

CHAPTER 1

Interviewing Victims of Crime, Including Children and People with Intellectual Disabilities

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INTRODUCTION

This chapter examines the importance within investigations of victims of crime and witnesses to crime and will emphasize that assisting victims/witnesses to provide as full an account as possible of “what happened” is a complex process for which interviewers need to be properly trained. Psychology needs to rise to the challenge of (i) translating what is known from laboratory and field research into this applied arena and (ii) developing new theories and techniques to the extent that current laboratory research on memory and communication provides insufficient guidance.

This chapter will first of all examine the role of witnesses and victims within the investigation process and then it will discuss the importance of the appropriate interviewing of witnesses and victims within the criminal justice system. This will lead to a discussion of the necessity of the accurate recording of information gleaned from such interviewing and we will try to answer the question: “To video or not to video?”. The chapter will then examine the interviewing of children and people with learning disabilities. The discussion will make recommendations for best practice.

INTERVIEWING VICTIMS OF CRIME

The main question that needs to be addressed is: “What is the main aim of an investigation?”. The answer to this question is a simple one, and is one likely to be true for investigations conducted in all countries irrespective of legislative and criminal justice system differences. The answer applies to all types of investigations, within many organizations. The main aim of an investigation is to answer two primary questions: (i) “What happened?” (if anything did happen) and (ii) “Who did it?” (see also the chapter in this book by Beaudry, Lindsay & Dupuis concerning identification procedures for identifying “who did it?”).

The next question that needs to be addressed is: “How do investigators seek to answer these two primary questions?”. Investigators have noted that in order to seek answers to these core investigatory aims they invariably gather material/information from a number of sources (Kebbell & Milne, 1998) and usually these sources of information are people: witnesses, victims, suspects, complainants, emergency services, experts or colleagues (e.g. the first officer at the crime scene). Information is therefore the currency of the criminal justice system. In order to gather such valuable information from these sources investigators need to communicate, and any communication with a purpose, is an interview. The aim of such interviews is to obtain the best *quality* and *quantity* of information, which can in turn be used to find out what has happened, who committed the crime and to feed this into the investigative process. Commonsense tells us that the more information that is obtained, which is of good quality, the more likely a solution will be found.

Why are witnesses to crime and victims of crime so important? How do they help within the investigative process? In the USA, Sanders (1986) asked police officers; “What is the central and most important feature of criminal investigations?”. The majority replied “witnesses”. A similar view applies in the UK where Kebbell and Milne (1998) asked 159 police officers for their perceptions of the utility of witnesses within investigations. It was found that witnesses/victims were perceived usually to provide the central leads in criminal investigations. Furthermore, investigators frequently have little (or no) other forensically relevant information to guide an investigation. Therefore, the primary source of information and evidence for the investigator is usually witnesses/victims. As a result, information gained from the interviewing of witnesses/victims often forms the cornerstone of an investigation (Milne & Bull, 1999; Milne & Shaw, 1999). (See also the chapter by Kebbell and Hurren in this book who discuss the critical role of evidence in suspects’ decisions to confess).

Information gleaned from witnesses/victims in the first instance governs the initial direction of the investigation, helping the investigators outline avenues of exploration and lines of enquiry to be pursued. As stated above, information obtained from witnesses/victims is pivotal in answering the two primary questions. First, "What happened?" (which in turn helps to outline the choice of offence to be charged and the points to prove the particular offence under investigation; in essence what crime is being investigated). Witness/victim information also helps answer the second question of "Who did it?" (if this question cannot be answered then there will not be a prosecution; witnesses/victims help in the selection of possible suspects). When a suspect is apprehended and charged with an offence, a good witness/victim interview can also be helpful in the planning and preparation stage that should take place prior to the interview of the suspect (Milne & Bull, 1999). In addition, a comprehensive account from a witness/victim, obtained in an appropriate manner, may help in the gaining of a confession from a suspect (Kebbell, Hurren & Mazarolle, 2005). This is because research has shown that strength of evidence is associated with suspects confessing within an interview (Gudjonsson, 2003).

However, obtaining the maximum quantity and quality of information from a witness is not an easy task. The information about the incident has to endure what we (Milne & Bull, 1999) have termed an obstacle course that involves imperfect eyewitness memory processes (Kebbell & Wagstaff, 1999), the difficulties associated with interviewing and the problems concerning the statement-taking process itself. Interviewers need to know about memory processes in order to be able to interview appropriately, as such knowledge will help interviewers to develop appropriate strategies to achieve maximum quantity of information from an interviewee without jeopardizing the quality of the information gained. This is because memory is fragile. It can easily be altered, changed and manipulated. It is, therefore, imperative for interviewers to learn how easily they can influence what interviewees tell them. The cognitive interview (and enhanced cognitive interview) was developed to do just this: help interviewees give a full and detailed account without decreasing the quality of the additional information obtained (see Fisher & Geiselman, 1992; Milne & Bull, 1999 for fuller accounts of the cognitive interview).

