

# Investigative Interviewing, Thinking Forensically-The New Paradigm

---

JOHN E GRIMES III, MS, CFE, CFI

# Forensic

---

The origin of the word Forensic is from Latin, “Forensis.” which means of belonging to the forum, or public forum

# Forensic

---

*“Relating to or dealing with the application of scientific knowledge to legal problems.”*

# Forensic

---

Being trained in a forensic discipline and possessing a forensic mindset indicates that you skillfully apply the highest legal and ethical standards in the performance of your duties.

# Investigations

---

It is in society's best interest to resolve the matter under investigation and find the truth.

# Investigations

---

In gathering information, the question is, if it is in society's best interest to find the truth, does the end justify the means?

# Investigation

---

It is important that the gathering, analysis, evaluation, and preservation of evidence meets legally acceptable and ethical standards that will stand up in a court of law or some other tribunal, and pass the scrutiny of public opinion!

# Interview v. Interrogation

---

THE POWER OF WORDS

# Interview vs. Interrogation

---

- Many people, including seasoned investigators, use the terms interview and interrogation interchangeably.
- In the Forensic world, using both terms interchangeably is not correct.

# Interrogation

---

- The term interrogation usually has a negative connotation.
- Many investigators say that the objective of an interrogation is to obtain a confession. This implies that:
  - The end justifies the means.
  - It makes no difference if the confession is true.

# Interrogation Definitions

---

- To question formally and systematically, (Merriam Webster)
- To ask someone a lot of questions for a long time in order to get information, (Cambridge Dictionary)

# Interrogation Definitions

---

- To ask someone many questions in a formal situation, often in a forceful way that can be seen as threatening, (Cambridge Dictionary)
- An interrogation is an intense questioning session, (Free Dictionary)

# Interrogation Definitions

---

- Interrogation may involve a diverse array of techniques, ranging from developing a rapport with the subject, to outright torture (Wikipedia)
- Ask questions of someone closely, aggressively, or formally, (English Oxford Living Dictionary)

# Interrogation Definitions

---

- An accusational interaction with a suspect in a controlled environment designed to persuade the suspect to tell the truth (Essentials of the Reid Technique)
- The Reid Technique teaches the Nine Steps to Interrogation. The first step is a “Direct Positive Confrontation.”

# Investigative Interview Definitions

---

Investigative interview is defined in a variety of ways:

- Non-accusatory.
- informal and informal.
- free-flowing and non-structured.
- structured question and answer session.
- A conversation with a purpose between two people.
- limits the interviewee categories to victims, witnesses, and suspects, includes the objective of discovering the truth.
- Some definitions include the skills required to interpret the interviewee's responses.

# Investigative Interview Definitions

---

A forensic mindset requires an articulable standardized definition for an investigative interview where the definition alone does not create opportunities for the process to be challenged. It should not be too restrictive, or too broad. Following is a straight forward simple definition:

# Great Britain Model

---

***The questioning of victims, witnesses, and suspects (interviewee) to obtain complete, accurate, and reliable information to discover the truth about the matter under investigation.***

# Investigative Interview

---

***The questioning of an individual to gather information pursuant to a matter under investigation. This includes determining the individual's knowledge of, or involvement in the matter under investigation, and if appropriate, to receive a truthful acknowledgement of responsibility***

# Investigative Interview

---

***Investigative Interviews involve a search for the truth!***

# Investigative Interview

---

- Based on the definition, the term “investigative interview” can be used instead of the term “interrogation.”
- Many entities are now utilizing the term “interview” in lieu of the negative connotation term “interrogation.”

# Interviewee Categories

---

Witnesses	Possible Witnesses
Information Providers	Whistleblowers
Accusers	Persons of Interest
Suspects	Targets
Guilty/Responsible Persons	

# Guilty/Responsible Person

---

When the individual you interview is a suspect, then the objective of the interview is to obtain details of the individual's involvement in the matter under investigation. (See Definition of Investigative Interview)

# Building Trust and Breaking Down Barriers

---

# Humans

---

Gathering information from humans is the most delicate and controversial investigative step.

