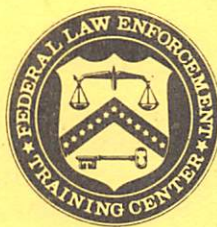


FEDERAL LAW ENFORCEMENT TRAINING CENTER



STUDENT TEXT

INTERVIEWING ST-305 (5-81)

DEPARTMENT OF THE TREASURY

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INTERVIEWING

INTRODUCTION

The spoken word is potentially the greatest of all sources of investigative evidence. No criminal investigation is complete until every important witness and all suspects have been interviewed. Proficiency in interviewing will assure a high degree of reliability in the results achieved and will help prevent surprise testimony from arising later.

The objective of this course is to present techniques effective for interviewing and to discuss the mental and physical factors and legal considerations that govern their application. This study will not replace practical experience, but can effectively shorten the training time required for you to become a successful interviewer.

- (6) Identify circumstances which may make admissions or confessions inadmissible.
- (7) Identify three witness activities which are prohibited from inquiry by Federal Agents.
- (8) Identify the four qualities of the interviewer that are probably most important to a successful interview.
- (9) Identify the importance and reason for obtaining background information prior to conducting an interview.
- (10) Identify the three primary classifications of interviewees and the two basic types of each.
- (11) Know the importance of the proper location and timing for an interview.
- (12) Identify three advantages and three disadvantages of a scheduled and an unscheduled interview.
- (13) Identify the first two parts of an interview and their purpose.
- (14) Identify the four general steps that are common to all interviews.
- (15) Recognize at least two techniques each for interviewing friendly and unfriendly witnesses.

INTERVIEWING

COURSE OBJECTIVES:

At the completion of this course the student will be able to:

- (1) Define interviewing and its main purpose.
- (2) Recognize the three basic investigative areas in which interviewing techniques are used.
- (3) Recognize the distinction between evidence and information.
- (4) Know a suspect's rights under current Supreme Court guidelines.
- (5) Know who has the burden of proof that the requirements for waiver of rights have been met.
- (6) Identify circumstances which may make admissions or confessions inadmissible.
- (7) Identify three witness activities which are protected from inquiry by Federal agents.
- (8) Identify the four qualities of the interviewer that are probably most important to a successful interview.
- (9) Identify the importance and reason for obtaining background information prior to conducting an interview.
- (10) Identify the three primary classifications of interviewees and the two basic types of each.
- (11) Know the importance of the proper location and timing for an interview.
- (12) Identify three advantages and three disadvantages of a scheduled and an unscheduled interview.
- (13) Identify the first two parts of an interview and their purpose.
- (14) Identify the four general steps that are common to all interviews.
- (15) Recognize at least two techniques each for interviewing friendly and unfriendly witnesses.

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COURSE OBJECTIVES (continued):

- (16) Identify six techniques of overcoming reluctance or resistance of the interviewee.
- (17) Identify six physical symptoms of emotions that may affect the statements of an interviewee.
- (18) Know five basic question types and give an example of each.
- (19) Identify two question types to avoid.
- (20) Identify an acceptable procedure for closing an interview.
- (21) Know the recommended procedure in administering an oath either by swearing or affirmation.
- (22) Given a situation in which investigative information must be obtained through interviewing, conduct interviews with witnesses, victims and suspects employing the recommended techniques and principles of interviewing.
 - (a) Obtain all relevant information that interviewee possesses relating to the investigation.
 - (b) Prepare a record of the interview by reducing the interview of writing (i.e., memorandum, affidavit, notes) confining the statements to facts not conclusions.

DEFINITIONS:

Terminology used in this text as it applied to interviewing is as follows:

- 1. Defendant - A person required to answer to a criminal action.
- 2. Interview - A meeting between an officer and a person from whom he seeks information.
 - controlled conversation

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3. Interviewee or subject - A person being interviewed.
 4. Interviewer - The officer conducting the interview.
 5. Suspect - A person who is suspected of having committed the crime.
 6. Violator - A person who has been convicted of a crime.
 7. Witness - An individual who has personal knowledge of a fact or an event.

INTERROGATION - demand for information

STATEMENT - verbal or written results of an interview

ADMISSION - voluntary statement acknowledging involvement

CONFESSION -

INTERVIEWING

CHAPTER 1

IMPORTANCE OF KNOWING HOW TO INTERVIEW

11. LEARNING ABOUT INTERVIEWING TECHNIQUES

- (1) Neither the ordinary experiences of growing up and living among people nor a public school education is of much value in learning how to obtain information from reluctant individuals. Even when interviewing cooperative witnesses, there is frequently an inability to acquire all the pertinent facts they possess.
- (2) This situation arises from our normal associations with others. As a rule, your family, friends and associates only tell you the things that reflect their mood, and this seldom includes admissions that are detrimental to self-interests. Attempts to get such admissions are usually limited to appeals based on family relationship, honor, civic responsibility, job loyalty or religion. These appeals are only moderately effective with people we know and have very little effect on the uncooperative witness.
- (3) Even when inquiries are made to agreeable persons, we usually limit the discussion to the areas of mutual interest and seldom explore all details of a matter in an unbiased manner.
- (4) Efficient interviewing is a specialized skill that must be learned by specialized training and experience. We cannot teach you experience but we can give you some basic training concepts in the proper way to conduct an interview.

12. STUDY VS. EXPERIENCE AS A TEACHER

- (1) Most officers learn to interview by "trial and error" practice on many persons or by observing other interviewers. A large number of "do's" and "don'ts" have been cited by writers on these subjects, but little information has been formalized to guide the officer in the application of such rules.
- (2) An interviewer must develop an "intuition" of when and how to proceed with each subject. Since intuition is merely spontaneous judgment derived from previous observations of similar situations, it has the shortcoming of permitting a conclusion without necessarily

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IMPORTANCE OF KNOWING HOW TO INTERVIEW

evaluating all variable factors. It is simply a guess when situations are encountered that have not been previously experienced. This does not, however, preclude the development of highly successful interviewers when innate skill is supplemented by sufficient training and experience.

(3) The development of skill by means of observation and practice alone may acquire many years of experience. Costly reduction of performance may result from errors in judgment and procedure before an acceptable level of interviewing performance is reached.

(4) Anything that can be learned through "trial and error" experience can be learned through systematized study more thoroughly and more quickly.

13. BAN ON USE OF FORCE

(1) Officers are not empowered to compel testimony or admissions. This power is limited to courts, grand juries, legislative bodies, etc. In the United States, the prohibition on the use of force applies to enforcement officers of all jurisdictions and applies to all types of mental or physical discomfort, as well as threats or improper promises.

(2) There are two general methods that are applicable for influencing the state of mind of witnesses and suspects:

(a) One method involves physical or mental abuse. Sufficient force will almost always result in admissions from individuals, but will afford little assurance of validity. In some cases, very little force is needed to frighten a subject or suspect into making false utterances. Under no circumstances can abuse or coercion be justified. If the officer is only interested in getting the facts, as he should be, he must exercise great care to avoid harassing the subject or suspect into giving information.

(b) The other method predominantly consists of systematic interviewing conducted in a humane and friendly atmosphere. In this method the inhibitions of the subject are replaced by logic and any natural incentives to cooperate are stimulated to the point where the individual feels that truthfulness will be beneficial to him in some way.

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In some cases, peace of mind may be the only apparent benefit. Rarely will injustice result from this method of interviewing.

14. OBLIGATION TO PROTECT THE RIGHTS OF WITNESSES AND SUSPECTS

- (1) Under the Constitution of the United States, an enforcement officer is as obligated to protect the rights of the individual as he/she is to safeguard the public interest. Under no circumstances can be justify a violation of these rights by his own acts.
- (2) You can solve crimes very successfully by the use of processes that are legally and morally proper, if you use skill, discretion and intelligence. In the law enforcement profession, as in any profession, it is incumbent upon each officer to develop a high degree of skill and render services of the highest caliber.
- (3) Chapters 4 and 5 of this test cover in part the constitutional rights of witnesses and suspects. These rights as they relate to interviewing may be strictly adhered to.

15. INTERVIEW RESTRICTIONS (PRIVACY ACT OF 1974)

Section 3(e)(7) of the Privacy Act provides that agencies shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."

Agencies are, therefore, prohibited from keeping a record of activities such as a person's church affiliations and activities, and, freedom of speech guarantees such as political affiliations and activities. Federal agencies are also limited in their areas of inquiry to enforcement activities which they are charged to enforce by statute or executive order. However, you can inquire into the above noted activities if it is pertinent to your investigation. For example, an IRS agent could inquire into an individual's church activities if the individual had claimed or was entitled to claim church contributions as an itemized deduction on his income tax return.

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16. PEOPLE ARE THE BEST SOURCE OF INFORMATION

Somebody may know all of the important details of a crime. Generally several or more other people will know enough to enable piecing the facts together. If you can effectively get the information from these sources, you will solve cases and have the testimony to convict the perpetrators of the crimes. However, if we do not learn how to control suspects and witnesses, they may divert the interview and lead the discussion into topics of their choosing. In this event, the interview will probably be unproductive and may result in their learning what the officer knows.

17. TESTIMONY IS USUALLY THE BEST EVIDENCE IN COURT

- (1) Most cases are won or lost in court by what witnesses and defendants have to say on the stand. Confessions and testimony are inadmissible if illegally or improperly obtained. An investigation of a criminal case is of little value if the evidence cannot be presented in court.
- (2) When a confession or admissions are voluntarily made by the suspect, he will frequently decide to enter a guilty plea in open court.
- (3) Careful interviewing will prepare witnesses for testifying in court.

18. INVESTIGATIVE ACCOMPLISHMENTS ARE INCREASED

- (1) The efficient handling of suspects and witnesses results in more complete information on the violation, confederates, contraband and other details. This permits greater certainty of solution. Cases are solved faster, at less cost, and with less effort.
- (2) Outstanding performance enhances the reputation for competency of both the investigator and the organization. It assures a successful career in the law enforcement profession.

19. PERSONAL ATTRIBUTES FOR THE INTERVIEWER

- (1) The qualities and personal attributes required to be a good interviewer can usually be developed with training and practice. Four of the most important qualities of an interviewer are:

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- (a) Honesty and integrity with the ability to impress upon all interviewees that he seeks only the TRUTH.
 - (b) The ability to establish rapport quickly and under many diverse conditions.
 - (c) The ability to listen to interviewee and evaluate responses.
 - (d) The ability to maintain self-control during interviews and not become emotionally involved in the investigation.
- (2) To be a good interviewer you must utilize a great variety of your personality traits. You must be able to adjust your disposition to harmonize with the many traits and moods of the interviewee.
- (3) Keep in mind the following guidelines, which are largely reflections of attitude and personality:
- (a) Do not prejudge a suspect or witness
 - (b) Subdue all prejudices
 - (c) Keep an open mind, receptive to all information regardless of its nature.
 - (d) Try to evaluate each development on its own merit.
 - (e) Refrain from trying to impress the interviewee unless such action is specifically used as an interviewing technique. A poor interviewer may unintentionally conduct himself and ask questions in a manner designed to impress the subject with his own importance or capabilities. This may cause the officer to exhibit sarcasm, anger, disgust, and other undesirable acts that diminish his stature in the eyes of the subject. The officer should always suppress his own emotions and apply all his faculties toward the immediate official objective.
 - (f) Deliberate lies or false promises cannot be justified.

