

INVESTIGATIVE INTERVIEWING IN ENGLAND PART II: SOME TACTICAL AND LEGAL CONSIDERATIONS

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This paper has been written so that it can be read as a stand-alone document in its own right but its primary purpose is to complement “*Part I “Models for Interviewing Witnesses and Suspects”*” and it is recommended that it is read in conjunction with that essay.

I. INTRODUCTION

The Greek philosopher Aristotle spoke of Ethos, Pathos and Logos as “*ingredients of persuasion*” or tools to encourage another to take a particular point of view. Whilst investigations should never be conducted in such a way as to distort the truth (so as to fit an investigator’s preconceived ideas) it is possible to draw parallels between Aristotle’s teachings and modern-day models of investigative interviewing. In the sister-paper to this essay (“*Part I: Models for Interviewing Witnesses and Suspects*”) we saw how the four-phased interview for vulnerable and intimidated victims and witnesses (as advocated in the Ministry of Justice publication “*Achieving Best Evidence in Criminal Proceedings*”) was comparable with the PEACE model of interviewing (employable in both suspect and victim/witness contexts). In this paper we will look at various strategies and tactics that can be employed during interviews as well as some additional factors that influence practice and procedures. In doing so we may see at least two of Aristotle’s ‘ingredients’ at work — if not all three.

Without looking too hard it is possible to see aspects of ‘Ethos’ — the attempt to establish the interviewer’s authority — present in the “Engage” phase of a PEACE model interview and quite possibly again in the “Challenge” element; ‘Pathos’ — the art of appealing to the interviewee’s emotions — without doubt features in the “Clarification / first-phase-challenge” steps; and ‘Logos’ — the presentation of an argument in logical terms — in the “Final-challenge” delivery, across a PEACE interview. This sort of psychology has long been recognised as playing a role in police interviews and many eminent professionals in that science have informed the research into techniques that the police now use. But where psychology (and/or acts of persuasion) meets the Criminal Justice system a boundary exists which cannot be crossed: everything that is done must fall the right side of the law. Article 3 of the European Convention on Human Rights (protection from torture, inhuman and degrading treatment or punishment) and Article 6 (the right to a fair trial) are both significant indicators of where that boundary is drawn (and both of those clauses are also reflected in the more global Universal Declaration of Human Rights in its Articles 5 and 10 respectively). Interviewers need to recognise this when considering their tactics.

The Association of Chief Police Officers recognised these challenges when, in 2005, it published its guidance on this matter. It stated that for an official body such as the police to stay within the standards set by Human Rights legislation it needed to be able to show that its activities met that benchmark. To that end they created a mnemonic that became the mantra for investigative decision making. The acronym they used was (coincidentally given that this paper is being delivered in Tokyo) “JAPAN”!

J *ustification* (legality) — that there were reasonable grounds to suspect some knowledge or involvement relevant to the criminal offending or disturbance of the peace;

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A *uthorisation* — that the proper procedures have been followed, recorded and all actions were authorised;

P *roportionality* — that the nature of the interference is proportional to the matter being investigated in its seriousness;

A *ccountability* — all the options considered and all the relevant factors must be recorded;

N *ecessity* — that the methods used are necessary for the purpose of the enquiry.
(ACPO 2005 pg 34)

An interview, be it with a suspect or a witness, has to be ‘*investigative*’ otherwise it is unlikely to achieve its objective — indeed interviewers are actively encouraged to employ an “*investigative mindset*” in the Seven Principles of Investigative Interviewing. So there is little dispute that an interviewer is not merely somebody who asks questions, they are an investigator. Thus, if they apply the five-point ‘JAPAN’ guidance to their decision making they will be in a stronger position to defend their strategy in court.

The National Police Improvement Agency makes an additional point on the topic of decision making:

In order to be effective the investigator must develop the ability to make reliable and accountable decisions. This may often be under pressure or difficult circumstances
(NPIA 2013)

In an investigative-interviewer context that pressure can be because they are making tactical decisions dynamically, in the heat of the interview. They may have planned and prepared for the exchange diligently but something happens in front of them that causes them to change direction and use a different strategy altogether. If, as they should have done, their original plan was recorded (“*Writing an interview plan in all cases will ensure that the most appropriate elements of PEACE are being used*” — Clarke and Milne 2001) the interviewers will need to justify their departure from that plan. That justification will itself need to be recorded — albeit, in these circumstances almost certainly retrospectively. This point is reflected in the performance criteria of an interviewer (as set out in the agreed National Occupational Standards) “*Ensure all decisions, actions, options and rationale are fully documented in accordance with current policy and legislation*” (Skills for Justice 2008). Applying the “Justified, Authorised, Proportionate, Accountable, Necessary” rationale to the recording process has been found to be a useful template.