# Qualities of a Professional Investigative Interviewer

---

Talented at Human Interaction	Treats all Interviewees with Dignity and Respect
Does not Impress with Authority	A Good Listener
Does not Interrupt	Perceived as Objective
Does not Lecture	Cordial and Polite
Prepares for the Interview	Confident in Ability
Even Tempered	Uses Even Conversational Tone
Mental Agility	Evaluates Interview Results

# Assessing the Interviewee's Attitude

---

- Assessing the interviewee's attitude begins with the first contact.
- An interviewee's attitude is often dependent on the reason they are being interviewed.

# Assessing the Interviewee's Attitude

---

- Introduction (Cordial Approach)
- Explain the purpose of the interview
- Ask Open Questions
- Allow the interviewee to talk
- Overcome objections
- Obtain agreement

# Assessing the Interviewee's Attitude

---

Reluctant	Reticent
Resentful	Animosity
Superior	Hostile
Wariness	Evasiveness
Afraid	Cooperative

# Assessing the Interviewee's Attitude

---

An interviewee will give clues to a negative attitude through:

- Proxemics (Stand offish, reluctant to shake hands)
- Kinesics (Stiff posture, slumped posture, not squarely facing the interviewer)

# Assessing the Interviewee's Attitude

---

- Word choices (Short-clipped answers, does not volunteer additional information, evasive answers to the benign questions)
- Paralinguistic (Angry tone, slow or fast to answer, Disingenuous)

# Assessing the Interviewee's Attitude

---

Its important for a professional interviewer to understand what motivates interviewees to lie, be deceptive, and to be truthful

# Motivation to be Truthful

---

- Some people are just honest.
- No other alternative.
- They believe the interviewer already knows the facts.
- The evidence is overwhelming.
- If they are the guilty party, they cannot bear the guilt.
- They trust the interviewer.

# Cordial Approach

---

Most people do not like being interviewed, even if they are not involved in the matter under investigation.

Most people will respond favorably to an individual who is cordial, friendly, and polite. The same goes for interviewees.

# Build Rapport

---

Rapport: A close and harmonious relationship in which the people or groups concerned understand each other's feelings or ideas and communicate well.

*Oxford Dictionary*

# Build Rapport

---

- Begins at the time of arranging the interview.
- Occurs throughout the interview process.

# Building Rapport

---

To build rapport, breakdown barriers, and gain trust, trained interviewers will utilize:

- Proxemics
- Word Choices
- Kinesics
- Paralinguistics

# Proxemics

---

Proxemics is the study of the nature, degree, and effect of the spatial separation individuals naturally maintain (as in various social and interpersonal situations) and of how this separation relates to environmental and cultural factors

# Proxemics

---

- In an interview setting it is recommended that the interviewer and interviewee sit across from one another with a separation of 4 to 4 ½ feet.
- No barriers (table, desk) between the interviewer and interviewee.

# Proxemics

---

- With no physical barriers, the interviewer is telling the interviewee that what will transpire is a conversation, not a deposition, or merely a Q &A session.
- Interviewer is better able to see non-verbal indicators of truth or deception.

# Word Choices to Break Down Barriers

---

Word Choice	Versus
Looking into a Matter	Conducting an Investigation
Sit Down and Discuss	Interview
Work Together/Need your Input/Participate	Cooperate
Extent of Involvement	Guilt
This Matter	Crime
Complete Explanation	Truth
Facts	Evidence

# Word Choices to Break Down Barriers

---

Word Choice	Versus
Inquiry	Investigation
Taken	Theft, Steal, Embezzlement
Missing	Stolen
Incident	Crime
Touching	Assault/Battery
Death	Murder

# Kinesics

---

Kinesics is the interpretation of body motion communication such as facial expressions and gestures, nonverbal behavior related to movement of any part of the body or the body as a whole.

