

University of Portsmouth

**Institute of Criminal Justice Studies
MSc Police Science and Management**

**Video interviewing of witnesses: The
opportunities available to the criminal
justice system – a critical examination.**

2007

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Dissertation submitted as partial requirement for the award of
MSc Police Science and Management.

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Declaration:

I confirm that, except where indicated through the proper use of citations and references, this is my own original work. I confirm that, subject to final approval by the Board of Examiners of the Institute of Criminal Justice Studies, a copy of this Dissertation may be placed upon the shelves of the library of the University of Portsmouth and may be circulated as required.

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Abstract:

The recording of witness testimony and the creation of statements during the investigative process is undergoing dramatic change. This research considers how that change is perceived by police officers whose role is to interview compliant witnesses, to study how the changes are affecting real life investigations and suggests where improvements may be made.

In order to achieve these goals the research has two strands; a study of police officers who are specialists in interviewing witnesses in serious and complex criminal cases and the review of a recently completed serious and complex criminal investigation.

The study of specialist interviewers perceptions indicates that there is an increased demand for video recording witness memories following the introduction of Section 16 of the Youth Justice and Criminal Evidence Act 1999. They anticipate a further increase when Section 17 of the Act becomes empowered. Officers identify that video interviewing witnesses provides high quality and quantity of memory detail recovery. Moreover statements and other documents created from such interviews are of higher quality too. The research into the case study supports the view video recording does provide the best standard of detail recovered from witnesses' memories and is an improvement over audio recording and simple statement taking. The study into the criminal investigation also highlights the problems of who may be video interviewed and suggests that while video is perceived as expensive it can prevent wasted time and other expenses associated with the multiple re-interviewing of non-vulnerable witnesses.

The research highlights the problems facing and the retention of specialist interviewers and identifies the need for effective supervision of this key investigative resource.

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Introduction

Change in investigative interviewing methods within the English and Welsh criminal justice system is under review because “society cannot afford investigative interviewing to be poor” (Milne and Bull, 1999. p.191). With the advent of the Youth Justice and Criminal Evidence Act 1999, those involved with interviewing witnesses, are challenged to reassess their methods and skills in collecting evidence for investigative purposes leading to the evidence’s presentation at court (Nield, 2002). This change reflects the increased priority placed upon witnesses’ testimony (Kebbell and Milne, 1998) and the difficulties in achieving complete, accurate and reliable witness statements (Rock, 2001). Witnesses as either victim or bystander are vital in providing the information from which the investigative processes follow trails of evidence. Witnesses’ memories aid the planning and preparation for the suspect’s interviews. To achieve such information of appropriate quality requires the investigator’s interviewing skill to enhance the witnesses’ memory recall. This is vital for safe convictions (Wolchover and Heaton-Armstrong, 1997).

From the 1980’s public concern about unsafe convictions has caused politically sponsored reviews and academic research into investigative practice. Initially directed to how suspects were treated by police the focus has expanded to encompass witnesses and statement taking (Clarke and Milne, 2001). The government has honoured this research with legislation and the police service has begun to train specialist interviewers for five tiered investigative roles (Griffiths and Milne, 2005). Witness vulnerability has led to the

use of video-recorded interviews and their presentation at court. Furthermore this change continues with the key report on Achieving Best Evidence (2001) being reviewed and refreshed at this time.

In order to provide the best evidence one must follow the trail of detail that makes a witness statement or video recorded interview and study that path from initial observations through the human memory and interview processes. The final part of this process produces a legally acceptable documentary record. The path is beset with difficulty from the witness's fragile memory to the interviewer's schema and interview aims. That malleable pathway is channeled by legislation which has been enacted because of concerns about the way the legal system has treated people during criminal investigations. The legislative changes to the processes of investigative interviewing; creating statements and interview records are a focus of this dissertation.

By critically examining the perceptions of specialist interviewers and studying documents produced in a serious and complex case it is possible to draw the strands of interviewing practice together to inform the debate about the state of current witness interviewing. However it is first necessary to review the history that has led to current investigative practice.

Chapter 1. Literature Review.

The criminal justice system in England and Wales requires full and accurate information from witnesses in order to achieve safe convictions of offenders and it is in everyone's

interests that the criminal justice system should be a search for the truth (Williamson, 1993). But what is the truth and can we ever achieve appropriate methods of identifying and recording it?

Interviewing witnesses, victims and suspects through conversation is how memorized information is recovered and recorded to become evidence suitable to be tendered at court (NCF, 2000). Interviewing is holding a conversation with a purpose (Shepherd, 1986) and managing such conversations is the basis of all witness interviewing techniques. This is because an interview is a dynamic interaction. It is the interviewer's understanding of this interaction that is the key to accessing full and accurate witness memories (Shepherd and Kite, 1988). Furthermore the importance of witnesses to the criminal justice system is central to the process because although witnesses rarely provide sufficient detail to answer the global questions "what happened" and "who did it" they are vital in guiding the direction of the investigation (Kebbell and Milne, 1998; Milne and Bull, 2006). In order to answer these primary investigative questions investigators gather information from numerous sources such as witnesses, suspects, victims, responders and experts (Kebbell and Milne, 1998) and the aim when interviewing such sources should be to always get the best quality and quantity of information to inform the investigation and subsequent court case should there be one (Milne and Bull, 2006).

Audio-recording to achieve full and accurate suspect interviews was enshrined in the Police and Criminal Evidence Act 1984 (PACE) and as a consequence of these efforts to

improve the methodology of suspect interviewing there has been a reduction in the reliance on confession evidence (Zander, 1995). As a result the spotlight of research has fallen on methods of interviewing witnesses (Wolchover and Heaton-Armstrong, 1997). Moreover because the adversarial court process in England and Wales focuses on witness accounts, it is vital that the methods used to retrieve witness memories are effective, robust, and transparent (Wolchover and Heaton-Armstrong, 1997). These accounts are then recorded as witness statements.

Statement taking is a complex task (Rock, 2001) and there are three stages to the production of such a document; (a) discovering what the witness knows, (b) the social interaction between the witness and the interviewer, and (c) the recording of the statement (Milne and Bull, 2006).

To discover what the witness knows it is necessary to understand the nature of human memory (Miller, 1956) and the interview techniques used by police officers to recover information witnesses hold (Fisher and Geiselman, 1992; Shepherd, 1986). There is a requirement for investigators to achieve the best evidence possible from witnesses to inform the planning and preparation of interviews with the suspect and outline the points to prove in the investigation (ABE, 2000) and this helps prevent miscarriages of justice (Wolchover and Heaton-Armstrong, 1997). However the interviewing process is difficult because the information held by witnesses has to negotiate a series of obstacles relating to

eyewitness memory, the interviewing process and the issues arising from taking the statement (Milne and Shaw, 1999).

The obstacles that memories have to pass through in the statement making process are both external and internal to the witness. It has been shown that the quality of memory recall is affected by the interaction between the witnesses and the to-be-remembered (TBR) event. The quality of this recall can be influenced by the witnesses proximity, involvement and perception of what is happening (Davies, 1993; Yarmey, 1986). Recall is affected by the internal state of the witness and adversely affected by alcohol (Yuille and Tollestrup, 1990) or other drugs where peripheral detail maybe reduced in recall (Thompson, 1995). Stress also influences memory and that for witnesses in real life situations highly stressful events can yield accurate recall yet high omission errors (Yuille and Cutshall, 1986). Close involvement in the TBR event makes the incident more memorable and this is pronounced when the phenomenon of ‘weapon focus’ occurs. Weapon focus is the phenomenon that happens when a person so focuses on the main threat towards them that when asked to recall the event they are able to describe the weapon clearly but have encoded fewer details concerning the offender (Loftus, Loftus and Messo, 1987).

In order to remember information a witness must attend to the TBR event and encode it as this is the process where information enters into memory (Eysenck, 1974). However there is a super-abundance of detail and human memory is selective. Therefore only what

appears at the time to be significant or unusual may be encoded into memory through the witness's limited cognitive resources (Navon and Gopher, 1979). This selective attention is dependant upon the person's knowledge, expectancy, attitudes, previous experience, interest, training and what is most important in their own judgment at that moment therefore everyone will record and remember the same event slightly differently (Fruzzetti, Toland, Teller and Loftus, 1992). Moreover memory is constructive and the encoded information that is being remembered is entwined with the person's general information about the world and inferences from previous experiences in a gap filling process. This allows the person to make sense of the world (Fisher-Holst and Pezdek, 1992) and is evidenced by a classic study by Loftus and Palmer (1974).

In this study participants viewed slides of a traffic collision and then one group were asked about the speed of one car as it 'hit' the other while others were asked about the speed when the car 'smashed' into the other. A week later the groups were re-interviewed and asked about seeing broken glass at the scene. Thirty-two percent of the 'smashed into' and sixteen percent of the 'hit' groups erroneously recalled the glass although there was none (Loftus and Palmer, 1974). It was argued that the more violent verb introduced a greater expectation leading to participants' confabulations. Thus memory recall is a very fragile process.

