

Winter 1937

## Approval and Disapproval of Specific Third Degree Practices

Herman C. Beyle

Spencer Parratt

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Herman C. Beyle, Spencer Parratt, Approval and Disapproval of Specific Third Degree Practices, 28 Am. Inst. Crim. L. & Criminology 526 (1937-1938)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## APPROVAL AND DISAPPROVAL OF SPECIFIC THIRD DEGREE PRACTICES

HERMAN C. BEYLE and SPENCER PARRATT\*

Experience with the Eighteenth Amendment should have taught us that government works best when the behaviors prescribed or prohibited by law approximate those which are widely approved or disapproved in actual practice. At least, the legal prescription of behavior cannot depart too far from general practice and acceptance without the rise of unintended reactions and unexpected problems. This is particularly the situation with respect to use of third degree practices by the police.

The term "third degree" refers essentially to those practices designed to influence suspects and witnesses to make "true" statements about some violation of law. In the nature of things, the "true" statement will be the truth as the enforcement officer can see and use it. Law enforcement agents tend to indulge in the assumption that the obtaining of a "confession" under circumstances permitting it to pass muster in criminal trial courts is a valid exercise of discretion. The line bounding this sphere of official discretion, as drawn by constitutional and statutory prescriptions, is not entirely precise; and its detail is being continually modified by the courts in cases brought before them.

But beyond the indefinite range of practice legally recognized as valid discretion is a further range of practices even more indefinite. It is common knowledge that the police often go considerably beyond the law in attempting to secure "confessions." Police officers will tell you that such practice is necessary to secure results. Clearly they have some basis for their contention. One may suspect, too, that private citizens approve some of these extra-legal practices. Doubtless also, those suspected of violation of law expect to encounter some extra-legal practice and even deem the experience, within reason, to be fair enough. However, there are times when extra-legal practice goes to extremes; and occasional cases arise where severity of practice produces results which are more intolerable than the original offense.

The actual law gives inadequate guidance, for its formal ap-

\* Professors of Political Science, Syracuse University, Syracuse, N. Y.

provals stop far short of the practices which apparently are accorded widespread although informal acceptance. Greater guidance would be afforded were the law brought more nearly into conformity with practice, and were the informal tolerance more carefully reconsidered. Then practices of approved severity could be followed to secure effective police work without the police setting an example of illegal action; and then also, intolerable practices could be more specifically restrained both by law and by opinion.

Neither the courts nor the police, over a period of time, can successfully uphold a range of practice at variance with the standards of public toleration and support. But what are the third degree practices which are deemed to be tolerable though extra-legal? That is the problem with which this study is concerned. This inquiry and such other studies as may be necessary to check upon and round out its findings should have some value as guidance (1) to the police in shaping practices to obtain greater effectiveness without occasioning unfavorable reactions from important groups of citizens, (2) to courts and prosecutors in construing indefinite principles within public approval, and (3) to legislators seeking to crystalize public attitudes into an enforceable rule of law.

## I

The instrument employed in this investigation is the psychophysical "characteristic-of-behavior scale" for measuring the severity of the third degree, previously constructed, tested, and reported in an earlier issue of the *Journal of Criminal Law and Criminology*.<sup>1</sup> This instrument presents fifty representative third degree practices graded as respects their degree of severity. These descriptions of explicit official behaviors—police practices—constitute the landmark positions of the scale. The variable characteristic exhibited by the series of behaviors is "more or less of severity." Location of these descriptive landmarks upon the continuum of the scale was accomplished by tested discovery of stable, sharp, and graded "institutional understandings" among "participants in the institution"—police, prisoners, and free private citizens.<sup>2</sup> The scale values of

<sup>1</sup> See, Herman C. Beyle and Spencer D. Parratt, "Measuring the Severity of the Third Degree," *op. cit.*, Vol. XXIV, No. 2 (July-August, 1933), pp. 486-503, particularly, pp. 492ff.

<sup>2</sup> In addition to the explanatory citations in the original article, see H. C. Beyle, "The Editor Votes," *American Political Science Review*, Vol. XXVII (1933), pp. 597-611; H. C. Beyle and S. D. Parratt, "Regulation of Electrical Utilities: How Much?" digested in *Public Utilities Fortnightly*, Vol. XVI August 1, 1935), pp. 156-160; H. C. Beyle, "Checking Response to Municipal Publicity," *Public Man-*

these practices range from  $-0.5$  through  $0.0$  to  $+9.5$ . Zero on the scale means no severity at all. The positive values mean various gradations of severity extending to that which causes death, scaled at  $+9.5$ . The negative values are those of the two statements which were scaled as exhibiting some slight indication of a variable characteristic the opposite of severity.

The directions and provisions for endorsing approved practices used in the instrument at this time are those presented in footnotes eleven and thirteen of the article which originally presented the scale. They requested the state troopers, prisoners, and free private citizens contacted in this application study to check the practices which they approved. Provision was made for such variation in approval as might be dependent upon variation of the third degree situation—different combinations of suspected offender and offense.

Returns from application of this instrument were received from fifty New York State troopers from Companies C and D at Sydney and at Oneida, New York,<sup>3</sup> from fifty prisoners in the State Prison at Auburn, New York, or the Onondaga Penitentiary at Jamesville, New York,<sup>4</sup> and from fifty free, private citizens widely distributed in a number of states.<sup>5</sup> The fifty responding troopers constitute a substantial sampling of the New York State policing force. Certainly their opinions as to what third degree practices should be approved merit attention and consideration. The fifty prisoners who checked the instrument constitute a fair representation of the different classifications of the inmates of the two prisons, according to the advice of Chief Clerk Westover and Superintendent Paddock. Of course, the fifty returns from the free, private citizens are not dependable sample of the classification they represent. They were not intended as a sample at all. Within their group, they were selected to present as much variation as possible; and as a group

---

agement, Vol. XVIII (1936), pp. 163-166; and particularly, H. C. Beyle and J. D. Kingsley, *A New Employee Evaluation Scale* (1935).

<sup>3</sup> Acknowledgment is made of the courtesy and careful answers of the troopers, and particularly of the kind consideration of Professor Raymond Moley, Superintendent John A. Warner, Deputy Superintendent George P. Dutton, Captains Stephen McGrath and Daniel E. Fox, Lieutenant Ronan, and Corporal Ray L. Gallon, who facilitated the collection of data. For those who are not citizens of New York State, it may be of interest to know that Company D has jurisdiction over that portion of the state in which the milk strike of 1933 occurred.

