

# The Role of Investigative Interviewing in Judicial Decision Making

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iIIRG Masterclass Porto 2018

July 2-3

Chairs: John Halley & Carlos Eduardo Peixoto



CATOLICA  
FACULTY OF EDUCATION  
AND PSYCHOLOGY

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PORTO

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# Overview

Over several decades there have been important developments in research and practice as to how investigative interviews with children and adults should, and should not, be conducted.

Progressively, in several jurisdictions, legislation, procedural rules, guidance and interview protocols have been adopted and implemented for the purpose of obtaining the best evidence in terms of quality and quantity of information.

The quality of evidence is crucial in judicial decision-making processes. Often, the quality of the evidence elicited in investigative interviews will have a crucial bearing upon whether a case is proved in a particular judicial process, whether to civil or criminal standards.

The prior recorded statements (elicited in investigative interviews) of victims and suspects can be crucial as to whether additional oral evidence is required from them in distressing cases such as those involving allegations of sexual abuse.

This masterclass will focus on these aspects of legal proceedings with reference to the frameworks in four different jurisdictions: Portugal; Scotland; England; and Norway.

It will consider how legal professionals assess investigative interviews and how the legal systems deal with issues relating to the quality of evidence. It will consider to what extent evidence based investigative interview methods may be important when contrasted with other methods.

# Presenters

## John Halley



John Halley is an experienced advocate and judge in Scotland. John was called to the bar in 1997, having previously worked in residential social work with young people in the care system. He initially appeared in many cases involving children's interests. He served as an Advocate Depute, or High Court prosecutor in Scotland, for several years between 2003 and 2010. He was appointed as a part time Sheriff (a judge with both civil and criminal jurisdiction, including criminal jury trials) in 2010. Since then he has presided over, and appeared as advocate in, many civil and criminal cases involving children's interests and issues arising from the interviewing of children. From

October 2015 until October 2016 he was one of the leading counsel to the Scottish Child Abuse Inquiry. John has pursued an active interest in the improvement of the conduct of child interviews in Scotland.

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## Carlos Eduardo Peixoto



Phd in Psychology - University of Porto (Portugal). Forensic Psychology in the Northern Branch of the Portuguese National Legal Medicine and Forensic Sciences Institute (INMLCF, I.P.). Researcher at the Centre for Studies in Human Development (CEDH) of the Catholic University of Portugal (Oporto Regional Centre). Professor at the University of Porto Abel Salazar Biomedical Sciences Institute (ICBAS). Author and co-author of several scientific publications (papers in peer-review journals, books and books chapters) in subjects related to the field of Forensic Psychology, such as forensic psychological assessment, credibility assessment, and children and adults forensic interview. Forensic Interview consultant in forensic interview in the public and private sector.

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## Gavin Oxburgh



Dr. Gavin Oxburgh is a Professor of Applied Forensic Psychology and Deputy Head of the School of Psychology at Newcastle University, U.K. He is a Forensic Psychologist (HCPC Registered), a Chartered Psychologist and Scientist, a Fellow of the UK Higher Education Academy, and an Associate Fellow of the British Psychological Society (BPS). He is also a registered Expert Witness with the BPS and provides advice in legal cases in the UK and overseas. Following an appointment at NHS Lothian, Edinburgh, as the Child Protection and Vulnerable Persons Training Lead (2004 - 2006), Gavin entered academia, and joined the School of Psychology at Newcastle University in September 2013. Prior to academia, he had a highly successful 22-year career with the Royal Air Force Police where he was a senior detective specialising in child protection and sexual offences, serving throughout the UK and across Europe. He is an Associate Professor at the Norwegian Police University College, Oslo, and a Visiting Senior Lecturer at the Institute of Psychology, Psychiatry and Neuroscience, Kings College London.

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## Jorge Duarte



Law Degree and Master by the Portuguese Catholic University (UCP) - Porto. In 1990 began his magistrate training in the Judicial Studies Centre (CEJ), and then beginning his career as a Public Prosecutor in Porto from 1993 to 2001, primarily investigating violent crime cases. Jorge Duarte has also been a teacher in CEJ from 2001 to 2006, teaching courses in penal matters. From 2006 to 2008, he has nominated a European Counsel Administrator to the *Directorate General of Human Rights and Legal Affairs, Division of the Judiciary and Programmes*, Strasbourg. In 2009 he was appointed to the Administrative Court in Lisbon, and in 2010 he began his work in the Gaia Family Court, where he was coordinator of the Prosecutor's Office from 2011 to 2014. Since 2011 and until 2015, Jorge Duarte was also the Public Prosecutor's Office coordinator of all Family Courts in the Porto district. And, since 2015, he is the Coordinator for the northern Portugal courts of Public Prosecutors training at CEJ. He is also the author of several papers and writings, particularly, in family and criminal matters. Jorge Duarte has been invited as a lecturer and keynote speaker in several courses and conferences in Portugal and around the world.

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## **Trond Myklebust**



Trond Myklebust, PhD Psych, holds a position as Assistant Chief of Police with the Norwegian Police University College, a public university conducting research in areas such as psychology, police science and law. He has a background in police work, theoretical and practical experience in forensic psychology, and has specialised in investigation and forensic psychology in Norway and internationally. His research is published in various peer-reviewed journals and has presented at various national and

international conferences. He is a Chartered Psychologist and Associate Fellow of the British Psychological Society.

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# Program

**2 July 2018**  
**Monday**

## **9.00 Introduction**

### **9.20 Context of Judicial Decision Making: a Comparative Law approach (Portugal and Scotland)**

- Fundamental judicial principles in different systems
- Criminal /Civil / Family Proceedings
- Procedural Specialities re pre-recorded testimonial evidence

**10.30 ~ Coffee break ~**

## **11.00 Judicial Method / Norms / Matrix / Approaches to Decision Making**

- Opinion n°11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions, Strasbourg, 18 December 2008
- *D v B and others (flawed sexual abuse enquiry)* (unreported, 14 September 2006) [2006] EWHC 2987 (Fam)
- *TW v A city council and others* (unreported, 20 January 2011) [2011] EWCA Civ 17

**12.00 ~ Lunch ~**

## **1.00 Workshop on the Quality of Judicial Decisions**

Attendees will be invited to participate in a consideration of examples of judicial decisions in cases, in different procedural contexts, involving investigative interviews with children

**2.30 ~ Coffee break ~**

## **3.00 Discussion**

## **4.30 End**

**3 July 2018**  
**Tuesday**

**9.00 The evidential elements ingredients for judicial decision making in cases featuring investigative interviews**

**9.20 Giving evidence about investigative interviews – what do courts require?**

- Comparative Law approach: England, Norway, Portugal & Scotland
- Interviewing requirements and practices
- Written and expert reports

**10.30 ~ Coffee break ~**

**11.00 Experiences of participating in the judicial decision making process in relation to investigative interviews**

- Interviews as evidence
- Interviews assessment by the legal decision maker
- Witness capacity assessment

**12.00 ~ Lunch ~**

**1.00 Case Studies**

Attendees will be invited to participate in a consideration of examples of judicial decisions in cases, in different procedural contexts, involving investigative interviews with children

**2.30 ~ Coffee break ~**

**3.00 Discussion**

**4.30 End**

# Notes