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## VISITING EXPERTS' PAPERS

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### INVESTIGATIVE INTERVIEWING IN ENGLAND PART I: MODELS FOR INTERVIEWING WITNESSES AND SUSPECTS

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This essay will, as its title suggests, outline the models of investigative interviewing that have evolved into current practice, not just in England, but in many parts of the world. It can be read alone or in conjunction with Part II of this project which will look at some tactical and legal considerations applicable to investigative interviewing.

#### I. INTRODUCTION

There is possibly no such thing as a *perfect* police interview and the author of this paper has heard many experienced detectives make that observation. That is not to say that they do not constantly strive for the best product available; it is more a recognition that, under close scrutiny, somebody somewhere will be able to pass critical comment on some aspect of their performance as the interviewer. The reality is of course that in an adversarial judicial system such as that which operates in many countries which derive their legal system from the English there will always be 'the other side' who will be strongly motivated to highlight flaws in the interview process. If an interview was conducted to such a poor degree that it could be argued the outcome was not reliable then the interview could be ruled as being inadmissible and its content not considered by the decision makers. In these circumstances it will almost always be the victim of the crime who suffers. If the product of a witness interview is deemed to be unreliable then it is possible that they will have to give their evidence 'live' in Court; if a suspect's admission is ruled to have been secured unfairly it may never get to the ears of the Judge or jury.

Criticisms of police interviews have long been the topic of debate in arenas wider than just the Courts though: many politicians, academics and other interested parties have evaluated and commented on some of the tactics and interview-skills employed during formal and informal reviews of cases. Much of this critical analysis has informed changes in practice through the years and it is true to say that these developments continue to this day. But for many, the basic premise of an interview remains the same: to find out what happened. Or "the quest for truth" as it is sometimes defined as. Even this simple foundation on which an interview is built has, in the past, been said to be the source of the problem: if the interviewer has already decided what happened (or what 'the truth' is) then they might conduct the interview in such a way as to achieve confirmation of their preconceived ideas — rather than adopt a more open-minded approach to explore of what might have happened.

#### II. CURRENT POSITION

There are a number of different interview frameworks that are currently trained to police officers and other criminal justice system practitioners in the United Kingdom and this paper will, in the main, deal with two of them: the four-phased interview advocated in the publication "*Achieving Best Evidence in Criminal Proceedings*" (Ministry of Justice 2011) and the PEACE model. The four-phased model is a framework exclusively for witnesses whilst the PEACE model has an application across both witness and suspect interviews.

These models developed in parallel to each other and although both started to gather a momentum within the criminal justice system from the late 1980s they have remained as separate entities through-

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out. That said there are obvious similarities between the two which will not be ignored as this essay gives a generic overview of both models. It will also focus on some more specific techniques that can be employed through the various phases.

### III. THE SEVEN PRINCIPLES OF INVESTIGATIVE INTERVIEWING

As early as 1992 the British Government recognised the need to set out ideology that would underpin all investigative interviews. In doing so it published its seven principles (which can be seen in their original form at appendix A) which remained unaltered until 2009 when they were brought up to date to reflect changes in some legislation, publications and working practices. These principles — still in use today — are:

- i. The aim of investigative interviewing is to obtain accurate and reliable accounts from victims, witnesses or suspects about matters under investigation
- ii. Investigators must act fairly when questioning victims, witnesses and suspects. Vulnerable people must be treated with particular consideration at all times
- iii. Interviewing should be approached with an investigative mindset. Accounts obtained from the person who is being interviewed should always be tested against what the investigator already knows or what can reasonably be established.
- iv. When conducting an interview, investigators are free to ask a wide range of questions in order to obtain material which may assist an investigation
- v. Investigators should recognise the positive impact of an early admission in the context of the criminal justice system
- vi. Investigators are not bound to accept the first answer given. Questioning is not unfair merely because it is persistent
- vii. Even when the right to silence is exercised by a suspect, investigators have a responsibility to put questions to them.

It can be seen that whilst many of the principles apply to both witness and suspect interviews some apply exclusively to one discipline or the other. Acknowledging these differences we need to look at how the models of interviewing vary, how they evolved and the key drivers behind those developments. Firstly we will look at specific guidance on interviewing vulnerable and intimidated victims and witnesses.

#### A. Victim and Witness Interviewing

In 1988 Judge Elizabeth Butler-Sloss published her report of the inquiry into a significant number of child abuse investigations in the English County of Cleveland. In it she commented that the interviews conducted with the witnesses: “. . . mostly failed the standards agreed by professionals working in the area of child sexual abuse” (Shaw 2011). As a result of this inquiry the Right Honourable Douglas Hurd, the UK Parliament’s Home Secretary of the day, established an advisory group to consider the using of visually recorded interviews of child victims and witnesses as a means of taking their evidence to Court. In his letter setting out the group’s terms of reference he was clear from the outset that:

*. . . although it is the context of child abuse that this idea has gained ground it has wider implications, and an argument — although probably a less compelling one — could be mounted for the evidence-in-chief of other vulnerable groups to be given in this way*  
(Pigot 1989).

