

An Investigation into the nature of witness statement error - A Thematic Study

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### Abstract

The way in which eyewitness testimony is reported and then recorded by a police officer during a criminal investigation, has seen proneness to distortion, contradiction and even omission. For a long time eyewitness testimony has relied on handwritten statements taken by a police officer. This study illustrates which aspects of the eyewitnesses account are changed during the statement taking process, and how. Such practices have received very little criticism from the judiciary, despite there being a plethora of psychological research on the subject, there has been very little change to the way eyewitness testimony is recorded. When a police officer takes a statement from an eyewitness, information can be distorted, subject to contradiction or even lost, this information could be crucial evidentially in a criminal trial. This study has analysed ten real-life police witness statements, handwritten by police officers during interview, and concurrently audio recorded by the researcher, in order to investigate errors which occur. This enables us to understand how the statement can change from being the eyewitnesses account to the police officers account, and how statements are subject to errors and omissions of information.

*Keywords:* eyewitness testimony, criminal investigation, statements, erroneous reporting

Police investigations in the UK involve a multi faceted approach to obtaining evidence. The onus on the prosecution to gather evidence has relied heavily on eyewitness testimony. The hierarchy of evidence often starts with a victim or witness account of what they observed, or experienced being high on the priority list (Ginet and Verkampt, 2007; Wells, Memon and Penrod, 2006). The acceptance by a court that the statement taken from an eyewitness is a true and accurate account has seldom been challenged (Wolchover & Heaton-Armstrong, 1992), police officers interview techniques however are often questionable (Baldwin, 1993).

There have been many studies investigating the nature of witness statement error and false testimony (Ginet & Verkampt, 2007; Lindholm, 2008; Milne & Bull, 1999; Wolchover & Heaton-Armstrong, 1992). It was towards the end of the 1970s that psychologists began to conduct programmatic experiments, aimed at understanding the extent of error, and the variables that govern error when eyewitnesses give accounts of crimes they have witnessed. Many of the experiments conducted in the late 1970s and throughout the 1980s, resulted in articles by psychologists that contained strong warnings to the legal system, that eyewitness evidence was being overvalued by the justice system, in the sense that its impact on juries exceeded its probative (legal-proof) value (Wells, Memon & Penrod, 2006).

Wells (1978) suggests that some eyewitness testimony research can be thought of as concerning basic theoretical issues in perception, learning and memory. Many studies conducted by Loftus and Palmer (1974) support these assertions. Memory can be constructed and interviewees are; "the victims of their own reconstructive processes", (Milne & Bull, 1999 p.92), which may be triggered externally by post incident information and/or internally. Examples of internal mechanisms included the use of inferences (Milne & Bull, 1999). This research has taken the scientific approach, investigating some of the reasons why eyewitness testimony can be unreliable, and has considered some of the ways that accuracy might be improved. Classic studies by Loftus and Palmer (1974), served as a catalyst for numerous other studies examining the effects of post incident information.

There appears to be much controversy regarding the underlying processes which cause this effect. A large amount of these studies have found that, after receiving post incident information, some interviewees make errors when they are subsequently expected to recall the original event (Milne & Bull, 1999). The confidence some participants report erroneously, has baffled some psychologists (Lindsay, 1994), leading them to research further causal mechanisms underlying erroneous reports. Some authors have argued (Zaragoza and Koshminder, 1989), that erroneous reporting does not necessarily mean that the incorrectly reported details, are now part of the memory of the original event. Instead, these authors aver that the misinformation effect occurs as a result of demand characteristics, these could

be factors inherent at the police station when a witness attends to be interviewed, or social pressure. It is important to point out at this juncture that regardless of the nature of the misinformation effect, such effects do exist and affect what a witness remembers, and the accuracy of his or her testimony (Karpadis, 1997 cited in Milne & Bull, 1999).

One possible reason that eyewitnesses recall events inaccurately, is that memory is distorted or reconstructed by the individuals prior knowledge and expectations (Bartlett, 1932). This creates acts of omission, commission and confabulation. Bartlett (1932), argued that people do not record memories passively, as we might if we were taking a photograph. Bartlett (1932) believed that we need to make what he called 'effort after meaning', in order to make more sense of the event. In effect what happens is that instead of storing an exact replica of the initial stimulus, we weave it with elements of our existing knowledge and experiences to form a reconstructed memory representation.

The research conducted by Bartlett (1932), investigated how people recall stories, pictures or faces. In his best known study 'the war of the ghosts', Bartlett read English participants folklore derived from Red Indian culture. This was an unusual story for participants from a Western culture to understand, as it contained unfamiliar supernatural concepts and an odd causal structure. After an interval, participants were asked to recall as much of the story as possible. What Bartlett (1932) found, was that their accounts were distorted in several

ways, that generally made them more consistent with a world view.

Interestingly, what Bartlett (1932) found in his experiments seems to exist some eighty years on.

Bartlett (1932) specifically found that people *rationalise* and include new material or added justifications for their actions, which were not in the original. Certain elements were left out, and these *omissions* applied in particular to those elements which were hardest for Westerners to comprehend. Events were sometimes reordered to make the story more coherent, and he referred to this as *change of order*. He also noticed that certain themes were given more prominence than in the original story, which he referred to as *alterations in importance*. Finally what Bartlett (1932) found, was that people can display what he termed *distortions of emotions* where they incorporate their own feelings and attitudes towards the story.

Research has shown that it is more a case of the way that witnesses are interviewed, rather than what they are able to report, that can have a profound impact on the completeness and accuracy of witness evidence (Kebbell & Daniels, 2006 p.267). Akin to this, is that the research that has been conducted over the last four decades, has checked the validity of eyewitness reports, which depends a great deal on the procedures that are used to obtain those reports, and found that the legal system was not using the best procedures. As a result of what has been found in studies, psychologists have tried to develop

several interview techniques with the aim of enhancing eyewitness recall (Ginet and Verkampt, 2007).

Few studies have considered a thematic approach to analysing witness statements, handwritten by police officers as part of criminal investigations from real life cases, and have heavily relied on simulation exercises. With role players acting out the various roles one would typically find in criminal acts. This may be because police forces are often protective about their practices, and are reluctant to allow science to creep into its domain, perhaps ignorant to the fact that a number of psychologists have already contributed to policing practices. Some examples being the Enhanced Cognitive Interview (Fisher and Geiselman, 1992), or the work of Elizabeth Loftus well known to US jurisdictions for her contribution to eyewitness testimony, and how human error occurs during the process of evidence gathering by police officers (Loftus 1975; Loftus & Zanni, 1975).

Testimony from an eyewitness is often incomplete and inaccurate (Cutler & Penrod, 1995; Memon, Virj, & Bull, 1998). The cause of information that is reported and recorded incorrectly, can be the result of many flaws that can be identified during the process of statement taking, conducted by a police officer. There have been many miscarriages of justice (Milne & Bull 1999, Macpherson enquiry, 1999), which have led to controlled measures, such as the guidance provided in the Police and Criminal Evidence Act 1984 (PACE 1984), which



governs the way suspects are dealt with. As well as the Youth Justice and Criminal Evidence Act 1999 (YJCE, 1999), which provides special measures in order to achieve best evidence from victims and witnesses of crime, who are considered by the police to be vulnerable and/or intimidated. These measures are monitored by the judiciary and where abuses of process are obvious, they are often dealt with by the courts. Police officers who are trained to conduct interviews with vulnerable child or adult witnesses, receive enhanced interview training. Which considers psychological concepts such as questioning styles, for example the use of open-ended questions which produce longer and richer responses (Sternberg, Lamb, Hershkowitz, Esplin, Redlich & Sunshine, 1996).

Notwithstanding, there appears to have been very little research studying the process of police interviews, with victims and witnesses of crime who are routinely interviewed by police officers. This includes those witnesses who are not provided with special measures or dealt with by specialist interviewers. There are a variety of procedures, which are in place for some victims and witnesses of crime, for example; YJCE 1999, which allows investigators to use special measures during interviews, and subsequently in court utilising further special measures, aimed at achieving best evidence from the victim or witness (Home Office, 2007). These special measures (for example a video link from a private location to the court), often remove the burden of putting pressure on witnesses, where ordinarily they are required to present their evidence in open court.

The current practice of taking eyewitness (or victim) testimony, (for the purposes of this research, eyewitnesses and actual victims of crime, are referred to throughout as witnesses), is by way of a one to one interview with a police officer. All police officers receive basic interviewer training, which they receive early on in their policing careers. Commonly known as the PEACE course; Planning and Preparation, Engage and Explain, Account, Closure and Evaluation. The PEACE course is delivered nationally to all Police Officers as a basic guide to interviewing, not only suspects, but also witnesses and victims of a crime. It is a week long course designed to equip a police officer with the skills and ability to interview eyewitnesses, covering some of the basic interviewing skills such as; questioning style and conversation management.

