

# The Role of Investigative Interviewing on Witness Testimony

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## Abstract

*Investigation is at the heart of policing. Criminal investigations require the gathering of facts (or evidence) from a number of sources with the ultimate goal to identify the perpetrator of a crime and serve the justice system. This evidence comes from, among other things, crime scenes (i.e. DNA) and from information disclosed by significant others (i.e. witnesses, suspects, victims). It is very often the case that the outcome of an investigation depends heavily on the process and outcome of police interviews with witnesses, as they provide the initial direction of the investigation and the lines of enquiry to be pursued. The investigative interviewing of witnesses is an area which has attracted great attention over the years as the crucial role witnesses play within the criminal justice system has come to light, not always in the most favourably way. Witnesses' misidentifications, which can result in wrongful convictions and subsequent miscarriages of justice, have brought together practitioners and professionals in a quest to develop best practices in witness interviewing and improve eyewitness testimony and identification. Such practices will be examined in this paper, and discussed also in relation to the context in Cyprus.*

**Keywords:** investigative interviewing, witness, misidentification, testimony, cognitive interviewing, PEACE

## Introduction

According to Milne and Bull, 'A major factor that determines whether or not a crime is solved is the completeness and accuracy of the witness account.'<sup>2</sup> Sometimes, if you do not have a witness, you do not have a suspect either. It is the case that quite often, the only evidence that police have to guide an investigation is what witnesses tell them, and so they are often seen as a strong form of evidence by police, judges

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<sup>2</sup> Rebecca Milne, Ray Bull, *Investigative Interviewing: Psychology and Practice* (John Wiley and Sons Ltd: Chichester UK, 1999, p.1)

and jurors alike. It becomes clear, therefore, that witness testimony plays a key role in criminal investigations and trials. Witness testimony is a written or oral statement given by an individual who has experienced an incident, such as seeing or hearing a crime take place, or has had something happen to them. The testimony can be collected in crime scene interviews, in subsequent interviews, through creating facial composites of perpetrators and via selecting suspects from identity parades<sup>3</sup>.

Effectively interviewing cooperative witnesses requires a considerable amount of skill; however, in many cases, appropriate training is often limited. Research over the years focusing on eliciting valid and reliable information from witnesses, has proved time and time again that failing to establish rapport, interrupting interviewees, asking mainly closed-ended questions, asking leading and suggestive questions, and providing inadequate retrieval support are all factors that impede the interviewees' ability to provide an accurate and complete account. Hence, improved methods of interviewing will considerably aid legal and / or criminal investigations.

Witnesses are central to solving a crime, which is accepted by all key players across the criminal justice spectrum. It is not surprising that the Murder Investigation Manual, which serves as a guide for all types of major crime in England and Wales explicitly states that: 'the success of any homicide investigation depends largely on the accuracy and detail of the material obtained from witnesses. The importance of treating witnesses with respect and dignity cannot be overstated. The way in which witnesses are treated can have a significant impact on how they cooperate with the investigation and any subsequent prosecution'.<sup>4</sup>

However, not all witnesses' accounts are reliable, sufficient or complete, and inaccurate testimony can lead to the prosecution of innocent individuals. As a result, wrongful convictions also mean the real perpetrator of a crime is not caught and may continue to harm society.

According to the Innocence Project,<sup>5</sup> a nonprofit legal US organisation committed to exonerating individuals who have been wrongly convicted through the use of DNA testing, eyewitness misidentification is a consistent and outsized contributor

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<sup>3</sup> Parliamentary Office of Science and Technology, *Improving Witness Testimony*, July 2019, Post Report 607

<sup>4</sup> ACPO, *Murder Investigation Manual* (Wyboston: Centrex, 2006. P.198)

<sup>5</sup> The Innocence Project available at <https://www.innocenceproject.org/>

to wrongful convictions. In a 2019 review of 365 wrongful conviction cases where an individual was later exonerated by DNA evidence, almost 70% (230 cases) involved inaccurate witness identifications of the suspect. In almost 40% of the misidentification cases, there were multiple eyewitnesses who misidentified the same innocent person. Also, in 50% of the misidentification cases, eyewitness testimony was the central evidence used against the defendant, without any other corroborating evidence like confessions, or forensic science.

In almost half of the misidentification cases where the real perpetrator was later identified through DNA testing and eventually comprehended, that perpetrator went on to commit additional violent crimes (rape, murder, attempted murder), after an innocent person was serving time in prison for his previous crime. It becomes evident, that the repercussions of wrongful witness identifications do not stop at the conviction of the innocent, but they do lead on to more imminent dangers.

It is not surprising that eyewitness identification testimony can be very persuasive. Back in 1932, Edwin Borchard wrote *Convicting the Innocent*,<sup>6</sup> where he identified eyewitness errors as an important factor which contributed to the erroneous conviction of innocent people. According to former US Supreme Court Justice William Brennan, ‘There is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, That’s the one’<sup>7</sup> *Such testimony, however, is not always reliable.*

## Convicting the Innocent

### *The Francisco Carrillo Case*<sup>8</sup>

‘There was no DNA in Franky’s case. There wasn’t even a gun. I mean, it was all just eyewitness testimony,’ Ellen Eggers, Carrillo’s attorney.

