

The Next Stage in the Evolution of Interrogations: The PEACE Model

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In this article, we review the evolution of police interrogation practices. In particular, we echo others that interrogations have historically been guided by a “get tough” philosophy, where abusive and manipulative practices have been viewed as a necessity to seek the truth. We illustrate how such a philosophy runs counter to the presumption of innocence, and review the scientific research that has demonstrated that accusatorial practices puts innocence at risk. We also discuss how manipulative practices are giving way slowly to information-gathering methods — those that are ethical and capable of eliciting probative evidence — and how arguments designed to undermine this new approach are baseless. We conclude by arguing that, although interrogation reform is building momentum in Canada through practitioner-academic partnerships and progressive court rulings, members of academia and the legal community need to do more to eradicate outdated interrogation practices that threaten due process.

Dans cet article, les auteurs examinent l'évolution des pratiques d'interrogatoire de police. Plus précisément, ils reprennent les propos d'autres personnes voulant que les interrogatoires aient toujours été guidés par une philosophie de « fermeté », où les pratiques abusives et manipulatrices ont été considérées comme une nécessité à la recherche de la vérité. Les auteurs illustrent comment une telle philosophie est contraire à la présomption d'innocence, et examinent la recherche scientifique qui a démontré que les pratiques accusatrices mettent l'innocence en péril. Ils discutent également de la manière dont les pratiques de manipulation cèdent lentement la place aux méthodes de cueillette d'information, celles qui sont d'ordre éthique et capables d'obtenir des preuves probantes, et la manière dont les arguments visant à saper cette nouvelle approche sont sans fondement. Ils concluent en faisant valoir que, bien que la réforme des interrogatoires prenne un nouvel essor au Canada grâce à des partenariats entre

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les praticiens et les universitaires, et aux décisions progressives des tribunaux, les membres du milieu universitaire et la communauté juridique doivent en faire plus pour éliminer les pratiques d'interrogatoire désuètes qui menacent l'application régulière de la loi.

Interrogations in North America have, for the most part, evolved from those that were dominated by physically abusive “third degree” practices to those dominated by psychologically manipulative ones.¹ Although the contemporary use of psychological tactics is a seemingly positive advancement over heavy-handed practices, the level of risk for miscarriages of justice has not diminished. Such practices still embody a “get tough” philosophy that runs counter to both the presumption of innocence principle and scientific data on how to elicit the accurate and reliable information from detainees. In this article, we first provide a brief historical account of interrogation practices in North America. The scientific research demonstrating that the accusatorial practices currently in use puts innocence at risk is then reviewed. We also outline how these “get tough” practices are slowly giving way to an information-gathering approach, known as PEACE, that is a more ethical and effective way of interviewing detainees.² We also outline some of the arguments that attempt to undermine the appeal of PEACE and illustrate how those knowledge destruction techniques are baseless. We conclude with a discussion of how interrogation reform is building momentum in Canada and outline what members of academia and the legal community can do to eradicate interrogation practices that threaten due process.

1. THE “GET TOUGH” STAGES: PHYSICAL ABUSE AND PSYCHOLOGICAL MANIPULATION

A review of the available literature on American interrogation practices, especially the Wickersham Commission Report, suggests that up until 1931 (and at least far back as the middle of the 19th century) it was normal for police officers to use “third degree” tactics when interrogating detainees. Third degree tactics included different types of physical force and abuse, isolation, and deprivation of basic necessities such as food and water.³ It is thought that police interrogators got tough on criminals because they perceived themselves to be at war with crime and that the third degree was their most effective weapon in securing confessions. Police officers were, as they are today, keenly aware that a confession is a very powerful piece of probative evidence. It also appears that the police organizations rationalized the use of such tactics by assuming that they only interrogated guilty individuals. Third degree tactics were seen as a necessary evil to seeking the truth because it would make otherwise uncooperative criminals talk, and it was much more expedient to get the guilty person to confess than having to prove guilt through the

¹ Richard A. Leo, *Police Interrogation and American Justice* (Harvard: Harvard University Press, 2008).

² Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* (Chichester: Wiley, 2003).

³ Leo, *supra* note 1.

painstaking collection of evidence. Interestingly, such a bellicose approach was seemingly unchallenged by the judiciary at that time.⁴

The release of “The Report on Lawlessness in Law Enforcement” in 1931 is cited as the catalyst for the demise of third degree tactics. Police organizations came to realize that physical and psychological torture produced unreliable information, elicited confessions that were inadmissible in court, lowered public confidence in policing, and impeded the desire to professionalize policing. In addition, police organizations eventually realized and grew concerned that innocent people were sometimes exposed to abusive practices.⁵

Physically abusive practices have been replaced gradually by softer psychological tactics — for all intents and purposes, the use of physical abuse as an interrogation approach was obsolete by the mid 1960s.⁶ The modern day approach to interrogations is based largely on the experiences of Chicago polygraphist John Reid. The Reid Technique (henceforth referred to as Reid) was first described in-depth in 1962 in the book *Criminal Interrogation and Confessions*. The book is now in its 5th edition, and the method has subsequently been taught to hundreds of thousands of investigators around the world.⁷ Reid consists primarily of two main phases: the behavioral analysis interview (BAI) and the nine-step interrogation.⁸

The BAI interview is a 15-item non-accusatory interview that is meant to assess guilt. The underlying assumption is that guilty individuals will provide answers to the questions that are quite distinct from the answers provided by innocent individuals. More specifically, it is assumed that guilty people will be more evasive and provide ambiguous or noncommittal answers.⁹ Consider the following example of one of the BAI questions (“purpose”): “Jim, what is your understanding of the purpose for this interview with me here today?” This question is presumed to result in one of two responses.¹⁰ The first response might be “I suppose you want to talk to me about what happened at the warehouse”. The second response might be “I’m sure you want to find out what I know about the arson at work”. Which of these

⁴ Leo, *supra* note 1.

⁵ Leo, *supra* note 1.

⁶ Leo, *supra* note 1.

⁷ Joseph Buckley, “The Reid Technique of Interviewing and Interrogation” in T. Williamson, ed., *Investigative Interviewing: Rights, Research, Regulation* (Cullompton: Willan, 2006) 190. The current count of the number of people trained on this method around the world on www.reid.com is 500,000. We focus on this specific accusatorial method in this article as it appears to be the mostly widely taught and used method in Canada.

⁸ Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, *Criminal Interrogation and Confessions* (Burlington, MA: Jones and Bartlett Publishers, 2013). See Saul Kassin et al. “Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs” (2007) 31.4 *Law Human Behav* 381.

⁹ Jaume Masip, Alberto Barba, and Carmen Herrero, “Behaviour Analysis Interview and Common Sense: A Study with Novice and Experienced Officers” (2012) 19:1 *Psychiat, Psychol Law* 21. Aldert Vrij, *Detecting Lies and Deceit: Pitfalls and Opportunities* (Chichester: Wiley, 2008).

¹⁰ Inbau, *supra* note 8.

responses indicates guilt? According to Inbau and colleagues, an innocent person will provide an answer that is similar to the second example because it is more “direct and contains realistic language”.