<sup>4</sup> Acknowledgment is made of the attention and earnest answers of the prisoners, and particularly of the kind assistance of Warden Joseph H. Brophy, Chief Clerk R. R. Westover, and Superintendent Charles Paddock.

<sup>5</sup> Acknowledgment is made of the interest and careful answers of the fifty patient housewives, legal students, professional and business men who richly deserve a more complimentary designation than that of "free, private citizens."

they present an important comparison with the others. The attitudes of these three collections, it was thought, might present differentials sufficiently significant and consistent to indicate what the promise might be of important findings from a more extensive sampling.

The findings and generalizations here reported should be taken as limited to opinions of the members of these three groups, as expressed late in 1934 and early in 1935. Before the recommendations can be safely taken as an assured basis for legislative action, a broader sampling of opinion should be treated. A more ambitious sampling, however, would have been difficult to secure until pioneered by a test indicating what "pay dirt" might be expected. As they stand, though, the present findings indicate so much of consistency as to suggest the likelihood of major confirmation by later investigation. If later surveys should indicate the widespread distribution of the approvals and disapprovals here discovered, there would be substantial basis for some rather specific suggestions as to desirable changes in the legal recognition and limitation of third degree practices of law enforcement officers.

Not only do the returns indicate considerable consistency of beliefs back of the many particular responses, but they bear evidence that the ubiquitous problems of candor and insight were not disturbing in this sampling of opinion. The troopers' endorsements of practice did not far outrun the approvals given by the free, private citizens, but they did far outrun the traditional, doctrinal position of the law. Thus, their checking amounts to much confession against interest. This would seem to minimize suggestion of undue lack of candor. Some of the tables, particularly Table VI, indicate that both the troopers and the prisoners were aware of the differing effectiveness of the several practices scaling similarly as respects degree of severity. The prisoners, too, evidenced no constraint in withholding endorsement of many practices thought essential by the troopers, or reluctance in admitting approval of some extra legal practices they deemed fair game. Both of these groups evidenced a high degree of candor and of insight. There was little problem of candor in the case of the free, private citizens. But they did evidence less insight than the other two groups. This is best noted in the instance of Table VI. In the main, though, the citizens exhibited sufficient consistency to suggest the existence of general principles, if not insight, back of their detailed checking.

## II

What might be deemed tolerable practice as respects the third degree would naturally vary with the sort of suspected offender and the nature of offense involved. The instrument provided for data contributing information as to these possible differentials. Those responding indicated approval of the several practices as applied to "the average citizen," "gangster," "negro," "communist," and "foreigner" suspected of "murder," "burglary," "embezzlement," "assault and battery," and "bootlegging." Table I presents the average upper limit of individual endorsements for each of the three groups of subjects—troopers, prisoners, and free citizens—upon each of the twenty-five combinations of suspected offender and offense designated. The corresponding central tendencies of endorsement are presented in Table II.

With the employment of psychophysical scales, the group averages of individual endorsements may be presented in terms of upper limits, lower limits, central tendencies, and range of endorsement. Depending upon the nature of the phenomena measured, one or other of these summarizing figures will be of prime significance. Thus, in the case of the Severity of the Third Degree Scale, it is the upper limit of endorsement which is most important. It would have meaning as the limit of tolerance. As might be expected, there were no appreciable differentials in the lower limits of endorsement. Consequently they are not reported. It is unnecessary to report the ranges of endorsement, for that feature is described by the summary of upper limits, in as much as all lower limits are practically the same. Appreciation of the summary of limits of tolerance will be enhanced if it is remembered that the statement of practice which describes the traditional, doctrinal position of the law is located on the scale at  $-0.3$ , "Police are careful to explain to suspect that whatever he says may be used against him."

The data presented in Table I permit of several comments. The differentials in the Troopers' endorsements, in the main, are the greatest. Those of the prisoners' are the least. The troopers tended to differentiate more in terms of the offense than in terms of suspected offender; the citizens more in terms of suspected offender than offense; and the prisoners tended to much less differentiation than did either of the other groups, although slightly favoring differentiation in terms of offense than in terms of suspected offender. These differences in the groups are quite logical, possibly founded

TABLE I

Averages of Upper Limits of Individual Endorsement of Third Degree Practices, for Situations Involving Designated Combination of Suspected Offender and Offense, by Fifty State Troopers, Fifty Free, Private Citizens, and Fifty Prisoners

|                 | Troopers |          |              |                     |             | Citizens |          |              |                     |             | Prisoners |          |              |                     |             |
|-----------------|----------|----------|--------------|---------------------|-------------|----------|----------|--------------|---------------------|-------------|-----------|----------|--------------|---------------------|-------------|
|                 | Murder   | Burglary | Embezzlement | Assault and Battery | Bootlegging | Murder   | Burglary | Embezzlement | Assault and Battery | Bootlegging | Murder    | Burglary | Embezzlement | Assault and Battery | Bootlegging |
| Average Citizen | 6.4      | 5.2      | 5.0          | 4.1                 | 3.1         | 4.6      | 3.9      | 3.6          | 3.7                 | 3.7         | 2.8       | 2.4      | 2.4          | 2.3                 | 2.0         |
| Gangster        | 6.8      | 6.1      | 5.9          | 5.9                 | 4.4         | 6.3      | 5.6      | 7.2          | 5.3                 | 5.1         | 3.1       | 2.7      | 2.7          | 2.6                 | 2.3         |
| Negro           | 6.6      | 5.6      | 5.3          | 4.8                 | 3.7         | 4.9      | 4.2      | 4.0          | 4.1                 | 4.0         | 3.0       | 2.5      | 2.5          | 2.4                 | 2.2         |
| Communist       | 6.6      | 5.7      | 5.5          | 5.2                 | 3.8         | 4.9      | 4.5      | 4.2          | 4.2                 | 4.1         | 2.9       | 2.5      | 2.5          | 2.4                 | 2.2         |
| Foreigner       | 6.5      | 5.5      | 5.5          | 4.9                 | 3.7         | 4.7      | 4.3      | 4.1          | 4.0                 | 4.0         | 2.9       | 2.5      | 2.5          | 2.4                 | 2.2         |