II. ADVERSE INFERENCES

Before we look at specific tactics that can be considered in investigative interviews it is right to look at another legislative issue that must be considered during interviews with some suspects. This is sections 35 to 37 of the Criminal Justice and Public Order Act 1994 which allows potentially adverse (on the part of the suspect) inferences to be drawn by the court. Section 35 deals specifically with an inference being made if the accused remains silent during the trial. There are caveats that apply but, given that section 35 can only apply after the interview has taken place it has less relevance to this essay than sections 36 and 37; so we will concentrate on them. As we do so we will also remind ourselves of the wording of the ‘caution’ that applies to all interviews of people for whom there are grounds to suspect them of having committed an offence:

“You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence.”

Here, it is clear that there is no obligation on the suspect to answer any questions — so long as he or she understands the implications of such a refusal at a later date. Section 36 though shifts the onus of commenting back to the suspect. It states:

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Where—

- (a) a person is arrested by a constable, and there is—
- (i) on his person; or
 - (ii) in or on his clothing or footwear; or
 - (iii) otherwise in his possession; or
 - (iv) in any place in which he is at the time of his arrest, any object, substance or mark, or there is any mark on any such object; and
- (b) that or another constable investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and
- (c) the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given [...] the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure or refusal as appear proper.

Section 37 has a similar impact:

Where—

- (a) a person arrested by a constable was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and
- (b) that or another constable investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and
- (c) the constable informs the person that he so believes, and requests him to account for that presence; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, [...] the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure or refusal as appear proper.

In both Sections there are areas that have been, and will continue to be, areas for debate: in section 36, what constitutes “*otherwise than in his possession*”?; and in section 37, how flexible can “. . . at or about the time . . .” be? These have been ultimately matters for the Court to decide but the responsibility lies firmly with an interviewer to ensure that, at the time of questioning, the suspect understands what is being asked of them. In circumstances where Sections 36 or 37 apply the original caution advising them that they ‘. . . do not have to say anything . . .’ is no longer relevant and the suspect needs to understand that the obligation on them has changed. To achieve this understanding they are given, what is referred to in relevant guidance as, a “Special Warning”. Significantly, whilst the original caution is published and agreed (Police and Criminal Evidence Act 1984 Codes of Practice: Code C Paragraph 10.5) a ‘Special Warning’ isn’t: “*Legislation does not provide a specific form of wording . . .*” (Centrex 2006 Pg 11) for it. The reference point then has to be the Police and Criminal Evidence Act Codes of Practice (Code C, Paragraph 10.11) which states:

For an inference to be drawn when a suspect refuses to answer a question about one of these matters, or to answer it satisfactorily, the suspect must first be told in ordinary language:

- a) *what offence is being investigated;*
- b) *what fact they are being asked to account for;*
- c) *this fact may be due to them taking part in the commission of the offence;*
- d) *a court may draw proper inference if they fail or refuse to account for this fact;*
- e) *a record is being made of the interview and it may be given in evidence if they are brought to trial.*

It is therefore the interviewer's responsibility to construct a 'warning' that embraces the five factors listed above in a form that they can justify was appropriate for their interviewee's level of understanding. Clearly the application of this "Special Warning" has the potential to confuse the interviewee if not explained well by the interviewer. Occasionally interviewers find themselves saying things like: "*I'm now taking the Special Warning off*" when no longer asking questions to which Sections 36 or 37 apply. It is perhaps not surprising when some practitioners prefer to introduce 'Special Warning material' only towards the end of the interview (approaching the challenge phase) in case they render the rest of it as inadmissible due to the interviewee being confused.

