Draft paper for Criminal Investigation Workshop

Please note this paper is a draft only and presents initial findings and observations from a practitioner viewpoint.

“Society cannot afford investigative interviewing to be poor. This affects people’s perceptions of the criminal justice system. The guilty get away, the innocent are convicted, justice for children and vulnerable adults is inadequate. Poor interviewing is of no value to anyone; it is a waste of time, resources and money. No one wins. People will not come forward if they have no confidence in the quality of investigators’ interviewing techniques”. Milne and Bull (1999, pg 191):

Introduction:

An “investigative interview” is a structured conversation with a party to a crime with the aim of recording that person’s account of events. It is a method of questioning that can be used with suspects, victims and witnesses which elicits best evidence information whilst eliminating or avoiding the methods that breach the rules of evidence and render a interview inadmissible. Investigative interviews differ from interrogations in that the aim in not solely to elicit a confession or evidence per-se but rather to contribute to an investigation by gaining a detailed version of events. The sophistication and use of investigative interview techniques has grown considerably over the last decade, to the point that UK Courts will not generally accept confessions that were not obtained using these principles. It may just be a matter of time before Australian courts follow suit?

This paper will discuss the investigative interview and the potential challenges facing what is commonly considered the ‘jewel in the crown’ of serious crime investigation. The paper will seek to determine if lessons learnt in the UK can
prevent similar criticism and the attendant loss of confidence in the Justice system in Australia.

This paper focuses on suspect interviews rather than witnesses’ and victims and will argue that there is more to be learnt from the UK experience than the American or Canadian models of interviewing.

The paper also poses the question of what constitutes a ‘good investigative interview’ and examines the steps currently being taken in Australia to prevent or at least minimise the likelihood of a repetition of the UK experience.

**Background**

An effective ‘interrogation’ has long been seen as the key to open the door of investigations but this mystery breaker has also been the subject of much abuse and criticism. The ability of police to communicate effectively with the community, including those who are impacted upon by crime or who are in fact involved in criminal activity is identified as core to their professional practice, yet the status and credibility of policing in this specific area of police work is a topic of debate and scrutiny from all quarters, including the Judiciary, the Media and Academia. Popular entertainment including film and television seem to provide endless examples of the police interrogation usually conducted in a highly dramatic, highly inadmissible and very provocative setting; which of course makes for good entertainment but does little to reflect the reality of the everyday police suspect interview. As Dixon (2007) discovered much of the myth and fiction surrounding the activities which take place in the interview room are founded on the representations found in popular entertainment rather than the rather dull and routine reality of every day policing. For the most part interviews are conducted with low level offenders in relation to relatively minor offences (Dixon 2007, Baldwin 1993). However, as any policing practitioner will tell you, it is at this level of interview that the requisite skills of interviewing are developed. Without practice and exposure to the interview environment junior officers will not be able to develop the confidence or ability to conduct a well planned and effective interview.
This paper will argue that improving performance at all levels of investigation will reduce the likelihood of poor practice and impropriety which can lead to cases being dismissed or miscarriages of justice occurring which convict innocent people. It is also observed that despite the mundane nature of police work reported by Baldwin (1993) Milne and Bull (1999) and Dixon (2007) it is during the mundane or routine interview that the skills are developed for effective interviewing.

When it comes to international comparisons of interview methods the UK experience is in the author’s opinion far more relevant to Australian law enforcement given the similarity of the legal system. This is because the USA and Canadian systems for example allow coercive, suggestive and misleading interviews to be admitted as evidence where as the UK and Australian courts would usually dismiss any evidence obtained by using any of these techniques. The different language used around ‘interrogation’ and ‘investigation’ between the two systems is in fact indicative of the approach and style adopted by officers in these countries and whilst this differentiation will be discussed at length later in this paper it is important to determine why the historical UK focus is particularly relevant to the future of Australian investigative interviewing. Australian Judicial systems are in fact very similar to those in the UK, which is not surprising given the origins of the Australian legal system. Therefore it is insightful to look at the historical context of the UK experience regarding Investigative Interviewing to predict what could impact on Australia.

