



## **Investigative Interviewing: Strategies and Techniques**

**Christopher D. Hoffman, CPO (Cand.)**

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## **The Interview: Getting Started**

### **Interviews versus Interrogations**

Investigative interviewing is an essential aspect of the investigative process for patrol officers, loss prevention agents, detectives or other investigators. As most information comes from people; it is necessary to have knowledge and proficiency in interviewing. An interview is a conversation intended to elicit information. Interviews are generally non-accusatory. During the course of an investigation the investigator will conduct interviews with all available witnesses and potential suspects. The investigator should ask open-ended questions in an attempt to elicit as much information as possible. The interview subject should do most (75%) of the talking during the conversation (Reid & Associates, 2001). If, during the interview it is found that the subject has lied, the investigator should generally not confront the subject. In most cases it is best to challenge a lie during a follow-up interview or once the interviewer has transitioned into an interrogation.

An interrogation is the process by which suspects are questioned in regards to their involvement in the activity that gave rise to the investigation. The interrogation will involve the interviewer accusing the suspect. Interrogations may be scheduled at the conclusion of the investigation, after all of the evidence has been considered. There are also times when, depending on the suspect's behavior, an interview will change into an interrogation. This step should not be taken lightly. Once the tone of the conversation has moved to accusatory it is virtually impossible to stop and go back to interviewing. In the interrogation the investigator will do most of the talking. The questions asked of the suspect will be more direct and less open ended.

Often, particularly in the private sector, the words interview and interrogation are used incorrectly. Perhaps worse is a tendency to drop the word interrogation altogether from the vocabulary in an attempt to make the practice less threatening to the public, union representatives, human resource administrators, attorneys or corporate executives. There is little doubt that the word interrogation carries a negative connotation. That, however, does not change the fact that it is the proper term for an important step in the investigative process. It is therefore important that the investigator has a clear goal in mind when having a conversation. If that conversation is intended as an interrogation (regardless of what it is called) the interviewer should keep that fact in mind and not allow the use of euphemisms to alter his or her approach.

### **Legal Considerations**

It is required that members of law enforcement agencies relay certain warnings (established by the Miranda Rule) prior to any custodial interrogation. These warnings include the suspect's privilege against self-incrimination and his or her right to the presence and advice of an attorney. An interrogation is considered custodial when the suspect has been taken into custody or one has been deprived of their freedom to leave in any way (Barron's, 1991).

It is rare, but not unheard of, that private-sector investigators will be required to make suspects aware of their Miranda rights. When a security officer or private-sector investigator detains and questions a suspect at the direction of a law enforcement officer one is considered to be acting

under color of law and must advise the suspect of one's rights. This occurs most often when 1) security and law enforcement agencies partner in an investigation and 2) the conditions (generally the timing) dictate that an interrogation must be done by the security officer.

In situations that require a subject be notified of his or her Miranda rights, regardless of whether an interrogation or accusatory interview is conducted by law enforcement or private security, the investigator should obtain a signed waiver of rights from the suspect prior to questioning. If the suspect chooses to exercise his or her rights under the Miranda rule, questioning regarding the investigation should stop.

The Canadian Charter of Rights and Freedoms guarantees suspects facing custodial interrogation the same rights granted in the United States under Miranda. Canadian authorities are required to conclude the warning by asking if the subject wishes to contact an attorney "right now." In the United States the Miranda warning typically ends with a suggestive question asking whether the subject will answer questions without representation. However, since 1990, the Canadian authorities have had to make an additional notification. In addition to informing the suspect of one's right to counsel the Canadian authorities are required to follow three additional steps:

1. Advise the person of the availability of legal aid or duty counsel and how to contact these services;
2. Provide the person with a reasonable opportunity to contact duty counsel or his or her lawyer;
3. Cease questioning until the person has had a reasonable opportunity to obtain legal advice (<http://laws.justice.gc.ca/ec/charter>).

### **Legal Considerations for Employee Interviews**

The decision of the U.S. Supreme Court in *Garrity v. New Jersey* (1967) enables public employers to compel their employees to make statements during investigative interviews of workplace misconduct. The court ruled that while public employers have the right to do this; it in no way diminished the 6<sup>th</sup> Amendment protection against self-incrimination. Employers can require statements from employees but only use them for employment purposes. Information obtained as a result of *Garrity* interviews cannot then be used in criminal prosecutions. Public employers need to separate the investigation of workplace misconduct and criminal conduct. It is recommended that public employers such as police departments provide information to employees regarding their employment rights and responsibilities under *Garrity* prior to an interview. There should be a form designed for this purpose which specifies that the statement being asked for is work related and not part of any criminal prosecution. Additionally, the interview should be narrowly focused on a specific incident. There is no right to representation during an interview under *Garrity*; but state laws or union contracts may require one.

Criminal investigations should be addressed on a separate form which provides employees notice that the matter is under criminal investigation and the employee is subject to prosecution. The Miranda rights and waiver of those rights should be incorporated within this form.

