

Summer 1962

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### Recommended Citation

James W. Osterburg, Selection of Criminal Investigators in Law Enforcement Agencies, 53 J. Crim. L. Criminology & Police Sci. 264 (1962)

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## SELECTION OF CRIMINAL INVESTIGATORS IN LAW ENFORCEMENT AGENCIES

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The ends of society depend greatly on the existence of a favorable climate of law and order. The combined efforts of the legislature, the police, the courts, and correctional institutions collectively add up to the process called the administration of justice. This is the means whereby society attempts to achieve the climate necessary for its stability and progress. When the penal law or criminal sanctions fail to deter, or the patrol force fails to prevent, or the correction process fails to rehabilitate, then the investigative function assumes a significance of vital importance to the community. How effective the detective forces in a community are, consonant with the democratic safeguards imposed by the Constitution, is a problem that should be of great concern.

Almost daily the solicitude of the highest levels of the judicial and legislative branches of the government for the operational tactics of the detective or criminal investigative forces of the country is reported. Fairly often, on Monday, its traditional decision day, the Supreme Court of the United States hands down some finding in which the heart of the issue involves current detective practice. Great constitutional questions posed in quite recent times by the tactics of criminal investigators revolved around such issues as: confessions and prisoner detention;<sup>1</sup> the right of defense counsel to inspect confidential witnesses' reports in investigative files;<sup>2</sup> disclosure of a confidential informant's identity;<sup>3</sup> wiretapping prac-

tice;<sup>4</sup> entrapment;<sup>5</sup> double jeopardy;<sup>6</sup> search and seizure;<sup>7</sup> and legislative investigations.<sup>8</sup>

That these problems do not arise merely out of gross indifference to civil liberties manifested in the name of investigative efficiency is well illustrated in a comment made by Quinn Tamm, at that time an Assistant Director of the Federal Bureau of Investigation:

The maintenance of the public peace and the bringing of offenders to justice is an extremely difficult task, for there is often a delicate balance to be held between the rights of the community and the rights of the individual. The law enforcement officer stands in a cross fire between the obligation to bring offenders to justice and the equally binding obligation not to violate constitutional rights in doing so. . . . The necessity of observing the civil rights of all is just as important in the big case as in the little one. The uproar of a shocked citizenry on the commission of a heinous crime, the traditional hue and cry, is no justification for the abandonment of fundamental guarantees. This is the time for even stricter observance. We constitute the tool which society uses to enforce the law in a constitutional manner and we must not break in its hand when powerful strains are put upon us.<sup>9</sup>

<sup>1</sup> *Benanti v. U.S.*, 78 S. Ct. 155; 355 U.S. 96 (1957).

<sup>2</sup> *Sherman v. U.S.*, 78 S. Ct. 819; 356 U.S. 369 (1958).

<sup>3</sup> *Abbate v. U.S.*, 79 S. Ct. 666; 359 U.S. 187 (1959).

Also *Bartkus v. Illinois*, 79 S. Ct. 676; 359 U.S. 121 (1959).

<sup>4</sup> *Elkins v. U.S.*, 80 S. Ct. 1437; 364 U.S. 206 (1960). Also *Mapp v. Ohio*, 81 S. Ct. 1684; 367 U.S. 643 (1961).

<sup>5</sup> *Watkins v. U.S.*, 77 S. Ct. 1173; 354 U.S. 178 (1957).

<sup>6</sup> Quinn Tamm, *Constitutional Law Enforcement*, an address presented at the 1959 annual conference of the International Association of Chiefs of Police on Monday, September 28, 1959, p. 8.

<sup>1</sup> J.S., Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, Hearings on *Confessions and Police Detention*, 85th Cong., 2d Sess., 1958; *Mallory v. U.S.*, 77 S. Ct. 1356; 354 U.S. 449 (1957).

<sup>2</sup> *Jencks v. U.S.*, 77 S. Ct. 1007; 353 U.S. 657 (1957).

<sup>3</sup> *Roviaro v. U.S.*, 77 S. Ct. 623; 353 U.S. 567 (1957).