III. THE FIVE TIERS OF INVESTIGATIVE INTERVIEWING

There is, without doubt, a need to exercise vigilance when interviewing around evidence to which sections 36 and 37 of the Criminal Justice and Public Order Act 1994 applies but professional interviewers should not be apprehensive and probably should not let it influence their interview plan to that degree. The more serious the case, the more scrutiny on things like the use of "Special Warnings" is likely to be and in recognition of that probability, the Police in England and Wales have adopted a tiered system of interview skills so that, for more serious investigations a higher level of skilled interviewer can be called upon.

For many years there were five tiers of investigative interviewer:

Tier 1 — an entry-level introduction for basic recruits;

Tier 2 — for more experienced officers dealing with more serious offences;

Tier 3 — identified 'Specialist interviewers' utilising additional techniques in the most serious crimes;

Tier 4 — for managers and supervisors of interviewers; and

Tier 5 — Interview Managers/Coordinators.

This structure not only gave Senior Investigating Officers in serious crime investigations clarity over what sort of resources they should be deploying across their interviews but it also gave Workforce Development departments a focus for any future Training Needs Analysis.

A commonly adopted application of the Tiers was that all uniformed patrol officers would be trained to Tier One, all detectives to Tier Two, all supervisors to Tier Four and then a core nucleus of staff, from specific policing disciplines, would be trained to Tiers Three and Five as necessary. It is important to recognise that the Tier Three specialism existed in both the witness and the suspect arenas and so departments such as Major Crime Investigation Teams would have some Tier Three (suspect) specialist interviewers as well as some Tier Three (victim/witness) specialist interviewers.

This Tiered structure existed until the publication of the National Investigative Interviewing Strategy (National Police Improvement Agency 2009) when it was incorporated within the Professionalising the Investigation Programme (PIP) and aligned with the National Occupational Standards of the Police. In essence nothing changed: Tier 1 became PIP level 1 'Volume and Priority Crime' interviewers and Tier 2 became PIP level 2 'Serious and Complex crime' interviewers. Tier 3, whilst still PIP level 2 investigators would be formally identified as having the additional competencies of a 'Specialist suspect' or a 'Specialist victim and witness' interviewer. Tier 4 was absorbed into the general supervisory responsibilities and the Tier 5 Interview Managers/Coordinators continued to exist in their own right.

Many Police Forces employ a progression strategy demanding that to become an Interview Manager/Coordinator you have to have been a 'Specialist' interviewer (in either the suspect or witness field). The logic of this is straightforward: they can advise on a technique or tactic that they are themselves familiar with and have practiced.

IV. TACTICS

Having a range of tactics available to an interviewer is important as every interviewee will be different and so a one-size-fits-all approach will almost certainly fail. Add to this fact that many repeat-offenders are interviewed time and time again by police officers and the need to be flexible in the execution of the interview takes on a heightened relevance. Something as common as receiving no satisfactory response to an interview question can be an area where different approaches can, and in many cases should, be considered.

A. "No comment"

When a suspect exercises his right not to say anything meaningful in reply to the questions put to them he should, in the first instance be reminded of the implications of the 'caution' that he is being interviewed under. He should be reminded that if he intends to rely on an account at Court, that Court might be less inclined to believe him than had he offered that explanation during the interview. Whilst that is something for the suspect to consider the interviewers also have a responsibility here: if they do not ask the question during the interview then no proper inference (following the suspect's refusal to answer) can be expected to be drawn by the Judge or jury. Basically, if the question is not asked — it cannot be a failure to answer it. Empirical evidence disappointingly exists of officers who have failed to plan for such a potential and they end up saying to the suspect (who has responded "No comment" to their opening fifteen questions): "Are you going to keep saying 'no comment' to all of our questions?" When the suspect replied that he was never going to answer any of their questions so they might as well charge him if they had the evidence — the interviewers terminated the interview at that point. This episode concluded with a supervisor intervening and, following appropriate planning, the interview was resumed later in the day. But this demonstrates that "no comment" is a difficult response to constantly put questions to unless you are ready to do so. Poorly prepared interviewers can sometimes find them falling into a metronomic response where the interview goes something like this:

Question: "Where were you last night?"

Reply: "No comment"

Question: "Did you go to the nightclub?"

Reply: "No comment"

Question: "Did you go into the nightclub?"

Reply: "No comment"

Question: "Did you see the barman in the nightclub?"

Reply: "No comment"

Question: "Did you threaten the barman?"

Reply: "No comment"

Question: "Did you punch the barman?"