In January 1991, 41-year-old Donald Sarpy was standing in the driveway of his home in Lynwood, California, when he was killed in a drive-by shooting. Sarpy’s son and five of his friends witnessed the murder. The sheriff’s department believed almost immediately that it was the work of the Young Crowd gang, as retaliation

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<sup>6</sup> John Brigham, Adina Wassermann, Christian Meissner, *Disputed Eyewitness Identification Evidence: Important Legal and Scientific Issues*, Court Review (Summer 1999)

<sup>7</sup> New England Innocence Project, *Eyewitness Misidentification*, available at <http://www.newenglandinnocence.org/eyewitness-misidentification>

<sup>8</sup> The Northern Carolina Innocence Project, *Francisco Carrillo*, available at: <http://ncip.org/francisco-carrillo-jr/>

against N-Hood, an African-American gang in the neighbourhood. Francisco Carrillo, who was 16 at the time, was investigated as the shooter despite the fact that no physical evidence ever linked him to the scene. He also had a solid alibi, Carrillo's own father declaring his son was home, had dinner, and did homework. Prosecutors however insisted that was a lie. Scott Turner, an eyewitness who was shown Carrillo's photograph on the night of Sarpy's murder, later identified Carrillo as the shooter. Turner then told Sarpy's son, Dameon, and the four other friends who were present that Carrillo was the gunman. Six months later, Dameon and the four friends identified Carrillo in a lineup. All six witnesses testified at Carrillo's first trial, which ended in a mistrial when the jury was unable to reach a unanimous verdict. Although Turner recanted his testimony before Carrillo's second trial, the other five eyewitnesses continued to identify Carrillo as the gunman. No other physical evidence linked Carrillo to the crime, but Carrillo would still be convicted of murder and six counts of attempted murder.

A few years later, Sarpy's son, Dameon, admitted that he had not actually been able to see the gunman at the time of the shooting, but identified Carrillo because he was told by Turner that Carrillo was the perpetrator. Ultimately, all six eyewitnesses recanted at a post-trial hearing on a motion for a new trial. Turner also testified that Carrillo had been pointed out to him by the police, leading him to encourage his friends to identify Carrillo. NCIP, Morrison & Foerster and Eggers also convinced the court to return to the scene of the crime to re-enact the shooting as described by the witnesses, which demonstrated that it was physically impossible for the witnesses to have seen the perpetrator's face. On March 14 2011, Los Angeles County Superior Court Judge Paul Bacigalupo overturned Carrillo's conviction based on the eyewitness recantations and two other men having confessed to the shooting. Carrillo was released from custody that day, after having spent over 20 years in prison for a crime he did not commit.

### *The Ronald Cotton Case*

In July 1984, an assailant broke into Jennifer Thompson-Cannino's apartment and sexually assaulted her; later that night, the assailant broke into another apartment and sexually assaulted a second woman. The evidence at trial included a flashlight found in Cotton's home that resembled one used by the assailant, and rubber from Cotton's shoe that was consistent with rubber found at one of the crime scenes. Overwhelmingly, however, the evidence rested on the identification and the flawed eyewitness identification procedures used by police at the time. The victim, Jennif-

er Thompson, helped police sketch artists create a composite picture of her attacker. Later, in a photo lineup, she identified Ronald Cotton, a 22-year-old man who looked strikingly like her sketch and had previous run-ins with the law. Then, she picked Cotton from a live lineup; she identified him with 100 percent certainty he was her attacker.

In January 1985, Cotton was convicted by a jury of one count of rape and one count of burglary. In a second trial, in November 1987, Cotton was convicted of both rapes and two counts of burglary. He was sentenced to life in prison plus 54 years. Cotton was unsuccessful overturning his conviction in several appeals. But in the spring of 1995, his case was given a major break: the Burlington Police Department turned over all evidence, which included the assailant's semen for DNA testing, to the defence. The samples from one victim were tested and showed no match to Cotton. At the defence's request, the results were sent to the State Bureau of Investigation's DNA database where it showed a match with the convict who had earlier confessed to the crime to a fellow inmate in prison. When the DNA test results were reported in May 1995, the district attorney and the defence motioned to dismiss all charges.

On June 30 1995, Cotton was officially cleared of all charges and released from prison. In July 1995, the governor of North Carolina officially pardoned Cotton. Cotton had already served 10,5 years in prison.

'Jennifer's misidentification of Ronald serves as a striking example of what is known technically as unconscious transference. For Jennifer, this chain began when she attempted to translate her memories from that dark, traumatic summer night into concrete, usable information by working with police to assemble a composite sketch. The image of the composite sketch then primed her to select Ronald's mug shot, which resembled the composite; her selection of the photograph, in turn, influenced her perceptions when Ronald appeared before her in person. Although unsure for a fleeting moment, she chose Ronald from the line-up, thereby solidifying her identification of Ronald as her perpetrator. This ID was reinforced by police and in pre-trial proceedings, and the certainty continued to build upon itself; the image of Ronald's face even haunting her in nightmares. By the time she went to court, Jennifer was utterly certain that he was her rapist. Her visions of Ron as her attacker became so firmly set in her brain that, when presented with both Ronald

Cotton and her real attacker, she reaffirmed that Ronald was, undoubtedly, her assailant,<sup>9</sup> Laura Hastay, Criminal Defence Lawyer.

### **Factors Affecting Eyewitness Testimony and Identification**

‘There had been an automobile accident. Before the court one of the witnesses, who had sworn to tell the whole truth, and nothing but the truth, declared that the entire road was dry and dusty; the other swore that it had rained and the road was muddy. The one said that the automobile was running very slowly; the other, that he had never seen an automobile rushing more rapidly. The first swore that there were only two or three people on the village road; the other, that a large number of men, women, and children were passing by. Both witnesses were highly respectable gentlemen, neither of whom had the slightest interest in changing the facts as he remembered them’, Hugo Munsterberg states.<sup>10</sup>

Contrary to what most people may think, human memory does not operate like a video recording where the witness can simply play back what actually happened. Scientific research has shown that memory is a constructive, dynamic, and selective process that can be influenced by many factors.<sup>11</sup> Researchers recommend that eyewitness identifications should in a way be treated, as trace evidence that can be distorted, contaminated or degrade over time. Hence, investigators must be careful when obtaining identification evidence in order to maintain its integrity and reliability, whilst at the same time minimising the chances of misidentification which can subsequently lead to miscarriages of justice.

