



New York State Office of  
Indigent Legal Services



# INTERVIEWING FOR FACTS

PRACTICAL GUIDANCE ON FACT-  
FINDING INTERVIEWING FOR  
DEFENSE INVESTIGATORS &  
TEAMS

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*The success of an interview relies not so much on the interviewee, but the interviewer.*

Fact-finding investigations are not about a lone fact, a sole source, a single report, or a solitary frame of video. Instead, investigations are the cumulation of empirical knowledge based on multiple facts, sources, reports, and surveillance.

Whether a DWI, petit larceny, robbery, or murder, the myths of an incident often overshadow the facts. An investigator's value lies not only in their ability to retrieve requested information, but to identify, examine, interpret, and present facts in a compelling manner that reinforces the theory of defense while debunking myths.

Particularly as technology continues to advance at an unprecedented pace, the exponential growth of information underscores the critical need for highly skilled defense investigations and interviewing techniques.

This reframe of the defense investigator's role requires an interdisciplinary, collaborative approach on defense teams, ensuring investigators have full access to all the case-related information throughout the life of a case. It also requires investigators to have an effective framework allowing them to analyze and interpret data with validity and reliability, thereby contributing to the construction of a robust and defensible case.

This guide introduces investigators to the **PEACE** model framework (See Appendix F: The History of the P.E.A.C.E. Framework) for conducting fact-finding interviews. PEACE represents the five stages of managing the interview process:

- *Plan and Prepare*
- *Engage and Explain*
- *Account*
- *Closure*
- *Evaluate*

Contemplating the PEACE model, and incorporating the recommended steps and best practices in this guide will help to: 1) introduce the concept of fact-finding interviews to entry-level field investigators; 2) make a complex, challenging interview effort more manageable, comprehensive, consistent, and effective for even the seasoned investigator; 3) improve understanding of the investigation function and interdisciplinary collaboration efforts on the defense team; and 4) underscore defense investigators as defense team members with distinct skills in unearthing helpful facts and resolving harmful facts to authenticate and bolster the client's defense theory.

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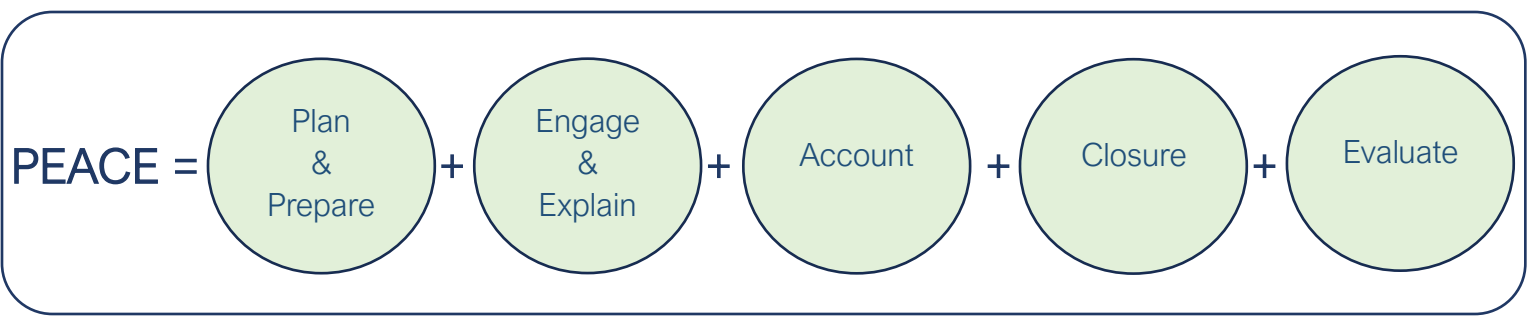
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## I. Every Field Needs a Framework: How the PEACE Model Aids Defense Investigations

The PEACE model is a framework for fact-finding interviews that relies on a conversational and non-confrontational information-gathering approach to questioning potential witnesses in legal matters. PEACE functions to teach and remind investigators that strategy is necessary for consistent results and legal wins, and a conscientious approach is necessary to minimize harm to the public.

<b>Step One: <i>Plan and Prepare</i></b>  Develop an interview plan and identify, organize, and begin working through the procedural steps that must be taken prior to speaking with witnesses.	<ul style="list-style-type: none"> <li>✓ Background research on case</li> <li>✓ Client family tree</li> <li>✓ Cast of characters</li> <li>✓ Background research on witnesses</li> <li>✓ Case conferencing with defense team</li> <li>✓ Client interview</li> <li>✓ Interview plan</li> <li>✓ Ethical considerations</li> </ul>
<b>Step Two: <i>Engage and Explain</i></b>  Engage through an initial introduction to a witness, sometimes known as “the door knock,” to successfully get through the door and converse with witnesses.	<ul style="list-style-type: none"> <li>✓ Introduction</li> <li>✓ Techniques for gaining consent</li> <li>✓ Rapid rapport building</li> <li>✓ Explaining the purpose of the interview</li> <li>✓ Setting ground rules</li> <li>✓ Understanding witness type</li> </ul>
<b>Step Three: <i>Account</i></b>  Conduct the interview by using a cyclical process of questioning, probing, clarifying and/or challenging, reviewing, and questioning once again.	<ul style="list-style-type: none"> <li>✓ Building rapport</li> <li>✓ Asking the first question</li> <li>✓ Getting to the root</li> <li>✓ Emotional engagement and commitment</li> <li>✓ Supporting witness openness</li> <li>✓ Reviewing statement for accuracy</li> </ul>
<b>Step Four: <i>Closure</i></b>  Summarize the information that the witness has provided, make edits, and give the witness the final word.	<ul style="list-style-type: none"> <li>✓ Is there anything else?</li> <li>✓ Best practices for editing</li> <li>✓ Next steps</li> <li>✓ No promises</li> <li>✓ Ensuring the witness has your contact information</li> </ul>
<b>Step Five: <i>Evaluate</i></b>  Review and analyze the information gained from the interview.	<ul style="list-style-type: none"> <li>✓ Reviewing statement provided</li> <li>✓ Re-reviewing evidence related to the witness</li> <li>✓ Case conferencing with defense team</li> </ul>

## II. The Art of Interviewing

Viewing fact-finding interviews as an art form may seem unconventional, but it's a powerful lens through which to understand the PEACE framework. For defense investigators, creativity and imagination are essential tools, shaping every approach they take, especially when working directly with the public.

No two witnesses are the same, and each person will require a unique approach requiring investigators to consider:

*It can be said that no matter the interview form, in essence, the most **successful interviews are genuine conversations between two or more people.***

*What do I wear in the field? How do I approach the witness's home? Where do I park my car? What is going to convince them to talk to me? How do I knock on the door? How do I get detailed information? How do I make this witness care? How do I maintain the confidentiality of my client? What if the witness starts yelling at me? When do I pull out my notepad or statement paper?*

### Hypothetical

The investigator completes a thorough background investigation on a witness and discovers that this witness is a veteran who saw combat. The investigator also discovers that the witness's brother was arrested as a juvenile, but the case was dismissed through the hard work of the public defense team. This witness currently lives at the end of a cul-de-sac in a duplex in a rural suburban neighborhood. An artful investigator's approach to this witness may look as follows.

- The investigator wears a plain business casual shirt, slacks, and comfortable sneakers to visit this witness.

Keep your look casual, tidy, and neutral, sending visual cues that mirror military principles and show respect. The look helps the investigator remain approachable.

- The investigator drives to the end of the cul-de-sac, analyzing the block, and turns around to face the outlet.

Most neighborhoods have a "nosey neighbor;" pinpoint who this might be. They can be incredibly advantageous (or disadvantageous). Are there any other neighbors out who might become helpful or problematic? Always park your car facing the direction that will allow you to exit a location immediately.

- The investigator doesn't park directly in front of the house but towards the end of the property line.

Never park in someone's driveway; it's aggressive and can garner unnecessary attention from curious neighbors. Create a little space by parking towards the end of the property line and casually walk up to the house taking in your surroundings along the way.

- The investigator doesn't bring a bag but instead carries a professional padfolio in hand with their documents inside. They walk calmly.

Bags can be intimidating because they can easily conceal weapons. Ensure you have all of your supplies, while aiming to be minimalist in what you carry. Do not bring confidential case materials. Be aware of how you walk – is your pace too fast for the neighborhood? Too slow?

- The investigator knocks casually on the front door, then steps back and to the left with their right foot comfortably situated ahead of their left.

Do not knock like the police or a cartoon character; just knock casually as a friendly neighbor might. Step back to create space, especially if you are tall. Try to be at eye level. Step just outside of the door opening to create an easy eye-line through a possibly cracked door. Keep your door-side foot slightly forward so you can easily stop the door from fully opening in the event a dog charges at you.

- The investigator smiles and says, “Hi ...”

If you are cold, the recipient will be cold. You catch more bees with honey than with vinegar!

- The witness is neutral and says they aren't interested in getting involved. They begin to close their door. The investigator brings up the witness's brother's case.

This is a moment when you need to stir up enough emotion in the witness to get them to not only become interested in what you have to say but to change their position and become involved in the process. Neutral witnesses often lack emotional attachment. Bringing up the witness's brother's case, and specifically the favorable outcome that his brother received through public defense, just might tip the scales in your client's favor. Of course, strategize around this in advance with your defense team.

#### a. What Defense Investigation Is Not

In general, interrogation tactics, aggressive examinations, cross-examinations, carrying an unconcealed weapon, or holding a badge does not get defense-side investigators the information needed to support their client's defense theories, nor do these approaches protect investigators from harm, or align with the cultural values public defense is working to embody within the sector. **At its core, the key to gaining access to people's personal lives – and ensuring both safety and success – is showing genuine respect for them and their communities.** This is the foundation of the PEACE framework, a reminder to defense investigators that a peaceful approach holds the greatest potential for building trust and uncovering the facts.

