

Excerpts from
Behind the Scenes

Considerations for Planning and Preparing an Investigative Interview



Part One: Goals and Agendas

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“All the world’s a stage,

And all the men and women merely players;

They have their exits and their entrances,

And one man in his time plays many parts, ...” William Shakespeare, *As You Like It*, Act II, Scene VII

A couple of years ago, I put on some nice clothes and went downtown to see the musical “Les Miserables”. Although it was being touted by some as an incredibly cultural event that would make me a better person, all I got from the actors was that pre-revolution France sure had a lot of extremely loud citizens, many of whom were dirty and owned at least one pitchfork. I readily admit that my lack of appreciation was more due to my musical taste, or lack of, as many other audience members seemed to enjoy the overall experience. Amazingly, I was able to stay in my seat until the intermission but only by distracting myself. I paid attention to everything except what was being done by the throng of unwashed yellers and I was far from bored. There was so much going on in the background that I could have kept myself amused for days. I activated my selective attention and noticed aspects of the production that I probably wouldn't have picked up on had I appreciated the music and acting; aspects that were as important to the end result as the singing, dancing and yelling. The costumes, the make-up, the set design, the acoustics, the lighting, and the audio-visual equipment were exquisitely prepared and played a huge role in the success of the production.

While driving home, and listening to my favourite classic rock station, turned up to 11 out of 10, it struck me that we often undervalue what goes on in the background and focus primarily on the “main event”. As an interviewer and educator, it reinforced that the planning and preparation of an interview, as with a stage production, could have a profound effect on the end result. With interviewing, it could be a deciding factor in the quantity and quality of information received. Let's look at some of the factors that should be considered when planning to interview an adult whether she or he is a witness, victim or suspect. This is not an exhaustive list of suggestions and it, as with many facets of interviewing, is not cast in stone. They are to be applied according to the context and circumstances unique to each situation.

The term “agenda” as it relates to this paper:

While the word “agenda” may have various definitions, in relation to investigative interviewing I prefer to think of it as the information a person, either witness or suspect, chooses to mention or omit during the interview. This agenda may differ between witnesses for many reasons, some of which may be purely idiosyncratic. Regardless, it is what the witness is willing to mention in a free recall narrative and; therefore, might be open to being questioned on further into the interview process. Generally, a witness or victim (for the purpose of this paper, unless specified, they will be treated as one-in-the-same) would have an agenda similar to the interviewer’s. Both parties would share the desire to provide the investigation with complete and reliable information. However, a suspect, due to potential jeopardy associated with providing information, may choose to work from an agenda that differs from the interviewer’s. This term will be mentioned throughout the paper as, whether it be used in relation to a witness or a suspect, it might dictate the route the interview should take if the goals are to be reached. In general, the suggestion would be to exhaust the interviewee’s agenda prior to making an attempt to move into the interviewer’s. This general rule allows for a process that is more conversational and could motivate the interviewee to provide fine-grain detail in a non-threatening, conflict-free manner. Moving to the interviewer agenda prematurely could have the deleterious effect of shutting the interviewee down before s/he had provided all the information that would have otherwise been provided.

Goals of an Investigative Interview of a Witness:

The primary goal of an investigative interview is to obtain information that is both complete and reliable. This means that a Cognitive Interview framework should be used as the environment in which the interview would take place would be consistent with what we know about human memory and recall. More specifically, the interview should be conducted in an atmosphere conducive to achieving the goals of completeness and accuracy. Whereas some may argue that an appropriate framework should also

ensure a credible account, this is often misleading. Reliability and accuracy are related to the content provided, the words uttered by the interviewee; however, credibility holds a closer link to the attitude or agenda of the interviewee. The reason these terms must be differentiated is that there may be times that an interviewee might be credible, he or she has chosen to provide accurate and complete information; however, due to one of many possible factors, is unable to achieve the qualitative or quantitative goals of the interview. (*R. v. Mitchell* (ONSC) [November 13, 2018]), (*R. v. H.C.*, 2009 ONCA 56)

An additional goal of any interview is to commit the interviewee to a version of events so that their version could not evolve with time to either intentionally mislead or because of some frailty associated to human memory. When recording equipment is used, which should always be a best practice, the history of a person's account could be tracked and assessed as the investigative process unfolds. Even if a witness said s/he didn't remember what happened, the mere fact that this agenda had been caught on audio would allow a prosecutor to prepare for trial knowing what each witness would or would not be able to say. It would also help the prosecutor deal with a hostile or adverse witness by being able to prove to the Courts that a prior inconsistent statement had been given.

Goals of an Investigative Interview of a Suspect:

The witness goals would still apply, complete and reliable information, but there would be more emphasis on aspects related to Court admissibility and adherence to ethical standards. Moreover, it could be argued that the aspect of credibility could present more often in a suspect interview due to an increased desire on the part of some suspects to present an agenda that differed from the interviewer's. What this means is that, generally, a witness would present in a more neutral manner and provide information based more on memory than a guarded or protective agenda. The witness' agenda would be to tell the truth as s/he

believed it. Conversely, a suspect, who had reason to hide from detection, might modify his or her account to suit a pre-determined agenda. Examples of this agenda are:

- Telling the complete truth
- Providing a complete denial ... *"I didn't do it"*
- Providing a partial truth ... *"I was there but was only a witness"*
- Providing an alibi ... *"I wasn't even there. I was on the other side of town at that time."*
- Providing a technical denial ... *"I did not hit her with my fist"*
- Providing an objection ... *"I am not a violent person"*
- Rationalization by minimizing the moral gravity ... *"This was the only time"*
- Rationalization by projecting all or an aspect of blame on someone or something else ... *"She started it"*

In presenting the potential agenda differences between a witness and suspect, I am in no way suggesting that all witnesses would have a saintly agenda or that all suspects would aim to mislead in some way. Additionally, I am not suggesting that considering interviewee agenda before and during an interview would relieve us of implicit and confirmation bias. What I do hope to achieve by raising this point is to ensure interviewers simply consider the potential of interviewee agenda that conflicts with their own and that he or she hold firm to a framework that reduces the likelihood that any resultant biases would leak into the interview process. In short, suspect interviews are often inherently different than witness interviews so a one-size-fits-all approach would not be recommended.

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