The group published their recommendations 18 months later in what has become known as the “Pigot Report” (after its chair, His Honour Judge Thomas Pigot) but is more properly titled: “*The Report of the Advisory Group on Video Evidence*” (Home Office 1989). In it they endorsed Professor

John Yuille's "Step Wise" approach to interviewing.<sup>1</sup> This is one which recognised the need for rapport to exist between interviewer and interviewee at the start of the interview; the need for the interviewee to recognise the seriousness of the context of the interview — and thus the need to be truthful; the need for the interviewee to be encouraged to speak freely about what they want to say before questioning begins; and when questioning actually commences it progresses from an open style before, if necessary, moving to more specific probing. Metaphorically speaking, this model's DNA exists in many of today's interview frameworks used around the world.

In 1992, adopting (and making reference to) many of the Pigot inquiry's recommendations, the British Government Home Office in conjunction with the Department of Health published "*The Memorandum of Good Practice*" (Home Office 1992) and what became known as "The Four Phased Interview" was born. This formalised the approach to be adopted in interviews with child witness in criminal proceedings and, in doing so, also acknowledged Judge Elizabeth Butler-Sloss's report referred to earlier. The four phases of the interview were:

- Rapport
- Free narrative account
- Questioning
- Closing the Interview

Instantly the influence of Yuille's 'step-wise' approach can be seen and his philosophy of minimising any trauma the child may experience during the interview whilst maximising the amount and quality of the information forthcoming and, at the same time, maintaining the integrity of the process (Yuille 1998 pg 1) was reflected. To achieve these objectives each phase contained significant guidance and whilst it is not intended to duplicate it all here some of the key points are worthy of reminder.

1. Phase One: Rapport

Everything needed to done overtly and whilst the main aim of this phase was to establish a rapport with the child and make them feel as relaxed and as comfortable as possible, the fact that the interview was being visually and audibly recorded needed to be made clear — as did the rationale for doing so. The child also needed to understand the reason for the interview. Given that the Pigot inquiry recommendations were aimed at securing Court-grade evidence the necessary rules of evidence needed to be considered during this phase and whilst there was no requirement for the child to swear an oath during the interview it was acknowledged that it would be helpful for the court to be aware of the child's *need* to tell the truth. This was also the phase that the interviewers were encouraged to supplement their existing knowledge about the child's cognitive and social development and, in particular, their communication skills so that the rest of the interview could be conducted using age-appropriate language.

2. Phase Two: Free Narrative Account

This phase, as its name suggests, was where the child was encouraged to speak spontaneously and freely — ideally about the matter under investigation. The key point here is that the account was to be given in a manner that was free of interviewer influence. Interviewers were encouraged to employ 'active listening' skills and use open questions as much as possible ensuring all the time that they were communicating at a level suitable for the interviewee sat opposite them.

3. Phase Three: Questioning

The purpose of this phase of the interview was to probe further information volunteered in the free narrative account phase. Whether the interviewer sought greater detail or just clarification of something already said the guidance was the same — use four specific question types (open-ended, specific but non-leading, closed, and finally leading) and recognise the hierarchy that exists between them.

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<sup>1</sup>Professor John Yuille is an Experimental Psychologist at the University of British Columbia, Canada and had spent over thirty years researching memory in adults and children.

(1) Open-ended.

The interviewer should, as much as possible, use open-ended questions in the first instance (and, indeed, return to this style at the earliest opportunity when they were departed from). Although it was obvious that the question phase had been entered it was still possible to secure information with the least amount of interviewer-influence if 'open' questions were employed.

(2) Specific but non-leading.

Specific but non-leading questions allowed the interviewer to secure clarification on particular points already made earlier in the process.

(3) Closed

The Memorandum of Good Practice (MoGP) was clear (Pg: 20): "*If specific but non-leading questions are unproductive, questions might be attempted that give the child a limited number of alternative responses*". This endorsement of the use of closed questions was given with additional guidance. It gives the example: "*Was the man's scarf you mentioned blue or yellow, or another colour or can't you remember?*" (MoGP: Pg 20). Here you can see that the closed question is constructed in such a way as to allow the child to select an option other than blue or yellow (without such an opportunity the question could be construed as leading). It also allowed a response from a child who genuinely did not know what colour the scarf was.

(4) Leading

The final question type in this hierarchy is 'leading'. Leading questions were advocated only if they were applied with the utmost care and only then if they were likely to lead on a point which was unlikely to be a fact in dispute at any subsequent trial. The Memorandum of Good Practice made the differentiation clear to new-to-role interviewers inasmuch as, when it is generally accepted that a person X has been killed at a particular time, it would not be considered as leading to ask the child 'what were you doing when X was killed?'. What is far less likely to be admissible would be a question:

*which either suggests the required answer, or which is based on an assumption of facts which had yet to be proved. Thus 'Daddy hurt you, didn't he?' is an example of the first type of leading question, and "When did you first tell anyone about what Daddy did?" put to child who has not yet alleged that Daddy did anything is an example of the second type (MoGP Page 26).*

At all times the interviewer was encouraged to revert back to 'open questions' if any new information came to light.

4. Phase Four: Closing the Interview

This phase was essential as it was designed to ensure that the child witness did not leave the process in a distressed state. The child should not feel that they had failed or let the interviewers down and it was important to ensure that the child left the interview room in a positive frame of mind. It was also an opportunity to answer any questions that the child might have of the interviewers and for a discussion to take place about what might happen next. In many respects it can be viewed as a return to the rapport phase where neutral topics were discussed before ending the process.

