

# Communications in Law Enforcement and the Criminal Justice System: Key principles



# Communications in Law Enforcement and the Criminal Justice System: Key principles

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JUSTICE INSTITUTE OF BRITISH COLUMBIA



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*“...Good police officers are the greatest communicators in the world”*  
(page 7)

—Thompson, G. J., & Jenkins, J. B. (2013).



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# Introduction

The ability to communicate is critical to those who work in law enforcement. This book will examine the key principles of communication personnel in law enforcement require. Areas covered include listening skills, communicating tactics, interviewing skills, note-taking, report writing and testifying in court. Also covered is a section on PTSD and its interaction with law enforcement. Key here is that police officers should understand the relationship between PTSD and the need to communicate with others in seeking help and assistance. The book concludes with a section on the history of women in policing. It is the belief of the authors of this book, that women have played an enormous role in developing the communication within policing and have advanced the narrative of a more inclusive approach to communication.





# About the Authors

## Steve McCartney

Steve McCartney, MSc, retired from the Vancouver Police Department after 28 years of service. While with the V.P.D. he served in a variety of capacities including patrol, Detective Constable with Strike Force, Sexual Offence Squad, the Provincial Unsolved Homicide Unit, and VPD Homicide Unit. After leaving the V.P.D., he was seconded to the B.C. Police Academy at the Justice Institute of British Columbia as an instructor in Investigation and Patrol. Upon retiring from the V.P.D., he has held the posts of Program Chair of Law Enforcement Studies at the Justice Institute of British Columbia and Program Director of the JIBC Police Academy. He has also co-authored Ethics in Law Enforcement.

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## Cindy Patterson

Cindy joined the West Midlands Police Service in the United Kingdom. Working as a police officer Cindy learned the skills required to police the inner-city streets of Birmingham, the second largest city in England. Unarmed, she quickly developed essential communication techniques. She qualified to National Public Order Standards in a time when the threat to public safety included the terrorist attacks caused by the terrorist group the IRA. Cindy worked as a community beat officer, a field trainer, an investigative file coordinator and a specialized child protection investigator within the Criminal Investigations Division. She was trained and experienced in cognitive interviewing, child interviewing and investigation techniques as well as the PEACE model of interviewing.

After moving to Canada in 2002, Cindy worked for an international airline and also

assisted in the family consulting business as a researcher. Having retired from the airline Cindy studied for her Masters in Intelligence and Security at Leicester University. Combining her experiences, Cindy is a sessional Instructor in both the Emergency Management and International Policing Divisions at the JIBC and has presented at local institutions in an array of subjects.

# Acknowledgements

## Cindy Patterson

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Finally I appreciate the recipients of this work in passing the torch forward and ensuring best practices continue to be employed and advanced.



# CHAPTER I



# Introduction

Police officers are primarily trained in the use of force, firearms, traffic, investigation and patrol, and legal studies; yet an officer's daily life consists primarily of using their communication skills during what are usually troubling circumstances for both the police and the member of the community.

Ultimately, police communicate with people to problem-solve. Officers must be able to effectively communicate with people from a wide range of socioeconomic levels, ranging from homeless people to high-income professionals. Officers are required to effectively communicate with this range of people, at times moments apart, in a manner that is respectful to each of these groups. Likewise, officers are also confronted with people who display myriad emotions, including people with emotion disturbance, individuals displaying murderous intentions, or those who are reacting adversely to drugs or alcohol consumption. In the course of an officer's day, people exhibit a wide range of behavior and come from a wide range of cultures, making effective interpersonal communication difficult.

Police officers in Canada spend most of their time not enforcing the law or fighting criminals, but rather keeping the peace. They do this by attending to calls in which people are not getting along and require an agent of peace to settle their differences. In keeping the peace, communication skills are critical and are needed to de-escalate situations without the use of force. With communication skills, officers are able to avoid harming people while keeping themselves and others safe.

Communication skills also allow officers to avoid any suggestion that their use of force was excessive, therefore avoiding police act investigations, professional standard investigations or criminal investigations. The use of effective communication by police will enable the community to better appreciate and trust the officer and the department, and view both in a positive light.. Effective communication in law enforcement is critical for law enforcement in a progressive society.



*Photo by Kindel  
Media from Pexels*



# The Principles and Complexities of Oral Communication

## Why is communication important in personal life?

In our personal life, communication helps us to make and keep friends, while developing new relationships. Most of us are attracted to friends who are good listeners – friends who hear what you have to say and can comment on what you have said. They demonstrate empathy and care by actively listening to what you have to say.

Poor listeners tend to drift off our ‘friend radar’ because they appear not to be interested in our life. Likewise, to keep friends, it is important that we demonstrate good listening skills that inform our friends that we care about them enough to listen to what they have to say.

Communication skills are also important because these skills enable us to express our beliefs, values and feelings on a wide range of subjects. We are able to effectively present sides to a story that represents what we believe. When we are effective communicators, we also have the ability to make change in society, our community or in someone’s life. We are able to advocate for people, convince people to change, and persuade people to tell us things.

## Why is communication important in professional life?

While effective interpersonal communication is important for our private lives, our professional lives are also well served by effective interpersonal communication. The hiring process starts from the first time the applicant telephones, emails or meets with the recruiter of the law enforcement agency. When we are trying to gain employment, it is important to accurately communicate to the recruiter who we are, through the clothes

we wear, the way we walk, even to the way an email is constructed. Poor communication at the very onset of the application process will likely prevent an applicant from progressing through the early steps of a recruitment process, and having a chance to compete for a job. It is critical that prospective employees understand that the way they communicate to the recruiter will have a profound impact on their ability to be hired.

Effective communication is essential for the following reasons:

## **Gaining employment**

Finding a meaningful job or career includes participating in a job interview. Job interviews are stressful, and interviewees who are experienced in the art of interpersonal communication are more likely to impress the interviewer. Good communicators are likely to be more relaxed in the interview because they are confident in their communication skills. Applicants will also be called upon to write essays, stories or answers that are evaluated not only for content, but also for the writing mechanics (grammar, spelling, sentence structure and organization) demonstrated by the applicant.

## **Building bridges with other workers**

Often when working, we don't know how to respond to certain issues that arise, and we need to consult with other organizational members. In order to do this, it is important to build relationships with experienced members based on communication. We can do this by writing professional emails and by using positive interpersonal communication.

## **Advancing in levels**

To be considered for promotion it is important to have excellent writing and interpersonal skills. To advance to the ranks of detective, officers must demonstrate the ability to build rapport with subjects involved in the investigation. Officers must also

demonstrate the ability to write effective reports in complex investigations. In doing so, officers demonstrate an ability to organize complex files in a manner that is presentable to the Crown Counsel, Defense Counsel and other investigators.

## Reading and comprehending duties

Officers in law enforcement are in a hierarchical organization in which they are at times given orders, either verbally or in writing. In order for the officers to perform their duty, it is essential that they comprehend what is being asked of them by their superiors. The ability to listen means to physically hear what is being said, and interpret what the superior means. Hearing may be problematic due to radio transmission issues or crowd noise. Understanding what the superior means may also be difficult, due to the language of the superior or inexperience of the subordinate in comprehending the true meaning of the message.

## Explaining to subordinates

Superiors should address subordinates in a way that makes their meaning clear at a different level. In law enforcement, a high ranking officer must be careful not to use language that may not be appreciated by those that are on the street, such as language that is used in the board room. Likewise, the high-ranking officer must not use patronizing language.

## Setting a good first impression

A recruit is observed and judged on their first day of employment with a law enforcement agency. How they attend that very first day will, rightly or wrongly, impact the way that recruit is perceived. A recruit who attends with poor grooming that is not in keeping with the standards expected in law enforcement may expose a side to their personality that suggests poor planning, poor research or a lack of practical intelligence. Unkempt

recruits will be given one warning to improve their deportment, however, even if they change and follow directions, they will have unwittingly communicated a personality trait to instructors that is not positive. While this situation is not irreversible, the recruit will have to correct impressions that could have been avoided by understanding the importance of communicating through deportment.

## Why is communication important for law enforcement?

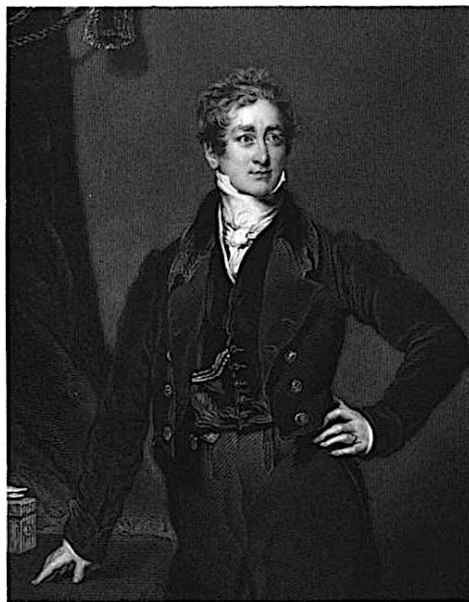
While police officers must be trained and ready to use force, they are expected to use their communication skills to de-escalate when possible before using force. Police agencies throughout Canada and most developed countries are training officers to use their communication skills rather than force.

## Peele's nine principles

While the use of communication skills has been steadily developing and taking more central focus in tactics, the notion of using communication as a key tactical step can be traced to the early 19th century, when we consider Sir Robert Peele's nine principles:

1. The basic mission for which the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon public approval of police actions.
3. Police must secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
4. The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
5. Police seek and preserve public favour not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.
6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.

7. Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
8. Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it. here is a brief history of the New Westminster Police Department.



Letitia Elizabeth Landon (L. E. L.) in  
*Fisher's Drawing Room Scrap Book*,  
1837  
"Fisher's Drawing Room Scrap Book,  
1837 – Sir Robert Peel" by Letitia  
Elizabeth Landon (L. E.  
L.), , Wikisource is in the Public  
Domain

When assessing Peele's principles, we are able to appreciate the intended positive relationship that the police should have with the public. At the core of the principles is the importance of communicating with the public by the police to project the adherence to these principles. Communication is accomplished through actions and interactions

with the community. It is hard to imagine a police department attaining each of these principles without some way of communicating to the public the manner in which these principles are achieved.

## Values

In addition to Peele's principles, law enforcement agencies also advertise their values. As an example, the Vancouver Police Department lists the following values on their web site:

- Integrity
- Compassion
- Accountability
- Respect
- Excellence

Only when effective communication practices are used, by the department as a whole and by individual officers, are these values all achievable. Likewise, to demonstrate these values, applicants to the VPD must be able to communicate in a way that achieves these values. Without effective communication, these values are not realized by recruits, the members of the agency, or the agency itself, and the values become meaningless. Effective communication allows the department to express these values to the community in a meaningful way, and allows individual employees and police officers to demonstrate these values.

## Communication and Peele's principles

Communication is a cornerstone of Peele's principles. The importance of effective communication in law enforcement aligns with Peele's principles for the following reasons:

1. Police are tasked to prevent not only crime but also disorder. In preventing crime and disorder, officers must receive and give information from and to the public by

opening and maintaining lines of communication. Today's community policing initiatives are critical in preventing crime; effective community policing relies upon open communication. Preventing disorder also relies upon communication. Most disorder in society is not of the criminal nature, and arrests may not be a suitable way to prevent disorder. As such, officers have to rely on skilled communication to prevent and stop disorder.

2. Canadian society demands that officers not use force unless authorized and justified under the Criminal Code. Additionally, officers are expected to use only as much force as is necessary, and when no other course of action will allow them to perform their duties.
3. Communication will enable co-operation with the public, and thus require a minimal use of force.
4. Using effective communication rather than physical force will preserve public favour, demonstrating absolute impartiality regardless of who the police are dealing with.
5. The public at large will favour any successful conclusion achieved by effective communication rather than physical use of force.
6. Police who apply persuasion, advice and warning effectively will be able to lessen the need for force, thereby gaining public favour.
7. Police are reminded that they are the public. As in all relationships, communication is critical, so that the public can view the police as the public. Only through open communication can these principles be re-affirmed and re-enforced.

The principles of Peele are also pertinent to modern day policing in ways that would have been inconceivable to Robert Peele. Modern day policing is highly complex. Officers are held to a high degree of accountability that requires articulation for decisions made throughout investigations, or in a split second when an officer is faced with a decision whether or not to use force. Investigations and decisions regarding the use of force are expected to reflect professionalism and non-bias. Furthermore, the physical use of force is expected to be justified, and an officer's execution of duties that limit the rights and freedoms of the public is expected to be justified under the Criminal Code and the Charter of Rights and Freedoms. Officers are expected to be able to communicate their decisions effectively in court and articulate in clear and concise language the reasons they took the actions they did. Likewise, officers are expected to remain calm when under great pressure either on the road, on the court stand or in a boardroom. The expectations for officers to demonstrate excellent communication skills is high.

## Examples of necessary communication skills

The modern day police officer is expected to have excellent communication skills for the following reasons:

Complex investigations need clear writing.

Every officer will from time to time investigate complex situations in which there are multiple crime scenes, multiple witnesses, multiple suspects, and complex and varied evidence. Investigations such as these require investigators who are able to write in a manner that clearly reflects what has occurred and what evidence the investigator has collected. Investigators are also required to communicate effectively with:

- a. other investigators;
- b. other agencies;
- c. victims;
- d. suspects;
- e. witnesses;
- f. media; and
- g. medical professionals.

Interviewing witness, victims and suspects

Good interviewing technique requires officers who can demonstrate empathy appropriately as well actively listen while strategizing appropriate questions to ask. Every criminal investigation consists of two elements: the crime scene, and people who are witnesses, suspects and victims. Witness and suspect statements should be treated as crime scenes to be mined and searched for evidence. Witnesses and suspects are as diverse as the general population, and an investigator must be prepared to meet with people from these diverse backgrounds. Receiving a fair, truthful, accurate and admissible statement is always an integral part of any investigation, and can change the



direction of a case. As a result, investigators must be able to communicate effectively with a wide range of personalities.

## Giving evidence in court

At the end of every case in which charges are laid, investigators face the prospect of giving testimony in court. As a witness in court, officers must be able to articulate what they did, what they observed, and the decisions they made and why they made these decisions. Officers who are experienced and effectively articulate their actions will give their 'evidence in chief' in a professional manner with little or no prompting from the crown. The end result for these officers is that their 'evidence in chief' provides a professional accounting of the investigator's part in the investigation that highlights the main points of the investigation. An effective articulation of the 'evidence in chief' will lead to few questions by the crown and minimal questions by the defense in cross examination.

## Talking to the media

Often investigators will be required to participate in media conferences, or to provide information at the crime scene rereading a case. Officers that perform this function must project a professional image that fosters public trust in what the officer has stated. Officers in this situation should be trained to interact with the media and must be able to choose their words carefully to avoid being quoted out of context. Officers must be transparent, truthful and sincere, while guarding what they say, without appearing to be guarded.

## Articulating any use of force, grounds for arrest and search

Unfortunately, law enforcement officers are legally required to use force at times. Officers who use force must articulate why they felt the need to use force and verify that

the use of force was justified under the criminal code. The consequences of not articulating accurately the grounds for using legitimate force are serious and may result in criminal charges for assault. Officers must be able to communicate verbally and in writing their accurate recollection of their actions.

## De-escalating people who are in crisis

Police officers spend much of their time working with people who are in crisis for a variety of reasons. To effectively police the public, officers must be able to use verbal and non-verbal communication skills to allow people in a state of crisis to be persuaded, without physical force, to keep the peace.

## Articulating their decisions in court

Officers who arrest suspects will likely have to attend court and outline the grounds that they formed to search, arrest, and/or detain the suspect. An officer who has worked at excellent communication skills should be able to tell the truth in an effective way. Defense Counsel will use a variety of methods to represent the best interests of the accused. Some of these methods may involve questioning the officer in a way that is designed to anger or confuse the officer. Even if an officer has conducted a fair, ethical and sound investigation, they may not be able to communicate this to the jury, or articulate the reasons for some of their decisions, if they become emotionally drawn into an argument by the Defense Counsel's.

## Some problems in communication for those in law enforcement

A key reason officers are hired is their demonstrated ability to communicate effectively with other people. They are given myriad tests, assessments and interviews in which

they are required to demonstrate an ability to communicate both verbally and through the written word. In spite of this, officers are human and will at times find themselves in situations in which the ability to communicate is greatly hindered. The following factors play key roles in difficulties with communication.

## **Multiculturalism**

Officers, like the public, represent many different cultures. Officers who are confronted by citizens who are from a different culture may not understand the nuances of the culture. It is important that the officer respect different cultures and that they adapt their communication to best suit the citizen. Officers should become familiar with cultures that they serve in their community. They should also identify key factors required to effectively communicate with these citizens, in settings ranging from emotionally distressed persons to friendly community groups.

## **Implicit bias**

Officers who unconsciously feel a certain way about a group of people may have difficulty understanding why it is difficult to build rapport with a person from that group. Officers should be aware of their implicit biases and understand that these are potential triggers that may be barriers to effective communication. Officers should develop strategies that mitigate these triggers and remove the barriers that may result in poor communication.

## **Explicit biases**

Officers may have a bias towards certain people because of their past history with that group. Unlike implicit bias, these biases are exhibited by the officer and are not unconscious or hidden. Officers may have an explicit bias against pedophiles. These biases are likely to act as barriers for the officer to build rapport with a person they are

investigating, if the officer believes that person is a pedophile. While communicating with a pedophile may be difficult, officers must develop strategies that mitigate the barriers. Some officers have developed strategies, such as thinking of the offender as a child who was themselves sexually assaulted. Other officers have focused on the means to the end, wherein the officer will do anything to gain a confession, including bonding with someone they detest, with the sole goal of providing justice to the victim.

## Lack of experience

Not every officer has experience in communicating, especially in emotional or difficult situations. Officers that have little experience may struggle with actively listening, and instead concentrate on other important issues, such as their safety, the safety of others or even how they are being judged by spectators. As officers gain experience, they will become more relaxed and able to rely on past strategies that were effective, and avoid strategies that were not effective.

## Emotion

Officers are often thrust into situations in which they are confronted with people who are emotional. As a result, officers are often impacted by the emotions of the subject, and may have difficulty effectively communicating. Some officers experience this when sitting with someone grieving; at times watching and listening to a person in such an emotional state can cause the officer to share the same emotion. Officers can also become emotional when observing an injustice or someone in pain. Officers must develop strategies to mitigate these feelings. Some officers have developed strategies which allow them to compartmentalize the victim's situation. They take the perspective that the crime was no fault of their own and that they are there to provide justice for the victim. In doing this, officers should be able to focus on the tasks involved in the interview.

## Accountability

Officers may be guarded in what they say out of concern for accountability, and may not say what ought to be said to diffuse a situation. For example, an officer who may want to apologize may not apologize, fearing that an apology may hold the officer accountable for the actions.

## Inter-agency language

What means one thing in one agency often means something different in another. For example, in the VPD, PC refers to Police Constable; in the RCMP, PC refers to Police Car or cruiser. Likewise, officers may hear terminology that they ought not use. For example, lawyers in court refer to their lawyer contemporaries as their friends. It is unacceptable for police officers to refer to defense lawyers or prosecutors as their friends.

## Acronyms

Law enforcement has its share of acronyms. Officers often rely on acronyms to shorten their communication and make it more efficient. As a result, officers often forget that their audience may not recognize their use of acronyms. Care should be taken by an officer to use familiar acronyms, or at least write out the full term the first time it is used. The use of acronyms in reports also makes reports unreadable at times.

## The Limitations of Listening

When teachers lecture in a class, they know through the class's body language that, at times, much of the class is not actively listening. They may retain some information, but they also miss much information because they are daydreaming or thinking of other things. This may be the fault of a boring lecturer, or it may be that the student has

difficulty focusing on the task at hand for myriad reasons (Farley, Risko and Kingstone: 2013). Students tend to demonstrate their inattention by fidgeting; by observing this, professors can alter their lecture to regain the attention of the students. Students may try to pretend that they are listening and paying attention but if they are not actively listening and concentrating, the information that the teacher is attempting to transmit is lost. Research does strongly suggest that in a lecture format, most information that a teacher attempts to relay is lost by the students (Farley, Risko and Kingstone: 2013).

Listening is something that can be done at different levels, and at times people can pretend to be listening and not gather information. People have ways to fake that they are listening, and it is incumbent on the speaker to be aware of clues that the listener may be exhibiting that demonstrate the person is not actually listening.

## Hearing and Listening



*Photo by RyanMcGuire from Pixabay*

Hearing is different than listening. When we hear something, at times we are not

listening. Hearing is physiologically receiving sound waves that impact our eardrums, Listening is the action of taking the soundwaves that impact our ear drums and transmitting that information to our brains, where we can consciously understand what the sound waves mean. When we hear sound waves, they can be a complex and potentially confusing mix. We separate sounds that do not matter from those sounds that are important; we selectively choose what is important and what is not important.

Listening then becomes a complex process of

- a. selecting;
- b. attending to, or focusing on;
- c. constructing meaning from, assigning meaning to;
- d. remembering, recalling information; and
- e. responding to verbal and non-verbal messages.

(MacLennan, J., 2007?)

Listening is much more than hearing; it is the transmission of the soundwaves into something that we do something about, either by responding or learning (Pavord and Donnelly, 2015). Listening is critical to success as a student. In a classroom setting, listening is critical for learning:

- 1. material;
- 2. what will be on exams;
- 3. what are the assignments;
- 4. what are the class deadlines; and
- 5. what are the school policies.

Listening at school is critical for success. Likewise, listening in social settings is critical so that students can enjoy their social lives, meet new friends and maintain those friends that they have. By being a good listener, we will be appreciated more by those we communicate with, and we will likely be sought out as a good listener.

On the other hand, when we meet someone who seems distracted while we are talking, it is unsettling. The listener that isn't really hearing what you are saying demonstrates this by looking over your shoulder, or looking to their right or left, and generally not making eye contact. Talking to such a person is frustrating, especially if you have something

important to say. Likely, after talking to such a person, you would not seek that person out again if you had some important information. The information that such a person misses out on could be catastrophic if the information is important. It is important for people in positions where information gathering is critical to be good listeners, and to demonstrate to the person that they are communicating with that they are good listeners.

If we are talking to someone that we are with frequently, we can at times not actively listen. Chances are that we know what the person is talking about without really hearing what they are saying. We know that married couples often tease one another that at times their spouse doesn't listen to them. They can become lazy listeners while they are together, especially if one of the partners isn't interested in what the other partner is talking about. At times listening can be hard work, taking a lot of effort to focus when it is easier to day dream or pretend to be listening.

When working in law enforcement, it is critical that officers engage in active listening and demonstrate to the other person that they are actively transmitting information and critically thinking about the information that they are receiving. Officers who demonstrate active listening are much more likely to have people seek them out to provide what can be critical and valuable information. This may include information about:

1. contraband (drugs, guns, pornography);
2. crimes committed but not reported;
3. suspects that have committed a crime;
4. crimes committed and reported; and
5. witnesses that may add information about a crime.

An officer who is actively listening obtains more information, and will likely be better able to act proactively in fighting crime than an officer who does not demonstrate active listening skills.



## How to listen

Listening takes effort, but it can be achieved by those that are new to active listening. Roberts and Rosnick (2010) suggest nine tactics that enhance listening skills:

### Decide to listen

- Concentrate and remind yourself that it is important to listen. That there is important information that you must learn from the person who is speaking. This will help you focus on listening.
- When you are introduced, choose to remember the name of the person that you are introduced to. Often when we are introduced to a new person whom we have never met, we tend to shake their hand and forget their name right away. Good listeners actively remember the name of the new person by using tricks, such as repeating the person's name right away while shaking their hand. They also talk about their name and associate someone else with that name or a similar name . They may mention this to the person. All this will enable the receiver of the information to remember the person's name while simultaneously creating rapport with the person, and demonstrate to the person that they are actively listening.

### Avoid selective listening

Hearing only what we want to hear can lead to misinformation, or to misinterpret information that is important. In a case in a British Columbia municipality, detectives interviewed a suspect in an unsolved homicide. During the interview with the suspect, the detectives were convinced that the suspect would not be willing to confess to the murder. The detectives developed a strategy to interview the suspect in a way that would make him want to confess. During the interview, the detectives were very mindful of their strategy and the dialogue that they had systematically designed. During the interview, the suspect started to sob and in doing so he stated on video that he had committed the murder. He stated this between sobs and in reviewing the tape later it

was quite apparent that this was a confession. During the interview, the two detectives did not hear this because they were waiting for denials and were concentrating on their planned dialogue. The detectives spoke over the suspect's confession by telling him to remain quiet so that he could listen to what the detectives had to say. Their listening was selective; they planned to hear only denials at that stage of the interview, and tuned out anything else. When the detectives finished with their scripted dialogue, the suspect had learned not to talk about his confession, and never spoke again. It was only after the recording was reviewed years later that the confession was heard and the investigation was re-opened.

## Give acknowledgement and feedback

Everyone wants to be heard when they are talking and, as the listener, it is important to demonstrate to the talker that you are listening and that you are understanding the message the other person is communicating. This can be done using the following techniques:

- **Nod or be silent.** By nodding you are using your body to effectively tell the speaker to continue and that you understand what they are saying and trying to communicate. This simple movement will cause the speaker to continue and acts as a prompt for the speaker to continue. Likewise, one of the struggles listeners have is to remain silent and allow the talker to speak uninterrupted. Interviewers must learn that their questions can wait until an appropriate time, usually when the speaker has assured you that they have nothing further to say. Remaining silent will allow the talker to carry on with their thoughts uninterrupted. Interruptions stop the talker's train of thought, and may cause them to move away from what they thought was important, which could be something that you would want to hear. At the same time, remaining silent will create a dynamic in which the talker believes that you are more interested in what they are saying than what you want to say. It is always necessary for the silent listener to demonstrate through their body language positive signals that they are actively listening, in spite of their silence.
- **Paraphrase.** Paraphrasing is the act of the listener restating in different words what the listener believes was said by the speaker. Paraphrasing is a powerful tool that enables the listener to ensure that they are receiving the true meaning of what the

speaker has stated. If the listener's perception of what the speaker states is not accurate, a paraphrase allows the speaker to correct the listener and clarify what they meant to say. It is a check and balance to ensure that the information relayed is accurate. Paraphrasing by the listener also assures the speaker that the listener is not only listening, but correctly interpreting the message the speaker is relaying. It creates confidence in the speaker that their message is being heard and will likely cause the speaker to continue communicating with confidence. Care must be taken by the listener to ensure that the speaker is not constantly interrupted and that the paraphrase is appropriately timed.

## Ask appropriate questions

At times critical information may be missing and questions are needed to fill the gaps. Typically in an interview, it is best to ask the questions when you are certain that the speaker has completed their statement.

Open versus closed questions. Open-ended questions allow the speaker more opportunity to speak. Asking "just tell me yes or no, was he wearing a red jacket?" is problematic because the answer is likely to lead to a yes or no answer. Conversely, saying, "tell me about what he was wearing" will lead to more detailed answers that may inspire other thoughts. Furthermore, the close-ended question may signal to the speaker that the questioner is impatient or upset. The answer will likely be much shorter than to an open-ended question.

## Look for the subject's non-verbal cues

As a listener, it is critical to not only listen to what the speaker is saying, but to monitor what differences that appear in the body of the speaker while they are speaking.

- **Body language.** Body language includes non-verbal physical signals that can be unconscious forms of communication that tell us more than a person's words. These signals may indicate that the speaker is uncomfortable, dishonest or experiencing

other emotions. Most of us have read body language at one time or another. At times, we may see someone on TV describing a sad incident they have witnessed and attempting to portray a strong disposition. When watching the person, we notice the person's lips begin to quiver and the subject looking away from the camera. These are body language signals that the speaker is having difficulty controlling their emotions, but they reveal how the person really feels. As a listener, it is incumbent on us to see these signals and use them to our advantage. If we say, "this must be very distressing for you", the speaker will believe that you are listening and will likely feel comfortable continuing to talk. Body language will manifest itself in different ways and, while at times these movements may be obvious, they may also mean different things. Great care must be taken in interpreting what body movements mean.

- **Tone of voice.** The tone of the voice is closely tied to body language. While the sound of the words is critical, a change in the speaker's tone of the voice may tell the listener that the information being relayed is sensitive to the speaker. When excited, speakers may increase their rate of speaking, while speakers who are bored or frustrated may slow their rate down. Likewise, speakers who really want to emphasize a point may emphasize a word to separate it from the other words in the sentence.

## Listen with your whole body

Just as we as listeners should watch the body language of the speaker, we must also monitor our own body language. A listener who is bored can easily demonstrate to the listener that they are not interested in what the speaker is saying. This tactic can be used to end conversations and to prolong conversations. If a listener is longing to end a conversation with someone, body language exhibited by the listener can assist in ending the conversation. Moving away from the speaker, or looking at their watch are all signs that indicate that the listener would like the conversation to end. Likewise, if a listener wishes to project that they want the conversation to continue, then the listener may lean forward and nod, indicating that they are listening and wanting more information.

Use body language to convey what you want to convey. Listeners may nod, or smile when they are hearing what they want to hear. This will enable the speaker to be sure that they

are on the right track. The listener must take care that they do not lead the speaker to say what the listener wants to hear and not what the speaker may want to say.

## Separate fact from opinion and propaganda

We are living in a time that some people refer to as the “post truth” era, when politicians such as Donald Trump have little regard for the truth. It is important for listeners to critically assess what is being said to them and to question the truth. To be aware of and guard against lies and mistruths,, Roberts and Rosnick (2010) suggest that listeners listen for inflaming words or biased words. These words betray what the speaker may be thinking or hiding rather than what they are saying. This helps the listener understand what the speaker really means. The listener is also forced to critically listen and ask questions to gain a better understanding of what the speaker is talking about.

## Control your emotional response

Roberts and Rosnick (2010) suggest that the ability to listen is enhanced when listeners are in control of their emotions. To be in control of one’s emotions, listeners should know what bothers them and what other people can do and say to bother them. When something is said that bothers a listener, Roberts and Rosnick (2010) suggest ignoring, confronting or addressing the comment, but continuing on with the conversation.

## Make notes

Notes assist all listeners to recall what was and was not stated. Notes also help the listener to determine whether or not they need to follow up with the other party for clarification. A good idea for a conversation that may be contentious is to make notes and follow up with the other party in an e-mail that includes the notes, so that both parties can agree on what was said. This way the other party has an opportunity to clarify what

you may have misunderstood. This is also a useful technique for confirming tasks that have been delegated, so that all parties are aware of what is expected of each other.



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## Barriers to effective listening

There are reasons that people are at times poor listeners. Roberts and Rosnick (2010) identify nine barriers to effective listening. They include:

### Lack of interest

We have all sat through lectures or presentations that do not interest us. At some point, most of us start to think about other things and we ignore what we do not care about.

For example, a police officer who is investigating a murder will likely not pay too much attention to a witness talking about a minor ticket they received, and after the interview may not even recall that this was mentioned.

## Daydreaming

As with lack of interest, when we are not interested, we tend to think of other things; this is day dreaming. For example, an interviewer who is struggling with personal issues away from their job may daydream during an interview and miss parts of what the other person is saying.

## Emotional concerns

We may have a connection to the story that inhibits us from actually listening to what the person is saying. We may have made up our mind already and are emotionally prevented from listening accurately to what is being said. For example, an interviewer who was sexually assaulted as a child may have difficulty listening to a sex assault victim's recollection of an assault that is similar to the one the investigator suffered through.

## Judging

Our biases hinder what is accurately being heard, and these biases influence our perception of what is being said. For example, a police officer who has a bias against homeless people may have trouble listening to a homeless person lodge an assault complaint against a fellow police officer.

## Physical location

The physical location of the conversation or interview is critical, and must be a relaxing, comfortable and quiet environment. For example, sitting in police car interviewing someone on a freeway may be distracting to a witness. It may also be noisy, and if the police car has a Mobile Data Terminal, sitting in the front seat may be uncomfortable for the witness.

## Inability to understand

At times we talk to people that are clearly incapable of appreciating or understanding what is at issue, e.g., a police officer talking to an elderly person who is suffering from Alzheimer's disease, or a doctor using highly technical terms in an interview that confused the officer.

## Unclear presentation

If the speaker does not present the information effectively, e.g., a witness who switches from a chronological accounting of events to unrelated vignettes, the listener may not clearly understand the speaker's intended message. For example, an officer may literally interpret a colloquialism used by a young person if the officer is not familiar with the phrase, e.g., "he was sick".

## Lack of retention

This is an inability to recall information. For example, a witness to an accident may not remember an instruction from a police officer to email a written statement, if the witness has already provided a verbal statement or a field interview.



# Non-Verbal Communication

Both the receiver of information and the provider of the information must be aware of and assess non-verbal communication. Facial expressions, hand gestures, the tone of voice, micro and macro body movements, the way we dress and wear our hair, the cleanliness of our face and hands, and the friends we keep, are all ways in which we display body language.

The presenter of the information must at all times be aware of the information they are providing through their non-verbal communication. At times, when the presenter of information is bored, uninterested or angry, they will project their true feelings and create a barrier for the listener to really understand their true meaning. Conversely, the listener can interpret body language and truly understand what the presenter means.

Imagine a person curling their lip and clenching their fist, while asking for a favor from a listener. The listener is likely to wonder why the presenter's body language contradicts their words. The listener may be upset, and even frightened, to the point of planning an escape, and therefore missing the presenter's verbal message. Likewise, it is difficult to present information when the receiver is showing a curled lip and a clenched fist. The presenter might be preoccupied with thoughts of their own safety, and their presentation of the information would suffer.

Most of us would recognize these basic body language clues. Clothing and personal grooming can exhibit even more subtle body language clues. Police officers who spend time as undercover operators experience the different ways that they are treated in different settings. A police officer who, before becoming an undercover operator, likely presents as a law-abiding family person who conforms to most of norms. However, that very same officer is often treated differently, as if they were a law-breaker or not to be trusted, when they become an undercover operator and meet people that do not know them as a police officer.



# CHAPTER 2



# Matching Communications Tactics with Evolving Situations/ Communicating with People in Crisis

## Use of force is a last resort

In policing, force must be used as a last resort. For police officers to have legitimacy, every effort must be made to avoid force. In Canada, the use of force is permitted under the Criminal Code, with limits as set out by Sec. 25 (4). (Justice Laws Web site accessed June 7, 2018).

25 (4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if:

- a. the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
- b. the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
- c. the person to be arrested takes flight to avoid arrest;
- d. the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
- e. the flight cannot be prevented by reasonable means in a less violent manner.

Ultimately, section 25 (4) prohibits the use of force by police officers unless the force is necessary to protect people. Furthermore, force is only to be used if there are no other available means that are less violent. The legislation makes it clear that officers must report any use of force and that force is only used when there are no other means available. As such, police officers are bound to try any means at their disposal to arrest a

suspect with the least violent means possible. One of the tools police officers utilize is verbal judo along with the main principles of crisis intervention, and de-escalation techniques.

## Communication strategies

Verbal Judo is a communication process used by officers to change a subject's behavior without the use of any physical force. The ultimate goal of verbal judo is to gently persuade someone to become non-resistant and cooperate without aggression. Thompson and Jenkins, (2013) have identified Five Universal Truths for Human Interaction that are important for officers to remember when dealing with people:

1. Treat people with dignity and respect.
2. All people want to be asked rather than told to do something.
3. All people want to be told why they are being asked or ordered to do something.
4. All people want to be given options rather than threats.
5. All people want a second chance when they make a mistake. (page ix)

These principles should guide all police officers when interacting with people in crisis.

