas Hensley was at least wanted for questioning and investigation . . . this objective reading would justify a brief stop to check Hensley’s identification, pose questions, and inform the suspect the St. Bernard Police wished to question him.”<sup>28</sup>

*Hensley* is an important case for law enforcement in that it recognizes the interdependence of law enforcement agencies and the need for rapid communication and cooperation. That recognition is best illustrated by the language of the Court itself:

“In an era when criminal suspects are increasingly mobile and increasingly likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions

and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction.”<sup>29</sup>

#### “The Whole Picture”

In assessing whether reasonable suspicion exists to justify an investigative stop, the courts should consider the totality of circumstances. Isolated facts which suggest only innocent behavior may create an entirely different impression when combined with other also seemingly innocent facts. *United States v. Cortez*<sup>30</sup> provides a good example.

On several occasions, border patrol officers in Arizona discovered several sets of footprints in a sparsely populated area near the Mexican border known to the officers as an area heavily trafficked by aliens illegally entering the country. From the number and location of the prints, the officers deduced that groups of from 8 to 20 persons had walked north from the Mexican border to an east-west highway, turned eastward, and continued along the highway to milepost 122 where they disappeared. One of the recurring shoeprints bore a distinctive V-shaped or chevron design. The officers surmised that a person—nicknamed “Chevron” by the officers—was guiding aliens illegally into the United States from Mexico to a point near milepost 122 where they were picked up by a vehicle.

Based on their observations, the officers made the following additional deductions:

- (1) Because the tracks led over obstacles which would have ordinarily been avoided in daylight, the activity was probably occurring at night, beginning sometime after 6:00 p.m. at that time of year;
- (2) Based upon the days of the week when the prints were

observed, the activity probably occurred during or near weekends when the weather was clear;

(3) Because the footprints turned east at the highway, the vehicle which picked them up probably came from the east;

(4) Because it was unlikely that the groups would be walking away from their ultimate destination, the vehicle probably returned to the east after a group was picked up;

(5) Considering the distances involved and the normal speed of such groups traveling on foot, the trip would probably take from 8 to 12 hours, and the groups would arrive at the highway between 2:00 a.m. and 6:00 a.m.; and

(6) Because of the number of footprints observed each time, the pickup vehicle would have to be large enough to accommodate sizeable groups.

Armed with the above facts and deductions, the officers set up a surveillance of the highway on a clear weekend night at a point some 27 miles east of milepost 122. Estimating that it would take about an hour and a half to make the round trip from their vantage point to milepost 122, the officers watched for suitable vehicles traveling west and returning within that time frame. At 4:30 a.m., a pickup truck with a camper shell passed them heading west. One officer recorded a partial license number. When the same vehicle returned almost exactly an hour and a half later heading east, the officers stopped it, advised the two occupants of the truck cab that they

---

## **"The law does ... recognize facts and the logical inferences which can be drawn from those facts by a trained law enforcement officer."**

---

were conducting an immigration check, and asked if they were carrying any passengers in the camper. (The officers observed that the passenger in the truck was wearing shoes with a distinctive "chevron" design on the soles.) Cortez, the driver, told them he had just picked up some hitchhikers and proceeded to open the back of the camper where the officers discovered six illegal aliens.

The two men were arrested and charged with transporting illegal aliens. A Federal appellate court reversed their convictions on the grounds that the officers lacked a sufficient basis to justify the initial stop of the pickup, because the circumstances admitted "far too many inferences to make the officer's suspicions reasonably warranted..."<sup>31</sup>

The Supreme Court reversed the appellate court, stating that "the totality of the circumstances—the whole picture—must be taken into account"<sup>32</sup> when assessing the information necessary to authorize police to conduct an investigative stop. The Court explained that the whole picture begins with "objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers,"<sup>33</sup> but includes the inferences and deductions drawn by a trained officer—"inferences and deductions that might well elude an untrained person."<sup>34</sup>

Articulating a standard for the lower courts to follow, the Court stated: "... when used by trained law enforcement officers, *objective facts*, meaningless to the untrained, can be combined with *permissible deductions* from such facts to form a legitimate basis for suspicion of a particular person and for action on that suspicion."<sup>35</sup> (emphasis added)

Applying the principle to the facts, the Court concluded:

"We see here the kind of police work often suggested by judges and scholars as examples of appropriate and reasonable means of law enforcement. Here, fact on fact and clue on clue afforded a basis for the deductions and inferences that brought the officers to focus on 'chevron.'"<sup>36</sup>

The ability or willingness of the courts to look at the whole picture in assessing the justification for an investigative stop depends largely upon the law enforcement officer's ability and willingness to draw the picture accurately and in sufficient detail. The law does not recognize an officer's "instincts" or "sixth sense" or "hunch." It does, however, recognize facts and the logical inferences which can be drawn from those facts by a trained law enforcement officer. The Supreme Court explained this practical concept as follows:

"Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers."<sup>37</sup>

A case decided in a recent term of the Supreme Court provides an excellent example of how the personal observations of an officer, combined with the logical inferences which his experience and training suggested, can provide the requisite reasonable suspicion to conduct an investigative stop.

