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## Concluding Remarks on the Future of Interviewing and Interrogation: Advancing Science and Practice

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### 24.1. Introduction

As highlighted in various chapters throughout this anthology, there has been much debate by academic researchers and practitioners around the world concerning the use of the terms ‘interrogation’ and ‘interview’. However, regardless of which term is used, the outcome of that interaction should also reflect the full exercise of legal rights by a person at each stage of contact with public authorities – regardless of whether such encounters are labelled as conversations, interrogations, interviews or questioning.<sup>1</sup> Such ‘interviews’<sup>2</sup> are extraordinarily rich and dynamic psychological environments. They involve *social judgments* of trustworthiness and reliability – the judgments made by the interviewer about the credibility of the interviewee. Furthermore, the interviews (ideally) should be non-coercive and involve the *dyadic element of rapport*,<sup>3</sup> that is, a positive

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<sup>1</sup> Anti-Torture Initiative, Association for the Prevention of Torture and the Norwegian Centre for Human Rights, Principles on Effective Interviewing for Investigations and Information Gathering, 2021 (‘Méndez Principles’) (<https://www.legal-tools.org/doc/wbfiw1/>); see also Chapter 6 of this book.

<sup>2</sup> Throughout this chapter, we will use the terms ‘interview’ and ‘interviewers’, which include ‘investigative interviews’ and ‘non-coercive interrogations’.

<sup>3</sup> See Chapters 4 and 15 of this book for more details on rapport.

quality of a social interaction conducive to the disclosure of information. Finally, these interactions should reflect *effective questioning techniques*, a feature that is contingent on a number of factors, including contextual as well as case-specific ones.

Across this anthology, the main focus of discussion is around victims, witnesses and suspects of crime; however, the content is still very relevant to other areas of work where interviews are conducted by military, security and intelligence personnel in different operational settings. Research drawing on the psychology and phenomenology of innocence<sup>4</sup> shows that suspects of crime who are innocent and have no guilty knowledge tend to approach an interview in a naive fashion, frequently waiving their rights to silence or legal counsel. Furthermore, they tend not to have a strategy regarding how to curate information,<sup>5</sup> likely for the obvious reason that they do not have any guilty knowledge to conceal. These facts insert an *epistemic problem* into the process: interviewers have to continually make decisions and must do so during a dynamic, high-stakes and often stressful environment. In addition to conducting judgments of credibility, interviewers need to organize their thoughts about additional questions, when and how to challenge or confirm specific parts of what the interviewee has said, whilst, at the same time, engaging in relationship-building and encouraging open dialogue. Whilst being interviewed can be mentally taxing for even the most co-operative interviewees, conducting effective interviews is also a cognitively demanding activity.<sup>6</sup>

## 24.2. The Psychology of Rapport

As outlined in this anthology,<sup>7</sup> rapport is generally understood as a co-ordinated form of action and characterized by positivity – a state of communicative alliance.<sup>8</sup> There is now consensus amongst scholars that interviews characterized

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<sup>4</sup> Saul M. Kassin, “On the Psychology of Confessions: Does Innocence Put Innocents at Risk?”, in *American Psychologist*, 2005, vol. 60, no. 3, pp. 215–228; Kyle C. Scheir, Allison D. Redlich and Saul M. Kassin, “Cumulative Disadvantage: A Psychological Framework for Understanding how Innocence Can Lead to Confession, Wrongful Conviction, and Beyond”, in *Perspectives on Psychological Science*, 2020, vol. 15, no. 2, pp. 353–383.

<sup>5</sup> Leif A. Strömwall, Maria Hartwig and Pär A. Granhag, “To Act Truthfully: Nonverbal Behaviour and Strategies During a Police Interrogation”, in *Psychology, Crime & Law*, 2006, vol. 12, no. 2, pp. 207–219.

<sup>6</sup> Pamela Hanway, Lucy Akehurst, Zarah Vernham and Lorraine Hope, “The Effects of Cognitive Load During an Investigative Interviewing Task on Mock Interviewers’ Recall of Information”, in *Legal and Criminological Psychology*, 2021, vol. 26, no. 1, pp. 25–41.

<sup>7</sup> See Chapter 4 of this book.

