

Postgraduate Diploma in IT Forensics

Week 1 of Module 5: Collecting Digital Evidence & Presentation in Court

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1 Prologue

1.1 Help

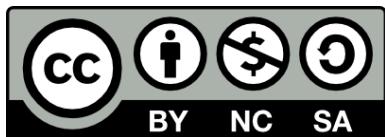
- Blue / pink means I am a link; please click me.

1.2 Contact info

- Personal email
 - hayson.tse

1.3 Copyright

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1.4 Disclaimer

- All materials come from the public domain. There are no government or trade secrets.
- Newspaper clippings may or may not contain the complete sets of allegations in relation to a case.
- A person who has been reported by newspaper clippings as being arrested or charged is presumed innocent until he is convicted or even until his appeal against conviction is dismissed.

1.5 Classroom regulations

- [HKU SPACE Handbook](#)
- No reservation of seats.
- No eating or drinking.
- Turn off all mobile phones and pagers.
- No smoking at all HKU SPACE learning centres and the University campus.
- *No video / audio recording, unless with the permission of the Programme Director / Manager*
- The Programme Direction / Manager may impose any conditions when granting the permission.
- No unattended personal belongings.

2 10 Learning weeks

- LW1: 21 March 2019
 - Miscarriage of justice; principles of litigations and investigations
- LW2: 28 March 2019
 - Nature and classifications of evidence; rules of Appellant evidence; science of proof; nature of testimonies of witnesses; methods of analysis of evidence.
- LW3: 4 April 2019
 - Further methods of analysis of evidence; exceptions to the rule against hearsay.
- LW4: 11 April 2019
 - Nature and admissibility of experts' opinions; science of investigations and crime scenes reconstructions.
- LW5: 18 April 2019

- Biases and failures in investigation and analysis; interviewing witnesses; investigative processes and procedures; experts' reports.
- LW6: 25 April 2019
 - Code of practice for expert witnesses; rules of disclosure; how judges evaluate expert evidence; examination-in-chief.
- LW7: 2 May 2019
 - Rules of the High Court regarding experts' reports; other requirements for experts' reports; defence case theories in the Casey Anthony saga; examples of examination-in-chief and cross-examination.
- LW8: 9 May 2019
 - Principles of examination-in-chief and cross-examination; digital investigation with a view to negate opposing party; standards governing digital investigations.
- LW9: 16 May 2019
 - International standards and principles of digital investigations; expert testimonies from the Inquiry on Vessels Collision near Lamma Island.
- LW10: 23 May 2019
 - Further examples from the Inquiry on Vessels Collision near Lamma Island; course review.

3 Important dates

- Assignment: 2 May 2019
- EXAMINATION: 6 June 2019

3.1 Assessments

- One assignment
- One written examination (not open book)
- Achieve 75% attendance
- Continuous Assessment (weighting 50%)
- Examination (weighting 50%)
- Total passing score is 50%

3.2 What is education

- John Dewey (1859 - 1952):

“Education is not preparation for life; education is life itself.”

- Thomas Jefferson (1743 - 1826):

“He who receives ideas from me, receives instruction himself without lessening mine; as he who lights his taper at mine receives light without darkening mine.”

- G. C. Lichtenberg (1742 - 1799):

“The most dangerous of all falsehoods is a slightly distorted truth.”

- Dwight D. Eisenhower (1890 - 1969):

“It is unwise to make education too cheap. If everything is provided freely, there is a tendency to put no value on anything. Education must always have a certain price on it; even as the very process of learning itself must always require individual effort and initiative.”

- Emperor Taizong of the Tang Dynasty's, The Emperor's Norms, Volume 4:

“Aim high and you may attain the average; aim at the average and you can only attain the lower level.” (HK LegCo translation)

- Albert Einstein. On the Method of Theoretical Physics. Philosophy of Science, Vol. 1, No. 2, (Apr., 1934), pp. 163 - 169, at p. 165:

“It can scarcely be denied that the supreme goal of all theory is to make the irreducible basic elements as simple and as few as possible without having to surrender the adequate representation of a single datum of experience.”

- Epictetus (50 - 135):

“If you search for the truth, you would not try to win by every method possible; and when you have discovered the truth, you do not need to worry about losing.”

- Zhang Guangming, Professor of School of Environment and Nature Resources, Renmin University of China:

“What any teacher can teach, is far less than Google. I told the students, “I do not have new knowledge to teach you. Rather, I hope to learn from you some new knowledge.” Research is not working for your teachers. It is for developing one’s ability, developing the ability to analyse the problems, propose solutions, obtain resources, solve problems, sum up and promote.”

3.3 Not interested in politics

- Jonathan Mayer, Stanford University:

" . . . my aim here is to describe the law as best I can, and to present the best articulation of competing views. If you get frustrated with the state of the law, please don't take it out on me. I certainly don't agree with everything I'm about to present."

3.4 Not training Click-button experts

- John J. Barbara, *Handbook of Digital and Multimedia Forensic Evidence*, page 129:

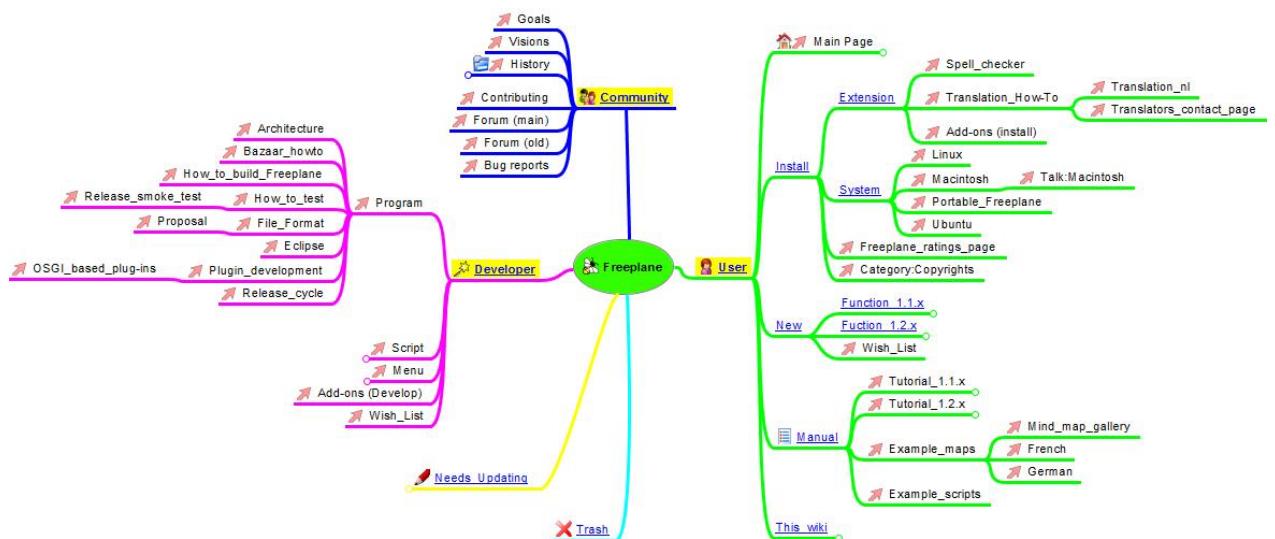
"The goods news for technical experts may be that the commercial software is increasingly being designed to conduct analysis tasks and automatic domain knowledge and expertise. For instance, . . . , This "click button expertise" poses a challenge to legal rules governing the reliability of an expert's methodology and the underlying data. It may also lead an opponent to query "Is the expert or the software performing the actual analysis?". If [the] methodology is to be assessed, the analysis and methodology must be reproducible and transparent."

3.5 Disclaimer

- All materials come from the public domain. No HKSAR Government or trade secrets.
 - Newspaper clippings may or may not contain the complete sets of allegations in relation to a case.
 - A person who has been reported by newspaper clippings as being arrested or charged is presumed innocent until he is convicted or even until his appeal against conviction is dismissed.