Although there has been little in the way of developing the PEACE course to bring it up to date, the introduction of the Enhanced Cognitive Interview (ECI) course to some of the 43 police forces in England and Wales offered a new approach to interviewing eyewitnesses. Cognitive Psychologists Ron Fisher and Ed Geiselman (1992) started to see the benefits of using psychological approaches, appropriate to, and suitable for investigators dealing with eyewitnesses. Without advances in the way police officers interview, and like any specialist role the trained individual is subject to skill fade, unless of course the trained individuals are kept abreast of investigative practices and updates.

PACE (1984) scarcely considers eyewitnesses or victims of crime, mainly due to other legislation governing police practices for interviewing witnesses and victims of a crime. The protection measures afforded to eyewitnesses comes from other legislation, such as; protection from harassment and witness intimidation.

There are also additional measures for those victims or witnesses who are deemed 'significant' in a criminal trial for example; a witness to a homicide (Murder Investigation Manual, ACPO, 2006). In both cases, interviewing often involves the very minimum of a tape recording of the interview, which is later transcribed by employed transcribers, in some cases interviews may involve the use of both audio and video recording. However, those victims or witnesses who do not fulfil special measures criteria, are subjected to a statement taking process whereby their statement is taken from an investigator (e.g. uniformed police officers and detectives). These investigators receive training to not only take witness statements, but also to conduct suspect interviews.

For some time there has been somewhat of an imbalance in the criminal justice system, in relation to the way victim and witness statements are obtained by police officers (Wells, Memon & Penrod, 2006). The Police and Criminal Evidence Act 1984 (PACE), stipulates procedures for interviewing suspects, but fails to apply similar rights to witnesses. In press at the moment, is a similar study to this one being conducted by Psychologists from Portsmouth University,

entitled 'The Fallibility of Real-Life Witness Statements' (Newell, Williams, Milne & Hope, in press). Wolchover and Heaton-Armstrong (1992 p.2), have observed that; "often statements turn out to bear all the hallmarks of being doctored versions of what the witness supposedly dictated".

In criminal law, there is a requirement that victims and witnesses are afforded rights and entitlements, seen in examples set out above. Some of these rights and entitlements tend to apply post interview, in the form of victim support and witness protection or protection from harassment. At the point of interviewing, and understandably, suspects are afforded more protection from improper practices than most, such as unfair interviewing. Equally it would not be unreasonable to afford victims or witnesses similar rights, when it comes to interviewing. Also, it is possible that additional information could be added unwittingly by the statement taker (Milne & Bull, 1999; Wolchover & Heaton-Armstrong, 1992), this generates some serious concerns in the production of evidence destined for criminal trials. Importantly, since the change in legislation to the code of practice for disclosure (Disclosure Manual 2005). Police investigators are now duty bound to take witness statements from witnesses acting for the defence, a practice which prior to the changes was conducted by defence solicitors.

Therefore, it was intended that this research investigates the way in which information recorded by police officers, in the form of eyewitness testimony,

withstands potential criticism by the judiciary, and that the very least eyewitness testimony is reliable. There are currently very few studies in the UK, which assess the veracity of witness statements taken by police officers. This type of research lends itself to analysing whether the statement is actually a true and accurate record of what a witness experienced. Therefore, this research also analysed how the information that a victim or witness in a criminal trial provides, is true and accurate to the best of their belief, and that the processes used to elicit such detail are reliable.

It is suggested that there may be flaws in the accuracy of information obtained by a police officer, who conducts a witness interview using only pens and paper, (Wolchover & Heaton-Armstrong, 1992). The current form used for taking victim or witness statements is entered on a MG11. On this form there is a caption, which states that the information being provided by that person, is a true and accurate record held in all honesty and belief. Commonly known amongst the courts as a section 9 statement, this is standard throughout England and Wales. Invariably they exclude the police officers questions, which may be leading and influential. For those victims or witnesses who are deemed either vulnerable or intimidated, or significant, additional material including audio and video recording equipment, would be used.

What this research set out to do, was to identify the nature of witness statement error, that may arise as a result of one to one interviews with a police officer,

and a witness or victim of a crime. Then to study any variances in what was said by the witness or victim during the statement taking process. Often a witnesses memory is tested in situations where police require evidential material, in the form of eyewitness testimony. Therefore, it would not be unreasonable to suggest that the police are testing the witnesses memory, and that most police officers are not trained in proper techniques, designed to elicit as much information as possible from an eyewitness, in order to offer accurate evidential material in criminal trials.

Making all due allowance for the frailty of human memory, it is almost a banality to state that the most effective method of testing the veracity, accuracy and reliability of an eyewitness, is by comparing their testimony in court, with what they have said about the incident on previous occasions. Eyewitnesses who provide statements to police officers, will usually be describing an incident which was completely out of their normal experience, graphically embossed on their memory. It is suggested that whilst details may become fuzzy over time (Wolchover & Heaton-Armstrong, 1992), the essentials may be expected to remain constant. The usefulness of memory aids used appropriately by properly trained investigators, cannot be underestimated. An example of such techniques designed for aiding memory recall, and used by some investigators, can be found in the Cognitive Interview model by Fisher and Geiselman (1992).

This model was later developed into the Enhanced Cognitive Interview (ECI). As well as this relatively new approach to police interviewing, another new development was beginning to take shape amongst police forces in England and Wales. This consisted of a five tier system approach to interviewing (Griffiths, 2008), based upon the level a police officer attains, determines the types of interviews they can conduct, apart from the routine victim, witness and suspect interviews.

Fisher and Gieselman (1992), are well known for their approach to interviewing using the Enhanced Cognitive Interview, such techniques are useful in utilising psychologically based techniques, which have been designed to exhaust ones memory in order to extract all stored relevant information. During the last 10 years, the ECI has been introduced to West Midlands Police force Investigative Training department, facilitated by the researcher, and with the invaluable support from Rebecca Milne, a psychologist from the Institute of Criminal Justice Studies at Portsmouth University. The techniques introduced to police witness interviewers were met with some reserved enthusiasm, despite this, once enlightened police officers began to see the benefits of using such useful techniques.

During a police investigation, the need to gather evidence often relies on credible eyewitness testimony. Sanders (1986), (cited in Milne & Bull, 1999 p.1) had asked police officers in New York: "What is the central and most important

feature of criminal investigations?" The majority replied "Witnesses". This evidence is often provided by a victim or witness who are encouraged to provide a detailed account of what they observed or experienced. This is not always so, with requests from officers to a witness to provide 'a quick statement', or 'a few lines' suggests that the witnesses account may not be as detailed as it could be. A question that was consistently asked by the researcher during this study was, "actually, who's statement is it, the witnesses or the officers?". This research which considers the importance of such statements, benefits from ecological validity, as the statements that have been analysed were provided by 'real life' victims and witnesses of crime.

Research conducted in the UK by Kebbell and Milne (1998), asked 159 serving police officers for their perceptions of witness performance during police investigations. The results suggested that witnesses were perceived usually to provide the central leads in criminal investigations. They conclude that the critical component of effective law enforcement, is the ability of police officers to obtain accurate and detailed information from witnesses. It has been noted from some commentators on eyewitness testimony, that witness reports can be incomplete and susceptible to errors, (Loftus, 1974). Despite the limited amount of 'real life' research, studying the process of police interviews with victims and witnesses of crime, Milne and Bull (1999) identify that police officers themselves have noted the importance of interviews, with both suspects and witnesses. Placing such interviews in the top four of the most frequently conducted tasks in day to day policing.



Furthermore, Milne and Bull (1999 p.2) identify that;

police officers believed that their three most important investigative duties were taking statements, interviewing witnesses and interviewing suspects, the last of these being the most significant.

Without the appropriate specialised training, a number of psychologists have attempted to define a typical police interview with "real" witnesses (Milne & Bull, 1999 p.2). Two studies in particular stand out as being significant in the development of police interviews with witnesses. One study by Fisher, Geiselman and Raymond (1987) and the other conducted in the UK by George (1991), examined tape recorded interviews covering a wide range of crime scenarios, which were conducted by experienced detectives with the average length of service being 10.5 years.

They had identified some commonalities in the absence of standardised interview training, typically that the interviewer, following formal introductions appropriately requested a free narrative from the interviewee. However, this 'free narrative' was on average, interrupted after only 7.5 seconds. Suggesting that a free narrative recall of an event from an interviewee, elicits a substantial proportion of the total correct information gained from the interview (Lipton, 1977; Stone & DeLuca, 1980, cited in Milne and Bull 1999). Milne and Bull (1999), point out that interruption of free recall is not good interviewing.

