
The runaway hunch

by Harvey Cashore

Harvey Cashore is a producer for the CBC News programme Disclosure. While he was working as a researcher and producer for the programme the fifth estate, his investigations brought to light several high-profile miscarriages of justice, including the wrongful conviction of Clayton Johnson for murder. Mr. Cashore has received numerous awards for his investigative research and his journalism.

Abstract. While describing a hunch the catalyst to an investigation, Mr. Cashore warns investigators to avoid turning a hunch into the pursuit of an individual or an explanation. Instead, he suggests backing away from the hunch, pursuing information rather than any individual, slotting the facts of an incident into chronological order and speaking to everyone involved. He illustrates his *modus operandi* by describing his investigative approach when he realized that Clayton Johnson was wrongfully convicted of murder.

Like almost all children there was a time in my life when I considered the idea of becoming a police officer – but I was small for my age and for a long time I thought I wasn't tall enough to become one. But then a few years ago I met Superintendent Graham Muir, and realized that I was obviously way over the height limit...but by then it was too late, I had moved on to other things.

So at first, when I was invited to speak at the Canadian Police College, well, it was like a dream come true. But when I was told that they wanted me to speak about tunnel vision, and they wanted me to critique police methods, I started to get a little worried.

But I think I've found a way out – I've decided to criticize police officers and investigative journalists all at the same time.

Because after I realized I was not going to become a police officer, I decided to become an investigative journalist and started to do what a lot of police officers do; I tracked down bad guys, exposed cover-ups and revealed injustice wherever I could find it. An investigative journalist likes to think he is simply performing a public service, shedding light on dark corners of society. We leave the police to figure out whether a crime has been committed, but in many ways police officers and investigative journalists are doing almost exactly the same thing. Simply stated, we are both investigators trying to find new information. And usually we are trying to get it from people who don't want us to have it.

I imagine that police officers often come up against the same dilemmas that investigative journalists encounter: when to fish or cut bait, or, to use another metaphor, when do we decide whether or not we are “barking up the wrong tree.” Once upon a time I used to dislike the term “barking up the wrong tree.” It was something I often heard from people who were trying to get me to stop barking up that particular tree – a tree that often had just the kind of fruit I was trying to pick. But there were many times when I realized I was barking up the wrong tree. For more than ten years I have worked as a researcher, associate producer and then producer at the fifth estate and in that time I would say I abandoned more than 90 per cent of my original stories and ideas. That’s because the facts did not support my suspicion. I was, in effect, barking up the wrong tree, and I would have to abandon my research, start over, get another topic and move on.

But what happens to the investigator, the police officer or the investigative journalist, who refuses to get off the wrong track? And if that refusal is inadvertent, or unintentional, how is the investigator going to recognize he is off-track in the first place?

Perhaps it was the training I received in the mid 1980s from Ottawa author John Sawatsky, but I came to develop a system or a *modus operandi* that I hoped would protect me from pursuing false leads. Simply put, my system is this:

- back away from your hunch;
- pursue information, not the subject;
- put the facts in order; and
- speak to everyone.

Back away from your hunch

For me, the first step in this process is the acknowledgement that that everyone has a bias. Police officers have them and so do investigative journalists. Sometimes we call this bias a hunch.

The hunch manifests itself in its darkest form as malice. I will never forget being told one day about an investigative journalist who said it was her life’s goal to “bring down” a politician. Now this might be the natural evolution of a legitimate story about a politician, but it should never be the goal. You can imagine that her hunches would naturally be contaminated with the poison of her dubious objectives. In the same way it would be inappropriate for a police officer to decide someone “looks guilty” and then set about making it his or her goal to prove it.

This is not to say however that investigators should not have a hunch. In fact sometimes our “hunch” is the catalyst for our interest in the investigation: We think there’s been an injustice. We think someone has gotten away with murder. We think someone has stolen secret commissions from the government. Without hunches, we’d have almost nothing to go on. I celebrate the hunch. But the hunch should only get us to the investigation. It should not drive the investigation.

In fact, we should do everything we can to forget about the hunch we had in the first place, and instead replace the hunch with a more open ended style of fact finding.