3.6 Use mind map to make notes

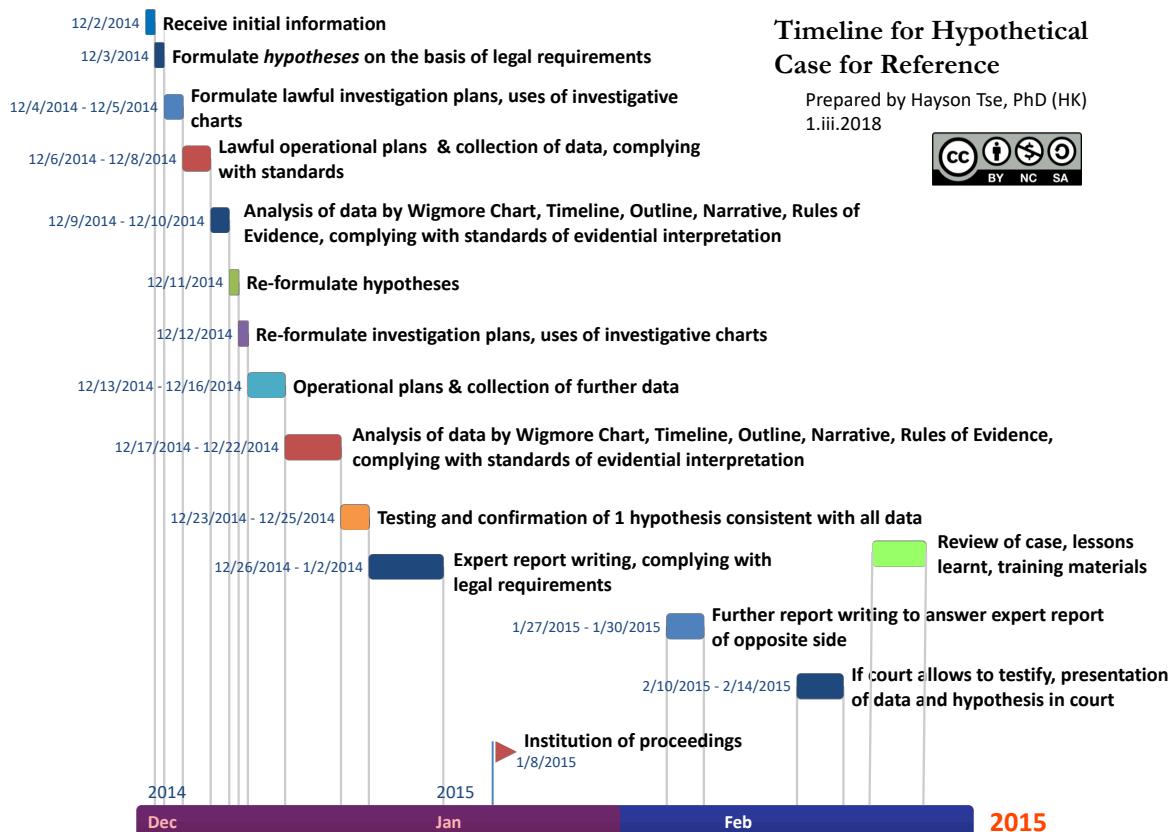
- Freeplane (open source)



3.7 Writing

- George D. Gopen. [RAC, REA, where we are now, and where we should be going in the teaching of legal writing](#). Journal of the Legal Writing Institute, 17 (2011), xvii - xxxv.
- George D. Gopen and Judith A. Swan. [The Science of Scientific Writing](#). America Scientist 78 (1990), 550 - 8.
- Stephen M. Griffies and William A. Perrie. [Elements of Style for Writing Scientific Journal Articles](#). December 2013. Elsevier.
- Wilhelmiina Hamalainen. [Grammar and Style Notes for Scientific Writing](#).
- [Using Tenses in Scientific Writing](#). The University of Melbourne.
- Tony Lynch and Kenneth Anderson. [Grammar for Academic Writing](#). 2013. University of Edinburgh.
- [Elsevier researcher academy \(free\)](#)

3.8 Overview of your work



4 Assignment

- They are lessons to be learnt for your career.

4.1 Question 1

- This is about common mistakes not noticed or recognized by investigators.
- You demonstrate your understanding by citing an example.

4.2 Question 2.

- This is a graphical analysis of data collected during investigation.
- It used a daily life example of a family.

5 Introduction

5.1 A story about you

- You are Dr/Mr/Ms/Mrs/Miss Hunt. You work for "Apotequil". It is registered as a consultancy firm in Hawaii. You are one of them:
 - Director of Forensic Laboratory
 - Director of Investigations
 - Principal Digital Evidence First Responder
 - Principal Digital Evidence Specialist
 - Principal Incident Response Specialist

5.2 Mission possible

- Angel, the secretary of the Chairman of the board of directors summonsed you by telephone to go to the penthouse-office of the Four Seasons Resort Hualalai to meet the Chairman. You went there and met Angel. She told you the Chairman was having a meeting and could not see you. The Chairman told her to tell you that you were his best man. He want you to meet Dr No, the Chairman of the TRUSH Holdings Limited in Jamaica. Angel had already arranged your flights and hotel. She said the CEO told you to take good care of the wish of Dr No. She also told you to report to her once you have a preliminary view of the work to be done. She would prepare a Computer Forensic Service Agreement for TRUSH and the Chairman to sign.
- You went to Jamaica alone. At the appointed time (the first day upon arrival), you met Dr No and his secretary, Sarah.
- Dr No said nothing, whilst Sarah said:

"Good morning, Dr/Mr/Ms/Mrs/Miss Hunt. Your mission, should you choose to accept it, involves . . ."

- In summary, she told you:
 - Oliver Harrison was the Chief Executive Officer of TRUSH. Oliver would be your point of contact. He would call you.

- The staff members in connection with your investigation were: Christina Hogan, Cody Stephenson and Kent Blair.
- Christian received unsolicited love emails and WeChat messages repeatedly from Kent. She read those emails with her mobile phone.
- Ten days ago, Christian had received an e-mail from Kent that redirected her to download a nude picture of the lower parts of a male.
- Christian complained to Oliver verbally. Oliver then asked Dr No for permission to commission a consultant to investigate. Oliver did not wish to seek help from the IT Department. Dr No told Oliver to contact the Chairman of Apotequil.
- Christian gave her mobile phone to Oliver. Sarah gave it to you.
- At the middle of the night on the second day, you went to the headquarters building of TRUSH. You brought along some digital tools. Oliver met you in a quiet place outside the building. He took you to walk past the security without checking. Oliver told you that all staff members had left the building except the security. He opened the locked office of Kent. You saw a Panasonic DMC-FX3 camera on Kent's desk. You "examined" the camera and "cloned" the contents of its storage device.
- Then Oliver opened the locked office of Cody. You "examined" Cody's office computer and "cloned" the contents of its storage device. When you finished cloning, it was almost 5 a.m. in the morning (the third day).
- On the third day, Oliver met you in a restaurant for lunch. You were surprised to find Cody with him. He told you to interview Cody. You interviewed Cody and he denied he had made the nude photograph.
- On the fourth day, you were waiting express delivery from Apotequil of certain digital tools. You decided that after you "investigated" the cloned copies with the new tools, you would report to Angel. So, meanwhile, you went to have a drink in a local bar. A stranger approached you and told you that he was working in TRUSH. He further told you that Christina, Cody and Kent had falsified company accounts to boost the Company's profits to increase their commissions.
- On the fifth day, you called Oliver and told him your encounter with the stranger. Soon, Oliver called you back and told you that TRUSH had been publicly listed in Jamaica in 2000. He further told you that TRUSH had raised over US 1 billion during its initial public offering, i.e. first sale of stock. Five years later, a third-party analyst evaluated the share value. The assessment jumped from a single-digit Price-Earning Ratio (P/E) to a double-digit P/E. TRUSH published a profit of US 183 million in 2016 and US 291 million in 2017. He also told you that after your interview with Cody, rumours of the internal investigation were circulating within the company.
- Oliver told you to take the opportunity to investigate any misconduct of Christina, Cody and Kent. Oliver said he would decide whether or not to report any crime to the Jamaica police after receiving your investigation report. He would decide whether or not to summarily dismiss Christian, Cody and Kent. He asked you to meet him at midnight outside the headquarters building of TRUSH again. He would take you to investigate the office computers of Christina, Cody and Kent. He would also take you to the server rooms of TRUSH. He told you all computers were connected to the server.

5.3 Questions

- What to do in Jamaica and Hawaii, and why?
- Is there any difference if you were an employee of TRUSH Holdings Limited?
- What should you do, if during your investigation either in Jamaica or in the forensic Laboratory in Hawaii, you found some intimacy videos between Sarah and Oliver, sent from the private email of Sarah to the private email of Cody, but stored in the office computer of Kent?

6 Common mistakes, errors & misunderstanding

6.1 Convicting the guilt, exonerating the innocence

- What happened during the investigations?
- [Not qualified as an expert](#), Chinese video
- [Carefree investigation](#), Chinese video
- [A road junction](#), Chinese video
- [Newton's third law](#), Chinese video
- [Who is right?](#), Chinese article
- [Freed after 23 Years in prison](#), English video
- [Freed after 29 years in prison](#), English video
- [Three Russians acquitted because of . . .](#) (Court's reasons for verdict is [here](#))

6.2 Common misunderstanding

- Can you find out the mistakes in this newspaper clipping? (graphical image removed.)
- Can you find out the mistakes of this TV drama? (graphical image removed.)
- Can you find out the mistakes of the LegCo member? (graphical image removed.)