# Kinesics-Eye Contact

---

- Make good eye contact with the interviewee
- Do not stare
- Break eye contact occasionally
- Assess the interviewee's eye contact with you.
- Be aware that some cultures believe it is rude to make eye contact
- Children, someone with psychological disorders, and trauma victims have trouble making eye contact

# Kinesics- Hand Gestures

---

Hand gestures can be threatening or calming

Use calming hand gestures



# Kinesics-Posture

---

- Posture is important when sitting and conversing with an interviewee.
- Moving forward shows interest in what the interviewee is saying.
- Nodding your head shows agreement or empathy.
- If you have a note pad an pen in your hand, put it down when attempting to break down barriers and build trust.

# Kinesics-Mirroring

---

- Mirroring is a way to bond and to build understanding. It is a powerful tool that we use instinctively without even being aware of it.
- Mirroring is when the interviewee copies body language and hand gestures of the interviewer.
- The interviewer can purposely mirror the body language of the interviewee.
- Interviewer mirroring must be subtle and not appear mocking.

# Paralinguistics

---

Paralinguistic is the verbal behavior ancillary to the spoken word.

- Pitch
- Tone
- Volume
- Speed

# Paralinguistics

---

- Empathy
- Compassion
- Fairness
- Urgency
- Seriousness
- Confidence

# Breaking Down Barriers

---

If an interviewee is reluctant and indicates that they believe they are being singled out, use wording such as this:

*“You should be happy that I am the one conducting this inquiry. I am fair, I am objective, I have no pre-conceived notions regarding your involvement in this matter. If the allegation is not true, then my inquiry will determine that. On the other hand, if there is some basis for the allegation, my inquiry will determine that also. I would prefer to have your complete input so we can resolve this.”*

# Breaking Through

---

If appropriate an interviewer can use:

- Praise
- Appeal to common sense
- Appeal to the overwhelming evidence (for suspects)
- Appeal to doing the right thing

# Breaking Through

---

If an interviewee is not answering questions by being evasive, or qualifying answers, (i.e: to the best of my knowledge; or I don't recall) then make a statement such as,

***“Gary, I know this is difficult to talk about; however it is important that we resolve this matter with your input. Is there a reason you do not want to answer my questions?”***

# Feel, Felt, and Found

---

If the interviewee provides a response to one of your breaking through questions, use Feel, Felt, and Found.

*“I understand how you feel. Others involved in similar situations have felt the same way. However, they found that it was best to be truthful and resolve the matter.”*

# Rex Krebs Video

---

<https://www.youtube.com/watch?v=WXFfZ0nwXBs>

# Confessions

---

# Confessions

---

- A confession is often the most compelling evidence
- A confession often leads to quick adjudication and resolution (guilty plea)
- Certainty of guilt is valuable to society
- Some agencies and companies are hesitant to take disciplinary action unless the individual acknowledges responsibility, in spite of overwhelming evidence

# Confessions

---

- Critics of interrogation techniques complain that an individual will not confess to a crime against their self interest unless nefarious tactics were used.
  - Psychological Manipulation
  - Coercion
  - False promises
  - Deception
  - Implications of leniency
  - Physical threats

# Confessions

---

- Due process requires that the statement/confession must be obtained voluntarily.
- A statement that is made involuntarily is one made against the individual's will by either physical or undue psychological pressure.
- In determining voluntariness, courts look at the totality of circumstances surrounding the interview
  - The actions of the interviewer
  - The weakness of the suspect.

# Video Brendan Dassey

---

<https://www.youtube.com/watch?v=BsDrsQvCwa4>

# Deception

---

- Deception in interviewing is considered by many as unethical under most circumstances.
- Using Deception is a “slippery-slope” and can lead to credibility issues and the eroding of the public trust.
- Some deception is allowed and will not invalidate an otherwise truthful confession.