The BAI is a critical step for an interrogator who follows the Reid training because it places the onus on the interrogator to interpret and assess human behaviour accurately. Given the fact that there is no objective guidance on how to score the pattern of answers to the BAI questions, officers are left to their own devices to sort out who is innocent and, more crucially, who is guilty. Only those individuals who are judged guilty are subsequently subjected to an accusatory interrogation. To be clear, interrogators following Reid are taught that they never interrogate innocent people.

The accusatory interrogation is comprised of nine steps that aim to elicit a confession from an individual through a pressured-filled interview.¹¹ The “get tough” philosophy of this interrogation process is summed up, in part, by the following quote from their training book: “investigators must deal with criminal suspects on a somewhat lower moral plane than that upon which ethical law abiding citizens are expected to conduct their everyday affairs”.¹² Reid-based interrogations operate on a “lower moral plane” through theme development (implicit promises of leniency), prevention of denials, using objections to reinforce themes, the use of an alternative question technique, and the use of (implicit) false evidence ploys. For those who are not fully informed about Reid, the overview presented below will provide a sense of its psychologically coercive nature.

Step One of Reid involves a direct, positive confrontation with a detainee. Interrogators are taught to state their unwavering belief in the detainee’s guilt, and to follow the confrontation with a pause so that the detainee’s non-verbal and verbal responses can be scrutinized.¹³ Interrogators are taught to examine an “evidence folder” (which can contain blank pages) to communicate to the detainee that the interrogator has proof of guilt, and to use a transition statement (also known as a theme) that provides the guilty person with a reason for why the interrogation is taking place given that their guilt is assured.¹⁴

In Step Two, interrogators are encouraged to develop a theme that provides a reason to the guilty party as to why they committed the crime.¹⁵ According to Inbau and colleagues, interrogators should distinguish between emotional offenders (i.e., those who express guilt or shame about their crime) and unemotional offenders (i.e., those who do not express feelings of guilt or shame).¹⁶ For emotional offenders, the interrogators are taught to minimize the crime by suggesting moral excuses or justifications. Interrogators are also taught that the chosen theme should

¹¹ Saul M. Kassin, “The Psychology of Confessions” (2008) 4 *Annu Rev Law Soc Sci* 193.

¹² Inbau, *supra* note 8.

¹³ An example of an unwavering statement of belief in their guilt is “I have no doubt in my mind that you murdered your wife”.

¹⁴ The interrogator, for example, might state, “The only thing we have left to figure out is *why* you started the fire.”

¹⁵ Inbau, *supra* note 8.

¹⁶ Inbau, *supra* note 8.

reinforce the individual's rationalizations for committing the crime to make it easier for a guilty person to overcome any hesitations associated with admitting their criminal involvement. For unemotional offenders, interrogators are taught to reason with detainees and persuade them to confess. If a theme continues to be rejected, different themes should be presented in an effort to find one that matches the detainee's identity.¹⁷

Step Three involves handling denials. Interrogators are taught that confessions occur rarely after detainees are confronted directly about their guilt and that they should expect guilty individuals to deny the offense. Allowing initial denials of criminal involvement presumably reduces the likelihood of obtaining a confession at a later stage in the interrogation. The primary goal of this third step is for the interrogator to prevent detainees from denying involvement in the crime by, for example, reconfirming one's belief in their guilt and reiterating the proposed theme after preventing denials from being voiced.¹⁸

The purpose of Step Four is to overcome objections — excuses given by detainees as to why they could not, or would not, have committed the crime. Objections can be emotional (“I’d be too nervous to do something like that”), factual (“I don’t even own a gun”), or moral (“I wasn’t brought up that way”). Because it is assumed that only guilty detainees verbalize objections, a movement from denials to objections is assumed to be a good indication of deception. Unlike denials, objections should be permitted because they can be used to further the development of a theme — namely, by providing the interrogator with an opportunity to turn the objection around to match the proposed theme.

Step Five involves the procurement and retention of the detainee's attention. After being discouraged from expressing denials and having their objections turned around to support the interrogator's proposed theme, guilty individuals (not the innocent) may psychologically withdraw and ignore the interrogator. At this point, interrogators are taught to use techniques that maintain the detainee's attention — for example, by inching their chair forward into the detainee's physical space or increasing direct eye contact.

The purpose of Step Six is to recognize and overcome passive moods. After the detainee's attention is procured successfully, the detainee is presumed to be more willing to listen but may physically appear defeated or start crying. At this stage, interrogators are taught to concentrate on a specific theme, display understanding and sympathy, and urge the individual to tell the truth. Interrogators are taught to use such techniques until the detainee shows signs of mentally considering whether to tell the truth (e.g., with nonverbal agreement such as nodding).

The presentation of alternative questions in Step Seven represents the culmination of theme development. An alternative question presents the guilty party with a choice between two explanations for the commission of the crime (e.g., “Did you plan the robbery or was it an accident?”). One of the choices is face-saving and one more reprehensible, but both involve an admission of guilt. Alternative questions

¹⁷ A number of examples of emotional and unemotional themes are provided in their manual, Inbau, *supra* note 8.

¹⁸ Examples of preventing denials might include putting a hand in front of the face of the suspect or verbally interrupting the denials.

allow an individual to save face while providing the interrogator with an incriminating admission. Interrogators are also taught to offer reinforcing statements if the person accepts one of the alternatives. For instance, the interrogator might state, "Good, that's what I thought."

Step Eight involves having the detainee verbalize the details of the offense. After a detainee makes an admission of guilt, the interrogator is encouraged to show signs of sharing the detainee's relief and to draw the individual into a conversation to fully develop the confession. When general acknowledgment of guilt is achieved, the interrogator is encouraged to return to the beginning of the crime and obtain information that can be corroborated.

Step Nine involves converting the oral confession into a written confession. This final step is thought to be important because it is assumed that a written confession reduces the possibility that an individual will retract the confession and, if he or she does, it helps to ensure the confession will stand up in court. Inbau and colleagues recommend converting the oral confession into a written and signed confession as soon as possible; it may be prepared in the form of questions and answers or as a narrative. When the written confession is complete, it should be read aloud, corrected for any errors, and then signed by the detainee in the presence of a witness.

Despite the movement away from the use direct physical force to psychological manipulation, little has changed with regards to the protecting of innocent detainees from coercive interrogation. There are two interrelated concerns that have been highlighted with Reid: the use of unreliable behaviourally-based deception detection methods and the use of tactics that are known to elicit confessions from innocent people.

(a) Judging Guilt With The Flip of a Coin

After the release of the Wickersham Commission Report, police organizations acknowledged more readily that they sometimes misclassified people as guilty and subjected innocent individuals to harsh interrogations. Like their predecessors during the "third degree" era, modern day police officers attempt to differentiate between guilty and innocent individuals using various behavioural cues. This raises an important question: Have police officers become better at distinguishing guilty and innocent people? The answer is an emphatic no. Empirical research over the past 50 years has essentially put the final nail in police officers' deception detection coffin.¹⁹ A meta-analysis of deception judgments has shown that naïve individuals correctly classified 47% of lies as deceptive and 61% of truths as non-deceptive — the average accuracy of judgments was 54%.²⁰ Research that has tested police officers' abilities to detect deception has shown that their accuracy levels also tend to hover around chance levels, and that this accuracy level does not increase when realistic scenarios are utilized.²¹ In other words, the maximum deception detection

¹⁹ Vrij, *supra* note 9.