Reply: "No comment"

Etc, etc etc.

The 'metronome effect' is where as soon as the interviewer has finished the question the suspect responds "no comment" and as soon as the suspect has finished the word "comment" the interviewer is straight back in there with the next question. No pause. Nothing. Just the start of the next question. To which the suspect replies "no comment" and the interviewer, in anticipation that that

would be the response, comes straight in with the next question. It becomes metronomic when question is followed by answer is followed by question is followed by answer is followed by question is followed by The reality is neither party is thinking about what is going on. Almost certainly the suspect is not listening to the questions — he is just waiting for the interviewer to stop talking to give his ‘reply’. In these circumstances however it is crucial that the interviewer gives the suspect time to digest what the question was and to show that he was given time to consider his response.

Another tactic in a similar vein employed by suspects is where they respond with the words “no comment” but do not give the interviewer time to deliver the question. They actually speak over the top of the question. The problem for the interviewer here is that the Court may hold that the suspect didn’t in fact hear the question — or, indeed, that the question was not successfully asked. In either case the ability to ask the court to draw a proper inference might prove difficult.

Responding with “no comment” is one method suspects can adopt when refusing to give adequate responses in interview. Another is just remaining silent. Much like saying “no comment” there is more than one way of remaining silent in an interview. The suspect can stare directly at the interviewers in an attempt to intimidate them or he can ignore them completely and adopt a body-language reinforcing this stance. This could be as extreme as standing and facing the wall or, less dramatically, they might just lay their head on their arms on the table feigning sleep. The interviewers need to have a response for these tactics — not least ensuring that the interviewee is not suffering some sort of mental break-down making his health and well-being an issue. In short, the interviewers need to ensure that there is nothing existing at the time that will impact on the reasonable expectation of the suspect answering.

B. Written Questions

If there is likely to be any doubt that the question has been put to the suspect an option exists for the interviewers to write them out, much like a questionnaire, and give them to the interviewee. As is always the case there are additional points that need to be considered with such a tactic but it is an option. It is also something that is worth considering as giving advanced notice of what will be included in the next interview.

C. Pre-Interview ‘Disclosure’

‘Disclosure’ is terminology often used when speaking about pre-interview briefings with the suspect’s legal advisor. This briefing reveals — or ‘discloses’ what material it is intended to discuss in the next interview. The rationale for such a practice is to give the opportunity for the legal advisor to, in private, advise the suspect and take instructions from him. Whilst this sounds perhaps like the police being overly helpful there are, in fact a range of investigative benefits in existence here.

If the police ask a question the suspect could make ‘no comment’. He could claim that he did so, on the guidance of his legal advisor. His legal advisor could in turn claim that they had insufficient information from the police on which to base coherent advice to their client — thus ‘no comment’ was the only advice they could give. If the Court considered this as being circumstances existing at the time of the interview that would have removed the reasonable expectation for the suspect to answer the questions put to him in interview it is possible for no proper inference to be drawn from the suspect’s refusal to answer it. To be clear: there is no legal obligation to disclose anything in advance of the interview but it is something that is occasionally done to progress the interview process. There is obviously the pitfall here of revealing so much of your case that the suspect has an opportunity to construct a false explanation to fit the facts of the case — and this could be argued if ‘pre-interview disclosure’ was not dealt with professionally and with an investigative mindset. To illustrate this point let us look at the introduction of scientific evidence, such as a finger-print of the accused at the scene, into the interview.

Let us consider an investigation where a school has been broken into during the long summer holiday and a lot of wanton damage and destruction has been caused. This includes heating pipes that had been suspended from the ceiling in the reception hall having been pulled down, flooding the area. The fingerprints of three people are discovered on the upper part of one of the pipes — consistent with people swinging on it and it eventually giving way under their weight. These fingerprints are identified

as belonging to three students of the school. The three youths were all interviewed simultaneously. The legal advisor of one youth was given the full circumstances of the scientific evidence: the fact that it was fingerprints, where they were — both where in the building and where on the pipe — and they were also given photographic evidence. In interview this youth's account was that he and his friends, during term time (ie when they had legitimate access to the school), had held a competition to see who could jump the highest — and make a mark highest on the wall. The youth went on to explain that he was so good at this game that he climbed onto the banister rail of the stairs in the reception and jumped from there and was even able to just about touch the heating pipe. That was why his fingerprints would have been found on something that was normally twenty feet off of the ground — certainly not because he had swung on the pipe breaking pulling it from the ceiling. Poor 'disclosure' tactics had given him the ability to construct a whole story around the potentially damning piece of evidence. A more thought-through disclosure strategy was used on the second youth.