6.3 Disclaimer

- Newspaper clippings may or may not contain the complete sets of allegations in relation to a case.
- A person who has been reported by newspaper clippings as being arrested or charged is presumed innocent until he is convicted or even until his appeal against conviction is dismissed.
- [Article 87 of the Basic Law](#) and Article 11 of the Bill of Rights provides that anyone charged with a criminal offence shall have the right to be presumed *innocent* until proven guilty according to law.
- [Article 11\(1\) of the Hong Kong Bill of Rights](#) (section 8 of the Hong Kong Bill of Rights Ordinance (Chapter 383).

6.4 Case 1 as mentioned by news

- Alternative hypothesis was overlooked (graphical image removed.)

- [The allegations against investigators](#)
- Prosecution alleged that the private car crossed the double lines and tried to overtake a vehicle in front. The private car hit the mini bus coming out of a lay-by. The force of impact was about 4.6 tons. The force turned the private car back to the opposite lay-by. (graphical image removed.)

6.5 Case 2 as mentioned by news

- Alternative hypothesis was overlooked (graphical image removed)
- Fallacy: Where a traffic accident took place at a junction of a main road and small road, if a driver came drove out of the main road and another came out of a small road, the driver coming out of the small road must be driving carelessly.
- [see the news here; and here; and also here.](#)

6.6 Case 3 as mentioned by news

- The other side's (Car 2's) hypothesis was overlooked (graphical image removed)
- Car 1 stopped suddenly. Driver 1 said he had been hit twice by Car 2. Prosecution's hypothesis was: Car 2 came so close to Car 1 that Car 2 was unable to stop when Car 1 stopped. Car 2 hit Car 1. Car 3 was following Car 2 and was also unable to stop. Car 3 hit Car 2 which in turn hit Car 1 again. Therefore, there were 2 hits on Car 1.
- [see news here.](#)

6.7 Case 4 as mentioned by news

- The magistrate decided the defence expert was not qualified to testify
- [Criticising each other?](#)
- [Traffic accident reconstruction expert?](#)
- [Tyre expert?](#)

6.8 Case 5

- Experts contradicting each other
- [HKSAR v Lau Chun Leung HCMA 266/2004](#)
- PW6 is a computer examiner. She testified that it was the second defendant's computer which caused the e-mail system of the Computer System to slow down. (not official translation)

"The testimonies of the prosecution and defence expert were totally contradicting to each other. The magistrate had properly evaluated their evidence and decided that the evidence of the prosecution expert was reasonable and fair." (not official translation)

6.9 Case 6

- Golf car safety expert by searching the internet
- *HKSAR v Kau Sai Chau Public Golf Course Limited HCMA 641/2009*

"Prosecution expert alleged that the golf cart was not safe because it did not have a safety belt. He had no training in the area and obtained knowledge by searching the internet regarding golf cart." (not official translation)

- internet or Internet

7 A case study

7.1 A murder trial

- *HKSAR v Manalili Magno Cruz*
- In this case Mr Cruz was acquitted after trial by a jury in the Court of First Instance.
- The deceased (graphical image removed)
- The house (graphical image removed)
- The podium in front of the house (graphical image removed)
- The bedroom (graphical image removed)
- Allegations for classroom discussion only (summary from newspaper clippings)
- Prosecution's narrative:
 - The deceased couple lived in the village house for over 20 years.
 - There was a small hut close to the village house.
 - The deceased were the land owners of the village house and the small hut.
 - The 2 sons of the deceased were studying in the USA.
 - Since 1999, the deceased employed the accused as domestic helper and gardener. The small hut was quarter provided to the accused.
 - The contract were to expire in February 2004 (the event happened in April 2003).
 - The deceased had kept 3 large dogs.
 - Timeline

7.2 Timeline

- 12 April 2003 morning: The deceased and their former classmates had a tour in the New Territories.
- 12 April 2003 afternoon: The deceased and the classmates parted.
- 12 April 2003 evening: The deceased and the classmates met again and had dinner together at a restaurant close to the deceased's home.
- 12 April 2003 9:30 pm: The deceased and the classmates parted. The deceased said they were going back home to take medicine.
- 12 April 2003 after 11 p.m.: The brother of the female deceased was unable to contact the deceased by telephone.

- 12 April 2003 night: The accused went to stay the night at his friend's hut nearby.
- 13 April 2003 small hours: The accused left the friend's hut and was seen to have pushed a trolley with a nylon bag towards the direction of area of the deceased's home.
- 13 April 2003: The sons of the deceased and the younger brother of the female deceased were unable to contact the deceased by telephone.
- 13 April 2003 evening: The accused left HK by air and went back to the Philippines.
- 14 April 2003 small hours: Police and the younger brother of the deceased went to the house for investigation. They found:
 - The lights of the house were turned on;
 - The house was neat and clean but smelly;
 - There was no signs of forced-entry;
 - Inside the bedroom there was a storeroom;
 - Inside the storeroom, the bodies of the deceased were found;
 - There were 8 knife stab wounds on the chest of the male deceased;
 - There were 10 knife stab wounds on the chest of the female deceased;
 - There were cut wounds on the left hand and right thigh of the male deceased;
 - A sports shoe was found under the body of the deceased, and the sports shoe resembled to one of the pair of sports shoes worn by the accused;
 - The deceased's HK identity cards, mobile phones, video-cameras and cameras were missing;
 - The male deceased's empty wallet and address book inside the hut where the accused resided;
 - Very soon after 14 April 2003: On 2 occasions, police interviewed the accused's wife. The wife did not say anything about the murder.
 - On a day X after the 2 interviews: The brother and police offered a reward of HK400,000.
 - On a day after X: police interviewed the accused's wife again. The wife mentioned the admission of the accused before the accused flew out of Hong Kong. The accused told her he had killed the deceased.
 - On a day in December 2004: police of the Philippines arrested the accused. Hong Kong sought his extradition. The accused objected. The accused was in jail custody in the Philippines.
 - On a day in June 2010: The accused agreed to be extradited to Hong Kong for trial. He had been in jail in the Philippines for 6 years.
 - On a day in June 2010: Hong Kong police interviewed the accused. The accused denied he had killed the deceased. He said he was on good terms with the deceased.
 - On or about 3 June 2011: The accused testified in the High Court. He said he had left HK hurriedly because he had to take care of his mistress in the Philippines who was about to give birth to a baby. His wife lied because of the reward of HK400,000.
 - 7 June 2011 (noon): jury retired for deliberation.
 - 8 June 2011 (morning): jury returned an unanimous verdict of not guilty for both charges of murder.

7.3 Questions

- Dr D. Kim Rossmo

“The criminal investigation process plays an important and special role in countries governed by the rule of law. Its function is to seek the truth, without fear or favour. That task, integral to both public safety and justice concerns, must be conducted in an unbiased and professional manner. If it is not, the result is unsolved crimes, unapprehended offenders, and wrongful convictions.”

- Assuming the evidence before the jury were those that had been set out above (according to newspaper clippings)
- Will you acquit or will you convict the accused? Why?
- Looking retrospectively, if you were the investigators, what further data or information will you obtain?

7.4 Take some of them with a grain of salt

- [Top 25 movies about trials](#)

8 *R v Sally Clark*

8.1 Murder of two babies

- (graphical image removed)
- [See Clark's version](#)
- See also [R v. Clark \[2003\] EWCA Crim 1020](#) (second appeal).

8.2 Prosecution's narrative

- Murder by a stressful mother, or two babies died in succession of sudden infant death syndrome? (graphical image removed)
- Lightning never strikes the same place twice (grpahical image removed)
- Christopher was born on September 22, 1996, and found dead in his Moses basket at 11 weeks.
- Harry was born on November 29, 1997, and eight weeks later suddenly collapsed in his bouncy chair.
- Christopher's death was originally certified as natural due to respiratory infection and this was only overturned when Harry also died.
- In July 1998, Sally was charged with the murder of both babies.
- Depressed mother, a career girl with a comfortable life style who did not want a family.
- Statistics: the odds against two cot deaths occurring in the same family was 73,000,000:1.
- Lightning never struck the same place twice.

8.3 Experts

- 5 defence experts against 1 prosecution expert

“The speculation is that the jury did not understand the medical evidence and took soundbites, reaching a majority decision on the disbelief that “lightning could strike twice” - plus the ...statistics from Professor Meadow, a paediatrician not an epidermologist,” - [Oliver A J Norman](#)

8.4 First appeal

- [R v. Clark \[2000\] EWCA Crim 54](#) to the Court of Appeal

“256. For all those reasons, we consider that there was an overwhelming case against the appellant at trial. If there had been no error in relation to statistics at the trial, we are satisfied that the jury would still have convicted on each count. In the context of the trial as a whole, the point on statistics was of minimal significance and there is no possibility of the jury having been misled so as to reach verdicts that they might not otherwise have reached. Had the trial been free from legal error, the only reasonable and proper verdict would have been one of guilty.”