The guidance published in the Memorandum of Good Practice proved to be so helpful in achieving its main objective of securing court-grade interviews of child victims that, following a further Home Office report (*'Speaking Up For Justice'*) in 1998 and the Youth Justice and Criminal Evidence Act of 1999, the same model of interviewing was extended for use with certain categories of vulnerable and intimidated adult victims and witnesses. The Memorandum of Good Practice was replaced by "*Achieving Best Evidence in Criminal Proceedings*" (Ministry of Justice 2001) and four new categories of vulnerable witness were added to the existing one of 'children'— and thus became eligible for interview under the four-phased model. They were:

- i. Witnesses with learning disabilities,

- ii. Physically disabled witnesses,
- iii. Witnesses with a mental disorder or illness
- iv. Witnesses who were suffering from fear and distress (intimidated witnesses).

The four phases of the interview remained more or less the same as they were under the Memorandum of Good Practice and this continued to be the case for nearly six years. In 2007 however, to reflect the changes in relevant legislation and the adoption of a “Victim’s Charter”, a second edition of “Achieving Best Evidence in Criminal Proceedings” was published. This edition not only recognised the definitions of ‘significant’, ‘reluctant’ and ‘hostile’ witnesses (and gave interview guidance accordingly) but it also slightly adjusted the question hierarchy of the third — or question — phase of the interview. It now re-labelled the ‘closed’ questions of earlier publications as ‘forced-choice’ questions and gave additional guidance as to their use.

2011 saw the third edition of “Achieving Best Evidence in Criminal Proceedings” published — again to cater for changes in practice and legislation — but the model and its phases remained fundamentally unchanged. A significant addition to this edition however was the inclusion of extended guidance on the use of the “Enhanced Cognitive Interview”. Although the cognitive-interview (in 2001) and the *enhanced* cognitive-interview (in 2007) were referred to in earlier editions the 2011 version was a much richer source of information on the various techniques available to interviewers.

Whilst the model to interview victims and witnesses was evolving and enjoying a variety of re-births the world of suspect interviewing was no less active and just as 1992 saw the publication of the Memorandum of Good Practice for the interviewing of witnesses it proved to be a landmark year in the development of suspect interviewing too.

## **B. Suspect Interviewing**

Police in England and Wales had been audible-tape recording their interviews with suspects since its trials in 1984 and so by the late 80s a wealth of material (much of which had completed its route through the full criminal justice system) existed for evaluation and comparison. Some police interviews with suspects were also visually recorded and in 1992 Professor John Baldwin<sup>2</sup> published a report for the Home Office following his evaluation of 600 such interviews (400 visually recorded and 200 audibly recorded). His report: “*Videotaping police interviews with suspects — An evaluation*” is described by Clarke and Milne (2001) as probably being the “watershed” moment in the well-documented criticism of police interview skills (page 1).

Baldwin was able to criticise over a third of the interviews he evaluated, grouping their failings under four main headings:

- I. The ineptitude of the police officers conducting the interviews resulted in Baldwin identifying them as being “*nervous, ill at ease and lacking in confidence*” with some of them being “*unfamiliar with the available evidence and had clearly not read the written statements*” (McGurk et al. 1993)
- II. The interviewers assumed guilt and therefore expected a confession. This, in turn, influenced the type of questions posed as well as the manner and tone in which those questions were asked — to the extent that any confession subsequently offered by the suspect was not pursued sufficiently to sustain the case.
- III. A poor interview technique was manifestly demonstrated by, amongst other things, interrupting the suspect and becoming “*unnecessarily flustered by the intervention of a third party, such as a legal representative*”. (McGurk et al. 1993).

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<sup>2</sup>Professor Baldwin was the Director of the Institute of Judicial Administration for over twenty years and is now the Emeritus Professor of Judicial Administration at the Birmingham Law School in England.

IV. Unfair questioning or unprofessional conduct. Baldwin expressed concern “in a small number of cases” where the interviewers employed an “*unduly harrying or aggressive approach*” (McGurk et al. 1993).

Whilst Baldwin acknowledged that the interviews he used in his research were not necessarily a representative sample both he, and subsequently the Home Office, were sufficiently concerned to make recommendations for change. The Police were not averse to change and it needs to be recognised that in parallel to Baldwin’s research the Association of Chief Police Officers (ACPO) had (in October 1991) already established a working party on Investigative Interviewing and were actively reviewing their working practices. An outcome of all of this work was the adoption, in 1993, of a model of interviewing that would be applicable to all suspect and witness interviews. It was based on a series of phases and would become known by the mnemonic P.E.A.C.E., an acronym designed to assist the police in recognising the different stages.

**P.E.A.C.E.**

The stages of a PEACE interview are: Plan and prepare; Engage and explain; Account, clarify and challenge; Closure; and finally Evaluate. PEACE therefore is, in essence, Yuille’s step-wise approach under different headings. Its application to a suspect interview obviously meant that different considerations would exist at each stage — but officers familiar with the four phased interview (advocated in the Memorandum of Good Practice) would recognise the parallels.

