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CT News and Information Updating and Connecting Our Partners in the Region

DOJ, Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) in partnership with the U.S. Department of State, Bureau of Counterterrorism

As we close out 2021, we would like to thank you for your tremendous work investigating and prosecuting counterterrorism cases. During the year, Albania, Kosovo, and North Macedonia each repatriated foreign terrorist fighters and associated family members from Northeast Syria. Kosovo has charged all six of the male foreign fighters it repatriated, while North Macedonia has charged and convicted two of the men it repatriated. In addition, numerous other terrorism cases were investigated and prosecuted throughout the region, several convictions were upheld on appeal, and at least one attack was thwarted by police.

The fight against terrorism is enormously impactful and pays long term dividends. Your success in being able to investigate and prosecute these cases despite the pandemic is incredibly impressive. We hope you are enjoying some well-deserved time off over the holiday and into the new year.

For our final newsletter of the year, we present you a recap of the practice tips we provided in early editions.

Best wishes,

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Practice Tip

Cross-Examination, Part I

Cross-examination has two main purposes: 1) to provide evidence that supports one's theory of the case and 2) evidence that undermines the opponent's theory of the case. In this issue we begin to discuss this essential trial skill by shedding light on a multitude of often neglected and overlooked aspects and benefits of cross-examination.

No damage = no cross: an outmoded rule. For a long time, cross-examination has been viewed solely as a battle with the opponent's witness who was to be beaten down or minimized, and rarely as an opportunity to provide constructive information for the cross-examiner's theory of the case. However, cross-examination is not just about damage control – it is also a superb opportunity to elicit favorable facts from the opponent's witness to prove one's own theory of the case. In fact, “the modern approach to cross-examination calls upon the lawyer to use the opponent's witnesses - at least in part - as if they were one's own witness.” Thus, the conventional approach that if a witness had done no damage to the cross-examiner's case on direct examination, the lawyer should choose to ask no questions, is outdated.

Facts established in cross-examination are likely to be more credible than facts adduced through your own witnesses. Use cross-examination to elicit the information that prove facts of significance of your own case. If the prosecutor elicits through cross-examination the fact that supports his case, such information will have greater credibility and weight than if it was established through direct examination of prosecution witness precisely because the logic is that the opponent's witness would not give up the fact in favor of the opposing side if it were untrue. An additional value in establishing a fact through cross-examination rather than direct examination is that “once a fact is admitted by the opponent's witness, the opponent is far less able to argue against belief in that testimony.”

Effective use of cross-examination techniques can help you lower your anxiety. Anxiety is undoubtedly part of trial experience, and it is important for prosecutors to be mindful thereof, “not because of what it does to their bodies, but because of what it does to their minds.” Anxiety impedes the processing of information, interferes with thought processes and undermines confidence, which are the effects the prosecutors cannot afford at trial especially during cross-examination when one needs to be completely focused on the complex job of forming questions, weighing the answers, evaluating the witness's word choices, hesitations, and moods, all while responding to objections, watching the judges, and searching for the right transcript or exhibit. Master and use cross-examination techniques to reduce your anxiety.

Effective use of cross-examination techniques can help you control deceptive witnesses. Anxiety has the same effect on witnesses. Why is this important? The reality that witnesses called by the opposing side may well attempt to hide, distort, or fail to completely reveal all the facts if those facts might hurt their perceived side of the case. However, any deception on the part of a witness requires far more mental processing - the witness needs to consider his prior answers, the facts he may have provided before trial, whether in interviews or documents, what he believes other witnesses will say, what the following questions will be and how any deceptive answer will change the answers to those questions. As the anxiety impedes the processing of information, “cross-examination techniques that ethically introduce anxiety in an opposing witness will interfere with the witness's ability to engage in the advanced processing required of people who are attempting to evade telling the truth, the whole truth, and nothing but the truth.”

In the next issue we will talk about how to obtain and maintain control of the witness and the subject matter of cross-examination through the “only three” rule of cross-examination.

Source: L. Pozner and R.J.Dodd, *Cross-Examination Skills for Law Students* (2009)

Practice Tip

Cross-examination, Part II

In this issue we present “the only three rules of cross-examination.” These rules are the building blocks for cross-examination and are designed 1) to maximize the amount of useful facts coming before judges and enable that they immediately be understood for their impact on the opponent's theory of the case and 2) to help you obtain and maintain control of a witness during cross-examination. The only three rules of cross-examination are:

(1) Ask leading questions only. The opportunity to use leading questions is a fundamental distinguishing asset of the right to cross-examine and a critical advantage given to the cross-examiner. Unlike the open-ended questions which convert the witness into the teacher of the facts, the leading question positions the cross-examiner as the teacher, providing him with the invaluable opportunity to 1) define a field of discussion, 2) control the flow of information, 3) control the facts to be stressed and emotion of the answer, and 4) efficiently teach the bench the facts of the case. Nevertheless, many lawyers forfeit these enormous advantages and instead, by habit or design, ask primarily open-ended questions. Do not do this.

The “leading questions only” technique means that, in trial, the cross-examiner must endeavor to consistently phrase questions that are leading. True leading questions do not merely suggest the answer; they declare it. Never use questions that begin with “who,” “what,” “when,” “where,” “how,” “why,” or “explain” because “these words invite uncontrolled, unpredictable, and perhaps unending answers.” Always remember that you as a cross-examiner should not be interested in presenting all aspects of the story or in having the witness explain everything that the witness wishes to explain – your only goal is to introduce or expand on the facts that most aid your theory of the case or that most damage the opponent’s theory of the case.

(2) Ask only one new fact per question. Asking only one new fact in each question adds another measure of control. Placing a single new fact before a witness narrows the field of evasion by specifying the fact to be discussed and reduces the witness’s ability to evade. Asking a question containing more than one new fact creates problems regardless of the answer. For example, if an examiner asks a leading question that seeks agreement to multiple new facts and the witness answers “yes” or “no,” it will be unclear to what fact the confirmation or denial applies. Further, a question that contains only one new fact enhances the ability of the fact finder to understand the answer and comprehend the significance of the fact just proved: “The structure of one fact per question meticulously builds the picture so that the court reaches the cross-examiner’s desired conclusion, even though the conclusion itself may never be put to the witness.” By establishing one fact at a time and letting each fact have its own moment of revelation, the cross-examiner also adds impact to the answers because judges concentrate on the development of the picture long before the whole picture is revealed. Finally, this technique permits adding an emotional overlay to specific facts that signal to the fact finder the importance of those particular facts.

(3) Break cross-examination into a series of logical progressions to each specific goal. Using the third rule of cross-examination, the cross-examiner controls the flow of cross-examination by linking the individual questions to preselected, comprehensible goals. Developing each cross-examination around specific factual goals makes it easier for judges to follow the line of questioning and allows them to know where you are proceeding with the questions and whether to sustain or deny relevancy objections of the opposing side. Also, an organized presentation that is broken down into several individual points invites attention and ensures that judges understand the takeaway - the point you are trying to make.

It is helpful to think of this technique as “putting together a group of related facts in order to paint a particular picture.” To do this, it is first necessary to break the cross-examination into separate and definable factual goals. Each individual goal is developed through a logical progression of leading questions, each putting into evidence one new fact. The questions should proceed from the very general to the specific goal. This is important for several reasons. First, witnesses usually find it easier to agree to general issue questioning before they are brought to specifics. Second, proceeding one fact at a time makes the specific answer inescapable - “as the witness admits a particular fact, other facts not yet admitted may be logically inferred.” Third, the “general to specific” approach creates interest.

Source: L. Pozner and R.J.Dodd, *Cross-Examination Skills for Law Students* (2009)

Practice Tip

Closing Arguments

Start strong and end strong. Information presented at the beginning and the end of your argument tends to be retained better than information presented in the middle. So, make sure to begin with a striking introduction and to end convincingly.