TABLE II

Averages of Central Tendencies of Individual Endorsement of Third Degree Practices, for Situations Involving Designated Combinations of Suspected Offender and Offense, by Fifty State Troopers, Fifty Free, Private Citizens, and Fifty Prisoners

|                 | Troopers |          |              |                     |             | Citizens |          |              |                     |             | Prisoners |          |              |                     |             |
|-----------------|----------|----------|--------------|---------------------|-------------|----------|----------|--------------|---------------------|-------------|-----------|----------|--------------|---------------------|-------------|
|                 | Murder   | Burglary | Embezzlement | Assault and Battery | Bootlegging | Murder   | Burglary | Embezzlement | Assault and Battery | Bootlegging | Murder    | Burglary | Embezzlement | Assault and Battery | Bootlegging |
| Average Citizen | 1.4      | 1.2      | 1.2          | 1.0                 | 0.7         | 1.0      | 0.9      | 0.8          | 0.8                 | 0.8         | 0.8       | 0.7      | 0.7          | 0.7                 | 0.6         |
| Gangster        | 1.8      | 1.5      | 1.5          | 1.3                 | 1.0         | 1.3      | 1.4      | 1.2          | 1.4                 | 1.3         | 0.8       | 0.7      | 0.7          | 0.7                 | 0.7         |
| Negro           | 1.6      | 1.3      | 1.3          | 1.1                 | 0.9         | 1.1      | 0.9      | 0.8          | 0.9                 | 0.8         | 0.7       | 0.7      | 0.7          | 0.7                 | 0.6         |
| Communist       | 1.6      | 1.3      | 1.2          | 1.0                 | 0.9         | 1.1      | 0.9      | 1.0          | 0.9                 | 0.8         | 0.7       | 0.7      | 0.7          | 0.7                 | 0.6         |
| Foreigner       | 1.5      | 1.3      | 1.2          | 1.5                 | 0.8         | 1.0      | 0.8      | 0.8          | 0.8                 | 0.8         | 0.7       | 0.7      | 0.7          | 0.7                 | 0.6         |

in the behaviors and understandings which do make a police force a more equitable instrument of social control than an informal coercing body of citizens would or could be. In the case of all groups, it was gangster and those suspected of murder who were selected as meriting most severe treatment, and it was average citizen and those suspected of bootlegging who were designated as deserving less severe handling. In support of conclusions looking to legislative change, it is interesting to note that the highest average of upper limits of individual endorsements by the troopers is +6.8, for the particular combination of gangster suspected of murder. This figure should be kept in mind during the interpretation of Tables IV, V, and VI, and in connection with recommendations made on the basis of the data presented in those tables. In the same connection, it should be noted that the lowest similar figure for the endorsements made by the prisoners is +2.0, for the particular combination, average citizen suspected of bootlegging. Likewise, the lowest similar figure for the endorsements made by the free private citizens is +3.6, for the particular combination, average citizen suspected of embezzlement.

### III

Now what are the specific third degree practices which are most frequently endorsed and which fall within these upper limits of approved severity? Table III presents the third degree practices designated in the severity scale which were endorsed by fifty per cent or more of the state troopers, listed in order of the percentage of troopers endorsing them, and showing the percentage of the free private citizens and prisoners also endorsing the practice. This list of statements happens to include all which were endorsed by fifty per cent or more of the free private citizens and all which were endorsed by fifty per cent or more of the prisoners. Reference to Tables IV, V, and VI will indicate the percentage of the several groups endorsing the other twenty-six practices described in the severity scale but not listed in Table III. These tables and all subsequent comment have reference to endorsement of third degree police practices as applied to the case of an average citizen suspected of murder. That situation would naturally be of most general interest.

From Table III, it will be seen that twenty-four out of the fifty practices were endorsed by a majority of the troopers. Of these, the ten which were most frequently endorsed by the troopers hap-



pen to be the only ones which were also endorsed by a majority of the free private citizens and likewise by a majority of the prisoners. All ten practices scale as respects severity within the range of -0.3 to +1.9. The generalized statement of the traditional legal rule, statement 25, is among these ten. The troopers endorsed statement 25 less frequently than they did the other nine, but the free private citizens and the prisoners endorsed it more frequently than they did any other practice except that represented by statement 4.

The twenty-four practices endorsed by the majority of the troopers scale between -0.5 and +7.4. Of these, all but four were endorsed by more than a third of the free private citizens, and all but four were endorsed by at least a fifth of the prisoners. The endorsements by the free private citizens and the prisoners fell below these proportions for all statements which have a scale value higher than +2.2 or +2.3. No statement scaling above +2.0 of severity received endorsement by a majority of the free private citizens, and no statement scaling above +1.9 was endorsed by a majority of the prisoners.

If these returns are any indication of what is considered necessary by the troopers, what is tolerated and supported by the free private citizens, and what is expected by prisoners as being entirely fair, the law could well be shifted from -0.3 on the scale of severity to somewhere around +2.0.

TABLE III

*Third Degree Practices Designated in the Severity Scale Which Were Endorsed by Fifty Per Cent or More of the Group of Fifty State Troopers, Listed in Order of the Percentage of Troopers Endorsing, and Showing the Percentage of the Group of Fifty Free Private Citizens and the Percentage of the Group of Fifty Prisoners Also Endorsing Each Practice\**

| No. of<br>Scale<br>State-<br>ment | Scale<br>Value<br>of State-<br>ment | Statement of<br>Third Degree Practice  | Percent Endorsing Practice |                          |           |
|-----------------------------------|-------------------------------------|--|----------------------------|--------------------------|-----------|
|                                   |                                     |  | Troopers                   | Free Private<br>Citizens | Prisoners |
| 11                                | 0.5                                 | Police trick suspect into confessing by pretending to be friendly .....      | 98                         | 66                       | 66        |
| 2                                 | 0.8                                 | Police ask detailed questions, tricking suspect into confessing crimes ..... | 96                         | 78                       | 70        |

\* The above list of statements includes all which were endorsed by fifty per cent or more of the group of free private citizens and all which were endorsed by fifty per cent or more of the group of prisoners.

| No. of<br>Scale<br>State-<br>ment | Scale<br>Value<br>of State-<br>ment | Statement of<br>Third Degree Practice  | Percent Endorsing Practice |                     |           |
|-----------------------------------|-------------------------------------|--|----------------------------|---------------------|-----------|
|                                   |                                     |  | Free<br>Troopers           | Private<br>Citizens | Prisoners |
| 4                                 | 0.3                                 | Police question a suspect at police headquarters for an hour .....   | 94                         | 90                  | 92        |
| 18                                | 0.7                                 | Police pretend they know more than they do about a crime to cause a suspect to tell his story and incriminate himself .....  | 94                         | 86                  | 66        |
| 36                                | 06                                  | Police ask a suspect leading questions to trick him into confessing crimes .....   | 92                         | 82                  | 66        |
| 14                                | 1.9                                 | When two suspected accomplices in the same crime are brought to police headquarters they are placed in separate cells, the police telling each suspect that the other has confessed and implicated him, without regard to the truth of such statements ..... | 88                         | 68                  | 56        |
| 48                                | 0.8                                 | Police tell a suspect that they know he is guilty and that it will be for his own good to confess .....  | 86                         | 74                  | 66        |
| 32                                | 0.0                                 | Police give a suspect a cigar to make him talk about crimes that he is suspected of having been implicated in.....   | 82                         | 78                  | 60        |
| 39                                | 1.3                                 | Police trick suspect into confessing by threatening to put him under an examination by means of a machine to detect lies .....   | 82                         | 78                  | 58        |
| 25                                | —0.3                                | Police are careful to explain to suspect that whatever he says may be used against him .....   | 80                         | 88                  | 88        |
| 8                                 | 2.9                                 | Police lock a suspect in jail all one night without permitting him to get in touch with his friends or lawyer to try to obtain a writ of habeas corpus .....   | 70                         | 24                  | 8         |