PEACE	Four phased
<u>P</u> lan and prepare	The Memorandum of Good Practice reflected this thinking when it was also very clear that: “ <i>No Interview should be conducted without adequate planning</i> ” (MoGP pg 9).
<u>E</u> ngage and explain	Rapport
<u>A</u> ccount . . . .	Free Narrative Account
. . . . clarify, challenge	Question phase
<u>C</u> losure	Closure
<u>E</u> valuation	

Although, as has already been stated, PEACE can apply to witness as well as suspect interviews we will focus, in this essay, on its application in a suspect context. We will consider the statutory obligations on the interviewer later but first we will take a generic look at the various stages of a PEACE interview.

**Peace: Plan and Prepare**

It is easy to argue that this is the most important part of the interview — particularly in a suspect context. As somebody once said: “Failing to plan is planning to fail”! Good planning would start to address at least three of Professor John Baldwin’s four categories of failings in the interviews that he assessed (referred to earlier in this essay) and even the fourth, ‘the unfair or unprofessional approach’, might be further minimised by better preparation.

There are a number of generic points that need to be considered before the interview takes place. Amongst these are:

- i. What can this interviewee contribute to this investigation?
- ii. What are my legal considerations / constraints?
- iii. What offence (or offences) am I investigating — and thus what are their ‘points-to-prove’?

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- iv. What do I already know about this interviewee and what do I need to find out?
- v. Does this interviewee have a third party present — a legal advisor or an 'appropriate adult'?

This is by no means an exhaustive list and each investigation will bring with it different 'planning and preparation' considerations but for this overview of PEACE we will briefly look at the five points above.

*(a) What can this interviewee contribute to this investigation?*

From the outset you always have to plan for one of three responses from your interviewee:

- i. prepare for a denial,
- ii. prepare for an admission and
- iii. prepare for your suspect to not answer any of your questions.

All three of these responses (even 'a suspect who does not answer your questions) can take on various guises but the need to plan for them is the same. Does, for example, the denial take the form of alibi that needs to be confirmed / rebutted or does the suspect claim 'mistaken identity' — in which case what are my identification options?

In the case of an admission the interview still needs to proceed to a depth that will, as Baldwin put it, sustain the case. Does the confession identify additional lines-of-enquiry such as those that might assist in the recovery of outstanding property — or identify additional victims? Does the admission go further than the original victim reported? A confession still needs to be probed.

A suspect who wishes to not answer the questions put to him can do so in a variety of ways. He can just choose to respond "no comment" at the end of each question — thus provoking the interviewer to ask the next question — or he can choose to say nothing whatsoever. The important thing in the planning phase is that the interviewers have planned to deal with the eventuality.

*(b) What are my legal considerations / constraints?*

The Police and Criminal Evidence Act 1984 is the primary piece of legislation that impacts suspect interviews. Amongst other things it governs the detention of a suspect when he or she has not been charged with any offence and stipulates the amount of time that a person can be so detained — and who to apply to if the investigation wants the period of detention to be extended. It also reinforces the fact that a detainee is entitled to free and independent legal advice.

Other things that an interviewer needs to consider at this early stage in the process include things like:

- Is English the first, or most appropriate, language for the interviewee?
- The fact that special considerations exist if the detainee is a juvenile or a mentally disordered or vulnerable adult
- Has the detainee made any significant statements in the past?
- Is there any 'Special Warnings' material in existence that require additional cautions under sections 36 or 37 of the Criminal Justice and Public Order Act of 1994? (This is discussed in greater detail in Part II of this essay.)

*(c) What offence is being investigated and what are the points-to-prove?*

Whilst it seems obvious that the interviewer should know what they are investigating Milne and Clarke (2001) in their comprehensive review of police interviews revealed that less than 30% of interviewers covered the points-to-prove in a "*comprehensive manner*" and, more worryingly, just over

14% of the interviewers did not cover them at all (Pg 38). Just as important as points-to-prove is knowledge of any statutory defences that might exist for the offence under investigation so that they too can be covered in the interview.

*(d) What do I already know about this interviewee and what do I need to find out?*

Given that the next stage of the PEACE model is “*Engage and explain*” there is an expectation that the interviewer will, at least try to, ‘engage’ with the interviewee. To this end it is useful to find out, so far as is relevant to the investigative process, some background information on the individual. This becomes particularly relevant if the employment of various interview tactics is being considered. The planning and preparation stage can be viewed as an opportunity to carry out a form of ‘gap analysis’. Once the interviewee identifies what they do not know about their interviewee when they ‘engage’ with their interviewee in the next phase of the process.

Another consideration could be whether this person has been interviewed in the past. If so, is there anything to learn from that contact with the police?

Does this interviewee have a third party present — a legal advisor or an ‘appropriate adult’? When it is remembered that McGurk et al. (1993) reported that officers became “*unnecessarily flustered by the intervention of a third party, such as a legal representative*” the need to prepare for this eventuality is obvious. Equally the solicitor and appropriate adult have clearly defined roles and responsibilities in an interview and the interviewer needs to be prepared to ensure that they are carried out.

#### **pEace: Engage and explain**

There are two distinct components to this phase: ‘engagement’ and ‘explanation’. Firstly let’s look at the ‘engage’ element. Depending upon what particular event is under investigation the interviewer(s) may have to spend a considerable amount of time in the next day or so with the person sat on the other side of the interview table. It is therefore right to recognise that:

*Interviewers and interviewees can be influenced by appearance, manner and speech, regardless of what is said [...] therefore you must give thought to how you are going to manage the opening of the interview*  
(Centrex 2004).