We are mandated to provide quality representation to our clients.

Defense investigators are servants to the people and work on behalf of clients who may have been arrested, criminally charged, and/or convicted, and who may be involved in family law cases. Defense investigators are not law enforcement, they do not hold legal authority and cannot rely

on even an illusion of having the power to coerce cooperation or participation from others.

**In fact, by even allowing witnesses to falsely believe defense investigators have any power to enforce, they are providing prosecution with easy ammunition to dismantle defense investigations during plea negotiations or at trial.** Adopting the PEACE model helps to steer defense investigators away from prosecutorial forms of engaging with the public and towards more defense-friendly forms of interaction that are effective and harm reductive.

We are mandated to provide quality representation to our clients.

#### b. Approaching Investigations through a Humanistic Lens

Since engaging the public is a primary function of the defense investigator and can make or break an interview, defense investigators must consider how they approach community members within the context of that community member's culture. Part of an effective and harm-reductive approach to community engagement is knowing how to appeal to people's humanity to help witnesses feel more secure and willing to share what they know.

In the PEACE model during the *Engage and Explain* stage, investigators must introduce themselves to witnesses in a manner that convinces witnesses to engage.

##### *Hi, Ms. Smith?*

If the person answering the door fits Ms. Smith's profile, researched by the investigator during the *Plan and Prepare* step, then the investigator can simply greet Ms. Smith directly. Greeting her directly pushes her to either accept the greeting or lie about not being Ms. Smith—a difficult thing for most people to do convincingly.

**My name is Jay Morris, I'm an investigator with the Local County Public Defender's office – here's my business card. I'm working on Michael Mar's legal defense. Michael told me that you're his grandmother. I think you might be able to help with his case. Could we talk for a moment so I can fill you in on what's happening? It won't take long.**

The investigator follows a consistent script that identifies them as someone working for a defense attorney or a public defense provider that represents the client. Providing a **business card** confirms the investigator's identity and gives the witness something to look at while analyzing how they feel about the investigator's presence. The investigator appeals to the witness's humanity by greeting them formally, identifying them as the client's "grandmother," explaining they've had a personal conversation with Michael, framing the request as an appeal for help, and asking the witness's permission to talk, while assuring her that the timeframe will be short.



A Few Considerations: Do ...	Do not ...
<i>Ask if you two could find a place to talk more.</i>	<i>Walk into the home uninvited or sit somewhere without permission.</i>
<i>Make eye contact and keep open body language.</i>	<i>Be forceful in your affect; be glued to what's written on your folder; shuffle paperwork; or pull out your notepad to take notes.</i>
<i>Ask how their day has been going. Make casual conversation – keep communication alive.</i>	<i>Be passive aggressive or make negative assumptions about the witness.</i>

**Pro tip:** Observe the best interviewers in any field, and it becomes evident that humanity is at the core of their approach.

The idea of appealing to a witness's humanity may seem surprising or even off-putting, but let's explore what makes it work. Evolutionary science has shown that the sharing of personal experiences, ideas, and advice is a deeply human impulse, driven by a tapestry of motivations that are as varied and complex as the individuals themselves. At the heart of this impulse is the desire to connect, to contribute, to learn, to heal, to story-tell, and to leave a mark on the world.

*What then drives people to guard what they know, or avoid sharing the details of their story?*

This human impulse often comes down to the single fear that by sharing, people will cause trouble for themselves or their loved ones. Although this fear is a considerable barrier, it's important to remember that people have a greater inherent desire to share than not to share. When we approach people, particularly people of different identities with whom we have no prior rapport, asking personal questions about potentially difficult or confusing circumstances in their lives, we are triggering competing impulses within them. They are trying to process verbal communication and nonverbal cues to analyze any potential threat through a sudden influx of emotions. Whether visible or not, communicated or not, most people have an emotional response to an investigator's approach and objective.

Although you cannot demand information or promise anyone that they or their loved ones won't face trouble after speaking with you, you can:

- Remain calm.
- Be predictable.
- Be present.
- Know the client and case.
- Allow others to have feelings and not take them personally.
- Make relaxed and meaningful eye contact.
- Maintain open yet grounded body language.
- Identify yourself clearly.



- Hand them a business card to read.
- Identify your purpose.
- Offer simple accommodations.
- Help keep them focused on the request.
- Anticipate questions and offer answers upfront.
- Remain emotionally open.

These actions work to mitigate a person's sudden influx of emotions, directly and indirectly. Mitigating the sudden influx of emotions is the bridge to obtaining tangible information.

**Pro Tip:** Seeking to help reduce the pressure a witness is under while they parse through their sudden influx of emotions leads to more consistent investigative gains. Never leave a witness feeling more emotionally unregulated than when you found them – **Do. No. Harm.**

Strong defense investigators are vulnerable. Vulnerability can be very difficult to accept and express. Vulnerability is the state of being *uncertain, open to risk and attack, and emotionally exposed*. This might lead one to ask, “Why would I want to be any of these things when working out in the field trying to get information from a potentially hostile witness?”

When investigators care about the people they are talking to, there is a greater chance that people will care about what investigators have to say. Through vulnerability, we can communicate non-verbally that we see another human being as complex and that we respect their complexity.

**Showing respect is the fastest way to build and keep rapport.**

### c. Breaking Down Cultural Barriers through Cultural Consciousness

Cultural consciousness is having the knowledge and skills to be aware of one's own cultural values and those of others and the implications of these in making respectful, reflective, and reasoned choices.

Becoming culturally conscious is essential for defense-side investigators. This consciousness enables investigators to engage with witnesses in a manner that respects their backgrounds and prioritizes empathy during interactions. Furthermore, it serves to mitigate potential misunderstandings that may arise during conversations.

A culturally conscious investigator is adept at describing behaviors in a non-judgmental way, consciously filtering out cultural biases, asking clarifying questions, and using emotional reactions as clues for understanding, as well as analyzing witnesses' behaviors through a lens of “cultural sense.”

**Pro Tip:** Reflect on the barriers you have in approaching strangers of different cultures. Ask yourself: When do I make assumptions about another person? Do I change my own affect or body language? Do I quickly give up on trying to obtain information? Is there a language barrier? This exercise requires self-reflection and honesty but can provide great insight regarding areas of approach that might need some reframing.

### III. Understanding the Basics

#### a. Case Conferencing

The difficulty defense counsel faces in addressing clients' complex social circumstances and underlying mental, emotional, and physical needs, in combination with complex legal obligations and deadlines, high caseloads, and strained resources can be radically mitigated through team-based approaches. The most important step in this approach is **case conferencing**.

Case conferencing is integral to case management, forming a critical part of the *Plan and Prepare* phase within the PEACE model. Managing cases involves identifying client vulnerabilities, planning for client needs, and making and tracking service referrals. Effective case management ensures that services are delivered in a timely, context-sensitive, and client-centered manner to achieve the best-case outcome and client satisfaction.

A case conference is a planned meeting that brings together all the defense team members who play a role in supporting a client through the life of their case.

These meetings are about building team rapport, identifying styles of communication, and strategic planning. For example, investigators must know when and how the attorney and other team members want them to report on investigative information, particularly as it relates to CPL 245.20. Should the investigator call the attorney and/or other defense team members immediately after a witness interview or wait until the next opportunity to speak to the defense team member in person? Should the investigator write a memorandum? Significantly, the investigator must know when the attorney wants information to be written down during the investigation and what the defense team's general rules are on reciprocal discovery.

This rapport-building aspect of the case conference should also identify the team's approach to building client relationships. How does the team ensure that the client receives regular communication with consistent messaging and feels assured that the defense team is qualified, tenacious, and committed to representing them during one of the worst moments of their life?

**Best practice dictates that an investigator should conduct at least one in-person client interview before initiating any witness interviews.** The client interview prepares the investigator to hit the ground running as an informed member of the client's defense team. There are exceptions to this rule, but client relationship-building and collaborating with the client in their own investigation is the optimal approach.

Over the course of representation, case conferencing is a space for team members to discuss the various options open to representing the client and discuss any concerns or challenges that any or all stakeholders on the team, including the client, are facing. These meetings allow for everyone to bring their own perspectives to the case and to come up with a set of shorter- and longer-term action steps to best serve the client.

Case conferencing is also a phenomenal accountability tool. Where defense team members must manage countless needs from a high volume of cases, inevitably some tasks slip through the cracks, and regular conferencing can support team members with these commitments.

Even where an attorney is not yet sure whether there's investigation or mitigation work to be done, case conferencing teases out the possibilities and identifies immediate needs. Case conferencing also helps to curtail ideas that are not productive or ethical, thus saving time and limiting the risk of the client receiving ineffective assistance of counsel.

Case outcomes often benefit from early and continuous case conferencing. And importantly, the client and their loved ones are usually more satisfied and confident that the case was handled with care and diligence from start to finish.

#### b. Charges, Elements, and Defense Theories

Each criminal charge has specific elements that the prosecution must prove beyond a reasonable doubt. Knowing these elements allows an investigator to focus on gathering or challenging evidence related to those specific points. **Reviewing jury instructions for every charge against the client is a fundamental best practice for investigators.**

##### Hypothetical

Charge: Second-Degree Murder.

Elements: **Intent to cause death** and **causes death**

Investigation: Through canvassing and witness interviewing, an investigator learns that the client was standing next to the decedent at the subway station and was physically fighting with another passenger when the client made contact with the decedent, who was allegedly pushed onto the train track. This information may help the defense raise doubts about the sufficiency of the evidence on the intent element.