When a non-union employer or its agent (security officer, human resource representative, supervisor or manager, etc.) conducts an investigative interview there is no requirement to advise the employee of his or her rights under Miranda. These are considered employee-employer conversations. The employee should be compensated for one's time in the interview, allowed the use of a restroom and not restrained against one's will. Ideally, the conversation will take place during the employee's normally scheduled workday. If an employee is called in on one's day off many states have statutes dictating the minimum amount of compensation due. For example, even if the conversation only lasts 45 minutes, and the employee leaves or his /her employment is terminated at the conclusion of the interview, the law may require that the employee be paid for four hours of work.

In 1975 the U.S. Supreme Court, in *NLRB v. J. Weingarten, Inc.*, established rules governing investigatory interviews involving union employees. The Weingarten Rights or Rules apply to any questioning of a union employee that could result in disciplinary action. An employee who believes that the interview may result in disciplinary action may exercise the following rights: 1) The employee may request a union representative before or during the interview. The employee may not be punished for making this request; 2) After the request has been made the employer must choose from among three options: a) Grant the request and delay questioning until the union representative arrives and has a chance to consult with the employee, or b) Deny the request and end the interview immediately, or c) Give the employee a choice of having the interview without representation or ending the interview; 3) If the company representative denies the request for union representation and continues to ask questions he or she has committed an unfair labor practice and the employee has the right to refuse to answer. The employee may not be disciplined for the refusal.

Under the Weingarten Rules the union representative has the right to know the topic of the interview and must be allowed to talk to the employee privately before questioning begins or resumes. The union representative must be allowed to speak during the interview and may request that a question be clarified so the employee may better understand what is being asked. After a question has been asked the union representative can give advice on how to answer. The union representative does not have the right to tell the employee not to answer a question or to give false answers.

In 2001 the D.C. Circuit Court of Appeals affirmed that the Weingarten protections are to be extended to both union and non-union workers. In June 2004 the National Labor Relations Board determined that nonunion coworker representation during investigatory interviews is at the employer's discretion. Obviously, the case law changes. Investigators must keep current on case law and adhere to employer policies.

### **Ethical Standards**

Obtaining confessions through 'third degree' practices has been proscribed in the United States since the 1930's. The landmark 1936 *Brown v. Mississippi* case put an end to the common practice of obtaining confessions through beatings and intimidation. However, there are effective and more subtle methods of coercion than physical threats or violence. For the interviewer the line between permissible interview techniques and coercion can be very fine.

These options often include some sort of misrepresentation or lie. Common types of deception used in interviews include: Telling a subject that he or she is free to leave, thus making the interview non-custodial and removing the need to obtain a waiver of Miranda rights; exaggerating or downplaying the seriousness of the offense; the use of vague or indefinite promises to encourage confessions; pretending to be someone other than an investigator and fabricating evidence (Leo & Skolnick, 1992).

It would be easy for an investigator to use any of the above techniques incorrectly or inappropriately to elicit a coerced confession. Any of the deceptions mentioned above may be used legally during an interview. In fact many of the techniques mentioned above are not at all unusual during an interview. Consider the following example:

A private-sector investigator employed as a security officer has scheduled a meeting with an employee of the company to discuss her involvement in the theft of thousands of dollars in petty cash. The investigator might begin the conversation with: “Hi, Mary, thanks for meeting with me. My name is Joe and I work for the company too, mostly with the audit group from accounting. I want to talk with you about some small inconsistencies in our petty-cash expense reporting and what we can do to correct this problem going forward. I really hope that we can correct these issues today and handle the whole thing in-house.”

Each of these sentences is in some way a deception. In the first sentence the investigator thanks Mary for coming to the meeting. In all likelihood Mary did not have much of a choice as she is an employee. But it reinforces the concept that the interview is non-custodial and that Mary is an equal partner and free to leave. The investigator uses his and Mary’s first names to make the tone of the conversation as casual as possible. In the second sentence the interviewer tells Mary that he works with the auditors from accounting. This is probably partly true. Someone investigating the theft of petty cash would probably work closely with the accounting department. But because the investigator knows that hearing that he works in security will put Mary on edge, he holds back that information. In the next sentence the thousands of dollars of missing petty cash has become “small inconsistencies in our petty cash reporting.” The investigator is minimizing the seriousness of the crime. Later in the interview he might exaggerate Mary’s involvement and refer to the amount as tens or hundreds of thousands of dollars.

In the second part of that sentence the investigator tells Mary that he wants to work with her to correct the problem “going forward”. The problem will be corrected when Mary is turned over to the authorities for prosecution and ordered by the courts to pay restitution. But what Mary almost certainly heard is that there is still a chance that she will not lose her job. In the final sentence the investigator expresses hope that the problem can be handled “in-house”. Mary is hoping for the same outcome. What Mary likely heard was something to the effect of “cooperate and I won’t call the cops.”

Deceptions are powerful tools available to the investigator. Using them incorrectly will result in confessions that the courts consider coercive. For example, an investigator is permitted to use props such as impressive-looking files or videotapes and can even hint to the suspect that they

represent evidence of their guilt that does not actually exist. The investigator may not however create false evidence to show to the subject. The investigator must decide which techniques, if any, should be used in each situation. It is important to remember that just because an investigative technique is legal does not mean that its use is ethical. Each investigator must consult organizational policy, ethical standards developed by professional organizations and his/her own sense of fairness in determining when to use a specific technique.