This extract comes from the Central Police Training and Development Authority’s publication “*The Practical Guide to Investigative Interviewing*” and explains perfectly why first impressions count. It is logical therefore to attempt to manufacture an environment aimed at meeting the needs of the process. There is no great mystique in human engagement and people do it every day. When you meet somebody you have never met before one of the first things you do is introduce yourself — and find out their name. And yet this seems to be anathema to some investigative interviewers, particularly in a suspect interview context. “*I don’t want [the suspect] to know my first name*”, and “*I don’t want to be his friend*” were just two surprising responses from some police officers of an English Shire police force when this point was addressed with them. The latter comment clearly misses the rationale for the guidance. It is not about trying to create a friendship but about ‘engaging’ with the interviewee. Whilst this all seems very logical almost all models of interviewing have had to include this instruction as part of their framework, perhaps demonstrating the ease with which this aspect would be ignored by some interviewers if not so included.

Other ‘engagement’ considerations include the identification of any particular concerns that the interviewee may have. This can range from a desire for a drink of water through to an impassioned enquiry surrounding his anticipated release-from-custody time. Either way, the important thing is that the interviewee is talking to you. Importantly it gives you the ability to actually manage any concerns that he might voice but also, a potentially beneficial spin-off might be that this interaction may make it psychologically harder for him to remain silent when the interview moves into its true investigative phase.

The second element of this phase of the interview is to *explain*. This should not be seen as a mutually exclusive ‘chunk’ of the interview and can easily be woven in with the engagement process but, either

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way, there are two main points that will warrant explanation: the reason that the interview is being conducted and secondly, the manner in which it is going to unfold. It is illogical, just because the interviewee is under arrest, to assume that they are familiar with the legal system. It is therefore appropriate to spend time checking their understanding and, if in any doubt, reinforcing the value that the interview will add to the investigation as a whole — and thus the significance that their contribution in the exchange will make. This is also the opportunity to explain what might happen during the interview.

These might include things such as:

- i. The formalities and procedures of a tape (or video) recorded interview — including:
  - a. The right to free and independent legal advice,
  - b. What will happen to the recording media at the conclusion of the interview.
  - c. If the interview is being remotely monitored, the additional procedures that relate to such a practice.
- ii. Although the interview may be being audibly (or visually) recorded notes might still be taken during the process.
- iii. Exhibits might be produced, revealed and discussed.
- iv. The interviewee should not make any thing up and fabricate a response just to 'please' the interviewer.
- v. The interviewee should give as much detail as possible
- vi. The interviewee will be given time to answer questions put to them — so if there are times of silence it may be because the interviewer is giving the suspect thinking-time.

This is by no means an exhaustive list but it illustrates the need, when engaging with the interviewee in the first instance, to assess his or her linguistic abilities and level of understanding so that when the above features are explained it is delivered at a level that the interviewee will understand. This becomes particularly relevant when 'cautioning' the suspect and ensuring that they have an understanding of its content.

**The "Caution"**

The PACE "*Code of Practice for the detention, treatment and questioning of persons by police officers*" defines an interview as: "... the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences". Every police officer is very aware that such interviews need to be conducted only once the interviewee has been told that:

*You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.*

This 'Caution' has sometimes been referred to as a '*right to silence*' and, to some degree, comparisons can be made with the "Miranda Rights" enshrined in the laws of the United States of America (which start: "You have the right to remain silent...") but the English caution makes the clear distinction between what the suspect says (or does not say) '*...when questioned*' and what he later intends to '*rely on in court*'.

Research (Jacobson 2008: Pg 9) has shown that even well educated people can have difficulty in explaining the caution in 'plain English' and so when one considers the added stresses that possibly exist when under arrest it is even more critical to ensure that the suspect understands it. To this end

many interviewers now ask three questions of the suspect who they have just cautioned. These are:

- i. Do you have to say anything?
- ii. If this matter goes to Court and you tell them something that you could have told me during this interview what might the Court think?
- iii. What will happen to the tapes?

It is argued that coherent responses (by the suspect) to these three questions demonstrate an understanding of the caution. Whilst the author of this essay acknowledges it to be a step in the right direction he does not necessarily see it as the final solution.

#### **peA ce: Account, clarify, challenge**

The opening question (in this phase) should give the interviewee the opportunity to admit or deny the offence, provide a reasonable explanation for what happened (and their involvement) or provide an alibi. Here we will look at examples of four different question constructs and their potential outcomes.

##### An open question:

*“You have been arrested for [offence]. What can you tell me about it?”* This gives the suspect an opportunity to respond in any of the four directions mentioned on the previous paragraph.

##### A closed question

*“You have been arrested for [offence]. Did you do it?”* This is merely a variation on the above and might, at best, secure only a “yes” or “no” reply — which obviously then demands a second question which will need to have been planned accordingly.

##### Time constrained question

Restricting the time frame inside which you want the suspect to comment can be done in two ways: *“Where were you between [time] and [time] ?”* or, *“Where were you at [exact time]?”*. Both address slightly different investigative objectives and should be employed tactically where appropriate. A third variation: *“What were you doing at [location] at [either a specific time or between-times]?”* could be used with a suspect arrested at or near the crime scene.

