

**Investigative Empathy: Five Types of Cognitive Empathy in A Field Study of  
Investigative Interviews with Suspects of Sexual Offences**

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**Declaration of Interest**

Author A (Bianca Baker-Eck) has declared no conflict of interest.

Author B (Ray Bull) has declared no conflict of interest.

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**Ethical Approval**

All procedures performed in the current study were in accordance with the ethical standards of the institutional and/or national research committee and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards. Data protection guidelines of the General Data Protection Act (2018) have been followed and all data remains anonymous. Informed consent was obtained from the police precinct in possession of the data.

**Abstract**

Empathy in investigative interviews has increasingly become a focus in the recent literature on investigative interviewing as its implementation may aid in building and maintaining rapport. Displaying empathy in interviews is claimed to have positive impacts on the provision of investigation relevant information and the cooperation of interviewees. However, the literature currently omits practically operationalizing empathy, which would provide a means of implementing it effectively in investigative interviews. As such, the present study examines empathic displays by interviewers employed in interviews with suspects of high-risk crimes such as sexual offences in order to see what types are applied as a step towards identifying and possibly defining/operationalizing empathy during investigative interviews in the future.

19 audio-tapes of police interviews with suspects of sexual crimes in England and Wales conducted by experienced police interviewers were coded for their empathic displays and suspects' level of cooperation throughout the interviews. Five different types of empathy were found to be employed. Interviews that had higher levels of suspect cooperation involved all five types of investigative empathy, whereas interviews in which fewer types of empathy were displayed had less cooperation (by offering less or no information). Thus, the use of investigative empathy in investigative interviews can indeed be recommended.

*Keywords:* Investigative interviewing; rapport; empathy; interrogation; offenders

### *The Importance of Building Rapport and Empathy in Investigative Interviews*

Due to the current popular media attention placed on police behavior internationally, there has been, in several countries, increased criticism of police in interrogation/interviewing, in terms of not only its ethics, but also its effectiveness (Walsh, Oxburgh, Redlich & Myklebust, 2016). For suspect interviewing in connection with high risk crimes, such as murder, sexual offences, and terrorism, research has shown that humane styles of interviewing are positively associated with the gaining of information partly by enabling an environment where suspects feel comfortable and willing to cooperate (Alison, Alison, Noone, Elntib, & Christiansen, 2013; Holmberg & Christianson, 2002; Kebbell, Hurren, & Mazerolle, 2006; Leahy-Harland & Bull, 2016).

Humane interviews include the respectful treatment of suspects (Holmberg & Christiansen, 2002; Kebbell et al., 2006). Empathy can be seen as a separate construct than rapport building yet it may be seen as a contributing factor towards building rapport between two individuals (and may or may not work, perhaps depending on personality and interviewer characteristics as well – this can be examined in future studies). Both rapport building and empathy are considered necessary aspects of a humane interviewing style (Alison et al., 2013; Clark & Milne, 2001; Dando & Oxburgh, 2016; Dando, Wilcock & Milne, 2008; Meissner, Redlich, Bhatt, & Brandon, 2012). Walsh (2012) noted that rapport should not only be established initially with the interviewee, but should also be maintained thereafter for the duration of the interview. It has been argued that when interviewees feel there is an open, positive, and harmonious relationship between them and their interviewer, an atmosphere develops where they feel inclined to speak more openly and freely (St. Yves, 2006). Particularly with regards to interviews with

suspects of sexual crimes, Read, Powell, Kebbell, and Milne (2009) suggested that five elements should be considered in an investigative interview. Of these five elements, the first is establishing rapport. The remainder include (ii) introducing the topic of concern, (iii) eliciting narrative detail, (iv) clarification / specific questions and (v) closure. Also studies involving terrorists have similarly found that employing a style of interrogation based on rapport and that also treats suspects with respect is effective in reducing their counter-interrogation tactics (Alison et al., 2013).