The initial interview and the accurate recording of that interview is crucial and can very often determine the success of the investigation. It would, therefore, be reasonable to assume that the interviewing of witnesses/victims and the resources needed to do this properly (e.g. time, money and facilities) would be a high priority. Unfortunately, research has shown that this is not usually the case and that the interviewing of

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witnesses/victims is often of a lower standard than the interviewing of suspects (Clarke & Milne, 2001; McLean, 1995). Indeed, police training courses around the globe tend to focus on the interviewing of suspects. Furthermore, in many countries interviews with witnesses/victims are still not tape/electronically recorded but merely written up as a statement.

There are three primary reasons why the electronic recording of interviews with witnesses/victims is important. The first concerns the investigative process itself. The best way to retain the information gained from witnesses to enable investigators to use this information to its full effect is to record it electronically. The second is from the witness/victim standpoint. The third concerns the presenting of the evidence within an ensuing court case, where the necessity of obtaining and maintaining an accurate record of the original account of an event from witnesses is crucial – “the bedrock of (the) adversarial process is the evidence of witnesses for the prosecution, not the confession of the accused” (Wolchover & Heaton-Armstrong, 1997a, p. 855). The decision of whether to electronically record interviews with witnesses/victims (or to merely take a written statement) is thus an extremely important decision.

We will examine the investigative reasons first. During an interview, what the interviewee communicates verbally and nonverbally has to be encoded by the interviewer. However, the many tasks required in a witness¹ interview put a lot of cognitive demands on the interviewer, especially so when there is no recording of the interview (e.g. the interviewer has to conduct an appropriate interview and also write down what the interviewee is saying). We all have only a limited amount of cognitive resources available at any one time (Navon & Gopher, 1979). As a result, the quality of the interview will suffer (Clarke & Milne, 2001) and there will be incomplete encoding of the available information (i.e. what the witness is reporting). In other words, not all the information mentioned by the interviewee will be encoded; some of it will never enter the interviewer’s memory at all. The information that does enter the interviewer’s memory has later to be recalled (for example, to produce a written statement or report). Thus, the information reported by the interviewee must travel through the memory processes of the interviewer. Research has found that even if a police report is written immediately after the interview, the report may contain only two-thirds of the relevant information reported by the interviewee (Kohnken, Thurer & Zoberbier, 1994). This would not be so bad if only irrelevant information is left out of the statement (presuming that the interviewer at that time in the investigation knows what information will be crucial to the case). Lamb, Orbach, Sternberg, Hershkowitz and Horowitz (2000) found that, even when investigators took notes within

¹The use of ‘witness’ in this chapter also includes ‘victims’.

an interview, 25% of the forensically relevant details provided by child interviewees were not included (many of these details were considered to be central to the investigation). Lamb et al. (2000) concluded “interviewers cannot be expected to provide complete accounts of their interviews without electronic assistance” (p. 705).

It has also been well documented that even before an interview begins interviewers form judgements about the event in question (Shepherd & Milne, 1999). For police investigators, these primarily arise from the crime category to which the alleged offence belongs and what typically occurs in such offences (i.e. offence knowledge) (Mortimer & Shepherd, 1999). Investigators will, wittingly or unwittingly, utilize this information to guide the direction of the case (Ask & Granhag, 2005). These judgements also guide their attention, comprehension and memory and in turn enable interviewers to make decisions pre-interview. If, however, interviewers are guided too much by their own views about the event, then relevant and vital information may (wittingly or unwittingly) be overlooked, screened out, ignored, forgotten, disposed of or deleted, even at this pre-interview stage. In the interview itself interviewers are also influenced by these pre-interview judgements. The interviewer may hold certain hypotheses about the event in question, and as a consequence, information which is consistent with the interviewer’s pre-existing view will receive preferential treatment while inconsistent details may be distorted or even filtered out completely (Milne & Shaw, 1999; Mortimer, 1994a, 1994b). It is this which often compels interviewers merely to confirm what they already know or think they know (i.e. they enter the interview room with a confirmatory bias) and to close prematurely the interview (i.e. once they have attained the information that they sought, without exploring in the interview other possibilities). This may result in vital information never being sought and/or being lost. It is therefore imperative to electronically record interviews with witnesses, so that everything that is reported to the interviewer can be preserved.