Review the evidence. A good closing argument reviews the evidence presented at trial. Even though a court has heard all the evidence, it is important to synthesize (not merely summarize) the evidence in closing argument. Explain each element of the crime(s) charged and how you proved it in simple, easy to understand terms. To do this, take the patchwork of testimony, documents, and other evidence, and weave it into a cohesive, logical and understandable story. Make sure to remind the court of what it was that made favorable, important witnesses credible. The testimony of less credible witnesses should be stated in summary form, without reference to the credibility of the witnesses.

Repeat the key information. The importance of repetition during trial cannot be overstated. Repeating information is an effective tool for focusing judges’ attention on facts you wish to emphasize. However, mindlessly repeating the same

information over and over again can be counterproductive. To maximize effectiveness of the repetition, follow these three simple rules: First, modify each repetition. The repeated information needs to be different than the first version. Second, repetition needs to get better. Start with your weakest iteration and make each successive repetition stronger. Third, keep it interesting.

Address the key issue. The key issue is any element that is hotly contested and requires special discussion. In many cases, the defense only contests one or two issues. Emphasize where you and the defense agree and disagree and direct your energies toward persuading the court of your position.

Address your weaknesses. Do not make the mistake of thinking that you can ignore difficult evidence and hope that the court will not notice. Make sure to raise your weaknesses before your opponent does and do your best to neutralize the facts against your case in closing.

Anticipate and attack the defense case. Although your primary objective is to convince the court of your theory of the case, once you have argued the positives of your case, you must attack your opponent’s case and force him to argue his weaknesses.

Do not read the closing argument. Whether you read your closing argument or not makes all the difference in how you connect with your audience. Reading from the script renders

it impossible to make eye contact with the judges. Making eye contact is important as it keeps judges interested and involved and you should make sure to look at the bench during your closing, especially when you are underscoring the most important points. So, instead of reading your closing argument, work from an outline. To minimize how much time you spend looking at your notes, make sure that they are easy to read.

Sources:

[Elliot Wilcox, *The Rules of Repetition*](#)

[T. Walthall, *The Closer: A Step-by-Step Guide to Delivering the Perfect Closing Pitch*](#)

[CALs at Lewis and Clark, *Closing Argument Guide*](#)

Practice Tip

Investigator on the Witness Stand: Direct Examination

Successful prosecution of a criminal case depends undoubtedly on the competency of the prosecutor, but prosecutors cannot win cases on their own. The fundamental role of the prosecutor is to orchestrate the presentation of the evidence, and it is the quality of evidence on which the cases are either won or lost. The quality of evidence depends first and foremost on the police officer's investigation, and the manner in which he presents it during his direct examination. The job of a law enforcement officer does not end with the completion of an investigation. As a key witness in court, a law enforcement officer continues to play a crucial role even once the case reaches the courtroom: "If the investigator doesn't put forward a strong case from the witness stand, there is little the prosecutor can do to convict a guilty defendant." The main vehicle the prosecution uses to place evidence against the accused before the court is direct examination. Through direct examination, the prosecution elicits testimony which provides or supports direct and circumstantial evidence. In this issue, we offer tips for a professional presentation of an investigator's testimony and evidence during direct examination.

Professional Appearance. Testifying is a serious matter, so dress for the occasion. Wearing proper, conservative attire is important for the professional appearance of the testifying officer. Never wear a weapon in the courtroom and refrain from wearing anything which may appear to be excessively authoritarian.

Manner of Speaking. When addressing the court, speak clearly, deliberately, and loudly. Make eye contact with the bench. Think before responding. Talk slowly and do not rush through your testimony. Give the judges an opportunity to absorb your testimony.

Attitude and Approach. An officer helps establish his credibility by his attitude displayed on the stand and the manner in which he delivers his testimony. So, be polite at all times. Remain calm and professional even when you feel that the person addressing you is being unfair. Appear confident,

but not arrogant. Do not appear to be unfair or biased - if there are facts which favor the defendant, bring them out without hesitation because it will just make you more credible. Do not interrupt the judges, prosecutor, or defense attorney when they are speaking. If one of them interrupts you while you are testifying, stop talking, and wait until the matter which caused the interruption is resolved. Stop your testimony when an objection is made and wait for the court's ruling before you continue testifying.

Preparation. Always remember that "performance in the courtroom is only as good as its preparation," and do your best to thoroughly prepare for your testimony. To adequately prepare for court, gather all available material which contains information about your case and make sure you are familiar with everything in them. Also, meet with the prosecutor before the trial to learn about the theory of the prosecution case, how the prosecutor plans to implement it, and what part you play in its presentation. It is also important that you are familiar with the defense theory to understand how the defense attorney may come after you on cross-examination, and what points he will try to bring out of your testimony. Discuss the facts and the exhibits with the prosecutor to make sure that you share a mutual understanding of the facts, and be sure to straighten out any confusion before trial.

Answering questions on direct examination. Listen to the question - as basic as that may sound, it is important that you concentrate on listening to the question and never answer a question you have not heard. Pause before answering - before answering any question, pause for a moment so that you can gather your thoughts before giving a reply. Answer at your own pace - take all the time you need to provide a complete answer to the question, but do not unduly drag out your answer. Answer only the question asked and do not include any unexpected information in your answer - if the prosecutor wants you to elaborate, he will ask you to expand on your response. Use plain and understandable language - when technical language is required, explain the technical terms used. Correct any mistake in your testimony as soon as you realize it was made.

Know when not to answer. Never answer a question that you do not understand - say that you do not understand the question and ask that it be repeated or put in other words. Also, do not guess at an answer - if you do not know the answer, say so openly. Or, if you are not sure of an answer, simply say that you are not sure.

Source: D. Lewis, *The Police Officer in the Courtroom: How to Avoid the Pitfalls of Cross-Examination Through the Proper Preparation and Presentation of Investigative Reports, In-Court Testimony, and Evidence* (2001)

Practice Tip

Investigator on the Witness Stand: Cross-Examination, Part I

Cross-examination is the main tool and often the only means defense attorneys have at their disposal to probe testimonies of prosecution witnesses and to elicit information that will be either harmful to the prosecution or helpful to the defendant. Defense attorneys will do their best to use cross-examination to discredit the investigator's testimony by making his investigation look incomplete or incompetent, but also by making the investigator look ineffective, inept, or untrustworthy. In this issue we present some of the general tactics defense attorneys use to attack investigators during cross-examination and offer you some tips on how best to respond to them. We will continue exploring this topic in the next issue.

1. Intimidation. Defense attorneys use various strategies to try to intimidate witnesses. Varying their tone of voice and using fast-paced questioning are only two of these strategies:

Tone of voice. The defense attorney will vary his tone of voice during cross-examination to affect the composure and response of the investigator. He will use a bored tone of voice to signal to the court that the investigator's testimony is not truthful or is not important. If he speaks in soft or inquisitive tone of voice, he may be trying to lull the investigator into a false sense of security to sneak something past him. Defense attorneys speak with a loud and threatening tone of voice usually when the investigator's testimony has seriously damaged their case and when they want the investigator to become defensive and combative. However, the attorney cannot effectively raise his tone of voice and keep it raised, without the investigator's cooperation. So, make sure to carefully listen to what was asked rather than how it was asked and respond in a calm, professional manner – that way, the attorney will be the one who appears panicked, not you.

Pace of the question. The defense attorney may employ fast-paced questioning to confuse the investigator, not giving him a chance to think and answer at his own pace. Do not allow yourself to be driven by attorney's pace. Take all time you need to digest the question and provide a complete answer.

2. Asking multiple or complicated questions. Defense attorneys will sometimes ask compound or complicated questions to confuse the investigator. When the attorney poses a compound question (i.e. a single statement that contains two or more questions), you can make a note that he has in fact asked two questions and then answer both questions, one after the other, provided that they are fairly simple questions. However, if the questions are complex or require lengthy answers, simply ask the attorney which question he would like answered first, rather than trying to answer them both at once.