In England and Wales, up to the 1980s the police have had a long history of using coercive techniques, psychologists and experienced detectives stepped in to develop a new method of investigative interviewing in the early 1990's. This model became known as PEACE – an acronym for 'Planning and preparation', 'Engage and explain', 'Account', 'Closure' and 'Evaluation' (Clarke & Milne, 2016). A core element of this model is building and maintaining rapport with interviewees and is thought to begin during the 'Engage and explain' phase (Walsh, 2012). The development of PEACE signified a substantial shift in police mindset from coercive techniques aimed at producing confessions to an ethical means of interviewing in order to gain access to information. Since the development of PEACE, other countries such as Norway and the Netherlands have followed suit in developing their own methods of interviewing with a similar ethos based on rapport (Walsh et al., 2016). Further, in 2016, United Nations special rapporteur Juan Mendez recommended the development of a world-wide protocol for investigative interviewing using non-coercive means, of which rapport is a core feature (United Nations, 2016). His 2016 report to the United Nations recognized the tendency for coercive means of interrogation to produce false confessions and inaccurate

information (Meissner et al., 2014; O'Mara, S., 2015). Additionally, Daniel Jones (United States Senate Torture Investigator who investigated the 'enhanced interrogation' methods of the CIA established after 9/11 in the United States) in a recent interview with BBC's *Hard Talk*, offered his opinion that "torture doesn't work as information gained is unreliable and untruthful [...] what works is rapport-building".

### *Empathy in Cross-Disciplinary Literature*

Empathy also does not have a consensual definition in other domains either, but rather shows the dynamic and complex nature of empathy where various types of empathy are examined [such as psychotherapy; see Elliott, Watson, Bohart, and Greenberg (2011), Hall & Schwartz, 2019]. Despite this, the literature claims that empathy is an important influencing variable regarding dyadic relationships (e.g., Will & Kauffeld, 2018) – particularly the therapist and patient relationship. For the purpose of this paper, the focus is on the display of empathy rather than the thoughts of empathy. How can empathy displayed and employed in dyadic relationships? In order to answer this question, it is beneficial to understand how the literature (across disciplines) views empathy. Two main types of empathy have been distinguished by various authors these being *cognitive* and *affective* (Bull & Baker, 2020). Cognitive empathy refers to the intellectual understanding of another's mental state, or the ability of a person to construct a working model of another's emotional state without necessarily being emotionally affected. Affective empathy, on the other hand, refers to more of an emotional response, or the ability to vicariously experience the feelings and emotions of another (Davis, 1983; Hogan, 1969; Joliffe & Farrington, 2006; Lawrence, Shaw, Baker, Baron-Cohen, &

## Emerging Types of Investigative Empathy

David, A., 2004; Mehrabian, Young, & Sato, 1988; Reniers, Corcoran, Drake, Shryane, & Völlm, 2011; Will & Kauffeld, 2018).

Observer measurement of empathy is increasingly being employed in the therapy (Will & Kauffeld, 2018). In such a setting Greenberg et al. (2001) observed therapists using empathy as a way to build rapport. Watson (2002) examined therapist empathy and found that this included: 1) communicating with interest, concern, and expressive tone of voice; 2) demonstrating levels of emotional intensity similar to the client's; and 3) reflecting clients' statements, nuances in meaning, or even implied meaning back to the client (Watson, 2002).

Cognitive empathy is well-recognized in clinical zones, and the confusion of empathy being too emotional is part of the reason it is a hard term to grasp and to teach. Empathy defined in clinical terms is mainly about being able to use one's imagination (Barrett-Lennard, 1981; Baron-Cohen, 2011; Davis, 1983; Decety, 2012; Greenberg, 2001) and not necessarily feel anything for or with the other person and is rather incumbent on making cognitive effort to understand another's position in a rational, cognitive way. Particularly for practitioners, cognitive empathy can be considered an important tool as it helps them understand their interactions with patients (Gleichgerrcht & Decety, 2012). Similarly, cognitive empathy can be useful for interviewers in investigative interviews.

*Empathy Research in Investigative Interviewing*

## Emerging Types of Investigative Empathy

Despite the research that has been conducted on empathy in a variety of settings, few researchers have provided a comprehensive definition of empathy nor a means of quantifying or measuring it. Even fewer researchers have examined empathy in investigative interviewing. The following literature has contributed in laying the foundation for determining useful types of empathy in investigative interviewing.

