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Between Human Rights Protection and Criminal Procedure – Analysis of Approaches to Investigative Interviewing¹

ABSTRACT: *Human rights, including the protection against torture or degrading and inhuman treatment, should be guiding law enforcement agencies' actions. Research shows that a vital moment of either their violation or realization occurs during the interrogation as a procedural activity. This paper will discuss the relationship between the above-mentioned human rights and interrogation in a procedural setting, with particular emphasis on the pre-trial stage.*

THE methodological basis of this paper includes dogmatic-legal, theoretical-legal and partially empirical methods. The central axis of consideration is the evolution of questioning techniques, starting from the analysis of coercive interrogation techniques – with the most popular Reid technique – to non-coercive methods, including the most recent proposal – the Méndez Principles. Besides that, the Author briefly considers model-level solutions on techniques permitted during the procedural activity of questioning.

THE analysis showed that, to date, the most popular method of interrogation – the Reid technique (FBI Method) – does not allow for sufficient protection of fundamental individual rights, even despite procedural guarantees. Effective protection is provided by non-coercive methods, which promote rapport and trust building – also strengthening the relationship between the state and the individual. The most significant impact in this sphere seems to be carried by the latest proposal – the Méndez Principles – which incorporates many individual methods, developed by researchers and practitioners alike, into a single comprehensive model, providing practical guidance addressed to law enforcement and practitioners and lawmakers. This consideration represents a novel

1 This paper is partially based on previous research, published in Wawrzyńczak, M. (2025). Securing Effective Collection of Evidence: An Overview of Various Approaches to Interrogation Techniques. In: B. Janusz-Pohl (ed.), *Effective Justice. International and Comparative Approaches. Volume 2* (V. 39), pp. 371–390. Peter Lang Publishing Group. <https://www.peterlang.com/document/1577095>.

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approach to the issue, as the Méndez Principles have not yet been developed academically in the context of interrogation and human rights issues.

KEYWORDS: *investigative interviewing, Méndez Principles, Human Rights, Prohibition of Torture, Reid's technique, interrogation, Prohibition of inhuman and degrading treatment.*

1. Introduction

The protection of fundamental human rights is multifaceted. The protection of rights in the sphere of the functioning of the judiciary seems most important. Within its framework, criminal justice, where individuals are particularly vulnerable to being violated, is the most interesting for us. In this sphere, a relatively broad spectrum of protection is established by the most important acts of international law in terms of human rights, such as the European Convention of Human Rights (ECHR) or the Universal Declaration of Human Rights (UDHR). These protections include, among others, the right to an effective remedy (Article 13 ECHR; Article 8 UDHR); right to liberty (Article 5 ECHR; Article 9 UDHR); right to a fair trial (Article 6(1) ECHR; Article 10 UDHR) or presumption of innocence (Article 6(2) ECHR; Article 11(1) UDHR). However, a unique position in the human rights catalogue is occupied by the prohibition of torture (Article 3 ECHR; Article 5 UDHR), which, only on the surface, does not seem to fit into the framework of the functioning of justice in democratic states.

In this paper, we focus on the prohibition of torture or degrading and inhuman treatment in a procedural setting. The central axis of consideration is acquiring procedural information through interrogations, which play a crucial role in the pre-trial stage. Although the criminal processes of individual countries have evolved over the years, the exceptional importance of the investigative phase in the entire criminal proceedings cannot be denied. After all, it is the phase that leads to the discovery of the perpetrator and qualification of a given act as a crime, while court proceedings occur based on the evidence gathered during this stage. Thus, naturally, the subject of particular interest should be the process of gathering evidence and, strictly speaking, the questioning of witnesses and suspects, as the human right in question applies only to personal sources of evidence. Consequently, in this paper, we analyse the relationship between interrogation techniques, understood as operational methods of law enforcement officers. More precisely, we focus on interrogation methods, defining the process-acceptable interrogation techniques at the model level, as determined by the shape of criminal procedure adopted in a given country. The relationship between these two elements and the prohibition of torture and degrading and inhuman treatment, as a fundamental human right, creates the main axis of considerations.

2. Model-Level Techniques on Interrogations and Interviews

The term “investigative interviewing” immediately brings several factors to mind. We consider issues primarily related to interrogations, which, though regulated by the provisions of the various criminal procedure codes, set certain impassable frameworks for this activity and do not always sufficiently protect the interrogated persons. Although, in principle, we can agree that interrogation should be free from torture (whether due to the applicability of the ECHR and, more specifically, its Article 3, prohibiting torture, degrading, or ill-treatment), practice shows that the accession of signatory states to the Convention alone is insufficient.² Let us briefly discuss the procedural aspects of interviews and interrogations to fully illustrate the crucial coupling of legislation and law enforcement practice.

Questioning techniques regulated on a model level are coherent during both the pre-trial and trial stages of the proceedings and apply to the law enforcement agencies, the prosecutors’ office, and the court during both stages. Five primary methods are regulated on a model level: 1) method of spontaneous relation; 2) open questions/open answers method; 3) cross-examination method; 4) suggestive questions method; and 5) focused questions method.³ These are model-level solutions as they either result from the accepted organisation of the trial (e.g. the cross-examination method, which is a vital and distinctive feature for the adversarial procedures) or from the solutions accepted by the legislator (e.g. admissibility of suggestive questions). The methods differ in their aims and results obtained from their performance. For example, the cross-examination method, along with the open questions method, provides the greatest amount of information, whereas the spontaneous relation method offers the least amount of information but with the highest accuracy and relevant facts.⁴ More recent studies have found that investigations address the directives of using multiple methods during the questioning to collect the maximum possible amount of relevant and true information.⁵

This introduction to the purely procedural aspect of questioning in the criminal justice system is insufficient. The quality of interrogations deteriorates with time. It is proven that witnesses fall into the trap of false narratives when the interrogated person tries to be a “good witness” at all costs. This includes the “enrichment” of their testimony by including false facts and information aimed to make it seem more credible; also forgetting the elements of the historical event in question due to the

2 See considerations regarding the RDI method, *infra* 43.

3 Although this study was developed based on the Polish Code of Criminal Procedure, these methods are universal. For further elaboration, see Sznajderska, 2014, pp. 59–77 and the literature cited therein.