Along with these principles, Thompson and Jenkins, (2013) suggest there are eleven things that officers should never say. They include:

1. "Come here";
2. "You wouldn't understand";
3. "Because those are the rules";
4. "It's none of your business";
5. "What do you want me to do about it?";
6. "Calm down";
7. "What's your problem";
8. "You never" or "you always";
9. "I'm not going to say this again";
10. "I'm doing this for your own good"; and
11. "Why don't you be reasonable?"

These phrases, according to Thompson and Jenkins (2013), can lead to barriers to communication. The use of these phrases can also lead to subjects reacting poorly and potentially aggressively. The effective communicator should use language other than the phrases listed above.

As an exercise, understand each phrase's goal, and another way to achieve the goal verbally.

**Phrase Goal Table**

<b>Phrase to avoid</b>	<b>Reaction the Phrase may cause</b>	<b>What the goal of the phrase is</b>	<b>Another way to verbalize</b>
<b>Come here</b>			
<b>You wouldn't understand</b>			
<b>Because those are the rules</b>			
<b>It's none of your business</b>			
<b>What do you want me to do about it?</b>			
<b>Calm down</b>			
<b>What's your problem</b>			
<b>You never or you always</b>			
<b>I'm not going to say this again</b>			
<b>I'm doing this for your own good</b>			
<b>Why don't you be reasonable</b>			

One of the most critical skills needed for someone to successfully use verbal judo is to demonstrate empathy. According to the Oxford Dictionary (2018) empathy means “the ability to understand and share the feelings of another” (e.g., both authors have the skill to make you feel empathy with their heroines), whereas sympathy means ‘feelings of pity and sorrow for someone else’s misfortune’ (as in, e.g., they had great sympathy for the flood victims).

At times, humans with biases and emotions have difficulty feeling genuine empathy. However, it is critical when dealing with people to demonstrate empathy, even when one does not truly feel empathy. Respect is also something that we need to show everyone, regardless of how negative we may perceive the person's actions to be or how we may

feel towards the person. Showing people respect projects a professional image, demonstrates ethical treatment of people, and ultimately obtains cooperation in a peaceful and ethical manner. When we treat people disrespectfully, we lose our objectivity and become more of the problem, rather than the solution. We also damage our ability to perform our job ethically and lose any ability to foster cooperation from the public.

Thompson and Jenkins (2013) suggest that one of the tools Verbal Judo utilizes is Paraphrasing. This shows empathy and allows the subject to stop and listen to the officer, while ensuring the officer's understanding of what the subject is trying to say. Verbal Judo is a skill set that deserves exploration by officers who value communication as a skill that will enable them to gently persuade people without the use of force. There are Verbal Judo courses offered for police officers. However, officers must be committed to using this communication technique and practice the technique when appropriate.

## Crisis intervention de-escalation

All police officers in British Columbia are trained in crisis intervention and de-escalation. The ultimate goal of crisis intervention and de-escalation is to turn a highly tense situation into a situation of greatly reduced tension. (Oliva, Morgan and Compton, 2010).

The value of this training leads to greater legitimacy of police in the eyes of the public and the courts, as well as greater welfare for those people in crisis. Furthermore, it leads to a safer environment for police officers who are more likely to solve critical issues without the use of force. The use of crisis intervention and de-escalation techniques increases the welfare of police officers because they avoid lengthy use of force investigations, inquiries, criminal charges, injuries that they sustain from use of force incidents and trauma that they may experience after the incident. Resolving a crisis through de-escalation skills and the use of non-physical means leads to an increase in cognitive confidence of officers. In addition, these skill sets can be used in officers' personal lives as well as during interviews related to more serious crimes. These benefits to police officers are enormous.

Like Verbal Judo, crisis intervention and de-escalation requires training, and



understanding that the end result is a resolution without the use of force. Officers must understand that most of their duties are dedicated to keeping the peace, and that a major component of peace-keeping is problem-solving without the use of force (Walker & Katz from Oliva et al (2010).



*“Crisis Intervention” by Mecklenburg County, , Flickr is licensed under CC BY-NC 2.0*

People in crisis present in many different forms, and may be in crisis for many different reasons. People with mental health histories can be more likely to be susceptible to being in crisis; police are often called to respond to calls when a person is in crisis due to a mental health episode. These people may exhibit a wide range of symptoms characteristic of someone experiencing a mental health episode, such as anxiety, a lack of concentration, and agitation (Oliva, Morgan and Compton, 2010).

Situations calling for crisis intervention techniques are not limited to people with histories of mental health issues. These situations include people who are resistant to arrest or apprehension, people who are traumatized by crime, and people who are coping with mentally difficult situations (Oliva, Morgan and Compton, 2010).

Again, a common theme in crisis intervention and de-escalation is the ability to actively listen and to assure the person in crisis that the listener is actively listening. Oliva, Morgan and Compton (2010) suggest the following strategies in a crisis situation to demonstrate to the subject that the officer is actively listening:

- a. introducing oneself;
- b. using “I” statements;
- c. restating statements;
- d. mirroring/reflecting; and
- e. summarizing/paraphrasing.

Conversely, Oliva, Morgan and Compton (2010) suggest that there are behaviors to avoid when dealing with a crisis situation. They include:

1. asking “why” questions;
2. speaking too loudly;
3. rushing;
4. allowing their feelings to interfere with their professionalism;
5. presenting rude, abrasive behavior;
6. taking things personally;
7. doing something dangerous; and
8. lying.

Some tactics are necessary when an officer is interacting with an Emotionally Disturbed Person (EDP). When confronting an EDP who is delusional or hallucinating, officers should acknowledge that the EDP is experiencing hallucinations and delusions, and that they are having an impact on the EDP.

In British Columbia, officers are trained in crisis intervention and de-escalation skills and have been using the techniques for years. Police recruits are taught these skills while at the police academy and are expected to use them during their testing, simulations and after graduation.

The BC Crisis intervention and de-escalation program is based on the blending of the National Use of Force model, which was developed in 1999, and the CID model that was developed as a response to the Braidwood commission in 2011. The training is mandated and is part of the BC Police Act Training Standards.

Historically, police response to crisis situations exacerbated situations rather than calming the situation down. Officers were reluctant to give the subject time to consider options or to give power to the subject. Officers would see the solution through their lens only, without considering the subject's perspective. Officers required the subject to follow their directions or they would use force. This strategy would inevitably lead to a power struggle in which the police would exercise the use of physical force to satisfy their goals. The inevitable result is a loss of legitimacy in the eyes of the public, the courts and the EDP.

Utilization of the CID model leads to less physical solutions to crisis situations through decisions based on a balance between the police and the subject. Using CID increases the number of safe resolutions for police and subjects, and the legitimacy of police to the public and courts. When police do have to resort to lethal use of force, the courts and the public understand that an effort to conclude the crisis situation peacefully was attempted.

The BC CID model for police officers in British Columbia consists of a lesson plan and exercises (from the CID course PPT). People in crisis in this program are referred to as EDPs. In the course, a crisis is considered a situation in which a person has difficulty coping with a conflict or series of conflicts in a rational manner. The EDP may be temporarily in a state that is disturbed or their disturbance may be part of a long-term mental health problem that has been exacerbated by the conflict they are confronted with.

The BC CID plan has three steps every officer must consider before, during and after the call with a person in crisis as the subject.

Situation:

1. Assess: The officer must consider all elements of the situation. They need to know the nature of the call, the suspect(s) involved, if backup is available, their physical abilities, the terrain at the location, weather conditions, etc.
2. Plan: The officer must formulate an action plan, bearing in mind that all situations

are dynamic. Remember, every action has a reaction, so contingency plans must also be considered.

3. Act: Once on scene, the officer must put their plan into action. It is important to remember that oftentimes officers must assess, plan, and act in a split second, as in the case of a spontaneous assault on the officer.

There are four phases within the BC CID program:

#### Phase 1: Make First Contact

Goal: Build rapport to start de-escalating the crisis.

#### Phase 2: Assess Crisis

Goal: Assess the crisis while maintaining rapport.

#### Phase 3: Collaborate to Build Solutions

Goal: Create opportunities for collaboration/cooperation (buy-in).

#### Phase 4: Resolve and Follow Up

Goal: Follow through on the solutions made in Phase 3.

Being able to use these techniques will not only contribute to improved results but provide a standardized way to articulate what an officer does or attempts to do to de-escalate a situation. (This has benefits for media responses, police notes, reports and testimony.)

The BC CID model, if followed, will increase the likelihood of a successful and peaceful conclusion to a situation with a person in crisis. All officers in British Columbia are required to take the BC CID course and are expected to utilize the key principles of the course when interacting with an EDP.

## Conflict resolution

Conflict not only occurs with EDPs, it happens on a day-to-day basis at work, school or

at home between people that are not emotionally disturbed and who have no history of mental illness. In this book, conflict resolution focuses on interpersonal conflict or conflict between people. “Foundations of Collaborative Conflict Resolution” (2017, Justice Institute of British Columbia) defines conflict as “differences between at least two independent parties who perceive or are experiencing:

- incompatible goals or needs;
- thinking differently about process or routes to a goal; or
- interference in meeting their goals or needs”.

Conflict, based upon the definition used, is something that is common in day to day life and is a part of life that is unavoidable. If someone is engaged in a social life, they will inevitably be confronted with conflict. Dealing with conflict can be difficult and frustrating and it is therefore critical to learn how best to resolve conflict so that it can strengthen relationships and provide both parties with a winning result.

There are five conflict styles that reflect different attitudes toward conflict (JIBC, 2017):

1. Competing: domineering behavior that is inflexible in its outcome.
2. Avoiding: the party avoids conflict and ignores any attempt to confront the conflict.
3. Accommodating/Harmonizing: The party focuses on the other person, rather than themselves.
4. Compromising: Both parties are satisfied, with each party showing a preference to themselves.
5. Collaborating/cooperating: Focus is on satisfying both parties as much as possible.



# CHAPTER 3





# Gathering Information

An investigation usually contemplates evidence gathered from crime scenes and from witnesses. As such, witnesses are an integral part of any investigation. Witnesses can range from persons who observed a crime occur and can identify the suspect, to witnesses who have no direct connection to the crime but are able to provide some indirect evidence that will form part of the overall evidentiary package that the investigator will use to gain a full understanding of the crime. Evidence such as this may include work records or other archival data to which the witness has access.

All witnesses are managed during the initial investigation when officers arrive on scene, during the initial investigation, during the follow up of the investigation, and post-investigation for the court appearances.

The author has had numerous cases that have involved witnesses that need to be managed for a variety of reasons. Witnesses that are vulnerable, such as homeless people, need to be made available for court, so a witness management program is required to keep the witnesses available for Crown Counsel. Witnesses who are in danger due to their lifestyles also need to be given access to healthcare or other programs that may make them more likely to be of assistance to the court when they are called to give evidence.

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## Witness Management

“Different types of witnesses will provide evidence from different perspectives, and these perspectives need to be assessed by the investigator to establish the reliability of the evidence provided.”

For any investigation, the details of events provided by witnesses are a critical element of the evidence gathered. Witness testimony is the verbal account of events or knowledge of the facts relevant to the crime. Witness statements will assist the investigator in forming reasonable grounds to lay a charge and will assist the court in reaching a decision that the charge against an accused person has been proved beyond a reasonable doubt.

As the law has evolved regarding witnesses, many rules of evidence, definitions, and protocols have developed to govern the way witnesses may testify in court. It is important for an investigator to understand these elements as this allows an investigator to evaluate witnesses and collect witness evidence that will be acceptable to the courts. The purpose of this chapter is to discuss the following concepts as they relate to the process of witness management.

1. Identifying witnesses
2. Defining witness types
3. Defining competence and compellability
4. Identifying the witness/suspect dilemma
5. Witness credibility assessment
6. The truthfully-incorrect witness
7. Recognizing dominant witness influences and conformity
8. Dealing with uncooperative witnesses
9. Conducting witness interviews
10. The field interview

## Identifying Witnesses

It is sometimes the case that persons found as apparent witnesses to an event do not always provide accurate information about their identity. The reasons for this deception can vary from actual involvement in the crime to fear of reprisals from the suspect to simply not wanting to become involved with the criminal justice system. Regardless of the reason, it is imperative for an investigator to verify the identity of each witness. This can be best achieved by viewing a valid photo ID or, in the absence of photo ID, by establishing the witness' identity through other means, such as police records, confirmation of identity, or verification of identity by a credible third party.

## Witness Types

Once the identity of a witness has been determined, an investigator needs to establish an understanding of the witness classification. Different types of witnesses will provide evidence from different perspectives, and these perspectives need to be assessed by the investigator to establish the reliability of the evidence provided. This is important for several reasons, including that if charges ever go before the court, a judge will also consider these witness types and apply appropriate rules of evidence and levels of probative value to the evidence each type of witness provides.

### Eye Witnesses and Corroborative Witnesses

As discussed in previous chapters, evidence can be classified as either direct evidence or indirect circumstantial evidence. An eyewitness is a person who directly saw the criminal event take place, while a corroborative witness is a person who can only provide circumstantial or indirect evidence of the events surrounding the crime. For example, consider two scenarios where a young cashier is shot to death during the robbery of a convenience store. In the first scenario, one witness is found at the scene of the crime when the police arrive. This witness was a customer inside the convenience store. She saw the robber walk up to the counter, raise his handgun, and shoot the cashier. This witness can identify the suspect. In the second scenario, the witness is a customer who was walking up to the front of the store when he heard what sounded like a gunshot. He then saw a man running out the front of the store with a handgun in his hand. Upon entering the store, he saw the cashier had been shot. He can identify the suspect.

In both scenarios, a male suspect is apprehended in possession of a handgun only two blocks away from the scene of the crime. In the first scenario, the witness would be classified as an eyewitness; but in the second scenario, the witness would be a corroborative witness.

In the described scenarios, both witnesses can provide valuable testimony; however, the evidence of the eyewitness in scenario one would be given more weight at trial because there is a direct connection that the accused committed the offence through direct evidence, and the court would not need to make any interpretation on the veracity of any circumstantial evidence. The witness was present and saw the suspect shoot the victim. The corroborative witness in the second scenario provides strong circumstantial evidence to suggest that the man running from the store committed the shooting; however, additional investigation would be needed to support the circumstantial assumption that the person seen running from the store committed the shooting.

Clearly, eyewitnesses are the type of witness that investigators hope to find in their investigative efforts. Any police investigator will tell you, eyewitnesses are frequently not present at the scene of a crime, and therefore investigators need to be skilled at discovering additional physical and circumstantial evidence that can assist the court in reaching its conclusions in relation to the evidence of a corroborative witness.

In the second scenario, additional evidence that might assist the court to reach a conclusion that the

suspect running from the store was the shooter might include the following: ballistics from the handgun seized from the suspect matching the fatal bullet found in the body of the accused, gunshot residue from the hand of the suspect showing that he had recently fired a weapon, and/or conclusive information indicating that the suspect and the shooting victim were the only two persons inside the store at the time of the shooting.

This is not to say that these same items of additional evidence would not also be useful to corroborate the witness in the first scenario. The difference is that, in the case of an eyewitness, the additional evidence is a value that is added, while in the case of the corroborative witness, more evidence is required to support the conclusion of guilt beyond a reasonable doubt.



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## Independent Witness

In addition to considering the evidence of a witness based on being an eyewitness or a corroborative witness, the court will also give additional weight to evidence that comes from a person who is an

independent witness. An independent witness is sometimes referred to as a third-party witness. They are characterized as independent because;

- They are not associated with the victim
- They are not associated with the suspect
- They are not in any way associated to the criminal event

In other words, an independent witness is someone with nothing to lose and nothing to gain by the outcome of the case. With this inferred lack of vested interest to either side, the independent witness is seen by the court as providing unbiased testimony. Similar to the court, an investigator can attribute more confidence to statements made by persons who are established to be independent eyewitnesses or independent corroborative-witnesses to an event.

## Competence and Comparability

For a person to be called as a witness to testify in court, that person must be accepted by the court as being both a competent witness and a compellable witness. There are some rules that apply to assessing both competence and compellability of witnesses, and it is important for an investigator to understand these rules and definitions since it can negatively affect a case if key evidence is expected from a witness who is found either not competent or not compellable to testify. The examination here is not intended to be a comprehensive review of the rules of competence and compellability, but an overview of the main statutory issues. Case law relating to the finer points of witness competence and compellability is constantly evolving and, where applicable, may be presented in a court to challenge a witness.

## A Compellable Witness

Most of the people an investigator will encounter during their investigations will be considered compellable to testify. Any person can be compelled to attend court as a witness by way of issuing a subpoena. If they fail to attend court after being served with a subpoena, the court may issue a warrant for the arrest of that witness to bring them before the court to testify. That said, once a person is compelled to attend court by either a subpoena or a warrant, there are still certain circumstances under which that person may be considered exempt, or not compellable to provide certain types of testimony. These circumstances relate to when the witness is an accused person or when the witness is the spouse of the accused.

1. An accused person cannot be compelled. Under Sec 11 of the Canadian Charter of Rights and Freedoms (1982), an accused person cannot be compelled to testify at his or her own trial. However, if the accused person is charged jointly with another person, they may be compelled to testify against their co-accused. Under those circumstances, the witness can be afforded protection under the Canada Evidence Act (1985) and their testimony cannot subsequently be used against them at their own trial for that same offence.
2. When the witness is married to the accused. To preserve the privilege of communication between two partners in their marriage, legislation and case law provides a protection of privacy, and anything said

between two married partners in relation to a criminal event cannot be compelled as testimony in court. This exemption to testify is stated under the Canada Evidence Act (1985). Specifically, Sec 4(3) states:

No husband is compellable to disclose any communication made to him by his wife during their marriage, and no wife is compellable to disclose any communication made to her by her husband during their marriage.

Many people incorrectly believe that this is a blanket protection where one spouse cannot testify against the other. However, the legislation only provides protection to the communication between spouses. It does not restrict a spouse being called to testify regarding observations of physical evidence or relationships. For example, a husband may arrive home covered in blood and carrying a bloody knife confessing to his wife that he just stabbed someone to death. Although the communication of the confession of the crime would not be compellable testimony, the observations of the blood, the knife, the time and location of the observation would be a compellable testimony. On this point, Sec 4(2) of the Canada Evidence Act (1985) also states:

No person is incompetent, or compellable, to testify for the prosecution by reason only that they are married to the accused.

In addition to the ability to call a spouse to testify regarding observations of evidence, the prosecution can compel a spouse to give evidence, including personal communications, for the prosecution in cases that involve an offence of violence against that spouse and certain sexual offence against children.

## A Competent Witness

Like the rules of compellability, persons are presumed to be compellable to testify unless they meet the exceptions stated under the Canadian Charter of Rights and Freedoms or The Canada Evidence Act. All witnesses are also considered competent to testify unless it can be shown that they lack certain personal abilities or capacities. Historically, common law barred certain people from testifying. These people included convicted criminals, very young children, the mentally ill, and spouses of an accused person.

Many of these rules have been overturned by statute, for example, the rule against convicts was removed by section 12 of the Canada Evidence Act (1985). The record of a convicted person can still be used as character evidence.

There are three classes of exceptions; children, persons with low mental capacity, and spouses. For each of these classes of people, it is up to the opposing counsel in court to make a challenge and establish the incompetence of the witness.

There is a presumption that the witness possesses both capacity and responsibility to give evidence. To testify, a witness needs only the ability to recall what they have seen and heard and be able to communicate what they recall. To communicate, the witness must be able to understand and respond to questions, and

the witness must demonstrate the moral capacity to tell the truth. Moreover, the determination of competency is guided by the following rules established in case law:

The proof of competency or incompetency is on the balance of probabilities (R v Ferguson, 1996).

Where competency is challenged, it must be established by a voir dire before the witness can be sworn (R v Steinberg, 1931).

A witness who states that they may not tell the truth is still competent to testify. Such issues of truthfulness are factors of credibility for the trier-of-fact (R v Walsh, 1978).

When considering the issues of witness competence and compellability, an investigator must keep in mind that the evidence collected from certain witnesses, such as spouses, children, and persons of low mental capacity, may be subjected to these rules. Exemptions for witness testimony and exclusion of the evidence may occur at trial (R v Khan, 1990; Justice Canada, 2017).

That said, during the investigation, it remains within the purview of the investigator to assess the information and evidence collected, and to consider that evidence when forming reasonable grounds to believe and act. When considering the nature of the information and evidence received, it is not up to the investigator to assess whether the court will accept the information or not. The investigator's use of the information and evidence received from a spouse, a child, or a person of low mental capacity should not be discounted in forming reasonable grounds simply in anticipation of a possible exemption of the witness and exclusion of evidence by the court. If the person giving the information or evidence is assessed as being a credible witness, the investigator should consider that material and give it fair weight in forming reasonable grounds for belief.

## The Witness/Suspect Dilemma

Although the circumstances vary, it is a common occurrence that crimes are reported by a perpetrator posing as a victim or a witness. Crimes, such as break-and-entry and motor vehicle thefts, are quite often insurance frauds. Other crimes, including murder, have also had the offender make the report as a witness to explain their presence at the crime scene and avoid being considered as a suspect. Being aware of this possibility requires investigators to undertake a process of validating the reported crime and assessing the information being reported by witnesses or victims as a routine part of their investigation. To do this, an investigator should be attentive to questioning the report and the evidence presented to assess:

1. Did the crime happen at the time being reported? It is often difficult for a person fabricating a report to provide the true timing of the events without implicating themselves as present at the time of the crime. Asking questions that demand timelines accounting for witness activities during the crime time can sometimes detect deception.
2. Did the crime happen at the place being reported? Persons fabricating a report will sometimes change the location of the reported crime to avoid detection of the true crime scene where incriminating physical evidence may still be present. Carefully assessing the report in comparison to evidence present or not present can sometimes indicate this deception.
3. Did the crime happen in the manner being reported? False accounts of crime will often exaggerate or over report details of the event. The report will contain some level of fabrication that explains their



own connection to the events. Assessing each witness version of the event for consistency or inconsistency with physical evidence and other witness versions can reveal deception.

Even with careful attention to these questions, it may not be immediately possible to confirm the validity of the crime being reported, and the investigation must proceed to take the report as true until other evidence emerges to prove otherwise.

The advantage of investigating this kind of falsely reported crime is that the suspect is presenting themselves as a witness or victim. As such, all their statements may be taken and will be admissible against them later, without voir dire, if deception in their statement becomes provable. Until some distinct piece of incriminating evidence emerges, the investigator is under no obligation to caution or warn the witness. Each new statement can afford opportunities to investigate further in search of evidence of the lie that will prove deception.

## Witness Credibility Assessment

In addition to determining if a person is an eyewitness, a corroborative witness, an independent witness, a competent witness, or a compellable witness, every person who is a witness during an investigation needs to be subjected to a credibility assessment. As information and evidence are collected from each witness, it is part of the investigator's job to determine the level of confidence that can be attributed to each witness. This is called witness credibility assessment.

One of the most significant issues to be considered in assessing a witness is determining if they are a witness, or if they are a suspect posing as a witness. More likely than interviewing false reporters of crime, investigators find themselves interviewing a variety of ordinary people who truly have been the victim of a crime, have witnessed a crime, or witnessed some aspect of a criminal event. The level of confidence an investigator can have in a witness will be contingent on several factors relating to who the witness is, the abilities of the witness, and the circumstances of the event.

1. Witness profile. Ideally, every witness would be an upstanding member of the community with a high level of integrity and an outstanding reputation. This is rarely the case. The nature of criminal activity and the natural proximity and association of criminals within a criminal community, often skew the witness list more towards those with more colorful and less upstanding personal profiles. Being part of the criminal community, or having a criminal record, does not necessarily mean that a witness will not be truthful. However, these are factors that an investigator must consider when assessing the value of the evidence being reported. For example, if a witness has a record for perjury, their evidence should be carefully scrutinized, and additional corroboration may be required to strengthen the witness' account of the events to achieve acceptable credibility for the court.
2. Witness bias – motivation to lie. As discussed earlier in this chapter, independent witnesses who are not connected to the victim, the accused, or the event itself make the most credible witnesses. People close enough to a criminal event to become witnesses are often, in some way, related to the victim, the suspect, or to the event itself. As such, the associated witness may have a bias in making their report of the event. As a friend or foe, the witness may have some motivation to withhold information or to lie to influence the outcome. Understanding how each witness fits into the event, and what their

linkages are to other participants or the event itself, is an important dynamic to uncover. In the case of a bias witness, additional corroboration should also be looked for.

3. Witness involvement – emotional impact of the event. Criminal events can be very stressful and anxiety producing experiences. This is not only true for the victim but for anyone who has been exposed to danger, violence, or situations where threats to personal safety or incidents of injuries or death have occurred. As human beings, we are not conditioned to live through these kinds of events without experiencing emotional response. Post-Traumatic Stress Disorder speaks directly to the emotional damage traumatic events can inflict (Resnick, Kilpatrick, Dansky, Saunders, & Best, 1993). It is important for an investigator to consider the nature of the event and the exposure of the witness to these dynamics. Extreme post traumatic trauma, such as observing the violent death of a loved one, can sometimes render that witness unable to provide a reliable account of details (Streets, 2011). It may be necessary to give some witnesses time to regain their composure to provide information or evidence. In some cases, the traumatic effect is too significant, and the information cannot be recovered. Knowing how a witness is connected to the event and being able to comprehend their potential exposure to emotional trauma provides the investigator with the insight that certain strategies, such as softer interview techniques, flexible timing, and professional support resources that take the emotional trauma of the witness into consideration, may be necessary and appropriate. Another kind of emotional trauma is a witness’ fear for their personal safety. This can be a fear of physical, psychological, or emotional reprisals for the witness providing evidence. In a situation that includes organized criminal groups, this fear is a genuine and understandable concern. In these types of cases, it may be difficult to protect the identity of a witness, and assurances of protection of the witness can be subject to jurisdictional or organizational limitations of witness protection resources.
4. Location when viewing the event. A witness’ physical location when observing an event can become an important point of evidence and should be considered and included in the interview and statement of each witness. If a witness is providing details of the event that required them to be in direct proximity of the accused or the event to observe or hear, the physical location of the witness at the time of those observations is a critical element. Physical location can also be important in explaining gaps or differences in witness observations. The fact that one witness to a crime observed certain actions, but another witness did not, can sometimes be explained by the alternate angles of observation of each witness or because of some physical obstruction that affected one witness but not the other. Crime scene photos and diagrams can often help witnesses to demonstrate and describe their distinct perspectives. Returning to the scene of the crime to physically establish these locations and angles of observation can be a useful exercise for investigators to conduct.
5. Awareness of the crime – intent to observe and recall the occurrence. In most cases where a crime has occurred, a witness will know that the crime is happening, and this awareness will engage their attention to make observations that they can later recall and give an account of. In other cases, where a witness has not been alerted to the crime and is only observing the evolution of events as part of an unremarkable sequence, their memory is not as engaged, and their processes of observation may not be as keen. To demonstrate this point, consider an example where a group of three people are standing in the teller’s line at a bank. Scenario? At the front of the line, a young man hands the bank teller a note advising, “This is a robbery. I have a gun. Put all the cash from your till into an envelope and give it to me. Do not press the alarm or I will shoot you.” The bank teller is aware that a crime is taking place; however, the two customers standing in line behind the robber are simply waiting their turn. The customer standing immediately behind the robber suddenly notices that the teller looks

frightened and sees she is placing the contents of her cash drawer into an envelope. The third customer in line remains unaware and is talking on the telephone to his wife about their grocery list. The robber grabs the cash-filled envelope from the teller and turns to run out of the bank. The customer immediately behind him steps out of his way, but he bumps into the third customer still talking to his wife. In this scenario, an investigator could expect to get a detailed account of the events from the bank teller who was engaged in the event and aware of the crime from the outset. The customer immediately behind the robber become aware of the crime and was making observations half way into the robbery. This customer could likely provide some significant details. The third customer in line was never aware that a crime was in progress and, other than perhaps providing a limited description of a man who bumped into him, his value as a witness may be negligible. Many witnesses who make observations of a criminal's activities in the pre-crime stage or in the post crime stage, when they are leaving the scene of the crime, fall into the category of not being aware of the crime. This does not mean these witnesses will be of no value but that their casual observations need to be identified and recorded as soon as possible.



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6. Length of observation time. Very simply, length of observation time is the amount of time a witness had to see the event taking place. This amount of time will vary with circumstances, as there would be a difference in opportunity for observation between one witness standing stationary at the crime scene observing the event, and another driving past the unfolding events at 100 kilometers per hour. This can also be an issue contingent upon the awareness of the event taking place. Some witnesses

become aware of the event more quickly and have a longer opportunity to observe. As with our example of the bank robbery, the teller being robbed had the longest observation time, the customer immediately behind the robber became aware that something was happening and had a shorter observation time, but the third customer did not become aware of anything until the robber bumped into him. This scenario demonstrates the value and detail of evidence an investigator might expect from witness with differing levels of observation time.

7. Time elapsed between the event and the interview. A critical aspect of gaining the best account of events from any witness is making sure that the interview happens at the earliest opportunity. It is a practice in police investigation to make every effort to identify and interview witnesses as soon as possible. As a simple exercise to demonstrate the importance of finding and interviewing witness quickly, take a piece of paper and to the best of your ability, write down the details of your day starting at the beginning of the day three days ago. What did you do? Where did you go? Who did you see? If you are like most people, you have some level of daily structure to your life. From that structure, perhaps you will recall you got out of bed at a usual time. Maybe you went to work or stopped at the gym or at your favourite coffee shop on the way to work. These benchmarks of your daily routine may be easily remembered. But, on your way to work, did you happen to see a green van with extensive damage to the front end on the street near your home? Of course, this is a fictitious question, but this would be the kind of inconsequential daily observation information you might be asked to recall by police canvassing for witnesses to a crime. Understanding this time limited aspect of human memory, investigators need to consider how much weight they can place on the accuracy of information being recounted by a witness. If a witness is providing a remarkably accurate recollection of something being recounted from any distance in the past, it is a good idea to ask that person how they can recall what should be a mundane event with such a degree of accuracy or clarity. If they are correct, the witness will sometimes provide a memory trigger that made them notice and causes them to recall. For example, a witness may answer, "Yes, I remember that green van with all the damage to the front end because my brother has a green van just like that and I looked at the driver and saw that it wasn't my brother. I looked at it even closer because I had never seen that van on my street before."
8. Ability to record or repetitively recount details. If a witness was aware that they had witnessed a crime and they were making a conscious effort to record or otherwise memorize the facts, this is a point that the court will be interested in hearing as part of the witness' evidence. If, for example, to remember the license number of a suspect vehicle, the witness repeated the number over and over until they were able to write it down, this is an important detail that should be recorded in the witness statement, and the paper upon which the number was written should be seized and retained as an exhibit that can be shown to that witness on the stand as the note they made at the time of the event. This demonstrated that the witness had intent to recall and record the details of an event, which will contribute in a positive way to the credibility of the witness.
9. Physical abilities – hearing, sight, smell, touch, taste and cognitive perception. The physical faculties of the senses may be used by a witness in their recollection of the events they are describing. When a witness makes a statement referring to their senses, their credibility in giving that evidence will depend upon the extent to which their senses are working. In taking statements from witnesses, the investigator must be satisfied that a witness who claims to have seen an event has adequate vision to make that observation. Similarly, a person who states that they heard something must be able to demonstrate that they have adequate hearing to have heard it. Speaking very quietly to test the hearing limits of a witness or asking a witness to describe something within the visual ranges of the

evidence they saw are both reasonable strategies to informally test a witness's range or limitations of senses. Asking a witness questions about their use of eyeglasses, contact lens, or hearing aids during their observation of events are all reasonable strategies to establish the credibility of a witness to make the observations they are reporting. Flowing from the use of their senses, witnesses will often provide information and cognitive perceptions of the events they witnessed. The cognitive perceptions of a witness are their own personal interpretation of the information they took in through their senses. As such, they are a subjective analysis of the information being sensed. A witness may provide a statement regarding the age of a suspect, the size of an object, the speed of a vehicle, the smell of alcohol on a person's breath, or even the distance they stood from the event they witnessed. To a certain degree, the court will allow such evidence and opinions of common knowledge from non-expert witnesses; however, a witness may be challenged on their observations, and it is best to understand any misperceptions in advance. Again, informal testing of a witness to become comfortable that their cognitive perceptions and subject interpretations are accurate and not significantly skewed is a reasonable way to test credibility. For estimating the age of a suspect, an investigator could ask the witness to point out other persons who are approximately the same age. Similar tests could be undertaken in testing perceptions of the size of objects, the speed of vehicles, and the distance to locations. For statements regarding observations, such as the smell of alcohol, the investigator should ask the witness to describe their personal experiences with alcohol to know that it was alcohol they smelt. If the witness had not experienced alcohol or been with people who were drinking alcohol, that opinion of smell would lose credibility.

10. Cognitive capacity and age of witness. To establish the competency of either a child or a person of limited mental capacity, conducting a careful witness credibility assessment will be helpful for the prosecution in meeting challenges to competency. Part of the initial interview should seek to determine if the child or person of limited mental capacity understands the need to tell the truth. The competency background of the witness should be conducted by interviewing persons, such as parents, caregivers, teachers, or doctors, who know the witness and can attest to their mental capacity and their ability to understand questions and communicate their answers. The actual interview of both children and persons of low mental capacity are a delicate and time-consuming process. They must be conducted in a manner that is both suited to the maturity level of the witness and structured using non-leading questions to elicit answers. In cases where it is possible, investigators with specialized training in this type of interviewing should be utilized. That said, in the first instance, at the scene of an event, it is important for the responding investigator to understand the special considerations that apply to this type of witness in consideration of their evidence. The goal in these cases is to determine how much weight can be attributed to the evidence being provided by witnesses. An investigator may determine that the evidence of a witness is credible and can be used in the development of forming reasonable grounds or, alternately, they may find that the credibility of the witness cannot be established, and the evidence cannot be used in the development of reasonable grounds to act.

## The Truthfully Incorrect Witness

As much as witnesses are a critical component of the criminal investigation process, they can also become a

critical threat to the accuracy and integrity of evidence gathering. This sometimes occurs in an anomaly where an apparently credible, independent witness tells their version of events and they are significantly wrong in what they say they observed. Unlike cases where a witness is motivated to intentionally fabricate or exaggerate their account of events, the truthfully incorrect witness has no malicious intent and will provide their version of the events with a genuine belief that what they are saying is true and accurate. This type of witness is an independent observer with no motivation to lie, and as such the weight of their testimony can carry significant influence for the investigator's reasonable grounds to believe and eventually carry significant probative value for proof beyond a reasonable doubt in the court. For investigators, the truthfully incorrect witness can become a paradox capable of misleading the outcome of the investigation resulting in a guilty suspect going free or an innocent suspect being arrested and charged. This anomaly of truthfully incorrect witnesses is an issue that investigators must remain mindful of. Witnesses are human, and humans are fallible. Even for a witness who appears to be independent and credible, there remains, a need to scrutinize and fact check the witness's version of events against the known physical evidence and the accounts of other witnesses.

The importance of the investigator being mindful of a truthfully incorrect witness cannot be emphasized too strongly. In 1996, for example, the National Institute of Justice in the United States released a report concerning the implications of eyewitness testimony and false memories, and in it, reported that 90% of all DNA exoneration cases defendants were wrongly convicted upon the false memories of eyewitnesses (Brainerd, 2005). More recently, Smarlarz and Wells (2015), citing The Innocence Project, noted that eyewitness testimony was used to convict innocent people in over 70% of DNA exoneration cases. More recently yet, Rose and Beck (2016) note that eyewitness testimony accounts for more wrongful convictions than anything else. Research has shown that false memories in eye witnesses can be created in several ways, including through leading questions, reports from others, contact with other people, suggestions, a witness' own expectations, the expectations of others, other social pressures, and media (Bennett, 2015; Allen, 1991). It has also been established that witness recall can be affected by stress (Morgan et al, 2004) and by alcohol (Oorsouw et al, 2015) in complicated ways.