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- (g) Do not underestimate the mental ability of the interviewee. On some occasions his faculties may exceed the interrogates. However, your official position and the specialized training you receive should qualify you to successfully interview almost any individual. Always work under the supposition that the interviewee or suspect is intelligent.
 - (h) Avoid contemptuous attitudes
 - (1) Do not ridicule
 - (2) Do not consider success as a "victory"
 - (3) Do not bully
 - (4) Keep all promises
 - (5) Do not belittle the interviewee or his information
 - (6) Avoid personalities, religion, politics and similar controversial matters to the maximum extent.
 - (7) Be fair
 - (i) Avoid pacing about the room or showing other signs of nervousness.
 - (j) Avoid creating an impression that you are only interested in a confession or conviction. Impress the interviewee with the fact that you only desire the truth.
 - (k) Never shout.
 - (1) If possible, avoid antagonizing the interviewee.
 - (m) Maintain control of the interview.
 - (n) Be serious.
 - (o) Display confidence in your course of action.
 - (p) Be a good listener.
 - (q) Be patient.
 - (r) Be persistent
-

INTERVIEWING

CHAPTER 2

HOW TO COMPOSE AND ASK QUESTIONS

21. COMMUNICATION

- (1) Effective communication is mandatory if a person is to be interviewed productively. The information attained will be very limited if he does not respond to inquiries or if his answers cannot be understood.
- (2) Speech is the principal means of communicating, but impressions received through the other sense organs are also important. Communicative proficiency under all conditions requires the use of almost the entire body and mind. It not only involves what is said or done by one participant, but also includes how it is perceived, understood and reacted to by the other party. It is a fluctuating condition that changes with each new perception. The deliberate speech and conduct expressions of each party are calculated to influence the attitude or actions of the other participant.
- (3) If the interviewer can perceive expressions, interpret their significance and apply appropriate influence better than the interviewee, he can exercise considerable control over the subject's attitude and actions. This is the basis for successful interviewing.

21.1 LANGUAGE OR SPEECH

If the interviewee or suspect does not speak the same language as the officer, it will be necessary to use an interpreter. Even when all parties are familiar with the same language, the subject may have speech or hearing difficulties. The interviewer can usually overcome these latter difficulties by speaking loudly, requesting the subject to wear his hearing aid, or by writing the questions and answers. If the subject can neither speak nor write, it may be possible to find an interpreter who can converse with him by sign language. Do not be too easily deceived by an individual who acts as though he does not understand or does not talk. It is not uncommon for suspects or witnesses, foreigners in particular, to pretend an inability to comprehend. Be careful of your conversations in the presence of such persons. If possible, make inquiries of persons who would know the individual's ability to understand the language. In some cases, the pretense may be

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detected by deliberately carrying on in his presence a planned conversation about a matter of much concern to him, while casually observing his facial expressions and other signs of reaction.

21.2 WORDS AND EXPRESSIONS

Be sure that you, the interviewee, and/or the suspect completely understand the words and manner of speech. Trade terms, local expressions, uncommon words, speech accents and imprecise sentence construction may result in a misunderstanding. Try to talk at the level and use the speech mannerisms of the subject to the extent necessary for him to understand. If there appears any doubt about what is meant, it should be immediately explained and clarified so that each of you has the same understanding.

21.3 CONDUCT AND APPEARANCE

- (1) Appearance, facial expressions and body actions can often be effectively used as aids in interviewing the subject. Continuously watch for and carefully analyze any such reactions from the witness.
- (2) Agreement, disagreement or a neutral attitude may be indicated by a nod of the head, a shrug of the shoulders or a gesture with the hands.
- (3) An emotional state may be revealed by a facial expression, a smile, a laugh, inflection or tone of voice, what is said, tenseness of body, etc.

21.4 ATTITUDE

The attitude of the interviewee can frequently be deduced from a combination of, and changes in, the factors cited above. For example, a sneering facial expression may indicate a hostile attitude.

The conduct, appearance and attitude of the interviewer can also influence the degree of cooperation of a witness. The interviewer should be aware of and utilize these factors to his/her benefit in each interviewing situation.

22. QUESTIONS ARE TOOLS

- (1) Questions are the principal tools of interviewing. The quantity and quality of information obtained from suspects and witnesses will usually be proportional to

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your skill in formulating and asking questions.

- (2) The word "question" has two general meanings:
 - a. That which is asked, or
 - b. The act of asking
- (3) In interviewing we use the word "questioning" or "to question" as meaning both that which is asked and the asking process.
- (4) In general, you use speech for the purpose of persuading the listener to take some action, change his attitude or acquire a different state of feeling. When you use speech in the questioning process, your primary objective is to induce the listener to talk and give information about the matter under investigation. In addition to seeking information, the questioning process may test, perplex, or confuse the subject. Cross-examination is an example of this.

23. CHARACTERISTICS OF GOOD QUESTIONS

- (1) The word is the basic unit used to convey thoughts and persuade. The desired effect must be determined before you utter the words calculated to achieve it. The effect you get will be limited to some degree by your choice and arrangement of words. In interviewing, the nature of your questions and persuasions will follow your pattern of thinking. Most questions or assertions, are based on assumptions, and it is highly essential that the assumptions are not based on faulty information or deductions.
- (2) Some of the fundamental characteristics of good question construction are:
 - (a) Make questions short and confined to one topic.
 - (b) Make questions clear and easily understood.
 - (c) Avoid the use of "frightening" words, such as confession, murder, forger, dope addict, embezzler, stool pigeon, etc. Use milder terms.

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HOW TO COMPOSE AND ASK QUESTIONS

24. IMPORTANT TYPES OF QUESTIONS

24.1 Precise Questions

- (1) A precise question is one that calls for a specific or an exact answer. It limits the requested answer to a definite item of information. For example, the following questions are increasingly precise in ascending order:

- (a) What did you do?
- (b) What did you do when you were growing up?
- (c) What did you do last year?
- (d) What did you do yesterday?
- (e) What did you do yesterday afternoon?
- (f) What did you do about 3:15 yesterday afternoon?
- (g) What did you do about getting home when you missed the 3:15 bus yesterday afternoon?

- (2) Precise questions are important. They tend to bring precise answers. They help keep the discussion and the pattern of thinking moving toward a particular goal. Usually they will extract the desired information quickly and with minimum effort.

24.2 Extended Answer Questions

Questions should generally be framed to require a narrative answer. Soliciting "yes" or "no" answers usually restricts the information that the subject may be inclined to give and usually is inadequate to completely answer the inquiry. Questions requiring a "yes" or "no" answer frequently are leading or suggestive. They may be acceptable when summarizing or verifying information and even desirable during cross-examination, but should not be used when seeking new information.

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24.3 Leading Questions

- (1) Leading or suggestive questions are those which:
 - (a) Suggest the desired answer; or
 - (b) Assume something to be a fact which has not been established as a fact; or
 - (c) Embody a fact and require a simple negative or affirmative answer.
- (2) Leading or suggestive questions tend to influence the answers given by a subject and should be avoided while asking for original information.
- (3) Such questions do have value, however, in testing or breaking down previous assertions, in getting a particular answer, or in refreshing a subject's memory.
- (4) Examples of suggestive questions in order of their suggestiveness:
 - (a) "Did you see a ---?"
 - (b) "Didn't you see a -----?"
 - (c) "Didn't you see the -----?"
 - (d) "Wasn't there a -----?"

25. QUESTIONS TO AVOID

25.1 Double or Triple Negative Questions

Questions or statements involving double or triple negatives are confusing and often suggest an answer opposite to the correct one. They should never be used. Examples:

- (a) "Didn't he have no dinner?"
- (b) "He couldn't hardly stand up."
- (c) "He never said nothing to nobody."
- (d) "Couldn't you see him neither?"
- (e) "He didn't do it, I don't believe."

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- (f) "I couldn't barely hear him."
- (g) "Didn't you not stop at a stop sign before entering the intersection?"

25.2 Complex Questions

- (1) Complex questions and statements are those that:
 - (a) Are too complicated to be easily understood.
 - (b) Cover more than one subject or topic.
 - (c) Require more than one answer.
 - (d) Require a complicated answer.
- (2) Examples -- "illumination is required to be extinguished before these premises are vacated," instead of saying, "Put the lights out before you leave," or "What did you do with the package and how much did you pay for the truck?" instead of asking two separate questions.
- (3) Complex questions and statements should be avoided. They serve no good purpose, tend to confuse the subject, and frequently lead to unintended false answers.

25.3 ATTITUDE QUESTIONS

- (1) The attitude of the interviewer can be conveyed by question or statement construction, as well as by the manner of asking. When you desire to influence the mood of a subject, you should phrase your questions and project your attitude in a manner designed to achieve the objective you have set.
- (2) Examples of friendly questions and statements:
 - (a) "How are you this morning, John?"
 - (b) "Do you like sports?"
 - (c) "Have a cigarette."
 - (d) "Would you care to tell me what you did Saturday?"

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(3) Examples of stern questions and statements:

- (a) "Don't lie to me."
- (b) "Do you expect the jury to believe that?"
- (c) "You had better explain your actions."

26. THE SEVEN "W"'s

(1) The following seven interrogatives are useful in most interviewing situations:

- (a) What? (What happened?)
- (b) When? (When did it happen?)
- (c) Where? (Where did it happen?)
- (d) Why? (Why did it happen?)
- (e) How? (How did it happen?)
- (f) Who? (Who was involved?)
- (g) Which? (Which one did the shooting?)

(2) The questions "Why?" and "Why not?" are the most powerful and of great value in interviews.

(3) When complete answers to these seven elements are obtained, the issue being explored is usually resolved satisfactorily.

27. QUESTION SEQUENCES

(1) An issue is an occurrence, situation or object in an investigation that needs to be explained or resolved. Issues are generally resolved by sequences of questions. As a rule, a separate sequence is required to resolve each issue.

(2) The sequence of questions should focus on the issue. Each question must push your solution effort in a particular direction.

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27.1 General to Specific

(1) The most efficient means of resolving an issue is to have the questions converge on it by progressing from the GENERAL to the SPECIFIC. Seek general information on the setting of an event before exploring details. Place the suspect on the scene before exploring his acts there. Determine what was done before exploring how or why it was done.