However highly emotional events are often rehearsed and re-run in the witness's mind helping to improve the memory for the TBR event (Yuille and Cutshall, 1989). There are

also other factors that aid remembering such as the contextual effect of recreating the mood, atmosphere or location where the encoding of information occurred (Estes, 1972). However it is not necessarily appropriate to reinstate the physical context of a crime as this may traumatize the witness and impede recall, indeed the crime scene may have changed and indeed a person's internal state may be just as useful when trying to retrieve a memory. Most successful recollection occurs when the retrieval cue reinstates the witness's subjective state at the time of the incident which may include feelings, thoughts and even fantasies (Schacter, 1996).

So in trying to assist the witness to recover a memory, particularly someone who has been deeply emotionally involved, frightened or is otherwise vulnerable (Memon, Vrij and Bull, 1998) the interviewer must not suggest or mislead the subject into building false detail. Another concern is that false memory details can be implanted into witnesses' memory particularly through repeated interviewing so that they believe details that never happened (Loftus and Pickerill, 1995). So as memory has been shown to be a delicate and fickle thing then how memories are recalled through interviewing must be critical to the process of creating a statement.

Witness Interviewing by the police.

Historically the police have been responsible for interviewing witnesses and taking statements as well as the interrogation of suspects. Written records of these interactions are then created into a file of evidence for presentation at court. However the accuracy of police recorded statements or interviews with suspects were challenged (Fisher, 1977)

and by the end of the 1970's the government had reviewed the criminal justice system due to rising public unease through the Royal Commission on Criminal Procedure (1981). The recommendations of this Commission formed the basis of the Police and Criminal Evidence Act (1984) (PACE) and the provisions of codes C and D relating to the interviewing of suspects came into force on 20th January 1986. Code F relating to video recording interviews with suspects was introduced later. The introduction of PACE required the police to formally audio tape record all interviews with suspects. This, coupled with the suspect's right to free legal representation during a recorded interview enabled independent scrutiny of the interview process (Zander, 1995). This new transparency had the effect of showing-up police attitudes to interviewing as basically seeking a confession (Plimmer, 1997) and identified the lack of formal training for this complex interaction. The Home Office then commissioned research that illuminated the main failures in interviews with suspects as inadequate preparation, poor techniques, assumption of guilt, general ineptitude, repeated questioning without establishing relevant facts and the use of psychological pressure (Baldwin, 1992).

Unfortunately PACE did not require similar safeguards for witness interviews and police officers continued to create victim and witness statements in a formulaic manner in order to provide a complete, watertight case for a successful prosecution. Rather the statement ought to be the persons' best account of what happened in their own words, uninterrupted and in a free flowing interview (McLean, 1992; Milne and Bull, 1999). This methodical system of statement making added to negative experiences of witnesses at court who are

often challenged over the content of their statement compared to their memory (Rock, 2001; Stephens, 2002). The systemic and individual failures to undertake appropriate interviewing and the exposure of miscarriages of justice such as the Birmingham Six case (Mullin, 1990) caused additional research to be commissioned and the genesis and distribution of the Practical Guide to Investigative Interviewing (CPTU, 1996; CPTU, 2004) which identified that interviewing should supersede interrogation (NCF, 2000, p13).

This inversion of investigative emphasis was important because it directed the investigators task was to help the witness provide the fullest report and because what the investigator has in their mind may affect their performance “psychologically, practically and evidentially.” Such subtle, unthinking investigator behaviour can affect the trial process especially when the defence studies the prosecution case for flaws in the record of eyewitnesses’ accounts (Ede and Shepherd, 1997; Heaton-Armstrong and Wolshover, 1999). Moreover police interviews generally involved poor questioning strategies that did not assist maximum retrieval or produce the best evidence (McLean, 1995; Clarke and Milne, 2001). A study by Frances Rock of how statements are made from the first verbal account to the final written form penned by the interviewer illustrates how the witness’s account can be changed during the process (Rock, 2001). Rock showed that the witness’s memory could be changed in the recording of the TBR event or during the statement creation especially if these occurred at the same time and if the interviewer made a formulaic statement (Rock, 2001. p.68). However if the case gets to court and witnesses refresh their memory from a formulaic statement created by the interviewer they are

vulnerable to defence' cross-examination (Shepherd and Milne, 1999). As a result the police service had to address inappropriate witness interviewing procedures that resulted in the PEACE interviewing model, an acronym of its five steps.

PEACE is a five stage interviewing framework for use with witnesses, victims and offenders (Williamson, 1993) and stands for:

- P** Prepare and Planning: The process of setting the environment, location and administration of the interview as well as the mental processes of those involved settled before the formal conversation takes place (CPTU, 1992).
- E** Engage and Explain: Is the process through which the working relationship is formed between the interview parties and includes rapport building and the setting of ground rules such as “it is O.K. to say I don’t know” (Bull and Cherryman, 1996).
- A** Account: This is the process of achieving the witnesses report of the event and should utilise the Enhanced Cognitive Interview which is the most suitable interview system for compliant witnesses (Fisher and Geiselman, 1992) or the Conversation Management techniques that are better suited to interviewing resistant witnesses (Shepherd, 1986).
- C** Closure: Should include the explanation to the witness as to what will happen in the future, answering questions the witness may wish to ask and

preparing for future interactions such as updating the witness with further details of the investigation's progress.

E Evaluate: means to review the information obtained in the interview, this information in the light of all other evidence and the interview team's performance as part of an experiential learning process (NCF, 2000).

The aim of the PEACE programme was to replace the directive style of interviewing in vogue in the 1970's and 1980's with a non-directive type of interview, indeed to replace 'interrogation' with 'investigative interviewing' (Bull and Milne, 2004). The principles of investigative interviewing were distributed in two booklets to the 127,000 serving police officers in 1992. The purpose of the booklets was to remove the selective attention of officers and filtering out of conflicting evidence or according undue importance to information that supported their agenda aim of achieving a conviction (Shepherd and Milne, 2006).

The investigative interviewing approach was interwoven with seven principles for investigators to follow that were issued in the Practical Guide to Investigative Interviewing's (CPTU, 1996). These principles are: (1) the investigator is to obtain accurate and reliable information from suspects, victims and witnesses in order to discover the truth. (2) Investigative interviewing should be approached with an open mind. (3) When questioning anyone, a police officer must act fairly in the circumstances of each case. (4) The police interviewer is not bound to accept the first answer given and questioning is not unfair merely because it is persistent. (5) Even when the subject

exercises their right to silence the police still have a right to put questions. (6) Police officers are free to ask questions to establish the truth and except where interviewing child victims of sexual or violent abuse are not bound by the rules applied to lawyers at court. (7) Vulnerable people, whether victims, witnesses or suspects, must be treated with particular consideration at all times.

The initial PEACE package was considered a useful step forward for witness interviewing (McGurk, Carr, and McGurk, 1993) and all newly recruited officers received training. However these inputs were unsatisfactory because of the use of the cascade training approach that diluted the key message and the five day course did not allow practice interviewing (McLean, 1992). This coupled with the entrenched attitude of senior colleagues who being untrained or ignorant of the training's aims persisted in pressing investigators to complete case files too quickly for good investigative techniques to take place (Kebbell, Milne and Wagstaff, 1999). As a result McLean identified that witness interviewing remained highly directive and controlled by officers who edited out unsympathetic detail to the prosecution case (McLean, 1992).

Witness interviewing systems

However in 1992 the government was independently developing a system to assist those who had to interview children for legal purposes which was published as the Memorandum of Good Practice for Video Recorded Interviews with Child Witnesses for Criminal Proceedings (Home office and Department of Health, 1992) (MOGP).

Figure 1.1: Witness Interviewing Systems.

Name of research	Phases of interviewing system	Sponsor	Date introduced	Authors
PEACE	P Planning and preparation E Engage and explain A account C Closure E Evaluation	ACPO	1992	Central Police Training Unit
MOGP	1 Rapport 2 Free narrative 3 Questioning (which includes) open-ended questions specific non-leading questions closed questions leading questions 4 Closure	Home office	August 1992	Profs Ray Bull & Diane Birch
CI	Report Everything Mental Context Reinstatement Recall events in different order Perspective change	Metro-Dade Police	1987	Geiselman, Fisher and Raymond
ECI	P1 Greet, personalize, build rapport P2 Explain the aims of interview P3 Initiate a free report P4 Questioning P5 Varied and extensive retrieval P6 Investigatively important questions P7 Summary P8 Closure P9 Evaluation		1992	Fisher & Geiselman
CM	G Greet E Explanation MA Mutual Activity C Close	City of London Police	1983	Shepherd

(Adapted from Nield, 2002)

Furthermore the enactment of the Criminal Justice Act 1991 required the routine video-recording of all interviews with children who are witnesses and/or victims.