Research has shown that the “standard interview” (i.e. how police typically interview) tends to involve poor questioning strategies that are not conducive to maximum retrieval (Clarke & Milne, 2001; Fisher, Geiselman & Raymond 1987; McLean, 1995). This is largely due to the fact that there usually exists minimal training for police officers with regard to witness/victim interviewing. Research examining police officers’ abilities to interview witnesses has shown that this aspect of police work is usually poor (e.g. use of appropriate questions; Clifford & George, 1996; Fisher et al., 1987; McLean, 1995). For example, McLean (1995) concluded “the treatment of witnesses appears far worse (than that of suspects)” (p. 48). This is even more remarkable when one notes that this senior officer asked his team to record their witness interviews for this research and they therefore knew that their abilities would be

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assessed. Even more worryingly, the national research conducted by Clarke and Milne (2001) found that after investigative interview training (that did tend to focus on the interviewing of suspects) the interviews with witnesses and victims were rather poor. (The interviewers in this study also knew that their witness interviews would subsequently be assessed.)

Research has also shown that the information obtained from witnesses is often far from complete, especially when a standard interview is used (which tends to be characterized by a question–answer format). For example, compared to a standard interview, the cognitive interview elicits up to 40% more information (see Koehnken, Milne, Memon & Bull, 1999). In essence the typical witness statement only contains the “tip of the iceberg” of information available. Interestingly, the report by Macpherson, Cook, Sentamu and Stone (1999) that examined the critical failure points of the investigation into the murder in London of Stephen Lawrence (April, 1993) noted that interviewers may well have missed important facts that later turned out to be crucial.

Another investigative reason for electronically recording witness interviews concerns the use, value and reliability of the information obtained within the investigation. When a written statement has been obtained there is no record of the questions asked to elicit the information. Thus, the actual quality of the resulting information is unknown. When interviewing, interviewers should at the outset gain a free recall (free narrative or first account) from the witness. Research shows that information obtained from this stage in the interview is usually reliable and of good quality (e.g. Milne, Clare & Bull, 1999). However, as the interviewer probes using questions to elicit more detail, the quality of the information is jeopardized and typically becomes less reliable (Milne & Bull, 1999). Investigators should examine how the crime-relevant/important information from witnesses/victims was obtained. Unfortunately, at present, reliability judgements may be determined by “stereotypes” (e.g. good character, confident witness etc.), rather than by examination of the interviewing itself.

From the witnesses’ perspective, there are also good reasons for the electronic recording of interviews. The interview itself tends to be shortened by the electronic recording of the interview as handwriting a statement draws out the length of the interview (while the interviewer is trying to write down what the interviewee is saying). The interviewer should be concentrating fully on helping the witness remember in detail, attending their needs, as opposed to trying to write down what they are saying.

With regard to statement taking, police interviewers also tend to rewrite what the witness actually reports, using more “standard” legal

language, putting events in a chronological order, making sure the account contains no contradictory evidence or information the interviewer deems to be irrelevant, addresses specific points to prove the offence in question, including legal jargon, and is confirmatory (Ainsworth, 1995; Rock, 2001). Witnesses thus often sign a statement that is dissimilar to what they originally said (Ede & Shepherd, 1997; Milne & Bull, 1999). This is problematic as a statement, in addition to initiating an investigation, also initially provides an outline of the evidence and enables a case to be prosecuted and defended coherently (Heaton-Armstrong, 1995).

However, a written statement may not have a “refreshing” effect prior to giving testimony in court if it differs from what was originally said. Furthermore, a statement which is inconsistent with the witness’s subsequent account of the event in court leaves it open to the lawyers to blame the witness for inconsistencies, and inconsistency is often seen as an indicator of unreliability, which may result in significant doubt being applied (by the court/jury). Rock (2001) noted that a statement is often used “as a weapon against a witness (p. 70)” in court. (See Milne & Shaw, 1999; Wolchover & Heaton-Armstrong, 1997a, 1997b for fuller accounts.)

In England and Wales recent legislation and national directives stipulate that interviews with adult witnesses (in addition to the more “traditional” vulnerable groups – see below) should be videorecorded. The *Youth Justice and Criminal Evidence Act, 1999* sought to improve access to justice for vulnerable people. Prior to this 1999 Act, only children, primarily in abuse cases, were allowed to use a prior recorded video interview as their evidence-in-chief in criminal trials. The definition of vulnerable is dealt with under Sections 16 and 17 of the Act.