(2) The following example illustrates exploration of an investigative issue by progressing from "General to Specific." The interview up to this point has revealed that counterfeit money was produced and divided among the suspects. The next issue to be explored is, "Who got a share of the counterfeit money and how much did each get?":

Question: How was the counterfeit divided?

Answer: At a meeting.

Question: Where did this meeting take place?

Answer: In Joe Green's barn.

Question: How many were there?

Answer: There were five of us.

Question: Who were they?

Answer: Well, Joe, Pete Brown, Fred White, Mike Grey and me.

Question: How was the dividing done?

Answer: Joe split it up into five piles.

Question: How much did each of you get?

Answer: I don't know -- Joe didn't count the money. He just guessed at the size of each pile.

Question: Did you all get the same sized pile?

Answer: No, Joe and Pete printed the stuff, so each had twice as big a pile as the rest of us.

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Question: Do you know how much was in your pile?

Answer: Yes. I counted it when I got home. I had just a little over \$9,000.00.

Question: Based on the size of the piles, you and Fred and Mike got about \$9,000.00 each and Joe and Pete got about \$18,000.00 each?

Answer: That would seem about right.

In this example the location of the act (dividing the counterfeit) was established first, the participants were then determined and the method of dividing ascertained, followed by details that permitted estimating the amounts. We see that the issue has been resolved and we have acquired the answers sought.

27.2 Reaching Backward

(1) Questions will progress more logically with less risk of omissions if transition is used to connect thoughts. To do this, start with known information and work toward areas of undisclosed information. An efficient method of achieving this sequence is to mentally reach backward over the known information and frame the next question as a logical continuation of the facts previously related.

(2) The following illustration portrays use of the "KNOWN TO UNKNOWN" sequence orientation before proceeding to the next question. THE STATEMENTS THAT ARE UNDERLINED AND ENCLOSED IN (PARENTHESES) ARE THE UNSPOKEN THOUGHTS OF THE INTERVIEWER AS HE PREPARES TO FRAME EACH NEW QUESTION:

Question: (You said earlier you went to Mudville.) Now what means of transportation did you use?

Answer: A car

Question: (If you went in a car?) Who drove?

Answer: I did.

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Question: (You drove a car to Mudville.)
Was anyone with you?

Answer: Two guys went with me.

Question: (You drove a car in which there
were two passengers.) What
were their names?

Etc.

27.3 Estimates of Quantities

- (1) You will rarely get the right answer the first time you ask for the number or quantity of anything.
- (2) To determine more specifically time or quantities of space and material, the following types of question sequences may be of value:

27.31 Change of Reference Point

- (1) When description of quantities are complicated or hard to understand, they frequently can be simplified by changing the reference point. Examples:
 - (a) A witness may describe the location of an illegal alcohol still as four miles east, one and one-half miles south, and two miles southeast of town. It is difficult to comprehend exactly where this location is. If guided, the witness may be able to simplify the description of the location by advising that it is one-half mile west of the Long Lake Town Hall.
 - (b) It does not mean much to the average person for a witness to talk about seven containers full of heroin. If the witness will convert the amount to ounces, pounds, or injections for an addict, it gives a clearer picture of the quantity.

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27.32 Comparison

- (1) When descriptions of quantities are vague or indefinite, they can often be made more specific by comparing them with similar items of known quantity. Examples:

(a) Was he taller than I am?

(b) Which one was the larger?

(c) What share of the loot did you get?

(d) In some cases where quantities are persistently given in generalities, it is productive to bracket the probable amount by suggesting quantities and by enlarging or sub-dividing the suggested quantity to get the witness to more specifically agree on an amount, e.g.:

Question: How far away was Smith when you first saw him?

Answer: He was a long ways down the road.

Question: About how far would you say?

Answer: I don't know -- quite a ways.

Question: Do you know how long a mile is?

Answer: I'm a pretty good judge of distance.

Question: How far would you say it is from here to City Hall?

Answer: About two miles.

Question: That is a good estimate. Now, would you say Smith was more or less than a mile away when you saw him?

Answer: Much less.

Question: Was he more or less than a half mile away?

Answer: Less

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Question: Was it more or less than a quarter mile?

Answer: More, I think.

Question: Would you say it was closer to a quarter mile or more nearly a half mile?

Answer: It was closer to a quarter mile.

Question: Then would it be correct to say the distance was a little more than a quarter of a mile?

Answer: That would be about right.

28. CONTROLLED ANSWER INTERVIEWING TECHNIQUES

(1) Controlled answer questions or statements may be used to elicit a desired answer or impression, as follows:

(a) To stimulate a subject to acknowledge that he has knowledge about some matter. Such as, "I understand you were present when the liquor was delivered; so would you please describe what happened?" This provides a stronger incentive to admit knowledge than to merely say, "Were you present when the liquor was delivered?"

(b) To stimulate the subject to agree to talk or give information. Such as, "If you are not involved in this, I'm sure you will not mind discussing it with me, will you?" This is a much stronger incentive to cooperate than to say, "Do you have any objection to telling me what you know?" When making a request, always avoid using a question that may encourage a negative reaction.

29. PRINCIPAL PROCEDURES FOR APPLYING INTERVIEWING TECHNIQUES

29.1 Free Narrative

(1) Free narrative is an orderly continuous account of an event or incident given with or without prompting. It is used to get a quick resume of what a subject knows or is willing to tell about a matter.

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Usually it can be initiated by requesting the subject to tell what he knows about the matter. Be sure to specifically designate the occurrence to be discussed.

- (2) Frequently the subject must be kept from digressing, but use a minimum of interruption and do not be too hasty in stopping him from wandering in his narration. He will sometimes give valuable clues while talking about things that are only partially related to the matter under investigation. Be careful not to erroneously interpret deviations from the anticipated narrative as wandering.

29.2 Direct Examination

Direct examination is systematic questioning designed to bring out a connected account of an event or an incident. Its purpose is to elicit new information or to fill in details omitted during free narrative.

- (1) Begin by asking questions that are not likely to cause the subject to become hostile.
- (2) Ask the questions in a manner that will develop the facts in the order of their occurrence or in some other systematic order.
- (3) Ask only one question at a time and frame the questions so that only one answer is required by each question.
- (4) Ask straight forward and frank questions. Do not use bluffs, tricks, or deceitful approaches.
- (5) Give the subject ample time to answer. Do not rush him.
- (6) Try to help him remember but do not suggest answers, and be careful not to imply any particular answer by facial expressions, gestures, method of asking questions or types of questions asked.
- (7) Repeat or rephrase questions again and again if necessary to get the desired facts.
- (8) Be sure you understand the answers and, if they are not perfectly clear, have the subject explain them at once.

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- (9) Give the subject an opportunity to qualify his answers.
- (10) Separate facts from inferences.
- (11) Have subject give comparisons of percentage, fractions, estimates of time, distance, types of automobiles, recognition of persons, etc., to ascertain the accuracy of his judgment and assertions.
- (12) Get all of the facts. Almost every subject can tell you more information than he initially recalls or admits knowing.
- (13) After the subject has given his narrative account, ask questions about every item discussed. Ask questions about little things. The answers will frequently contain clues to previously unreported information of interest.
- (14) Upon conclusion of the direct examination, ask the subject to summarize his information and then follow up by a resummarization of your own and have the subject verify the correctness of the statements.

29.3 Cross-examination

- (1) Cross-examination is exploratory questions conducted for the purpose of testing the reliability or breaking down the previous assertions of suspects or witnesses. It is very useful for the purpose of testing previous testimony for correctness, resolving conflicting information, determining completeness, filling in evaded details, evaluating the judgment of witnesses, and undermining the confidence of those who lie.
- (2) Insofar as practical, all previous testimony should be evaluated and checked against known or readily available information. This will give clues to portions of testimony that should be further explored during cross-examination, such as:
 - (a) Attempt to evade answers.
 - (b) Vague answers.
 - (c) Conflicts of information.

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- (d) Inconsistent answers to the same or similar questions.
 - (e) Apparent falsehoods or inaccurate information.
 - (f) Suspicious actions or appearance of subject.
- (3) The examining officer should generally be friendly but reserved and unemotional. Effective cross-examination can be conducted without abuse or coercion.
- (4) Have the subject repeat testimony about a particular event or occurrence several or more times. Attempt to keep expanding on details at random without following a definite order or sequence. This is usually best accomplished by asking about the event in a different manner from time to time. Ask what happened, why it happened, when it happened, who was there, why they were there, how did the subject happen to be there, what preceded or followed the event.
- (5) Occasionally inject a different context or relationship of details. (For example -- initial question: "When did you first meet the defendant?"; first subsequent query: "Tell me what led up to your first meeting with the defendant."; second subsequent query: "Did the defendant give you any indication of his plans prior to the previously mentioned meeting?"; third subsequent query: "How long after you learned of the defendant's plan did the indicated meeting take place?", etc.) Be alert for inconsistencies in his replies. If he is recalling facts, he will usually be consistent. A lying subject generally finds more and more lies are necessary as additional details are required and he either forgets what he has previously asserted or fabricates details that are not compatible with previous statements.
- (6) It is permissible to use suggestive questions and implications during cross-examinations (such as, "You saw the defendant strike his supervisor, did you not?"; "You had no trouble seeing Richard Roe in the bright moonlight?"; "Would you estimate the distance to the still to be about one mile?"; "Wouldn't you say that only an expert could make a counterfeit bill this good?"). If the subject is fabricating information or lying about an occurrence, he will frequently concur in suggested

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answers to fill in details of his story. If many of the questions are designed to suggest false answers, the subject may make false assertions that can be shown to be erroneous. This procedure may be valuable in testing the validity of testimony from witnesses.

- (7) Ask about known information as if it were unknown, or ask about unknown information as if it were known. Use a casual tone and demeanor. Show no sign of surprise or emotion when false answers are given. Use good judgment in selecting questions that have a strong probability of being answered affirmatively and truthfully.
- (8) Specifically explore vague or evaded sections of testimony. Frequently such information areas are purposely slighted because they are particularly embarrassing to the subject. Always be suspicious that these slighted details are of direct concern to the subject. Often they involve some previously undisclosed but pertinent information.
- (9) Point out conflicts. It is usually best to ask deception questions before confronting the subject with evidence of conflicts or proof of falsehoods. Ask the subject to explain inconsistencies or conflicts in his statements. Inform him how his statements are proved false by previously established facts, physical evidence, contradictory circumstances, etc. Ask for an explanation. Any explanations or revised information given by a subject should be subject to the same direct and cross-examination scrutiny as was afforded the original story.
- (10) Notice physical signs of lying, such as nervousness, guilty appearance, dry mouth, sweating hands, etc.
- (11) Summarize the known facts and compare them with the subject's statements. Ask the subject to explain each item of damaging evidence; then point out his illogical answers.