3. Leading questions. The defense attorney will almost always ask leading questions on cross-examination. Leading questions are designed to be answered "yes" or "no," thereby preventing the investigator from expanding on his answers in a narrative that could damage the defense case. If you feel that the question cannot be answered with a simple "yes" or "no" because such an answer would be misleading, you should first answer the question and then offer the explanation. If the defense attorney interrupts you before you finish answering, and you will at least have alerted the prosecutor to return to the same area for further explanation on redirect-examination.



4. Questions containing half-truths. The defense attorney may pose leading questions containing information that is only half true. Beware of such questions. They may seem plausible and tempt you to give a simple "yes" or "no" response, even when that is not 100% inaccurate. So, if a question is not totally accurate, say so and give whatever explanation is necessary.

5. Leading the investigator into a false sense of security. Another tactic commonly employed by defense attorneys is to make the investigator feel relaxed and sure of himself. When the investigator lets down his guard, he can easily get careless in his answers and is more likely to fall into traps set by the defense attorney. There are a couple of approaches the defense attorney may use to lull the investigator into a false sense of security:

Feigning ignorance. The defense attorney may ask questions in such a way as to leave an impression that he has no knowledge of the subject matter or has little expertise in the area of the testimony. This is a trick intended to make the investigator feel safe, so the attorney can attack him after he has lost his edge and started to relax.

Appearance of being fair and courteous. When a defense attorney is trying to be unusually fair and courteous, he may be attempting to lead the investigator to believe that there will be no attack or confrontation. Once the investigator has let down his guard, he is more likely to make serious mistakes. Beware of these tactics and remain alert and always have your guard up!

Source: D. Lewis, *The Police Officer in the Courtroom: How to Avoid the Pitfalls of Cross-Examination Through the Proper Preparation and Presentation of Investigative Reports, In-Court Testimony, and Evidence* (2001)

Practice Tip

Investigator on the Witness Stand: Cross-Examination, Part II

In this issue we continue exploring common tactics defense attorneys use to attack the investigator during cross-examination and best strategies for effectively responding to them.

1. Misstatement of previous testimony. Often a defense attorney will go over the investigator's direct testimony with him, and, in restating some of that prior testimony, try to subtly change one or two words which, in effect, change the meaning of the entire statement. He will then ask the investigator to confirm the modified statement as his testimony on direct examination. To avoid this, listen carefully to the questions before answering and, no matter how innocent the error may seem, if the defense attorney misstates your prior testimony, say so. A defense attorney may then attempt to rephrase his version and ask you again to confirm it. Again, do not adopt it if it is not what you testified to.

2. Personalizing the defendant. A defense attorney will use every opportunity to paint the defendant as a nice person despite the evidence of his guilt, and what better place for kind words about the defendant to come than from the investigating officer. To accomplish this, the defense attorney may refer to the defendant by his first name hoping to get you to do the same; or he may refer to the defendant in endearing terms or say things about him that make him look good and then seek confirmation from you of his statements about the defendant. Be aware of this tactic and do not allow yourself to become the defendant's "character witness."

3. Contradiction in the investigator's testimony. Any time a person tells a story more than once, there will be some inconsistencies, no matter how carefully the story is told. An investigator can expect a defense attorney to emphasize contradictions in his testimony to damage his credibility. In recounting past events, use your best recollection and when confronted with an inconsistency, explain it if you can. If you cannot, simply tell the defense attorney that your present testimony is your best recollection. If, in confronting you with your prior statements that are inconsistent with your present testimony, your recollection is refreshed and it is your feeling that your earlier statement was correct, admit to the error and confirm the earlier statement.

4. Questions outside the investigator's area of knowledge. During cross-examination an investigator may

sometimes be asked questions that are police related, but that fall outside his area of expertise or knowledge. Often defense attorneys ask these questions with an aim to have testifying police officers admit to a lack of knowledge or expertise about a particular matter or to have them try to answer questions that they are not qualified to answer, hoping that in either case their answer will make them look incompetent. Do not fall into this trap. If asked such a question, say without hesitation that this particular area of law enforcement is not within your area of expertise or that you did not participate in that particular phase of the investigation. Do not apologize or make excuses for his lack of knowledge or expertise.

5. Building block questions. The defense attorney may divide the cross-examination into segments, with each segment having its own goal: "The questions in each segment will be directed toward that goal, and each is intended to provide an answer which follows a sequence that the cross-examiner hopes will end with his goal being achieved." In doing this, the defense attorney will combine several of the other tactics we have already addressed: To build an investigator's testimony in a way that best suits the defense case, the attorney will usually begin with the most innocent questions. These questions will be put in as unsuspecting and delicate a manner as possible. The defense attorney will then start directing the investigator's attention to the facts about which he wishes the officer to testify and will try to "con" the first few answers by mixing these questions in with other innocent questions to leave the impression that he is not looking for anything damaging to the prosecution. If the investigator falls into this trap, he will end up in a situation where each answer he gives strengthens the preceding one until he is put into a position where every time he tries to change his position, he finds that it is impossible because he is so deeply tied to his previous answer.

6. Broad, sweeping questions. A defense attorney will ask broad, sweeping questions for three reasons: 1) he lacks information about the facts surrounding the subject matter of the examination; 2) he is on a fishing expedition, hoping to hear information that he was not aware of until the answer was given and 3) he wants to get the commitment from the witness and, at the same time, mislead the witness as to the meaning of the question, so that later on during the examination, he can use the answer to that question to attack an answer to another question. Be aware of these tactics and think about the question before you answer it.

Source: D. Lewis, *The Police Officer in the Courtroom: How to Avoid the Pitfalls of Cross-Examination Through the Proper Preparation and Presentation of Investigative Reports, In-Court Testimony, and Evidence* (2001)

Practice Tip

Investigator on the Witness Stand: Cross-Examination, Part III

In this issue we complete the series of practice tips on cross-examination with some general advice on “do’s and don’t’s” of the investigator’s conduct on the witness stand.

1. Listen carefully to each question. If you did not hear the question, ask the defense attorney to repeat it. If you did not understand the question, ask for clarification. And if you do not know the answer to the question, say so.
2. Prepare for trial - know the elements of crime about which you are testifying and anticipate and understand prosecution and defense theories of the case.
3. Always be confident both in your demeanor and in your responses, but make sure not to appear arrogant. Be frank, modest, and natural.
4. Be polite, but never informal in your interactions with the court, prosecutor or defense attorney.
5. Speak clearly and loudly.
6. Be concise and direct in your responses. Do not volunteer information.
7. Never speculate or guess and do not give opinions that you are not qualified to give.

8. Before answering each question take your time to organize your response. Do not allow defense attorney to affect your pace and length of your answers.

9. Be fair and accurate, yet firm in your recitation of facts.

10. Always correct the defense attorney’s misuse of any word or phrase referring to your investigation or any misinterpretation of your statements. Do not let defense attorney put words in your mouth, but also do not engage in argument with the defense attorney over the meaning or interpretation of facts or testimony.

11. Stay alert and do not let yourself be lulled into a feeling of security.

12. Keep control of your emotions and do not give in to nervousness. Do not appear shaken if something goes wrong.

13. Do not refer to the defendant by his or her first name. Refer to the person by their last name by using the proper title, or simply refer to him or her as the defendant.

14. Do not show hostility toward the defendant or the defense attorney.

Source: D. Lewis, *The Police Officer in the Courtroom: How to Avoid the Pitfalls of Cross-Examination Through the Proper Preparation and Presentation of Investigative Reports, In-Court Testimony, and Evidence* (2001)

Practice Tip

Social Media as an Investigative Tool in Criminal Investigations

In this issue we talk about the value of social media evidence and importance of using social media as an investigative tool in the routine investigative work.

Social media holds an important position in the set of tools available to law enforcement in routine criminal investigations, especially of ideologically motivated crimes and offenders who commit acts of terrorism and extremist violence. Counter-terrorism investigators can use social media both in investigations that are reactive to terrorism events, but also to proactively identify individuals who appear to be close to committing acts of violence in the hope of foiling a plot. Social media is thus both a proactive and reactive investigative tool that can be utilized by law enforcement through the varying stages of criminal activity, from crime prevention to crime investigation.



