

Moving Beyond the Conventional Wisdom

A Progressive Approach to Police Interview and Interrogation Training

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INTRODUCTION

In 1992, Professor John Baldwin's paper, *Videotaping Police Interviews with Suspects—An Evaluation*, detailed his analysis of 400 video and 200 audio recorded interviews with suspects collected from six police stations across England. Reading Baldwin's paper a decade and a half later, it is remarkable how current his observations and conclusions on the state of police interviewing and interrogation practices remain. One of Baldwin's conclusions suggested that police training programs should not be considered a "cure-all" (p. 29). Instead, he expressed the need to get back to the *basics* of interviewing and away from "sophisticated approaches to questioning" (p. 29) and unproven deception detection techniques.

Contrast this experience for a moment with what I witnessed at a seminar I attended not long ago in the United States. Along with the rest of the room, I was instructed in how to establish dominance over a suspect within the first 45 seconds of an interview. This technique included overemphasizing your importance ("I have been sent by the governor"), purposely calling the suspect by the wrong name, confusing them about which chair to sit in, and engaging in a game of continual one-upsmanship ("You have three children? Oh, I have four."). This is but one example of the type of training that continues to be provided to North American investigators. It is also, I would argue, emblematic of how entrenched what I will call *traditional* North American interview and interrogation techniques remain. Moreover, it is typical of the lack of progress I have witnessed with respect to law enforcement interview and interrogation training since being sworn in as a police officer in 1993.

While the efforts of Baldwin and others influenced a move to a national investigative interviewing model in the United Kingdom, the same can't be said for North American law enforcement. The reality is that in Canada and the United States, police interview and interrogation training remains dominated by a multi-million-dollar industry that focuses precisely on the "sophisticated" approaches Baldwin cautioned against. Despite repeated calls from inquiries and commissions into miscarriages of justice that police training recognize topical issues like tunnel vision (Cory, 2001; Kaufman, 1998; Snyder, Mcquillan, Murphy, & Joselon, 2007) in reality, little seems to have changed. The traditional North American approach to police training also appears to be largely one of style over substance. For instance, a senior officer called some months ago and asked me if I could recommend an interview and interrogation training course for his investigative team. After explaining the content and rationale behind the revised course I will be talking about in this presentation, I was politely asked to refer him to a commercial course that had "all the bells and whistles" or, as he put it, was more "sexy."

Not surprisingly, this apparent lack of progress has not gone unnoticed among those in the research community. For example, a study on the type and amount of training received by a sampling of Texas police officers during their careers determined it to be outdated and virtually void of any discussion of social science research findings (Colwell, Miller, Lyon, & Miller, 2006). More recently, prominent deception researcher and author, Aldert Vrij, expressed that he was "pessimistic about the quality of such training

programs” (2008, p. 184). Accordingly, there have been calls from the research community for the implementation of training programs that reflect scientific findings over the conventional wisdom (Blair & Kooi, 2004; Watkins & Turtle, 2003; Williamson, 2006).

Before going any further, I should point out that when I initially found myself in the position 5 years ago of instructing my fellow officers in interview and interrogation techniques, I was a firm believer in the curriculum that had been taught in the past. After all, I was a traditionally trained North American interviewer and interrogator. With both levels of the Reid Technique (introductory and advanced) and a healthy dose of statement analysis training under my belt (not to mention the books, manuals, and cassette tapes I had devoured over the years!) it is not surprising that I preached what I had been practicing. Over time however, and following a combination of personal experience, observations, and perhaps most importantly, discovering the wealth of research material available over and above my original diet of commercial manuals and books, it became apparent I was being faced with a significant choice. Did I continue to preach the conventional wisdom that involved the instruction and application of a behavioral analysis style of interviewing, an accusatory approach to interrogation, and the so-called “sophisticated” techniques to detect deception that drew the ire of Professor Baldwin all those years ago? Or conversely, did I recognize the need to be both progressive and responsible in terms of what was being instructed to my fellow police officers? I can now say I chose the latter path, and will endeavor to explain the reforms that have been implemented to the Edmonton Police Service (EPS) interview and interrogation training program.

THE CONVENTIONAL WISDOM

- *One of the reasons for conducting a Behavior Analysis Interview is to determine whether or not the subject is telling the truth. One of the more accurate indicators of truth or deception is non-verbal behavior.*
- *NEVER GIVE UP!!!! (Edmonton Police Service training materials, 2002)*

For decades, Edmonton Police Service (EPS) interview and interrogation training, in a similar fashion to other Canadian and American law enforcement agencies, focused on the instruction in and application of:

- A behavioral analysis style of interviewing whose purpose is to distinguish between a truthful and deceptive subject;
- A Reid-based interrogation model which is accusatory in nature;
- Sophisticated techniques of detecting deception (i. e., evaluation of verbal and non-verbal behavior, statement analysis)

In essence, EPS training could be best described as a strong derivative of the Reid Technique. For example, our week long “Interview and Interrogation” course (which has since been renamed to “Forensic Interviewing” to get the focus back on interviewing) involved in-depth instruction in all of these components. In addition, the final day saw each member take part in a scenario where they were required to put to use the skills and techniques taught throughout the week. Based on a scenario handout, members were tasked with first preparing and then conducting a behavioral analysis interview followed by an interrogation (a partner from the class acted as the “suspect”). Each of these interviews and interrogations was monitored by an instructor and feedback provided immediately thereafter on both the positive and negative points observed.