“257. It follows that in our judgment the error of approach towards the statistical evidence at trial identified at paragraph 181 (Ground 3(c)) did not render the convictions unsafe.”

- The statistic was wrong, but it would not have influenced the jury unduly. Appeal dismissed.
- Criminal Cases Review Commission decided to re-open her case and referred it back to the Court of Appeal.

8.5 Second appeal

- [R v. Clark \[2003\] EWCA Crim 1020](#) to the Court of Appeal.
- Sally’s conviction was quashed on the 29th day of January 2003.

“178. The argument before us would have addressed the question whether the 1 in 73 million figure was misleading in itself quite apart from the use made of it at trial. On the material before us, we think it very likely that it grossly overstates the chance of two sudden deaths within the same family from unexplained but natural causes. There is evidence to suggest that it may happen much more frequently than suggested by that figure although happily the risk remains a relatively unlikely one. The figure of 1 in 73 million was disputed by ...”

"178. ...The figure of 1 in 73 million was disputed by Professor Berry in his evidence who pointed to the obvious dangers of simply multiplying the risk of one such recurrence by the same figure to obtain the chance of two such deaths. Quite what impact all this evidence will have had on the jury will never be known but we rather suspect that with the graphic reference by Professor Meadow to the chances of backing long odds winners of the Grand National year after year it may have had a major effect on their thinking notwithstanding the efforts of the trial judge to down play it."

"179. The Court of Appeal on the last occasion would, it seems clear to us, have felt obliged to allow the appeal but for their assessment of the rest of the evidence as overwhelming. In reaching that conclusion the Court was as misled by the absence of the evidence of the microbiological results as were the jury before it. We are quite satisfied that if the evidence in its entirety, as it is now known, had been known to the Court it would never have concluded that the evidence pointed overwhelmingly to guilt."

- Lessons from the second appeal

"One of the most interesting parts of the 2003 judgement is a long section on the approach of the pathologist to the suspicious death. The Court's analysis is equally relevant to any investigator or scientist involved in the investigation of a suspicious death. In short; get as much information about the case as possible; do the examination keeping meticulous notes and consider all the possibilities and all the evidence, both positive and negative, normal and abnormal. The report should set out the conclusions and why they have been reached showing that relevant alternative hypotheses have been considered and why they are not as well supported by the evidence as the formulation favoured by the pathologist. The recording of the finding and results of the special investigations for review by others is vitally important." - A.R.W. Forrest, *Sally Clark - a Lesson for Us All*. Science & Justice, Volume 43, No. 2 (2003) pages 63 – 64.

"There are lessons in the case of Sally Clark for all of us who assist the courts as investigators, experts or advocates. Justice requires meticulous preparation, comprehensive note taking, opinions soundly based in recorded and/or reproducible fact, sharing of data between experts, valid scientific deductions and a willingness to think again as data emerges, or re-emerges. Also scientific and opinion evidence should be presented in court objectively and not emotively. Opinion evidence should be testable, not ex cathedra. That requires the information on which the opinion is based to be shared." - A.R.W. Forrest, *Sally Clark - a Lesson for Us All*. Science & Justice, Volume 43, No. 2 (2003) pages 63 – 64.

- Sally was discharged from prison on 29 January 2003 (graphical image removed)

8.6 General Medical Council

- Findings of General Medical Council (Fitness to Practise Panel)

“The GMC found that the expert was guilty of serious professional misconduct (under the old GMC rules) because he had relied on statistical information in a flawed way which may have influenced the jury to convict of murder. The GMC did not find that the expert’s conduct was intended to mislead the Court and there was no evidence of any calculated or wilful failure to use his best endeavours to provide evidence. The Fitness to Practise Panel found that he had acted in good faith but had misinterpreted the statistics, a mistake which it found was easily and widely made. Notwithstanding that finding, he was erased from the medical register.”

8.7 Appeal against GMC Findings

- The expert’s name was restored in the medical register

“The statistical error was obvious from the squaring of the 1:1000 to make 1:1,000,000. Such squaring is only permissible if the two events are truly independent.” (paragraph 32)

“As I have said, he made one mistake, which was to misunderstand and misinterpret the statistics. It was a mistake, as the Panel accepted, that was easily and widely made. It may be proper to have criticised him for not disclosing his lack of expertise, but that does not justify a finding of serious professional misconduct.” (paragraph 54)

- *Meadow v. General Medical Council* [2006] EWHC 146 (Admin)

8.8 Final Episode

- Sally Clark was found dead at her home on 16 March 2007. She passed away during the night.
- When she was released in 2003 (aged 42), she had been wrongfully imprisoned for more than 3 years and had been falsely accused of the murder of her two sons. It was said that she never fully recovered from the effects of miscarriage of justice.
- Her release in January 2003 prompted the Attorney General to order a review of hundreds of other cases. Two other women convicted of murdering their children, had their convictions overturned and were released from prison. A third woman, who was also accused of murdering her three children, was acquitted in June 2003. In each case, the same expert had testified about the unlikelihood of multiple cot deaths in a single family.

9 *R v Alfred Arthur Rouse*

9.1 A Summary of prosecution and defence case

- Alfred Arthur Rouse, a travelling salesman (graphical image removed)
- Trial of Alfred Arthur Rose, Notable British Trials, 1931, Second Edition

"The crime was committed in the early morning of Thursday, 6th November 1930, the victim man, an unknown man, being burned to death in a motor car on a lonely road near the small village of Hardingstone in Northamptonshire. The suggestion of the prosecution at trial was that Rouse, who was in embarrassed circumstances, calculated by this means to obscure his identity, and that his plan only miscarried because he was seen on the road near the burning car by two young men. Rouse maintained that the car had been accidentally set alight by the dead man while he was out of it."

9.2 The crime scene

(graphical image removed)

9.3 Rouse's explanation

- There is no perfect crime vs. prove beyond reasonable doubt.
- What Rouse told police:
 - He had been travelling overnight to Leicester and had picked up a hitch-hiker.
 - He had taken a wrong turn to Hardingstone Lane.
 - He decided to stop to take a short sleep.
 - He got out of the car to relieve himself and asked his passenger to fill the petrol tank with the contents of a can that was in the car.
 - The man asked if he could smoke.
 - He did not smoke but happened to have a cigar and gave it to him.
 - He took his suitcase, left the car and walked over 200 yards to relieve himself.
 - On his way back, he saw the car burst into flames.
 - He had tried to reach the man trapped in the car but had failed. He panicked.
- What the two young men said regarding the first response of Rouse

"Looks as if someone has a bonfire."

- (A bonfire is a large but controlled outdoor fire, used either for informal disposal of burnable waste material or as part of a celebration)

9.4 Trial process regarding witness testimony

- Examination-in-chief (by counsel of the party who calls the witness to testify)

- Cross-examination (by counsel of the opposing party)
- Re-examination (by counsel of the party who calls the witness to testify)

9.5 Examination-in-chief

- Testimony of defence expert

"I am managing director of the Bramber Engineering Company, Limited, of Cricklewood, London, manufacturers and specialists in the heat treatment of metals. I am an engineer and fire assessor, and I have acted for insurance companies in numerous cases for more than 18 years."

"I say it (a whole turn loose of a nut after the fire) is invariably found at all fires that have been very intense that these nuts are loose. As a matter of fact, I go so far as to say that in the last twenty-five cases that I have done, where the fire has been intense, these nuts have always been loose. (The nut of iron and the pipe of iron were of different metal. They expanded differently under heat. Therefore, the nut was loosen by heat. So, the loosen of the nut of a petrol pipe did not imply human intervention.)" (bracket added to explain the background)

9.6 Cross-examination

- Testimony of defence expert

"Mr Norman Birkett, QC: What is the co-efficient of the expansion of brass?

Answer: I am afraid I cannot answer that question off-handly.

Q: If you do not know, say so. What do I mean by the term?

A: You want to know what is the expansion of metal under heat.

Q: I asked you what is the co-efficient of the expansion of brass? Do you know what it means?

A: Put that way, probably I do not."

"Q: You are an engineer?

A: I dare say I am. I am not a doctor, nor a crime investigator, nor an amateur detective. I am an engineer.

Q: What is the coefficient of the expansion of brass? You do not know?

A: No, not put that way. My company deals with the heat treatment of metals. We make commercial laminated springs, car laminated springs, forging, and all types of parts. We employ about 70 people. I do not have any degrees. I have had training as a fire assessor."