The examination of the history of interviewing in the UK is well established and the origins and development of the ‘PEACE’ model of interviewing in the UK have been debated and discussed at length (Dixon2007, Moston and Fisher 2007, Hill and Memon 2007, Schollum 2005). However, what has perhaps not been discussed in such depth is the full impact that the changes to legislation and practice had in the UK and how this situation could be replicated in Australia if action is not taken to prevent this. What can Australia learn from the UK experience?
In the UK a string of events brought police interviewing practices into the full public glare and it will be argued that this is currently occurring in Australia. One of the first cases to highlight the vulnerability of interview processes in the UK was that of Judith Ward in 1974. She was convicted of bombing a coach full of UK armed service personnel on behalf of the IRA killing 12 people. After 18 years in gaol her conviction was quashed in 1992 when the court of appeal found that the trial jury should have been told of her history of mental illness which allegedly made her susceptible to false confession under police interrogation.

In 1975 the ‘Guildford Four’ were jailed for life for bombing pubs in Guildford. The attacks left five people dead and over 100 injured. The four men spent 15 years in jail before the case was overturned in 1989. The case against them was found to be flawed and the credibility of the notes of interview were undermined as being not written up immediately. The ‘Birmingham Six’ were also convicted IRA bombers accused of killing 21 people and injuring more than 160. They spent 16 years in jail before being released in 1991 after the forensic evidence which had formed much of the basis for the case was found to be questionable. Further the ‘Maguire Seven’ (1976) including six members of the same family were imprisoned for handling explosives. The scientific evidence which formed the basis of the case was later discredited and the case overturned in 1991 (Schollum 2005).

Whilst these cases were ‘over turned’ for a variety of reasons the ‘interviews’ with the suspects, the behavior of officers during the interview process and the treatment of these high profile suspects was very much focused upon by both the Judiciary and the media at the time. Consider for a moment the position of the police officers in these cases. All very high profile murder cases with enormous pressure and public expectation for police action and reassurance. Mainland England was caught in the fear of the IRA and the day to day safety of the general public was considered to be at risk. The police, on arresting most of these suspects, were provided with ‘clear evidence’ from the forensic team in the cases of the Birmingham Six and the Maguire Seven’ linking the suspects to explosives. Without condoning this type of behavior it is easy to see exactly how the ‘scientific information’ (Delahunty 2008) and the pressure to bring
people to justice for these terrorist bombings may have contributed to the cognitive bias and heuristics which negatively impacted on the investigation and the interview process resulting in such a loss of confidence in police interview methods. (Rossmo 2009, Kebbell, Muller and Martin 2009) This point of significance in police behavior will be returned to when the current Australian position is examined.

The outcome of these cases, whether the suspects were innocent or not, brought significant discredit to the criminal justice system and by the late 1970’s it was clear that action needed to be taken to regain the legitimacy which was being seen to be so badly eroded. Following a Royal Commission in 1981, the Police and Criminal Evidence Act (PACE) was introduced. PACE introduced the tape recording of all interviews with suspects and with this came the hope that investigative malpractices including ‘verbaling of suspects’, threatening and coercive tactics would become a thing of the past. However, the introduction of PACE was not accompanied by the appropriate training on how to conduct a professional interview, merely how to switch on the tape recorder and seal the tapes as exhibits. Police found the loop holes they needed to continue interviewing suspects without tape recording them and McConville, Sanders, and Leng, (1991) concluded that nothing much had changed. They found that the tape recording of interviews had not altered the power relationships in the interview process, noted that “Interrogation takes place in an environment which increases the vulnerability of the suspect and maximises the authority and control of the police” (1991, p78). This point remains of particular relevance to the Australian context, as described by Dixon (2007) who has observed that even with the presence of video recorded interviews in Australia, the power relations between interviewers and interviewee are still strongly weighted in favour of the interviewer. Whilst police obviously need to ‘control’ the interview, it is an outdated concept for them to feel they need to ‘dominate’, this can be counterproductive and is not always conducive to obtaining a full account from a suspect.