Prior to the instruction on interviewing and interrogation, day one began with two hours allotted to the evaluation of verbal and non-verbal behaviors as indicators of truth or deception. This instruction included the viewing of videotaped examples as well as demonstrations by the instructors as to what constituted, for instance, deceptive versus non-deceptive postures and statements. Considering the previous mentions of “sophisticated” approaches to deception detection, it is interesting to note that almost an hour’s worth of instruction was also allotted to Neuro Linguistic Programming (NLP) on the first day. In this case, NLP referred specifically to the monitoring of a subject’s eye movements. For example, if a suspect is right handed he/she will look up to the right to create an answer and up to the left to remember past (i. e., true) experiences (Helm, 2003). The well-intentioned purpose behind this training was to provide another means by which the interviewer could presumably detect deception.

Beyond the week-long course that was provided twice a year to classes of 18 members at a time, interview and interrogation instruction to recruits involved delivery of a compressed version of the week-long course. Due to the obvious time restrictions (typically one day of training), instruction on the behavioral analysis interview and

accusatory interrogation model was emphasized. In this respect, recruit classes were shown a videotaped behavioral analysis interview of a suspect, followed by the requisite interrogation and resulting confession. In effect, an ideal scenario was played out in front of the class. That is, the suspect in question was first properly diagnosed as deceptive during the behavioral analysis interview, interrogated, and then, as should be expected, confessed.

MOVING BEYOND THE CONVENTIONAL WISDOM I

In particular, sound, scientifically based training programmes are urgently needed to assist investigators acquire the necessary interviewing skills to function at the higher professional standards that will be required in the twenty-first century. (Williamson, 2006, p. 148)

The competition between police forces to devise courses in interview techniques at ever higher levels of sophistication is proving costly and counter-productive. (Baldwin, 1992, p. 29)

With the benefit of hindsight, it is evident that the original training program, as described above, had some rather obvious weaknesses. First of all, there existed an information overload effect. This was particularly evident during the practical scenarios (a homicide scenario no less!) held on the last day of the week-long course. Not surprisingly, it was common to observe the interviewer freeze up during the scenario as they valiantly tried to execute all of the intricacies taught during the week. Faced with the task of analyzing the verbal and non-verbal behavior of the suspect for truth or deception, processing the “suspect’s” response, and structuring the next question while having to make contemporaneous notes was asking far too much of a novice interviewer, let alone an experienced one. Another apparent weakness was the content of the course itself. With its heavy Reid influence and emphasis on sophisticated techniques of lie detection, much of the content was simply not supported by research. I distinctly remember—with an admitted sinking feeling at the time—first reading the chapter on non-verbal behavior from *Detecting Lies and Deceit* (Vrij, 2002). The impact of reading a single book chapter is one of the personal experiences I referred to earlier that proved influential in the gradual chipping away of my traditional outlook on interviewing and interrogation.

Considering the information overload effect that was being observed during the week-long course, the recruit interview and interrogation training format was equally, if not more, problematic. Showing police *recruits* a tape of a suspect’s interview, interrogation, and (surprise!) confession has since been replaced with getting back to the *basics* of interviewing. As a result, training now centers on “Street Level Interviewing” with the emphasis back where it should be—on police officers *gathering information*. Rather than continuing to instruct dubious and complex techniques, recruits are now trained in simple and effective questioning techniques. While certainly not *sexy*, haranguing recruits about the need and value of asking open-ended questions is both a requirement and responsibility. In effect, the intention is that recruits will hit the streets

with the understanding (at least at this stage of their career) that their primary function is to gather complete and accurate information in an objective manner from those they come in contact with.

While not necessarily new components per se, there are two key philosophies that are being encouraged from the recruit to the detective level. With respect to interviewing, the adoption of an *information gathering approach* (Frank, Yarbrough & Ekman, 2006; Williamson, 1993) is being advocated over the traditional model of behavioral analysis. Secondly, we now advocate that interrogations include a greater degree of communication over accusation and confrontation and, where applicable, a sense of open-mindedness over unwavering certainty of guilt.

Interviewing—Information over Behavior

I do not condone the exposing of hundreds of thousands of people to a BAI (Behavioral Analysis Interview) training programme when the benefits of the BAI protocol have not been established, and believe this to be poor practice. (Vrij, 2008, p. 199)

The aforementioned behavioral analysis approach—which has been cleverly likened to the creation of “human lie detectors” (Leo, 2004, p. 64)—has, for the most part, been set aside in favour of encouraging our members to understand and appreciate that information is power. Information gleaned from well-planned and well-executed interviews has the power to better identify both the guilty and the innocent. Instead of analyzing behaviour and diagnosing the suspect in question as truthful or deceptive, ideally it is *evidence* arising from the information obtained that forms the basis for informed decision making. Taking into account my own hard learned lessons during the investigative process, I would suggest there exist a disproportionate number of other police officers who, in utilizing a behavioral analysis approach, also made a significant number of diagnostic errors. These errors ultimately lead to innocents being unnecessarily interrogated and, quite frankly, lend credence to the contention that police interviews indeed “may well constitute one of the most important conversations of an interviewee’s life” (Haworth, 2006, p. 740).