A clear understanding of the charges and their elements helps investigators determine which witnesses to interview and what information to gather. Questions and investigatory approach are tailored to focus on key details that relate to the offense elements. For example, in a case where the main evidence is eyewitness identification, the defense may be that it was a mistaken identity.

It's also helpful to know that some defenses can prevent convictions. For example, if the defense raises self-defense, then the prosecution may be able to prove the elements of second-degree assault but may not be able to prove that your client was not justified.

It's important for investigators to collaborate with the attorney in conceptualizing the defense theory, which serves as a narrative counter to the prosecution's version of events. A compelling theory weaves together people, facts, and legal principles to tell clients' stories of injustice.

During the brainstorming process to determine the defense theory, investigators bring a unique perspective. Their work, particularly in conducting fact-finding interviews, involves uncovering evidence that bolsters or challenges the theory's credibility.

### Genres of Defense

It didn't happen the way they say it did.

The witnesses are lying or mistaken, and we investigate the motive to lie or the reasons for the mistake.

It happened that way, but our client didn't do it.

This is a misidentification defense. We investigate the factors impacting the identification and any possible alibi.

It happened, our client did it, but they were justified.

Justification defenses include but are not limited to self-defense, defense of others, and defense of premises; and affirmative defenses include but are not limited to duress, entrapment, and renunciation. Investigation varies widely based on the defense.

Something happened, our client did it, but the prosecution charged the wrong crime or can't prove it.

The prosecution charged the wrong crime or has a biased witness and can't make out the elements of the crime, and the jury shouldn't convict. Or the jury should only convict on one of the lesser included offenses.

It happened, our client did it, but they aren't responsible due to their mental state.

Investigators play an essential role in gathering medical, mental health, and law enforcement records pertaining to the client's mental state and mental health history for affirmative defenses of mental disease or defect and extreme emotional disturbance.

It happened, client did it, but so what!?

Investigators work to develop relevant evidence that may emphasize the unfairness of the prosecution, which may sometimes result in jury nullification.

### c. Witnesses

There are several types of witnesses:

- ✓ Client (i.e., “the defendant”) is not usually referred to as a witness but may in fact be a witness to the incident in question, as well as their own arrest, and the client has a constitutional right to testify as a witness in their own case.
- ✓ Complaining Witness (“CW”) is a person who has allegedly been victimized by your client and/or others and has reported the alleged crime to law enforcement.
- ✓ Lay Witness (i.e., “eyewitness”) is a person who observed the events that led to your client’s arrest and describes what they saw, heard, or smelled.
- ✓ Key Witness is a lay witness with the most comprehensive account of what happened, usually based on personal presence at the incident.
- ✓ Expert Witness (i.e., “specialist”) is educated in a certain area and may testify and give an expert opinion within their area of expertise.
- ✓ Character Witness is someone who knew your client, CW, or other people involved in the case. Character witnesses usually didn’t see the alleged incident take place. In New York, character witness law is extremely limited.

While witnesses don’t technically belong to either side:

- A “prosecution witness” refers to someone who may be called to testify on behalf of the prosecution’s case.
- A “defense witness” refers to someone who may be called to testify on behalf of the defense’s case; and the CPL 245.20 rules apply regarding their statements.

No matter the type of witness, or which party is calling the witness, the witness may be **friendly**, **neutral**, **hostile**, or **unknowing**.

### *The Friendly Witness*

#### **Pros**

- ✓ Willing to meet you wherever and whenever
- ✓ Willing to give you as much time as needed to conduct a thorough interview
- ✓ Willing to tell you everything they know
- ✓ Can be excellent sources for leads

#### **Cons**

- ✓ Strong tendency to flip
- ✓ Might feed the defense team misinformation
- ✓ May be trying to manage the case
- ✓ Motives subject to attack on the basis of bias

#### **Best Practices**

- ✓ Prepare as though they are a neutral or hostile witness
- ✓ Never assume that what they say is true – always verify

### *The Neutral Witness*

#### **Pros**

- ✓ May have critical information
- ✓ Can become favorable and reliable

#### **Cons**

- ✓ Most witnesses are neutral
- ✓ Lots of work to win over
- ✓ Can be more difficult than a hostile witness
- ✓ Willingness depends greatly on rapport building
- ✓ Lacks emotional attachment
- ✓ Perceives involvement as a burden

#### **Best Practices**

- ✓ Initial goal is to simply establish rapport
- ✓ Find out what might motivate this witness to get involved
- ✓ Help them understand just how important their knowledge is
- ✓ Try appealing to a sense of justice or the importance of *their* insights
- ✓ Rely on “looping,” or circling back, to get the conversation going

### *The Hostile Witness*

#### **Pros**

- ✓ Not as hard to interview as we sometimes anticipate
- ✓ Once they start talking, the floodgates may open
- ✓ Often just need or want to talk
- ✓ Strong emotions tend to be tied to strong memories

#### **Cons**

- ✓ Getting through the front door
- ✓ Very high levels of initial resistance
- ✓ Can be off-putting and abusive

#### **Best Practices**

- ✓ Start with **close-ended** questions
- ✓ Express empathy for their experience and emotions
- ✓ Allow the witness to express their emotions and affirm them
- ✓ Take their hostility gracefully, and do not take it personally
- ✓ Reduce their hostility, so by the time they testify their emotions are muted
- ✓ Do not leave a hostile witness even more hostile after speaking to them – **do no harm**

### *The Unknowing Witness*

#### **Pros**

- ✓ Authenticity in responses
- ✓ Unbiased perspective
- ✓ Reduced resistance
- ✓ Potential for key details

#### **Cons**

- ✓ Getting through the front door
- ✓ Very high levels of initial resistance
- ✓ Limited preparedness
- ✓ Risk of contamination

#### **Best Practices**

- ✓ *Plan and Prepare* thoroughly
- ✓ Use a neutral approach
- ✓ Stay transparent within limits
- ✓ Document everything carefully
- ✓ Assess the ethical landscape
- ✓ Evaluate witness reliability early
- ✓ End with respect



#### d. Background Investigations

No matter the type of witness or their disposition, an investigator must complete a comprehensive background investigation to successfully interview witnesses. In the *Plan and Prepare* step of the PEACE framework, investigators should conduct a thorough background investigation to illuminate where potential evidence might be found and where it might not be found and to inform the approach that must be taken for each witness. While this procedural burden falls squarely within the investigator's duties, the entire defense team should strategize around approaches together.

Background investigation steps include:

##### **Step One: Understand the Charges**

Understand the nature and details of the charges, the elements of the charges, and the instructions of law that will be provided to a jury respecting the charges. Read all available case information prior to interviewing witnesses. Immediately after arraignment, discovery will not yet be available. However, there will still be many avenues for obtaining information, including:

Record, Conference, or Interview	Background Information
Arraignment packet: <ul style="list-style-type: none"><li>✓ Alert Sheet/Arrest Report</li><li>✓ Complaint</li><li>✓ Pretrial Release Assessment</li><li>✓ Charge Sheet</li><li>✓ Arraignment Interview</li></ul>	<ul style="list-style-type: none"><li>• Client information (i.e., address, phone #, who they live with, employer, school, family, etc.)</li><li>• Co-D and CW information (i.e., possibly names)</li><li>• CW profile</li><li>• Incident and incident location (i.e., date/time, address, alleged weapon)</li><li>• Arraignment interviews, if conducted, can identify immediate investigation needs</li></ul>
Defense team case conferencing: <ul style="list-style-type: none"><li>✓ Case conferencing should happen immediately after a case is assigned to an attorney and continue throughout the life of a case.</li><li>✓ Case conferencing is an opportunity for multiple minds to analyze a case from different perspectives.</li><li>✓ Case conferencing helps to ensure that nothing is missing or falling through the cracks.</li></ul>	<ul style="list-style-type: none"><li>• Analyze charges</li><li>• Understand elements of charges</li><li>• Discuss attorney arraignment notes (if they spoke to the client)</li><li>• Consider case type (i.e., Who done it? Self-defense?)</li><li>• Discuss what is needed from known witnesses:<ul style="list-style-type: none"><li>○ Lock them into a story?</li><li>○ Get more info?</li><li>○ Create inconsistencies?</li><li>○ Just get the facts?</li><li>○ Establish alibi?</li><li>○ Attack credibility or another witness?</li></ul></li></ul>

<p>News media and social media:</p> <ul style="list-style-type: none"> <li>✓ National news platforms</li> <li>✓ Local news platforms</li> <li>✓ Facebook</li> <li>✓ Reddit</li> <li>✓ YouTube</li> <li>✓ Instagram</li> <li>✓ TikTok</li> <li>✓ Snapchat</li> <li>✓ X (formerly Twitter)</li> <li>✓ Threads</li> <li>✓ Google Maps</li> <li>✓ Google Earth</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Preserve</u> all news media and social media immediately</li> <li>• Biographical and historical information about any of the players in a case</li> <li>• Footage, surveillance, photographs of the scene and/or potential witnesses</li> <li>• Additional witnesses (i.e., names, statements to reporters, addresses, employment)</li> <li>• Dates, addresses, times of alleged incident and events leading up to the alleged incident</li> </ul>
<p>Client interview:</p> <ul style="list-style-type: none"> <li>✓ One of the most important collaborations for investigations.</li> </ul>	<ul style="list-style-type: none"> <li>• Date, time, address of alleged incident</li> <li>• Events leading up to the alleged incident</li> <li>• Eyewitnesses</li> <li>• Character witnesses</li> <li>• Alibis</li> </ul>

**Pro Tip:** Prior to interviewing defense witnesses, particularly “friendly” witnesses, ask your client if they go by any nicknames to the witness and/or can provide any anecdotes that you may pass along to help prove to the witness that you are working closely with your client and that your client did in fact give you permission to speak about the case with them.