4 Ibid. pp. 69–73.

5 Ibid. and the literature quoted therein.

passage of time; some elements that may impact the testimony are stress, fear, the mere gravity of a courtroom or presence of an audience during interrogation or the recording of their statements.⁶

At the criminal-procedure-model level, we can also consider interrogations as procedural conventional actions. We refer to the concept of conventional acts proposed by Stanisław Czepita⁷ and adapted by Barbara Janusz-Pohl for the criminal process,⁸ including the concept proposed by Searle.⁹ This concept assumes the existence of two types of rules: conventionalisation (determining validity or invalidity) and formalisation (determining the correctness or incorrectness and effectiveness or ineffectiveness of the performance of a procedural act), which is particularly important in the context of the admissibility of evidence in court proceedings. Although the present issue requires more extensive elaboration, *prima vista*, it seems reasonable to assume that the prohibition on the use of torture by law enforcement is absolute and, as such, is a constitutive rule for the act of interrogation, the violation of which would result in the invalidity of such an act. A similar position is adopted by B. Janusz-Pohl based on the Polish Code of Criminal Procedure (Article 171 § 5).¹⁰

3. From Third Degree to RDI – A Highlight of Highly Coercive American Approaches to Investigative Interviewing

Before the first well-established interrogation technique, law enforcement officers used its precursor and direct inspiration. This refers to the so-called Third Degree method, which consisted of brutal interrogation tactics, including various kinds of psychological abuse.¹¹ It should be pointed out that although the practice of violating the rights of suspects/defendants through torture had been going on in the US since the late 19th century, it was not legal. As early as 1897, the US Supreme Court condemned the use of torture for extraction purposes as part of the pre-trial interrogation process. This is confirmed by both the Fourth and Fifth Amendments to the US Constitution, as well as the US Supreme Court's decision in *Bram v. United States*, which derives its fundamental meaning from the very maxim *nemo se ipsem accusare tenetur*.¹² However, the literature points out that despite the unequivocal

6 Ibid., p. 61.

7 See Czepita, 1996; Czepita, 2006, pp. 9–28.

8 See e.g. Janusz-Pohl, 2017a; Janusz-Pohl, 2021, pp. 241–258.

9 Cf. Wawrzyńczak, 2022, pp. 55–57 and pp. 60–63.

10 Cf. Janusz-Pohl, 2019, pp. 560–562; Janusz-Pohl, 2017b, pp. 456–457.

11 Leo, 2008, pp. 47–70.

12 *Bram v. United States*, 168 US 532 (1897).

position taken by the Supreme Court, in reality, officers cultivated the practices of the Third Degree method while taking utmost care to conceal its application from the public.¹³ In 1949, in *Watts v. Indiana*, the Supreme Court held that the conviction of a defendant on the basis of a confession obtained through torture and degrading and inhuman treatment (held in custody without counsel or advice regarding constitutional rights, degrading sleep conditions, interrogations occurring well past midnight – sleep deprivation) violated the defendant's rights granted by the Fourteenth Amendment and, consequently, such a confession was inadmissible.¹⁴ The consequence of this ruling – and the popularisation of information about the use of the Third Degree method by police officers – was the emergence of a gap in interrogation techniques, which resulted in attempts to develop a new methodology for conducting them.¹⁵

Perhaps the best-known and popularised interrogation technique, The Reid Method – also known as The FBI Technique – filled the gap left by the Third Degree method. According to the organisation that holds the patent to the technique, John E. Reid began working on it as early as 1947,¹⁶ but did not achieve real success until 1955 through his participation in the Darrell Parker case.¹⁷ We will return to this case later in another context; however, it should be pointed out that Reid's obtaining a confession in the present case led to a kind of boom in his services, while his technique became a subject of teaching in police forces, private security companies, the military, the Federal Bureau of Investigations (FBI), the Central Intelligence Agency (CIA), and the Secret Service.¹⁸ The scale of Reid's success is enormous; John E. Reid and Associates (interchangeably: Reid's organisation) indicates that their technique is the most widely used approach to question subjects in the world.¹⁹ A 2014 report by the Office of Legislative Research, Connecticut General Assembly indicated that more than 500,000 people had been trained using Reid's technique.²⁰ It is claimed to be a leading method in at least 28 countries, as indicated on their website.²¹ Given this, the contribution and impact of the Reid technique on interro-

13 Kozinski, 2018, pp. 306–309 and the literature quoted therein.

14 *Watts v. Indiana*, 338 US 49 (1949).

15 Leo, 2008, p. 63.

16 John E. Reid and Associates, no date a.

17 Starr, 2013.

18 *Ibid.*

19 John E. Reid and Associates, no date a.

20 Orlando, 2014.

21 Among these are Germany, Bosnia-Herzegovina, the Czech Republic, the United Arab Emirates, Singapore, Japan, Mexico, Canada, Belgium, Israel, India, South Korea, China, Luxembourg, Africa, Italy, Malaysia, Norway, Philippines, Saudi Arabia, the Netherlands, Brazil, Peru, Jamaica, Ecuador, El Salvador, Iraq, Slovakia. John E. Reid and Associates, no date a.