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2(10) HOW TO USE AN INTERPRETER IN INTERVIEWING

- (1) When you use an interpreter in interviewing, it is important that this person be fluent in the exact dialect spoken by the subject. Mere foreign language training in school is usually not enough. It is also unsatisfactory to use a person who has a poor command of English. The interpreter must know your language well enough to understand exactly what you wish to convey. He/she must have sufficient vocabulary and knowledge of sentence structure in both languages to make an accurate translation. He/she must be able to pass on to the subject the information, as well as to reflect the attitude and manner of expression he/she wishes to convey. Further, he/she must be able to recognize any inconsistencies in the subject's answers and bring them to your attention, along with the reply information.
- (2) The subject should generally be seated in a chair opposite you, with the interpreter in between but slightly to one side, so that by merely turning the head he/she directly faces either you or the subject as the conversation switches back and forth.
- (3) It is desirable to orient the interpreter prior to the interview as follows:
 - (a) He/she should merely act as a vehicle for accurately interpreting and passing the information back and forth between you and the subject.
 - (b) He/she should imitate your voice inflection and gestures as much as possible.
 - (c) There should be no conversation between the interpreter and the subject other than what you tell the interpreter to say.
 - (d) No matter what the subject says, the interpreter should pass it on to you verbatim rather than evaluate its worth himself. This includes even the most trivial remarks or exclamations.
 - (e) Even if the subject has some knowledge of English, once you have decided to use an interpreter, you should pass all information through the interpreter to avoid confusion as to whom the subject should answer.

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- (4) You must control the interpreter and through him/her control the subject. Usually you are restricted to the more routine methods imposed by the use of an interpreter. At the conclusion of the interview, after the subject has left the room, it is often worthwhile to ask the interpreter how he/she evaluates the subject.
- (5) In spite of the difficulties involved in using an interpreter, very successful interviews can be conducted provided they are well planned and controlled.

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CHAPTER 3

HOW TO PREPARE FOR INTERVIEWING

31. NEED FOR PLANNING AND ARRANGING

- (1) Asking questions in our daily association with people is so common that we are inclined to consider the process as instinctive and simple. Such spontaneous inquiries may be adequate for the ordinary problems and curiosities of life, but are quite inefficient for getting intentionally concealed information.
- (2) Primitive man needed little planning or preparation to build a lean-to shelter, but modern houses require extensive plans and preliminary preparation to satisfy the demands of present civilized occupants. Interviewing is likewise specialized to meet the needs of present day law enforcement and will be greatly improved if properly planned and prepared for.
- (3) The first consideration in planning for the interviewing of witnesses or suspects is whether this is potentially the most valuable means of getting the desired information under the existing circumstances. There are a number of processes that are effective in procuring information from people, as follows:
 - (a) Interviewing
 - (b) Use of an intermediary (informant)
 - (c) Undercover operations
 - (d) Surveillance
- (4) Frequently, existing conditions may suggest that one of these other processes would be more productive than interviewing, for example, when contacting a witness might tip off the suspect and cause him to flee or be more cautious.
- (5) In almost every case, before the case is completed, it will be desirable to interview every person thought to have information, but there will be times during an investigation when interviewing is not advisable. A time must be selected when interviewing a particular person will be beneficial and not harmful to the investigation. When

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interviewing does appear in order, give careful thought to the pre-approach planning and arrangements.

32. LOCATE WITNESSES AND SUSPECTS

- (1) Attempt to locate and eventually interview every suspect and every witness who may have relevant information. In many cases there will not be adequate evidence to convict the suspect unless all sources of information have been exhausted. In other cases you cannot be sure that all of the associates in a crime have been identified nor can the exact participation of each be proved until all possible information has been obtained and evaluated. Sometimes a single statement from what appeared to be the least important witness will change the entire complexion of a case. There is also the possibility that an unexpected witness may appear for the defense and introduce new testimony. If you have previously identified him as a potential witness and have obtained a statement from him, you will be prepared for this additional testimony. If he changes his statement, you may be able to impeach him.
- (2) Initially, suspects may be developed by ascertaining whose actions, whereabouts, reputation, or motives are questionable in relation to the violation. Similarly, witnesses may be identified by determining who was in a position to have observed worthwhile information through sight, hearing, feel or smell and ascertaining who performs services, receives reports, or maintains records of value. Even a person knowing hearsay information is worth interviewing for clues to more suitable sources.
- (3) When known witnesses are being interviewed, they should be queried about others who may be involved or have information.
- (4) If there are no apparent witnesses, it is sometimes productive to interview:
 - (a) All persons who live in the crime scene area.
 - (b) The types of merchants who may have furnished the supplies for a criminal activity.
 - (c) Transportation companies who may have provided

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transportation to or from the area for the violators.

- (d) Pawn shops where stolen goods may have been sold.
- (e) Other similar groups that might be in a position to have knowledge.

(5) In some cases, it is productive to question violators with a similar modus operandi. A check with other enforcement agencies handling similar types of crimes is often productive in locating suspects.

33. PROCURE BACKGROUND INFORMATION

Prior to an interview, obtain as much information as possible on the details of the case and the background, character and habits of associated witnesses and suspects. This will help in appraising the subject's character and in determining the most effective interviewing procedures applicable to that particular individual, as well as in providing some facts to use as controls and levers during the interviewing. Some of the sources of background information are:

- (1) Read all available investigative reports and talk with other officers who may have worked on the case.
- (2) Examine statements already obtained.
- (3) If practicable, visit scene of crime.
- (4) Evaluate all related physical evidence.
- (5) Examine any related physical evidence.
- (6) Procure and examine any previous criminal record of suspects and potentially hostile witnesses.
- (7) Check telephone directories, city directories and similar readily available sources of information about the addresses, occupations, families, etc., of involved witnesses or suspects.
- (8) In some cases, it may be of value to make inquiries of local police officers, a postman, local storekeepers, neighbors, etc., before interviewing an individual.

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34. ESTABLISH A GOAL AND PREPARE A PLAN

- (1) It is impossible to complete any task efficiently unless you know what you are trying to accomplish. It is essential that you have a clear-cut goal or objective that can serve as a target for your plans and efforts. There are two distinct factors to be considered in determining your objective:
- (a) Determine the requirements of the law or investigative assignment. In criminal cases, the requirements are ascertained by analyzing the law involved and identifying the elements that must be proved. In noncriminal cases, you should carefully analyze the problem to be investigated and identify the matters to be explored.
- (b) Determine the "unknown details" to be resolved. Ask yourself, "Why should I interview this individual?" The reasons for interviewing a person may be many or few; they may be strong or slight; but there should be a reason and you should be able to comprehend specifically what that reason is. Some common reasons are:
1. He was on the scene when the crime was committed.
 2. He lives or was present in a neighborhood where he might have heard or observed something.
 3. Other investigation indicates he has knowledge or is involved.
 4. His handwriting, personal effects, or fingerprints were found at the crime scene.
 5. He has committed similar crimes.
 6. He had a motive or an opportunity to commit the crime.
 7. He is associated with or knows a great deal about the probable suspects.

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8. He maintains official records or possesses information that may be of value.

(2) When you have decided on the probable relationship of an individual to your case, you are in a position to judge what details he is likely to know. Each "unknown" is in effect a question to be answered. Therefore, you should outline the "unknown" points in logical order. Be sure to include several or more points of a general nature to ascertain if the subject has knowledge on unanticipated matters.

(3) The outline should cover every topic to be discussed. As a rule, the items outlined will indicate the topic to be resolved, but will not specifically cover the individual questions that must be asked to resolve the topic. During the discussion of an "unknown," it may be necessary to ask a number of related questions before the matter is resolved or explored satisfactorily. The specific topic question may never be asked at all.

(4) Following are examples of typical "unknown detail" questions that might be explored during an interview with a government chauffeur who reported that his government car was stolen from the curb while he was delivering official mail in a government building:

- (a) What is the identity of the driver?
- (b) What is the description and identification of the car?
- (c) When did the theft take place?
- (d) Where did the theft take place?
- (e) Why was he at that place?
- (f) How did the theft occur?
- (g) What precautions, if any, had been taken to prevent the theft?
- (h) Who else has any personal knowledge of theft?
- (i) How, when and to whom was the theft reported?
- (j) Who can verify any part of the driver's story?

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- (k) Does the driver have any suspicions on theft?
- (l) What is the driver's background, criminal record and driving record?
- (m) Was any property of value in the car when it was taken?
- (n) What else does the driver know of value to aid the investigation?

35. ARRANGE FOR AIDS AND AUXILIARIES

Aids and auxiliaries are important in interviewing. Their value, however, depends on their being available in the proper form when needed. Carefully ascertain the existence of potentially useful aids and auxiliaries and be sure to arrange for their availability in advance. Some typical aids and auxiliaries are:

- (1) Written or recorded statements of other witnesses and suspects.
- (2) Photographs of suspects, crime scenes and evidence.
- (3) Police type lineup to identify suspects. (Note the legal requirement regarding the presence of the suspect's attorney, contained in the text on Description and Identification)
- (4) Contraband or instruments of a crime.
- (5) Other suspects or witnesses to be confronted.
- (6) Background information.
- (7) Information from other sources that is to be verified or discredited.
- (8) Previous statements of same subject.
- (9) Results of laboratory and expert examinations.
- (10) Recording equipment or stenographer.

36. LOCATION, SETTING AND ATMOSPHERE

- (1) Evaluate and attempt to control the physical conditions where the interview will take place. Try to avoid locations where noise, activity,

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or surroundings will be distracting, although any area where the environment can be controlled will suffice. Generally, a government office offers the best surroundings free of distraction. On the other hand, the mere fact that a disinterested witness has to take time from his personal or business activity is in itself a distraction. This inconvenience may be lessened by holding the interview in the witness' home or place of business, provided no disturbing or interfering situations are present.

- (2) Government facilities probably provide the best environment for interviews with arrested persons, as well as for situations in which it is desirable to have a stenographer record the interview.
- (3) The room where the interview is to be held should be well lighted, adequately ventilated and comfortably furnished. It is advisable to place the person being interviewed with his back to the door to minimize the distraction of anyone entering or leaving the room.

37. ESTABLISH THE ORDER OF INTERVIEWING THE WITNESSES AND SUSPECTS

- (1) Generally, witnesses who can and will voluntarily give the most complete account of the event and associated background information should be interviewed first. This will give an early overall picture of the matter and provide information of value in interviewing the other witnesses and suspects.
- (2) Suspects and hostile witnesses should generally be questioned last in order to take advantage of the information gained from the cooperative witnesses. Generally, interview the easiest suspects before the more difficult ones.
- (3) In some cases, it is advantageous to question several or more witnesses or suspects at alternate intervals during the same period for the purpose of relating one person's answer against another's.