²⁰ Charles F. Bond & Bella M. DePaulo, "Accuracy of Deception Judgments" (2006) 10:3 *Pers Soc Psychol Rev* 214. Vrij, *supra* note 9.

²¹ Paul Ekman & Maureen O'Sullivan, "Who Can Catch a Liar?" (1991) 46:9 *Am Psychol* 913. Samantha Mann, Aldert Vrij, & Ray Bull, "Detecting True Lies: Police Officers'

accuracy that can be achieved by law enforcement officers is the same as simply flipping a coin. The lack of accuracy is largely because of mistaken beliefs regarding what cues are indicative of deception by members of the legal community (e.g., gaze aversion, unnatural posture changes). Although attempts to train officers to detect deception by paying attention to relevant cues have resulted in moderate gains, the absolute levels of predictive ability remain unimpressive.²²

Of particular concern when attempting to detect deception pertains to the use of the BAI. Research has shown that the BAI matches commonsense notions of what works in deception detection (no special training is required), and there is no empirical evidence to support the underlying assumptions about how guilty and innocent people will react to provoking questions.²³ To put it bluntly, the available research suggests that the underlying assumptions are erroneous. In a seminal study examining how guilty and innocent participants reacted to BAI questions, no meaningful differences were observed in the reactions of guilty and innocent individuals for 12 of the 14 questions. In fact, the expected reactions of guilty people for the remaining two questions were observed more frequently for innocent individuals.²⁴ Additional studies have shown that training officers to use Reid-advocated cues to detect deception has actually led to *impairment* in the ability of police officers to separate truth-tellers from liars.²⁵ Research has also shown that interrogators who believe the suspect is guilty tend to engage in tunnel vision.²⁶ A study by Saul Kassin and colleagues, for instance, found that interrogators who hold the belief that suspects tend to be guilty chose more confirmatory or guilty-presumptive ques-

Ability to Detect Suspects' Lies" (2004) 89: 1 *J Appl Psychol* 137. During a November 21st 2013 talk to the NY Legal Society titled "American Police Interrogation: A Psychological Review", Maria Hartwig reported that the accuracy rate of law enforcement was 42.9% when a more realistic scenario is used — where the interviewer and detainee are able to interact (as opposed to the interview simply watching a video of a detainee). Maria Hartwig, Pär Anders Granhag, Leif A. Strömwall, Aldert Vrij, "Police Officers' Lie Detection Accuracy: Interrogating Freely Versus Observing Video" (2004) 7:4 *Police Quart* 429.

²² James E. Driskell, "Effectiveness of Deception Detection Training: A Meta-Analysis" (2012) 18:8 *Psychol Crime Law* 713. Stephen Porter et al. "Evaluation of the Effectiveness of a Brief Deception Detection Training Program" (2010) 21:1 *J Foren Psychi Psych* 66.

²³ Jaume Masip & Carmen Herrero, "'What Would You Say if You Were Guilty?' 'Suspects' Strategies During a Hypothetical Behavior Analysis Interview Concerning a Serious Crime" (2013) 27:1 *Appl Cognitive Psych* 60.

²⁴ Aldert Vrij, Samantha Mann, & Ronald P. Fisher, "An Empirical Test of the Behavior Analysis Interview" (2006) 30:3 *Law Human Behav* 329.

²⁵ Saul M. Kassin & Christina T. Fong, "'I'm Innocent!': Effects of Training on Judgments of Truth and Deception in the Interrogation Room" (1999) 23:5 *Law Human Behav* 499.

²⁶ Carole Hill, Amina Memon & Peter McGeorge, "The Role of Confirmation Bias in Suspect Interviews: A Systematic Evaluation" (2008) 13:2 *Legal Criminol Psych* 357.

tions to ask the suspect, used more tactics during the interrogation, and applied more pressure than those without presumption of guilt.²⁷

The cumulated knowledge on deception detection suggests that innocent individuals are still at risk of being mistaken for guilty individuals and, ultimately, being exposed to psychologically manipulative practices — a concern that was noted nearly 80 years ago following the release of the Wickersham Commission Report.

(b) The Effect of Psychologically Manipulative Practices on Confession Reliability

Many scholars have argued that although the techniques may have changed over the past 80 years — from overt physical abuse to covert psychological manipulation — the risk to innocent people has not changed. Reid, for example, starts with the conclusion that the detainee is guilty (by using the much-maligned BAI) and then proceeds to confirm this assumption through deception (e.g., pretending to be the detainees advocate), trickery (e.g., false evidence ploys — explicit and implicit), and minimization of the crime (e.g., blame the victim).²⁸ As stated in the Reid text, one of the primary assumptions underlying their interrogation approach is that interrogators need to use “less than refined methods than are considered appropriate for the transaction of ordinary, everyday affairs”²⁹ to obtain confessions because criminals will not admit guilt without the use of such tactics. The question that remains, then, is, “Do these ‘less refined methods’ impact confession reliability?” The unequivocal answer to that question is yes.³⁰

Many studies have shown that various tools in Reid’s toolbox of tactics increase the chances of inducing false confessions.³¹ In a classic experiment, commonly referred to as the ALT KEY paradigm, it was found that false confessions about pressing the “alt” key on a computer keyboard that they were explicitly told not to press (and did not press) could be elicited from students through psychological manipulation.³² Specifically, it was found that individuals who were made more

²⁷ Saul M. Kassin, Christine C. Goldstein & Kenneth Savitsky, “Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt” (2003) 27:2 *Law Human Behav* 187.

²⁸ Gudjonsson, *supra* note 2. Richard J. Ofshe & Richard A. Leo, “Decision to Confess Falsely: Rational Choice and Irrational Action” (1996) 74 *Denv. UL Rev.* 979.

²⁹ Inbau, *supra* note 8.

³⁰ It is counter-intuitive that the law pertaining to fraudulent contracts — those based on deceit, falsehoods, or other fraudulent means — does not apply to the actions of interrogators. See *Criminal Code*, R.S., 1985, c. C-46, s. 380; R.S., 1985, c. 27 (1st Supp.), s. 54; 1994, c. 44, s. 25; 1997, c. 18, s. 26; 2004, c. 3, s. 2; 2011, c. 6, s. 2.

³¹ Saul M. Kassin & Karlyn McNall, “Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication” (1991) 15:3 *Law Human Behav* 233.

