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MONTEREY, CALIFORNIA

THESIS

FROM THIRD-DEGREE TO THIRD-GENERATION INTERROGATION STRATEGIES: PUTTING SCIENCE INTO THE ART OF CRIMINAL INTERVIEWING

by

Desmond S. O'Neill

March 2017

Thesis Co-Advisor:	Cristiana Matei
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The interviewing strategies of the American law-enforcement system are more than seventy-five years old. Psychologically manipulative and guilt-presumptive, these methodologies replaced the brutal "third-degree" interrogation tactics of the previous century, but have recently come under scrutiny for being both ethically and operationally unsound. These findings have prompted a paradigm shift toward more ethical, effective, and scientifically validated tactics. This thesis set out to explore the advantages of integrating next-generation practices into the interview-training ethos of the Department of Homeland Security (DHS) Office of Professional Responsibility (OPR)—the internal affairs component of Immigration and Customs Enforcement. An evaluation of evidence-based interrogation practices and governmental policy analyses, along with insight from subject-matter experts, provided the data for this exploration. A series of recommendations derived from the lessons learned of the U.K. PEACE model, the practices of the Federal Law Enforcement Training Center, and research by the High-Value Detainee Interrogation Group offered insight for the optimal training of interviewing techniques and their long-term retention in the field. Assuming the recommendations for OPR are both scalable and replicable, this model should be relevant and valuable for the professional practices of other DHS agencies responsible for conducting interrogations as well as for law-enforcement agencies nationwide.

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FROM THIRD-DEGREE TO THIRD-GENERATION INTERROGATION STRATEGIES: PUTTING SCIENCE INTO THE ART OF CRIMINAL INTERVIEWING

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ABSTRACT

The interviewing strategies of the American law-enforcement system are more than seventy-five years old. Psychologically manipulative and guilt-presumptive, these methodologies replaced the brutal "third-degree" interrogation tactics of the previous century, but have recently come under scrutiny for being both ethically and operationally unsound. These findings have prompted a paradigm shift toward more ethical, effective, and scientifically validated tactics. This thesis set out to explore the advantages of integrating next-generation practices into the interview-training ethos of the Department of Homeland Security (DHS) Office of Professional Responsibility (OPR)—the internal affairs component of Immigration and Customs Enforcement. An evaluation of evidence-based interrogation practices and governmental policy analyses, along with insight from subject-matter experts, provided the data for this exploration. A series of recommendations derived from the lessons learned of the U.K. PEACE model, the practices of the Federal Law Enforcement Training Center, and research by the High-Value Detainee Interrogation Group offered insight for the optimal training of interviewing techniques and their long-term retention in the field. Assuming the recommendations for OPR are both scalable and replicable, this model should be relevant and valuable for the professional practices of other DHS agencies responsible for conducting interrogations as well as for law-enforcement agencies nationwide.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFOSI	Air Force Office of Special Investigations
AILEITP	Advanced Interviewing for Law Enforcement Investigators Training Program
AILEITP-M	Advanced Interviewing for Law Enforcement Investigators Training Program-Modified
BAI	behavioral analysis interview
CI	cognitive interview
CITP	Criminal Investigator Training Program (FLETC)
CM	conversation management
CRC	curriculum review conference (FLETC)
DHS	Department of Homeland Security
FBI	Federal Bureau of Investigation
FLETC	Federal Law Enforcement Training Center
HIG	High-Value Detainee Interrogation Group
HSI	Homeland Security Investigations (DHS)
HUMINT	human intelligence
ICE	Immigration and Customs Enforcement
ISD	instructional systems design
OPR	Office of Professional Responsibility (DHS)
OPRSAT	OPR Special Agent Training
SME	subject-matter expert
SUE	strategic use of evidence
U.K.	United Kingdom

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EXECUTIVE SUMMARY

Criminal interrogations are fundamentally designed to elicit confessions.[1] Beginning with the proliferation of physically abusive and aggressive tactics in the early 20th century—arguably the first generation of American interrogation strategies—law-enforcement agents employed what they deemed the most effective means for getting suspects to confess.[2] In the early 1940s, harsh "third-degree" interrogation practices eventually gave way to less physically abusive but more psychologically manipulative techniques.[3] These tactics—later named the Reid Technique—taught investigators how to detect lies and elicit confessions using an array of psychological strategies.[4] Now more than seventy-five years old, Reid's dominance in the U.S. criminal-interrogation realm is pervasive and relies heavily on assuming guilt, assessing behavioral clues of deception, and administering psychological manipulation.[5]

Over the past decade, however, accusatorial interviewing has come under intense scrutiny in part because it is based more on anecdote and tradition than on scientific research. Critics note that Reid's architects have failed to produce empirical evidence supporting the validity of assessing behavior to determine culpability.[6] A 2006 meta-analysis study found the aptitude to correctly detect deception—regardless of expertise—averaged only 54 percent, near the equivalent of a coin flip.[7] A compounding problem

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[1] Randy Borum, "Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Intelligence Science Board Study on Educing Information Phase 1 Advisors*, 17–43 (Washington, DC: National Defense Intelligence College, 2005), 18.

[2] Richard A. Leo, "The Third Degree and the Origins of Psychological Interrogation in the United States," in *Interrogations, Confessions, and Entrapment*, eds. G. Daniel Lassiter and Jennifer J. Ratcliff, 37–84 (New York: Springer, 2004), 57.

[3] Ibid.

[4] Ibid., 57, 77.

[5] Leo, "The Third Degree," 64; Christian A. Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods and Their Effects on True and False Confessions: A Meta-analytic Review," *Journal of Experimental Criminology* 10, no. 4 (2014): 461.

[6] Gisli H. Gudjonsson, *The Psychology of Interrogations and Confession: A Handbook* (Hoboken, NJ: Wiley, 2003), 21; and Leo, "The Third Degree," 67.

[7] Charles F. Bond Jr. and Bella M. DePaulo, "Accuracy of Deception Judgments," *Personality and Social Psychology Review* 10, no. 3 (2006): 214.

with relying on behavior to distinguish between truth and lies is twofold: interrogators often overestimate their ability to detect deception, which then intensifies the accusatorial nature of the interview.[8] These flawed interrogation schemes collectively increase the potential for false confessions, a systemic problem within the U.S. policing culture.[9]

The United Kingdom—having faced its own miscarriages of justice due to false confessions—has prohibited its practitioners from employing coercive interrogation methods.[10] British investigators now conduct investigative interviews grounded in building rapport, asking open-ended exploratory questions, and focusing on cognitive cues of deception.[11] A 2014 study showed investigative interviewing increased the elicitation of truthful information and decreased false confessions when compared to the accusatory approach—the favored American model.[12]

Despite the ubiquity of traditional interviewing strategies within the U.S. law-enforcement ethos, scholars and practitioners are slowly shifting toward next-generation methodologies. In 2009, the U.S. government created the High-Value Detainee Interrogation Group (HIG) in response to the highly publicized post-9/11 interrogation tactics the United States used on terrorist suspects.[13] Part of the group's mission was to

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[8] Saul M. Kassin et al., "Police Interviewing and Interrogations: A Self-report Survey of Police Practices and Beliefs," *Law and Human Behavior* 31, no 4 (2007): 389; Saul M. Kassin, Christian A. Meissner, and Rebecca J. Norwick, "'I'd Know a False Confession if I Saw One': A Comparative Study of College Students and Police Investigators," *Law and Human Behavior* 29, no 2 (2005): 222.

[9] Richard A. Leo and Richard J. Ofshe, "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," *The Journal of Criminal Law and Criminology* 88, no. 2 (1998): 491; Saul M. Kassin and Gisli H. Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues," *American Psychology Association* 5, no. 2 (2004): 37.

[10] David Dixon, "Questioning Suspects: A Comparative Perspective," *Journal of Contemporary Criminal Justice* 6, no. 4 (2010): 429.

[11] Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 461.

[12] Christopher E. Kelly and Christian A. Meissner, "Interrogation and Investigative Interviewing in the United States: Research and Practice," in *Contemporary Developments and Practices in Investigative Interviewing and Interrogation*, Volume II, eds. D. Walsh et al. (New York: Routledge, 2014).

[13] The HIG is a federally funded interagency created by the Obama Administration in 2009 that oversees the interrogations of terrorist suspects in U.S. custody and the custodial transference of terrorist suspects. In addition, the HIG is tasked with conducting research in the field of interviewing and interrogations in order to identify the most effective and ethical means to educe information from suspects. "Special Task Force on Interrogations and Transfer Policies Issues its Recommendations to the President," U.S. Department of Justice, August 24, 2009, https://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president; Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," *Applied Cognitive Psychology* 28 (2014): 847.

identify the best theories and practices "from the cognitive, behavior and social sciences," and from them produce the most effective and ethical means of conducting interrogations.[14] Since the group's establishment, HIG-supported researchers have published more than 100 pieces of scientific literature in the field of interviewing and interrogations, arguably making the group the authority in communication methodologies.[15] The group has also provided instruction to multiple U.S. law-enforcement and military institutions, including the, Los Angeles Police Department, Federal Law Enforcement Training Center, and Air Force Office of Special Investigations, on the use of evidence-based methods of interviewing.[16]

Not all government agencies, however, have adopted research-supported interrogation methods.[17] While some organizations are stymied by institutional challenges—such as agency assumption that the traditional interrogation tactics are sufficient—others remain unaware of the HIG's existence or the efficacy of its science-based techniques. This thesis was, in part, an attempt to defeat both problems. It was particularly interested in the strategic, ethical, and performance improvements next-generation interviewing can bring to the Department of Homeland Security (DHS) Office of Professional Responsibility (OPR)—an internal affairs component of Immigration and Customs Enforcement.

OPR comprises senior and experienced special agents promoted from within the DHS Homeland Security Investigations (HSI).[18] Unlike HSI special agents, who mostly interview suspected criminals, OPR special agents primarily interview other law enforcement officials—many of whom themselves are experienced interrogators.[19]

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[14] Kelly and Meissner, "Interrogation and Investigative Interviewing," 9.

[15] Christian A. Meissner and Melissa Russano, "Examining Validation and Field Assessment of Science-Based Methods of Interrogation," HIG Research Symposium, October 23, 2015, Washington, DC.

[16] Kelly and Meissner, "Interrogation and Investigative Interviewing," 9; Meissner and Russano, "Science-Based Methods of Interrogation."

[17] Patricia Donovan, email to author, January 30, 2017.

[18] "Office of Professional Responsibility," U.S. Immigration and Customs Enforcement (ICE), accessed March 2, 2017, https://www.ice.gov/leadership/opr#wcm-survey-target-id; "Homeland Security Investigations," ICE, accessed March 2, 2017, https://www.ice.gov/hsi.

[19] "Homeland Security Investigations," ICE; "Office of Professional Responsibility," ICE.

During the writing of this thesis, OPR agreed to partner with the HIG to conduct an effectiveness evaluation of instruction offered by HIG-backed trainers. This study design is a comparative before-and-after training analysis that measures the quality and quantity of information obtained during suspect interviews. The framework of this project has three phases. The initial phase involves OPR providing the HIG with suspect interview transcripts for review. These documents enable the group's researchers to identify the types of interview challenges OPR agents face and to develop a five-day training program specific to those needs. The second and third phases include training select OPR agents in HIG-supported interviewing methodologies and assessing the effectiveness of that training by evaluating actual interrogations conducted by participants before and after training.[20]

This thesis hypothesizes that by identifying and instituting select science-based interviewing practices, OPR special agents can enhance their investigative output. Support for this argument derives from an array of empirical research, governmental policy analyses, and insight from subject-matter experts. A series of recommendations, such as continuing educational development as well as achieving agency and practitioner buy-in, provide the framework for adhering to these enhanced interviewing methods. This thesis also discussed the concept of training skilled OPR special agents to be instructors in HIG-backed strategies for agency personnel. Such an approach is fiscally constructive and alleviates the reliance on third-party vendors for teaching interviewing strategies to OPR agents. Furthermore, assuming the principles are both scalable and replicable, this model can theoretically be broadened to encompass the standard practices of other DHS agencies responsible for conducting interrogations as well as law-enforcement entities nationwide.

[20] HIG research is approved both by the university Institutional Review Board and the FBI Institutional Review Board, and complies with U.S. federal policies for the protections of human subjects research.

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DISCLAIMER

This work reflects the author's opinions alone and not those of the Department of Homeland Security, Immigration and Customs Enforcement, or Office of Professional Responsibility.

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I. INTRODUCTION

The record button on the video recorder was switched on as the special agent from the U.S. Department of Homeland Security (DHS) took his seat inside the interview room of the Clarksville, Tennessee, Police Department.[1] Trained as a polygraph examiner by the U.S. Department of Defense, the agent was considered both a lie-detection specialist and an expert in interrogation strategies. Sitting across from him was Freddrick Bates, a 31-year-old high school dropout.[2]

A month previously, Bates had been accused of performing oral sex on his 17-year-old stepdaughter, a crime punishable with up to fifteen years in prison.[3] Although there was no evidence against him in the case, Bates met with Clarksville police detectives to answer their questions. During his interview, Bates vehemently denied the allegations and, wanting to further prove his innocence, agreed to take a polygraph exam at a later date.

Bates spent his morning attached to a polygraph instrument, answering the same questions, but this time in the sole presence of the trained special agent. As the video continued to record, Bates sat in silence, waiting to hear the results of his polygraph test. The agent purposefully rolled forward in his chair. "Alright Freddrick," the agent began, "I looked over everything, and there's absolutely no doubt at all … that you did engage in oral sex with her before she was 18."[4] With a confused look on his face, Bates replied, "There's no doubt that I did?"

Over the next hour, the video captured Bates's interrogation as the agent used an array of psychological strategies designed to persuade him to confess. First, the agent shifted blame onto Bates's victim, implying she came onto him while minimizing the

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[1] State of Tennessee v Kevin Yepez, 19th Jud. Cir. (2015), Exhibit 12 [video].

[2] The agent's qualifications as a lie-detection specialist and expert interrogator are based on this author's professional experience as a U.S. Department of Homeland Security special agent/polygraph examiner who attended the same U.S. Department of Defense polygraph training school.

[3] "Tennessee Rape and Sexual Assault Laws," FindLaw, accessed December 17, 2016, http://statelaws.findlaw.com/tennessee-law/tennessee-rape-and-sexual-assault-laws.html.

[4] State of Tennessee v Kevin Yepez, 19th Jud. Cir. (2015), Exhibit 12 [video].

seriousness of the offense, suggesting the act was consensual.[5] Next, the agent challenged Bates's character by questioning if he was a "dirt bag" who preyed on girls and should therefore go to prison.[6] Although Bates repeatedly denied any wrongdoing, the agent rebuffed his claims, calling Bates a liar and refusing to give him a chance to plead his case.[7] Several times throughout the interrogation, the agent sat intimately close to Bates, touching his knee as a way to maintain his attention.[8] In the end, with seemingly no way to convince the agent otherwise, Bates finally broke. He admitted to performing oral sex on the juvenile and spent the next hour and a half putting his confession on paper. [9]

Ten months later, Bates agreed to face his interrogator again. This time, however, it was in front of Tennessee Circuit Court Judge John H. Gasaway III, who presided over the motion to suppress Bates's confession from trial.[10] According to Bates's attorney, Charles S. Bloodworth, the interrogation of his client was conducted in a manner that overbore Bates's ability to act freely in his own self-interest.[11] Shortly after reviewing the videotaped confession, Judge Gasaway granted the motion to suppress. In his decision, he wrote, "It is enough to say that the nature of the conduct exhibited by the interrogator exceeded the limits of coercion permitted. His actions and words can fairly be described as browbeating the defendant into submission."[12]

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[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Order Suppressing Evidence."

[11] State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Motion to Suppress Statements of the Defendant."

[12] State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Order Suppressing Evidence."

A. PROBLEM STATEMENT

Truthful information—given voluntarily and without duress—is arguably the most valuable piece of evidence educed from any law-enforcement interview setting. In the criminal arena, admissions of guilt are ostensibly the product of strategically designed interviews orchestrated by highly experienced interrogators.[13] The opening narrative, however, brings to light the dark side of the current interviewing paradigm and provides the backdrop for the argument of this thesis.

Bates's interrogation took place in 2012; its recent occurrence suggests that practitioners continue to use interviewing tactics invented in the 1940s: methods developed on preconceived assumptions and post hoc analysis.[14] Bates's interrogator was an experienced federal agent and polygraph examiner—presumably among the best trained in the nation. Why, then, was Bates's confession deemed coerced? The answer lies in the systemic use of unscientific and overbearing methodologies. When qualified interrogators elicit false confessions using government-backed strategies deemed highly effective, the framework upon which the entire tradecraft is founded must be questioned.

Because criminal interrogations are fundamentally designed to elicit confessions, U.S. law-enforcement personnel rely heavily on "accusatorial" interviewing methods that comprise:

- Establishing control
- Using psychological manipulation
- Asking closed-ended and confirmatory questions
- Focusing on obtaining a confession

[13] For the purpose of this thesis, the words *interrogator*, *interviewer*, *investigator*, and *practitioner* are used synonymously and interchangeably, defined as: any individual whose professional responsibility involves interviewing suspects, witnesses, victims, or human sources for the purpose of gathering information.

[14] Leo, "The Third Degree," 67.

- Assessing behavioral clues of deception[15]

Over the past decade, however, these accusatorial approaches have come under scrutiny, in part because they are based more on anecdote and tradition than on empirical research. A 2006 report for the Office of the Director of National Intelligence found that a majority of U.S. law-enforcement training academies teach interviewing techniques that lack scientific validity.[16] The magnitude of this finding is significant because these strategies have been the framework of U.S. criminal interrogations for nearly seventy-five years, a problem further discussed in Chapter II.[17]

Compounding the issue is the institutional perception of the practitioners themselves. Although consensus exists over the need for interrogators to be highly proficient, carefully trained, and well educated, most U.S. policing agencies choose convenience over capability. According to Neuman and Salinas-Serrano, interviews are assigned to "whichever team of agents [or individual] happens to be investigating the case, regardless of experience or expertise," rather than to those considered most competent.[18] Moreover, many of the investigators who conduct interrogations have received little, if any, specialized interview training beyond basic academy instruction.[19] In short, because law-enforcement agencies categorize interrogation aptitude as a *generalized ability*—an everyday skill required for the job—rather than a *tradecraft specialty*, presumably anyone with a badge and gun is considered a competent interrogator.[20]

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[15] Randy Borum, "Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Intelligence Science Board Study on Educing Information Phase 1 Advisors*, 17–43 (Washington, DC: National Defense Intelligence College, 2005), 18; Christian A. Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods and Their Effects on True and False Confessions: A Meta-analytic Review," *Journal of Experimental Criminology* 10, no. 4 (2014): 461; Allison D. Redlich, Christopher E. Kelly, and Jeaneé C. Miller, "The Who, What, and Why of Human Intelligence Gathering: Self-reported Measures of Interrogation Methods," *Applied Cognitive Psychology* 28, no. 6 (2014): 817.

[16] Ariel Neuman and Daniel Salinas-Serrano, "Custodial Interrogations: What We Know, What We Do, and What We Can Learn from Law Enforcement Experiences," in *Educing Information: Interrogation: Science and Art*, 141–233 (Washington, DC: National Defense Intelligence College, 2006), 229.

[17] Leo, "The Third Degree," 64.

[18] Neuman and Salinas-Serrano, "Custodial Interrogations," 227.

[19] Ibid., 227–228.

[20] Ibid., 228.

Practitioners themselves are equally aware of these tradecraft deficiencies. In a 2014 study of some of the nation's most highly regarded U.S. interrogation experts, more than half (53.7 percent) felt their formal interviewing courses failed to prepare them for the field while an additional 19.5 percent were undecided as to the real-world transference of their training, a problem they attributed to classroom instruction that was insufficient, irrelevant, or archaic.[21] Beyond these organizational and academic shortcomings are the moral implications of interviewing practices that elicit confessions "too powerfully."[22] Nonprofit legal organizations such as the Innocence Project have exposed not just the unethical and inhumane side of modern U.S. police interrogation tactics but also their inaccuracy: nearly one quarter of erroneous convictions come from false confessions.[23]

The prevalence of these injustices is as much an international phenomenon as it is an American tragedy. The United Kingdom (U.K.)—having faced its own miscarriages of justice due to false confessions—has prohibited its practitioners from employing coercive interrogation methods.[24] British investigators now conduct *investigative interviews* founded on the following:

- Establishing rapport
- Using direct, positive confrontation
- Asking open-ended exploratory questions
- Eliciting information as a primarily goal
- Focusing on cognitive cues to deception[25]

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[21] Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," *Applied Cognitive Psychology* 28 (2014): 850.

[22] Alan Hirsch, "Going to the Source: The New Reid Method and False Confessions," *Ohio State Journal of Criminal Law* 11 (2013): 805.

[23] "False Confessions or Admissions," Innocence Project, accessed February 4, 2017, http://www.innocenceproject.org/causes/false-confessions-admissions/.

[24] David Dixon, "Questioning Suspects: A Comparative Perspective," *Journal of Contemporary Criminal Justice* 6, no. 4 (2010): 429.