Social media can be used proactively to identify criminal behavior, potential offenders and to prevent criminal acts. Perpetrators sometimes broadcast their criminal intentions over social media accounts by posting threats or potential plans and if law enforcement is made aware of such posts in a timely fashion, it provides them with an opportunity to intervene and prevent a crime before it occurs.

Social media can also be utilized as an investigative tool after a criminal event has occurred and law enforcement investigations are underway. Information posted through social media accounts can be used to verify alibis, demonstrate *mens rea*, provide evidence of premeditation, tie the offenders and their social networks to the crimes, identify a motive, identify the witnesses and to verify or contradict the veracity of witness testimony during a trial. In terrorism investigations “a terrorist’s social media accounts can add context to their crime, demonstrating an interest in, or avid support for, extremist ideologies, movements, and organizations”. Additionally, it can help investigators to understand how the offender was radicalized or with whom they interacted over social media, to prove the motive, as well as to identify other offenders who might have assisted in the criminal act or potentially will engage in future acts.

Through social media law enforcement can, with little effort, access some relevant information. Social media is most commonly utilized for:

1. Identifying persons of interest. One of the major tasks of any investigator is that of identifying persons of interest and associates affiliated with them. Through public social media accounts, social network acquaintances and relationships among them can nowadays be identified and analyzed with the click of a button, especially with help of available specialized social network analysis software. Investigators can also use online venues such as chat rooms to identify persons of interest from whom useful intelligence may be gathered.

2. Identifying location of criminal activity. Some social media services provide geographic and temporal data about an individual’s whereabouts while posting. Additionally, photographs that are uploaded to accounts might also have geographic coordinates if taken with cellular phones or digital cameras with geotagging capabilities. This type of information can be used to identify location of criminal activity, place a suspect at a crime scene or to verify individual’s alibi.

3. Gathering photographs, videos, or statements to corroborate evidence. Status updates, posts, user-uploaded photographs and videos may also prove to be valuable pieces of evidence. Photographs or videos posted to social media sites can place a suspect at a scene at relevant time, link suspects to victims or prove the existence of a fact. In addition, postings to social media sites can sometimes be used to prove the mindset of a particular criminal.

4. Identifying criminal activity. Social media is routinely utilized to identify and convict criminal activity that may show up on sites such as Facebook, Twitter and YouTube. It is not uncommon for criminals to publish incriminating photographs and videos of criminal misdeeds on social media sites like Facebook and YouTube. Even though in many cases videos and pictures can be uploaded with a degree of anonymity, it is important to keep in mind that such anonymously published video or image may establish legal basis for obtaining a search warrant to request additional information about the uploading account.

Thus, one’s online presence can leave a large trail of useful information behind, which is why social media investigation should be a part of a routine investigative work of every law enforcement investigator.

Sources: S.K. Rice and W.S. Parkin, *Social Media and Law Enforcement Investigations*, Oxford Handbooks Online Scholarly Research Review (2016)

J. Brunty and K. Helenek, *Social Media Investigation for Law Enforcement*, Anderson Publishing, (2013)

Practice Tip

Terrorism Investigation Techniques: Interview

Although the investigative techniques employed in terrorism investigations are essentially the same as those that investigators use in ordinary criminal cases, their application is often different. Terrorists generally fear law enforcement and will do everything in their power not to get caught. To stay under the radar of law enforcement, terrorists, unlike common criminals, will place extraordinary emphasis on security, making it difficult for police investigators to monitor their activities and arrest and prosecute them. Many

of them are familiar with investigative methods and strategies, which often constrains the use of certain investigative techniques in terrorism investigations.

However, the fact that many terrorists are aware of law enforcement investigative techniques does not mean that these methods of developing information cannot be employed – it simply means that greater care must be used during the investigation: “Throughout the investigation, great attention to detail must be given. Carelessness and mistakes must be avoided. Proper and prompt documentation of the results of every investigative technique imperative. Rules and procedures with respect to the use of these techniques must be followed. Investigative techniques must be used with care.”

In this issue we offer you tips on how to effectively utilize in terrorism investigations the “mother of all investigative techniques”: interview.

Prepare. Although there are situations when the investigator has little or no time to prepare for the interview, interviews that are pre-scheduled can and should be carefully organized and planned. This does not just mean having high-quality questions for the subject to answer or having good knowledge about the subject’s activities and about his group: “Instead, the most valuable aspect of preparation is determining the best time to contact the person, and knowing just how to break the ice with respect to beginning a conversation with him.”

Conduct the interview carefully and in detail. Many terrorists will refuse to cooperate with law enforcement and to be interviewed about anything. So, with those that do agree to an interview, investigators should be mindful that it may be the only interview they will ever get with the subject. For this reason, it is essential that investigators diligently explore information developed from an interview and make necessary efforts to identify evidence, witnesses, and other elements that can be used to confirm the subject’s statements, if he should later recant or refuse to testify. The investigator conducting an interview should always make sure to address and try to obtain the answers to the following key questions: Who?, What?, When?, Where?, Why?, How?.



Understand the main concepts of the subject’s beliefs. To better understand the subject’s mindset and statements, investigators should have at least some basic knowledge about the political philosophy or religious views of the subject they plan to interview. An officer who responds with complete ignorance to the subject’s rhetoric is likely to fail in his efforts to interview that person. However, it is also advisable that the investigator does not give an appearance of being an “expert” in the subject’s political philosophy or religion. The investigator is more likely to have success in engaging the subject in discussion if he indicates that he is aware of concepts that are key to subject’s beliefs.

Avoid engaging in political or ideological debates with interviewees. As already mentioned, it is important that investigators understand the political or religious views of the subject they plan to interview, and during the interview they

should not refrain from discussing certain aspects of subject’s beliefs because some statements made by an interviewee concerning his beliefs can be used as evidence against him in court. However, this discussion should not turn into debate.

Never agree with, or show support for, any illegal actions that a terrorist mentions during an interview. While it is sometimes important to show some empathy for the person’s beliefs to keep the interview going, it is a mistake for an investigator to assume that he can win a subject’s confidence by claiming to support terrorist activities conducted by the subject and his group. Also, such statements can later backfire on the investigator if he is summoned to give testimony at trial.

Source: William E. Dyson, *Terrorism: An Investigator’s Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigations Techniques: Records Checks

One of the most easily obtainable and highly valuable resources available to an investigator are records checks. Record checks include government records, such as a suspect’s criminal records or tax records. They also include records held by private companies, such as phone records and property records. Because record checks can almost always be performed without the subject’s knowledge, they are especially important in terrorism investigations when law enforcement must be careful not to alert the subject that he is being investigated. By surveying all entities that can provide information on the subject of an investigation, an investigator can very often assemble an extensive subject profile without ever leaving the office. Nevertheless, many investigators fail to use this investigative technique to its full potential.

In this issue we offer you tips for conducting effective records checks.

Check your agency’s records. The first step in any investigation should be running the names of the subjects through the complete records of the investigator’s own agency. Through agency records, the investigator will be able to establish if the subject is already being investigated by another member of his department or by his colleagues in other departments of the same agency, or if the subject has been investigated in the past. Knowing the subject’s history with the agency can save a great deal of time by helping investigator to avoid duplicating the work that has already been done by others. The investigator should also check his agency’s records for the names of the subject’s relatives and close associates because information about these individuals

can provide not only intelligence with respect to the subject, but also information about potential informants who might be able to assist with investigation.

Check other law enforcement agency records. Records checks should not be limited to the investigator's own agency: "A wise investigator will check the name of a newly assigned subject through the logical law enforcement agencies within his geographic area to determine what information, if any, they have on the subject." In most instances, inquiries can be made of other law enforcement agencies without fear of jeopardizing an investigation. Caution might be required if the subject is a law enforcement officer or if the law enforcement officers within the agency being checked has members who are somehow connected with the criminal activity being investigated. Investigators should also remember to utilize existing task forces to speed up records checks because task force member agencies should be able to check their own agency records in a faster and more thorough manner than could outside agencies.