<sup>8</sup> Allison Abbe and Susan E. Brandon, “The Role of Rapport in Investigative Interviewing: A Review”, in *Journal of Investigative Psychology and Offender Profiling*, 2013, vol. 10, no. 3, pp. 237–249.

by *rapport* are superior to the confrontational, accusatory interrogation styles that pervade practice in many countries across the world, including the US. Such accusatory styles are associated with the production of false information, including false confessions<sup>9</sup> especially where the interviewee is vulnerable.<sup>10</sup> From a theoretical point of view, the most influential model of rapport consists of three components:<sup>11</sup> (i) mutual attentiveness; (ii) positivity; and (iii) co-ordination. Empirical evidence supports the claim that rapport-based interviews lead to substantial information gain while, importantly, reducing the risk for compromised and false information compared to confrontational and coercive techniques.<sup>12</sup> However, there remains much to learn about rapport and the mechanisms by which these outcomes are achieved. Operational definitions of rapport differ from study to study, thus further conceptual clarification is required.<sup>13</sup> However, fundamentally, we now know that the evidence for using rapport appears to be scientifically very strong indeed.<sup>14</sup>

### 24.3. The Challenge of Advancing Science and Practice

The science on non-coercive interviewing and information-gathering has progressed significantly over the last few decades, and we have now reached a point where we can give consensus-based recommendations to policymakers and practitioners in various operational contexts. However, many elements remain either understudied or entirely neglected. For example, as discussed above, whilst there is consensus that building and maintaining rapport is conducive to gaining accurate and reliable information, there is far less consensus on the

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<sup>9</sup> Gisli H. Gudjonsson, “The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions”, in *Frontiers in Psychology*, 2021, vol. 12, pp. 1–15; Richard A. Leo, *Police Interrogation and American Justice*, Harvard University Press, 2008; Aldert Vrij *et al.*, “Psychological Perspectives on Interrogation”, in *Perspectives on Psychological Science*, 2017, vol. 12, no. 6, pp. 927–955; Saul M. Kassin *et al.*, “Police Interviewing and Interrogation: A Elf-Report Survey of Police Practices and Beliefs”, in *Law and Human Behavior*, 2007, vol. 31, no. 4, pp. 381–400.

<sup>10</sup> See also Chapters 1 and 3 of this book.

<sup>11</sup> See Linda Tickle-Degnen and Robert Rosenthal, “The Nature of Rapport and Its Nonverbal Correlates”, in *Psychological Inquiry*, 1990, vol. 1, no. 4, p. 285; See also Chapter 4 of this book.

<sup>12</sup> Fiona Gabbert *et al.*, “Exploring the Use of Rapport in Professional Information-Gathering Contexts by Systematically Mapping the Evidence Base”, in *Applied Cognitive Psychology*, 2021, vol. 35, no. 2, pp. 329–341.

<sup>13</sup> Irwin Altman, “Conceptualizing ‘Rapport’”, in *Psychological Inquiry*, 1990, vol. 1, no. 4, p. 294; see also Chapters 1 and 3 of this book; for a particularly critical examination, see David A. Neequaye and Erik M. Giolla, “The Use of the Term Rapport in the Investigative Interviewing Literature – A Critical Examination of Definitions”, in *Meta-Psychology*, 2022, vol. 6, pp. 1–15.

<sup>14</sup> See also Chapter 4 of this book.

conceptual nature of rapport.<sup>15</sup> This is a problem that demands not only empirical research, but also a re-examination of existing theoretical models.

Furthermore, research on interviewing and interrogation has largely focused on a particular setting – the criminal justice system (‘CJS’).<sup>16</sup> Such interviews are, of course, vitally important, but do not represent the full spectrum of contexts in which information-gathering takes place. For example, researchers frequently attempt to replicate what occurs once a person has been taken into custody and interviewed in a police station, however, interviews and interrogations can and do occur in many other locations depending on the context (for example, on ships, on aircraft, in tents, in hotel rooms, or entirely casual or domestic contexts like bars or people’s homes). Such interviews are not illegal and may well be justified, or at least acceptable, depending on the context and country in which they are taking place.<sup>17</sup> Such interviews are not only different physical spaces but *different psychological environments altogether* and the person may not be under arrest (nor in custody). In the case of covert interviewing, the interviewee (or target) may be completely ignorant about the fact that they are being interviewed. More broadly, the dialectic nature of interviews and interrogations are rarely captured – most commonly, researchers study the conduct of an interviewer or interrogator and its impact on what the interviewee says or does. In many ways, this static approach overlooks the interactional qualities inherent to interviews and interrogations.