"Q: How many of the 15 to 20 (of cases of) last year were roadside fire? (brackets added to explain the background)

A: I could not be sure.

Q: Did you not look up your records before you came?

A: I do not think I had much time ..."

10 Who guards the guards

10.1 Who guards the guards?

- Three global sister organisations that develop International Standards for the world
 - IEC
 - ISO
 - ITU
- Rules of evidence
- Other guidance and standards

10.2 International Electrotechnical Commission

- IEC
- China is a full member.

10.3 International Organization for Standardization

- ISO
- China is a Member body
- Hong Kong is a Correspondent body

"ISO (International Organization for Standardization) is the world's largest developer of voluntary International Standards. We were founded in 1947, and since then have published 21520 International Standards covering almost all aspects of technology and business."

"ISO has published more than 20,500 International Standards and related documents, covering almost every industry, from technology, to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere."

- [Why ISO not IOS?](#)

"Because 'International Organization for Standardization' would have different acronyms in different languages (IOS in English, OIN in French ...), our founders decided to give it the short form ISO. ISO is derived from the Greek isos, meaning equal. Whatever the country, whatever the language, we are always ISO."

- ISO/IEC 27037:2012 Information technology - Security Techniques - Guidelines for identification, collection, acquisition and preservation of digital evidence
- ISO/IEC 27041:2015 Guidance on assuring suitability and adequacy of investigation method.
- ISO/IEC 27042:2015 Guidelines for the analysis and interpretation of digital evidence.
- ISO/IEC 27043:2015 Digital evidence investigation principles and processes.
- BS 10008:2008 Evidential weight and legal admissibility of electronic information - Specification.

10.4 ISO/IEC 27037:2012

"ISO 27037:2012 provides guidance to individuals with respect to common situations encountered throughout the digital evidence handling process and assists organizations in their disciplinary procedures and in facilitating the exchange of potential digital evidence between jurisdictions."

10.5 ISO/IEC 27041:2015

"ISO 27041:2015 provides guidance on mechanisms for ensuring that methods and processes used in the investigation of information security incidents are "fit for purpose". It encapsulates best practice on defining requirements, describing methods, and providing evidence that implementations of methods can be shown to satisfy requirements. It includes consideration of how vendor and third-party testing can be used to assist this assurance process."

10.6 ISO/IEC 27042:2015

"ISO/IEC 27042:2015 provides guidance on the analysis and interpretation of digital evidence in a manner which addresses issues of continuity, validity, reproducibility, and repeatability. It encapsulates best practice for selection, design, and implementation of analytical processes and recording sufficient information to allow such processes to be subjected to independent scrutiny when required."

It provides guidance on appropriate mechanisms for demonstrating proficiency and competence of the investigative team.”

10.7 ISO/IEC 27043:2015

“ISO/IEC 27043:2015 provides guidelines based on idealized models for common incident investigation processes across various incident investigation scenarios involving digital evidence. This includes processes from pre-incident preparation through investigation closure, as well as any general advice and caveats on such processes. The guidelines describe processes and principles applicable to various kinds of investigations, including, but not limited to, unauthorized access, data corruption, system crashes, or corporate breaches of information security, as well as any other digital investigation.”

10.8 International Telecommunication Union

- [ITU](#)
- ITU-T Y.4050/Y.2069 (07/2012): Terms and definitions for the Internet of things
- China is a Member State with 2 Hong Kong companies from the industry

11 Standard of proof

11.1 Article 50 Criminal Procedures Law of the PRC (14 March 2012 amended)

- Article 43 renamed as Article 50

“Judges, procuratorial personnel and investigators shall adhere to statutory procedures when gathering and obtaining evidence that may prove whether criminal suspects or defendants are guilty or innocent, or whether cases involve serious criminal offences or not. They are strictly prohibited from extorting confessions by torture, collecting evidence through threats, enticement, deception or other unlawful means, or forcing anyone to provide evidence proving his/her own guilt. They shall ensure that all citizens who are involved in a case or who have information about the circumstances of a case can furnish all available evidence in an objective manner and, except under special circumstances, may ask such citizens to provide assistance in investigation.”

11.2 Article 53 Criminal Procedures Law of the PRC (14 March 2012 amended)

- Article 46 renamed as Article 53 and amended.

"All cases shall be judged according to the principles that emphasis shall be laid on evidence, investigation and research, while credence shall not be readily given to oral statements. A defendant cannot be found guilty and sentenced to criminal punishments if there is no evidence other than his/her own statement. On the other hand, a defendant may be found guilty and sentenced to criminal punishments even without his/her own statements, as long as there is sufficient and concrete evidence."

"Evidence shall be deemed to be sufficient and concrete if the following conditions are satisfied:"

"(1) There is evidence for each fact that serves as the basis for conviction and sentencing;"

"(2) The authenticity of evidence used for deciding the case has all been confirmed in accordance with statutory procedures; and"

"(3) Based on the comprehensive assessment of all evidence for the case, *the ascertained facts have been proved beyond reasonable doubt.*"

- Before amendment: "sufficient and reliable."

11.3 Why prove beyond reasonable doubt in criminal trial?

- Richard A. Posner, "An Economic Approach to the Law of Evidence," 51 Stanford Law Review 1477 (1999)

"To see how accuracy in fact-finding relates to deterrence, notice that the expected cost of punishment ...is actually the difference between the expected cost of punishment if one commits a crime ...and the expected cost of punishment if one does not commit a crime ... The more accurate the process of determining guilt is, the less random punishment will be, and so the greater will be the law's deterrent effect. To put this point differently, greater accuracy in the determination of guilt increases the returns to being innocent. The point is not limited to criminal law. It applies to all areas of law in which deterrence of unlawful behavior is an important objective. It shows what a good investment, expenditures on evidence can be."

12 Admissions and confessions

- Exclusionary rule

- The Law Reform Commission of HK Report on Confession Statements and their Admissibility in Criminal Proceedings(October 1985). (Recommendations rejected by the HK Government in September 1987.)
- Rules & Directions for the Questioning of Suspects & the Taking of Statements (Rules & Directions) (gazette dated 2 October 1992, but with effect from 1 October 1992)
- The Law Reform Commission of HK Report on the Procedure Governing the Admissibility of Confessions Statements in Criminal Proceedings (July 2000). (No change to the existing law was recommended.)
- Judges' Rules (Old); then Rules & Directions for the Questioning of Suspects & the Taking of Statements (Rules & Directions).

12.1 Judges' Rules (Old)

- Drawn up by the Judges of the King's Bench Division in 1912, added to in 1918 and clarified in a Home Office circular in 1930, and supplemented in two further circulars in 1947 and 1948.
1. The statement must always be volunteered . . .
 2. The caution to be administered to the prisoner when he is charged should be in the following words . . .
 3. A prisoner's statement should, whenever possible, be taken down in writing and signed by him after it has been read over to him and he has been invited to make any corrections that he may wish . . .
 4. A prisoner should never be cross-examined - that is, while he is telling his story . . .
 5. A record must be kept of the times at which the statement started and finished, . . .
 6. Although there is no express rule that a prisoner who wishes to have a friend or lawyer present while he is making a statement is to be allowed to have him, it is clear that a request of that sort would have to be granted; . . .

12.2 Judges' Rules (New)

- Revised old rules in 1964
1. When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, . . .
 2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person . . .
 3. Persons in custody should not be questioned without the usual caution being first administered.
 4. If the prisoner wishes to volunteer any statement, the usual caution should be administered . . .
 5. The caution to be administered to a prisoner when he is formally charged should therefore be in the following words . . .

6. A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.
7. A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. . .
8. When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply. . . .
9. Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

- The Law Reform Commission of HK Report on Confession Statements and their Admissibility in Criminal Proceedings(October 1985):

"The new Rules were formally sent to Hong Kong after their adoption in England and on 7 March 1964 the Governor informed the Secretary of State for the Colonies:-"

"It is not intended that the new Judges' Rules should be adopted in this Colony at the present time since at a recent conference of the Judges of the Supreme Court the following resolution was passed :-"

"....The existing Judges' Rules will accordingly remain in force and continue to be applicable in the Courts of the Colony.' . . ."

"The Judges in reaching this decision took into account the fact that no comments on the new Rules in legal publications have yet reached the Colony. It was felt by their Lordships that it would be unwise to introduce the new Rules until these comments had been received and studied. It is proposed that they should re-examine the position again shortly. . . ."

"In October 1964 the Judges gave the matter further consideration and concluded that it was desirable to introduce the new Rules as they stood on 1 January 1965 contingent on the police being in a position to work and apply the rules as from that date. The Commissioner of Police indicated that the necessary re-education of the force, revision of charge procedures and forms and translations of the rules could not be completed by 1 January 1965 and so the new Rules were not introduced on that date . . ."