Despite encouraging an investigative mindset that stresses the gathering of information or “the examining and adding to the existing evidence” (Williamson, 1993, p. 89) there remains the uphill battle of weaning members (especially the senior ones) off of the behavioral analysis style of interviewing. Let me be clear at this point that I am not about to contend a blanket move to an information-gathering approach will totally negate the possibility of an innocent being subjected to an interrogation. Nor do I wish to give the impression that evaluation of verbal and non-verbal behaviour should be totally disregarded. On the contrary, evaluating behaviour is an important tool of any competent interviewer and/or interrogator. What I take issue with are snap judgments that are made with respect to a suspect’s veracity, where somehow the investigator confidently

determines there is a definitive link between a specific behavior(s) and deception. Unfortunately, the misguided concept that the analysis of verbal and non-verbal behaviour can reliably detect deception still remains popular among both junior and senior investigators. As research has consistently shown however (DePaulo, Lindsay, Malone, Muhlenbruck, Charlton, & Cooper, 2003; Leo 2008; Vrij, 2008) that while there are some cues liars are *more likely* to exhibit, there is in fact no written, spoken, behavioral, or physiological cue that is unique to lying. Sadly, I believe ego plays a significant role in this problem as some investigators choose to continue to both buy into and sell others on their perceived expertise as “human lie detectors.” The end result, in my estimation, is that this practice does nothing more than perpetuate the passing on of ill-advised techniques from senior to junior investigators. This point, it has been suggested, also explains to some extent why interrogation techniques remain remarkably similar and constant (Ofshe, 2007).

Having taken this position, I should state that I am an advocate of the approach taken in the *Improving Interpersonal Evaluations* (IIE) interview (Frank et. al, 2006). The IIE discourages investigators from making “lie” judgments based on behavioral changes and instead considers such baseline changes as “hot spots” (p. 5). Recognition of these “hot spots” during an IIE interview therefore “encourages the investigator to keep gathering information” (p. 16) rather than stopping because they now believe they have the right person. Admittedly, any approach has limitations; however, the awareness and timely application of an information-gathering approach would surely lessen the negative consequences (e. g., false confessions, perception of bias), encourage rather than discourage communication, and allow an interviewer to better execute and concentrate on the task at hand. Furthermore, given that the perceived strength of evidence has been shown to be a major factor that influences a suspect to confess (Vrij as cited in Hartwig et al., 2005) then it follows that the more information gathered throughout the investigative process the better chance a confession will be obtained. Finally, the potential for validating an innocent suspect’s version of events through the gathering of information should also not be underestimated.

In sum, the move away from a diagnostic approach to interviewing really speaks to the need of getting back to the core skills of interviewing, or as Baldwin recommended, the basics. As such, what is now being stressed, throughout the week-long course in particular, are core skills which, while certainly not *sexy* or sophisticated, are within reach of all committed investigators. They include:

- The ability to plan and prepare for interviews;
- The ability to establish rapport;
- Effective listening;
- Effective questioning. (Schollum, 2005, p. 102)ⁱ

ⁱ For those interested in a current perspective on the behavioral analysis approach, a paper has recently been published to address some of the criticism (mostly coming from the legal and research community) which surrounds it. The paper, *The behavioural analysis interview: clarifying the practice, theory and understanding of its use and effectiveness* (Horvath, Blair & Buckley, 2008) provides some current insight into the “BAI” as it is known. While I am admittedly no longer a strong proponent of this approach, to their

Interrogation—Communication over Accusation

Police interrogation should be an investigative function not a prosecutorial one. It should therefore not be guilt presumptive, and its purpose should not be to incriminate the suspect in order to build a case against him. Instead, the goal of American police interrogation should always be to get to the truth – even if it proves the detectives’ theories wrong, demonstrates the suspects’ innocence, or elicits information that favours the defense over the prosecution – not to get a conviction. (Leo, 2008, p. 327)

Remember, in an interrogation you do 95% of the talking! (Edmonton Police Service training material, 2002)

Due to the Reid influence, our original training programs largely focused on and encouraged subjecting suspects to the psychological processes of isolation, confrontation, and minimization (Feld, 2006). Moreover, we were training our officers that, for example, denials by a suspect during an interrogation must be shut down at every turn. As a result, I found myself imploring to those I later trained, “the only time you want to let the suspect talk in an interrogation is when they are ready to confess.” This was called the 95% rule. In other words, in an interrogation—unlike an interview—the interrogator did 95% of the talking. The remaining 5% involved the odd denial (to be shut down immediately) and objection but predominately it would be comprised of the subject’s verbal confession.