³² Saul M., Kassin & Katherine L. Kiechel, “The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation” (1996) 7:3 *Psychol Sci* 125. The ability to elicit false confessions can be done with both explicit and implicit false evidence ploys (e.g., “what would you say if I said I have your fingerprint?”), presumably be-

vulnerable to memory distrust (i.e., being exposed to a fast paced data entry condition) were more apt to comply with the suggestion that they were guilty of hitting the “alt” key (and even believed they hit the button) than less vulnerable individuals. This finding was further amplified when presented with false evidence of their guilt (i.e., someone reported seeing them hit the button). Other researchers have replicated these findings using the same design.³³

This research has also been replicated using more realistic and pressure-filled scenarios and the same concerns over the elicitation of false confessions have surfaced. In a novel experimental design, known as the “cheating” paradigm, each student participant was asked to work on a series of logic problems by themselves or with another “student” (i.e., a confederate working secretly with the experimenter). At a point in the experiment, the confederate asks the student for help on a logic problem that they had to work on alone, thus, leaving the student to choose to refuse to help or “cheat”. Regardless of the student’s decision, s/he is “interrogated” about the possibility of cheating. Their results showed that, when an explicit offer of leniency or a minimization tactic (e.g., offered face-saving excuse/theme), the guilty students were more likely to confess than their innocent counterparts. More concerning, however, was the finding that the ratio of true to false confessions (i.e., diagnostic value) was reduced substantially when the pressure tactics were employed (as opposed to when no pressure tactics were used).³⁴

A wealth of other research has produced a series of disconcerting findings with respect to accusatorial methods and false confessions.³⁵ For instance, the chances of obtaining false confessions have been shown to increase when law enforcement officers interrogate vulnerable individuals (e.g., youths, mentally ill, intellectually disabled).³⁶ It has also been shown that interrogators who believe that detainees are guilty (as is the case in reality when interrogators try to detect guilt and innocence prior to interrogation) tend to increase the use of minimization tac-

cause of a “phenomenology of innocence” where suspects believe that a confession is of little consequence because the evidence (which does not exist) will prove their innocence, see Jennifer T. Perillo & Saul M. Kassin, “Inside Interrogation: The Lie, The Bluff, and False Confessions” (2011) 35:4 *Law Human Behav* 327. Also see William D. Woody, Krista D. Forrest, & Sarah Yendra, “Comparing the Effects of Explicit and Implicit False-Evidence Ploys on Mock Jurors’ Verdicts, Sentencing Recommendations, and Perceptions of Police Interrogation” (2013) ahead-of-print *Psychol Crime Law* 1.

³³ Robert Horselenberg, Harald Merckelbach, & Sarah Josephs, “Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel (1996)” (2003) 9:1 *Psychology, Crime and Law* 1. Robert Horselenberg et al. “False Confessions in the Lab: Do Plausibility and Consequences Matter?” (2006) 12:1 *Psychol Crime Law* 61.

³⁴ Melissa B. Russano et al., “Investigating True and False Confessions within a Novel Experimental Paradigm” 16:6 (2005) *Psychol Sci* 481.

³⁵ Leo, *supra* note 1.

³⁶ Saul M. Kassin, et al. “Police-Induced Confessions”, (2010) 34:1 *Law Human Behav* 3.

tics that end up reducing interrogation diagnostic value.³⁷ Also of interest, and concern, are the findings that members of the community fail to accept that psychologically coercive tactics leads to false confessions and that people are unable to recognize false confessions.³⁸ Further still, research suggests that a confession impact jurors' verdicts even when the confessions was coerced, when the jurors were told to ignore it in their deliberations, and when the jurors indicated they did not include it in their deliberations.³⁹

A detailed review of the concerns of accusatorial methods on miscarriages of justice is beyond the scope of this article. However, the experimental research findings touched on above should make it clear that psychologically manipulative tactics are linked to the elicitation of false confessions. The risk of false confessions is further increased when such tactics are used against vulnerable populations, and little guidance is given within Reid regarding how to identify and deal with these individuals appropriately. This issue is compounded within the justice system more broadly by the fact that potential triers of fact tend to disbelieve that psychological tactics could lead someone to confess to a crime they did not commit, and the fact that people are unable to recognize false confessions (but think they can). The risk of eliciting false confessions has far from diminished since the demise of the third degree tactics.⁴⁰

(c) The Confession Rule

Despite the wealth of empirical research demonstrating the negative impact of accusatorial practices on confession reliability, the courts — the sole regulators of police questioning practices — appears to remain less convinced. For instance, the Supreme Court of Canada has recently revisited the confession rule in *R. v. Oickle*,⁴¹ and essentially decided against a clampdown on aggressive and accusatorial methods. The voluntariness of any statement made to law enforcement officers is determined by an evaluation of the extent to which threats (imminent threats of

³⁷ Fadia M. Narchet, Christian A. Meissner & Melissa B. Russano “Modeling the Influence of Investigator Bias on the Elicitation of True and False Confessions” (2011) 35:6 *Law Human Behav* 452.

³⁸ Richard A. Leo & Brittany Liu, “What Do Potential Jurors know about Police Interrogation Techniques and False Confessions?” (2009) 27:3 *Behav Sci Law* 381. Saul M. Kassin “On the Psychology of Confessions: Does Innocence Put Innocents at Risk?” (2005) 60:3 *Am Psychol* 215. Deborah Davis & Richard A. Leo, “The Problem of Interrogation-Induced False Confession: Sources of Failure in Prevention and Detention” in SJ Morewitz & ML Goldstein, eds., *Handbook of Forensic Sociology and Psychology* (New York: Springer, 2014) 47. Also see Linda A. Henkel et al. “A Survey of People’s Attitudes and Beliefs about False Confessions” (2008) 26:5 *Behav Sci Law* 555.

³⁹ Saul M. Kassin & Holly Sukel, “Coerced Confessions and the Jury” (1997) 21:1 *Law Human Behav* 27.

⁴⁰ Saul M. Kassin, “Confession Evidence Commonsense Myths and Misconceptions” (2008) 35:10 *Crim Justice Behav* 1309.

⁴¹ See *R. v. Oickle*, 2000 SCC 38, 2000 CarswellINS 257, 2000 CarswellINS 258, [2000] 2 S.C.R. 3, 147 C.C.C. (3d) 321, 36 C.R. (5th) 129.

torture) or promises (*quid pro quo*), oppressive tactics (denial of food, water, clothing, confronted with fabricated evidence) and police trickery is used, as well as the extent to which the respondent had an operating mind. In the case of Richard Oickle, he had confessed to committing eight fires after being told that he “failed” a polygraph, underwent a lengthy interrogation, was subjected to minimization techniques, and was exposed to threats (e.g., might have to polygraph his finance) and promises (e.g., implied psychiatric help was available following a confession).⁴²

It is worth noting that the dissenting Judge’s arguments are in line with the psychological research on interrogations and confessions but that the six judges who struck down the appeal were more in line with long-standing arguments by the law enforcement community that some unpleasant tactics are necessary in the war on crime. The support for the use of psychologically-coercive tactics is evident in some of their statements, such as:

... the police did not improperly offer leniency to the accused by minimizing the seriousness of his offences. While the police did minimize the moral significance of the crimes, they never suggested that a confession would minimize the legal consequences of the accused’s crimes.⁴³

and

... although the police exaggerated the accuracy of the polygraph, merely confronting a suspect with adverse evidence — even exaggerating its accuracy and reliability — will not, standing alone, render a confession involuntary.⁴⁴

and

... none of these statements contained an implied threat or promise ... the accused’s fiancée, there were moments when the police intimated that it might be necessary to question her to make sure she was not involved in the fires. The relationship the accused had with his fiancée was strong enough potentially to induce a false confession were she threatened with harm. However, no such threat ever occurred. The most they did was promise not to polygraph her if the accused confessed. Given the entire context, the most likely reason to polygraph her was not as a suspect, but as an alibi witness. This is not a strong enough inducement to raise a reasonable doubt as to the voluntariness of the accused’s confession.⁴⁵

The fact that the Canadian Supreme Court judges were, for the most part, relatively unconcerned about the subtle, yet powerful, impact of psychologically manipulative tactics on false confession is disconcerting because it is not in line with what the scientific literature tells us about best practices.