The majority of studies have focused on the conditions under which eyewitness misidentification is likely to occur, including the initial perception of the event (encoding phase), the period in which the memory trace of the event is stored in memory (retention interval), and the subsequent recall of the event or identification of the suspect (retrieval phase). It is important to note that time delays between the first and last stage can vary greatly, and this could seriously hinder the witnesses’ ability to provide accurate and full reports of what has happened. Some informa-

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<sup>9</sup> *Picking Cotton: A Memoir of Injustice and Redemption*, available at: <https://www.pickingcotton-book.com>

<sup>10</sup> Hugo Munsterberg, *On the Witness Stand: Essays on Psychology and Crime* (New York, The McClure Company, 1908, p.15)

<sup>11</sup> Andy Griffiths, Rebecca Milne, *The Application of Cognitive Interview Techniques as Part of an Investigation*, in Carol A. Ireland & Martin J. Fisher (Eds.) *Consultancy and Advising in Forensic Practice: Empirical and Practical Guidelines* (John Wiley & Sons, 2010, p.69 – 90)

tion may be requested almost immediately, i.e. when the witness is still at the crime scene, whereas other information may be requested much later, such as where the witness is asked to identify a suspect or during the interview process.<sup>12</sup>

### ***Stage 1: Witnessing the Incident – Encoding Phase***

When witnessing an incident, information about the event is entered into memory. Research has consistently shown that the accuracy of this information acquisition is influenced and subsequently hindered by a number of factors, such as: the fear or stress the eyewitness experiences during the event; the age of the witness; the actual physical conditions such as lighting, distance from the crime scene or disguise of the suspect; the duration / time to view the event or the perpetrator; and the presence of a weapon (weapon focus) which distracts the witness' attention.<sup>13</sup>

### ***Stage 2: Waiting Period Before Giving Evidence – Retention Interval***

The time period that passes between perception i.e., seeing an incident and the subsequent recollection of that incident is very important. The longer the gap between witnessing an incident and recalling it, the less accurate the recollection of that incident. Witnesses are highly susceptible to suggestions (easily influenced) regarding their memory for the previously viewed event. Memories that have been altered by external influences are considered contaminated and are often less accurate. Contamination by external factors can include discussing the event with another person, such as other witnesses, or seeing inaccurate media representations of the event. This post-event misinformation is commonly seen with children and the elderly who appear to be, by nature, more susceptible to suggestion. 'In the life of justice trains are wrecked and ships are colliding too often, simply because the law does not care to examine the mental colour blindness of the witness's memory. And yet we have not even touched one factor which, more than anything else, devastates memory and plays havoc with our best intended recollections: that is, the power of suggestion', Munsterberg argues.<sup>14</sup>

In order to counteract the effect of witnesses contaminating each other's testimony, researchers in the UK have developed the Self Administered Interview (SAI).

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<sup>12</sup> Gary L. Wells, Elizabeth Loftus, *Eyewitness Memory for People and Events*, Handbook of Psychology: Part Three. Special Topics in Forensic Psychology (Wiley & Sons, 2003)

<sup>13</sup> Carolyn Semmler, Neil Brewer, *Eyewitness Memory*, in Jennifer M. Brown & Elizabeth A. Campbell (Eds.) *The Cambridge Handbook of Forensic Psychology* (Cambridge University Press, 2010, p. 49-57)

<sup>14</sup> Hugo Munsterberg, *On the Witness Stand: Essays on Psychology and Crime* (New York, The McClure Company, 1908, p.18)

The SAI is a booklet which is given to witnesses before the interview, and contains a list of generic open-ended questions along with a clear set of written instructions about what is expected of a witness. Its use in practice has shown that it can actually improve the accuracy of witness testimony and the number of details correctly remembered after a week, as well as reducing memory contamination from incorrect (external) information or leading questions. Even though its use is not obligatory, the SAI is standard practice in some UK police forces, and has also been included in the College of Policing's interviewing guidance with the recommendation that investigators should consider its use, especially in incidents involving large numbers of witnesses.<sup>15</sup>

### ***Stage 3: Giving Evidence During Police Interview – Retrieval Phase***

The information regarding what happened at the incident in question is usually elicited through a process of questioning during the interview of the witness. Similarly to the previous two stages, here too one can identify a number of factors that can affect the accuracy with which the memory of a crime / a perpetrator is retrieved (i.e. when describing the incident to the police or when viewing a line-up in order to identify the perpetrator). Investigators can, unwillingly sometimes, influence the witnesses during the interview process, and hence they should be encouraged to mostly use open-ended questions and avoid suggestive or leading ones. Research has shown that poor questioning skills of the interviewer can exacerbate the already malleable/unreliable nature of witness memory and testimony.<sup>16</sup>

According to the 2016 Report *Advice on the Structure of Visually Recorded Witness Interviews* by the National Police Chiefs' Council (NPCC)<sup>17</sup> in the UK, video-recording of key or significant witness interviews should be considered in cases of: murder, manslaughter, road death, serious physical assault, sexual assault, kidnap, robberies in which firearms are involved, and any criminal attempts or conspiracies in relation to the above listed offences.

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<sup>15</sup> Lorraine Hope, Fiona Gabbert, Ronald P. Fisher, *From Laboratory to Street: Capturing Witnesses' Memory Using the Self-Administered Interview*, (2011) 16 (2) *Legal and Criminological Psychology*, p. 211-226

<sup>16</sup> Rebecca Milne, Gary Shaw, Ray Bull, *Investigative Interviewing: the Role of Research*, in David Carson et. al (Eds.) *Applying Psychology to Criminal Justice*, (Wiley, Chichester UK, 2008, p. 65-80)

<sup>17</sup> Association of Chief Police Officers, National Investigative Interviewing Strategic Steering Group. (2013). *Advice on the structure of visually recorded witness interviews (2nd Edition)*, available at: <http://library.college.police.uk/docs/APPREF/ACPO-Witness-Interview-Structure-2013.pdf>



The actual physical environment in which the interview takes place can also have an effect on the details provided by witnesses. Interviews should be conducted as soon as possible after the incident, in a quiet place, with minimum distraction and maximum privacy, because as with any evidence, the accuracy of witness testimony decreases if it is not carefully obtained, managed and handled. Sometimes, an interview in a police station may seem intimidating to a witness and potentially reduce their cooperation and / or the amount of details they can recall.