## Cases That Allowed Deception

*Frazier v. Cupp (1969)* : The U.S. Supreme Court has allowed police to falsely claim that a suspect's confederate confessed when in fact he had not.

*Oregon v. Mathiason, (1977)*: The Court ruled that telling a suspect his fingerprints were found at a crime scene when there were none was acceptable.

# Cases That Allowed Deception

---

*State v. Nightingale, (2012)*: The Maine Supreme Court ruled that falsely stating that incriminating DNA evidence and satellite photography of the crime scene exist is okay.

Nightingale was not under arrest. He was told several times that the interview was voluntary and that he was free to leave at anytime.

# Deception Generally Acceptable

---

- Telling the suspect the purpose of the interview is to determine “why” the suspect committed the crime, when the real purpose is to obtain a confession.
- Telling the suspect that he is basically a good person who made a mistake, when in fact the interviewer does not believe that all.
- Displaying false sympathy or empathy.

# Deception Generally Acceptable

---

- The interviewer telling the suspect that he or she believes that the reason the crime was committed was for some mitigating, morally acceptable reason (stealing money to buy food for a hungry baby) when in fact the interviewer does not believe that all.

## Deception not Acceptable

---

In *Florida v. Cayward* (1989), the court held that fabricating laboratory reports was not permissible

# Deception not Acceptable

---

- Creating false evidence
- False promise of leniency
- Implied false promises of leniency
- Threats of dire circumstances unless confession is obtained (You will never see your children again)

# False Confessions

---

# False Confessions

---

False confessions further erode the public trust in law enforcement and investigators. Investigators have a moral, as well as legal responsibility to ensure that all interviewees/suspects are provided due process.

# False Confessions

---

The Innocence Project claims that 1 out of 4 persons convicted and imprisoned, and later exonerated by DNA evidence confessed to the crime

# False Confessions

---

- Lack of training
- Misapplication of training
- Bias
- Prejudice
- Pressure
- Desperation
- Failing to review all of the case facts
- Going with “gut instinct” only

# False Confessions

---

- Having the mindset that “the objective of an interrogation is to obtain the confession.”
- Failing to recognize or change strategy with suggestible interviewees

# False Confessions

---

- Stubbornness: Failing to back out of and stop a confession seeking interview when the interviewee's responsibility of involvement becomes questionable.
- Most False Confessions occur after lengthy or repeated interrogations.
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, mental limitations, or limited education.
- Innocent persons believe they should be believed and do not ask for an attorney.

# Recording Interviews-MD

---

“(1) a law enforcement unit that regularly utilizes one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audiovisual recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, whenever possible, and

# Recording Interviews-MD

---

“(2) a law enforcement unit that does not regularly utilize one or more interrogation rooms capable of creating audiovisual recordings of custodial interrogations shall make reasonable efforts to create an audio recording of a custodial interrogation of a criminal suspect in connection with a case involving murder, rape, sexual offense in the first degree, or sexual offense in the second degree, whenever possible.”

# Recording Interviews-MD

---

§2-403. “An audio or video recording made by a law enforcement unit of a custodial interrogation of a criminal suspect is exempt from the Maryland Wiretapping and Electronic Surveillance Act.

There are no remedies for non-compliance

There are no articulated exceptions

Jurors are coming to expect recordings when questioning takes place in police station interview rooms. When no recordings are made, defense lawyers may be quick to argue that unfavorable inferences should be drawn.

# Recording Issues

---

- Camera angle
- Volume
- Clarity
- Capturing all parties present
- Identifying revealed evidence or documents

# Recorded Interview Video

---

<https://www.youtube.com/watch?v=ZOwvLdef2LE>

# Thank You! Questions?

---

JOHN E. GRIMES III, MD, CFE, CFI

[JGRIMES@STEVENSON.EDU](mailto:JGRIMES@STEVENSON.EDU)

410-591-2568