- *Leung Lai-por* [1978] HKLR 202, 207:

“Whatever effect ‘the Judges’ Rules’ may have in Hong Kong it is abundantly clear that ‘the new Judges’ Rules’ of England have no effect at all in Hong Kong.”

12.3 Difference between admissions and confessions

- School 1:
 - Civil: admission (a (voluntary) acknowledgement of the existence or truth of a particular fact)
 - Criminal: confession (a (voluntary) statement made by an accused admitting his guilt.)
- School 2:
 - Admission to a civilian
 - Confession to a person in authority
- School 3:
 - Admission: replies in the session of questions and answers
 - Confession: replies immediately after caution
- School 4 (Black’s Law Dictionary, 4th Edition):
 - Admission: A statement by defendant of fact or facts pertinent to issues tending, in connection with proof of other facts or circumstances, to prove guilt, but which is, of itself, insufficient to authorize conviction. An “admission” as applied in criminal cases is the avowal of a fact or of circumstances from which guilt may be inferred, but only tending to prove the offence charged, and not amounting to a confession of guilt. Example: a suspect said “Just my luck. I knew I’d be picked out.”
 - Confession: In criminal law, a voluntary statement made by a person charged with the commission of a crime or misdemeanour, communicated to another person, wherein he acknowledges himself to be guilty of the offence charged, and discloses the circumstances of the act or the share and participation which he had in it.
- School 5 (Halsbury’s Laws of England, Volume 28, Para 632)
 - The term ‘confession’ includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise. This may include an admission of liability made in the course of civil proceedings. A statement which, when made, is on its face exculpatory does not become a confession merely because it is inconsistent with the defendant’s defence in court. Nor is a statement by the defendant a confession if it is incriminating only on the basis of its manifest or admitted falsity. Demonstrably false alibi not a confession, because not tendered by the prosecution as evidence of truth.

12.4 Rules & Directions

- Rules & Directions for the Questioning of Suspects & the Taking of Statements (Rules & Directions)
- Published in Special Supplement No. 5 to the Hong Kong Gazette, 2 October 1992

"That it is a fundamental condition of the *admissibility in evidence* against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

- The words of the "caution"
 - [LegCo CB\(2\)754/05-06\(04\)](#) (English version)
 - [LegCo CB\(2\)754/05-06\(04\)](#) (Chinese version)
 - * Should the phrase "You have the right to silence" be added in the beginning?
 - * What is the Putunghua translation?
- Content
 - General principles (a) to (e)
 - 7 Rules
 - 8 Directions

"(e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

"That principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules and Directions are put forward as a guide to all police officers conducting investigations. Non-conformity with these Rules and Directions may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings."

12.5 TMCC 2071/2015

- One example of a magistrate concluded that a confession was inadmissible: [Chinese news](#) (graphical image removed)
- According to the news:
 - Police identified defendant as suspect.
 - Entered defendant's house at 0100 hours.
 - Defendant woke up.
 - After inquiry on defendant and girlfriend for 30 minutes, police declared arrest

and cautioned defendant.

- Two hours later, police issued Notice of Rights to Persons under Investigation and took defendant back to police station.

12.6 Three cases

- *HKSAR v Hussain Shakeel Rasheed* [2018] HKDC 196, paragraph 9.
- *HKSAR v Chan Hin Wan and 5 others*[2018] HKDC 86, paragraphs 30 and 99.
- *HKSAR v Choy Kwai-chun* DCCC 354/2011, paragraphs 4 - 6.

12.7 CACC 152/2003

- *HKSAR v. Lau Wai Tim* CACC 152/2003

“4. The applicant and his colleague spent 30 minutes at Hung’s residence during which there was a conversation. Hung was able secretly to record the first 15 minutes of this conversation. Later that day, at ICAC Headquarters, Hung was interviewed under caution. In the course of these interviews he made certain admissions which resulted in his prosecution, together with one other, for the offence of conspiracy to defraud.”

“6. In giving his answers under cross-examination, the applicant did so in a manner which purported to demonstrate that, despite a lapse of almost two years, he still retained a good memory of what had been said that morning. For example, he remembered making complimentary remarks about Hung’s home, he recalled that Hung had not been well that day, suffering from flu, he remembered also that, on the way back to ICAC Headquarters, Hung had fallen asleep in the car. In addition, in denying the suggestions of improper conduct, the applicant gave unambiguous answers.”

“7. Shortly after this exchange, the tape recording that had been made secretly by Hung was played to the applicant who accepted that it was a recording of the conversation that had taken place between himself and Hung on the morning of 14 October 1999. In the light of this admission, the prosecution did not seek to have Hung’s records of interview admitted into evidence and, with no case to answer, Hung was acquitted.”

“8. In the result, the applicant was prosecuted for the offence of perjury. At the trial of the applicant, the trial judge had the benefit of reading a transcript of the recorded conversation that had taken place in October 1999 between the applicant and Hung. He found that the effect of the words spoken by the applicant (and his colleague) had been to induce, threaten and mislead Hung with the aim of convincing him to divulge information. The judge described what had been said

by the applicant to Hung as 'grossly improper'."

12.8 CACC 178/2012

- *HKSAR v. Cho Wing Nin and others* CACC 178/2012

"2. The three applicants were all officers of the Independent Commission against Corruption ("ICAC"). At all times material to the charges the 1st applicant was a Chief Investigator, the 2nd applicant a Senior Investigator and the 3rd applicant an Assistant Investigator. In 2008, the 1st applicant was one of a team of ICAC officers involved in an investigation into fraudulent trading in warrants. In May 2008, a number of arrests were made by officers of ICAC, including Cheung Ching Ho ("Cheung") who gave evidence in the trial of the three applicants, in which he was referred to as PW1. Cheung cooperated with the ICAC and agreed to give evidence against others, ..."

"7. Cheung testified in the prosecution case. It was his evidence that there had been a number of meetings with various combinations of the applicants in the second half of 2009. Those meetings occurred in various places including coffee shops and tea houses. In advance of the imminent commencement of the trial of others for fraudulent trading of warrants the pattern of meetings continued. Cheung began to make a note of what happened in the meeting after its conclusion. He did so, on the advice of his lawyer. With the permission of the court, he referred to those contemporaneous notes to refresh his memory during his testimony."

"8. On 3 and 13 November 2009 he met the 2nd and 3rd applicants at the Tai Hing Teahouse in Tseung Kwan O. On each occasion he made notes of the conversation at the end of the meeting. Suggestions were made to him in respect of the content of his testimony and how he should deal with questioning. On 30 November 2009, he met the 1st and 2nd applicants in a car parked at Hung Hom Ferry Pier. Again, he made notes of the contents of the conversation. On 4 December 2009, Cheung had a meeting, of which he made notes, with the 1st and 2nd applicants in a room at ICAC headquarters."

"10. On 3 December 2009, the 2nd applicant met Cheung by arrangement and drove him in a motorcar from Tseung Kwan O to ICAC headquarters in North Point. There, he had a meeting with the 1st and 2nd applicants. Suggestions were made to him as to how he should deal with issues in his testimony. He was shown video discs of ICAC surveillance film. From time to time it was suggested to him whom was depicted in the film and what was happening. For his part, he was asked to confirm that was the case. Again, he made an audio recording of the conversation between them."

- DCCC 360/2011 Reasons for Verdict

12.9 Failure to properly investigate

- It also happened in UK
- A autistic suspect (as explained in SCMP)

"The younger brother was arrested on May 2 on suspicion of killing a 73-year-old man in a basketball court in Mei Lam Estate."

"Police laid a holding charge against the autistic man with one count of manslaughter last Monday, saying the case would be mentioned at Sha Tin Court a day later. But hours later, just past midnight, the holding charge was dropped."

"They asked him a lot of yes-no questions like 'did you go to the basketball court', 'did you see the elderly man' and 'did you push him' ...the problem is autistic people have the tendency to repeat what others say to them."

"A police spokesman said that once evidence suggested the man was not at the crime scene, he was released on bail on Monday. When officers confirmed he was not there, he was released unconditionally on Thursday."

"The police took his statement in a suggestive manner, and did not help the man take medicine during his two-day detention"

"Au said his autistic brother did not have good communication skills, and was unlikely to have answered police questions in complete sentences as recorded on the police statement."

"during detention, officers asked the autistic man misleading questions and he was also denied the medication he needed."

"...a social welfare group said it had in fact provided officers with details of the suspect's activities, including CCTV footage, from the day of the alleged killing before the charges were laid."

- Autistic suspect (as explained by Independent Police Complaints Council)

"In this particular case, the Complainant (COM), a mentally incapacitated person (MIP), was arrested for "Murder". Whilst the alibi evidence was being gathered, the Superintendent (SP) in charge of the case decided to hold a stand-up briefing to

inform the public of COM's arrest, and eventually charged COM with the offence of "Manslaughter" after COM had been detained for almost 48 hours. After COM's alibi was established, COM was eventually released on Police bail a few hours later."

