

He Shoots!...He Scores!



Why an attempt should be made to interview suspects and why it could benefit both you and your investigation

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October 1, 2022

The Lesson

I remember that when I first became a cop, I always wondered why some colleagues could get people to talk; whereas, nobody I arrested ever told me more than where I should stick my head. I worked hard, I stayed late, and I made sure all my paperwork was submitted on time. Nonetheless, I couldn't get a suspect to tell me what I really wanted to know; whether he did what he was accused of and, if so, what happened.

One day, at the end of a fruitless shift, I asked one of the senior investigators for help. I explained how I went about my investigations, and how friendly I was to all the suspects; yet could not get any of them to talk to me. I whined that I worked as hard as anyone and questioned if I were just not cut out for the job. I could solve any crime where I had been handed the requisite evidence to lay a charge, but I couldn't seem to solve anything where a confession would have saved my bacon. The senior investigator looked at me, smiled, and said, *"Young fella', I've been watching you deal with those guys, and you're doing everything right, except one thing."*

I held my breath awaiting the word from this guru, but he just kept looking at me with that expression, you know the one, where someone smirks at you after an unknown culprit had just passed wind. I squirmed a bit, added some fidgeting, and finally this demigod of interviewing spoke again saying, *"You have never asked any of them if they had done it, and truly listened to the response."*

I let out a laugh, which was cut short by the older member who said, *"No really. The only reason I get people to talk to me is that I present them with an opportunity to tell me what happened. I learned this trick at about your service after a gruelling trial where I listened to the accused admit most of the offence on the stand. After he was found guilty, I went outside and joined him for a smoke and grumbled at him, 'So, why didn't you tell me what you said up there?'"*

He smiled and said, *"If you had asked me, I would have told you too. I didn't tell you because I didn't think you gave a damn and had already made up your mind."*

As the years passed, I kept the member's message close to my heart and found his technique allowed me to become very successful at launching conversation. I learned something else as I grew in experience; for their entire career, many members stay at the same stage I was at prior to learning my lesson. Most, contrary to my earlier assumptions, don't attempt to obtain any information from the accused, because they don't know to ask or are too damned lazy. This concerns me, as there are many reasons why an investigation should never be concluded without having first asked the accused what happened. They are as follows:

- a. Few will talk to you without an invitation;
- b. The innocent may provide reliable exculpatory evidence;
- c. You are obliged to conduct an unbiased investigation;
- d. It helps the prosecutor;
- e. A denial is often as valuable as a confession; and,
- f. Valuable experience may be gained

Few Will Talk to You Without an Invitation

Seldom in my career has a suspect accosted me to explain why he had committed the crime for which he was under investigation. Come to think of it, neither have many come to offer an unsolicited denial. Nonetheless, I have found that many who are suspected of breaking the law do wish to express themselves to someone, be it to have their reasoning become part of the official record, to minimize the moral gravity of their involvement, or simply to clear their conscience. I have also found that most people will not unburden themselves to anyone, unless they first feel comfortable with that person. For this reason, it is important to sit down and build rapport between you and that person and see what unfolds. If an effort is not made, then, I can guarantee one thing; you will learn nothing from the accused.

I have found it beneficial to conduct a non-accusatory interview in which the suspect is asked directly if he committed the act. After all, there are some relatively honest people out there who would readily admit to their wrongdoing. Even when we used to interrogate, I believed it counterintuitive and unproductive to become accusatory before having first tested the waters. The following scenario describes a possible outcome to posing what I call the *Responsibility Question*:

The Full or Partial Truth Agenda:

Interviewer: *Jim, I pride myself on conducting a thorough and fair investigation, so if you did rob the Greasy Spoon Restaurant last Friday the investigation will clearly show that. On the other hand, because I am thorough and fair, if you didn't do it, the investigation would show that as well. So, what is really important today is, did you rob the Greasy Spoon Restaurant?*

Jim: *Yes, I did.*

Interviewer: *Thank you for being honest with me about that Jim. It tells me a lot about your good character. Now, I wasn't there, and I don't want to misrepresent anything about this as that would be unfair. The most important thing we could do now is to go over this and make sure you are happy with the way it is understood. I'd like you to start at the beginning and tell me everything about it.*

At this point, Jim would be able to tell you what happened in the way he would like to. This is what we refer to as his *"agenda"* and may contain rationalizations that save face by either minimizing the moral gravity or projecting whole or partial blame onto someone or something else. If we have evidence that is incongruent or inconsistent with this agenda, we could choose to clarify or challenge those segments later in the process by presenting the evidence and asking for an explanation. At this point, we could rest easy that we had obtained a platform from which further dialogue could be launched, conversation that could be excavated until we had the fine grain detail necessary to investigate the credibility and reliability of the agenda. You'll see that the principle followed appears to be closer to a martial art, where the more skilled participant would take advantage of the opponent's momentum and strength, rather than attempting to engage in battle using an equal but opposite reaction.