The list is not incomplete though, as, for example, Poland's leading method taught during police training is the Reid method. See: Załącznik do decyzji nr 272 Komendanta Głównego Policji

gation trends cannot be underestimated; however, it has both positive and negative implications.

Reid's technique constituted the first modern interrogation method – consisting of principles and guidelines – that encompassed all kinds of instructions for officers conducting investigations. The technique included how questions should be posed; however, it extended beyond that. John E. Reid created a whole manual on how to design interrogation rooms, how to behave, and how techniques and psychological methods should be used to create the most interrogator-friendly environment.²²

The technique has three components: Factual Analysis, Behavioural Analysis Interview (BAI), and interrogation.²³ Following the original wording used by Reid's organisation: 'Factual Analysis can be defined as estimating the probability of a suspect's guilt or innocence based on investigative findings'.²⁴ This element consists of five components: Opportunity/Access, Attitude, Motivation, Biographical Information, and Evidence, which are evaluated to narrow down the circle of suspects and select the one most likely to be the perpetrator.²⁵

The second component of the technique is the BAI.²⁶ This phase has ignited a debate between scholars and the Reid organisation, which has engaged in a polemic with academia.²⁷ The core of this heated discussion was not only the essence and mode of BAI but also the matter of the effectiveness of such an approach. Several scholars who conducted studies on human psychology and the possibility of detecting deception and lies during interviews have questioned the efficacy of Reid's BAI,²⁸ with Kassin, Appleby, and Torkildson describing it as '(...) a non-confrontational

z dnia 2 listopada 2017 r., Program nauczania na kursie specjalistycznym z zakresu taktyki i technik przesłuchań (Appendix to Decision No. 272 of the Chief of Police dated November 2, 2017, Curriculum for the specialized course in interrogation tactics and techniques), DZ. URZ. 2017.70. Available at: https://edziennik.policja.gov.pl/eli/DU_KGP/2017/70/ogl/pol/pdf (Accessed: 3 December 2023). It seems that this list of 28 countries only includes those that have acquired the certified training from the organisation, whereas the technique is being taught at a domestic level by certified professionals who are not part of the John E. Reid and Associates organisation, and thus may not certify the graduates.

22 Among the materials to study the technique, John E. Reid and Associates provides various books, e.g. *The Reid Technique of Interviewing and Interrogation*; *Criminal Interrogations and Confessions*; and *Essentials of the Reid Technique: Criminal Interrogation and Confessions*. The books are periodically updated as the socio-legal reality changes; thus, the techniques, methods, or clues evolve. Several positions are available at <https://reid.com/store/products> (Accessed: 3 December 2023).

23 Orlando, 2014.

24 John E. Reid and Associates, 2017.

25 Ibid.

26 For a more detailed analysis of this component of Reid's technique, see Snook et al., 2010, pp. 215–229.

27 See John E. Reid and Associates, 2014.

28 For further reference on this topic, see Kassin, Appleby, and Perillo, 2010, pp. 39–55 and the literature quoted therein.

interview that possibly transitions into an interrogation. The purpose of the interview is to provide a means by which investigators can determine if suspects are lying or telling the truth'.²⁹ Conversely, Reid's organisation characterises BAI as a polygraph-rooted 'non-accusatory question and answer session, involving both standard investigative questions and structured "behaviour provoking" questions to elicit behaviour symptoms of truth or deception from the person being interviewed.'³⁰ Nevertheless, this stage is intended for evaluating the likelihood of the interviewed person being the suspect in a given case and whether the suspect is lying,³¹ if such a conclusion is made, the next phase begins.

The third and final component of the Reid technique is interrogation. During this phase, the investigator follows nine steps, which are aimed at gaining success as a final result. However, it is pointed out that these steps may be essentially reduced to three aspects/principles fundamental to this method: isolation, confrontation, and minimisation.³² The issue with this technique, even at first sight, is its suspect-driven approach. While Reid's organisation would argue otherwise, this method is no longer handy when it comes to interviewing the witnesses, as it aims at obtaining a confession.³³ In other words, although some elements of this technique may be helpful in general interviewing practices, it has a very narrow scope in the broadest range of interrogations. Therefore, it is not feasible for the authorities to obtain several confessions when there is only one perpetrator.

This stage of Reid's technique is highly accusatory, and the steps are calculated to create a confession-friendly environment. The isolation phase aims to create anxiety through various power plays, such as the layout of the interrogation room (described carefully by Reid's organisation), the order of entering the room, or food, drink, and sleep deprivation.³⁴ It does not stop at creating such a psychological and non-verbal atmosphere but also consists of forcing the suspect to acknowledge that their guilt is already well-known to the interrogator, who shall not even allow the suspect to plead his innocence and cut off any possibility of denial.³⁵ The end goal is to create a complete isolation of the suspect's body and mind. Anxiety of loneliness and inevitable fate will arise, preparing the ground for the next phase, which is confrontation. After preparing the ground for vulnerability, the interrogator presents evidence of guilt. It should be undeniable, yet may be non-existent or even fabricated, but its strength shall be so overwhelming that conviction is inevitable and not reliant on a

29 Ibid., pp. 40-41.

30 Orlando, 2014; John E. Reid and Associates, 2014.

31 Snook et al., 2010, p. 217.

32 Moore and Fitzsimmons, 2011, pp. 512-513.

33 Kozinski, 2018, p. 311 and literature quoted therein.

34 Pieters and Frank, 2016, p. 4.

35 Kozinski, 2018, p. 311.

mere guilty plea – which, however, may lead to “bettering” the procedural position of the suspect in terms of leniency.³⁶ Rearranging the perception of the procedural situation of the suspect from hopeless (isolation stage) to one in which there is a distant light in the tunnel (confrontation with suggestions of leniency or preferable treatment in case of confession) prepares the ground for the minimisation phase. In this stage, the interrogator looks for “excuses” regarding the criminal conduct. Various possible crime schemes are presented, and the interrogator pretends to sympathise with the suspect, even going as far as minimising their participation, role and guilt, as well as giving ethical and moral justification for the crime,³⁷ to accustom the suspect to the thought of a guilty plea being their best choice and the greatest chance for leniency.