## Step Two: Digest Discovery

Digest Discovery. If automatic discovery requirements have been met, the investigator must digest all materials in an organized and methodological manner (See Appendix A: *Discovery Digest Template and A.I. Considerations*). If discovery requirements have not yet been made available, prepare your templates, and digest any materials that are at your disposal. Discovery provides defense investigators with an immense amount of data that will greatly inform their investigations.

Materials to review, include:

CPL 245.20(1) – Initial Discovery	Record Type
The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including but not limited to:	<ul style="list-style-type: none"> <li>✓ All written and recorded statements, and the substance of all oral statements, made by the defendant or a co-defendant.</li> <li>✓ All GJ testimony.</li> <li>✓ Names, contact information for all civilian witnesses.</li> </ul>

	<ul style="list-style-type: none"> <li>✓ Names and department of all police witnesses.</li> <li>✓ All statements, written or recorded.</li> <li>✓ Expert opinion evidence.</li> <li>✓ All tapes or other electronic recordings, including 911.</li> <li>✓ All photographs and drawings.</li> <li>✓ All photographs of any property by police.</li> <li>✓ All reports about physical or mental examinations, or scientific tests.</li> <li>✓ All evidence favorable to the defense.</li> <li>✓ All promises, rewards, inducements, and requests for considerations.</li> <li>✓ List of all tangible objects obtained from defendant.</li> <li>✓ All search warrant records.</li> <li>✓ All tangible property obtained (and a list of which will be used at trial).</li> <li>✓ Criminal history of defendant, co-defendants, prosecution witnesses.</li> <li>✓ All open cases against witnesses.</li> <li>✓ Time and place of seizure, arrest.</li> <li>✓ DWI Records.</li> <li>✓ Computer crime records.</li> <li>✓ E.S.I. (electronically stored information).</li> </ul>
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### Step Three: Visit the Scene

Investigators should visit the scene of the incident, if possible, before beginning any fact-finding interviews. If the scene requires prior authorization and a police escort, then investigators must speak to the attorney about submitting this request and discuss with the attorney the benefits and disadvantages of doing so. Having an image of the location allows the investigator to build rapport with witnesses and better understand the information they are providing. Being able to pinpoint the place from which the witness observed activity is essential. It also allows for canvassing, eyewitness, and surveillance considerations, as well as measurements, photographs, and video to be taken for diagramming purposes and potential use in trial.

#### Step Four: Create a Cast of Characters and a Timeline

Outline the case, create a timeline of events, and identify all the possible players. Whether you have received all the discovery or visited the scene of the incident, a cast of characters must be developed. A cast of characters is more than a witness list, but less than an entire transcript. It is an ever-changing document that identifies everyone mentioned in any documentation relevant to the alleged incident. It identifies all information known about that person and their relationship to others. With this as a starting point, a witness list can be amassed. Identify the appropriate individuals to interview in a logical order. Maximum information can thus be gathered before one witness “shuts down” another witness’s accessibility. When interviewing members of a jury, for example, it should be remembered that often jurors establish bonds during a trial and keep in touch afterwards. (See Appendix B: *Cast of Characters Template*).

**Create a Witness List** of all known possible witnesses. For fact-finding purposes, create tiers related to the case, not the client.

- ✓ First tier witnesses who have direct knowledge of the incident.
- ✓ Second tier witnesses who might have direct and/or circumstantial knowledge.
- ✓ Third tier witnesses who have more obscure circumstantial knowledge. (See Appendix C: *Witness List template*).

#### Step Five: Locate Witnesses and Determine Where the Interview Should Occur

Locate witnesses prior to proceeding to their residence or business. Determine where you’d like for the interview to take place. Several prominent textbooks suggest that the investigator should make appointments for the witness to meet at the investigator’s office. However, this approach allows for witnesses to cancel and disappear, and it omits an important opportunity to see the witness within the context of their world. Scheduling times for witness interviews works best when you want to interview client’s loved ones and other “friendly” witnesses. **Otherwise, for the defense investigator, a cold-call approach at a witness’s residence is the best practice.** Plus, being in the comfort of one’s own home tends to put people at ease. A home visit also provides the investigator with a working knowledge of the socio-economic and physical influences that might be impacting a witness’s willingness to participate in the client’s case. Perhaps, at some point, the client lived in the very home the investigator is visiting, allowing the investigator to see an environment that informed their social history.

##### Witness Location Databases:

- ✓ LocatePLUS
- ✓ TLO
- ✓ Tracers
- ✓ Police Reports
- ✓ Social Media

**Pro Tip:** Investigators should be flexible about changing venues if the witness’s home is not available. Other comfortable venues may include public places in the neighborhood, such as a fast-food restaurant.

### Step Six: Case Conference on How to Memorialize Background Information

Investigators must discuss with their team how to memorialize their background investigations. The best practice is to create virtual witness portfolios, alongside a case file folder. However, this should be decided in case conferencing with the defense team.

### Step Seven: Prepare for the Interview

Prepare for the interview. Through case analysis with the team, the investigator should identify the purpose of the interview and anticipate relevant questions that will help to clarify the objective. Preparation includes having the right instruments with which to take notes and document information. The investigator should have the appropriate forms for witness statements or declarations available if it becomes necessary to memorialize a witness's words on the spot. Forms must mirror the witness's preferred language. Before taking any statements with witnesses, confirm with the attorney that this is the desired method of documentation. **In fact, before putting anything in writing, ensure that it will not adversely impact the case through reciprocal discovery.**

#### e. Fact vs. Truth

Fact-finding investigation is often framed as searching for “the truth.” This is a misconception, especially when interviewing. The concept of truth comes with philosophical and cultural complexities that make the notion subjective. Defense investigators, even when contracted, are part of an interdisciplinary defense team working on behalf of a client who has been charged with or convicted of a crime. They are scrutinizing the prosecution's case. **A defense investigator's objective is to find reliable information – facts – that supports their client's defense theories.** That is to say, the defense team is developing a compelling story based on facts. Not necessarily finding the truth.

This does not mean that you ignore information that will harm your client's case. In fact, harmful information is as important as helpful information because it allows the team to build a defense based on the facts that answer the big question of “why?” To simplify, investigators are collecting facts that will be woven together to tell the defense story that is hopefully more compelling than the prosecution's story.

This reframe might feel uncomfortable, but it's important to recognize three points:

- 1) Facts and truth are not the same thing,
- 2) Truth may include facts, but it can also include belief, and,
- 3) Through the process of finding pertinent and reliable information, many truths can be revealed, which can benefit our clients.

## f. Asking Effective Questions

### *How do defense investigators gather pertinent and reliable information?*

Through the PEACE framework, in order to effectively *Engage and Explain*, gather a witness's *Account*, and obtain crucial information, an investigator must skillfully ask the right questions at the right moments. While anyone can enter the field and ask witnesses questions, it takes a unique combination of learned skills and experience to ask the right questions and draw out specific, case-related information effectively.

There are several barriers to consider when asking any type of question to witnesses during fact-finding interviews:

1. **language barriers** – People have different levels of language comprehension, whether their primary language is shared with the investigator or not. There are also culturally-based meanings of words that might vary from formal definitions.

**Pro Tip:** Keep communications straightforward, clear, and neutral. Ask only one question at a time.

2. **barriers of confidentiality** – There might be confidential pieces of information in the case that a witness wants to know but that you cannot share due to a protective order or for strategic reasons. The best practice is to keep your witness list private from the witnesses you speak to unless the defense team has previously agreed to allow a witness to help you get in touch with other witnesses. These are team decisions that demand consideration. Once witnesses begin speaking to each other about your client's case, the risk increases that other witnesses' memories will be inappropriately influenced and that other witnesses may decide not to participate in the investigation.
3. **context versus legal advice** – Witnesses may very well have questions about their own liability in relation to your client's case or questions about the legal implications for your client. These questions create a very grey territory for investigators. Since investigators are not attorneys, investigators cannot provide legal advice, and yet, not answering questions can make investigators seem evasive and untrustworthy, potentially shutting witnesses down. The best practice is for investigators to explain that since they are not attorneys, they can't speak about the law, but they will ask the attorney handling the case. Then, they can return to their line of questioning. (See Appendix D: Navigating Ethical Dilemmas).
4. **protecting defense strategy** – The more information you share about your client's case with witnesses, the greater the probability your client's case strategy is going to find its way back to the prosecution. The best practice is to not share any information about your client's case that is not public information, relevant to the interview, or has not been previously approved by the attorney on the defense team.

In anticipation of these barriers, defense teams should hold regular case conferences to discuss defense theories and investigation strategies. In addition, investigators should engage in regular interviewing role-play with their peers to continue refining their skills. Understanding the defense theory is the only way to ask effective questions. And determining the type of question to ask to elicit the information you need is a skill that must be honed. However, there are tools available to increase your proficiency. Let's explore these tools through an example:

Your client's name is Sandra. The defense theory is self-defense.