Let's change it up a bit, and look at how the conversation would be managed had the agenda been a denial:

The Denial Agenda:

Interviewer: *Jim, I pride myself on conducting a thorough and fair investigation, so if you did rob the Greasy Spoon Restaurant last Friday the investigation will clearly show that. On the other hand, because I am thorough and fair, if you didn't do it, the investigation would show that as well. So, what is really important today is, did you rob the Greasy Spoon Restaurant?*

Jim: *No, I didn't!*

Interviewer: *Thanks for having the courage to tell me that, Jim. That's why I always believe in sitting down with another adult who has become involved in an investigation. I don't have a side in this so, if you didn't do it, it is my job to help you prove it. If you didn't do this, then, we can show what you were really doing instead. Let's go back to the beginning of that day, when you woke up, and tell me everything up until the point you fell asleep. Don't leave anything out as everything might be important. I want you to work hard and help me out by mentioning any evidence that would clear you. Did you talk to anyone? Were you ever in a place that had video cameras?*

The Technical Denial Agenda:

There may also be other agendas presented in response to this Responsibility Question. You might receive a *Technical Denial*, where a specific detail is put forward to create a distracting argument. These are an example of a pseudo-denial as they are not a definitive expression of innocence. Let's look at a case of sexual assault where the technical denial relates specifically to the number of breasts grabbed as opposed to whether any were grabbed:

Interviewer: *Did you sexually assault Kim?*

Jim: *I did not grab her breasts!*

Interviewer: *Thank you for telling me that, Jim. I'm still a bit confused though. Did you grab even one of her breasts?*

Jim: *Yes, but just one*

Whether the truth or a minimization, you would now have the launching pad to follow up with, *"Okay, so it was only one. That's good to know. So, tell me everything about it then."*

Or, Jim could choose to respond using the following denial agenda:

Jim: *No, I didn't grab either.*

Again, whether this were the truth or a lie, you would be set up to launch further conversation by using something similar to the denial to the robbery above.

The Objection Agenda:

Another pseudo-denial is what we call an Objection. These creatures present as a character reference that may, in fact, be true. Rather than argue the proposition, which would be pointless, we could pose the Responsibility Question again.

Interviewer: *Did you sexually assault Kim?*

Jim: *I was raised to respect women!*

Interviewer: *I hear you on that Jim, and have no reason to disbelieve you when you say that. I'm still confused though; did you sexually assault her?*

Whether truthful or not, the launching pad has been set up to probe for more detail.

Offering an Invitation to Lie:

An alternate conversation launcher would be to invite the suspect to choose to lie to you. It would look similar to this:

Interviewer: *Jim, I'm confused. Are you simply trying to tell me that you didn't do this?*

Where the response is "yes" or "no", we again would have been given a launching pad to continue with productive questioning. The beautiful part of this technique is that, although it is a suggestive question, the purpose is to lead to a denial. The subsequent excavation would allow an innocent person to clear himself and a guilty person to choose to lie.

The Rationalization Agenda:

Listen for the “*Yeah, but*” agenda as well. These indicate a propensity or desire to present a version, that although not a denial, would definitely fit into the minimization category. Here’s what it might look like:

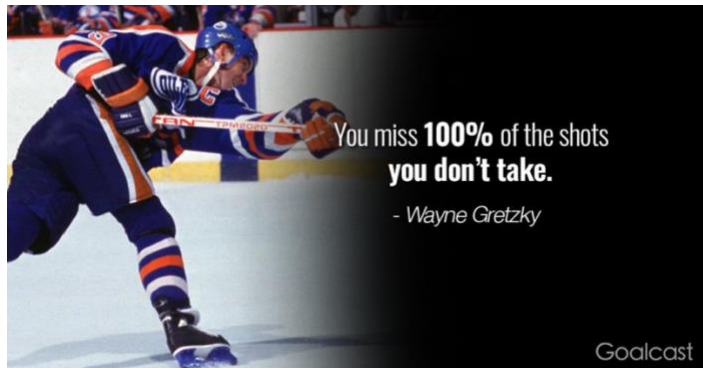
Interviewer: *Jim, the most important question I could ask you is, did you call Lulu a waste of skin?*