| No. of<br>Scale<br>State-<br>ment | Scale<br>Value<br>of State-<br>ment | Statement of<br>Third Degree Practice   | Percent Endorsing Practice |                          |           |
|-----------------------------------|-------------------------------------|---|----------------------------|--------------------------|-----------|
|                                   |                                     |   | Troopers                   | Free Private<br>Citizens | Prisoners |
| 34                                | 1.1                                 | Police tell a suspect that they will arrest his pals unless he makes a confession.....  | 68                         | 62                       | 26        |
| 46                                | 1.8                                 | Police deprive a suspect of food for one meal to force him into confessing .....  | 68                         | 52                       | 22        |
| 6                                 | 1.7                                 | Policeman shakes his doubled fist under a suspect's nose and tells him to confess....   | 62                         | 38                       | 32        |
| 22                                | 1.4                                 | When the police question a suspect at police headquarters they first tell the suspect that his failure to answer questions will show that he is guilty.....   | 62                         | 46                       | 26        |
| 31                                | 5.1                                 | To wear a suspect's resistance down and cause confession, the police lock him up for the night, but wake him every hour to ask him insulting and accusing questions, causing the suspect to answer before he can collect his thoughts ..... | 60                         | 18                       | 0         |
| 30                                | 0.8                                 | Police promise leniency to a suspect to cause him to tell all he knows about suspected crimes .....   | 58                         | 64                       | 32        |
| 37                                | 2.0                                 | In examining a suspect at police headquarters, the police tell the suspect dreadful stories of what happens to persons who refuse to confess  | 58                         | 50                       | 24        |
| 3                                 | 7.4                                 | At police headquarters the police lock a suspect in a cell and take turns questioning him, not letting him have any rest or sleep for three consecutive days and nights   | 54                         | 24                       | 8         |
| 40                                | 1.9                                 | During an examination at police headquarters a suspect is told that unless he confesses the police will tell his friends and relatives that he is a common jailbird.....  | 54                         | 44                       | 24        |

| No. of<br>Scale<br>State-<br>ment | Scale<br>Value<br>of State-<br>ment | Statement of<br>Third Degree Practice  | Present Endorsing Practice |                     |           |
|-----------------------------------|-------------------------------------|--|----------------------------|---------------------|-----------|
|                                   |                                     |  | Free<br>Troopers           | Private<br>Citizens | Prisoners |
| 43                                | 2.2                                 | During an examination at police headquarters a suspect is told that unless he answers all questions, the police will see that his employer knows he is a crook.....                      | 54                         | 38                  | 16        |
| 50                                | 1.3                                 | When an arrest is made the arresting officer tells the suspect that he will come to no harm if he will answer all questions asked, but that he will get hurt if he refuses to talk ..... | 54                         | 40                  | 20        |
| 20                                | 2.3                                 | Police tell a suspect that he shall be deprived of food until he is willing to confess .....   | 50                         | 30                  | 22        |
| 45                                | -0.5                                | Police are careful not to frighten suspect .....   | 50                         | 46                  | 70        |

## IV

But degree of severity is not all that is involved. Toleration of different kinds of practice would seem to vary. Greater severity of one sort is evidently tolerated where less severity of a different kind is disapproved. The following tables tell this story and offer suggestion as to possible "principles" which might govern reconsideration of law and practice with respect to the third degree.

In the following tables, the statements of the third degree practice were classified inductively as respects kinds of severity distinguishable, demarcation of the several categories and sub-categories being facilitated by attention to consistencies in the variation of the percentages of endorsement of practices. Thus Table IV presents the endorsement of all practices which might be classified as involving *personal violence*, that is, personal violence after arrest and detention has been effected and before any court has begun any stage of the process of trial. These practices involve personal violence in one or more of several respects: (a) *actual personal violence as fully as threatened*, (b) *samples of personal violence accompanied by threats of more*, or (c) *mere threats of personal violence*. Table V presents the endorsements of all practices which

might be classified as "psychological trick," or better, as *cleverness*: (a) *cleverness in actual questioning*, (b) *clever suggestion*, or *clever action*, with or without *misrepresentation of fact*, (c) *actual or possible misrepresentation of legal authority or law*, and (d) *resort to social sanctions*. Table VI presents the endorsements of all practices which might be classified as *wearing down with discomfiture*, mental or physical: (a) *wearing down simultaneously with questioning*, and (b) *wearing down preparatory to questioning*.

## V

Inspection of Table IV will show that the majority of no one of the groups, not even the troopers, endorsed actual personal violence or threat of personal violence where the threat is actually accompanied by a sample.

Severe personal violence was consistently repudiated. As might be expected, however, there was some greater approval of less rigorous physical coercion. Thus a scant majority of the troopers, 48 per cent, endorsed the practice of slapping a suspect's face to make him confess.<sup>6</sup> This practice was endorsed by slightly more than a fourth of the free private citizens and by a scant eighth of the prisoners. But where the physical coercion is more severe than that of face slapping, approvals by the free private citizens and by the prisoners were negligible. It is important to note that about one-seventh of the troopers endorsed the practice of twisting a suspect's arms and legs to make him confess,<sup>7</sup> and a scant twelfth of the troopers endorsed the practice of knocking a suspect unconscious when he refuses to answer questions.<sup>8</sup> It only requires an occasional officer disposed to severe measures of personal violence to produce the occasional case of brutality which can so greatly damage the reputation of an entire law enforcement organization.

The same consistency of endorsement held for all practices involving threat of personal violence actually accomplished by a sample. Thus only about a seventh of the troopers approved of threats accompanied by a blow with the fist directed either to the suspect's body<sup>9</sup> or face,<sup>10</sup> in instances where the suspect refuses to confess. Endorsement of these practices by the free private citizens

---

<sup>6</sup> Statement 1.

