Empathy-Based Interrogation (EBI)

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What Is EBI?
The Road to Modern Interrogation

“Third Degree”

1929
Wickersham Commission
(National Commission On Law Observance and Enforcement)
Brown v. Mississippi

1. Raymond Stewart murdered on March 30, 1934
2. Indicted & arraigned April 4, 1934
3. Convicted and sentenced to hang Trial - April 5th – 6th

Brown v. Mississippi
297 U.S. 278, (1936)
United States Supreme Court

Diagram:
- 7 ½
- 6
- 2 ½
Every prisoner had a story to tell
“Gentleman’s approach”
Facilitator
No longer the enemy
Steps don’t work

Most successful interrogator of WWII
480 out of 500
Soft empathetic approach

Friendly approach
Never pressed for information
The illusion of knowing it all
Confirmation /disconfirmation tactic

Problem is, these are controlled academic studies, not review of actual cases and investigations!
Behavioral Analysis

Kassin & Fong (1999)
College students
boosted confidence
Meissner & Kassin (2002)
Investigators

WHAT DOES THE "CIVILIZED" WORLD THINK OF INTERROGATION TECHNIQUES?

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CANADA

R. v. Thaher, 2016 ONCJ 113, After a seven hour session, he confessed. Judge called the method, "shoddy police practice...shown to be coercive and to produce false confessions."

R. v. Goro 2017 ONSC 1236, Justice Fitzpatrick, "Use of the Reid technique or something akin to it does not automatically render a statement inadmissible...However, the technique is inherently coercive and for that reason has been the subject of considerable judicial and academic criticism.

R. v. Oickle, (2000) 2 S.C.R. 3, Supreme Court stated, "In defining the confessions rule it is important to keep in mind its twin goals of protecting the rights of the accused without unduly limiting society’s need to investigate and solve crimes." Did not specifically condemn Reid.
### AUSTRALIA

The term "interrogation" is not used in Australia.

Instead, the term "investigative interviewing" is used - to emphasize that the interview with the suspect is an ongoing part of the investigation (and to distance the practice from North American interrogations.)

Statements obtained when the investigator has lied to a suspect are inadmissible in court.

### UNITED KINGDOM

Collaborative effort between law enforcement and psychologists

- A relaxed subject = rapport = cooperation = information
- No aggression or intimidation

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**High-Value Detainee Interrogation Group (2016)**

Best Practices report for Interrogation Examined military, and police interrogation methods
INFORMATION-GATHERING, not CONFESSION FOCUSED

Interrogation is a TEAM effort

More likely to obtain INFORMATION using methods that draw out what information the detainee knows as opposed to what the team would like to obtain, such as confession.

No multi-step question plan

Provide the suspect space to DISCUSS topics they would like to talk about

Demonstrate empathy and understand the suspects perspective

False Confessions
How prevalent?
NO ONE KNOWS!
DNA exonerations most studied
• No real method to calculate precise rates

2145 known exonerations (through 2017)
260 of these were false confessions
= 12%
(http://www.law.umich.edu/special/exoneration/Documents/Table%20Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess.pdf)

False confession averages 16.3 hours  (Drizin & Leo 2004)
Investigators estimate an average of 4.21 hours for a successful interrogation
(Cassell & Hayman, 1996, Leo, 1996, Wald et al. 1967)

So the LENGTH of interrogation may be a factor?

Traditional Interrogation
Deny the “NO”
Investigator dominated
Frequent interruptions
Danger of “lawyering up” or shutting down
What are we taught about deception?

Things taught as deception such as evasive answers, crossing of legs, posture shifts, were found more often in **TRUTHFUL** subjects.  
Vrij, Mann, & Fisher (2006)

No ONE behavioral cue is scientifically found to be reliable for detection of deception.

23 out of 24 studies have found this to be unreliable.

Some apply to innocent people more than guilty when stress is applied!
The most dangerous phrase in the language is, "We've always done it this way."
- Admiral Grace Hopper

IT IS TIME FOR A CHANGE

Dealing with humans

- Each interview is different
- No one person reacts exactly as another
- Steps and models lock us into a "box"

EBI is a philosophy

EBI

Atmosphere

Corroboration

Communication

Conversation

Behavior Analysis
Easier to defend

relaxed conversation + let them tell the story = no courtroom pitfalls

Objective of EBI

1ST GOAL = LEADS AND INFORMATION

CONFESSION IS A BY-PRODUCT OF THE CONVERSATION

Atmosphere
Why Empathy in Criminal Justice Interviews?

Interrogation atmosphere = conflict
What happens if you remove the conflict mindset?
Even confrontational methods start with building rapport...
Empathy!

empathy(n):
the intellectual identification with or vicarious experiencing of the feelings, thoughts, or attitudes of another.

Communication

Interrogation atmosphere = conflict
What happens if you remove the conflict mindset?
Even confrontational methods start with building rapport...
Empathy!
"Climb inside their skin"

Research has shown that being empathetic with each other and listening to each other leads to conflict resolution and a bigger connection between individuals (Davis & Oathout, 1987; Long, Angera, Carter, Nakamoto, & Kallo, 1999).

Just as important as everybody else

“If he isn’t judging me and allows me for who I am, I am maybe not that strange person I always thought I was”.

ROGERS (1982)

"When you listen well..."
Acquaintance Form

- Personal Interest?
- Raised by? Mother, Father, Grandparents, Step-Parents
- How do you get along with _____, now?
- On a scale of 1-10, how would you rate your honesty, integrity?
- Who do you respect the most in your life? The least? Why?
- What is the most important thing in your life?
Acquaintance Form

• How does your family view this situation?
• What is the worst thing that ever happened to you physically or emotionally?
• What is the best thing that ever happened to you physically or emotionally?
• Have you ever been arrested or charged with anything?
• Ever been in the Military? Branch? Length of service?

Acquaintance Form

• Present job? Do you like it? Co-workers?
• How have you been treated by Law Enforcement during this situation?
• Ever been interviewed by Law Enforcement before? How was that experience?
• What are your plans for immediate future for your life? Long term?
Hi, I am Investigator Milnor, but I prefer just Mike. Is it ok if I call you Jeff?
Do not mention investigator or police titles again at any point

I see from the sheet you filled out that you rate yourself an 8 of 10 for honesty. That makes me feel good. The ones that scare me are the ones that put a 10!
No one can be a 10, but an 8 is what most honest people say. So it shows that I know we will be honest and straight with each other today.
Hold an attitude of openness to the experience and position of the other person

Need to remind ourselves to listen - rarely need to remind ourselves to talk

Withhold the desire to help or interrupt

Corroboration

Confession is a by-product

Followed by a search for separate corroboration

The conversation provides the foundation

The development of leads and information
“Something probably happened to her, but I didn’t do it.”

“It was consensual – she wanted it”

“I saw the Father’s day card – tell me about your relationship with your daughter”

“Do you think your child learned the lesson you were trying to teach them?”

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Low Threat
Corroboration

Medium Threat
Riskier

High Threat
Only when you are ok with the interview ending

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“I must have been sleepwalking”

Layout of the house? Where does he sleep? Where does the victim sleep?

Difference between child’s room and master bedroom
Size of the child v. size of the wife

“I don’t believe you”
What about the text message saying “don’t tell”
Etc.
Flip the Perspective

*Put them in your shoes*

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- EBI = Leads, Corroboration, Information
- Unaware "Tracer Rounds of Truth"
- Verbal evidence for Prosecutor
- Corroborate with Search and Interviews
- No Confession = No Problem

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Questions??

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Atmosphere

Corroboration

Communication

Conversation

Behavior Analysis

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EBI