Members were also emphatically told to “never give up” in an interrogation giving rise to an unspoken belief (which I certainly held for a number of years) that anything less than a confession was considered a failure. By encouraging what amounted to a confession-at-all-costs approach, we were in essence feeding the *confession culture* that, it has been suggested, is a contributing factor to past miscarriages of justice (Savage & Milne, 2007). The late police officer, forensic psychologist, and author Tom Williamson held similar feelings about the strict adherence to a confession-oriented style of interrogation. Williamson posited that such an approach not only promotes human rights abuses, it may also conceal what he eloquently called “low levels of interviewing skills” (Williamson, 2006, p. 147). If one agrees with these points, then it makes sense that police investigators be reminded that their responsibility in an interrogation is also—at times—that of an information-gatherer (Shuy, 1998). Moreover, it is noteworthy that confessions have been exposed to some degree at least, as “among the least reliable forms of evidence because they are based on the vagaries and fallibility of human testimony, perception and belief, and are products of a guilt-assumptive influence that relies on pressure, manipulation, deception and sometimes even coercion” (Leo, 2008, p. 267).

credit, the authors (among them, the president of John E. Reid and Associates, Inc., Joseph Buckley) conclude the paper by encouraging further research on the approach to win the trust of practitioners “who, on a daily basis, have to address the common but difficult task of lie detection” (p. 116).

Further to this point, I find Kenworthy Bilz both insightful and provocative when she argues that the days of a confession being the “golden ring” (Bilz, 2005, p. 367) for police and prosecutors may in fact be nearing an end due to advances in technologies (i. e., DNA) and “make confessions redundant, and even quaint” (p. 383). Perhaps professors Ray Bull and Becky Milne (2004) sum up this discussion best when they state that what is really required is a change of “ethos of interviewers from seeking a confession to a search for information – from a blinkered, closed minded, oppressive, and suggestive interviewing style to one involving open-mindedness, flexibility, and the obtaining of reliable evidence” (p. 186).

MOVING BEYOND THE CONVENTIONAL WISDOM II

Tunnel Vision, Investigator Bias, & False Confessions

In addition to encouraging progressive approaches to interviewing and interrogating, there is also a responsibility to include training components that go beyond the “how to” of interview and interrogation. That is, the psychology surrounding the entire police investigative process merits attention. In this respect, three training components have been added to the EPS training curriculum so investigators can gain insight and an appreciation of the realities of tunnel vision, investigator bias, and false confessions in the investigative process. ⁱⁱ

Tunnel Vision

Report of the Kaufman Commission on Proceedings Involving Guy Paul Morin

Recommendation #74 Education respecting tunnel vision:

One component of educational programming for police and Crown counsel should be the identification and avoidance of tunnel vision. In this context, tunnel vision means the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably colour the evaluation of information received and one’s conduct in response to that information.

(Kaufman, 1998)

The Inquiry Regarding Thomas Sophonow

I recommend that attendance annually at a lecture or a course on this subject be mandatory for all officers. The lecture or course should be updated annually and an officer should be required to attend before or during the first year that the officer works as a detective.

ⁱⁱ As of December 4, 2006 all EPS police recruit classes and those members taking part in EPS forensic interviewing training programs began receiving mandatory training on tunnel vision and investigator bias.

Courses or lectures that illustrate with examples and discuss this problem should be compulsory for police officers and they would undoubtedly be helpful for counsel and judges as well. (Cory, 2001)

The role of police tunnel vision as a contributory factor in miscarriages of justice whether in Canada, the United States, or the United Kingdom cannot be overstated. As noted above, recommendations arising out of the *Kaufman Commission on Proceedings Involving Guy Paul Morin* and *The Inquiry Regarding Thomas Sophonow* clearly defined the need for educational programs to address the problem of tunnel vision.

In terms of the EPS tunnel vision training component I developed, it begins by taking the class step-by-step through one of my own investigations. What is valuable about this particular exercise is it allows the class to take the same journey with tunnel vision (and related biases) that I did. It is also intended to humanize the training to some extent, in that it is a co-worker who is humbled rather than a faceless outsider. When the exercise comes to an end, the guilty party is ultimately identified as among the least likely of the original four suspects. Most importantly, the guilty party also provided a corroborated confession. There is the intended shock and surprise among the police officers in the class, which is exactly what I felt as an investigator at the time. I have found that this exercise provides for an excellent opening discussion and underscores how, regardless of seniority and experience, tunnel vision is indeed part of our “psychological makeup” (Findley & Scott, 2006, p. 307).

Following the conclusion of the initial exercise, one PowerPoint slide is dedicated to the significant contributory factors of miscarriages of justice in which tunnel vision assumes its rightful spot. The contributory factors include:

- “junk” forensic science;
- abuse or misuse of informants, including jailhouse snitches;
- manipulating witnesses to refute alibi evidence;
- misuse of offender profiling techniques;
- poor skills for interviewing witnesses and suspects;
- fabrication of evidence (perjury) or ‘gilding the lily’;
- misconduct by lawyers;
- the psychological vulnerability of many suspects
- unprofessional relationship between corrupt cops and bad lawyers;
- “Cop culture” where loss of objectivity and bad judgment manifest themselves in either ‘*tunnel vision*’ or what some have called ‘noble cause corruption,’ which is simply an attempt to control criminal activity by criminal or unconstitutional methods. (Williamson, 2006)

What follows on the next slide are pictures of Thomas Sophonow, David Milgaard, and Guy Paul Morin—all subjects of commission of inquiries in Canada over the last two decades. Members are then invited to put a name to each face. Interestingly, I have found that rarely, if ever, are members able to identify those on the screen before

them. Training material then shifts focus to a brief analysis of the Guy Paul Morin case with emphasis on the recommendations arising out of the 1400 plus page Kaufman Commission report. A slide related to the Sophonow inquiry is also provided where Judge Cory offers his own conclusions regarding the “insidious” (Cory, 2001, p. 37) role of tunnel vision during the Sophonow investigation.