The second youth was told only that the police had "intelligence" that suggested he (the youth) might have been responsible for the damage. It was left for the youth and his legal advisor to ponder what this 'intelligence' might have been. Was it an independent informant or one of the other detainees in an admission to the police, was it closed-circuit television footage or something else. The legal advisor argued that he did not enough information on which to advise his client — hence the youth made no comment to the questions put to him. In the next 'disclosure' package it was then revealed to him that the 'intelligence' was in fact 'scientific, forensic intelligence'. Still the legal advisor did not know whether this 'intelligence' was likely to be a footwear mark, fingerprint, DNA or fibre evidence — or something else. The interviewing officers pointed out that all they were trying to do was secure an uncontaminated account from the youth that might explain his probable presence at the scene of the crime but the youth maintained his position of making no comment. The officers revealed next that there was fingerprint evidence available to them. The youth obviously pointed out that he was a student at the school and so his fingerprints were likely to be present. It was only when the location of the fingerprints was revealed to him did the youth make a reply — this being that he had heard the damage going on and entered the building in an effort to see what was happening. In doing so, he must have inadvertently grabbed the pipe (which was now at waist level) — thus leaving his fingerprints behind. Any subsequent Judge and jury would be able to see that ample opportunity had been given to the youth to explain his involvement, and that he only chose to do so when given the whole amount of information linking him to the scene. Pre-interview disclosure therefore does not need to tie the hands of the interviewer. Indeed it is sometimes helpful to consider it alongside one of the National Police Improvement Agency's Principles of Investigative Interviewing.

D. Facilitating the Cooperation of Suspects: Early Admission of Guilt

The fifth Principle states: "*Investigators should recognise the positive impact of an early admission in the context of the criminal justice system*" (NPIA 2009). The question that this raises for an interviewer is: are they obliged to reveal more information in advance of the interview than they would otherwise have intended — in order to provoke an early admission (if, indeed the interviewee is guilty) or is it right to hold back the information in order not to contaminate any early confession — thus allowing the offender to demonstrate their true regret? The answer is almost certainly unique to each investigation and goes back to the '*Justified, Authorised, Proportionate, Accountable, Necessary*' approach to defensible decision making discussed earlier. If there is any doubt about the contribution that an admission in interview can make to the sentence that an accused can receive in Court some time later it should be removed by the Sentencing Guidelines Council. When considering mitigating factors relevant to the offender they state: *The issue of remorse should be taken into account at this point [once the seriousness of the offence has been considered] along with other mitigating features such as admissions to the police in interview.* (Sentencing Guidelines Council 2006). The interviewer needs to be careful how this guidance is introduced into the interview so as to ensure it does not become interpreted as an unfair inducement. It is almost certainly for this reason that very few interviews contain the discussion in such stark terms.

E. The Custody-Time Clock

The incremental approach to 'disclosure' used in the example above with the youths' fingerprints on the school heating pipe identifies another consideration for the interviewer: "*How much time have I got left before this suspect needs to be released?*" The Police and Criminal Evidence Act 1984, Code C,

paragraph 1.1 lays the foundation: “*All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies*”. Section 37 of the same Act states that where a person has been arrested for an offence:

If the custody officer determines that he does not have such evidence before him [to charge the detainee], the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

Here it is clear that a person can be held in custody solely for the purpose of interviewing them. But does incremental ‘disclosure’ conflict with an ‘expeditiously’ dealt with investigation and unfairly extend the time a person spends in custody — particularly if to be interviewed is the sole reason he is so detained? We are back, yet again, to defensible decision making — and decisions of this nature will have to be defended on a regular basis to an ever escalating-in-authority independent reviewer.

Section 40 of the Police and Criminal Evidence Act 1984 states that a detainee who has not been charged must have his continued detention reviewed and further authorised not later than six hours after the initial detention was first authorised. The detention must be reviewed again not more than nine hours after the previous one was conducted and subsequent reviews will be at intervals of not more than nine hours — up to a maximum period of detention not exceeding 24 hours. These reviews will be conducted by an officer of at least the rank of inspector who has not been directly involved in the investigation.

