In 1984 Britain introduced the Police and Criminal Evidence Act of 1984 (PACE) and the Codes of Practice for police officers which eventually resulted in a set of national guidelines on interviewing both witnesses and suspects, composed of five distinct parts (corresponding to the acronym "PEACE"):

Preparation and Planning: Interviewers are taught to properly prepare and plan for the interview and formulate aims and objectives.

Engage and Explain: Rapport is established with the subject, and officers engage the person in conversation.

Account: Officers are taught two methods of eliciting an account from the interviewee:

• Cognitive Interview: used with cooperative suspects and witnesses.
• Conversation Management: recommended when cooperation is insufficient for the cognitive interview techniques to work.

Closure: The officer summarizes the main points from the interview and provides the suspect with the opportunity to correct or add information.

Evaluate: Once the interview is finished, the information gathered must be evaluated in the context of its impact on the investigation.

A recent article, *Reforming Investigative Interviewing in Canada*, suggested that the PEACE Model would be a more appropriate way to investigate criminal behavior in Canada than current interview and interrogation techniques, such as those that we teach in our training programs on The Reid Technique of Interviewing and Interrogation.

The PEACE model represents a non-accusatory interview designed to develop sufficient investigative information to determine the suspect's possible involvement in the criminal behavior under investigation.

Essentially the PEACE Model is the initial step in The Reid Technique – a non-accusatory fact finding interview. The difference thereafter is that in the PEACE model they are not allowed to engage in the interrogation process in which the investigator attempts to persuade the suspect to tell the truth about what they did.

As a result the PEACE model severely limits the investigator's ability to solve cases. Detective Superintendent Sturgeon of the Police Service of Northern Ireland, who has vast experience with interrogations both in typical law enforcement and terrorism-related investigations, stated that "**these legal restrictions on interrogation have made it impossible to secure a confession or incriminating admission from a suspect."**
(Intelligence Science Board on Educing Information, 2006)

In an effort to overcome these limitations the UK has established a two pronged attack to solicit guilty pleas (confessions) – one is that the suspect can be advised that if he does not talk to the police his silence will be used against him in court – the judge will specifically advise the jury that they can consider the suspect's silence in their deliberations. (Police and Criminal Evidence Act 1984)

Secondly, the suspect can be offered a reduced sentence (by up to 1/3 of the prescribed sentence) if he agrees to a guilty plea early in the process. (*Sentencing Guidelines Council* 2005*)*

The suggested threat of using his silence against him and the promise to reduce his sentence if he pleads guilty would be unacceptable under US and Canadian law.

The Reid Technique

The Reid Technique describes a three-part process for solving a crime. The first step is referred to as factual analysis. This represents the collection and analysis of information relative to a crime scene, the victim and possible subjects. Factual analysis helps determine the direction an investigation should take and offers insight to the possible offender.

The second stage of the process is the interview of possible subjects. This highly structured interview, referred to as a Behavior Analysis Interview, is a non-accusatory question and answer session intended to elicit information from the subject in a controlled environment.

The first several minutes of the interview are spent obtaining background information from the suspect. This information, of course, establishes personal demographic data of interest to the interviewer. In addition, however, the collection of such relatively neutral data permits the interviewer to evaluate and note the suspect's 'normative' behavior, in particular, eye contact, response timing, spontaneity and general nervous tension. In addition, during this early stage of the interview we are establishing rapport and assessing the suspect's intelligence, communication skills, mental health and general suitability for the interview, e.g., intoxication, anger, fatigue etc.

During the remainder of the interview, the suspect is asked two different categories of questions - investigative and behavior-provoking questions.

Investigative questions concern such things as the suspect's actions, opportunity, access, motivations and propensity to commit the crime; his alibi, relationship to the victim, activities on the day of the crime, etc. In our book, Criminal Interrogation and Confessions, we devote 6 chapters to the interview process.

If the investigator believes that the subject has not told the truth during the non-accusatory interview, the third part of the technique is employed, which is the accusatory interrogation.

The purpose for interrogation is to elicit the truth from someone whom the investigator believes has lied during an interview.

Canadian Courts

In the case of *R. v. Amos* (2009) the Ontario Superior Court upheld the techniques that the interrogator successfully used to obtain a confession, many of which are elements of the Reid Technique. For example, when discussing the interrogator's efforts to minimize the suspect's moral responsibility, the court stated the following:

There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility. <u>At no time did he suggest that a confession by the subject would result in reduced or minimal legal consequences.</u> Those questions did not minimize the offence anywhere close to the extent of oppression within the meaning of Oickle and other authorities. <u>In using the words "this is your opportunity" to tell your story, and statements to the effect that "your credibility is at its highest now", and in asserting to the accused that he would not be as credible ten months down the road at trial when he had "spoken to lawyers",</u> and the like, the detective was making an approach to the accused's intellect and conscience.