Jim: *Yeah, but I was only joking.*

Interviewer: *Thanks for explaining that, Jim. It’s important to figure this out, so start at the beginning and tell me everything about what happened. Don’t miss anything out as we don’t want to miss something important and misunderstand this.*

Rationalizing through minimization or projection could present in many ways and may not be the way you would have expressed it had you been the interviewee. It may not even be believable. Regardless, stick to the principle of allowing the suspect to present his agenda before introducing yours, so the flow of information isn’t turned off prematurely. Patience is extremely important. If you have evidence that is inconsistent with the rationalization, hold off until the most opportune time, and reap the benefits.

These are a few of the agendas that you could receive from the Responsibility Question. Although some suspects present their agenda without the question being posed, generally, if you don’t ask the question, you won’t get an answer. Without an answer, you won’t have the ability to strategically and tactically reach the goal of obtaining detail. Wayne Gretzky once said, “*You miss 100% of the shots you don’t take.*” Although my hockey skills have deteriorated with wisdom (okay, with age), I encourage you to take the shots whenever possible.



The Truth May Set Him Free (the innocent may provide reliable exculpatory evidence)

On occasion, I have asked an accused for his side of the story and he had convinced me that he has not committed the crime. This may come in the form of a rational explanation, exculpatory evidence, or an alibi. Without a doubt, as a supposedly unbiased investigator, you would be remiss in your duties if you did not work with an accused to see if he were able to provide evidence to support a claim of innocence.

If the trial were the first time such an examination were made, then, it would have been too late. Even in situations where the evidence of guilt were overwhelming, there could be elements within the accused’s statement that could explain details relevant and necessary for fair sentencing. It is an investigator’s job to probe all allegations by trying her best to obtain input from all witnesses including the suspect, who is really just a witness, but one who may also have committed an offence. He may be a witness to his own unlawful actions.

Conduct an Unbiased Investigation (Procedural Fairness)

As mentioned in the preceding paragraph, as investigators we are obliged to conduct a fair and unbiased investigation using all available evidence. When it comes to witnesses, we don’t leave it up to them to approach us at their leisure, so we should not treat the accused differently. Evidence known by an accused should be sought

proactively. It is our role to facilitate this process, as perhaps he did not know he had the option of giving his side of the story. After all, we are conducting an investigation that is aimed at obtaining the whole truth, not just the truth according to the alleged victim.

In a justice system continuously plagued with allegations of inadequate investigations and procedural unfairness, it would serve you well to ask every suspect for his input, as at least then he could not allege that you had not provided him that opportunity. This would be particularly helpful to you when facing a lawsuit for malicious prosecution after he had been acquitted at trial. If documented thoroughly, the file would exonerate you by showing you went out of your way to seek input from the suspect. If he chose to remain silent, which is his right, then he and his lawyer would be responsible for the lack of input, not the investigator.

Having the Accused Commit to a Version of Events Helps the Prosecutor

One of the goals of an interview, be it with a witness or suspect, is to commit the interviewee to a version of events to be used by a prosecutor in decisions regarding charge approval and trial preparation. Integral to the process, is the ability to review fine grain detail to establish whether offence elements were satisfied. Additionally, many prosecutors would benefit from reviewing a video-recorded interview to predict how the witness or suspect would present on the stand. Assessments could be made on behavioural traits related to confidence and believability in the eyes of judges and jury. Even though investigators who adhere to the science around the detection of deception wouldn't place much weight on body language, defence lawyers and judges often do. For the prosecutor, forewarned is forearmed.

When preparing for cross-examination of a suspect, prosecutors could also benefit from knowing what the defence argument would be at trial. A suspect interview would be a crystal ball, permitting the prosecutor to predict what the accused would say on the stand, as well as areas that might require probing and challenge.

Having committed a suspect to an agenda could also prove to be useful as it would be hard for him to change his story when giving evidence at trial. Generally, a prosecutor would hold a voir dire prior to the trial proper, and if the statement were ruled admissible it would be held back and adduced as evidence should the accused later took the stand and gave testimony that differed from the prior inconsistent statement.