In England and Wales, in the PEACE method for interviewing, a cognitive definition of empathy is used when describing building rapport (Baker-Eck, Bull, & Walsh, in press). Affective empathy may yield poor results and have potential drawbacks such as burnout or emotional fatigue; where compassion fatigue may be a direct consequence of “encountering traumatic events through vivid and detailed descriptions of what the survivor has directly experienced, which may result in the emergence of secondary traumatic stress symptoms (MacEachern, Dennis, Jackson, & Jindal-Snape, 2019, pp. 166).” This can also include police officers investigating child abuse (Levin, Kleinman, & Adler, 2014 cited in MacEachern et al., 2019). Allowing oneself to feel the emotion as the interviewee is experiencing it could contribute toward ‘compassion fatigue’ and may even cause a higher ‘burnout’ rate. Therefore, rational/unemotional (as best possible) cognitive types of empathy could be more useful for the protection of the interviewer as well in the investigative interviewing process, though more research in this area is needed.

Barrett-Lennard (1981) explain that the origin of empathy comes from the word *empathia*, “meaning affection and also passion, with a quality of suffering. The *em* means ‘in’ or ‘into’, and there is the idea at least of going into a strong feeling-connection with another (pp.91).” Barrett-Lennard (1981) examined the presence or absence of

## Emerging Types of Investigative Empathy

empathy in response to another person providing empathy opportunities and found it to include three forms: empathic opportunities, continuers, and terminators. Empathic opportunities are defined as moments where an opportunity is given by the interviewee to the interviewer to display empathy. Building on this, a fourth form of empathy was proposed by Oxburgh et al. (2014) – spontaneous empathy. Oxburgh, Ost, and Cherryman (2012) conducted a study on the relationship between empathy, question types and the amount of investigation relevant information (IRI) obtained. They found that the amount of IRI gained was not associated with police interviewers' use of empathy (as defined by Oxburgh et al., 2012). However, empathy was not fully operationalized in this study (nor in many other studies). Empathy and question type were also examined by Oxburgh et al. (2014) who noted three aspects of empathy: spontaneous, continuers, and terminators. They showed that even in a 'no comment' interview, displays of spontaneous empathy occurred. Building on this Dando and Oxburgh (2016) examined empathic opportunities and cooperation and concluded that empathy may be subcategorized into four types (i) spontaneous comfort, (ii) continuer comfort, (iii) spontaneous understanding, and (iv) continuer understanding.

Pounds (2019) conducted a study on the role empathy in investigative interviews. The following behaviors were found: 1. Expressing understanding for the suspect's feelings, 2. Demonstrating positive regard, 3. Face-enhancing expressions (which includes active listening), and 4. Un-empathic and face-threatening expressions. Expressing understanding of others feelings was found in the 'Engage and Explain' phase of an interview by stating that they "*appreciate that the interview is not a particularly nice thing to have to go through...*" (p. 10). Another empathic component that Pounds

(2019) found was the 'positive regard' toward the suspect, such as a regard for the suspect's interests as a means of establishing and maintaining rapport. Pounds (2019) has stated that not all types of empathic expressions may be useful or appropriate in investigative interviews with suspects. Similarly, Baker-Eck, Bull, and Walsh (in press) have taken this a step further to suggest that not all rapport building methods, such as empathy employed during interviews may be appropriate for both the interviewer and the interviewee.

Pounds (2019) analysed the use of empathy as a method of building rapport, focusing on empathic responses as a means for establishing a channel for communication between interviewers and suspects. Listening to recordings of interrogations in the UK, she assessed the value of empathy, rapport, and face-saving techniques and utilized several definitions of empathy attempting to identify its use (combined with face-saving responses) to build a working relationship with suspects. That study forges a connection between empathic responses and face-relevant responses, concluding that rapport is enhanced.

Thus in a police context, it is recommended that police officers demonstrate empathy by understanding their interviewees, appreciating their emotions and distress, and communicating this to interviewees both directly and indirectly (Davis, 1983). Davis (1983) further stated that empathy is a multidimensional construct, rather than a single unipolar one (such as just either cognitive or emotional), showing how complex empathy is.