In the UK as the courts became more aware of officers failing to adhere to the spirit of the PACE the pressure was applied to make them comply with the requirement to tape record and transcribe their interviews. In effect what this meant was that investigators had to suffer the excruciating experience of listening to and reviewing their own performance. I recollect this experience
only too clearly and when the poorly phrased, badly planned and awkward questions were written in a verbatim transcript the focus of the investigator to improve their practice was and swift.

However the turning point for Investigative Interviewing in the UK was the George Heron case (1993). Having been a Detective in Sunderland at the time of this case I clearly remember the pressure and circumstances surrounding the prolonged and later discredited interviews of Heron. Heron had been arrested in relation to the murder of Nikki Allan a 7 year old girl from the Hendon area of Sunderland. There was huge public outrage and Heron was named by locals as having been known to the victim and having been seen with her shortly before her death.

During the investigation the interviewers who had conducted the original interviews with Heron, an experienced Detective Constable and Detective Sergeant, were replaced by the Senior Investigating Officer (SIO) and his second in command, these being a Detective Chief inspector and a Detective Inspector. Both officers were highly regarded and experienced but neither were experienced at conducting tape recorded interviews. It was common practice at that time for the SIO to conduct the interviews with prime suspects particularly if it was thought that they were about to ‘cough the job’. This practice would surprise Australian police and does offend common sense in that the SIO should be able to be remain independent, objective and be able to make rational decisions based on fact rather than emotional connections to particular suspects or witnesses. In the UK context it was generally considered at that time that a confession to a more senior officer would stand up better in court particularly in high profile cases.

Unethically encouraged, by no less than the legal representative for Heron, the two officers conducted a number of lengthy and repetitive interviews. Eventually Heron provided the officers with a full confession including details which were only known to the investigation team (re forensic and location of the body). The SIO and his partner emerged from the interview victorious having elicited a ‘full and frank’ confession and Heron was charged with the murder of Nikki Allan. However, at the trial in 1993 Justice Mitchell ruled that only the first four 45 minute tapes, which contained consistent denials, were admissible. He rejected the remaining tapes on the basis that the questioning was oppressive. The rest of the interview included questions on Heron’s sexuality and religious beliefs, and suggested that Heron needed to ‘get it off his chest’ and confess. Heron was subsequently acquitted due to the
inadmissibility of this evidence. In a later civil case taken by the victim’s parents he was found liable and ordered to pay damages.

This case had massive implications not just for Northumbria Police as it was the catalyst for some of the thinking and development around the implementation of the ‘PEACE’ model of Interviewing. More directly, this case caused a wakeup call to police investigators. The conduct of the two officers involved in this case had not been considered by anyone involved in the case to be oppressive or overly persuasive. Whilst they were a little out of practice in relation to conducting taped interviews the admissibility of the interviews had never been in doubt. This form of interview was in fact quite common practice at that time. The individuals concerned were devastated and neither really recovered from this trial as they truly believed they had done their job appropriately, honestly believing they had found the right man and elicited a true confession. Hindsight being the perfect tool it was obvious that Heron was a vulnerable suspect, highly suggestible and influenced by the persuasive tactics used in the interview. However his confessions did include information which had not been released to the media or even other members of the investigation team. The loss of this case, despite the evidence suggesting guilt was a watershed in the UK and provides a clear lesson for Australia which is that times change. What was acceptable to the judiciary will not always be so and I suggest that the time of this change is rapidly approaching if it has not yet arrived!