"The elder brother of COM lodged a complaint on his brother's behalf with 11 allegations ("Neglect of Duty (NOD)", "Misconduct", "Fabrication of Evidence" and "Unnecessary Use of Authority (UUOA)") against various officers."

"CAPO found that a Sergeant (SGT) had put forward to COM some leading questions during a cautioned interview and classified the "UUOA" allegation as "Substantiated";"

"CAPO considered that three police officers on the crime team had failed to take the earliest opportunity to verify COM's alibi, hence the allegation of "NOD" is "Substantiated". "

"As to the remaining allegations, CAPO classified them either as "No Fault" or "Unsubstantiated". During the investigation, CAPO registered three counts of "Substantiated Other Than Reported (SOTR)" (NOD) for some procedural and documentation errors made by different officers."

"In view of the serious nature of this case and the public interest arising therefrom, this complaint investigation was monitored by the Serious Complaints Committee of the IPCC."

"Upon examination of the case, the IPCC disagreed with some classifications and raised some queries with CAPO. In response, CAPO reclassified some allegations, including:"

"reclassified an "NOD" allegation about failure to arrange medical care for COM from "Unsubstantiated" to "Substantiated";"

"reclassified an "UUOA" allegation about lengthy detention from "Unsubstantiated" to "Substantiated";"

"reclassified a "Misconduct" allegation about the inappropriate stand-up briefing from "No Fault" to "Not Fully Substantiated";"

"registered an additional "SOTR" count of "UUOA" for the Police's inappropriate decision to charge COM with "Manslaughter";"

“registered two more”SOTR” counts of “NOD” and two more counts of “Outwith” matters to address the officers’ mistakes in their handling of COM 1 during the criminal investigation; and”

“escalated the penalties against the officers concerned.”

- see examples of leading questions

12.10 Cases for self-study

- Not discussed in classroom
- [DCCC 236/2017](#)
- [HCMA33/2016](#)
- [CACC 373/2015](#); (Trial: [DCCC 97/2015](#))
- [DCCC 204/2015](#)
- [DCCC 97/2015](#)
- [HCA 49/2011](#)

13 Investigation (Introduction)

13.1 Casey

“Investigation delayed is justice denied.” Casey, E., M. Ferraro, et al., Journal of Forensic Sciences 54(6): 1353 - 1364.

“This click button expertise poses a challenge to legal rules governing the reliability of an expert’s methodology and the underlying data.” John J. Barbara, Handbook of Digital and Multimedia Forensic Evidence, Springer, page 129, line 14.

13.2 Postulation of hypotheses

- Some hypotheses are checked and are immediately rejected by cursory observations
- Some hypotheses will stand until completion of laboratory observations
- The ideal is to eliminate all but one conceivable sequence of events as being consistent with all the material evidence, observations and evidence from witnesses: Chisum and Turvey, Crime Reconstruction, 7th edition, pages 216 & 217.

13.3 Principles of tug-of-war

- Yan & Lim, Attack and Defence of Digital Evidence in Court, Journal of Information, Technology & Society, 2007, pp. 53 - 63.

Issues for attack and defence	Facts to be proved	Attack strategy	Defence strategy to the attack
Source of digital evidence	The proponent wishes to collect the digital evidence with a suspect, e.g. the digital evidence from the suspect's computer or storage device	The digital evience did not come from the suspect	The investigator who collected the evidence testifies. Other evidence which prove the connection.
Method of collection of digital evidence	The digital evidence to be tendered to court came from internet, email, portable device, etc.	The digital evidence was not available in the public domain.	Surveillance. Testimony regarding method of collection.
Author of digital evidence	The contents of the digital evidence related to a person, e.g. blackmail email was sent from a person	The digital evidence was not written by the suspect.	Collect other evidence to prove author.
Format of digital evidence	The digital evidence are to be presented in a human readable format.	The digital evidence are not original evidence.	Expert evidence testifies that the copy contents are reliable and accurate.
Contents of digital evidence	The contents are direct evidence of facts, e.g. traffic accident scene, confession of accused.	The contents have been altered.	Forensic evidence to prove the contents have not been altered. Proof of chain of evidence.
Time of creation of digital evidence	Intersection between the time of creation of digital evidence and time of material events of the case.	The accused was not at the crime scene at those times.	Other evidence to prove digital evidence was related to the accused. Other evidence to prove accused was at crime scene.

Issues for attack and defence	Facts to be proved	Attack strategy	Defence strategy to the attack
Method of presenting digital evidence to court	By most practical way to read the contents of the digital evidence.	Original contents are not in paper form. No original source for the paper form.	Compare contents on paper with contents read from computer. Other evidence to prove original source code existed.

14 UK College of Policing

- [College of Policing](#)

14.1 Criminal Investigation

“rigorous search for material to bring an offender to justice.”

“An investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.” Code of Practice to the Criminal Procedure and Investigations Act 1996 (CPIA)

14.2 Ethics

“the goodwill and cooperation of victims, witnesses and the community”

“investigations should be conducted with integrity, common sense and sound judgement”

“heavy-handed, discriminatory or disproportionate actions risk losing cooperation and any future criminal proceedings”

“effective investigators maintain a balance that recognises the concerns of all the parties involved”

“understanding the response to crime assists investigators to build this relationship”

“a professional approach to investigations benefits the victim, the public and the

police”

14.3 Investigative skills

“the planning required to conduct an investigation and the investigative process”

“decision making and how it can be improved by applying the investigative mind-set”

“investigative and evidential evaluation (which can assist the investigator to determine the value of material gathered during the investigation)”

“creative thinking”

“challenging experts”

“victim and witness care”

14.4 Modus Operandi (MO)

“understand how a particular crime has been committed, the type of material that may have been generated in the commission of the offence and how or where this material might be recovered”

“identify linked series of crimes committed with the same MO, (pooling material from a linked series of crimes can be a highly effective way of progressing an investigation)”

“identify links between crimes and known offenders who use the same MO”

“predict future offending patterns, which may enable preventive or protective measures to be taken”

“predict future offending patterns, which may enable offenders to be caught red-handed”

“identify likely disposal routes and markets for stolen or illicit property, e.g. drugs.”

14.5 Admissibility and sufficient of data or information

“It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence, and to bring offenders to justice. Casework decisions made fairly, impartially and with integrity help to deliver justice for victims, witnesses, defendants and the public.”

“Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.”

14.6 Basis of actions to be taken

- All investigation processes must be (see Module 3 explanations)

“in accordance with the law”;

“necessary in a democratic society in pursuit of one or more legitimate aims specified in the European Convention on Human Rights”;

“proportionate to the aim pursued”.

14.7 Summary : Interviews & interrogation

- Civil and criminal cases; witnesses and suspects
- Reid method
- PEACE
- (Kinesic interview)(not discussed)
- “Witnesses should (also) be interviewed in accordance with the PEACE model”. ([see here](#)) (brackets added)

14.8 Reid method

- The Reid method is / was a system of interviewing and interrogation widely used by police departments in the United States and Canada. The term “The Reid Technique of Interviewing and Interrogation” is a registered trademark of [John E. Reid and Associates, Inc.](#)
- Components
 - Factual analysis
 - Behaviour analysis interview
 - 9 steps of Interrogation
- Factual analysis

- On the basis of crime scene analysis (physical and circumstantial), information learnt about the suspect (witness), e.g. opportunity, motivation, ability, behaviour before and after the crime, assess probable guilt or innocence.
- Behaviour analysis interview
 - First ask background questions
 - * Purpose: identify normal verbal and non-verbal behaviour
 - Behaviour-provoking questions
 - * Purpose: identify different verbal and non-verbal responses relating to deceptive answers
- Interrogation
 - The positive confrontation
 - * Relate information demonstrating guilt
 - Theme development
 - * Presents a moral justification (theme) for the offence in a monologue and in sympathetic manner
 - Handling denials
 - Overcoming objection
 - * Generally accept objections as if they were truthful and use them to develop the “moral justification”
 - Procurement and retention of suspect’s attention.
 - Handling the suspect’s passive mood
 - * Continue to display an understanding and sympathetic demeanour
 - Presenting an alternative question
 - Having the suspect orally relate various details of the offence
- One critic of the Reid’s method
- Reid’s Replies to some critics

14.9 PEACE

- High profile wrongful conviction cases in the United Kingdom (e.g., the Guildford Four, the Birmingham Six)
- Snook, Et al. Reforming Investigative Interviewing in Canada. Canadian Journal of Criminology and Criminal Justice, Volume 52, Issue 2, 2010, pages 215 - 229.
- In 1984 Britain introduced the Police and Criminal Evidence Act of 1984 (PACE) and the Codes of Practice for police officers which eventually resulted in a set of national guidelines on interviewing both witnesses and suspects, composed of five distinct parts (corresponding to the acronym “PEACE”):
 - Preparation and Planning: Interviewers are taught to properly prepare and plan for the interview and formulate aims and objectives.