Witness statements form part of a criminal prosecution case and are perhaps the most important piece of prima facie evidence. Therefore, it goes without saying, that the originality of such evidence should be captured in such a way, as to prevent the loss of crucial information where possibly. Save for the practice of audio and sometimes a combined audio and video recording, police officers are entrusted to conduct a proper and thorough investigation. Despite many suggestions for the advancement of such practices (Milne & Bull, 1999), there seems to be very little progress in law enforcement, and the criminal justice system, to provide a more reliable and detailed process for presenting eyewitness testimony. A significant amount of training has been provided for police officers conducting interviews, since the days of the PEACE training package. The PEACE package started its auspicious journey amongst police forces in the early 1990's.

To date there has been little change to the original PEACE training package, which again tended to focus more on suspect interviewing. George (1991) (cited in Milne & Bull, 1999 p.5), suggests that there exists a limited amount of knowledge relating to the way in which British police officers in particular, actually interview victims and witnesses. George (1991) conducted a study of police officers with at least five years service, and whose duties included interviewing witnesses and victims. All interviewers tape-recorded three witness interviews, one of which was randomly selected for analysis. What George (1991) found was that there appeared to be a common witness interviewing

approach, by the officers regarding both content and the conduct of the interview.

Interestingly George (1991), revealed that there were more leading questions than closed questions, pauses were almost non-existent. Importantly Clifford and George (1996) found that these officers were neither interviewing appropriately, nor obtaining the maximum information available from the witnesses. It is quite clear in this respect, that whilst suspects have been the focus of changing preferred interviewing techniques, following research and development, the conduct of the witness interview has not been given the appropriate attention.

Since 1986, suspect interviews have been recorded by audio tape, with some exceptions, where either they may be contemporaneous style interviews, where it is impracticable to conduct an interview at a police station custody area, or due to recording equipment failing (Home Office, 2010), which is a rare occurrence. On the other hand, in more serious cases, suspect interviews can be audio and video recorded. Therefore, compared to a victim of a serious assault for example, they get a fairer deal when it comes to obtaining and recording information. Sear and Stephenson (1997) attempted to relate individual differences among police officers', to the interviewing behaviours of the officers. They found few relationships between officers' overall interviewing skill score (demonstrated in interviews with suspects) and personality measures

of dominance, agreeableness, conscientiousness, neuroticism and openness. They suggested that one reason for this was the similarity in personality among the officers who exhibited a cold, calculating and dominating approach to others.

This study aims to identify whether crucial information is distorted, omitted or changed in some way from the original report made by a witness, which is then recorded by a police officer, which could be crucial in a criminal trial. The ecological validity of any study, in particular this one, should not be underestimated. It's importance is supported by the naturalistic observations that took place during this research, and conducted during the statement taking process. This study has considered a number of important factors crucial to the evidence gathering process, conducted by investigators.

## Method

### Design

Most police witness statements produced in the UK have avoided criticism following criminal trials (Wolchover & Heaton-Armstrong, 1992). In view of the attempts made by psychologists researching the fallibility of eyewitness testimony in criminal investigations (Newell, Williams, Milne & Hope, in press), it may be that the reasons for the limited available literature on this topic, have been as a result of obstructions put in the way of researchers by police forces. In respect of such ethical issues as; consent and appropriate authority, as well as possible underlying issues such as; 'outsiders' not being privy to such sensitive material, or even access to conduct appropriate research. Where literature does exist it has noted some important points, for example information may be 'lost' during statement taking (Wolchover & Heaton-Armstrong, 1992; Rock, 2001). This is vitally important in the context of gathering evidence from witnesses for the purposes of conducting thorough investigations.

Although the researcher considered embarking on a qualitative research approach, the distinction between quantitative and qualitative research can be misleading. Denzin and Lincoln, (1998) (as cited in Rudestam & Newton, 2001 p.36) assert that;

Qualitative researchers do not possess a distinct set of methods that are all their own. They can make use of interviews, hermeneutic inquiry, survey research, participant observation, even statistics.

Of particular relevance and importance with this research, is that it focuses directly on eyewitness statements taken by serving police officers, provided by victims or witnesses, who have been subjected to, or whom have witnessed criminal acts.

A qualitative approach has been adopted following careful consideration and from the suggestions made by some authors. Rudestam and Newton (2001 p.36) assert that;

according to Polkinghorne (1991), qualitative methods are especially useful in the 'generation of categories for understanding human phenomena and the investigation of the interpretation and meaning that people give to events they experience.

A number of interviews were observed and recorded in a naturalistic setting. In this study the researcher looked for themes in the statements taken by police officers, compared to the recorded transcript, produced from the same interview. Braun and Clarke (2006) have provided a useful outline to conducting a thematic analysis, and this approach was chosen by the researcher. The analysis was not a linear process simply moving from one phase to the next, instead it became apparent that the researcher had embarked on a recursive process moving back and forth throughout the analysis. This study set out to establish errors and omissions by coding detail contained within the written statement taken by the police officer, and the differences that may be found

within the transcribed recording from the same interview. A thematic analysis was selected for the present study as this approach offers flexibility as one of its benefits (Braun & Clarke, 2006). The researcher needed to engage with the literature prior to analysis, therefore a theoretical approach was deemed suitable for this study.

### Participants

Of the 15 interviews that were arranged by the researcher, 10 were conducted. 3 witnesses refused to take part in the research and 2 witnesses failed to make prearranged appointments. There were  $N = 20$  participants in this study consisting of an eyewitness, providing their statement to a trained police officer, interviewing, recording and writing the witness statement. The witnesses were all consenting adults, and the police officers were also asked for their consent to take part in the study. They were briefed (Appendix B) and debriefed (Appendix C) by the researcher, who was present during the process but took no part in the investigation. All participants were from a variety of backgrounds, some of the interviews took place at West Bromwich Police Station, whereas others took place at home and work locations. This has been suggested so that the researcher has no influence whatsoever in the investigation, and allowed for a flexible approach to obtaining the data.

### Methodological theory

Braun and Clarke (2006) offer a useful approach to conducting a thematic analysis (table 1:1), and is considered suitable for researchers who are starting out studying data, using qualitative methods. The researcher had considered other qualitative approaches such as Discourse Analysis (Willig, 2003), and Interpretative Phenomenological Analysis (Smith & Osborn, 2003). A thematic analysis was considered the most appropriate method, as it allows the researcher to fully understand the data that is collected, and the process of thematically analysing data sets. This method is also considered useful when investigating under-researched topics (Braun & Clarke, 2006). A further consideration was how many interviews would be enough, in order to provide a meaningful data set and subsequent analysis. Guest, Bunce and Johnson (2006), provide a useful insight into this dilemma. They suggest that saturation occurs within the first 12 interviews and basic elements for metathemes were present as early as 6 interviews.

### Materials

The researcher used a digital dictaphone for the audio recording of each interview, and was placed in the room so as not to act as a distraction during the statement taking process, and limit the disruption to the flow of the interview. Each interview was audio recorded, and a copy of the written statement taken by the police officer was obtained. The interviews were later



transcribed by the researcher and this was time consuming, but later proved beneficial.

### Procedure

In order to accurately evaluate the testimony provided by the witness, it is suggested that it would be necessary to be directly involved in the statement taking process, in order to reduce the risk of losing rich detail obtained therein. It is for this reason that the research focuses on direct observation and recording of eyewitness testimony, in natural settings with no involvement in the investigation by the researcher. For ecological validity the interviews were conducted in real-life settings, ranging from the police station to the witnesses place of work.

A thematic analysis was conducted using both the officers handwritten statement, and the typed transcript taken from the narrative provided by both witness and police officer, this consisted of both implicit and explicit text. A rigorous and thorough analysis took place for each data item, the audio transcript was transcribed by the researcher so that there was immersion in the data. A verbatim account was transcribed including non verbal utterances, no punctuation was included in the transcript to prevent misinterpretation of what was said by both officer and witness. Each transcript in particular was checked for accuracy against the audio recording.

Each statement and transcript was read at least five times and although time consuming, this systematic approach to analysing the data proved beneficial. This meant that full and equal attention was applied to each data set consisting of 1 statement and 1 transcript per interview. A number of themes surfaced as a result of applying this process, and became an exciting experience for the researcher as soon as the themes began to surface, with an emphasis on themes appearing frequently rather than as a one off.

A coding system was used and the researcher began to highlight data that may appear useful in determining themes throughout, relevant to the research question. This was achieved by simply using a variety of highlighter pens and underlining each piece of data, which the researcher believed may form a theme. The data obtained from the research was then used to determine the themes found within each data item. The researcher then used the themes that emerged by placing them into 'theme-piles' for later use. Coding was used from the themes that surfaced before, during and after the data set was obtained. In the early stages of the research, different codes were observed and began to form overarching themes, and these were applied using a coding template (see appendix D). The themes that emerged were put into theme-piles and then analysed further and put into themes.