This is particularly the case for vulnerable witnesses, such as children, individuals with communication or social impairments, and people with a disability / disorder. Hence, investigators should be flexible in regards to the interview location, depending on the demeanour and trauma of the individual witness.

### *The Lineup Process*

Another crucial factor, which falls into this phase and is considered responsible for many of the eyewitness' misidentifications, is the suspect identification parade, or the line up as it is also called. Once the police identify a suspect during their investigations, they can carry out an identity parade. In an identity parade, the witness tries to identify a perpetrator after being shown a suspect and at least seven other similar-looking individuals.

During this procedure, the witnesses select the suspect from the lineup who mostly resembles their memory trace of the perpetrator. Sometimes line-ups are conducted by using a series of pictures which the police present to the witness; photo lineups typically include seven or more photographs. The problem with identity parades / lineups starts when the witnesses assume that the real culprit is indeed amongst the individuals presented to them, which is not always the case. So, when the actual offender is not present, witnesses tend to identify or choose the person who looks very similar to the one they remembered from the event.<sup>18</sup>

This, in turn, dictates the need of line-up fairness, where the fillers (the non-suspects included in a line up) should resemble the eyewitness's description of the perpetrator so that the suspect does not stand out. Similarly, when constructing a photo lineup, it is critical that the suspect is not a distinctive member of the photo line up, and his photograph does not in any way stand out from the rest in the collection. Subsequently, one can understand why it is critical that, during the lineup

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<sup>18</sup> James Michael Lampinen et al., *Comparing Detailed and Less Detailed Pre-Lineup Instructions* (2019) 34 (02) Applied Cognitive Psychology, p. 409-424

instructions, the witnesses are informed by the police that the perpetrator may not be in the line up and that the investigation will continue regardless of whether an identification is made. This also lifts the emotional burden from many witnesses who feel, in a way, compelled to make an identification in order to help the police solve the crime.

Such pressures, which may come from law enforcement officials, or even family members and friends, may increase the chance of an erroneous identification any time that the perpetrator is not in the line up. Recent research also suggests for a double-blind procedure: that is, having the line up administered by an officer who is unaware of which line up member is the suspect, and the witnesses also not knowing who the suspect(s) are in the specific parade.

### *Cross-Race Effect*

The own race bias, also known as cross-race effect (CRE), seems to be another factor which often leads to wrongful witness identifications. A rather robust phenomenon which seems to be a dominant theme over time in eyewitness research, CRE refers to the fact that people are better at recognising and differentiating between faces that are the same race as they are, and experience greater difficulty discriminating among faces of a race different from their own.<sup>19</sup> According to the Innocence Project, 53% of the misidentification cases, where race is known, involved cross racial misidentifications.

### *Gender Issues*

People often wonder whether the gender of the eyewitness plays any role in their identification accuracy and their overall performance as witnesses to a criminal investigation. Research has shown that men and women may differ in the type of information they recall about an event; for example, women tend to remember better ‘person information’ such as faces and clothing, whereas men focus more on ‘event information’ and can provide better details on things such as types of car or weapon. Hence, there seems to be gender differences, not on the actual abilities of the eyewitness, but rather on which aspects they tend to recall best.<sup>20</sup>

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<sup>19</sup> John Brigham et al. *The influence of race on eyewitness memory*, in R. C. L. Lindsay, D. F. Ross, J. D. Read, and M. P. Toglia (Eds.), *The handbook of eyewitness psychology, Vol. 2. Memory for people* (Lawrence Erlbaum Associates Publishers, 2007), p. 257–281

<sup>20</sup> Tess M.S. Neal, *Women as Expert Witnesses: A Review of the Literature*, (2014) 32 (2) *Behavioral Sciences and the Law*, p.164-179

### *Confidence and Accuracy*

Eyewitness confidence is also a topic of interest, which has received a great deal of attention. Let us not forget that jurors are strongly influenced by confident eyewitnesses, and this can in turn have a large impact on legal proceedings. When the witness states ‘I am sure this is what happened’ or ‘I am certain this is the person I saw’, should one simply take their word for it? Does confidence always go hand in hand with accuracy in identification? A substantial amount of recent research has supported this, and it is argued that indeed when pristine procedures are used (fair line ups, correct line up instructions), there seems to be a relationship between confidence and accuracy, where confidence can be highly indicative of accuracy. Timing, however, seems to be an important factor here; confidence seems to be informative at the time the eyewitnesses first make their identification, before they are exposed to various external influences which can compromise their memory.<sup>21</sup> As Professor Laura Mickes states, “If you look back at all the people who were exonerated based on DNA evidence, where eyewitness identification played a big role in their wrongful conviction, you will see that, and this is amazing, the initial identifications were actually made with low confidence. But over time their confidence can increase for various reasons and by the time they get to the court they say with high confidence, yes, that’s the guy.”<sup>22</sup>

In addition, one must take into account that during the interview process, it is often the interviewer’s perception of the accuracy of a witness that counts. Confidence is in fact a complex issue and for some it could be a personality as well as an ability trait. Hence, one should be cautious about overconfident eyewitnesses. The fact that a person is confident with regards to their memory of an event does not necessarily mean that what they remember is 100% accurate. The same goes for witnesses who seem to be more cautious, and state that they are not absolutely certain of what they recall; this also, does not automatically mean that the account they will provide will not be the correct one. Perhaps, a positive eyewitness identification should not always be viewed as a definitive evidence of guilt, but rather as an indication to law enforcement officials of a potentially valuable direction in which to search for more reliable forms of forensic evidence.