The Introduction and refinement of the PEACE model

The longer term implications resulting from these cases and in particular the Heron case was that the UK was forced to seriously re think its position in relation to criminal justice and in particular the core function of interviewing. The result was the ‘PEACE National Package on Investigative Interview Training’ which was introduced in 1993 and was based on research conducted with both academics and police practitioners. PEACE is a pneumonic for a five step approach to investigative interviewing:

- Planning and Preparation
- Engage and Explain
- Account
- Closure
- Evaluation
The training was rolled out en-masse and it soon became apparent that the introduction of this training and the Royal Commission was to have dire consequences for many cases pending trial or hearing in the justice system. In the North East of England where the Heron case had originated the Solicitors and Barristers swooped on any opportunity to discredit interviewing officers. All interviews conducted by officers not ‘PEACE’ trained were subject to applications for exclusion and for several years otherwise sound prosecution cases were put under extreme scrutiny with numerous interviews being knocked out purely on the grounds that the officers conducting the interviews had not been PEACE trained at the time of the interview. It would be true to say that the PEACE model was passionately embraced by the judiciary who were determined to force the uptake by police.

However, the initial role out of the ‘PEACE’ model of interviewing was not met with unilateral support in policing circles. The training was tightly structured and often delivered by inexperienced trainers rather than investigators who could ‘operationalise’ the new model. The original ‘PEACE’ model had a prescriptive approach and was erroneously based on a presumption that those being interviewed would be highly compliant, literate and quite articulate. Anyone who has observed, read or undertaken police interviews can attest that this is seldom the case (Dixon 2007, Clarke and Milne 2001).

Clear delineations were drawn between the methods prescribed for witness interviewing, using a cognitive model, and suspect interviewing by conversation management techniques and this did not always work in practice. The methodology for witnesses and victims included the officer trying to establish a context reinstatement for the incident. Witnesses were to be encouraged to close their eyes and imagine that they are back at the scene of the crime and to virtually ‘relive’ the event in a cognitive state. The model also included forward and backward loops to cover the before and after of the incident and a reverse memory retrieval technique, all of which was way too complex for the average investigation and the average investigator. Frustration with the methods encouraged many investigators to slip back into old habits. The subtlety of this form of interviewing was really lost on inexperienced practitioners who were often seen trying to conduct a cognitive interview with a ‘non eye witnesses’. Obviously “there is no such thing as a one-size-fits-all” (Shaw, 2002). The need to reform and streamline the model was soon recognised. Whilst there was general acceptance that ‘PEACE’ offered an
excellent framework for investigative interviews and that its principles were sound (Shaw, 2002), a more practical tiered approach was needed.

A ‘Tiered Approach’ for the various levels of training and roles was adopted on a National level with a renewed commitment to improve the quality of Investigative Interviewing. The five-tiered structure of interviewing skills was developed as follows:

1. probationers and uniform patrol officers – basic investigation
2. uniform investigators and detectives – serious and complex crime
3. specialist interviewers – children and vulnerable witness/suspects
4. investigative interview supervisors/managers – responsible for overall supervision and standards
5. specialist interview advisers – advise senior investigating officer on full interview strategies for serious and complex crime

The revised method focused on 3 distinct techniques:

• free recall – allowing a interviewee to fully articulate their account followed by probing to obtain uncontaminated detail
• conversation management – usually with a suspect or uncooperative interviewee, requiring free recall followed by probing and challenges where appropriate and
• enhanced cognitive interview – full cognitive reinstatement with a compliant interviewee willing to cooperate fully.