One of an interviewer's most important possessions is his or her integrity. The use of misrepresentations by an investigator carries with it the risk that the subject will call the investigator's bluff. Once that happens the investigator's integrity is damaged, making obtaining a confession that much harder.

The use of deception during an interview is one of the most common ethical questions that an investigator will face. It is however not the only one. While rare, false confessions do occasionally occur. They may arise out of interviews with juveniles or subjects having mental/psychological impairment. They may also occur during interviews that take a place over an extended, unusually long period of time as well as those that involve coercive techniques. The investigator must be aware of the possibility of a false confession and attempt to avoid it. The interview subject should be able to provide good details of the crime and be able to describe a credible motive. If either of these is absent the investigator should consider the possibility of a false confession.

Depending on state and local statutes it may be legal for an interviewer to make an audio recording of a conversation with a subject. It may also be legal to make this recording without the subject's knowledge. But again, what is legal may not be ethical. If an interviewer is caught (because the tape runs out, etc.) making a recording without the subject's knowledge one will have lost the trust of the subject, making obtaining a confession more difficult.

### **Criteria for Interviewers**

Among the most important traits for a successful interviewer are Empathy, Communication and Professionalism. All three of these characteristics combine to send a powerful message to the subject. That is, that the interviewer is an honorable person, who has all of the necessary evidence, and truly understands the feelings of guilt within the subject.

Empathy is considered an essential characteristic of a good interviewer. Empathy is the capacity for participating in another's feelings (Webster, 1972). Investigators who use empathy can more readily identify with another person. They can "see things through another's eyes". An interview or interrogation is a conversation between two human beings. The subject and interviewer are on an equal footing. Unlike the interviewer, the subject probably has no training in interviewing. But as a person the subject has been communicating all of one's life and can recognize when one is dealing with a person who is not sincere. It is difficult to believably offer rationalizations and understanding to a subject when the interviewer cannot identify with the other person. This results in the interviewer seeming insincere and makes obtaining a confession difficult.

Probably the most important trait for a good interviewer is being a good communicator. When people communicate they use more than words. Tone, inflection, volume and pauses are all important components of para-verbal communication. Non-verbal communication is at least as important as what is actually said. Gestures, posture, hand, eye and head movement (or lack thereof) are important parts of a person's non-verbal communication. The interviewer should also be aware of the messages sent by the subject's physiological responses such as skin tone, sweating and respiration. During some interviews the subject may suddenly have red splotches like hives or rashes appear on one's neck, arms and face. In some circumstances the interviewer will notice that one can visibly monitor the subject's heart rate by observing the carotid pulse. The most important communication challenge for the interviewer is to be aware of all of these channels of communication. The interviewer must not only be aware of what he or she is receiving but also of what one is sending. While the subject may not be consciously aware of these signals in the same way as the interviewer, one is subconsciously aware of communications beyond what is actually said. Regardless of how observant an interviewer is he or she must be able to control and manipulate the non-verbal signals being sent.

The core of interviewing is communication. In the section above important communication skills are discussed. But how the interviewer presents oneself to the subject is the first communication that occurs. The interviewer should be dressed professionally. This does not necessarily mean that a business suit is required for every interview. The interviewer should consider the subject and the location of the interview before deciding on attire. An interviewer meeting with an executive of a Fortune 500 company in a boardroom might dress differently than when meeting with a construction foreman at a job site. The interviewer's demeanor should always be professional. Whether the interviewer is a member of law enforcement or private security one is almost certainly in a perceived position of authority. No matter what the outcome of the interview, the interviewer should not make snide or disparaging remarks during or after the interview. The conversation should begin civilly with a handshake and end in the same manner. If the case is going to be referred for prosecution or civil litigation the lawyers are responsible for playing roles in an adversarial process. This adversarial atmosphere has no place in the interview room.

The final role that professionalism plays in the interview is the attention to detail paid to the confession and statement. Someone, perhaps the interviewer, spent valuable time preparing the investigation. The investigation file will likely be full of detail and description. Once the subject confesses, the professional interviewer will follow through with developing the confession and capturing it in a detailed and accurate statement.

### **Interview Standards**

The location of the interview/interrogation should be considered carefully before proceeding. Ideally the interview would be held in a private office or designated interview room. This is not always possible. In particular, non-accusatory field interviews are often conducted as time permits. Witnesses may initially be interviewed at the scene of the crime, over the telephone or at their place of employment. The number of distractions in these settings can be limitless. The interviewer should make every attempt to minimize these distractions. Even things as minor as

asking a witness to step aside or away from a group and turning off a cell phone can make a difference.

When possible, interviews should be conducted in private. The room should be free of distractions such as telephones or two-way radios that could cause an unexpected distraction. All participants should turn off cell phones and pagers. The room should be as bare as possible, a desk and enough chairs for the interview participants. In addition to distractions this also removes potential weapons such as letter openers, scissors or staplers, from the subject's reach. The interviewer should place a "do not disturb" sign on the door. The interviewer should make every effort to minimize the number of reminders of punishment in the room. If possible the subject should not be able to see signs of law enforcement presence such as handcuffs or an "investigator of the year" plaque.