Check the records of other agencies/public utilities/companies. Every agency that has an impact on the subject should have some form of record on that person: "These records can yield a variety of interesting facts that may be of value in an investigation. Often the information itself is of little value, but when combined with other facts developed about a subject, it can become significant." Some of the records maintained by other agencies which can be reviewed for information on the subject are records on property taxes, professional and other types of licenses, various types of permits, driver's licenses and vehicle registration, property ownership, welfare, vital statistics (birth, death, marriage, divorce and similar).

Public utilities also maintain some personal information about their customers and their property, including information on each customers' method of paying for their services.

Although banks are reluctant to release information about customers without a court order, banking records are worth the trouble as they can be very revealing and, in many instances, can be used as evidence to prove wrongdoing.

A subject's telephone records are often valuable to investigators: "Excellent evidence can be developed from such records in light of the fact that some people tend to be careless with respect to telephone use. Even a highly sophisticated terrorist may occasionally slip and make an unwise telephone call...".

Another source of useful information are employment records. Some employers require that potential employees submit lengthy applications containing everything from a listing of previous employers to arrest records, education, and family history. Some companies will make their records readily available, while others will require court orders, especially since most law enforcement agencies cannot reveal the reason they are seeking the information. In this regard, special care must be used when contacting employers in terrorism cases because "if the employer believes that the

employee could be a terrorist, he may terminate or transfer him out of fear," which could alert the subject that he is under investigation. For this reason, investigator should not use "a volatile term like 'terrorism' when interviewing an employer unless he truly believes that the nature of the threat posed by the employee requires such notification."



Check the court records. Courts usually maintain very accurate records and therefore are excellent sources of information. Investigators should check court records to learn if the subject has been involved in any proceeding in that court.

Check the Internet. Investigators should run names of new subjects through an Internet search engine to determine whether any information is available. This should be particularly done in terrorism investigations, because political or religious extremists often use the Internet to promulgate their causes. However, investigators should bear in mind that the Internet is not necessarily a reliable and accurate source and be very careful in employing Internet information as a basis for search or arrest warrants. Also, if information obtained from the Internet results in a change in the direction of an investigation, or leads an investigator to take a specific action, it is important that this information be properly documented and reflected in the case file.

Records checks should be thorough. Comprehensive records checks are very important in terrorism investigations. Records checks should not be limited to the outset of an investigation and investigators should occasionally recheck the subject's name against available records, especially if the investigation lasts long.

Source: William E. Dyson, *Terrorism: An Investigator's Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Surveillance, Part I

“Surveillance” means visual observation of targeted persons and locations by law enforcement officers for the purpose of developing information that can ultimately lead to a prosecution. Surveillance is a valuable investigative tool because it involves actual, real-time observations of targets conducted by law enforcement personnel who, as professionals, make credible and reliable witnesses in court proceedings. However, surveillance also has several disadvantages. Firstly, it is time-consuming, manpower-intensive, and taxing on agency resources. Secondly, there is no guarantee that it will produce positive results. Finally, it can be a risky technique to use, especially in a terrorism investigation which involves subjects who place great emphasis on security and practice counter-surveillance measures. For all these reasons, “careful consideration should be given before using this technique, especially in situations in which other investigative techniques are yielding valuable information.”

In this issue we talk about types of surveillance and various methods of conducting surveillance. In the next issue, we will offer you some tips for effective use of this investigation technique in terrorism cases.

There are three basic types of surveillance – moving surveillance, fixed surveillance, and combination surveillance.

The best-known type of surveillance is **moving surveillance**, where law enforcement officers literally follow the subject wherever he or she goes. Although probably the simplest to organize and coordinate, this method is also the easiest for the subject to detect.

With **fixed surveillance**, only the subject moves, whereas investigators assume stationary positions along the subject’s predicted route. Investigators do not actually follow the subject but observe him and note his activities as he passes through their assigned station. The main strength of this surveillance type is that it is least likely to be detected. However, fixed surveillance is very complex and consumes a lot of manpower, which is why it is most suitable for coverage of restricted areas or for short distances.

Combination surveillance is a mixture of both moving and fixed surveillance. Most well-established surveillance teams rely heavily on this method because it utilizes the strengths of these two types of surveillance, while limiting some of their disadvantages: “The combination method requires more manpower than does moving surveillance alone; however, it is simpler to use than the fixed method, and is nowhere near as manpower-intensive.”



There are various methods for conducting surveillance that can be applied within these three general types of surveillance:

Around-the-clock coverage. This method involves covering the subject 24 hours per day. The main advantage of this method is that it enables continual observation of the subject. However, it is very time-consuming and the least secure.

Limited-hour coverage. The concept behind this surveillance method is to restrict coverage to the subject’s most active hours, when law enforcement assesses he has opportunities to engage in criminal activity. The main disadvantage of this method is that there is a chance that the subject will commit crime during the time he is not being covered.

Specific coverage. In this method, subject is covered only during periods when it is believed that he will engage in criminal activity. Obviously, this surveillance method depends heavily on intelligence developed through other investigative techniques.

Capsule coverage. The idea behind this method of surveillance is to develop a complete picture of the subject while employing minimal resources. Capsule coverage involves covering a subject during every part of a 24-hour period on each day of the week. There are several variations of this methods. The one that is based upon the days of the week involves conducting surveillance, for example, for 24 hours during each Monday for a month. Then, if nothing is developed, surveillance may be staged throughout some other day of the week during the next months. Another variation of this method divides each day into segments that are covered on a regular basis. For instance, a subject is surveilled between 6:00 A.M. to 12:00 noon for a week. If nothing significant occurs, a capsule of 12:00 noon to 6:00 P.M. might be given coverage during the next week.

Event coverage. This method is designed to cover a person or location in conjunction with a particular event. This method is more commonly used in terrorism investigations than in other kind of cases. When used in the context of terrorism prevention, surveillance of logical targets is initiated around the dates when the event carrying the risk of a terrorist attack is taking place. This method can also be used in response to a terrorist attack, in which case coverage of certain individuals is initiated immediately following an attack in the hope of observing people engaging in suspicious behavior.

Spot check coverage. Another method of surveillance that is frequently used by law enforcement agencies is spot check coverage. In this method, an investigator goes past a given location to observe what activities are underway and who is there. Spot checks are done easily, with minimal risk of detection, and thus can very valuable, especially in complex investigations. They can be conducted either on a regular basis or sporadically. They can also be well-planned or done with a little forethought when an investigator happens to be in the area. In any case, it is essential to make sure that observations made during spot checks are properly documented.

Source: William E. Dyson, *Terrorism: An Investigator's Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Surveillance, Part II

In the last issue we talked about different surveillance methods and this time we offer you several practice tips for conducting surveillance in terrorist investigations.

As already noted, surveillance can be challenging in many aspects, especially when targets are terrorist suspects. For this reason, it is essential to carefully consider and weigh all pros and cons before instituting surveillance operations. If a decision is made to employ this investigative technique, investigators should invest effort to thoroughly plan the coverage and limit its scope as much as possible because “the longer and more extensive the surveillance, the greater the opportunity for detection.”

Here are some good practices for successful planning and smooth execution of surveillance operations:

Investigation and subject background. Police officers who will conduct the surveillance should be thoroughly briefed about their target. They should be given photographs of the subject, his known associates, and relatives. It is also important that they understand the goals of the surveillance and that they are familiar with the information that has already been collected during the investigation, as well as with missing facts that they should try to develop through surveillance.

Vehicles. Vehicles used for surveillance should be reliable and well-maintained. Investigators should use plain-looking vehicles that blend into the community and generally go unnoticed. Vehicles that attract attention, such as brand-new, sports, custom, bright-colored vehicles, and vehicles with noticeable body damage, must be avoided: “Any vehicle that will cause the average person to give it a second look should not be used in surveillance.” However, even the most nondescript car will be detected if the target sees it too often. To avoid detection in prolonged surveillance operations, it is ideal to frequently exchange vehicles. If that is not possible, officers conducting surveillance can alter the appearance of their cars to make them look different each time the subject sees them. This can be easily done by changing the driver; removing or changing wheel covers; frequently changing items hanging from the rear-view mirror; placing a changing array of items on the rear window ledge (including stuffed animals, hats, clothing, trash) or on the dashboard (cupholders, compasses, note pads, tissue dispensers, and parking permits); placing and removing various props inside the car, including baby seats, folding wheelchairs, boxes, and briefcases; placing and removing bike racks (with or without bikes), roof carriers, and ski holders.