Section 16 (which has now been enacted) specifies that vulnerable witnesses include:

- (i) Children under 17 years of age at the time of the court hearing.
- (ii) People whose quality of evidence is likely to be diminished because they have a mental disorder, or have a significant impairment of intelligence and social functioning, or have a physical disability or are suffering from a physical disorder.

Some examples of what constitutes such vulnerability are:

people with a psychopathic or any other personality disorder, schizophrenia or any other mental disorder. In some circumstances, this might include a clinical diagnosis of depression; people with learning disabilities; people with Alzheimer’s Disease or other forms of dementia; people suffering from impairments of hearing or speech.

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Section 16 thus defines a person as vulnerable because of “who” they are; the vulnerability is associated with the person. (For more on interviewing such witnesses see below.)

In Section 17 (which has only yet been enacted in Northern Ireland and is planned to be enacted in England and Wales at the end of 2006/2007) vulnerability stems from the actual (alleged) crime or circumstances surrounding the nature of the (alleged) offence (i.e. the witness/victim is vulnerable through intimidation, fear, distress). Crime types that need to be thought about within this category include: serious sexual assault, racially motivated attacks, murder/manslaughter, elder abuse and domestic violence (to name a few). Witnesses to such crimes are termed “intimidated” witnesses.

In addition, numerous national guidance manuals for the police (e.g. the *Murder Investigation Manual*, *Domestic Violence Manual*, *Serious Sexual Offences Manual*) all suggest that such significant witnesses should be interviewed on video as part of the investigative process. Furthermore, the *Criminal Justice Act, 2003* (Section 137) allows that any interviewee, regardless of vulnerability, may be afforded a video interview as their evidence-in-chief in a court of law in indictable offences (to be enacted along with Section 17 of the *Youth Justice Criminal Evidence Act, 1999*). Thus the question in the UK soon will be “Why did you not video the interview?”.

INTERVIEWING CHILDREN AND PEOPLE WITH INTELLECTUAL DISABILITIES

While everybody knows that children’s brains are not as fully developed as those of adults, few people have in-depth knowledge of how children’s memories and communication skills differ from ordinary adults. Similarly, although everybody knows that some people have intellectual disabilities, few of us know much about how to assist such people to tell us what has happened to them.

It is a sad fact that some crime perpetrators specifically choose to prey on vulnerable victims such as children and people with intellectual disabilities, partly in the hope that such victims will not be able to provide comprehensive accounts of what has happened to them. Fortunately, several countries have recently introduced legislation and interviewing guidance designed to make it more likely that vulnerable victims will achieve the justice they deserve.

In Scotland, for example, the *Vulnerable Witnesses (Scotland) Act, 2004* specifies a number of procedures and ‘special measures’ that are now available. This recent legislation has many similarities with the *Youth Justice and Criminal Evidence Act, 1999* and the *Criminal*

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Justice Act, 1991 both introduced in England and Wales for the same purpose as the Scottish legislation. All of this legislation has been accompanied by official government guidance documents for interviewers, this guidance being firmly based on psychological research.

For example, *Achieving Best Evidence In Criminal Proceedings: Guidance For Vulnerable Or Intimidated Witnesses, Including Children* (ABE) was introduced in England and Wales in 2002. Two of its major chapters focus on how best to interview witnesses who are (i) children or (ii) vulnerable adults. (The 2001 writing of ABE was coordinated and partly authored by psychologists from the University of Leicester.) While vulnerable adult witnesses are, of course, not children, effective interviewing of these two groups has many similarities.

One crucial aspect of skilled interviewing of such people is not to rush them. While time pressures can sometimes justify a quick interview with a vulnerable witness (e.g. a victim is assaulted in the street, the police arriving very soon after so that with a description from the victim they can immediately search the vicinity for the perpetrator), organizational pressures should not be used as an excuse for conducting rushed, hasty, ill-planned and ineffective interviews (Aarons & Powell, 2003).

Children and vulnerable adults do need more time (Milne & Bull, 1999)

- to understand the nature of the task;
- to comprehend the questions being put to them;
- to think about the questions;
- to try to retrieve from memory the relevant information;
- to put this information into words;
- to say these words (or communicate in a way that suits them if they cannot speak).

Investigative interviews with children and vulnerable adults will only be as good as the planning put into them beforehand. Such witnesses will usually have a poor understanding of how their own memory works and will have limited strategies for retrieving the relevant information that is in their memory. It is the responsibility of interviewers to realize this and to try to overcome these limitations. Furthermore, many such victims will not be able to concentrate for long periods and therefore interviewers need to take account of this.