The investigator must budget enough time for the interview/interrogation. In law enforcement this may mean as much as four or five hours. Some confessions will come quickly but there is no guarantee. When a subject admits the truth one is making a life altering decision. The subject's decision to confess will impact one's life, family, relationships at home and work, life goals and one's own and others perception of the subject. The investigator must have time to work through the interview process in order to convince a person to confess. The chances of obtaining a confession increase about 25% for each hour of interrogation up to four hours (Vessel, 1998).

In many situations it is necessary to have a witness to an interrogation. This may be mandated by company or agency policy. If an interviewer is meeting with someone of the opposite sex having a witness of the same gender as the subject is a good idea. Another good reason for a witness is training. The best training for new interviewers is to observe experienced interviewers. The use of video and audio recordings will negate the need for witnesses in many instances. Audio recordings of subjects should only be made with their permission. Once a witness has been selected, the interviewer should prepare the witness by explaining what to expect. The witness should be told that their role is to sit quietly and observe the conversation and the behavior and demeanor of both the interviewer and subject. The witness should not take part in the conversation and should be prepared to provide a written report of his or her recollection of the conversation.

### **Preparation**

The single most important aspect to successfully concluding an accusatory interview is case preparation. The interviewer must understand and be aware of all aspects of the investigation. The investigative file should be neat and organized. The interviewer cannot afford to look confused or lost when referencing evidence in the file. The investigator's notes should briefly explain each piece of evidence and its significance so that it can be quickly referenced during the interview.

The investigator should have a plan in place for after the conclusion of the interview. In the private sector the interview may lead to sanctions against the employee up to termination and prosecution. If an outside person is required to terminate or suspend an employee at the

conclusion of the interview the investigator should make this person aware in advance that the interview will be occurring and suggest an approximate time when it will conclude. There should be additional consideration given if criminal charges are going to be filed. Many police agencies will not arrest an employee for theft or minor crimes at work if that person is still employed.

### **Non-Accusatory Interviews**

Most interviews conducted by investigators will be non-accusatory in nature. The investigator uses these interviews to establish as much information as possible about the event under investigation. Even when a suspect has been identified and an interrogation is planned the investigator will interview the suspect prior to the interrogation. This pre-interview may occur on the telephone, in person, immediately prior to the interrogation or as a witness interview early in the investigation.

### **Cognitive Interviewing**

Cognitive interviewing techniques have been used by investigators for years. However, the National Institute of Justice quantified the techniques in a study demonstrating their effectiveness. Cognitive interviews should be held in a quiet, secluded location. Interview subjects should be encouraged to speak slowly. The techniques in cognitive interviewing are used to enhance the recollection of victims and witnesses. The basic idea behind cognitive interviewing is to reconstruct the details of an event in a witness' mind, in different ways to improve their overall recall of the event. The four techniques are:

1. ***Reconstruct the circumstances of the event.*** The witness is asked to reconstruct how the incident began and the circumstances surrounding it. The witness is asked to think about details in the environment like weather and lighting and the condition of the area. The interviewer also asks the witness to recall their emotional state at the time of the incident.
2. ***Instruct the witness to report everything.*** The witness is asked not to leave out any details regardless of how small they may seem.
3. ***Recall the events in a different order.*** The witness is asked to describe the event backward or from a point in the middle and describe the event either forward or backward from that point. This technique can also be useful in determining a suspect's truthfulness. If a person is creating a story it is almost impossible to tell the story out of sequence.
4. ***Change perspective.*** The witness is asked to change roles with another person in the incident and consider what he or she might have seen. The witness is also asked to describe the incident as if they saw it from a different location. (Wicklander & Zulawski, 1993).

## **Witness Interviews**

Interviews conducted with witnesses should be non-accusatory. Investigators must make a systematic effort (a canvass of the area of the incident) to interview all witnesses so that a thorough investigation is completed. Some witnesses to a crime may eventually become suspects but they should not be treated as such until the investigator feels that there is adequate evidence to infer this and is prepared to proceed with an interrogation. During a witness interview the investigator should ask open ended questions allowing the witness as much time to answer in as much detail as he or she wants. If the witness' answers are too short or lack description the investigator should ask follow up questions to elicit further detail. The questions asked of witnesses will vary depending on the investigation. In general, the witness should be asked to describe what they observed in as much detail as possible, what involvement, if any, they had in the event; their knowledge of, or relationship with, any of the participants, and personal information (name, age, phone number, address).

## **Victim Interviews**

When interviewing a victim the investigator must keep in mind that the person they are speaking with has just been through a bad experience. The victim's health and personal safety must be the investigator's primary concern. This may cause the interview with the victim to be postponed. The victim may be angry, afraid or even traumatized. These intense emotions may be projected onto the investigator. The investigator will have to use all of his or her communication skills to obtain the valuable information that the victim possesses. The victim should be asked to provide a description of what happened to them in as much detail as possible.

The investigator should ask follow-up questions to clarify points in the victim's statement. The victim should be asked if they know the other person(s) involved in the incident and what, if any, is their relationship to them. In cases involving property crime the investigator should establish, in detail, what was taken or damaged. The investigator should obtain the victim's personal information (home, work, cell and email) to facilitate follow-up conversations.