<sup>7</sup> Statement 15.

<sup>8</sup> Statement 12.

<sup>9</sup> Statement 19.

<sup>10</sup> Statement 49.

and by the prisoners was negligible. Even a much less rigorous sample of violence, such as a light tap with a club at the time of arrest so that the suspect will know what will happen if he refuses to talk, was endorsed by only a little more than a third of the

TABLE IV

*Endorsement of Third Degree Police Practices Involving Personal Violence, by the Groups of Fifty State Troopers, Fifty Free Private Citizens, and Fifty Prisoners*

| Classification* and<br>Identification No. of<br>Scale Statement** | Scale Value<br>of Statement | Percent of a Designated<br>Group Endorsing Statement |                          |           |
|---|-----------------------------|--|--------------------------|-----------|
|   |                             | Troopers   | Free Private<br>Citizens | Prisoners |
| <b>Actual Personal Violence<br/>as Fully as Threatened:</b>       |                             |  |                          |           |
| 1 .....   | 4.4                         | 48   | 26                       | 12        |
| 13 .....  | 5.9                         | 18   | 4                        | 0         |
| 7 .....   | 7.1                         | 14   | 4                        | 2         |
| 41 .....  | 7.5                         | 8  | 2                        | 0         |
| 15 .....  | 7.6                         | 14   | 0                        | 0         |
| 44 .....  | 7.8                         | 6  | 2                        | 0         |
| 17 .....  | 8.0                         | 4  | 0                        | 0         |
| 9 .....   | 8.4                         | 8  | 0                        | 2         |
| 21 .....  | 8.5                         | 4  | 0                        | 0         |
| 12 .....  | 8.7                         | 8  | 2                        | 0         |
| 33 .....  | 8.8                         | 0  | 0                        | 0         |
| 27 .....  | 9.0                         | 2  | 0                        | 0         |
| 5 .....   | 9.5                         | 0  | 0                        | 0         |
| <b>Sample of Personal Violence with Threat of More:</b>           |                             |  |                          |           |
| 28 .....  | 3.5                         | 36   | 20                       | 2         |
| 49 .....  | 6.5                         | 16   | 0                        | 2         |
| 19 .....  | 6.6                         | 14   | 4                        | 0         |
| 38 .....  | 6.6                         | 22   | 2                        | 2         |
| <b>Mere Threats of<br/>Personal Violence:</b>                     |                             |  |                          |           |
| 48 .....  | 0.8                         | 86   | 74                       | 66        |
| 50 .....  | 1.3                         | 54   | 40                       | 20        |
| 6 .....   | 1.7                         | 62   | 38                       | 32        |
| 37 .....  | 2.0                         | 58   | 50                       | 24        |
| 16 .....  | 3.9                         | 42   | 20                       | 12        |

\* In contrast.

45 ..... -0.5      50      46      70

\*\* Statements contained in the Third Degree Severity Scale.

troopers, by a fifth of the free private citizens, and only one prisoner.<sup>11</sup> A light tap with a club has been rated as less severe than a slap in the face, but the statement involving the tapping with a club, unlike the other practices with which it is here compared, presents the practice of resort to violence in advance of, rather than concurrently with, the questioning process.

Although the actual use of force was not frequently approved, the threat of violence unaccompanied by a sample was condoned much more generally. Thus a majority of the troopers approved the practice of threatening personal violence, provided the substance of the threat is not too brutal, such as the practice presented by statement 16 would be, "Police place a suspect in a back room at police headquarters and brandish whips and clubs before a suspect, threatening to strike him if he will not confess." Sixty-two per cent of the troopers approved of shaking the doubled fist under suspect's nose to enforce insistence upon confession.<sup>12</sup> This would mean that four times as many troopers approved of threatening a blow with the fist as endorsed actual delivery of the blow. About three-eighths of the free private citizens and a third of the prisoners approved this practice of threatening a blow by shaking the doubled fist under a suspect's nose, indicating possibly, that the practice exists without being reduced to execution of threat in many instances.

A large majority of the free private citizens and of the prisoners endorsed threats of personal violence where the threat is so vague that it might be taken to be counsel and advice rather than a veiled threat of violent coercion, as in statement 48, "Police tell a suspect that they know he is guilty and that it will be for his own good to confess." This practice was endorsed by about six-sevenths of the troopers, three-fourths of the free private citizens, and two-thirds of the prisoners. The approvals declined when the threat is less veiled. Thus the practice of telling the suspect dreadful stories of what happens to those refusing to confess at police headquarters<sup>13</sup> was approved by 58 per cent of the troopers, half of the free private citizens, and a scant fourth of the prisoners. The vague but even more direct threat of physical coercion made by an arresting officer that the suspect will come to no harm if he will answer all ques-

<sup>11</sup> Statement 28.

<sup>12</sup> Statement 6.

<sup>13</sup> Statement 37.

tions asked, but that he will get hurt if he refuses to talk<sup>14</sup> was approved by 54 per cent of the troopers, by two-fifths of the free private citizens and by one-fifth of the prisoners.

It is entirely logical that mere threat of violence should be more generally approved than actual violence. Yet the logic has important implications. It might seem that the mere threat would be compelling only if actual violence were imminent, or at least occasionally used in particular cases. Fear might be a compelling motivation on the part of a suspect, even though he experienced nothing more than a threat from officials in a system which was never known to resort to personal violence and had the reputation of exclusive dependence upon cleverness in securing confessions. Such a reputation, however, could hardly be maintained for long were threats frequently used even though they were never fulfilled. So where all but a minority of a law enforcing organization disapproves of actual personal violence yet approves of threats of such violence, it must be that the majority wish either to avail themselves to some extent of the motivation of fear when dealing with timid suspects or to capitalize on occasional instances of actual brutality when dealing with more hardened and experienced suspects. The second alternative, if not the first, involves recognition that personal violence, though deplorable, is expected to occur upon occasion either in the immediate organization or in some organization associated with it directly or indirectly. It would seem to imply a limited expectancy of developing a tradition and reputation for exclusive reliance upon cleverness in securing confessions. This dilemma of unwanted violence yet sufficient violence to make threats effective may be the explanation of the troopers' endorsements of statement 45, "Police are careful not to frighten suspects." That statement was approved by exactly half of the troopers, by 46 per cent of the free private citizens, and naturally enough by 70 per cent of the prisoners.