It was decided that by creating too many sub themes, may have diverted the focus of the investigation into the nature of witness statement error excessively.

Two main themes (Procedural Bias, Interview Style) and four sub themes (Legal Requirement, Statement Format, Questioning Style and Listening Skills) were identified. From the data analysed, it revealed such patterns as; inconsistencies and changes to descriptive items such as clothing. It was decided that a theme coded; 'known data and police procedure' covered some of the most basic aspects found in each data set. In order to stay focused on the research question, set codes were eventually established and used.

Prior to the research taking place, both witness and police officer participant received a formal briefing from the researcher, and all participants were told that the research study is being conducted in order to "research the taking of witness statements", there was no further elaboration on what the research sets out to achieve at this stage. This was decided so that both participants would act as normal as possible. Consent was obtained from the participants and a request was made for each participant to sign a consent form once it had been read out and understood (Appendix B).

Once consent was given by both the adult witness and the police officer taking the statement, digital audio recording of the interview commenced. Once the police officer had finished taking the witness statement, and the interview was completed, the researcher conducted a formal debrief with both participants, and they were given a copy of the debrief form (Appendix C). The debrief also contained contact details of the researcher and their supervisor.

After completing the data collection, the researcher will then transcribe the data into written form. Transcription of the data is important for the dependability of analysis. The criteria for transcription of data was established before the transcription was initiated, to ensure that dependability is high. It is understood that inconsistencies in transcription, can produce biases in data analysis that would be difficult to identify later in the analysis process. Therefore transcribing will be conducted by the researcher without the use of transcribing software, which can sometimes produce errors. Although in this research there is no specific protocol for transcription, inserting non-verbal utterances and verbal discussions, led to a richer understanding of the meaning of the data transcribed.

Defining the themes will rely on the data that is produced following a comparison of both the written statement and transcribed data. The research will require a detailed analysis in order to identify each theme and its significance. Following this the researcher can then define what the current themes consist of, and explain each theme. It was understood that the researcher needed to consider thinking about names for themes, which would give the reader a full sense of the theme and its importance. By conducting a thematic analysis, attempts should be made to go beyond surface meanings of the data, to make sense of the data and provide an accurate account of what the data means.

Without the use of transcribing software it allowed the researcher to feel familiar with the content of the data, and identify overt patterns or repeating issues in one or more interviews. These patterns were recorded in a notebook and were used when coding and checking for accuracy. Following the completion of the transcription process, the researchers most important task was to gain control over the data. At this point, it is important to mark data that addresses the research question. This will be the beginning of the coding process.

#### Ethical considerations

Authority from the local policing commander to conduct the research was sought and given. The local commander has autonomy over his ward (Sandwell) and is responsible for the activity that takes place there. Both witness and police officer were informed that they have the unconditional right to withdraw their consent, at any time and the information obtained would not be used. No one withdrew their consent once it had been obtained.

The purpose of selecting 'non-vulnerable' adult witnesses had been carefully considered, including the ethical issues surrounding the interviewing of child victims and witnesses, vulnerable or intimidated witnesses and significant witnesses of serious criminal offences, such as homicide. These particular witnesses are dealt with using different legislative practices. Also consideration was given to non English speaking participants who require interpreter services,

and due to the prolonged nature of taking these statements and the processes involved, such potential participants have not been included in this study.

The very nature of requiring a victim or witness to recall an emotional experience, may place additional stressors on that person. Statements that were taken from victims explored a range of criminal offences from theft, criminal damage, serious assault, and domestic violence. Therefore having considered the risks, the researcher was prepared to depart if a break was requested, until both participants were happy to continue, no breaks took place.

The researcher had no direct involvement in the interviewing process. Evidential information such as that contained within police witness statements, is key evidence within a criminal trial, and seldom gets presented as an edited document. The personal details obtained as a result of this research were preserved for the purposes of 'strict confidentiality'. Any expletives mentioned in the interview were disregarded in this research. The original material that is produced as a result of this research, will be managed according to the legislation in law, currently the Criminal Procedure and Investigations Act 1996 (CPIA, 1996).

Analytical strategy

Table 1:1

Overview of the six phase approach to doing a thematic analysis as outlined by Braun and Clarke (2006).

| Phase | Procedure  |
|-------|--|
| 1     | Researcher familiarises themselves with the data |
| 2     | Generating initial codes                         |
| 3     | Searching for themes                             |
| 4     | Reviewing themes                                 |
| 5     | Defining and naming themes                       |
| 6     | Producing the report                             |

The transcript from each audio recording was transcribed by the researcher, the researcher started to identify themes which emerged during each transcription. These were noted and a initial list of ideas compiled after all transcripts had been completed. This research had a specific question in mind and sought to investigate the nature of errors during the statement taking process, and was therefore considered to be theory-driven (Braun & Clarke, 2006). The researcher was conscious of being open-minded during the analysis of the data and the initial list, which consisted of some interesting features. These were put into the following codes; leading questions, interruptions by the officer, distortion of information, incorrect descriptions, and changes in quotations made by the

witness, which were then changed by the officer in their statement. They were then read alongside the written statement from the police officer, and coding started once themes started to emerge from the data.

The process of recursively reading through the transcript and the statement, seemed to produce better results when the researcher listened to the audio recording. Following the transcript at the same time and checking the accuracy of each transcript, then reading the police officers statement. The researcher who is a serving police officer, had the permission to conduct this research, in an operational 'real-life' setting. The researcher was allowed open access, to the 'first hand' detail contained within eyewitness testimony.



## Analysis

The analysis started with the researcher typing the transcripts from the audio recordings, alongside was a copy of the police officers statement. The thematic analysis utilised Braun and Clarkes (2006) model. Other methods of analysis were considered such as discourse analysis (Willig, 2003), IPA (Smith & Osborn, 2003) and grounded theory (Howitt & Cramer, 2008). The data *corpus* consisted of police officer handwritten statements, and transcripts taken from the audio recordings that ran concurrently with the researcher being present.

Each data set was analysed recursively to find repeated patterns of meaning. The writing down of codes and ideas formed an integral part of the research, certainly in the early stages. Themes were not necessarily 'jumping out' at the researcher, or necessarily noticed during the data collection. Codings and themes were synthesised actively from the data, as a result of the researcher carefully analysing each data set. Coding started early on during transcription, and the researcher began the thought process needed to identify codes most pertinent to a theme. What was noticeable, was the process of constantly moving back and forward between the data sets, which seemed absolutely necessary. Other subordinate themes/clusters were identified within each sub theme and have been presented in tables 1 and 2, before in depth analysis.

The importance of this particular research was that the researcher made a decision to analyse the data collected, as objectively as possible in order to match the research title. The researcher found that by using data extracts these could then be referred to as coded chunks of data, identified within, and extracted from data items. Themes that began to emerge following detailed analysis were put into theme-piles and further analysed, over arching themes were identified and decided on during the analysis. The overarching themes were; Procedural Bias and Interviewer Style. The thematic framework for the analysis revealed four sub themes; legal requirements and statement format for procedural bias, questioning ability and listening skills for the interviewer style.

The codes that were utilised during analysis were; distortion, contradictory, omission, new items, and inconsistencies most relevant to the research question, using a coding template (see appendix D). Additionally known data and police procedure was considered, such as; informing the witness that they make the statement true to the best of their knowledge and belief, and if wilfully falsified they are liable to prosecution (Criminal Procedure Rules, Criminal Justice Act 1967; Magistrates Courts Act 1980). The researcher became very familiar with the data that was collected and analysed.

The researcher was conscious of remaining embedded in the data, and considered the previous research that had been conducted by psychologists analysing eyewitness testimony (Milne & Bull et al., 1999). Clear definitions and

names for each theme relied on the researcher analysing the notes made during the transcription process, and once all data had been compiled. Initial coding was conducted and themes were clearly defined, determined by the level of relevance and importance to the research question, and not on the frequency of occurrence in the data. The frequency of interruptions made by the interviewing officer would certainly have disrupted recall, and was common amongst all ten interviews. However, this aspect was not considered as the focus of erroneous reporting of information, or witness error.

Instead, interruptions were considered as a poor interviewing technique, and placed within the theme 'Interviewer Style'. The review of the themes that started to take shape during the analysis of the data, were fixed by the researcher, although there was a level of flexibility applied to the research, just in case a new code or theme became prevalent. If there was little data supporting a theme it was either modified or abandoned. The applicability of themes were checked against certain data extracts, as well as across the entire data set. Throughout this stage there was no new data to code, having attained a better level of understanding of the material.