The “I Don't Remember” Agenda:

An example of how a statement could be used tactically by a prosecutor is when a suspect tells the interviewer that he could not remember part or all of an event. In this case, the prosecutor would request a voir dire to have the statement admitted. Should the accused choose to give evidence that miraculously gave a detailed recollection, the prosecutor could apply to have the already-admitted statement adduced as evidence, and use it as a basis for cross-examination. Keep in mind that a suspect who has not committed himself to a statement could say anything at trial. Help your prosecutor to avoid this happening by inviting suspects to commit to an agenda, even if it is, “*I don't recall anything*”.

A Denial is Often as Valuable as a Confession

I was trained to stop denials at all cost as it was believed that they, if left unchecked, would lead to repetition of the denial and this could lead to what is called habituation. We were told to, if necessary, raise a hand and firmly tell the suspect to stop denying. When this technique led to accusations of oppression, meaning it could cause any person to eventually confess against his will because he believed it futile to remain silent, the language was changed from “stop denials” to “handle denials”. This was mainly a semantic ruse to counter claims that the goal of the technique was to stop denials so the suspect would listen to the rationalization themes, eventually leading to the goal of obtaining a confession in a face-saving manner. It was part of the guilt presumptive, confession-oriented approach many of us used. When I look back at the times I was persistent and forceful enough to stop a denial, I

noticed something interesting. It often worked. Sometimes it took minutes and sometimes it took hours, but it worked. I learned to successfully stop a person from talking. You bet. Let's read that again: I-learned-to-successfully-stop-a-person-from-talking.

Wait a minute! Isn't the goal of an interview to obtain information from a person, and doesn't talking give you information? If you asked a suspect if he committed the alleged crime and he replied, "No", wouldn't that be information? Could a denial express his agenda to either truthfully deny the allegation or to lie to you? Wouldn't it be better to listen to the denial, and rather than challenge it, encourage the suspect to explain it further by adding fine grain detail? Wouldn't productive questioning of this detail, help us to investigate the veracity and reliability of the agenda by comparing it objectively to other evidence? If you were able to answer yes to all these questions, you now understand that the last thing we would want to do is shut down a denial. As long as your interviewee is talking, he is providing information and that information would allow for further excavation of the expressed agenda.

Often, an accused will sit down, listen to our rambling, and deny either knowing the victim or being anywhere near her at the time the offence had been committed. This is not a negative factor in your investigation, as at least you have let him commit to one version of events that you may be able to refute through further investigation. Once he has signed his name to that version (metaphorically, since we should be video recording all suspect statements, right?), it would hurt his credibility later at trial if it could be proven that he had lied in the initial version to you.

For instance, suppose you interview a man who was accused of sexually assaulting a woman. He tells you that he could not have done it as he had been in another city at the time. Investigating his alibi, you research his credit card and find that he had, in fact, used it in the city where the offence had occurred. This causes you to investigate further and you locate CCTV footage placing him in the store where the card had been used; thus, severely damaging his credibility. You could even go a step further and challenge him with the new evidence, giving him the opportunity to either satisfactorily explain the inconsistency or to choose to come off as a liar. This associated loss of credibility could also support an application for a search warrant and other investigative measures while the incident was still being investigated. Imagine how compelling this sort of evidence would look in an information to obtain a search warrant.

As long as you were able to have the accused commit to one version of events, even if it were a denial, you would have made it difficult for him to come up with a better version later on. If you had waited until after he had read over all your disclosure material, you would have given him the opportunity to defend himself by logic. From your evidence, he may have found an opportunistic defence. However, if you had allowed him to provide a version of events early in the investigation, he might have been more apt to rush into the decision to lie, and make mistakes. This does not mean your intent should be to fool the accused into saying something that he did not mean to say. It should be to allow him to provide a version of events that he would be willing to accept as "his truth"; what he wanted us to believe, however he wished to say it. It would incorporate all the best practices of a witness interview to obtain a detailed and uncontaminated account. If this version were proven to be fraught with untruths, then, only the author of the lies would have been to blame. It's all about choices, and we should not feel we had acted unethically as long as we had not deprived the suspect of those choices.