Surveillance personnel. Like with the vehicles, it is important that surveillance officers blend into the location where the coverage is being staged. This is especially important in foot surveillances: “Even exceptionally tall, short, or possibly handicapped people look ‘average’ when in vehicles. On foot, however, distinctive looks are likely to be noticed.” Officers who are known to the subject on sight should not participate in surveillance of him. It goes without saying that investigators involved in the

operation must be properly trained, knowledgeable and well-prepared to handle delicate situations, such as potential confrontation with the subject.

Disguises. Investigators should also try to alter their appearance from time to time, regardless of how plain looking they are. The simplest way to do this is change of clothing. An appearance can be quickly modified from formal to casual by pulling out or tucking in an article of clothing or by using jackets, coats and reversible outerwear. Hats and glasses are also valuable disguise props. Having several pairs of glasses and sunglasses of different styles and an array of easily folded soft fabric types of hats is a simple way for an officer to modify his or her appearance. Another trick that is particularly useful in foot surveillances in which the officer may have a face-to-face encounter with the subject, is to use some highly noticeable prop (for example large belt buckles, distinctive earrings and other jewelry, highly visible bandages...) that draws attention from the person. The idea is to make people focus on the prop rather than on the face, so that if the encounter between the surveillance officer and the target happens, the officer is no longer recognizable to the subject after he removes the prop.



Techniques that terrorists use to detect and avoid surveillance. As already emphasized, terrorists often practice countersurveillance measures. Some of the things they do to detect and avoid surveillance are:

- *Constant observation of surroundings.* Terrorists try to be aware of their surroundings and people around them and become immediately suspicious of anyone they observe several times. Some terrorists are open in their observations, while others use less obvious methods such as glancing back while tying shoes or using reflective surfaces like windows to observe their surroundings.
- *Erratic driving.* Terrorist will sometimes drive in an unusual or erratic manner (rapid acceleration, sudden stops, driving too fast or too slow, parking along the road, driving into dead-end-streets) with an aim to detect vehicles attempting to maintain close coverage.
- *Using public transportation.* Public transportation can be effectively used to both spot and avoid surveillance: “A subject who suddenly parks his vehicle and boards a bus may be able to observe cars trying to follow. He will certainly become suspicious if he sees someone else exit a vehicle and board a bus. A person on foot can also use public transportation to elude and detect surveillance. The simplest method is to get off the public transportation within a block of entering it. Anyone else who does the same will be identified as following the subject.”
- *Using associates to detect surveillance.* Terrorists sometimes ask their associates to observe them as they leave certain location to establish if anyone is following them.

Confrontation during surveillance. As terrorists are trained to be alert for law enforcement surveillance, it is possible that the officer will come under suspicion by the subject. In fact, confrontations may come not only from the subject, but from several different directions, including the subject’s associates, a law enforcement officer performing his duties or an uninvolved person such as neighbor or security guard. An investigator’s reaction in this situation is crucial because “how the investigator responds to such confrontations can make or break a case.” For this reason, the surveillance officer should always be ready to provide some plausible explanation for being where he is and to extricate himself without confirming the suspicion that he is conducting surveillance.

Surveillance documentation. All surveillance activities must be properly documented because “surveillance is only as good as its documentation.” Maintaining good logs is imperative even in instances where nothing believed to be of value has been learned, not only because surveillance records some day may be needed to support investigator’s testimony in court, but also because “some of the seemingly unimportant information learned during a surveillance may turn out to have some significance at a later stage of the case.”

Source: William E. Dyson, *Terrorism: An Investigator’s Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Informants, Part I

In this issue we begin a discussion on the use of informants. We will first talk about the different types of informants and in the next issue we will offer you practice tips for operating an informant.

An informant (sometimes called a “source” by law enforcement) is defined as “an individual who covertly provides accurate information to a law enforcement agency on a continuing basis.” In essence, there are three types of informants: inside informants, periphery informants and outside informants.

An **inside informant** is a person who holds a position within a criminal or terrorist group which gives him knowledge about its operations and allows him to continue to learn about the group’s activities. He could be an active member, a trusted contact, an advisor, or even a leader (but not the top leader). Although an ideal informant from the law enforcement point perspective, an inside informant is the most difficult to develop. The key advice for developing an inside informant is to “know the enemy.” That means that an officer approaching a potential inside informant should be truly knowledgeable about the group and the contacted person. He must exhibit an appearance that would be accepted and be able to initiate some degree of conversation with a would-be informant. The officer should be able to determine how to entice the informant to become a source and to try to engage him by offering something that will appeal to him. Establishing communication with a terrorist subject is often a challenging task because in many instances they are schooled to avoid law enforcement contact.

The **periphery informant** is a person who occupies a lower position within the terrorist group, who associates with some members of the group, such as a spouse, relative, or co-worker, or who occupies a position outside the group that nonetheless enables him to be able to develop information, such as a neighbor, or member of a different criminal organization. Periphery informants should not be expected to provide a considerable amount of information – they will usually supply some information on part of the case which can be either evidentiary in nature or provide a lead on which an investigator can develop information. However, periphery informants are usually much easier to develop than the inside informants and investigators should try to develop them even when they have inside informants, especially in long-running investigations.

The outside informant is a person who has a little or no relationship with the terrorist group but is willing to cooperate with law enforcement by accepting to be placed in a position from which he can develop valuable information about the group. There are two types of outside informants: “lukewarm” and “cold start” informants. A lukewarm informant is an individual who has some obvious natural relationship with the group (for example, if the group is involved in car thefts, this person might have a car theft conviction). A cold start informant has no clear connection

with the targeted group or its activities. Investing effort into developing “cold start” informants makes the most sense in long-running investigations as it will require a lot of time for such a person to work his way into the group. In this respect, cold-start informants are practically starting from the same point as undercover officers because “neither have credentials that would qualify them to be inside members of a group”. For this reason, an agency that considers instituting undercover operations against a group should also consider using a cold-start informant because “it might be an excellent way to test the waters before initiating an expensive and manpower-intensive undercover project.” Potential outside informants can be found anywhere. They can be found among ordinary people who in their encounters with law enforcement express interest in assisting them in their job. Potential cold-start informants can also be recruited from closed informants or found in other investigations: “There may be a periphery person in one case who would like to make a “deal” to avoid prosecution, but who has little of value to offer. An officer might be able to use such a person as a cold-start informant in another criminal conspiracy investigation.”

People become informants for different reasons. Understanding what motivates informants is crucial for successful development of informants: “The best informant developers are officers who successfully identify the factors that motivate the people they are targeting, and then capitalize on them. Once they have encouraged a person to cooperate, these investigators stimulate the person by continuing to stress the factors that motivate him or her.”

Source: William E. Dyson, *Terrorism: An Investigator’s Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Informants, Part II

In this issue we offer you practice tips successfully working with an informant.

Handling practices. An official “handling officer” should be assigned to each informant. A secondary or backup officer who knows the informant should also be assigned step in and replace the handling officer should he be unavailable.

The handling officer should establish a control file for each informant. The control file should contain the informant’s personal information, the results of background checks, copies of his reports, and the results of the vetting operations that were done to verify his honesty and reliability.

Informants must understand that “being an informant is not a ‘get out of jail free card.’” Officers must explain to an informant that he is not allowed to violate the law at any time—neither while developing information for a law enforcement agency nor while “off duty”—and that an arrest

or other problem with the law could cost him his position as an informant.