38. THE TIME AND TIMELINESS OF INTERVIEWING MUST BE CONSIDERED

- (1) Interviews should not be initiated unless there is sufficient time to permit an extended period of questioning without undesirable interruptions.

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- (2) As a rule, friendly witnesses should be interviewed as soon after the occurrence as possible.
- (3) If practicable, it is often desirable to interview a strongly suspected person before he has had an opportunity to fabricate a false story or alibi. However, if this early interview is not practicable, it may be advisable to wait until all readily available background information relating both to him and the occurrence has been assimilated. The suspect's constitutional rights are discussed in Chapter 5 of this text.

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CHAPTER 4

HOW TO INTERVIEW WITNESSES

4.1. IMPORTANT CONSIDERATIONS

- (1) As a rule neither witnesses nor suspects will cooperate well unless they are aware of an officer's authority to question them. In the absence of knowledge of such authority they are inclined to evade questions because of their attitude that the interviewer has no right to question them and they are not obligated to answer. It is therefore important that you, the interviewer, reveal your official identification as your authority to investigate a particular matter prior to requesting information. People are more impressed with what they see for themselves than with what they are told; so exhibit your commission book or badge, as appropriate to establish your authority to conduct the interview.
- (2) A witness is an individual other than a suspect who possesses or is in control of information having value in a matter under investigation. Friendly witnesses may occasionally prove overly enthusiastic in their zeal to cooperate. Care must be exercised in controlling their enthusiasm while assuring that they are not alienated by such control.
- (3) Generally, time means money to the average witness and insofar as practicable, interviews should be arranged when the witness is not busy and effort made to complete the interview quickly. It is usually desirable to interview witnesses by arranging for an appointment at a designated time and place. If an interview of an employee at work is involved, arrange with his employer for the witness to be made available. If the witness comes to the office, it is usually not his choice and you must not take advantage of this situation.
- (4) Exert every effort to avoid false rumors, suspicious or character defamation. If an officer inquires of friends, neighbors, employers, etc., about an individual and does not reveal a reason for the inquiry, he may cause speculation and suspicion which may result in unjustified and irreparable harm to the subject. Whenever obvious inquiries

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or interviews are conducted, you should give satisfactory reasons for the inquiries or substitute an appropriate pretext to prevent unwarranted speculation. It should be kept in mind that even the recognized presence of an enforcement officer at an individual's home or office may cause speculation. As a general rule, any appropriate measures which suggest themselves as means either of explaining to observers the officer's presence, or of disguising his identity as an officer, should be employed so that the possibility of embarrassment to the individual being interviewed is minimized.

- (5) Be alert for the witness who is a publicity seeker and be cautious of the witness who insists on telling everything he knows. Always try to ascertain the witness' incentives for giving information. Be alert for ulterior, personal motives and abnormal mentalities. If such a situation is suspected, you should specifically check on the background, behavior, attitudes, and mental condition of the witness before evaluating his testimony.
- (6) Be careful to assure that the information comes from the witness and is not suggested by leading questions. Listen to all that a witness has to say about a matter and do not discourage or ignore relevant information. Ascertain the interest and point of view of the witness to help evaluate his statements.
- (7) Keep in mind that potentially friendly and cooperative witnesses still may not give desired information because:
 - (a) They have faulty perception.
 - (b) They do not remember.
 - (c) They do not completely understand what is wanted.
 - (d) They are not aware that they possess worthwhile information.
 - (e) They are reluctant to get involved.
 - (f) They are reluctant to involve others.

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- (g) They are not impressed with the importance of cooperating.
- (h) They do not feel friendly toward the officer or his agency.
- (i) They have been threatened or are fearful.
- (j) They dislike possible inconvenience of appearing in court.
- (k) The time or place of interview may interfere.
- (l) They are unknowingly prejudiced.
- (m) Their logic or conclusions are faulty.
- (n) They mistake inferences for facts.
- (o) They are mentally abnormal.

42. INQUIRIES

- (1) Many investigative inquiries are simply requests by an officer for information from uninvolved and disinterested persons. Usually, the information can be obtained if an officer identifies himself and asks for it. Often a great deal of useful evidence can be developed in this simple way. Such inquiries should be made early so that the information gained may aid in handling more difficult investigative activities later.
- (2) Inquiries addressed to custodians of records that are open to the public or to government investigators are often productive. The following are examples of open public records.
 - (a) Criminal arrest records
 - (b) Traffic records
 - (c) Court records
 - (d) Real estate records
 - (e) Post Office change-of-address cards
 - (f) Listed telephone numbers that have been changed
 - (g) Birth, death and marriage records

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- (h) The employment records of most organizations.
- (3) Another type of inquiry that facilitates investigative activities is a commonplace request for orientation, such as:
 - (a) Asking neighbors where a certain person lives.
 - (b) Asking the postman if an individual lives at a designated address.
 - (c) Asking a child playing in a front yard if his father is home.
- (4) Restricted information, where permissible, can usually be obtained by displaying official credentials. In some cases, it may be necessary to explain in general terms why the information is needed or what it is to be used for. Usually such inquiries can be made of officials or organizations without undue concern that your confidence will be betrayed.
- (5) Inquiries made of neighbors, the general public, etc., should be made carefully and circumspectly. If your identity is revealed, it is generally desirable to ascertain the reliability and non-implication of the person queried.
- (6) Sometimes inquiries can be effectively made by use of the telephone, telegrams, letters, etc.

43. CONSTITUTIONAL RIGHTS OF WITNESSES

43.1 Non-Custodial Interviews

- (1) Witnesses (third party) need not be warned of the constitutional right against self-incrimination during a non-custodial interview as they are not being asked to incriminate themselves. Should it happen, however, that the interview takes such a turn that the person who was thought to be a witness only - i.e., not involved in the offense - begins to disclose evidence of his own guilt of a crime, a warning such as the following may be advisable.

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"Before you answer any more questions, I want to advise you that under the Fifth Amendment to the Constitution of the United States, you have the right to remain silent. You do not have to answer any more questions or submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in court or other proceedings which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding and have him present with you."

- (2) If the witness requests clarification as to his rights, the officer should give such explanation as is necessary to clarify the matter.
- (3) If at any stage of the interview, the subject indicates that he wishes to exercise his rights to withhold his testimony or records, or to first consult with an attorney, the officer shall terminate the interview.

43.2 Custodial Interviews

Persons interviewed as suspects who are in custody (federal, state or local) or otherwise deprived of their freedom of action must be given the type of warning specified in the Miranda v. Arizona decision prior to any questioning. Custody need not be based on the same offense on which the interview is centered. See section 52(2) of this text for a suggested warning format.

With respect to what constitutes depriving individuals of their freedom of action so as to require Miranda warnings, the courts generally view the totality of the circumstances in determining whether Miranda warnings are required. In one appeals court case, the court ruled that the following set of circumstances deprived a person of his freedom of action sufficiently to require Miranda warnings:

- (a) The subject being asked for the first time to report to a government premises at a particular time and place, and, the subject thinking that he must attend.
- (b) The indicated nervous manner of the subject

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during interrogation (tape recorded interview).

- (c) The physical character of the interrogation room, i.e., high windows in a basement room and bare furnishings such as the room containing only a long bare table and a few chairs.

Investigators, in non-custody interviews with suspects who have not been given Miranda warnings and who later may become defendants, should consider making use of certain activities which would tend to negate an allegation that a suspect had been deprived of his freedom of action during an interview session may include actions such as:

- (a) Hold the interview in a public or quasi-public type area.
- (b) Take rest periods or coffee breaks during the interview session.
- (c) Allow the interviewee to make telephone calls if he requests.
- (d) If the interview is recorded or transcribed, make it a matter of record that the subject is free to leave or terminate the interview at any time.
- (e) Keep the number of interviewer witnesses to a minimum.
- (f) Do not press the interviewee to answer questions he does not want to answer.
- (g) The interviewer can leave the room on one or more occasions.

43.3 Fifth Amendment Privilege

A witness may refuse to testify by declining to give answers that tend to incriminate him under federal or state law. This privilege applies not only to answers or documents which would support a prosecution, but it extends even to those (answers or documents) which provide a link in the chain of evidence which could be incriminatory and where there is a reasonable probability that such an answer might tend to incriminate. However, a witness

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is not justified in refusing to answer questions on the grounds of possible self-incrimination where the statute of limitations has barred the possibility of prosecution. However, the determination as to when prosecution is barred is made by the Court, not by the officer.

44. ESTABLISH RAPPORT AND ORIENT THE WITNESS

- (1) There is little chance of a successful interview unless the subject can be induced to talk. Most people resist giving information to a stranger; therefore, attempt to establish a sincere and trusting attitude known as rapport with the witness to enlist his full cooperation.
- (2) Some procedures for establishing rapport are:
 - (a) Identify yourself immediately.
 - (b) Begin the discussion by commenting on a topic of apparent interest to the subject.
 - (c) Establish confidence and trust by having a friendly discussion.
 - (d) Keep conversation informal and easy.
 - (e) Display pleasant emotional responses and avoid unpleasant expressions.
 - (f) Urge the subject but never hurry or pressure him.
 - (g) Be interested and sympathetic to the witness's problems.
 - (h) Don't ask questions that insinuate suspicion of the witness, either by their composition or your method of asking.
 - (i) Don't begin the interview, if possible, until the subject appears friendly and cooperative.
 - (j) Try to reestablish rapport at any time during the questioning when the subject appears to become reserved or hostile.
- (3) Before you attempt to solicit information from a witness, be sure he knows exactly what is wanted. Limit the interview to the specific

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topics on which you desire information.

(4) Impress on the witness:

- (a) His responsibility to relate facts he knows.
- (b) His civic responsibility for helping to protect the community as well as himself from violators.

45. EXPLORE "UNKNOWN DETAILS" AND DETECT CLUES OF ADDITIONAL INFORMATION

- (1) As a general rule, start an interview by asking the witness to give a free narrative discussion of what he knows about the matter being investigated or about certain specific "unknown details."
- (2) All "unknown detail" items that have not been satisfactorily covered by the free narrative discussion should be explored by direct examination.
- (3) Each "unknown" should be explored separately and completed before proceeding to the next.
- (4) It will generally be necessary to use a sequence of questions and discussions which should proceed from "general to specific." Individual questions should be precise and discerning.
- (5) Cross-examination generally should not be used with a friendly witness but mild cross-examination may be useful when it is necessary to test the completeness or accuracy of his testimony.
- (6) Efforts should always be made to test or confirm information from questionable witnesses. Avoid merely trying to get the witness to confirm the information of a previous witness. Obtain his information independently and determine if it does or does not corroborate prior information attained.
- (7) Nervous tension, low intelligence, and impaired mental functions can cause statements that are distorted, misleading, or vague. Often the witness will believe he is doing his best to be helpful. Tactful and extensive questioning in a friendly manner will usually enable you to extend a subject's knowledge and procure the details from him.

