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Practical Psychology for Forensic Investigations and Prosecutions

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Preface

Crime is a blight on our societies. From Australia to the United States, Russia to South Africa, Iceland to Argentina, crime has a major impact on how people live their daily lives. Minor crimes such as vandalism and petty theft are a nuisance, and while they typically have comparably little economic impact, they create an environment of distrust and suspicion that can poison communities. More serious crimes such as assaults, kidnappings, rapes and murders have a more profound impact both on victims and their communities, leading to fear, hatred and isolation.

Technological advances, for example DNA testing and CCTV, have improved our methods of investigating and prosecuting crime, but despite these advances the majority of forensic investigations and prosecutions still rely on human factors. In this respect forensic investigations and prosecutions have changed little over the past couple of centuries. Investigators still rely on their own conceptualizations of who commits certain crimes to identify potential offenders, eyewitnesses are still integral to most investigations and prosecutions, and a suspect confessing still has a major impact on decisions to convict a suspect. It is in these human factors where psychology has its role. In this book, we outline current, cutting-edge research and its application to investigating and prosecuting offences.

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Introduction

GRAHAM M. DAVIES AND MARK R. KEBBELL

Almost a century has passed since the publication of *On the Witness Stand* by Hugo Munsterberg (1908), one the first books to treat legal issues from a psychological standpoint. Munsterberg was an acknowledged pioneer of applied psychology, who moved from his native Germany to set up the first experimental psychology laboratory at Harvard at the invitation of William James (Hale, 1980; Moskowitz, 1977). Munsterberg's book, based on a series of successful magazine articles, aimed at promoting the role of psychology in the courts, the police and the prisons. Despite its somewhat bombastic tone, the book's central message, that the law and its agencies had ignored the importance and potential of psychology, shines through. Sadly, the research he was able to offer to support his claim was limited, took little account of the principles of jurisprudence or the realities of law enforcement and was leavened with trenchant criticism of lawyers (labelled as "obdurate") and other law-enforcement professionals. Not surprisingly, the book was a popular success, but did little in the short term to promote the union of psychology and law. Indeed, it drew from the distinguished American jurist John Henry Wigmore a satirical review (1909), which though savage in its treatment of Munsterberg's pretensions, did foresee a time when psychology might have something to offer the law.

We hope that on the evidence of the contributions to the current volume, Wigmore might well have concluded that psychology's time had come. The contributors illustrate the many practical applications of psychology to forensic problems and the manifest opportunities for mutual

cooperation that currently exist. There are many topics included in Munsterberg's classic that feature in this book. They include the accuracy of memory of witnesses, the detection of crime and deception, untrue confessions and the use of suggestive questioning in court. In addition, the current volume covers other topics that Munsterberg could only have dreamed of: offender profiling, risk assessment procedures, sexual violence and offender behaviour, to name but a few. As the contributors illustrate, all are issues on which psychologists are currently working fruitfully with their professional colleagues in the police, social services and the law.

We trust our readers will find the tone adopted by all our contributors is more measured and constructive than Munsterberg and takes proper cognisance of the differences in the ways that psychologists and lawyers think and reach decisions. It would be foolish to think that there is not some residual friction between the different professional groups involved in the legal arena, but it is fair to say that guarded respect and mutual understanding is increasingly the norm. This process has been accelerated by the many positive impacts of forensic psychology on legal processes described by the various distinguished contributors to this volume.

Together, the contributions provide an overview of appropriate psychological methods for investigating and prosecuting offences. Practical information is provided designed to maximize the possibility of guilty persons being convicted and those innocent of charges being exonerated. Importantly, the book illustrates ways of ensuring that victims and suspects, both innocent and guilty, are treated with respect and in a professional way. A theme running through many contributions is the need for a more holistic approach to criminal justice that links the different stages of the investigative and prosecution process together by

maximizing reporting rates, thorough investigation, effective presentation of evidence in court and effective sentencing. Clearly, forensic psychologists cannot by themselves ensure that such joined-up thinking prevails, but they can make a contribution to this ideal by working with their professional colleagues in law and law enforcement.

AN OVERVIEW OF THE CONTRIBUTIONS

In the opening chapter, Becky Milne and Ray Bull discuss the interviewing of victims of crime, with a particular emphasis upon children and those with intellectual disabilities. They emphasize the role of the interviewer's expectations and agenda in shaping both the witness's responses and any subsequent written report. Given these influences, they argue for the value of full recordings of all witness interviews conducted by the police. Effective styles of interviewing are discussed with a particular emphasis upon the staged interview recommended in the Home Office guidance, *Achieving Best Evidence* (Home Office, 2002). The practical problems of interviewing vulnerable victims are explored and some solutions offered to common problems with such witnesses.

Jennifer Baudry, Rod Lindsey and Paul Dupuis present some practical guidance on the conduct of identification procedures for suspects by the police. The simplistic view that identification is a matter of common sense has long since been demolished due to serious miscarriages of justice caused by confident but wrong identifications by witnesses. The authors draw attention to the most recent list of convicted persons exonerated through new DNA evidence where a primary cause of error was mistaken identification (Innocence Project, 2005). The authors

produce a series of evidence-based recommendations on procedures to be followed in conducting mugshot searches and the composition of lineups and show-ups, designed to maximize the likelihood of an offender being identified, while minimizing the likelihood of an innocent suspect being selected.