Table 1. Thematic framework

Sub themes for Procedural Bias

| Sub theme | Statement | Transcript |
|-----------|-----------|------------|
|-----------|-----------|------------|

|                    |  |  |
|--------------------|--|--|
| Legal requirements | <p>(S1) Descriptions of suspects</p> <p>Describes male 3 as</p> <p>"large build"</p> <p>"Number of males entering"</p> <p>(S2) Describing what the suspect said</p> <p>"I thought straight away that I was not giving him my phone"</p> <p>Referring to suspects</p> <p>weapon</p> <p>"don't make me use it"</p> <p>(S4) "Lee swung a punch with a clenched fist which struck me to the right side of my face just under my eye"</p> <p>(S5) Explains nature of assault</p> <p>"Stood to my left who I will refer to as Male 2 hit me to</p> | <p>(T1) Witness describes male 3 as</p> <p>"body builder"</p> <p>"three of them came in"</p> <p>(T2) Witness states</p> <p>"not having my phone"</p> <p>Witness states</p> <p>"don't let me have to get it out"</p> <p>(S3) Omitted</p> <p>"grabbed me by the arms"</p> <p>(T4) "And he's come there perfect angle, to throw one I mean"</p> <p>(T5) Witness states</p> <p>"Hit me with a hammer the back of the head.</p> |
|--------------------|--|--|

|                  |  |  |
|------------------|--|--|
|                  | <p>the side of my head"</p> <p>(S6) The officer describes the offender as</p> <p>"medium build"</p>  | <p>Was the one behind me"</p> <p>(T6) The witness does not provide this information</p>  |
| Statement format | <p>(S1) Material times</p> <p>"between 19.25 and 19.35"</p> <p>Locations</p> <p>"counter which is to the left of the shop as you enter"</p> <p>(S5) Material times</p> <p>"8.30pm"</p> <p>(S6) Clothing description</p> <p>"wearing dark clothing"</p> <p>(S7) Officers asks for material time</p> <p>"1140, 1150"</p> | <p>(T1) Witness states</p> <p>Five minutes before (7.30pm)</p> <p>"as soon as you come in on The right"</p> <p>(T5) Witness stated</p> <p>"Probably about i'd say between eight and ten"</p> <p>(T6) Witness describes offenders clothing</p> <p>"he had light clothing"</p> <p>(T7) Witness states</p> <p>"ten to twelve"</p> |

Table 2. Thematic framework

## Sub themes for Interview Style

| Sub theme   | Statement   | Transcript   |
|-------------|---|--|
| Questioning | <p>(S1) Officer leads witness</p> <p>"I think we've decided that it Happened about five minutes Before"</p> <p>(S5) Leads witness to agree on a time suggested by the officer</p> <p>"alright try and narrow it down Half eight half eight best best you can"</p> <p>(S7) Officer leads witness to agree with actions displayed by the offender</p> <p>"he ran at me with his fists flying"</p> | <p>(T1) Witness states</p> <p>"three to five minutes Yeah"</p> <p>(T5) Witness feels obliged to agree</p> <p>"just say just say"</p> <p>(T7) Witness only states</p> <p>"that's when he's run at me"</p> |
| Listening   | <p>(S1) Omission from the Statement</p> <p>(S2) "walking in a aggressive manner"</p>  | <p>(T1) "i'm gonna get a gun and shoot him</p> <p>(T2) "come over to us boxing and all that rubbish"</p>   |

|  |   |  |
|--|---|--|
|  | <p>(S3) "why are you going through my phone"</p> <p>(S5) Explaining injuries<br/>"Blood coming from my head and nose"</p> <p>(S6) Explaining who was with the witness<br/>"showing a labourer around"</p> <p>(S7) Height of suspect<br/>"5'7" tall"</p> <p>(S8) Describing suspects vehicle<br/>"I immediately recognised that the white transit van wasn't ours"</p> <p>(S8) Describing the suspect<br/>"short brown cropped hair"</p> | <p>(T3) "what you going through my phone for"</p> <p>(T5) Witness states<br/>"Had blood from my ear from my eye from my nose"</p> <p>(T6) Witness explains<br/>"I had a builder with me"</p> <p>(T7) Witness gives the suspects height as<br/>"five six probably"</p> <p>(T8) Witness states<br/>"I noticed it wasn't our driver it was somebody else"</p> <p>(T8) Witness states<br/>"he had dark dark brown cropped hair a bit like yourself"</p> <p>(T10) Officer omits</p> |
|--|---|--|

|  |  |                       |
|--|--|-----------------------|
|  |  | "spitting in me face" |
|--|--|-----------------------|

### Legal requirements

Distortion was coded, and was noticeable during the early analysis of the data obtained. In most statements, they lacked some vital information and revealed that the officer had received an initial 'free recall', facilitated by them, but the vital information was not recorded in the officers statement. All but one of the interviewing officers had not directed their witnesses to the declaration, on top of each statement, which is a legal requirement and is signed by the witness, reminding them of the importance of honesty, care and accuracy.

The physical description of the offender described as number 3 by witness 1, was distorted when the witness described the offender as being of "body builder" size (transcript 1 p.15). The officer put in the statement "large build" (statement 1 p.3). There is a legal requirement to identify suspects at the earliest opportunity, PACE (1984). The officer taking this particular statement appeared governed by time, and their own process of taking a statement had probably been adopted, as they have become more experienced and challenged less.

In the interview with witness 2, the police officer distorted what the witness had said, when describing a robbery that had taken place where he was the victim.



He's said to the offender who tried to steal his mobile phone "not having my phone" (transcript 2 page 6). In response to this the officer put in statement 2, "I thought straight away that I was not giving him my phone" (statement 2 p.2). The officer made a further entry in the statement confirming what the witness had said earlier, "no you are not having my phone" (statement 2 p.3). There were also contradictions in the statement made by the officer, (statement 2 p.2), first, the officer puts "don't make me use it" referring to a knife produced by the offender in the robbery. The witness states "don't let me have to get it out".

Witness 3 in their interview made a comment "grabbed me by the arms" (transcript 3 p.7), and this was omitted from the witness statement. It is unknown if the rationale for this omission was due to the comment encroaching into the previous statement taken by police, which may have covered this aspect. The previous statement taken by officers was not examined by the researcher.

The officer who produced statement 4 also incorrectly recorded "Lee swung a punch with a clenched fist, which struck me to the right side of my face just under my eye" (statement 4 p.2). Confirming an offence of assault, the witness actually stated "And he's come there perfect angle, to throw one I mean" (transcript 4 p.4). The officer conducting the interview with witness 6 and producing the statement introduced a new item (physical description), which is a legal requirement, but has to come from the witness. The officer states "of a

medium build" (statement 6 p.1). The witness does not provide this detail, and this would potentially open the witness up to cross examination in court. It would also provide the defence in a case with the suggestion that the statement contains new information, and creates the issue of what else has been added? The officer taking the statement from witness 10, was the only officer recorded as directing the witness to the declaration caption found at the top of every witness statement, and ensuring that they read it, and understood it.

#### Statement format

The officer contradicted what witness 1 had said, when describing an assault against him in a shop, in particular the location of the shop counter, where witness 1 worked, described by the witness; "as soon as you come in the right". The officer put in the statement "counter which is to the left of the shop as you enter" (statement 1 p.1), and this was later changed when the witness picked up on this error, when given the opportunity to read through the statement, which is the correct procedure.

Behaviour that was present during the interviews such as rushing due to time constraints, was noted by the researcher, who was present during the statement taking process. This assisted in the analysis and enhanced the understanding of the themes that were reported. One interruption occurred

during interview 1, and was clear when witness 1 was halted by the officer, as soon as they started to provide descriptions of offenders (transcript 1 p.3). The witness appeared to want to get this information across early on in the statement, but was prevented from doing so by the officer.

This dictates to the witness that any further responses may also be halted, and takes away the essence of free recall (Milne & Bull et al., 1999). After being interrupted several times, the witness will soon expect this to occur more frequently. In the interview where transcript 1 was produced, the officer interrupted the witness 41 times. Interruptions by the police officer were common during all interviews, often impeding the free narrative expressed by the witness. Accordingly the witness will begin to tailor his or her responses by shortening these to fit the time constraints, apparently set by the officer.

Known data and police procedure covers many points, one of those being 'material times' which are recorded in a statement and almost on every occasion. These times are often used as the starting point of examination of both officers and witnesses during court proceedings. The times mentioned in data set 3 revealed that the officer led the witness to agree that an argument had occurred two to three minutes before they arrived home. This would be inconsistent with the parameter time of between nine thirty and ten o'clock. The transcript contained a material time, when the witness stated that the incident in question happened at ten o'clock (transcript 3 p.2). What left this open to

question and more importantly ambiguity, was that the officer had omitted material times mentioned by the witness in the statement. It was decided that the theme relating to such inconsistencies in relation to what was recorded, would now be coded.