## **Sexual Harassment Interviews**

These investigations will be handled almost exclusively by non-law enforcement investigators; the obvious exception being Internal Affairs inquiries within police departments. The Civil Rights Act of 1991 has increased the importance of the effective internal investigation of sexual harassment complaints. Complaints that are handled quickly and efficiently by employers are less likely to result in litigation. *Men and women can be victims* of sexual harassment. A minimum of two interviews should be conducted in a sexual harassment investigation, one with the victim and one with the accused. Additional witnesses should be interviewed if available. Since these investigations often involve one employee's word against another the victim should be told that his or her complaint is being taken seriously and that it will be investigated fully. The investigator should not make any promises of confidentiality to the victim. When interviewing the alleged perpetrator the investigator should explain the purpose of the interview, the allegations and the identity of the victim. The investigator should also explain to the perpetrator that no decision has been made on the truthfulness of the allegation. At the

conclusion of the interviews the investigator should consider the credibility of the victim, perpetrator and witnesses. The facts should be evaluated from the perspective of a *reasonable person*. The investigator should distinguish between unwelcome and voluntary sexual conduct. The finished report should then be submitted with recommendations to the person or committee with the authority to decide what action, if any, will be taken by the employer.

### **Accusatory Interviews (Interrogations)**

There are many styles of accusatory interviews and only a few of the more common types are listed below. There is no one best style of interviewing. A good interviewer will be familiar with different types of interviews and be able to use the best approach for the situation at hand. It may even be necessary to switch between styles “on the fly” during an interview.

#### **Introductory Statement**

The use of the introductory statement style of interviewing, as taught by Wicklander-Zulawski, is designed to elicit signs of guilt from the suspect early in the interview. One of the benefits to this type of interview is that it allows the investigator to evaluate the subject’s behavior before making any accusations and committing oneself to an interrogation. In this interview style the subject has little opportunity to participate in the early part of the conversation.

During the process the interviewer covers several specific topics:

1. ***Who we are and what we do.*** The interviewer describes his role within the organization or agency and briefly explains the core values and goals of the organization. The interviewer stresses how their job is to protect the citizens or employees. While not spoken the interviewer implies that the subject is also deserving of that protection.
2. ***Different types of crime.*** The interviewer explains that part of his or her job is to investigate different types of crime or violations. The interviewer lists several types of offenses, including the one the subject is suspected of involvement in. This mention of a specific type of offence, is generally preceded by a phrase to minimize the seriousness, and occurs with a brief pause and eye contact.
3. ***How we investigate.*** The investigator goes on to describe the variety of investigative tools at their disposal. Specifically, several investigative techniques that could have lead to the identification of the subject are discussed.

These three points are designed to cause a guilty suspect to react involuntarily. This gives the interviewer the opportunity to assess the subject’s reactions to the crime under discussion. If at this point the investigator has not detected any indication that the subject is guilty they can continue on with interview questions and never make an accusation. If, however, the suspect has demonstrated signs of guilt the interviewer begins to offer rationalizations and reasons for the person’s actions that will ultimately lead to an accusation.

### **Participatory Accusation**

Similar to the introductory statement and also taught by Wicklander-Zulawski, this style is less useful for law enforcement. The participatory accusation is highly effective when dealing with employee dishonesty. After the rapport-building process the interviewer asks the subject several questions regarding the company's policies and procedures. Included in this list are the policies that the employee is suspected of having violated. The employee is asked to explain to the interviewer their understanding of each policy. The first few should be easy to answer items that the employee is most likely to answer correctly. When asked about a policy that the employee has violated the investigator should be looking for signs of guilt or dishonesty. If the employee answers the question correctly it will be very difficult for them to later say that they did not understand the policy. However, regardless of the employee's answer, they typically display behavior that will help the interviewer determine if he or she should accuse the employee of dishonesty or violating company policy. In some circumstances the employee may be ignorant of a company regulation. In those cases the interviewer has not accused the employee of intentional wrongdoing.

Once the interviewer has decided that the subject has displayed enough behavioral evidence of guilt they will begin the interrogation, perhaps shifting to an introductory statement or other style before making an accusation.

### **Direct Accusation**

The direct accusation is best used when there is substantial evidence of the suspect's guilt of one crime. In this style the interviewer begins the interrogation by informing the subject that the conversation is to discuss his/her involvement in the incident. The investigator informs the subject that the evidence clearly indicates the subject committed the crime. Normally the subject will deny the accusation. The interviewer immediately re-accuses the subject, using the same wording as before, and then begins offering rationalizations for the crime.

### **The Reid Technique**

The Reid technique is useful as a general interview format or when there are several people suspected of the same crime. The core of the Reid technique is the Reid Interview Tabulation Sheet. This consists of a warning of rights, a medical data sheet and 15 numbered questions. Each question has a space next to it where the interviewer uses an abbreviation to note his opinion on whether the subject answered truthfully, deceitfully or that the interviewer is uncertain about the truthfulness of the response. The interviewer also writes down the subject's answer to each question. The questions deal with the issue under investigation. The interviewer asks questions concerning what the subject knows about the crime, if the subject is involved, who the subject thinks is involved, what should happen to the person who did it, did the subject ever think about doing it, the subject's alibi, etc. (Shuy, 1998). Like the questions asked in the Participatory Accusation and the monologue in the Introductory Statement styles, the Reid questions are designed to cause the subject to react. The interviewer determines from the answers the likelihood of the subject's involvement. If the interviewer feels that the subject is innocent he or she may continue on as if the conversation was a witness interview. If however,

the interviewer feels that the subject has shown signs of guilt he or she would make an accusation and continue on with the interrogation.