The Memorandum has now been updated and replaced with Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable and Intimidated Witnesses, Including Children (2001) (ABE) and the aim remains to produce the ‘best evidence’ in a legal

format. The ABE document directs the interviewer about the legal requirements and gives guidance on the language that can be used while its phased approach is very similar to the components of PEACE and are shown in figure 1.1.

However witnesses rarely remember as much detail as interviewers would like (Kebbell, *et al*, 1999) and two American psychologists, Ed Geiselman and Ron Fisher began research in 1984 to discern how to increase the quantity and quality of information from cooperative victims, witnesses and suspects. The four techniques that they developed were the 'report everything' instruction, the 'mental reinstatement of context', the 'recalling events in a variety of orders and change perspectives' and were the collective basis of the cognitive interview (CI) (Fisher and Geiselman, 1992). However by 1987 the CI had been refined into a system of nine phases described as the enhanced cognitive interview (ECI). The enhanced cognitive interview is so called because the CI was developed from cognitive psychology but the founders discovered that real-life police interviewing lacked interpersonal communication skills including anxious interviewees who were left uncertain what their role was (Fisher, Chinn and McCauley, 1990). In addressing the lack of interpersonal skills in police interviews Fisher and Geiselman drew upon their own knowledge of techniques that had proven successful when used in interviewing (Fisher and Geiselman, 1992). The ECI phases are, 1] greet and personalise the interview by establishing rapport with the interviewee, 2] explain aims of the interview and the techniques of focussed retrieval, report everything, transfer control to the interviewee, requiring no fabrication or guessing and asking the witness to

concentrate hard, 3] initiate a free report including context reinstatement the use of open-ended questions, pauses and non-verbal behaviour. Phase 4] is Questioning and includes the instruction to report everything using interviewee-compatible questioning and reminding the interviewee it is OK to say 'I don't know' and 'I don't understand'. In this phase the interviewer activates and probes images using open and closed questions, 5] includes varied and extensive recall through the questioner instigating changes the temporal order, perspective and reinforces focusing on all the witness' senses and 6] covers investigatively important questions. Phase 7] is a summary of the interview and 8] closure including thanking and praising the witness for their effort and 9] the evaluation of the interview (see figure 1.1, page 17) (Fisher and Geiselman, 1992; Milne, 2004).

Increased correct recall using the ECI/CI has been found with all types of interviewees including children (Fisher and Geiselman, 1992), adults (Kohnken, Milne, Memon, and Bull, 1999), and those with learning difficulties (Milne, Clare and Bull, 1999; Clare and Gudjonsson, 1993), and the elderly (Mellow and Fisher, 1996), also improved interviewing performance has been found with experienced detectives and with students (Fisher *et al.*, 1987). Research has shown that the CI produces 40% more detail (Kohnken *et al.*, 1999) as well as equivalent accuracy rates (Milne *et al.*, 1999). However not every interviewee is co-operative so another interviewing system is required for such interviews and this is provided by the conversation management system.

Conversation Management (CM) was devised by Dr Eric Shepherd in 1986 and is a system that provides a framework to manage any conversation through pre-interview activities, the in-interview period and post-interview behaviours as given in figure 1.2, below.

Figure 1.2: The Conversation Management interviewing process. (Shepherd, 1986)

Pre-Interview Activity	In-Interview Activity	Post Interview Activity
Assess		
Collect	Greeting	
Collate	Explanation	Interview Summary
Evaluate	Mutual Activity	Investigative Analyses
Survey	Close	
Summary		

CM recognises that all interviewers have stereotypical knowledge of the events they are investigating (Shepherd, 1986). These schemata affect the way the interview will be conducted and so where the interviewer believes the suspect to be guilty they may employ techniques to secure a confession and become more accusatorial in their interviewing style (Mortimer, 1994). Investigators may utilise their past experiences of investigations to predict what happened, whether accurately or not in the current investigation and may ignore facts or explanations that do not fit their hypothesis. Before, during and after the interview such blinkered thinking can lead to premature closure, confirmation bias or defensive avoidance. Premature closure occurs when the investigator draws conclusions from the data before conducting the interview then tends to accept facts that confirm their conclusions and discount those that conflict with their pre-ordained schema (Shepherd and Milne, 1999). This is translated into the erroneous belief

that the interviewer already knows the answer and where a police officer or other authority figure asks the questions the susceptibility of the witness to err because of the presence of the authoritative expert may increase (Smith and Ellsworth, 1987). It is therefore the interviewer's responsibility to elicit information using non-biased techniques. Confirmation bias happens when the interviewer seeks and selects information that supports their hypothesis during the interview giving undue prominence to it and ignores or suppresses information that does not (Evans, 1989). Defensive avoidance is the deliberate repudiation of data that does not fit with the perception of guilt and the ignoring or suppressing of such information in order to achieve a conviction (Shepherd, 1986). Therefore information that relates to the investigators script may well receive preferential treatment or inconsistent data may become distorted to fit the script or be filtered out completely (Mortimer, 1994). These stumbling blocks to justice tend to produce directive, accusatorial interview techniques, failure to actively listen or summarise and encourage the interviewer to interrupt the free reporting stage of the interview (McLean, 1995). Thus if the interviewer is guided by their own script then much of the vital, relevant information can be "overlooked, screened out, ignored, forgotten, disposed of or deleted" (Milne and Shaw 1999, p131.). Premature closure, confirmation bias and defensive avoidance should be avoided because to achieve the fullest account from a witness the interviewer needs to keep an open mind and be prepared to test several hypotheses. Conducting an interview is a problem solving and decision making experience and requires careful preparation to examine the problems to resolve, the information sought, the aims and objectives, the conversational plan, the

mental mapping of the questioning structure, the issues to be addressed and the briefing of third parties (Rock, 2001). If these issues are not resolved the interviewee may lose confidence in the interviewer and become resistant to questioning and this will inevitably lead to a lack of detail as the interviewee sees no point in explaining what happened (Shepherd, 1993).

To avoid creating resistance to the interviewer or interview requires the investigator to construct a detailed representation of what has occurred and needs to avoid the pitfalls outlined above. Shepherd (1993) created the ACCESS model of investigation requiring a flexible, open-minded, monitoring interviewer who can draw on all aspects of the investigation and will account for new detail in a systematic way. This system attempts to outlaw confirmation bias, premature closure and defensive avoidance. ACCESS stands for assess, collect, evaluate, survey and summary and is an experiential learning cycle of investigative behaviour (Shepherd, 1993). ACCESS is important because can be used with both resistant and compliant witnesses and provides a cross-over with suspect interviewing.

Having interacted with the witness the police create a statement for use in the investigation and potentially at court. Historically police officers have been required by the criminal justice system, through their training systems to standardise the witnesses report by placing the events in chronological order. Ensuring the legal points to prove for the suspected offence are covered encourages the use of legal jargon (Ainsworth, 1995;

Rock, 2001). Moreover it is impossible to interview a witness and write a statement at the same time. The task is too large in scope as it requires the interviewer to attend to the witness's verbal and non-verbal communication, note salient points and inconsistent facts to return to later in questioning and also cope with internal schema. Therefore consideration must be made to video or at least audio-record witness interviews so that all details are recorded (Rock, 2001). Even as the interviewer creates the statement without reference to such a record error can creep in as the interviewer has to go through the process of attending to, encoding, storage and retrieval of data during this complex of tasks. Even when the interviewer attempts to write a document immediately after the interview ends at least a third of all salient detail will be lost (Kohnken, Thurer and Zoberbier, 1994). Furthermore although a witness may write their own statement almost all are written by police officers (over 90% Ainsworth, 1995) and those that are not, are mostly created by professional store detectives, immigration officers and the like. This creates the concern that apart from forgetfulness other filtering methods will affect the storage and processing of the interviewers memories. Into this area fall the pressures of work both in volume and of time management on the statement writer, their scripts, prior knowledge of the case, of the crime type and the legal points to prove as well as providing a document that will please supervisors and lawyers (McLean, 1992). Moreover the fact that individual's statements are filtered by police can mean that they become turned against the witness in court whose memory may be different to the formulaic document they signed weeks or months previously (Ede and Shepherd, 1997; Milne and Bull, 1999; Rock, 2001). However not every witness is offered a video-

recorded interview unless this is required by law or they are identified as ‘significant witnesses’.

The identification of significant witnesses and the provision of a video interview trained depends upon the police’ senior investigating officer’s (SIO’s) decision and there is no legal definition of ‘significant’. However the police ‘murder manual’ (ACPO/NCF, 2000) records that “at any stage of a murder investigation witnesses whose evidence is clearly of significant evidential value will be identified. This is particularly the case in respect of Key Witnesses who emerge at an early stage of an investigation” (ACPO/NCF, 2000, p105.). This is not the clearest definition and the decision as to who is a significant witness rests with the SIO although this person may not have been specialist witness interview trained. Some of the competing elements in the SIO’s decision to tape record the witness’s statement are that consideration must be made of the skills footprint of their staff, who is actually available to interview the witness and at the same time manage the competing pressure of the ongoing investigation at the time(s) the witness is available.