[25] Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 461.

In a 2014 study, Kelly and Meissner found distinct differences between the accusatorial and information-gathering interviewing styles. They focused on five major studies to identify the most-used interrogation practices and how those practices affected outcomes. In sum, their research showed investigative interviewing to be more successful in eliciting truthful information, while decreasing the potential for false confessions when compared to the accusatory approach—the favored American model.[26]

Despite their ubiquity across the U.S. policing culture, accusatorial interviewing methods are slowly but increasingly being recognized by researchers, trainers, and practitioners as flawed and obsolete.[27] In 2009, the U.S. government created the High-Value Detainee Interrogation Group (HIG) in response to the highly publicized post-9/11 interrogation tactics the United States used on terrorist suspects.[28] Part of the group's mission was to identify the best theories and practices "from the cognitive, behavior and social sciences," and from them produce the most effective and ethical means of conducting interrogations.[29] The establishment of this program in 2009 has resulted in the publication of more than 100 pieces of scientific literature, arguably making the HIG the authority on interrogation strategies.[30] Since its inception, the group has shared its evidence-based interviewing practices with several law-enforcement and military institutions. DHS's Federal Law Enforcement Training Center (FLETC), metropolitan police departments in Dallas, Philadelphia, and Los Angeles, as well as the Air Force Office of Special Investigations (AFOSI) have begun instituting HIG-approved protocols

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[26] Christopher E. Kelly and Christian A. Meissner, "Interrogation and Investigative Interviewing in the United States: Research and Practice," in *Contemporary Developments and Practices in Investigative Interviewing and Interrogation*, Volume II, eds. D. Walsh et al. (New York: Routledge, 2014), 8.

[27] Dixon, "Questioning Suspects," 437; Meissner et al., "Accusatorial and Information-Gathering Interrogation," 479.

[28] The HIG is a federally funded interagency created by the Obama Administration in 2009 that oversees the interrogations of terrorist suspects in U.S. custody and the custodial transference of terrorist suspects. In addition, the HIG is tasked with conducting research in the field of interviewing and interrogations in order to identify the most effective and ethical means to educe information from suspects. "Special Task Force on Interrogations and Transfer Policies Issues its Recommendations to the President," U.S. Department of Justice, August 24, 2009, https://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president; Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," *Applied Cognitive Psychology* 28 (2014): 847.

[29] Kelly and Meissner, "Interrogation and Investigative Interviewing," 9.

[30] Christian A. Meissner and Melissa Russano, "Examining Validation and Field Assessment of Science-Based Methods of Interrogation," HIG Research Symposium, October 23, 2015, Washington, DC.

in their training curricula.[31] These next-generation approaches include techniques such as the *cognitive interview*, *investigative interviewing*, and the *strategic use of evidence*—all scientifically validated and ethically sound (discussed in more detail in Chapter IV).

Although FLETC began teaching HIG interviewing practices to its basic students in 2013, not all agency personnel within DHS have adopted HIG-backed methods.[32] While some organizations are stymied by institutional challenges—such as agency assumption that the traditional interrogation tactics are sufficient—others simply remain unaware of HIG's existence or the efficacy of its techniques. This thesis is, in part, an attempt to defeat both problems. It is particularly interested in strategic, ethical, and performance improvements—essentially a shift to this new generation of approaches—for the DHS Office of Professional Responsibility (OPR).

OPR—an internal affairs component of DHS Immigration and Customs Enforcement (ICE)—comprises senior and experienced special agents promoted from within Homeland Security Investigations (HSI), the investigative arm of DHS.[33] Unlike HSI special agents, who mostly interview suspected criminals, OPR special agents primarily interview other law enforcement officials.[34] As such, OPR personnel must be proficient in the most effective interviewing strategies available to interact with their audience—most of whom are themselves experienced interrogators.[35] Equally important is the need for not only OPR agents but all law-enforcement agents to adhere to

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[31] FLETC is the primary DHS training academy for U.S. criminal investigators. "Four FLETC Training Programs Earn Accreditation Status," Federal Law Enforcement Training Center (FLETC), November 11, 2016, https://www.fletc.gov/press-release/2016/11/04/four-fletc-training-programs-earn-accreditation-status; Kelly and Meissner, "Interrogation and Investigative Interviewing," 9; Robert Kolker, "A Severed Head, Two Cops, and the Radical Future of Interrogation," *Wired*, May 24, 2016, https://www.wired.com/2016/05/how-to-interrogate-suspects/; Kelly McEvers, "In New Age of Interrogations, Police Focus on Building Rapport," NPR, May 23, 2016, http://www.npr.org/2016/05/23/479207853/in-new-age-of-interrogations-police-focus-on-building-rapport; Meissner and Russano, "Examining Validation."

[32] Patricia Donovan, email to author, January 30, 2017.

[33] "Office of Professional Responsibility," U.S. Immigration and Customs Enforcement, (ICE), accessed March 2, 2017, https://www.ice.gov/leadership/opr#wcm-survey-target-id; "Homeland Security Investigations," ICE, accessed March 2, 2017, https://www.ice.gov/hsi.

[34] "Homeland Security Investigations," ICE.

[35] "Office of Professional Responsibility," ICE.

interviewing tactics that are grounded in science and ethics; a failure to do so carries both legal and financial repercussions, as discussed in Chapter III.

B. RESEARCH QUESTIONS

In response to these systemic interviewing challenges, this thesis asks the following: How can the OPR training program integrate "third-generation" interviewing methodologies to improve the effectiveness of its special agents' investigations?

Ancillary questions directing this research include:

- What are the benefits and limitations of adopting these next-generation methodologies?
- How can the policies that support the HIG and FLETC training protocols be integrated into the OPR interview training framework?
- How can OPR special agents remain proficient in these new interviewing techniques after training?
- How can these improvements be replicated by law-enforcement components beyond OPR?

C. RESEARCH DESIGN

To answer the research questions, this thesis begins by analyzing and discussing the "traditional" interviewing approaches employed by most U.S. law-enforcement agencies—including OPR. Those methods are then compared to newer, "third-generation" interviewing stratagems, such as the cognitive interview (CI), the U.K.'s PEACE model of interviewing, and the strategic use of evidence (SUE), empirically supported by scientific research.[36] Components of the Scharff Technique, a human intelligence (HUMINT) collection strategy, are also analyzed for their relevance within the criminal interrogation arena. The creation of the HIG and FLETC's adoption of HIG-supported interviewing strategies, including the challenges of their development and lessons learned, are also discussed. This thesis concludes with a set of policy

[36] PEACE is an acronym for Planning and preparation, Engage and explain, Account clarification and challenge, Closure, and Evaluation. Andrea Shawyer, Becky Milne, and Ray Bull, "Investigative Interviewing in the UK," in *International Developments in Investigative Interviewing*, eds. Tom Williamson, Becky Milne, and Stephen P. Savage, 24–38 (London: Willan, 2009), 27.

recommendations for the adoption of third-generation interviewing practices at OPR and, by extension, law enforcement nationwide. Specifically, it proposes restructuring the OPR Special Agent Training (OPRSAT) interview and interrogation training curriculum to accord with the best practices of the HIG and FLETC, and discusses how a training modification could significantly enhance both the OPR program and law enforcement as a whole. This thesis contributes to the literature and the tradecraft of law-enforcement interrogation by highlighting the strengths and limitations of the status quo. Its purpose is to synthesize the organizational, strategic, and operational metrics involved in transitioning OPR away from its reliance on accusatorial interview strategies and toward next-generation methodologies.

During the writing of this thesis, OPR headquarters agreed to collaborate with the HIG to conduct an effectiveness analysis of instruction offered by HIG trainers. The design of the collective project is a pre- and post-training comparative analysis that measures the quality and quantity of information obtained during suspect interviews. The framework of this project has three phases. The initial phase—ongoing as of this writing—involves OPR providing the HIG with suspect interview transcripts for evaluation. These documents enable the group's researchers to identify the types of interview challenges OPR agents face and to develop a five-day training program specific to those needs. The second and third phases—scheduled to begin after the completion of this thesis—include training OPR agents in HIG-supported interviewing methodologies and assessing the effectiveness of the training by analyzing the participants' actual interrogations both before and after training.

Although the implementation of this joint project satisfies certain elements within this thesis—gaining OPR headquarters' approval and identifying a funding source—its long-term benefit has yet to be determined. The question remains if this beta group of OPR agents will revert to its original interrogation tactics. This thesis hypothesizes that by identifying and instituting certain post-training practices, such as continual educational development, this training modality can succeed. The concept of "train the trainer"—training select OPR special agents to be instructors in HIG-backed strategies for agency personnel—is also discussed here. Such an approach is not only fiscally

responsible, it also alleviates the reliance on third-party vendors to teach OPR agents interviewing strategies. Furthermore, assuming the principles are both scalable and replicable, this model can theoretically be broadened to encompass the standard practices of other DHS agencies responsible for conducting interrogations as well as law-enforcement entities nationwide.

D. CHAPTER OVERVIEW

Chapter II describes the status quo, in particular the framework of the predominant U.S. interviewing model—the Reid Technique. The literature review is integrated directly into Chapters II and III; the latter analyzes the flaws and limitations of the status quo and lays the foundation for a paradigm shift to third-generation methodologies. Chapter IV evaluates the best evidence-based approaches toward more effective and ethical interviewing. Chapter V, the final chapter, explores the framework of the U.S. national policies that currently govern the HIG and FLETC's involvement in third-generation interviewing strategies. This chapter also focuses on the applicability of this research and offers several recommendations for the successful broader adoption of this model.

II. THE REID TECHNIQUE: SECOND-GENERATION INTERROGATION METHODOLOGIES

The evolution of criminal interviewing is as much about the future as it is about the past. According to Richard Leo, by studying its history, "we gain a deeper understanding of the roots, context and contradictions of contemporary police interrogations."[37] Beginning with the proliferation of physically abusive and aggressive tactics used against suspects in the early 20th century—arguably the "first generation" of American interrogation strategies—law-enforcement agents employed what they deemed the most effective means for getting confessions. In that first generation, suspects were routinely beaten with "fists or … some implement especially the rubber hose, that inflicts pain but is not likely to leave permanent visible scars."[38] These harsh interrogation practices (colloquially referred to as the "third degree") eventually gave way to less physically abusive but more psychologically manipulative techniques, which began to appear in the 1940s.[39] Now more than seventy-five years old, these "second-generation" interviewing methodologies are the status quo for most U.S. law-enforcement interrogators.[40]

A central tenet of second-generation approaches is the suspect's presumed culpability.[41] Meissner et al. identify this approach as an "accusatorial method … that is confrontational and guilt-presumptive."[42] Forensic psychologist Karl Roberts identifies this American style of interviewing as "persuasive," in which suspects are encouraged—

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[37] Richard A. Leo, "The Third Degree and the Origins of Psychological Interrogation in the United States," in *Interrogations, Confessions, and Entrapment*, eds. G. Daniel Lassiter and Jennifer J. Ratcliff, 37–84 (New York: Springer, 2004), 41.

[38] National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement*, Volume 11 (Washington, DC: United States Government Printing Office, 1931), 153.

[39] Leo, "The Third Degree," 57.

[40] Ibid.

[41] Jacqueline R. Evans et al., "Criminal versus HUMINT Interrogations: The Importance of Psychological Science to Improving Interrogative Practice," *The Journal of Psychiatry & Law* 38 (2010): 219; Redlich, Kelly, and Miller, "The Who, What, and Why," 817.

[42] Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 462.

through various modes of psychological influence—to confess.[43] The methodology most recognized for this style of interviewing is the Reid Technique.[44]

A. THE ORIGINS OF THE REID TECHNIQUE

One of the first to introduce second-generation methods of interviewing into the American policing culture was Fred Inbau.[45] Inbau, a Chicago-based lawyer who had previously served as director for the Chicago Police Department's Scientific Crime Detection Lab, was a staunch critic of third-degree strategies.[46] In his police-interrogation manual, *Lie Detection and Criminal Interrogation*, published in 1942, Inbau laid the foundation for using new "scientific" methodologies to extract confessions.[47] These tactics—later named the Reid Technique by Inbau's colleague John E. Reid—were designed to teach investigators how to detect lies and elicit confessions using an array of psychological strategies, discussed further in Chapter III.[48] According to Leo, because manuals such as Inbau's provided law-enforcement officials with better solutions for extracting information, the Reid Technique has been partially credited for the decline of coercive third-degree interrogations.[49] The Reid Technique has gone through several revisions and, as of 2011, was in its fifth edition.[50]

Reid's dominance in the criminal-interrogation realm is pervasive. According to the John E. Reid & Associates website, since the organization launched its first "Reid Technique of Interviewing and Interrogation" training seminar in 1974, more than

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[43] Karl Roberts, "Police Interviewing of Criminal Suspects: A Historical Perspective," *Internet Journal of Criminology* (2012): 4.

[44] Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," 850; Michel St-Yves and Nadine Deslauries-Varin, "The Psychology of Suspect's Decision-Making during Interrogation," in *Handbook of Psychology of Investigative Interviewing: Current Developments and Future Direction*, eds. Ray Bull, Tim Valentine, and Tom Williamson (Hoboken, NJ: Wiley, 2009), 7.

[45] Leo, "The Third Degree," 57.

[46] Ibid., 63.

[47] Fred E. Inbau et al., *Criminal Interrogation and Confessions*, fourth edition (Burlington, MA: Jones and Bartlett, 2001), ix; Leo, "The Third Degree," 63.

[48] Leo, "The Third Degree," 57, 77.

[49] Leo, "The Third Degree," 59.

[50] Leo, "The Third Degree," 63; Hirsch, "Going to the Source," 804.

500,000 law-enforcement and security professionals worldwide have been trained, with approximately 20,000 new attendees each year.[51] In a 2013 *New Yorker* article, author Douglas Starr named the Reid Technique the global leader in interrogation training, with a client list that reads like a "who's who" of the interrogation world, including the Federal Bureau of Investigation (FBI), the Central Intelligence Agency, the U.S. Secret Service, the U.S. military, and a host of police agencies and private security firms.[52] Starr notes the technique is so influential that Reid's methods form the framework for modern-day criminal interrogations.[53]

The extent of Reid's dominance in the American interrogation ethos has been extensively documented in scientific literature as well. Russano et al. identify the Reid Technique as one of the most common interviewing and interrogation courses taught to U.S. military and law-enforcement professionals, an assessment confirmed by the work of forensic psychologist Michel St-Yves and criminologist Nadine Deslauriers-Varin.[54] Berkley law professor Charles D. Weisselberg calls John E. Reid & Associates "the largest national provider in interrogation training."[55] Leo notes that "during the last 60 years, [Reid's] *Criminal Interrogations and Confessions* has become the definitive police training manual in the United States, if not the Western world," a fact which, according to professors Christopher Kelly and Christian Meissner, has had such a profound impact it essentially solidified U.S. adherence to the accusatorial style of interviewing.[56]

Reid's definitions of *interviewing* and *interrogations* play a key role in its methodology:

> An interview is a non-accusatory conversation in which, through question and answers, the police interviewer tries to develop investigative and

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[51] "Success with Reid," John E. Reid & Associates, accessed March 2, 2017, http://www.reid.com/success_reid/r_success.html; Inbau et al., *Criminal Interrogation and Confessions*, ix.

[52] Douglas Starr, "The Interview," *New Yorker*, December 9, 2013, http://www.newyorker.com/magazine/2013/12/09/the-interview-7.

[53] Ibid.

[54] Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," 850; St-Yves and Deslauriers-Varin, "The Psychology of Suspect's Decision-Making," 7.

[55] Charles D. Weisselberg, "Mourning Miranda," *California Law Review* 96, no. 6 (2008): 1530.

[56] Leo, "The Third Degree," 63; Kelly and Meissner, "Interrogation and Investigative Interviewing."

> behavioral information that will test the veracity of statements made by a suspect, victim, or witness. Interrogation, in contrast, is an accusatory procedure designed to elicit from the subject an acknowledgement that he or she did not tell the truth during an initial statement, whether that person is a suspect who originally denied involvement in the issue under investigation, or a victim who fabricated the nature of the alleged offense.[57]

The context of this narrative is central to the accusatorial-interrogation model. Practitioners are instructed to use behavioral reaction-evoking questions to establish the culpability of the interviewee. If the interviewee responds in ways deemed deceptive, the harshness of the inquiry increases in an effort to extract previously undisclosed information. From Reid's own definitions emerge both the technique's success and its limitations, the latter of which is explored in Chapter III.

B. THE REID TECHNIQUE'S FRAMEWORK

The premise of the Reid Technique is a psychological exchange layered in deception. Although Reid disavows any strategy that would educe false confessions, it endorses "psychological tactics and techniques that may involve trickery and deceit."[58] Reid defends this duplicity as being "not only helpful but frequently indispensable in order to secure incriminating information from the guilty or to obtain investigative leads from otherwise uncooperative witnesses or informants."[59] The technique is divided into two stages—the information-gathering stage and the accusatorial-interrogation stage.[60] The first stage comprises the behavioral analysis interview (BAI).[61] Composed of approximately fifteen provocative questions, the BAI is strategically designed to induce verbal and non-verbal responses from the interviewee.[62] These questions revolve around the subject's knowledge, assumptions, and attitudes about the crime, e.g.,

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57 "Interviewing and Interrogation," John E. Reid & Associates, 2001, http://www.reid.com/pdfs/iandipreview.pdf.

58 Inbau et al., *Criminal Interrogation and Confessions*, xii.

59 Ibid.

60 Saul M. Kassin, Sara C. Appleby, and Jennifer T. Perillo, "Interviewing Suspects: Practice, Science, and Future Direction," *Legal and Criminal Psychology* 15 (2010): 40; Leo, "Third Degree," 63–64.

61 Kassin, Appleby, and Perillo, "Interviewing Suspects," 40.

62 Inbau et al., *Criminal Interrogation and Confessions*, 64–65.

- Do you know who shot that man?
- Why do you think someone would shoot that man?
- What do you think should happen to someone who shot that man?

During the BAI, Reid recommends that interrogators focus on the three channels of communication—*verbal*, *paralinguistic*, and *nonverbal*—which it argues are universal.[63] According to Reid, these channels can either work conterminously to produce a consistent message, or discordantly, sending mixed signals.[64] The verbal channel consists of the words themselves and the order in which they are spoken; the paralinguistic channel involves indicators such as voice inflection and pitch, pauses, answer delays, and stutters.[65] The nonverbal channel comprises physical movements—or lack thereof—of the subject's body as well as his or her face and eyes during questioning.[66] Reid claims, for example, that a prolonged static posture, an inappropriately timed hand gesture, or a subject's unwillingness to make eye contact with the interviewer are all indicators of deception.[67]

By studying these channels simultaneously, Reid suggests, interrogators can infer the degree of a subject's truthfulness.[68] Yet, Reid notes, "Although behavior symptoms can be helpful in differentiating truth from deception, they are not to be considered determinative of the issue."[69] This position seems to contradict the importance Reid puts on the utility of the BAI in cases otherwise devoid of evidence.[70]

Subsequent to completing the BAI, interrogators synthesize the subject's multi-channel responses and, in concert with any other evidence, decide on one of three actions: eliminate the subject from suspicion, delay questioning the subject further until additional

63 Ibid., 125.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.,144–150.

68 Ibid., 126.

69 Ibid.,155.

70 Ibid., xi.

evidence can be collected, or interrogate the subject.[71] Assuming the practitioner witnessed behavioral cues indicative of deceit (as prescribed by Reid), he or she is advised to transition to the second stage of the interview—the interrogation—with a high degree of confidence as to the suspect's guilt.[72]

C. REID'S INTERROGATION STEPS

Reid's interrogation stage comprises nine psychological steps, as shown in Figure 1. Each step is designed to increase the suspect's anxiety, minimize his or her perceived responsibility associated with the crime, and tacitly suggest that a confession is the fastest and best way to end the interrogation.[73]

[71] Ibid., 190–191.

[72] Ibid.

[73] Hirsch, "Going to the Source," 805.