Section 42 of the same Act authorises an officer of the rank of Superintendent or above to extend this maximum by another 12 hours in certain circumstances, namely:

- it is an indictable offence;
- the detention continues to be necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; and
- the investigation is being conducted “*diligently and expeditiously*”.

This has the potential to extend the detention up to 36 hours without charge, by which point, if a further extension is desired it will be a matter for Magistrate to rule on.

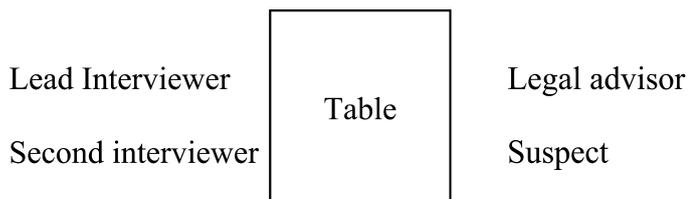
Initially a Magistrate can issue a Warrant of Further Detention to extend the custody period for up to a maximum of 36 hours (making 72 hours in total). Application can later be made for this warrant to be itself extended to a maximum of 96 hours detention — after which the suspect must be charged or released.

It is right to recognise that a significant amount of legislation, requirements and provisos have been summarised in these few sentences but, for the purpose of investigative interviewing and the tactic of incremental disclosure — the point is made: the investigation (and therefore the interview) must be dealt with diligently and expeditiously and an independent Inspector, then Superintendent, then Magistrate must be regularly convinced the need to detain the suspect remains. These review thresholds give the suspect’s legal advisor the opportunity to put forward their views regarding, not least, the interviewer’s diligence and expedience. Whilst these views are put to the Review Officer (the Inspector, the Superintendent or the magistrate) a tenacious legal advisor will have already made their mark in the interviews — and interviewers need to be ready for these interventions.

F. Dealing with Legal Advisors in Interviews

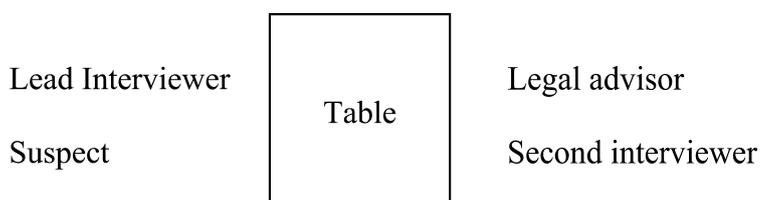
Ideally police interviews with suspects will be conducted by two interviewers — one to lead the process and ask the questions and the second to take notes, summarise as appropriate and otherwise assist his or her colleague as necessary. A rule of thumb tactic for police officers when dealing with legal advisors is that the lead-interviewer should remain engaged with the interviewee and the

second-interviewer, the note-taker, should be the one who responds to any intervention during the interview by the legal advisor. A simple rationale for this is if the legal advisor 'wins' the argument then the lead-interviewer has not 'lost face' in the eyes of the suspect — thus whatever 'engagement' existed between the lead and the suspect, none of it has been lost. If any professional credibility has been lost in the room (in the eyes of the suspect) it has been lost by somebody not directly interviewing them. A second, more reasoned, basis for the second interviewer engaging with the legal advisor is that it does not mean that the lead-interviewer has to be distracted from their train of thought. Often, when an interview is going well (in the eyes of the police) a legal advisor will make an intervention merely to break the momentum. Allowing the lead interviewer to maintain their line of thinking whilst their colleague deals with the distraction is extremely helpful to the lead. This tactic can even be enhanced by manufacturing a specific seating arrangement in the interview room. Look at the setting below:



Even if the second interviewer deals with the legal advisor's intervention they are talking across the diagonal of the table — across the line-of-sight that exists between the lead interviewer and the suspect. This can potentially disrupt the engagement that you want to continue to exist between these two individuals. Just swapping the interviewers seating positions means that this is less likely to happen.