Since the fall of 2007, I have included a slide and brief talk about Jeffrey Deskovic’s wrongful conviction. Once again, tunnel vision (police and prosecutorial) was identified as the main factor that resulted in Deskovic languishing in prison from the age of 17 until his exoneration in November of 2006 at the age of 33 years (Snyder et al., 2007). In September 2007, I was fortunate to be present for Deskovic’s keynote speech at the excellent “*Conference on Interrogations and Confessions—A Conference Exploring Current Research, Practice and Policy*” held in El Paso, Texas. As a result, I was able to personally relate the impact of his brave, eloquent, and moving account of his false confession and subsequent wrongful conviction. This is but one example of how police training can and should seek to incorporate current events and research to have the desired impact and effect. An excellent example of this occurred when the organizers of the 2005 *Vancouver Police Department Homicide Investigator’s Conference* invited Thomas Sophonow to speak to a room full of police and prosecutors about his own life-altering experience. As Vancouver Homicide Detective and conference organizer Rob Faoro said in an interview after the fact, “He’s real. He’s not somebody I read about in the paper. If we can see the guy in person, if we can live it and feel it, maybe we can think twice the next time (Sher, 2006, p. 3).

One final note on this training component bears mention, and it is something that is relayed to each training class. While history shows that tunnel vision is indeed a primary factor in miscarriages of justice, the cases that come to the attention of the public tend to be of a higher profile. In other words, the cases involve the most serious of crimes like murder and sexual assault. Moreover, the crime and subsequent conviction usually result in a lengthy jail sentence for the accused that in turn results in heightened media attention once the miscarriage of justice begins to be unearthed. What tends to be overlooked is that tunnel vision does not selectively target only the high level investigations. That is, just as tunnel vision can be contributory factor in a high profile wrongful conviction, so too can it play its part in the “run-of-the-mill” investigation. In sum, whether it is a new recruit investigating a \$500.00 theft from employer or a senior detective heading up a homicide investigation, awareness of tunnel vision and its associated dangers is critical.

Investigator Bias

I should admit at the outset that the investigator bias has been a personal interest of mine such that I have done some informal (and certainly less than empirical!) studies with classes of police officers on the subject (Tedeschini, 2007). I am left, based on my own experiences, observations, and a review of the available research, with the opinion that it is indeed a pervasive but overlooked problem among police officers at all levels of

seniority. I can attest to this problem because I have had the unique opportunity to regularly observe other investigators at work in the interview room, be it live or via recordings. More importantly, I was a classic offender myself. Confident in my lie detection abilities—after all I had taken lots of courses—at times the interview was simply window dressing for the interrogation to follow. I can distinctly recall some investigations in the early stages of my career where my focus was solely on the end product: a confession. The fact that I entered the interview with a classic case of confirmation bias is only clear now. If there is a silver lining to these hard lessons (it is humbling to find out you have interrogated an innocent), it is that they now act as excellent training tools.

To begin the investigator bias training component, members are advised that investigator bias is defined as “the tendency to perceive interview suspects as guilty” (Meissner & Kassin, 2004, p. 89). While tunnel vision and investigator bias share some similarities in terms of the psychology behind them, I feel it is important to make the distinction to our members that the investigator bias effect is primarily about what happens *inside* the interview/interrogation room (although we still explore and discuss bias as it relates to the overall criminal investigative process). A demonstration with a class member is then conducted to show how the three-step chain of events involved in behavioral confirmation (Kassin, Goldstein, & Savitsky, 2003) applies to a police interview dynamic. More to the point, members are shown how the three steps could potentially play out as follows:

1. *Perceiver (investigator) forms a belief about the subject that they are guilty.*
Members are advised that this belief may be based on the police report(s), other (negative) opinions offered by investigators, organizational pressure to conform to a specific theory, etc;
2. *Perceiver (investigator) unwittingly behaves toward the subject in a manner that conforms to the belief.*
The investigator, by way of their verbal and non-verbal behaviour for example, leaves the subject with little doubt that their veracity is being called into question. Differences in voice tone, a raised eye brow, and the use of specific statements inferring guilt are provided as examples at this stage.
3. *The subject responds in turn—often behaving in ways that support the belief.*
Members are told that due to the subject’s now-heightened awareness that the investigator wrongly assumes they are guilty, their behaviour will become more nervous and therefore misdiagnosed as deceitful in nature. Additionally, the subject may now ‘lawyer-up’ and as such be seen even more as the guilty party (i. e., the investigator works off a “rule of thumb” that perceives only guilty suspects as those who invoke their right to counsel).