“Interviewers consider how information obtained from an interview will contribute to an ongoing investigation; they learn as much as possible about the interviewee; they create a list of investigative objectives; and they take the time to make all practical arrangements associated with conducting the interview.

Officers also develop a timeline of events, prepare the opening question and subsequent questions based on an analysis of existing evidence, create an outline of how they will proceed (a "route map"), and plan for all eventualities (such as a no-comment interview)." (Snook, Et al.)

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

" . . . First, the interviewer engages the interviewee in conversation and, second, the interviewer explains what will happen during the interview. An interviewer engages the interviewee by personalizing the interview and continuously acting in a professional and considerate manner. . . . The interviewers ensures that the interviewee understands the purpose of the interview, delivers the required police cautions in a manner that ensures the interviewee understands his or her legal rights, and identifies exhibits that will be addressed later in the interview. They also explain the route map, outline the various practical routines that will be followed, and establish expectations and ground rules." (Snook, Et al.)

- Account: Officers are taught two methods of eliciting an account from the interviewee:
 - Cognitive Interview: used with cooperative suspects and witnesses.
 - Conversation Management: recommended when cooperation is insufficient for the cognitive interview techniques to work.

" . . . This framework involves asking an initial open-ended question that elicits a free narrative of the event in question. . ." (Snook, Et al.)

"The initial open-ended question is designed to elicit as much reliable and accurate information as possible by providing the interviewee with an opportunity to give an uninterrupted, personal account of the event or events being investigated. . ." (Snook, Et al.)

" . . . After the interviewee completes the free narrative, the interviewer identifies topics from the narrative and probes the account. . ." (Snook, Et al.)

"To identify topics, the interviewer listens carefully to the interviewee's account and notes points of interest (e.g., persons, locations, actions, and times) that can be pursued later in the interview. Once a seemingly complete account has been provided, the interviewer explores each of the identified topics through the systematic process of "opening, probing, and summarizing." The interviewer opens up a topic through the use of an open-ended question – that is, a question starting with a word like tell, explain, or describe – and then probes the account with questions starting with who, what, where, when, and how. After all the necessary

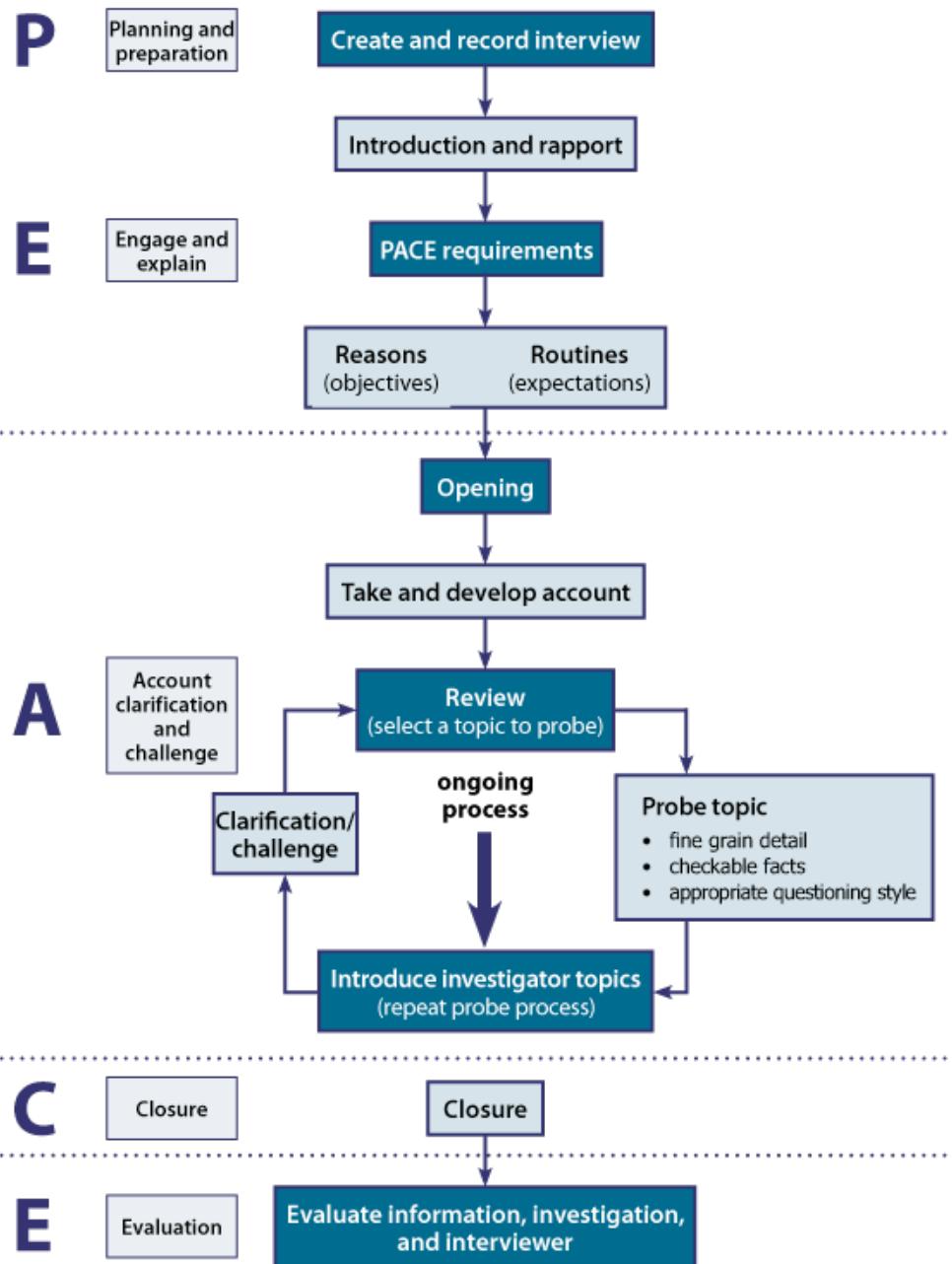
probing has been done, the interviewer summarizes all the information obtained about that particular topic. This opening, probing, and summarizing is repeated until the interviewer is satisfied that all the topics identified from the interviewee's free narrative have been explored sufficiently. Using the same systematic process, the interviewer then asks questions about topics that did not arise from the interviewee's account but that were prepared beforehand." (Snook, Et al.)

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

"Interviewers following PEACE recognize when to end an interview, maintain a courteous and professional manner, and ensure they ask all of their questions. They check that the interview objectives have been achieved, summarize the main points of interviewees' statements, provide the interviewee with the opportunity to correct or add any information, and explain what will happen in the future. . ." (Snook, Et al.)

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

". . . Interviewers also consider the effect of new information on the investigation and how the information is consistent with all of the available investigative evidence. Interviewers are encouraged to conduct self-evaluations of their performances, and supervisors are taught to provide constructive feedback as part of routine or interviewer-requested performance evaluations." (Snook, Et al.)



- UK College of Policing explaining PEACE Model and witness interview
- Witness interview strategy

"This should be developed at an early stage in the investigation. An interview adviser can assist in developing a witness interview strategy . . ."

"Setting objectives - these should be meaningful and realistic, particularly in the case of vulnerable, intimidated and significant witnesses."

"Selecting interviewers (you) - staff selected should be competent to the appropriate tier." (brackets added)

"Briefing interviewers (you) - they should be informed of their roles as soon as possible and given time to plan and prepare." (brackets added)

"Investigators must be properly prepared. Any notes that are made must be retained, as the prosecution (plaintiff) may need to disclose any unused material." (brackets added)

"The interviewer should ensure that the witness statement accurately reflects what the witness has said."

"Debriefing the interviews – if required, they should be debriefed to establish the information obtained, how the account fits in with other available material, whether any action needs to be taken and what further enquiries are necessary."

"Supplementary interviews – these should only take place when they are essential for the purpose of eliciting additional information or clarifying contradictory information of significance to the investigation. Consideration should be given to whether holding such an interview would be in the witness's best interest. . . . The reason for conducting supplementary interviews should be recorded."

15 Epilogue

15.1 The golden question

"Recognize and delineate assumptions, inference chains, and points of uncertainty; always ask, "How do we know what we think we know?"" Dr D. Kim Rossmo

15.2 Summary

- Common mistakes, errors and misunderstanding
- Sally Clark
- Alfred Rouse
- Investigative interviewing