It is essential to ensure that information produced by the informant is properly documented because, “from a law enforcement perspective, if an informant’s information has not been documented, it does not exist.” Officers should complete debriefing reports shortly after any contact with the informant, while information is still fresh in the officers’ minds. Preparing informant reports in a timely fashion is important not only for keeping an investigation case file up to date but also because it helps the investigator identify possible loose ends that need to be addressed and to promptly seek clarification or additional information.

Vetting. It is important to periodically verify the accuracy of the informant’s information. The fact that an informant was once reliable is not a guarantee that he will always be reliable. Some of the vetting methods that investigators can use are:

- Revisiting previous debriefings to establish whether the informant’s more recent statements are consistent with previously given accounts of events;
- Having another officer debrief an informant or bringing in a superior officer to sit in a debriefing session;
- Conducting records checks with other agencies to determine whether the informant has engaged in criminal activities of which his handling officer is unaware;
- Asking other informants about this informant (Of course, this must be done without identifying the person as an informant);
- Using other investigative techniques to verify the informant’s statements;
- Asking informants to sign debriefing reports or undergo polygraph testing (For some sources, the idea of signing something or a suggestion of the polygraph will cause them to want to “clarify” some of their statements. However, these methods should be used cautiously as some informants might regard such requests as a sign of distrust.)

Debriefing. The debriefing of an informant should be conducted in a similar manner as any official business interview that an investigator would conduct. However, investigators sometimes forget to ask the basic questions that should be resolved during any interview – “who,” “what,” “when,” “where,” “why” and especially “how”? Investigators should always remember to ask an informant how he knows something is true and correct. To get full and accurate information, investigators should debrief informant as soon as possible after an event while his memories are still fresh.

Security. It is important that the handling officer practice good security techniques with respect to meetings and communication with the informant because if he does so, the informant will be encouraged to practice good security habits too. Handlers should bear in mind that informants often

have little knowledge about what constitutes good security and that it is up to handling officers to educate them.

Informants should be warned not to reveal their status to anyone else, not even in arrest situations. Officers need to explain to an informant that he should not try to talk his way out of a traffic ticket by revealing his informant status or to count on getting off scot-free on account of mentioning his cooperation if he is arrested for a more serious violation. An informant needs to understand that anyone who knows about his informant status presents a threat to his security and that he should not trust anyone outside of his handlers with this secret.

One of the essential security practices is to meet with informants at locations where no person connected to the investigation can observe the meeting: “Secure meeting locations, including safehouse-offsites and hotel rooms are encouraged for source contacts. This is especially true if the informant is of great value, or if documents and photographs are to be reviewed, and/or if the debriefing is expected to be lengthy.”

If officers decide to use a vehicle for meetings, they should do so with caution. They should never pick up a source at his residence or drive him around in areas where subjects of the investigation routinely go.

Officers should not bring an informant to the law enforcement agency offices overtly. If an informant needs to come to a law enforcement agency’s facility, his visit should be organized in such a manner that only few, if any, employees observe him.

Officers should not be late for meetings with informants, and they should insist that the informants also arrive on time. From a security point of view, it is not prudent for either the handling officer or the informant to hang around waiting for the other to arrive. In this regard, the handling officer and informant should agree in advance not to wait for one another more than a certain period of time. It is also recommended that handler and informant establish an “abort” signal to be used to indicate if the meeting area is not secure.

It goes without saying that investigators should avoid wearing and displaying anything police-related when meeting with an informant.

Source: William E. Dyson, *Terrorism: An Investigator’s Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Undercover Operations, Part I

The topic of this and the next issue's practice tip section will be undercover operations. In this issue we will briefly outline different types of undercover operations and important points that law enforcement agencies should consider before employing this investigation technique. In the next issue we will offer you some practice tips for conducting successful undercover projects.

An undercover operation is defined as an investigative technique in which law enforcement officers operate covertly for the purpose of developing evidence about illegal activities. In an undercover operation, one or more undercover officers is placed into position which enables him or her to provide direct information about criminal activity and to testify as a direct witness against a subject or a criminal conspiracy. The scope of undercover operations can vary greatly, ranging from a simple covert contact in which some intelligence is gathered to highly elaborate projects involving several investigators.

Undercover operations have several advantages. First, they can produce spectacular results that may not be yielded through other investigation techniques. Second, unlike most approaches that are used to solve crimes that have already been committed, undercover operations enable law enforcement to proactively react and prevent a crime. Third, because of their official position and training, law enforcement officers are considered more desirable witnesses in court than informants or the average cooperative citizens.

However, undercover operations are at the same time extremely complex, time- and manpower consuming, resource-intensive, dangerous, and potentially psychologically harmful for the undercover officer and his personal life.

There are essentially three types of undercover operations: limited contact, semi-deep undercover, and deep cover operations.

In a **limited contact or "one shot" undercover operation**, an undercover officer makes "one or more brief contacts with a subject or other knowledgeable person for the purpose of developing intelligence or evidence" without revealing his identity as an officer. Such an operation could involve attending a meeting, engaging a person in a conversation, visiting a target location, etc. Although this type of undercover operation is usually short-term, it should nevertheless be well-planned and well-documented.

In a **semi-deep undercover operation**, an undercover officer "makes contacts in the target area with some degree of frequency, but he is not functioning on an around-the-clock basis." In this type of project, an undercover officer should have quality props to support his fake identity, including false personal and vehicle documentation, and sometimes even a clandestine residence or employment that the subject can see if necessary.

Deep cover operation is the most complex level of undercover work. It is a full-time assignment in which an undercover officer joins the targeted subject or conspiracy on a full-time basis. This means that a deep cover officer should not perform other police work and that the law enforcement agency should refrain from using him to simultaneously perform undercover functions in different cases, unless they involve the same type of crime and can complement the targeted case.

As already emphasized, undercover operations are very complex and "involve a great deal more than an investigator telling people that he is someone and something other than what he really is." For this reason, law enforcement agencies should thoroughly weigh all pros and cons before employing this investigation technique, taking into consideration especially the following points:

Have all other investigation techniques been exhausted? If less demanding techniques can accomplish the same objectives, undercover operations should not be used.

Is it an emergency situation? Situations where lives are at stake may require instituting an undercover operation. For example, if an extremist group is trying to obtain explosives to bomb a target, an undercover officer could assume the role of an explosives provider in order to preclude someone else from responding to the request.

Is there a suitable person available to function in the undercover role? Undercover work is unique and requires certain skills and talents that many people do not possess, and even investigators who possess such qualities may not be able or suitable to participate in undercover assignments for various other reasons (for example, the negative impact that such operations will have on their family life, they are well-known as law enforcement officers or have other specialized responsibilities within their law enforcement agency...). In any case, it is probably better to abandon the project than to use an inappropriate undercover operative.

Can the agency maintain complete security for the operation? The undercover operation should not be common knowledge in the department or the prosecutor's office. The specifics of the undercover project should be kept on a need-to-know basis.

Is the agency able to protect the undercover officer? The law enforcement agency must do a proper assessment of what is required to fulfill this commitment because "the more dangerous the target, the more protection the undercover investigator may require." Security for the undercover officer can require employing a variety of precautions such as surveillance, electronic coverage, even assigning additional officers to function in other undercover roles.

Is the agency able to deal with fallout? If it appears that an undercover agent and his family are in danger, or that the agent's ability to continue functioning as law enforcement officer has been compromised, the law enforcement agency should be ready to transfer the undercover operative away from the area where undercover project was undertaken.

Source: William E. Dyson, *Terrorism: An Investigator's Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: Undercover Operations, Part II

Selecting an undercover officer. Selecting an appropriate officer for an undercover role is one of the key factors for the success of operation. Here are a few points that should be considered to ensure that a good choice is made.

Experience. Undercover projects should be entrusted to experienced investigators only: “One of the main values of undercover work is that it places a skilled investigator in a position where he can use his good judgment and knowledge to develop sufficient evidence to prosecute the suspects. If the candidate for the undercover position does not have these attributes, one of the main reasons for using the undercover technique is compromised.”