Following the demonstration on behavioral confirmation, two research studies play an important part in getting the message across about how bias can influence the criminal investigative process. The first is the fascinating paper *Motivational Sources of*

Confirmation Bias in Criminal Investigations: The Need for Cognitive Closure (Ask & Granhag, 2005). Some key points of the paper, which are of obvious value to any investigator, are included in a handout and discussed with the class (some are also incorporated into the exam held at the end of the week).

These key points include:

- *Criminal investigation is a theory-driven activity. Investigators are guided in their search for and evaluation of evidence by their preliminary theories or hypotheses regarding how and by whom a crime was committed.*
- *Such working hypotheses are not always based on solid facts surrounding a case, but sometimes on the expectations and preconceptions of the investigators.*
- *An investigator's motivation to arrive at a definite conclusion regarding a case (i. e., need for cognitive closure) is an important contributing factor in this regard.*
- *There are three factors in the police environment that foster a tendency of confirmatory investigation strategies. They are: time pressures, a police culture that is characterized by norms that promote decisiveness, and that an investigator's prior commitment means they are then less likely to admit to having made a mistake. (p. 47)*

The second paper that proves very useful and powerful during this component is *Why Experts Make Errors* (Dror & Charlton, 2006). The paper provides a rather compelling case for the insidious nature of bias in forensic identification contexts. The study involved six fingerprint experts who had examined and either identified or excluded sets of prints. Unbeknownst to the fingerprint experts, these same prints were then presented a second time. On the second presentation of these same prints, "biasing contextual information" (p. 600) was included. Examples of this are statements such as "suspect confessed to the crime" and "suspect was in police custody at the time of the crime" (p. 608). The results of the study revealed that fully *two-thirds* of the experts changed their decisions. As Dror and Charlton concluded, "fingerprint and other forensic experts are not immune to such psychological and cognitive factors" (p. 612).

To conclude this component, some suggested solutions and management practices to consider, as presented in the comprehensive and insightful *The Multiple Dimensions of Tunnel Vision in Criminal Cases* (Findley & Scott, 2006), are highlighted. Portions of this paper are also included in a class handout during the week-long course.

False Confessions

Originally, introduction to the false confession training component began with an overview of Kassin and Kiechel's famous Alt Key study (1996). Given the audience, it is not surprising that the reaction to my explanation of the study has been somewhat less than receptive over the years. In fairness, I can attest to similar feelings in the beginning because it is difficult, especially from a practitioner's perspective, to not question the link between a low-stakes laboratory experiment and that of an actual high-stakes police interrogation.

More recently, I have started this component off by showing the class a short clip of the opening minutes of a forensic polygraph procedure I conducted (for privacy reasons I will be very general on the details). The suspect in question was a mid-twenties male who is first seen and heard on the recording telling me he can be called by any of three first names but he is “trying to start a thing where people call me Dave (not his real name).” What follows is the suspect then spreading a coffee-table book sized Canadian flag across his thighs. A short time later he pulls out a coin from his front pant pocket, kisses it and then puts it down on the arm of the polygraph chair while proudly exclaiming it was his lucky coin. I then let the class know that upon first meeting him in the lobby of police headquarters, he was wearing the flag tied to a baseball cap and holding an older style instamatic camera. The camera, he told me, was to take a picture of “the machine” that was going to prove his innocence. Just after the coin-kissing sequence, I stop the recording and ask the class one simple question: “You are in my shoes. What do you do at this point and why?”

Generally speaking, most of the class recommends continuing on with the procedure and try to determine what the cause of this aberrant behavior is. There is also typically a small number of officers who believe the subject is malingering. As it turns out, I did continue on with the procedure and immediately began developing the subject’s medical and psychological history. I soon learned he was off his medication (a strong one) and that he had previously been admitted to a mental health facility. Given this information I stopped the procedure and, with his consent, arranged for him to be assessed by our joint Police and Crisis Team (PACT). The point that I try to make through this real-life example is that this young man falls within the type of a high risk category for a false confession that research has suggested. Taking into consideration his current and past mental health issues, a high pressure police environment and—depending on the investigator—a potent confession culture the recipe *could* be ripe for false confession. In this particular case, the risks (including those to my professional ethics) clearly outweighed the need to complete the procedure and have the afore noted “cognitive closure.”

Subsequent PowerPoint slides speak to the important and committed work on false confession by the likes of Richard Leo, Steve Drizin, Gisli Gudjonsson, and Saul Kassin. The significance of confessions as having more impact on jurors than any other form of evidence—even when the confession is believed to be coerced—is presented and followed by the typology of false confessions. At this juncture, members are provided with examples of what constitutes voluntary false, coerced compliant, and coerced internalized false confessions as well as reasons someone might provide each type. For example, members are told that a voluntary false confession could include that of a mentally deranged male voluntarily attending the front counter at a divisional station where he admits to committing a recent high profile homicide. Through some standard police work it is soon determined the male in question could not have committed the crime because he was in custody at a mental health facility at the time it occurred. A slide is then dedicated to ways by which an investigator can attempt to distinguish between true and false confessions.