The *Achieving Best Evidence* document (available at <http://www.cps.gov.uk/publications/prosecution/bestevidencevol1.html>) provides comprehensive guidance concerning the determination of whether an adult witness/victim may have special vulnerabilities. Of course, vulnerable victims will possess some relevant skills. Indeed,

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“...mildly mentally retarded persons...In their interactions with others...often have a hidden agenda...trying to protect their self-esteem by...disguising incompetence” (Kernan & Sabsay, 1997, p. 243) and “to avoid the embarrassment of having to admit that they have not understood something that has been said to them or that they have been asked to explain, an admission that might reveal them as incompetent, mildly retarded individuals will sometimes feign understanding” (p. 245). Thus, determining whether a victim is especially vulnerable is not always an easy task. Indeed, even regarding children, many professionals seem to falsely assume that those over 12 years of age do not have relevant comprehension problems (Crawford & Bull, 2005). Also, the cues people seem to use to determine if an adult has intellectual disability (e.g. by their speech – Kernan, Sabsay & Shinn, 1989) or may be suggestible (e.g. by their facial appearance – Nurmoja, 2005) do not seem to be that reliable.

Interviewer Behaviour

When it has been determined that a witness/victim is vulnerable (e.g. because of young age or/and intellectual disability) interviewers need to be aware that this may unduly affect their own behaviour, especially if they are not experienced at interacting with such people. ABE points out that “Research has made it clear that when people meet others with whom they are unfamiliar their own behaviour becomes abnormal” (p. 67). The interviewees will probably notice this and may view it as a sign of discomfort, unease and/or impatience. Interviewers should also be aware of the appropriate terminology for the various intellectual disabilities. While interviewers need to be fully aware of victims’ vulnerabilities, they should not focus too much on these to the exclusion of building on the interviewees’ relevant strengths.

A sizeable proportion of vulnerable victims will want to place themselves (e.g. be seated) closer or further away from the interviewer than will ordinary witnesses. Asking witnesses for advice on how best to communicate with them will assist with this and many other relevant issues, and will also empower witnesses which will have several benefits, including reducing compliance to questions. Establishing good rapport could also reduce compliance.

Rapport

In 1992 the *Memorandum Of Good Practice On Video Recorded Interviews With Child Witnesses For Criminal Proceedings* (MOGP) was published by the Home Office (the relevant government department).

(Its recommendations were incorporated into the 2002 *Achieving Best Evidence*.) This MOGP stated that “A rapport phase . . . should not be omitted . . .” (p. 16). This opening phase of the interview is especially important for children and people with intellectual disability. They, unlike the interviewers, will be unfamiliar with the purpose and format of investigative interviews. This unfamiliarity will add to the stress of (possibly) having been victimized to make it even more difficult for them to retrieve information from memory (Milne & Bull, 1999). They will need time to adjust to the setting and to the interviewer, and will need explanations of what is about to take place.

The rapport phase should also be used to allow the interviewer to become more familiar with the victim’s communicative limitations and strengths (Milne & Bull, 2001).

Free Narrative

Psychological research has repeatedly demonstrated that people’s most accurate recollections of what happened are those that are provided in their own words. Thus every effort must be made to assist victims to do this. Some young children and people with intellectual disabilities will be under the impression that the adult authority figure (i.e. the interviewer) already knows what happened (due to their inability to realize that what “is in their head” is not the same as in other people’s – called “theory of mind” by psychologists). They will be under the impression that since the interviewer already knows what happened, their role is merely to confirm what the interviewer suggests. Therefore, the questioning of them must be delayed until every effort has been made to obtain free recall in their own words.

Compliance

A major reason why questioning, particularly any form of suggestive questioning, should be delayed is that children and people with intellectual disabilities are skilled at going along with what they believe authority adults want to hear. However, studies of real-life investigative interviews with such (alleged) victims have found that interviewers soon rush into questioning, without providing enough opportunity for free recall (Davies, Wilson, Mitchell & Milsom, 1995). Why do interviewers, even trained ones, do this? The answer to this question is that everyday conversations are full of questions and rarely is full, free recall asked for outside the investigative setting. Consequently, it takes a lot of practice and experience to obtain good free recall.

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As stated above, interviewers must make it clear that they do not know what happened, that they were not there and that they may ask “silly” or “misguided” questions.

Acquiescence

This is somewhat similar to compliance but it specifically refers to saying “Yes” to yes/no questions (regardless of their content). Since to many questions in everyday conversations an acceptable answer is “Yes”, vulnerable people acquiesce to get by in life. To yes/no questions on some topics, the “appropriate” answer is “No” and therefore some vulnerable interviewees will reply to questions regarding taboo topics (e.g. bodily touching) with “No”, regardless of the wording of the question. Most yes/no questions can be reworded into either/or questions that are likely to be less affected by acquiescence.