The law assists the police by providing direction as to who must be video interviewed such as children who are witnesses to violent or sexual offences (Davies, 1999) and people who are vulnerable or intimidated under provisions of the Criminal Justice Act’s of 1988, and 1991 and Sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999. Section 16 directs that any person under the age of 17 is vulnerable, or where the witness “suffers from a mental disorder” or otherwise has a significant impairment of

intelligence and social functioning” or that the witness has a physical disability or is suffering from a physical disorder.” (S16 (1) and (2) Youth Justice and Criminal Evidence Act 1999). The Act then defines vulnerability as where the quality of the evidence “is likely to be diminished by reason of fear or distress on the part of the witness’s connection with testifying in the proceedings.” The court must consider the nature and circumstances of the offence, the witness’s age and their social, ethnic, political and religious background. The court must also consider the behaviour of the accused, the accused’s family or associates and any other person involved in the proceedings towards the witness and finally the witness’s views, (S17 (1), (2) and (3) Youth Justice and Criminal Evidence Act 1999) (Nield, 2002). However further research and improvement in vulnerable witness interviewing continues to raise the need for better supervision and monitoring of witness interviews and for understanding that ‘vulnerable’ as applied to witnesses should be applied to many more people who are currently discounted for audio or video interviewing (Nield, Milne, Bull and Marlow, 2003). It is anticipated that S17 of the Youth Justice and Criminal Evidence Justice Act 1999, currently enacted in Northern Ireland will come into force in England and Wales during 2007 and this will extend support to witnesses who are vulnerable on grounds of fear or distress about testifying in court. This will support intimidated witnesses as their vulnerability relates to the nature of the crime or the circumstances of the offence such as homicides, serious sexual assaults, racially aggravated offences and domestic violence (Milne and Bull, 2006) and it may even be seen to apply to any offence where the witnesses can be regarded as vulnerable. Also S137 of the Criminal Justice Act 2003 (that is waiting to be enacted with S17 of the

Youth Justice and Criminal Evidence Justice Act 1999) states that any witness regarded as vulnerable may give their evidence-in-chief at court by means of a video-recorded interview.

Professionalising the process.

Current efforts in the police service are geared to professionalizing the witness interview process with a tiered approach to provide the training and competencies for interviewers appropriate to the type and complexity of the offences they are required to investigate. Commitment to this aim was evidenced by the introduction of ABE and while this document identifies how best to interview children and vulnerable adults it also identifies that skilled interviewers taking the necessary time to interview the subject as best practice (Griffiths and Milne, 2005). This is applicable to all interviews and ABE provides guidance concerning the determination as to what vulnerabilities the witness has although this is not necessarily easy to do. Good communication skills, sufficient time and appropriately asking the witness how best to interview them can significantly improve the interview results (ABE 2001, 2.50 and 3.4). Following changes during the last 15 years ABE is currently being re-written and revised to take account of recent research. This research has been incorporated into the Association of Chief Police Officers' (ACPO) national investigative interviewing strategy and includes the updated and tiered structure of the national police interviewing package, PEACE (Central Police Training Unit, 1992). This interviewing package structure has identified five tiers of training (Clarke and Milne,

2001): Tier 1 is an appreciation and introduction to interviewing to police probationers. Tier 2 continues the training of police staff in interviewing for volume crime events such as uniform investigators and detectives but Tier 3 is an advanced interview course for specialist interviewers who are to interview witnesses in complex and serious crimes. Tier 4 deals with the quality control of interviewing through the management and development of investigative interviewers and Tier 5 sets out the role of the expert consultant interview controller for the specialist interview management and coordination of complex and serious crimes (Clarke and Milne, 2001; ACPO, 2002; Griffiths and Milne, 2005; Milne, Shaw and Bull, 2006).

It is because of continuing concern throughout the criminal justice system about how witness statements are being recorded that leads to this research and asks the following questions.

Research Questions

What is the current practice of video or audio recording interviews with significant witnesses in the investigation of high profile criminal offences by comparing these artifacts with the subsequently produced witness statements? It reviews current academic research into witness interviewing and specialist interviewer's perceptions of the current video-recording process.

Do video and audio recording witness interviews assist in the preparation and production of improved witness statements within the criminal justice system?

What are the views of the interviewer practitioners as to the efficacy of video and audio recording witness interviews?

Through these questions this study will inform the debate around the criminal justice system as to how best to interview witnesses in order to allow the best evidence to be adduced in court.

Chapter 2. Method.

In order to address the research questions in this dissertation two practical aspects of police work were examined; (i) the views and experiences of police officers who are Tier 3 interviewers regarding the efficacy of different methods of conducting witness interviews because these officers are trained in video-recording and other witness interviewing techniques and (ii) a review of the ROVI's, ROTI's and statements from a recently completed serious and complex criminal investigation. Each method will be examined in turn.

Design: Interviewer's perceptions.

The study of the police interviewers' perceptions was designed as a descriptive, cross-sectional study (Hagan, 1993) which was suitable for monitoring and assessing the practice of recording witness testimony. The key aspect of the research was to gain an

insight into the participants' views when creating statements from recorded interviews with compliant witnesses. The researcher was interested in the respondents' understanding of current interviewing theory and how it is utilised in practice. A semi-structured interview (McLean, 1995) was conducted with the sample of eighteen Tier 3 witness interviewers (Griffiths and Milne, 2005) because the semi-structured interview achieves high reliability and validity of data collection through the use of themed questions and allows exploration of the interviewees understanding of the subject (Ogier, 1999). This is a flexible approach, allowing a large volume of data to be recorded from a limited source and acts as a starting point for experimental studies, several of which are suggested in the discussion. The semi-structured interview was chosen over a questionnaire as it was more likely to provide a greater take-up by the target population (Gibbon, 1995; Ogier, 1999; Moon and Twigg, 1998) and because it could provide the necessary data at a lower cost in researcher's time and finances than an observational study (Ogier, 1999).

The design of the semi-structured practitioner interviews was based upon themes and utilised mostly open questions. The themes were developed based upon research into interviewing and statement taking practice (Rock, 2001; Nield, *et al.*, 2003; Shepherd and Milne 2006) and the themes were recorded in the researchers questionnaire that was used for each interview and a copy of which is given in appendix B. During the interviews the researcher asked thirty-three open questions to guide the conversation (Maxwell, 1992) through eight themes via the sequential steps of greeting, explanation, mutual activity and closure (Shepherd, 1986). Open or open-ended questions were used because they allow the respondent to provide an unrestricted answer, minimizing the risk that the interviewer

will influence the outcome of the interview and maximizing the interviewee's control of the subject. Open questions are framed to enable the interviewee to give an open, unrestricted answer that also allows the interviewee to control the amount and flow of information during the interview (Stewart and Cash, 1988). Closed questions restrict the opportunity for the interviewee to respond, replies often consisting of a single word or short phrase (Bull and Cherryman, 1996).

The Participants.

To obtain the sample the researcher approached twenty Tier 3 interviewers from Surrey Police to participate in the study by email or telephone and the purpose of the research was explained to them and their agreement to be interviewed was sought. Ninety percent (n=18) agreed to participate and stated that they were Tier 3 trained witness interviewers who regularly interviewed witnesses using video and audio-recording methods in complex and serious crimes. These officers were then sent an explanatory letter to formally introduce the aims of the research, why it was necessary, how their responses would be used and who the researcher was. The letter indicated the areas where the officers' would be questioned and explained that their responses would be anonymous and that confidentiality would be fully respected. The researcher also provided contact details should any of the officers seek clarification of any issue and closed thanking the individuals for agreeing to be involved in the research (see appendix A for a copy of the letter). The interviewees agreed to set aside an hour at a mutually suitable time and place to undertake the semi-structured interview. Fourteen of the interviews were conducted by

telephone and four were undertaken face-to-face. The notes made during all the conversations were checked by the interviewees for accuracy and content and feedback was given to the researcher. All respondents were thanked for their involvement and any comments they wished to make were recorded. The interviews were completed between September 2005 to January 2007 in the respondents' own time and no payment was made for participation.

How the semi-structured interviews uncovered the respondents perceptions.

In order to capture the eighteen interviewer-practitioners' perceptions they were interviewed through seven themes in individual semi-structured interviews. The first theme was designed to capture demographic data about the respondent, based on twelve open ended questions and one closed (yes/no) question relating to age, gender, occupation, length of service, job title, police force, role currently undertaken in the police service, qualification as a tier 3 interviewer, the date and the length of their Tier 3 training and they were also asked what training was supplied to assist them to create a record of a video-taped interview (ROVI), a record of an audio-taped interview (ROTI) or statement from a video or audio-interview.