What follows in the training component is an overview of the 1989 Central Park Jogger rape, which is arguably the most high profile of all false confession cases. Discussion on this case acts as a natural introduction into suspect vulnerabilities given that the five suspects in question were between 14 and 16 years of age at the time of their arrest and interrogations. Among the vulnerabilities highlighted in addition to age are mental capacity and physical and psychological state at the time of interrogation.

It has been my experience since first incorporating the false confession component in 2003 (which I should admit was originally a much less objective and well informed product than it is now) that it is the hardest of all the new components to “sell” to police officers. I suspect it is because each individual member struggles, like I did, to come to terms with why someone would confess to a crime they didn’t do. As a result, I was not overly shocked when, during our most recent course, I overheard one detective say to another that, regardless of what had been presented, they still found it hard to fathom a person would confess to something they did not do.

While I advocate the inclusion of mandatory training on tunnel vision, investigator bias, and false confessions (currently, due to time issues the false confession component is limited to the week-long course), there are two other components that have been added to the week-long training course and can also be considered as progressive in nature.

The Defense Perspective

When reviewing the course evaluations over the last 3 years or so, time and again our defense perspective presentation has received the most positive feedback. I am indebted to Alex Pringle, Q.C., for regularly volunteering his time to present on our training courses. Pringle has been practicing as a defense lawyer for over 30 years and for the past 25 has also taught various courses at the Faculty of Law at the University of Alberta. More recently, Pringle represented the original defense counsel at the Commission of Inquiry into the Wrongful Conviction of David Milgaard. Pringle’s experience with the inquiry is somewhat fortuitous as, in keeping with the general theme of the course, it allows him to present what amounts to an insider’s account of a miscarriage of justice. His captivating account to the class of the journey to Milgaard’s wrongful conviction sends the desired powerful message about the dangers of tunnel vision as they relate to criminal investigations.

During the remainder of his presentation, Pringle also offers important insight into statement admissibility, court testimony, and other related legal issues from an experienced defense lawyer’s perspective. As I previously stated, this has always been a popular component of the course which is unusual in some respects as there tends to be an unfortunate undercurrent among some of an us-versus-them relationship between police and defense lawyers. Thanks to Pringle’s experience and natural charm, I am of

the belief that the incorporation of this defense perspective component has, to some degree, helped bridge this gap.

Eyewitness Evidence Considerations

For the first time ever, the most recent detectives' course saw a psychologist invited in as a guest lecturer to present on considerations surrounding eyewitness evidence. Given that eyewitness misidentification has been shown to be among the most prevalent factors in wrongful convictions (Wells, Memon, & Penrod, 2006), it is only prudent that this issue be included in a police training program. Largely working from key points of *Eyewitness Evidence: Improving Its Probative Value* (Wells et al.), issues such as cross-race identification, stress, weapon focus, and photographic line-ups are raised and discussed within the class.

Also included was a *hidden scenario* in an effort to try to highlight some of the underlying issues surrounding eyewitness identification. The day prior to the training lecture, I selected a male subject from the hotel lobby due to his rather distinct appearance (he was carrying several cases and was dressed in layered clothing). After agreeing to participate in the scenario, and unbeknownst to the class, our accomplice proceeded to enter the meeting room, walk to the front, and in a confused manner ask if he was in the Buffalo meeting room. On cue, I then stepped forward and escorted him out of the room while telling him in earshot of the class he was actually in the wrong location but that I would be glad to assist him. The next day, the psychologist brought up the *stranger* who had walked into the wrong room the day prior and asked for the class to provide a description. While far from empirical, it was still turned into a useful and interesting exercise, particularly when examining some of the identifying factors that were either included or missed altogether by the class.

To conclude, I would like to draw attention to two additional reforms that, like the training components I have outlined, are intended to be progressive in nature. These include policy amendments regarding the polygraph, and professionalizing the report-writing process.

Polygraph Policy

As a practicing polygraph examiner for the last 5½ years, I am keenly aware that polygraph has been and will remain a lightning rod for criticism and controversy. In reality, some of the criticism leveled at polygraph is clearly warranted and in this respect, we are often our own worst enemy. For example, I nearly fell out of my seat at a polygraph seminar this year when a private American examiner spoke up and advised the invited speaker (a pro-polygraph lawyer) that he had run in excess of 20,000 polygraphs (do the math...) during his career and he could say unequivocally that he "never failed an innocent person." Following this comment the examiner was quickly admonished by another in the audience who, like others in attendance, realized this statement was an

absurdity. While it is not my intention in this presentation to discuss what I consider legitimate or illegitimate criticism leveled at polygraph, I do believe it is worth drawing attention to a specific reform I have implemented that underscores the need for investigators to recognize both the utility and limitations of polygraph as an investigative aide and/or screening tool.