Next, Laurence Alison and Mark Kebbell provide an evenhanded review of the research evidence for and against the authenticity of recovered memories. The issue of recovered memories – memories of traumatic events remembered after long intervals of apparent amnesia – initially polarized the psychological and psychiatric community between those who saw such 'memories' as invariably fabrications springing from suggestive therapeutic practices and those who believed they were the plausible consequences of global traumatic amnesia. Today, there are indications of a middle ground emerging in this debate (Davies & Dalgleish, 2001) and the current chapter is another constructive contribution. The authors also offer some cautionary words of advice for experts and investigators who may be drawn into cases involving the delayed reporting of sexual abuse.

Kevin Howells and Jacqueline Stacey examine the psychological characteristics of offenders: what makes a criminal. The authors stress that no one single factor characterizes all criminals and that some fashionable nostrums – such as "lack of self-esteem" – are not necessarily associated with criminality. The authors focus on serious offending, with an emphasis upon sexual and physical assaults, and draw on their experience of designing and running offender treatment programmes to argue that a range of factors, including impulsiveness, levels of anger and on occasion, cultural and political factors, need to be taken into account in reducing reoffending and countering crime in society.

Aldert Vrij's chapter on detecting deception via verbal and nonverbal cues would have made disappointing reading for Hugo Munsterberg, an early exponent of the use of the lie detector. Vrij's review of the research suggests that not only is the polygraph an unreliable instrument in the detection of deception, but also such contemporary successors as the voice-stress analyser and thermal imaging. He recommends more traditional solutions, such as getting suspects to elaborate on their alibis and withholding police evidence until after suspects have had the opportunity to give their version of events.

Mark Kebbell and Emily Hurren discuss techniques for interviewing suspects to obtain accurate information. They point out that a genuine confession from a guilty suspect has many advantages, not least the savings in time and cost and obviating the need of the victim to testify in court. They outline some of the psychological models that have been proposed to explain the process of confession and review ethical interview procedures that might encourage confession in guilty suspects: disclosing the mass of evidence against an accused is a far more effective and reliable method of securing a confession than the adoption of an aggressive and bullying posture.

The use of inappropriate interviewing techniques can lead to false confessions, another important source of miscarriages of justice according to DNA exoneration records. Deborah Davis and Richard Leo review the investigative techniques that are likely to lead to false confessions. These include prolonged interviewing and a certainty of guilt of the suspect that is not warranted by objective evidence. They emphasize the difficulties for both interrogators and the courts in readily distinguishing between true and false confessions and echo Milne and Bull in calling for all interviews to be videotaped. Once a confession is made, it is difficult for a suspect to re-

establish their innocence, even when other evidence is inconsistent with the suspect's account.

Laurence Alison and Mark Kebbell explore the myths surrounding one of the most prominent activities undertaken by forensic psychologists: offender profiling. They argue against the predominant view among profilers and indeed, the police, that it is possible to confidently infer from a crime scene, the character and the background of the offender. They describe research that suggests that crime-scene characteristics may owe as much to the situational factors as to the nature of the offender. They are critical of many profiles, which they assert, contain many generalized statements and unverifiable assumptions and call for a more overtly evidence-based approach to profiling.

Elizabeth Gilchrist discusses the factors underlying the decision to prosecute in criminal cases. The research she reviews undermines the belief that decisions are made purely on the basis of a rigorous consideration of the evidence and the demands of the public interest. She argues that any comprehensive model of legal decision making requires consideration of such factors as police practices on decision to charge, prosecutors' beliefs and stereotypes, class attitudes and political influences. She points to the procedures adopted in Tasmania that list factors that should *not* be taken into account as well as those that should, in reaching decisions to prosecute.

Graham Davies and Helen Westcott look at the problem of the premature withdrawal of complaints by victims of crime, which can leave an offender free to perpetrate the same or more serious offences against other persons. This problem is particularly acute among witness victims who are vulnerable by reason of age or mental disability. They examine what can be done to reduce overt intimidation of

witnesses and to support complainants, both during the investigative phase and at trial. They argue that while much can and is being done for vulnerable witnesses through alterations in legal process and social support, the demands of cross-examination will continue to be a formidable obstacle to justice for many victims.

Don Grubin tackles the contentious topic of communicating risk to the court. Advising on the likelihood of an offender committing further serious offences is a high-profile task for a forensic psychologist or psychiatrist. Success goes unnoticed, but failure is public and likely to lead to denigration by the press for the professional involved. Grubin highlights common confusions, such as that between the likelihood of further offending and the consequences for the victim. He illustrates how actuarial approaches are rapidly overtaking clinical judgement as the most accurate and transparent method for assessing risk with violent and sexual offenders. He emphasizes that while the final decision lies with the courts, it is up to the assessor to communicate clearly the reasons for their assessments, both immediate and in the longer term.

In the concluding section, the editors note the roles that forensic psychologists are already taking in progressing the investigative, prosecution and trial process, as described by the contributors to the current volume. These contributions illustrate also the different methodological approaches that have been adopted, not merely quantitative but qualitative, not merely experimental, but also field and case-study approaches. Finally, they emphasize the crucial importance of communicating with the other players in the legal process: police officers, social workers, lawyers and judges. This communication process needs to be two-way: forensic psychologists passing on their own insights, but also learning more about important and unexplored issues, which can better shape their research to the practical

realities of the police station and courtroom. Only then perhaps, can forensic psychology be said to have fully learned the lessons of Hugo Munsterberg and *On the Witness Stand*.

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CHAPTER 1
Interviewing Victims of Crime, Including Children and People with Intellectual Disabilities

BECKY MILNE AND RAY BULL

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 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 witness[1] 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 (Koehnken, 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 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 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 Macphearson, 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.

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 indepth 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 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, "… 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.

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.