In *United States v. Sharpe*,<sup>38</sup> an agent of the Drug Enforcement Administration (DEA) observed a pickup truck with camper shell traveling in tandem with a car in an area near the coast in North Carolina which was under surveillance for suspected drug trafficking. The agent noticed that the

truck was riding low in the rear and appeared to be heavily laden. In addition, the rear and side windows of the camper were covered with a quilted material. After following the two vehicles for about 20 miles, the agent decided to make an investigative stop and called for assistance from the State highway patrol. When a marked patrol car caught up to the procession, the two suspect vehicles appeared to take evasive action by turning off the highway onto a campground and then continuing at a high rate of speed back onto the highway. Both vehicles were eventually brought to a halt, and when marijuana was discovered, the occupants were charged with possession of a controlled substance with intent to distribute.

The defendants appealed their convictions on several fourth amendment issues, including the original basis for the stop. The Federal appellate court which reviewed the case "assumed" that there was an articulable and reasonable suspicion to justify the stop, an assumption which the Supreme Court agreed was "abundantly supported by the record."<sup>39</sup> The Supreme Court noted the following facts as being significant:

- (1) The agent's observation of the two vehicles traveling in tandem for 20 miles in an area known to be frequented by drug traffickers;
- (2) The agent's knowledge that pickup trucks with camper shells are often used to transport large quantities of marijuana;
- (3) The pickup truck appeared to be heavily loaded;

(4) The windows of the camper were covered with a quilted material rather than curtains; and

(5) Both vehicles took evasive action and started speeding when they saw the marked patrol car.

The Court explained that while perhaps none of the facts standing alone would give rise to a reasonable suspicion, "taken together as appraised by an experienced law enforcement officer, they provided clear justification to stop the vehicles and pursue a limited investigation."<sup>40</sup>

The Supreme Court cases provide positive illustrations of the level of information a law enforcement officer must have to justify an investigative stop. That information may be obtained through firsthand observations or through secondhand (hearsay) sources. In addition, law enforcement officers may rely and act upon requests from other law enforcement officers and agencies, e.g., police bulletins and flyers, even though the acting officers do not possess the underlying facts which prompted those requests. Finally, the officers who act, and the courts which review those actions, must consider the "whole picture" or totality of the circumstances.

In *Terry*, the Court emphasized that the officer who conducts an investigative stop must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."<sup>41</sup> It is not sufficient that the police officer was "suspicious." The suspicions must be objectively reasonable, based on facts capable of withstanding the scrutiny of a neutral, detached magistrate, and supporting a reasonable belief that the person to be stopped has been, is, or is about to be engaged in criminal activity.

Once a valid stop has occurred, the degree of the intrusion must be tailored to the reasons for its inception. If the intrusion exceeds the permissible scope for an investigative stop with respect to duration or degree of control exercised by the officers, it will be measured against the higher standard necessary to justify an arrest. Furthermore, if the police frisk the detainee for weapons, they must be prepared to justify their action both with respect to its initiation and its scope.

Parts II and III of this article will consider these issues.

FBI

(To be continued)

#### Footnotes

- <sup>1</sup>392 U.S. 1 (1968).
- <sup>2</sup>*Id.* at 22.
- <sup>3</sup>*Id.* at 16.
- <sup>4</sup>*Id.* at 20.
- <sup>5</sup>407 U.S. 143 (1972).
- <sup>6</sup>*Id.* at 145-146.
- <sup>7</sup>See, *Florida v. Royer*, 460 U.S. 491 (1983).
- <sup>8</sup>See, e.g., *INS v. Delgado*, 80 L.Ed. 2d 247 (1984).
- <sup>9</sup>*Supra* note 1, at 17.
- <sup>10</sup>*Id.* at 21.
- <sup>11</sup>*Id.* at 22.
- <sup>12</sup>*Id.* at 23.
- <sup>13</sup>83 L.Ed.2d 165 (1984).
- <sup>14</sup>*Id.* at 169.
- <sup>15</sup>*Id.* at 171.
- <sup>16</sup>*Supra* note 1, at 22.
- <sup>17</sup>*Supra* note 5.
- <sup>18</sup>*Id.* at 147.
- <sup>19</sup>*Id.*
- <sup>20</sup>719 F.2d 368 (11th Cir. 1983).
- <sup>21</sup>*Id.* at 371.
- <sup>22</sup>For a thorough discussion of the collective knowledge rule and its application in the establishment of probable cause, see Jeffrey Higginbotham, "The Collective Knowledge Rule," *FBI Law Enforcement Bulletin*, vol. 53, No. 10, October 1984, pp. 25-31.