## **Dominant Witness Influence and Conformity**

One of the negative dynamics that can occur in an investigation where there are multiple witnesses is the contamination or influence of witness statements by a dominant witness. This influence can occur when witnesses to an event have not been separated before any interactions or conversations have occurred between the witnesses. These dynamics are possible in almost all cases, and an investigator must always be mindful that this potential exists. It is also possible that a dominant witness will boldly and sometimes aggressively state their version of the events, which can cause other less confident or less sophisticated witnesses to question their own perspective. In such cases, a less dominant witness may change their version of the events or even omit observations to conform to what the dominant witness stated.

Most susceptible to this kind of influence are very young witnesses, elderly witnesses, or witnesses who have timid personalities. On some occasions, where there is an imbalance of power or status in a personal relationship, or even in a subordinate organizational relationship, witnesses may conform to the more

powerful witness out of fear of repercussions or hope of favour. In some cases, the dominant witness has a vested interest in having their version of the events stated their way, and the dominant influence towards the other witnesses is intentional and implicitly threatening in its tone.

In cases where witnesses have interacted prior to being interviewed, each witness should be interviewed in seclusion from the others. Witnesses should be asked if they have discussed the event with anyone else or heard anyone else's version of what happened. They should be cautioned and encouraged to disregard anyone else's version of events and limit their version to their own account of what was seen and heard during the event.

## Uncooperative Witnesses

One of the many unpleasant dynamics of criminal activity is when the police attend the scene of a crime and witnesses, or even victims, refuse to cooperate with investigators. Sometimes, these uncooperative persons are part of the criminal lifestyle and are not willing or interested in cooperating in the justice system. The only strategy for police in these cases is to gather as much forensic evidence as possible in relation to the event and to seek charges where enough evidence can be found.

Although these uncooperative witnesses may believe they are not required to participate in the criminal justice system, it is entirely possible to subpoena an apparent witness to attend court to be questioned regarding the criminal event they witnessed. If that witness refuses to answer questions in court, it is possible for the judge to find them in contempt of the court and to sentence them accordingly. That said, this rarely happens.

## Conducting Witness Interviews

Arriving at a crime scene, investigators are often confronted with a cast of characters who may be victims, witnesses, or suspects in the matter to be investigated. In the case of an active event, where immediate in-depth interviews are not possible, it is important to:

1. Conduct immediate field interviews of each subject at the scene;
2. Do an immediate preliminary classification of persons found at the scene as victims, witnesses, or suspects; and
3. Take appropriate measures to separate the persons found at the scene for physical security and protection of future testimony from cross-contamination of witness accounts and conformity.

## The Field Interview

Attending the scene of an event, the first immediate field interview may be as simple as asking an apparent victim or a probable witness, "What happened here?". This simple question serves several purposes for the

investigator. First, it shows that the investigator is not making any investigative assumptions based on what is visible to him or her at first glance. With this question, the person being asked is prompted to supply their own version of the event, as they saw it. This pure version will assist the investigator in developing a picture of the event, and it will provide a context allowing the investigator to classify the speaker as a victim, witness, suspect, or an uninvolved party.

If the person the investigator questioned turns out to be the perpetrator, and the investigator has no other evidence that suggests this person should be a suspect, any statement made by that person would likely be considered a spontaneous utterance and may be admitted in evidence without a voir dire. For example, consider a situation where an investigator arrives at the scene of a street fight where a man has been fatally stabbed. The investigator asks one of the men standing nearby, "What happened here?" and the man immediately says, "I killed him and he deserved it." This statement would be considered a spontaneous utterance and would likely be admitted as evidence without the usual voir dire. Once this self-incriminating statement has been made, the suspect would need to be immediately arrested and provided with the Charter warning and caution before any further statements could be pursued through additional questioning. Clearly, once a suspect is identified, they can no longer be considered as a witness.

If no one is immediately identifiable as a suspect at the scene of an event, it is reasonable for the investigator to proceed with classifying the persons present as possible witnesses. As discussed earlier in this chapter, to classify the witnesses, the investigator must consider the nature of the evidence that the witness can provide:

- Direct evidence of the eyewitness, which is evidence of seeing the criminal event occurring and perhaps even identifying the suspect; or
- Circumstantial evidence of the corroborative witness, which is indirect evidence of events, physical evidence, timelines, and spatial relationships that can assist the court in reaching a logical presumption of how the crime occurred and who was responsible.

Interviewing a witness is not just a simple matter of hearing their version of the events. There are many factors that can come into play in determining how credible a witness is. Following the initial field interview, and once the event is under control, it is important to take the witness' formal statement at the earliest available opportunity. Taking the witness statement should be conducted using the best technology available given the circumstances. If audio and or video recording devices are not available or obtaining them would cause an unreasonable delay in getting the witness statement, a written statement should be taken. No matter how the witness statement is recorded, it should be the goal of the investigator to obtain the best, uninfluenced, and unbiased version of events from a witness.

Like the threat of conformity being induced by a dominant witness, a witness can also be influenced by leading questions asked by an investigator. Some witnesses are so eager to assist in solving the crime that they will attempt to guess the answer to a leading question instead of admitting that they do not know the answer. The caution here is to avoid asking leading questions. Leading questions are questions that a witness might be able to infer the answer by the nature of the wording. An example of a leading question would be:

"Did you see Larry pick up the revolver and shoot Bill in the head?"

This leading double question can be answered yes or no, and it also supplies the witness with a significant amount of information that the witness can infer about the details of the event. These may be details that they would not have previously known. From this question, the witness could infer that Bill was shot in the



head, the weapon used was a revolver, the suspect in the shooting was Larry, and the revolver was picked up from somewhere. A better and more appropriate initiation of the statement would be: "Did you witness an event today? Tell me what you saw."

Although this open-ended approach to statement taking is more time consuming, the investigator at least knows that they are not planting any ideas or words to influence the witness' account of the event. Taking a statement in this manner is known as taking a pure version statement. A pure version statement needs to be the witness's best, uninterrupted narration of the events, as they recall it. As the witness recounts their best memory of the event, the investigator must resist the temptation to intervene and ask clarifying questions on the points being revealed. Clarifying questions like the question used to start an interview can be leading and can influence the witness' statement.

As the witness recounts their pure version of the events, the investigator should be taking notes on points to be clarified once the entire statement is completed. Those questions should remain as open-ended as possible. So, if the witness has stated in their pure version of events, "I walked into the room

and that is when I saw the shooting happen", the clarifying question should be an open-ended prompt, such as, "You said you saw a shooting happen, tell me more about that."

There are many different techniques and strategies for witness interviewing that cannot be addressed in this short book as part of an introduction to investigations. The best advice for new investigators for the interviewing of a witness is learning to be patient and allow the witness to tell their story in their own time and in their own way. Avoid the human tendency of trying to assist and interact with the speaker by asking questions, filling in the blanks, and clarifying things while the story is being related. The more effective interview technique is one where the witness can exhaust their memory and relate the events to the best of their ability without interference and the contaminating influence of questions that might derail their train of thought.

As discussed earlier, it sometimes happens that a witness or a reporting victim will turn out to be the perpetrator of a crime. In these cases, allowing the person to provide their full uninterrupted statement can produce incriminating indicators or even evidence of involvement. There is a tendency for criminals who fabricate their report of a crime to make sure they are adding information in their statement that helps eliminates them as a suspect. This can include unsolicited alibis for their whereabouts and their activities at the time of the reported event. When a witness supplies this type of information without being prompted, it can be an indicator of personal involvement in the criminal event. Any such voluntary explanations of personal activities should be recorded carefully and closely scrutinized to confirm the validity of facts. Follow up questions to unsolicited explanations should include seeking the names of independent witnesses who might be able to corroborate the witnesses account.

In the case where an investigator suspicious that a reporting witness or victim may be the perpetrator of the crime, there is no obligation to reveal that suspicion until evidence exists that allows the investigator to form reasonable grounds for belief. If further investigation determines that the statement is a fabrication, this may be enough circumstantial evidence to require a warning for at least the offence of mischief for making the false report. In such circumstances, a Charter warning and caution are appropriate before additional questioning is undertaken.

## Taking the Witness Statement

The written, audio, or video statement of a witness taken by a police investigator will become the permanent record of events as seen by that witness. The police investigator will use the content of that statement as a reference document in the construction of search warrants and in support of reasonable grounds for belief to lay an arrest. The crown prosecutor will use the statement to construct their case for presentation to the court and for pre-trial disclosure of the evidence to the Defense Counsel. The statement will serve as a document from which the witness may refresh their memory of events to provide accurate testimony to the court.

Considering the foregoing list of uses, the witness statement needs to be as accurate and complete as possible. The standard format used to begin a witness statement is as follows:

This is the statement of witness's full name taken on date and time at location where taken by name of person taking or recording the statement.

At the conclusion of the statement, it must be signed by the witness. If the statement is audio and or video recorded, the foregoing preamble needs to be used to start the statement, and once the statement is transcribed, the witness should sign the hard copy transcription.

Interviews and statements are critical tools for policing. The following section from Gehl and Plecas provides the legal framework under which officers must work to provide statements admissible to the courts. Also included below are the overarching goals of investigative interviewing.

From Rod Gehl and Darykl Plecas, *Introduction to Criminal Investigation: Processes, Practices and Thinking*

*“Understanding the correct processes and legal parameters for interviewing, questioning, and interrogation, can make the difference between having a suspect’s confession accepted as evidence by the court or not.”*

In this chapter, we will examine the interviewing, questioning, and interrogation of suspects as information gathering techniques police use to aid them in investigations. In modern day policing, interviewing, questioning, and interrogation techniques are measured, objective, and ethical. They are aimed at the goal of discovering the truth; not just getting a confession to a crime. This is a contrast to earlier times of policing, when techniques called the “third degree” sometimes involved threats, intimidation, coercion, and even physical violence. Fortunately, these “third degree” techniques were identified in the United States by the Wickersham Commission in 1931, as being unlawful police practices that caused false confessions and miscarriages of justice, where suspects were sometimes wrongfully convicted and imprisoned (Head, 2010).

Emerging from this, police forces across North America, who were using the “third degree” techniques to varying extents, started moving towards less oppressive and less aggressive methods of interrogating suspects (Gubrium, 2002).

While there has been a significant evolution to more objective and ethical practices, the courts still remain vigilant in assessing the way police interview, question, and interrogate suspects during criminal investigations. The courts expect police to exercise high standards using practices that focus on the rights of the accused person, and minimize any physical or mental anguish that might cause a false confession. In meeting these expectations, the challenges of suspect questioning and interrogation can be complex, and many police agencies have trained interrogators and polygraph operators who undertake the interrogation

of suspects for major criminal cases. But not every investigation qualifies as a major case, and frontline police investigators are challenged to undertake the tasks of interviewing, questioning, and interrogating possible suspects daily. The challenge for police is that the questioning of a suspect and the subsequent confession can be compromised by flawed interviewing, questioning, or interrogation practices. Understanding the correct processes and the legal parameters can make the difference between having a suspect's confession accepted as evidence by the court or not. With the above in mind, this chapter will focus on several salient issues, including:

1. The progression from interviewing to questioning to interrogating, and how this progression relates to investigative practices
2. The junctures that demonstrate the need to change from interviewing a witness to questioning a detained suspect to interrogating an arrested suspect
3. The issues of physical and mental distress, and how to avoid the perception of officer-induced distress during an interrogation
4. The seven elements to review to prepare an interrogation plan
5. The five common reasons arrested suspects waive their right to silence and provide statements and confessions
6. The interrogation strategies to initiate statements using the motivations within the five common reasons
7. The three types of false confessor and strategies to deal with false confessions
8. The additional rights of young offenders and practices required to meet the investigative obligations under Canada's Youth Criminal Justice Act
9. Ancillary offense recognition

## Interviewing – Questioning – Interrogating

Police investigations can be dynamic, and the way events unfold and evidence is revealed can be unpredictable. This premise also holds true for interviewing, questioning, interrogating suspects. Players in a criminal event may be revealed as suspects at different stages of the investigation. To properly secure and manage the statement evidence that is gained during interactions with suspects or possible suspects, it is important for investigators to understand the actions that should be taken at each stage, while remembering that interviewing, questioning, and interrogating are terms that refer to separate stages in the process of gathering verbal responses from a suspect or a possible suspect. But each stage is different in relation to when and how the information gathering process can and should occur. The differences between these three stages needs to be defined in the mind of the investigator since they will move through a process of first interviewing, then questioning, and finally interrogating a suspect. When this progression occurs, the investigator needs to recognize the changing conditions and take the appropriate actions at the correct junctures to ensure that, if a confession is obtained, it will be admissible at trial. Given this, let us examine the operational progression of these three stages and identify the circumstances that make it necessary to switch from one stage to the next.

**Interviewing** a possible suspect is the first stage and the lowest level of interaction. In fact, the person is

not even definable as a suspect at this point. As pointed out in our chapter on witness management, suspects often report criminal events while posing as witnesses or even victims of the crime. The investigator receiving a statement report from such a person may become suspicious that they are not being truthful; however, until those suspicions are confirmed by evidence that meets the test of forming reasonable grounds for belief, the investigator may continue to talk to this possible suspect without providing any Section 10 Charter or cautions. There is a unique opportunity at that point to gather the poser's version of events, including any untrue statements that may afford an opportunity to later investigate and demonstrate a possible fabrication, which is by itself a criminal offence. The transition point for an investigator to move from interviewing a witness or victim to detaining and questioning the person as a possible suspect should occur when real evidence is discovered giving the investigator reasonable grounds to suspect that the person is involved in the event. Discovering real evidence and gaining "reasonable grounds to suspect" creates an obligation for the investigator to stop interviewing the person who then becomes a suspect. At this point, the person is a suspect and should be detained for the suspected offence and provided the appropriate Section 10 Charter and Statement Caution before proceeding with the questioning of the suspect.

**Questioning** a suspect is the next level of interaction. For a suspect to be questioned, there will be some type of circumstantial evidence that allows the investigator to detain that suspect. In our previous scenario of the young man found at 3AM standing under the tree in a residential area at the boarder of an industrial complex one block away from the building where a break-in was confirmed to have taken place that young man was properly detained, chartered, and warned for the investigation of the break-in. However, there was no immediate evidence that could link him to that actual crime at that point. He was only suspected by the circumstantial evidence of time, conduct, and proximity to the event. He was

obligated to provide his name and identification. If he had tried to leave, he could have been arrested for obstructing a police officer in the execution of duty. The investigator at the scene of that incident would have questioned this suspect, and by his rights under the Canadian Charter of Rights and Freedoms, the suspect would not be obliged to answer questions.

This right to not talk does not preclude the investigator from asking questions, and the investigator should continue to offer the suspect an opportunity to disclose information that may be exculpatory and enable the investigator to eliminate that person as a suspect in the crime being investigated. As an example of this, again, consider our young man who was detained when found standing under the tree near a break-in. If that man had answered the question what are you doing here by stating that he lived in the house just across the street, and when he heard the break-in alarm, he came outside to see what was happening, this would greatly reduce suspicion against the young man once this statement was confirmed. Subsequent confirmation by a parent in the home that they had heard him leave when the alarm sounded could eliminate him as a suspect and result in his release.

**Interrogation** is the most serious level of questioning a suspect, and interrogation is the process that occurs once reasonable grounds for belief have been established, and after the suspect has been placed under arrest for the offence being investigated. Reasonable grounds for belief to make such an arrest require some form of direct evidence or strong circumstantial evidence that links the suspect to the crime.

Of course, where an arrest is made, the suspect will be provided with their charter rights and the police caution, as per the following:

## Charter Warnings

### Section 10(a)

"I am arresting/detaining you for: (State reason for arrest/detention, including the offence and provide known information about the offence, including date and place.)"

### Section 10(b)

"It is my duty to inform you that you have the right to retain and instruct Counsel in private, without delay. You may call any lawyer you want. There is a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the Legal Aid Plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number.

Do you understand?

Do you want to call a lawyer?" (Canadian Charter, 1982, s 10(a,b))

## Police Warning

"You are not obliged to say anything, but anything you do say may be given in evidence." (Transit Police, 2015)

If the suspect has already had communication with the police in relation to the offence being investigated, they should be provided with the secondary caution. This secondary caution serves to advise the accused person that, even if they have previously made a statement, they should not be influenced by that to make further statements.

## Secondary Police Warning

"(Name), you are detained with respect to: (reason for detainment). If you have spoken to any police officer (including myself) with respect to this matter, who has offered you any hope of advantage or suggested any fear of prejudice should you speak or refuse to speak with me (us) at this time, it is my duty to warn you that no such offer or suggestion can be of any effect and must not influence you or make you feel compelled to say anything to me (us) for any reason, but anything you do say may be used in evidence" (Transit Police, 2015).

Once the accused has been afforded the opportunity to speak with a lawyer, the caution obligations of the police to the accused have been met, and the suspect may be questioned with respect to their involvement

in the offence. These cautions and warnings may sound like a great deal of effort aimed at discouraging a suspect from saying anything at all to the police, and, in many cases that is the result. However, if the cautions are properly administered, and the opportunities to speak with counsel are properly provided, a major obstacle to the admission of any future statements has been satisfied.

Interrogation generally takes place in the formal environment of an interview room and is often tape-recorded or video-recorded to preserve the details of what was said. A video recording is the preferred means because it accurately represents the environment of the interview room in which the interrogation was conducted. In challenging the processes of an interrogation where a statement has been made by an accused, Defense Counsel will look for anything that can be pointed to as an oppressive environment or threatening conduct by the investigator. Within the appropriate bounds of maintaining an environment of safety and security, the investigator should make every effort to demonstrate sensitivity to these issues.

Seating in the room should be comfortable and balanced for face to face contact. The investigator should not stand over the suspect or walk around the room behind the suspect while conducting the interview. More than one investigator in the room with the suspect can be construed as being oppressive and should be avoided. The suspect should be offered a beverage or food if appropriate and should be told that a bathroom is available for their needs upon request. The demeanor of the investigator should be non-aggressive and calm, demonstrating an objective professional tone as a seeker of the truth. Setting a non-aggressive tone and establishing an open rapport with the suspect is not only beneficial to demonstrate a positive environment to the court, it also helps to create a positive relationship of openness and even trust with the suspect. This type of relationship can be far more conducive to gaining cooperation towards a statement or even a confession.

Prior to beginning the actual interrogation, the investigator should prepare an interrogation plan by:

1. Reviewing the suspect's profile, criminal record, and past investigations
2. Reviewing the full details of the existing investigation to date
3. Determining the elements of the offence that will need to be proved
4. Determining if sufficient evidence has already been obtained to submit a prima facie case to Crown
5. Examining evidence that demonstrates motive, opportunity, and means
6. Determining what evidence was located and considered in forming reasonable grounds to arrest the suspect
7. What physical evidence has been found that may yet be analyzed to prove the suspect's involvement

Preparing the interrogation plan can assist the investigator in developing a strategy to convince the suspect to answer questions or confess to the crime. Those uninitiated to the process of interrogation might wonder why anyone would possibly choose to answer questions or confess when they have been provided with their Charter of Rights and Freedoms and the standard caution that they are not obliged to say anything, and anything they do say may be used as evidence. There are several reasons that can motivate or persuade a suspect to answer questions or confess. Statements or confessions are often made despite the warnings that would seemingly deter anyone from saying anything. These reasons include:

- Wishing to exonerate oneself,
- Attempting deception to outsmart the system,
- Conscience,
- Providing an explanation to minimize one's involvement in the crime, or

- Surrender in the face of overwhelming evidence.

Investigators who are familiar with these reasons and motivations can utilize them in assessing their suspect and developing a strategy for their interrogation plan.

## Exoneration

After making an arrest, an objective investigator must always be prepared to hear an explanation that will challenge the direct evidence or the assumptions of the circumstantial evidence that led to the reasonable grounds for belief to make that arrest. The best reason an arrested suspect can be offered to answer questions is to be exonerated from the crime. It is possible, and it does occur, that persons are arrested for a crime they have not committed. Sometimes, they are wrongly identified and accused by a victim. Other times, they are incriminated by a pattern of circumstantial evidence that they can ultimately explain. The interrogation following the arrest is an opportunity for the suspect to put their version of events on the record, and to offer an alternate explanation of the evidence for investigators to consider. Exoneration is not just an interrogation strategy; it is the duty of an objective investigator to offer a suspected person the opportunity of make an explanation of the evidence that led to their arrest. This can be initiated by offering the suspect the proposition, "This is the evidence that led to your arrest. If there is an alternate explanation for this evidence, please tell me what that is." In some cases, the statements made by the suspect will require additional investigation and confirmation of facts to verify the exoneration. Conducting these investigations is also the duty of an objective investigator.

## Deception to Outsmart the System

Some experienced criminals or persons who have committed well-planned crimes believe that they can offer an alternate explanation for their involvement in the criminal event that will exonerate them as a suspect. An investigator may draw answers from this type of suspect by offering the same proposition that is offered for exoneration. This is the opportunity for a suspect to offer an alibi or a denial of the crime and an alternate explanation or exonerating evidence. It can be very difficult for a suspect to properly explain away all the evidence. Looking at the progression of the event, an interrogator can sometimes ask for additional details that the suspect cannot explain. The truth is easier to tell because it happened, and the facts will line up. In contrast, a lie frequently requires additional lies to support the untrue statement. Examining a statement that is believed to be untrue, an interrogator can sometimes ask questions that expose the lies behind the original lie.

## Conscience

As much as the good guys versus the bad guys” concept of criminal activity is commonly depicted in books and movies, experienced investigators can tell you that people who have committed a criminal offence often feel guilt and true regret for their crime. This is particularly true of persons who are first-time offenders and particularly young offenders who have committed a crime against a person.

Suspects fitting this category may be identified by their personal profile, which typically includes no criminal record, no police record or limited police record of prior investigations, evidence of poor planning, or evidence of emotional/spontaneous actions in the criminal event.

Suspects who fit this profile may be encouraged to talk by investigators who have reviewed the effect that the criminal act has had on the victim or the victim’s family. Following this review of victim impact, the investigator can accentuate the suspect’s lack of past criminal conduct, while making the observation that the suspect probably feels really bad about this. Observing the suspect during this progression, a suspect affected by guilt will sometimes exhibit body language or facial expressions of concern or remorse. Responses, such as shoulders slumping, head hung down, eyes tearing up, or avoiding eye contact, can indicate the suspect is ashamed and regretful of the crime. Observing this type of response, an investigator may move to a theme of conversation that offers the suspect the opportunity to clear their conscience by taking responsibility for their actions and apologizing or by taking some other action to right the wrong that has been done.

## Explanation to Minimize Involvement

Suspects who have been arrested will sometimes be willing to provide an additional explanation of their involvement or the events to reduce their level of culpability or blame for the crime. In cases where multiple suspects have been arrested for a crime, one of those suspects may wish to characterize their own involvement as peripheral, sometimes as being before the fact or after the fact involvement. Examples of this would be a person who left the door unlocked for a break-in to take place or merely driving the getaway car. These less involved suspects hope to gain a reduced charge or even be reclassification as a witness against their co-accused. In such cases, where multiple suspects are arrested, the investigator can initiate this strategy by offering the proposition, “If you have only a limited or minimal level of involvement in this crime, you should tell me about that now.”



## Surrender to Overwhelming Evidence

The arrested suspect in a criminal investigation waiting in custody for interrogation has plenty to think about. Even the most experienced criminals will be concerned about how much evidence the police have for proving their connection to the crime. In the process of presenting a suspect with the opportunity to address the evidence that has been collected, an additional strategy can sometimes be engaged where there is a large volume of incriminating evidence or undeniable direct evidence, such as eyewitnesses or strong forensic evidence for circumstantial connections of the suspect to the crime. In such cases, if the interrogator can reveal the evidence in detail to the suspect, this disclosure may result in the suspect losing hope and making a confession to the crime. Although this tendency to surrender to overwhelming evidence may seem illogical, it does happen. Sometimes, this surrender has more to do with conscience and shame of the crime, but other times, the offender has just lost the energy to resist what they perceive to be a hopeless fight. As counter intuitive as this may seem, research has found that the suspect's perception of the strength of police evidence is one of the most important factors influencing their decision to confess to police (Gudjonsson & Petursson, 1991). More recent research has shown that the stronger the evidence, the more likely a suspect was to confess (Gudjonsson, 2015 ).

## Dealing with False Confessions

As noted at the beginning of this chapter, the goal of ethical interviewing, questioning, and interrogation is to elicit the truth, and the truth can include statements that are either inculpatory confessions of guilt or exculpatory denial of involvement in a crime. Whenever an investigator has interrogated a suspect, and a confession of guilt has been obtained, that investigator needs to take some additional steps to ensure that the confession can be verified as truthful before it goes to court. These additional steps are required because, although the investigator has not used any illegal or unethical techniques, the court will still consider whether the accused, for some reason, has confessed to a crime they did not commit. A skilled defense lawyer will often present arguments alleging that psychological stresses of guilt or hopelessness from exposure to overwhelming evidence have been used to persuade a suspect to confess to a crime they did not commit. In such cases, it is helpful for the court to hear any additional statements made by the accused, such as those that reveal that the suspect had direct knowledge of the criminal event that could only be known to the criminal responsible.

In police investigations, there are many details of the criminal event that will be known to the police through their examination of the crime scene or through the interview with witnesses or victims. These details can include the actual way the crime was committed, such as the sequence of events, the tools used in the crime; or the means of entry, path of entry/exit, along with other obscure facts that could only be known by the actual perpetrator. There are opportunities in a crime scene examination for the investigator to observe one or more unique facts that can be withheld as “hold back evidence”. This hold back evidence is not made part of reports or media release, and is kept exclusively to test for false confessions. Confessing to the crime is one thing, but confessing to the crime and revealing intimate details is much more compelling

to the court. Regardless of the effort and care that investigators take to not end up with a false confession, they still occur, and there are some more common scenarios where false confessions happen. It is important for an investigator to consider these possibilities when a confession is obtained. These situations are:

1. The confessor was enlisted to take the blame – On occasions where persons are part of organized crime, a person of lower status within the group is assigned or sacrificed to take the blame for a crime in place of a person of higher status. These organizational pawns are usually persons with a more minor criminal history or are a young offender, as they are likely to receive a lesser sentence for the offence.
2. The Sacrificial Confessor – Like the confessor enlisted in an organized criminal organization, there is another type of sacrificial confessor; the type who steps forward to take the blame to protect a friend or loved one. These are voluntary confessors, but their false confession can be exposed by questioning the confessor about the hold back details of the event.
3. The Mentally Ill False Confessor – This type of false confessor are encountered when there is significant media attention surrounding a crime. As Pickersgill (2015) noted, an innocent person may voluntarily provide a false confession because of a pathological need for notoriety or the need to self-punish due to guilt over an unrelated past offences. Additionally, those suffering from psychosis, endogenous depression, and Munchausen Syndrome may falsely confess to a crime they did not commit (Abed, 2105). As with other false confessors, these people can be discovered using hold back detail questioning.

## Interviewing, Questioning, and Interrogating Young Offenders

Over the past century, with the Juvenile Delinquents Act (1908), the Young Offenders Act (1984), and the Youth Criminal Justice Act (2003), there has been an increased recognition in Canada of the need to treat young offenders differently than their adult counterparts. Recognizing the special needs of youth, each of these acts moved to treat young offenders less punitively and with a greater attention to rehabilitation. Further, under the Youth Criminal Justice Act (YCJA), young offenders are regarded as a special category of suspect, and some very strict rules apply to the process of arresting, questioning, or interrogating a young offender. For instance, the YCJA requires the notification and inclusion of parents or guardians in situations where a youth is being subjected to action for an investigation or a charge for an offence. As well, any young persons must have their Charter Rights explained by the investigator with language appropriate to their age and level of understanding. This means that the officer must talk with and assess an accused youth to determine their ability to understand their rights before taking their statement.

The officer's process of assessment will be questioned and examined by the court before any statement made by a youth is admitted as evidence. During this examination, the court will determine from the evidence whether the youth fully understood the rights being explained to them. An officer presenting evidence of having conducted a proper assessment of an accused youth should have notes reflecting the conversations and specific observations of the youth's responses to satisfy the court that adequate efforts were made to ensure that the youth did understand their rights. Good evidence of understanding can be achieved by asking the youth to repeat, summarize, or paraphrase their understanding of the rights that were explained to them.

In addition to the right to instruct counsel, as afforded to any adult under the Canadian Charter of Rights and Freedoms, a youth must also be afforded the additional right of being given a reasonable opportunity to consult with a parent or, in the absence of a parent, an adult relative or any other appropriate adult chosen by the young person, as long as that person is not a co-accused or under investigation for the same offence.

Further, in addition to this right, there is also an obligation on the police investigator to provide independent notice to the parent of a detained young person as soon as possible. The requirement for notice to the parent is a separate obligation for police, and it requires specific notification of (a) the name of the young person, (b) the charge against the young person, and (c) a statement that the young person has the right to be represented by counsel. If a parent is not available to receive this notice, it may be given to a person whom the investigator deems appropriate. In the case of some young people, this could be an older sibling, an adult caregiver, or, for those in the care of Social Services, a social worker in charge of the young person care.

In any case, these requirements and others specific to young offenders are spelled out under Sec 146 of the Youth Criminal Justice Act:

## Youth Criminal Justice Act (Section 146)

1. Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.
2. No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless
  - a. the statement was voluntary;
  - b. the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
    - i. the young person is under no obligation to make a statement,
    - ii. any statement made by the young person may be used as evidence in proceedings against him or her,
    - iii. the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and
    - iv. any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
  - c. the young person has, before the statement was made, been given a reasonable opportunity to consult
    - i. with counsel, and

- ii. with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.
- 3. The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.
- 4. A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver
  - a. must be recorded on video tape or audio tape; or
  - b. must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.
- 5. When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.
- 6. When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.
- 7. A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.
- 8. A youth justice court judge may in any proceedings under this Act rule admissible any statement or waiver by a young person if, at the time of the making of the statement or waiver,
  - a. the young person held himself or herself to be eighteen years old or older;
  - b. the person to whom the statement or waiver was made conducted reasonable inquiries as to the age of the young person and had reasonable grounds for believing that the young person was eighteen years old or older; and
  - c. in all other circumstances the statement or waiver would otherwise be admissible.
- 9. For the purpose of this section, a person consulted under paragraph (2) (c) is, in the absence of evidence to the contrary, deemed not to be a person in authority. (Government of Canada, 2015)

# Investigative Interviewing

## Characteristics of the Good Interviewer

Not every police officer is interested in being a good interviewer or has the capacity to be a good interviewer. There are personalities in law enforcement that lend themselves to being a natural interviewer, however even officers who are not naturally gifted at interviewing can practice, take courses and learn interviewing techniques from mentors. Good interviewers are either born with, or develop with practice, the following common characteristics.

1. They are able to bond and create a relationship with the subject. This is a theme throughout this book because it is the most critical component of communication in law enforcement. Officers must be able to dissociate themselves from their feelings towards people whose lifestyles they may not agree with, and who are suspected of committing crimes repugnant to the officer. The officer must at times draw upon their own life stories to create a bond and to demonstrate to suspects and witnesses that they share common interests and life stories. These strategies of bonding allow suspects and witnesses to feel more comfortable with the interviewer. As such, suspects and witnesses are more likely to speak with an interviewer.
2. They display empathy when appropriate. Interviewers must be able to demonstrate to the suspect or witness that they are able to relate with a deep and emotional understanding of what the subject has been through, is going through at the moment and will potentially be going through in the future. This ability will allow subjects to sense a bond from someone who cares about their plight. Interviewers must take care not to assume that they have experienced exactly what the subject has experienced, or feel exactly what the subject feels. Interviewers should instead state how they think the subject would feel in that situation. Interviewers may also relate their own stories to the subject, but should be mindful not to one-up the subject or try to equate their story to the situation in which the subject finds themselves.



*Photo by JacksonDavid from Pixabay*

3. They actively listen to what the subject says. Interviewers must listen. As mentioned previously, good interviewers must listen to every word. This, at times, is difficult when interviewers are also trying to satisfy essential elements of a charge, or discover information they need for a complete understanding of the subject's involvement in a case. Interviewers must focus on every word that is said, and know that each word is spoken by the subject for a reason. The inclusion of a specific word may seem innocuous, however at times it may have intrinsic meaning that should be explored by the interviewer. Too often interviewers are not focused on what the subject is stating, thereby dismissing the true meaning.
4. They are able to ask the right questions to achieve their goals. Interviewers must understand what their goals are and listen to the information the subject is relaying to them. When appropriate, the interviewer should recall what information has been missed, or what needs to be clarified, and then add the details through well-articulated, open-ended questions that are understood by the subject. Interviewers, while listening to the subject, should note questions as they arise, so they will not

forget the questions when it is time for them to be asked. Investigators should also consider writing down key questions before the interview even starts. As the subject speaks and answers the questions, the investigator marks off the question so it is not asked at the end. Not repeating questions is a way to display to the subject that the interviewer has been listening. Subjects will express frustration when the interviewer asks questions after the subject has provided information that would qualify as the answer.

5. They display confident and appropriate body language. While we know that interviewers must be aware of the body language of the subject, it is equally important for the interviewer to be aware of their own body language, and the information they are transmitting to the subject. Interviewers must be aware that their body language may project their own negative emotions, such as boredom, disgust, anger or fear. Interviewers must project a body language that exhibits confidence. This will demonstrate to the subject that they are able to rely upon the interviewer, or that they ought to consider being truthful to the interviewer. Likewise, interviewers should show interest and respect to the subject. This can be achieved through body language that demonstrates empathy through nodding, a concerned look and leaning in. Conversely, investigators should monitor their own body language so they don't project emotions that ought to be concealed. At times this can be an act put on by the interviewer to conceal these negative emotions, but this skill is part of being an interviewer who is committed to receiving information that others may not be able to receive.
6. They use gestures. Interviewers should gesture with their hands to explain points. This part of normal conversation helps to 'normalize' what, to the subject, is likely a scary and unforgettable experience. Gestures should be in keeping with normal conversations and should be clearly non-threatening.
7. They maintain eye contact. Most subjects subconsciously equate eye contact with active listening. Eye contact can at times be unnatural and, if inappropriate, can lead some subjects to become stressed, e.g., an interviewer who never looks down while taking notes and instead maintains eye contact. Such eye contact is unnatural and may appear to a subject as somewhat creepy. Eye contact should be natural and focused in a non-threatening way. Much like with body language, interviewers must be aware of the need to break away from eye contact if the subject indicates that they are uncomfortable and need time away from the interviewer's eye contact. Usually, subjects will want eye contact as confirmation that the interviewer is listening and is giving them the respect they crave.

8. They show appropriate enthusiasm. As well as professional demands, interviewers have personal demands that may at times diminish the interviewer's enthusiasm. A case may be one of the least important cases the investigator is working on. Interviewers must be aware of these feelings and develop strategies to help them avoid looking and acting unenthusiastic in the interviews. Interviewers should state that the case is important, and that they want to get the truth and require the help of the subject to do so. Showing enthusiasm relies upon demonstrating the previous traits. If these traits are followed, the subject will believe that the interviewer is enthusiastic about their case and is treating the case as serious.
9. They are non-accusatorial. Regardless of the situation, the interviewer should exhibit neutrality about the behavior of the subject. At times this will be hard to do, but the interviewer must always be mindful that people are reluctant to talk to those that are accusatorial. Subjects are much more likely to talk to interviewers who project respect for the subject by treating them as an equal.
10. They display interest in the case. So often, interviewers may lack faith in the case. They may believe that the victim or witness is lying and that the case has no merit. Interviewers may also believe that the case, while important, is unsolvable. However, interviewers must be aware that any case is solvable, given the right conditions. Sources may come forward or forensic evidence may appear that pushes forward what was previously considered an unsolvable case. Interviewers must always consider how they want to appear if the case is presented in court and the interviewer's negative attitude is revealed.