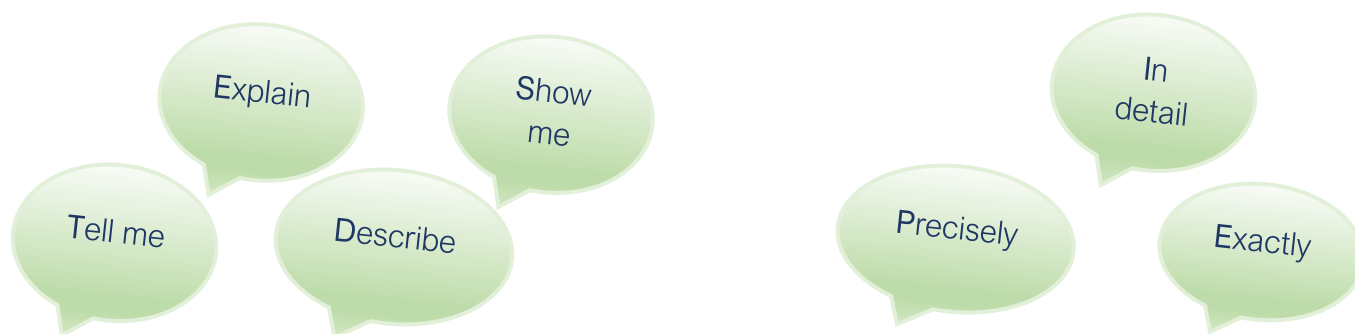
As an investigator you are trying to determine:

1. Whether the attack was provoked or unprovoked.
2. Whether there was a threat of imminent injury or death.
3. Whether the degree of force used in self-defense was reasonable.

Issue #2 tends to be the simplest to investigate. *Did your client have any opportunity to escape the situation?*

Witness Type: Convenience store owner who was an eyewitness to the incident and is hesitant about involvement but agrees to an interview.

How do you engage the witness? What questions do you ask and how do you ask them to determine the answer to issue #2?



Because the convenience store owner is hesitant to be involved in Sandra's case, there is a good chance he will be short and evasive with his answers. An evasive witness requires an investigator to ask the same question in various ways to get a complete answer. For this reason, "TEDS PIE" is a helpful interviewing technique. TEDS PIE stands for:

TEDS:	PIE:
✓ "Tell me ..."	✓ "Precisely ..."
✓ "Explain ..."	✓ "In detail ..."
✓ "Describe ..."	✓ "Exactly ..."
✓ "Show me ..."	



By pairing a term from TEDS with a term from PIE, an investigator can ask the same open-ended question in different ways to get more information from the witness.

In this example, the convenience store owner is not responding to your first line of questioning. So, try using the TEDS PIE questioning technique to ask for the same information.

- “**Tell me** in detail about the moment Sandra walked into the store.”
- “**Explain** precisely for me, so I can make sure I got this right, what happened between 9:00 and 9:30 on Tuesday night?”
- “**Describe** to me exactly what you saw go down between Sandra and Carmen right before the fight broke out.”

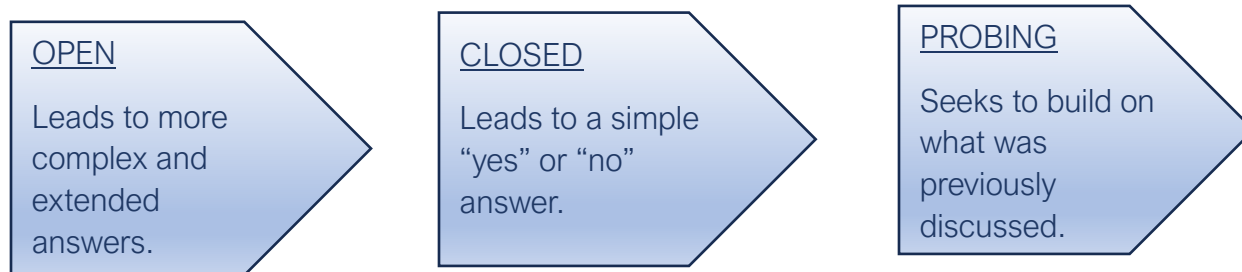
In addition to TEDS PIE, Investigators can use the **Five W’s and How** to gather a complete narrative.



*Who, what, where, when, why, and how* are the basis for almost everything asked. Learning how to apply these questions effectively is an important skill to master.

If you want to determine whether your client or the CW started the fight, you might ask the convenience store owner, “Who did you see start the fight?” But, if you want to know about the events that led up to the fight, you might ask, “Why do you think the fight started?”

Complex questions that build upon TEDS PIE and the Five W’s and How include **Open, Closed, and Probing Questions**.



By using such a range of questions while interviewing, investigators can uncover much more about witnesses’ experiences and observations.

A closed question is: “Do you know Sandra?” An open question is: “What is Sandra like?” And a probing question builds on these questions. “Can you tell me more about Sandra’s behavior and attitude over the last month when she came into your store?”

**The types of questions** that an investigator asks are also informed by the types of witnesses they're interviewing and the objective of the interview. If you need the client to come to terms with the incriminating evidence against them, you may ask funnel questions, a series of questions based on the witnesses' answers to the previous question.

- If you're interviewing a prosecution witness for information that may later be used for impeachment purposes, you may ask factual questions, close-ended questions that assess the witness's capacity to remember information.
- If you are interviewing a neighborhood witness who saw the complaining witness hit your client first, you may ask probing questions, questions seeking details about the event by building off the questions previously asked.
- If you are watching surveillance videos with the client, you may ask evaluative questions, questions that encourage your client to make value judgments about the weight and potential harmfulness of the videos in their case.

Once the investigator asks a question, they must listen for the response. A response, or a non-response, may necessitate a clarification prompt from the investigator. The investigator can then continue along this cycle of asking a question, listening to the response, and prompting for more information, while paying attention to the witness's non-verbal cues and the surrounding environment. If the witness becomes flustered, angry, or sad, then the investigator should appeal to the witness's humanity to help regulate the witness, so they can continue the interview.

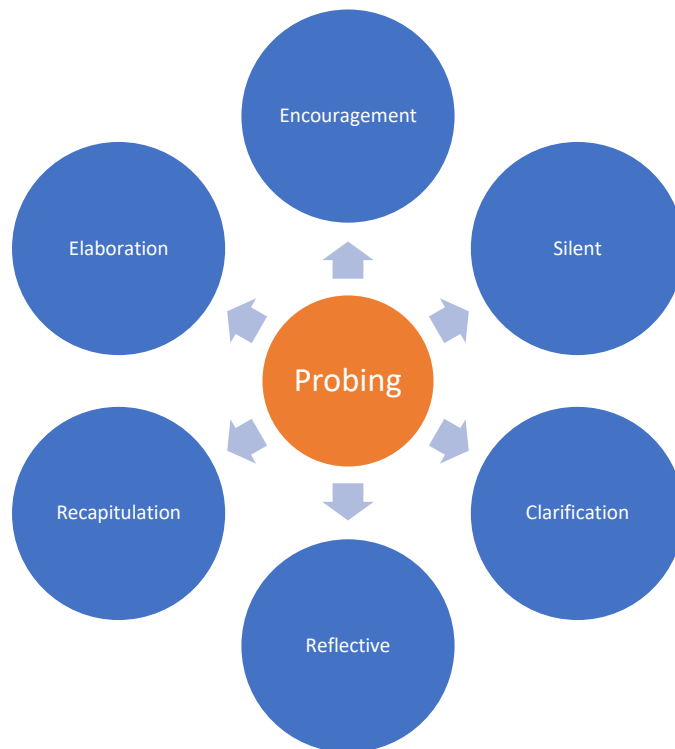
**Defense investigators can, of course, probe interviewees for information;** in fact, investigators want to be very comfortable scrutinizing and prodding the information witnesses provide to them until it's comprehensive. However, there's a big difference between probing and prompting. Probing achieves access to an extra level of detail and depth through verbal prompts by the investigator to help the witness clarify, illustrate, or explain a prior answer.

**Probing serves two overarching functions:**

1. **Motivating witnesses, and**
2. **Steering witnesses to give relevant, complete, and clear responses.**

**This is an area where the art of interviewing comes in.** If probing questions are used skillfully throughout an interview, the conversation between investigator and witness moves into sensitive and salient areas of discussion that are otherwise hard to access. To accomplish this, the investigator should be skilled in active listening, critical analysis, and perceptive observation of both verbal and non-verbal communications. Properly analyzing incoming information is how an effective investigator determines how far they can probe the witness before the witness may ultimately decide to end the interview, retract their statement, or not participate in the case.

**The Corolla Model** identifies six approaches to probing that are meant to enhance depth and detail in interviews. Probes can be questions, requests, or responses made by the investigator to the person being interviewed to solicit additional information about their prior responses. Probes can also be laddered to lead down a series of proverbial rungs into the deeper, concealed layers of narrative that may relate to more stigmatized and criminalized behavior. Probing should not feel performative, but rather, should flow organically and conversationally.



**Pro Tip:** Be careful not to co-create information with witnesses by asking leading questions. Rather than ask: “Did it make you feel angry?”; Ask instead: “How did it make you feel?”

**Corolla Model's Six Approaches to Probing**

Encouragement	Silent	Clarification
<i>Yes, I can see why you thought that!</i>  <i>That makes complete sense.</i>	[period of silence when witness stops talking to encourage witness to elaborate]	<i>When you told Nick, “say less” ... I’m old ha ha ... can you tell me what that means?</i>
Reflective	Recapitulation	Elaboration
[echoing statement as a question] <i>You liked the security guard?</i>	<i>Let’s go back to the beginning of the night, so I can make sure I got all the details. You left work at 6pm, right?</i>	<i>Can you tell me more?</i>  <i>Can you describe his beard— was it long or short?</i>

## IV. Effectively Engaging Witnesses and Taking Competent Witness Statements

### a. Environmental Considerations

In the PEACE framework, the *Account* phase begins when the investigator goes out into the field to interview witnesses. First and foremost, the investigator must consider the environment of the interview – whether in the witness’s home, in an apartment hallway, on the street, or in a restaurant.