However, for investigative empathy Baker-Eck et al. (in press) discuss the importance of distinguishing between a cognitive or affective approach and they examine

police officers' (across Europe) definitions of empathy and interview behavior. The police interviewers were asked if they employed empathy with suspects during their interviews, and then were asked for their definition of empathy. Most (92%) stated using empathy in such interviews and nine definitions of empathy emerged across the seven European countries. These definitions included "openness", "listening", "non-judgment", "understanding" (current situation), "working together", "changing perspectives", "building rapport", "understanding actions", and "appreciating emotions and/or distress." Baker-Eck et al. (in press) distinguished between cognitive and affective empathy and between direct versus indirect forms, as the affective/emotional type may not be conducive for investigative interviews, particularly because of the possibility of losing oversight of the current objectives. Cognitive empathy was described as a rational type of empathy allowing for understanding on a non/emotional level, whereas affective empathy was deemed emotional, such as experiencing similar feelings as the interviewee.

The complex nature of empathy found by Baker-Eck et al. (in press) could be an explanation as to why investigative empathy as a term has not been differentiated from other types of empathy and why many have not clearly defined investigative empathy, despite its recognition and importance (Oxburgh & Ost, 2011). In the current literature there are merely indirect definitions of empathy but a comprehensive, operational, and measurable definition is missing (see Baker-Eck et al., in press; Bull and Baker, 2019; Cherryman & Bull, 1996; Oxburgh et al., 2014; Oxburgh, Ost, & Cherryman, 2012; Rollnick & Miller, 1995). The current study aims to examine the types of empathy employed in suspect interviews conducted by highly qualified and highly PEACE-trained investigators in England.

The present study was designed to: (i) see if police officers employed empathy as cognitive and/or affective empathy; (ii) evaluate the relationship between empathy and cooperativeness of the suspect and (iii) if a particular type of empathy is associated with suspects' cooperation.

### **Method**

#### *Field Data*

Field studies are rare and challenging to achieve. Yet with their challenges, they have benefits that may outweigh other studies, as they are representative of the population being studied. Two recent examples of such hard to come by field research in the area of investigative interviewing can be seen in Surmon-Böhr, Alison, Christiansen, and Alison (2020) and Kim, Alison, and Christiansen (2020). The interviews examined were conducted between 2011 and 2016 at four English Police Constabularies. Ethical approval was obtained from the relevant university and from the relevant Constabularies. The interviews varied in length, from the shortest interview of 70 minutes to the longest interview of 223 minutes. The crimes were all sexual in nature including: possession of indecent photograph, sexual activity with underage person, and rape. The 19 interviews were the audio tapes of 19 male suspects. In 18 of the interviews (94.7%) two interviewers questioned the individual suspect, except in one tape where only one interviewer conducted the interview. Each interview involved different interviewers. It is unknown which interviewees may have consulted a legal advisor prior to the interview.

#### *Coding Strategy*

Of course, regarding empathy it is only the behavior of the interviewer that a suspect has available and therefore in the present study relevant behaviors/displays were coded rather than the interviewer's internal knowledge of whether the empathy was 'genuine'. Also, empathy was coded for not only as merely being present or absent, but also for the qualitative nature of its differing types. For the current study empathy was defined as having one or more of the following characteristics (Baker-Eck et al., in press): (i) active listening, (ii) open demeanor, (iii) being non-judgmental, (iv) working together, (v) demonstrating understanding, (vi) appreciating emotions and distress, (vii) to sense the emotion of the other as he/she is experiencing it, and (viii) expressing the same affect as the interviewee. In Baker-Eck et al.'s study there was a ninth element: to understand/perceive internal frame (meaning the individual experiences of a person and their attached emotions) of the other with accuracy but this is very difficult to assess and therefore it is not analyzed for in the present study. The presence or absence of the types of empathy was noted (the types of empathic displays found are detailed in the results section of this paper). It was then analyzed when and how empathy was displayed, where five types of investigative empathy repeatedly emerged either across situations throughout the interview or in specific instances within the interview (see the results section).