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<sup>21</sup> John W. Wixted & Garry Wells, (2017) 18 (1) *The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis*, Association for Psychological Science, p. 10-65

<sup>22</sup> Economic and Social Research Council (ESCR), *Eyewitness Confidence is Key to Safer Convictions*, 31 July 2018

### *Vulnerable Witnesses*

As mentioned earlier in the article, there are certain individuals who fall under the vulnerable groups category. Such individuals are children, adults with a disability or disorder, victims of sexual crimes, as well as those with significant social and communication impairments. Vulnerable witnesses are often more susceptible to memory inaccuracies and they may find standard procedures intimidating, which in turn affects the quantity and quality of their testimony. Identifying these individuals and catering for their needs is therefore of utmost importance, and the law in various countries allows for special measures for these groups.

In the UK, the 2011 Report by the Ministry of Justice, *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures*, as well as the 2016 Report by the National Police Chiefs' Council (NPCC), *Advice on the Structure of Visually Recorded Witness Interviews*, set out a very comprehensive set of rules on how vulnerable witnesses should be approached throughout the stages of an investigation.<sup>23</sup> These, amongst other things, include the following:

Vulnerable witnesses should be interviewed in more comfortable and less intimidating environments than police stations (such as special interview centers) so as to put them at ease and not create a situation in which they feel extremely anxious or worried.

Registered Intermediaries (RI), communication specialists who help vulnerable witnesses give evidence, should also be available in such cases. RIs are trained professionals (usually with a background in psychology, speech and language therapy, or occupational therapy) who have very often assisted in the collection of testimony that may not have been possible without them. It should however be noted that their role is very specific and they mainly assist the witness communicating with the police officers (during interviews), or with lawyers (during court proceedings). They are not to provide emotional support or bias the witness. Instead, they need to remain impartial, and follow the regulations, codes of conduct and procedural guidelines for RIs involved in criminal court cases.

Furthermore, UK's Professor Ray Bull, who has been a key figure in the drafting of both the government's *Memorandum of Good Practice* and of *Achieving*

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<sup>23</sup> National Police Chiefs' Council (NPCC), *Advice on the Structure of Visually Recorded Witness Interviews* (2016)

*Best Evidence on Video Recorded Interviews with Child Witnesses for Criminal Proceedings* (ABE), highlights the phased approach adopted by the ABE when interviewing vulnerable witnesses. The key features of this approach is the rapport building phase (directly linked to empathy and showing understanding by the part of the interviewer), the free narrative phase (the witness is asked to provide with his/her words the account of events taking all the time she/he needs, the interviewer exhibits active listening), the questioning phase (questions are asked in a simple way avoiding jargon and complex statements, topic hopping is avoided) and the closure phase (answer any questions of the witness, thank him/her for his/her time and effort). According to ABE guidelines, investigators should tailor their interview to the particular needs of the individual they are about to question, and hence, assessment of the interviewee beforehand is a crucial part of the interview's planning and preparation process.<sup>24</sup>

Once in the court, there are a number of procedures in place to make the witness feel less intimidated, such as: screening the witness from the accused, giving evidence via video link, video-recorded evidence in chief, examination of the witness through an intermediary, or asking members of the court to remove wigs and gowns.

## **Interviewing Methods**

### *The PEACE Model of Interviewing*

Models of investigative interviewing can provide positive guidance for the universal protocol on investigative interviewing and associated safeguards and can be applied in a wide range of investigative contexts, including during intelligence and military operations,<sup>25</sup> Juan Munde, 'The UN Special Rapporteur on Torture.

The PEACE Model was developed in the early 1990s as a collaborative effort between experienced police investigators and psychologists in England and Wales. It was designed to train police officers to interview both witnesses and suspects, and is still the basis of all investigative interviewing work.

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<sup>24</sup> Ray Bull, Becky Milne, *Recommendations for Collecting Event Memory Evidence*, in J. Pozzulo, E. Pica and C. Sheahan (Eds.) *Memory and Sexual Misconduct: Psychological Research for Criminal Justice* (Routledge, New York, 2020) Manuscript submitted for publication

<sup>25</sup> Association for the Prevention of Torture, available at: [https://apt.ch/en/news\\_on\\_prevention/good-progress-towards-universal-protocol-on-investigative-interviewing-and-associated-safeguards/](https://apt.ch/en/news_on_prevention/good-progress-towards-universal-protocol-on-investigative-interviewing-and-associated-safeguards/)

Today, it is the most widely used and accepted method of interviewing for victims, witnesses and suspects across the world including, but not limited to, England and Wales, Norway, Australia, New Zealand, and parts of Canada. A mnemonic acronym for planning and preparation, engage and explain, account, closure, and evaluation (PEACE), is a five stage information gathering model, very structured in nature which covers the periods before, during and after an interview.<sup>26</sup> Its aim is to obtain accurate and complete accounts from those being interviewed, using the following stages:

### *Planning and Preparation*

Perhaps one of the most important phases of the model, this stage often paves the way for the successful (or not successful) outcome of the interview. This is why the interviewer needs to think beforehand how the interview will contribute to the investigation. It is very important for all parties to understand the purpose of the interview and to clearly define its aims and objectives. Detailed background information should be obtained regarding the specific case and the person to be interviewed (i.e. witness). The interviewer needs to know well in advance the points which she/he needs to prove or clarify, and possible ways of achieving this. Equally important is assessing what evidence is available and from where it can be obtained. Preparing the mechanics of the interview (stationery, exhibits, location etc.) should also be taken into account.