Writing in *The New York Times*, Anthony Lewis, a staff reporter in their Washington Bureau, speculates on

... why the court has so many cases on state criminal procedure now, while it had almost none a few decades ago. The reason is surely not that police were kinder and state trials fairer in the earlier period. The court's willingness to protect the rights of state prisoners, beginning in the Nineteen Thirties, has undoubtedly led more prisoners to seek its protection. And constitutional standards for fair trials have slowly developed.

It is probably not surprising that in a world racked by totalitarian brutality, torture and official murder, the Supreme Court should place a high constitutional value upon fair criminal procedures.<sup>10</sup>

It is apparent that to a constantly increasing degree investigative practice will have to withstand critical inquiry. Tactics satisfactory in the past will no longer do as the keener application of the knife edge balance between civil liberties and efficiency in law enforcement is employed to determine acceptable performance within the guide lines for the investigative process. The potential for future growth and improvement in investigative methods will be determined largely by the caliber of the persons who carry out law enforcement duties.

The problem of the selection, training, and evaluation of criminal investigators then is one which ought to be reviewed periodically in the light of the emerging trends indicated by administrative and judicial decisions and developing personnel practice. The spread of public (or private) defender systems,<sup>11</sup> the association of lawyers specializing in the practice of criminal law to exchange trial and cross-examination "know-how,"<sup>12</sup> and the like, point to the need for greater care in the selection of future criminal investigators.

Considering the importance of the subject matter, it is astonishing to discover that *no* lit-

<sup>10</sup> Anthony Lewis, "High Court Shift Since 30's Noted," *The New York Times*, January 18, 1960, p. 16, col. 1.

<sup>11</sup> Special Committee of the Association of the Bar of the City of New York and the National League Aid and Defender Association, *Equal Justice for the Accused* (New York: Doubleday, 1959).

<sup>12</sup> "Lawyers in Criminal Cases, National Association of Defense," *The New York Times*, August 18, 1958, p. 21, col. 8.

erature—journal articles, or monographs—exists on the selection of criminal investigators. Moreover, in a recent text devoted to *Police Personnel Practice*,<sup>13</sup> the selection of detectives (or criminal investigators) is not even mentioned much less discussed. Several texts devoted to police administration treat the subject very briefly,<sup>14</sup> in essentially the same manner, without documentation for their recommendations. With the exception of two interesting statements written respectively by J. Edgar Hoover, Director of the Federal Bureau of Investigation, and Elmer Irey, former coordinator of Law Enforcement, United States Treasury Department, little has been written on this subject for the federal level.<sup>15</sup>

Related to the selection process are the twin problems of training and evaluation and retention of personnel chosen to perform the investigative task. While some relatively high level police training exists,<sup>16</sup> little is known about the utilization of this training. Only recently has any thoughtful attempt been made to study performance rating practice among municipal police departments.<sup>17</sup> Before this, the last serious attempt was in 1933.<sup>18</sup>

With crime costs estimated at about 22 billion dollars annually in the United States, the role of the investigator is significant indeed.<sup>19</sup> That a comprehensive, critical analysis of the method of selection of the persons responsible for this important task in the United States has not been attempted is remarkable. Yet perhaps it is merely indicative of the complexity of the problem.

<sup>13</sup> A. C. Germann, *Police Personnel Practice* (Illinois: Thomas, 1958).

<sup>14</sup> *Municipal Police Administration* (5th ed.; Chicago: International City Managers' Association, 1961); O. W. Wilson, *Police Administration* (New York: McGraw-Hill, 1950).

<sup>15</sup> U. S. President (Roosevelt), The President's Committee on Civil Service Improvement, *Documents and Reports to Accompany Report on Civil Service Improvement*, Vol. 3, Part 2 (Washington, D. C.: Government Printing Office, 1942), "Investigative Services," pp. 91-110.

<sup>16</sup> D. E. J. MacNamara, "Higher Police Training at the University Level," *J. Crim. Law and Crim.*, XL (1950), 657-665.

<sup>17</sup> George N. Beck, *Municipal Performance Rating*, Donner Fund Publication No. 4 (Los Angeles: University of Southern California, 1958).

<sup>18</sup> United States Conference of Mayors, *Merit Ratings in Police Departments* (Chicago: American Municipal Association, 1933).