The officer conducting the interview with witness 7 records a material time of "1140, 1150" (witness statement 7 p.1). The time given by the witness is "ten to twelve" (transcript 7 p.8). This time which appears on the police log that officers are provided with, shows 1140, this shows that the officer has presumed that this time is correct. The witness provides a different time, and is then asked the question by the officer in the affirmative "about ten to twelve?". But still does not use the actual time detailed in the statement, instead creates the time that they believe it should be .

### Questioning

The style of questioning that was applied to most interviews was directed by the officer throughout, who seemed intent on structuring their statements, to cover the aspects they believed are necessary for a criminal investigation. In statement 1 the officer led the witness when discussing timings, which are important as they can be used to place a suspect at the scene of the crime. When questioned about the time of the offence the witness is informed that the police were called at seven thirty. This has the effect of forcing the witness to either agree or disagree, and the witness is then possibly torn between

agreeing and introducing their own time. The witness said "three to five minutes yeah" (transcript 1 p.2). The officer then puts in the witness statement timings of 1925 hours and 1935 hours (statement 1 p.1).

The officer taking the statement from witness 5 displayed the incorrect approach to interviewing, on a number of occasions. In establishing the time of returning home and near to the time the offence occurred, the officer appeared determined on committing the witness to agree with the time known to the police officer, rather than what the witness believes. "what time roughly did you park up" (transcript 5 p.3). The witness replies "probably about I'd say between eight and ten" (transcript 5 p.3). The officer then by forced choice states, "alright try and narrow it down half eight half eight best best you can". The witness perhaps feeling pressured into agreeing states "just say just say" (transcript 5 p.3). What is interesting here is that the officer then puts in the witness statement 8.30pm (statement 5 p.1).

Witness 7 was led by the officer to agree that what he put in the statement is correct, "he ran at me with his fists flying" (statement 7 p.3). When in fact the witness has stated "that's when he run at me" (transcript 7 p.14). The implications of this forced choice questioning, is that the statement begins to form the shape of the officers' interpretation, rather than what is recalled by the witness.

## Listening

Of importance was the omission in statement 1 by the officer, of the quotation made by the witness "i'm gonna get a gun and shoot him" (transcript 1 p.14). This was left out of the statement by the officer and was something which the officer stated he would talk about later (transcript 1 p.30). The researcher was unaware of another offence being investigated, in addition to the one reported here. There is an obligation to investigate other offences if they are disclosed to the police (Home Office Counting Rules for recorded crime, 2013).

Another contradiction appeared in statement 2 where the officer puts, "walking in a aggressive manner", the witness states "come over to us boxing and all that rubbish" (transcript 2 p.17). Furthermore, the officer interrupted the witness 14 times. The data set from witness 3 revealed that there were no new themes that emerged. The statement that was produced by the police officer did distort what was said, the officer put "why are you going through my phone" (statement 3 p.2), the witness actually said "what you going through my phone for" (transcript 3 p.6). This distorted what was actually said and was noted accordingly, similar to the other statements that were taken, it formed a quotation in the officers statement, giving the impression that this is what the witness has said.

A contradiction emerged from the interview with witness 3, when witness 3 explained the damage caused to their mobile phone during a domestic dispute. A statement had already been taken in relation to the domestic violence aspect.

A second statement was taken in order to address the criminal damage allegation that was being reported. The replacement phone was described as "white" by the witness (transcript 3 p.8), whereas the officer put "silver" in the witness statement (statement 3 p.2).

The data set produced from witness 4 also revealed all the identified themes which emerged from the interview with witness 3, including a new code defined as; inconsistencies. This witness reported a serious assault and on one occasion said, "Where's lee get him down here I've had enough" (transcript 4 p.17), the officer incorrectly recorded "Where's lee, get him down here now" (statement 4 p.2) inconsistent with what had been said by the witness. The contradictions that occurred during this interview revealed that the officer put that the witness had said "Shouting for lee to come out" (statement 4 p.2). This contradicted what the witness actually said, "Just shouted him down the stairs" (transcript 4 p.17).

Witness 4 whilst explaining that ordinarily the family get on, and it was unusual for them to even argue. The officer taking the statement quoted that the witness said "why are we fighting, we're family" (statement 4 p.3). The witness actually stated "why are we arguing it's family it's stupid" (transcript 4 p.19). The inference that can be drawn here, is that it suggests that only an argument took place. The alleged assailant, given the opportunity during a criminal

investigation, may acquiesce to such inferences, and that no assault took place just an argument. Although further on the witness describes a fight.

Witness 5 explains that when he was hit with a hammer during the assault he reported, he states, "they've hit me in the back of the head I've turned around" (transcript 5 p.10). The officer taking the statement states "this caused me to fall to the floor" (statement 5 p.2). The nature of this misinterpretation may come from the ineffective listening displayed by the police officer during the interview.

Witness 6 provided a statement which detailed the damage caused to his property by a drunken male, who had subsequently been tasered by police officers. Therefore, very little was achieved in relation to eyewitness testimony of the actual event, but nonetheless the statement was considered a credible piece of investigative evidence. The officer taking this statement misinterpreted what the witness said, when he explained that the person he was showing around his premises was a builder, "I had a builder with me" (transcript 6 p.2). The officer recorded something different, "showing a labourer around" (statement 6 p.1).

The statement produced by the officer interviewing witness 7, made an error with the description of the suspect, the officer has asked "how tall is he about" (transcript 7 p.15). The witness has replied "five six probably" (transcript 7



p.15). What was put in the witness statement differed and the officer wrote "5' 7" tall". It is unclear how this has happened, but there is no denying that this is not what the witness has reported, and then this has been entered onto the witness statement erroneously.

Witness 8 provided a very detailed account of the theft of metal he had witnessed from where he was working. The officer has recorded in the witness statement "I immediately recognised that the white transit van wasn't ours" (statement 8 p.2). What the witness said during the interview was "I noticed it wasn't our driver it was somebody else" (transcript 8 p.3). The witness interestingly stated when asked about the physical description of the suspect, "he had dark dark brown hair a bit like yourself" (transcript 8 p.5). The officer recorded "short brown cropped hair" (statement 8 p.2). The officer producing this statement did in fact have short brown hair, and this may have had some influence over what was put in the statement. The officer sought clarification later on in the interview, and this time the witness stated "dark brown cropped bit like a like your's but more of longish on the sides" (transcript 8 p.6).

The statement produced during the interview between the police officer and witness 9, revealed that even when watching and seizing closed circuit television evidence, information can be distorted. In this particular interview which took place in a security office where CCTV cameras were stored, the officer has put "skin is quite swethy" (statement 9 p.1), perhaps meaning "skin is

quite sweaty". Both witness and officer view the CCTV and the witness does not appear to mention this during the audio recording. Although the cause of this erroneous report is unclear, it now becomes clear that it is not uncommon for police officers to make incorrect statement entries.

Schemas (Milne & Bull, 1999) can often play a role in the officers (and eyewitnesses) interpretation of suspects, and when detailing criminal offences. The statement produced during the interview with witness 10 was a relatively good statement with few errors. The witness had been subjected to a violent attack by her juvenile son. On one occasion when asked by the officer to give an account of what happened, the witness replied "spitting in me face" (transcript 10 p.3) the officer failed to record this. The questioning style of this officer was one of the better examples, and the researcher was unclear whether his presence had an effect on the police officers performance.

## Discussion

The thematic review of this study allowed for close analysis of the data collected, in all but one of the interviews, and from studying each data item there were a number of errors some which breach legal requirements. One example of this, reminding the witness of their obligation found in the declaration caption at the top of every police witness statement. Each witness signs to say that the contents of the statement are true to the best of their

knowledge, and if they wilfully state anything which they know to be false, or do not believe to be true they may be liable to prosecution. This is a stern reminder, although in some cases this legal obligation is undermined.

Importantly the process of taking a witness statement, should be true to the best of the knowledge of a witness and a true and accurate record of what was experienced and said by them. It seems that during the investigatory process, the statement changes from being the witnesses experience to the officers interpretation of what they think may have happened. Wolchover and Heaton-Armstrong (1992) capture the essence of the responsibility placed upon police officers when taking witness statements. They assert that the officer who has taken the witness statement, does so knowing that they may be cross examined in court, through attendance as a witness in other aspects such as; arresting of offenders or interviewing them at police stations whilst in custody. Where the witness has blamed the statement taker for inaccuracies, the police officer may be asked by the defence to confirm that the statement is a true and faithful record of what was dictated.

Such an approach will often contrast ironically with a claim by the defence, that incriminating conversation between the same officer and the defendant has not been faithfully recorded. Furthermore, one can never be sure how the police officer will respond. It has been suggested (Wolchover & Heaton-Armstrong, 1992) that the officer will often be torn between standing by their accuracy, and

the desire not to sell their own witness short. An attempt to resolve this sort of dilemma, sometimes manifests itself in quite transparent fence perching.