### *Engage and Explain*

For many experts, this is the most crucial and influential phase of the interview, where the key theme is rapport building. Each interviewee needs to be treated as an individual, with their own needs, fears and expectations; it is a known fact that people will start disclosing information when they feel at ease and not threatened in any way. Hence, the secret often lies on whether a trust relationship will be formed between the two parties. Since interviewing entails the interviewer and interviewee interacting closely with each other, it is only natural that the success of the interview depends heavily on mutual trust and cooperation. Research has shown that rapport building approaches increase correct responses without increasing incorrect information. In addition, the investigators need to explain the format and procedures to be followed throughout the interview, as well as outlining the reason(s) the interviewees have been called in to give their statement.

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<sup>26</sup> Ray Bull, *Investigating the Truth: Selected Works of Ray Bull*, (London: Routledge, 2019)

### *Account*

This is the stage in which the interviewee's recollection of the event(s) in question is obtained, and the aim is to achieve the fullest possible account without interrupting their recounting of events. The investigator can use techniques to encourage the interviewee's attempt to recall (i.e. Cognitive Interviewing), and when necessary they can expand on and clarify the witnesses' account. Research has shown that open ended questions do, indeed, achieve the best quality and greatest amount of information. If required, the interviewer can use other evidence in order to challenge any weaknesses or inconsistencies in the account given as well as exploring possible reasons for such inconsistencies. It is a good idea that the interviewer summarises and recounts what the witness has said at each stage so that both parties have an agreed understanding of what has taken place.

### *Closure*

During this stage it is very important that all involved parties understand what has happened in the interview as well as what will follow in the future. It is imperative to give the interviewee the chance to add on what they have already said or ask any questions they might have regarding the procedure. In addition, the investigator needs to ensure that all preplanned themes have been covered; if not, they can always go back to the account phase and either ask more questions or expand on the responses already being given. The closing phase is as important as any other of the models' phases, and therefore it has to be ensured that nothing is rushed.

### *Evaluation*

At this final stage, the interview and all material that came from it should be evaluated fully. Investigators need to consider whether the aims and objectives of the interview have been achieved. Following that, decisions must be made about whether a further interview is required or whether other lines of inquiry need to be pursued. In addition, it can also be determined how the interviewee's account fits in with the rest of the investigation's available evidence (i.e. other witnesses' statements, crime scene evidence etc.). Last but not least, evaluation helps investigators to improve their interviewing skills, and hence reflect on possible improvements for the future.

It is important to note that the interviewer's own social, communication and personality skills are very important for a successful application (and eventual outcome) of the proposed information gathering model. The following traits are significant in the interviewer: the open-mindedness of the interviewer (not starting from

a pre-determined position, how willing the interviewer is to listen to the witness), the attitude of the interviewer towards the witness (particularly important in the case of informants), and the interviewer's flexibility (the need to be interviewer, confidant and counsellor at the same time, how able the interviewer is to change his/her attitude to suit the witness' behaviour / attitude). The interviewer should also be able to express any ideas and/or pose questions to the witness in an appropriate way, as well as being responsive to the needs of the witness.<sup>27</sup>

'The detectives know inherently that without rapport you will not get much information and subsequently research has shown their judgment was right. Only when you have established rapport and are talking meaningfully do you then begin to focus on getting an account relevant to the investigation; so you have planned, you have engaged, you then get an account',<sup>28</sup> Professor Ray Bull.

According to the UK College of Policing, witnesses should be interviewed in accordance with the PEACE model: 'Interviewers must treat all witnesses with sensitivity, impartiality and respect for their culture and rights, while maintaining an investigative approach.'

### *The Cognitive Interview*

'Standardised and evidence based interview practice means that the police are less likely to see their evidence challenged in court. Judges and juries are better able to reach the correct verdict as a result of more reliable evidence and suspects are less likely to be wrongly accused. Overall it means we can all have greater confidence in the fairness and effectiveness of criminal justice',<sup>29</sup> Professor Amina Memon.

Interviewing is the major fact-finding tool law enforcement uses to obtain information, reliably establish the facts, and up to a certain degree, ascertain the veracity of statements. The interviewer seeks to obtain the interviewee's recollection of the events with the aim of being given the fullest possible account. Research in police interviews had, over the years, identified a number of problems relating to the interviewee accounts; often, they contained information, which was incomplete, at times they were hesitant or inconsistent, and the person (i.e. witness) would often

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<sup>27</sup> David Walsh, Ray Bull, *The Association Between Interview Skills, Questioning and Evidence Disclosure Strategies, and Interview Outcomes* (2015), 21, 661-680, *Psychology, Crime and Law*

<sup>28</sup> The Psychologist (BPS), *United Nations may Recommend PEACE Approach*, (2016) 29, p. 896-901

<sup>29</sup> Economic and Social Research Council (ESCR), *Protecting Vulnerable Witnesses*, June 2017



say what they thought the interviewer wanted to hear. Thus, there was a pressing need for a reliable investigative interview procedure.

To assist memory recollection as well as enhancing the quality of witnesses' and victims' reports, the Cognitive Interview (CI) was developed by Fisher and Geiselman.<sup>30</sup> The theoretical basis for the CI model was extensive memory research on two important principles: first, there are several retrieval paths to memory for an event, and hence, if information is not recovered via one type of retrieval cue/technique, it may be accessible with another technique.

Second, is the encoding specificity principle which states that memory is improved when information available at encoding is also available at retrieval; thus, recall of an event is maximised when the retrieval conditions (such as context) duplicate the conditions that were present when the memory was originally formed.

The CI consists of four individual techniques which are described below:<sup>31</sup>

#### *Context Reinstatement*

The mental reinstatement of context consists of asking the witnesses to mentally recreate the event in question, and their physiological, cognitive and emotional state at the time of the crime. The investigator asks interviewees to reconstruct in their minds the context, both physical (features of the surrounding environment) and personal (for example how they felt or what they were thinking at the time) features of the event.