Three tentative generalizations may be made upon this portion of the data. First of all, there is no confusion or indeterminate appropriation relative to use of personal violence by the police when attempting to influence suspects and witnesses to make true statements about some violation of law. The majority of the members of highly reputable policing force such as the New York State Troopers can be said not to consider the actual use of personal violence in the third degree necessary or desirable. Such practices,

<sup>14</sup> Statement 50.



furthermore, are not likely to be supported by free private citizens. Second, a small minority of troopers do countenance the use of personal violence in attempting to secure confessions, even violence that is severe. Here, apparently, is the hazard of the third degree, both as respects efficiency and prestige and as respects public policy. It might easily be just such individual officers who would inflict the punishment which can give a case now and then notoriety of an unfortunate sort. And third, there is a dilemma as respects threats of violence. A majority of the troopers do wish to be allowed to threaten violence, provided the substance of the threat is not too brutal. This would seem to imply the necessity of some occasional, unwanted violence to render the threat effective. Either that, or the necessity of fundamental reconsideration of the practices, tradition, and reputation essential and desirable in an effective policing force given discretion to attempt the securing of confessions which can avail in trial courts.

## VI

Inspection of Table V will show that a majority of the troopers endorsed all of the practices which have been classified under the heading of "psychological trick" or cleverness. In these endorsements they were supported for the most part by a majority of the free private citizens, and even by a majority of the prisoners. The only practices of this character which were not approved by a majority of the free private citizens are those presented in statement 22, involving misrepresentation of law, and statements 40 and 43, involving resort to social sanctions. Less than a majority of the prisoners endorsed these same three statements; but the only other practices in this classification which failed to receive endorsement by a majority of the prisoners were statement 34, again involving resort to social sanctions, and statement 30 which could be taken by the prisoners to involve misrepresentation of police authority and discretion.

It will be seen that all of these practices endorsed by a majority of each of the three groups of subjects are beyond the traditional position of the law as respects their degree of severity. On the basis of these returns, it would seem that expert police opinion approves and citizens support clever practice without regard to the doctrinal freedom of the individual. Of controlling significance in this connection is statement 25, scaling at  $-0.3$ , "Police are careful to explain to the suspect that whatever he says may be used against

TABLE V

*Endorsement of Third Degree Police Practices Involving Cleverness, or the "Psychological Trick," by the Groups of Fifty State Troopers, Fifty Free Private Citizens, and Fifty Prisoners*

| Classification* and Identification No. of Scale Statement**                          | Scale Value of Statement | Percent of a Designated Group Endorsing Statement |                       |           |
|--|--------------------------|---|-----------------------|-----------|
|  |                          | Troopers  | Free Private Citizens | Prisoners |
| <b>Cleverness in Actual Questioning:</b>   |                          |   |                       |           |
| 36 .....   | 0.6                      | 92  | 82                    | 66        |
| 2 .....  | 0.8                      | 96  | 78                    | 70        |
| <b>Clever Suggestion or Clever Action with or without Misrepresentation of Fact:</b> |                          |   |                       |           |
| 32 .....   | 0.0                      | 82  | 78                    | 60        |
| 11 .....   | 0.5                      | 98  | 66                    | 66        |
| 18 .....   | 0.7                      | 94  | 86                    | 66        |
| 48 .....   | 0.8                      | 86  | 74                    | 66        |
| 39 .....   | 1.3                      | 82  | 78                    | 58        |
| 14 .....   | 1.9                      | 88  | 68                    | 56        |
| <b>Misrepresentation of Legal Authority or Law:</b>                                  |                          |   |                       |           |
| 30 .....   | 0.8                      | 58  | 64                    | 32        |
| 22 .....   | 1.4                      | 62  | 46                    | 26        |
| <b>Resort to Social Sanctions:</b>   |                          |   |                       |           |
| 34 .....   | 1.1                      | 68  | 62                    | 26        |
| 40 .....   | 1.9                      | 54  | 44                    | 24        |
| 43 .....   | 2.2                      | 54  | 38                    | 16        |
| * In contrast.   |                          |   |                       |           |
| 25 .....   | -0.3                     | 80  | 88                    | 88        |
| ** Statements contained in the Third Degree Severity Scale.                          |                          |   |                       |           |

him." This legal practice was approved by four-fifths of the troopers and by seven-eighths of both the free private citizens and the prisoners. As the statement appears it is a generalized description of our traditional doctrine of limiting administrative officers in favor of protected personal rights. But when this doctrine is reversed so that the police are represented as telling a suspect that they know he is guilty and that it will be for his own good to confess,<sup>15</sup> the percentage of approving troopers increased to 86, although there was a slight decrease in civilian approvals, their percentage falling

<sup>15</sup> Statement 48.

to 74, and a still greater decline in prisoner approbation to 66 per cent. Apparently the approved pattern of police practice must retain the traditional legal warning although other practices in the approved pattern may contradict the warning once it has been given.

Use of leading questions is usually barred in the criminal trial court processes, but the high percentage of approvals given the technique by all three groups would seem to indicate that it is deemed necessary for efficient performance of the police function. The statement, "Police ask suspect leading questions to trick him into confessing crimes,"<sup>16</sup> was approved by 92 per cent of the troopers, 82 per cent of the free private citizens, and 66 per cent of the prisoners. The practice of asking detailed questions to trick the suspect into confessions<sup>17</sup> was approved by 96 per cent of the troopers, 78 per cent of the free private citizens, and 70 per cent of the prisoners. From this similarity of response the conclusion might be drawn that the participants in the third degree have had little experience which leads them to believe that any significant differential exists in these practices, although from the viewpoint of constitutional rights this is theoretically a mistaken position. Clever questioning, even when it does not conform with the traditional standards of the law was approved, apparently, as being fair enough.

Closely related to cleverness in actual questioning are the practices of clever suggestions and clever action some of which may even involve misrepresentation of fact. The approvals noted above respecting cleverness in actual questioning are confirmed by the very similar percentages of approval given the practices in this related classification. Thus the practice of police pretending knowledge of a crime to cause a suspect to tell his story and incriminate himself<sup>18</sup> was approved by 94 per cent of the troopers, 86 per cent of the free private citizens, and 66 per cent of the prisoners. A similar practice is that presented in statement 14, "When two suspected accomplices in the same crime are brought to police headquarters they are placed in separate cells, the police telling each suspect that the other has confessed and implicated him, without regard to the truth of such statements." This practice was approved by 88 per cent of the troopers, 68 per cent of the free private citizens, and 65 per cent of the prisoners. Where the pretense is that the police are friendly and thereby a suspect is tricked into con-

<sup>16</sup> Statement 36.

<sup>17</sup> Statement 2.