At the same time the respondents' views were sought as to what is important when planning and preparing an interview and how many witness interviews and how many significant witness interviews each respondent conducted per month? This allowed the researcher to examine which respondents were most active in witness interviewing, and

provided data on their interview experience. The responses to these questions were designed to provide a perspective on the officers' comments throughout the research because twelve respondents' roles had a high level of interaction with witnesses whilst two provided an opportunity to observe the management of investigations.

The second theme sought to identify the importance of witnesses to the investigation of serious and complex crimes. The respondents were asked for their perceptions of the value of witnesses in an investigation and then whether or not witnesses were considered as important as other forms of evidence. This identified how the interviewers perceived witnesses in relation to their Tier 3 interviewer roles and to the investigation as a whole.

Theme three asked the respondents how best to discover and record witnesses memories of a 'to-be-remembered' event. This required the officers to consider the interview recording systems such as video or audio-recording the conversation or to simply to write out a witness statement as would be expected in a volume crime (Tier 2) investigation.

The fourth theme sought to discover what systems are used to interview witnesses and asked what positive and negative factors relate to each method. This theme also sought what criteria are used to determine who will be interviewed using video or audio recording or the simple statement model. It also asked who the interviewees thought should be video or audio-recorded when making a witness statement for use in the criminal justice system. Next the question was considered as to whether video or audio-

recording witness interviews assist in the preparation and production of improved witness statements. Furthermore this theme examined if statements are improved when created from a video or audio-recorded interview when compared to being created from an interviewers notes or the simple statement taking process.

Theme five asked how the recording of witness statements could be improved and incorporated the possibility of identifying better methods of creating statements. It examined why such improvements are not yet available, the provision or not of administrative support to the statement making process and how detail may be lost throughout the process of statement taking. This theme also sought to elicit the views of the respondents as to the efficacy of video and audio-recording witness interviews from the perspective of the interviewer-practitioners.

Theme six sought to review the objectivity of the statement making process and how objectivity can be safeguarded throughout the process. This is important as the investigative interview is a key process in a complex search for the truth (Williamson 1993). So the theme considered how objectivity can be maintained in the interview and statement creation by someone who already has an in-depth knowledge of the investigation. For example how is objectivity to be assured where one investigator is required to interview all the witnesses and also the suspect? The theme then considered if being the interviewer may preclude that person from creating an objective ROVI and how much supervision is currently given to Tier 3 witness interviewers to check for objectivity

and accuracy in the ROVI/ROTI or statement. Theme seven also asked whether there was administrative support for the interviewers from typists to create the documents and looked into who checks ROVI's, ROTI's and statements for accuracy or the detail transferred from the tapes. The theme also looked at the how the interviewers skill might be reviewed and how the role of the investigative receiver might be enhanced.

Theme seven asked the interviewees to rate the quality and usefulness of their Tier 3 training. It sought views on the effectiveness of the training and whether it had fitted them for their roles and what was missing. Finally the respondents were asked if anything could have been improved in the particular training given and if the overall package of investigative interviewing training could be improved upon.

The responses provided by the respondents within the themes were recorded by the sole researcher and the accuracy was then checked by a colleague who was given a two hour introduction to the subject, the semi-structured interview questions and response notes. Any disagreement between scorers was discussed and resolved. The inter-rater agreement was ninety two percent and all disagreements related to misunderstanding between the recorders perception of what a respondent meant rather than any dispute over the recorded information. For example, one respondent stated that they always self-evaluated their own work which was recorded by the researcher as having no supervision and as being supervised by the checker so a telephone call was made to the respondent who confirmed that her work was never supervised by her line manager.

The case study.

The second strand of this research was designed to review current practice of interviewing through the examination of ROVI's, ROTI's and statements from a completed high-profile investigation that included adult and juvenile witnesses. The selected case involved a wide range of witnesses from youthful victims to the neighbourhood policing team and specialist tattoo artists, in total two hundred and twenty four witnesses. The offending behaviours included serious offences against children that had taken place over several years and the police investigation started in January 1999 with a complaint against one of the suspects and concluded with his conviction in March 2006. This investigation provided the appropriate level of case complexity to require Tier 3 witness interviewing and involve management decisions by the SIO to be made about witnesses' vulnerability and their significance to the investigation. Also as the main parties in this investigation knew or were related to each other management decisions about who should be interviewed by video or audio-recording were able to be made without the additional pressure that is inherent when the investigation is also trying to identify the suspect. The researcher also received the support of the senior investigating officer to undertake the research and confirmed with him that it was policy to video or audio-interview significant witnesses in such an investigation.

With a suitable case selected for study it was necessary to (a) identify within it which interview related artifacts would be studied in depth and then (b) to review the interviews to identify the standards of the Tier 3 witness interviewers involved. Once this had been

completed the research could focus on (c) the examination of the quality and the quantity of the information recorded on the media used in the studied interviews. Finally (d) the transfer of detail from tapes or interviewer notes to ROVI, ROTI or statement was researched. Within these four aspects consideration was made of the decisions as to who was a significant witness, which interviewers received administrative support and why some witnesses were interviewed multiple times.

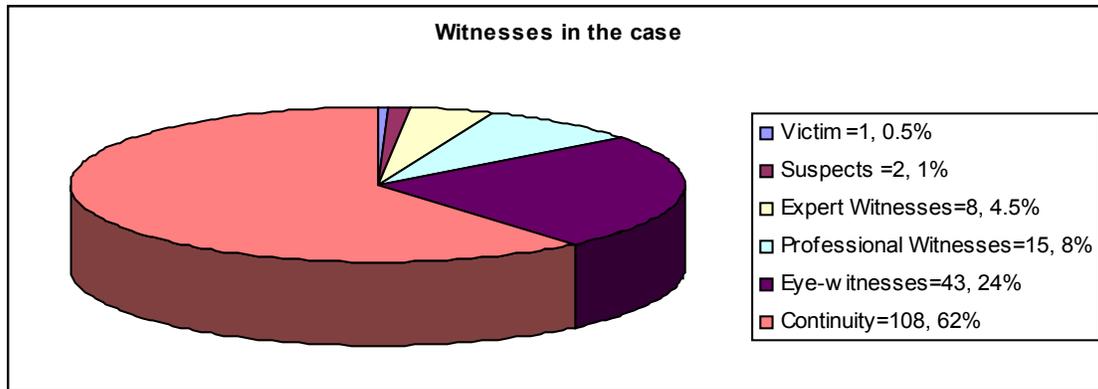
(a) The selection of the sample of artifacts for study.

The case that was studied provided two hundred and eighty eight witness artifacts for examination, these included seven video tapes from which four ROVI's and one statement were made and twelve audio tapes from which eleven ROTI's were created. There were also two hundred and fifty-four statements made during the course of the investigation but due to thirty one people being interviewed multiple times there were only 177 witnesses. From this number forty-three statements (n=43) were identified as being from eyewitnesses involved in the incidents leading up to the initial complaint and the subsequent police investigation which had interview notes available to allow the interviews to be studied.

In this study an eyewitness is defined as someone who was closely involved with the offender or victims (i.e. has material evidence to assist the court's decisions) at the time of the offences and who has been interviewed by the police. There were also eight expert witnesses including the coroner, the home office pathologist and a tattoo artist and this

‘expert’ classification was based on the role of the witness. Then there were fifteen professional witnesses including a social worker, probation officer, police, ambulance and fire officers but the largest group of witnesses were those providing continuity who were one hundred and eleven in number. Continuity statements are defined as those statements that are not made by eyewitnesses but are necessary for the completion of the file of evidence tendered to the court. This includes statements administrative staff who produced computer records or people including police staff involved in managing the construction of the case. The continuity category also includes statements from relatives, neighbours and tradesmen that might have had a bearing on the investigation and which once recorded were required to be contained in the file of evidence but were never be presented to court except as part of the complete file of all evidence.

Figure 2.1: Witnesses categories in the studied case.



Clearly continuity within a case is a very high priority for a successful investigation as almost two-thirds of all statements relate to this process. However it does not detract from the key role of the victim, suspect and eyewitnesses without whom the investigation would not come to court. From these selected artifacts it was possible to study the interviewers abilities.

(b) Identifying the standard of interviewing ability.

In order to discover the quality of the witness interviews the seven video and twelve audio-tape recorded interviews were examined for interviewing ability by scoring eleven categories of interviewer behaviour against a Likert type scale where one (1) was very poor, two (2) was poor, three (3) was adequate, four (4) was good and five (5) was excellent. The eleven studied categories within the interviews for each interview were the *greeting* of the witness by the interviewer, the explanation of the *aims* of the interview and the initiation of a *free report* from the witness as the interview got underway. These were followed by the *expansion* of the information gathered during the free report stage and the use of appropriate *questioning* techniques. Next a *summary* of the interview was sought as this could confirm the witness had provided all the relevant details and the *construction* of the interview and *language* used by the interviewer was considered. Furthermore the research sought if an appropriate *closure* was conducted and then a closed question was utilised to record whether *resistance* was met from the interviewee. The last category scored was the *overall* standard of the interview and this provided the data for a critical examination of the standard of witness interviewers skill before looking into the data recorded and transferred from the tapes into a document acceptable to the criminal justice system (Griffiths and Milne, 2005).