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- (8) If a potential witness claims no knowledge, ask him a large number of questions about the matter. He will often unintentionally reveal information.
 - (9) Gain control of the interview at the very beginning and try to maintain that control. If you lose control, take immediate steps to re-establish it in a friendly but positive manner.
 - (10) A written record should be made of each interview. As applicable in the particular circumstances, this may be in the form of an affidavit, a verbatim record of questions and answers, unsworn statements, a memorandum of interview or informal notes. See Chapter 8 of this text for details about statements. Generally, the best approach is to listen until the witness has told his story before taking notes. Some witnesses are inhibited by the sight of an officer taking notes while others may feel that the officer's failure to take notes indicates a lack of interest in them and in what they have to say. In the final analysis, the officer must evaluate the witness in each instance to determine the correct approach.
 - (11) Often, additional information is intentionally concealed, restricted, or distorted because it means something unpleasant to the witness or he may be trying to protect himself or a friend. It is important that you detect signs of withheld information and fully explore the associated matter. Some of the clues that a witness has more information are:
 - (a) Attempts to evade questions
 - (b) Vague answers
 - (c) Conflicting information
 - (d) Physical actions and appearance of the witness
 - (e) Information from other sources indicating he has certain knowledge
 - (f) Circumstances placing him in a position to know certain information
 - (g) Inconsistencies. He knows some things; therefore, he should know others that happened at the same time.
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- (12) When the withholding of information is suspected, reframe the questions and continue to explore until you get precise and discerning answers on every doubtful point. When the interview is completed, end it. Do not dawdle but leave the door open for subsequent interviews, if necessary.

46. TEST ASSERTIONS

- (1) Before completion of an interview, it is essential that you detect falsehoods and separate facts from opinions. Do not accept inferences as fact.
- (2) One procedure for checking the accuracy of facts is to get and check as many of the small details as possible.
- (3) To test the assertions of a witness, evaluate the conditions under which the information was obtained.
- (4) First, determine how the information was obtained. If acquired visually, what was the condition of the light? What distance was involved? How reliable is the eyesight of the witness? Similar questions should be considered when other senses or body functions are involved. If the information was related to the witness by someone else, how did the third party get it? How reliable is the word of the third party and what were the circumstances under which he related it? Was he possibly joking or gossiping? If the information was deduced from circumstances, what facts were the deductions based on?
- (5) Second, evaluate the reliability of the witness. What is his reputation for accuracy and truthfulness? If he has been inaccurate or untruthful on one point, he may also be the same on others. How observant is he? How good is his memory? Is he mentally competent? Does he have any personal interest in the matter?
- (6) Third, separate facts from opinions by checking and evaluating the source of the information. How did the witness get the knowledge and how conclusive is the evidence on which he bases his assertions?

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(7) Ascertain the degree of contact a witness has had with other witnesses, suspects and occurrences in order to judge the amount of influence such contacts may have had in coloring his testimony. Get statements from all alibi witnesses and attempt to ascertain discrepancies.

(8) Beware of the witness who lies from habit. He will usually be motivated by a desire to impress and build self-importance.

He will frequently be recognized by his tendency to brag about himself, exaggerate accomplishments and abilities, and continually make assertions about the difficulties he has.

(9) It may be necessary to use cross-examination to test or evaluate some of the witness' statements.

47. SUMMARIZE AND VERIFY THE TESTIMONY

(1) After the various phases of the interview are finished, recheck to see that all of the "unknown details" on the pre-interview list have been satisfactorily explored, that all clues of additional information have been exploited, and that the reliability of the information has been tested.

(2) Next, mentally rearrange the information obtained so that the details follow one another in a logical continuity. Then summarize the testimony by stating all important details in proper sequence. Stop after each statement or segment of the summary and ask the witness to verify the correctness of your interpretation. If he indicates any disagreement, the discrepancy should be corrected before you proceed.

(3) If a statement is to be recorded, it should be made immediately after the testimony has been summarized and verified. During the summarizing and verifying process, it is worthwhile to specifically point out the important facts and suggest that the witness make every effort to remember them accurately in case he is later called to testify in court.

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48. DRAW INFERENCES AND CONCLUSIONS FROM THE INTERVIEW RESULTS

- (1) The results of an interview have little value unless they help accomplish the principal investigative objectives. First of all, the information obtained must be relevant and material. If the testimony is to be used in court, the facts must be admissible under the rules of evidence.
- (2) The time to evaluate these factors is at the close of the interview, but before the witness has departed so that any deficiencies can be promptly corrected. If recognized deficiencies in the testimony still exist following this evaluation, they should be kept in mind for later attempts to corroborate by evidence from other sources.
- (3) Most of the difficulty of drawing conclusions and evaluating evidence comes from a failure to get all available facts together before making a decision. Do not draw conclusions until you have completed the interview. Be careful not to base reasoning on false assumptions. In the initial consideration, be skeptical of so-called facts until you are satisfied with the proof of their authenticity,
- (4) Even after you are satisfied with the facts, use care in interpreting them. Your conclusions will depend on the meaning you attach to each fact. For example, a forged signature written in a backhanded style may have been written by a left-handed suspect or it might have been written by some person attempting to disguise his writing. The conclusions you reach may greatly affect the results of your investigation.

49. HANDLING UNFRIENDLY WITNESSES

- (1) The procedure for handling hostile witnesses is somewhat contrary to that for handling cooperative witnesses. The hostile witness rarely volunteers information of value and frequently becomes uncommunicative unless properly stimulated to talk.

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- (2) Begin a questioning period by discussing and asking for unobjectionable background information. Do not ask questions directly related to the matter under investigation until it appears the subject will respond to such questions. Start off with easy questions that are readily answered.
 - (3) Ask questions that are positive in nature and which convey the impression that there is no doubt of the witness' desire to cooperate. Examples of such questions are:
 - (a) "you wish the truth to be known in this matter, do you not?"
 - (b) "If you have any knowledge, you would naturally desire to help in procuring justice in this matter, wouldn't you?"
 - (c) "Then I'm sure you have no objection to discussing this matter with me for awhile, do you?"
 - (4) Persuade him that he would expect others to help him if he were in trouble. Therefore, he should assist in solving this matter that affects some other citizen like himself.
 - (5) Have available a good argument and reason for overcoming excuses such as:
 - (a) Civic responsibility
 - (b) Forestalling a more serious offense, etc.
 - (c) The rational implication that he may be involved or associated with the crime.
 - (d) Misprison of felony
 - (6) Sometimes exaggerating facts or stating information out of context will compel a subject to deny an allegation and give correct answers. For example: --"Why did you take twice as much as your share of the money?", or "Your story is inconsistent with the facts that have been developed. How do you explain this?"
 - (7) During the interview if there are signs that the subject is becoming unwilling to talk, the conversation usually should immediately
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revert to topics he discussed freely--then again progress slowly to the desired topic by a different line of questioning.

(8) It is desirable to have a second officer present with an unfriendly witness in case the witness later denies or changes his information.

(9) In many cases, if the true reason for a witness' being hostile can be determined, it is possible to change his attitude by rationalization and persuasion.

(10) In some cases, it may be desirable to have an unfriendly witness subpoenaed by a grand jury.

(11) If the witness is quarrelsome, let him talk and get any grievances off his chest. After he has finished, he will usually calm down and listen to reason if you ignore his past conduct and quietly proceed to establish rapport. Never argue with a witness.

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CHAPTER 5

HOW TO INTERVIEW SUSPECTS

51. WHY DO SUSPECTS CONFESS?

- (1) Suspects normally make admissions or confessions because their state of mind leads them to believe that cooperation is the best course of action to follow.
- (2) As a rule, suspects committed their crimes in belief that such conduct offered the best solution to their needs at the moment. Often it is difficult for us to comprehend why an individual commits an act that obviously may result in severe punishment or other undesirable retribution, or why he confesses, knowing the probable consequences. Actions that are apparently contrary to self-interest do not contradict the fact that usually a definite intent motivated the act. In fact, most criminal acts eventually prove detrimental to the welfare of the perpetrator; and the violators who have previous records probably are well aware of the probable consequences.
- (3) The same fears, passions, morals, attitudes, inferiority complexes, mental abnormalities, physical drives, ambitions, environmental factors and many other complex forces which may have caused an individual to commit a crime may also have precipitated his confession to that crime. These forces are still no doubt affecting the suspect during the interview and the alert officer does not discount them even though he may not understand them.

52. CONSTITUTIONAL RIGHTS OF SUSPECTS

- (1) Court decisions hold that when a law enforcement officer approaches a person to question him for evidence of his guilt, at a time when that person has been taken into custody or otherwise deprived of his freedom of action in any significant way, the officer must first warn that person of his right against self-incrimination, his right to consult with a lawyer and to have the lawyer with him during questioning, and obtain his waiver of those rights if

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he is willing to give it. If the law enforcement officer fails to give the warning and obtain the waiver prior to questioning, the statement which he obtains from the accused will not be admitted as evidence in court.

- (2) The following warning must be given if it is intended to use the suspect's statement against him in court and if he is in custody or if his freedom of action has been restrained in any significant way during questioning:

"Before we ask you any questions, it is my duty to inform you of your rights.

You have the right to remain silent. Anything you say can be used against you in court, or other proceedings.

You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning.

You may have an attorney appointed by the U.S. Magistrate, or the court to represent you if you cannot afford or otherwise obtain one.

If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However--

You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make any statement without consulting a lawyer if you so desire."

- (3) Keep in mind that any admissions or confessions must be voluntary. This does not rule out interviewing as a fact gathering technique. It does mean, however, that the officer must be sure that the suspect fully understands his rights and that any waiver thereof is voluntarily, intelligently and knowingly made.

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In this respect, effective interviewing is most important. For example, if the suspect appears to be lacking in educational background or command of the English language, it may be necessary at first to ask him questions stimulating answers that would disclose his understanding of his rights and the meaning of a waiver thereof.

- (4) To further assure the admissibility of statements made during in-custody interviews, it must be shown that a suspect (a) voluntarily, (b) knowingly, and (c) intelligently waived his rights. The burden rests on the government to prove that the waiver meets this test. Next to custodial interviews, this is the area that has resulted in the most case law.
- (5) A suspect may orally waive his rights or he may do so in writing. If practicable, the waiver form (Exhibit 50-1) should be signed by the suspect before the interview is initiated. When it is impossible or impracticable to obtain a signed waiver, an oral waiver may be accepted. In such cases, the warning given and the suspect's waiver should be witnessed by another officer or other credible person.
- (6) If a written statement is obtained from the person interviewed after he has waived his right to remain silent, either orally or by execution of the waiver agreement, it should contain an introductory paragraph which indicates that the person was advised of his right to remain silent and of the right to counsel and that he waived the rights and voluntarily made the statement. See Exhibit 80-1 in chapter 8 of this text for a suggested statement format.
- (7) Spontaneous and volunteered statements of any kind are not barred by the Fifth Amendment and are not affected by the Miranda and Escobedo decisions. See text on Evidence.
- (8) A defendant who made statements or gave testimony to officers during an investigation may still rely upon his constitutional privilege and refuse to testify at his trial. However, any statements inconsistent with his innocence may be used against him as admissions.