All interviewers should prepare before every interview. They should understand all the issues surrounding the interview, including:

1. What are the key facts needed?
2. What information does the witness likely possess that is necessary to form a complete picture of the case?
3. What are the elements of the charge that are needed to prove the case?
4. What is relevant versus irrelevant information?
5. Questions should be open-ended and interviewers should avoid direct, short-answer questions such as:  
    “What color was his coat?” Or “Was he wearing a red coat?”
6. The question should be phrased:  
    “What was he wearing?”



# What is Investigative Interviewing

Before unravelling the many recognized methods of investigative interviewing, it is important to have a core understanding of the intention of its use and what it actually is. Traditionally, when we think of interviewing in its everyday context, we perhaps have images of a news journalist with a microphone asking questions of someone following an incident, or reporting on a newsworthy local or international story. We also may picture a manager and her team sitting across from a nervous potential employee.

In this chapter we will focus on investigative interviews. These images are somewhat relevant to the investigative interviewing, however each style of interview is designed to elicit answers in very different ways., We must consider the person being interviewed and choose an appropriate interview technique. Witnesses, suspects and victims all have different involvement with and emotional reactions to questions. What type of questions, how they are posed, and in what format, are real considerations for the investigator. Not only do we need to consider the type of interview technique against the classification of the subject, but also the social standing of that person, be that age, mental awareness or medical status.

A parent interacting with their child is an excellent example of interviewing, and a good place to start this chapter. The way the information is relayed to the child may affect the child's reaction or response. If a child is remorseful about something they have done, and is already admitting their understanding of doing wrong and what they should have done, it leaves the parent with very little to do in the way of an interview. However, if that child is defiant and covering up their involvement in an incident, the parent has to use tact, wit and experience to unravel the sequence of events and get to the truth. Ultimately, the last thing a parent wants is to place so much pressure on the child that they confess to the wrongdoing regardless of actual guilt, to satisfy the parent's need to find an answer, or to end the

questioning, or simply because they don't see an alternative. In this case, the child gives up trying to tell the truth under such opposing questioning. How many of us are aware of younger siblings taking the blame for older siblings, or more savvy older siblings quickly passing the blame to their younger sibling? Now, a parent can record these confessions on the camera of a cell phone and taunt children with them when they are older. Such a basic format of recording an interview is powerful, capturing that moment in time. Later

in this chapter we will discuss the importance of note-taking accuracy and how that may be achieved.

When considering police-style interviews, it should be remembered that interviewing skills are developed through ongoing training, practice and experience gained from feedback and assessment. These interviews may be taking place at considerably varied locations, at any time of the day or night, or in any weather condition. The interactions can take minutes or many hours or even days. Interviewing conditions will vary, as will the relationship of the interviewer and the interviewee. A victim of a crime or accident will feel and display different emotions than a suspect or a witness.

An interview can take many forms. It can be conducted in many places and recorded in many ways. The goal of the investigating officer is to develop an interpersonal connection with the interviewee, to draw out key and pertinent information, and record the findings as accurately as possible. The interviewer must make sure they are left with no doubt that neither witnesses nor suspects are being deceitful. If the interviewer suspects that they are, they should highlight this information and make sure it is utilized in the case to underline the truth of what actually occurred.

## Interviewing Versus Interrogation

Often the terms, “investigation” and “interrogation” are used without regard to their true meaning, but if we consider the words themselves, they have vastly different connotations in society. If a child at school was involved in a minor playground incident, whereby another student fell over and grazed a knee, a school follow-up to the incident would be expected. The teacher would conduct a soft interview or a simple string of questions to ask what happened. This would be considered a normal practice; when the child returned home and told their parents what had occurred, the parents would not be too concerned about the interview. If that child returned home, appeared upset and said they had been interrogated, there might be a slightly different response from the parent. The different word likely paints a powerful picture in the mind of a parent.

The word “interview” means the views between people. The word “interrogation” has a much harsher image and a somewhat unsavory implication of someone being deprived of needed comforts, repeatedly questioned, deprived of contact, and hours upon hours of

pressured verbal conversation delivered in an oppressive manner to draw out a confession. The interrogation tends to home in on a confession, with the assumption of guilt. The expected outcome of the interrogation is a perceived successful result for the interrogator. Maybe this is why police departments fully utilize the term “interview” and not “interrogation”. The interview in investigations is a two-way communication, and, if done correctly, draws out the truth and a reliable response. This two-way conversation helps to build rapport between the interviewer and interviewee, and may lead to much more than the initial required information. A suspect may turn informer or divulge other criminality, and a witness may trust the interviewer with information leading to other investigations or community incidents. An interrogation perhaps assumes guilt, which flies in the face of the assumption in western culture that people are innocent until proven otherwise. If a suspect is not given the opportunity to express their innocence, perhaps the interview would be called an interrogation. In plain language, what sounds more acceptable, “I was interviewed by the police and I decided to tell them” or “I was interrogated by the police and I decided to tell them”?

## Why is Interviewing Important?

Most police departments operate according to strategic goals similar to large businesses. Within these goals are core principles and values. Often these values include crime prevention, crime reduction and, of course, crime detection. Some succinct strategies and educational concepts in the prevention and reduction of crime will overlap and influence another value. When we consider the detection of crime, we often refer to the investigation. It is unfortunate if a crime is attempted or completed, but the public depends upon the police officer to seek the answers as to why the crime was committed, how, and of course, by whom. The investigation is conducted with stringent rules in place to protect intrusion upon societal norms. The investigation must conform to laws and be completed with integrity.



*“Barge accident – Victoria Police Department officers at the scene” by Lotus Johnson is licensed under CC BY-NC 2.0*

At the core of their lengthy training, officers learn how to be respectful whilst prying into people’s lifestyles. Whether they are walking the community sidewalks, answering public enquiries by telephone, or sitting opposite a violent prisoner in an interview room, the officers play a huge part in the investigations. These wide-ranging investigations may include crime, public enquiries, road traffic accidents, missing people, property complaints, civil disagreements or a community issue. Every officer will have a new problem to solve many times a day. As their careers unfold, officers who become good at their job learn the essential skills of effectively communicating, investigating and recording findings.

There are many forms of investigation and many variations. A traffic accident may need immediate scene isolation to protect those involved and to others attending to offer aid.

It may require access routes to allow those others to respond, and exit routes for people to bypass the site of the accident. It may require scene mapping and accident reconstruction, and arrests may need to be made. This investigation would not be complete if those involved and those who saw the incident were not interviewed. A murder scene offers similar challenges. The search of the scene may expand many blocks or even kilometers. Continuity of evidence needs to be proved, and witness interviews may be crucial in unravelling what occurred. The complexity of a murder is equally as challenging, especially if the deceased victim was the only person known to have seen the attacker.

Whatever the crime or incident, we should never lose sight of the fact that a suspect is usually aware of their involvement. Some simply will not be willing to admit guilt; others will be undecided on what to admit; others may view the interview as closure on their actions and be willing or even relieved to discuss their involvement. An open-minded investigator willing to work with the suspect may be able, during a well-planned interview, to find facts or circumstances that add to the case beyond the confession.

We mustn't limit the use of the term "interview" to suspects. Officers also use extremely important interview techniques to gain valuable evidence from witnesses and victims.

"A major factor that determines whether or not a crime is solved is the completeness and accuracy of the witness account".

(Milne & Bull, 1999, p 1.) quoted in Schollum, 2005, p.37.

What a suspect is willing to say can be juxtaposed on the observations, or recall, of the people who saw the event or were part of that event. The victim and suspect may provide the best account, but a third party watching the event could give an important, unbiased and unemotional view. Often, following a short verbal explanation, a witness statement is the first statement in an investigation, and as such should be thorough and open in nature. Getting someone to describe what could be a prolonged and intricate incident in such detail that the investigation will quickly lead to a suspect and remain true and accurate in detail in a court case many months later, is a difficult skill to master. While, in a simple street robbery, where a male suspect punches his victim, steals a cell phone and runs off, evidentially, it is ideal for a statement to be taken from the victim immediately, however they may be in need of medical care. Officers may, therefore, rely on a third party witness. The difficulty with this concept is that the third party, who did not expect the incident, may not have been paying attention to it and may have seen or

heard only part of the incident. They may be unsure of what was unfolding, or why. They will be asked to describe the suspect's sex, height weight, age, colour, clothing, hairstyle, and whether or not they were wearing glasses, clean shaven, agile, muscular or overweight? Were they accompanied, where did they come from, who with, what exactly occurred, what did the victim do, where did the suspect go, how long did the viewing of the incident last? There are so many details, and all have to be drawn out logically into a detailed statement.

The victim statement is also considered a witness statement, but it brings different complications. Often, they unexpectedly become victims. Taken by surprise by an ill-willed act, they maybe emotional, angry, or shocked, and unable to recall what happened at all. They may also be reluctant to talk, or provide a confusing or illogical statement. They may fear reprisals for giving information of any kind, or they may be completely or selectively deceitful to protect their own, or another, role.

Nothing is more satisfying to an investigator than compiling clear and reputable evidence. Ideally, this is followed up by a suspect interview in which the main suspect provides a full and frank confession describing what they did, why, who with, where and how they did it. This type of evidence is extremely powerful and, when extracted in the spirit and direction of the law, compelling in court. Admissions of guilt can also take place in the absence of other collaborating evidence. Suspects can confess criminality to protect others or themselves, receive attention, or simply to benefit personally from such compensations as shelter, food or medical care.

Interviewing the suspect, victim or witness assists in determining what will and will not be presented as part of a case. Often the investigation will not lead to charges or prosecution; sometimes it leads to the realization that no offence actually occurred, or something else is afoot. The Criminal Justice System depends on high quality investigations and decision-making, as well as evidence presented to charge standards. It must consider many aspects of public interest. An interview may help to reduce not-guilty pleas, mistaken identity, or other conditions that would otherwise require trials. The interview may determine the correct disposition for a case other than prosecution, and allow intelligence to be gained for future use, to prevent or at least mitigate an ongoing situation.

# The Use of Interviewing in Policing

Many styles or methods of interviewing are conducted daily by law enforcement agencies. As we have established, any two-way communication can be deemed an interview. Information sought by police questioning people on the streets in the form of street checks, or “carding”, as it is often called, is type of interviewing that seems to attract the most attention in the daily news media. The manner in which officers conduct themselves during an interview, be that a simple spontaneous street interview or a pre-planned interview of a homicide suspect, is heavily scrutinized, and can make or break a criminal case. Human rights and legal frameworks are in place to protect the community from heavy-handed methods of policing.

While interviewing is used in most industries on a daily basis as a basic communication necessity, in the context of police or law enforcement it suggests a different meaning. Perhaps this underlines the importance of some of the Nine Principles of Sir Robert Peel.

Peele’s principals highlight the societal expectations that the police must adhere to as their mandate in their quest to uphold the public peace and obey the law. Any deviance from the role, any breach of trust, or sign of unfair treatment to the general public, can have a negative effect on those relationships. Each police force/service/department tries to break down poor perceptions of their authority, by participating in the community, amending their strategy to fit their community, and forging public relationships. Perception of that police-public trust varies greatly, but is never strengthened if sections of the community feel oppressed or isolated by the officers assigned to protect and serve.

So, why do police interview? Simply put, most contacts with the public could be construed as interviews. Police officers walk a thin line between community engagement and wittingly or unwittingly gaining intelligence, or information. The “who, what, why, when and where” questions are all relevant when we view the term “interview” through the law enforcement lens.

As you read the following two scenarios, ask the question: Is this an interview? If so, why?





*“broken bottle” by Erich Ferdinand, Flickr is licensed under CC BY 2.0*

#### Scenario 1

As a new police officer assigned to a small town, you choose to get out of the car and talk to the people in the street. You walk for a few minutes and chat with a young couple walking their dog; you discover you share a similar interest as you have a new puppy. They make small talk and you establish that the woman owns the bakery in the next street. She tells you that generally the area is nice, but of late there seem to be lots of adolescent youths hanging around in the evenings, she believes due to the opening of a local youth centre. You bid them farewell and walk around to the next street toward two boys who appear to be about 14 years old, standing on the sidewalk beside some broken glass between some parked cars and a yard wall. There are no reports of glass breaking and no sign of a vehicle that has been broken into. You nod your head on approach, and before you say anything one of the boys says, “I didn’t break it”.

You reply, “Break what?”

“The beer bottle,” one replies.

You notice fresh signs of liquid around their feet. They look underage and worried that you have approached them. You frown and, somewhat confused, make a comment intended as a joke to ease their concern.

“You guys can’t handle your beer?”

You ask the boys’ names and where they are from, more out of interest, and to try to earn their trust.

Immediately one of the boys says, “If you want to ask me any more questions, I want my parents here.”



## Scenario 2

You are a 13-year-old boy living in a small town. You are doing quite well at school but recently your friends have been in trouble with the local police. As a result, they have been grounded. You didn't pay much attention to some glass beside you; it looks like the adults walking home from the pub at lunchtime dropped a beer. You talk to your pal and see a police officer walking straight towards you. He looks down and back at you and you get nervous, so you tell him immediately that you didn't drop the bottle, it isn't yours. He now starts asking you for your name and address and whether you were drinking beer. You haven't done anything, you were trying to stay out of trouble and now the whole street is watching; your mom will find out. You become worried and, like your friends told you to, you ask the officer not speak to you.

The scenarios are the same but the perceptions and realities are vastly different. Why is this? Why would one point of view be that the officer is doing a great job and another that the officer may be overbearing or selective in his or her work? As the officer, you can rationalize your actions; you spoke to the boy; there was no intention to marginalize him; the beer bottle was of little or no consequence and was just part of the conversation to get to know the boy. You are a basketball coach, and were wondering if the lads played, since they were tall. Yet through all of the light-hearted banter, you felt resentment from the boy. The boy's perspective is totally different: he is a youth; his friends have been in trouble and he is trying to avoid it. He has perhaps listened to his friend's advice, and although he has done nothing wrong, as soon as the uniformed officer approaches he feels compelled to stand up for himself. He senses possible blame for the broken beer bottle and feels obligated to disassociate. Would he have done so if a familiar member of the community had walked past him, or would he have been less obliged to mention it? Did the uniformed police officer's role in society make a difference to his behaviour?

The exercise demonstrates a real struggle for law enforcement. Their social status alone and the principles mentioned by Peele are finely balanced between the need to be part of the community and being alienated or seen as oppressors. How do you maintain rapport with communities that may have broken trust values or simply choose not to want to communicate with police officers? Was this exchange an interview? Should it be recorded?

Let's examine a few facts that support not classifying the communication an interview

- The communication was spontaneous.

- It was in public so there was no privacy invasion.
- There was no report of criminality associated with the youth.
- There were no consequences attached to answering or not answering the questions.
- There wasn't a legal caution or notice of the interview being formal.
- It was a low key and non- chat, filtered through some attempt at age-appropriate humour.
- In asking if the boys played basketball, the officer intended to keep them engaged and get to know them.

These facts support it being a more formal interview:

- The officer is on duty, in uniform, performing street duties.
- They have prior knowledge of youth creating issues.
- They attributed the broken glass to beer; they can see the boys were underage.
- When they asked for the boys' names, they created a perception that they want to identify the boys.

Canadians should always remember that they are protected under the Charter of Rights and Freedoms. Section 7 indicates, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." (Guide to the Canadian Charter of Rights and Freedoms retrieved 15 January 2020).

The boy has a right under the Charter not to have his liberty breached, not to be detained without reason, and not to be concerned for his security and right to free speech. In contrast, the officer has a Common Law duty to:

1. preserve the PEACE;
2. protect life and property;
3. prevent crime;
4. enforce the law; and
5. apprehend offenders.

This example clearly articulates that by walking the beat and talking to people the officer was carrying out the first common law duty. The officer would also state that number 2 and 3 were indirect consequences, as would be number 4, if required; at no stage did the officer need to consider number 5.

There is a fine line between the police officer's intention and the perception of a community member. We could add other characters into this scenario, perhaps the elderly couple who call the police daily to report the noise in their street; they never see an officer but saw this one doing his job. Perhaps we add the parents of the boy, worried that their boy was stopped and had his name taken. Perhaps we consider the point of view of the couple who were enjoying their walk and felt they helped by talking to a new officer. We can argue both ways: this could have been an interview or one of thousands of benign interactions the officer will have in their career.

Interviews in law enforcement vary in their tactical use. Like the example above, perhaps the most underestimated use of interviews is the public's daily interaction with officers. They attend thousands of calls for service, ask questions of victims and witnesses, and ask neighbourhood-related questions of the general public. Each interaction and interview helps to form part of the officer's strategic picture of the community. Each officer interacts with their colleagues or submits related and unrelated reports which, unwittingly, may later form part of an intelligence of criminal evidence package. Simply put, the officer will never know when this interaction may prove helpful another time.

There are varying levels of street interviewing. As outlined above with the boy, an officer can have a mere conversation without the intention of relating it to any criminality or specific call, a naturally inquisitive conversation that helps create rapport and increases the officer's recognition recognize within the community. Other street interviews may include patrolling specific areas of the community if there has been a spree of break and enters. Officers want to show residents that their presence, asking questions of people and trying to ascertain what has changed and what or who may be causing the spree, is not only supportive, but also useful. These canvassing opportunities are potentially vital in identifying lines of enquiry to follow. A similar but perhaps more controversial situation is created when street officers flood an area and checking people on the street, viewing them as suspects or persons of interest. For decades, street officers have used this tactic, however it is now recognized that stopping people in the street to question them and take and log their personal details can have massive implications in isolating communities from the police. The RCMP and other police agencies in Canada are reflecting on the use of street checks and the way in which they are identified as such, conducted and recorded. "On 23 April, 2018, the RCMP initiated a review into policies and procedures for street checks. This occurred after Justice Tulloch's independent street checks review (Toronto), and the Vancouver Police Department report that defended street interactions, along with the Halifax Police Department's recent decision

to ban street checks as detailed in their report. The Nova Scotia RCMP released new guidelines for street checks on 1 April, 2019 including guidance on “bias-free policing”.

“We wanted to release these policies proactively to ensure our communities and stakeholders are aware of the standards the RCMP abides by,” says Insp. Rob Doyle, Acting Officer in Charge of Halifax District RCMP”.

A street interview with a witness, a potential suspect, or a victim is generally verbal but pertinent points are recorded verbatim in notebooks or on voice recorders in the street, or summarized shortly after. Depending upon the file and interaction, the notes may be attached to a court file. Officers often conduct these interviews in their police cruisers, especially if people prefer to be seated or need to be somewhat separated, sheltered or detained.

Officers can ask that the witnesses attend a police station, and the suspect may be escorted to a local station or jail as part of a detention. Audio or video recorded interviews are more common at the station. Specialized interview suites are extremely advantageous for interviewing children, victims and witnesses of more sensitive subject matter.

Police interview training in Canadian law enforcement agencies somewhat depends upon need and location. It is difficult to obtain and maintain national standards across Canada, with such a variety in the ability of departments to uphold the changing demands of investigations. Currently, there is no single framework for interviewing standards. Nonetheless, departments adhere to very strict rules, best practices, in-house procedures and protocols and actually utilize similar methods.

National frameworks of investigative interviewing exist in other countries. The New Zealand Police has a four-level national framework for investigative interviewing. This framework includes a hierarchical modular training system to achieve professionalism and integrity, and a supervisory component for those responsible for supervising investigative interviewers. The framework is summarized as follows:

- Level 1: Foundation- provides foundation interviewing skills for all recruits and constables, including free recall and conversation management.
- Level 2: Advanced – consolidates and advances the skills learned in Level 1 (for all investigators).
- Level 3: Specialist – includes enhanced cognitive interviewing (word document),

interviewing for major crimes and with interviewees requiring special consideration (for a variety of specialist interviewers of both suspects and witnesses).

- Level 4: Advisory – provides advice, management and co-ordination of interviewing in major operations (for interview advisors).

This framework was partially designed to professionalize the approach to interviewing, and solidify the importance of being fair and respectful, and maintaining the dignity of the interviewee. Using the framework, the interviewer has ownership of their trained level and can strive for the next, and organizations can ensure that the best practices outlined in the courses are maintained and ethical considerations are considered. (Retrieved from Investigative interviewing doctrine [PDF]).

The RCMP considered existing framework models when reviewing the Reid model of interviewing. The RCMP looked at the UK's PEACE model because the Reid model had been criticized, especially by the media and academics. The PEACE model, however, was widely praised for its non-confrontational approach and inclusion of input from legal personnel and academics. The RCMP used the PEACE model to help build the Phased Interview Model, for the following reason:

“In the past, there was a belief that you could fit the same approach to any interview, which you can't. Interviewing is a very dynamic thing.”

Parker, L.(2017) “The art of an effective interview, why non-accusatory is the new normal”, Royal Canadian Mounted Police, vol.79. No.1. (Accessed:03 February 2020).

## Legal Ramifications of Interviewing

Officers are expected to conduct their interviews in an ethical way, maintaining the dignity of the interviewee and not utilizing coercion and trickery. Ultimately, if the interview transcript finds its way into evidence, it may be scrutinized for the legalities of “appropriate techniques and methods of interviewing. This is an intertwined and often complex area of law. Case law is regularly made and challenged. The Canadian Charter of Rights and Freedoms, part of Canada's constitution, sets out the rights that individuals have when they have been arrested. The Criminal Code of Canada sets out Federal Laws

and Procedure. Officers must abide by both; if they do not, or if there is doubt as to their conduct, the evidence could be nullified. Investigative approaches to interviewing vary, as do the people and experience of those involved as both the interviewer and the interviewee. Rules of Search and Seizure, Stop and Search, Arrest and Detention, and myriad supporting, yet opposing, legalities exist. Many cases are won and lost on whether or not evidence was gained lawfully. Interviewing can yield a massive amount of evidence that is quickly lost if the interview is considered inadmissible. Specialized police teams are formed and experienced interviewers are trained to deal with the more complex cases. The reality of unintended coercion in a child interview is an example of such an issue. A person considered vulnerable may agree with the interviewer's words, just to try to please them. Likewise, an interviewee may claim their answers were given to cut short their detention, to please the interviewer, or simply to deflect the truth from some other person.

Another example of complex and unrelenting pressure placed upon officers is the case law developed in the Case of R v Stinchcombe. This case determines the duty of Crown Prosecutors to share all evidence accumulated against the suspect prior to criminal trial; interviewing and evidence gained thereafter falls under this requirement. (Stinchcombe and Crown Disclosure of Criminal Evidence retrieved 15 January 2020)

When we are discussing best practices for witness identification, we should also mention a case law from the UK which resulted in a useful mnemonic that is easy to remember and helps enormously in securing better quality eye witness evidence. The case is R v Turnbull: Court of Appeal [1977] QB 224 [PDF]. From this website comes the following description of the mnemonic ADVOKATE.

In 1976, in considering the case of R v Turnbull, the Court of Appeal created guidelines on the subject of identification, which have been followed in subsequent cases.

The points raised indicate the areas to which police officers must pay particular attention whenever they are involved in identification processes. This can be remembered with the assistance of the mnemonic ADVOKATE:

**A**mount of time under observation.

**D**istance from the eyewitness to the person or incident.

**V**isibility – including time of day, street lighting etc.

**Obstructions** – was there anything obstructing the view?

**Known or seen before** – did the witness know, or had they seen the suspect before?

**Any reason to remember** – was there something specific that made the person or incident memorable?

**Time lapse** – how long since the witness last saw the suspect?

**Errors or material discrepancies** – this means any material discrepancy between the description of the accused given to police by the witness when first seen by them and the actual appearance of the accused.

Not all of these points will apply to every statement. However, one must consider each point and record those points that do apply as part of the witness statement.

## Recognized Models of Interviewing

It seems logical that people expect police officers to be trained and experienced in their role, whatever that role is. The skill of interviewing is one that not only stems from training but is developed over time. Simply put, the more interviews you do that are diverse in nature and scope, the more skilled you become.

Officers receive a complex and multi layered “basic” training schedule spanning many months and including intense legal, physical and skill-based scenarios. In truth there is not much “basic” about it. This is coupled with practical supervised patrolling and ongoing assessments. Officers are assessed in role-play scenarios where their ability to conduct street interviews, investigate crime and traffic offences, and sift through an abundance of legal material are tested. Once the recruits leave the Depot or Academy, they quickly develop the art of interviewing and listening. Their daily dependence upon an ability to ask questions, listen and record findings is monitored and tailored by supervisors and senior officers in the field. They learn quickly that interviewing is not always as depicted on television shows but is sometimes upsetting, personal in nature, sad, or conducted in highly stressful conditions or places, such as busy highways, public order environments or at often macabre scenes.

Once the basic skills are mastered, advanced courses are offered and specialist interviewers for specific roles are developed. Over the years, many models of interviewing have been prevalent in Canada. We shall now look at some of the prominent models and techniques namely: Cognitive Interviewing, Reid Model, PEACE Model, Phased Interview Model, and Child Interviewing.

## Cognitive Interviewing

The Cognitive Interview (CI) is a method of interviewing that is generally utilized with eyewitnesses and victims. The method is supportive, and utilizes what is commonly known as the four retrievals. It is meant to assist in memory and provide confidence in reducing inaccuracies.

### Scenario

Mentally place yourself in a store; you are browsing a shelf for some candy. All of a sudden, two men start fighting. You try to avoid them as you exit the small store, and you see police arrive as you walk away. You later find out this was a very serious incident and the police want a statement from you. You contact them, and now you have to provide a statement.

At this stage of the scenario you may have some concerns. Perhaps you are concerned about what you saw, or what will happen if you give a statement? Did you actually see the right two men? Can you describe them? Who did what? Who was the aggressor? Where were they in the store? What were they wearing? Did they have weapons? So many thoughts, so much room for error. Being the good citizen that you are, you want to help and you want to ensure accuracy. Remember, you may have to give evidence in a year or so.

Luckily for you, the police are trained to assist in your memory recall. Having explained the likelihood of your evidence being used and how, they have put you at ease. By utilizing the CI approach, they have calmed your worries of providing misinformation. The police may not actually be aware of the source of their training or how it evolved to a



practical tool, but it works. CI is born from techniques of four general memory retrieval rules based on the encoding specificity principle. Essentially, the assumption is that memory traces are usually complex with various kinds of information overload. The principals are:

- Memory deteriorates over time.
- Human memory has a limited capacity for storing information, as well as a reconstructive nature.
- A witness may incorrectly recall and subsequently report the events of a crime because they are reporting what their schema of a crime is, as opposed to what actually transpired.
- The recall of information from memory is influenced by the strategies used to gain access to that information.

(Memon et al, 1995)

## Reid Model-What is the REID Model?

The Reid Model was first developed by John E. Reid and Associates who began developing Investigative Interviewing and Interrogation techniques in 1947. It is suggested that the technique has grown to be the most widely used technique worldwide. Law enforcement officers were first offered the training in 1974, and the company website boasts that over 500,000 professionals in the law enforcement and security fields have attended the program since. It is used by the US Military, extensively across North America, and Canadian Police in every Province and Territory have been trained.

Originally established as the standard in the industry, the Reid Model incorporated Behaviour Symptom Analysis, the Behaviour Analysis Interview and the Reid Nine Steps of Interrogation as the foundation of its process. Courses and training are layered, so advanced training can be taken when candidates are skilled at previous levels. Taken from their training course description, their training includes:

- Interview and Interrogation Preparation;
- Distinction between a Non-Confrontational Interview and Interrogation;
- Proper Room Arrangement; and

- Factors Affecting the Subject's Behaviour.

## BEHAVIOR SYMPTOM ANALYSIS

- Evaluating;
- Attitudes;
- Nonverbal Behaviour;
- Verbal Behaviour; and
- Paralinguistic Behaviour.

## BEHAVIOUR ANALYSIS INTERVIEW®

The Benefits of Conducting the Non-Confrontational interview prior to any interrogation:

- Analyzing Factual Information;
- Reid Behaviour Provoking Questions;
- The Baiting Technique;
- Investigative Questions;
- Hypothetical Questions; and
- Assessing the subject's concerns.

## THE INTERROGATION – Developing the truth

- Preparation prior to the interrogation – how to use the information developed during the interview to determine the most effective interrogation strategy; and
- Assessing the Suspect's fears, rationalizations and objections prior to the interrogation.

## THE REID NINE STEPS OF INTERROGATION®

- Step 1: The Positive Confrontation/Benefit of the Transition Statement.
- Step 2: Theme Development
  - First Person Themes;
  - Third Person Themes; and
  - Personal Stories-Identifying the suspect's Needs for committing the crime.
- Step 3: Handling Denials-

- How to move past Denials;
- Addressing Suspect Challenges;
- Addressing the Suspect's Request to see evidence;
- Introducing Evidence;
- Tactics to gain trust; and
- Tactics to change the suspect's perception.
- Step 4: Overcoming Objections
  - Handling Logical Challenges
- Step 5: Procurement and Retention of the Suspect's Attention
  - Use of Role Reversal;
  - Challenging the Suspect's Values and Traits;
  - Addressing the Suspect's Fear of Consequences; and
  - Addressing the Futility of continued denials.
- Step 6: Handling Suspect's Passive Mood
  - Having the suspect verbalize agreement
- Step 7: Presenting the Alternative Question
  - Understanding the Alternative; and
  - Using Positive and Negative Supporting Statements
- Step 8: Having the Suspect Orally Relate the Details of the Crime-
  - Committing the Suspect to the crime-
  - Safeguards to protect the integrity of the confession
- Step 9: Elements of Oral and Written Statements

The model has been popular over many years, and boasts a high success rate for investigators to get confessions from previously unwilling subjects. Conversely, concerns exist about false confessions obtained from more vulnerable subjects. The founder, John Reid, is an American Psychologist who based his theory on the interview techniques he developed based on psychological principles. Three phases of interviewing begin with fact analysis, followed by the non-accusatory behaviour analysis interview, and then followed, if needed, by the Reid Nine Steps of Interrogation. It is relevant that the Reid Nine Steps of Interrogation are only utilized if the other two steps reveal the need. Reid's technique builds on an accusatory style. The interviewer has a position of knowledge and explains that knowledge, building in the interviewee to tell the truth.

Here is an example of a simple question:

“Did you break the window by accident, or did you plan to break it?”

The question is very specific, it gives two options, one is admitting guilt occurring as a spontaneous accident (no mens rea) and the other is framed to include the intent to do the act (mens rea and actus reus). On the surface both are admissions that a window was broken and the interviewee was involved. Of course, there is another answer:

“I have no idea what you are asking me, I didn’t break a window.”

The line of questioning does not offer this answer as a choice; both are accusatory. This is a questioning technique called an “alternative question”. It is frowned-upon by critics, due to the psychological suggestion of guilt.



*Photo by Tumisu from Pixabay*

Exercise:

Think of 3 alternative-style questions you could ask that are similar in nature to the

example above, in relation to fictitious crime or accusations. Try to vary the wording to hide the question technique amongst the various questions.

1

2

3

In summary, The Reid Model is still used and is a relevant method in modern policing, particularly in the United States. There are dangers of overzealous investigators applying too much pressure and refusing to accept denials as a possibility. There are also examples of investigators exaggerating evidential leads to encourage confessions and firmly establish their power in the interview relationship. The downside is a feeling of worthlessness and hopelessness in the interviewee's mind, and a resignation to please the interviewer by confessing, to end the process.

PEACE Model-What is the PEACE Model?

Policing in the United Kingdom has always been progressive in nature. The subject of interviewing techniques has been topical since the inclusion of the Police and Criminal Evidence Act Codes in 1984. As the legislation guided, the police researchers and law enforcement worked together to enhance policing methods. The PEACE Model was widely introduced in England and Wales in the early 1990s. It was established by police officers working with psychologists in an attempt to prevent, or at least effect a huge reduction in, the number of false confessions. The PEACE Model was designed as a somewhat less aggressive method of interviewing.

It has definite sections that spell out the acronym PEACE:

- Planning and Preparation;
- Explain and Engage;
- Account, Clarification, Challenge;
- Closure; and
- Evaluation.

# Planning and Preparation

This is the beginning of the interview and one of the most important phases in effective interviewing within the PEACE Model. The success of the interview and, consequently, the investigation could depend on it. Skilled investigators spend time in a planning session that takes account of all the available information and identifies the key issues and objectives required, even where it is essential that an early interview takes place.

Interviewers consider how to:

- create and record the interview plan;
- explore the characteristics of the interviewee;
- make practical arrangements for the interview; and
- make a written interview plan.

## Interview Planning and Written Plan

When we consider an interview in the context of an investigator's role, we can understand the importance of getting it right. The first aspect of the Planning and Preparation Phase is the plan. The investigator may not have all the details of the offence at the time of the interview, but they will study and understand as much as possible, reviewing the details of the case, known or suspected. They will understand the known evidence and the relevant legislation. Ultimately, they need to have a clear understanding of the objective for the interview and, in a broader sense, how that interview fits into the investigation. Some important facts of the case can be established or negated with careful questioning. During this Interview plan there may be some consideration given as to which interviewee to interview first. If there are multiple interviews to be conducted, is one interviewee likely to provide more essential information than another, are any considerations of health, medication, wellness, or meal breaks for the interviewee? Of course, there may not be time, or it could be deemed inappropriate, but can an interview be delayed for a time to gather more evidence that would be beneficial to the interviewer or interviewee?

During this planning stage, interviewers need to understand the person they are about to

interview. If the interviewer gets this wrong, all sorts of issues or accusations may present at a later date as part of a defense that could jeopardize a case.

How the interview will be conducted and where, as well as who will conduct the interview, are all considerations in the planning phase. Often the interviewer will be lucky to have spent valuable time making themselves as familiar with their subject as possible and they may have personally visited their address, searched them or their vehicle. They may have spoken to neighbors, family or other witnesses and used the information to build up an understanding of the interviewee.

The by no means exhaustive list of considerations includes:

- the age of the interviewee are they deemed a youth or child by law, does the adult interviewee have learning needs? In both situations appropriate adult support may be required.
- Are there any cultural or religious considerations, language barriers?
- Does the interviewee have other needs such as child-care worries or a family member dependent upon them?
- Will the interviewee best respond to a male or female, of what age or culture?

Although such needs are not directly associated with the interview, the interviewee may not be as attentive, with these matters on their mind. It should also be recognized that not everyone is cooperative, and the safety and welfare of the interviewing officer is always a given concern. Gang affiliation, previous history, current behaviour, and sometimes just the interviewer's intuition may be indicators that interviews can become a dangerous situation for interviewers.

Having planned and prepared some of the essential thoughts as to how the interview will be conducted and in what manner, the interviewer will then be encouraged to develop a written interview plan. As discussed, there must be goals or aims for the interview, whether the interview is of a witness or suspect. If the interviewee is in custody, it is important for the interviewer to be mindful that there are rules as to the length of time a suspect can be held. Often known as the detention clock, it is a major factor impacting how much time the investigator has. Running out of time in the interview is a missed opportunity to gather evidence. The interviewer must remain aware of the location of the detention clock, and spend appropriate time on designated parts of the interview. It is essential to not allow the interview to go on too long. This is not as important in a

witness interview, but is still affected by witness needs and investigator time for completing the task. It is important in both witness and suspect planning to know the elements of the offence, the points of law to use to shape the interview, and the questions to ask to help to ensure they are covered in enough detail. The interview must establish Mens Rea (mental element of the offence) and the Actus Reus (physical act) if an incident occurred as a result of an accident or unfortunate miscalculation.. Knowing when to bring exhibits or evidence into an interview is also essential, as can be the dynamic of two interviewers. It is important to know who the lead interviewer is and the role of the support interviewer. Everyone has heard of the term 'good cop, bad cop', however interviews are not so definitive in real life. It may be that one investigator gets little response from the interviewee while the other is able to establish a rapport; maybe neither may make any headway. Flexibility is an essential part of the plan. Consideration as to what evidence will be discussed, in what order and by whom, will often make for a smoother and more professional interview.