Types of Questions

Once the first two phases of (i) rapport and (ii) obtain free narrative have been achieved to the best of the interviewer’s and witness’s ability, then and only then should questioning begin. Not every professional is aware that question types vary in how appropriate they are. A wealth of psychological research (Milne & Bull, 1999) supports the recommendations in official guidance documents that the questioning phase should always commence with open questions (if the interviewee has the communicative capacity to understand these and to reply to them).

Open questions “are ones that are worded in such a way as to enable the witness to provide an unrestricted response” (ABE, p. 74). This form of question reduces the likelihood that interviewers will let their expectations about what may have happened affect the victim. Of course, open questions can include information that the victim has already provided in the earlier free recall phase. For example, “A few minutes ago you told me that Robert hurt you. How did Robert hurt you?”

When some victims are responding to open questions, unskilled interviewers often interrupt them (i) when the victim seems (from the interviewer’s point of view) to be going off the point or (ii) to seek clarification. This should be avoided, particularly since it may well convey to the victim that only short answers are acceptable. Interrupting also disempowers the witness, making them more compliant.

Though some people might label questions beginning with “Why” as open questions, these should be avoided with children and people with intellectual disabilities because they (i) could interpret this as attributing blame to them and (ii) they are particularly unlikely to have a good

understanding of why other people (and, indeed, themselves) behave as they do.

It is imperative that it is fully explained to victims that replying “Don’t know” (where appropriate) is a very welcome response (unlike in real life).

Specific-closed questions ask in a non-biasing, non-leading way for clarification/extension of what the (alleged) victim has earlier in the interview communicated. If worded skilfully they could also ask about matters not raised by the victim, but such questions run the grave risk of being suggestive (which ought to be avoided with child victims and those with intellectual disability).

Forced-choice (closed) questions “are ones that provide the interviewee with a limited number of alternative responses” (ABE, p. 76). Problems with this type of question are that: (i) they may not include the correct alternative; (ii) all the alternatives may not be equal from the victim’s point of view so that one or two inappropriately “stand out”; and (iii) children and people with intellectual disability may only be able to “take in” the first or last alternative and so they choose that one.

Another form of closed question is one that offers only two alternatives (e.g. yes/no questions). These should be avoided unless they are the only type of question the witness can cope with (e.g. those with severe intellectual disability) and even then they should be either/or questions rather than yes/no questions. It must be emphasized to victims that replying “I can’t remember” (where appropriate) is a welcome response that will not annoy the interviewer.

Leading questions imply the answer and/or assume matters not earlier revealed by the victim in the interview. Psychological research has revealed that even ordinary adults, who have not been victimized, readily go along with leading questions. People who have been victimized, especially children (Young, Powell & Dudgeon, 2003; Zalac, Gross & Hayne, 2003) and adults with intellectual disability are even more likely to go along with leading questions (Kebbell, Hatton & Johnson, 2004). One of the main problems with leading questions is that one cannot determine whether the answer is based on memory of the incident(s) or on compliance. This is why courts frown upon the use of leading questions during witnesses’/victims’ evidence-in-chief.

If a leading question is asked that produces a response, interviewers should then refrain from asking another leading question but should revert back to open questions, or specific questions.

Closure

Once the questioning phase has been completed, a final and important phase remains. This closure phase has three main aims. The

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first involves the interviewer checking, in a non-suggestive way using language and communication that the victim can cope with, that the interviewer has correctly understood the witness. The second aim is to ensure that the victim leaves the interview in as positive a frame of mind as possible (which may well involve going back to some of the neutral topics conversed about in the rapport phase). The third aim is to try to ensure that if the victim subsequently has more to say, she/he will feel that the interview was conducted in a sensitive, professional yet supportive way and will be willing to experience a further interview. Psychological research and professional experience confirm that victims often are unable to remember everything in one interview (this may be especially so for children and people with intellectual disabilities). At present vulnerable witnesses' satisfaction with the investigative and other parts of the criminal justice system is less than that of ordinary witnesses (Hamlyn, Phelps & Sattar, 2004).

The above order of question types (i.e. open, specific-closed, forced-choice, leading) need not be rigidly stuck to regarding all the topics that may be focused on in the interview. A victim may have mentioned, say, three separate incidents in their free recall. The questioning on the first of these incidents could go through the above question types in the proper order, likewise the questioning on the second and then on the third incident, with some closure after each incident.