The investigation might also benefit from striking while the iron were hot. If you had a suspect but limited evidence to support an arrest, it might be worth your while to invite him for an interview before too much time had passed. If you waited until you had sufficient evidence, which could take months, the suspect might claim to have forgotten what he had done that day (and he might not be lying) and, thus, be unable to provide an accurate account. For example, let's suppose you were investigating a sexual assault where the victim had been unable to identify the suspect, but had been given the name John Smith by a friend who speculated that it might be him based on the description. Suppose that you had no physical or verbal evidence to link John Smith to the crime. He would simply be a suspect, and a weak one at that. In cases like this, the best course of action would be to interview John Smith as soon as possible so you could commit him to an alibi (or whatever agenda he had) while he would be unable to use the line, "I can't remember what I was doing then as it was long ago". There would be nothing wrong with asking someone what he had been doing, as long as you did not unjustly accuse him without having first obtained sufficient evidence. As investigators, we should not have to be afraid to do our job, which is to talk to people to obtain

information that could direct us to the truth. There is a difference between telling a suspect, *"I know you did this"*, and asking him, *"Did you do this?"*. You should have proof before you point fingers, but all you need is suspicion to pose questions.

Valuable Experience May Be Gained

If I were to ask you how an NHL player got to be so good, for the average player you would probably respond that he got to where he was by working hard and practicing often. Why is it, then, that when I ask how someone became such a great interviewer, I often receive a reply such as, *"Because he has the gift of the gab"*, or *"Because he took all the courses"*. While it may be true that some people have a gift, as with Wayne Gretzky or any top-level athlete, they would not have attained their level of success without extensive practice. Although Gretzky might have made the NHL by practicing two days a week instead of seven, it is fair to say that he would not have reached his full potential.

Interviewing is the same. The difference between a great interviewer and one who was proficient would be the effort put into honing the skill. Courses and personal research are definitely beneficial; however, without repetitive, practical application of the material you would not improve to the point of being as good as you could have been. Why? Simply because each interviewee is distinct from all others in both personality and behaviour, and you would be unable to learn how to adapt to situations posed by these variances. You would not develop the repertoire of responses often gained only through post-failure self-evaluation. In a somewhat Darwinian approach, only those who build a large repertoire of responses to situations, would be able to draw from experience and survive through adaptation. An interview deals exclusively with people and because every person has a distinct behaviour, to enter into an interview without reading that person is tantamount to going into battle without knowing whether the other person was armed with a sword or a rocket launcher. The ability to read a person (and by this I mean being able to gain insight into his values, morals or agenda, as opposed to detecting deception), is a learned skill which could degrade without constant practice.

Repetition and practice could also increase interviewer confidence, which, in turn could improve the interview process. Experience would allow you to become so familiar with the process that you could pay more attention to being creative when faced with unusual circumstances. If you were always thinking about your next move, you would not be prepared to handle the unexpected. By becoming well-versed in the art, and it is an art, you would be able to forget about the rules and be as creative as you wanted. This acquired spontaneity would leave you free to use everything in your arsenal within a framework, which would be predominantly oriented to the behaviour and responses of the interviewee.

Having a vast array of experiences would also allow you to be yourself during the interview. Often, when learning a new trade, we tend to mimic more experienced people while we search for our own style. Although this is the highest form of flattery for the person we were trying to emulate, it would not lead to successful outcomes when interviewing. In the same way that the suspect is able to intrinsically read your verbal and non-verbal cues related to fairness and empathy, he would be able to tell that you were trying to be someone you were not. If he picked up that you were pretending to be someone else, it might be wrongfully perceived as insincerity; thereby, negatively affecting your ability to convey that you cared about him. Watch the experts, learn from them, and work on developing their techniques to fit your own specific personality. A great interviewer is herself in the room. She also learned the trade from someone else, but she does not try to be that person.

Conclusion

As the majority of police investigations are built on a framework of verbal evidence, the value of a good interview is priceless. I will go as far as to state that any police officer who is not a proficient interviewer has no place investigating anything more complex than a shoplifting. I am not advocating that all investigators must be great interviewers, simply that they are proficient in this skill. So, what is the difference?

Great interviewers often come from a combination of natural talent or ability, hard work and training; whereas, proficient interviewers come from hard work and training alone. As the differing variable is the natural talent, anyone could become a proficient interviewer if they wanted to. As it is; thus, a matter of choice, I encourage you to seek as much training as possible (this could be in the form of courses or independent research) and to practice your skills at every available opportunity. The skills required to become proficient would not be achieved in a matter of weeks; but it wouldn't be a matter of decades either. Get out there and master this art as it will put you head-and-shoulders above those who expect to get prime investigative positions because of their seniority or ability to "talk the talk". Take the time to become the type of investigator who would be a valuable asset to any section that prides itself on conducting investigations that are efficient, thorough, ethical, and fair.