

# Maximizing the Involved Officer's Recollections Before "The Big Interview"

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It often is difficult for any interviewee to recall details of what just happened, especially after a life-threatening incident. We naturally experience inconsistent recollections, delayed recollections, inattention blindness, tunnel vision, and cognitively-biased perceptions just to list a few potential problems. Unfortunately, the legal system too often views signs of these natural recollection challenges as signs of deception or at a minimum witness unreliability. Sometimes even the interviewers can become part of the problem with leading and misleading questioning. Given these concerns, a number of agencies have moved to simply asking a short checklist of pointed questions, rather than a face-to-face interview at all. The good news is that many of the challenges for both interviewers and witnesses can be addressed with proven, reliable, good-practice investigative-interview techniques.

## The Cognitive Interview

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For over 40 years, through more than 500 research studies worldwide and innumerable field applications, the needed assistance for effective interviewing has come to the criminal justice community in the form of "cognitive interviewing" (or the CI). The original R&D funding for the CI was provided by DOJ with the end product being open-source material. A properly conducted CI gains 35-50% more information than a standard control interview, and without compromising accuracy. Some studies have reported a doubling of information gained, or 100% improvement. The CI protocol is a malleable collection of good-practice interviewing tools, which include: building effective rapport, transferring of control, reinstating the original context, thinking in detail, segmenting the action, recalling in different orders, and considering different physical and cognitive perspectives (as well as other more specific mnemonics). Given its solid footing in science, the CI protocol has been adopted by investigative agencies worldwide as a legally acceptable alternative for conducting their forensic interviews.

## Setting Up an Effective Cognitive Interview

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In order to conduct an effective CI, the interviewee should be comfortable with recalling as much as possible without immediate concern for being incomplete or inaccurate. The interviewee must be free to sort out the details in his/her mind as part of an honest but unclean recollection process. A nervous and defensive participant cannot concentrate fully and may engage in second guessing with less accuracy. Given a properly conducted CI, research shows that the interviewee is able to more reliably distinguish which recollections are accurate and which are not. This is through convergence of memories elicited using different recall techniques.

Following a use-of-force incident, the involved officer likely will be asked to participate in one or more investigative interviews. For various legal reasons, some officers may choose not to participate in certain post-incident investigations. If an officer decides to share his/her experience, whether the interview is voluntary or compelled, investigators will continue to benefit from the cognitive interview process. Unfortunately, too many agencies in some jurisdictions still continue to conduct disciplinary interviews under *Garrity* with the style and feel of an accusatory criminal interrogation. In fact, this practice appears to be on the rise in the past 20 years. The accusatory style has been shown to significantly impair accurate recall, yet under this method, the involved officer is expected to be a super-human recollection machine without "saying the wrong thing." This has restricted officers to intentionally offer minimal information. Whether an officer even submits to an interview may depend on whether the environment is supportive or hostile to the officer.

## Purpose of the Interview

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The primary purpose of the forensic interview is to evaluate the reasonableness of the officer's actions in a given specific instance. But that should not be the only focus. We also should be interested in learning something from each and every incident toward more, better, or different training for those who might find themselves in a similar situation. Maybe there is nothing new to be learned from a given incident, but how will we ever hope to know that without the assistance of those who were directly involved? Gaining that assistance may be difficult or impossible if the involved officer is expected to provide recollections in an unsupportive, if not openly hostile environment. We want to learn as much as possible, but we cannot be sacrificing officers in the process when we ask them to be as complete, accurate, and forthcoming as possible. So what can we do?

## The Self-Administered Cognitive Interview

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Even before officers are subjected to a formal forensic interview, there is a process that can help to maximize their recollections—the self-administered cognitive interview. This option (CI SAI) is for the involved officer to use several elements from the CI protocol to mine his/her own memory prior to going in for “the big interview.” Geiselman makes this suggestion in his instructional block about the CI during the Force Science Certification Course. The self-administered elements from the CI might include: reconstruction of the circumstances at the outset of the event (using all senses), concentrating and recalling in detail, follow-up segmenting of the sections of the action, reverse-order recall, drawing sketches, and changing mental perspectives. In a nutshell, if an officer is trained to properly conduct a CI with civilians, he/she is capable of using the CI to mine their own memory. In research, the SAI has been found to be more effective than nothing, but still not as effective as a face-to-face, sit-down CI.