<sup>18</sup> Statement 18.

fession,<sup>19</sup> approval was given by all troopers but one, and by two-thirds of both the free private citizens and the prisoners. The approvals were only a little less numerous respecting the situation where the police take the trouble to offer a suspect a cigar to support the illusion of friendliness.<sup>20</sup> Clever resort to the lie detector without any suggestion of misrepresentation<sup>21</sup> also elicited distinct approbation. This latter practice was approved by 82 per cent of the troopers, 78 per cent of the free private citizens, and 58 per cent of the prisoners. Thus it would seem that clever suggestion, and clever action as well as clever questioning, even when there may be misrepresentation of fact is given distinct approval. The sporting nature of the police-suspect relationship is apparently accepted and approved.

A different situation is presented where there is misrepresentation of legal authority and of law rather than misrepresentation of fact. Thus statement 30 represents the police are promising leniency to suspects in return for a confession. Analysis of this practice raises the question of the motive of the officer when he makes such an offer. If he is acting honestly and really intends to do what he can for the suspect, the promise is limited by the authority of the official. If he promises more than he can perform, he misrepresents his authority and the practice involves deceit and dishonor, although not necessarily with such intent on the part of the official. But when the promise is made with no intent to execute it at all, the practice becomes a clever but highly questionable trick. Where there is resort to such a trick as this, the system is apt to operate in unremitting animosity. As has been indicated, misrepresentation of fact received high percentages of approval among all three groups. But when this practice, involving possible misrepresentation of legal authority, was presented the approvals declined. The prisoners' approvals dropped to 32 per cent, although the approvals by the troopers and the free private citizens remained fairly high, 58 and 64 per cent respectively. It is possible that many of the free private citizens did not consider that the question of good faith might be involved in the situation described by the statement. There is little doubt, however, that the majority of the prisoners lack faith in officials and disapproved the practice. The troopers could hardly be unaware of the limitations upon their authority, so they must

---

<sup>19</sup> Statement 11.

<sup>20</sup> Statement 32.

<sup>21</sup> Statement 39.

have regarded the practice as tending toward useful trickery, nevertheless a trick not so morally laudable as others.

Actual misrepresentation of the law is presented by statement 22. It is the situation of police telling a suspect when they first start to question him that his failure to answer questions will show him to be guilty. This practice was approved by 62 per cent of the troopers, but by only 46 per cent of the free private citizens and 26 per cent of the prisoners. The free private citizens could hardly miss the element of misrepresentation in this case.

The police sometimes rely upon social sanctions to make suspects talk. When they threaten to arrest a suspect's pals unless he confesses, the officials are really counting upon social sanctions and loyalties to effect their purpose.<sup>22</sup> Sixty-eight per cent of the troopers and 62 per cent of the free private citizens approved this technique. Obviously the prisoners object to this type of pressure, for only 26 per cent of them approved the practice. As respects a threat to tell relatives and friends that the suspect is a common jailbird unless a confession is forthcoming, there was approval by 54, 44, and 24 per cent of the troopers, free private citizens, and prisoners respectively.<sup>23</sup> The similar percentages were 54, 38, and 16 as respects the practice of threatening to tell the suspect's employer that the suspect is a crook.<sup>24</sup> Apparently the troopers do wish to avail themselves of these supporting pressures. The free private citizens are not so sure about it. And the prisoners are clearly opposed. This is particularly true of economic effects of police action.

Relative to this portion of the data, two tentative generalizations may be made. First, there is some doubt whether approval and support will be given to third degree practices which involve misrepresentation of law and certain uses of social sanctions. Second, there is no confusion or indeterminate approbation relative to clever questioning, clever suggestion, and clever action even though the cleverness may involve misrepresentation of fact. Indeed the reliance upon cleverness is as distinctly approved as resort to actual personal violence is distinctly disapproved.

## VII

Aside from the exceptions noted, the data presented in the last two tables do not indicate any considerable conflict of opinion. It is

<sup>22</sup> Statement 34.

<sup>23</sup> Statement 40.

<sup>24</sup> Statement 43.

the following Table VI, however, which indicates where the disagreement among the three groups largely lies—in the matter of wearing down resistance with discomfiture. Table VI, moreover, emphasizes a distinction between clever and unclever use of the wearing down process, which, if stressed, might bring future agreement as to desirable practice. This is the same distinction which places the data of Tables IV and V in such contrast.

The majority of the troopers approved the “wearing down” process, particularly when carried on simultaneously with questioning, even though it might involve considerable severity. Obviously the wearing down process undertaken simultaneously with questioning will require greater cleverness than wearing down preparatory to questioning. The free private citizens, however, did not support the “wearing down” practices when they pass beyond a severity of about +2.0 on the severity scale. It is interesting to

TABLE VI

*Endorsement of Third Degree Police Practices Involving Wearing Down of Resistance with Discomfiture, by the Groups of Fifty State Troopers, Fifty Free Private Citizens, and Fifty Prisoners*

| Classification and<br>Identification No. of<br>Scale Statement* | State Value<br>of Statement | Percent of a Designated<br>Group Endorsing Statement |                          |           |
|---|-----------------------------|--|--------------------------|-----------|
|   |                             | Troopers   | Free Private<br>Citizens | Prisoners |
| <b>Wearing Down Simul-<br/>taneously with Questioning:</b>      |                             |  |                          |           |
| 4 .....   | 0.3                         | 94   | 90                       | 92        |
| 8 .....   | 2.9                         | 70   | 24                       | 8         |
| 31 .....  | 5.1                         | 60   | 18                       | 0         |
| 26 .....  | 6.5                         | 36   | 18                       | 4         |
| 3 .....   | 7.4                         | 54   | 24                       | 8         |
| <b>Wearing Down Prepara-<br/>tory to Questioning:</b>           |                             |  |                          |           |
| 42 .....  | 1.2                         | 46   | 50                       | 12        |
| 46 .....  | 1.8                         | 68   | 52                       | 22        |
| 20 .....  | 2.3                         | 50   | 30                       | 22        |
| 23 .....  | 4.7                         | 38   | 20                       | 10        |
| 10 .....  | 5.2                         | 20   | 12                       | 10        |
| 47 .....  | 7.3                         | 44   | 24                       | 4         |
| 35 .....  | 7.4                         | 10   | 6                        | 4         |
| 29 .....  | 7.4                         | 6  | 4                        | 4         |
| 24 .....  | 7.9                         | 10   | 2                        | 2         |

\* Statements contained in the Third Degree Severity Scale.

note that the citizen group did not distinguish, as the troopers did, between wearing down in advance of questioning and wearing down simultaneously with the examining process. Their opinion may be founded on "principle" which does not tolerate greater severity, or it may be lack of insight as to what is effective. The prisoners, though, seemed to catch the significance of wearing down at the time of questioning as contrasted with unclever wearing down in preparation of actual inquiry. Apparently it is a sort of practice which can be more effective against their interest.