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HOW TO INTERVIEW SUSPECTS

53. PRE-INTERVIEW CONSIDERATIONS

- (1) The suspect may be innocent and, therefore, may want to explain his position. Others, fully aware of their rights, still may be willing to talk about their actions or may want to confess to the violation.
- (2) The officer's job is to be objective in obtaining all of the facts that the suspect is willing to give. This requires the use of effective interviewing techniques such as those set forth in this text and which must be considered prior to interviewing any suspect.

54. ESTABLISH RAPPORT AND GET PERSONAL HISTORY INFORMATION

- (1) There is a natural inclination for persons who are not close friends to be formal, reserved and somewhat skeptical of one another when they meet. Under some circumstances, they may even be hostile. When these conditions exist, little cooperation or information can be expected. Most suspects feel apprehensive about giving derogatory information. It is therefore, necessary to establish an understanding and trusting attitude known as rapport with suspects. Some of the procedures for establishing rapport with the suspect are:
 - (a) Identify yourself promptly and adequately.
 - (b) Keep conversation on a professional level. Be businesslike at all times.
 - (c) Display pleasant emotional responses.
 - (d) Be interested and sympathetic to his problems.
 - (e) Be fair.
 - (f) Try to reestablish rapport at any time during the questioning when the suspect appears to become reserved or hostile.
- (2) Prior to discussion of the violation, an effort should be made to determine any unknown information about the suspect's background, character and attitudes.
- (3) Have suspect relate full name, place and date of birth, present and previous addresses, names and

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addresses of relatives, names of friends and associates, education, employment, social security number, etc.

- (4) Clues to the suspect's attitudes and character may be deduced from a discussion of his current and past life.

/NOTE/ A sample outline of steps to follow in conducting an interview which would apply to the interview of either a suspect or a witness is included. (See Exhibit 50-2).

55. MAKE COOPERATION TOLERABLE

- (1) When a person desires to confide voluntarily about his troubles he does not go to an enemy or a confederate, but rather to a parent, a clergyman, lawyer, close friend or some other respected person who he feels will understand and advise him wisely.
- (2) When a suspect confesses to an officer, he places his destiny in the hands of the Government. He will find it much easier to confess if he feels the officer is understanding and of high integrity.
- (3) Always maintain a professional attitude toward the suspect. Be friendly, exhibit interest, but avoid appearing superior in a way that would make the suspect feel that you consider him inferior.
- (4) Be tactful and considerate of his feelings. Most people desire understanding and consideration at a time when they deserve it the least. When a suspect can give reasons for cooperating, he can satisfy his own conscience and save face with others.

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WAIVER OF RIGHT TO REMAIN SILENT
AND OF RIGHT TO ADVICE OF COUNSEL

EXHIBIT 50-1
Statement of Rights

Before we ask you any questions, it is my duty to inform you of your rights.

You have the right to remain silent.

Anything you say can be used against you in court, or other proceedings.

You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning.

You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one.

If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

HOWEVER --

You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make any statement without consulting a lawyer if you so desire.

Waiver

I have had the above statements of my rights read and explained to me and fully understanding these rights I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity. I was taken into custody at _____ (time), on _____ (date), and have signed this document at _____ (time) on _____ (date).

(Name)

Witnesses:

(Name)

(Name)

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EXHIBIT 50-2

SAMPLE OUTLINE OF STEPS IN CONDUCTING AN INTERVIEW

- I. INTRODUCTION - IDENTIFICATION
 - A. Make sure you have correct person.
 - B. Properly identify self with credentials.
 - C. Give reason for activity without disclosing case details.
- II. STARTING INTERVIEW
 - A. Give Miranda rights, if required.
 - B. Establish rapport.
 - C. Obtain personal history information.
- III. QUESTIONING TECHNIQUE REGARDING THE INVESTIGATION SUBJECT
 - A. Ask witness to tell you what he knows about the incident. (Narrative answer provoking question)
 - B. Listen to responses. (Watch for vague, misleading, and inconsistent answers, etc.)
 - C. Follow with direct examination. (General to specific)
 - D. Keep witness/suspect talking. (Maintain control)
 - E. Test assertions witness/suspect. (Separate fact from hearsay, inferences or lies)
 - F. Make questions short and confined to one topic.
 - G. Take notes on important details unless note-taking inhibits the witness/suspect.
- IV. CONCLUDING INTERVIEW
 - A. Summarize and verify information with interviewee.
 - B. Express appreciation.
 - C. Leave door open for future contacts.

INTERVIEWING

CHAPTER 6

HOW TO RECOGNIZE PHYSIOLOGICAL FACTORS

61. THE PROBLEM

- (1) The body and the brain of a human being functions as a single coordinated unit and many physical conditions of the body will influence mental activity. They are integrated to the point that each depends on the other for functional needs, as follows:

- (a) The brain depends on blood circulation for food and waste elimination.
- (b) All information comes to the brain through sense organs.
- (c) In general, the result of brain activity can only be expressed through vocal cords and muscles.
- (d) The brain activity is influenced by the existing condition of the body, as well as anticipation of future events (such as fear) that may affect the body.

62. PHYSICAL INFLUENCE FACTORS

An interviewer who understands the following physical influence factors is better able to evaluate the information given by the subject and form judgments relative to its accuracy, truthfulness, and completeness. In addition, the current and anticipated physical conditions can frequently be controlled or neutralized. Some of these factors follow:

62.1 Smoking

- (1) Since smoking decreases both mental and physical efficiency, it is advisable to observe the smoking habits of the subject who smokes during the interview.
- (2) The emotional factor is very important in determining the frequency of smoking by the average individual. Observing the rate and changes in the rate of smoking may be a key to an individual's emotional temperament, as well as to fluctuations in his current emotional state.

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62.2 Drugs

- (1) The opiates, including opium, morphine and heroin, and other similar pain killing drugs, have a depressant effect on the body. Cocaine, unlike the opiates, is a stimulant. It gives a feeling of exhilaration, quickens the intellect for a short period of time, making the user appear very fluent in conversation, but finally is always followed by a general feeling of depression. The barbituates -- chloral hydrate, etc, -- are hypnotic or sedative type drugs that have a general depressant effect on the system.
- (2) Whenever possible, the interviewing of persons under the influence of drugs should be delayed until they reach a more nearly normal physical state.

62.3 Alcohol

- (1) Alcohol produces an ascending paralysis of the brain and nervous system. The apparent stimulation of the individual is due to a removal of normal inhibitions. In ascending order the following symptoms appear as an individual absorbs increasing amounts of alcohol:
 - (a) A feeling of well-being.
 - (b) Exultation (lively or joy).
 - (c) Increased self-confidence.
 - (d) Loss of judgment.
 - (e) Loquaciousness (talkative).
 - (f) Dulling of the senses.
 - (g) Loss of skill.
 - (h) Slurred speech.
 - (i) Disturbance of equilibrium.
 - (j) Visual disturbance of color, motion and distance perception.
 - (k) Apathy (lack of emotion).

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- (l) Tremors.
 - (m) Cessation of automatic movements.
 - (n) Sweating.
 - (o) Dilation of surface capillaries.
 - (p) Stupor.
 - (q) Coma.
 - (r) Death (4 to 5 percent alcohol in blood).
- (2) In early stages of intoxication there is a marked decrease of self-control and a weakening of will power.
- (3) During interviews, never furnish alcohol or approve its consumption by a subject. If a subject is found to be intoxicated, delay the interview until he is sufficiently sober to be aware of his constitutional rights and in full possession of his faculties.
- (4) Intoxicated individuals have a reduced ability to fabricate lies. However, they also have an impairment of the sense organs and a reduction in judgment and reasoning power. For this reason, be cautious of evidence observed by an intoxicated person, as well as evidence reported by a witness while he is under the influence of alcohol.

62.4 Coffee and Tea (Caffeine)

- (1) The caffeine in both coffee and tea acts as a mental and physical stimulant.
- (a) Caffeine considerably delays the onset of fatigue.
 - (b) The efficiency of the physical and mental processes may be increased by as much as 4% by consumption of moderate amounts of caffeine.
- (2) During extended interviews, the use of these beverages might increase the witness' mental alertness and assist them in the process of remembering details.

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HOW TO RECOGNIZE PHYSIOLOGICAL FACTORS

62.5 Food and Drink (Hunger and Thirst)

Distractions resulting from the discomforts of hunger and thirst interfere with interviews.

62.6 Age

(1) Children frequently make good witnesses. However, this information must be cautiously obtained and carefully evaluated. In some matters, they are more observing than adults, but are not always capable of differentiating between what they actually observed and what they have heard others say. A vivid imagination may create distorted or false information. Some children are exceptionally susceptible to suggestion. They will adopt the expressions of others as their own or will respond with the answer they think is desired rather than relate facts only.

(2) Children often make better observers than adults because their senses are more receptive and their minds less preoccupied. Their greatest shortcoming stems from insufficient experience to discriminate or correctly interpret what is observed.

(a) They have not learned the meaning or nature of many things.

(b) They may not understand language, words or expressions being used.

(3) In many cases the ability and reliability of children should be tested.

(a) Check with parents, teachers, etc., regarding traits and reliability.

(b) Test ability to understand and evaluate by asking irrelevant questions requiring perception and judgment similar to the observations being reported.

(c) In some cases accuracy can be tested by having the child relate details of observations on which a conclusion is based.

(d) Find out who has talked to the child about the matter and have the child relate the comments or instruction received from such persons.

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HOW TO RECOGNIZE PHYSIOLOGICAL FACTORS

- (4) Young children often tire quickly and it is best that they not be interviewed when fatigued. When an investigation does require that children be questioned, be sure to corroborate their testimony as best as possible by checking other sources of information.
- (5) In some cases be aware that poor eyesight, hearing, or memory may affect adversely someone's testimony. Be certain that your questioning techniques, e.g., leading questions, do not distort the recollection of those susceptible to suggestion.

62.7 PERSONAL FACTORS

- (1) Some individuals, because of their inclinations, employment history, hobbies, etc., make better witnesses with respect to mechanical things such as cars, trucks, or boats. Similarly, others are more concerned with books and records and can recall more details about financial matters than they can about the workings of machinery.
- (2) Some people are more informed about social matters and petty intrigues (gossip) in their neighborhoods and places of employment. Such individuals are interested in people and their surroundings and often will make better witnesses with regard to the activities, dress, characteristics, etc., of those with whom they come in contact. Thus, some people can recall in detail facts relating to furnishings, furniture arrangements, and other conditions of living quarters because these things are of direct interest to them.
- (3) Many people are, by their very nature, more excitable than others and thus, are less reliable with respect to matters of an emotion producing nature.