There has also been substantial concern from *within* the operational communities that interviewing and interrogation practice in many countries is either at odds with science or lacking any scientific underpinning whatsoever. For example, in the US in 2004, under the auspices of the Office of the Director of National Intelligence (‘ODNI’), the Intelligence Science Board (‘ISB’) commissioned the study of ‘Educating Information’ to examine the current state of scientific knowledge regarding interrogation practice and learn about training programs that prepare individuals to conduct custodial interrogations. The study was predicated upon the ineffective and counter-productive interrogation practices within the US military and Central Intelligence Agency (‘CIA’). The ISB study showed that there had been no government-funded research on interrogation topics since the 1950s. The study team stated that they “could not discover an objective scientific basis for the techniques commonly used by US interrogators”.<sup>18</sup> This was viewed as a significant revelation, as the ISB team reviewed

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<sup>15</sup> See also *ibid.*

<sup>16</sup> Vrij *et al.*, 2017, see *supra* note 9.

<sup>17</sup> Méndez Principles, Principle 3, para. 148, see *supra* note 1.

<sup>18</sup> ISB, *Educating Information Intelligence Interviewing: Teaching Papers and Case Studies*, ODNI, April 2009, p. 1.

the training and practices of the Federal Bureau of Investigation ('FBI'), the Federal Law Enforcement Training Center and the Homicide Division of the Boston Police Department. The Educing Information study states: "The effectiveness of standard interrogation techniques has never been validated by empirical research".<sup>19</sup> As a government study commissioned by the ODNI, the Educing Information study paved the way for a new wave of research into the practice of interrogation.

### 24.3.1. The Pitfalls of Using Unscientific Methods

Corrupted, incomplete, inaccurate, misleading and fabricated data can significantly disrupt any system or process. Ineffective practice within the law enforcement, military, security or intelligence spaces, which relies on information to guide tactical and strategic decisions, can have sizeable and long-range consequences. Ineffective practice impacts those individuals suspected of crimes, witnesses or victims of crime, as well as those from whom intelligence is collected.

More broadly, the outcomes from the interpretation of the information generated can result in the significant commitment of resources, including placing authorities and citizens in situations of heightened anxiety. Ineffective interviews and interrogations can also result in false information that is then used as the basis for searches and arrests, or they can result in an inability to collect untainted witness information that may be used to stop or prevent crime. On a national level, a significant commitment of resources may be unwarrantedly allocated leaving other areas more vulnerable. Furthermore, from a procedural justice point of view, unwarranted arrests, false confessions and unprofessional conduct undermine the public's trust in their institutions and consequently reduce compliance with authorities.<sup>20</sup> Innocent people go to prison (while the guilty go free) due to systemic inadequacies in the CJS. The burden of wrongful convictions disproportionately affects racial and ethnic minorities.<sup>21</sup>

At the time of writing of this chapter, the US National Registry of Exonerations reports that 3,293 people have spent a total of 29,100 years incarcerated for crimes they did not commit, a number that is likely to represent a 'tip of an iceberg' situation. The Innocence Project's<sup>22</sup> seminal efforts to exonerate wrongfully convicted people using post-conviction DNA analysis has shown that over

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<sup>19</sup> Ariel Neuman Daniel and Salinas-Serrano, "Custodial Interrogations: What We Know, What We Do, and What We Can Learn from Law Enforcement Experiences", in Robert Fein, Paul Lehner and Bryan Vossekuil (eds.), *Educing Information, Interrogation: Science and Art*, National Defense Intelligence College, Center for Strategic Intelligence Research, 2006, p. 143.

<sup>20</sup> Tom R. Tyler, *Why People Obey the Law*, Princeton University Press, 2006.

<sup>21</sup> Samuel R. Gross, Maurice Possley and Klara Stephens, "Race and Wrongful Convictions in the United States", National Registry of Exonerations, 2017, pp. 1–32.

<sup>22</sup> See the Innovent Project's web site.

25 per cent involve false confessions. Again, the raw number of cases is likely to be an underestimate because the sample does not include “those false confessions that are disproved before trial, many that result in guilty pleas, those in which DNA evidence is not available, those given to minor crimes that receive no post-conviction scrutiny, and those in juvenile proceedings that contain confidentiality provisions”.<sup>23</sup> Furthermore, it is unknown how many wrongful convictions occur because of coercive interrogation that results in false information short of false confessions that still lead the investigation astray.