### **Kinesic Interviewing**

Kinesic interviewing uses techniques to interpret subject's truthfulness by evaluating verbal and non-verbal cues. Like most of the methods mentioned above Kinesic interviewing can be divided into two phases; detection and interrogation. The interviewer has the option to stop the interview before making an accusation. Kinesic interviewing differs from some of the techniques discussed above in that it places greater reliance on verbal communication with the subject. The interviewer observes behaviors associated with the subject's responses to questions. The interviewer looks for disconnects between the subject's words and actions. The interviewer also evaluates the wording chosen by the subject looking for signs of deception. Because Kinesic interviewing places more reliance on the subject's word choice and phrasing, it is the best suited of the methods mentioned here for telephonic interviewing.

### **The Accusatory Interview Process (Conducting an Interrogation)**

Depending on personal preference and the situation interviewers will choose to use the interview style that is most comfortable. Regardless of the style chosen the goal of the interrogation is the same: to obtain a confession, legally and ethically, that will stand up to scrutiny in court. To accomplish this, interviewers will use many of the same tools, despite their different choices, or combinations, of interview styles.

### **Rapport**

Developing rapport with a subject early in the interview can be very valuable to ultimately obtaining a confession. Spending time with the subject discussing non-threatening topics will put the person at ease. The questions asked by the interviewer during the rapport building process should not be personal. These questions can be as simple as verifying their address, phone number, the spelling of a name or work history. For interviewers who prefer to evaluate behavioral and physiological responses to questions the rapport building process allows them to establish the subject's normal responses to questions. This makes evaluating truthful and deceptive responses later in the interview easier.

A common occurrence in normal conversations is mirroring. Both parties will mimic the posture, gestures and mannerisms of the other. When building rapport the interviewer can mimic the posture and gestures of the subject. Once the interviewer feels that rapport has been established he or she should move slightly (cross or uncross legs etc). If the subject mirrors this movement rapport has been established.

### **Signs of Deception**

There is no guaranteed way to determine if a subject is lying. There are no typical nonverbal behaviors that are associated with deception. Not all liars display the same behavior in the same situation. Additionally, behaviors will differ across deceptive situations (Virj, 2000). The

interviewer has to rely on his or her experience and instincts to make that determination. Changes in behavior in response to questions should be noted. If the interviewer has taken the time to establish rapport with the subject, deceptive responses may be more obvious. Any one word or behavior on its own should not be considered an indicator of dishonesty. However, if the behavior is linked to a question about the subject's involvement in the investigation there is a good chance that the behavior is an indicator of dishonesty. Behaviors should be consistent when the question is repeated and deceptive signals typically occur in clusters. Following are behaviors that may indicate dishonesty:

Posture:

- Slumping over or leaning back in the chair.
- Sitting in a way that protects the abdomen.
- Shifting position in the chair

Hand and Arms:

- Placing the hand over the mouth to muffle words or hide expressions.
- Arms crossed with the thumbs extended.

Legs and Feet:

- Movement of legs and feet
- Legs crossed with the knee raised to protect the abdomen.
- Legs crossed with arms holding the leg in place as a barrier.

Head and Neck:

- Head down can indicate a negative attitude or submission.
- Head back looking down the nose.
- Head nodding or head shaking

Neurolinguistic eye movement can be an indicator of deception. Once the interviewer has determined the normal responses to questions he or she may be able to evaluate the truthfulness of a subject's response based on eye movement. This concept is based on a belief that most people move their eyes in a certain direction when recalling and creating information. For example, if a subject is asked to recall the color of the shirt they wore the day before their eyes would move up and to their left while they retrieved the memory. If the subject decided to lie, their eyes would shift up and to the right while they created an answer. Recalling and creating sound memories are associated with eye movements directly left or right. Looking down and to the right is associated with creating tactile memories. And looking down and to the left is associated with internal dialogs or getting in touch with one's feelings (Wicklender & Zulawski, 1993).

There are also verbal indicators of deception that interviewers must interpret. These may or may not be accompanied by an observable behavior. The most telling verbal indicators are when the words do not match the physical behaviors that accompany them. For example, if the subject says "no" but shakes his or her head in a "yes" gesture. Following are some verbal indicators of dishonesty:

- Skipping around in sentences.
- Stopping sentences or leaving off the end.
- Inappropriate laughter.

- Starting to speak in the third person.
- Telling the interviewer that they have done things (similar to the things currently under investigation) wrong in the past.
- Repeating the interviewer's question.
- Asking the interviewer to repeat the question.
- Asking the interviewer "are you accusing me"?
- Giving very short answers.
- Overgeneralizations (any, all, never, always etc).
- Saying "I can't recall".