⁴² Steven Penney, “Police Questioning in the Charter Era: Adjudicative versus Regulatory Rule-making and the Problem of False Confessions” (2012) 57 *Supreme Court Law Rev* (2d) 263.

⁴³ See *R. v. Oickle*, *supra* note 41, 6.

⁴⁴ See *R. v. Oickle*, *supra* note 41, 7.

⁴⁵ See *R. v. Oickle*, *supra* note 41, 6.

2. THE HUMANE STAGE: THE PEACE MODEL

The next stage in the evolution of interrogation has arrived in the form of the PEACE model of investigative interviewing. PEACE is an acronym which stands for the stages of interviewing: (a) Preparation and Planning; (b) Engage and Explain; (c) Account; (d) Closure; and (e) Evaluation. This new model emerged, in part, because of several high profile wrongful conviction cases in the United Kingdom where coercive interrogation tactics were a major contributing factor (e.g., Guilford Four, Birmingham Six).⁴⁶ Under the PEACE model, the term “interrogation” is intentionally replaced with the term “investigative interview” as the approach is based on a humane and ethical philosophy. In direct contrast to accusatorial approaches, interviewers are taught to collect information before making decisions, which is more akin to hypothesis testing in science. The role of interviewers who utilize PEACE is that of objective fact finders as they are taught to be open-minded, not to attempt to detect deception through behavioural cues, and not to lie or use psychologically coercive tactics to manipulate interviewees. Below is an outline of the PEACE method that ought to be used with detainees.

(a) Planning and Preparation

Prior to asking detainees any questions, interviewers are encouraged to create a written plan that documents: how information obtained from an interviewee will contribute to their investigation; information on the interviewee (e.g., presence of mental illness, age); legal requirements that need to be covered; and investigative objectives (e.g., points that need to be disproven, facts that need to be established). Interviewers are also taught to consider all practical arrangements associated with conducting the interview, develop a timeline of events, prepare the opening question and subsequent questions that emerge from an analysis of existing evidence, create an outline of how they will proceed (i.e., “route map”), and plan for all eventualities (e.g., no comment interview). It is important to note that, where possible, interviews with detainees do not commence until witnesses and victims have been interviewed and all available evidence has been collected.

(b) Engaging and Explaining

The two central components of this stage are to engage the interviewee in conversation and explain what will happen during the interview. Interviewers engage the interviewee by personalizing the interview, building rapport, engaging in self-disclosure, and continuously acting in a professional and considerate manner; it is assumed that such actions foster the development of a relationship and atmosphere that will lead to a working alliance.⁴⁷ Interviewers are taught to accommodate the

⁴⁶ See Gudjonsson, *supra* note 2 for an account of how PEACE emerged. Also see R. Milne & R. Bull, *Investigative Interviewing: Psychology and Practice* (Chichester: Wiley, 1999).

⁴⁷ Milne, *supra* note 46. E. Shepherd, *Investigative Interviewing: A Conversation Management Approach* (Oxford: Oxford University Press, 2008). Ernst Fehr & Simon Gächter, “Fairness and Retaliation: The Economics of Reciprocity” (2000) 14:3 *J Econ Perspect* 159. Tanya L. Chartrand & John A. Bargh, “The Chameleon Effect: The Perception —

interviewee by making sure s/he understands the purpose of the interview and delivering the required police cautions in a manner that ensures that the interviewee understands their legal rights.⁴⁸ Interviewers are also taught to explain the outline of the interview, the various routines that will be followed (e.g., note-taking), and expectations of both parties (e.g., limited interruptions, no rushing, no judgments) and ground rules (e.g., breaks approximately every hour).⁴⁹

(c) Account — Information Gathering

Once the engage and explain phase ends, the next phase of the interview starts with a closed yes/no question about whether the detainee committed the crime.⁵⁰ If the response is “yes”, the interviewer asks, using an open-ended question, for a full account of the events that transpired. If the answer is “no”, the interviewer proceeds to ask an open-ended question that elicits a step-by-step account of the interviewee’s whereabouts during the material time frame (i.e., a period of time that encompasses the time when the crime was committed) or asks the interviewee to provide a detailed answer that takes into account the evidence that both the interviewee and police know to exist (known as a “trailer question”; the question does not include hold-back evidence). In general, the goal of the first part of this phase is to obtain an uninterrupted account of their version of the event(s). If a free narrative is not forthcoming, the interviewer will need to ask the planned questions that attempt to understand the detailed movements and actions of the interviewee during the material time frame.

Once the movements and actions of the interviewee during the material time frame are obtained, the interviewer should listen carefully to the interviewees account and take notes on the points of interest (e.g., persons, location, actions, times) that may need to be pursued later in the interview. The interviewer should then

Behavior Link and Social Interaction” (1999) 76:6 *J Pers Soc Psychol* 893. Nancy L. Collins & Lynn Carol Miller, “Self-Disclosure and Liking: A Meta-Analytic Review” (1994) 116:3 *Psychol Bull* 457. Roger Collins, Robyn Lincoln & Mark G. Frank, “The Effect of Rapport in Forensic Interviewing” (2002) 9.1 *Psychiat Psychol Law* 69. Linda Tickle-Degnen & Robert Rosenthal, “The Nature of Rapport and its Nonverbal Correlates” (1990) 1:4 *Psychol Inq* 285.

⁴⁸ Joseph Eastwood & Brent Snook, “The Effect of Listenability Factors on the Comprehension of Police Cautions” (2012) 36:3 *Law Human Behav* 177.

⁴⁹ Howard Giles & Tania Ogay, “Communication Accommodation Theory” in BB Whaley & W Samter, eds., *Explaining Communication: Contemporary Theories and Exemplars* (Mahwah, NJ: Lawrence Erlbaum, 2007) 325. Keiichi Kobayashi, “What Limits the Encoding Effect of Note-Taking? A Meta-Analytic Examination” (2005) 30:2 *Contemp Educ Psychol* 242. Ronald P. Fisher, R. Edward Geiselman & David S. Raymond, “Critical Analysis of Police Interview Techniques” (1987) 15:3 *J Police Sci Admin* 177.

⁵⁰ Although the elicitation of a confession is welcomed, the overarching goal of a PEACE interview is to gather as much checkable and verifiable information as possible that will help determine the truth of the matter under investigation. It is important to note that the closed yes/no question at the beginning can also be skipped if the interviewee has already made it clear they are not guilty of the crime or if the interviewer believes that such an approach would hinder the remainder of the interview.

explore each of the identified topics in a structured manner by: (a) opening up a topic through the use of an open-ended question (e.g., starting with tell, explain, describe); (b) probing the account (who, what, where, when, why, and how); and (c) summarizing all the information obtained about a particular topic. The systematic process of “opening, probing, and summarizing” topics is repeated until the interviewer is satisfied that all the topics identified from the interviewee’s free narrative have been covered sufficiently. Using the same systematic process, the interviewer then asks the questions about topics that did not arise from the interviewee’s account (but were prepared beforehand during the Planning stage). Once the interviewer believes that all topics have been covered in detail, a summary of the entire account is provided and checked with the interviewee that the information reviewed was accurate.