You should consider where to park your car for the fastest and safest exit from a location; if you don’t drive, you should know whether carshares pick-up in the neighborhood. You should also take a moment to scope out the area you’re about to enter and consider whether the neighborhood you’re visiting has adequate cell signal. However, these many considerations require their own guide. **Your defense team and office should create a safety manual** that includes answers to environmental challenges and de-escalation techniques.

As you are entering the interview environment, you may be asking yourself:

- *Is anyone else in the home and potentially impacting the witness’s ability to speak openly?*
- *Am I interrupting this witness while they were in the middle of cooking, and now, they’re attempting to multi-task?*
- *Is this witness distracted by the state of their home because they weren’t expecting a guest?*
- *Am I distracted by the state of this witness’s home?*
- *Have I identified a clear exit strategy, if necessary?*

Do not ignore the environment you are navigating. Always do a subtle sweep of the environment you are entering, taking note of the general blueprint of the area. If you’re in a witness’s home, you might even ask if there’s anyone else there who might be able to help with Michael’s case. If there is, you’ll likely want to interview them separately, but it’s good information to know. Confront any barriers gently and kindly and attempt to move them out of the way so that you can have an effective conversation. It’s also important to not be demanding or judgmental. If you can have a successful conversation at your witness’s kitchen table while they cook, then do not attempt to stop them from cooking. Remember, distraction can be a great way for a witness to process their feelings, so they can focus on engaging with the questions. A witness does not have to be completely focused on the investigator. However, if a witness’s distraction becomes an impediment, then either ask softball questions until they are done, or gently let them know that you are more than happy to just hang out until they’re done with their current activity. This might prompt the witness to finish up quickly or put the activity on hold. Of course, if they tell you they can talk to you and continue the activity, then accept their decision.

A more difficult scenario is managing someone else in the home who is negatively impacting the witness or interview process. Here, an investigator might suggest to the witness that they step outside to talk. Although the investigator cannot completely control an environment, the investigator should work to reduce barriers.

## b. Conversational Interviewing

Conversational interviewing tends to be most effective because the investigator is having a real conversation with the witness. It's a two-way discussion where they are both freely exchanging questions and information. However, because the investigator has prepared so extensively, the investigator can easily steer the discussion to obtain the necessary information.

Investigators should follow the 80/20 rule. 80% of the conversation is the investigator listening, and only 20% is the investigator talking.

In the example that follows, the investigator has a pointed and pre-determined question to ask the witness: "Did Louis have a gun that night?" However, the investigator will ask the question in a moment that makes sense during the flow of the conversation.

Investigator: It sounds like a lot happened that night. That must have been scary for you.

Witness: Yeah, it was crazy. I can't even believe Louis got caught up like this.

Investigator: How have you been coping with it since then? Are you still dealing with a lot of fear?

Witness: Yeah, it's hard. I don't even want to leave my house, and Louis helped me a lot with my kids and everything. He's a good guy.

Investigator: That sounds really hard, I'm so sorry. Louis does seem like a good guy. He and I talked for a couple hours, and it was clear that he really cares about you too. He said you two have been best friends since elementary school.

Witness: Yeah, we've known each other forever.

Investigator: I think Louis's exact words were - *we're like peanut butter and jelly!* The only smile I saw was when he talked about you. So, on that night, were you with Louis when the fight broke out?

Witness: Yeah, we had just walked out of the club.

Investigator: And, did Louis have a gun that night?

Witness: I don't know ...

Investigator: I know it can feel counter-intuitive, but I ask so that his team can figure out the best possible defense for him, and to do that, we need to know everything that went down. Telling me what you remember exactly will help him. Are you sure you didn't see him with a gun?

Witness: Well, he carries since he was shot back in the day, but he didn't pull it out that night until after those two dudes pulled up with one.

Investigator: Okay, okay, this is really helpful. Let's walk through what happened from the moment you and Louis walked out of the club.

In this conversation, there were a few moments when the investigator went with the flow of the conversation instead of simply firing off successive fact-based questions. In fact, the investigator began the conversation with general questions and focused on the witness, not the case itself. The investigator listened to the witness and didn't gloss over the witness's feelings. Instead, the investigator checked-in with the witness and built rapport. Importantly though, the investigator continued to probe the witness even when the witness was evasive about whether Louis had a gun that night. The investigator helped the witness to feel more comfortable about how the information would be used and why it was important. And it worked! The witness provided an important piece of information – Louis wasn't the first one to pull out a gun!

### Best Practices for Conversational Interviewing

- ✓ Get the witness involved in the interview as soon as possible.

Begin with small talk, preferably unrelated to your client or the case. Talk about low stakes topics such as the weather, the neighborhood, a pet, or how the witness is doing, and then transition into the interview.

- ✓ Before asking about controversial matters (such as feelings and conclusions), first ask about some facts.

With this approach, witnesses can more easily engage in the interview before warming up to more personal matters.

- ✓ Intersperse fact-based questions, which tend to leave witnesses disengaged, with questions that invite viewpoint.

Solely asking fact-based questions will begin to feel like an interrogation and become boring.

- ✓ Ask questions about the present before questions about the past or future.

It's usually easier for people to talk about what's happening now and then work into the past or future.

- ✓ The last questions should allow witnesses to provide any other information or context they haven't given you already.

If the witness has no additions, ensure the witness is emotionally okay and understands your next steps, communicate your appreciation for their time (and welcoming you into their home, if relevant), and end your conversation with small talk.

### c. Writing Compelling Statements

Witnesses' fact-based statements might be some of the first discoverable pieces of information created by the defense. It's imperative to consider how the information in the statement ties into the larger story of the client's defense.

Although the top priority may be to get the facts down on paper and signed by the witness, you should consider how to create a compelling final product that engages the reader, helps to tell your client's story of defense, and is difficult to refute.

Ultimately, defense counsel will direct when and how to approach writing down witnesses' statements. However, defense investigators should consider some best practices.

#### STATEMENT WRITING PREPARATION

##### **DO:**

- ✓ Carry black, red, and blue pens for statement writing. The black pen is for writing the statement. The red pen is for correcting mistakes in the statement. The blue pen is for writing in edits in the statement.
- ✓ Strategize around how to illustrate that the witness has reviewed the final statement in full. Perhaps, purposefully making a mistake in the writing, so upon review the witness can correct and initial, showing they examined the final product.
- ✓ Carry more statement paper than you need.
- ✓ Carry statement paper with introductory language and signature line in the primary language of the witness.

##### **DO NOT:**

- ✓ Allow the witness to handle the statement paper or the written statement at any time. Instead, hold the paper down on a flat surface when the witness needs to initial or sign.
- ✓ Allow the witness to write in their own corrections. They should only input their initials and/or signature. This keeps the statement legible with only the investigator's handwriting and ensures that the witness does not have an opportunity to take the statement or destroy it.

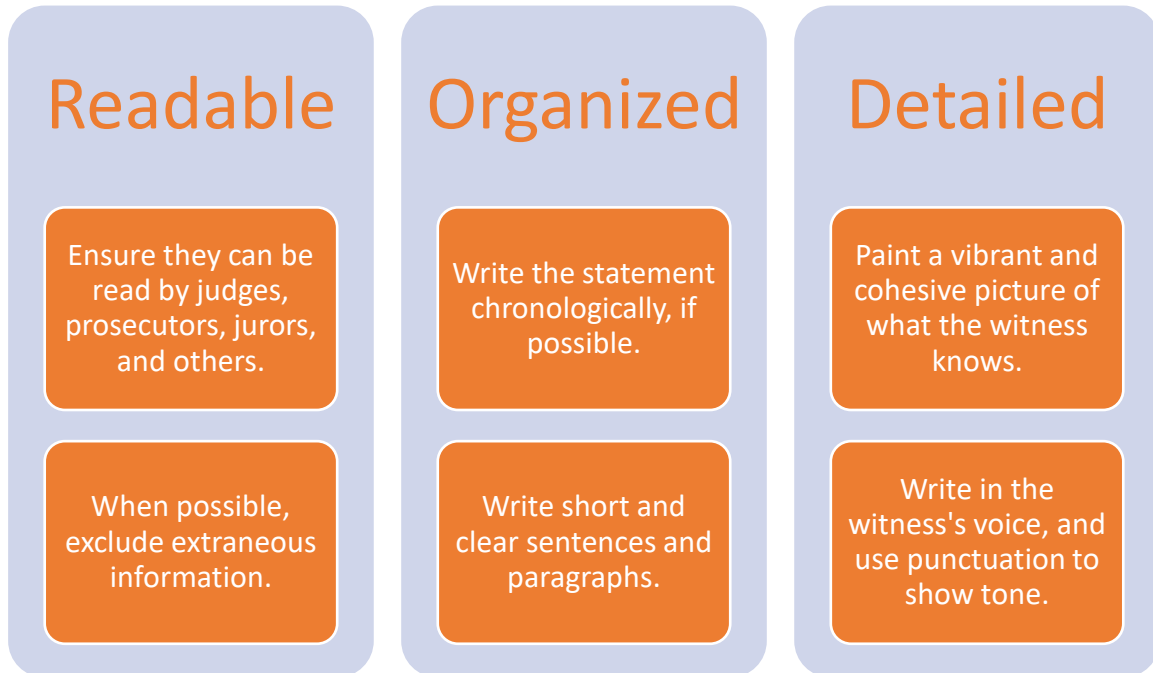


## STATEMENT WRITING PRACTICES

- ✓ Conduct the full interview before discussing or taking a written statement. In the event the witness does not agree to signing a written statement, the investigator will have the facts from the interview and will be able to testify to them.
- ✓ Explain that you will be helping the witness to create a statement and that writing the statement down will ensure that their words are not misconstrued.
- ✓ Determine how to order the witness's account, and then guide the witness through recounting what happened in this order.
- ✓ Write down the statement as the witness recounts it. If the witness changes a detail from their first telling, ask the witness to clarify prior to writing it down.
- ✓ Use the witness's exact words, including their expressions and language. Include swear words and do not make changes based on grammar or style. If something the witness says is not clear, ask them to clarify before writing down their words.
- ✓ Once the statement is fully written, hold down the statement while the witness signs and dates it. If the witness is unable to write, have them mark the statement with an X. Include the witness's date of birth, address, and/or phone number.
- ✓ Once the statement is final and signed, the witness may continue speaking about the events and want to tell you more information. If the information is relevant and beneficial, you can write it succinctly into the statement as an edit and have the witness initial it. However, if the information is significant and lengthy, you may consider creating an additional written product – an addendum to the statement.
- ✓ Know ahead of time what the defense counsel's position is on allowing the witness to keep a copy of their statement. Witnesses will often ask for a copy, and there may be strategic reasons not to leave them with one.