<sup>19</sup> J. E. Hoover, "Statement of Director," *F.B.I. Law Enf. Bull.*, XXIX (February, 1960), 1-2.

## QUESTIONNAIRE

In order to throw some light on this area of almost stygian darkness it was decided that one approach might be through the preparation and distribution of a questionnaire. It was designed to ascertain current practice in the selection, training, and evaluation of criminal investigators. Written job descriptions were also sought.

The questionnaire was sent to each of the fifty states and to all cities having a population of over 250,000. In addition, cities smaller in size were sampled by selection from the 1950 decennial census listing, as reported in the Uniform Crime Reports.<sup>20</sup> A copy of the Questionnaire was mailed to five federal agencies. Approximately 200 questionnaires were mailed with a return response of about 50 per cent.

The tabulated data and details are available elsewhere.<sup>21</sup> The significant findings flowing from analysis of the reported data were as follows:

1. The most common practice in the selection of criminal investigators is designation—without an objective basis—by the head of the department.

2. The most common basis for selection and designation as a criminal investigator is “consistently good police work”.

3. In municipalities a high coincidence of selection by competitive examination and the existence of a city manager form of government is noted.

4. For the most part, the only agency employing a competitive examination open to all qualified citizens is found at the federal level of government.

5. In general, federal agency practice requires special training in some form *before* selection. In general, municipal and state agency practice requires no special training before selection.

6. On the state level more agencies provide formal training *after* selection than do not—the ratio is about 2 to 1. On the federal level the practice seems to be evenly divided—1 “do” to 1 “do not”. On the municipal level the ratio is less satisfactory, about 5 “do” to 6 “do not”. Thus, more cities have no formal training even *after* appointment than do. There appears to be no essential differences between the various size cities in this respect.

<sup>20</sup> U. S. Federal Bureau of Investigation, *Uniform Crime Reports*, XXII No. 1, 1951.

<sup>21</sup> Osterburg, James W., “The Selection of Criminal Investigators in Law Enforcement Agencies,” New York University, 1960. (A thesis presented to the faculty of the Graduate School of Public Administration and Social Service.)

7. The most common method of familiarizing a criminal investigator with his task is through “on-the-job” training. Assignment of the neophyte investigator to “work under close supervision of an experienced investigator” is the technique most often employed.

8. Scheduled, periodic “refresher” training is much more common in state agency practice than it is in municipal and federal agencies. At all governmental levels, emphasis in this type training is upon *up dating* and *remedial correction*.

9. University sponsored training and the F.B.I. National Police Academy appear to have won acceptance by law enforcement agencies as sources for “high level training.”

10. About 70 per cent of the reporting agencies evaluate their personnel. This is most often done on a 6 months periodic basis.

11. Great reliance is placed upon the opinion of the individual’s immediate superior for the purposes of evaluation.

12. Of the various possible uses of performance evaluation data, current practice largely is directed toward improving employee performance. This objective is in keeping with sound personnel theory.

13. Promotion is the chief cause for change of status as a criminal investigator, but advancement is a little better than equally likely to be to a supervisory position within the investigative branch.

14. Criminal investigators are seldom transferred for discipline. Even more infrequently does a poor evaluation record lead to a transfer.

15. A job description of the criminal investigation task is given below. It is characteristic of those which were submitted and is used by several agencies. In general emphasis is not placed on team work, or the need for specialization, but upon the individual acting as a general, “all-around” investigator. This is true at the municipal, state, and federal law enforcement levels. Outside of federal service educational requirements beyond high school are seldom mentioned. Experience as a policeman or detective is required almost universally.

## JOB DESCRIPTION

*Distinguishing Features of Work*

This is specialized police work in the investigation of criminal offenses, accidents, and related police problems as a full-time assignment.

This work involves police duty in plain clothes and requires the use of considerable discretion

and the application of specialized knowledge and abilities in the investigation and detection of crime. Assignments are received from superior officers and usually are specific cases or types of cases to be followed to conclusion, and normally closing with the preparation of a case for prosecution. This distinguishes the police detective from the other police personnel who make preliminary investigations of cases at the scene of a crime. Although work is performed in accordance with established rules and procedures, the employee must exercise considerable independent judgment in his application to specific cases. Advice and assistance is available from superiors on unusual situations and work is reviewed through accomplishments, personal inspection, and a review of written reports covering activities.