The following phrases are usually indicators that the subject is going to finish the sentence with a lie:

- "I swear on the bible that I didn't..."
- "To tell you the truth..."
- "To the best of my knowledge..."
- "You may not believe this but..."
- "I know that this sounds strange but..."

### **Overcoming Resistance**

Identifying the subject's dishonesty is an important part of an interrogation. However, the interviewer must be able to convince the subject to confess. Most interviewers use stories and rationalizations to move the subject closer to a confession. The stories are intended to convince the subject that he or she is not the first person to find themselves in their situation and that the first step to feeling better about the situation is to tell the truth. The stories that interviewers use may be real experiences or fabricated. Rationalizations are another important part of convincing a subject to confess. The interviewer presents possible reasons for the subject to have committed the crime. Presenting these rationalizations allows the subject to give a face saving reply as to why they committed the crime. Finally, interviewers will often minimize the severity of the crime. This can be accomplished by softening the language used during the interview. In that way murder becomes "hurt", theft becomes "take" etc. It is much easier for a subject to say that they borrowed a car without permission than to confess to carjacking.

### **Submission**

A large part of the interrogation will involve the interviewer offering these rationalizations and stories combined with minimizing the subject's actions. The investigator has to find a theme that the subject can relate to. Once that has happened, the subject's behavior will change. The subject will enter submission and be ready to confess. Some signs of submission are:

- Less forceful denials or lack of denials.
- Slumped posture.
- Eyes looking down.
- Teary eyes or crying.
- Letting out a sigh.

At this point once when the interviewer again makes an accusation the subject should accept it and acknowledge his or her guilt. This acknowledgement may be just a small nod or “yes”. The investigator should try to keep the subject talking about the crime to prevent them from recanting.

### **Concluding the Interview**

Once the subject has voiced the first admission it may seem as if the interview is nearing the end. That is not necessarily the case. After the subject has admitted their involvement the interviewer must develop that admission into a confession and finally into a statement that is admissible in court.

### **Transitioning from a Verbal Admission to a Confession**

The subject’s admission represents an important step in the interview process. It is a breakthrough. The subject has ceased to deny taking part in the activity. It is important for the interviewer to move the subject beyond an admission to an actual confession. Investigators often use an interview technique known as the assumptive question to obtain the first admission. Following are two types of assumptive questions:

1. ***The choice question:*** The interviewer presents the subject with two rationalizations, one good and one bad, then encourages the subject to choose. The interviewer may emphasize either the good or the bad choice. For example, in the investigation of a shooting, the interviewer might use the following accusation: “Mary, when you went over there did you intend to shoot Joe or just scare him with the gun? You just wanted to scare *him, right?*” When the subject answers *yes* to the good option she has chosen an easy way to admit to her involvement.
2. ***The soft accusation:*** The interviewer does not ask if the subject did something, but rather asks a broad question about the incident(s) that assumes the subject’s involvement. For example, in the investigation of an employee taking money from cash registers at work, the interviewer might ask: “Mary, when was the first time that you took money?” This question is often followed up with a choice question, *or* some sort of yes-no question like: “Have you been taking money since your first day of work?”

While these techniques are very effective they only result in admissions. The interviewer must continue to develop the admissions into a confession. In a confession the subject takes responsibility for his or her actions. The confession should be well supported with a detailed description of the subject’s actions and motive. This is the phase of the interview when the interviewer should attempt to develop additional information about accomplices and other crimes that the subject has committed. Once the subject has made his or her confession the interviewer should document the confession in a statement.

### **The Statement**

The statement may be the most important part of the interview. It is one of the key items that the investigator will use to help prove the case in court. Many police agencies now record or

videotape interviews. These recordings can be used as powerful evidence in a trial or as protection for the interviewer if accused of misconduct during an interview. There are different approaches to taking a written statement. However, whatever method is chosen the statements should include a waiver of rights and acknowledgement that the subject was not coerced to make the statement. The time, date, and names of all people present during the process should also be included. Any scratch-outs or changes made to a statement should be initialed by the subject. The subject, interviewer and all witnesses should sign and date each page of the statement. Following are some examples of statements that can be used at the conclusion of an interview.

The subject can be asked to provide a written explanation of what occurred in a free narrative format. The subject writes, in his or her own words, the details of their confession. Most people, if given the opportunity, will do what ever they can to minimize the seriousness of their actions. There is a real possibility, especially with an inexperienced interviewer, to lose a lot of important information between the confession and the statement. When using a free narrative format it may be necessary to ask the subject to go back and make additions to their statement. It can be time consuming and almost like interviewing the subject a second time. The interviewer will often have to read what the subject wrote and say: "Mary, didn't you tell me..." and then when she agrees to that item say: "Please write that down." While a statement in the subject's own handwriting probably holds the most weight for a jury this can be a very difficult type of statement for some interviewers to obtain. It may, however, be necessary in those instances where the interviewee simply refuses to sign a statement that someone else has prepared.

One application for this type of statement is when the subject continually changes details of his or her involvement. Once the subject writes down a version of the story, the interviewer can go to evidence that he or she has held back up to that point and challenge the lie.