For example: 'I want you to close your eyes and think back to that day. Think about what you saw, what you heard, and how you were feeling. Take your time and when you are ready tell me everything you remember at your own pace.'

#### *Report Everything*

The witness is asked to report everything remembered about the incident and all surrounding circumstances. The investigator has to make it clear that no matter how small the details or unimportant they may seem, they need to be reported. For example: 'I need you to tell me everything that you remember, even if it seems unimportant, or if you only remember fractions of it. Every little piece of information could help us'. Hence, everything that comes into the interviewee's mind needs to

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<sup>30</sup> Edward Geiselman, Ronald Fisher, *Interviewing Victims and Witnesses of Crime*, 1985, National Institute Justice Research Brief

<sup>31</sup> Ronald Fisher, Edward Geiselman, *Memory-Enhancing Techniques for Investigative Interviewing: The Cognitive Interview*. (Charles C Thomas, Publisher, 1992)

be conveyed, because even the smallest or seemingly irrelevant information can make a difference and become a crucial part of the investigation.

### *Change Order*

The witness is asked to recall the events in a variety of chronological sequences, such as from beginning to end, reverse order, forward or backwards from particular points. They can make a number of retrieval attempts from different starting points in their account. The interviewer could say, for example, ‘Let us start from the last thing you remember’ or ‘I would now like you to tell me again about the event but this time backwards’.

### *Change Perspective*

The witness is now asked to consider the event from a different perspective, from the point of view of someone else who was present at the scene. The investigator asks the witness to put themselves in the shoes of another person who was also present at the incident in question, for example: ‘We are going to try another technique which may help your memory, but do not guess at the information, just report what you saw. Go through the event again, but this time in the shoes of {...}, think about where she/he was’.

### *Enhanced Cognitive Interview (ECI)*

The CI has been the subject of extensive research, and is used by many law enforcement organisations worldwide for the interviewing of cooperative interviewees, mainly witnesses and victims. Over time, improvements to the model were made, resulting in the development of the Enhanced Cognitive Interview (ECI)<sup>32</sup>. The ECI includes procedures to develop rapport, put the interviewee at ease and allow the interviewee to provide an uninterrupted narrative of their experience before various aspects are clarified by the interviewing officer. It involves nine phases, each of them contributing to the success of the whole interview, these are listed below:

#### *Phase 1: Greet and Rapport*

At this opening phase of the interview, interviewers should introduce themselves and set an informal tone, where the witness will feel comfortable and at ease. Em-

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<sup>32</sup> Paulo Rui, Pedro Albuquerque, Ray Bull, *The Enhanced Cognitive Interview: Expressions of Uncertainty, Motivation and its Relation with Report Accuracy*, (2015), 22 (4), *Psychology. Crime and Law*, p.1-31

pathy should be shown (throughout the interview) and rapport building with the interviewee is of utmost importance.

*Phase 2: Explain the Aims of the Interview*

Focused retrieval and transfer control of the interview to the interviewee. The interviewee has to be reminded that she/he needs to take his/her own time, to concentrate hard and report everything, but avoid any guessing or fabrications.

*Phase 3: Initiate a Free Report*

Context reinstatement and uninterrupted free report of the witness' account of events. Open ended questions can be used and non verbal behavior can be also observed.

*Phase 4: Questioning*

The interviewer can now ask questions based on the witness' free account at the previous stage. The report everything principle should be repeated here, and the interviewee should be reminded that it is absolutely fine if they do not remember something or if they are not able to know the answer to a specific question.

It is important to use interviewee/witness compatible questioning, which means that the questions asked should be based on the order that the witness remembered the event and not based on predetermined questions drafted by the interviewer.

*Phase 5: Varied and Extensive Retrieval*

The reverse order recall as well as the change perspective technique are used here. The interviewer should take the time to explain the reason(s) for using such techniques, as they might, at first, seem, confusing to the witness. In addition, focusing on different senses, i.e. sound or smell, could also help with retrieval, and depending on the individual cases they could be used accordingly.

*Phase 6: Investigative Important Questions*

This stage was introduced by Rebecca Milne<sup>33</sup> because it was recognised that it may be necessary during the interview to introduce information that is important to the investigation but has not already been mentioned by the interviewee. The reason these questions and/or information are introduced at this later stage, is mainly to

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<sup>33</sup> Rebecca Milne, *The Enhanced Cognitive Interview - a Step-by Step Guide*. Unpublished Training Manual

avoid leading the witnesses, as well as allowing them enough time and space (beforehand) to provide whatever information they think they have.

*Phase 7: Summary*

Near the conclusion of the interview process the investigator should summarise what has been reported by the witness and inform them that they can add or correct where needed.

*Phase 8: Closure*

It is important to close the interview in a positive mood and leave the witness with an optimistic impression. The interviewer should gradually return to more neutral, rapport building topics, and thank the witness for his/her cooperation and patience. Any questions the witness may have can be addressed here, as well informing them about any future procedures.

*Phase 9: Evaluation*

It is always useful and constructive for interviewers to revisit the interviews and examine, amongst other things, whether the set scopes have been achieved, and how the information obtained fits in with other relevant evidence on the case. In addition, they can evaluate their performance, see what they did well, if the used techniques worked, what did not work and why, etc. This final stage of ECI also highlights the importance of recording all investigative interviews, as it is the only way one can go back and revisit what the specific witness/suspect/victim has said.

A large number of lab-based studies and a smaller number of studies involving use of the CI in police forces have shown that, compared to standard interviews, the CI does increase the amount of information gathered. It has to be noted, however, that the effectiveness of the CI depends heavily on adherence to procedures and training. In practice, it is more often the case that police officers only use certain parts of the cognitive interview such as establishing rapport, report everything, witness compatible questioning, and context reinstatement. It is certainly a specialised technique which requires skills (acquired through training) and time, and this could be one of the reasons police officers do not always use the method in its full form. Perhaps, the real challenge would be to successfully transfer these skills and techniques into the field.