The investigative relevant information (IRI – adopted from Phillips, Oxburgh, & Myklebust, 2012) involved information related to at least one of the following types: (i) person, (ii) action, (iii) location, (iv) item, and (v) temporal details. The present study will also add a sixth type of detail, labeled 'motivational' (or offering a motive). As for Phillips et al. (2012), the details gained will provide interviewers with information on:

## Emerging Types of Investigative Empathy

“(i) who did what, (ii) how it happened, (iii) the location of where it happened, (iv) any items that were used, and (v) the time that it happened” (p. 46). The motivational detail will provide information to the possible motives for the alleged crime. Such motivational information may include anything relevant to the motive or the ‘why’ of the alleged crime, such as desires, or emotions. For example, ‘*I loved her very much*’, or ‘*I hated her for what she did to me*’.

After empathy had been displayed, any IRI that was provided in the five minutes following the empathic utterance was noted on a six-point Likert scale (0 = *being non-cooperative* and 5 = *being highly cooperative*). High cooperation included relevant IRI provided by the suspect and willing participation and meant that all questions were answered, whereas no cooperation meant that no questions were answered, or they were answered with ‘no comment’. Cooperation included offering any IRI about the alleged incident in the answers to the questions provided. The current first author was the only researcher to whom the police organization gave permission to analyze these recordings. Coding of IRI and empathy was clear and no amendments to the coding procedure were needed once coding had commenced. There were no uncertainties and no coding drift for IRI and empathy as re-test reliability showed no deviation from the initial coding. This re-analyzing the data was conducted by going through the earliest recordings after completing coding to see if the codes were applied consistently. Re-test reliability was conducted via same researcher (first author) as other researchers were not privy to the interviews.

## Results

The following five types of empathy emerged:

1. Continuous Empathy (Demeanor) – CE
2. Indirect Empathy (Recapping/Repeating back) – IE
3. Current Situational Empathy – CSE
4. Retrospective Situational Empathy – RE
5. Empathic Reassurance – ER

Five types of cognitive empathy were found in different parts/times throughout the interview. *Indirect Empathy* was found after the free recall and after any suspects' statements; *Continuous Empathy* throughout the interview; *Current Situational Empathy* at the beginning of the interview and account phase; *Retrospective Situational Empathy* account phase; *Empathic Reassurance* at any point of the interview.

*Continuous empathy* (CE) was empathy shown consistently throughout the interview in utterances such as 'OK', 'Yes', 'Continue', or 'Uh huh'. This is similar to the therapist empathy that Watson (2002; see above) describes as a particular tone, utterance or communicating with interest, concern or expressive tone of voice. *Indirect empathy* (IE) included repeating back (or summarizing) to the suspect what they had just said. *Current Situational Empathy* (CSE) involved showing understanding for the current situation of the suspect such as 'I understand that you are a smoker, should you at any time in the interview need a break, please let us know and we will stop the tapes and offer you this break'; 'I know it's difficult to remember, but try.' This is similar to Pounds (2019) classification of 'Expressing understanding of others feelings'. In this case, it was

## Emerging Types of Investigative Empathy

classified as the understanding of their current situation. *Retrospective Empathy* (RE) involved empathy for the interviewee at the time of the alleged crime; for example utterances such as *'I understand you were drunk at this time and cannot now remember, however, I would like you to try to remember as much as possible, and please take your time.'* The difference between CSE and RE is that the former gives an empathic response related to the current situation the interviewee finds themselves in, such as anything related to them in the interview room, related to the arrest or anything else in their current state – whereas the latter (RE) relates to empathic responses given about the situation at the time of the alleged crime. *Current situational empathy* exists in a well-delivered police caution (given in England and Wales before suspect begins talking). Therefore it was only coded for if it appeared in the interview itself (and not as part of the caution, in which it always occurred).

*Empathic Reassurance* (ER) was coded as an empathic response to an empathic opportunity given by the interviewee. For example, one participant gave the investigator an opportunity to react empathically by saying: *'I don't quite know which language to use'*. The investigator then replied empathically by saying *'Whatever language you want to use in here is fine, if I have questions, I will then just ask you'* (interestingly, in this particular interview, not only did the suspect then offer information, but in the subsequent five minutes confessed). It was coined 'Empathic Reassurance' instead of empathic response as the empathic response is a general response.