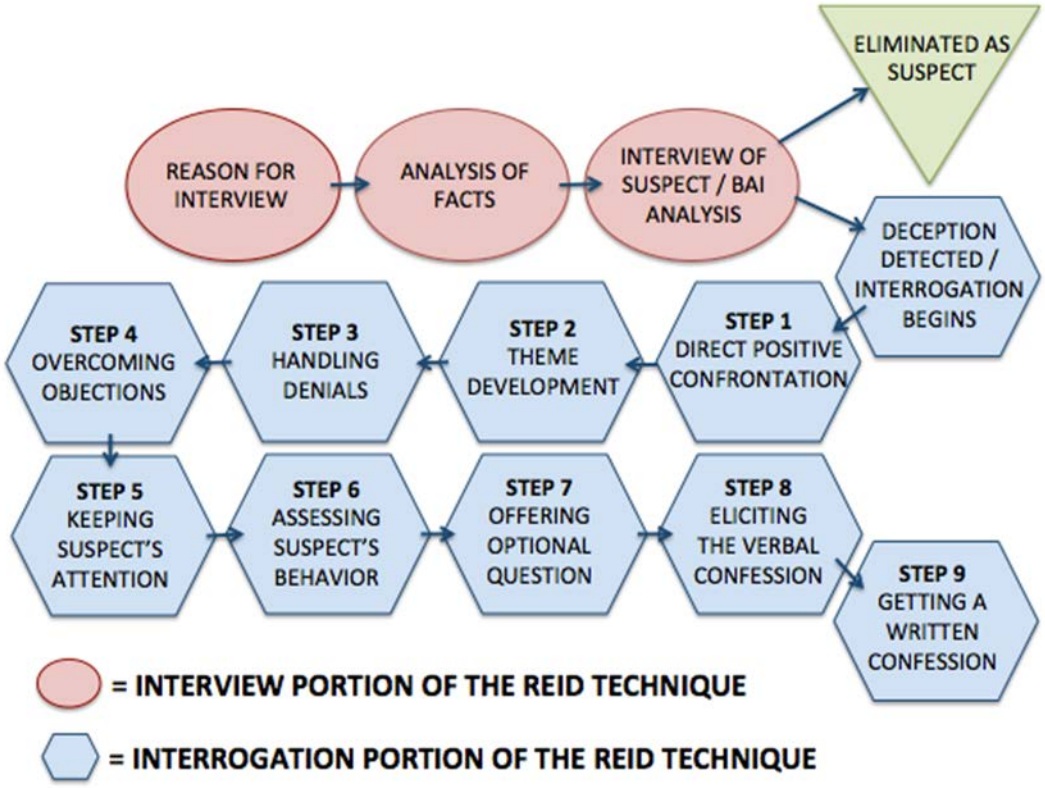

Figure 1. Reid's Nine Steps of Interrogation[74]

The first of the nine steps is a direct positive confrontation of the suspect's guilt.[75] In this step, the interrogator advises the suspect that his or her culpability has been proven beyond a reasonable doubt, so denials are futile. Reid recommends delivering this conclusion with absolute conviction so as to convince the suspect of the interrogator's certainty.[76] Next, the interrogator is instructed to pause and assess the suspect's verbal and non-verbal responses to the direct positive confrontation. These responses provide clues for how best to proceed. For example, the suspect crossing his or her arms indicates defiance, while a collapsed posture is a sign of a broken spirit.[77] The second step, theme development, presents the suspect with a moral excuse for committing the crime. In this

[74] Source: Inbau et al., *Criminal Interrogation and Confessions*, 215.

[75] Ibid., 218.

[76] Ibid.

[77] Ibid., 222.

step, Reid recommends projecting blame onto something or someone else—often the victim.[78] Reid also advises telling a story, called "a theme," that parallels the suspect's own plight. Themes in step 2 help rationalize the suspect's behavior, while step 3 focuses on rejecting the suspect's repetitive denials by reiterating elements of step 2.[79]

As the interrogation continues, the ensuing steps are designed to mirror the suspect's internal struggle between continuing to resist the practitioner's efforts and confessing.[80] Step 4 deals with managing secondary excuses, such as those involving economic, spiritual, and ethical justifications. In this step, suspects often give reasons as to why they are either unwilling or unable to commit whatever crime they are being accused of, such as, "I have enough money, why would I need to steal any?"[81] Step 5 encourages the investigator to keep the suspect's attention by feigning sympathy, manipulating the proxemics between the interrogator and the suspect, and maintaining eye contact.[82] Step 6 calls for assessing the suspect's behavior for clues of defeat, such as tears, the inability to look at the investigator, or a "broken" posture (e.g., shoulders slouched, head in hands).[83]

Once the suspect appears to be on the verge of confessing, the final three stages are centered on eliciting a vocalized confirmation of guilt, then convincing the suspect to transfer his or her verbal admissions onto paper. Step 7 involves offering the suspect an optional question. This question comprises two alternatives, one much more favorable than the other. For example, "Was this the first time you did this, or has it happened many times before?"[84] Regardless of which option the suspect chooses, both are an admission of guilt. Once the suspect admits culpability, step 8 focuses on encouraging the

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[78] Ibid., 213.

[79] Ibid.., 239–240, 213.

[80] Ibid., 212.

[81] Ibid., 213.

[82] Proxemics is the use of space between humans to affect behavior. "Proxemics—Noting Your Distance," CReducation, accessed March 2, 2017, http://www.creducation.org/resources/nonverbal_communication/proxemics.html; Inbau et al., *Criminal Interrogation and Confessions*, 214.

[83] Inbau et al., *Criminal Interrogation and Confessions*, 214.

[84] Ibid.

suspect to describe the event in enough detail to establish legal accountability; step 9 constitutes getting the suspect to transfer his or her verbal confession into a written statement.[85] Reid contends, "None of the steps is apt to make an innocent person confess and … all the steps are legally as well as morally justified."[86] Reid also notes the order of the steps is not definitive; rather, based on a constant evaluation of the suspect's verbal and nonverbal behavior, they are fluid and should match the suspect's psychological state at any given time.[87]

D. SCHOLARLY SUPPORT FOR THE REID TECHNIQUE

Proponents of Reid maintain that the ethicality and effectiveness of its interrogation strategies have been both legally confirmed through the U.S. court system and individually validated via countless user testimonials, as featured under the "General Comments" section of its website.[88] Researcher Frank Horvath along with John E. Reid & Associates' Director Brian C. Jayne and President Joseph P. Buckley defend the validity of the BAI. In their study, "Differentiation of Truth and Deceptive Criminal Suspects in Behavior Analysis Interviews," four BAI-trained evaluators watched sixty videotaped interviews, in which half (thirty) of the subjects were truthful and the other half (thirty) were deceptive. According to the authors, the culpability of the subjects had previously been independently verified. During the interviews, the evaluators were asked to determine interviewee honesty based on verbal and nonverbal responses to the interrogator's BAI questions. After factoring out inconclusive decisions—15.8 percent—evaluators were reportedly able to identify truthful subjects an average of 91 percent and deceptive subjects approximately 80 percent of the time.[89]

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[85] Ibid.

[86] Ibid., 212.

[87] Ibid., 216.

[88] "What Do the Courts Say about the Reid Technique?" John E. Reid & Associates, accessed March 2, 2017, http://www.reid.com/pdfs/wtcs.pdf; "General Comments," John E. Reid & Associates, accessed March 2, 2017, http://www.reid.com/success_reid/r_comments.html.

[89] Frank Horvath, B. Jayne, and J. Buckley, "Differentiation of Truthful and Deceptive Criminal Suspects in Behavior Analysis Interviews," *Journal of Forensic Sciences* 39, no. 3 (1994): 793–807, doi: 10.1520/JFS13657J.

Other scholarly work has confirmed and replicated the findings of Horvath, Jayne, and Buckley. In their article, "Detection of Deception: An Analysis of the Behavioral Analysis Interview Technique," researchers John P. Blair and William P. McCamey conducted a study using fifty-two participants of which twenty-seven—the experimental group—were taught the BAI technique.[90] All participants then watched ten interrogation videos—a subset of the same videos used in the Horvath et al. study. Subsequent to BAI training, the experimental group correctly identified more subjects as deceptive than did the control group.[91] The experimental group's level of confidence in determining which subjects they believed to be deceptive also increased after training.[92] Blair and McCamey note the effectiveness of the BAI in distinguishing between truth and deception.[93] However, due to what the authors infer as a research design flaw, "the pretesting process may have affected the ability to correctly classify subjects on the post-test," they conclude their results should not be generalized beyond the scope of their study.[94]

E. CONCLUSION

Over the past sixty years, the Reid Technique has been touted as the world leader in interrogation strategies.[95] Despite this, a significant amount of research has questioned if the accusatorial interview is still the best approach for gathering truthful information.[96] Scholars and practitioners alike have repeatedly and increasingly rejected the current system, embracing, instead, practices steeped in science and grounded in ethics.[97]

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[90] John P. Blair and William P. McCamey, "Detection of Deception: An Analysis of the Behavioral Analysis Interview Technique," *Illinois Law Enforcement Executive Forum* 2, (2002): 165.

[91] Ibid., 168.

[92] Ibid., 167.

[93] Ibid., 168.

[94] Ibid.

[95] Leo, "The Third Degree," 77.

[96] Christopher E. Kelly et al., "A Taxonomy of Interrogation Methods," *Psychology, Public Policy, and Law* 19, no. 2 (2013): 165.

[97] Kelly and Meissner, "Interrogation and Investigative Interviewing," 8–9; Gisli H. Gudjonsson and John Pearse, "Suspect Interviews and False Confessions," *Current Directions in Psychological Science* 20, no. 1 (2011): 36.

Chapter III explores how Reid's methodology has come under intense scrutiny for its lack of scientific support and its role in the prevalence of false confessions.

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III. PROBLEMS WITH ACCUSATORIAL (SECOND-GENERATION) INTERROGATIONS

Much of what has traditionally been deemed effective in eliciting confessions relies, in fact, on nothing more than anecdotal evidence.[98] In 2006, the Intelligence Science Board presented a Phase 1 report in which it assessed various strategies used to extract information in the criminal and intelligence arenas.[99] In chapter six of that report, Neuman and Salinas-Serrano reviewed the available literature about the methods by which law-enforcement agencies conduct interrogations.[100] From this, they found that most criminal interview training includes elements of or is similar to the Reid Technique.[101] Neuman and Salinas-Serrano also looked at the interview training programs of two federal law-enforcement agencies—the FBI and FLETC—as well as the Boston Police Department's homicide division. The researchers highlighted several significant shortcomings related to the interrogation methodologies promoted and practiced within the United States:

> Currently, those law enforcement agencies and departments that teach interrogation techniques train their officers and agents in tactics that have not been proven successful through any empirical studies. Neither the FBI nor FLETC had ever studied the efficacy of its techniques in garnering confessions or incriminating statements. Generally the agencies use variations of the Reid Technique, or subcontract the training to the Reid School or its spin off, Wicklander-Zulawski. Given the dearth of empirical evidence to support the agencies' training and techniques, it seems that reliance on them is based mostly on the reputation of the Reid approach on anecdotal evidence of its utility. Another explanation might be the institutional inertia characteristic of most large government agencies such as the FBI and other federal law enforcement agencies.[102]

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[98] Robert A. Fein, Paul Lehner, and Bryan Vossekuil, *Educing Information-Interrogation: Science and Art, Foundations for the Future* (Washington, DC: Center for Strategic Intelligence Research, 2006), xx, 5.

[99] Ibid.

[100] Neuman and Salinas-Serrano, "Custodial Interrogations," 142.

[101] Ibid.

[102] Ibid., 229.

Russano et al. further underscore the magnitude of this training failure. In their 2014 study, they interviewed forty-two senior U.S. interrogators from across the federal government as well as several state and local agencies. All participants confirmed receiving some type of formal interrogation training: the Reid Technique was the course most often attended (50.0 percent), followed by the Basic Interrogator Training Course at the U.S. Army's Fort Huachuca (42.9 percent), and the FBI Training Academy (31.0 percent). Approximately 17 percent confirmed they had received BAI training, the same percentage that received interview training at FLETC. Despite the abundance of formal training, more than half (53.7 percent) of these practitioners claimed they felt inadequately prepared to conduct real-world interrogations.[103]

Accompanying these training weaknesses is the questionable utility of the techniques themselves. Redlich et al. surveyed seventy-seven experienced U.S. interrogators regarding the methods they considered most effective for eliciting information. The researchers used six elicitation domains: *rapport and relationship building*, *context manipulation*, *emotion provocation*, *confrontation/competition*, *collaboration*, and *presentation of evidence*. They then evaluated those domains across four interview settings or contexts: *intelligence gathering*, *confession/prosecution*, *tactical interrogation*, and *strategic interrogation*.[104]

Redlich et al. found that r*apport and relationship building* was unanimously reported as the most useful for gathering information, while harsher strategies such as *confrontational/competition* were deemed the least effective, as noted in Table 1. These latter tactics, which contain elements of the Reid Technique (such as "identifying contradictions, confronting suspects, and interrupting denials"), ranked last, or least effective, in every interview category.[105]

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[103] Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," 850.

[104] Redlich, Kelly, and Miller, "The Who, What, and Why," 824.

[105] Ibid.

Table 1. Effectiveness of Elicitation Domain per Interview Setting[106]

Elicitation Domain	Interview setting			
	Intelligence gathering	Confession/ prosecution	Tactical interrogations	Strategic interrogations
Rapport and relationship building	4.64	4.45	4.06	4.48
Context Manipulation	3.88	3.94	3.89	3.83
Emotion provocation	4.03	4.09	3.97	4.02
Confrontation/competition	3.25	3.49	3.47	3.24
Collaboration	4.03	3.85	3.81	3.94
Presentation of evidence	3.87	4.15	3.90	3.90

1= very ineffective; 5 = very effective

A. ASSESSMENT OF THE BAI: OTHELLO'S ERROR

A growing body of research points to the futility of attempting to ascertain guilt through verbal and nonverbal indicators, as touted in behavioral assessment strategies—such as the BAI—promoted by John E. Reid & Associates, FLETC, and the FBI.[107] In a 2006 article, psychologists Aldert Vrij, Samantha Mann, and Ronald P. Fisher conducted the first empirical study on the BAI.[108] Their experiment tested the veracity of Reid's claim that, during questioning, liars would be less cooperative in aiding investigators and display more signs of nervousness than the innocent.[109] Vrij, Mann, and Fisher's research found evidence for the exact opposite: liars were in fact more cooperative with investigators, while demonstrating fewer signs of apprehension.[110] In a later article, Vrij, Granhag, and Porter wrote, "Cues to deception are unreliable and faint [because they] …

[106] Source: Redlich, Kelly, and Miller, "The Who, What, and Why," 824.

[107] Charles F. Bond Jr. and Bella M. DePaulo, "Accuracy of Deception Judgments," *Personality and Social Psychology Review* 10, no. 3 (2006): 230; Neuman and Salinas-Serrano, "Custodial Interrogations," 184.

[108] Aldert Vrij, Samantha Mann, and Ronald P. Fisher, "An Empirical Test of the Behaviour Analysis Interview," *Law and human behavior* 30, no. 3 (2006): 329.

[109] Ibid., 342.

[110] Ibid.

can be displayed by both liars and truth tellers."[111] Like the findings of previous scholars, Vrij, Granhag, and Porter conclude that improper training is the reason interrogators focus on unreliable cues of deception.[112]

Masip et al. also underscore the inaccuracy of the BAI, arguing "the behavioural indictors of deception espoused by Inbau et al. do not coincide with the scientific evidence accumulated over several decades of empirical research."[113] They note further that the BAI is nothing more than a set of common-sense strategies for ferreting out deception, or routine social judgments that have been commercialized by Reid.[114] These same authors also counter the studies supporting the efficacy of the BAI. In their 2011 article, Masip et al. called the research conducted by Horvath, Jayne, and Buckley, as well as Blair and McCamey, "fraught with serious methodological problems" due to their small sample size, potential interviewer biases, and the inability to independently verify the suspects' guilt or innocence.[115]

Fundamental BAI shortcomings stem from its emphasis on verbal and nonverbal indicators to determine culpability. According to psychologists Charles F. Bond, Jr., and Bella M. DePaulo, the ability to correctly detect deception is near the equivalent of a coin flip.[116] Bond and DePaulo conducted a meta-analysis of 206 documents published between 1941 and 2005.[117] From this data, they assessed 6,661 statements from which 23,483 deception judgments were made. Of these decisions, 2,842 (12 percent) claimed to be by experts in distinguishing truth from lies.[118] Bond and DePaulo's work showed

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[111] Aldert Vrij, Pär Anders Granhag, and Stephen Porter, "Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection," *Psychological Science in the Public Interest* 11, no. 3 (2010): 94.

[112] Ibid., 89.

[113] Jaume Masip et al., "Is the Behavior Analysis Interview Just Common Sense?" *Applied Cognitive Psychology* 25, no. 4 (2011): 595.

[114] Ibid., 601.

[115] Masip et al., "Behavior Analysis Interview," 595–596.

[116] Bond and DePaulo, "Accuracy of Deception Judgments," 214.

[117] Ibid., 219.

[118] Ibid.

that, universally, the accuracy of truth-versus-lie discrimination averages only 54 percent.[119]

Saul M. Kassin, Christian A. Meissner, and Rebecca J. Norwick report the same "slightly exceeding chance" success rate among evaluators. In a study comparing the accuracy of college students and law-enforcement officials in assessing deception, they conclude, "Across participants, conditions, and items, the overall accuracy rate was 53.9 percent—a level of performance that is both unimpressive and nonsignificant relative to chance performance."[120] Even proponents of the BAI recognize its weak theoretical application: Horvath, Blair, and Buckley write, "The Inbau et al. (2001) manual was intended to be a training tool, written by practitioners for practitioners. As such there was little concern with or need to consider the [BAI's] underlying 'theory' and the associated assumptions."[121] Horvath, Blair, and Buckley further acknowledge the earlier research supporting the BAI's utility was limited in scope; the investigators in the study were employees of John E. Reid & Associates—not law-enforcement officials—and the interviewees were not suspects in police custody, but employees from area businesses who had been suspected of committing various crimes, such as theft.[122] In short, the authors concede the BAI has never been empirically tested in a law-enforcement setting.[123]

B. A FALSE SENSE OF CONFIDENCE

A compounding problem with relying on the BAI to assess guilt is its effect on the practitioner's confidence level. Kassin et al. note that interrogators often overestimate their aptitude for distinguishing between truth and lies despite averaging only a 54-

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[119] Ibid., 214.

[120] Saul M. Kassin, Christian A. Meissner, and Rebecca J. Norwick, "'I'd Know a False Confession if I Saw One': A Comparative Study of College Students and Police Investigators," *Law and Human Behavior* 29, no 2 (2005): 216.

[121] Frank Horvath, J. P. Blair, and Joseph P. Buckley, "The Behavioural Analysis Interview: Clarifying the Practice, Theory and Understanding of its Use and Effectiveness," *International Journal of Police Science & Management* 10, no. 1 (2008): 115.

[122] Ibid., 103.

[123] Ibid.

percent accuracy rating. In their survey of 631 police investigators on interviewing methods as well as self-perception on evaluating deception, 77 percent believed their judgments were correct, an accuracy error further supported in a 2005 study by researchers Kassin, Meissner, and Norwick.[124]

The unsound reliance on behavioral cues to spot deception has been shown to increase the accusatorial nature of the interview as well. According to Saul M. Kassin, Christine C. Goldstein, and Kenneth Savatsky, once guilt is assumed, interrogators mentally enter a feedback loop of confirmation biases in which they observe, analyze, and decode information in a way that merely validates their beliefs.[125] This "self-fulfilling prophecy" leads to a cyclical response in which interrogator biases influence personal behavior, which in turn affects the suspect's behavior, causing subsequent assessments and further reactions from the interrogator, an argument further supported by Shawyer, Milne, and Bull (see Figure 2).[126]

[124] Saul M. Kassin et al., "Police Interviewing and Interrogations: A Self-Report Survey of Police Practices and Beliefs," *Law and Human Behavior* 31, no 4 (2007): 389; Kassin et al., "I'd Know a False Confession if I saw One," 222.

[125] Kassin et al., "I'd Know a False Confession if I Saw One," 216.

[126] Saul M. Kassin, Christine C. Goldstein, and Kenneth Savitsky, "Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt," *Law and Human Behavior* 27, no. 2 (2003): 187; John M. Darley and Russell H. Fazio, "Expectancy Confirmation Processes Arising in the Social Interaction Sequence," *American Psychologist* 35, no. 10 (1980): 867; Shawyer, Milne, and Bull, "Investigative Interviewing."

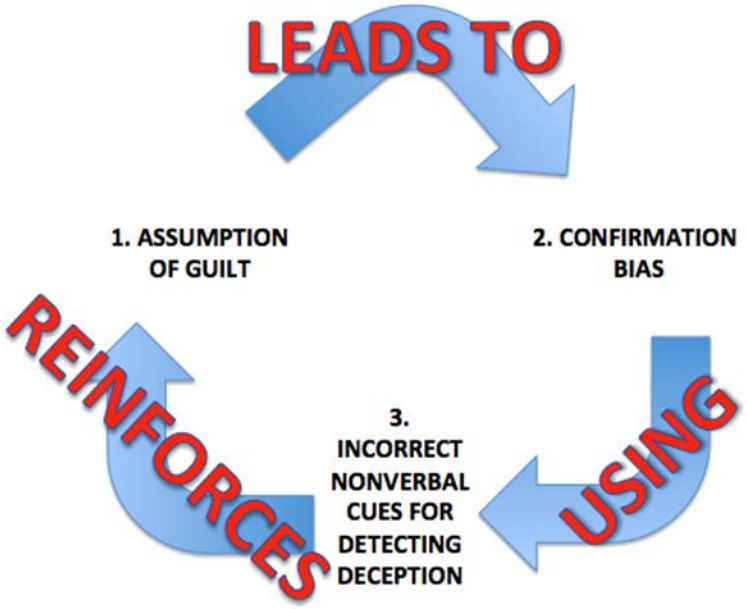

Figure 2. Influence of Investigator's Biases on Behavior[127]

Critics of this presumptive interviewing framework note that Reid's architects have failed to produce empirical evidence supporting the BAI's utility.[128] Instead, they have chosen to rely heavily on an "accumulation of unsystematic, *post hoc* observations to verify their own preconceptions."[129] Reid's unwillingness to publicize any research supporting the technique's behavioral assessment cues has prompted some scholars to caution against its use. Associate professors J.P. Blair and Brandon Kooi write,

> Many law enforcement agencies throughout the world currently use the Reid Technique to help guide their investigations. Yet, the nonverbal model of deception taught by Reid has not been sufficiently validated. If the model is incorrect, this could lead to investigators making erroneous decisions regarding the guilt or innocence of suspects. This in turn could cause an investigation to focus incorrectly upon an innocent suspect or

[127] Source: Shawyer, Milne, and Bull, "Investigative Interviewing," 28.