## Engage and Explain

The interview commences after the planning stage and the development of the written plan. It may seem logical, but other interview models fail to establish the importance of the interviewee. This is not always easy. Perhaps the person is well-known to police and well-practiced in interviews. Alternately, the person may be previously unknown to the police, therefore little information is available to make meaningful conversation. Listening is equally as important as talking. The skill of active listening develops as an investigator's career unfolds.

The term "active listening" means, as it suggests, to listen with a purpose. The skill assists an interviewer to pick out themes, topics or pertinent points during the interview. It is also used to display an interest in what is being discussed. If the interviewee feels the interviewer is engaged and interested, it may encourage the flow of communication, which may in turn encourage the interviewee to release evidential information.

During the beginning of the interview, it is important to make sure the person knows the reason they are being interviewed and their status, and to get the person to explain their understanding of the explanation. This will prevent a suspect from claiming at a later date that they did not know why they were being spoken to under the circumstances



that developed. Once the reason has been given, the roadmap of the interview should be given. For example:

“You were arrested this morning at about 4am for an assault outside the taxi centre on Fairwell Road. I am interviewing you to establish your involvement in the incident. Do you understand why you are being interviewed?”

Once the person acknowledges a positive understanding, the interview may continue; otherwise clarification of their understanding is sought again.

“So, in connection with the offence of assault for which you were arrested, I will talk to you about some key points which may include your reason for being at the taxi centre, the person you were with and why, and what occurred leading up to your arrest. I will also seek some clarification for some of your answers if I need to.” The interviewer should also confirm that the person being interviewed is not impaired, medically or otherwise, or confused, or under duress, since these will all be examined if the interview process is questioned in court or at a hearing. It is important to remind the interviewee that the interview is a process for police to establish truth and an opportunity for the interviewee to give their explanation of an event.

## Account, Clarification, Challenge

There comes a stage in the plan and execution of the interview when the investigator must tighten up the interview and make sure they are hitting their interview goals. The PEACE Model emphasizes using easy-to-answer questions without ambiguity or trickery, and discourages jargon and over-complicated sentences. Although interrupting an answer is acceptable, it should be avoided if not used as a probe. The more a person talks, the more confident they may get. The use of silence is also a powerful tool; when one person doesn't say anything for a minute or two, the other person may be prompted to open up.

The PEACE Model encourages open-ended questions to allow the person to expand their account or explanation. Open-ended questions encourage answers other than “yes” or “no” or a prescribed short answer. This type of questioning is referred to as closed questioning. Examples of open-ended questions would be:

“Tell me about your involvement in...”

“How do you know the person?”

A closed question would be “Do you know this person?”

When a person is talking, their non-verbal behaviour, such as how and where they look, what their hands and feet do, and where they lean or don't lean, can reveal important information. There are characteristics as to how a person pauses, when they reflect or make up answers, how they answer, or whether they stumble or use sounds, such as “er” or “um...” between their words. Trained investigators should pick up on such nuances. Open and closed questions are then used as required to clarify the larger topic and to make sure the goals of the interview are met.

## Closure

Once the account has been given the interview should be concluded; this is an important part of the process. All of the relevant questions should have been answered; if not, a good reason should be established. The witness or suspect should have been given ample opportunity to contribute, or to add or clarify anything. Any signatures or legal or policy requirements of process should be met during the closure.

## Evaluate

Once complete, the interview should be evaluated for evidentiary or informational value, and the content considered in the totality of the investigation. Did the interview change our opinion, add extra work, establish innocence or guilt, or implicate others? Is essential or urgent work, or some follow-up investigation required as a result? (Investigative interviewing accessed 05May2020)

# Phased Interview Model

The Phased Interview Model was developed by the RCMP in response to legal attacks on and criticism of the Reid Model. Academics, the media, and industry experts warned of the perils of utilizing a guilt-presumptive model that influenced confessions. The resulting false confessions and involuntary statements were concerning. There were also concerns that the PEACE Model extensively used in the UK was being pushed in Canada without true understanding of it. It was considered perhaps too passive in nature, since it was based on a non-guilt presumption and non-confrontational questioning.

In 2012, RCMP officers spent extensive time with officers from the UK looking at the PEACE Model and being trained to the UK standards. Extensive research accompanied the visit, and a working group of subject experts was formed. The then existing model, "structured Interview and Interrogation", used by the RCMP, was also reviewed. (The RCMP Phased Interview Model For Suspects [PDF] retrieved 15 January 2020)

In their summary, the following comparisons were made by the working group:

**PEACE Model Pros & Cons**

PEACE MODEL PROS	PEACE MODEL CONS
Non-Guilt Presumptive	The adverse inference
Not concerned with obtaining a confession –only information	Impermissible inducements
Well suited for voluntariness	No persuasion
Objective veracity testing & scientific validation	Requires an engaged suspect

The group also made comparisons in relation to the Reid Model:

### REID Model Pros & Cons

REID MODEL PROS	REID MODEL CONS
Effective persuasion (theme-based approach, moral inducements)	Guilt presumptive
	Subjective veracity testing
	Stopping denials
	Maximization techniques
	Pragmatic implication
	Not aligned with the confession's rules
	Increased risk of false confessions
	Not scientifically validated

Essentially, the two-year study established that the RCMP would proceed with a model that took the PEACE Model fundamentals but kept some aspects of the Reid Model where Canadian law and policing methods allowed. A hybrid model, now known as the Phased Interview Model, developed, and is now utilized across BC by many agencies. It is described as being more akin to the PEACE Model, with a little more application for the interviewer to be successful. Courses were rolled out in 2017; being relatively new, the success of this model is still being measured. (Canadian Police Knowledge Network retrieved 15 January 2020)

## Interviewing Children and Vulnerable People.

The subject of interviewing adults is complex for law enforcement. Behind every interview are myriad defensible legal arguments. We have discussed the variance in interview techniques and the locations in which they may occur, and considered the concept of police responsibilities and duties and how that is perceived by communities. Officers face additional difficulties when they are required to interview people who, it could be argued, are not in a position to comprehend some or all of what is being asked. It is difficult to legally defend whether or not the interviewee's comprehension is pure. Interviews are commonly defended as inadmissible as evidential value. Such defenses

may hinge upon not only the subject's ability to understand the questions, but the whether or not they will be compelling witnesses in court.

## Children

Children at various ages can be influenced by those around them. Parents and guardians spend countless hours training and coercing children into making good life decisions, such as persuading a child to forego the bright candy at the store for a more nutritious snack. The naivety of a child is both positive and a barrier to effective communication. The difficulty with such a variance in the behaviour and skills of childhood communication, lies in establishing fact from fiction in their imagination. We also need to consider legal practices and adhere to law. In British Columbia, the law that protects children and youth from abuse and neglect is the Child, Family and Community Service Act. Under the Act, a child is defined as anyone under the age of 19; children aged 16 to 19 are defined as youth. The Canada Evidence Act is clear in its message under Section 16.1 (1) that a person under fourteen years of age is presumed to have the capacity to testify, but a proposed witness under fourteen years of age shall not take an oath or make a solemn affirmation. Legally, the burden is on the challenger to disprove the capacity to understand and respond to questions of someone aged under 14.. If this is proven, then the court has to conduct an enquiry to prove the real capacity of that witness.

Ultimately, the concern (particularly with younger children) is that they do not make compelling witnesses. We know that children grow at alarmingly different rates; growth charts and school exams are obvious measures. Cognitive growth is a harder medium to measure. A child's account of an incident can be extremely believable, and weight can be given to the purest statement, but there is always the concern of imagination and willingness to please a parent, or even a police officer. It is important to be aware of the devastation that can be caused in the life of someone wrongfully accused of a crime, or the risk of a case being lost due to the testimony of a child witness.

An excellent source document is The RCMP Phased Interview Model for Children. The document was prepared by a team of experienced investigators, and highlights the pitfalls of such interviews as well as outlining best practices to law enforcement. It states that successful prosecution of a case of child abuse requires a team of professionals from many fields of work to obtain the evidence, provide medical care and support, and

navigate the legal implications of the prosecution. The essential joint agency approach may include police, specialist interviewers, social services, child ministry teams, and special prosecutors, as well as specialized medical staff. The voice of the child is often a lone catalyst for such an investigation, and that child has likely been brought up to respect the word of the adult looking after them. Often, a child is influenced by people around them. Children have creative minds, and their life skills are evolving; to a child, the world is a playground where make-believe and reality can co-exist. This can be a difficult sequence of events to unravel. Children do not generally recall pertinent dates, times or locations, and have little regard for days or months, let alone the year.



*“Kid Talking With Police Officer Looking @ His Phone” by Informed Images is licensed under CC BY-NC 2.0*



The multiple agencies required in a case involving a child have different aspects to consider, including terminology and consolidated practices. The mere word “interview” can mean different things to the different agencies. A forensic interview is used to gain the facts and clarify what a child knows about an event or incident, yet a clinical interview is perhaps used by medical or support teams to be able to gain information to help support or treat a child. The term interview is used equally but means two very different things; both may be crucial in the way a case involving a child is investigated and handled.

The RCMP Guide provides excellent comparative information to help determine a child’s developmental stage, which may not specifically align with their chronological age.

Exercise:

Consider yourself a police investigator assigned to a complex case involving a family. A 6-year-old boy and his 13-year-old sister have disclosed to their parents that an adult babysitter has been locking them in a cupboard under the stairs as a punishment for being naughty, and had allegedly been physically abusing them. What core skills or characteristics will you, as the investigator, need, to be successful with each child?

Exercise Table

Aged 6 Boy	Aged 13 Girl

Having compiled your list of attributes, are there any that are more necessary than others, or are they equally important? Bear in mind that this is your point of view. What would the child want, need or best react to, and does this vary from child to child? Age, culture, and family circumstances all have a bearing on a child’s lifestyle. Building rapport may start with building trust. For some children this may not happen easily; other children have that trust.

Children- Legal Considerations



### RCMP Phased Interview Model for Children

STAGE	AGE	DEVELOPMENT
<b>SENSORIMOTOR STAGE</b>	Birth to 2 years of age	<p>Children learn about the world through basic actions:</p> <ul style="list-style-type: none"> <li>• Sucking.</li> <li>• Grasping.</li> <li>• Looking.</li> <li>• Listening.</li> </ul> <p>They learn object permanence. They discover that they are separate beings from people and objects.</p> <p>They learn cause and effect.</p>
<b>PREOPERATIONAL STAGE</b>	2 to 7 years of age	<p>They are unable to fully understand conservation principles, and egocentric – they struggle to see things from another's perspective. Language skills improve but are very concrete and the child lacks abstract thinking. They cannot apply logic and cannot reason.</p> <p>Their pretend play becomes more pronounced.</p>
<b>CONCRETE OPERATIONAL STAGE</b>	7 to 11 years of age	<p>Major developmental changes. They begin to think logically about concrete events.</p> <p>They understand the concept of conservation (numbers, mass and weight). They are more logical/organised. They start to use basic logic and reasoning but still struggle with abstract thinking. Egocentrism begins to disappear.</p>
<b>FORMAL OPERATIONAL STAGE</b>	12 years of age and up	<p>A key hallmark is the development of abstract thinking. The child is able to reason about hypothetical problems.</p> <p>Deductive logic develops. Children become capable of seeing multiple solutions to problems. Children are able to think more specifically about the world around them. There is more focus on the future.</p>

The paper THE RCMP PHASED INTERVIEW MODEL FOR CHILDREN is an excellent guide in relation to case law involving children and testimony. Subject to updated cases, these legal parameters may vary in time:

R V. MARQUARD, 1993 SCC

Marquard holds that testimonial competence relates to the capacity to observe, recollect and recall, and communicate.

R V. J.S., 2007 SCC

A witness may not be questioned about understanding the promise to tell the truth during the competency inquiry. However, the defense may question the child about competence during cross-examination. Responses of the child may only affect weight (probative vs. prejudicial affect) and credibility but not admissibility.

#### EVIDENCE OF VICTIM OR WITNESS UNDER 18 – S. 715.1(1) CC

Section 715.1(1) of the Criminal Code permits the submission of a video recorded statement into evidence if the witness is under the age of 18:

In any proceedings against an accused in which a victim or other witness was under the age of eighteen years at the time of the offence is alleged to have been committed, a video recording made within a reasonable time after the alleged offence, in which the victim or witness describes the acts complained of, is admissible in evidence if the victim or witness, while testifying, adopts the contents of the video recording, unless the presiding judge or justice is of the opinion that admission of the video recording in evidence would interfere with the proper administration of justice.\*\*A voir dire is required before admission of the video recording into evidence.

#### RELEVANT CASE LAW DECISIONS

R v. L. (D.O), 1993 SCC

In a case where the protection of s.715.1 is called upon, the child victim must testify at trial and attest to the truth of the statement made earlier as recorded by videotape. In addition to the child adopting all or part of her prior statements, other limitations exist in that the videotape will only be admissible for a victim under 18 years of age and the video must be made within a reasonable time. However, even before the videotape may be admitted, a voir dire must be held to review the contents of the tape and ensure that any statement made in the videotape conforms to the rules of evidence. Any statements which are in conflict with the rules of evidence may be expunged from the tape. There are a number of factors which the trial judge could take into account in exercising his or her decision to exclude a videotaped statement:

- a. The form of questions used by any other person appearing in the videotaped statement;
- b. any interest of anyone participating in the making of the statement;
- c. the quality of the video and audio reproduction;

- d. the presence or absence of inadmissible evidence in the statement;
- e. the ability to eliminate inappropriate material by editing the tape;
- f. whether other out-of-court statements by the complainant have been entered;
- g. whether any visual information in the statement might tend to prejudice the accused (for example, unrelated injuries visible on the victim);
- h. whether the prosecution has been allowed to use any other method to facilitate the giving of evidence by the complainant;
- i. whether the trial is one by judge alone or by a jury; and
- j. the amount of time which has passed since the making of the tape and the present ability of the witness to effectively relate to the events described.

Legal considerations aside, there are also best practices to consider. One such best practice is that the child's interview be video recorded. In any interview with a child, the form of questions is extremely important. A leading question (one that will take a child's mind down a specific path towards an answer) is likely to be deemed inadmissible in court. Coercion, deliberate or otherwise, or leaving a court in any doubt that the child was answering to appease or please the interviewer, will negatively affect the case.

Exercise:

List some advantages of the video recorded interview:

1. Example
2. Example
3. Example

There are cautions as well as advantages to the video recorded interview, including the fact that the overt presence of a video camera may worry the child, or even provide a platform to "perform". The technology and its stability should be considered; good quality audio and picture clarity are great, but poor quality or poorly maintained video specimens create negative issues. Considerations for evidence continuity of the electronic exhibit include: who handled the disc, where the information was stored, and who possessed it. Continuity of evidence is an essential component of securing the evidence.

Child interviewing is a skill; specialized training is a necessity. As the United Kingdom developed their training to officers, they realized that as soon as an officer arrived at a

scene or a home, or first spoke to the child, the content of the conversation and the other people present provided potential ammunition to a defense council to cast doubt on a case. In the mid-1990s, police were trained in the importance of documenting a conversation with a child from the beginning and throughout.

Imagine this scenario:

An officer (CONSTABLE Wendy Green) is called to attend #1 Smith Street. At 10:02 am she arrives and speaks to “Jimmy”, aged 6, and his mom. They are in the living room. In front of Jimmy, Mom explains that Jimmy has cigarette burns on his back and Dad has been causing them. Mom goes on to explain that Dad is a drug user and occasionally visits with friends. CONSTABLE Green asks Jimmy to lift his shirt and Jimmy obliges. Three round burns are apparent. CONSTABLE Green asks “Did Daddy do this?”

What are the issues that you see with this scenario so far? How could they be avoided? What would you consider doing differently? Is there anything wrong with the question?

It is a tough situation. Mom is irate and upset; Jimmy is comfortable to talk around Mom and confident in showing the officer his torso. Did the officer need to see the torso at this time? Is her question appropriate or considered leading? Back to the scenario...

Jimmy: Yes, Daddy did it (looks down and stops).

Mom: It's okay, tell the officer.

CONSTABLE Green: You're a brave boy. Tell me how Daddy did it.

Mom: It was with his cigarette. This was not an accident, I know it; he gets drunk.

CONSTABLE Green: Was Daddy drunk?

Jimmy: Yes, he drinks adult pop a lot.

Mom: That's what we call vodka.

CONSTABLE Green: Did Daddy do it with a cigarette?

Jimmy: Yes, he was throwing me in the air; we were playing helicopters.

Given this short scenario, there may be further concerns about the contact and the method of receiving the information. The conversation took place in the presence of an

apparently supportive parent. The officer would maintain that the questioning was simplistic and necessary to obtain basic facts.

The scenario develops to a point where PC Green decides that mom may also be involved in causing some injuries. Mom admits that she has an alcohol dependency and at times has difficulty remembering events. Jimmy intimates that mom hurts his wrists when she is telling him off. PC Green calls her supervisor and asks for some advice. They decide to bring Mom into the station for an interview, and to transport Jimmy to the child interview suite at the Child Ministry. PC Green is met by PC Lamb, and they transport Jimmy in an unmarked vehicle to the Ministry Suite, a journey of about ten minutes.

The conversation so far would be recorded in PC Green's notebook. It was almost formal in nature and it is clear that it would be a significant part of the case. What is sometimes not so obviously noteworthy is the casual conversation with Jimmy in the back of the police car. These ten minutes of time are very relevant. What did Jimmy say? What questions were asked? They would be easy to recall today, but in nine months or more will PC Green and PC Lamb remember the topics of conversation, and will their accounts be the same?

To circumvent this issue, the UK developed a best practice where the first officer engaging Jimmy, in this case PC Green, would start a child interview log. The log would note the time and date, and the initial interview questions would be recorded contemporaneously as they are clearly relevant. On the journey to the Ministry, PC Green would maintain the log, noting who else was with the child and in what capacity. Every effort would be made not to engage Jimmy in conversation about his family or the incident. General conversation themes would then be recorded in short time blocks. If Jimmy made impromptu statements, they would be captured verbatim and time stamped. PC Lamb would read the notes and sign them as a true account.

### Child Interview Log

Time	Date	Present	Location	Speaker	Notes	Signed
1000	20-02-02	Green/ Lamb Jimmy	Police Car	Jimmy	"Is daddy in trouble for throwing me?"	(officer)
1000	20-02-02	Green/ Lamb Jimmy	Police Car	Green	"We just need to make sure everyone is ok. Do you like football Jimmy?"	
1001-1004	20-02-02	Green/ Lamb Jimmy	Police Car	Jimmy	Spoke about his love for Manchester UTD, his goalkeeper skills and how he likes to play basketball too.	
1004	20-02-02	Green/ Lamb Jimmy	Police Car	Jimmy	"Mommy gets mad when I am not ready for school, she tells me I am naughty and I will have to go live with Daddy if I don't listen."	
1004	20-02-02	Green/ Lamb Jimmy	Police Car	Green	"We are nearly there now, Jimmy. Have you eaten? We can try and get some food. What do you like?"	
1004-1006	20-02-02	Green/ Lamb	Police Car	Jimmy/ Green/ Lamb	Spoke about burgers and pizza, and his favourite toppings.	
1007					ARRIVED AT MINISTRY	

This type of detailed record made by the officer seems a little extreme, but if documented in such a way, a court can determine the relevance of the statements and, more importantly, see that the officer made attempts to deflect the conversation away from the situation, to a point that the child did not talk about the events. According to the above notes, there can be little question that the officer did all they could not to coerce or lead the child while transporting him. They also did not influence his mindset towards the behaviour of the parents. Some officers across BC and Canada use similar forms, and some will use their notebooks. Either way, documentation is every important. Details that seem trivial at the time may be crucial at the final trial.

Many aspects of interviewing children are very important. There are numerous opinions and studies, but some consistent rules should be considered a necessity. These may include:

- Use simple language.

- Do not entice or encourage answers; ensure questions are not leading.
- Allow the child to use their own terminology to describe objects, places or parts of the body.
- Take careful notes.
- Use specialist interviewers where possible.
- Avoid positive reinforcement, e.g., “Good boy, go on” or negative reinforcement “Tell me or you are in trouble”.
- Make sure you understand their terminology.
- Simple strategies, like being on a physical level with the child, using open body language, and being engaging and non-judging, all help to make the process more comfortable.
- Special lounge suites with soft furnishing, or play areas, all help the child to feel less threatened by the process.
- The child’s boundaries and tiredness, rather than the investigator’s agenda, will define the time and focus. ’s

It is important that the child tell the truth. How do we ensure that the child understands the concept of truth, and the difference between the truth and a lie? A simple test can determine whether or not the child understands the word.

“Do you understand what truth is? Can you explain?”

(Allow the explanation)

“I am going to say some sentences. Can you tell me if they are truth or lies?” You then make some statements that are clearly lies or truths, to establish the child’s comprehension.

“Your name is Jimmy, truth or lie?”

“I am wearing red shorts, truth or lie?”

“We rode in a big yellow bus today, truth or lie?”

Once a baseline of the child’s understanding is established, the interview is deemed to be more relevant.

# Mental Health

According to the 2013 VPD report, Vancouver's Mental Health Crises; An Update Report, there has been a steady increase in police interactions with people suffering from apparent mental health issues. Beyond 2013, British Columbia Emergency Services were stretched daily to attend calls related to drug overdoses due to the Fentanyl crises. Police in most agencies received extra training to identify signs of mental illness and to assist with often volatile incidents.

(Vancouver's Mental Health Crisis: An Update Report September 13, 2013, Tim Szkopek-Szkopowski)

Inevitably, the necessity to arrest or interview people with mental illness grows. Interviewing people with mental health issues brings many pitfalls. Ultimately, we must be able to confirm that the person being interviewed comprehends the questions. If their sobriety or mental health is in question, the interview can be worthless to an investigation. Alarming, the VPD has stated that mentally ill persons are 15 times more likely to be a victim of crime, and 23 times more likely to be a victim of violent crime. This places a huge demand on police and support services, and limits their ability to take the necessary care and time, to record appropriate statements.

It is apparent that vulnerable persons such as children and those suffering with mental illness are more susceptible to making "false confessions", often leading an investigator to falsely believe in their involvement. Interviewers must spend time explaining questions and ascertaining the interviewee's level of comprehension. The ability of the interviewer to recognize the interviewee's need for extra – maybe clinical – care, , or to seek further clarification of the interviewee's comprehension levels, is valuable.

False confessions are particularly likely when the police interrogate particular types of suspects, including: suspects who are especially vulnerable as a result of their background, special characteristics,

or situation; suspects who have compliant personalities; and, in rare instances, suspects whose personalities make them prone to accept and believe police suggestions made during the course of the interrogation.

R vs. Oickle, 2000 SCC 38, paragraph 42.



Interviews with people who have taken drugs or alcohol, or people who are extremely fatigued, are also troublesome. Experienced interviewers will all have sat opposite a suspect or victim who is literally falling asleep, even after resting for many hours. Addictions and other ailments affect how the body reacts. Conducting an interview in situations complicated by conditions such as detention clocks for suspects will frustrate the investigator, particularly when timely retrieval of crucial evidence could save a life. There is strong advice to support interviewing only people who are of operating mind, but few suggestions as to how to define that term. The Supreme Court of Canada Case R V Whittle (1994) actually saw no real need to extend the term, “operating mind”.

*Interviewers The operating mind test, therefore, requires that the accused possess a limited degree of cognitive ability to understand what he or she is saying and to comprehend that the evidence may be used in proceedings against the accused. Indeed it would be hard to imagine what an operating mind is if it does not possess this limited amount of cognitive ability...*

*... In determining the requisite capacity to make an active choice, the relevant test is: Did the accused possess an operating mind? It goes no further and no inquiry is necessary as to whether the accused is capable of making a good or wise choice or one that is in his or her interest.*

(R. vs. Whittle, 1994 2 SCC 914, pg. 31)

When interviewing a suspect, victim or witness with apparent vulnerabilities, one can expect to be scrutinized by the court system. Simple adaption of technique, exploring clinical or medical examination or deferring the work to a more suitable time or location are options that will be questioned. It is not always easy to get antecedent information. Often suspects, or even witnesses, will not fully cooperate, will not answer personal questions, or will not or cannot provide simple information about their own lifestyle habits. It is not always practical or even ethical to reach out to family members, or seek medical or psychological reports. Similar to interviews with youth, interviews with vulnerable people require a baseline of understanding:

“Are you okay?”

“Do you feel well enough to continue?”

“Are you under any medication or have you taken anything that may influence your behaviour?”

“Can you tell me where you are today? What day is it? Do you know the date?”

As frustrating it may be for an investigator, they must cover the basics. Even if they believe the person sitting opposite them is using their tiredness or apparent illness as a smoke screen to stall or avoid answering questions, the investigating officer must show due diligence to care of the person.

As we have seen, interviewing is an important tool and skill for evidence collection. It is also essential that it be conducted in an ethical and professional manner.

The author has followed the additional steps to achieve a Pure Version/Free Narrative Statement:

1. Mental Preparation

The interviewer should be aware of the facts surrounding the case, the involvement of the witness, and the information regarding the case that the witness is expected to provide.

2. Physical Preparation

The interviewer should have available any evidence that they may wish to show the witness, if it is required. The interviewer should also secure a private room that is appropriate for the interview, and check the recording device to ensure that it will operate properly. The investigator should have clean sheets of paper and a pen to make notes during the interview. Interviewers should consider having another interviewer in the interview room. This is especially important, so that the other interviewer can raise other important questions.

3. Pre-amble

An interviewer should take down the contact details of the witness before the audio or video recording starts. This process may also include some informal conversation to create a bond or foster rapport between the interviewer and the witness.

4. Interview Explanation

An interviewer should start the interview with an explanation of the case about which the witness is being interviewed. The interviewer should also tell the witness that the interview is a statement from the witness, and that the witness will be given an opportunity to tell the interviewer everything without interruption. The

interviewer should confirm that once the witness has completed the statement, the interviewer will then ask questions about parts of the statement that need to be clarified, or where some information may be missing, and more detail is required.

#### 5. The First Direction

Once the interviewer is reasonably certain that the witness is aware of the interview format and knows which case they are being interviewed about, the interviewer advises the witness to “remember that no detail is too small and that everything can be important, even the most minor detail”. The interviewer should then advise the witness to “start from the beginning”. If the witness asks, “where is the beginning?” or “would you like me start when I saw the suspect?” the interview’s response should be, “start from wherever you think the beginning is”. If the witness asks, “where do you want me finish?” or “when do you want me to stop talking?” the interviewer should respond, “wherever you think the end is”. This allows the witness to be in control, and dictate the beginning and end of their involvement.

#### 6. The Pure Versions Statement

During the Pure Versions Statement, the interviewer listens and simply records the questions that they may have to ask after the witness has completed their statement. The interviewer should appear to be engaged, and monitor their own body language to demonstrate that they are listening and empathetic. They should encourage the witness to talk by using their own body language, e.g., nodding their head. They should also observe and record the body language of the witness and what the witness was saying when they witnessed the body language. Interpreting body language cues is difficult and often inaccurate, however it is something that interviewers should be aware of and use to assess the feelings of the witness. Care must be taken not to put too much emphasis on body language.

#### 7. Post Pure Version Statement

When the witness has finished their statement and has made this clear to the interviewer, the interviewer should ask “is there anything else that you think I should know?” and “have you have left out any details that you think may be too small, or something that you think I may not be interested in?”.

#### 8. Follow-up Questions

Once the interviewer is sure that the Pure Version part of the statement is complete and the witness has exhausted their memory, the interviewer refers to their notes and asks questions that they have. The questions should expand on information provided by the witness or seek information that was omitted by the witness. Throughout the questioning, the interviewer should remain calm and neutral,

without betraying any emotion that they may be feeling. The questions that the interviewer asks should be open-ended. If, after asking open-ended questions, the interviewer believes the witness may possess further information, the interviewer may decide to ask close-ended questions or questions that reveal information about the case. This is a series of questions that start out open-ended and cascade to questions that are increasingly close-ended, including more and more information from the interviewer. Interviewers who follow this practice must be aware that the credibility of the information they receive from the witness diminishes with each question. In a case where a man seen running from a crime had a tattoo on his face that was not mentioned by the witness, an interviewer may use a cascade such as:

1. "You mentioned a person that ran around the corner. Could you describe that person?"
2. "Was the person a man or a woman?"
3. "Could you describe his clothes?"
4. "Could you describe his face?"
5. "Was there anything that distinguished him from another man?"
6. "Did you see a mark, scar or tattoo?"

If the witness mentions the tattoo only after the last question, the interviewer must assess the information as being fed to the witness and not overly reliable. Should the witness provide detail about the tattoo that is corroborated by another witness, then the information would increase in credibility.

#### Simple rules of Pure Version Statements:

1. Ask the subject to start from the beginning.....
2. The beginning is where THEY think the beginning is, not where you think the beginning is.
3. If they ask where to start, just say, "wherever you think the beginning is...."

#### During the Pure Version Statement:

1. Do not talk to the subject unless they ask something.
2. Do not tell them any facts.
3. Do not interrupt the subject while they are reciting or writing their pure version statement.

4. Allow for long breaks of silence; do not rush the subject.
5. If the Pure Version Statement is being recorded, make notes of questions you want to ask.
6. Be attentive and listen to what the subject is telling you.
7. If you have a partner, they can take the notes of the interview, for a quick reference.

When the subject stops talking:

1. Ask if there is anything else they think you should know.
2. If the statement is written, read it to develop questions. Write the questions and record the subject's answers verbatim.
3. If the statement is electronically recorded, ask the questions while the equipment is still recording.

## Recording statements

In a perfect world, all statements would be video recorded; this is the best evidence of an interview. However, the reality is that at times interviews are conducted in remote areas or in exigent circumstances that preclude the ability to have the interview recorded on video. As such, there four types of witness interviews that can occur:

1. Written statements

These are statements that are formally written by the subject or the interviewer on a blank paper or on a digital document. The preference is that the subject write their own statements on a blank paper so that they are responsible for including the pertinent information from their perspective. From a blank paper, the investigator can see an unclesed document that could have important corrections that might be helpful to the investigator, or indicate to the investigator how sure and confident that witness is. A digital document will not provide this information to the investigator. Written statements are always a good starting point for all non-suspect interviews, as they can provide the interviewer with great information before the in-person interview starts. The interviewer is able to read the statement and formulate questions to which they need answers, before the interview starts. The author believes that witnesses

will at times write things they would never say, similar to the person who writes a nasty email, but would not say something nasty to another person's face. Finally, statements written by the subject allow the subject to have more time to think rather than feeling pressured in a verbal statement. If the subject feels they have more control of their statement, they are more likely to provide a more honest account. In written statements, a blank piece of paper or a statement form provided by the interviewer's agency should be used. The statement form should always contain the following information:

- Who made the statement ("statement of \_\_\_\_\_")
- Who is present ("all present for the statement: \_\_\_\_\_")
- Where it occurred ("statement written at \_\_\_\_\_")
- The GO number ("General Occurrence Number \_\_\_\_\_")
- Date and time (statement written on \_\_\_\_\_ at \_\_\_\_\_ hrs")

All statements should be signed and dated by the subject and the interviewer, and initialed by the subject and the interviewer at the bottom of each page after the last word.



*Photo by Free-Photos from Pixabay*

## 2. Notebook statements Also known as field interviews, these are:

- quick;
- sometimes messy;
- informal; and
- not as credible as a recorded or written statement from the subject.

These are interviews that are recorded in the interviewer's notebook. Problems arise with these interviews because they are often regarded by the courts as inaccurate because they are not considered the best evidence. Also, the interviewer may have challenges keeping pace with what the interviewee is stating, will immediately edit for importance, and may inadvertently leave out critical information. The interviewer may also struggle with the actual mechanics of writing detailed notes, due to weather, poor penmanship or a poor pen.

## 3. Audio Statements on a Portable Digital Recorder.

These statements are fine for interviews where video is not available, or for statements of a lesser value.

## 4. Video recorded statements at headquarters.

These are the benchmark, and are considered by the courts to be the best interview. In the case where a video or audio-only statement is being conducted, the following rules are used: Use an agency-issued digital audio recorder or video recorder, so that there is software support. Each download should be transferred to a CD or DVD and treated as an exhibit. Each CD or DVD should be initialed and stored as per departmental policy. When starting a statement that is being recorded, the following information should be stated by the interviewer before the interview starts:

1. where interview is taking place;
2. the GO #;
3. who is present; and
4. the date and time.

In order to protect the safety and privacy of the subject, it is important to exclude the subject's personal information, such as the date of birth, the address

or the phone number of the subject. If this is included, the information will have to be vetted from the recording and the transcript.

## Memory and Statements

Memory is imperfect. We should all expect that memory is not absolute and that there will be gaps in memory, especially when a subject has witnessed something that is stressful or dangerous. We often think that memory is at its best immediately after the event has been witnessed, however, many witnesses recall things later on when something triggers something they have witnessed. An interviewer should also realize that during the course of an interview, the witness is likely to recall most of the events in chronological order, but at times may step out of this sequencing when they are triggered by something.

Memory may also function better days after an event has occurred, when the witness has been able to reflect upon the event after relaxing and feeling safe. It is also a good practice to help someone with their memory by taking them to visit the crime scene. This often helps them to recall things that they may not have recalled in a sterile room. Care must be taken not to allow the witness to fill in gaps with information that they never witnessed. This must be done through open-ended questions at the end of the interview. Just as importantly, the investigator must take into account the mental trauma of returning to a crime scene, and be prepared to accept that the witness may not want to revisit the scene. If the witness does revisit the scene, it is important that the witness is provided support.

When interviewing a subject, interviewers should be aware that subjects use all their memories to recall information. A subject may talk about how it felt to be touched, or the smell of the suspect, and these sensory observations are often as important as visual observations. Many investigators believe that the veracity of a witness's statement is enhanced if the senses other than sight are mentioned. There is little scientific evidence to support this, however the rationale is that the witness is likely telling the truth if they are using senses other than sight while accessing their memory.



# Detecting Deception

“Meta-analysis focuses on non-verbal visual cues (eye blinks, eye contact, gaze aversion, head movements, nodding, smiles, adaptors, hand movements, illustrators, foot and leg movements, postural shifts.”

Lay people and professionals, for example, in cross-examination or in police interviews, pay attention to these aspects of demeanor to gauge whether a person is telling the truth or lying. Of these non-verbal behaviors, none showed a reliable association with deception across studies.



# Summary

This chapter examined the broad range of issues that an investigator must consider in relation to the collection of information and evidence from witnesses to a crime. These issues range from the way witness evidence is classified and validated, to the way witnesses are assessed and evaluated to determine their ability to give evidence and the credibility of the evidence they give.

The chapter illustrated the processes required for proper witness management during investigations. These task processes of witness identification, classification, credibility assessment, and proper interviewing practices in statement taking are all components of witness management that demonstrate professional standards applied by a criminal investigator.

## Study Questions

1. What is a collaborative witness?
2. What is an independent witness?
3. Can an accused person be compelled to testify regarding a crime they have been involved in?
4. Are all persons considered competent to testify?
5. What is witness credibility assessment?
6. What concerns should an investigator have about dominant witnesses?
7. What should an investigator do in the case of an active event where immediate in-depth interviews are not possible?
8. Is it possible to have a witness statement in something other than written form?
9. What are two negative aspects of having a witness attempting to identify a suspect by paging through volumes of criminal file photos?