##### Micro-summary questions.

If the suspect has already made a relevant comment it is possible to include that fact to act as a prefix to many of the above types of question. An example might be: *“The police and ambulance service were called to your house and found your partner had been stabbed in the chest. When they asked you what had happened, you said that you stabbed him/her. Tell me how you came to stab him/her?”* Similarly: *“When you were arrested this morning you said you’d been defending yourself when you hit Brian. Tell me what happened?”*

Whilst all of the questions focus immediately on the matter under investigation they approach the subject in subtly different ways and a good interviewer will have used the *engage* and *explain* phase to assess which wording is most likely to provoke the most desirable response from the interviewee. Again psychology makes a significant contribution here. Look at the difference between these two questions, which both ask the same thing:

*“You have been arrested for sexually abusing your daughter. Tell me what happened?”*  
and . . . .

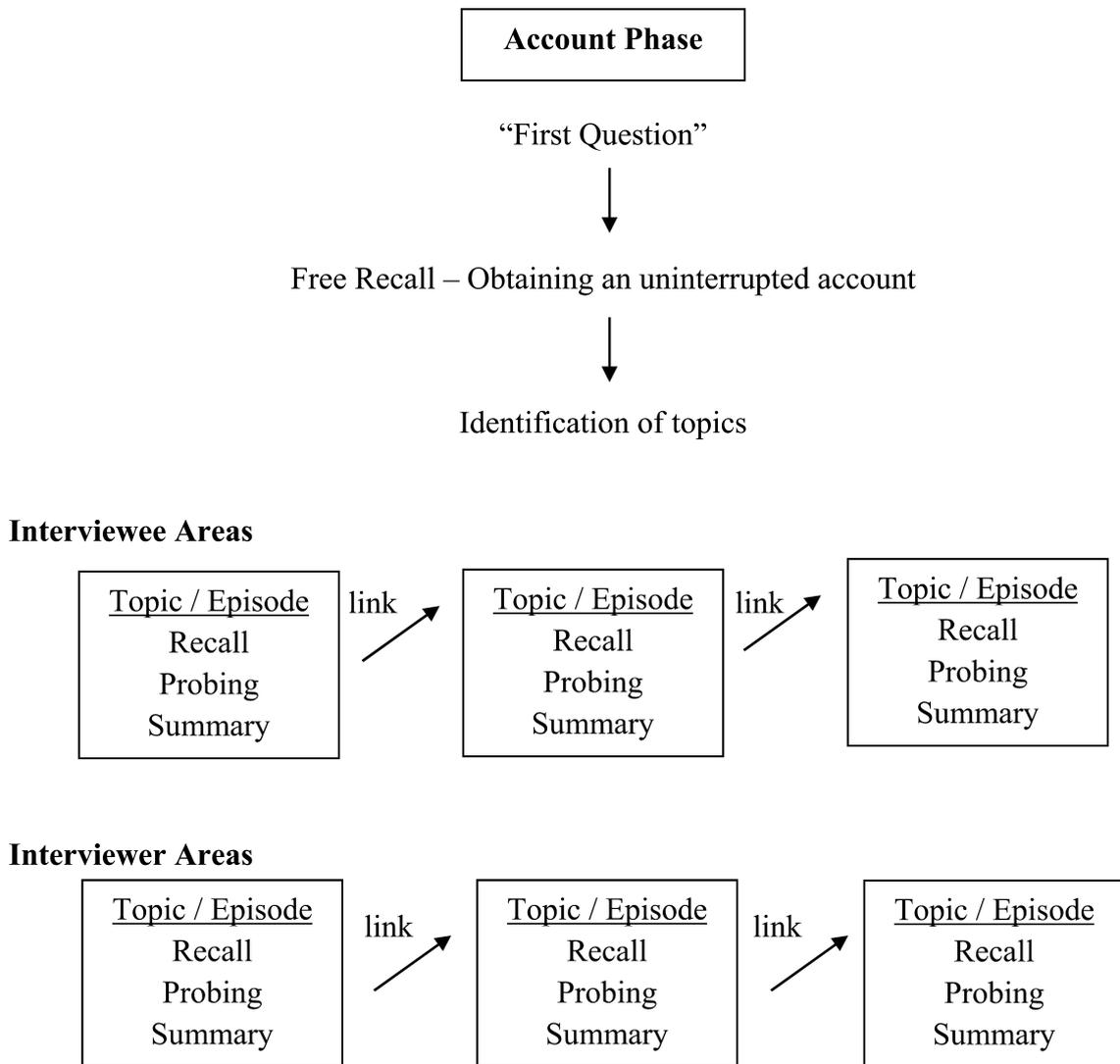
*“You have been arrested because we are enquiring into an allegation by your daughter that you had sex with her. We want to understand what has happened, so tell us what you know about this?”*

Knowing your interviewee and therefore being able to assess which wording (and which question type) is likely to achieve your objective is the key. Securing the fullest, most detailed account that the interviewee can (or is willing to) give is the primary aim of this phase of a PEACE interview and it is therefore hoped that the planning, preparation, engagement and explanation will all pay dividends at

this point.

Once an account is forthcoming the interviewers task is to identify specific topics within that account that they want to clarify further. Once these topics have been identified they should probe each one separately before moving to the next. Once the suspect's topics have been exhausted the interviewers can start to introduce their own topics. These could be, for example, apparent points of conflict — where a witness's account and the suspect's account appear at odds. Similarly it could be that the interviewers want to introduce new material to the suspect — such as scientific findings.