Compatibility. However, the fact that an officer is an outstanding investigator does not necessarily mean that he will be as effective in undercover work. The undercover officer should possess characteristics that would enable him to blend into the targeted situation with a minimum of effort. He must have some skills, talents or qualities that would cause the group to want to recruit him and accept him as “one of the gang.” It is crucial that the officer be compatible with the project and its requirements. In this regard, it is important to remember that the fact that he was successful in undercover work before is not necessarily a guarantee that he will be a good fit for a new project.

Maturity and Stability. Undercover work can be very demanding. It can involve a lot of loneliness, a great deal of pressure, and exposure to many undesirable temptations. For these reasons, it is important that an undercover operative is a mature and stable person. Another point that must be considered in this regard is whether there exists a risk of undercover candidate switching loyalties and joining the terrorist cause. Placing an undercover officer into a group with which he holds sympathetic political views should be avoided. Similarly, an officer who strongly holds beliefs that are in opposition to those of the target group is also not a good choice for undercover task.

Clean personnel record. An undercover officer should have a clean personnel record. If the officer’s background includes disciplinary actions, these could impair his credibility in court, especially if he has been disciplined for giving false statements, lying, or failing to follow orders while on duty.

Handling officer. Assigning a handling officer in deep cover and some semi-deep undercover operations is a must. The role of handling officer is to be a link between the law enforcement agency and the undercover operative. He will arrange for, or in certain situations, conduct briefings and debriefings of the undercover officer. He will transmit messages between the undercover officer and the agency. The handling officer will listen to the undercover officer, monitor him for signs that he is weakening or needs assistance, and offer counsel and advice. A handling officer’s functions also include taking care of a wide variety of the

undercover officer’s personal matters, including paying his bills, picking up mail, taking care of his vehicle and other property. The handling officer should be a knowledgeable law enforcement officer, ideally with some personal experience with undercover work. He should be a stable, mature, and emphatic person, a good listener, and enjoy the undercover officer’s respect and confidence.



Securing false documentation. False documentation supporting the new identity is a foundation upon which the undercover officer is “created” and therefore should be treated very seriously: “Weak documentation can bring down an undercover officer just as fast as a poorly constructed foundation can bring down a building.” The undercover agent’s life can depend upon the quality of the false identification, which is why the law enforcement agency must ensure that his false identification is of sufficient quality to withstand scrutiny. Similarly, the law enforcement agency should ensure that the props that are necessary to make that undercover officer appears what he claims to be are assembled. For example, if an undercover officer’s residence will be visited by the targets or anyone who will report to the targets, the residence should be furnished so that there will be no question that the undercover officer lives there.

Entrapment. In cases that are built on evidence obtained through undercover operations defendants will often claim entrapment in court: “Defendants will claim that somehow the undercover officer caused them to violate the law. Terrorists will claim that although they may hate the government, they never actually intended to take any illegal action against it until the undercover officer suggested it.” An undercover officer must exercise great caution throughout the course of the undercover project to ensure that he does not undertake any actions that could constitute entrapment. To protect himself from entrapment allegations, an undercover officer, as well as other law enforcement officers providing support to the undercover operative, should carefully document their actions. To avoid *agent provocateur* accusations, undercover officers must also take care not to exhibit the natural leadership or “take charge” traits that police officers often have: “It will be very difficult to prosecute a criminal conspiracy in which the undercover law enforcement officer can be shown to be a leader, or essentially ‘in charge’.”

Source: William E. Dyson, *Terrorism: An Investigator’s Handbook*, Third Edition, Anderson Publishing (2008)

Practice Tip

Terrorism Investigation Techniques: The Crime Scene

Although investigations that result in prevention of crime are always preferred to those conducted after the offense has occurred, the reality is that criminal investigations most commonly begin with the commission of a crime. The crime scene as a location where illegal activity has taken place can be extremely important for solving the crime, especially in terrorism cases in which some of the most valuable evidence is likely to come from the scene of the terrorist attack. Also, physical evidence obtained from the crime scene is usually strong and difficult for a subject to dispute in court. In this issue we offer you useful tips for investigating a crime scene.

Upon arriving at a crime scene, the investigator must first determine what happened and if a crime occurred: an explosion does not necessarily mean that a bomb detonated, just like not every fire is an arson. In any case, law enforcement's immediate priority should be to help people who need immediate attention. Once those in need of assistance have been taken care of and after it has been determined that a crime has indeed taken place, the next steps should be identifying and apprehending the perpetrators, addressing the crime scene, and conducting initial interviews with witnesses and victims of the crime.

Law enforcement officers should remember that the crime scene is more than just the exact location where the crime occurred and that it can also include the areas adjacent to, above, and below that location, as well as anything that has passed through the area. The scope of the crime scene and its value for the overall investigation will vary greatly depending on the nature of the offense. Terrorist attack crime scenes will generally require thorough investigations and can yield extraordinary evidence if conducted properly. In this regard, officers investigating the crime scenes of terrorist bombings, arsons and other similarly violent incidents should never assume that nothing of value can possibly be found in the rubble because outstanding evidence can be recovered even from what appears to be total destruction.

Investigators must strive to preserve the crime scene and protect it from contamination as best they can so that evidence can be recovered in a manner that permits it to be brought into court. However, terrorist attacks will often generate situations that will require some penetration of the crime scene by actors who are not members of the evidence recovery team. These situations may include, for example, rescuing and assisting the injured, dealing with immediate dangers (fires, unsafe structures, toxins, gas leaks...), searching for secondary explosive devices, etc. Even though access to the crime scene may not be fully restricted, law enforcement officers should ensure that only those with proper authorization are allowed to enter it.

Crime scene investigation should begin as soon as is reasonably safe and feasible: "Timely evidence collection is important but should be tempered with common sense and safety concerns." Unnecessary delays should be avoided because delay in conducting the crime scene investigation involves the risk of both contamination and decay: "Things can change over time. Wind can blow evidence away or bring contaminants into the scene. Heavy rain could wash away footprints. 'Wet' items, like those splattered with blood, can dry."

To ensure that evidence is collected in an organized manner, the crime scene investigation should be well planned and coordinated before investigators enter the area. When they enter the crime scene, they should know exactly what they are supposed to do. Ideally, the crime scene should be divided into sections prior to the investigation. Each investigator should be assigned the specific section and specific assignments to be conducted within that area. Of course, the goal of conducting a well-planned crime scene investigation can be in tension with the goal of responding quickly to a terrorist attack. Law enforcement agencies can resolve some of this tension by preparing in advance, creating plans to respond to various types of terrorist incidents, and practicing those response plans with other emergency-response agencies.

Upon initial arrival at the crime scene, law enforcement officers must interview witnesses as soon as possible to try to determine what happened and learn about the possible perpetrators, victims, and even about other witnesses who may have already left the scene. These initial interviews do not have to be in-depth, but officers must remember to obtain necessary information on the people they interview so they can be easily located for a second interview. Even if witnesses can be thoroughly interviewed at the scene, it still might be useful to talk to them again at a later date because it is possible that, once the initial state of shock has passed, some of these people may be able to recall something that they had not previously mentioned. Investigators should put in the effort to at least identify everyone who may have been a witness to the crime or may have been in the vicinity when the crime occurred. Rescue workers and other emergency personnel who were the first to respond to the crime scene should not be overlooked as possible witnesses because, even though they arrived after the incident occurred, they may have been there soon enough after the incident to have observed something important, such as perpetrator escaping. The owner, lessee, or manager of the property where the crime took place should also be interviewed as soon as possible even if they did not actually witness the crime because it must be determined whether they were threatened and if they know of anyone who would have attacked their facility.

Investigators should locate every security camera within the crime scene area, and all such cameras that could possibly observe people entering or leaving the crime scene. The area should be canvassed quickly, because in many instances security camera recordings are deleted automatically every few days. Efforts should also be made to identify people who may have been taking pictures in the crime scene area around the time of the incident because their recordings may be just as valuable as those taken from fixed security cameras.

Source: William E. Dyson, *Terrorism: An Investigator's Handbook*, Third Edition, Anderson Publishing (2008)