CHAPTER 7

HOW TO RECOGNIZE PSYCHOLOGICAL FACTORS

71. IMPORTANCE

There are a number of psychological factors that have a bearing on interviewing as well as on the reliability of the information obtained. It is highly desirable to ascertain the existence or nature of such factors in order to better evaluate results. Some of the more important psychological factors are as follows:

71.1 The Emotions

- (1) The emotions of a witness or suspect which are of primary concern to the officer are anger, fear and neutral excitement. These are mental and physical processes affecting an individual's reaction to a crucial situation. The physical responses are largely similar, but definite mental distinction exist.
- (2) During anger, the individual has resolved to meet the situation by resisting, including physical combat, if necessary. Anger against the officer is usually undesirable in a subject being interviewed. Anger can usually be avoided by treating the subject in a friendly manner and pointing out that the officer is not responsible for the subject's difficulties.
- (3) Fear is aroused by any present or imagined danger. It develops when an individual knows enough about a situation to realize the danger, but is not able to satisfactorily resolve his fears. Fear will develop spontaneously in a suspect if he is confronted with a serious difficulty, is frustrated in all attempts to evade answers, and is aware that the solution may result in unpleasant consequences. An officer must not induce fear in order to make a suspect receptive to telling the truth. Fear may be reduced or eliminated by removing the real or imagined difficulty, or by finding a solution which the individual can accept. The fear emotion is usually beneficial to an officer when interviewing hostile witnesses, but when attempting to get detailed testimony from friendly witnesses, their fear should be mitigated.

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- (4) In neutral excitement the individual is merely prepared to meet whatever may arise. Neutral excitement is of some concern to an interviewer since it may affect the perception of the witness and may develop into fear or anger with attendant changes in mental attitude. Such excitement is generally aroused when the individual is aware of a potential danger not specifically directed at him. It may usually be removed by elimination of the supposed danger or by adequate assurances to the witness that he is not threatened by the situation.
- (5) Emotional conditions of the body are frequently developed through repeated subjective reaction to situations of many kinds. This is called a "conditioned reflex" and exists in almost all persons with respect to lying and similar forms of deception. Most people exhibit some emotion whenever they knowingly tell a lie, no matter how small the untruth may be. Anger and excitement are likewise subject to a conditioned reflex excitation in response to emergencies or symbols of potential danger.
- (6) Physical symptoms of emotion (sometimes called "guilt" symptoms).
 - (a) Dryness of mouth -- frequent requests for water.
 - (b) Restlessness -- frequent change in position -- tapping of feet -- fidgeting -- gripping arms of chair -- elbows held tight to body -- running hands through hair -- chewing fingernails, pencils or other objects.
 - (c) Excessive sweating -- particularly of hands or in arm pits.
 - (d) Pulsation of the carotid artery.
 - (e) Unusually pallid or ruddy complexion -- changes in complexion.
 - (f) Excessive swallowing -- indicated by unusual activity of the "Adam's Apple."
 - (g) Avoiding direct gaze of interviewer's eyes.

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- (h) Excessive assertions of truthfulness such as, "I hope to die if I am lying"; or "Standing on my dead mother's grave, I'll swear that it is the truth."
- (i) Evasive or vague answers such as, "I am not sure what happened;" "I can't remember;" "I have forgotten;" "I don't think it could have been that much."
- (j) A disturbing feeling of tenseness and turbulence in the pit of the stomach.

71.2 Perception

- (1) Perception is the process of receiving knowledge through the sense organs -- sight, hearing, smell, taste and touch.
- (2) Most human behavior is in response to impressions received through the sense organs and any distortion of these impressions may affect the nature of the behavior. Defective eyesight, hearing, etc., may result in faulty impressions. Pain, emotion, severe discomfort, exhaustion, etc., may distract the individual so that he becomes preoccupied and inattentive to ordinary impressions received through the eyes, ears and other senses. Mental impairment may cause the sense to function abnormally and produce delusions or hallucinations.
- (3) Perception requires mental interpretation of the knowledge received by the sense organs. Such interpretations are based on past experiences and reasoning power of the individual. (For example, a person would be unable to identify a type of dog he had never previously heard of but would recognize the animal as a dog because it bears characteristics similar to other dogs he has seen.) This limitation of individual ability should be kept in mind when evaluating testimony of witnesses.
- (4) Visual limitations: Tests have roughly determined the following limitations on the distance at which persons can be recognized:
 - (a) A well known person in good illumination can, on the average, be recognized at a distance as far as 150 feet.

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- (b) If a person has some physical, dress or manner peculiarities, it may be possible to recognize him up to about 300 feet.
- (c) A person who is not well known could not usually be recognized at more than 100 feet.
- (d) In bright moonlight, recognition is usually limited to about 30 feet.

Eye defects may frequently be evaluated by ascertaining the type and strength of glasses worn by a subject. It is estimated that approximately three percent of the population is color blind.

71.3 Memory

- (1) Principles of association: Whenever two things have been observed together, a subsequent recurrence of one will tend to bring back the other. When interviewing persons, encourage them to give unimportant details as this will help them to remember the important aspects.
- (2) The more frequently a thing is encountered or an incident related, the easier it is to remember. More confidence can be placed in testimony regarding incidents that have been observed more than once by the witness. If a witness relates his testimony several times to an officer, it will help him to remember the details when he is called as a court witness.
- (3) The memory of an incident or observation decreases with time. Talk to a witness as soon as possible.
- (4) People usually remember the first contact with persons, things or incidents better than succeeding contacts. Be suspicious of witnesses or suspects who can remember complete details of an occurrence but cannot remember when or how the incident came about, who was involved, whose idea it was, and similar preliminary aspects.
- (5) Incidents that stimulate a strong emotion are more easily remembered but less reliable as to details. If an incident frightened or angered an individual, he will usually remember it, unless the lapse to time is great, but he may be quite inaccurate in reporting just what happened.

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- (6) An occurrence that has been largely forgotten can often be remembered in considerable detail if one pertinent incident can be recalled.
- (7) Frequently the memory of a witness can be refreshed about an occurrence by injecting a name, date, place or similar vague clue in the questions. If no details are known to the officer, the witness may be able to refresh his own mind by recalling, in detail, all incidents that might in any way have a bearing on, or connection with, the occurrence. Do not drop a prospective witness who at first denies knowledge of an occurrence.
- (8) An individual who has suffered a head injury or has been temporarily knocked unconscious may not be able to recall events surrounding (before and after) the accident.
- (9) If a person specifically intends to remember something, he usually can recall it in much greater detail than he otherwise would. When witnesses are first interviewed, they should be specifically requested to remember important aspects of testimony for later presentation in court.
- (10) A witness who remembers information received through one sense organ particularly well may be quite inefficient in recalling information received through a different sense organ. An individual who remembers what he sees may be poor at remembering what he hears.
- (11) Old people frequently experience impaired memory. They frequently forget more recent things but still remember earlier happenings.
- (12) People tend to fill in missing details with imagined material. This is particularly true when the recollection of the witness is faulty. Frequently such witnesses find it difficult to distinguish between what is remembered and what is imagined. The greater the gap in memory the greater will be the tendency to fill these gaps with imagined details. Interview witnesses early before these memory gaps develop to assure that more accurate testimony will be obtained.
- (13) Recognition is the awareness that someone or something has been previously encountered or observed. We recognize a person because his appearance, action, and mannerisms are familiar to us.

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- (14) Persons or things that are not known well are frequently subject to false recognition. To test the accuracy of recollection and reduce the possibility of suggesting an identity, never have a witness view a suspect unless the suspect appears in a lineup of similarly dressed persons. Usually conditions surrounding persons or things may affect recognition.
- (15) If a suspect changes clothes, gets a haircut, removes his glasses, or similar changes are effected, a witness may be unable to recognize him. Therefore, before viewing by witnesses, always have persons or things in as nearly the original condition and situation as possible.

71.4 Suggestion

- (1) Suggestion is a process of placing an idea before a person in such a manner that he uncritically accepts it as his own, such as asking leading questions in which the desired answer is suggested by the question. In their efforts to please, some witnesses and suspects will respond with answers which they feel are most pleasing to the interviewer, regardless of the facts.
- (2) Individuals whose memory of an incident is faulty are often particularly responsive to suggestions as to the unremembered details. The interviewer himself must be careful not to suggest information which might be accepted and vouched for by a witness or suspect.
- (3) In some cases a person will disregard his own observations and give information that is in accord with the majority opinion of other witnesses. Many people do not like to contradict or come in conflict with others and will accordingly adjust their own expressions to conform with the known testimony of others.
- (4) Be careful to get the personal observations of an individual and not a considered opinion that has been adjusted to agree with known statements of others. Try to talk to witnesses and suspects before they have been influenced by others; keep them separated during interview; and do not suggest the position taken by other witnesses or suspects.

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- (5) Other factors which may influence or suggest answers are:
- (a) Tone of voice of interview.
 - (b) His facial expressions.
 - (c) His general posture.
 - (d) His gestures.
 - (e) The general surroundings where interview is conducted.
 - (f) The witness' observations of treatment of others involved in incident. A witness observing a suspect sitting on a bench with a group of known offenders may conclude that the suspect is also an offender.

71.5 Bias

- (1) A person who is biased or prejudiced may give distorted information, either intentionally or unintentionally.
- (2) An individual who strongly dislikes the use of alcoholic liquors may conclude that a neighbor who drinks was intoxicated when he was involved in an automobile accident. If a witness hates a suspect, he is likely to report derogatory information and ignore favorable information. Be alert for signs of prejudice which may color the testimony of a witness.

71.6 Deception

- (1) The ability and inclination to deceive are common among persons of all ages and cultures. Lying and other forms of deception are action patterns which are generally used to compensate for personal inadequacies. In most cases such conduct is resorted to when the individual feels incapable or is unprepared to solve a problem by more desirable means. (Examples: The young child gains personal satisfaction by deceiving his mother and pretending to be asleep as long as the crib is rocked -- Some merchants try to achieve a financial gain by misrepresenting their merchandise -- In war time armies try to gain an advantage over the enemy by deceptive maneuvers.

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- (2) The law violator attempts to use deception as an avenue to escape from the consequences of his deeds. The fear emotion and lying are corollary processes that are closely associated. When an individual is confronted by a danger which he is unable to overcome by ordinary means, he begins to develop fear which in turn prepares and motivates him for escaping from danger. The suspect when questioned is usually not in a position to attempt physical flight; hence, he seeks escape through lying.

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