Protraction of the questioning process is itself a means of wearing down resistance. Particularly is this true where other factors are introduced simultaneously to produce exhaustion or to induce pain. Thus an hour of examination at police headquarters<sup>25</sup> was approved by 94 per cent of the troopers, by 90 per cent of the free private citizens, and by 92 per cent of the prisoners. But introduce factors particularly intended to wear down resistance, such as placing the suspect before a blinding light and forcing him to sit facing this light while a number of police attempt to browbeat him for an hour to cause confession,<sup>26</sup> and the proportion of troopers approving falls to 36 per cent. The prisoners, probably experienced enough to know, at least by hearsay, the results of such a practice, rarely approved. Only 4 per cent indicated endorsement. The free private citizens stand between the two other groups. Only 18 per cent of them approved the practice.

Extended questioning periods met with much greater approval from troopers than from either free private citizens or prisoners. When a suspect is locked in a cell and police take turns questioning him for three consecutive days and nights, not letting him sleep or rest,<sup>27</sup> 54 per cent of the troopers approved, while approval was indicated by only 24 per cent of the free private citizens and 8 per cent of the prisoners. This practice has a severity rating of +7.4. It is the most severe of the practices approved by a majority of the troopers. Aside from a similar practice having a severity rating of +5.1, and a closely related practice having a severity rating of +2.9, the majority of the troopers did not endorse any other practices more severe than +2.3. Statement 31 is the practice which rates at +5.1 and was approved by more than half of the troopers. It presents the case of locking a suspect in a cell for the night,

<sup>25</sup> Statement 4.

<sup>26</sup> Statement 26.

<sup>27</sup> Statement 3.

waking him every hour to ask insulting and accusing questions, and causing him to answer before he can collect his thoughts. This practice was approved by 60 per cent of the troopers, but by only 18 per cent of the free private citizens and none of the prisoners. The practice rated as of a severity of +2.9 also involves wearing down resistance, possibly though not necessarily, in connection with actual questioning.<sup>28</sup> But being the practice of holding a suspect over night without permitting him to get in touch with his friends or a lawyer, it is the basis of prolonged and unrestrained questioning. Clearly, wearing down resistance simultaneously with questioning would seem to be a practice which the troopers insist upon as being necessary for efficient police work.

One distinct means of wearing down resistance, possibly as an incident to prolonged questioning, but not necessarily so, is deprivation of food. Mostly this practice would be used to bring about a condition making confession more likely in subsequent questioning. Depriving suspects of food for one meal to cause them to confess<sup>29</sup> was approved by 68 per cent of the troopers, by 52 per cent of the free private citizens, and by only 22 per cent of the prisoners. Even where the police threaten to deprive suspects of food until they confess,<sup>30</sup> the approvals were still comparatively numerous. Exactly half of the troopers endorsed such a threat, but only 30 per cent of the free private citizens and 22 per cent of the prisoners approved it. Actually increase the severity to a day's involuntary fasting, then promise food to the suspect for his confession<sup>31</sup> and the approvals diminish in all groups. Only 38 per cent of the troopers, 20 per cent of the free private citizens and 10 per cent of the prisoners approved the practice. But when the severity of the practice is increased so that the suspect is denied all food, except water, for three days to make him confess,<sup>32</sup> the troopers' approvals dropped to 6 per cent, and the approval by both the other groups to 4 per cent.

There are other means of wearing down resistance, operative in advance of the questioning process. Rather severe would be the practice of locking a suspect in a dark damp cell without facilities to sit or lie down for three days to make him confess.<sup>33</sup> This

<sup>28</sup> Statement 8.

<sup>29</sup> Statement 46.

<sup>30</sup> Statement 20.

<sup>31</sup> Statement 23.

<sup>32</sup> Statement 29.

<sup>33</sup> Statement 24.



practice was endorsed by 10 per cent of the troopers while only one free private citizen and one prisoner approved it. But where a less severe practice of holding a suspect in a miserably cold room for one night to make him confess was considered,<sup>34</sup> the troopers' approvals rose to 20 per cent, and the approvals among the free private citizens and the prisoners to 12 and 10 per cent respectively.

Merely locking a suspect in jail one night without permitting him to get in touch with his friends or a lawyer to attempt to obtain a writ of habeas corpus,<sup>35</sup> was within the approval of 70 per cent of the troopers, but only 24 per cent of the free private citizens and 8 per cent of the prisoners. It should be noted that this last statement of practice not only involves the holding of the accused or suspected person over night, but adds the elements of withholding traditional rights to counsel and court appeal under the due process clauses of constitutions.

This portion of the data supports two tentative generalizations. First, the majority of the troopers, in so far as they approve third degree practices of a severity greater than +2.3, insist upon the need of wearing down a suspect's resistance, but doing so in connection with actual questioning. To this end, they are apparently willing to sacrifice important constitutional rights of the suspect. Second, the free private citizens do not approve the practice of wearing down resistance when it is more severe than +2.0. Possibly a reconsideration of desirable practice in terms of the distinction between cleverness and mere force might clarify this conflict of opinion. The possibility of cleverness and administrative trickery within the framework of traditional constitutional rights of the accused would need to be considered particularly.

## VIII

If a wider sampling of opinion should be undertaken along lines indicated by this study, and should the more extensive returns conform with those here reported, the findings could be summarized in terms of "principles" guiding third degree practice and regulation. The word "principle" has been much used and abused in the social sciences, but mostly the comment of social scientists about principle resolves into a "rule of desired action." It is in that sense that the term is employed here. Precise description of institutional attitudes such as approval or disapproval of third degree practices may

---

<sup>34</sup> Statement 10.

<sup>35</sup> Statement 8.

afford some basis for decision as to what might be considered workable and desirable institutional behavior.

Tentatively, it would seem that the police should be permitted legally to use such third degree practices as rate somewhere about +2.0 of severity. It would seem that actual personal violence, misrepresentation of law, punitive use of social pressures, and wearing down tactics not involved in actual questioning should be distinctly prohibited. It would seem also, that those responsible for administration of law enforcement agencies should reconsider the practices of the third degree from the point of view of the possibility of developing the practice, tradition, and reputation for exclusive reliance upon cleverness in the securing of "true" statements respecting violations of law. In the main, this is what members of a highly reputable policing force desire, what citizens are likely to support, and suspects would probably regard as fair enough.