Levels 1 and 2 of PEACE training emphasize the practicality and usefulness of applying ‘free recall’ and ‘conversation management’ techniques when obtaining the interviewee’s account of events. A basic ‘enhanced cognitive interview’ is also taught at the Tier 2 level. Officers are provided with a ‘tool-kit’ of techniques that they can apply within these interview models as and where appropriate. (Schollum 2005)

The more sophisticated enhanced cognitive interview techniques are only advocated for use in advanced interviews (e.g., major crimes) and specialist interviews (e.g., vulnerable witnesses), and are therefore taught at the more advanced Tier 3 ‘Advanced Significant Witness Interviewing’ (Shaw 2007).
Tier 4  Investigative Interview supervisors/managers are not necessarily expected to also have the specialist skills of a Tier 3 interviewer but must be trained and experienced to at least Tier 2 for serious and complex crime. Their role is to oversight the interviews conducted by their staff and to supervise the interview process. This role is vital in ensuring that standards are maintained, training needs are identified and most importantly interviews are being conducted in an ethical manner and are evidentially sound.

Tier 5 specialist interview advisors are responsible for advising the Senior Investigative Officer in relation to all aspects of the interviewing strategies for major crime investigations. This includes advice as to the ‘who, where and when’ an interview should take place, what the interview seeks to achieve, the planning and preparation of the various interviews and the preparation of the policy document in relation to the interviews throughout the investigation. Thinking of an investigation in this holistic way has brought great benefit to the overall strategy of a major inquiry some of which are highly complex long term investigations requiring intimate knowledge of detail and consistency. (Shaw 2007)

More recently this model is being further refined to a three/four tier model and training concentrates far more on core skills and developing the investigative aspects of the interview, closely aligned to the ‘Professionalising Investigation Programme (PIP)’. This programme is a jointly sponsored by Association of Chief Police Officers (ACPO) and the NPIA and is designed to, “Improve the professional competence of all police officers and staff who are tasked with conducting investigations”. (NPIA 2009) Through this joint approach the role of the supervisor and the interview advisor is enhanced and the push to engage more officers at all levels in professional Investigative Interviewing remains a challenge in the UK in much the same way as it does in Australia. Supervision of Interviews and ongoing support ‘post training’ has been identified as an issue (Shaw 2008) and steps to address this are being taken via the National Police Improvement Agency, National Training Packages.

Whilst some of the early research claimed that the PEACE model has done little to enhance the quality of police interviewing in the UK, Milne and Bull (2003) report the change in approach from their research found that “post 1986 police interviews (in the UK) have become better planned, more structured, and the use of trickery and deceit has all but vanished” (2003 p121). In addition the PEACE model and the introduction of PACE certainly improved the ethical aspects of interviewing and great progress has been made in terms
of a National approach which enhances the capacity for highly skilled interviewers to be engaged in serious crime cases. (Shaw 2007, Clarke and Milne 2001).

Investigative Interviewing in Australia

Most Australian police services currently have some level of Interview training based around a PEACE model for recruit training. Whilst this is helpful and has improved standards (Dixon 2007) the more experienced officers have not generally been exposed to any formal training. In addition there is no “top down” pressure to adopt an Investigative Interviewing model in Australia. Steps are being taken to try to enhance the skills of officers but rather than a national approach this improvement is largely being brought about by the dedication and passion of small groups of individuals who champion the benefits of investigative interviewing. In almost every jurisdiction there are isolated attempts to utilise variations of the ‘PEACE’ model which, in some cases still reflect the early days of PEACE which are outdated and unnecessarily complex. New Zealand have adopted a national approach based on the PEACE model since 2006 and are now in the position to be training interview advisors and supervisors to further enhance their capacity.

While the foresight on behalf of these practitioners is commendable it is not likely to assist policing in Australia from suffering the loss of confidence experienced in the UK. This is because there has not been any consideration of what is the ‘best practice’ for Australia, and there are no national or jurisdictional standards. Similarly the wholesale adoption of the UK PEACE model is not appropriate because the policy and structures which have been adopted in the UK are peculiar to the unique administrative environment of the UK services.