- <sup>23</sup>401 U.S. 560 (1971).
- <sup>24</sup>83 L.Ed.2d 604 (1985).
- <sup>25</sup>*Id.* at 614.
- <sup>26</sup>*Id.*
- <sup>27</sup>*Id.* at 615.
- <sup>28</sup>*Id.* at 616.
- <sup>29</sup>*Id.* at 614.
- <sup>30</sup>449 U.S. 411 (1980).
- <sup>31</sup>595 F.2d 505, at 508 (9th Cir. 1979).
- <sup>32</sup>*Supra* note 30, at 417.
- <sup>33</sup>*Id.* at 418.
- <sup>34</sup>*Id.*
- <sup>35</sup>*Id.* at 419.
- <sup>36</sup>*Id.*
- <sup>37</sup>*Id.* at 418.
- <sup>38</sup>84 L.Ed.2d 605 (1985).
- <sup>39</sup>*Id.* at 613.
- <sup>40</sup>*Id.* at 613, note 3.
- <sup>41</sup>*Supra* note 1, at 21.

# WANTED BY THE FBI



Photographs taken 1978

*Because of the time factor in printing the FBI Law Enforcement Bulletin, there is the possibility this fugitive has already been apprehended. The nearest office of the FBI will have current information on this fugitive's status.*

## Seymour Pinckney

Seymour Pinckney, also known as Seymour Pickney, Semore Pinckney, Seymore Pickney, Seymour Seymoun Pinckney, and Seymour Pinkney

## Wanted for:

Interstate Flight—Murder; Rape

## The Crime

Seymour Pinckney is wanted by the FBI for unlawful interstate flight to avoid prosecution for murder and rape. Pinckney, a reported drug user and heavy vodka drinker, is being sought in connection with the August 15, 1978, murders of his common-law wife and his stepdaughter, who were shot with a rifle and then buried under the cement floor of his garage. Pinckney is also being sought in connection with the alleged rape of three young females.

A Federal warrant was issued on March 13, 1979, at Newark, NJ.

## Description

Age .....	46, born September 26, 1939, Newark, NJ.
Height .....	5' 10".
Weight .....	195 pounds.
Build .....	Medium.
Hair .....	Black.
Eyes .....	Brown.
Complexion .....	Light.
Race .....	Black.
Nationality .....	American.
Occupations .....	Brick mason, laborer, painter.
Scars and .....	1-inch scar on left bicep.
Marks	
Remarks .....	Pinckney is reportedly a heavy vodka drinker. He may wear glasses, mustache, Afro wig, or toupee to disguise his appearance.
Social Security Number Used .....	140-30-5344.
FBI No. ....	63 832 G.

## Classification Data:

NCIC Classification:

11050204071010010810

Fingerprint Classification:

1 S 1 U I I 7  
S 1 U O I I

I. O. 4976

## Caution

Pinckney, a reported drug user, is being sought for the shooting murder of his common-law wife and stepdaughter and the rape of his own daughter and two additional stepdaughters. He is reportedly armed with a rifle and should be considered armed and dangerous.

## Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, DC 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone of which appears on the first page of most local directories.



Right thumbprint

## Change of Address

Not an order form

# FBI

## Law Enforcement Bulletin

**Complete this form and return to:**

Director  
Federal Bureau of  
Investigation  
Washington, DC 20535

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

## Interesting Pattern

This pattern is a central pocket loop whorl with an outer tracing. The unusual aspect of this pattern is the appearance of a face in the center of the pattern.



*Washington, DC 20535*

Official Business  
Penalty for Private Use \$300  
Address Correction Requested

---

## The Bulletin Notes

Officers Michael McKinney and Michael Simmons of the Hot Springs, AR, Police Department were on patrol on August 12, 1985, when they noted a speeding sports car on State Highway 7 in Hot Springs. They immediately engaged in a high-speed chase of 18 miles, joined in this pursuit by deputy sheriffs from both Garland and Hot Spring Counties.

They arrested the armed driver of the vehicle, later identified as Top Ten Fugitive Gilbert James Everett by the FBI. Everett had been on the FBI's Top Ten List since May 14, 1981. He was wanted for over 60 bank robberies across the country, numerous auto thefts, and for escaping from Federal custody. The Bulletin is pleased to recognize Officers McKinney's and Simon's alertness.



*Officer McKinney*



*Officer Simmons*

BEHAVIORAL SCIENCE UNIT  
TRAINING DIVISION  
FBI ACADEMY  
QUANTICO VA 22135

E  
\* 4