**Pro Tip:** The more a witness corrects and initials on the statement, the easier it is to show that they were aware of all the content within the statement.

## Compelling Statements are:



### V. The Path Forward

Conducting compelling and unbiased fact-finding interviews is critical to the defense investigator's role in ensuring a fair and effective legal process. The PEACE framework offers a comprehensive and human-centered approach to defense investigations, integrating thoughtful planning, strategic engagement, and reflective evaluation to ensure thorough and effective case development. The phases of *Plan and Prepare*, *Engage and Explain*, *Account*, *Closure*, and *Evaluate* are not merely steps to follow but principles to guide every action taken. As defense investigators on interdisciplinary teams, your ability to apply creativity and empathy within each phase, while being culturally conscious and utilizing humanistic practices, is key to building rapport with witnesses and building a case. (See Appendix F: *The History of the PEACE Framework*).

By understanding the different types of witnesses and defenses, collaborating across disciplines, and asking the right questions, you gather vital insights that form the foundation of a strong defense. Effective witness interviews, compelling statements, and collaborative efforts ensure the integrity and success of the investigation, all while upholding ethical standards.

As you continue to implement the PEACE framework, remember that each phase is interconnected, and your ability to adapt, reflect, and continuously improve throughout the investigative process is crucial. With each iteration, you enhance your skills, build stronger cases, and serve your clients with greater effectiveness and compassion.

## VI. Appendix

### Appendix A: Discovery Digest Template

Table 1: Records Digest

Date Received	Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From	Review Date
1/15/2024	ATT_000001	ATT_0000046	AT&T cell phone records	1/20/2024
2/9/2024	CPS000072	CPS000084	Child Protective Services client records	2/10/2024
4/25/2024	AMC-0001760	AMC-0001797	Albany Medical Center client records	

Table 2: Digest of Disclosed Discovery

Date Received	Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From	Description
1/1/2024	AR_00001	AR_00010	Arrest reports	Details arrest and alleged justification for pulling CL over. Seems incomplete.
1/1/2024	IR_00011	IR_00013	Incident reports	Broad overview. Some helpful facts about location.
1/1/2024	SW_00014	SW_00019	Search warrants and affidavits	Search warrant for CL vehicle.
1/1/2024	BWC_00020	BWC_00203	Body camera and dash camera footage	Extensive BWC from 8 different officers. See BWC Digest XLS.
1/1/2024	INT_00204	INT_00205	Interrogation interview recordings	10-hour interrogation of CL. See Client Interrogation Digest XLS.
1/1/2024	EVI_00206	EVI_00256	Evidence logs	List of physical, digital, documents. Complete universe here? Chain of custody questions?
1/1/2024	DR_00257	DR_00277	Dispatch records	Note police, fire, and EMS responded.
1/1/2024	SUR_00278	SUR_00300	Surveillance footage	See Surveillance Digest XLS for compiled look at footage collected by police incl map of locations.
1/1/2024	NOTE_00301	NOTE_00357	Officer notebooks	Names to locate. Some handwriting is not legible.

Table 3: Digest of Surveillance Footage

Footage ID	Date	Time	Location	Camera/Angle	Duration	Summary	Relevance	File Format	Notes
CAM001	12/15/2023	14:35-14:50	Corner of Main & Elm St	North-facing (street)	15 mins	Man wearing red track suit walking toward the scene	Cops allege this is client	MP4	Man in red track suit slightly obscured by passing cars
CAM002	12/15/2023	14:50-15:00	Convenience store, inside	Cash register camera	10 mins	Red track suit entering, purchasing Marlboro's	Timeline prior to incident	AVI	Clear view of red track suits face
CAM003	12/15/2023	15:00-15:10	Convenience store, parking lot	Lot overview camera	10 mins	Red track suit leaves in black sudan	Vehicle registered under clients name	MP4	License plate fully visible
CAM004	12/15/2023	15:20-15:30	Intersection of Elm & 5th St	South-facing (traffic)	10 mins	Black sedan stopped at traffic light	Confirmed route away from the scene	MKV	Poor lighting, plate not visible, unable to clear see inside vehicle

## Appendix B: Cast of Characters Template

Name	Role	Alias	Contact	ID	Relationship	Crim Htx	Known Address	Prior Statements	Notes
John Doe	Prosecution Witness	"Johnny"	XXX-XX-XXXX	5'10", brown hair, blue eyes	N/A	N/A	123 Elm St.	Saw CL at scene	May have been intoxicated
Jane Smith	CW	N/A	XXX-XX-XXXX	5'5", blond hair, green eyes	Ex-GF of CL	Assault ('05)	456 Oak St.	Claims CL assaulted her	Htx of false accusations
Sally Green	Alibi Witness	N/A	XXX-XX-XXXX	5'7", red hair, brown eyes	CL best friend	N/A	321 Pine St.	Having dinner with CL during alleged incident	Conflicting schedule with CL's account
Officer Mike Brown	Law Enforcement	N/A	XXX-XX-XXXX	6'0", bald, brown eyes	N/A	N/A	5 <sup>th</sup> Precinct, 789 Maple St.	Arrested CL at scene	Known for aggressive behavior in past arrests
Tom White	Defense Psych Expert	N/A	XXX-XX-XXXX	5'9", black hair, brown eyes	N/A	N/A	654 Birch St.	Mental health evaluation of defendant	Highly reputable in field

## Appendix C: Witness List Template

Tiered Witness List Template for Background Investigation

<b>Wtx Name</b>	<b>Role</b>	<b>Contact</b>	<b>Type of Wtx</b>	<b>Testimony Overview</b>	<b>Tier of Importance</b>
John Doe	Eyewitness	XXX-XX-XXXX	Prosecution (fact)	Testifies that he saw CL at the scene	1
Jane Smith	CW	XXX-XX-XXXX	Prosecution (fact)	Claims CL assaulted her	1
Sally Green	Alibi Witness	XXX-XX-XXXX	Defense (fact/character)	Had dinner with CL night of incident; describes CL as peaceful nature	1
Officer Mike Brown	Law Enforcement	XXX-XX-XXXX	Prosecution Expert (forensics)	Provides expert testimony on crime scene evidence, including fingerprints	2
Dr. Tom White	Expert Witness	XXX-XX-XXXX	Defense Expert (medical)	Provides expert testimony on the defendant's psychological state during the alleged incident	2
Robert Black	Eyewitness	XXX-XX-XXXX	Prosecution (fact)	Places CL at the scene	1
Marcy Gray	Supervisor	XXX-XX-XXXX	Defense (character)	N/A	3

## Witness List Template for Testifying

Wtx Name	Role	Contact	Type of Wtx	Testimony Overview	Expected to be Called By	Notes
John Doe	Eyewitness	XXX-XX-XXXX	Prosecution (fact)	Testifies that he saw CL at the scene	Prosecution	Credibility issues, may have been intoxicated
Jane Smith	CW	XXX-XX-XXXX	Prosecution (fact)	Claims CL assaulted her	Prosecution	Credibility issues, htx of false claims
Sally Green	Alibi Witness	XXX-XX-XXXX	Defense (fact/character)	Had dinner with CL night of incident; describes CL as peaceful nature	Defense	Known to have close relationship with CL; clear up timeline
Officer Mike Brown	Law Enforcement	XXX-XX-XXXX	Expert (forensics)	Provides expert testimony on crime scene evidence, including fingerprints	Prosecution	Possible credibility issues from aggressive history
Dr. Tom White	Expert Witness	XXX-XX-XXXX	Expert (medical)	Provides expert testimony on the defendant's psychological state during the alleged incident	Defense	Highly regarded
Robert Black	Eyewitness	XXX-XX-XXXX	Prosecution (fact)	Places CL at the scene	Prosecution	Possible credibility issues with conflicting statements



## Appendix D: Navigating Ethical Dilemmas

### Confidentiality and Privilege

Attorney-Client Privilege: Public defense investigators may have access to confidential information shared between the defense attorney and the client. Maintaining confidentiality is paramount.

Duty of Confidentiality: Any information obtained from the client or through investigation, including statements, records, or conversations, must be kept confidential unless the client provides explicit consent to disclose it.

### Common Dilemmas

Overhearing Confidential Conversations: Investigators overhearing confidential discussions between the defense attorney and the client must ensure the information is not shared outside of the defense team.