The Centrex publication of 2004, the “Practical Guide to Investigative Interviewing” (pages 95 and 101) has a diagrammatic representation of a PEACE interview and the below is a development of that illustration showing just the Account phase:



In some law-enforcement settings the “Interviewer Areas” are occasionally referred to as “First-stage challenge” (although such terminology does not exist in the purist PEACE model) in recognition of the fact that this is where the relationship between the interviewer and the suspect can start to change and even deteriorate if not properly managed. A PEACE traditionalist would refer to this stage of the interview as ‘moving from account to clarification’. Either way the continued use of open, non-confrontational questions at this point is advocated. The difference in style between the following two questions is obvious — even though both use open questions — but it is important, at this stage, that something akin to the latter is adopted.

*In your account you said you left home at 10.00pm whereas I have a witness who says they saw you in town at 9.30pm. Tell me again what time you left home*

and . . . .

*In your account you said that you left home at 10.00pm. I need to tell you now that a witness has come forward who says they saw you in town at 9.30pm. Can you see the problem we have here? This is why I'm interviewing you [about this offence] — so that we can resolve this discrepancy. So, take your time to ensure we both fully understand what you are saying here and when you are ready, tell me when you left home?*

In the second example the “we” in the ‘problem that **we** have’ and ‘. . . **we** can resolve this discrepancy’ refers to the interviewer and the interviewee. This point can be reinforced by appropriate body language to ensure that the interviewee does not think that it is a problem that ‘we’ — the law enforcement agency — have. Was he to think that there is obviously nothing that he can do to address the issue. This is why it is important that he sees himself as part of the solution — not just the problem. Empirical evidence shows that this approach is more likely to maintain the engagement with the interviewee, which is the objective of the tactic.

This is the phase that all the new evidence (that the investigators intend to use in the interview) is revealed to the interviewee. Some interviewers want to hold back what they consider to be their strongest, most damning piece of evidence, their coup de gras, for a final challenge point — but this approach is flawed. How do they know it is their strongest point if they have not given the suspect the opportunity to comment on it? He might have a perfectly logical explanation for his fingerprints being on the knife. Until he is asked the interviewers can only guess his response. It is not only unprofessional for them to assume that they know the answer but it also reinforces Baldwin’s point (as reported in McGurk et al 1993) referred to earlier in this essay that the interviewers’ assumptions unhelpfully influenced the manner in which they delivered their questions. Only once all the material that the investigators intend to use in the interview has been discussed — and the suspect’s responses considered — can a decision be made as to what points are the ‘strongest’. Without doubt the assessment of a particular evidential aspect’s strength and weakness is very subjective and additional planning is essential. There are a number of different tactics available to interviewers when delivering their ‘challenge’ and whilst there is no single universal solution to the approach that should be adopted we will look at one approach in detail this paper: the principle of prioritisation.

The premise is simple: take a number of evidential points that remain in conflict with the suspect’s account and assess the value they add to the investigation. Now prioritise them — weakest to strongest — and prepare a closed question around each point-of-evidence to be put to the suspect. The actual delivery tactics of the questions will depend upon many factors unique to each investigation but the following is a guide. Start the interview with a brief but formal re-assessment of the suspect’s understanding of the ‘Caution’. Deliver the questions (as planned in advance) and acknowledge the suspect’s responses. Because the question type has moved from ‘open’ to a more closed construction the interviewer is not expecting lengthy replies. The interviewer needs to be ready for potential frustration from the suspect as he (the suspect) will almost certainly be repeating responses he has given earlier. Whilst the interview concludes on what the interviewers consider to be the strongest point-of-challenge they should not overtly label it as such. It should be delivered, in question form, in the same measured and professional manner as the others have been.

The rationale for the use of this tactic is two-fold. Overtly the interviewers are ensuring that all they have put all of the key points of evidence (that they intend to use in interview) to the suspect and are giving him chance to reiterate his previously delivered explanations. Perhaps more psychologically there is an acknowledgement that by prioritising the points-of-challenge there is an opportunity for the suspect to see the true weight of evidence being considered against him. Delivering these points in a closed manner also allows the suspect to see this evidence with absolute clarity.

The tactic is not designed to elicit a false confession and it should not be employed in such a way as to exert an unfair pressure on the interviewee but a suspect who has lied during the earlier interviews — because they have not recognised the evidence that exist against them — might choose to reconsider their earlier responses in the light of this clarity. Equally an offender who has chosen to

remain silent until this point may decide to respond during this phase. Much as is the case at the very beginning of an interview, the interviewer should be ready at this stage to receive an admission — either full or partial — or a continued denial.

A third effect of this tactic is that should this matter go before a court, the jury have, in this interview, a summary of some of the key prosecution points alongside the defendant's responses, all in a ten to twelve minute interview tape (or six page interview-transcript). Somewhat theatrically it has been said in the past that if the interview tapes are played (in court) in chronological order then the last thing the jury will hear before entering their retiring room to 'decide the fate of the accused' is this resume.