The interrogation is concluded with two steps (the 8th and 9th steps) for the interrogator to follow. These consist of oral and then written pleas; the interrogator will have the suspect orally relate various details of the offence. Then, the oral confession is transformed into a written (or recorded) plea, and during this final step, the Reid technique provides some guidelines, such as repeating Miranda warnings, avoiding leading questions, and using the suspect’s own language.³⁸ Once the confession is obtained, the interrogation (and usually the case) is deemed closed; the investigation proceeds further to the judicial stage.

However, Reid’s technique has faced much criticism. It is pointed out that its extremely accusatorial – even extractive – nature creates a state of mental coercion,³⁹ often violating the sphere of protection established by the prohibition of torture and degrading or inhuman treatment. Even when the law enforcement officer’s actions do not result in inflicting physical pain, the psychological aspect, such as sleep deprivation or denial of food and drink connected with highly stressful and accusatorial interrogation, often leads to wrongful convictions due to a high number of forced confessions resulting from inhuman and degrading treatment. As mentioned earlier, Reid’s star as a prolific interrogator shone the brightest after the Darrell Parker case, which resulted in the conviction of the accused based on the confession obtained by Reid himself. Ironically, the Darrell Parker case was overturned in 2011, with Darrell Parker being exonerated along with a public apology and compensation for wrongful conviction, as the real perpetrator turned out to be Wesley Peery.⁴⁰ Just in the USA

³⁶ Ibid., pp. 311–312.

³⁷ Coughlin, 2009, p. 1646.

³⁸ John E. Reid and Associates, no date b; Orlando, 2014.

³⁹ On the coercive interrogation methods, including the Reid technique, see Pieters and Frank, 2016, pp. 1–25 and the literature quoted therein.

⁴⁰ Although Parker has brought up the fact that the confession was false and coerced due to the psychological pressure and manipulation from Reid, enhanced by the fact that it was extraordinarily lengthy and tiring and recanted the confession on the next day, he was still convicted for life. Following *Miranda v. Arizona* in 1966, Darrell Parker appealed the conviction based on

alone, a study within the Innocence Project has shown that from 1989 to 2020, almost 30% of the confessions were false; among these 30%, nearly half of the suspects were below 21 years of age.⁴¹ Another research showed that 95% of felony convictions occur through guilty pleas, out of which 18% happen to be false pleas – with a majority of convicts being people of colour.⁴² Considering that the majority of officers in the US – but also worldwide – are trained using Reid’s technique or its variables, this raises serious concerns regarding the prevention of inhuman or degrading treatment.

Another technique widely used by American law enforcement agencies is the one developed within the Rendition, Detention, and Interrogation (RDI) programme, run by the CIA to interrogate terrorist suspects. We will discuss this technique only briefly, as it has a somewhat limited application scope, although it has been widely covered by both the psychological and legal academia, as well as the media and public opinion. We refer here to the interrogations on CIA black sites that were already subject to judgements of, for example, the ECHR, regarding the violation of Article 3 ECHR of the suspects interrogated on the territory of states-parties to the Convention.⁴³ The very essence of the RDI programme is the permissibility of torture to extract information from suspected terrorists, which was meant to provide reliable information on any terrorist activities in a faster and more efficient manner.⁴⁴ Although, as mentioned earlier, European Court of the Human Rights (ECtHR) was very critical in terms of permissibility regarding the preservation of human rights standards under the ECHR, interestingly, there were voices in the academia pleading for the use of torture in the terrorist cases.⁴⁵ This is concerning. The prohibition of torture or inhuman and degrading treatment, to be effective, must be granted an absolute character. Any deviation from this prohibition could result in dangerous exceptions involving increasingly broad groups of people. Although the military used RDI on suspected terrorists for extraction purposes, their reach extended to as many

the coerced confession claim; although the US Supreme Court ruled that Parker was up for a retrial, he took a deal offered by Nebraska to be paroled after serving 10 years. It should be noted that the real perpetrator, Peery, was briefly suspected in the case. Although the fact that Parker was innocent came to light in 1991, the lack of state legislation made it impossible to seek exoneration; the legislative changes in 2009 made it possible, and the state conceded that the conviction was wrongful and coerced. See Starr, 2013; Possley, 2012.

41 Innocence Project, no date.

42 Available at: <https://guiltypleaproblem.org/#stats> (Accessed: 3 December 2023).

43 E.g. cases *Al Nashiri v. Poland*, (appl. no. 28761/11) and *Husayn (Abu Zubaydah) v. Poland*, (appl. no. 7511/13), in which the Court has found violations of: Article 3, 5, 6 § 1, 8, and 13 ECHR, as well as a violation of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (abolition of the death penalty) regarding Mr Al Nashiri; *Nasr and Ghali v. Italy*, (appl. no. 44883/09); *Al Nashiri v. Romania*, (appl. no. 33234/12); *El-Masri v. “the former Yugoslav Republic of Macedonia”*, (appl. no. 39630/09).

44 For more information on the programme, see Amnesty International, 2005; Tyler and Epstein, 2022; Schmidt and Sikkink, 2018, pp. 1014–1033.