Police officers can be seen to cultivate the impression that witness statements are the product of dictation to an indifferent amanuensis, something which can be effectively produced by the use of audio recording facilities. Officers will usually concede that there was some generalisation during the initial disclosure by a witness, on the broad outline of the incident. They will sometimes admit that the occasional interjection intended to keep the witness within the bounds of relevance, or a neutral question designed to elicit details of a description. But the suggestion of any greater involvement in controlling the content of the statement, will usually be vigorously resisted. With this in mind it is useful in putting a statement to a witness, to ask whether it was dictated, or for the most part elicited by questioning. The officers taking part in this research appeared governed by time, and their own process of statement taking, whether good or bad has probably been adopted, as they have become more experienced and seldom, if not all, challenged on the content.

The process of conducting a thematic analysis seemed most appropriate to this research, and having considered other options including quantitative methods, thematic analysis suited this research.

Howitt and Cramer (2008 p.347), note;

The simplicity of thematic analysis is superficial and disguises the considerable efforts that the analyst needs to make in order to produce something that goes beyond the mundane (or, perhaps, what merely states what the researcher 'knew' already).

In interview 1 it was clear that the theme most prominent, which may have caused data to be lost, was the amount of interruptions that occurred during the interview, this may have occurred as a result of the officer trying to control the statement taking process, and are mostly caused by the interviewer, normally the police officer. Milne and Bull (1999) identify that, information may be lost as a result of interruptions by the interviewer, but also that it sets the tone for the remainder of the interview, whereby the interviewee may expect more interruptions to occur throughout, and as a consequence may inhibit the amount of information they retrieve and recall.

The social factors associated with vulnerability to suggestibility, varies both within and between situations, and that suggestibility is a function of setting and situation (Baxter, 1990). Therefore suggestibility is not a purely cognitive phenomenon, many social and motivational factors are also relevant. The suggestibility effects during eyewitness recall have been studied by psychologists (Ceci & Bruck, 1993; Gudjonsson & Clarke, 1986; Grice, 1975; Milne & Bull, 1999; Newcombe & Siegal, 1996), who have identified a number of misinterpretations that occur during this process. Interpretations can alter as

a function of the social relationships, perceived motivation and beliefs of the participants, and of the actual conversational setting. Interviewees may be more likely to succumb to suggestive questioning in a forensic setting, as the interviewer who could be a police officer, is seen as an authoritarian, and deemed an expert in criminal investigations (Smith & Ellsworth, 1987).

Cognitive psychologists assert that memory is the result of cognitive processing, and that over time and in response to erroneous suggestions, the features of a trace may begin to appear less defined until they have nearly dissipated. However, Milne and Bull (1999), argue that at retrieval it is possible for these features to be reconstructed.

The process of interviewer and interviewee relationships and how much information an interviewee may be expected to reveal, could be determined by the conduct of the interviewer during their interaction. It became clear that the police officer participants conducting their interviews with witness participants, were perhaps unaware that they may well be 'teaching their witness how to respond'. By shortening the responses made by the witness through repeated interruptions by the Police Officer taking the statement, potentially teaches the witness to limit future responses (Milne & Bull, 1999).

Suspect interviews have been subject to audio recording since the introduction of the Police and Criminal Evidence Act 1984 (Code D PACE 1984). By audio recording interviews allows research to take place as in this study, by way of thematic analysis this is not exclusively the only method of analysis, and other methods were considered such as; Discourse Analysis, and Interpretative Phenomenological Analysis. The type of analysis selected allowed for themes to be identified, that perhaps reveal improper practices and poor interviewing techniques.

A six phase process suggested by Braun and Clarke (2006), was followed in order to analyse the collected data properly. Immersion in the data was noticeable from the outset, and started during the transcribing process conducted by the researcher. This provided a satisfying experience for the researcher. Rather than focusing entirely on the research question proposed, when themes started to emerge this was elating for this researcher. Braun and Clarke (2006) note the importance of familiarisation with the data collected, in order to identify possible patterns that may be shaped during this process. It was also noted that there exist many possible pathways to conducting a thematic analysis, and in this research study, a theoretical approach was considered appropriate. This allowed for a rich analysis of the data, which was driven by the researchers theoretical interest in the topic of police interviews with eyewitnesses. And not just simply presenting a case using a thematic analysis of the questions put to participants during their interviews.

Eyewitness testimony has been subject to much psychological research in relation to its veracity and effectiveness in judicial processes (Loftus et al., 1974). How the evidence from a victim or witness to a criminal act is retrieved and then produced, has seen some interesting developments designed to enhance eyewitness recall, for example the Enhanced Cognitive Interview (ECI), (Fisher & Geiselman, 1992). Although a product which was initially developed in the US, the ECI has found its uses in the UK, with courses being delivered to UK police force training departments (West Midlands Police Investigative Training Department).

Psychological research into the process of statement taking by police officers, from victims or witnesses has suffered somewhat. Although there are no found cases where police officers or the prosecution have been lambasted for poor evidence gathering, the current process used by police officers to take eyewitness statements, has allowed itself to be open to challenge and scrutiny by the courts. Although there is an inherent risk to the credibility of the statement taking process by police officers, this has seldom seen such processes challenged by defence counsels, or the courts generally. It is perhaps a matter of time before this current process is properly challenged by the courts.

The democratic process of fairness is indeed one which is legislated by the Human Rights Act 1998 (Article 5 right to a fair trial), for all involved. Criminal



trials in the UK may have gained respect and notoriety for being fair across the globe, with some international envy at the way justice is served, notwithstanding some miscarriages of justice have occurred. It remains the case that any miscarriages of justice, would weaken any countries judicial process. This study has identified that police officers may miss the point when it comes to 'eyewitness testimony', when conducting statement taking. It could be argued that many police officers during the statement taking process, may create errors and omissions for the sake of covering what 'they' think is necessary, and fail to reflect what has actually happened, from the memory and perspective of the eyewitness they are interviewing.

Research conducted into specialist interviewing started in 1993, when Julie Cherryman was awarded by the Home Office Police Research Group a project grant, to help identify skills gaps in specialist investigative interviewing (McGurk, B., Carr, M. & McGurk, D., 1993; Cherryman, J. & Bull, R., 1999). The project involved the analysis of nearly 200 police officers from 13 police forces to the request; "Please describe what you consider to be a full description or working definition of specialist investigative interviewing". The resultant draft definition, which incorporated the gist of all their suggestions, was then shown to other police officers and members of relevant professions.

The finalised definition stated;

The fair questioning or facilitative interviewing by a well-trained, experienced officer with 'in-depth' knowledge of a specific area, of a suspect, witness or victim in offences of a special nature or in unusual circumstances. These may be complex, severe or sensitive offences requiring additional skills within the rules of evidence, and in accordance with the principles of investigative interviewing, in order to obtain accurate, credible and reliable information to help to establish the truth.

From the definition provided, this included the investigation of sensitive offences such as; terrorism or sexual offences or those, which may attract media attention. Notably the work conducted by Milne and Bull (1999), and to some extent Sear and Stephenson (1997), makes it clear that officers differ among themselves in their interview style and skill. Milne and Bull (1999 p.89) also note that there is still much to learn about how to best conduct investigative interviews. This they argue will be achieved by conducting more research on real life police interviews. Future work needs to focus more on the fact that the strengths and weaknesses of investigative interviews, depend on the purpose of the interview, and on the ability of investigator to realise that the information available to them prior to an interview, should have a considerable effect on their decisions about how to conduct themselves.

Furthermore, it could be argued that during the statement taking process, a police investigator may fail to notice that what actually occurs during the statement taking process. Is the modelling of the investigators views, schemas or stereotypes contained within the structure of a witness statement. After all the prosecution, require certain information in order to secure a conviction based on the onus of the prosecution to prove beyond all reasonable doubt, that the evidence submitted by eyewitnesses is reliable.

Many police officers would overlook the psychological concepts that take place during the statement taking process, such as the testing of the witnesses memory, along with critical factors noted by Milne and Bull (1999 p.14). Here the presence of a weapon at the scene of a crime may reduce the amount of correct recall reported by a witness, especially recall about the identity of the suspect holding the weapon. Whilst the witness may provide a detailed description of the weapon used in the offence, they may fail to provide, what the officer expects, which could be a detailed description of the suspect. Without such knowledge of factors affecting the encoding of complex events, this may create a situation whereby the investigator starts to doubt the credibility of the witness, because they cannot recall information which they expect to see in an eyewitness account.

So what is an "original memory?". The process of interpretation occurs at the very formation of memory, thus introducing distortion from the beginning.