The results of poor practice in the UK have been substantial and have created a broad practical divide in the way interviews are conducted and accepted in our nearest juris-neighbour and ourselves. Given that Australian courts still place
considerable weight in British case law, and the fact that Australian criminal justice practice is heavily influenced by UK developments it is timely to examine the current climate surrounding investigations in Australia. The UK police services were forced to adopt investigative interviewing as the base standard of admissible evidence by a determined judiciary and the weight of public opinion. It is not hard to argue that similar circumstances will inevitably arise here unless pre-emptive action is taken. In fact the wheels may already be in motion as the Courts and Judiciary appear to be taking interest in the conduct of investigative practices and a string of high profile cases have recently made media headlines leaving Police Services and the Judiciary embarrassed and looking for answers.

The archetypal intimidatory statement to a suspect is, “there’s a hard way and an easy way to do this (the interview)”. Ironically Australian police services may now find them in exactly this position, that is, developing and adopting its own form of Investigative Interviewing or having one forced upon them.

The Dr Haneef case in 2007 received enormous media coverage and publicity. The officers involved in the investigation of this case found themselves in circumstances not dissimilar to those of the UK officers in the 1970’s and 80’s. The Dr Haneef case was highly reliant upon external information from the UK in relation to Dr Haneef’s alleged involvement in the Glasgow Airport bombing and his arrest on suspicion of being involved in terrorist activity caused great alarm to the Australian public. The political and media pressure was immense and the police from both the AFP and Queensland Police Service found themselves under enormous pressure to act. The subsequent Clarke inquiry found “There were mistakes of detail, but they were in the main the results of the need to rely on overseas information and what I think were the inadequate systems of evidence recording employed. I interviewed a number of these officers, including some who have been singled out for criticism in the media, and I found them, almost without exception, dedicated, competent and impressive. Unfortunately, the investigation has been presented, somewhat unfairly, as a complete bungle”. (Clarke 2008. Pg vii)
Whilst this comment from Clarke goes some way to exonerating the actions of the police involved in the investigation he goes on to say “Finally, I record my surprise that not one of the people involved in the police investigation and the charging whom the Inquiry interviewed stood back at any time prior to the decision to charge and reflected on what Dr Haneef was known to have done” (Clarke 2008. Pg xi). This of course was due to the complete frenzy of political and media interference, the public fear that Australia actually had Terrorist cells working amongst the general population and of course the heuristics and cognitive biases that this type of situation tends to breed. (Kebble et al 2009)

The investigators, due to the nature of the incident, the information provided to them, and the pressure placed upon them by various agencies did not have the opportunity to stand back from the situation and make the normal type of investigative judgments that they would make under normal circumstances. Some of these issues bear a striking similarity to UK cases. Decisions and actions made under these kinds of circumstances are not usually typical of the officers involved and neither does it provide an excuse however the reality is that without very serious intervention they will continue to occur.

The transcripts of the interviews in the Haneef case have been made fully available to the public. These have been heavily criticized as being repetitive, boring, pointless and poorly executed (Russo 2007). The emphasis on ensuring that ‘propriety’ in relation to Dr Haneef being repetitively told of his rights to a lawyer and adopting previous conversations which take up the first nine pages of the transcript. (Dixon 2007) Knowing how these issues can be criticized in any subsequent hearing it is perfectly understandable that the officers would be very concerned about being seen to make very sure that all such ‘administrative’ aspects are covered. However despite these laborious efforts to cover all of the probabilities for criticism, Haneef’s solicitor still made representations that his client had not had the full opportunity to correct his version of earlier conversations and claimed there were “several points to consider in reading the interview transcript...”, in particular, "...It should be noted that Dr Haneef’s attempts to correct the translation of the chat-room conversation had been brushed aside by the police questioners with a promise that those corrections could be made at the end...not all of those corrections seem to have been raised at the end." Russo (2007).