Answering Witness Questions: Witnesses often ask questions that have privileged answers. Not answering these questions can make investigators seem evasive and corrode trust between investigator and witness. However, any breach of confidentiality can harm the client's case and violate ethical rules.

### How to Navigate

Investigators should always ask for clarification from the attorney if they are unsure whether information should remain confidential.

Investigators should answer witness questions by telling witnesses that they are not sure of the answer and will need to get back to them, then speak to the attorney about how best to answer.

Investigators should err on the side of caution when answering questions from witnesses about the client.

### Avoiding Conflicts of Interest

An investigator's primary duty is serving the interests of the client. However, investigators may face situations where personal relationships or previous professional connections could affect their impartiality.

### Common Dilemmas

Conflicts of Interest: Where a defense investigator is working on a case that involves a key witness or law enforcement officer the investigator has worked with in the past in another capacity, this may create an appearance of bias.

Personal Bias: Personal beliefs or relationships might unintentionally affect the objectivity of an investigator's work.

### How to Navigate

Full Disclosure: Where investigators discover potential conflicts of interest, they must disclose them to the defense attorney and seek guidance on how to proceed.

Recusal: If a case conflicts with personal beliefs or relationships, investigators should consider recusing themselves from the investigation to maintain ethical integrity.

### Truthfulness and Honesty in Investigation

Defense investigators must be truthful and honest throughout defense investigations. The investigator's role is to gather facts, not fabricate or manipulate evidence to fit a particular narrative.

### Common Dilemmas

Misleading Witnesses: An investigator may feel pressure to encourage a witness to recall specific details that align with the investigation's goals. However, investigators cannot pressure, deceive, or intimidate a witness into providing false information.

Withholding Evidence: Investigators will often find evidence that contradicts the defense's case. While the prosecution is required to disclose evidence favorable to the defendant, the opposite is not true. However, the defense attorney must be made aware of all evidence, including negative evidence, in the defense case to determine the best legal strategy.

### How to Navigate

Do Not Fabricate or Alter Evidence: It is unethical to falsify or distort evidence to benefit the client. This includes rewriting damaged witness statements. Investigators must preserve the integrity of their findings.

Consult with the Defense Attorney: When investigators uncover evidence that could be harmful to the defense or the client, they must consult with the defense attorney about how to handle the situation properly.

Avoid Deceptive Techniques: Investigators should not mislead, coerce, or lead witnesses into providing information they do not recall or that may not be accurate.

### Handling Testimonial Evidence

Investigators may be responsible for gathering testimonial evidence from witnesses. It is crucial that this is done without leading or coercing the witness.

### Common Dilemmas

Witness Intimidation or Coercion: Investigators may be under pressure to get a witness to testify in favor of the defense.

Bias in Interviews: Investigators should not allow personal biases to influence their questions or how they interact with witnesses.

### How to Navigate

Neutral, Open-Ended Questions: When interviewing witnesses, investigators should focus on asking open-ended, non-leading questions that allow the witness to provide their own account

without guidance. If the investigation requires close-ended questions, investigators should ensure that these questions are not leading.

Protecting Witnesses: Investigators must not intimidate or unduly influence any witnesses and should work to create a safe environment where witnesses can share their true recollection of events.

Report Accurately: When documenting or reporting witness statements, investigators must remain faithful to witnesses' words and avoid inserting personal interpretations.

### **Balancing Compassion and Objectivity**

Defense investigators may become emotionally invested in their clients and cases. While empathy is important, it is crucial for investigators to remain objective and not allow personal emotions or relationships to cloud their professional duties.

### **Common Dilemmas**

Emotional Bias: Feeling sympathy for the client or others involved in the case can lead investigators to overlook facts or manipulate findings in a way that they may believe will benefit the case.

Over-Identifying with the Client: Investigators may face difficulty in maintaining professional distance if they deeply sympathize with the client's circumstances or backstory.

### **How to Navigate**

Maintain Professionalism: Investigators should remain focused on the facts and recognize the importance of objectivity in the work. However, this does not mean that investigators should act with a lack of empathy or vulnerability.

Seek Support: When indicated, defense investigators should consider discussing their feelings with the defense attorney, a supervisor, or a colleague for guidance to ensure that any emotional response is not affecting the client's case or the work.

## Appendix E: Helpful Online Databases

A to Z Internet Searching for the Defense Team	
Anatomy	<a href="https://www.innerbody.com/htm/body.html">https://www.innerbody.com/htm/body.html</a>
Body Diagrams	<a href="https://health.mil/Military-Health-Topics/Combat-Support/Armed-Forces-Medical-Examiner-System/Office-of-the-Armed-Forces-Medical-Examiner/Autopsy-Diagrams-Paperwork">https://health.mil/Military-Health-Topics/Combat-Support/Armed-Forces-Medical-Examiner-System/Office-of-the-Armed-Forces-Medical-Examiner/Autopsy-Diagrams-Paperwork</a>
Calendar Facts	<a href="#">On This Day - Today in History, Film, Music and Sport</a>
Camera Registration	<a href="https://cityprotect.com/camera-registration#/agencies">https://cityprotect.com/camera-registration#/agencies</a>
Chat Text Shorthand	<a href="#">The Largest List of Chat Acronyms and Text Message Shorthand (IM, SMS) found of the Web - updated daily by NetLingo</a> <a href="#">The Internet Dictionary: Online Dictionary of Internet Terms, Acronyms, Text Messaging, Smileys ;-)</a>
City Information	<a href="https://www.city-data.com/city/New-York.html">https://www.city-data.com/city/New-York.html</a>
Did they graduate?	<a href="https://www.studentclearinghouse.org/">https://www.studentclearinghouse.org/</a>
Email Tracing	<a href="http://www.readnotify.com">http://www.readnotify.com</a>
FOIA Request	<a href="https://www.foia.org/">https://www.foia.org/</a>
Genealogy Resource	<a href="#">Welcome to Cyndi's List</a>
Hospital Locator	<a href="#">American Hospital Directory - Advanced Search</a>
Internet Sleuth	<a href="http://internet.sleuth.net">internet sleuth.net</a>
Jurisdictional Clemency	<a href="https://www.cjpf.org">https://www.cjpf.org</a>
M.D. Lookup	<a href="https://www.docinfo.org">https://www.docinfo.org</a>
Namechk	<a href="#">Namechk - Username and Domain Name Checker - Search All Domain Names and User Names to see if they're available</a>
Newspaper Archive	<a href="https://newspaperarchive.com">https://newspaperarchive.com</a>
Pill Lookup	<a href="#">Pill Identification Wizard from Drugs.com</a>
Police Locator	<a href="#">Police Departments &amp; Sheriff Offices in New York</a>
Quick Facts Census	<a href="#">U.S. Census Bureau QuickFacts: United States</a>
Root Zones	<a href="#">Root Zone Database</a>
TV Stories Archives	<a href="#">Broadcast Monitoring for TV and Radio   TVEyes</a>
US SOS Business Search	<a href="#">Corporate Registration   NASS</a>
Veterans Search	<a href="#">Search Our Veteran Registry   Veteran &amp; Personnel   Veteran Registry   VetFriends.com</a>
YouTube Search by Location	<a href="#">Location Search - Discover Geo-tagged Videos - MW Geofind</a>

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## Appendix F: The History of the PEACE Framework<sup>1</sup>

The PEACE investigative interview model emerged in the early 1990's in the United Kingdom in response to widespread concerns about coercive interrogation practices that had contributed to false confessions and miscarriages of justice. Prior to its development, law enforcement agencies in the UK, like many others worldwide, relied heavily on confrontational and confession-driven interrogation techniques. These methods, often influenced by the Reid technique<sup>2</sup> and similar accusatorial approaches, were designed to elicit admissions of guilt rather than prioritize the collection of reliable, objective information. However, a series of high-profile wrongful convictions, including the Guildford Four and the Birmingham Six cases, exposed the fundamental flaws in these practices and highlighted the urgent need for reform.

In response, a collaborative effort between investigators, psychologists, and legal experts led to the creation of the PEACE model, which was officially introduced in 1992. The approach was built on the principles of ethical, evidence-based interviewing and sought to align investigative practices with psychological research on memory, communication, and deception. Unlike traditional interrogations that rely on psychological manipulation or coercion, PEACE is structured to obtain accurate and comprehensive accounts from interviewees through a non-confrontational, information-gathering approach.

Research has consistently demonstrated that PEACE-trained investigators elicit more accurate and detailed accounts than those using coercive techniques, reinforcing the model's effectiveness in preventing false confessions and improving investigative outcomes.

The implementation of the PEACE approach represents a paradigm shift in investigative interviewing, moving away from confession-driven practices toward ethical, rapport-based, and evidence-led techniques. By prioritizing accuracy and reliability over obtaining false admissions, PEACE aligns with broader efforts to uphold integrity, protect the rights of interviewees, and enhance the credibility of investigative processes. As investigative interviewing continues to evolve, the principles of the PEACE model remain central to fostering professionalism and effectiveness in fact-finding endeavors.

Feature	PEACE Model	Interrogatory Techniques
Approach	Non-confrontational, information-gathering	Accusatory, judgmental, pressured, biased
Interviewer Role	Neutral factfinder	Persuasive interrogator
Questioning Style	Open-ended, encourages free recall	Leading, designed to obtain a particular response
Risk of False Admission	Low	High, especially with vulnerable individuals

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<sup>1</sup> Davison, Jonathan. "P.E.A.C.E. A Different Approach to Investigative Interviewing." Forensic Interview Solutions, available at [www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf](http://www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf).

<sup>2</sup> The REID Technique is a widely used interrogation method developed in the United States in the 1940s by John E. Reid, a former police officer and polygraph examiner.