DISCUSSION

Victims and witnesses of all ages and vulnerabilities are pivotal to attaining justice. In order to achieve a correct solution to a crime all interviewees need to be interviewed appropriately, by fully trained interviewers. In addition, interviewers should be assessed regularly within the workplace to ensure that their skills are as high as possible. Furthermore, the recording of such interviews needs to be accurate and the interview process needs to be a transparent one. Thus it is recommended that: (i) witness/victim interviewing is put higher up on the agenda; (ii) interviews with witnesses and victims be electronically recorded; (iii) the training of interviewers to interview witnesses and victims is improved; (iv) such training should be assessed; and (v) regular supervision of witness and victim interviews should be carried out in the workplace as part of the interviewers' staff development.

To follow the recommendations mentioned above (and in official guidance documents) on the interviewing of vulnerable (alleged) victims does require proper understanding of the challenges interviewers face. However, these challenges are not that different from those relating to the interviewing of ordinary witnesses (Prosser & Bromley, 1998).

Kernan and Sabsay (1997) cite Turner (1984) who perceptively noted that “the retarded are just like us, only more so”.

REFERENCES

- Aarons, N. & Powell, M. (2003). Issues related to the professional's ability to elicit reports of abuse from children with intellectual disability: A review. *Current Issues in Criminal Justice*, 14, 257–268.
- Ainsworth, P. (1995). *Psychology and policing in a changing world*. Chichester: John Wiley & Sons, Ltd.
- Ask, K. & Granhag, P.A. (2005). Motivational sources of confirmation bias in criminal investigations: The need for cognitive closure. *Journal of Investigative Psychology and Offender Profiling*, 2, 43–63.
- Clarke, C. & Milne, R. (2001). *National evaluation of the PEACE investigative interviewing course*. Police Research Award Scheme, PRAS/149. London: Home Office.
- Clifford, B. & George, R. (1996). A field investigation of training in three methods of witness/victim investigative interviewing. *Psychology, Crime and Law*, 2, 231–248.
- Crawford, E. & Bull, R. (2005). *Teenagers' difficulties with keywords regarding the criminal court process*. Paper presented at the Annual Conference of the European Association of Psychology and Law, Vilnius.
- Davies, G., Wilson, C., Mitchell, R. & Milsom, J. (1995). *Videotaping children's evidence: An evaluation*. London: Home Office.
- Ede, R. & Shepherd, E. (1997). *Active defence: A solicitor's guide to police and defence investigation and prosecution and defence disclosure in criminal cases*. London: The Law Society.
- Fisher, R. & Geiselman, R. (1992). *Memory-enhancing techniques for investigative interviewing: The cognitive interview*. Springfield, IL: Thomas.
- Fisher, R., Geiselman, R. & Raymond, D. (1987). Critical analysis of police interviewing techniques. *Journal of Police Science and Administration*, 15, 177–185.
- Gudjonsson, G. (2003). *The psychology of interrogations and confessions*. Chichester: John Wiley & Sons, Ltd.
- Hamlyn, B., Phelps, A. & Sattar, G. (2004). *Key findings from surveys of vulnerable and intimidated witnesses 2000/01 and 2003*. London: Home Office Research, Development and Statistics Directorate.
- Heaton-Armstrong, A. (1995). Recording and disclosing statements by witnesses – law and practice. *Medicine, Science and the Law*, 35, 136–143.
- Home Office. (1998). *Speaking Up For Justice*. London: Home Office.
- Home Office and Department of Health. (1992). *Memorandum of good practice on video recorded interviews with child witnesses for criminal proceedings*. London: Her Majesty's Stationery Office.
- Home Office and Department of Health. (2002). *Achieving best evidence: Guidance for vulnerable or intimidated witnesses, including children*. London: Her Majesty's Stationery Office.
- Kebbell, M., Hatton, C. & Johnson, S. (2004). Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have? *Legal and Criminological Psychology*, 9, 23–36.