[128] Gisli H. Gudjonsson, *The Psychology of Interrogations and Confession: A Handbook* (Hoboken, NJ: Wiley, 2003), 21; Leo, "The Third Degree," 67.

[129] Leo, "The Third Degree," 67.

> ignore a guilty suspect, either of which could ultimately result in the conviction of an innocent person.[130]

Blair and Kooi's concern regarding false confessions is echoed by a wealth of other researchers.[131] Kassin and Gudjonsson identify Reid's BAI as a flawed pre-interrogation scheme that sets off a cascade of decisions made by the interrogator, increasing the potential for false confessions.[132] Even further, Narchet et al. found that when interviewers relied on inaccurate pre-interrogation assumptions of guilt, they were more likely to employ aggressive interrogation strategies to elicit confessions.[133] These pressure-filled tactics, such as minimizing the severity of the offense and introducing fabricated evidence, were found to influence false confessions by the innocent while having no greater confessional effect on the guilty.[134] In a 2005 study, Russano et al. note that using minimization tactics, which they acknowledged as "a common and legal interrogation technique [that] provided an effective means of obtaining true confessions," also caused a three-fold increase in false confessions when compared to interrogations not employing this strategy, as seen in Table 2.[135] Although the research showed the use of the minimization technique increased the rate of true confessions from 46 percent to 81 percent, the diagnostic value concurrently reduced by almost 40 percent, thus undermining the value of the tactics.[136]

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[130] John P. Blair and Brandon Kooi, "The Gap between Training and Research in the Detection of Deception," *International Journal of Police Science & Management* 6, no. 2 (2004): 82.

[131] Michel St-Yves and Christian A. Meissner, "Interviewing Suspects," in *Investigative Interviewing: The Essentials 2014*, ed. Michel St-Yves, 145–189 (Toronto: Carswell, 2014), 145.

[132] Saul M. Kassin and Gisli H. Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues," *American Psychology Association* 5, no. 2 (2004): 37.

[133] Narchet, Meissner, and Russano, "Investigator Bias," 462.

[134] Ibid.

[135] Melissa Russano et al., "Investigating True and False Confessions within a Novel Experimental Paradigm," *Psychological Science* 16, no. 6 (2005): 484.

[136] Ibid.

Table 2. Rates of True and False Confessions and Diagnosticity Related to Interrogation Tactics[137]

Conditions	True Confessions	False Confessions	Diagnosticity
No tactic	46%	6%	7.67
Minimization	81%	18%	4.50

C. FALSE CONFESSIONS

The prevalence of false confessions has been described as a systemic problem within the realm of police interrogations.[138] Leo and Ofshe reviewed sixty cases in which suspects had initially confessed, but the confessions were later proven, or suspected, to be false.[139] All the cases lacked physical evidence proving the suspects' guilt but contained compelling evidence supporting their innocence.[140] Based on the strength of the evidence, each confession was categorized as either *proven false*, *high probability of being false*, or *probably false*.[141] Of the sixty cases reviewed, more than half (thirty-four) were identified as *proven false*.[142] Leo and Ofshe argue the common thread linking these injustices is poor police practice that originates from faulty training and instruction, and reliance on interviewing manuals such as Reid's *Criminal Interrogation and Confessions*.[143]

Skeptics of false confession findings, however, point to several shortcomings within that literature. Levine et al. note that because studies like Russano et al.'s in 2005

137 Adapted from Russano et al., "Investigating True and False Confessions," 484.

138 Richard A. Leo and Richard J. Ofshe, "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," *The Journal of Criminal Law and Criminology* 88, no. 2 (1998): 491.

139 Ibid., 435.

140 Ibid., 436.

141 Ibid.

142 Ibid., 492.

143 Ibid.

were designed to educe *false confessions*, their success in achieving these outcomes was likely due to the interrogator's intent, something Levine et al. called the "experimenter demand effect."[144] Inbau et al.—the authors of the Reid manual's 4th edition—argue that scholars such as Leo and Ofshe fail to validate their claim that police psychological persuasion tactics are the catalyst for educing false confessions.[145] The authors further note that although suspects do falsely confess, *how often* or *why* they do has never been empirically verified.[146]

As research in the study of false confessions has continued, its prevalence within the interrogation room has been repeatedly confirmed. In a 2014 study, Williams College law professor Alan Hirsch notes that newer research has, in fact, supported the previous findings of Leo and Ofshe, and shown the number of false confessions has likely been underestimated, as discussed subsequently in the Innocence Project.[147] Hirsch also surmises that Reid's dogmatic defense of its techniques is financially motivated. "Whatever else the Reid Technique may be, it has to be understood as a commercial product … which has been sold in the form both of manuals and training courses. Given these commercial realities, it is little wonder that those associated with John. E. Reid & Associates fiercely defend their brand and counter-attack against its critics."[148]

D. MISUSING PSEUDO-SCIENTIFIC INTERROGATION METHODS

Notwithstanding this ongoing debate, the fact remains that multiple miscarriages of justice—many of which were built on the framework of Reid—over the past several decades have been brought to light within the United States.[149] Some of these failures were discovered through analyses of recorded police interrogations, while others have

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[144] Timothy Roland Levine et al., "Expertise in Deception Detection Involves Actively Prompting Diagnostic Information Rather than Passive Behavioral Observation," *Human Communication Research* 40, no. 4 (2014): 457.

[145] Inbau et al., *Criminal Interrogation and Confessions,* 443.

[146] Ibid.

[147] Hirsch, "Going to the Source," 813.

[148] Dixon, "Questioning Suspects," 428.

[149] "False Confessions or Admissions," Innocence Project.

been attributed to DNA exoneration efforts heavily lobbied by organizations such as the Innocence Project.[150]

1. The Innocence Project

Since 1992, the Innocence Project—founded by lawyers Peter Neufeld and Barry Scheck—has been the cornerstone for "exonerating wrongfully convicted individuals through DNA testing."[151] According to this non-profit organization, of the 347 cases in which it worked to free the innocent as of 2016, 29 percent of those unjust convictions were due to false confessions.[152] The Innocence Project website reduces the contributing factors surrounding these miscarriages of justice to improper police practices:

> Sometimes law enforcement use harsh interrogation tactics with uncooperative suspects. But some police officers, convinced of a suspect's guilt, occasionally use tactics so persuasive that an innocent person feels compelled to confess. For instance, it is perfectly legal for law enforcement to employ deception or trickery in the interrogation room. Some suspects are untruthfully told that there is already evidence pointing to their guilt, such as a forensic test that links the suspect to the crime. Some suspects have confessed to avoid physical harm or discomfort. Others are told they will be convicted with or without a confession and that their sentence will be more lenient if they confess. Some are told a confession is the only way to avoid the death penalty. These tactics can be persuasive in eliciting a false confession.[153]

Scholarly work has linked certain aspects of these injustices to the accusatorial interviewing approach seen with the Reid Technique.[154] Reid proponents as well Innocence Project supporters argue, however, it is often the improper application of certain techniques, rather than the techniques themselves, that have led to false

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[150] "False Confessions or Admissions," Innocence Project; State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Order Suppressing Evidence."

[151] "About," Innocence Project, accessed March 2, 2017, http://www.innocenceproject.org/about/.

[152] "DNA Exonerations in the United States," Innocence Project, accessed March 2, 2017, http://www.innocenceproject.org/dna-exonerations-in-the-united-states/.

[153] "False Confessions or Admissions," Innocence Project.

[154] Christian A. Meissner, Christopher E. Kelly, and Skye A. Woestehoff, "Improving the Effectiveness of Suspect Interrogations," *Annual Review of Law and Social Science* 11 (2015): 213.

confessions.[155] Law professor Brandon L. Garret notes that between 1989 and 2014, sixty-six individuals initially convicted and incarcerated on false confessions were exonerated through DNA evidence (see Table 3).[156] Of those, more than one-third were juveniles, and another third suffered from mental defects.[157] In addition, 94 percent of false confessions were contaminated with publicly withheld evidence and 92 percent of the interrogations lasted for more than three hours.[158]

Table 3. Number of False Confessions Resulting from Improper Interrogation Techniques[159]

	Contaminated with Inside Information	Interrogations of More than 3 Hours	Guilty pleas
40 False Confessions (1989–2009)	38	36	10
26 False Confessions (2009–2014)	24	25	8
Total N (% of 66 cases)	**62 (94%)**	**61 (92%)**	**18 (27%)**

Although Reid disapproves of using interrogation tactics that reveal non-disclosed evidence to suspects or introduce false evidence during the questioning of juveniles or the mentally ill, it rejects the assertion that lengthy interrogations yield false confessions.[160] To support its claim, Reid's website highlights several court rulings that found the length of the interrogation was not the sole factor in determining the voluntariness of a confession.[161] The question arises then, of whether miscarriages of justice have resulted

155 Inbau et al., *Criminal Interrogation*, 428–429; Brandon L. Garrett, "Contaminated Confessions Revisited," *Virginia Law Review* 101 (2015): 408.

156 Garrett, "Contaminated Confessions," 403.

157 Ibid., 400.

158 Ibid., 404.

159 Source: Garrett, "Contaminated Confessions," 404.

160 Inbau et al., *Criminal Interrogation and Confessions*, 369, 429.

161 "The Length of Interrogation—How Many Hours Are Too Many?" John E. Reid & Associates, accessed March 2, 2017, http://reid.com/reid_topics/length.html.

from the *proper application* of accusatorial interrogation methods like the Reid Technique—including a reliance on behavioral cues—or from the *misuse* of said strategies. In either case, what remains is a singular argument that American interviewers need better training, and in interviewing methods deemed scientifically sound. A prime example of this systemic failure involves two state court cases and one U.S. federal interrogator.

2. State of Tennessee v. Freddrick Lydrell Bates

As described in Chapter I, in *State of Tennessee v. Freddrick Lydrell Bates,* a U.S. federal law enforcement special agent—trained as a polygraph examiner by the U.S. Department of Defense—conducted a polygraph exam on Freddrick Bates. A month prior, Bates had been accused of performing oral sex on his underage stepdaughter. Subsequent to failing the polygraph exam, Bates was interrogated for approximately an hour before confessing to the lewd act. He also provided the agent with a written statement. The video-recorded interrogation of Bates—the only portion of the polygraph exam that was electronically captured—was later entered into evidence as part of a separate court proceeding. Its submission made the recording a public record and, therefore, available for review. During this author's analysis of the video, the agent was observed using eight of Reid's nine interrogation steps (described in Chapter II).[162] The following are mere examples of the agent's tactics and strategies, but provide enough detail to support the claim that his methods were Reid-based.

(1) Step 1: Employing Direct Positive Confrontation

Upon initially confronting Bates about the results of his polygraph exam, the agent stated, "I looked over everything and there's absolutely no doubt, no doubt at all that … you did [it]."[163]

[162] State of Tennessee v Kevin Yepez, 19th Jud. Cir. (2015), Exhibit 12 [video].

[163] Ibid., 2:35.

(2) Step 2: Developing Themes

After delivering the direct positive confrontation, the agent transitioned immediately to blaming the victim for Bates's actions—a projection tactic he revisited throughout the interrogation: "I know how girls are"; "They act on their hormones and that's exactly what happened here"; "She came onto you"; "Girls want attention."[164] The examiner also used a "third-person theme" to help rationalize Bates's alleged immoral behavior. "Let me tell you this story real quick … same type of situation … there's a buddy of mine, alright, named Paul … Paul's a good dude …"[165] The examiner went on to claim that "Paul" was unjustly accused of molesting an underage female and ultimately failed his polygraph trying to prove his innocence. The moral of the story was that after "Paul" failed his exam, he chose to tell his examiner the truth, thus enabling "Paul" to clear his name, an allegory mirroring Bates's current dilemma.

(3) Step 3: Handling Repetitive Denials

In response to Bates's repeated claims of innocence, the agent rejected his denials, stating, "I hear what you're saying. You already told me that, but that's not the truth. I know that's not the truth"; "No, no, no, no, don't sit here and tell me that's the truth, because that's not the truth"; "I know it happened, you're not going to convince me otherwise."[166] At one point during the interrogation, Bates is heard saying, "Listen, listen to me," to which the interrogator responded, "No, no, I will not. I'm not going to listen to that."[167] The interrogator then created space between Bates and himself by rolling back his chair. This "proxemics manipulation" further helped dismiss Bates's denials.

(4) Step 4: Secondary Excuses

During the course of the interrogation, Bates never made excuses as to why he was innocent, he just repeatedly denied the allegations. As such, the interrogator never used a step 4 tactic.

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[164] Ibid., 4:16, 4:26, 4:43; 27:22.

[165] Ibid., 9:05.

[166] Ibid., 5:21, 15:11, 26:08.

[167] Ibid., 28:39.

(5) Step 5: Keeping the Suspect's Attention

Throughout the approximately hour-long interrogation, the agent employed multiple step 5 techniques, including sitting extremely close to Bates and occasionally touching Bates's knee to keep his attention. The agent also made several remarks to give the illusion he was an advocate for Bates: "My job at this point right now is to prove that you're not a dirt bag"; "You have to explain to me so I can explain to everybody else"; "I'm trying to be a spokesperson for you"; "I know that you did not intend to cross that line with her"; "The only two people that are going to fight for you are me and you right now."[168]

(6) Step 6: Assessing the Suspect's Behavior

Approximately thirty minutes into the interrogation video, Bates displayed a broken posture—head in his hand—which signaled to the interrogator a sign of defeat (see Figure 3).

Figure 3. Bates Displaying a Sign of Defeat as Noted in Reid's Step 6

[168] Ibid., 3:20, 28:23, 29:19, 32:20, 47:12.

(7) Step 7: Offering an Optional Question

The agent also deployed an "optional question" during the interrogation: "Did it happen because you're a dirt bag and you're a scumbag or did it happen because she came onto you?"[169]

(8) Step 8: Verbal Accountability

As his denials failed to convince the interrogator of his innocence, Bates began making minor admissions, which the agent capitalized on: "So let's talk, now that the truth is coming out"; "First of all, I want to shake your hand, alright, because you're being a man of integrity right now"; "Give me the details, give me the truth of what happened when that line got crossed"; "Again, you've got to give me the details here because this is the stuff that's going to be used against her"; "How many other times did that happen?"; "Is there anything else other than that?"[170]

(9) Step 9: Eliciting a Written Confession

After confessing, the agent gave Bates a pen and paper and instructed him to write down everything he had confessed to: "Alright, this is what we are going to do, everything that you've told me we're gonna put it on paper. Alright, that way it shows your commitment to telling the truth, a commitment that you're cooperating, that you're wanting to get this cleaned up, that you want to prove that this is what the truth is."[171] Despite what appeared to be his apparent reluctance to do so—Bates was seen in the video sitting motionless, staring at the paper—he eventually wrote out a confession detailing his crime.[172]

Subsequent to finishing the written statement, Bates exits the interview room, thus ending his interrogation. As a result of his confession, Bates was arrested and later indicted by a grand jury on thirteen counts ranging from rape to a lesser offense of

[169] Ibid., 16:05.

[170] Ibid., 33:35, 33:43, 33:55, 48:19, 52:02, 1:00:50.

[171] Ibid., 1:06:31.

[172] Ibid., 1:19:10.

attempted assault (offensive/provocative touching).[173] While in jail awaiting trial, Bates's attorney filed a motion to suppress his confession, claiming it was coerced.[174] The case was eventually put before Tennessee Circuit Court Judge John H. Gasaway, III. During the hearing, Judge Gasaway reviewed the interrogation video and ruled to suppress the evidence. In his findings, Judge Gasaway wrote:

> The court has viewed the videotape of the interrogation of the defendant by [the special agent]. It is enough to say that the nature of the conduct exhibited by the interrogator exceeded the limits of coercion permitted. His actions and words can fairly be described as browbeating the defendant into submission. It is manifest that the confessional admissions of the defendant were not free, willing, and voluntary result of knowing and intelligent waiver of his constitution right.[175]

Bates ultimately pled guilty to a lesser charge and received time served for the time he spent in jail awaiting his day in court.[176]

3. State of Tennessee v. Kevin Yepez

Two years later, the same U.S. federal special agent was involved in another motion-to-suppress hearing—*State of Tennessee v. Kevin Yepez*, in which the court transcripts were available for review. Unlike *Tennessee v Bates*, the agent appeared before the court to answer questions about his training and experience and the interrogation methodologies he used to get Yepez to confess to molesting a child. During direct examination, the agent stated he had been a U.S. federal special agent since 2006 and a federal polygraph examiner since 2010.[177] During his time as an examiner, the agent claimed to have conducted between 375 and 400 polygraph exams, of which he estimated half were evaluated as *truthful*.[178] When asked, the agent stated his goal of

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[173] Charles S. Bloodworth, email to author, December 9, 2016.

[174] State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Motion to Suppress Statements of the Defendant."

[175] State of Tennessee v. Freddrick Lydrell Bates, 19th Jud. Dist. (2012), "Order Suppressing Evidence."

[176] Charles S. Bloodworth, email to author, December 9, 2016.

[177] State of Tennessee v Kevin Yepez, 19th Jud. Cir. (2015), "Motion to Suppress."

[178] Ibid.

conducting a polygraph examination was to obtain the facts surrounding the case and not specifically a confession.

The state's attorney asked the agent to expand on the questioning methods he used while interrogating Yepez. In response, the agent referred to Reid's "optional question" and "feigning sympathy" tactics—steps 8 and 5—although not by name. According to the agent, "I elude [sic] to the fact that listen, people either make mistakes or people are—are bad people, monsters. And I would have told him at that point, say, listen, I don't think you're a monster; I think this is probably a mistake that had happened, but I just need to know what your side of the story is."[179]

Unlike Bates's interrogation, Yepez's was not recorded. When asked about this discrepancy, the agent stated it was his agency's policy *not* to record criminal polygraph examinations. However, during Bates's polygraph exam the agent incorrectly assumed the policy did not apply if the exam was for an entity other than his own agency (i.e., the Clarksville, Tennessee, Police Department), which was why he recorded Bates's interrogation. The agent stated that upon learning (after Bates) that his agency's *no record* policy applied to all polygraph tests, he no longer recorded any of his exams.[180]

During cross-examination, the defense attorney asked the agent if he knew how to avoid psychological coercion during an interrogation, to which the agent answered, "No."[181] The defense attorney also asked the agent if he had "done any studies or read any material about false statements … or false confession," to which the agent again responded, "No, no sir."[182] When asked, the agent stated he had attended a Reid Technique course—his only training on interrogation tactics—however, he could not recall any of its specific training methods.[183]

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[179] State of Tennessee v Kevin Yepez, 19th Jud. Cir. (2015), "Motion to Suppress."

[180] Ibid.

[181] Ibid.

[182] Ibid.

[183] Ibid.

During further cross-examination, the defense attorney asked the agent, "Have you been trained that [the Reid] methodology is guilt presumptive?" The agent responded, "I was trained that there's something that's not been told, yes."[184] The defense attorney also pressed the agent as to the length of the interrogation. When asked why the agent gave the suspect two and a half hours to confess, the agent responded that he would have given Yepez three weeks to confess, if needed.[185] The defense attorney again asked the agent if he was aware of any studies related to innocent individuals giving false confessions, to which the agent responded, "I haven't read anything about those, no sir."[186]

At his conclusion of the cross-examination, the defense attorney entered into evidence the granted motion to suppress in *State of Tennessee v Bates*. This submission was based on the agent stating the interrogation methods he used to question Yepez were the same as those he used on Bates.[187] In the Yepez case, however, the motion to suppress was denied, which suggests the strength the videotape had in exposing the coercive nature of the Reid Technique.

Although Yepez's confession was not thrown out, the cross-examination alone indicates the scrutiny law-enforcement officials may begin to face regarding their interrogation techniques. In addition, these recent cases reaffirm that federal agencies continue to train their agents in accusatorial interrogation techniques while failing to school them in research related to false confessions. Irrespective of the interviewing methods advocated, policing agencies must take responsibility for educating their practitioners on the legal and ethical risks associated with those practices.[188]

To sum up this concern, Shepard and Griffiths note that, "It remains to be seen if interrogation—in North America and in other countries where practitioners have long

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[184] Ibid.

[185] Ibid.

[186] Ibid.

[187] Ibid.