Interviewers are then taught to consider whether or not the interviewee’s account is consistent with previously provided information or contradicts the available evidence. If a discrepancy is identified, the interviewer may decide to challenge it at the end of the interview. Challenges are not conducted in an aggressive or accusatorial manner. A challenge is a clarification-seeking task where the interviewee is given an opportunity to explain the discrepancy. The number of challenges used depends on the number inconsistencies and discrepancies identified.⁵¹ Interviewers are also taught to recognize resistance (e.g., receiving evasive answers) and are taught to handle the resistance in an ethical and appropriate fashion (e.g., not engaging in arguments, ignoring the resistance).⁵²

(d) Closing and Evaluating

Interviewers are taught to end an interview when they have asked all of their questions and all the interview objectives have been achieved. They should summarize the main points, provide the interviewee with the opportunity to correct or add any information, and explain what will happen in the future — all while maintaining a courteous and professional manner. Interviewers also consider the effect of new information on the investigation and how the information is consistent with all of the available investigative evidence. Interviewers are encouraged to conduct self-evaluations of their performance and supervisors are taught to provide constructive feedback as part of routine (or interviewer-requested) performance evaluations.

PEACE represents a major departure from the psychologically manipulative interrogation approaches currently in use. It does not contain coercive strategies that have been linked to false confessions, and gives detainees a chance to provide a full account before moving to evidence-based challenges if necessary. The removal of coercive techniques has the added benefit of reducing the likelihood that a statement will be deemed inadmissible and the possibility that police officers will be subjected to disciplinary measures or even civil liability for conducting negli-

⁵¹ Maria Hartwig et al., “Strategic Use of Evidence during Police Interviews: When Training to Detect Deception Works” (2006) 30:5 *Law Human Behav* 603. Marina Sorochinski et al., “Interviewing to Detect Deception: When to Disclose the Evidence?” (2013) ahead of print *J Police Crim Psychol*.

⁵² Shepherd, *supra* note 47.

gent interrogations.⁵³ Moreover, ethical interviewing can reduce: (i) offender resentment; (ii) legal rights being disregarded; (iii) public confidence being undermined; and (iv) a “boomerang effect” occurring where detainees who were going to confess decide not to because they believe they are being manipulated or treated inappropriately.⁵⁴

A legitimate question, however, is “does PEACE work?” Although the third author is conducting the first systematic evaluation of the effectiveness of the model in the field, and therefore direct evidence of the effectiveness of the approach is limited, the fact that the model avoids unethical practices and is comprised of scientifically supported practices should be enough to warrant it as a default approach. In addition, there are several streams of empirical evidence that directly and indirectly suggests the superiority of an ethical information-gathering style of interviewing such as PEACE.

The first piece of evidence comes from controlled laboratory research showing the diagnostic superiority of information gathering approaches. For instance, a meta-analysis of studies that compared the information-gathering approaches to accusatorial approaches on their diagnostic ability found that both produced a large percentage of true confessions but that an information-gathering approach produced far fewer false confessions.⁵⁵ Anecdotal evidence from the intelligence domain also suggests that having a conversation with terrorists is far more productive than using enhanced interrogation techniques — a lesson learned by police organizations at the turn of the 20th century that seems to have been ignored.⁵⁶ A recent empirical study that compared accusatorial and information gathering approaches in the intelligence context showed that information gathering techniques yielded more critical details and resulted in a more talkative interviewee, and more admissions of guilt.⁵⁷ Furthermore, those interviewed with an information gathering approach are perceived to be less nervous and under less pressure than those interviewed in an accusatorial manner.

⁵³ See *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, 2007 CarswellOnt 6265, 2007 CarswellOnt 6266, [2007] 3 S.C.R. 129, 50 C.R. (6th) 279 for a discussion of the liability under the law of negligence and the tort of negligent investigation in Canada.

⁵⁴ Gudjonsson, *supra* note 2.

⁵⁵ Christian A. Meissner et al., *Interview and Interrogation Methods and their Effects on True and False Confessions* (Campbell Systematic Reviews, 2011).

⁵⁶ Retired Army General Stanley McChrystal, a central figure in the wars in Iraq and Afganistan, stated in a talk at the Aspen Institute on February 8, 2013 that “(We) used them a little bit in the first few months after I took over and then just stopped because one, we realized — I didn’t feel good about it and they weren’t working so we did away — it took me about nine months before I was completely convinced, the summer of 2004, the only way to operate is . . . sitting down and just talking with people”. See Robert Schlesinger, “McChrystal: Torture’s a ‘Slippery Slope, You Can’t Climb Back Up’” (2013) *US News and World Report*.

⁵⁷ Jacqueline R. Evans et al., “Obtaining Guilty Knowledge in Human Intelligence Interrogations: Comparing Accusatorial and Information-Gathering Approaches with a Novel Experimental Paradigm” (2013) 2.2 *J Appl Res Mem Cogn* 83. Also see Elizabeth F. Loftus, “Intelligence Gathering Post-9/11” (2011) 66:6 *Am Psychol* 532.

A second piece of supporting evidence comes from research that has considered the perspective of offenders, which has shown that the decision to confess and cooperate with the police is determined largely by the extent to which the police use a humane style of interviewing. Specifically, there is an association between admissions of wrongdoing and both the level of trust toward the officers and feeling respected and understood by the officers. Conversely, interviews where offenders perceive interviewers to take on a “get tough” or accusatorial style tend to result in denial of involvement in criminal activity.⁵⁸ Moreover, research has shown that the strategic presentation of real evidence to detainees, as is the case in information-gathering interviews, is associated with decisions to confess and an increased ability to differentiate guilty and innocent individuals.⁵⁹

More broadly, research from disparate fields suggest that practices that are guided by a “get tough” philosophy are often ineffective or lead to reactance — the adoption or strengthening of an attitude/action that is contrary to the desired attitude/action, or increases resistance to persuasive tactics. For instance, in the related field of correctional psychology, there is a wealth of evidence showing that increasing sentence lengths for criminals leads to an increase (not a decrease) in recidivism.⁶⁰ Similarly, within crisis negotiation research, the research is clear that a forceful approach to the management of crisis negotiations leads to suboptimal outcomes.⁶¹ Within counselling psychology, it is well documented that practitioners who “get tough” on clients by trying to persuade them to change are often met

⁵⁸ Ulf Holmberg & Sven-Åke Christianson, “Murderers’ and Sexual Offenders’ Experiences of Police Interviews and their Inclination to Admit or Deny Crimes” (2002) 20:1-2 *Behav Sci Law* 31. Mark Kebbell et al., “How Do Sex Offenders Think the Police Should Interview to Elicit Confessions from Sex Offenders?” (2010) 16:7 *Psychol Crime Law* 567. Tom O Connor & William Carson, “Understanding the Psychology of Child Molesters: A Key to Getting Confessions” (2005) 72:12 *Police Chief* 70. Also see John J. Pearse “The Interrogation of Terrorist Suspects: The Banality of Torture” in T Williamson, ed., *Investigative Interviewing: Rights, Research, Regulation* (Cullompton: Willan, 2006) 64.