The statement can be taken in a guided narrative format. The narrative can be written by either the subject or interviewer. The interviewer goes through each point of the confession details with the subject to verify that they are in agreement. After each point the investigator either asks the subject to write down what they just said or the interviewer writes it down. The interviewer may choose to prepare a typed version of the statement and present it for the subject's signature. It may be advisable to ascertain the subject's degree of literacy and their educational level. A diplomatic question as to how much education they had may be appropriate. If the interviewer writes or types the statement he or she should make two or three minor errors on each page. Once the statement is complete, the interviewer should re-read the statement with the subject to verify accuracy. Having them read aloud a portion of the statement to ensure that they can, in fact, read is also important. Note that some illiterate persons are quite adept at disguising their illiteracy. During the re-read the interviewer should ask the subject to make the corrections and initial each one. Since the subject's initials are on corrections throughout the statement, as well as their signature on each page, it will be difficult for them to later say that they did not understand what they were signing.

The statement may be taken in a question and answer format. The Q and A statement may be written or typed by a witness or stenographer. In this type of statement the interviewer asks a series of questions. Each question and the subject's response is then recorded by the witness.

This type of statement is useful for subjects that are unwilling or unable to write their own statements.

### **Conclusion**

Conducting interviews and interrogations are among the most challenging and rewarding tasks that an investigator will be called on to perform. Often the outcome of an investigation is determined by the success or failure of the interviewer. Persons interested in interviewing should seek quality training and observe experienced interviewers whenever possible; then get practice, practice and more practice.

The best interview trainers are interviewers. There are a variety of methods, techniques and schools available. There is no one interview method that works best. If possible, obtain training in a variety of methods. Understanding and being able to use a variety of techniques gives the interviewer more tools in his or her toolbox. Interview training is often very affordable. Many of the quality training organizations offer discounted training in partnership with professional associations. One example of this is the discount available to International Foundation for Protection Officers members into the John E. Reid classes. Following are some suggestions on where to obtain training:

- Wicklander-Zulawski and Associates: [www.w-z.com](http://www.w-z.com)
- John E. Reid and Associates: [www.reid.com](http://www.reid.com)
- Stan B. Walters (Kinesic Interviewing): [www.thelieguy.com](http://www.thelieguy.com)
- Behavior Analysis Institute (Cognitive Interviewing): [www.liedetector.com](http://www.liedetector.com)
- Detecting Deception: [www.donrabon.net](http://www.donrabon.net)

Following are some excellent resources for investigators and interviewers:

- Online document archive of labor and employment law: [www.bna.com](http://www.bna.com)
- Training manuals in pdf format: [www.cops.usdoj.gov](http://www.cops.usdoj.gov)
- Links to hundreds of free research sites: [www.refdesk.com](http://www.refdesk.com)
- Online searches for investigators and law enforcement (pay per search): [www.lexisnexis.com](http://www.lexisnexis.com)
- National Criminal Justice Reference Service: [www.ncjrs.org](http://www.ncjrs.org)
- National Association of Property Recovery Investigators: [www.napri.org](http://www.napri.org)

### **About the Author**

*Chris Hoffman, CPO (Cand.) is a corporate investigator for a department store chain. He has worked in both contract and retail security for over 10 years and is a member of ASIS International. Mr. Hoffman holds a BS in Criminal Justice from York College of Pennsylvania. He is a candidate for designation as a Certified Protection Officer.*

## References

- Barron's Law Dictionary (1991). Hauppauge, NY: Barron's Educational Series.
- Canadian Charter of Rights and Freedoms (1982). Retrieved on May 30 from <http://laws.justice.gc.ca/en/charter>
- Dempsey, J. (2003). Introduction to Investigation. Belmont, CA: Wadsworth.
- Grimald, R. (2005). Back To The Future: Nonunion Coworker Representation In Employer Investigatory Interviews Is At Employer's Discretion. Retrieved on June 6,2005 from <http://www.whitewms.com/CM/NewsAlerts347.asp>
- Leo, R. & Skolnick, J. (1992). The Ethics of Deceptive Interrogation. Criminal Justice Ethics, Winter/Spring (5-7).
- Reid, J.E. and Associates (2001, June). Monthly Investigator Tips. Retrieved on April 10, 2005 from [http://www.reid.com/educational\\_info/r\\_tips.html](http://www.reid.com/educational_info/r_tips.html)
- Reid, J.E. and Associates (2004, April). Monthly Investigator Tips. Retrieved on April 12, 2005 from [http://www.reid.com/educational\\_info/r\\_tips.html](http://www.reid.com/educational_info/r_tips.html)
- Shuy, R. (1998). The Language of Confession, Interrogation and Deception. Thousand Oaks, CA: Sage.
- Vessel, D. (1998). Conducting Successful Interrogations. FBI Law Enforcement Bulletin. 67, 2.
- Vrij, A. (2000). Detecting Lies And Deceit: The Psychology of Lying and the Implications for Professional Practice. West Sussex, UK: John Wiley & Sons.
- Websters' Seventh New Collegiate Dictionary. (1972). Springfield, MA: G. & C. Merriam.
- Wicklander, D. & Zulawski, D. (1993). Proactical Aspects of Interview and Interrogation. Boca Raton, FL:CRC Press.