In *R. v. Oickle*, (2000) the Canadian Supreme Court overturned a lower court's suppression of an arson confession and expressed implicit approval of many of the interrogation techniques utilized in The Reid Technique. In *Oickle*, the Court of Appeals suggested that the interrogator's understanding demeanor improperly abused the suspect's trust. The Canadian Supreme Court disagreed stating, "In essence, the court [of appeals] criticizes the police for questioning the respondent in such a gentle, reassuring manner that they gained his trust. This does not render a confession inadmissible. To hold otherwise would send the perverse message to police that they should engage in adversarial, aggressive questioning to ensure they never gain the suspect's trust, lest an ensuing confession be excluded."

Furthermore, in *Oickle*, the Court of Appeals concluded that the police improperly offered leniency to the suspect by minimizing the seriousness of his offense. The Supreme Court again disagreed stating, "Insofar as the police simply downplayed the moral culpability of the offence, their actions were not problematic."

In *Oickle* the Supreme Court offers support for the investigator's necessity to be less than truthful in persuasive efforts during an interrogation. It referenced to the often cited decision of Justice Lamer who wrote, "The investigation of crime and the detection of criminals is not a game to be governed by the Marques's of Queensbury rules. The

authorities, in dealing with shrewd and often sophisticated criminals, must sometimes of necessity resort to tricks or other forms of deceit and should not through the rule be hampered in their work. What should be repressed vigorously is conduct on their part that shocks the community." (*Rothman v. The Qu*een, 1981)

In the Reid Technique we teach that when a suspect appears to be debating whether or not to tell the truth, the use of an alternative question can be a very effective means to obtain the first admission of guilt. Examples of an alternative question include, "Have you done this many times before or was this just the first time?"; "Did you blow that money on drugs and partying, or did you use it to pay bills?"; "Was this whole thing your idea or did you get talked into it?" It is important to recognize that none of these alternative questions address real consequences the suspect may face. This concept is emphasized repeatedly during training in The Reid Technique, including several examples of improper alternative questions. An example of an improper alternative question is, "If you planned this out and it was premeditated then we're talking first degree murder. That means spending the rest of your life behind bars. On the other hand, if this happened on the spur of the moment then it's just manslaughter." Clearly this alternative question is telling the suspect that if he confesses to manslaughter he will be sentenced less harshly. It is improper and could be used as grounds to suppress a confession.

In *Oickle*, the Court of Appeals expressed concern that the use of an alternative question implied a threat or promise of leniency. In refuting this argument, the Canadian Supreme Court offers a clear test of whether or not an implied threat or promise crosses the legal line to where an ambiguous statement may invalidate a confession. It writes, "The most important consideration in all cases is to look for a quid pro quo offer by interrogators, regardless of whether it comes in the form of a threat or a promise." A relevant passage from *R. v.Rennie* illustrates excellent insight into the criminal mind:

"Very few confessions are inspired solely by remorse. Often the motives of an accused are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if promoted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be rendered inadmissible. This is not the law. In some cases the hope may be self-generated. If so, it is irrelevant, even if it provides the dominant motive for making the confession. There can be few prisoners who are being firmly but fairly questioned in a police station to whom it does not occur that they might be able to bring both their interrogation and their detention to an earlier end by confession.

Can investigators misapply interrogation techniques? Yes. Consider the Canadian case *R. v. M.J.S.* (2000). In this case the Provincial Court of Alberta ruled that a confession was inadmissible, in part, because the investigators used an alternative question that contrasted a situation in which if the suspect confessed he could continue to raise his family and keep his family together. On the other hand, if he did not confess he

would never see his kids again because they would be raised by foster parents. This alternative question clearly addresses real consequences and, therefore, is improper.

Conclusion

If the Reid Technique is applied in accordance with the guidelines we have outlined in our training programs and books, it is the most effective process available to help solve criminal activity, and the basic core of the interrogation process is in compliance with all of the criteria established by the courts.

The legal system in which the PEACE model presents serious concerns about causing innocent people to confess as a result of a promise of leniency (reduced sentence) or the threat that if they do not talk the judge will advise the jury that they can consider their silence as a possible indication of guilt.

The UK does not have an absolute right to silence. If they choose not to talk, they are cautioned that this may affect their ability to defend themselves in court. This coupled with the explicitly codified 1/3 sentence reduction for confession "at the earliest reasonable opportunity", which the police may bring up during an interview, amount to an explicit threat of punishment for not talking and an explicit promise of leniency for confession. These are extreme forms of the minimizations and maximizations that have been of so much concern in the false confession literature.

A researcher who accepts that minimizations and maximizations increase the likelihood of a false confession happening would have to be very concerned that the high end minimization and maximization that are explicit characteristics of the British legal system would enhance the likelihood that false confessions would occur. Since these are high end forms of minimizations and maximizations as defined by one critic of police interrogation (Dr. Richard Leo), one would could infer that these characteristics would produce false confessions at a higher rate than that of the much more constrained North American interrogation tactics. This view would also be consistent with a fair amount of literature on the difference between implicit suggestions and explicit ones in the persuasion literature suggesting that explicit statements are more powerful than implicit.