A variation on this theme — and one that provokes discussion amongst trainees — is that shown below:



Here the rapport between the lead and the suspect is much easier to maintain and any discussion between the legal advisor and second interviewer can seem almost ancillary to the interview going on over the other side of the table. Another benefit of this seating plan is that there is no barrier between the interviewer and the suspect. This may be advantageous or it may not be — and there may be other factors to consider too — but the point is, even something that we often do without thinking (such as walking into an interview room and sitting down) should be planned for in an investigative interview.

G. Tactical Interview Advice: The Interview Manager

Interview Manager/Coordinators have already been referred to earlier in this essay. Their role is, amongst other things, to advise on a range of planning and tactical considerations (some of which have been discussed above). This coordination is crucial to the investigation as a whole as so many things can upset the interview strategy unless it is coordinated. A well meaning press-release to the news-hungry media following the discovery of a dead body can — and will — influence a pre-interview disclosure strategy. The press release will, by definition, release information to potential witnesses and the offender thus contaminating future interviews. A commonly practiced investigative technique is the house-to-house enquiry. Unless this is coordinated by or with the Interview Manager an injudicious release of information into the public domain can occur. Investigative Interviews stretch far beyond the confines of the interview room; equally factors previously not considered as relevant can have a massive impact on what happens during that maximum of 96 hour detention.

H. Tactical Interview Advice: The Psychological Interview Consultant

Sometimes even more assistance is required and this can come in the form of a Behavioural Investigative Advisor (BIA) or, more recently, a Psychological Interview Consultant (PIC). In the past

these specialists have been referred to as psychological profilers, forensic psychologists and criminal profilers amongst other titles. They will almost certainly not be police officers but are an external service who can be called upon as and when considered necessary. For many years they have been considered as having a contribution to make to investigations as a whole it has only been in relatively recent years that their contribution to investigative interviewing has become finely honed.

They can offer interview guidance against specific character disorders: a psychopath, for example can be superficially charming and intelligent, and yet under the surface they might be unreliable, dishonest, insincere, manipulative and egocentric. When interviewing such a person they will say that there is little point in spending too much time on trying to build a rapport with the suspect. Interviewers should avoid criticism of him or his actions and also avoid conveying or expressing emotions. A PIC will also say that there is limited value in appealing to a psychopath's better nature as he may well not have one. If he does it is quite possible that this is a hard-to-reach area of his psyche.

A second example would be a suspect with a histrionic personality disorder will quite possibly see life as mundane and boring and will crave attention and excitement. In interview it might be helpful to flatter their intelligence and independence and to emphasise the need to resolve the situation.

Equally a paranoid person might well be suspicious, mistrustful and hyper-sensitive. Here, if the interviewers emphasised the importance of the suspect giving their version of events then this might be appropriate motivation to encourage an account from them.

These are just three examples of the sort of generic advice that a BIA and/or a PIC might be able to give, but more specific assistance might also be possible, depending on how much information about the suspect exists on which they can build their guidance. It is quite possible for them to advise on things like:

- Nature and timing of arrest
- Who is to make the arrest
- Characteristics of interviewers
- Duration of interviews
- Timings of interviews
- Order of questions asked
- When and how to make challenges
- Topics to include / avoid
- What would be the most effective first question
- How might questions be most effectively worded
- How can rapport be most effectively established and maintained

Just as importantly BIAs and PICs recognise also what they cannot do. They are academics with a background in behavioural sciences; they are not investigators, interviewers or interrogators. They do not pretend to keep up with relevant legislation surrounding investigation and/or interviewing nor do they profess to be able to 'get inside the mind of a killer' or to 'push the right buttons in order to get them to confess'. The stereotypical portrayal of a criminal psychologist in Hollywood movies and television dramas is often an image they need to dismantle for some more naive investigators!

V. CONCLUSION

This paper has aimed to give an overview of some of the strategies, tactics and techniques that can be considered during an investigative interview. Whilst its focus may appear to have been on suspects much of what has been discussed is equally applicable to some witnesses. Each tactic needs to be adapted to suit the circumstances that exist at the time, the presentation of the interviewee and the skill set (and confidence) of the interviewer. It is hoped that this paper has also shown that ongoing advice is available to interview teams and Senior Investigators — both from within their own ranks and beyond. In conclusion, consider the words of filmmaker Errol Morris:

I think an interview, properly considered, should be an investigation. You shouldn't know what the interview will yield. Otherwise, why do it at all?

Follow that mindset, in both witness and suspect interviews and you will not go far wrong.

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