45 See Rumney, 2005, pp. 465–466 and the literature quoted therein.

as 53 countries cooperating with the US on the programme. Of all 53 countries, only 13 cooperated as transport points for smuggling suspects; in as many as 40 countries, the CIA carried out extraction operations through torture using the RDI method.⁴⁶

The application of the RDI programme has proven to carry threefold consequences. First, we can distinguish the individual dimension – concerning violations of the human rights of individuals. We have discussed this aspect above. Several human rights violations, particularly of the ECHR’s Article 3 prohibition, have been found in cases at the initiative of persons tortured on the territory of ECHR signatory states. The second aspect regards policy-making. Of all 53 countries cooperating with the US RDI programme, 23 are classified as democratic states, while as many as 30 are non-democratic states.⁴⁷ The consequences of this state of affairs again take on a double dimension. In democratic states, we have seen conscious and deliberate acquiescence in violations of fundamental human rights, contrary to the principles of the rule of law, the right to a fair trial, and the prohibition of inhuman and degrading treatment and torture, probably for political reasons.⁴⁸ The second dimension concerns the consequences of a country’s state of human rights. Although cooperation under the RDI programme has not had long-term adverse effects among democratic states, data indicate a deterioration of human rights practices in non-democratic states.⁴⁹ Consequently, human rights violations by the US at the hands of the CIA on the territory of non-democratic states have led to the adoption of progressively worsening practices by these states under a mechanism that can be described as “learning by doing,” in particular, increasing the scale of physical torture (Psychical Integrity Score), the Disappearance Score, and the Political Imprisonment Score.⁵⁰

The third aspect relates to the effectiveness dimension of the use of coercive techniques, such as RDI or Enhanced Interrogation Techniques (EIT). The literature points out that despite the use of torture on suspected terrorists, most of the information obtained was unusable or false.⁵¹ Consequently, a simple calculation of the gains and losses from using RDI and EIT speaks significantly against their use. When combined with the aspect of high coerciveness in the psychological sphere of the interrogated person, the potential for human rights violations to reconcile with ECHR standards appears to be impossible. The marginal amount of truthful information obtained – coupled with the predominant amount of false information, resulting in

46 Schmidt and Sikkink, 2018, p. 1022 and data indicated therein.

47 Ibid.

48 Hassanová, 2023, p. 60.

49 Ibid, pp. 1022–1026. On the worsening of the human rights practices within US Army Units, see Pfiffner, 2014, pp. 147–158.

50 Schmidt and Sikkink, 2018, pp. 1022–1027.

51 For further elaboration on the practices and their effects, see Pfiffner, 2014, pp. 150–151. See also Tyler and Epstein, 2022 and the sources cited therein.

the cost of pursuing empty leads – combined with the economic, social, moral, and political costs dictates the search for alternative interrogation methods.⁵²

4. Human Rights Violations Leading to New Openings: Development of Non-Coercive Investigative Interviewing Techniques

Although the above-described interrogation techniques were formed on the grounds of American law enforcement practice, the problems of coercive methods resulting from the application of the Reid technique or its variants are universal. The problem with high rates of wrongful convictions based on false or coerced confessions was recognised in the UK as early as the 1980s. This provided the impetus for developing the first information-gathering-based method, completely changing the paradigm guiding interrogators. The technique is named PEACE, after five main elements that also create the five stages of interrogation: Planning and Preparation; Engage and Explain; Account; Closure; Evaluation. Instead of seeking confession through pressure on the suspect, it relies on building rapport and trust and gathering information by employing principles of cognitive interviewing.⁵³ Since adopting the model within the UK's legal framework in 1992, the PEACE method has been positively received, resulting in its implementation (also in due variants) in Norway and New Zealand.⁵⁴

The fundamental assumption behind this method is the focus of the investigator's activity of searching for information. Its goal is to avoid emotional involvement in the "accusatorial" model of interrogation, in which the phenomenon of so-called tunnel vision bias is widespread.⁵⁵ Instead, this model supports asking open-ended questions, reducing the engagement of the officer to the role of a journalist rather than an interrogator, encouraging the interviewee to do most of the talking, along with the prohibition of using false and non-existent evidence or deceit.⁵⁶ Although, as mentioned earlier, this technique does not strive for confession, research shows that the confession rates are, in fact, higher than those obtained with Reid's technique.⁵⁷ Crucially, although the confession rates are higher, there is a significant difference in the false confession rates.⁵⁸

52 On the costs of coercive interrogations, see Tyler and Epstein, 2022, pp. 36–39.

53 Moore and Fitzsimmons, 2011, pp. 539–542.

54 Ibid., p. 540.

55 Pieters and Frank, 2016, p. 4 and the sources cited therein; Moore and Fitzsimmons, 2011, pp. 540–541 and the sources cited therein.

56 See, e.g. Pieters and Frank, 2016, p. 18; Moore and Fitzsimmons, 2011, p. 540; Orlando, 2014; Kasin, Appleby and Perillo, 2010, pp. 46–47.

57 Spierer, 2017, pp. 1749–1750 and the literature quoted therein.

58 Ibid. and the literature quoted therein.

However, PEACE is not the only non-coercive model of investigative interviewing. Several techniques may be used at once. Overall, they do not provide a complex structure (much like Reid or PEACE does) but play a significant role in certain aspects of interrogation. Among the alternatives to Reid's technique, we can mention Strategic Disclosure of Evidence, Unanticipated Questions, Cognitive Interview, and KREATIV. Each of these techniques varies; thus, we will only briefly discuss each of them because their essence is universal: refraining from any kind of coercion and building rapport through good practices.