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- Kebbell, M., Hurren, E. & Mazarolle, P. (2005). *Sex offenders' perceptions of police interviewing: Implications for improving the interviewing of suspected sex offenders*. Paper presented at the Annual Conference of the European Association of Psychology and Law, Vilnius.
- Kebbell, M. & Milne, R. (1998). Police officers' perception of eyewitness factors in forensic investigations. *Journal of Social Psychology, 138*, 323–330.
- Kebbell, M. & Wagstaff, G. (1999). *Face value? Evaluating the accuracy of eye-witness information*. Police Research Series Paper 102. London: Home Office.
- Kernan, T. & Sabsay, S. (1997). Communication in social interactions: Aspects of an ethnography of communication of mildly mentally handicapped adults. In M. Beveridge and G. Conti-Ramsden (Eds), *Language and communication in people with learning disabilities*. London: Routledge.
- Kernan, K., Sabsay, S. & Shinn, N. (1989). Lay people's judgements of story-tellers as mentally retarded or not. *Journal of Mental Deficiency Research, 33*, 149–157.
- Koehnken, G., Milne, R., Memon, A. & Bull, R. (1999). The cognitive interview: A meta-analysis. *Psychology, Crime and Law, 5*, 3–28.
- Koehnken, G., Thurer, C. & Zoberbier, D. (1994). The cognitive interview: Are the interviewers' memories enhanced too? *Applied Cognitive Psychology, 8*, 13–24.
- Lamb, M.E., Orbach, Y., Sternberg, K.J., Hershkowitz, I. & Horowitz, D. (2000). Accuracy of investigators' verbatim notes of their forensic interviews with alleged child abuse victims. *Law and Human Behavior, 24*(6), 699–708.
- Macpherson, W., Cook, T., Sentamu, J. & Stone, R. (1999). *The Stephen Lawrence Inquiry report*. London: The Stationery Office.
- McLean, M. (1995). Quality investigation? Police interviewing of witnesses. *Medicine, Science and the Law, 35*, 116–122.
- Milne, R. & Bull, R. (1999). *Investigative interviewing: Psychology and practice*. Chichester: John Wiley & Sons, Ltd.
- Milne, R. & Bull, R. (2001). Interviewing witnesses with learning disabilities for legal purposes. *British Journal of Learning Disabilities, 29*, 93–97.
- Milne, R., Clare, I. & Bull, R. (1999). Interviewing adults with learning disability with the cognitive interview. *Psychology, Crime and Law, 5*, 81–100.
- Milne, R. & Shaw, G. (1999). Obtaining witness statements: Best practice and proposals for innovation. *Medicine, Science and the Law, 39*, 127–138.
- Mortimer, A. (1994a). *Cognitive processes underlying police investigative interviewing behaviour*. Unpublished PhD thesis, University of Portsmouth.
- Mortimer, A. (1994b) Asking the right questions. *Policing, 10*, 111–123.
- Mortimer, A. & Shepherd, E. (1999). Frames of mind: Schemata guiding cognition and conduct in the interviewing of suspected offenders. In A. Memon and R. Bull (Eds), *Handbook of the psychology of interviewing*. Chichester: John Wiley & Sons, Ltd.
- Navon, D. & Gopher, D. (1979). On the economy of the human information processing system. *Psychological Review, 86*, 214–255.
- Nurmoja, M. (2005). *Interrogative suggestibility, trait-related, and morphofeatural characteristics of human phenotype*. Unpublished Master's thesis, Department of Psychology, University of Tartu, Estonia.
- Prosser, H. & Bromley, J. (1998). Interviewing people with intellectual disabilities. In E. Emerson, C. Hutton, J. Bromley & A. Caine (Eds), *Clinical psychology and people with intellectual disabilities*. Chichester: John Wiley & Sons, Ltd.

- Rock, F. (2001). The genesis of a witness statement. *Forensic Linguistics*, 8, 44–72.
- Sanders, G.S. (1986). The usefulness of eyewitness research from the perspective of police investigators. Unpublished manuscript, State University of New York. Cited in R. Fisher, R.E. Geiselman & M. Armador. (1989). Field test of the cognitive interview: Enhancing the recollection of actual victims and witnesses of crime. *Journal of Applied Psychology*, 74, 722–727.
- Shepherd, E. & Milne, R. (1999). Full and faithful: Ensuring quality practice and integrity of outcome in witness interviews. In A. Heaton-Armstrong, D. Wolchover & E. Shepherd (Eds), *Analysing witness testimony*. London: Blackstone Press.
- Turner, J. (1984). Workshop society: Ethnographic observations in a work setting. In K. Kernan, M. Begob & R. Edgerton (Eds), *Environments and behavior: The adaptation of mildly retarded persons*. Baltimore: University Park Press.
- Wolchover, D. & Heaton-Armstrong, A. (1997a). Tape recording witness statements. *New Law Journal*, June 6, 855–857.
- Wolchover, D. & Heaton-Armstrong, A. (1997b). Tape recording witness statements. *New Law Journal*, June 13, 894–896.
- Young, K., Powell, M. & Dudgeon, P. (2003). Individual differences in children's suggestibility: A comparison between intellectually disabled and mainstream samples. *Personality and Individual Differences*, 35, 31–49.
- Zalac, R., Gross, J. & Hayne, H. (2003). Asked and answered: Questioning children in the courtroom. *Psychiatry, Psychology and Law*, 10, 199–209.