# CHAPTER 4



# Essential Note Taking Skills

“You will never know the value of good notes until you don’t have them.”

Cst. (ret.) Wyatt, New Westminster Police

Officers need to take notes. The Hollywood image of an officer taking detailed notes is an accurate one; officers should always strive to take accurate and thorough notes. At times, officers are unable to take notes due to exigent situations, but even so they should take notes as soon as practicable. Courts will ask if officers’ notes were taken contemporaneously, i.e., were the notes taken as soon as possible? The courts understand that if an officer is in a situation in which safety is an issue, then notes cannot be taken immediately. However, once the officer is safely able to take notes, they are expected to do so.

## Types of Notes

Officers are able to collect notes in a variety of ways, however officers should be careful to follow agency policy, which usually contains guidelines that reflect the court’s expectations. However, notes can be taken on anything. There are numerous incidents in which officers may be without their notebook, or have taken notes on a handy piece of paper instead of their agency notebook. In these cases, the notes are still valid, as long as the officer can identify them as being theirs, and that they were taken contemporaneously. The notes in this example should be signed and dated by the officer. An example of this is when an officer is driving through the streets and sees a suspicious car, of which the officer notes the license plate on a scratch pad. When a crime is later detected in the area where the officer observed the car, the note that the officer made on the scratch pad is the officer’s note and should be saved as evidence for court.

Handwritten notes can come in different formats, such as:

### 1. Notebooks

There are numerous types of notebooks, and each agency has their preferences. The Vancouver Police Department used to use a book that opens to the left and contains only lined pages with a margin on the left. The RCMP and some municipalities have notebooks that open from the bottom and flip up. Inside the notebook is information

such as metric converters. The Vancouver Police now have notebooks that open from the right. Each officer's notebook should be uniform throughout the agency and only the notebook that is issued by the agency should be used. As a standard practice, notebooks issued by the agency should have numbered pages that are not easy to pull out. This is because officers should be transparent; when they write a mistake in their notebook, they should not remove the mistake by tearing the page out.

## 2. Pre-formatted log sheets

Detectives may choose to use log sheets. The log sheets are easy to write on if they are attached to a clipboard. Each note sheet can contain a lot of information and the space tends to make note taking clear and neat.

## 3. Plain lined paper

Detectives may also use lined paper in legal or letter size.

Officers are beginning more and more to take notes on computers, in the form of laptops at the office or in the car as a Mobile Data Terminal (MDT). Agencies are also experimenting with recorders in which officers talk into a mic that is attached to them. Much like a body cam, the audio recording device transcribes the officer's spoken words into transcript that acts as notes. There are benefits and problems with each of these newer technology note-keeping systems.

1. Laptops are a great way to take notes because the notes are always readable and not subject to interpretation problems associated with poor handwriting, or messy ink issues. Documents that are created on computers are also easily searchable. This comes in handy when officers are engaged in long-term investigations when there is a lot of information that has been gathered by the investigators and the information has to be easily accessed. Oftentimes investigators will recall mention of something, and when the data is searchable, it is easy to locate. One of the issues with laptops or electronic devices is that some judges may not like them and have little trust in them. As departments develop protocol in conjunction with law and judicial groups, this should change. However, judges still like to see written notes and are currently more likely to view them with greater trust than digital notes. This will change as protocols are established and trusted. As part of their job and duty, Defense Counsel are also likely to critique digital notes and attempt to make them appear to be



unreliable. This is easy to do until they are accepted by higher court. Conversely, written notes that are clearly made in chronological order and have visible mistakes within them are difficult to criticize for trustworthiness.



*“Day 167 – West Midlands Police – Body worn cameras” by West Midlands Police, Flickr is licensed under CC BY-SA 2.0*

2. Digital recorders are convenient and “as it happens”. They are accurate because the information is recorded in real time or immediately after the fact. They also tend to contain more information because speaking into a recorder is faster and easier than writing or typing. Digital recorders do have problems, such as being labor intensive after the recording is made. Transcribers are expensive and required to transcribe the recording onto typed transcripts. If the transcript is not typed by the original investigator who made the recordings, then the transcripts must be reviewed and proof-read for accuracy. This all takes a great amount of time and resources.
3. Notes can be taken on anything when desperate. While notes recorded on agency approved and supplied notebooks and recorders are preferred, officers can take notes on anything. In instances where officers have witnessed incidents while

without their official notebooks or recording devices, the courts will accept whatever the officers write on. Officers have been forced to write notes on napkins and these notes were accepted in court. Care must be taken by the note-taker in these situations to ensure the notes are signed and dated by the note-taking officer. The notes must also be preserved and treated as an exhibit.

There are benefits to taking notes that are accurate and thorough.

## There are Five Main Benefits of Using an Investigator's Notebook

Ensures accountability.

Notes should be made as contemporaneously as possible. This means that an officer must record their notes as soon as it is safe or practicable to do so. The notes will reflect what the investigator thought, what they did and what they observed. Notes allow the officer to be accountable for their actions but also to be held accountable by others. When an officer properly enters notes that are truthful, they will also record mistakes that the officer makes in good faith. Likewise the officer will be able to legitimately record things such as coincidences that, to some, would seem unbelievable. Notes are an important tool to allow the officer to be accountable for their actions.

Reflects your efficiency and professionalism.

Accurate and complete notes demonstrate that the note taker is professional and that they are efficient. Notes can illustrate that:

you followed policy;

you showed no bias or prejudice; and

your actions and decisions were legitimate.

Aids in report writing.

Officers rely on their notes while writing reports. Most incidents that officers are involved with are away from their computers. To remember details they need to make notes contemporaneously so that the information is accurate. Once the notes are made, officers transfer the information to the report in a more readable format.

Assists in an investigation.

Notes are way to create records that can be referred back to. Key information that may otherwise be lost to memory can referred to. This is especially helpful when suspects contradict themselves, new information becomes known that matches old information, and old information becomes relevant in a current investigation.

Aids in accurate testimony.

Officers are often required to go to court to present the evidence that they have accumulated. Detailed notes must be made to reflect the manner in which the evidence was collected and to corroborate the officer's memory that the evidence was collected in accordance with policy, the charter and other statutes. Officers, especially those involved in complex cases, cannot be expected to remember every detail. Notebooks are a memory aid that officers, with certain conditions, are able to use and refer to in court. Notes are critical to reflect in court the following:

- a. Verbatim conversations between the officer and suspects, witnesses and victims. Officers may also be subject to *res gestae* statements (admissible statements that are made spontaneously) and these must be recorded as close to verbatim as possible. Other statements may include statements that the officer heard being made between other people.
- b. Continuity of exhibits. Exhibits must be collected, seized and stored in strict accordance with the law. Every movement and action regarding property or exhibits must be recorded. This includes the "who, what, where, when, why and how" of everything involving the exhibit.
- c. Accurate account of details. The details of all incidents will be considered to be more credible when they are corroborated with notes, rather than from memory. Details include everything from decisions made by the investigator to the color of pants that a suspect was wearing during a robbery.

Officers who use their agencies' note books must follow certain "Rules of Maintenance".

Consistent note-taking practices throughout the agency reflect the professionalism of agencies. Common rules of maintenance include:

- a. Write in black ink only. While this rule came about due to the low quality of earlier photocopiers and their inability to fully copy non-black ink, notes are still generally taken in black ink. Some officers have used blue ink with the argument that the blue ink differentiates itself from copies that appear black, and that new copiers are good enough now to fully copy coloured ink.
- b. Ensure that the owner of the notebook's name and assignment are clearly labelled on the outside cover. Officers do lose notebooks and the only way to have them returned is to have their names on them.
- c. Seal off used portions of notebooks when in court. While referring to notebooks in court, Defense Counsel will often ask to see the notes that the officer is referring to. If the Defense Counsel is handed the book in court, they may be able to look throughout the notebook and view what could be confidential information. A good practice is to hold the book for the Defense Counsel to view it while the officer holds it.
- d. Do not editorialize; include "just the facts". Each notebook is subject to scrutiny by the courts, Freedom of Information and Protection of Privacy legislation, and the officer's supervisors. It is critical that notes are objectively recorded and reflect only the facts. It is also critical that notes do not contain any mention of biases or subjective ideas.
- e. Notes must reflect the four Cs:
  - Clear* – there cannot be an apparent attempt by the officer to make notes that only the officer can read, thereby rendering it difficult for Defense Counsel to read. Some officers develop a shorthand system that assists them in making quick notes. Officers who use symbols must be prepared to clarify what each symbol means. The symbols should make sense and be consistent throughout the notes. They must not be unprofessional or demeaning in their use and satisfy the professionalism demands of the B.C. Police Act. An example of a symbol is a triangle used by officers to refer to the A in accused.
  - Complete* – notes should have a start, a body, and a conclusion. They should not leave the case halfway through with no conclusion. Notes should also include all pertinent information about people, and important details such as date of birth, email addresses and contact information.

*Concise* – notes should be considered memory aids that refresh the officer’s mind. Notes are not a place to write narratives; they are meant to be recorded contemporaneously and then expanded upon in the report narrative. The exception to this is when a reportee, witness, complainant or suspect states something that may be relevant later in court. This is a situation in which the notes should be recorded as close to verbatim as possible. Also important in the notes for statements is how the statement was made by the statement giver. Was the statement made in a matter-of-fact voice or was the person emotional, and if so, what type of emotion was exhibited? Also, was the statement made voluntarily, and how did the person making the statement know that it was a voluntary statement?

*Consistent* – notes should be recorded in the same style and format, showing a pattern. Entries should show the same type of writing and the same format. This illustrates to Defense Counsel a measure of professionalism, as well as the likelihood that notebook entries are accurate and written by the same officer.

The mechanics of a notebook are the easy part of note-taking. The complicated part is knowing what to put in the notebook. “Scribe” courses are offered to help officers who may act as “scribes” in serious incidents to know what to enter and what not to enter as notes. When information is entered into the notes that should not be entered, problems can arise, such as:

- contradicting other information or facts with theories or subjective belief; or
- including information resulting from officers’ brainstorming or constructing theories.

Problems also arise when officers do not enter information that ought to have been entered. These problems include failing to include:

- why decisions were made;
- accurate information about people; and
- information or evidence that is exculpatory to the case and demonstrates bias.

Officers who are taking notes should consider including the following information:

- What the officer heard, saw, said, smelled. Each of these pieces of information should be recorded and concisely expanded upon, so that when the officer reviews the notes, they are able to recall exactly what their senses registered.
- What decisions you made and why. When an officer makes a decision that involves an arrest, search or seizure, they need lawful authority to execute it. While the lawful authority at the time may seem obvious, after a year or so when the officer goes to court, the reason for making the lawful decision may be unclear. Officers should consider the notebook a decision log, in which decisions are logged and, most importantly, the grounds upon which the officer made the decision.
- Most importantly, when officers use force, they must document exactly the level of force they used and the reason they believed that force was needed. Officers must be careful not to exaggerate the reasons that they subjectively believed they needed to use force. Their notes must be detailed and complete, fair and balanced.

## Use of Notebooks in Court

Officers who attend court are required to give fair, accurate and detailed testimony that is not meant to support the prosecutor's case, but rather to offer the court an account of everything the officer witnessed or did. Officers at times do not attend court until years after the event. When they do attend court for bigger cases, they may be called to give testimony that may have seemed trivial to the officer at the time of the incident, but to the courts, years later, the testimony may mean the difference between a guilty verdict and a not guilty verdict. Officers are expected not to say in court "I can't recall". They are expected to somehow access their memory and make recollections professionally and accurately. The only way they can do this is to refer to their notes before and during the trial. Experienced officers know that it is worth the effort to review and study their notes before they have an interview with Crown Counsel, and that after the interview they may be more aware of what Crown and Defense are interested in. It is a good practice to use Post-It Notes in the notebook to locate certain notes that may be referred to in court. This allows the officer to quickly reference their material while on the stand. Sometimes Defense Counsel will tell the Crown what part of the officer's evidence they will take issue with during the officer's testimony. When an officer studies before the case, it is important that they understand these issues and the reasons that they made their decisions. Officers should not feel the need to memorize details from their notebooks,

such as times and license plates. In fact, memory is so fallible that officers should be reluctant to rely upon their memory. One mistake in court testimony that illustrates a false memory may be seized upon by Defense Counsel and used to harm the reputation and credibility of the testifying officer. Officers should be prepared to use their memory as much as possible, but when they are unable to recall details, they are usually permitted to access their notebooks to refresh their memories.

Officers are able to refer their notebooks under the following conditions:

1. They have exhausted their memory.
2. They have received permission from the judge to access their notebooks to refresh their memory. Typically, this is preceded by the officer attempting to recall a detail and, when unable to do so, turning to the judge to ask, “Your Honour, I am unable to recall. May I refer to my notebook to refresh my memory?”. The judge may respond in one of several ways. They may ask Defense Counsel if they have any objections. If asked, often Defense Counsel will say they have no objections, or ask the judge to ensure that the officer has exhausted their memory. The judge may ask the officer if they have exhausted their memory. The officer will respond that they have exhausted their memory. Usually, the judge will allow the officer to refer to their notes. Other questions that the judge or the Defense may ask is, “were the notes made contemporaneously?” This is a vague term that can mean different things to different people at different times., The officer is required to make their notes as soon as practicable. This means that the officer is not required to make the notes while the event is occurring or during a use of force activity. No one expects the officer to stop to make notes while struggling to handcuff a suspect. The courts expect that the moment the officer is safe and able to make notes, they do so. If an officer completes the arrest after a struggle with the suspect, but is out of breath, the courts allow for the officer to take time so that they are ready to make detailed and accurate notes. The officer must articulate any delays in completing the notes, including these reasons in the notes. Officers who make their notes later, even when they include a logical and sound reason why they were required to complete the notes later, may not be allowed by the courts to refer to their notes if the judge decides the notes may not be fair and accurate.

Once the judge consents to the officer using their notes in court, the officer is free to use the notes for the rest of the time that they are on the stand. Officers who are asked a

series of questions by crown and Defense Counsel can refer to their notes for each of these questions. In contentious cases, the judge may ask the officer to exhaust their memory regarding a specific question or point of evidence, however the officer is entitled to refer to their notes based upon the original permission granted by the judge. An officer who is on the stand for an extended time may ask the judge if they can continue to use their notes. This is not required, but demonstrates respect for the judge, especially when court resumes after a break.

Once in court, officers who are given permission to refer to their notes must be prepared to allow Defense Counsel to examine the notebook to which the officer is referring. Defense Counsel will do this to ensure the officer is reading from the exact same notes that they received a copy of. This is one of the reasons that officers must never go back to update or change their notes. The copy of the notes that the officer discloses to Crown Counsel should be identical to the notes that the officer reads from. Officers, while showing Defense Counsel their notes on the stand, should hold on to their notes so that counsel does not walk away with them and look at other cases that are not of concern in the current legal proceedings. Furthermore, most officers block off other cases in their notes that are unrelated to the current legal proceedings, by using elastics or paper clips to secure and isolate pages that are unrelated to the current legal proceedings.

Officers should also keep in mind that their notes are not the “real evidence”. Notes are just reference material to support the real evidence. While notes may record verbatim what a suspect said in a *res gestae* statement (an unsolicited inculpatory statement made by a suspect) this is not the evidence; the real evidence is what the person stated. The notes are just a record of what the suspect stated. The notes may become evidence if the writer has made an incorrect entry that proves Defense Counsel’s case, or if there are unprofessional entries that demonstrate the officer’s lack of credibility. Notes should merely be a conduit that points to evidence and answers the “who, what, where, when, why and how” of the evidence.

Officers should also keep in mind that their notes are subject to full disclosure and that all officers involved in a case are required to attach or scan a copy of their notes to the report to Crown Counsel. This is due to the findings of *Regina versus Stinchcombe*, which establishes that Crown Counsel has a duty to share all materials that they intend to use in court, including notes that are made regarding the case. Even notes that are



made about the case but are not directly related to evidence, are required because Crown Counsel is expected to err on the side of inclusion.

## Basic Notebook Principals

Because officers make notes while on duty and in notebooks that are supplied by the agency, they are the property of the agency, not the officer. If at any time a supervisor asks to review the notes, the officer must present them to the supervisor. Officers at the police academy are subject to notebook inspections and must present completed and up-to-date notes; likewise, supervisors may ask officers to see their notes after graduation.

Notes are also considered public records and, as such, are subject to disclosure requests under the Freedom of Information and Protection of Privacy Act.

Notes are permanent records and should never be destroyed or lost. When an officer has completed a notebook they should be stored according to departmental policy. Officers are free to retrieve the notebooks to check information about a case or when they are preparing for court. Following proper storage policy prevents officers from losing their notes and makes the notes available to other investigating officers, should the author of the notes not be available. Notebooks should never be discarded or lost. Should a notebook be misplaced, all efforts should be made to recover the book, to mitigate the problems surrounding the breach of confidential information contained in the notebook, that could be detrimental to the safety of suspects, reportees, witnesses and victims.

## Procedure for Setting up an Investigator's Notebook

Notebooks should be set up the same way each time an officer starts a new book and a new shift. Consistency looks professional and reflects a standard approach to all cases and all shifts. Because it is critical that notebooks never be lost, notebooks should all be labelled on the front cover. Many notebooks contain a template on the front cover so that officers are able to easily fill out the required information. Some departments, such as the Vancouver Police Department, use a notebook that has a blank cover. Typically, the front cover should include the following information:

1. Name
2. Rank
3. Personal Identity Number (pin)
4. Department
5. Email address
6. Phone number
7. Unit the officer is attached to
8. Book number
9. Date of the first and last entry were made the note book was used.

### **What Not to Write in your Notebook**

Notebooks are the property of the police department, and as such they are allowed to be viewed by a supervisor at any time and by officers of the court. It is critical that notebooks contain only documentation that relates to the officer's professional life. Officers must not include the following in their note books:

1. Anything that would not be open to scrutiny by the media or court. Notebooks are subject to Freedom of Information and disclosure rules in judicial proceedings. Officers must write their notes as though they will appear on the front page of the local newspaper. These notes may well become part of a case, and reported on by the media.
2. Personal opinions. Facts are most important. At times officers may note their opinions based on facts, but it is critical to identify opinions as such. For example, when an officer makes a subjective decision they may write that, based upon the series of facts, they have decided to arrest the suspect because they believed that the suspect had committed the crime.
3. Personal biases. While everyone has biases, officers must be aware of their biases towards a person or a situation and act in ways that mitigate them.

## **The Importance of Possession**

One of the primary rules for officers and their notebooks is that officers never misplace their notebooks or lose them. Some departments have a policy that after each shift,

officers submit their notebooks and then collect them when they start the next shift. This policy re-enforces that the notebooks are the property of the department and ensures that the notebooks are safely stored when not in use.

Notebooks must never be lost because of the confidential content they contain regarding the officer's investigation. Officers should never allow their notebooks out of their sight; even while they leave to use the washroom, they should not leave the notebook on their desk. The notebook should either be taken with them or locked in their desk.

## Errors and Corrections

When officers make notes at a crime scene, or when they make notes contemporaneously after the incident, mistakes can be made. Judges and prosecutors understand that mistakes are part of being human and, as such, mistakes should be expected from time to time. When mistakes do occur in a notebook, officers must be prepared to defend the mistake in court, but they must be transparent about the mistake. Because the mistake should not reflect bias, prejudice or anything else unprofessional, officers should be comfortable with the mistake. Even if the mistake was made in a moment of unprofessionalism and the officer is ashamed of the comment or entry that they made in the notebook, the mistake must still be revealed.

An officer may correct a mistake only immediately after the entry. If the officer realizes that they made a mistake after the fact, the mistake must not be corrected. When the officer later realizes they were mistaken, they must make a new entry in the notebook and refer back to the original entry. Some officers put a sticky note in the position where the mistake was made, to cross-reference the entries. The sticky note becomes part of the notes, and is also open for disclosure. Because notes must be made contemporaneously, officers must use sticky notes or a note page that is attached to the original notebook page. Notes that are entered later to correct an error may give the impression that the correction was made to cover a mistake. To be transparent, the sticky note, or a page attached with a staple, clearly identifies the cross-reference as separate and distinct from the original notebook page mistake.

Officers who make mistakes should always follow these rules:

1. Make the correction immediately.
2. Draw a single line through the error.
3. Do not scribble.
4. Do not erase.
5. Do not use correction fluid (White-Out).
6. Do not rip out pages.
7. Initial both ends of the lined-out error.
8. Make the correction.

## Photographs as documents

Photographs should be taken by forensic experts who are trained to take proper photographs. When this is not possible, in less serious files photographs should be taken by one investigator, in consultation with the lead investigator or other investigators assigned to the investigation. This ensures a consistent practice amongst all investigators in the collection of the exhibits. If more than one officer takes photographs, there may be some inconsistencies because some exhibits may have been moved by other officers. The officers may have moved the exhibits, thinking that the scene had been processed. A mistake such as this could lead to confusion in court, allowing the defense to raise the issues of incompetence or corruption, and greatly discredit the investigator and the investigation. When officers decide to take photographs, they should make notes with every photograph so that they are able to recall the context of each photograph. The first photographs should start from the farthest distance, and each photograph should move closer to the scene or the exhibit. The exhibit should be photographed from different angles to show each side. Video should also be considered for certain scenes. Investigators should be mindful that videos record sound as well, and use professional language at all times, especially during videoing. Investigators should take into account that each of these photographs and videos is subject to Freedom of Information legislation. Sketches can be made by all officers to enhance their recollection.

## Diagrams and Sketches

Diagrams and sketches should always be considered when an investigator is confronted with a large crime scene or a scene that requires explanation. In a notebook, officers should make a free-hand sketch. While sketches that are made at the scene accurately reflect the scene, if they are not to scale, they may need to include some measurements for critical exhibits.

Diagrams look more professional, and are generally completed on a separate paper or computer generated. They are a formal drawing that is completed away from the scene, based upon measurements taken at the scene. They can also be based on sketches in notebooks and photographs, and should be drawn to scale. Diagrams should be completed by trained investigators.



# CHAPTER 5





# Preparing an Operational Report from Written Notes

“Emphasize report writing and note taking in Block I because it is important right away and all the way through Block II.”

An anonymous quote from Police Recruit at the JIBC Police Academy

## Why is report writing is so important?

To complete a thorough investigation, it is critical for any investigator to be able to extract information from witnesses, victims, persons of interest and suspects. An investigator who meticulously processes a crime scene, and properly logs and documents exhibits, is able to complete a thorough investigation. As important as this is, it is also critical for the investigator to be able to articulate in written reports what was collected, what was said and who did what. If the investigator is unable to articulate what has occurred in their investigation, the case may never see the inside of a court room.

While reports are not real evidence, they ought to point to evidence and lead the reader to understand, without question, what has occurred in the investigation. Crown Counsel will read the reports and make a decision to charge the accused or not. When a charge is made, Defense Counsel will get a copy of the report; from the report and the interview of the accused, they will decide what defense to put forward. They will base much of the decision on the contents of the report. When the case does go to court, only defense and Crown Counsel will receive copies of the report. The judge will not receive the report, but may see the report if Defense Counsel objects and draws attention to a poorly worded report or a report that is factually incorrect.

# Types of reports in Law Enforcement

Officers can at times feel as though they are scribes, dedicated to writing numerous reports regarding what they have done or what they intend to do. Reports are not limited to calls, or action taken while on duty, but also apply to the administrative side of an officer's job. There are many types of reports that are used for different functions in policing, including:

Operational Reports – submitted by patrol members in response to calls for service.

Administrative reports- submitted to fulfill policy and procedural responsibilities

## 1. Operational Reports

In British Columbia, operational reports are written and stored on Police Records Information Management Environment (PRIME). Officers can write the report in their cars, at a restaurant or back at headquarters. Each report an officer writes is available to all other officers in BC and those across Canada who have access to PRIME. Confidential Reports can be locked so that even other PRIME users cannot view the report unless they are authorized.

- General Occurrence reports are used for all calls of service that do not result in charges. They can range from an initial response to a murder call, to a follow up to a murder, or found property, and should be considered a record of the investigation. The reports are used to track reactive investigations and to initiate proactive investigations. They are also used by the agency as well as provincial and federal governments to track and analyze crime trends.
- Reports to Crown Counsel (RCC or RTCC) are used to request charges or to outline the case the police are presenting to Crown Counsel for a charge that has been laid. Reports to Crown Counsel identify and describe evidence; reports alone are not considered evidence. Reports to Crown Counsel initiate criminal prosecutions. The RCC, if written contemporaneously, can be used in court as a matter of record and, with the

judge's permission, to refresh the officer's memory. Reports to Crown Counsel are written by either the lead investigator in small and simple cases, or for the investigative team in larger, more complicated cases. In these cases, each officer who has participated in the investigation will be instructed to write their own report on the evidence. The evidence, if pertinent, will be included in the RCC. If the evidence is not deemed by the lead investigator to be pertinent, the officer will still complete a narrative of their part of the investigation and the report will still be given to Crown Counsel as part of the disclosure package.

Because of *Regina versus Stinchcombe*, Crown Counsel is required to release all information in their possession on a case. This is required whether the evidence is deemed relevant or not relevant. It is also the responsibility of the police to ensure that Crown Counsel receives all the information from their investigation. Crown Counsel also has an additional duty to inquire of the police if they have everything and if they do not, they can request further pieces of information. When Crown Counsel receives the disclosure package, and the charges have been approved and laid against the accused, Crown Counsel will forward the disclosure package to Defense Counsel as soon as practicable. It is the responsibility of both the investigator and Crown Counsel to ensure that only the appropriate information included in the disclosure package is forwarded to Defense Counsel. Information that is not required under *Regina versus Stinchcombe* can relate to irrelevant information, e.g.: secret police techniques such as surveillance strategies; information that would identify an unknown informant; advice that was received from Crown Counsel as part of a lawyer-client privileged discussion; and personal information about a victim or witness. Once the disclosure is made to Defense Counsel, they will be able to look at the file in full in order to provide a well-researched and fair defense of their client. In criminal court, only the defense and Crown Counsel have access to the report. The judge is not subject to the disclosure rules and, as such, does not have the report or any other information related to the investigation of the offense.

Because a report to Crown Counsel is not real evidence, the reports are not likely to be referred to in court. However, if there are mistakes contained within the report, Defense Counsel may present the report to the judge by presenting the report to the author while the author is on the stand, and

highlighting the errors for the judge. This strategy is used by Defense Counsel in an attempt to demonstrate that the author is careless and not detail-oriented, thereby damaging the credibility of the officer and bringing the officer's evidence into disrepute.

## 2. Administrative Reports

Administrative reports come in different forms and are agency specific.

Generically, reports include the following:

1. Internal memos to document such things as damage to property or a request for leave.
2. Special Project Reports for reports that initiate a project that may be long term. These reports would include what the project is, who would be involved in the project, the jurisdiction the project would occur in, why the project is needed and what the cost of the project would be.
3. Organizational Reports include reports that affect the agency through human resource movement or changes in the organizational chart.
4. Departmental Studies/ask Force reports include reports on something that impacts general operations of the agency, such as new policy or a new type of crime that is emerging, e.g., a new variation of cybercrime.

Police recruits are trained to write effective reports. This can be difficult, since recruits come from different occupations and have different writing skills. Basic rules of report writing for recruits include:

- To mean what they write, and write what they mean. Recruits should understand what it is they want to articulate and ensure that their words articulate their intended meaning.
- To know and get what information they need. Every case requires proving essential elements that are identified in the legislation or criminal code. Essential elements are those key components of an offence that need to be proven in order to form a charge. Officers should be aware of the essential elements of a case they are submitting for charges, and ensure that the report contains them. If the case does not have the required elements, the officer should continue the investigation and ensure that additional elements are incorporated into the report. If an author submits a report including an element that cannot be proven, the author should be transparent and mention that the element has been investigated, but has

not been, or cannot be proven.

- To know that everything should be sourced. It is not enough for officers to write something in a report and believe that this is all the evidence that is needed. Crown Counsel Reports are reports that point to real evidence and describe the evidence, where it was found, and who found it. As such, reports should source every piece of information. The report should also illustrate where the author received all other pieces of information.
- To be Concise-Clear-Correct. The report must state the necessary information in as few words as possible. In this way, the report will be easy to read and more likely to be factual rather than subjective. Furthermore, a report that is concise, clear and correct will enable the reader to read it quickly. In law enforcement, often time is of the essence, therefore the reader does not want to waste time on frustrating wordiness.

## Writing a General Occurrence Report

Every GO report should start with a synopsis. A synopsis is a very brief summary of the report to follow, and should contain, the “who, what, where, when, why and how” of the investigation.

1. The reasons GO reports should start with a synopsis’s are:
  - a. While enroute to a call, members will likely only read the synopsis.
  - b. Investigators and criminal analysts can search the data base by synopsis quickly.

The general rules of the synopsis are:

A synopsis is a short paragraph including a summary of the investigation, from start to finish. If the officer has arrested the suspect, the synopsis should end with the disposition of the suspect, noting whether the suspect is in custody, still at large, or not in custody but has been charged. Most importantly, the synopsis should identify anything in the case that is a danger to other officers who are reading the report, such as where a subject carries a weapon, if there were threats made by a subject, or any other situations that may be dangerous to the next officer who has contact with the subject.

The length of the synopsis is open for debate amongst departments. However, the best business practice is that synopses should be between five and eight sentences long. In some cases, such as complex homicide files, the synopsis may be more like an executive summary that is one or more pages long. These are general guidelines for the report to Crown Counsel and not part of the GO-located PRIME. When the report is in PRME, the report synopsis should be 5 to 8 sentences long.

As in most of the report, the synopsis should be written in third person, so that the author is clearly identified. For example, if Steve McCartney is a constable and his badge number is 1318, then the report should read, “Constable 1318 McCARTNEY observed the male walking...”. This allows the reader to quickly know who is writing the report section. In some reports, there will be a multitude of writers and the reader can have difficulty identifying who wrote the portion of the report they are reading, as well as who did what in the report. When a report is written in the first person, it is often difficult to ascertain who is writing without looking at the name of the author.

The names in a synopsis should be written in all capitals. This is true throughout the whole report. This allows the reader to pick out names quickly. This is important because so much of police investigation has to do with finding names of people in narrative reports. Furthermore, capitalizing names differentiates names from words, such as the name CARPENTER versus the occupation carpenter.

In a synopsis, whenever an address is mentioned, the writer should also include the municipality in which the address is located, because the PRIME report will be entered into a Canada-wide database and read throughout Canada.

In a synopsis, and in the whole report, whenever a person is introduced, a prefix should be included, to state clearly the role the subject plays within the context of the investigation that is the subject of the GO.

A prefix is written before the subject’s name, for example, “Victim Jones stated to Accused Jones” versus “Jenny Jones stated to John Jones...”

Other common prefixes include, but are not limited to:

- complainant;
- suspect;
- accused;

- subject of complaint;
- witness;
- driver; and
- registered owner.

## The Narrative of the GO

The main portion of the GO is the narrative. This is where the report states in detail all elements of the investigation. Within the narrative there are headings that break the report into sections. Headings allow the reader (usually Crown Counsel, Defense Counsel or another investigator) to reference the portion of the report from which they require information. All narratives should have headings, some of which are standard. Depending upon the circumstances of the report, headings should also be customized to fit the particulars of the investigation. For example, if a report is written about an unknown male suspect who is easily identified by a particular descriptor, such as an odd tattoo on his face (sail boat on the forehead), then a heading may be added, such as “Tattoo of Sail Boat on Face”.

Overall, every investigator is required to write reports. The investigator may have executed a flawless investigation that utilized creative techniques and followed policies and charter of rights rules. The investigation may have solved a brutal murder through the tenacity of the investigative team and revealed evidence that was obtained through dedicated hard work. All this good hard investigative work could be ignored if the report is written poorly and includes flaws. It is therefore critical that the report is well-written and accepted by Crown Counsel and Defense Counsel, so that the attacks to the case from Defense Counsel are directed at the evidence and not the report. To accomplish a well-written report, writers should ensure that the reports are:

1. Factual
  - a. Facts are verifiable. Reports are not facts or evidence, unless they are poorly written and used by Defense Counsel to demonstrate the weakness of the investigator’s writing, thereby embarrassing them in court and attacking their credibility. The report is a document that points to evidence and facts, explains the facts, and states how the facts are related to the conclusion of the report of

whether or not there are charges.

- b. Investigators' Opinions are allowed, but should be used sparingly. Opinions may be included only if they are supported by facts, and directly assist investigation or demonstrate why the investigator took a certain action.
- c. Write what you were thinking. We apply a thinking process to make decisions. It is important to state the reason for making the decision, and what the writer was thinking when they made that decision. The courts refer to this as articulating, meaning that the writer of the report is describing their reasoning or thinking while making the decision. The thinking that has made the decision does not have to be objectively true, it only has to be the subjective belief at the time the decision was made. If an officer has made a lawful decision based upon information they believed at the time of making the decision, and it was later proven that this information was incorrect, then the decision can still be a valid decision; however the writer must include the information and how it affected their thinking and the decision they made.
- d. Judgmental Opinions – unprofessional and inappropriate opinions should never be included in a report. In Canada, police officers should treat everyone equally and with respect, and this should always be reflected in an officer's report. Additionally, careful consideration should be given to the use of language that may seem to be common vernacular in the officer's life, but may be insulting to some. Everyone has biases, and it is important that we all be aware of our biases. Accordingly, officers must ensure that they treat everyone equally regardless of their biases. Written language can reflect the bias of the writer, even though their actions were bias-free.
- e. Conclusions must be based on facts included in the report. The conclusion should reinforce the key points from the witness statements that are both inculpatory to the accused as well as exculpatory. The conclusion should also refer to physical evidence that has been mentioned in the report the evidence is inculpatory or exculpatory.

## 2. Well Organized

- a. Reports should be written, for the most part, in chronological order. People expect this when they read a book or a report. This includes when the writer is referring to the investigator's roles and actions and the sequence of events that occurred before, during and after the crime was committed. Exceptions to this rule are made when evidence needs to be mentioned in the report before the evidence was known to the officer. This would help the reader to make sense as



to how the evidence impacted the case earlier on, e.g.: if an investigator learned from a witness about some highly important evidence that appeared irrelevant at the time of the statement. The report writer may decide to include a notation in the report about the reason the evidence was later determined to be highly relevant, and why the investigator did not act upon it at the time. The writer must be mindful that this is written out of chronological order and make sure the reader is aware of this, to ensure the information and sequence of events is clearly understood and transparent.

- b. Use Timelines. Time lines are very important in helping the reader to understand the significance of the timing of the crime. The duration of the crime does not dictate whether or not the writer should include a timeline; however, when it is important for the reader to understand the timing of events and have a quick reference point within the report, a timeline is necessary.. Timelines can be used for events that occur over seconds or decades. For example, a shorter timeline would include key points in an impaired driving investigation, such as when the impaired driver started consuming alcohol, last consumed alcohol, started driving, was observed driving erratically, was stopped by police, and displayed symptoms of impairment to the officer. A timeline would also describe when the officer formed the grounds to arrest or detain the driver and demanded that the driver provide a breath sample, and when the breath sample was provided.

An example of a long-term timeline would be a historical sexual assault or homicide in which the timeline would include the relevant dates and times of the crime and the original investigation, as well as the key dates and times of the time between the original crime and the most recent investigation. For example, a case that involves a series of sexual assaults in the 90s would include key dates and times of the original offences. If new evidence, such as DNA, of the original crime scene was matched to a person in 2020, the timeline would be updated to include relevant information such as the current known whereabouts of the accused, and the criminal record that the accused accrued during the time between the original crime and the new investigation. It would also include new information, such as when the match was made, when the investigator was notified of the match, and the resulting actions of the investigator.