These categories were designed to provide a comparative system to review the standard of the witness interviewers. This is because it is only after these skills have been benchmarked that the quantity and quality of the data captured in the interviews and then

the accuracy and completion of the data transfer from the interview to paper documents (ROVI, ROTI and statement) can be critically examined.

(c) The examination of the quality and the quantity of the information recorded.

Having scored the interviewers abilities the interviews were next examined for the quantity and quality of each detail recorded. This was achieved by creating a marking guide for each interview, noting each piece of information separately on these documents and comparing the details from the ROVI's, ROTI's or eyewitness statements that were produced by the investigative team and presented as evidence to the court. Therefore details in the video and audio-recorded interviews were compared by the researcher with the details recorded in the ROVI, ROTI or statements constructed from these witness records by an administrative assistant or police officer. The ROVI's, ROTI's and statements were compared to the facts presented by the witnesses in the interviews and scored on a Likert type scale of one to five; where *one* suggested the record was misleading, distorted or otherwise of poor quality indicating that the statement addressed few of the salient points, *two* described a statement that omitted so much detail as to make it an unfair account, *three* was a reasonable outline but too long, *four* indicated that the statement outcome was a reasonable outline of all salient points and *five* showed a statement that covered all the salient points and that this was supported by interview notes. Analysis of this data was used to critically examine the quality of the transfer of information from the witness into documentary evidence. The details sought across the documents were (a) People including the offender and other witnesses, (b) the Actions of

individuals both physical and verbal and the use of objects, (c) the description of Objects and vehicles and (d) the inclusion of Surroundings and event, (i) before the event, (ii) the scene and (iii) after the event. Then the time and chronological sequence of events was reviewed and noted.

The purpose of this activity was to examine the interview for data capture and recording in order to identify best practice or poor performance and allow the researcher to establish across the artifacts what detail was being sought by the interviewer.

Thus having previously identified the quality of the interviews, this process informs the research as to the quality and quantity of the information extracted from the witnesses by the interviewers and is key to providing the detail to be transferred in to a usable paper document for the court.

(d) The transfer of detail.

Once each of the interviews had been scored for quality of detail how the detail was transferred from the video or audio interview tapes and interviewer notes transferred into the ROVI's, ROTI's or witness statements was then expressed as a percentage of the total number of details given by the witness. This was achieved by grading the transfer of the details using six discrete descriptions of the recorder's activity. These six comparative actions are (i) ***inclusion*** of correct details for example where the witness says they saw a self-loading pistol (SLP) and this was accurately recorded in the statement as a SLP or

automatic pistol. (ii) *Omission* of a noted detail, was recorded where the SLP was reported in the interview but did not appear in the statement. Next (iii) a *distortion* was recorded where incorrect detail was provided for example where the weapon was described not as a self-loading pistol but as a revolver and (iv) A *contrary* fact was evidenced where a detail, say the SLP was reported by the witness but statement recorded that there was no gun and (v) a *confabulation* was the inclusion of detail that was not reported by the witness but which appeared in the witness statement for example that there were three SLP's.

This transfer of detail from the tapes or interviewers notes to the ROVI, ROTI or statement is the final stage before the document is presented to the witness for their agreement and signature. It is vital that this process is completed accurately or the witness may be misled by the interviewer into signing an inaccurate record. This can occur because the witness sees the officer as an authority figure knows everything and who must be correct (Savage and Milne, 2007). Alternatively the witness might simply be tired after the long and challenging event that is a cognitive witness interview and assume the record is accurate or simply not checking the written document. If all the segments of the interview process are completed professionally and accurately there is far less opportunity for miscarriages of justice to occur and a greater likelihood that the offender will be found guilty (Wolchover and Heaton-Armstrong, 2007; Savage and Milne, 2006).

Safe convictions are a goal of the investigative search for the truth so what are the outcomes of this research into the investigative process?

Chapter 3. Results.

The results of this research start with the findings from the practitioner questionnaire and follow with those from the case study. The experiences of the witness interviewers and their perceptions of witnesses inform their opinions of how to record interviews and what is necessary to improve the accuracy of detail transfer as they search for the truth. How this fits with the case study is then shown with the standards of interviewing data and transfer of detail from these conversations transferred to the final documents.

The participating Tier 3 interviewers' perceptions.

At the time this dissertation was undertaken Surrey Police had trained thirty-five police officers as Tier 3 witness interviewers, seventeen men (49%) and eighteen women (51%). The researcher approached twenty of this group to undertake the study. The response rate was ninety percent nine of whom nine were male and nine were female, and all stated that they had been trained as Tier 3 witness interviewers. The mean age of the eighteen officers was 33.7 years with a range of 27-45 years. The roles of the participants were noted and twelve of the officers were detectives or investigators (the term was used interchangeably by the respondents), one was an inspector, another was a detective sergeant, one was working as a local intelligence officer (LIO), one was on the staff of a domestic violence unit, one was on the neighbourhood policing team and one was a multi-

agency public protection agreements (MAPPAs) co-coordinator. Other than the inspector and detective sergeant the remaining sixteen participants were police constables with the sample's average length of service being 13.7 years, ranging from 5 to 29 years. This data indicated that the officers were out of their probationary period, had settled police careers and had all undertaken detective training prior to their Tier 3 witness interview training. In all the participants were officers who would be regarded as specialists by their force in witness interviewing and this was supported by their self-reported witness interviewing activity.

The participants responses recorded they undertook a combined total of 265 witness interviews per month, with a mean of 14.7 interviews and a range between 0-30 interviews. Of this total some 129 were described as significant witness interviews (SI), that is 48.7% and on average each interviewer conducted 7.1 SI's per month. However there was a range of between zero and twenty-three with a mode of five because the inspector, the neighbourhood officer, the LIO and the MAPPAs coordinator were in roles where witness interviewing was not a priority. The scores with this group omitted raised the average interviews completed per month to 11.5 SI's and the mode to 9.8 indicating that the detectives' role provided the most opportunities for witness interviewing and that the interviewers conducted a large number of interviews per month.

Perceptions of planning and preparation for interviews.

The participants were asked to identify what factors they considered most important when planning to interview a witness which elicited 43 responses. The most important issue for interviewers was to build rapport which was reflected in twenty eight percent of the views (n=12) whereas having an appropriate location to conduct the interview and a briefing about the witness including the current state of the investigation each provided nineteen percent of the (n=8) responses. Having time both in its quantity and of suitability to the interviewee was presented in sixteen percent (n=7) of responses as vital for a well conducted interview and having the best available equipment drew twelve percent (n=5) of replies. The following three aspects each provided two percent (n=1) of the replies and were the interviewing system to be used for the interview, the number and composition of the interviewing team and a thorough knowledge of the law relating to the alleged offence being investigated. It is clear from these results that building rapport which is a key aspect of interview training has been accepted and is used by these officers when interviewing witnesses. It is interesting that twenty-six percent (n=11) of the officers believe that thorough preparation including researching the legislation will enhance the interview process and support the witness. The third theme to arise from this section of the research was the perennial concerns of time and equipment. As will recur throughout this dissertation officers identify the need for appropriately equipped interview rooms plus sufficient time to conduct the interview that meets the needs of the witness.

What is the importance of witnesses to an investigation?

The officers were asked for their views regarding the importance of witnesses to the investigation of serious and complex crimes where Tier 3 witness interviewers might be deployed. There were twenty-six replies of which fifty percent (n=13) indicated that the officers believed that witnesses were either vital or important and overall eighty-nine percent (n=23) of the responses suggest that witnesses are key to investigating crime. These current views were illuminated by comments from three practitioners suggesting that “witnesses are not given enough importance in the investigation” and that “witnesses have been let down in the past”. This result indicated that fifteen percent of the Tier 3 witness interviewers in this sample had concerns about the value the criminal justice system places on witnesses. Moreover one officer suggested that witness interviewers are treated as less important to the investigation than suspect interviewers. It is clear that witness interviewers see witnesses as vital to the investigation and are evangelical about their role but they have concerns about the way their senior officers perceive witness interviewing and witnesses’ usefulness within the overall structure of the investigation.

How best to discover and record witness memories to a TBR event.

The participants were asked to identify the best method to record witness memories for a TBR event and all the officers responded. Their views covered the techniques for interviewing and the mechanical method of recording the conversation. There were eighteen replies for the interview techniques used and ninety-four percent (n=17) stated that the CI was the best interviewing system to use for compliant witnesses of all ages and abilities which was anticipated considering the training these interviewers had received.