[188] Michel St-Yves, "Police Interrogation in Canada: From the Quest for Confession to the Search for the Truth," In *International Developments in Investigative Interviewing*, eds. Tom Williamson, Becky Milne, and Stephen P. Savage, 92–110 (London: Willan, 2009), 101.

used and argued the merits of these oppressive, non-investigative practices to secure the 'truth'—will survive the transparency of recording, even more so as the efficacy of these techniques is being called increasingly into question through empirical research."[189] Police agencies continuing to train their personnel in poor interviewing strategies may lead to losses beyond confessions, justice, or truth. Such failures may have a significant financial impact as well, as in the case of Juan Rivera.

4. Juan Rivera

In 1992, Waukegan, Illinois, police detectives questioned 19-year-old Juan Rivera about the rape and murder of 11-year-old Holly Staker. After being interrogated over a four-day period and polygraphed twice by a John E. Reid & Associates polygraph examiner, Rivera confessed. In 1993, Rivera was sentenced to life in prison based solely on his confession and despite evidence of his innocence. For nearly two decades Rivera remained incarcerated until DNA evidence exonerated him in December 2011.[190] During a review of the Lake County, Illinois, Circuit Court of Appeals reversal, presiding Judge Honorable Christopher C. Starck wrote:

> Given the circumstances surrounding the interrogation of defendant, we are left with the impression that the details of defendant's confession were procured "piecemeal" and not as a result of a candid acknowledgement of guilt. Over the course of four days, there were no fewer than 10 law enforcement personnel discussing the crime with defendant or interrogating him. It was the State's burden to establish that defendant was not plied with factual information of the crime to which he finally confessed.[191]

In March of 2015, Juan Riviera was awarded a $20 million settlement for the harsh interrogation tactics that elicited his false confession.[192] Although the city of Waukegan,

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[189] Eric Shepard and Andrew Griffiths, *Investigative Interviewing: The Conversation Management Approach*, second edition (Oxford: Oxford Press, 2013): 12.

[190] Dan Hinkel and Steve Mills, "Man Freed after 20 Years in Prison for Waukegan Murder Gets $20 Million," *Chicago Tribute*, October 22, 2016, http://www.chicagotribune.com/suburbs/lake-county-news-sun/crime/ct-rivera-lawsuit-settlement-met-20150320-story.html; Douglas Starr, "Juan Rivera and the Dangers of Coercive Interrogation," *New Yorker*, May 22, 2015, http://www.newyorker.com/news/news-desk/juan-rivera-and-the-dangers-of-coercive-interrogation.

[191] People v. Rivera, IL App. (2d) 091060 (2011).

[192] Hinkel and Mills, "Man Freed after 20 Years in Prison"; Starr, "Juan Rivera."

Illinois, bore the brunt of this financial responsibility, John E. Reid & Associates was ordered to pay $2 million for its participation in this miscarriage of justice.[193] Another example that has brought national attention to the prevalence of improper interrogation tactics is the case of Brendan Dassey.

5. Brendan Dassey

In the 2015 Netflix documentary series "Making a Murderer," Brendan Dassey is portrayed as a naive 16-year-old who confessed in 2006 to helping his uncle Steven Avery rape, kill, and dismember 25-year-old Teresa Halbach.[194] On August 12, 2016, U.S. Magistrate Judge William E. Duffin—U.S. District Court for the Eastern District of Wisconsin—overturned Dassey's conviction on the grounds that it was coerced. According to Judge Duffin, the investigator's "repeated false promises, when considered in conjunction with all other relevant factors, most especially Dassey's age, intellectual deficits, and the absence of a supportive adult, rendered Dassey's confession involuntary under the Fifth and Fourteenth Amendments."[195]

During Dassey's post-conviction litigation, he was co-represented by Northwestern Pritzker Law Professors Steven Drizin and Lara Nirider.[196] As a result of Drizin's unrelated legal work earlier in his career—championing mandatory videotaping of all juvenile interrogations in Wisconsin—Dassey's electronically recorded interrogation was one of the state's first.[197] It was also what Drizin and his team used to

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[193] Ibid.

[194] Daniel Victor, "Prosecutors Appeal Overturned Conviction of 'Making a Murderer' Subject Brendan Dassey," *New York Times*, September 9, 2016, http://www.nytimes.com/2016/09/10/us/brendan-dassey-of-making-a-murderer-has-his-release-delayed.html?_r=0.

[195] Brendan Dassey v. Michael A. Dittmann, Case No. 14-CV-1310 (E.D. Wis.) (2016).

[196] "CWCY Client Brendan Dassey's Conviction Overturned by Federal Judge," Northwestern Pritzker School of Law, August 12, 2016, http://www.law.northwestern.edu/about/news/newsdisplay.cfm?ID=822.

[197] Kayla Hawkins, "Who Is Steven Drizin? Brendan Dassey's Lawyer Has a Passion for Justice," Bustle, February 10, 2016, https://www.bustle.com/articles/136610-who-is-steven-drizin-brendan-dasseys-lawyer-has-a-passion-for-justice.

argue that Dassey's confession was coerced, much of which they attributed to interrogators using Reid-based tactics.[198]

E. CONCLUSION

These four cases—*State of Tennessee v. Freddrick Lydrell Bates*, *State of Tennessee v. Kevin Yepez*, Juan Rivera, and Brendan Dassey—illustrate a singular point: the interrogation framework within the United States is systemically dysfunctional. These cases represent only a fraction of the injustices that result from poor training, a reliance on unscientific interviewing techniques, and an unwillingness to advance beyond a nearly eighty-year-old methodology. As a result, innocent men have died in prison, guilty men have walked free, and police agencies have paid millions in restitution.[199] Despite the existence of more effective and ethical means to interrogate, these methods have yet to be nationally accepted. Although the American criminal justice system has never been flawless, it has matured in step with social norms of humane treatment and civility. As such, along with the evolution of our consensus positions and knowledge in the scientific, moral, and legal realms, comes the need for the tradecraft to modernize. In Chapter IV, this thesis explores the next generation, not of coercive interrogation tactics, but of objective interviewing strategies—practices that have withstood the rigors of empirical science and practical suitability.

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[198] "Brendan Dassey: A True Story of a False Confession," Northwestern Pritzker School of Law, May 9, 2016, https://www.youtube.com/watch?v=Z7jDf5wWdDQ.

[199] Saul A. Kassin et al., "Police-Induced Confessions: Risk Factors and Recommendations," *Law and Human Behavior* 34, no. 1 (2010): 23; Hinkel and Mills, "Man Freed after 20 Years in Prison"; Starr, "Juan Rivera."

IV. THIRD-GENERATION INTERVIEWING METHODOLOGIES

Continuous evaluation of interviewing strategies through the personal accounts of interrogators and prisoners of war, and in the literature of interrogation manuals, agency policies, and government-sponsored research, has yielded a handful of scientifically validated and ethically sound strategies.[200] The first of these is the cognitive interview.

A. THE COGNITIVE INTERVIEW

Developed by psychologists R. Edward Geiselman and Ronald P. Fisher in 1985, the cognitive interview (CI) is used most effectively and principally with cooperating subjects (i.e., forthcoming witnesses and victims). It is grounded in a triad of psychological components: "memory and cognition, social dynamics, and communication."[201] Geiselman and Fisher define the CI as "a systematic approach to interviewing witnesses with the goal of increasing the amount of relevant information obtained without compromising the rate of accuracy."[202] The original version of the CI centered on investigators using four general memory-recall strategies:

- *Reinstate the context*: Recounting the event in explicit details, e.g., the condition of the room, the weather outside, and the people in the area.
- *Report everything*: Encouraging the interviewee to not hold back any information, even if he or she considers it unimportant.
- *Recall the event in a different order*: Describing the interview in a sequence other than chronologically, such as starting from the middle.

[200] Edward Geiselman and Ronald P. Fisher, "Interviewing Witnesses and Victims," in *Investigative Interviewing: Handbook of Best Practices*, ed. Michel St.-Yves, 1–21 (Ontario, Canada: Thomson Reuters, 2014), 2; Maria Hartwig, Christian A. Meissner, and Matthew D. Semel, "Human Intelligence Interviewing and Interrogation: Assessing the Challenges of Developing an Ethical, Evidence-Based Approach," in *Investigative Interviewing*, ed. Ray Bull, 209–228 (New York: Springer, 2014), 212–215.

[201] Geiselman and Fisher, "Interviewing Witnesses and Victims," 2.

[202] Ibid.

- *Change perspective*: Recalling the event from another person's viewpoint.[203]

Although the CI was found to be more effective than the standard police interview—asking open-ended questions followed by specific questions regarding the event—the technique has gone through several revisions to further its effectiveness in memory retrieval.[204]

In its current version, the CI is structurally organized into five phases.[205] The first phase is the *introduction*. This is when the interviewer establishes rapport with the interviewee and encourages him or her to do most of the talking in order to elicit maximum information.[206] *Open-ended narration* is the second phase of the interviewing sequence. This phase involves the interviewee mentally recreating the event using all five senses and then recalling what he or she remembers.[207] The third phase is the *follow-up question* phase, in which the interviewer listens to the specifics surrounding the interviewee's recollection. In this step, the interviewer also asks the interviewee to recall the event in a different chronological order, which helps further elicit information.[208] The interviewer then asks questions to prompt further details. The fourth phase, *review*, consists of the interviewer assessing the information gleaned thus far. This phase also clarifies areas of uncertainty or inconsistency and allows the interviewee to add information, if needed.[209] In the final phase, *close*, the interviewer thanks the interviewee for cooperating and encourages him or her to contact the interviewer again if additional memories surrounding the event emerge.[210] Geiselman and Fisher claim the CI approach

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[203] R. Edward Geiselman et al., "Eyewitness Memory Enhancement in the Police Interview: Cognitive Retrieval Mnemonics versus Hypnosis," *Journal of Applied Psychology* 70, no. 2 (1985): 404; R. Edward Geiselman et al., "Enhancement of Eyewitness Memory with the Cognitive Interview," *The American Journal of Psychology* 99, no. 3 (1986): 390.

[204] Günter Köhnken et al., "The Cognitive Interview: A Meta-analysis," *Psychology, Crime and Law* 5, no. 1–2 (1999): 5.

[205] Geiselman and Fisher, "Interviewing Witnesses and Victims," 3.

[206] Ibid.

[207] Ibid., 5.

[208] Ibid., 7.

[209] Ibid., 8.

[210] Ibid., 3–8.

has been evaluated in more than 100 laboratory experiments and two field studies, in which it has outperformed the typical police-style interview by 25 to 50 percent.[211]

Since the technique's development, two meta-analyses have shown its efficacy in enhancing accurate memory recall from witnesses and victims. In 1999, scholars Günter Köhnken et al. looked at forty-two studies related to the CI, in which they found the technique outperformed the standard interview in eliciting correct information by 41 percent, an effect the researchers noted as "remarkably stable and consistent."[212] Köhnken et al. did find a few studies within their analysis that failed to support their overall conclusion. They note, however, these outliers were likely attributed to either asking the interviewees to recall the event in written form—as opposed to a verbal recitation—or using very young children (age six) as interviewees.[213]

In 2010, researchers Amina Memon, Christian A. Meissner, and Joanne Fraser performed a meta-analytic study on the CI. Their data, which spanned more than twenty-five years, point to a "rather substantial increase in correct recall with the CI as compared with a structured interview," an interview technique similar to the CI but less exhaustive in terms of prompting memory recall.[214] A drawback, however, was difficulty in getting practitioners to incorporate the CI into their everyday routine.[215] Memon et al. attributed this struggle to the amount of time and effort needed to employ the interviewing strategy effectively: "Not only does the CI take longer to administer, but involves instructing witnesses in the use of several sophisticated techniques."[216] Further criticism focused on methodologies used to verify the CI's success.[217] Specifically, earlier studies occurred in laboratory environments where participants watched videos of the events as opposed to

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[211] Ibid., 8.

[212] Köhnken et al., "The Cognitive Interview," 20.

[213] Ibid.

[214] Amina Memon, Christian A. Meissner, and Joanne Fraser, "The Cognitive Interview: A Meta-analytic Review and Study Space Analysis of the Past 25 Years," *Psychology, Public Policy, and Law* 16, no. 4 (2010): 2, 26.

[215] Ibid., 35.

[216] Ibid.

[217] Jillian R. Rivard et al., "Testing the Cognitive Interview with Professional Interviewers: Enhancing Recall of Specific Details of Recurring Events," *Applied Cognitive Psychology* 28, no. 6 (2014): 917.

experiencing them personally.[218] These studies also relied on students being both interviewers—as opposed to experienced criminal interrogators—and witnesses, which may not have represented the average "witness" in terms of intelligence and memory recall.[219] The previous studies also conducted the interviews shortly after participants observed the events, which lessened the need for long-term memory recall.[220]

In a 2014 study, Rivard et al. tested the validity of these criticisms by recruiting eight experienced criminal interrogators who taught interviewing strategies at FLETC.[221] Twenty-five other FLETC trainers—who had teaching backgrounds in either law-enforcement or security courses—were used as witnesses.[222] Prior to experiment onset, the interviewers received two full days of CI instruction. Over the following month, the recruited interviewees participated in several meetings that preceded planned training exercises in surveillances, search warrants, or undercover operations. None of the interviewees knew the questions ahead of time and each interview occurred between three and forty-three days after a witnessed event. Once the interviews commenced, each interviewer conducted between two and four interviews in which they equally employed the CI technique and the five-step interviewing method taught at FLETC. This latter technique is the cornerstone of FLETC's interview and interrogation training, which centers on building rapport, avoiding leading questions or interrupting the interviewee, allowing long pauses, and employing follow-up questions.[223]

During the interviews, interviewees were asked to recall specific details, such as clothing descriptions of meeting attendees, as they related to a particular event. Each piece of information was then separated into five categories: people, settings actions, objects, and temporal, as shown in Table 4.

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[218] Ibid.

[219] Ibid.

[220] Ibid., 918.

[221] Ibid.

[222] Ibid.

[223] Patricia Donovan, email to author, January 13, 2017.

Table 4. Detail Retrieval Comparison between Cognitive Interview and FLETC Five-Step Interview Method[224]

	COGNITIVE INTERVIEW	FLETC FIVE-STEP INTERVIEW
CATEGORY	Average Number of Details	Average Number of Details
People	105.33	51.25
Setting	45.08	33.13
Actions	124.58	57.75
Objects	40.92	22.00
Temporal	3.00	1.95
Total	318.91	166.08

Rivard et al. found the CI elicited nearly 80 percent more information than the five-step interview.[225] The single disadvantage of the CI compared to the FLETC technique was time: the CI required approximately twelve more minutes on average to complete, a drawback previously discussed by Memon et al.[226] Despite this disadvantage, the CI was so effective that in 2013 FLETC began incorporating elements of its methodologies into the center's basic interviewing curriculum.[227]

B. INVESTIGATIVE INTERVIEWING: THE U.K.'S PEACE MODEL

The U.K.'s criminal interviewing philosophy and practices were characterized by the same flaws that plague the American policing system today—insufficient and inadequate interview training, the reliance on guilt-presumptive interviewing approaches, the use of manipulation techniques to glean confessions, and the lack of a unified policy

[224] Adapted from Rivard et al., "Testing the Cognitive Interview," 921.

[225] Ibid., 923.

[226] Ibid., 924; Amina Memon et al., "The Cognitive Interview," 35.

[227] Rivard et al., "Testing the Cognitive Interview," 924.

mandating the recording of every suspect interview.[228] As a result, the U.K. suffered a litany of public embarrassments from a number of wrongful convictions.[229] These judicial miscarriages led to a national paradigm shift toward a more ethical interviewing strategy called *investigative interviewing*.[230]

In 1984, the U.K. Home Office instituted the Police and Criminal Evidence (PACE) Act, intended to safeguard against suspect abuse and which mandated the audio recording of all criminal interviews.[231] A re-evaluation of the policy's impact nearly a decade later, however, revealed that little, if anything, had changed. Psychologists Stephen Moston and Terry Engelberg found that practitioners lacked the skills necessary to properly manage difficult interviews and focused more on educing confessions rather than seeking objective information.[232] John Baldwin's research produced similar conclusions that a majority of practitioners within the U.K. were professionally incompetent and disorganized, and seemed inept at asking questions in a structured fashion.[233]

1. Creation of the PEACE Model of Interviewing

In response to these shortcomings, a working group within the U.K. evaluated the region's police interviewing practices.[234] This assessment resulted in the creation of a national training model that focused on seven key philosophies rooted in the tenets of "fairness, openness, and accountability"[235]:

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[228] Dixon, "Questioning Suspects," 431; Andy Griffiths and Becky Milne, "Will it All End in Tiers? Police Interviews with Suspects in Britain," in *Investigative Interviewing: Rights, Research, Regulation*, ed. Tom Williamson, 167–189 (London: Willan 2006): 167.

[229] Ibid.

[230] Ibid.

[231] Shawyer, Milne, and Bull, "Investigative Interviewing," v.

[232] Stephen Moston and Terry Engelberg, "Police Questioning Techniques in Tape Recorded Interviews with Criminal Suspects," *Policing and Society: An International Journal* 3, no. 3 (1993): 236.

[233] John Baldwin, "Police Interviewing Techniques: Establishing Truth or Proof?" *British Journal of Criminology* 33, no. 3 (1993): 339.

[234] Ray Bull and Becky Milne, "Attempts to Improve the Police Interviewing of Suspects," in *Interrogations, Confessions, and Entrapment*, ed. G. Daniel Lassiter (New York: Springer, 2004): 185.

[235] Griffiths and Milne, "Will it All End in Tiers," 170; Shawyer, Milne, and Bull, "Investigative Interviewing," 26.

1. The role of police is to obtain accurate information from suspects.
2. Interviews should be approached with an open mind.
3. Information obtained from the suspect must be compared with what the interviewer already knows.
4. The interviewing officer(s) must act fairly.
5. Vulnerable suspects must be treated with particular consideration.
6. The interviewer need not accept the first answer given.
7. Even when suspects exercise the right to silence, the interviewer still has the right to ask questions in order to try to establish the truth.[236]

On these principles, U.K. officials developed an ethical interviewing framework known as the PEACE model—an acronym for planning and preparation, engage and explain, account clarification and challenge, closure, and evaluation, as shown in Figure 4.[237]

[236] Timothy E. Curtis, "Investigative Interviewing In England Part I: Models for Interviewing Witnesses and Suspects," United Nations Asia and Far East Institute, accessed March 2, 2017, http://www.unafei.or.jp/english/pages/RMS/No92_04VE_Curtis1.pdf.

[237] Shawyer, Milne, and Bull, "Investigative Interviewing," 26.

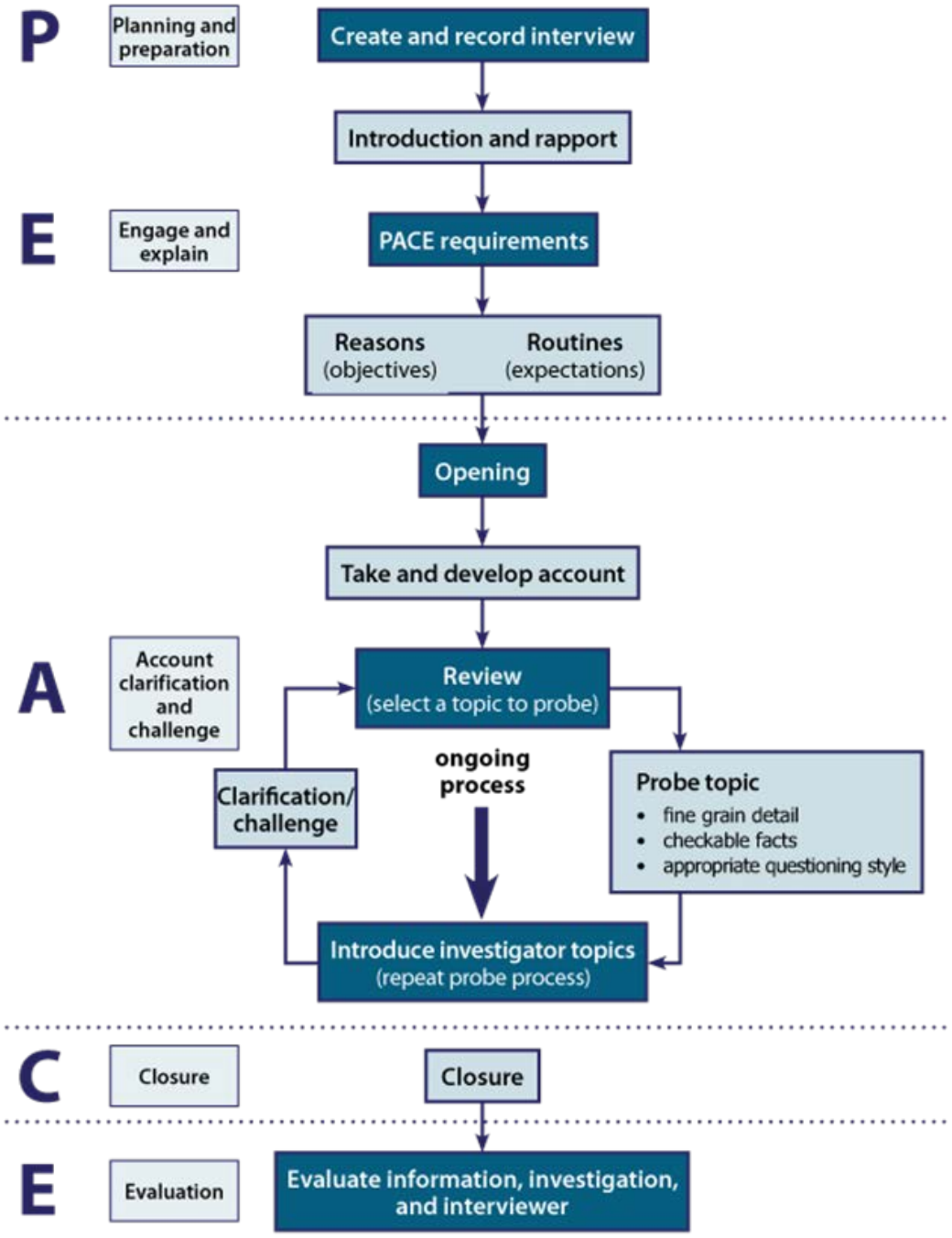

Figure 4. The U.K.'s PEACE Model of Interviewing[238]

[238] Source: "Investigative Interviewing," College of Policing, last modified January 11, 2016, https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/.