- i. Report narratives should be written in essay format, not point form. Narratives that are written this way are easier to read and can include more context. There are exceptions to this rule, such as when the writer is

summarizing a witness statement. A writer may choose to write an introduction to the statement, and use points to highlight the key pieces of information from the statement.

- ii. Writers should break their report narratives into multiple headings. The reader will be interested in different portions of the report at different times and, as such, they will refer to the point in search of those specific portions. Making the report's information easy to locate for the reader is critical. For example, the reader may be the Crown Counsel. When preparing for court, or even while in court, Crown Counsel may require information regarding the arrest of the accused and the statement made by the accused at the time of the arrest. If the narrative does not have a heading titled "Arrest of Accused", locating the section may be difficult and time consuming.

Examples of typical headings in a police report include:

1. Background of Event :
  - a. Events that took place prior to the Crime/Incident
  - b. Previous history or relationship of parties involved
  - c. Previous police involvement, etc.;
  - d. Often establishes the Mens Rea of a Crime
2. Circumstances of Incident:
  - a. What happened? Actus Reus
  - b. Date
  - c. Time
  - d. Location
  - e. Other essential elements of offence / incident
  - f. Victim/Witness Actions – what did they see or do?
3. Scene Upon Police Arrival:
  - a. Initial observations
  - b. Events occurring after the crime / incident
4. Police Actions:
  - a. Summarize what every police officer did
  - b. Members will write their own detailed narrative
5. Investigative Overview
  - a. For ongoing investigations
  - b. A brief outline with significant dates and times

6. Timeline
  - a. Lists all times and events
  - b. Good for impaired investigations
7. Grounds for Detention / Arrest:
  - a. Detail reasons for arrest
  - b. Paint the picture for the reader
  - c. Include what you were thinking
8. Arrest and charter of accused
  - a. Time, date, location
  - b. Identify arresting officer
  - c. Exact words used and Accused's responses stated verbatim
  - d. Exact times (clock starts at charter)
  - e. 5 W's
9. Interview of Accused:
  - a. If accused decides to speak to you, document their story
  - b. Indicate Q&A verbatim
10. Disposition of Accused:
  - a. Where did the accused go? Was he released at the scene? Taken to jail? Warrant requested etc.
11. Use of Force:
  - a. What force was used and why
  - b. Detail the specific actions of accused and police response
  - c. Commands given and the accused's response
  - d. Use of force continuum
12. Injuries:
  - a. Property Stolen
  - b. Injuries to Accused
  - c. Injuries to Police Officers
13. Property:
  - a. What force was used and why
  - b. Property Damaged
  - c. Property Recovered
  - d. Property Seized

- e. Description of property
  - f. Value
  - g. Owner
  - h. Location
- 3. Reports must be complete and include both inculpatory and exculpatory evidence. When reports do not include exculpatory evidence, the reader does not receive all the information. If Defense Counsel learns that information is missing from the report, they may suggest in court that it relates to exculpatory evidence. Defense Counsel will use this omission to suggest that the report writer is biased and not transparent, thereby damaging the credibility of the writer and the investigator.
  - a. Reports should thoroughly describe all the important information. They should include the investigator's grounds for each decision and the information that led to the investigator's decisions.
  - b. Reports should be clear and use plain English, leaving no opportunity for misinterpretation. The writer should not use words that they do not fully understand. Investigators should write in a manner they find comfortable and should not use language designed to impress or sound like a lawyer. Writers should not use slang, which can be misinterpreted. The writer must write in a clear and concise manner.
  - c. The investigator should leave no questions unanswered. While investigating a crime, investigators should always seek answers to the questions they think the prosecutor and defense would ask. While writing, writers should constantly ask themselves, "what would the reader want to know?" They should seek the answers to the questions they cannot answer, and if the answer is not attainable, they should address the problem and provide an explanation as to why the questions is not answerable. This demonstrates to the reader that all aspects of the case have been considered, even when there are no answers.
  - d. The 5Ws & 1H provide an excellent framework for identifying information. For example:
    - i. When:
      - 1. When did this occurrence happen?
      - 2. When did the police arrive?
      - 3. When did police speak to the victim?
      - 4. When did the police leave?
    - ii. Where:

1. Where did the occurrence happen?
2. Where did police attend?
3. Where is the victim?
4. Where is the property?
5. Where do the people involved live?
6. Where can people be contacted?

iii. Who:

1. Who is the victim?
2. Who is the complainant?
3. Who is involved?
4. Who are the witnesses?
5. Who is the suspect?
6. Who are the police officers involved?

iv. What:

1. What offence has been committed?
2. What happened?
3. What statements did the suspect make?
4. What did the witnesses see?
5. What did the victim do?
6. What did the complainant report?

v. Why:

1. Why did the crime/occurrence happen?

vi. How:

1. How did the crime happen?
2. How did the witnesses become involved?
3. How did the police conduct the investigation?
4. How did the police reach a conclusion as to what happened?

4. Concise

- a. Be thorough, however, leave out information that is not relevant or necessary (concise does not necessarily mean brief). Readers do not want to wonder about the relevance of the information while they read the report; “”They want to read only what is relevant.
- b. Avoid wordiness or deadwood. Words that are not required should be left out. The idea is not to write the most words, but to write the clearest report

efficiently. For example, “The investigator attended the street and then the address that was listed on the report” could instead be, “The investigator attended the address noted in the report.”

- c. Be specific. Use exact words in descriptive explanations. For example, the writer may write “the accused was non-compliant” or the writer may be more specific and write “the accused refused to comply with Cst. SMITH’s repeated commands to place his hands behind his back.”

It is critical in cases of police use of force that specific and truthful language is used. For example:

Vague: “The accused was violent and had to be subdued by the officers.”

Specific: “The accused was yelling profanities and then with his right boot he kicked Cst. JONES in the left leg and attempted to punch Cst. SMITH in the face with a closed right fist.”

- d. Avoid using “Police Jargon”. Police jargon is not professional. Since the writer is writing for a diverse audience that includes non-police, jargon can be misinterpreted, misunderstood, or simply not known by the reader.

- i. Advised
- ii. Altercation
- iii. Indicated
- iv. Responded
- v. Proceeded
- vi. Utilized
- vii. “maintained visual surveillance”
- viii. “requested to the driver”

- e. Avoid slang, unless referencing a quote. Similar to police jargon, slang is open to interpretation and not precise. It also lessens the professionalism of the report.

- i. i.e.,
- ii. “pulled over”
- iii. “ran him on the computer”
- iv. “scooped him”
- v. “pepper sprayed him”

## 5. Readable

- a. Use active voice rather than passive. Writers should write in an active voice as often as possible. Active and passive voices are differentiated by their use of verbs. A verb is an action, state of being or occurrence. Examples of verbs

include: starting, ending, living, dying, arriving and leaving. An active voice sentence includes a subject (the person) who performs the verb. For example, in the following sentences, the noun is the person (Cst. Smith) and the verb is saw and observed. One sentence is direct (the active) and one is indirect (the passive). For example:

- i. Passive: "The suspect JONES was observed by Cst. SMITH breaking into the car"
- ii. Active: "Cst. SMITH saw suspect JONES break into the car".

In the example, the active voice is direct and concise. The formula to follow is SUBJECT +VERB.

- b. Keep sentences short. Run-on sentences are confusing.
- c. Use multiple paragraphs with breaks between paragraphs. Under headings, paragraphs should be short and concise. When the writer completes a subject, a new paragraph should be started under a new heading.
- d. Throughout most of the report, the writer should write in the third person, so that the reader understands, while reading the report, who the writer is. The writer should determine how they want to describe themselves, or follow their agency policy. This should remain consistent throughout the whole report. Writing in the third person is important because in reports with numerous investigators involved, identifying who did what can become very confusing when pronouns such as "I", "we" and "us" are used. In a large report, the reader may be confused and have to refer back to a previous point in the report to determine who the writer is referring to. Writing in the third person is also important because in large cases, the narrative can be cut and pasted from the report narrative into an affidavit. When written in the third person, the report does not have to be changed and can be placed into the affidavit as it is. There is some suggestion that writing in the first person is more likely to convey the emotion of the subject officer. For example:

"Cst. Smith was in fear of his life when accused Smith approached him with his fists clenched" versus, "I was in fear of my life when accused Smith approached me with his fists clenched". In the third person sentence, the fear felt by Cst. Smith was how Cst. Smith felt. If the sentence suggests a detachment from Cst. Smith, a question may be raised as to how the writer knew how Cst. Smith felt. The appropriate way to write this section would be to have a separate section with a use of force heading, and written in the first person by the subject officer.

- Reports are written on computers. Care should be taken to capitalize names and locations appropriately, however ALL CAPITAL letters should not be used, except for SURNAMES. Capitalizing surnames is an accepted practice that assists the reader to locate names in an expansive report. For example:

For Police Witnesses: SGT. 1507 ANDERSEN

For Accused put “accused SMITH” (use once)

- e. Avoid most abbreviations, particularly uncommon ones. If they are necessary, they should be placed in brackets the first time they are used, e.g., the “Canadian Police Information Centre (CPIC)”, or “Insurance Corporation of British Columbia (ICBC)”. This is important because some abbreviations, while commonly used by the writer may not be familiar to the reader. This is especially the case for readers new to Law Enforcement. Also, some abbreviations may be confusing from agency to agency. For example, in the Royal Canadian Mounted Police (RCMP) “PC” refers to “Police Car”. In the Vancouver Police Department (VPD), “PO” refers to Police Officer. There are many other abbreviations that writers have to use cautiously because the meanings may differ from agency to agency.
6. Writers should ensure that their spelling is correct and the punctuation is correct. If possible, writers should proof read their report several times, and have a partner proof read as well.

## Effective Court Presentation

Once the interviews are completed and the reports have been written and submitted, an officer’s case often culminates in court. Officers must investigate every case keeping in mind the possibility that they may be called to court as witnesses, and held accountable for their actions and every decision they made. It is wrong to assume that an investigator’s job is complete once charges have been laid and the investigator has presented all the evidence to court. At times, work starts when the investigator is called to court. There are four duties that investigators will often be faced with regarding court:

1. Interview with Crown Counsel.

This will often include an interview with Crown Counsel weeks before the trial.



However, depending upon the court location, interviews may occur the same morning as the trial, or in some cases minutes before the trial. When summoned to court, officers will receive a Court Notification, or a Law Enforcement Notification form. The Court Notification advises the officer of the case regarding which they are required to appear as a witness. The court notification advises: Who: The name of the accused is prominently displayed.

What: The offence that the accused is alleged to have committed.

Where: The location they will be required to attend for the Crown Counsel interview and the address of the court room they will be required to attend to provide testimony.

When: The date and time they will be required for the interview, and when they will be required to provide testimony. Because courts hear numerous cases, investigators will likely be required to wait until their time arrives.

Why: Under the "Remarks from Court Notifier" section of the Court Notification, Crown may include the reason the officer is being called to court. Investigators are expected to sign and return the notification slip, and mark on their calendar both the interview and court date and time. Officers should review the case for which they have been notified, and determine whether or not they will have to present exhibits and assist in locating witnesses. If they require direction from Crown Counsel before the trial day, they should make arrangements to have an earlier interview with Crown Counsel.

## 2. Submitting exhibits.

Officers that seize or locate physical evidence will be required to visit their property office to retrieve the evidence. They must be prepared to demonstrate to the courts that the "chain of continuity" for the evidence has not been broken, and that the officer can account for the whereabouts of the evidence from the moment the evidence was seized or found until it was presented in court.



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### 3. Managing witnesses.

When a case involves evidence from witness statements, the statement will not be presented in court. Rather, the witness who made the statement will be called to court to provide a first-hand account of their evidence. The statement will only be used if the witness does not corroborate what was in their statement. Often, witnesses change their addresses and they become difficult to locate, or they are reluctant to go to court and may need encouragement. Often, Crown Counsel does not have the resources or the time to locate witnesses and may call upon the investigating officer to ensure the witnesses attend court. Officer must be cognizant of the importance to take detailed notes of their conversations with the witnesses to ensure they account for what was said and what was not said. Officers should not talk to the witnesses about their testimony and should be prepared for Defense Counsel to cross examine them on that point.

### 4. Providing testimony.

Officers who have collected evidence, witnessed the crime scene or witnessed a statement will likely be called to court to give evidence. The officer could be asked to provide two types of evidence within the trial:

- a. Evidence in chief. The officer answers questions by Crown Counsel; experienced officers will need few, if any questions or prompts from Crown Counsel. These officers know the evidence they must address, what is not required and how to verbalize the information that they have. Crown Counsel will prompt inexperienced officers. The officer enters exhibits as evidence during the presentation of evidence.
- b. Cross examination. Defense Council questions the officer. Defense Counsel, in the interest of fairness, is provided the latitude to ask questions that may seem to the officer to be unrelated, but may form a part of the strategy for the defense of the accused.

## Strategies in Testimony

It is natural for officers to feel nervous before court because there is a lot at stake for the accused, the victim, the courts, the police department, the judge, the Crown, Defense Council and, of course, the officer who is testifying. This is compounded for officers who are reserved and do not like public speaking or verbal confrontations. However, the officers can reduce their stress by considering that their role is to state truthfully what they did and why they took certain actions relating to the investigation, what they saw, and what and why they said what they said in relation to the investigation. Most importantly, the officer must testify truthfully and not intentionally leave out pertinent information. There are two main reasons that officers might lie in court:

1. To cover up a mistake in the investigation that they consider to be embarrassing.
2. Out of a sense of noble cause corruption, in which officers believe that it is worth lying in court to achieve the end result of convicting a person they believe is guilty.

Officers who are caught lying in court and are exposed by Defense Council can face criminal charges, and Police Act charges, and will be reassigned to a non-operational position where they will no longer be required to attend court. Officers placed in this position are typically ostracized by other officers. There are times in policing when it is

appropriate to lie, e.g., in an undercover operation, or during an interview when an officer is attempting to build rapport. The scope for appropriate lies is very narrow, but in some situations legally permissible. In court, there is NO scope for lying, and no lying will be tolerated. Officers must possess values and integrity that allow them to admit to mistakes they made in the investigation, and face the consequences of mistakes they have made. Judges will accept mistakes made in good faith, but they will not accept lying. Judges will also likely assign more credibility to officers who admit mistakes, and give the officer the benefit of the doubt when their credibility is questioned or compared to the testimony of another witness.

### **The Nuances of Giving Evidence in Court**

Before Court:

Officers should prepare for court by reviewing their notes and the reports associated with the case. They should do this before and after the interview with Crown Counsel.

Officers should also prepare for court by considering their non-verbal communication and appreciate that they are watched by the court beginning the moment they walk into the court. Officers should consider:

What clothing to wear. A uniform is always acceptable and should be clean and pressed, and the boots and leather should be polished. If the officer is unable to wear a uniform, or is on a day off, the officer should wear business attire that is clean and pressed. If the officer is undercover or in plain clothes, and is working at the time of their appearance in court, the officer can attend court in that attire. The officer should apologize to the court for their attire and state to the judge and the court that this is their working attire for the day.

Their demeanor. Generally, this is the way the officer represents themselves in court as well as while waiting to be called into court. This includes presenting themselves to the court on time and being well-prepared. While waiting to be called into court, officers should avoid drawing attention to themselves. They should avoid talking loudly, or making cynical or sarcastic remarks that might lead a bystander to question the importance of the case.

Officers should never talk about the case with other witnesses, and should not compare notes or evidence. They should also be aware that talking about other

cases can be construed as talking about the current case. Officers should be mindful that all varieties of people could be in the waiting area for court, including suspects, people accused of the case in which they are testifying, witnesses for the case, and convicted people who could be looking for an opportunity to complain about an officer. Officers should keep in mind that their demeanor should be one of total respect for the court, and that their behavior, from the time they attend the courthouse to the time they leave the courthouse, should demonstrate respect for every worker in the court house.

## Entering the Court Room

While waiting outside the court room, the officer should be attentive and listen for their name to be called. The officer should know which court room they will be in and stay close by. When called, the officer should enter and immediately bow out of respect to the judge. The bow is a simple stop in walking and a slight bow from the waste. The officer then walks to the witness stand and waits for directions while remaining standing.

## Taking the oath

The officer will note that there is a Bible within reach. This is used so that the officer can swear an oath to God to tell the truth. If they prefer, they can use another holy book, or make a solemn affirmation to tell the truth. Officers should know whether they want to affirm or to swear an oath to God to tell the truth. Either way, the officer will assure the court that what they say will be truthful. The oath or affirmation will be administered by the court clerk, and the officer will only have to say “I do.”

## Stating your Name

Following the oath or affirmation, the court clerk will ask the officer for their name, their

rank, and possibly their badge number. Officers will usually be asked how to spell their name.

## Standing or sitting

Officers should wait to be asked by the judge to sit. Only then should an officer sit. Officers may also choose to stand. If a judge does not ask you to sit, and if the officer has a need to sit, then the officer should respectfully ask the judge if they may sit and give a reason for having to sit. If the officer anticipates that they are going to be on the stand for a long period, they ought to sit. After each break, they should wait each time to be asked if they wish to sit.

## Speaking

The officer's spoken words are recorded digitally. However, the judge and the court recorder are making notes. Officers should address the judge while talking and adjust their description of the evidence so that the judge is able to keep up with their notes. Usually, the judge will look up at the officer to indicate that the officer should continue with their testimony. As the judge is the trier of fact, the officer ought to pay the judge the most attention. They should look at the judge while talking and engage the judge in normal eye contact. Conversely, when the trier of fact is the jury, the officer should not only focus their eye contact on the judge, but also on the members of the jury. The officer should address the judge with respect and refer to the judge as "your honour". In the Supreme Court, female judges are referred to as "my lady" and male judges are referred to as "my lord".

When providing the evidence on chief, the officer should be mindful of their tone, their pace, their volume and their clarity.

Officers should refer to Crown Counsel or Defense Counsel as, "sir", "madam" or "ma'am". This is a formal setting and must be respected as such. Regardless of the behavior of Crown Counsel or Defense Counsel, officers should remain common and respectful. This will in turn gain respect from the judge and the jury.

## **Body Language**

As in everyday communication, body language while testifying is critical for the officer to manage and to observe from the judge, Defense Counsel, Crown Counsel and the jury. Officers should be aware of body language that results from being nervous. While it is natural to be nervous, body language that is the result of nerves can be distracting and in some instances allow Defense and the judge to question the veracity of the testimony. Care should be taken by officers to avoid the following common body language cues:

- hands in pockets playing with keys or coins
- rocking back and forth
- fidgeting with a note book, pen or other exhibits
- biting your nails
- holding the witness stand rigidly

Officers should also be mindful of the body language of others. When they are speaking, they should watch the judge for cues that the judge understands what they are saying and that they are speaking at the appropriate tone, volume, speed and clarity. Likewise, officers should use the same rule for Defense Counsel and Crown Counsel. Officers should look for the following common body language cues:

- Raising eye brows
- Shaking or nodding head
- Nodding to continue

## **Eye contact**

Officers should make eye contact with the judge and whoever is asking a question. The answer provided by the officer should be accompanied with eye contact directed to the judge and the jury. Judges would likely find it disrespectful to the court if an officer only looked at the judge and never looked at Defense Counsel.

## Being Dismissed From Court

When Defense and Crown Counsel have finished asking questions in cross examination, the judge will dismiss the officer, and advise them in words to the effect, “thank you constable, you are free to go.” Officers should walk to the door, turn and offer a slight bow at the door when leaving. The officer should be the model of objectivity and not display any negative or positive emotions.

## Notes and reports

Officers are expected to review their notes and reports before court. Officers should not memorize specific information, but should form a general understanding of the case and know where certain information is contained in the notes or report.

Officers will be allowed to use their notes or reports in court, however there are specific rules that apply to officers using their notes:

- The notes or report were made contemporaneously to the event and that they were made as soon as practicable.
- The officer exhausted their memory and cannot recall anything further without referring to their notes.

## Cross Examination

Officers should remain calm and respectful when asked questions by Defense Counsel. They should expect some strategies that Defense Counsel will utilize in an effort to upset the officer and cause them to react in a negative manner. Examples include:



## Cross Examination

Counsel's strategy	Purpose of strategy	Appropriate officer's response
<b>Questions that are asked quickly after each other</b>	To upset or confuse officer	Answer one question at a time Ask counsel to repeat the question Remain calm
<b>Condescending attitude</b>	Demonstrate to court the officer is incompetent or lying	Remain calm Be objective
<b>Overly friendly counsel</b>	Cause the officer to "let their guard down"	Be objective Take time and consider answers
<b>Belligerent or badgering</b>	To upset or confuse officer	Remain calm Be objective
<b>Mispronouncing the officer's name/ title or rank</b>	To upset or confuse officer Have the officer agree to a higher rank and then reveal that this is not the real rank, damaging the officer's credibility	Remain calm Be objective Do not agree to any inaccuracy no matter how trivial
<b>Suggestive questions that include minute incorrect details</b>	Later be introduced as inaccurate if you agree	Remain calm Be objective Do not agree to any inaccuracy no matter how trivial
<b>Staring in silence To induce officer to talk more If finished answer, remain silent and wait for next question</b>		

## Conclusion

Being a police witness testifying in court is always stressful. The key is to:

- a. Do a thorough investigation
- b. Maintain your integrity throughout the investigation and the trial
- c. Prepare for court
- d. Tell the truth

If these steps are always followed, then the stress of testifying in court will be greatly diminished. Judges expect that in the course of an investigation, mistakes will be made. They do also expect that when officers attend court they will be respectful to the court and well prepared.

# CHAPTER 6



# PTSD

## What Is PTSD? Why Should We Be Aware of PTSD in Policing?

### What is PTSD?



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This textbook describes communication within policing. It was decided to add to the book a component of mental health awareness, specifically Post Traumatic Stress Disorder (PTSD). The reason for this is that the long-term effects of policing are being examined in both academic/medical papers and the media, with reports of suicides and mental health issues among emergency responders. This chapter hopes to bring an awareness to the dangers officers face that may subject them to a mental illness. Before

this chapter begins this is an opportunity to question what you already understand PTSD to be. Try to answer these questions before you read on.

Who suffers from PTSD?

Do you know anyone with PTSD?

What are the symptoms of PTSD?

How does this affect Police Officers in their work?

How does this affect others?

What can we do to help?

Hopefully you were able to give some answers to the questions posed. As we move forward, we can see if your answers accurately reflect the realities of PTSD.

The author of this section was a police officer in the early 1990s in the United Kingdom. Based on first-hand experience, if an officer at that time saw a person commit suicide or perhaps attended a particularly gruesome murder, their supervisor would most likely acknowledge this fact with a nod and the phrase "stiff upper lip," meaning, "carry on, as before". There was no expectation of counselling or even a check-up to see how the officer was coping emotionally. PTSD can occur after a concurrent set of events as well as one singular serious event. This chapter will describe the nature of PTSD and highlight some strategies and identifiers from academia already written regarding this subject.

The first question is, what exactly is Post Traumatic Stress Disorder (PTSD)? It is beneficial to understand exactly what it is and, perhaps as importantly, understand how it can affect people. There are many medical descriptions. The Canadian Mental Health Association describes PTSD as a mental illness disorder. It involves exposure to trauma involving death or the threat of death, serious injury, or sexual violence. (The Canadian Mental Health Association: Post-Traumatic Stress Disorder (PTSD) accessed 21 March 2020).

The Lifeline Canada Foundation describes PTSD as an anxiety disorder that can occur after a person has been through a traumatic event. They list events such as disasters, physical assaults, accidents and violent acts such as terrorism or those seen during wartime.

So, we see similarities in the descriptions. The commonality is that there may be a perceived fear for one's safety or the safety of another, or by looking at the incidents it may be possible to discern a loss of control, or confusion that may inflict fear or bring about intense emotion in the sufferer. PTSD has long been considered, by some, an illness that is akin to the nightmares suffered by those who have served in a conflict, dismissed as something only suffered by those unfortunate enough to have been to war. There have been many terms used over the years such as "shell shock", "Combat Fatigue" and "Soldier's Heart". Seemingly this is not the actual description of how it is caused and certainly it goes beyond wartime situations. (The LifeLine Canada Foundation accessed 9 April 2020).

The sheer nature of the labels given to this condition make it difficult to diagnose and cause it to be accepted as a mainstream public illness. The stereotypical image of the sufferer of PTSD was historically a military man, one who does not want to display weakness, viewing his position in society as the household provider who is expected to keep going regardless of his suffering. PTSD is a more broadly considered illness and is spoken about more freely now, albeit not freely enough, without considerations of stigma from its label as a mental illness. We also understand that this is not an exclusively male illness and does not just relate to conflicts or veterans. So, having labelled PTSD, what are the signs of it? If we can recognize the signs, we may have some insight into how it relates to policing and communications.

It is important for police officers, and in fact everyone, to be able to recognize the signs and symptoms of PTSD. The illness can be a constant, with the person suffering extensively, or may be somewhat dormant. There may be triggering incidents that cause the sufferer to relive all or part of an event or cause increased anxiety. Some of the suffering may be in private, some may be seen in public. Lack of sleep, nightmares, depression, increases in heart rate, sweating, panic attacks, a lack of sexual desire or performance, anger or mood swings, irritability, negativity or an inability to show happiness or affection are included on a growing list of signs of PTSD. It is also true that not everyone that experiences a traumatic event or who is traumatized develops PTSD.

So, as an illness how can it be treated? If we are aware of it, can we prevent it, or at least mitigate some of the symptoms? Indeed, now that there is a movement to concede that PTSD is a widespread problem, especially among first responders, treatment is developing for it and is available. This treatment includes prescription medication and psychological help, varied to the need of the individual patient. In addition, there are

support groups, counselling, and a heartening trend that officers are being encouraged by their departments to eat healthily, take breaks at work and to remain fit and active in order to assist in taking care of their overall well-being. Training and awareness is growing and first response supervisors and peers alike are becoming more aware of the signs and symptoms of PTSD. Individual officers are being schooled in their initial training to recognize PTSD and are being given coping strategies. Veteran groups and other organizations and social supports are offering similar services and importantly, the impact is such that officers themselves are breaking the stigma and talking about PTSD. (The Canadian Mental Health Association: Post-Traumatic Stress Disorder (PTSD) accessed 21 March 2020).

## PTSD and Policing

Having discussed what PTSD is and how it may translate into people's lives, we can consider the impact on policing. There are likely more impacts, but two that are most evident are to the Police Departments directly, hiring, retirements, and generally ensuring that officers are able to maintain and fulfil the expectations of duty during their employment. The other is the demands and increased risks in almost every encounter with the public. Not knowing a person's history or what may trigger a person's PTSD, or what their behaviour may escalate to, will be an officer's concern. Understanding and exploring the signs and symptoms and becoming familiar with them is a positive start. To the first point, that officers are impacted, it is a positive and increasing trend that Departmental Leaders within policing recognize PTSD as a priority and are leading the way in breaking the stigma of mental illness. Living with PTSD seems to have been a process. Reports and academic papers suggest that historically a stigma was attached to officers who declared they were suffering from PTSD; ridicule, career limitations and pride have all been reasons for non-disclosure of suffering from PTSD. In 2016, the Vancouver Police Union revealed to Global News that as many as one third of its police officers were dealing with post-traumatic stress disorder. This information was obtained from a survey completed by 700 of its 1200+ police officers. This is a huge number and a testament to the fact that officers are under a lot of scrutiny from the public with the increases of public expectation standards and the constant watch provided by cameras and phones. Working under a constant camera lens with such high-stake duties, it seems logical that officers would feel their mental health is somehow affected. With a workforce



admitting their health issues, what are the consequences? In this article is a quote from a psychologist, Dr. Gregory Passey. When commenting on the impact of people with PTSD he states, “It can have a huge impact”, “It disrupts their sleep, and they often have nightmares, difficulty concentrating, multitasking.” (Duran, 2016, p.1). This is a concern in itself; now expect that person to carry a firearm, drive to high risk calls, make decisions in less than a few seconds and carry high jeopardy work load. Add to that unsociable, long work hours, and attending traumatic events repeatedly, it can be seen that this is a real problem for Police Chiefs. PTSD has been linked to increasing numbers of officers taking months to years off work with illness or even tragically committing suicide.

This is an issue not limited to North America. The West Midlands Police is the second largest police service in the United Kingdom (UK). They do not have a union but have representation through an organization called the West Midlands Police Federation. According to a report published 14 May 2019, one in five police officers is suffering from PTSD. A survey of

- 17,000 police officers was conducted with 47 departments in the UK, carried out by Cambridge with funding from Police Care UK. The results show:
- 21% of police officers who responded reported symptoms consistent with PTSD or the more severe, Complex PTSD (CPTSD)
- 73% per cent of those with PTSD or CPTSD will be unaware they have it
- 66% of those reported a psychological or mental health issue which they felt was a direct result of police work
- 69% of officers feel that trauma is not well managed in their force
- 93% still go to work even when suffering from a work-related psychological issue.

The survey’s findings echo the Police Federation’s latest “Demand, Capacity and Welfare Survey”, which also found evidence of widespread, repeated exposure to trauma within the police workforce. (West Midlands Police Federation, 2019, p.1).

There is no shortage of news stories and research into PTSD in policing, not only around the world but here in Canada. One only has to type Police and PTSD into a search engine to find such information. In particular, there are a lot of officers who are retrospectively taking their department to task for failing to look after their welfare. Unfortunately, there are numerous accounts of officers leaving the force and, sadly, others taking their own life. If we consider the journey of an officer from their excitement and thrill in joining a

department to the ultimate sacrifice in taking their own life through not being able to cope, it is not a pleasant read.

## Increased Demands and Risks

As discussed, there are demands placed upon police departments to look after their officers but there are also the personal and individual demands placed on the officer themselves, just by the sheer nature of their role. Some are clear and obvious potential triggers, such as gruesome crime scenes, accidents or personal physical attack; others are more subdued. When considering the broad depth and variety of criminal acts and incidents that occur daily, not a day goes by when law enforcement officers are not dealing with something that others do not want to even think about having to attend to. It is easy to see how these incidents add up, but let us now consider one of the less obvious builders of stress. We have discussed many forms of interviewing techniques; each brings the victim, suspect or witness back to a place in time. Often that place is described in graphic detail. If we add visual injuries, video evidence, sound recordings or even eye witness observations, it is not surprising to learn that a real concern is the well-being of the interviewer. It is important to recognize that the interview process is potentially traumatizing and to offer victim support or peer support where possible to the victim and witness. The interviewer themselves is often the forgotten subject and, as discussed, over time this may lead to problems associated with PTSD. Officers also have to collect evidence for court cases; sometimes this involves examining digital or recorded evidence and listing the offences committed in these recordings. These job requirements can eventually lead to difficulties in carrying out daily activities in the officer's life, job, and relationships with their families and colleagues. Tragic incidents such as the reported US army reservist who reported that PTSD had left him suffering from anxiety, depression and hallucinations. The web link to this news headline is: CTV NEWS: [Gunman who killed 5 Dallas police officers showed PTSD symptoms](#)

In Canada cases such as the RCMP officer Sgt Chris Bewsher have been reported in the news. Sgt Bewsher sued the Canadian government because he perceived he received a lack of support or counselling while he suffered from PTSD. The link to this news report is listed here: [Former Mountie with PTSD sues Ottawa after multiple northern postings](#)

In B.C., Canada, the Wounded Warrior Run “raises awareness of occupational stress injuries suffered by military and first responders”. This is designed to support Canadian first responders, armed forces and veterans.

Police officers may not know that a member of the public they are dealing with is suffering from PTSD, however there are some recognizable symptoms and signs. Not all are apparent at once, or indeed at all, but hopefully knowledge of such will assist them in their duties. Some people that suffer from PTSD have trouble with interpersonal and social skills that at one time were not an issue to them:

- The person may have a powerful sense of disconnect and may not grasp another person's point of view, read their reactions or be able to correctly gauge the thread of a conversation. As a result, they may seem distant or fearful, confused or frustrated.
- The disconnect for the conversation makes them unable to create emotional rapport. This may occur straight away and will add to the anxiety and frustration.
- Self-esteem may be low and, as a result, the person may appear to lack assertiveness. This may lead to feeling that they are not listened to, and compound the need to withdraw from others.

PTSD also can trigger the nervous system activation or a high stress condition in the brain and body including signs and symptoms:

- Being highly sensitive to others can lead to hypersensitivity. Such things as the other's tone of voice, volume of voice or surroundings, and issues of trust being lost are major hurdles to overcome.
- Not having two-way open communication may cause someone to adopt a rigid portrait of stubbornness, not always a good thing in dealing with officers making demands.

Of course, there is always the profession where quirks and behaviours are clearly entering into the lifestyle of Mental Instability and illness:

- There may be times when a PTSD sufferer loses track of a conversation, and may need clarification of what was being said. An apparent difficulty in keeping up with the message and lack of decisiveness in decision making or answering questions may lead to anger issues. Often this processing confusion will be aided if the person

writes information down to help to process it. Overwhelmed people need time and if not given it will feel further frustration.

- With the difficulty in listening and processing, a problem may develop in organizing information. Imagine having a conversation with someone that is logical to you but the other person is not following it. People with PTSD can formulate or process information in a way they feel is right but to the other person it is not logical and sometimes even scrambled in nature.
- At the increased level the person may have a more serious lack of concentration and focus, with things on their mind and so many thoughts and feelings rushing through their mind that it makes it very hard to focus.
- Another frustration is the lack of process and focus that is not supported well by memory. Losing one's train of thought or forgetting simple tasks leads to a massive frustration that can add to the mental illness of the person. (Retrieved from The Art of Healing Trauma Blog: PTSD Challenges – Communication).

## Communicating with People with PTSD

The first and perhaps most important thing to understand in communicating with someone with PTSD is that they may not need help at all. They are coping, they are able, and they would rather get on with their day in the way they normally did before they discovered they had the illness. There are some simple ideas for helping if it is necessary.

- If someone is under stress, try to reduce it, be tolerant of work performance issues, and don't add more pressure.
- No two people will have the same illness symptoms. Make sure you do not pigeon-hole anyone. If you become aware of the circumstances, have a conversation to see how the person wants you to communicate and determine if there is anything you can do to assist. Do not push your ideas or perceptions on them.
- Expect that there may be repetition and some personal stories in conversation with them. Let them talk; there may be a reason they are doing so.
- If the person has or displays crises, or has a confrontation, you should remain supportive and calm. Maybe there is a support person, family member or someone

that can be called around whom the subject is comfortable. If it is appropriate and comes up in conversation, see if the person needs logistics such as meals, fluids or medication that will make it easier for the person. As a rule, liquor should not be presented, since it may be part of the problem.

In short, remain calm, keep your professionalism, but show dignity and respect, be a great listener and try not to be judgmental or overbearing with your assistance. Be honest, however bad news can be devastating, so be mindful of timing and where you are; always keep in mind the best interests of the person and be positive in your choice of words.

### Tips for Communicating with People with TBI and PTSD

The Canadian Mental Health Association: Post-Traumatic Stress Disorder (PTSD)

## PTSD CONCLUSION

PTSD is a mental illness that is being highlighted as a real concern to law enforcement personnel. There doesn't have to be a trigger incident; it can be caused by one incident, a multitude of incidents or simply a prolonged exposure to incidents over time. The causes of PTSD are very individual to the person suffering from them.