⁵⁹ Stephen Moston, Geoffrey M. Stephenson & Thomas M. Williamson, “The Effects of Case Characteristics on Suspect Behaviour During Police Questioning” (1992) 32:1 *Brit J Criminol* 23. Hartwig, *supra* note 51.

⁶⁰ P Smith, C Goggin & P Gendreau, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (Ottawa, ON: Solicitor General Canada, 2002). Doris Layton MacKenzie, David B. Wilson & Suzanne B. Kider, “Effects of Correctional Boot Camps on Offending” (2001) 578:1 *Ann Am Acad Polit SS* 126. Alana N. Cook & Ronald Roesch, “‘Tough on Crime’ Reforms: What Psychology has to say about the Recent and Proposed Justice Policy in Canada” (2012) 53:3 *Can Psychol* 217. P Gendreau, FT Cullen & C Goggin, *The Effects of Prison Sentences on Recidivism* (Ottawa: Solicitor General Canada, 1999).

⁶¹ Ellen Giebels & Paul J. Taylor, “Interaction Patterns in Crisis Negotiations: Persuasive Arguments and Cultural Differences” (2009) 94:1 *J Appl Psychol* 5. Paul J. Taylor “A Partial Order Scalogram Analysis of Communication Behavior in Crisis Negotiation with the Prediction of Outcome” (2002) 13:1 *Int J Confl Manage* 4. Gregory M. Vecchi, Vincent B. Van Hasselt & Stephen J. Romano “Crisis (Hostage) Negotiation: Current Strategies and Issues in High-Risk Conflict Resolution” (2005) 10:5 *Aggress Violent Behav* 533.

forcefully with arguments for staying the same.⁶² Within learning psychology, it is well known that punishment is largely ineffective in creating desired behavioural change. A meta-analysis of the effect of corporal punishment on children's behaviour, for instance, has shown that spanking children tends to be associated with undesirable behaviours such as aggression, anti-social behaviour, and increased risk of being abused.⁶³ The research from those three areas provides a sense for the ineffective nature of pugnacious philosophical approaches.

A convergence of evidence from controlled laboratory research that has compared information-gathering approach against the accusatorial approach, interviews with offenders, evidence from the field, and related research on "get tough" practices provides compelling evidence for the move from psychological coercive approaches such as the Reid technique to the PEACE model of interviewing.

4. UNDERMINING PEACE

Since the introduction of PEACE to Canada in the past decade, some Reid aficionados have become a little histrionic because the change is seen as a move to handcuff police officers in their ability to do their jobs.⁶⁴ We recognize that — as with any novel or promising development — the implementation of PEACE is not immune from the range of practical challenges and resistance from detractors. In this section, we review five arguments that attempt to undermine the accomplishments of PEACE and demonstrate that such knowledge destruction techniques are each without merit.

(a) PEACE and Reid's BAI Are Equivalent

Some might be inclined to think that because the PEACE model is non-accusatorial in nature (in fact, it is best described as an information gathering approach) that it is akin to the non-accusatorial component of the Reid Technique known as the Behavioural Analysis Interview (BAI). Beyond sharing the term "non-accusatorial", the two techniques share little in common. As reviewed above, the primary purpose of the BAI is deception detection. It involves a series of questions and subsequent observations that are designed to differentiate between innocence and guilt in possible detainees through the use of (unsubstantiated) verbal and non-verbal cues (e.g., gaze aversion). The PEACE model, by direct contrast, contains no attempt to use behavioural cues to detect deception, and instead attempts to collect as much reliable and accurate information as possible from interviewees by using

⁶² WR Miller & S Rollnick, *Motivational Interviewing: Helping People Change* (New York: Guilford Press, 2012).

⁶³ Elizabeth Thompson Gershoff, "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review" (2002) 128:4 *Psychol Bull* 539.

⁶⁴ The third author was verbally attacked at a conference after explaining how the PEACE model worked. The first author has also received several emails questioning the utility of PEACE to work. In both instances, the Reid advocates were attempting to defend the use of accusatorial methods by holding PEACE to a different standard than their own practice.

scientifically-based interview procedures (e.g., open-ended questions, no interruptions). The assertion that the two approaches are similar is patently false.

(b) PEACE Restricts the Ability to Obtain Confessions

Joseph Buckley, of Reid and Associates in the United States, has argued that investigators will not be able to obtain confessions because PEACE does not include psychological ploys and trickery needed to break down a detainee's resistance (e.g., rationalizations and minimizations). There are at least three major problems with this argument. First, a preoccupation with obtaining a confession is distressing. The measure of an effective interview is best determined by using a mixture of process (e.g., a complete and accurate account of the event was obtained, best practices were followed) and outcome (e.g., statement challenges in court, the success rate of challenged statements, plea bargains) measures. Whether or not a confession has been elicited is a crude measure of success. Second, even if we were to use confessions as some sort of measure of success, research has shown that confession rates hover around the 50% for countries that use Reid and 50% for countries that use PEACE.⁶⁵ Third, the extent to which an interrogation method is diagnostic — a high ratio of true to false confessions — is more important than absolute confession percentage. The research reviewed above has demonstrated that the diagnostic value of ethical-based information gathering approaches is much higher than an accusatorial approach.⁶⁶

(c) Canadian Laws are Different

The point has been raised that UK case law, unlike Canadian case law, is designed to allow the PEACE model to be effective.⁶⁷ There are two major differences that have been highlighted as why PEACE will not work in Canada: (1) Police officers in the UK can offer inducements in exchange for confessions; and (2) detainees in the UK do not have the right to remain silent. First, the notion that police officers are allowed to offer a reduced sentence (by up to 1/3 of a sentence) as an inducement to get people to talk is erroneous. The offering of potentially reduced sentencing for admissions is not standard practice in the UK (and is not sanctioned by agencies or part of their training tactics). Furthermore, any attempt to use inducements would be a breach of the *Police and Criminal Evidence Act* (codes that regulate police procedures in the UK), and any statements obtained through the

⁶⁵ Ray Bull & Stavroula Soukara, "Four Studies of What Really Happens in Police Interviews" in GD Lassiter and CA Meissner, eds., *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations* (Washington, DC, US: American Psychological Association, 2010) 81. Lesley King & Brent Snook, "Peering Inside a Canadian Interrogation Room An Examination of the Reid Model of Interrogation, Influence Tactics, and Coercive Strategies" (2009) 36:7 *Crim Justice Behav* 674. John Pearse and Gisli H. Gudjonsson, "Police Interviewing Techniques at Two South London Police Stations" (1997) 3:1 *Psychol Crime Law* 63.

⁶⁶ Meissner, *supra* note 50.

⁶⁷ Scott McLeod, "Getting to the Truth: Comparing the PEACE and Reid Models of Forensic Interviewing" (2011) 73:1 *RCMP Gazette* 16.

use of inducements would likely be deemed as unreliable in court.⁶⁸ Simply put, the notion that PEACE works in the UK because the police officers can use *quid pro quo* inducements with interviewees for the cooperation is simply false. Second, the idea that detainees must talk with the police in the UK is an erroneous caricature of their right-to-silence laws. As in North America, the primary right given to detainees and accused persons is the right to not answer any of the questions asked by the police. The accused is also informed, however, that if they decide to provide information in court that could have been provided to the police during the initial interview but was not (either through silence or spinning a story), negative inferences about their credibility may be drawn. They are also told that anything they do say may be given in evidence. If a detainee refuses to answer a question about an obvious and concrete piece of incriminating evidence, a police officer may decide to deliver a “special warning”. This warning mentions that a judge or jury may assume that the failure to account for such evidence indicates that an accused had no reasonable or innocent explanation to give. For example, if a homicide detainee chose not explain why he had the victim’s blood on his clothing during the interview, the judge may (or ask the jury to) make a negative inference about the detainee’s credibility. Although these practices differ from North American law, detainees are never told that they are obliged to speak to the police, only that it may hurt their defence if they choose not to talk.