The PEACE model is separated into five phases that provide the roadmap for practitioners to follow during the course of the interview. The first phase of the model—*planning and preparation*—precedes the interview.[239] This stage requires the interviewer to gather and become familiar with the pertinent information or evidence related to both the subject and the facts of the case.[240] This data collection ensures the interviewer is prepared for the interview well in advance.[241] The three subsequent phases—*engage and explain*, *account clarification and challenges*, and *closure*—take place during the interview and provide the interviewer a logical sequence of steps toward a successful conclusion.[242] During each of these steps, the subject is encouraged to provide as much detail as possible without interruption prior to the interviewer presenting any evidence to the contrary.[243] Because the interviewee's level of cooperation plays a significant role in the amount of information provided, it is also during these middle stages that the interviewer deploys one of two interviewing techniques.[244]

The first option is the aforementioned cognitive interview (CI) and the second is the *conversation management* (CM) technique.[245] This latter approach is best used with uncooperative interviewees, such as suspects or hostile witnesses, and contains three phases: the *greeting* phase, the *explanation* phase, and the *closure* phase.[246] The greeting phase focuses on establishing rapport while the explanation phase requires the interviewer to set the boundaries of the interview and explain its purpose and objectives.[247] During the second phase, the interviewer also verbalizes the need for the

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239 Shawyer, Milne, and Bull, "Investigative Interviewing," 27.

240 Ibid.

241 Ibid.

242 Ibid.

243 Ibid.

244 Ibid.

245 Ibid.

246 Ibid.; Ulf Holmberg, "Investigative Interviewing as a Therapeutic Jurisprudential Approach," in *International Developments in Investigative Interviewing*, eds. Tom Williamson, Becky Milne, and Stephen P. Savage (London: Willan, 2009): 156.

247 Holmberg, "Investigative Interviewing," 156.

interviewee to actively participate in the conversation, defined as *mutual activity*.[248] In the closure phase of the CM, the interviewer purposely ends the meeting in a positive light in the hopes the subject will agree to a future interview if the need arises.[249] After implementing either the CI or CM, the interviewer enters into the last phase of the PEACE model—the *evaluation*. In this step the interviewer assesses the outcome of the interview as well as the methodologies used.[250]

2. Evaluation of PEACE

In 2001, scholars Clarke and Milne evaluated the decade-old PEACE model, and found it deficient. In particular, they discovered no real difference—aside from the length of the interview—between the efficacy of the practitioners' interviewing skills before and after PEACE training.[251] These shortcomings were further exacerbated during victim and witness interviews, in which interviewers routinely reverted back to traditional question-and-answer exchanges instead of conducting the CI.[252]

Further research found the model's blanket approach to criminal interviewing lacked the versatility to accommodate sophisticated methods required for more serious crimes.[253] Andrew Griffiths, one of the key contributors to advancing interview policies within the U.K., notes, "PEACE fulfilled an important role in limiting oppressive interviews but there was still a need to develop further effective interview techniques."[254] These findings led to the development of a five-tier approach to interviewing, a paradigm shift reflective of changes in research, national policy, and institutional evolutions.[255]

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[248] Ibid.

[249] Ibid.

[250] Shawyer, Milne and Bull, "Investigative Interviewing," 27.

[251] Colin Clarke and Rebecca Milne, *National Evaluation of the PEACE Investigative Interviewing Course* (Report No. PRAS/149) (London: Home Office, 2001), i.

[252] Ibid., ii.

[253] Griffiths and Milne, "Will it All End in tiers," 171.

[254] Ibid.

[255] Michel St-Yves et al., "Training in Investigative Interviewing: Observations and Challenges," in *Investigative Interviewing—The Essentials*, 245–282 (Toronto, Canada: Carswell, 2014), 248.

The training modules within each of the five tiers—ranging from one to three weeks in length—were designed to correspond to the interviewers' professional experiences and skill levels, and the degree to which they would be involved in conducting investigations relevant to their positions (see Figure 5).[256]

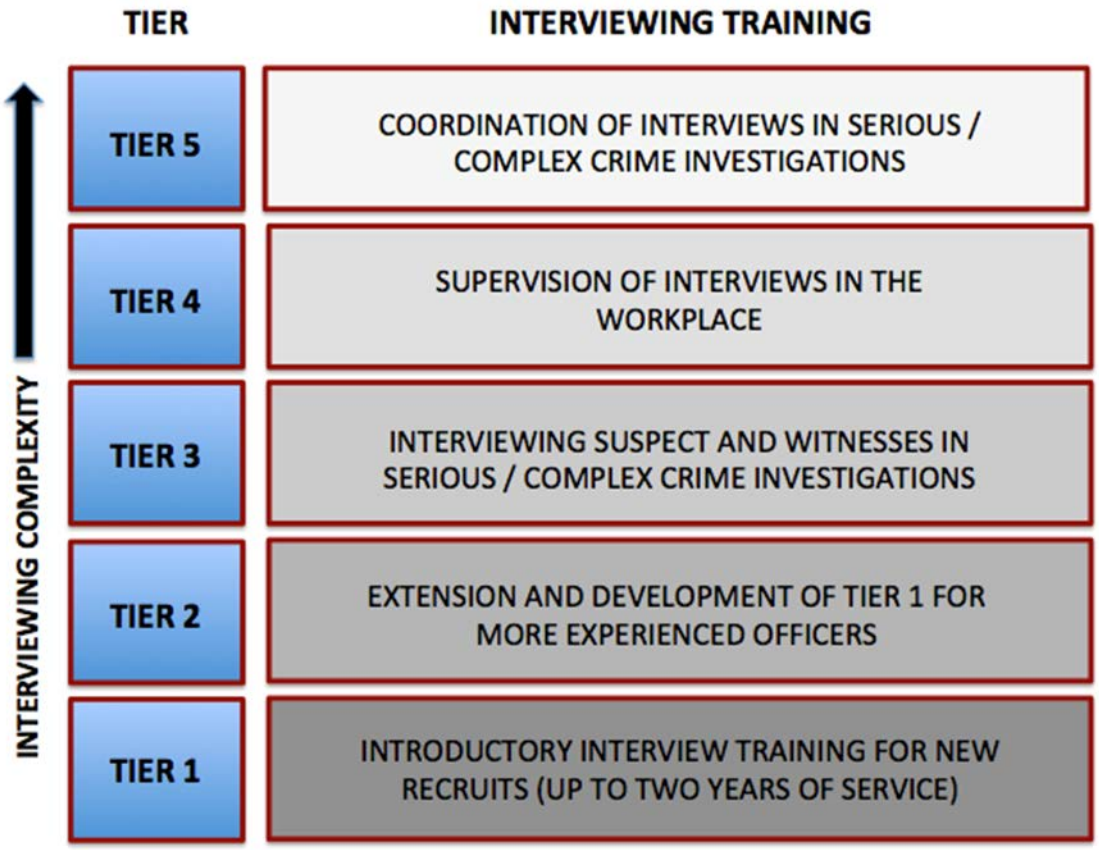

Figure 5. Five Tiers of the U.K.'s Interview Training[257]

Tier 1 teaches the rudimentary concepts of interviewing to new law-enforcement personnel, and Tier 2 is a training extension of first-tier fundamentals for more experienced officers.[258] Tier 3, which is three weeks long, is an advanced course for

[256] Shawyer, Milne, and Bull, "Investigative Interviewing," 34.

[257] Source: Shawyer, Milne, and Bull, "Investigative Interviewing," 34.

[258] Griffiths and Milne, "Will it All End in Tiers," 167.

agents involved in more serious investigations. Because its focus is on complex suspect, witness, and victim interviews, this tier incorporates strategies steeped in theoretical learning, legal training, and practical exercises requiring peer feedback.[259] Unique to this stage is the requirement that investigators pass an initial assessment prior to being accepted into Tier 3 training. This pass/fail test safeguards against incompetency in the interview room and ensures only the most qualified interviewers are conducting the most difficult interviews.[260] Tier 4 involves supervising the interviews for quality assurance and Tier 5—the highest tier—consists of coordinating the interviews for the most serious cases.[261]

3. Outcomes of the PEACE Model

Although the PEACE model was not the panacea the U.K. Home Office had initially envisioned, several studies have verified its effectiveness subsequent to Clarke and Milne's 2001 recommendations. In a 2006 study, Milne and Griffiths note that while the original PEACE training did reduce coercive interrogations, it failed to enhance the interviewer's ability to gather more relevant information.[262] With the creation of the five-tier model, however, the researchers found marked improvements in the types of questions interviewers used to probe for information and a decreased use of inappropriate questions—though these enhancements appeared to be predicated on continual refresher training to maintain a proficient interview skill level.[263]

In a 2010 study, researchers Walsh and Bull also found implementing the PEACE model greatly enhanced the quality of the overall interview.[264] In particular, they note that when practitioners effectively utilized the *planning* and *preparation* as well as the *account clarification and challenges* segments of PEACE, they performed better than

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[259] Ibid., 173.

[260] Ibid.

[261] Ibid., 168; Shawyer, Milne, and Bull, "Investigative Interviewing," 34.

[262] Griffiths and Milne, "Will it all End in Tiers," 187.

[263] Ibid.

[264] Dave Walsh and Ray Bull, "What Really Is Effective in Interviews with Suspects? A Study Comparing Interviewing Skills against Interviewing Outcomes," *Legal and Criminological Psychology* 15, no. 2 (2010): 318.

interviewers who were less successful at implementing these phases.[265] Walsh and Bull did find, however, that interviewers still lacked the ability to overcome the heightened challenge when faced with subjects unwilling to confess.[266]

4. Additional Research Supporting the Investigative Interview

Meissner et al. conducted a comparative review of the *accusatorial interview*, predominantly used in the United States, and the U.K.'s aforementioned *information-gathering* approach.[267] This review—which consisted of seventeen studies—was separated into two meta-analyses; five of the studies were field studies and the remaining twelve were experimental studies. Each study consisted of an identifiable interviewing/interrogation strategy, such as accusatorial or information gathering (see Table 5), as well as information on the confession outcome linked to that strategy.

Table 5. Distinctions between Information-Gathering and Accusatorial Interviewing Methods[268]

METHODS OF INTERVIEWING

INFORMATION-GATHERING	versus	ACCUSATORIAL
Establishes rapport		Establishes control
Uses direct, positive confrontation		Uses psychological manipulation
Employs open-ended exploratory questions		Employs closed-ended confirmatory questions
Primary goal is elicitation of information		Primary goal is confession
Focuses on cognitive cue to deception		Focuses on anxiety cue to deception

[265] Ibid.

[266] Ibid., 320.

[267] Tom Williamson, Becky Milne, and Stephen P. Savage, *International Developments in Investigative Interviewing* (New York: Routledge, 2012), xxii; Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 461.

[268] Adapted from Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 479.

Their results indicated that while the application of both methods increased the likelihood of obtaining true confessions—as opposed to a direct question-and-answer exchange—the accusatorial approach increased the likelihood of obtaining false confessions as well. The information-gathering approach, however, was found to decrease the potential for false confessions.[269]

Despite the documented utility of the PEACE model, critics of investigative interviewing have questioned its degree of effectiveness along with its cultural and organizational limitations—compared to the Reid Technique—within the United States. According to law professor David Dixon, "In the enthusiasm to promote an alternative to the Reid Technique, the impact of investigative interviewing is sometimes exaggerated."[270] Gudjonsson and Pearse see Reid's dominance within the American interviewing community as an impediment toward national acceptance: "No doubt, such a reform will be strongly resisted by American police authorities. The Reid Technique has a long history, and its prescriptive nature and *apparent* effectiveness undoubtedly makes it attractive."[271] According to Leo, one of the prime differences between U.S. and U.K. policing cultures is the latter's collaboration with researchers to explore, develop, and train its practitioners in more effective interview strategies.[272] As noted in much of the literature, this mutual researcher/practitioner relationship, however, is nearly nonexistent in the American policing system, resulting in a dearth of evidence as to what occurs within the confines of the interrogation room.[273] According to Gudjonsson, this void has led to "police officers … making the same interviewing mistakes as they have

[269] Ibid.

[270] Dixon, "Questioning Suspects," 430.

[271] Gudjonsson and Pearse, "Suspect Interviews and False Confessions," 36.

[272] Richard A Leo, "Inside the Interrogation Room," *The Journal of Criminal Law and Criminology* 6, no. 2 (1996): 267.

[273] Gisli H. Gudjonsson, "Psychological Vulnerabilities during Police Interviews. Why Are They Important?" *Legal and Criminological Psychology* 15, no. 2 (2010): 163.

traditionally done in the past," an argument further supported by Meissner, Hartwig, and Russano.[274]

The literature underscores that the primary obstacle with establishing such a relationship is mistrust. According to Meissner et al., "It is not unusual for law enforcement to express a reluctance to cooperate on research projects, and their lack of trust with the scientific community represents a serious obstacle for progress on these issues."[275] Nonetheless, they argue, in order to succeed in changing the current American interrogation methodology, researchers must remain persistent in their efforts to engage the policing community.[276] To date, the implementation of the PEACE model has enhanced the U.K.'s commitment to its citizenry by striving to "treat everyone fairly; be open and honest; work in partnership; and change to improve."[277] This philosophy, in turn, has improved human rights standards, thus further promoting the professionalism of the U.K. policing system as a whole.[278]

In conjunction with efforts to establish better interviewing strategies, researchers have continued to explore techniques for improving lie-detection accuracy beyond 54 percent, as noted previously by Bell and DePaulo.[279] One such technique that has shown promising results involves the use of evidence to judge deception.

C. STRATEGIC USE OF EVIDENCE

The timing of evidence introduced into a criminal interrogation has been shown to have an effect on educing confessions. In a 1996 study, Leo analyzed the "routine American police interrogation practices" in which he found 90 percent of investigators

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[274] Ibid.; Christian A. Meissner, Maria Hartwig, and Melissa B. Russano, "The Need for a Positive Psychological Approach and Collaborative Effort for Improving Practice in the Interrogation Room," *Law and Human Behavior* 34, no. 1 (2010): 44.

[275] Meissner, Hartwig, and Russano, "Positive Psychological Approach," 44.

[276] Ibid.

[277] "MPS Publication Scheme: Introduction to the Scheme," Metropolitan Police, accessed March 2, 2017, http://www.met.police.uk/foi/introduction.htm.

[278] Shawyer, Milne, and Bull, "Investigative Interviewing," 34–35.

[279] Bond and DePaulo, "Accuracy of Deception Judgments," 214.

opted to introduce evidence during the early stages of an interrogation.[280] This immediate evidentiary disclosure was then used to encourage the suspects to confess.[281] Psychologists Maria Hartwig et al. argue, however, that by strategically delaying the introduction of evidence in an interrogation, practitioners may be able to draw out more clues of deception from guilty suspects because they know neither the strength nor the breadth of the evidence against them.[282] In a 2005 study, Hartwig et al. found that when evidence against the suspect was disclosed late in the interrogation, observers were able to detect deception rates at 61.7 percent accuracy, versus 42.9 percent accuracy when evidence was disclosed early in the interview.[283] In a follow-on study, Hartwig et al. observed that when trained interviewers employed the strategic disclosure of evidence—withholding evidence while asking specific questions related to it—guilty suspects were not only less forthcoming with information when compared to truthful subjects, but also more likely to make statements that contradicted the evidence against them.[284] As such, by using this strategy, trained interviewers were able to identify deception 85 percent of the time, compared to 56 percent by untrained interviewers.

In a 2016 study, Luke et al. recruited fifty-nine participants from FLETC to test the validity of using evidence to increase deception detection accuracy. Thirty-one of the sample participants were then trained in the strategic use of evidence (SUE) technique, defined as "a framework for planning and executing suspect interviews with the aim of facilitating judgments of truth and deception."[285] Subsequent to training, all participants conducted mock suspect interviews in which physical evidence was a key part of the investigations. The study found interviewers trained in SUE were 22 percent more

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[280] Leo, "Inside the Interrogation Room," 279.

[281] Ibid.

[282] Maria Hartwig et al., "Detecting Deception via Strategic Disclosure of Evidence," *Law and Human Behavior* 29, no. 4 (2005): 471.

[283] Ibid., 469.

[284] Maria Hartwig et al., "Strategic Use of Evidence during Police Interviews: When Training to Detect Deception Works," *Law and Human Behavior* 30, no. 5 (2006): 605.

[285] Timothy Luke et al., "Training in the Strategic Use of Evidence Technique: Improving Deception Detection Accuracy of American Law Enforcement Officers," *Journal of Police and Criminal Psychology* 31, no. 4 (2016): 1.

accurate at detecting deception than those who were untrained (65 percent versus 43 percent).[286] The researchers note, however, that due to their small sample size, further studies of SUE's efficacy are needed to better support their results.[287]

Compared to Bell and DePaulo's meta-analysis study that found the accuracy rating for detecting deception—regardless of expertise—averaged 54 percent, the findings related to the strategic use of evidence are significant. Improving interviewing strategies is not confined to research solely within the criminal-interviewing milieu. There are also transferrable strategies in the realm of human intelligence gathering from which law-enforcement practitioners might equally draw.

D. ADOPTION OF HUMAN INTELLIGENCE COMMUNICATION STRATEGIES: THE SCHARFF TECHNIQUE

Human intelligence (HUMINT) is the standard term used to refer to the gathering of direct information from humans.[288] Although differences among HUMINT collection interviews and criminal interviews exist—the goal of the interrogation representing the primary difference—there are areas in which the techniques significantly overlap as well.[289] In a 2010 study, Evans et al. identified several of these shared traits: a need to properly identify the individual to be interviewed, the need to compile evidence against the subject while establishing rapport, the need for the interviewer to seek reliable answers to specific questions, and the need for the interviewer to decide the individual's immediate future, such as further questioning, releasing, or holding the subject for as long as legally possible.[290]

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[286] Ibid.

[287] Ibid., 7.

[288] Russano et al., "Structured Interviews of Experienced HUMINT Interrogators," 847.

[289] "The goals of a HUMINT interrogation is to obtain reliable information from a source about the past, present, or future which can be used to improve national security and/or further national interests. In contrast, the purpose of a criminal interrogation is generally to acquire evidence, which can be presented at trial to obtain the conviction of the guilty party." Evans et al., "Criminal versus HUMINT Interrogations," 217.

[290] Evans et al., "Criminal versus HUMINT Interrogations," 228.

The Scharff Technique represents one HUMINT strategy that arguably has the most components adaptable to the law-enforcement arena. The utility of Scharff comes from its ability to elicit more information than the *direct approach* method—asking a series of direct questions as outlined in the U.S. Army Field Manual—the government-wide standard for gathering HUMINT.[291] Although the direct approach is considered primarily a HUMINT tactic, Redlich, Kelly, and Miller found approximately 45 percent of civilian interrogators use it as well.[292] Because this percentage suggests the technique is employed as a questioning strategy during criminal interviews, its applicability in the criminal interrogation room is discussed in this section.[293]

The Scharff Technique is named and modeled after German Luftwaffe Interrogator Hans Joachim Scharff, known for his ability to elicit sensitive information from over 500 captured Allied fighter pilots using non-adversarial psychological manipulation.[294] Scharff's approach involved adopting the perspective of his prisoners, which enabled him to visualize their world. He then used that vantage point to identify their counter-interrogation tactics and circumvent them. Scharff used five interrelated tactics to accomplish this feat: adopt a friendly approach, do not press for information, present the illusion of "knowing it all," confirm/disconfirm elicited information, and ignore new information.[295]

Because of Scharff's success, psychology professor Pär Anders Granhag theorized his techniques could be applied to closely scrutinized modern-day interrogation

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[291] Jacqueline R. Evans et al., "An Empirical Evaluation of Intelligence-Gathering Interrogation Techniques from the United States Army Field Manual," *Applied Cognitive Psychology* 28, no. 6 (2014): 868.