For many years people attributed PTSD to those suffering a serious, often macabre or devastating, event, such as witnessing a murder, military actions, or being a victim of a violent offence. We have established that, while this can be true, it doesn't have to be the trigger. Living with PTSD can be extremely problematic for the individual as well as their friends, family and work colleagues. Behaviours in an individual can change. They can develop nervousness, aggression, tiredness, irrational behaviour, overreaction, or under-reaction. There is no normal behaviour pattern, but usually there is a change in emotions from what was previously considered normal for the person. Some people with PTSD use alcohol and drugs to help control or forget the feelings; generally this will only intensify the emotions and perpetuate the illness.

Historically, a stigma has been attached to talking about PTSD. Law enforcement officers

in years gone by would attend scene after scene, get through their days without proper debriefing or counselling, and basically carry out their own coping strategy, which may have included an alcoholic drink. Nowadays, with the significant increase in social media platforms, there is a massive shift towards PTSD awareness, with a particular focus on first responders and military personnel who take their own lives because of PTSD. This attention has raised awareness. Most police departments are putting training in place, and officers are talking about PTSD and supporting each other. Cognitive-behavioral therapy and support groups are common. No longer is the individual expected to come forward, but supervisors and peer support is now available to allow individuals to talk about their experiences.

It is evident that there is a long way to go to really understand how to assist officers with PTSD. It is clear that academy training and peer support on their new teams is not enough. Increasing awareness and commitment to assistance will help officers to open up and talk about their feelings without fear of rejection or being judged. ‘Suck it up’ is no longer the appropriate or expected action of an officer returning from a call. Dark humour once buried the problem and masked the emotion; now it is everyone’s responsibility to ensure that proper debrief and follow up takes place. Before officers assist each other with their mental wellness, they should also be helping themselves. Included is a chart examining the physical signs, behavioral changes, and emotional signs exhibited with PTSD.

**PTSD Signs Chart**

<b>Physical Signs</b>	<b>Behavioral Changes</b>	<b>Emotional Signs</b>
<b>Fatigue</b>	Withdrawal from family and friends	Anxiety or panic
<b>Vomiting or nausea</b>	Pacing and restlessness	Guilt
<b>Chest pain</b>	Emotional outbursts	Fear
<b>Twitches</b>	Anti-social acts	Denial
<b>Thirst</b>	Suspicion and paranoia	Irritability
<b>Insomnia or nightmares</b>	Increased alcohol consumption and other substance abuse	Depression
<b>Breathing difficulty</b>	Withdrawal from family and friends	Intense anger
<b>Grinding of teeth</b>	Pacing and restlessness	Agitation
<b>Profuse sweating</b>	Emotional outbursts	
<b>Pounding heart</b>		
<b>Diarrhoea or intestinal upsets</b>		

(American Military University: Police Officers Face Cumulative PTSD retrieved 2020-02-10)

To close the chapter, we include descriptions of PTSD as seen through the eyes of a police officer from the United Kingdom. A friend and former colleague of the author, this officer was typical in nature and her career path followed that of anyone progressing from patrol into the detective position. She dealt with violent and often traumatic street incidents, and spent time in an office dealing with traumatic files and interviewing children and their offenders, which is one of the most common causes of stress for police officers. Officers find offences against children particularly difficult to process. They often take on the role of temporary guardian, on-scene social worker, medical examiner and support to the child, while maintaining ethical integrity and professionalism dealing with the suspect. Child protection police departments can be known to have a short officer tenure to prevent too much exposure and burn out for officers. As PTSD can be so different from one sufferer to another, I have also included an account written through the eyes of a Canadian paramedic working in BC. I hope this information in the form of personal accounts will assist in your awareness and understanding of PTSD as an illness.

## My PTSD

By Sharon Spriggs.

“Close your eyes, just for a minute and imagine. Think about what someone with Post Traumatic Stress looks like. Try and think also about the cause of their PTSD. Do they have battle scars, missing limbs? Are they badly burned, blind? In all likelihood the person you are imagining will be in uniform. The army, navy, RAF (Royal Air Force), and the causes of their post-traumatic stress are clearly visible and easy to imagine. Perhaps a firefighter, paramedic or, of course, a police officer, all of whom are involved in accidents, sustain injuries and witness horrendous sights on a daily basis. “Is the person you are imagining crying constantly, looking tired and haggard, jumping at the sound of any loud noise or bang, drinking more than usual, being violent and having unexplained outbursts of anger?” This is what my psychologist asked me to do when he told me he thought I might be suffering with PTSD.

Of course, I said it was impossible. Surely, I would know if I'd been involved in something that bad it would give me PTSD. “What if I was to tell you your next-door neighbour was suffering with PTSD, or your mum, your brother, sister, best friend? What about the person sitting next to you in the office? PTSD isn't one size fits all. One of the worst cases of PTSD I have ever had to deal with is from a woman who saw her dog get run over.” And there it was. I was diagnosed with PTSD

I am not an authority on PTSD but I do know it can affect anyone. I know you don't have to have suffered a life changing injury, been involved in an horrendous incident. You don't have to have been to war or been scared for your life. Basically, you just need to have been getting on with your life. It won't necessarily be because of one single incident, or one particular day. It can be something that has built up over weeks, months, years and suddenly BOOM! You will be taking the trash out one day and you trip over a stone, or someone will say something mildly offensive, you might drop a plate. It can be anything but that incident, on that particular day will be the catalyst. The most mundane of things and that's exactly what happened to me.

The first instance was while I was at a shop in the local shopping centre looking for some swimming shorts for my husband. I recall having difficulty finding the size on the pair of shorts I was holding. I could see the US size, the EU size, all the different countries but not the UK size. I remember getting frustrated and then angry and I felt as if the lights were getting dimmer. I began pacing up and down the shop, going towards the entrance



where it seemed lighter. I recall feeling really short of breath, suddenly claustrophobic and wanting to scream. By this time tears were rolling down my cheeks. I walked out of the shop with the shorts in my hand, just half a dozen steps then came back again, continuing to pace. People were watching me but to be honest I think they were too frightened to approach me. Finally, I threw the shorts to one side and stormed out of the shop. I don't recall what happened after that, I'm assuming I found my car and drove home, I just remember getting into my bed exhausted and falling asleep and not waking up 'til the next morning. Did I realise or even suspect I was suffering with PTSD at that stage? No. Did I tell anyone, even my husband? Of course not, perhaps if I had he would have told me he'd noticed my erratic moods, restless sleep, irritability. Then again, he might just have thought, and this is no disrespect to him at all, that I was due on my period. After all I hadn't had any recent injuries or accidents.... well not in the last 3-4 months.

Then one day, whilst at work, I received a phone call from my husband, his father had been rushed into hospital with a suspected heart attack, he was on his way to pick me up. Several hours later, tired, emotionally exhausted and worried about what the future held for my father-in-law, we set off home. Ten minutes into the journey I received a phone call from my sergeant. Was I coming back into work? Had I submitted the file I was working on? Had I contacted CPS for an update? When would I be coming back in? With my head a blur I instructed my husband to drive me to the station. Again, I don't really remember what happened after that but my husband told me I walked into the office and went up to my desk and I just started packing. I found a box and started putting scissors, staplers, crime reports, files, pens, random pieces of paper into it. I never spoke, not one word and nobody spoke to me. Just watched. My husband asked me what I was doing but I never answered and when I cleared my desk completely, I just walked out, box in arms and went back to the car. When we got home, I got undressed and again, slept for several hours.

The next day I reported in sick and I agreed with my husband to make an appointment with the force counsellor. Did I know or suspect I had PTSD at this stage? No, I didn't, neither did my husband and neither did the counsellor. We all agreed however I might be suffering with stress. No shit, Sherlock!

A week went by, maybe ten days. My husband was at work and I sat huddled under a duvet on the settee. Like so many other days I hadn't dressed, washed or cleaned the house. I'd gone upstairs briefly to fetch something and I heard a knock on the door. I was

a mess and had no intention of answering it but watched covertly from behind the curtain. There was a car outside that I didn't recognise so I just waited and watched until the caller walked back down the path and then I recognised him, my Superintendent, followed by my Chief Inspector. My heart leapt into my mouth. There was only one reason two senior officers called on you and it was to deliver the worst news possible. I raced downstairs, tears already welling up in my eyes, I opened the door and called to them. As I led them into the living room, I became conscious of how messy the living room was, I quickly raced ahead bundled up the quilt and threw it into the dining room. I directed the Superintendent into a chair and became aware of all the old newspapers tucked down the side and quickly grabbed them. All the time I was asking myself why I was doing this, why I was worried about an untidy house, it didn't matter. Deep down I knew I was trying to avoid having to deal with the inevitable news. The Supt began to engage me in small talk. How was I feeling, was I doing OK? 'I'm fine' I said. 'I'm doing OK' I replied, all the while wondering why they didn't just get on with it. Why weren't they asking me if I wanted a cup of tea, or if there was a relative who could be with me. I just kept looking from one to the other and screaming in my head GET ON WITH IT!!!! 'You brought some paperwork home with you,' the Supt said. I looked at him confused before confirming I had. 'Why?' he asked. 'The file needs to be in by the weekend,' I said. 'Is it done?' 'Nearly,' I said. He just stared at the newspapers I had clutched to my chest. The silence was deafening and I couldn't stand it anymore. 'Is he dead?' I blurted out. The Superintendent and Chief Inspector looked at each other in confusion. 'Where is he?' Tears began streaming down my face as I looked from one to the other. 'Chris (my husband). Where is he? Where have they taken him? Suddenly a look of realisation dawned on the Chief Inspector's face. 'No, no it's OK, he's fine. He's fine. That's not why we're here.' I didn't believe them and asked them to leave. I tried contacting my husband, but couldn't get hold of him but managed to reach my counsellor. That's when I had my first full blown panic attack. My husband was finally traced and he came home. The fall out of emotions was a shock to both of us and it was agreed it was time to get more specialist help and an appointment was made to see a psychologist.

So, here's why I was suffering from PTSD. In the twelve and a half years I had been a police officer I'd had someone try to stab me in the face as I peered through a letterbox. I'd walked into an invisible glass wall whilst investigating a burglary and knocked myself unconscious. A man had tried to take my head off with a baseball bat...the same man who half hour earlier had tried to murder his ex-wife's partner. I'd had someone try to bite my nipple off as I struggled on the floor, he'd also punched me several times on the side

of the head, so hard it was later discovered he'd left me with diminished hearing in my left ear. I had been involved in a car accident on my way to a blue light run, which put me in hospital for several days, attended a road traffic accident where a taxi had hit a motorcycle and I had to administer first aid on the roof of the Black Cab where the rider lay. I had spent an hour talking someone off the top floor of a multi-storey car park, holding onto his hand as he was threatening to jump, not sure if he would take me with him. Four years on the Family Protection Unit dealing with the horrors of child abuse, abuse on Vulnerable adults and Domestic Violence where a woman I had spent three years trying to keep safe from her partner had eventually had her throat slit. All every day trials and tribulations that are dealt with by police officers up and down the country on a daily basis. And here is the issue. There is one thing all of the above incidences had in common. Something it took several hours of tears, heart wrenching, soul searching and numerous expensive visits to the psychologist to discover, and that is not a single one of those incidents was dealt with in any constructive or therapeutic way. No counselling. No chats from supervisors. No phone calls from HR, but this wasn't the exception, this was the norm. You just didn't address these things in those days, so it was twelve and a half years of worry, stress, injury, panic, adrenaline. Emotional highs, emotional lows. Good days, bad days. All there in my head just waiting for someone or something to light the touch paper. BOOM!

So, when you next think of PTSD remember, it's not like a broken bone, a rash, a laceration. There won't necessarily be any visible identifiable signs. It doesn't come with a big sign saying 'Warning! PTSD Approaching'. It just silently worms its way into your head, quietly creeping into your senses, distorting your emotions. Creating triggers, responses and overreactions to things that wouldn't normally affect you. What is the biggest cause of PTSD? Ego. Bullheadedness. Thinking you are the exception to the rule, the big I am. Embarrassment. Thinking you would be considered weak if you admitted to suddenly feeling scared, worried, apprehensive. Can PTSD be prevented? Definitely. Have a conversation. Share your day. Address your concerns. Don't push things to the back of your mind. Grab counselling with both hands if offered. Accept you are human.

(Sharon Spriggs. personal communication 2020)

A powerful account as I am sure you will agree. Here is another experience, this time from a paramedic:

The Psychophysiology of PTSD

The following is from a blog written by a paramedic with direct experience of PTSD:

“When I first started developing symptoms of PTSD, it was all very confusing. The main emotion that came up for me was sadness. However, it was not a normal sadness, it was a supercharged sadness. It comes up with an intensity that is difficult to describe unless you have experienced it.

What I truly couldn't understand at the time, were why these emotions kept on coming up. It seemed any small emotion, thought, sound or even the way someone would talk to me would trigger it. I had no control over my emotions and it was extremely unsettling. I would also get intrusive memories and thoughts. I might be having a great day, then all of a sudden memories of the bad calls would surface and suck all the happiness out of me. Sometimes the intrusion is an image, sometimes it is an emotion, other times it involves sounds or smells, sometimes a scene would re-play and I would be re-living what had happened. I would get sucked into the past. Needless to say, staying in the present was extremely challenging.

The lack of control, the lack of understanding of what was happening, and the inability to find a solution was what was most troubling for me with PTSD. Thankfully through counselling, reading books, and some research into trauma and the brain helped me better understand what was happening to my body and mind. In fact, what I learned was completely fascinating (mind you I am a bit of a nerd).

Understanding the psychophysiology of trauma and memory was a major stepping stone for me. When what I was experiencing started to make sense, I felt a sense of autonomy and control again, I knew I wasn't going crazy. This knowledge didn't make having a flashback or getting triggered less painful or prevent them from coming up, but suddenly things were a bit less scary.

One way to look at PTSD is to see PTSD as your body's way of adapting and protecting you from traumatic experiences. However, your brain's method of protection can result in memory consolidation problems. Normally memories are experienced and processed into long-term storage by an area of our brain called the hippocampus. This memory consolidation can occur during waking hours but the majority of the work occurs during REM sleep and trauma can cause a disturbance to this memory consolidation process (Marle, 2015).

In summary, when a person is exposed to trauma, our body's natural instinct is to try and

protect ourselves. In the process of doing this, our survival brain (older reptilian and limbic system) takes over our rational brain (neocortex). It is important to remember that this is a natural process, it is only when the trauma is so overwhelming that it causes certain parts of our brain to deactivate, like the hippocampus, that it can interrupt memory processing and potentially lead to PTSD.

The truth is, no one is immune to trauma, simply being human and having a highly structured brain makes you vulnerable to trauma. Those who are in professions that are often exposed to violence and death, like first responders and military personnel, increases their risk of occupational stress injury and getting PTSD.”

End of account.

As you can see, these accounts give a valuable and interesting insight into experiences of non-military first responders and how they describe their understanding of their personal encounter with PTSD. For myself, in general as a police officer, I always liked to talk to a colleague after my shift, especially after a busy night. I found comfort in a listener who understood completely the events of the evening, was not shocked or horrified with the details of what I had seen, and could understand the need to talk or wrap the seriousness up in humour, if I found it necessary. To be able to give a reassuring and understanding ear and quiet nod to my colleague's accounts was also helpful, to feel useful to someone about whom you cared. This removed some of the emotional burden for me and was a strategy I employed on a regular basis to help me work through the emotions and adrenaline rushes of patrol work, especially as an unarmed officer, which as a UK police officer was the case.



# CHAPTER 7





# The History OF WOMEN IN POLICING, a change in communication

## Introduction

This chapter will explore the challenges faced by women as their policing role changed over many years. There are unique situations and circumstances faced by women that are both internally caused (from within their departments) and externally presented (public acceptance of female officers). How much of this information can we attribute to the unique skill sets offered by females in policing? Do they communicate differently? Is it effective, or are there simply no differences in policing style or standards? There are some key questions to ask yourself before reading on. Without researching these questions further, write a few lines on each to record your opinion and revisit the questions after the chapter to see if your views are swayed.

Do women bring a different style to policing than their male counterparts?

Why?

Is there a communication difference?

What would you expect a female officer to do differently than a male?

Are physical or verbal confrontations dealt with differently?

How have females historically been utilised in policing and in modern policing?

Where are we truly finding equality?

What era do you think equality was found in relation to policing?

The chapter will provide a brief history of policing in the United Kingdom (UK), long

considered the birthplace of modern-day policing methods. A comparison to Canada will be explored. This is an interesting parallel to begin with, as so many policing standards in Canada were adopted from the UK. The author of the chapter, a Woman Police Constable (WPC) in the West Midlands Police in the UK in the 1990s, provides personal dialogue on the challenges faced. A brief look back in time to a decade not long ago reveals some head-scratching decisions. Imagine policing on the street and being expected to do the same job as your male counterpart while wearing a skirt, carrying a black police handbag that holds your handbag-sized wooden truncheon! You would feel at odds with your male partner, who was wearing warmer and more practical trousers with a specially-sewn pocket down the outside of the leg to secure the easily accessible, full-length wooden truncheon.

The UK Equal Opportunities Commission (1990) concluded from its review of police working practices in England that a considerable amount of stereotypical deployment existed. While policemen were more frequently allocated to driving, public order and outside duties, policewomen were more frequently allocated to communications, work with children and young persons and inside duties.

Within the chapter, a personal account will show the much-needed evolution of accepting women in an equal role and the eventual integration of the “Women’s Department” to the mainstream police service. How much communication has, both internally and externally, assisted women in policing?

The UK Equal Opportunities Commission (1990) (1990, p. 21)

## History of Women in Policing

To understand communication strategies and how they have helped women in policing, it is pertinent to provide a brief history of where this all began. Police departments did not always have women in uniform.

# The VPD Story

The story of females employed by the Vancouver Police Department (VPD) is very well detailed by Matteo Miceli in a blog on the VPD Museum Archives Website. Miceli describes how, in the early 1900s, a strong women's movement highlighting and defending women's rights existed. At the time there was a high rate of domestic violence and a push by women's rights activists to have female police officers who would be more sympathetic to women and child victims. This led to the employment of Vancouver Police Constables Lurancy Harris and Minnie Miller, who were Canada's first female officers and fulfilled "matron" positions, looking after juvenile and female prisoners in the jail. (Miceli)

Of course, Harris and Miller were paid substandard wages in comparison to males, and did not receive training or carry a weapon. In fact, they provided their own clothing and utilized hand bags to conceal any tools of the trade. As pioneers, they saw the female contingent grow to 11 officers placed under the command of a female Inspector Nancy Hewitt in 1943. Along came uniforms, and eventually, in 1956, equal pay to men was granted. (Miceli)

Three officers take aim during target practice. In 1967, women were required to train with firearms but were not allowed to carry them on duty.

The distinct and separate division meant that male officers were not in direct competition with the women, who were still, essentially, only employed in the jail. There seemed to be a backward step following some resignations and the death of Inspector Hewitt. The female roles were given to male officers and the women were transferred to dispatch duties. Miceli observes that the VPD were going in the opposite direction to a society that was advocating female equality. Finally, in 1973, women were allowed firearms and utilized alongside male officers on the street. Two years later, the term "police women" was replaced by the non-gender term "police constable". Following this, females took on roles in dog handling, motorcycle rider, and as Emergency Response Team members. Today's department has significantly changed since the 1970s. The

number of female officers has increased year after year. As of 2018, women made up 26% of sworn officers in the VPD and have filled almost every section.

This part of local history in British Columbia (BC) Canada, has not gone unnoticed in recent years. A particular interest in Vancouver's first female police officers was reflected in a stage show produced in Vancouver running in 2017. This show featured portrayals of Lurancy D. Harris and Minnie Miller as constables in the production, "And Bella Sang with Us".

## Females on Patrol

The evolution for women in policing occurred in not only North America and Europe, but also Australasia at the same time. Articles were written in the 1980s and 90s regarding the perceived lack of physical strength of female police officers, and their therefore perceived unsuitability to work on patrol. The article "The Weaker Sex? Women and Police Work" (International Journal of Police Science and Management, vol. 1, number 3, Margot French and Linda Waugh, 1998.) details this discussion from an Australian viewpoint, but is reflected in the experiences of female police officers in many countries at that time. It may be surprising to learn that as recently as 1998, female police officers were reporting feelings of isolation, unfair working conditions and harassment. This is reflected in the experiences of women in North America and the UK at the same time. Much of this discrimination stems from concerns that females would emasculate policing, and that the job would be seen as more akin to a social worker than a traditionally more military career. This translated into operational policing for women by deploying them into stereotyped roles that women were perceived to be good at. Policemen were allotted driving and public order duties, while policewomen were dispatched to assignments involving children, women, youth, and communication jobs (such as taking witness statements). There were few women in traffic departments and specialist units. Women were over-represented in community relations and training (French, Waugh, 1998, p.261). This stereotyping was perpetuated by the fact that female officers also lacked the experience gained by male officers.

The author had a similar experience, which can be demonstrated by this typical encounter. One of her male colleagues told her he really enjoyed working with her as a person, but hoped not to be partnered up together for patrol duties, because it meant an

allocation of 'girl jobs' for the duration of the shift. By this comment, he had admitted his acceptance that a male and female occupied patrol unit would be dispatched primarily to female shoplifters, missing person enquiries, sudden deaths and statement taking. Females were not dispatched to burglaries in progress, thefts, or assaults with the offender still present. The author recalls that women were not sent to fights unless absolutely necessary, the rumour being that male officers felt an obligation to 'protect' females, making the men's job more difficult. This could potentially cause the male officer to be injured because he felt that he had to act as guardian to the female officer. Even in the mid-1990s, female officers were not viewed by male peers (and perhaps the wider population) as physically strong or capable in a fight, and were therefore considered less useful and well-rounded than a male police officer. This made the author feel less respected as a team member and certainly less valuable as a police officer. It was not just the male police officers that needed to be convinced. The author remembers attending a burglary and being asked by the male householder, 'Where is the man?', meaning that a female officer was not adequate for him and did not meet his expectations.

Since the graduated inclusion of females entering into a policing career, women were not just concerned with whether they could perform their duties as a police officer, but also with the aspect of fitting into an established male police culture. Over time, complaints from male officers regarding accepting females as patrol officers were similar across departments. There was a strong perception of an encompassing lack of suitability of women to all aspects of police work and their ability with the required interpersonal skills in times of trouble.

Especially important was the effort women needed to make in order to prove themselves. "In order to gain acceptance, many women police become one of the boys." (French, Waugh, 1998, p.261)

"In doing so, however, they must also maintain satisfactory working relationships with the dominant group by downplaying their achievements. This balance is often difficult to achieve and even harder to maintain for a long period of time (Martin, 1980)." (French, Waugh, 1998, p.261)

The police had been a male-dominated culture for almost the entirety of its existence. The reasons for this include the connection with the military. Men often found a natural transition when leaving the armed forces to enter the police, and the police were happy to have reliable men experienced in conflict situations in the force. It therefore became a

male environment and culture akin to the military. Women wanting to do this kind of work were either laughed at or dissuaded by way of it not 'being appropriate' work for a female. The author heard all of this herself. She experienced some very strange comments, as did her husband, who is also a police officer. Her husband was a police officer when she joined and comments directed at him by his male colleagues included, "You know she'll be in a car with a man for hours?" When the author went to the optician for her obligatory test for colour-blindness the male optician said, "Why does a nice girl like you want to do a job like that?" So, the cultural seeds are sown, not a suitable job for a female. The effect on the would-be police woman (as we were known as WPC then) was to install trepidation, questions for myself such as "Will I be accepted?" "Will I be alone?"

From the book, "Women in charge"

"The police culture is one that is hostile to women and continues to have a strong influence in defining and structuring police work." (p.22)

The author goes on to state that there is a 'cult of masculinity' in police work, because of the attributes seen as being desirable for a policing career, such as: aggressive, strong, heroic, rescuer (knight in shining armour), brave – all traditionally regarded as male qualities. To that end, women entering into the policing profession were encouraged to take on 'caring' roles befitting traditional female qualities. In fact, in the UK up to the 1970s, women in the police were segregated into the Women's Police Department. After the Sex Discrimination Act in 1975, women were integrated into the mainstream (male) police departments. Until 1999, women in the UK police service also had the prefix of W (woman) in front of the designation police constable. The book "Women in Charge" also emphasises that police work as "crime-fighting" appears to be a more masculine pursuit than does "PEACE-keeper" which implies that women can do the job, too.

In order to 'fit in' and gain acceptance, women not only had to work harder, but find a way to prove themselves and therefore gain access to the male team. Any mistake a female made reinforced the idea that women were not suitable for police work.

The aspect of fitting in with a team that was all men was another tricky part of policing. The author decided to work harder, determining that she had to be seen and heard by the whole team to be working flat out constantly, meaning that when she was not directed to a call, she was conducting stop checks on people or vehicles as UK legislation allows. She would also make stops without asking for backup in an attempt to appear independent, courageous and therefore suitable to the job, not something that is

suggested for any officer. Her willingness to take every call and be first on the radio also involved accepting a certain amount of inappropriate humour and comments. The lack of acceptance leads to a lack of social support in a profession that can be very stressful. Since females were not considered part of the 'brotherhood', they did not receive the same social network support (Bannerman, 1985,p.3). Also according to Hochschild (1973) in 'female officers: the relationship between social support, interactional style, and occupational stress and strain' (Bannerman,1985, p.77) women have two coping mechanisms when faced with a male work culture environment. These are 'de-feminized' and 'de-professionalized'. The de-feminized woman plays down her femininity and does not identify with other women. The de-professionalized woman takes a junior role and accepts being treated as a lady, so as not to threaten masculinity. (Bannerman, 1985, p.77). 'Unfortunately, the effect of such over-utilisation of females in some activities can perpetuate the perceived stereotype of activities appropriate for females and limits the experiences that women can gain' (French, Waugh, 1998, p.261). This had an effect on their apparent competence and their own confidence in their ability and worth to the profession.

## Female Officers-Communication Skills

The question early on in policing appears to have been regarding physical strength, perhaps even confrontations with members of the public and how suitable and effective female police officers were in these incidents. In this case I refer back to these earlier articles, as follows:

The realistic aspect to policing is the majority of police time is not spent in physical fighting. Women have been proved to be highly successful in their non-confrontational communication style. (French, Waugh, 1998, p.264).

'Furthermore, police research has never shown physical strength to be related to police functioning or officer safety (Sherman, 1993). It may be that the ability to defuse a potentially violent situation may be preferable to the use of strength in conflict situations.' (French, Waugh, 1998, p.264).



*“Alright looking female cop” by Mihnea Stanciu is licensed under CC BY 2.0*

Females are less likely to use physical confrontation or demands, and prefer to use verbal communication skills to diffuse a volatile situation. Although there is a shortage of research as to the differences in communication styles between female and male police officers, a small study from Australia does show a consistent difference in strategies between genders. The research showed that the behaviour tactics used by females were more consistent with support, with males employing controlling language such as “come here”. Males also tend to be more “threatening in their approach” and were also in physical contact longer than females. (Braithwaite, 1997, p.280). Citizen behaviour is also different towards male police officers, with verbal and physical abuse being much more frequently used towards males than females (p.281). The conclusion from this study showed that male officers “preferred tactics which emphasised power over the citizen, such as control, threat and physical actions”. It states that:



Females were generally more supportive of citizens, preferring tactics which emphasised mutual power in the interaction. In the article 'Differences in the conflict resolution tactics of male and female police patrol officers' (Wiley et al, quoted in Braithwaite, 1998, p.285), "The results of this study provide further evidence for previous work, demonstrating that police-citizen encounters are interactive processes, whereby the behaviour of the officer significantly influences the behaviour of the citizen. Not only do officers respond to the behaviour of the citizen and act accordingly, but the tactical choices of officers were also shown to affect the level of citizen resistance experienced." Further in the article Braithwaite adds;

"Consequently, the tactical choices of male officers more often placed them at risk of physical confrontation than female officers. Females were generally more supportive of citizens, preferring tactics which emphasised mutual power in the interaction. Females used coercive tactics less frequently and in different contexts than males and, as a result, experienced less verbal abuse during their discussions with members of the public, and avoided physical resistance."(Braithwaite, 1998, p.285).

This illustrates that even where there are perceived differences in the communication style of female officers, there is no evident disadvantage to the situation when a female is involved in the discourse or management of the situation.

In the book "Women in Charge", the author references a stumbling block I have personally encountered, which is a lack of research into gender in policing. "The significance of gender for policing is evident with only a handful of researchers taking gender as their main focus" (Silvestri, 2003). For example, the chapter, 'The Police organisation: a gendered site' begins with the statement that "Research on organisations has historically paid little attention to the significance of gender, with the field almost exclusively dominated by malestream approaches and ways of viewing and understanding organisational reality". (Silvestri,2003, P. 21)

A fascinating insight into what are considered masculine roles in policing and the resistance toward more "female" identified roles such as community policing is reported by Silvestri. The reaction of women to being pushed into more gender stereotypical roles is also featured. Some women attempt to emphasise masculine traits in order to prove themselves or fit in with the boys. (Silvestri,2003, P. 36)

Women have come a long way in policing since then; the current numbers of females represented in law enforcement have seen consistent increases.

Women, however, have not traditionally been their own supporters. Silvestri points out that part of the reason is that they felt a sense of particular oversight and examination into how they fulfilled their roles (Silvestri, 2003, P. 147). They were often not openly supportive of other females, even when they achieved management positions. The feeling that any failure on the part of a female would be attributed to their gender seemed to be an underlying concern and an added pressure to their jobs and careers. The other issue made clear by Silvestri is the concern with being labelled a feminist because of the nature of the career and the negative connotations associated with that label. This is something I, too, was conscious of. The attempt to show you are not a feminist and therefore, not uptight, by trying to be one of the boys, makes female traits less obvious in an attempt to over-compensate for your gender.

The report, 'Women in policing: A study of the Vancouver Police Department', issued in September 1980, indicates that Vancouver was the first police service in Canada to hire female police officers. It started, much like the UK police, with a women's department. Similar to the UK new legislation passed in the 1970s, Canada passed The Canadian Human Rights Act in 1977. This saw women assigned patrol duties for the first time. A study shows that female police officers, when evaluated by their supervisors, were found to be very similar in performance. When male police officers were asked about the hiring of females, they were more often against it. The notable exception was those male officers who had already worked closely with female officers (Linden, 1984, p.21-27). This attitude and the counter, the positive evaluations of females could be seen throughout North American departments, including RCMP and municipalities. The RCMP found through a survey that the main complaints they had about hiring female police officers were:

1. It made their job look like social work;
2. Women are not committed because they want babies;
3. Women cannot deal with violence and policemen were worried about having to protect them.

These are all concerns that were voiced to me personally during my time in service. Men did feel an almost chivalrous duty to protect women, something most women did not expect or feel was owed to them. I suppose this is the nature of culture and the way these men had been brought up and considered themselves gentlemen. Interestingly the same study also found that the attitude toward women was more favourable amongst

men who already worked closely with women on patrol. In the book 'Equality Denied, The Status of Women In Policing' (Lonsway, Kim, et al,2001), Lonsway states that women are deterred from joining the police because of a perception of a masculine and aggressive image (Lonsway, Kim, et al,2001, p.3). Lonsway states that this is a large part of the problem in retaining and promoting women in the police. In my experience in the late 1990s, many females were leaving the police. The problem was recognized but was not addressed in any meaningful way, leaving most female police officers to feel that it really didn't matter to management.

Women in policing has evolved and advanced in the last twenty years. Women are an integrated and valued part of the policing workforce. They belong and have an important part in the future of our police services. I will finish this chapter with a personal insight from an officer beginning her career in the 1980s.

1986 – Reporting For Duty

by Sharon Spriggs

One of the first places all officers report for duty is, of course, the store room to pick up your uniform. Whatever else you are given it is the uniform that symbolises who and what you are. It is the uniform that gives you the respect and is imbued with the powers handed down to all police officers so it was with a fair amount of excitement and awe that I stood in line at Bournville Police Stores with my fellow new recruits that chilly October morning in 1986. In front of me was a typical police officer (to be), 22 years of age, 6 ft, male, lean, broad shouldered. Next to him was me, 5'4", female, medium build, age 26, size 4 feet. But it was OK, we were both there to be equipped to do the same job. We were equals. I know this because I had been told so many times during the interviews and training. West Midlands Police, I was assured, were a modern police force going forward.

As we shuffled along the counter we were each handed the accoutrements to do our job. Handcuffs, handcuff pouch, torch, epaulettes, collar numbers, 8830 in my case and then we got to the actual uniform. I remember my heart beating faster in excitement and anticipation as the young man in front was asked his name and then handed 2 pairs of trousers. He shuffled along. I was asked my name and handed 2 skirts. In front of me my fellow colleague to be was handed 2 blue jumpers and his pristine jacket. He held it up with pride, a big grin on his face. I held my arms out eagerly for mine, smaller of course and, I quickly noticed no pockets. I glanced back at the other jacket. Two side pockets, at

least one breast pocket from what I could see, lots of room to put his pens, notebook, keys, handkerchief. I quickly picked up my skirt, no pockets there either. I turned in time to see the man next to me handed a thick leather belt to go round his long, warm, user friendly trousers, which would undoubtedly be used to hang his handcuffs, torch, first aid kit etc.

Suddenly, the ugliest thing I had ever seen was thrust in my direction. A stiff, black, heavy leather handbag. I assumed this was the substitute for the missing pockets. The line had started to move along and I caught up just as the man in front was holding out both his hands. I watched as he stood there expectantly and patiently, palms facing upwards until a 16" piece of beautifully carved shiny wood was placed ceremoniously in his hands. His truncheon. He turned it this way and that, slipping his hand through the soft leather handle, swinging it gently, testing it out for balance. This was a British police officer's only form of protection and I understood it deserved a certain amount of reverence and respect. I watched as he carefully placed it on top of his clothes. The man behind the counter stepped away momentarily and returned with an encouraging smile on his face. 'There you go love.' I quickly looked up to see if he was taking the piss but no, he'd already moved on to the next in line and was holding another 'adult sized' truncheon in his hand. I stared at the 10" piece of wood in my own hand, turning it over to check if there was somewhere to put batteries as this was clearly a joke, and the only chance I would ever have of protecting myself would be if, when taking it out of my handbag, the person in front of me died of laughter!

I quickly shuffled along the counter and watched as my fellow colleague, my peer, my equal in all manner was handed his police helmet. It seemed huge. Another big grin as the recipient admired the shiny silver badge on the front, tested the strap for strength and stability then rapped it hard with his knuckles. It was solid. He tried it on for size and I watched as his face clouded over. I knew he was imagining himself standing on the front line, bottles and bricks flying overhead, confident in the knowledge his head would be safely protected. He unconsciously pulled his shoulders back and pushed his chest out, standing tall. A movement caught my eye and I looked down. There on top of my folded skirts, jumpers and jacket was a round piece of white plastic. For several moments I glanced back and forth at the two pieces of headgear. I placed my forefinger on the top in the centre and pressed gently down and watched as a dent quickly formed in the middle. I picked it up by its shiny black plastic peak and noticed underneath a paper envelope. Inside a small metal badge to clip on the front of the hat. And that's what it was, a hat. Not a helmet. Not a piece of protective headgear. It was a hat. For a moment my face also

clouded over as I imagined myself chasing after my first burglar. Restricted by my skirt as I tried to clamber over a fence, encumbered by the heavy bulky bag slung over my shoulder, conveniently placed should anyone want to use it to strangle me and my white shiny hat languishing in a puddle having been blown off by that strong gust of wind. And then, having caught the aforementioned burglar having to ask him if he'd just hold still a moment while I rummaged through my bag for my handcuffs.

As the counter came to an end I glanced across and saw the young man next to me staring. He was also looking back and forth between the two pieces of headwear. He didn't say anything. He didn't need to. He just shrugged his shoulders and moved along. Yes we were the same, but different. Some would always be more equal than others. Nothing needed to be spoken, nothing overt in nature but in all its subtlety it was there, plain to see.



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