## Conclusion

Currently, most investigative interviews are conducted by practitioners whose guidance comes mainly from hands-on experience, with minimal formal training on the subject. Scholars argue that researchers (such as cognitive and social psychologists) can contribute to the process, mainly by developing new theoretically informed methods of interviewing.<sup>34</sup>

It is important to note that investigative interviewing techniques, such as the PEACE model and the CI should not be seen as a magic wands or a recipe with a fixed set of questions and instructions, but rather as a toolbox of techniques, some of which will be used in any specific interview. Furthermore, many of these techniques will have to be adapted to meet the demands of the specific interview, as each interviewee is different and so are his/her needs.

Each witness and situation will call for a slightly different approach for conducting an investigative interview, and thus it requires learning and practice to ensure that high standards are achieved and maintained.

Of course collaboration between scientists and practitioners benefits both disciplines and our understanding of investigative interviewing at large, as both bring unique perspectives to the task of interviewing witnesses.

Police and researchers are increasingly working in partnership to produce evidence-based techniques. In most cases practitioners and academics agree on what constitutes best practices, but field studies of police interviews (especially where the officers have not received any training, supervision, or feedback) have shown that most real-life interviews still contain many undesirable practices.<sup>35</sup>

Hence, one can appreciate the important role of specialised training, as it is an integral part of ensuring effective law enforcement and focused investigation procedures. Sometimes the training to interview witnesses is overlooked and suspect interviewing receives much more attention (training wise), but the last few years this has started to change and the need for productive interviewers is recognised as critical to society in general. Relevant research has indeed revealed that trained

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<sup>34</sup> Aldert Vrij, Lorraine Hope, Ronald Fisher, Eliciting Reliable Information in Investigative Interviews, (2014) 1 (1) Policy Insights from the Behavioral and Brain Sciences, p. 129-136

<sup>35</sup> Peter Molinaro et al., *Train-the-Trainer: Methodology to Learn the Cognitive Interview*, (2019), 16 (1), Journal of Investigative Psychology and Offender Profiling, p. 32-43

interviewers used more desirable practices than their untrained counterparts, and so the outcome of those interviews can only be more productive.

The guidelines and training products in some countries (i.e. the UK)<sup>36</sup> make it clear that, for interviewing skills to grow and improve, interviewers need to receive training at the appropriate level, accompanied by regular feedback on real life interviews, and supervisors need to be trained to provide that ongoing feedback. Similar practices and guidelines could be adopted in Cyprus. The training of police officers on investigative interviewing and its application in real life interviews should be followed up and supervised accordingly. The development of a specialised manual, such as a Memorandum of Good Practice on how to conduct investigative interviews (with witnesses, suspects and victims) could set out standard operating procedures (SOP's) to be followed. In the cases of witnesses, this would cover all phases of the investigation, from identifying and contacting the witness, to developing and implementing a witness interview strategy, as well as establishing a set of guidelines on how to approach reluctant, significant or hostile witnesses and how to provide witness support and preparation before and during the trial.

In addition, the recording of police interviews is also a significant issue. It is widely acknowledged that recording the interview on audio or video media has many important advantages for the police. While notes will need to be taken during the interview (ideally by a second interviewer and not the lead interviewer), their purpose is to enable a structured approach to seeking clarification on issues arising from or challenging the interviewee's account during questioning. The interviewer cannot take a complete record and will also have their attention partly on what the suspect continues to say and how they are behaving.

Furthermore, an electronic record provides verbatim evidence of what is said and cannot be disputed. It allows the interviewer to concentrate more on actively listening to the witness' or suspect's account and encouraging disclosure. The recording itself can later be reviewed by officers and may help identify points initially missed in the interview and that need to be followed up.

The recording not only clarifies any dispute, it also provides a level of protection for police officers regarding the conduct of the interview, as it may furnish the evi-

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<sup>36</sup> Ministry of Justice (UK), *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures*, March 2011

dence necessary to refute any malicious or unfounded allegations of abuse',<sup>37</sup> stated by Michael Boyle, Jean Claude Vullierme.

This is another recommendation that Cyprus could adopt, and even though there are legislation issues (in regards to the recording of the interviews), this is considered best practice in many countries and the benefits do outweigh the limitations. At the moment the testimonies of children are being video recorded, but perhaps, it should also be considered for the cases of adults (significant witnesses and suspects).

Another point equally important to stress is how the identity parades / lineups are taking place. Research has shown that it is not a good idea to place the witness in direct contact with the suspect, as it can cause high levels of stress and anxiety to the witness. Ideally, the witness must view the identification parade from behind a one way mirror to avoid subsequent victimisation by the identified person. Even though there are other forms of identity parade, such as videos or photographs of suspects, it is the identification where suspects are physically present that has proven to demonstrate improved identification.

Finally, police should remember that being a witness is not always an easy task, and sometimes the personal costs can be significant. As Ord, Shaw and Green state,<sup>38</sup> 'Witnesses may have to give up a significant amount of their personal time by being interviewed and providing a witness statement. They may later be required to attend a court or tribunal, often in such circumstances in which they may feel they have been given less consideration than the accused. Witnesses may also have to: confront the accused person; give evidence in the presence of the offender's relatives and supporters; face the accused, his/her friends or family after the proceedings are complete; feel responsible for any subsequent punishment of the alleged offender'. Witnesses need to feel supported and protected; their role is indispensable in the justice system and their testimonies often form the cornerstone to many criminal investigations.

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<sup>37</sup> Michael Boyle, Jean Claude Vullierme, *A Brief Introduction to Investigative Interviewing: a Practitioner's Guide*, Council of Europe (October 2018, p. 17)

<sup>38</sup> Tracey Green, Brian Ord, Gary Shaw, *Investigative Interviewing Explained*, (LexisNexis Butterworths: Australia, 2004, p.56)

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