[292] Allison D. Redlich, Christopher Kelly, and Jeaneé Miller, "Systematic Survey of the Interview and Intelligence Community," American Psychology-Law Society Conference, San Juan, Puerto Rico (2012), 3.

[293] Ibid.

[294] Pär A. Granhag, Sebastian C. Montecinos, and Simon Oleszkiewicz, "Eliciting Intelligence from Sources: The First Scientific Test of the Scharff Technique," *Legal and Criminological Psychology* 20, no. 1 (2015): 99.

[295] Ibid., 101.

techniques and with uncooperative interviewees.[296] In a 2015 study, May and Granhag predicted that if an interviewer used two of the tactics mentioned previously—*illusion of knowing it all* and *confirmation/disconfirmation*—the Scharff Technique would be more successful at eliciting information than the direct approach method.[297] To test their theory, May and Granhag separated ninety-three participants into three groups: *Scharff open-ended questions/confirmation group*, in which the interviewer gave the illusion of knowing it all, asked one open-ended question followed by a confirmation tactic and then asked another open-ended question; *Scharff confirmation/open-ended questions group*, in which the interviewer alluded to knowing it all, used a confirmation tactic and thereafter asked two open-ended questions; and *direct approach group*, in which the interviewer asked "an open-ended question followed by three specific questions, which were repeated if the source failed to answer, and finished the interview with yet another open-ended question."[298] The comparison among these techniques is shown in Table 6.

Table 6. Elements of the Scharff Technique and Direct Approach Interviewing Strategies[299]

METHODS OF INTERVIEWING		
Scharff OpenQ/Conf	**Scharff Conf/Open Q**	**Direct Approach**
Illusion of knowing-it-all	Illusion of knowing-it-all	Open-ended question
Open-ended question	Confirmation tactic	Specific questions
Confirmation tactic	First open-ended question	Open-ended question
Open-ended question	Second open-ended question	

[296] Lennart May and Pär Anders Granhag, "Techniques for Eliciting Human Intelligence: Examining Possible Order Effect of the Scharff Tactics," *Psychiatry, Psychology, and Law* 23, no. 2 (2015): 1, doi: 10.1080/13218719.2015.1054410.

[297] Ibid., 1.

[298] Ibid., 4.

[299] Adapted from ibid.

Prior to the start of the interview, each participant received twenty-four pieces of information specific to an event and was asked to strike a balance between revealing too much information and not enough to the interviewer during questioning. The participants were also advised not to add any fabricated information. The interviewers—all trained in interviewing strategies—were provided half (twelve) of the total pieces of information, unbeknownst to the students. Subsequent to the interviews, each student completed a questionnaire related to how well they understood the interviewer's objective, how motivated they were to not reveal any information, and out of the twenty-four pieces of information possessed, how many they assumed the interviewer already knew. Both methods of the Scharff Technique—open-ended questions/confirmation and confirmation/open-ended questions—outperformed the direct approach, increasing the amount of new information disclosed and minimizing the amount of information the students assumed they revealed.[300]

Although the study compared the effectiveness of two intelligence-gathering methodologies—Scharff Technique and the direct approach—the findings point to elements that can be applied to criminal interviews as well. These include techniques such as Scharff's non-coercive means of collecting information or introducing fictitious evidence.[301] Scharff's perspective-taking tactic has proven utility within the criminal-interviewing room as well. According to Granhag and Hartwig, by adopting the mindset of the suspect—specifically, his or her strategies for countering interview questions—interrogators can learn to become better prepared for more effective interrogations.[302]

[300] Ibid., 11.

[301] Granhag, Montecinos, and Oleszkiewicz, "Eliciting Intelligence from Sources," 15.

[302] Pär Anders Granhag and Maria Hartwig, "A New Theoretical Perspective on Deception Detection: On the Psychology of Instrumental Mind-Reading," *Psychology, Crime & Law* 14, no. 3 (2008): 198.

E. CONCLUSION

Despite the ad hoc successes of the Reid Technique, science has identified an array of interviewing approaches that are more ethical and more effective than these second-generation approaches: strategies such as the CI, the investigative interview, SUE, and elements of the Scharff Technique.[303] Although the American policing system has yet to systemically embrace next-generation methodologies, researchers have slowly begun collaborating with practitioners to identify the most applicable "interrogative methods that carry the support of both scientific and law enforcement communities."[304] This shared effort between scientists and investigators was the U.K.'s impetus to reform its interviewing model in the 1980s; it has similarly begun to yield improvement in several U.S. law-enforcement training curricula as well.[305] This improvement is the focus of Chapter V.

[303] Geiselman and Fisher, "Interviewing Witnesses and Victims," 8; Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 479; Luke et al., "Training in the Strategic Use of Evidence," 1; May and Granhag, "Techniques for Eliciting Human Intelligence," 11.

[304] Gudjonsson and Pearse, "Suspect Interviews and False Confessions," 36; Meissner, Hartwig, and Russano, "The Need for a Positive Psychological Approach," 44.

[305] Gudjonsson and Pearse, "Suspect Interviews and False Confessions," 36; Patricia Donovan, email to author, January 13, 2017.

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V. POLICY ANALYSES, RECOMMENDATIONS, AND CONCLUSIONS

Synthesizing the material presented in previous chapters, this final chapter lays the foundation for incorporating third-generation methodologies into the OPR training program. Two policy analyses—of the HIG and the FLETC interviewing curriculum—provide the necessary framework and offer strategic steps toward effective implementation. Finally, the chapter outlines approaches for long-term adherence as well as recommendations for broadening practices into a larger law-enforcement arena.

A. THE HIGH-VALUE DETAINEE INTERROGATION GROUP (HIG)

In response to the highly publicized post-9/11 interrogation tactics the United States used on terrorist suspects, President Barrack Obama signed Executive Order 13419, *Ensuring Lawful Interrogations*, which called for humane treatment of detainees in U.S. custody.[306] The executive order also called for the creation of a Special Task Force on Interrogations and Transfer Policies, which proposed adopting several policies to strengthen U.S. national security.[307] One such recommendation was to establish a federal interagency group comprising interrogation experts from throughout the U.S. law-enforcement and intelligence communities. From this proposal came the creation of the HIG.

The HIG is tasked with multiple responsibilities. The first is to oversee deployment of interrogators, analysts, linguists, and support personnel to locations where high-value U.S. targets are detained. These mobile teams are designed to conduct comprehensive interrogations to educe information that both thwarts future terrorist attacks and protects U.S. national-security interests. The HIG is also responsible for instituting and managing a research program aimed at identifying the best theories and

306 "Executive Order 13491—Ensuring Lawful Interrogations," The White House, January 22, 2009, https://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations.

307 "Special Task Force on Interrogations and Transfer Policies Issues its Recommendations to the President," U.S. Department of Justice, August 24, 2009, https://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president.

practices "from the cognitive, behavior and social sciences" that represent the most effective and ethical means of conducting interrogations.[308]

Since its establishment in 2009, HIG researchers have published more than 100 pieces of scientific literature in the field of interviewing and interrogations; topics of interest in this literature are shown in Figure 6.[309]

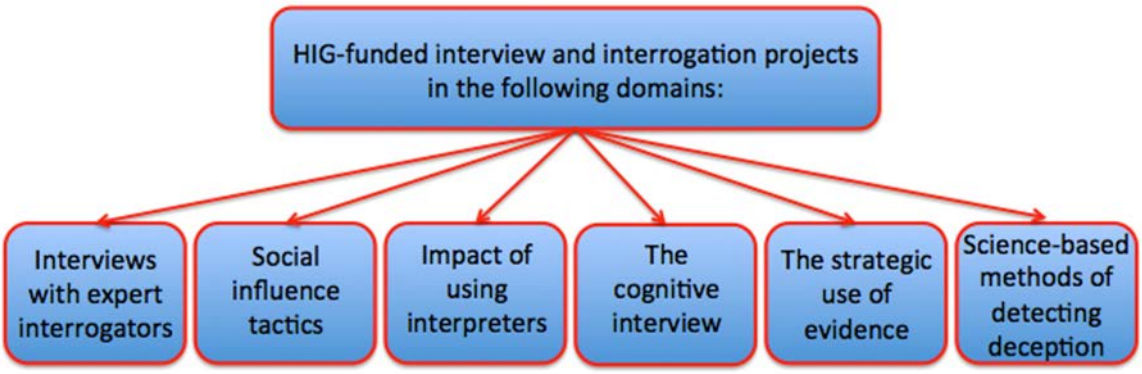

Figure 6. Domains of HIG-Funded Interviewing and Interrogation Research Projects[310]

The group has also provided instruction to multiple U.S. agencies and departments on the use of science-based methods of interviewing, including AFOSI, the Los Angeles Police Department, and FLETC.[311]

In line with the HIG's collaborative efforts with other agencies, this thesis initiated a concurrent joint research project between the HIG and OPR to enhance OPR's interview-training program. The joint project's methodology uses a before-and-after training analysis of the information obtained during suspect interviews, most of which comprise federal employees accused of criminal and administrative violations. The first

308 Kelly and Meissner, "Interrogation and Investigative Interviewing," 9.

309 Meissner and Russano, "Science-Based Methods of Interrogation."

310 Source: "High-Value Detainee Interrogation Group," Federal Bureau of Investigation, accessed March 2, 2017, https://www.fbi.gov/about/leadership-and-structure/national-security-branch/high-value-detainee-interrogation-group.

311 Kelly and Meissner, "Interrogation and Investigative Interviewing," 9; Meissner and Russano, "Science-Based Methods of Interrogation."

phase of this collaboration—which is ongoing—involves OPR providing HIG program staff with suspects' redacted interview transcripts. These records offer examples of the interviewing methods used by OPR special agents as well as the types of investigations they conduct.

The second phase of this research effort will consist of training a select group of OPR investigators in science-based interviewing methodologies. All newly hired OPR special agents are required to attend a multi-week training program—OPR Special Agent Training (OPRSAT)—located at FLETC. The program is designed to train OPR agents in a variety of skills specific to their new role within DHS, including report writing, administrative responsibilities, and internal investigative practices. Within the investigative segment is a block of instruction dedicated to interviewing strategies. Traditionally, this instruction comprised a full day of lecture from employees of John E. Reid & Associates or Wicklander-Zulawski & Associates, an interview and interrogation training business licensed to teach the Reid Technique. However, based on the HIG–OPR joint project, the traditional one-day training block has been replaced with a weeklong interviewing program taught by HIG-sponsored instructors. This five-day course, beginning in May 2017, will teach OPR students the ideologies and essentials of HIG-supported interviewing strategies and then how to apply those strategies to scenario-based exercises. The final phase of this collaboration involves OPR sending the HIG redacted transcripts from suspect interviews conducted both before and after training. The exact interviewing methodologies taught during OPRSAT have yet to be decided.

The HIG's joint project with OPR mirrors an earlier collaboration with AFOSI.[312] Beginning in 2014, a team of HIG-based researchers and practitioners trained 123 AFOSI special agents in HIG-supported research over the course of twelve months, which consisted of four weeklong classes.[313] In an effort to properly assess training effectiveness, AFOSI provided the HIG with recorded interrogations that occurred both prior to and after training. HIG coders assessed these transcripts for an array of data

[312] Meissner and Russano, "Science-Based methods of Interrogation."

[313] Ibid.

points specific to the instructed techniques and compared them to the accusatorial methods traditionally used by the military investigators.

In this particular study, HIG researchers focused on students learning an array of techniques strategically designed to influence cooperation, elicit information from stored memory, present evidence, and assess credibility.[314] At the conclusion of the study, Meissner and Russano noted that newly trained practitioners increased their use of science-based interviewing techniques such as the cognitive interview and motivational interviewing.[315] The practitioners, however, did not substitute these newly acquired strategies for their preexisting accusatorial practices.[316] Meissner and Russano surmise that the HIG-based techniques were likely viewed as additional tools in the toolbox from which the practitioners could pull.[317]

Meissner and Russano's findings suggest a similar outcome—agents continue using accusatorial interviewing tactics despite being newly trained in science-based methods—may occur subsequent to the HIG training of OPR agents in May 2017. Although ostensibly these results may seem discouraging, they in fact support the main point of this thesis. Just as the U.K.'s adherence to the PEACE model was scheduled to take five years, the restructuring of OPR's interviewing methods should also be considered a developmental process.[318] Full commitment to this new approach will arguably take generations of OPR training courses. Nevertheless, in order to become the agency's prescribed model, it must begin at some point. Furthermore, the foundation of the theoretical argument was to enhance OPR special agents' investigations using third-generation interviewing methodologies, an outcome achieved in the AFOSI project.

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[314] Ibid.

[315] Ibid.

[316] Ibid.

[317] Ibid.

[318] Griffiths and Milne, "Will it All End in Tiers," 171.

B. THE FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC)

FLETC is the largest law-enforcement training facility in the United States.[319] Through partnering with more than ninety policing organizations, the center graduates approximately 70,000 local, state, and international criminal investigators on an annual basis.[320] From this immense responsibility comes the need for FLETC to adhere to training ideologies that are theoretical, efficient, and realistically sound. An analysis of its methods is arguably scalable toward smaller training programs such as OPRSAT.

1. FLETC's Criminal Interview Training Program

In April 2005, researchers Ariel Neuman and Daniel Salinas-Serrano reviewed the FLETC interview-training curriculum as part of their report for the 2006 Intelligence Science Board, as referenced in Chapter II. During an onsite evaluation of the program, Neuman and Salinas-Serrano noted that a majority of interview training is embedded in the center's Criminal Investigator Training Program (CITP).[321] Within this portion of the curriculum, students receive approximately ten hours of interviewing and interrogations training.[322] This block of instruction centers on teaching agents and officers fundamental communication skills and standard behavioral responses. FLETC stresses the importance of pre-interview planning, proper question construction, and adherence to its five-step methodology, as discussed in Chapter IV.[323] The curriculum integrates classroom discussions with labs and practical exercises involving role-playing.[324] Because FLETC understands the diversity of its stakeholders' jurisdictional authority to enforce laws, students are introduced to diverse interviewing and interrogation methodologies in an effort to add flexibility to their cache of tactics.[325]

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319 "Four FLETC Training Programs Earn Accreditation Status," FLETC.

320 Ibid.

321 Neuman and Salinas-Serrano, "Custodial Interrogations," 210.

322 Ibid., 209.

323 Ibid.

324 Ibid., 210.

325 Ibid.

Despite the wealth of interviewing approaches, Neuman and Salinas-Serrano found that FLETC's methodology closely resembled Reid's—though not intentionally.[326] This finding reflects the "institutional inertia" argument highlighted previously, namely that organizations simply adhere to popular protocols without independently verifying their utility.[327] FLETC also teaches its students to introduce detailed evidence into the interview room as a way of educing confessions in those situations where the interviewee is more sophisticated than the average street criminal.[328]

The framework of FLETC's communication schema is built upon the center's five-step interview/interrogation technique.[329] Reflective of the Reid Technique, this approach begins with an introduction of all those present in the interview room along with the purpose of the interview. The second step emphasizes the need to establish and maintain rapport throughout the process. The third step—the focal point of the interview—involves several components of Reid, such as presenting the elements of the case, asking general and specific questions, using pauses strategically, introducing themes, cutting off denials, and offering an optional question. During this step, students are also instructed to observe the subject's nonverbal behavior while remaining conscious of their own.[330] The introduction of evidence also occurs in this step in an effort to overwhelm the suspects with guilt. The fourth step summarizes the interview and acknowledges the subject's cooperation while the fifth step closes the interview with an exchange of contact information.[331] Unlike Reid, FLETC's five-step methodology discourages students from using deception-filled interrogation monologues to avoid losing credibility in the eyes of suspects, who may be equally adept at identifying cues of lying.[332]

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[326] Ibid.

[327] Ibid., 229.

[328] Ibid., 210.

[329] Ibid.

[330] Ibid., 211.

[331] Ibid., 210.

[332] Ibid., 212.

Neuman and Salinas-Serrano note that due to the diversity of student personalities, experiences, and education, FLETC instructors teach at the "least common denominator" level, a training pace designed for the most basic learners.[333] As such, unless students received additional training through their agency, they graduate from FLETC with only the most basic interviewing skills. When agents request further training, Neuman and Salinas-Serrano state that FLETC primarily outsources to John E. Reid & Associates or Wicklander-Zulawski & Associates.[334]

Neuman and Salinas-Serrano find FLETC lacks any systematic means to empirically measure the efficacy of its CITP training in the field.[335] In an effort to close this gap, students and agencies receive after-training surveys, as do those students who returned to FLETC for advanced training. This latter assessment is considered a flawed measure for determining value since only a small portion of graduates return to FLETC for further interview training. Those who do return are arguably highly dedicated individuals invested in the communication tradecraft, and thus more likely to have retained prior training ideologies.[336]

According to FLETC's website, the center adheres to a best-practice curriculum, which it draws from a wealth of domestic and international stakeholders within the law-enforcement and academic communities.[337] The center further promotes its efforts to comply with accreditation standards by collaborating with its federal partners and policing professionals, investing in continual training research, and employing subject-matter experts (SMEs) in an array of law enforcement–related topics.[338] FLETC's commitment to developing its training program underscores the argument that interviewing methodologies can and do evolve. As such, training curricula must be constantly evaluated and amended accordingly.

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[333] Ibid.

[334] Ibid., 213.

[335] Ibid.

[336] Ibid., 214.

[337] "Welcome to FLETC.Gov," accessed March 2, 2017, https://www.fletc.gov/welcome-fletcgov.

[338] Ibid.

Within FLETC's online training catalog, two interviewing programs are offered:

- Advanced Interviewing for Law Enforcement Investigators Training Program (AILEITP)
- Advanced Interviewing for Law Enforcement Investigators Training Program-Modified (AILEITP-M)[339]

Both programs are built on the framework of eliciting information from suspects, witnesses, and victims.[340] The primary distinction between the AILEITP and the AILEITP-M is the number of training days: five versus three, respectively.[341] In addition, the longer program (AILEITP) provides its attendees with one-to-one instructor time as well as hands-on training and lab-based exercises. These students are also taught the cognitive interview, while the AILEITP-M teaches "the advantages of effective verbal and non-verbal communication as well as ways to detect deception through verbal and non-verbal observation of others," the latter of which contradicts the aforementioned findings by Bond and DePaulo.[342] Acceptance into either training program requires active service in a federal, state, local, tribal, or international law-enforcement capacity that involves investigations, arrests, prevention, detection, or detention.[343]

2. Insight from FLETC Senior Instructor Patricia Donovan

During the author's attendance at the 2016 HIG symposium, FLETC's Behavioral Sciences Division Senior Instructor Patricia Donovan spoke about the FLETC's efforts to teach science-based interviewing techniques. During a panel discussion, Donovan noted FLETC's interviewing curriculum was currently under review as part of the curriculum review conference (CRC), an evaluation process that determines what interviewing

339 "Advanced Interviewing for Law Enforcement Investigators," FLETC, accessed March 2, 2017, https://www.fletc.gov/training-program/advanced-interviewing-law-enforcement-investigators; "Advanced Interviewing for Law Enforcement Investigators Modified," FLETC, accessed March 2, 2017, https://www.fletc.gov/training-program/advanced-interviewing-law-enforcement-investigators-modified.