I believe that when investigators – be they the media kind or the police kind – that when investigators get off on the wrong track it is almost always because they have refused to abandon their hunch. When I talk about this I am always reminded of a line from an old Simon and Garfunkel song, “Still a man hears what he wants to hear and disregards the rest.” Simon and Garfunkel were not talking about investigative methods, but they could have been. Investigators who cling to their hunches believe so much in their original suspicions that they refuse to look at the facts other than through the prism of their own biases. And, in my opinion, that’s when the mistakes first begin to accumulate.

I believe the wrongful conviction of Clayton Johnson is a good example of what I call the “runaway hunch.”

By now we all know the outline of the Clayton Johnson story. Last spring the Nova Scotia Supreme Court declared Clayton Johnson an innocent man after having spent more than four years behind bars for the first degree murder of his wife. Clayton Johnson’s wife had died after a freak fall but police officers reinvestigated the case sometime later and concluded that a supposed insurance policy taken out on his wife, a “younger woman” and a suspicious police statement all pointed to a guilty husband.

The media is not immune from criticism in this story either. In fact the very programme that I worked for made judgments that, upon reflection, had little to do with the facts of the case. The fifth estate was so impressed with the police and the crown for having nailed the conviction that it produced a story called “getting away with murder” – a story that explained how Clayton Johnson almost didn’t get caught – if not for the clever work of some police officers and forensic pathologists.

Several years after the wrongful conviction, and the first fifth estate story, our programme received a call from AIDWYC, the Association in Defence of the Wrongly Convicted, and

they told us that we had made a terrible mistake as did the police. My colleague Trish Wood and I were assigned to look into the whole mess.

Perhaps Trish Wood and I were in the best position to look at the story in a neutral way. Even though we were not involved in the original investigation, we didn't want to believe the fifth estate had made a mistake. We didn't want to believe our own show had helped keep an innocent man in jail. On the other hand, we didn't want to see an innocent man in jail either. The two possibilities seemed to balance each other out.

So we set about reading trial transcripts, forensic reports, time lines and witness statements. And we came to believe that both the police and our colleagues at the fifth estate had made a classic mistake. They paid more attention to who was talking than to what exactly was being said. In my opinion, the argument that Clayton Johnson was guilty seemed to be based on the fact that a lot of important people believed it was so. That's because the more we sifted through the facts, the more we came to believe that the opinions reached were simply not supported by the facts. And when that happened, the case came tumbling down like a deck of cards. In our opinion, there was no foundation – no factual foundation – to the guilty verdict.

Why is that? For starters, there never was “another woman.” The supposed life insurance policy was actually an accidental insurance policy that most Nova Scotia teachers took out at the same time as Clayton Johnson. And the statement analysis revealed nothing, unless you think it's bizarre that Clayton Johnson read his Bible every morning before he went to work.

Pursue information, not the subject

I think that investigators who refuse to budge from their hunch inevitably fall into the trap of making a second fundamental mistake – pursuing the person, instead of pursuing the information. This may sound like I'm splitting hairs but I think the difference is significant. If we pursue a “target” we are, in effect, looking for “dirt” on that person: we search corporate records looking for something out of place, we hunt through civil lawsuits looking for another negative fact to put into our files, we talk to people, but all with one objective in mind – trying to find out something suspicious about someone. This is not to say we shouldn't pursue suspicious information. But it is to say that sometimes information sounds suspicious because we want to view it that way, not because it is truly suspicious. And that's because we have the wrong goal, or, to put it more crudely, we have the wrong target.

In the case of Clayton Johnson investigators came to believe that he acted rather strangely for a man on his way to school. Why? Well, he was a little late that day – suspicion number

one. He stopped at the side of the road for no apparent reason – suspicion number two. He stopped at the gas station but didn't buy gas – suspicion number three.

I agree with all of the above. All those things are a little suspicious, until you add more information. If Clayton Johnson was a little late for school that day it might have been because he got caught behind the school bus on the road that day. And that might also sound suspicious unless you know that he had stopped at the side of the road to pick up papers that had blown off his dashboard. And also because he stopped at the gas station that day. Yes, you might argue, but isn't it odd that he didn't buy gas when he stopped a gas station? Yes, that is very suspicious, but, as it turns out, he did buy gas at the gas station. To this day I don't know the origin of this suspicion because there is no debate now that he did buy gas. In my opinion there was nothing suspicious whatsoever about his drive to school that day. But for some investigators the whole thing seemed dark and mysterious.