**'Reliable' and 'Fair': Sections 76 and 78 of the Police and Criminal Evidence Act 1984**

There is a similarity between seeking clarification and challenging something insofar as they both seek an explanation. What makes them different is often just the style with which they are employed. In an investigative interview both need to be conducted in an appropriate and professional manner. Sections 76 and 78 of the Police and Criminal Evidence Act 1984, whilst important throughout the entire investigative process, are particularly relevant here as they deal with the admissibility of evidence in general and confessions in particular.

Section 78 states:

*In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.*

Simplistically this gives the court the option to exclude evidence (which would normally be admissible) if it considers that it was unfairly obtained. This has in the past included evidence obtained in such that breaches the European Convention on Human Rights and/or the Police and Criminal Evidence Act Codes of Practice. In the context of a suspect interview is easy to see that if the Court considered tactics employed during that interview to have been unfair then it has the right to exclude it.

Section 76 is even more relevant to interviewers as it relates directly to any admission that a suspect may make. It allows a court to exclude that confession if it agrees that it:

*... was or may have been obtained —*

*(a) by oppression of the person who made it; or*

*(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,*

Much like section 78 above the European Convention on Human Rights is the agreed point of reference here thus "Oppression", in this context, would include "torture, inhuman or degrading treatment, and the use or threat of violence". Oppression (as a term) was also specifically considered by the Court of Appeal in the case of Regina versus Fulling (1987) where it was held to be given its ordinary dictionary meaning and: "*... was likely to involve some impropriety on the part of the interrogator*" (CPS 2013). In the case of Miller, Paris & Abullahi (1993) the interview was held to have been oppressive even though the solicitor was present throughout.

Although there is a lot for the interviewers to consider during the planning and execution of the clarification and challenge phases of any interview the Central Police Training and Development Authority was very clear in its 2004 guidance (which still holds today):

*The account needs to be challenged when you have good reason to suspect that an interviewee is deliberately withholding relevant information or knowingly giving a false account* (Centrex 2004).

If, during a challenge, the suspect was to suddenly make an admission the interviewer should be ready to return to an open-style of questioning — and seek this new ‘account’; PEACE should therefore not be seen as a restrictively linear, one-way approach, much more a flexible framework in which to interview.

**peaCe: Closure**

In a suspect interview there are some obligations placed on the interviewer, not least by Code E of the Police and Criminal Evidence Act Codes of Practice. Amongst these requirements is the need to give the suspect the opportunity to clarify or add anything he has already said, the time the interview is being concluded and the suspect should be handed a notice which explains what happens to the interview tapes. It remains obvious that these matters should still be carried out in a professional manner, not least because there there may be a requirement for further interviews. It is also right to let the suspect know what will happen next.

Interviewers can sometime treat this stage of the interview as merely a procedural formality when, in fact, it should be considered tactically. As just one example, it could be used as an opportunity to reveal what will be covered in the next interview. In doing so the legal advisor could be briefed accordingly and any other ‘disclosure’ material handed over to the suspect. The Police and Criminal Evidence Act demands that the police deal with a detainee “expeditiously”: by revealing at the end of one interview what will be covered in the next — in order to give the suspect thinking time can surely be argued to meet that obligation.

**peacE: Evaluation**

Although this phase is conducted after the interview is concluded it is still a fundamental part of the process. Logic demands that there was an aim, an intended objective for conducting the recently concluded interview. That same logic demands that the interviewer assess whether that aim and objective was achieved. If it wasn't then the investigation could be severely let down unless this evaluation is conducted and a new approach to address the investigative objective is considered.

There are three things that should always be evaluated at the end of the interview: what new information (if any) was forthcoming, the suspect and finally the interviewer.

- i. The new information that came out of the interview
  - a. What new information do you now have?
  - b. Does it corroborate existing information?
  - c. Does it generate new lines-of-enquiry?
  - d. Does it elevate existing lines-of-enquiry to a higher priority?
- ii. The interviewee
  - a. What was his demeanour?
  - b. Has his health or well-being deteriorated/improved?
  - c. Has he changed his approach (from ‘no-comment’ to now answering questions — or vice-versa)?
- iii. The interviewer’s performance
  - a. Was there still a professional rapport existing?
  - b. Should we change interviewer for the next interview?

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- c. Has that interview identified any professional development / training issues for the interviewer?
- d. What does the interviewer need to do differently next time to achieve the investigative objectives?

It is clear that a well conducted evaluation will inform the 'planning and preparation' phase of any subsequent interview with the suspect and therefore is an essential ingredient in the process.

In conclusion the PEACE framework can be applied to victim and witness interviews just as it can be to suspects. Whilst some of the considerations discussed above might not be relevant with witnesses, many will. Equally additional factors may exist with victims of crime that are not relevant to suspected offenders. It is hoped that by comparing the opening section of this report, which focussed on witness interviewing, with the latter section, dedicated to PEACE (in a suspect context) a broad understanding has been secured of the current system of investigative interviewing in England.

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## **APPENDIX A**

### **The Original Seven Principles of Investigative Interviewing**

1. The role of investigative interviewing is to obtain accurate and reliable information from suspects, witnesses or victims in order to discover the truth about matters under investigation.
2. Investigative interviewing should be approached with an open mind. Information obtained from the person who is being interviewed should always be tested against what the interviewing officer already knows or what can reasonably be established.
3. When questioning anyone a police officer must act fairly in the circumstances of each individual case.
4. The police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.
5. Even when the right of silence is exercised the police still have a right to put questions.