However six percent (n=1) stated they would use the CM system but when challenged about this all indicated that they knew the CI was most suitable for achieving the greatest quantity and quality of information from a compliant witness and if the witness was not compliant then CM was appropriate.

Then the interviewers' were asked how they preferred to record interviews with witnesses. This provided support for video-interviewing with seventy-two percent (n=13) selecting this recording system. There were twenty-two percent of responses (n=4) that showed a preference for audio-recording and one officer, six percent (n=1) who maintained that simple statement taking was their preference. Interestingly the audio recording preferences and statement taking responses were amplified when the participants were asked to identify the strengths and weaknesses of video and audio recording and statement taking and are recorded below.

The Tier 3 witness interviewers were asked for their perceptions of the strengths and weaknesses of video interviewing, audio interviewing or statement taking from witnesses. When the question was posed regarding video-recording witnesses there were twenty-three responses with sixty-five percent (n=15) reporting video provided the best quality record of the interview and seventeen percent (n=4) reporting the positive benefits of video recording non-verbal communication and additional detail. The remaining nineteen percent was split evenly with four and a half percent each reporting positive perceptions of safeguards for the witness (n=1), the fact that the tape can be viewed in the court (n=1),

that are no unexpected interruptions to the interview itself (n=1) and the equipment available is the best available (n=1). These data are presented in figure 3.1 *post*. It is clear that the quality available to the investigators from video-recording is clearly understood.

The same number of twenty-three responses (n=23) was recorded when the same information was sought regarding the audio-recording of interviews with witnesses and is shown pictorially in figure 3.2. The most positive response of forty-nine percent (n=11) was that audio-recording witness interviews provides sufficient quality of information to the investigation whilst a further thirty percent (n=7) believed that the portable nature of some audio-recording equipment was a factor in audio-recording's favour. Some thirteen percent of responses (n=3) suggested that audio was overall the best medium to record witness testimony, making a cost-benefit analysis within the answer. The final eight percent consisted of positive perceptions that audio interviews may be played to the court (n=1) and of the sufficiency of detail captured in the process (n=1).

When asked about statement taking from witnesses the respondents provided twenty-four positive responses (n=24) with forty-two percent (n=10) reporting that the time taken was the most positive aspect. These are presented in figure 3.3 that shows twenty-one percent (n=5) stated it was the cheapest method of recording witness testimony that can be presented at court and thirteen percent (n=3) noting that it only required one interviewer to take the statement. Eight percent each suggested that benefits were mobility (virtually no equipment needed) (n=2), that it was more intimate between interviewer and

interviewee and that the interviewer was in some way more connected to the witness (n=2) and finally a simple statement can be all that is needed for the investigation to succeed (n=2). So in comparison the respondents perceived video as the most effective medium for recording witnesses recollections giving the best detail and record of the witnesses' behaviour in the interview. However some still thought that audio was cost effective and provided sufficient detail for investigations and that simple witness statements were in some cases enough to discharge their duty to gather evidence. This will be explored and compared to the negative perceptions and considered further in the discussion *post*.

Figure 3.1: Interviewers' positive perceptions of video interviewing.

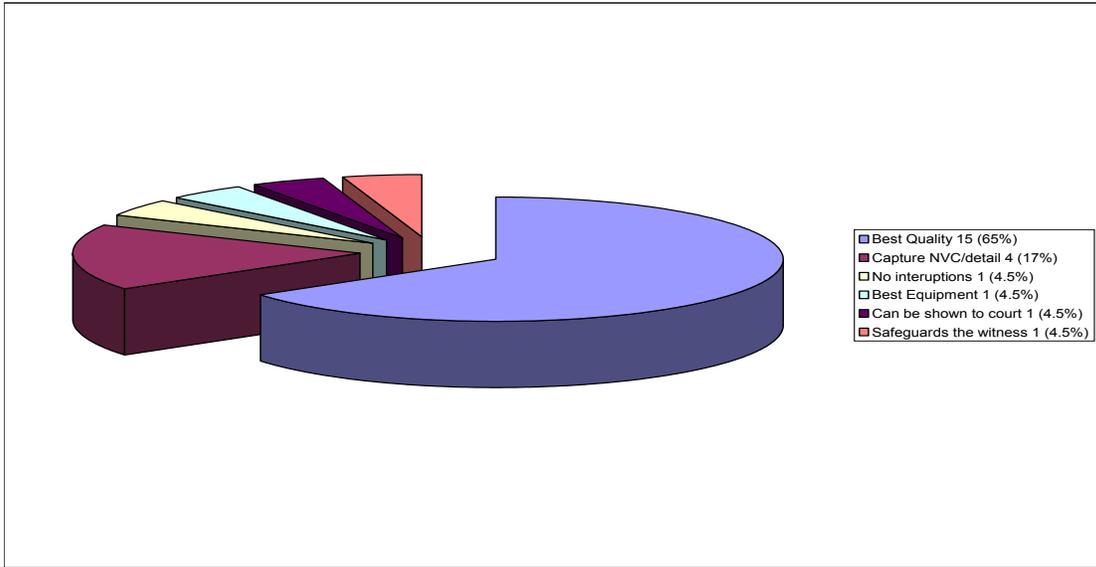


Figure 3.2: Interviewers' positive perceptions of audio interviewing.

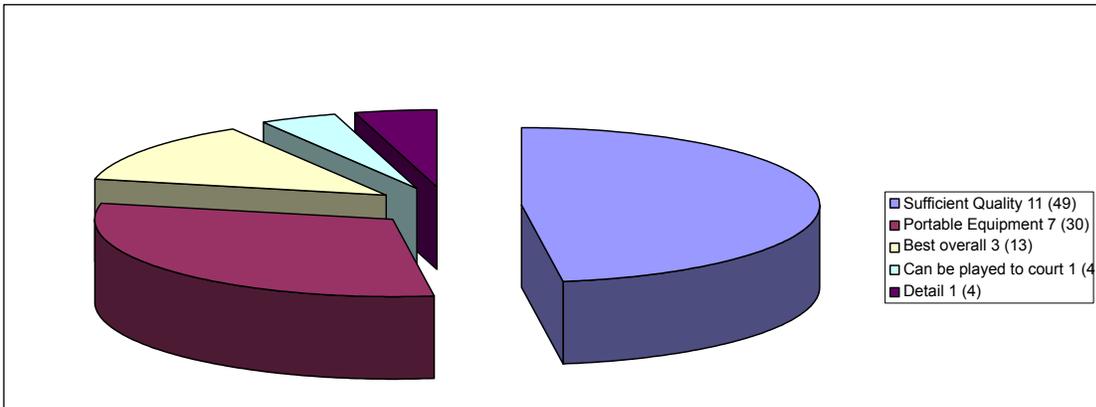
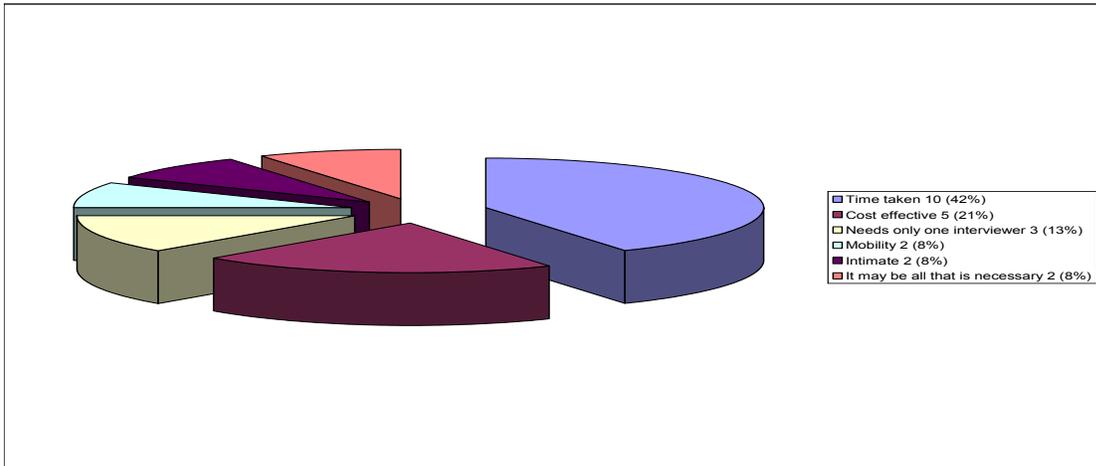


Figure 3.3: Interviewers' positive perceptions of statement taking.