## Maximizing Recall with a Face-to-Face Cognitive Interview

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Perhaps the optimal solution is to conduct a face-to-face CI as part of the attorney-client preparation phase, where nothing generated during the unclear recollection process will be discoverable under attorney-client privilege. The involved officer is free to experience inconsistent recollections or delayed recollections while honestly sorting out the ‘what’ and the ‘why’ of the incident.

## Two Interviews

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Just as with an officer conducting their own SAI prior to the formal forensic interview, a face-to-face CI in the presence of his/her attorney before “the big interview” would result in two interviews (one in preparation and one the formal forensic interview). Fortunately, we have

research, both laboratory and field, to evaluate the wisdom of this practice. The basic finding is that two interviews are better than one in terms of the ultimate completeness and accuracy of recall. Thus, there is no credible argument to be made that a properly conducted SAI or CI as part of the preparation phase constitutes contamination of the witness's memory. The overall practice cannot be criticized as "meddling" in the veracity of the formal forensic interview because the science, both laboratory and field, shows a reliable positive effect of conducting a prior SAI or CI.

## **Confabulations and Other Memory Mistakes**

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Confabulation (generating new memories not perceived) by "normal" adult witnesses has been studied formally by research psychologists since at least the early 1970s. It can be part of the unclear recollection process following any arousing, confusing, or perhaps traumatic event. Research on the CI has shown that one CI does not lead a witness to greater confabulation, and two CIs does not either. In fact, researchers have found it more difficult to experimentally mislead a witness during a properly conducted CI. Thus, legalistically, conducting an interview in preparation for "the big interview" could be a smart move – surely it is better for the officer to have a complete and accurate readout of his/her own memory prior to saying anything formally binding. The natural and expected delayed recollections and inconsistent recollections often observed following a stressful incident will not be interpreted mistakenly by observer-evaluators as signs of deception. This interview prior to the 'big interview' allows the officer to think aloud as needed while the recollection process unfolds. At this point, undue concern about having flawless recollections in real time is not present for the officer. We know the CI protocol allows delayed recollections to come forth, while inconsistent recollections are clarified using different platforms for remembering at the direction of the CI interviewer.

## **The Role of the Attorney**

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The interviewer must be trained in the proper use of the CI. During the interview, both the 'what' and the 'why' (ongoing thoughts) should be addressed. Because of the natural legalistic mindset, it perhaps would be optimal for the CI to be conducted by an investigator trained in the use of the CI protocol as with any eyewitness. If the attorney is not conducting the interview, the attorney should remain silent during this interview. Any questions should be asked only after the interviewer has concluded the CI protocol to allow for maximum completeness and accuracy.

Properly trained attorneys can conduct the CI. However, they must focus on maximizing the completeness and accuracy of the involved officer's recollections. They are to assist the interviewee in their remembering as much as possible with accuracy. Save questions of legalistic concern until the end of the interview protocol. We always can ask any lingering questions about the known unknowns at the end of the interview, but what about the

unknown unknowns? We need to hear from the involved officer first. They were there and involved. What was their experience? Conducting the interview entirely around specific items of legalistic concern could result in confirmation bias or hindsight bias. It also could curtail full recall through interference with the recollection process (interruptions, redirecting focus, and skipping around). Attorneys tempted to fall into a legalistic mindset throughout the interview might benefit from using a properly trained investigator to conduct their client's CI.

## Finding the Right Training

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Many agencies at all levels of law enforcement now offer in-house training on the CI. Ideally, instruction would include role-play interviews under the direction of an instructor with feedback. Toward this end, both Professors Ed Geiselman and Ron Fisher (researchers and co-developers of the original CI) independently have assisted numerous agencies and PDs around the country to set up their own in-house, independent training on the CI (e.g., FLETC, NTSB, NCIS, DHS/CBP, GBI, and numerous other federal, state, and local agencies). Given that the CI has been in place for several decades, there are several experienced CI interviewers available who are capable of conducting a face-to-face CI as part of the attorney-client preparation phase after use-of-force incidents. It could very well be a smart discretionary move.

Dr. Geiselman's UCLA emeritus faculty webpage can be viewed online at the Department of Psychology.

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