In terms of Strategic Disclosure or Strategic Use of Evidence, much of the interrogation tactic relies on withholding information from the suspect rather than fabricating incriminating evidence.⁵⁹ The main idea of the lie detection technique is catching the lying suspect in the act – instead of forcing them into confession through bogus evidence or presenting them with all facts with a request to elaborate on it; their knowledge and reactions are tested. This allows the investigator to go through all related facts without prior elaboration on them. The technique of Asking Unanticipated Questions refers to joint-involvement crimes. It requires that at least two suspects be concurrently interrogated regarding their participation in the crime. A group of researchers found that it is possible to detect deceit based on the responses to the questions that are unlikely to be discussed between the guilty perpetrators.⁶⁰ Cognitive Interview techniques are twofold: some of them serve to detect lies in the testimonies, while others aim to enhance the reliability and the quality of the testimonies, particularly the eyewitness ones. The first strand of cognitive interviews refers to imposing cognitive load; however, this theory has been tested in academia and has no real impact on the practice of law enforcement agents.⁶¹ The other strand involves cognitive interviews based on memory-retrieval mnemonics.⁶² This approach is also multi-fold, as before the creation of the Cognitive Interview (CI) model in 1985, it was already recommended that the questions should be posed only after the witness has been requested to describe the situation of interest,⁶³ compliant with the method of spontaneous relation evident, for example, in the Polish criminal procedure.

Geiselman et al.'s model relies on four interview stages posed in a particular order. The first one relies on reinstating the context of the incident. The second demands

59 For further elaboration, see Hartwig et al., 2005, pp. 469–484; Luke et al., 2016, pp. 270–278; Hartwig et al., 2006, pp. 603–619.

60 Vrij et al., 2009, pp. 159–166.

61 For further elaboration on this technique, see Moore and Fitzsimmons, 2011, pp. 539–540.

62 A group of US academics developed this method as an alternative to the so-called standard interview practice within US law enforcement. For further elaboration on this method, see Geiselman et al., 1985, pp. 401–412.

63 See Geiselman et al., 1984, pp. 74–80.

reporting everything, all memories regarding the incident, regardless of their perception of their utility. The third asks to recall the event in different orders. The fourth relies on changing perspectives, for example, asking the witness to report the incident from a victim's perspective.⁶⁴ The results of the laboratory study performed by the researchers showed that the Cognitive Interview technique is an effective tool to enhance memory retrieval, particularly in terms of recalling rapidly-happening events, with multiple details.⁶⁵ It has also been proven to be much more effective in comparison with standard interviews, vastly improving the number of recalled details and their accuracy.⁶⁶ However, it has been noted that based on the practices and demands under the given tradition and requirements of law, the impact of using the Cognitive Interview method may be greater or smaller; for example, European law enforcement employed structured interviews instead of standard interviews, contrary to their American counterpart.⁶⁷

The next step in the development of the CI was broadening its application scope to cover the entire interview. This happened through the development of the Enhanced Cognitive Interview (ECI) method, which comprised seven instead of four steps, as in the case of the Cognitive Interview. The phases are as follows: (1) Greeting and establishing rapport; (2) explaining the aims of the interview, exploring the second stage of CI – report everything; (3) initiate a free report through context reinstatement and open-ended questions; (4) questioning, again with report everything stage, through open and closed questions, but without fabrication of evidence; (5) varied and extensive retrieval, employing third and fourth stage of CI, namely changing perspectives and changing the temporal order; (6) summary; (7) closure.⁶⁸ Similarly to its predecessor, ECI also significantly increased the effectiveness of collected testimony.⁶⁹

Finally, let us discuss the Norwegian KREATIV model of interviewing. The acronym reflects the values and principles upon which the method is based: Communication, Rule of law, Ethics and empathy, Active consciousness, Trust through openness, and Information – Vantage point: science.⁷⁰ This model is based on PEACE, essentially being a variable of it;⁷¹ created in 2002, the technique relies on information-gathering techniques and plays an essential role in the basic training of Norwegian law enforcement officers.⁷² Again, the focus is placed on obtaining reli-

64 Gieselman et al., 1985, p. 404.

65 Ibid., pp. 409–410.

66 Fisher, Chin and McCauley, 1990, p. 11.

67 Ibid., pp. 23–24.

68 Milne and Bull, 1999, p. 40.

69 For a further elaboration, see Schollum, 2005, pp. 61–62.

70 Norwegian Centre for Human Rights, 2020.

71 Ibid.

72 Magnusson et al., 2021, p. 3 and the literature cited therein.

able information instead of seeking confessions. The usage of deceit, fabricated evidence, sleep deprivation, or any other coercive techniques is prohibited; although the same prohibitions exist under Swedish law (which does not use PEACE or KREATIV models *per se*), there was a visible difference in the extent of confrontational/accusatorial interrogation tactics usage compared to KREATIV-trained Norwegian counterparts.⁷³

All techniques described above share similar characteristics. Refraining from any kind of coercion, respect for human rights, and the central role of trust and rapport in effective interviewing play a vital role in each of them, regardless of any noticeable differences. They are much more intertwined, though. It is easily noticeable that each model is based on scientific grounds, namely laboratory or practical studies, contrary to Reid's technique – under which “lie detection” techniques are based on the gut and experience of the investigator instead.⁷⁴ Although these techniques tend to focus on gathering information, the confession and false confession rates are still an important determinant of their effectiveness; however, scholars have stressed that not only “pure” confession fulfils such criteria but also obtaining information that inevitably links the suspect with the perpetration of the crime.⁷⁵

Another factor that must be considered is the relationship between the society/citizens and the law enforcement/judiciary. Fundamental human rights granted under international law aim to provide individuals with much-needed protection; its sometimes-overlooked aspect is that their rigorous preservation also leads to the enhancement of trust towards state agents.