#### *Examples of Work* (Illustrative only)

Ascertains information or secures evidence for the arrest of persons alleged to have committed a crime.

Visits the scenes of crimes, searches for and preserves evidence, investigates and follows up clues, and searches for and apprehends violators.

Interviews suspects, prisoners, complainants, and witnesses to obtain information about crime.

On assignment makes specialized vice investigations and raids and apprehends violators.

Checks pawnshops, second-hand stores, and junk shops for stolen property.

Appears in court to present evidence and testify against persons accused of crime.

Investigates complaints of bad checks.

Investigates reports of missing persons and attempts to locate them.

Maintains surveillance over known agitators and suspected narcotic peddlers and other suspected criminals.

When assigned, inspects businesses requiring city licenses for operation, investigates persons applying for licenses and collects license fees.

Prepares written reports of investigations.

Performs related work as required.

#### *Requirements of Work*

Considerable knowledge of modern methods and practices of criminal investigation and identification.

Working knowledge of police rules and regu-

lations. Working knowledge of federal and state laws and city ordinances.

Working knowledge of the geography of the city and the location of important buildings.

Some knowledge of criminal law, with particular reference to apprehension, arrest, and prosecution of persons.

Ability to understand and execute difficult oral and written directions, and to prepare clear and comprehensive reports.

Ability to deal firmly but courteously with the public.

Ability to work long hours and to withstand the physical strain of police work.

Skill in the use of firearms.

#### *Desirable Experience and Training*

Experience as a police patrolman; and graduation from a standard high school, preferably supplemented by training in scientific methods of crime detection and criminal investigation; or any equivalent combination of experience and training.

#### ADDITIONAL STUDY

Upon reflection and review of the present study and the needs of the field it would appear that further examination, in depth, would be desirable. Areas offering great promise through additional study would include:

A. Research to determine the attributes of an effective criminal investigator. An objective method for measurement of these qualities is highly desirable. Selection may then be based on objective data.

B. The finding that an "on-the-job" method is the most common form of training the criminal investigator requires further examination.

Apprentice (on-the-job) type training is usually an indication of an area of activity in which principles have yet to be elucidated or a skill which requires close supervision to master. Neither of these explanations any longer is completely satisfactory for the present state of investigative knowledge. Furthermore, limitations recently have been imposed on the investigative function by external overseers as the United States Supreme Court. It is evident to many that the ability to cope with these restrictions is better developed through broad education based on principles than by a narrow, "know-how" outlook often associated with pragmatic, apprentice training.

Research is necessary to determine the consensus

concerning basic investigative principles or body of theory which must be taught and passed on. Until this is done, not only for criminal investigation, but for all aspects of police work, little credence is likely to be given by the public to the assertion this is a profession.

C. The utilization of people sent for "high level training" might be pursued further. Such training is of limited value if the person is not assigned where he can employ it to the best advantage of his department.

D. Research into possible methods of determining quantitatively the effectiveness of a detective in accomplishing the job tasks specified in his job classification is required. Retention of a criminal investigator can then be based on objective data.

*Methodology.* If the necessary cooperation by law enforcement agencies is forthcoming, inspection of departmental records, as well as personal interviews with investigators and their supervisors, can be employed. Documentary evidence

which a department is reluctant, or perhaps, forbidden to release from its custody, is sometimes open for inspection in person. Responses to a questionnaire can be spot checked and verified by record inspection and personal interview also.

A study in depth of a carefully selected criminal investigative agency is likely to be useful for the insight it might provide into this peculiar work, ranging as it does from the alpha of delicate sensitivity in matters of a person's reputation and civil liberty to the omega of ultimate force in the employment of deadly weapons to capture a criminal.

#### CONCLUDING COMMENTS

Financial support, sufficient competent personnel, time, and the ardent cooperation of some interested law enforcement agencies are the ingredients necessary to effectuate the proposed further research. The dividends to society are likely to be considerable.