(d) PEACE Is Too Soft

Although we have heard this comment repeatedly, we remain unsure what it means that an interviewing method is soft — presumably it is the opposite of hard. We suspect that some officers define “hard” as being a forceful and accusatorial challenge to the legitimacy of what is being presented by a suspect or accused person. It might also be that part of the definition of “hard” means being vociferous in the confrontations about one’s guilt and attempting to persuade the detainee that they are guilty. By contrast, the term “soft” might imply that the interviewers do not challenge detainees regarding their potential guilt and is devoid of raucous challenges.

The idea that PEACE interviews do not have a challenge phase (or confrontation about guilt) is false. Rather than confronting people with guilt at the beginning of an interview, the PEACE model teaches officers to conduct open-minded interviews that collect the information that is necessary and sufficient for forming the basis of consequential decisions. If there are discrepancies or outright contradictions in the interviewee’s account or between what the interviewee says and what is known through hard evidence, the interviewee is challenged on those inconsistencies at the end of the interview. It is true that direct/boisterous confrontations that are devoid of substance (i.e., lacking in evidence) are avoided because research suggests that such an approach kills rapport and prevents valuable information from

⁶⁸ The offering of inducements would breach section 76/78 of the *Police and Criminal Evidence Act* because it would mean evidence was obtained by an unfair means. Of course, the discussion of reduced sentences is an issue for the defense lawyer to explain to the suspect. It is also worth noting that PEACE was being used prior to the introduction of the legislation pertaining to special warnings.

being obtained. However, the challenge phase of PEACE is cognitively demanding for interviewees who have been deceptive and have attempted to weave an intricate web of lies.⁶⁹ By allowing detainees the opportunity to confirm their version of events, and then presenting them with evidence-based challenges to those accounts, the truth is likely to emerge regardless if direct confessions are obtained.

(e) Interrogating Without Evidence

This is perhaps the most baffling attempt to deny the superiority of PEACE. Some officers have commented to us that they owe it to victims to “get tough” on suspected offenders (e.g., in shaken baby syndrome cases) by using the full arsenal of psychologically manipulative tactics. This comment tends to get followed up with the claim that, should a confession be elicited, follow up investigative work is conducted to confirm the confession. The logic behind such argumentation is flawed. In order to detain an individual, there has to be reasonable and probable grounds for that detention; that is, there needs to be some evidence to justify the interview.⁷⁰ In addition, if there is no evidence, it is not entirely clear how investigators are able to follow up the confession to check and verify its validity. Most importantly, the law of unintended consequences comes into play, as the use of aggressive tactics on people where guilt is uncertain may produce additional victims through false confessions; not to mention the failure to capture real culprits.

4. INTERROGATION REFORM

There is no doubting that there is need for substantial reform to the way interrogations are conducted in Canada. That reform will only be made possible through the concerted effort of police organizations, academics, and the judiciary. Because policing is a provincial responsibility, the decision to modernize interrogation practices will likely have to take place on organization-by-organization basis. Indeed, it is understandable that the adoption of a national standard is not a straightforward process. However, professional bodies such as the Canadian Association of Chiefs of Police (CACP) and the Canadian Police Association (CPA) can play a large role in advocating for the implementation of a national standard. Given that the CACP and CPA have been successful in advocating reform on various policing initiatives, they are ideally positioned to reform interviewing practices in Canada.

Greater collaboration between criminal justice researchers and police organizations is also required. Collaborations provide an opportunity for researchers to conduct quality research that is based on an understanding of the conditions under which interviews are conducted. Such partnerships may make police officers more aware of the benefits of empirically derived practices, and thus increase their willingness to participate in research and engage academics in the training process. Researchers working in conjunction with police organizations (and who appreciate their needs and concerns) should attempt to evaluate current interviewing practices,

⁶⁹ Hartwig, *supra* note 51. John Sweller, “Cognitive Load During Problem Solving: Effects on Learning” (1988) 12:2 *Cognitive Sci* 257.

⁷⁰ D Stuart, RJ Delisle & T Quigley, *Learning Canadian Criminal Procedure* 11 ed. (Toronto: Carswell, 2013).

facilitate the implementation of any training needs that emerge from the evaluations, and conduct and publish program evaluations to ensure that the training is leading to desired outcomes.

The Canadian judiciary will also need to play a larger role in eradicating coercive and manipulative practices. A recent ruling by Judge Michael Dinkel in Alberta provides the optimism that some of the judiciary are aware of the concerns pertaining to Reid (and the same tactics used under a different label).⁷¹ At the broadest level, Judge Dinkel agreed with the defence's position that an "oppressive atmosphere was created by a constellation of factors arising out of the use of the Reid Technique". He noted that a guilt-presumptive interview that uses manipulative tactics such as blaming the victim and minimizing culpability were part of the reason why the confession from Christa Lynn Chapple was involuntary. Specifically, Judge Dinkel commented that:

Twelve years after Judge Ketchum warned of the dangers of the use of the Reid Technique in *M.J.S.*, it continues to be criticized by a number of courts. I now add my voice to the chorus. Like Judge Ketchum, I denounce the use of this technique in the strongest terms possible and find that its use can lead to overwhelmingly oppressive situations that can render false confessions and cause innocent people to be wrongfully imprisoned. In this case, the police were convinced of the accused's guilt even though there was medical evidence available that was consistent with the accused's version of events. They pushed ahead with the interview with one goal in mind: a confession. And that confession had to fit their theory of the case.

Such a ruling is promising, intelligent, and insightful when one considers the wealth of compelling evidence that many of the psychologically manipulative tactics advocated in Reid are associated with unreliable confessions.

It is only a matter of time before the psychologically manipulative practices that dominate current interrogations become extinct. The persuasive link between accusatorial methods and false confessions, and the fact that police officers around the world (The United Kingdom, New Zealand, Norway, and parts of Canada) are conducting effective criminal investigations with the use of a humane interviewing approach, suggests that arguments (e.g., "they are a necessary evil in the fight against crime") in favour of "get tough" tactics are less likely to continue to convince a contemporary and progressive judiciary. The relatively minor costs associated with changing interrogation policies and practices pales in comparison to the financial, political, and legal costs associated with inadequate investigations and miscarriages of justice.

⁷¹ *R. v. Chapple*, 2012 ABPC 229, 2012 CarswellAlta 1667 (Prov. Ct.); *R. v. Millar*, 2003 ABQB 146, 2003 CarswellAlta 697 (Q.B.); *R. v. S. (M.J.)*, 2000 ABPC 44, 2000 CarswellAlta 339, 32 C.R. (5th) 378 (Prov. Ct.)

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