340 Ibid.

341 Ibid.

342 Ibid.; Bond and DePaulo, "Accuracy of Deception Judgments," 214.

343 "Advanced Interviewing For Law Enforcement Investigators," FLETC; "Advanced Interviewing For Law Enforcement Investigators Modified," FLETC.

modalities to include or delete from the following year's training courses.[344] According to Donovan, over the past several years FLETC has shifted toward educating its students in evidence-based methodologies, a majority of which stem from HIG research. She conceded that not all federal agency officials were supportive of the curriculum change; several government institutions continue to adhere to the traditional modes of accusatorial interviewing. But she reiterated FLETC's continued commitment to adopt better interviewing practices to align with scientific studies. Donovan also expressed the importance of FLETC remaining instep with shifting political and societal changes toward the policing culture to meet the expectations of its stakeholders, identified as FLETC's partner organizations as well as the center's instructors and students.[345]

In subsequent email correspondence, Donovan expanded on the importance of stakeholder acceptance: when FLETC first implemented the CI into its 2013 training curriculum, it did so gradually.[346] This incremental approach accomplished two objectives: it ensured instructors and students properly adapted to the new method and allowed the center's stakeholders to anticipate how the new strategy would affect the FLETC five-step interviewing model.[347] According to Donovan, at the same time the CI was introduced, FLETC stopped teaching that non-verbal behavior was an indicator of deception due to its lack of scientific validity.[348] FLETC's decision to incorporate the CI into its curriculum while discontinuing teaching behavioral cues to deception was based on its continued collaboration with the HIG. By March 2017, all Reid-like techniques will have been removed from FLETC's interviewing instruction block and replaced with evidence-based methodologies.[349] The progressive nature of the center's interview

344 Patricia Donovan, panel discussion, High-Value Detainee Interrogation Group Symposium, October 20, 2016.

345 Ibid.

346 Patricia Donovan, email to author, January 13, 2017.

347 Ibid.

348 Ibid.

349 Ibid.

training program stems from its CRC—a vital component of FLETC's instructional systems design (ISD) model.[350] According to Donovan,

> The CRC is a process by which training programs are examined, modified and approved, often culminating in a formal meeting in which decisions are made by consensus of stakeholders. This gathering is a critical step in identifying training needs, performance objectives, course content, instructional strategies, evaluation methods, development, plans, risk mitigation and resource requirements (money, time, personnel, equipment, etc.). Participants/Stakeholders may determine the scope of training, sequencing of instruction, and the acceptable standards. They will have an opportunity to present training recommendations, hear SMEs' findings and input, and provide feedback on training proposals.[351]

Beyond achieving agency buy-in, Donovan claims that success of all new training approaches requires student buy-in as well.[352] Due to a predominant reliance on traditional interviewing tactics, students may be less apt to try new techniques.[353] In an effort to overcome related obstacles, Donovan suggests having relevant literature available for dissemination to agency management and practitioners, providing illustrations or models of the new techniques, and referring to other agencies or departments that have effectively used such practices—social proof—similar to the HIG's work with the AFOSI and contingencies within the Los Angeles Police Department.[354]

Donovan's explanation has significant value in understanding the system FLETC uses to evaluate and develop its interview-training program. Currently, OPR neither adheres to an ISD model nor confers with a CRC prior to making changes to its OPRSAT curriculum. This does not suggest agency failure, but arguably an unnecessary protocol for an organization—of only 200 field agents—that holds a two-week OPRSAT academy

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[350] Instructional Systems Design is "a step-by-step system for the evaluation of students' needs, the design and development of training materials and the evaluation of the effectiveness of the training intervention." Kevin Kruse, "Introduction to Instructional Design and the ADDIE Model," accessed March 2, 2017, 1, http://docshare01.docshare.tips/files/12024/120247130.pdf.

[351] Patricia Donovan, email to author, January 13, 2017.

[352] Ibid.

[353] Ibid.

[354] Meissner and Russano, "Science-Based Methods of Interrogation"; Kolker, "A Severed Head"; Patricia Donovan, email to author, January 13, 2017.

at most three times a year. However, as this thesis pushes to introduce next-generation interviewing strategies into OPRSAT, the ISD's framework may prove useful in evaluating future training modalities. Donovan's insight provides the much-needed framework for how OPR can successfully introduce evidence-based interviewing practices into its program.

C. FINDINGS AND RECOMMENDATIONS

As highlighted throughout the previous chapters, better interviewing methodologies are slowly integrating into the American policing system, thanks to organizations such as the HIG and FLETC. Solving the main theoretical question—how to adopt third-generation interviewing methodologies into OPRSAT—was not, however, an isolated problem. To fully accomplish the overall goal of this thesis—the long-term and predominate adherence to these practices—several ancillary questions required attention as well, the first of which involves the limits of training.

1. Limitations

A core limitation within any training environment is the retention of new information. Although enhanced interviewing techniques are attainable, researchers Powell, Fisher, and Wright note law-enforcement officials often "do not use these skills reliably in the real-world criminal investigations."[355] Compounding this dilemma is failing to understand that, without proper supplemental training in investigative interviewing, practitioners are more likely to revert back to traditional methodologies.[356]

In order to minimize these challenges and maximize the long-term success of the program, training must consist of the following key elements: 1) adhering to structured interviewing practices, 2) learning and applying strategies over a period of time, 3) providing supervision and feedback from SMEs, 4) creating and relying on self-motivated trainees, and 5) having practitioners who value and believe in the validity and

[355] Powell, Fisher, and Wright, "Investigative Interviewing," 37.

[356] Michel St-Yves et al., "Training in Investigative Interviewing: Observations and Challenges," 258.

necessity of what they are learning.[357] In addition, research by Memon and Higham shows that the complexity of effective training is dependent on its quality, instructor experience, and the students' willingness to learn.[358]

According to Helen Post, executive director of the Utah Parent Center, adult students "learn best when they perceive there is a connection between the training and their goals."[359] In this example, the training–goal relationship would be OPR agents equating HIG-based interview training with enhanced investigative outcomes. In addition, Post notes learning generally is more effective when it contains a practical or applied element.[360] These principles form part of the PEACE model's foundation, which incorporates the theory of experimental learning—a teaching methodology that melds lecture with practical application in an effort to improve retention.[361]

According to theorists Alice Y. Kolb and David A. Kolb, experimental learning theory is "a process of constructing knowledge that involves a creative tension among the four learning modes that is responsive to contextual demands."[362] Kolb and Kolb define these learning modes as concrete experience, abstract conceptualization, reflective observation, and active experimentation, as shown in Figure 7.[363]

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[357] Powell, Fisher, and Wright, "Investigative Interviewing," 37.

[358] Memon and Higham, "A Review of the Cognitive Interview," 191.

[359] Helen Post, "Teaching Adults: What Every Trainer Needs to Know about Adult Learning Styles," Pacer Center, accessed March 2, 2017, http://www.fastfamilysupport.org/fasttraining/Other/teachingadults-whattrainersneedtoknow.pdf.

[360] Ibid.

[361] Andy Griffiths, "An Examination into the Efficacy of Police Advanced Investigative Interview Training," (PhD diss., University of Portsmouth, 2008), 33.

[362] Alice Y. Kolb and David A. Kolb, *Experiential Learning Theory: A Dynamic, Holistic Approach to Management Learning* (WP-01-02) (Cleveland, OH: Case Western Reserve University, 2008), 44.

[363] Ibid.

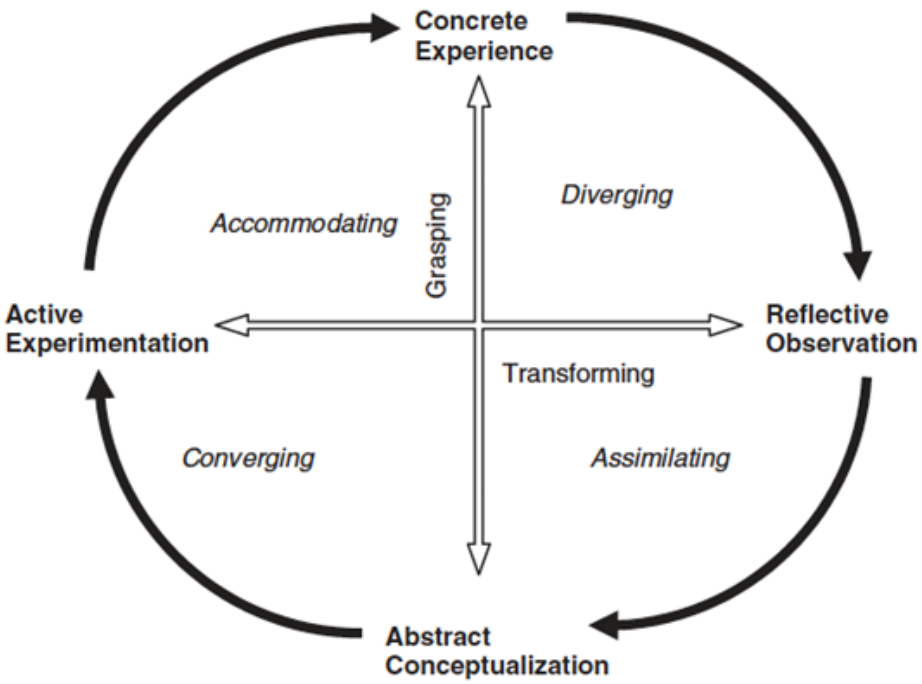

Figure 7. Kolb and Kolb's Interactive Learning Modes[364]

As students collectively synthesize each new experience through initial thought and subsequent action, learning becomes more effective, thus perpetuating the continuation of the cycle with each new experience.[365]

2. Importance of Continual Training

Although the HIG has agreed to undertake the role of training OPR agents during a five-day course, the group's responsibility stops there. Subsequent to a weeklong block of HIG instruction, research highlights the importance of continual training. According to St-Yves et al., ongoing investigative interview training must become an integral part of an investigator's career in order for the investigator to remain proficient.[366] The authors further note this continuous training can occur via "refresher courses, … annual training,

[364] Source: Kolb and Kolb, *Experiential Learning Theory*, 44.

[365] Ibid.

[366] St-Yves et al., "Training in Investigative Interviewing," 265.

… international seminars and conferences, … as well as on-line sources."[367] Both Donovan and Griffiths support the argument put forth by St-Yves et al. as to the importance of agents attending refresher courses to maintain competency.[368] In fact, two of the difficulties that have continued to compromise PEACE-model efficacy include transferring training to real-world scenarios and maintaining quality after training. In his doctoral thesis, Griffiths finds that investigators who attend Tier 3 interview training show a "positive transfer of skills" during subsequent real-life interviews.[369] He identifies, however, a significant decline of skills subsequent to training, which underscores the need for practitioners to routinely attend supplemental courses.[370] According to Griffiths,

> Advanced interviewing represents a major financial investment for the police service, but one worth making ... The failure to provide formal refresher training is akin to buying an expensive car and then not servicing it. Sooner or later there will be a crash and someone will get hurt.[371]

As such, Griffiths argues that continual training, either through official coursework or informal coaching, is necessary to minimize an eventual lapse in this perishable communication skill.[372]

3. Trainers of Third-Generation Interviewing Strategies

In addition to providing OPR agents refresher training, OPR management should consider the financial benefit of identifying competent in-house instructors to train future OPR cohorts in science-based interviewing practices. This argument parallels the identification, training, and utilization of OPR special agents to collaterally serve as OPR firearms instructors. The advantage of having agency-based weapons trainers is three-fold: it enables all OPR agents to remain firearms qualified on a quarterly basis;

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[367] Ibid., 265–266.

[368] Patricia Donovan, email to author, January 13, 2017; Griffiths, "Police Advanced Investigative Interview Training," 141.

[369] Griffiths, "Police Advanced Investigative Interview Training," 135.

[370] Ibid., 141.

[371] Ibid.

[372] Ibid., 264.

supplemental training is readily available for agents needing additional instruction; and there is no third-party training cost to the agency. Since 2005, OPRSAT has primarily relied on commercial trainers such as John E. Reid & Associates and Wicklander-Zulawski & Associates to train newly hired OPR agents. Aside from problems with these accusatorial interviewing strategies, OPR has spent approximately $104,500 over the past decade on these teaching modalities, arguably an unsustainable expense for an unproven commodity (see Table 7).

Table 7. Cost of Outsourcing Interview Training for OPRSAT Students[373]

Year	Course Taught	Number of classes	Hours of Training	Total Cost
2005	Reid	1	8	$3,000
2006	Reid/WZ	3	26	$9,000
2007	WZ	2	20	$9,000
2008	WZ	2	21	$11,000
2009	WZ	3	30	$16,500
2010	WZ	2	20	$11,000
2011	WZ	2	24	$12,000
2012	WZ	1	11	$6,000
2013	WZ	1	11	$6,000
2014	WZ	1	11	$6,000
2015	WZ	2	16	$10,000
2016	WZ	1	8	$5,000
			Total	$104,500

WZ = Wicklander-Zulawski

Relying on outsourced training also puts the quality of instruction at the mercy of happenstance or convenience. Third-party trainers are generally either experienced law-enforcement or security officials whose teaching methodologies are based solely on their individual experiences or on academics that lack any field knowledge.[374] Unless the

[373] Statistical data provided to the author by OPRSAT Program Manager Kimberly Willson.

[374] St-Yves et al., "Training in Investigative Interviewing," 266.

training comes from HIG-taught instructors, who are arguably few and far between, neither option is effective.

Griffiths supports the concept of training a small cadre of qualified personnel who become primarily responsible for training the rest of the organization.[375] To effectively manage this task, Griffiths recommends trainers understand the theories and ideologies associated with the methodologies they are teaching. Within the U.K., trainers are advised to stay in contact with researchers, remain updated in current research, study live interviews, and routinely check their own knowledge against each other's in order to collectively develop as SMEs.[376] Agents are also assigned to specialized groups managed by equally skilled supervisors who are responsible for overseeing the competency of all trainers.[377] Griffiths further notes the importance of individual credibility when it comes to teaching. Specifically, he remarks that students are more likely to adhere to training from those teachers they view as proficient and active practitioners. According to Griffiths, it is not enough to be a skilled interrogator who happens to teach interviewing; to be perceived as an expert, instructors must also be well versed in the art and science of academic teaching. St-Yves et al. further support the value of instructor characteristics, noting, "Ideally, trainers should be selected on the basis of their motivation, professional skill, understanding of theory in human learning, and interpersonal skill."[378]

Not all experts, however, agree fully with Griffiths' point of view. Vrij et al. identified the shortcomings of experienced practitioners teaching interviewing methodologies to other investigators. In their 2015 study, a retired police detective—as opposed to a scientist—instructed seasoned police detectives on the use of the CI. [379] Although Vrij et al. found the students increased their use of open-ended questions as a result of training, the questions were not specifically tied to the CI technique. The

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[375] Andy Griffiths, video interview with author, November 17, 2016.

[376] Ibid.

[377] Ibid.

[378] St-Yves et al., "Training in Investigative Interviewing," 267.

[379] Aldert Vrij et al., "Train the Trainers: A First Step towards a Science-Based Cognitive Lie Detection Training Workshop Delivered by a Practitioner," *Journal of Investigative Psychology and Offender Profiling* 13, no. 2 (2015): 110–130.

researchers attribute this shortcoming to the CI course being only one day in length. Better results might have come from an extended training course lasting several days. According to Vrij et al., when it comes to maximizing the full potential of the technique, there is value in instituting the training over several days, which should be followed by occasional refresher courses, an argument highlighted previously in this chapter.[380]

4. Supervisory Adherence

Another area of discussion OPR management should consider for the long-term effectiveness of third-generation interviewing strategies is supervisory buy-in and follow-through. As noted in the PEACE model, one recommendation for enhancing the model's efficacy is having supervisors properly trained and willing to engage in interviewing oversight—observing their agents' interviews to ensure adherence to acceptable interviewing protocols.[381] According to Stockdale, "Senior management must accept responsibility for ensuring that learning becomes incorporated into standard work practices, by encouraging, supporting and monitoring the use of new behaviors in the workplace."[382] The enhancement of OPR's interview training program is predicated on more than merely teaching one methodology over another. In addition to selecting the most appropriate science-based techniques for the program, a sequence of steps must equally be followed to ensure the newly taught strategies become embedded within the agents' toolbox, as shown in Figure 8.

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[380] Ibid.

[381] Clarke and Milne, *National Evaluation of PEACE*, 119.

[382] Janet E. Stockdale, *Management and Supervision of Police Interviews*, No. 5 (London: Home Office Police Research Group, 1993), 37.

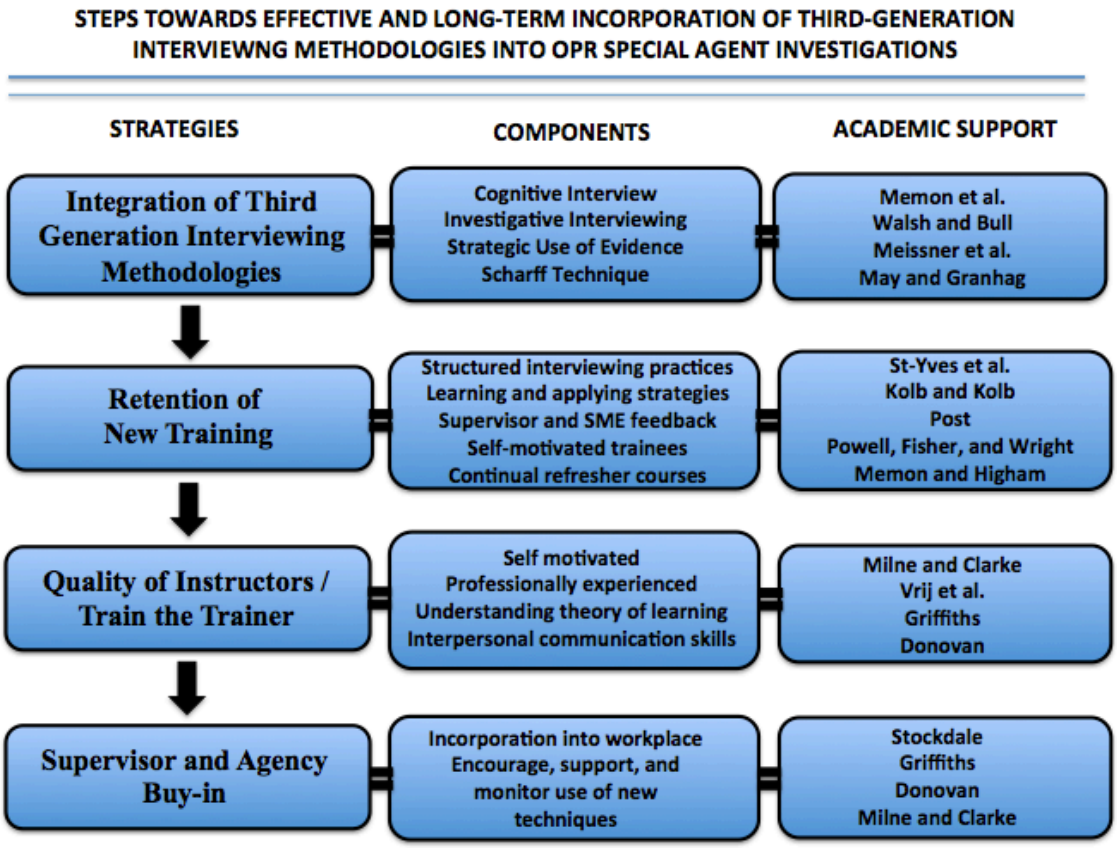

Figure 8. Elements for Long-Term Adaptability of Third-Generation Interviewing Methodologies[383]

[383] Adapted from Memon, Meissner, and Fraser, "The Cognitive Interview," 366; Walsh and Bull, "What Really Is Effective," 318; Meissner et al., "Accusatorial and Information-Gathering Interrogation Methods," 479; May and Granhag, "Techniques for Eliciting Human Intelligence," 1; St-Yves et al., Training in Investigative Interviewing," 265–266; Kolb and Kolb, *Experiential Learning Theory*, 44; Post, "Teaching Adults"; Powell, Fisher, and Wright, "Investigative Interviewing," 23; Memon and Higham, "A Review of the Cognitive Interview," 191; Clarke and Milne, *National Evaluation of PEACE*, 116; Vrij et al., "Train the Trainers; Andy Griffiths, video interview with author, November 17, 2016; Stockdale, *Management and Supervision of Police Interviews*, 37; Patricia Donovan, email to author, January 13, 2017.

D. APPLICABILITY

The incorporation of third-generation interviewing methodologies is not unique only to the professional enhancement of OPR, but to all law-enforcement organizations whose personnel conduct criminal interviews. As noted by several scholars mentioned throughout this thesis, the advancement of the criminal-interrogation methodologies is predicated on its transparency. Only when researchers are able to peer inside the interrogation room are they capable of providing useful feedback that increases the credibility of the institution as a whole. This transparency, however, is founded on trust and adherence to a working relationship between the law-enforcement community and researchers, much like those who worked collectively to revamp the U.K.'s interviewing model. Future research should focus on feedback from policing organizations, including OPR, the promotion of anecdotes related to interviewing successes using HIG-supported strategies, and broader agency buy-in. Collectively, these elements may add to the foundation currently being built by the HIG and FLETC's interview training program.

E. CONCLUSION

The argument of this thesis has focused on a singular issue: the need to enhance the interviewing capabilities of law-enforcement agents, beginning with OPR. The foundation of this argument originates from the agency's decade-long use of accusatorial interviewing approaches, taught by instructors from John E. Reid & Associates and Wicklander-Zulawski & Associates. Criminal interviewing, however, is not a mere cog in the machine of investigations; oftentimes it is the focal point. Although interviewing is a form of basic human verbal communication, not every investigator is an expert or even proficient. In fact, much like highly trained specialists are called upon to collect forensic evidence such as fingerprints, so too should those skilled in the art and science of interviewing strategies be utilized to educe information inside the interview room. Understanding that not all agencies have the personnel or the finances to rely solely on expert interviewers, agencies should at least invest in training their personnel in techniques found to be the most principled.

The predominant interviewing framework within the United States is wrought with deficiencies, both morally and operationally. In light of these shortcomings, organizations such as the HIG and FLETC have laid the foundation for the next generation of interviewing methodologies, practices backed by science. These approaches have yet to be adopted nationally by the law-enforcement community; this lack of implementation is not based on poor performance but rather on poor marketing—agencies are simply unaware or unconvinced there is a better way. Nevertheless, as noted by Neuman and Salinas-Serrano, agencies remain influenced by institutional inertia in continuing to adhere to practices developed nearly eighty years ago. As the cultural and political climate continue to change toward the professionalism of policing, the law-enforcement community will need to respond by incorporating better methods for communicating with the public. The arguments made within this thesis provide that framework, beginning with OPR.

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