All of the above methods can be considered useful for the criminal procedure. They certainly serve a protective function by modelling safeguards for possible abuses of fundamental rights. Focusing on rapport and trust building makes it possible to minimise the threat of violations of the prohibition of torture as well as degrading and inhuman treatment. Meanwhile, their effectiveness is beyond doubt, as described for each of the methods discussed. Statistically, these methods provide more truthful information than coercive ones. They are also more suited to the interrogation models presented in Section 2. However, it seems that integrating all the key elements and findings of each of these techniques should yield the best results.

⁷³ *Ibid.*, pp. 3 and 11.

⁷⁴ Moore and Fitzsimmons, 2011, p. 541.

⁷⁵ Although such statements are not treated as confessions *per se*, they play a vital role in the work of investigative forces within law enforcement. It is argued that the importance of such evidentiary-tied statements has impacted the significance and placing of information-gathering methods at the centre of investigative interviewing studies. See Bergeron, Fortin, and Deslauriers-Varin, 2023, p. 61.

5. In Search of the Universal Standards for Investigative Interviewing: Méndez Principles

The above information-gathering-oriented techniques were a huge step forward in building an interrogation culture in a trend that corresponds to human rights standards. The next stage of development was the creation of The Principles on Effective Interviewing for Investigations and Information Gathering⁷⁶ (so-called Méndez Principles), which are intended to serve as a universal standard of conduct for law enforcement agents. They have both a theoretical-dogmatical dimension, exposed in the sphere of legislation, where their implementation would lead to the creation of clearly defined procedural standards, and a practical dimension, providing guidance and a basis for training officers to achieve the best results.

These Principles have been drafted by experts in the fields of interviewing, law enforcement, criminal investigations, national security, military, intelligence, psychology, criminology, and human rights from around the world and were consulted with more than 80 experts from 40 countries during the four-year-long working process. Three institutions coordinated the works: the Association for Prevention of Torture, the Norwegian Centre for Human Rights and Centre for Human Rights & Humanitarian Law of the Washington College of Law. The Authors of the Principles were divided into three major groups: the Steering Committee, composed of 15 members, which intertwined academic experience (e.g. Ray Bull, whose numerous contributions helped develop PEACE, CI, and ECI methods and investigative interviewing as a whole), law enforcement practices and legislative/political figures; Drafting Groups; and the Advisory Council, combining the experience of more than 60 experts from all fields and continents, with many contributors to previous research on investigative interviewing practices and techniques.

The Méndez Principles are grounded in science, law, and ethics. They propose a concrete alternative to interrogation methods that rely on coercion to extract confessions, providing guidance on obtaining accurate and reliable information in full respect of the human rights and dignity of all, including through the implementation of legal and procedural safeguards in the first hours of police custody. The principles aim to transform the relationship between States and their citizens. They are intended to change how public authorities conduct interviews and, as a result, improve trust in the State. They also aim to enhance the quality of interrogations – the first interrogation is crucial for information-gathering, as the questions and possible influence of the suggestion may further affect the witness's memory.

⁷⁶ Principles on Effective Interviewing for Investigations and Information Gathering [Méndez Principles], 2021.

The following principles guide the legislators and practitioners in the process of investigative interviewing:

Principle 1: *On foundations* – Effective interviewing is instructed by science, law, and ethics.

Principle 2: *On practice* – Effective interviewing is a comprehensive process for gathering accurate and reliable information while implementing associated legal safeguards.

Principle 3: *On vulnerability* – Effective interviewing requires identifying and addressing the needs of interviewees in situations of vulnerability.

Principle 4: *On training* – Effective interviewing is a professional undertaking that requires specific training.

Principle 5: *On accountability* – Effective interviewing requires transparent and accountable institutions.

Principle 6: *On implementation* – The implementation of effective interviewing requires robust national measures.

Nevertheless, Méndez Principles are more than just a legislative initiative. We can perceive them as a comprehensive guide to the enhanced human rights and law enforcement practices standard, which fully corresponds with the standard under UDHR or ECHR. The ECtHR's stance on the evidence obtained in violation of Article 3 ECHR is rigorous; thus, rapport-based approaches seem to be a natural step forward. The Court consistently expresses the inadmissibility of the evidence obtained by a public official in violation of Article 3 ECHR, which automatically bears a violation of Article 6 ECHR.⁷⁷ UN Convention against Torture sets a similar standard, where tortures always exclude evidence; however, inhuman or degrading treatment automatically does not. Regardless, these exclusionary rules create an essential human rights protection standard; thus, a straightforward shift in the interrogation approach is deemed useful and necessary, at least for all States that are parties to the ECHR. In a case *Ćwik v. Poland*,⁷⁸ ECtHR found that the prohibition of torture, set forth in Article 3 ECHR, constitutes an absolute prohibition and a positive obligation of the state to prevent such behaviour from the 3rd (private) parties. It has also been expressed in academia that evidence gathered by private individuals – regardless of torture or ill-treatment – should be admissible under Article 3 ECHR or the UN Convention against Torture, as it only addresses evidence collected by public officials.⁷⁹

The Principles themselves respond to the realities of the investigative world. Significant contributions from the scholars and bodies participating in developing

77 E.g. ECtHR [Grand Chamber] judgment of 1 June 2010, *Gäfgen v. Germany*, (appl. no. 22978/05), § 166; ECtHR [Grand Chamber] judgment of 13 September 2016, *Ibrahim and Others v. the United Kingdom*, (appl. nos. 50541/08, 50571/08, 50573/08 and 40351/09), § 254.