On a geopolitical level, false and fabricated information that is the product of ill-treatment or counter-productive methods can heighten tensions among countries, even leading to war. For example, the US went to war with Iraq based partially on false and fabricated information that was the result of a coercive interrogation that claimed the existence of high-level Al-Qaida connections in Iraq. That false information was promoted as a fact to the American public by then President George Bush and by the United Kingdom’s then Prime Minister Tony Blair. Former US Secretary of State Colin Powell also used this false information resulting from coercion before the United Nations (‘UN’) to obtain coalition support to wage war with Iraq.

But where did this false information come from? Analysis of this context reveals a commitment to dangerous and unscientific practices at the time. Specifically, the military interrogations at Guantánamo Bay, Cuba, in 2002, led former Secretary of Defense Donald Rumsfeld to justify the adoption of the same Survival, Evasion, Resistance and Escape methodologies the CIA was using at Black Sites, calling them ‘counter-resistance interrogation techniques’. The Pentagon authorized the utilization of this family of interrogational abuses after the Assistant Commandant of the US Army Intelligence Center and School at Fort Huachuca, Arizona, conducted a review of military intelligence interrogations and declared Guantánamo as ‘America’s Battle Lab’. Fort Huachuca is the primary provider of interrogation training for military intelligence, and the US Army is the executive agency within the US armed forces responsible for military intelligence interrogation policy. A subsequent congressional investigation into detainee abuses by the Senate Armed Services Committee (‘SASC’) concluded that the interrogational abuses used by the CIA at Guantánamo Bay migrated within operational units in Afghanistan and Iraq and led to the atrocities of Abu Ghraib, Iraq. The price of ineffective practice in this instance was substantial. During the height of casualties of US and coalition-led forces in Iraq, one of the chief reasons that foreign fighters (other than Iraqis) were recruited onto the battlefield were the prisoner abuses – in other words, insurgency

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<sup>23</sup> Vrij *et al.*, 2017, p. 3, see *supra* note 9.

recruitment was propelled by the discovery of abusive interrogation tactics used by American forces, surely using more force than was necessary. Here, the price of unscientific interrogation practices can be measured in human lives.<sup>24</sup>

The broader impact of using unscientific, ineffective and counter-productive interrogation techniques are not confined to the geopolitical space. In fact, the very same problem has plagued the US' CJS for a long time, yet reform has been slow or non-existent. The US President's Commission on Law Enforcement and the Administration of Justice released a report in 1967 called "The Challenge of Crime in a Free Society", including chapters named 'Science and Technology' and 'Research-Instruments of Reform'.<sup>25</sup> In August 2013, the International Association of Chiefs of Police ('IACP')<sup>26</sup>, the world's largest and most influential professional association for police leaders, with over 30,000 members in 160 countries, published the results of the 'IACP National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions', acknowledging systemic deficiencies, including that of false confessions.

In addition to the dearth of scientific foundation within the US law enforcement community, intelligence components within the US military responsible for conducting human intelligence and counter-intelligence operations, which includes interrogations to collect information, are likewise hampered. The training programs are largely based on legacy methods that have not been subjected to empirical study. These military intelligence interrogations are guided by the policies set forth in the Army Field Manual ('AFM') 2-22.3, 'Human Intelligence Collector Operations'.<sup>27</sup>

On a policy level, the National Defense Authorization Act ('NDAA')<sup>28</sup> implemented the so-called 'McCain-Feinstein Anti-Torture Amendment' in 2016, which prohibited the most severe forms of torture but did not address general coercion in interrogation. Upon passage, the late Senator John McCain, as the SASC Chairperson, said:

I believe past interrogation policies compromised our values, stained our national honor and did little practical good. This

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<sup>24</sup> Douglas A. Johnson, Alberto Mora and Averell Schmidt, "The Strategic Costs of Torture", *Foreign Affairs*, 1 January 2016.

<sup>25</sup> US President's Commission on Law Enforcement, "The Challenge of Crime in a Free Society", Washington, D.C., 1967.

<sup>26</sup> See the International Association of Culinary Professionals' web site.

<sup>27</sup> US Department of the Army, *Human Intelligence Collector Operations*, Field Manual No. 2-22.3, Washington, D.C., 6 September 2006 (<https://www.legal-tools.org/doc/wbfiw1/>).