Furthermore, it is suggested that witnesses can distort their own memories without the help of examiners, police officers or lawyers. Rarely is a story told or recounted without a purpose. Every act of telling and retelling is tailored to a particular listener; we would not expect someone to listen to every detail of our morning commute, so we edit out extraneous material. The act of telling a story adds another layer of distortion, which in turn affects the underlying memory of the event. The inherent problem identified here is that a story which grows with each retelling, can eventually lead the teller to believe it (Tversky & Fisher, 1999).

Police investigators most of the time trust the eyewitness in a criminal investigation, after all why shouldn't they? as they are volunteering information and signing their statement to say that it is a true and accurate record of what was observed. Lindholm (2008) suggests that eyewitness testimony tends to be compelling, but also the most unreliable types of evidence in criminal investigations. Lindholm (2008) also suggests that one of the sources of error in eyewitness accounts are deliberate lies about a remembered event. A large amount of literature has focused on detecting deceit in the forensic context (Davies, Hollin, & Bull, 2008). A major concern for the criminal justice system, is that investigators can make valid accuracy assessments of witnesses' truthful recollections as well.

What Lindholm (2008) further points out, is that the literature to date suggests that people often have difficulty estimating eyewitness accuracy correctly. The

fault probably lies with the trust that a police investigator inherently applies to eyewitnesses, who assist with a criminal investigation. Lindholm (2008) set out in their study to examine the relative ability of professional fact-finders and laypersons, to estimate the reliability of honest and genuinely offered eyewitness memory. What Lindholm (2008 p.1312) concluded, is that professionals in law enforcement should probably entertain some scepticism, about our ability to determine eyewitness accuracy.

Firstly, in this study I have set out to identify whether there are significant differences in police witness statement taking, where ordinarily a witness or victim is interviewed by a police officer, and are then subjected to a written record of what was said. Secondly, to compare the audio version from the same interview. It has therefore been my intention to compare and contrast the results provided during the statement taking process, a process which has not seen any significant changes since statement taking by police officers began. A similar study has been conducted by Milne et al., (in press).

A large proportion of studies in this area appear to have fallen prey to the lack of ecological validity, due to using university students for example (Newring & O'Donohue, 2008). Staged events have also been created in order to facilitate an experience, often designed to spark an emotion (Ginet & Verkampt, 2007), however, the emotions experienced during a staged or fictitious event would not necessarily compare to a 'real life' experience.

This particular study has an additional benefit in respect of the police participants who have been trained to conduct proper investigations and interviews, with victims or witnesses of a crime. Newring and O'Donohue (2008) quite rightly propose that whilst basic research in this area is necessary, future research would benefit enormously where there is a more resemblance to "real world" situations. For example where participants are far removed from the university setting, and using interviewers and investigators trained in proper techniques. What witnesses expect at a police interview can often be tainted by the media portrayal from such programmes as 'The Bill' or CSI type programmes. What is portrayed by the media is very different to reality.

Importantly, whenever a witness is subjected to a police interview, there may be susceptibilities, such as those seen in the research conducted in social psychology, where authoritarian figures can exercise very powerful positions (Milgram, 1963). It is accepted that an interview is a conversation with a purpose, and that the interviewer must have some form of control during the interview, including self control. Control over the interview however subtle (i.e. regulation), applying a balance of control and reinforcement requires a particular skill. According to Miller, Crute and Hargie (1992), too much control can have negative ramifications, such as preventing highly significant, or relevant information being elicited.

Often an enormous amount of trust is placed in the hands of police officers to conduct their duties, with utmost honesty and integrity. When investigators fall fowl this could have detrimental effects, not only on those people who come into contact with an unprofessional investigator, but it may also have significant effect on the trust and confidence amongst the communities they serve. Kapardis (1997) (cited in Milne & Bull 1999, p.29) have highlighted the need for improvement in police training, to address the issue that police officers in particular, like civilians, have poor knowledge of many important factors affecting eyewitness testimony.

One of the most obvious flaws in police witness statements, is that often witnesses tend to allow the police officer to reconstruct their statement of evidence, into a more legally sounding document, which they would feel satisfies a court and the investigation. When in fact, what may be at stake here is the potential loss of vital information at the expense of the statement 'sounding good'. Another key aspect to witness statements taken by police officers, is the question around what happens when a witness provides information for their statement, which does not conform to the officers schema? This process has been termed 'disconfirmatory evidence' by such commentators as Ainsworth (1995).

What happens when the witness reports such information is dependent on three possible outcomes; (i) include the information in full; (ii) distort the information to

fit; (iii) omit the information altogether. What McLean (1992) set out to establish, was the effects such outcomes have on the witness statement taking process. McLean asked sixteen experienced officers to tape record witness interviews, and to also supply the statement from the same interview. It was found that the statements had important omissions with evidentially significant details missing, some being vital to the case being investigated.

For a defendant in a criminal trial there is a heavy reliance on the credibility of eyewitness testimony, since the case of *R v Turnbull* (1976), courts have to direct the prosecution to prove beyond reasonable doubt that the defendant has correctly been identified. Dependent upon a number of legal factors including; the amount of time they were observed by the witness, and if they know or have seen the defendant before. Where the confidence with which eyewitnesses make an identification is increased, the impact of the identification on suspects' likelihood of confessing will also increase accordingly (Kebbell & Daniels, 2006). Further, an extensive amount of literature exists, which suggests that eyewitness identifications are often crucial for securing convictions, and that juries heavily rely on them when making decisions to convict.

Therefore it becomes clear that, in order for evidence to be reliable in criminal cases, the eyewitness testimony must contain certain detail. Some of this detail is often put there by the investigator, which tends to lead the witness into being persuaded to agree with what the investigator suggests. For example, the



criteria set in *R v Turnbull* (1976), which uses the mnemonic ADVOKATE (Amount of time observed, Distances, Visibility, Obstructions to the witnesses view, Known or seen before by the witness, Any reason to remember, Time lapse, and Errors), these are deemed to be key factors in assessing identification of someone considered a suspect in a criminal offence. What is important is that once the statement taking process is complete, the investigator has a duty to ask the witness to read through their statement, and comment where necessary on items which they disagree or wish to add.

This research has considered other factors on witness credibility, it is a fair question asked by the courts of a witness who is questioned, how consistent is the actual testimony with what they said during the earlier police interview? Davies, Hollin and Bull (2008) observe that judges and juries use other factors, such as personal attributes of the witness in making decisions about credibility. Age has often been considered as a factor in elderly or young children, who were found to be poorer at identifying strangers accurately than other age groups. Although people in these age groups are provided with special measures to achieve best evidence, others who may have credibility issues are also afforded the same protection measures, such as those witnesses with mental illness, or learning disabilities.

Confidence is a factor that the general public and the legal system tend to believe, that those witnesses displaying confidence are accurate (Leippe,

Manion & Romanczyk, 1992). At the time of providing eyewitness testimony the state of the witness can sometimes be overlooked. It is surprising that little research has been conducted on the effect of drugs on witnesses, despite their ubiquity in Western Society. This has a potential effect on perception at the time of the crime, compared to the time the statement is taken, where there can sometimes be delays, some of which may be significant as not all police statements are conducted immediately following a reported incident. Therefore delays in obtaining eyewitness testimony can result in decayed memory. The effects of stress on a witnesses ability to encode information at the time of the crime, is also a key consideration. It is known that if information is not encoded properly, then the witness will not be able to recall that information at a later stage (Milne & Bull, 1999).

Davies, Hollin and Bull, (2008) note that; the relationship between stress and eyewitness testimony is quite complex, and high levels of stress do not automatically create problems for the witness. One reason may be that a witness will focus on some aspects of the scene and ignore others, this can mean that some information is recalled very well, whereas other aspects can be less accurate. The legal system however, requires witnesses to be able to recall peripheral as well as central details, and that a failure to do so may have an adverse effect on a witnesses credibility. There are also post incident influences suggesting that after a crime has occurred things can still happen to the witness, and this may have an impact on their memory. These post-incident or post-event influences can be controlled by investigators, such as when and how

witnesses are interviewed. Memories decay over time, therefore it is an important factor to consider when taking a witness statement. The time delay between making a statement and then giving their account in court has to be considered. A failure to consider this could result in either the witnesses recall being tainted (by other people or other information) or prolonged delays resulting in lower levels of correct recall during cross examination.

The researcher involved in this study, expressed concerns in July 2006 (M. Albrighton, personal communication, 19 December 2007), that there was room for improving the way in which police officers record eyewitness testimony. Despite being commended for the suggestion that they made to the second largest police force outside London, the suggestion failed to gain momentum (Appendix G). It would be interesting to see how the results from this research, could support future developments, with a view to promoting good practice, and further developing an area of psychology in policing, which to date, in respect of 'real life' research that has been conducted, has not seen any significant change.

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