Only one suspect was uncooperative throughout saying 'no comment' to every question asked, regardless of the types of empathy displayed. Suspect cooperation was found to be highest in those interviews where all five types of empathy mentioned above

## Emerging Types of Investigative Empathy

were present (see Table 1). A Spearman Rho correlation was conducted between amount of interviewer empathy (how many of the five types) and suspect cooperation. A significant positive relationship was found ( $r_s = .543, p < .016$ ).

Table 1: Empathy Types and Suspect Cooperation Level

Audio Rec.	CE	IE	CSE	RE	ER	Empathy Amt.	Susp. Coop.
1	X	X	X	X		4	3
2	X	X	X	X	X	5	5
3	X	X	X			3	0
4	X	X	X			3	3
5	X	X				2	1
6	X	X	X		X	4	1
7	X					1	1
8	X	X	X			3	4
9	X	X	X	X	X	5	5
10	X	X				2	4
11	X	X	X			3	3
12	X	X	X	X		4	5
13		X	X		X	3	2
14	X	X	X	X	X	5	5
15	X	X	X			3	5
16	X		X			2	5
17	X	X	X	X	X	5	5
18		X	X			2	2



investigative interview should be cognitive rather than affective, and they found that all of the English interviewers defined empathy only in a cognitive way.

The present study found empathy to be positively associated with suspect cooperation through the provision of relevant information. Possible reasons for this include that, suspects may feel they have been treated with respect, understood and not judged (see Kebbell et al., 2008; Holmberg & Christianson, 2002). The openness that comes with empathy may lead to a less stressful environment that enables suspects to decide to cooperate and reveal relevant information. Although each of the 19 interviews had received extensive training in the 'PEACE' method that involves a 'challenge account' phase, no empathy was displayed during this 'challenge phase'. In theory, the challenge phase (as the name hints) requires a direct focus on the objectives from the interviewer and is deemed to clarify any contradictions in the account versus the evidence in hand. Therefore, it is difficult to determine if empathy has a useful role in this phase of the interview. More research on this particular topic is needed.

### **Limitations and Future Studies**

One of the limitations of this study (similar to other field studies) was the small number of interviews eventually made available for analysis. A larger sample could help to identify more meaningful patterns with regards to the employment of empathy in criminal interrogations, including those beyond violent and sexual crimes to include "white collar" crimes that may attract a different type of criminal, one who may or may not respond to empathy in the same way as found in the present, pioneering study. By nature, a violent attack, which causes physical harm is very different than a financial

scheme that may cause other (indirect) harm to the victim. The differing motives could possibly have an influence on the effectiveness of empathic interviews, as might the pressures the varying punishments for the differing crimes may hold.

Given that rapport-building (and empathy) is growing in its recognition within the realm of investigative interviewing (as seen above regarding Professor Juan Mendez's report), and that the relevant literature is starting to consider empathy as playing a major role in building such rapport, a thorough understanding and definition of empathy is essential to move research and practice forward. However, decades of research from various disciplines (Psychology, Philosophy, Sociology, Medicine) on this topic have revealed that empathy is quite complex and not easily defined or measured and rather difficult to assess in practice (Pounds, 2019).

It is widely accepted that prejudices and stereotypes influence human interactions and may bias behavior. Police interviewers may experience biases towards particular individuals such as suspects of sex offences, due to the nature and gravity of the alleged crimes (Minhas, 2016). Such biases may hinder them from displaying the empathy needed to maintain rapport with the interviewee and to gain information. Indeed research has demonstrated that beliefs about a suspect's guilt can influence interviewer behavior toward the suspect (Adams-Quackenbush et al., 2018; Meissner & Kassin, 2002, 2004; Olson, 2013).

Additionally, Browne et al. (2013) suggested that some sex offenders may have a deficit that hinders their response to empathy, though this was not found in the present study. This deficit may (among other factors) have allowed the (alleged) crime to be

committed. Thus, the types of empathy employed during police interviews with suspects of sex offences could be further examined furthermore.

In conclusion, this study developed potentially useful codes for different types of empathy and it found cognitive empathy to have a positive association with suspect cooperation. Other types of empathy (such as affective empathy) may prove to be counter-productive and therefore studies on such other 'types' of empathy and their effects on the cooperation of suspects may be worth researching in future studies where such types of empathy are used.

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