<sup>28</sup> US, National Defense Authorization Act for Fiscal Year 2016, 25 November 2015, Public Law No. 114-92 (<https://www.legal-tools.org/doc/or0k6w/>).

amendment provides greater assurances that never again will the United States follow that dark path of sacrificing our values for our short-term security needs.

With that legal action, AFM 2-22.3 became law, implementing policies that: “An individual who is (i) in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or (ii) detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict” (NDAA Sec. 1045 (a)(2)(B)) “shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in the AFM 2-22.3” (NDAA Sec. 1045 (a)(2)(A)). It is a major problem that the AFM, as it is currently written, is an official interrogation policy across the spectrum of armed conflicts. While a thorough review of the AFM from a stringent scientific perspective has never been conducted (a problem in itself), the best practice report released by the High-Value Detainee Interrogation Group (‘HIG’)<sup>29</sup> showed that the AFM was inconsistent with scientific findings on interrogation.

In recent years in the US, the science of interrogation has progressed, largely driven by the research arm of the HIG,<sup>30</sup> formed by the Obama administration in 2009. The HIG was established as an inter-agency component, with a Director from the FBI and two Deputy Directors from the CIA and Department of Defense and focused on intelligence interrogation of high-value detainees. In 2012, the HIG constructed a one-week training course that incorporated HIG-sponsored research, as well as other relevant science, to offer instruction in methods that included rapport-building and how to strategically utilize evidence and information to elicit reliable information. While HIG-sponsored training has been offered to other US federal agencies and some local law enforcement, the HIG is not resourced to provide training, and their Charter does not include a mandate to provide or disseminate research or training.

The McCain-Feinstein Amendment to the 2016 NDAA included specific instructions that:

[...] not sooner than three years after the date of the enactment of this Act, the Secretary of Defense [...] shall complete a thorough review of Army Field Manual 2-22.3, and revise Army Field Manual 2-22.3, as necessary to ensure that Army Field Manual 2-22.3 complies with the legal obligations of the United States and the practices for interrogation described therein do not involve the use or threat of force (NDAA, Sec. 1045 (a)(6)(A)(i)).

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<sup>29</sup> HIG, “Interrogation: A Review of the Science”, September 2016.

<sup>30</sup> See Chapter 22 of this book.



The magnitude of the problem of using unscientific methods is global in scope. However, a recent high profile international initiative, led by the former UN Special Rapporteur on Torture, Professor Juan Méndez, has signalled the opportunity for a global step-change in organizational approach and practice in the treatment of detained people. In May 2021, following a four-year project and the contributions of almost 100 international experts, the Méndez Principles on Effective Interviewing for Investigations and Information Gathering were launched.<sup>31</sup> The Méndez Principles are, in essence, an acknowledgement that the successful outcome of an interview is interconnected with the full enjoyment of human rights by a person at each stage of contact with state authorities – regardless of whether such encounters are labelled as ‘conversations’, ‘interrogations’, ‘interviews’ or ‘questioning’. The Méndez Principles present an alternative to the risks of coerced statements and brutality of torture and a recognition that these tactics lead to false confessions and unfair trials and undermine the delivery of justice.

#### 24.4. Conclusion

The fundamental challenge that remains ahead of us is the following: *how do we improve and advance the current science and practice of interviewing and interrogation?* We believe this involves furthering scholarship and the stimulation of research and, critically, a synergistic interoperability of researchers and practitioners engaged in the science and practice of interviewing and interrogation. Whilst policing and law enforcement has long recognized the value of scientific evidence in criminal proceedings, for reasons that are not clear, in many countries, the behavioural sciences have been less embraced. We believe the time is overdue to marry the science of interviewing and interrogation with the practice – the gap between what scientific research shows is working and the actual practice of interviewing and interrogation has remained wide for far too long in many countries. It behooves both academics and practitioners to join forces in order to (i) further develop science-based interviewing and non-coercive interrogation methods; and (ii) implement these methods in practice. We believe that (continued) *collaboration between scientists and practitioners* is critical both to ensure the validity and legitimacy of research, as well as the implementation of science-based methods in practice.

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<sup>31</sup> Anti-Torture Initiative, Association for the Prevention of Torture and the Norwegian Centre for Human Rights, *Principles on Effective Interviewing for Investigations and Information Gathering*, 2021 (‘Méndez Principles’) (<https://www.legal-tools.org/doc/wbfiw1/>); see Chapter 6 of this book.