The Haneef interviews would have benefitted by some adherence to the principles of the PEACE model. These interviews seemed to be somewhat lacking in real planning and preparation. They provide little opportunity for
Haneef to explain himself or give a full account by the use of a ‘free recall’ technique. The 1616 questions posed to Haneef were largely closed questions which did not elicit much information and were at times repetitive and seemingly pointless. This approach certainly did little to allow Haneef to explain his behavior and actions or provide an account as to why he was heading to India. The interviews may well have been a clearly thought through strategy but it did not appear so and therefore the interviews were always going to be open to criticism.

Other Australian cases have similarities to the UK experience, such as the Western Australian case of Mallard. Mallard was convicted of the murder of Pamela Lawrence, a local jeweler, who was killed in her shop on May 23rd 1994. The main evidence upon which the police prosecution relied was Interview evidence. In short the interviews consisted of a set of unsigned notes of interview which alleged that Mallard had confessed. The second was a video recording of the last 20 minutes of 11 hours of interview. Mallard was clearly vulnerable and suggestible and had a history of mental illness. His alleged confession was made in the third person and was rambling and confused. There was no forensic evidence to support the conviction and again it seems that the police were determined to ‘crack’ the case. During the subsequent years it was revealed that evidence had been withheld from Mallards defence team. Almost 12 years later, after an appeal to the High Court his conviction was quashed and a re-trial ordered. At the time the Director of Public Prosecutions, Robert Cock, said that Mallard remained the prime suspect. In 2006 the police conducted a review of the case and uncovered sufficient evidence to charge a convicted murderer Simon Rochford, who on hearing that he was to be charged with the murder of Pamela Lawrence, committed suicide in his cell in Albany prison. (Corruption and Crime Commission 2007)

In 2009 when the Director of the DPP Robert Cock stood down from his position he stated that the Mallard case has tarnished his office. On leaving his position Cock also said "... I think the immediate demands on the next person to sit in this seat is to ensure that staff are properly trained and we have good processes to ensure compliance with the regime that we've built." (Cock 2009).

Even more recently in October 2009 in Queensland a woman was committed to stand trial in the case of R V Evans. Evans faced Court accused of murdering her own son and cutting him in half to help conceal the body. Evans allegedly admitted the offence to police following eight hours of interviewing.
During the trial the defense has claimed that the interviewers asked questions which were leading and contained incorrect statements.

The interviewing officer told the court of becoming frustrated by Evans's responses, which often involved silence or inaudible answers and admitted his questioning in the later stages of the interview was flawed. The defence Barrister also raised the issue that questions were repeated up to six times until they got an answer and that the accused was told on several occasions to "stop ginning around" and that "he had had enough of sitting here in silence".

(Sydney Morning Herald 29th October 2009) The main evidence in this case was driven by DNA. The interviewing officers stating that it proved that Evans was the Mother where as the actual DNA was only referred to as ‘familiaral’ DNA, in other words from that direct family. The repercussions of this case as it proceeds through the Justice system will be of great interest.

Australia has the opportunity to look at current best practice and take from it the aspects which can enhance police practice in Australia. In reality what this may look like is an adoption of most of the ‘current’ thinking around the PEACE interview structure. This should not include adopting the original PEACE model but rather a more streamlined model making sure that the key skills of investigation are also included. The focus of the investigative interview should not remain the somewhat altruistic ‘search for the truth’. It is obvious that in most investigations the ‘truth’ may never be revealed although many may feel they have in fact told what they perceive to be the truth.

Therefore the interview, whether with suspect, witness or victim should be focussed on gaining the individuals ‘account’ of the event followed by clarification of the investigative agenda. This should include thorough planning and preparation which it seems is very rarely happening in current practice. I. “Investigators should understand however that ‘failing to plan' could be construed as 'planning to fail.' Ord, Shaw & Green” (2008) Initial research with groups of experienced practitioners (Green 2009) shows that planning and
preparation is poorly understood and very seldom carried out. In addition there is little attention paid by supervisors to interviews conducted by their officers which in turn does little to improve practice. Australia has the opportunity to learn from the UK experience that it is a mistake to turn too far away from the ‘investigative’ focus. A model of the PEACE style interview which primarily provides for an ethical, fair and admissible account to be obtained and challenged where appropriate should be introduced on a National level. The model should follow the principles now adopted by the UK which now have a greater emphasis on the ‘investigation’ and the need for interviewers to actually try to obtain information which will assist the investigative process. The Principles of Investigative Interviewing as adopted by ACPO in 2008 are as follows:

- The aim of investigative interviewing is to obtain accurate and reliable accounts from victims, witnesses or suspects about matters under police investigation.