I should also mention that from the perspective of a Canadian polygraph examiner, I find it significant that recommendations with respect to its use were included in both the 1998 *Kaufman Commission on the Proceedings involving Guy Paul Morin* and *The Lamer Commission of Inquiry Pertaining to the Cases of: Ronald Dalton, Gregory Parson & Randy Druken* in 2006. The recommendations read as follows:

Kaufman Commission Recommendation 113: Polygraph Tests

a) Police officers should be trained as to the appropriate use of, and limitations upon, polygraph results. Undue reliance on polygraph results can misdirect an investigation. The polygraph is merely another investigative tool. Accordingly, it is no substitute for a full and complete investigation. Officers should be cautious about making decisions about the direction of a case exclusively based upon polygraph results.

b) The documentation respecting polygraph interviews, including any information provided to the examiner by the investigators or by the person examined, should be preserved until after the completion of any relevant court proceedings or ongoing investigations.

The Lamer Inquiry Report:

The following should be reflected in the policies, procedures and training programs of the RNC (Royal Newfoundland Constabulary) with respect to polygraph testing (p. 215):

a) The polygraph is merely another investigative tool and is no substitute for a full and complete investigation.

b) Caution must be exercised in placing reliance on polygraph results so they do not misdirect an investigation.

c) Polygraph testing must always be videotaped.

d) Polygraph testing must be not be conducted after an interview with an investigator.

e) An investigator, who is also trained as a polygraph examiner, must not fulfill both roles in the same investigation.

Taking into account the above recommendations, but also because I believe there rests a responsibility among examiners to educate fellow investigators in the proper application of polygraph, the following amendment has now been added to the EPS policy and procedure manual on the use of “The Polygraph” (N.B. This amendment is also included at the bottom of every forensic polygraph results report that is forwarded to the investigator in charge of the file):

Please note as per Policy and Procedure – “The Polygraph”

The polygraph should be considered an **investigative aide** and as such can assist in concluding and/or focusing investigations. However, caution should be exercised when making decisions about the direction of a case **exclusively** based upon polygraph results (as per recommendation #113 of the Kaufman Commission on the Proceedings involving Guy Paul Morin). Further, it shall not be considered as a substitute for a thorough investigation.

Report Writing

An unsettling by-product of the instruction and application of *sophisticated* techniques to detect deception is the tendency for investigators to include in their police reports unfounded and/or unsupported (by research) opinions on a subject’s veracity. Undoubtedly, what was instructed in the past and the influence of a potent police culture continues to manifest itself in written form. A few notable examples culled from police reports that have come across my desk speak to this problem:

“I observed her to be nervous throughout the interview.”

“I believed she was guilty.”

“Her emotional timing is not consistent and appears to be rehearsed.”

“It was obvious (name) was not being truthful.”

The following points are now encouraged in the training curriculum in an effort to educate investigators about the pitfalls of providing opinions over facts:

- Do not include personal opinions on whether a person is “truthful” or “deceptive” in reports, notebooks etc.!
- Your report should reflect the facts of the case.
- When someone reads your report they should not get the impression you have taken sides or have made up your mind.
- There is a difference when you write:

SMITH appeared to be very nervous and offered contradictory information during the interview. I believe he answered several questions in a deceptive manner....

It should/could be written as:

SMITH was interviewed by the writer and provided a version of events that was contradictory to what the evidence to date shows. The contradictions were as follows.....

CONCLUSION

In closing, I wish to state that I fully recognize that reforming the traditional North American interview and interrogation model will take a significant amount of time, effort, and, as previously noted, require a “change of ethos” on the part of investigators. Admittedly too, what may appear to be a reform to one person or group “may appear to be ‘soft on crime’ to another” (Skolnick, 2008, p. 36). Unfortunately the practice persists by some investigators making lofty claims of a “100% confession rate” and who continue to hold the belief that dominance and confrontation are of more value between the four walls of the police interview room than are rapport and information gathering. By no means however do I believe the future holds no promise. For example, it is reassuring to see the recent addition of a commercial training product like the Wicklander-Zulawski & Associates non-confrontational approach to interviewing and interrogation. Perhaps the message that the continued application of the traditional model does have some rather severe limitations in the 21st century criminal justice system is getting out. I should also state that I continue to be impressed and enthused about the valuable work out of the research community. The research findings and commentary from this community have been and continue to be instrumental in broadening my rather narrow prior outlook on interviewing and interrogating. By recognizing that police training needs to be progressive and responsible in what product is ultimately delivered to investigators, police will indeed be fulfilling a significant part of their role in the criminal justice system. Conversely, by continuing to adhere to the conventional wisdom, I would argue that we are indeed destined to repeat the same mistakes from the past. As the Right Honourable Antonio Lamer stated, “a society that treats its administration of criminal justice as a low priority eventually pays the price” (Lamer, 2006, p. 133).

Disclaimer

The views and opinions expressed reflect the personal opinion of the author and do not necessarily reflect opinions of the author’s employer.

Note

Portions of this paper have been used from the following:

Tedeschini, J. C. (2007). *Presumed guilty—Investigator bias in the police interview room*. . Edmonton, AB, Canada: 2007 Edmonton Police Service Essay for Excellence Competition

If you would like an electronic copy of this essay please contact the writer via e-mail - see title page for e-mail address

Tedeschini, J. C. (2008). But we’ve always done it this way! A progressive approach to police interview and interrogation training. *The Wisconsin Defender*, Winter/Spring 2008.
<http://www.wisspd.org/html/publications/WinSpr08/Always.pdf>

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