I am not trying to imply that all police officers work this way. I believe most police officers do good work, most of the time, just as most investigative journalists do good work, most of the time.

You may know that I spent years of my life researching the so-called Airbus affair, the story about all those secret commissions that ended up in a post office box in Liechtenstein. I believe my investigative colleagues did a lousy job covering the story and gave up on it and instead criticized the journalist who kept at it. They even criticized the RCMP for looking into the story when, in my opinion, the RCMP should be congratulated for its work on the Airbus story. The RCMP wants to know where the millions of dollars ended up. And if that isn't a legitimate goal for Canada's national police force I don't know what is.

The point I am trying to make here is that finding out where the money went is the pursuit of information. Trying to prove that a specific person got money is the pursuit of the person. It is focusing on the former and not thinking about the latter that turns us into good investigators. So what would have been the proper investigative approach on the Clayton Johnson story? Well, a simple pursuit of the information would have done just fine.

Put the facts in order

For me the Clayton Johnson story is best understood when the facts are assembled in a chronology, or a time line. In fact I think any story is best understood in chronology.

When I work on an investigative project, I am forever plugging facts into my chronology. Sometimes the facts in the chronology appear disconnected. Sometimes they appear out of

place. But over time as the facts fill up the chronology the story starts to reveal itself, as if by magic, on its own. When I put together the timeline, as it related to Johnson's movements that day, the evidence, in my opinion, made it impossible for him to be home when his wife died that morning. And if he was not at home, he could not have killed her.

Chronologies will also tell you when the information is not adding up. They will tell you when two facts juxtaposed don't make sense and when someone is not telling the truth. When you come to believe someone is not telling the truth based on the time line, then you are no longer making a judgment based on a hunch. You are making a judgment based on the facts before you. You are, in effect, pursuing the information, and not the person.

I guess I am suggesting that perhaps there should never have been an investigation into Clayton Johnson. Perhaps no one should have asked the question, "Did Clayton Johnson kill his wife?" I would have liked a broader, more open-ended investigation, with a broader question. It is my assertion that there would have never been a wrongful conviction if investigators had at the back of their mind one simple question, "What happened to Janice Johnson?"

Speak to everyone

Now this is going to sound self-serving, and perhaps it is, but I think police agencies in this country help perpetuate the error of the runaway hunch by not allowing their investigators to speak to investigative journalists. This is not to say that investigators don't want to talk to journalists, and that journalists don't want to talk to police investigators. We do. But in today's climate we do it more often by meeting secretly, away from our superiors, hoping that no one finds out that police officers are talking to journalists and journalists are talking to police officers.

I spoke earlier about normal behaviour sounding suspicious. In my experience I can sometimes think certain behaviour is suspicious until I talk to the people who were there, at the scene, and immediately the suspicions evaporate.

And so it has always been a puzzle to me that the people who run law enforcement agencies, the bosses at the RCMP, for example, insist on keeping their investigators away from journalists.

I am not suggesting journalists should have unfettered access to RCMP files, but I am suggesting that the RCMP should be allowed to tell a journalist when he's barking up the wrong tree. And a journalist should be allowed to ask an investigator why he's barking up his

own tree. Perhaps this is going to sound like Pollyanna, but if journalists and police officers were allowed to have background chats with each other, then the quality of the information they are both pursuing could only improve. And this way, the runaway hunch could be stopped dead in its tracks. And if a hunch paid off, well, presumably that would end in a great story and a proper conviction.

This is not to say that investigators will not make mistakes, even honestly-made mistakes. We do. Years ago the fifth estate made a terrible mistake when it pronounced Clayton Johnson guilty of murder. And while it took a few years, we admitted publicly, on our own programme, that we were wrong. And hopefully we learned something from our mistakes.

Police officers should be allowed to admit mistakes as well, and it is my fear that this rarely happens in law enforcement circles. And when mistakes cannot be admitted, then nothing is learned, and the runaway hunch lives on forever.