- Investigators must act fairly when questioning victims, witnesses or suspects. Vulnerable people must be treated with particular consideration at all times.

- Investigative interviewing should be approached with an investigative mindset. Accounts obtained from the person who is being interviewed should always be tested against what the interviewer already knows or what can reasonably be established.

- When conducting an interview, investigators are free to ask a wide range of questions in order to obtain material which may assist an investigation.

- Investigators should recognise the positive impact of an early admission in the context of the criminal justice system.

- Investigators are not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.
Even when the right of silence is exercised by a suspect, investigators have a responsibility to put questions to them. (Shaw 2008)

Feedback from the few senior Australian investigators who have been trained using these revised principles and the more streamlined PEACE investigative interviewing model have reported improved results with both victims and suspect interviews. Although this research is yet to be thoroughly analysed or published the early indicators suggest that this model is highly suitable for implementation in the Australian environment.

The renewed focus on the role of police and their ability to conduct investigations which do not rely so heavily on scientific evidence or technology is where Australia needs to focus their attention. The 90’s technical revolution which saw the introduction of security cameras, automatic fingerprint recognition, DNA, forensic trace evidence and so many technical enhancements have lulled police investigators into a false sense of security. They are comfortable with the illusion that criminal cases are solved through the use of scientifically verifiable evidence (Moston & Fisher 2008). This so called ‘CSI effect’ (Goodman-Delahunt &Newell, 2004; Mirsky 2005) does little for the development of the skills required by officers to become good investigative interviewers. An increased reliance on this ‘CSI’ effect seems to have eroded the core skills required by police, namely the ability of officers to communicate effectively (French 2008).

With the increasing number of successful challenges to such ‘infallible’ evidence as DNA increasing (Sydney Morning Herald, 7th December 2009) police will have to become more reliant on the evidence gained during investigative interviews with victims, witnesses and suspects. Therefore it is only a matter of time before greater emphasis will be paid to the conduct of officers throughout the entire interview process. The current apathy of the community and judiciary towards investigative practice will not last. Moston (2009) clearly identifies that a “current climate of indifference prevails” (pg 20) and he uses the recent case of the Victorian Police officers, caught on camera beating an admission from a suspect of armed robbery to illustrate this
point. The case caused no public outrage and the officers actions which were recorded by hidden cameras on film were almost endorsed by the popular media. One report in The Australian stated “Yes, the film looks bad, but what is the big picture here? Would a jury ever convict a detective extracting evidence from a violent criminal about the location of a shotgun” (Rintoul 2006)

This paper would suggest that this attitude towards police behaviour will change and that if police do not drive the change then public opinion and the Judiciary will. The police need to support those enlightened officers who have seen the need to improve professional practice, related to interviewing from within and to adopt not only a ‘bottom up’ approach to new recruit training but to promulgate a investigative interviewing model which embraces the best of the lessons learned, primarily in the UK, but adapts them to suit the Australian environment. Australian police currently enjoy the overall support of the community, “confirmed cases of miscarriages of justice fail to ignite public outrage” (Moston 2009) but this will not prevail if the police fail to change. Moston predicts that “new initiatives are likely to come from police services themselves, rather than being imposed from the outside by state government” (Moston 2009, pg 20). I certainly hope that this is the case however the window of opportunity will not remain perpetually open and it is time that the lesson was learnt the ‘easy way rather than the hard way’!
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