78 ECtHR judgment of 5 November 2020, *Ćwik v. Poland*, (appl. no. 31454/10).

79 For a further elaboration, see Wąsek-Wiaderek, 2021, pp. 343–374.

various non-coercive techniques have created a unique approach in which multiple research results are combined. The creators of the Principles note that the growing movements to refrain from torture and any coercion during investigations have produced tangible yet reliable results in the form of new non-coercive methods; preservation of safeguards throughout the interview shall enhance the quality of received information and reduce the risks of ill-treatment or any possible human rights violations.⁸⁰ In the sphere of human rights, it is indicated that the initiative's effective application will lead to ensuring the protection of individuals from torture or ill-treatment, protecting the physical and mental integrity of persons interacting with the authorities or enhancing respect for the rights of vulnerable people.⁸¹

Their universality of application also comes from the legal grounds on which the Principles were developed. Contrary to the peculiarity of coercive model application (limited by the grounds of respective procedures of each country), Méndez Principles are based on the standards arising from international human rights law.⁸² Six rights are absolute for the proper functioning of investigative interviewing; under UDHR, they are equal to protection under Articles 5, 7, 9, 10, and 11(1). The creators of the Principles also underline the importance of the right to remain silent and the right to avoid self-incrimination, following Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR). Considering that the UDHR and ICCPR are well-established, global standards of international human rights law, operating on their premises (which must be incorporated into ratified domestic legislations) produces promising universal solutions in the field of investigative interviewing.

Crucially, they combine every positive effect of various non-coercive interviewing methods. They encompass multiple techniques, such as active listening; free report by the interviewee; open-ended questions; application of probing questions only after finishing the open-ended questions stage; avoiding jargon and complicated language to facilitate the interviewee's understanding of the situation; promoting Strategic Use of Evidence; respecting the right to remain silent; building and maintaining rapport; or assessing obtained information⁸³. We can clearly see the intertwining of multiple techniques described in Part 3 of this paper; through Méndez Principles, we apply PEACE, KREATIV, Strategic Use of Evidence, Cognitive and Enhanced Cognitive Interview methods or Conversation Management. This proves that the Principles are highly capable of providing proper guidance to law enforcement officers on creating

80 Méndez Principles, 2021, p. 1.

81 Ibid., p. 2.

82 Most importantly: Universal Declaration of Human Rights (UDHR), General Assembly resolution 217 A (III) of 10 December 1948; the International Covenant on Civil and Political Rights (ICCPR), General Assembly Resolution 2200 A (XXI) of 16 December 1966.

83 Méndez Principles, 2021, pp. 17–27.

such an environment that would enhance the quality and quantity of information collected throughout the interview.

6. Conclusion

The example of the interrogation techniques described above highlights the dangers of using methods based on mental and physical coercion. Interrogators do not have superpowers that allow them to fathom whether a person is telling the truth. In recent years, a growing number of studies have revealed the scale of false confessions while stimulating the need for change. For more than 30 years, there has been a tremendous progression of investigative interviewing, which has resulted in the development of many non-coercive techniques. The choice is vast; the only problem may be incorporating these techniques into officer training programs.

Unfortunately, the findings also highlight the dangers of attempting to reconcile coercive and non-coercive methods of interrogation. It has been found that initially applying the PEACE model and subsequently utilising the Reid method increases the likelihood of obtaining false information and confessions.⁸⁴ Consequently, it is necessary to entirely abandon the use of coercive practices and fully shift to either non-coercive method. While Méndez Principles encompass all of their achievements into one comprehensive model of multi-layered legislative and professional practices, they pose as a perfect solution for states that wish to make a change. Reid's technique is still strong in many countries, as presented in Section 3 of this paper. For example, law enforcement training in Poland primarily relies on Reid's (FBI) technique, just briefly mentioning the existence of the rapport-based ones.⁸⁵ The dominant majority of the practical training utilises this method. Thus, even if the information-gathering models are included in the training programme, their joint application will most likely yield undesirable results, following the abovementioned observation.

As the effectiveness and scientific background of relationship-oriented and trust-building techniques increase, they seem more appropriate for criminal proceedings. The rule of law requires that any procedure be modelled in a way that protects fundamental rights. Among these rights is the prohibition of torture and

⁸⁴ See Gudjonsson and Pearse, 2011, pp. 33–37.

⁸⁵ See Decyzja nr 206 Komendanta Głównego Policji z dnia 12 sierpnia 2021 r. zmieniająca decyzję w sprawie programu nauczania na kursie specjalistycznym dla policjantów służby kryminalnej wykonujących czynności operacyjno-rozpoznawcze [Decision No. 206 of the Commander-in-Chief of the Police of August 12, 2021, amending the decision on the curriculum for the specialized course for police officers in the criminal service performing operational and investigative activities]. Available at: <https://isp.policja.pl/isp/aktualnosci/prawo/16217,Decyzja-nr-206-Komendanta-Glownego-Policji-z-dnia-12-sierpnia-2021-r.html> (Accessed: 3 December 2023).

inhuman and degrading treatment. If law enforcement is focused on obtaining valuable information for a criminal trial (rather than a simple confession), the usefulness and superiority of non-coercive techniques are apparent at first glance.

It should be noted that even within the US, the entities previously permitted to provide certified Reid's method training are shifting away from this approach towards rapport-based methods. In 2017, Wicklander-Zulawski & Associates announced focusing on teaching non-coercive techniques based on, *inter alia*, Cognitive Interviewing, as the risk of false confessions is too great while interrogating under Reid's principles.⁸⁶ Overall, the fate of coercive interrogation methods seems inevitable; there is no place for abuse and false confessions in democratic rule-of-law states, and the recent Méndez Principles present themselves as a perfect alternative. Although the full implementation of the proposal may take long, the non-coercive techniques promoted by Méndez Principles are the *only* way forward in a modern law-abiding society.

86 See Wicklander-Zulawski & Associates, no date; Kozinski, 2018, pp. 304–306.

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