The participants were asked for their negative perceptions of the three common ways of recording a witness's testimony; video-tape recording, audio-tape recording or writing out a witness statement and the responses are presented in figures 3.4-3.6 *post*. When asked about the negative aspects of video-recording there were forty-two responses and these were separated into fourteen categories. The main criticism of current video interviewing of witnesses had nineteen percent of respondents stating there were too few video ready interview rooms (n=8) and the next three equal concerns of twelve percent each were the poor locations of the rooms (n=5), not having sufficient trained staff (n=5) and this method being too time consuming (n=5). Further concerns were raised in seven percent of responses about the lack of portable video-recording equipment (n=3) and not having enough training (n=3). There were a further five negative categories of five percent each; the perceived cost of video-recording (n=2), the SIO's decision being needed to video an interview (n=2), the need for an assistant (n=2), the storage of recordings (n=2) and a lack of administrative support (n=2). These are shown in figure 3.4 *post*.

The respondents provided thirteen replies when asked to provide the negative aspects of audio-taping interviews that are recorded in figure 3.5 *post*. These included five responses of fifteen percent each which were; the inability of the tape to capture non-verbal communication (n=2), the lack of disclosure (n=2), insufficient administration (n=2), poor equipment reliability (n=2), and that this method was too time consuming (n=2). There were two other concerns both of seven and a half percent which were that there were too

few Tier 3 trained staff available (n=1) and that the equipment could be considered intrusive in a witnesses home environment (n=1).

Figure 3.4: Interviewers' negative perceptions of video interviewing.

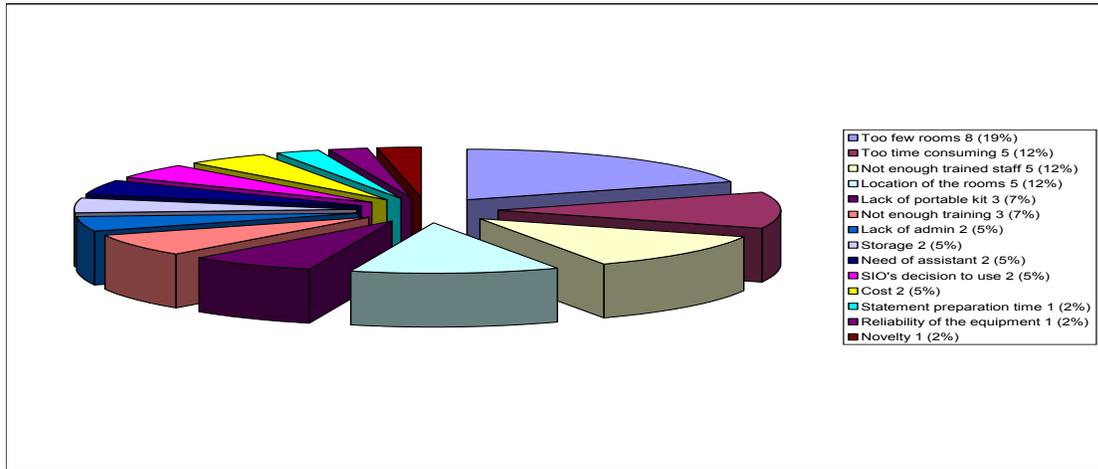


Figure 3.5: Interviewers' negative perceptions of audio interviewing.

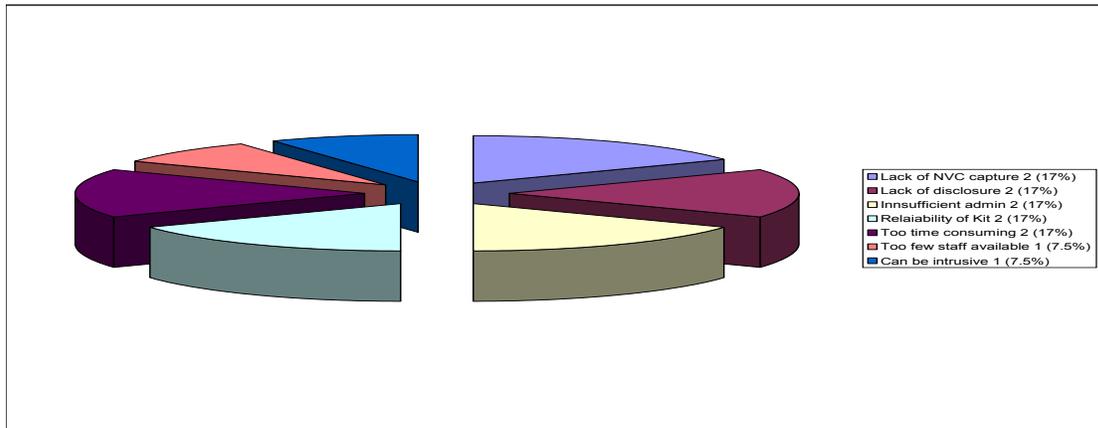
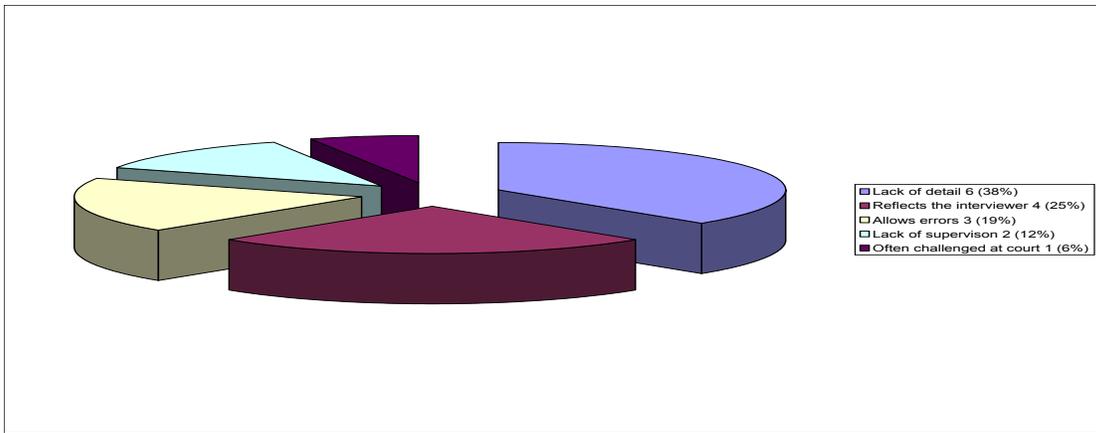


Figure 3.6: Interviewers' negative perceptions of statement taking.



The negative aspects of taking witness statements were recorded in sixteen responses with thirty-eight percent stating that this method produced a lack of detail (n=6) and with twenty-five percent arguing that the product reflects the interviewers schema (n=4) and not the interviewees memories. Nineteen percent thought that this system allowed errors to creep through a lack of being able to review the witnesses' (n=3). In twelve percent a concern about the lack of supervision was recorded (n=2) and finally six percent saw the system being challenged at court (n=1) which is recorded in Table 9c.

It is noticeable that forty-eight percent of the negative perceptions of video interviewing relate to the equipment and facilities and twenty-nine percent relates to training, staff available and administration and overall be seen as supporting the video process and the positive comments supporting the quality and quantity of detail recovered. The audio-recording results show confidence in the system, equipment and training as might be expected with a system in place for suspect interviews from 1986 but only later extended to witness interviews. Finally the statement taking process is seen as cheap and less

effective than video or audio recording witness interviews although sufficient in some circumstances, even in complex and serious crime investigations.

The participants were then asked how the recording of witness interviews should be improved and from the twenty-five suggestions presented in Table 3.7 *post*, thirty-two percent (n=8) stated that the available interview rooms were too few in number and inappropriately spread across the force area and they sought more and appropriately located interview rooms to be made available across the county. One detective had submitted a report to his line managers on this specific point but felt it had been overlooked. A further twenty percent (n=5) wanted more trained staff to be available to interview vulnerable witnesses and a similar percentage (n=5) wanted better availability and mobility of the video-recording equipment while one respondent commented that another police force was already using mobile video equipment.

Although this may be seen as an advance in the flexibility to interview witnesses it must be considered that interviewing a person at their home or place of business is not good practice. However if mobile video-recording equipment were to be used for first account interviews near the scene of an incident this may confirm the appropriateness of initial questioning. That stated sixteen percent of responses suggested that interviewers sought more or quality time to interview witnesses (n=4) because the demands of the investigation required them to interview witnesses without achieving the most appropriate interview time-frame to maximise the witness's recall. This, it was argued was due to the

number of trained interviewer's available, pressure from management to keep overtime payments in check and the handful of video-interview suites available. Eight percent of the respondents (n=2) thought more training for themselves would improve their service to witnesses while four percent (n=1) wanted to see more use of the interview tapes played at court as this would support the witnesses, provide the greatest amount of recalled detail and evidence the quality of the interview.

Six officers also provided their opinions as to why these practical improvements are not available and of these sixty-eight percent (n=4) indicated that cost was the inhibitor, and in sixteen percent each (n=1) the respondent thought that there was too little understanding by senior managers of the Tier 3 role and one stated that they were no longer undertaking the interview role because they had been redeployed. This is interesting as there is a clear perception that there are too few tier 3 witness interviewers available identified in this dissertation yet the organisation allows Tier 3 witness interviewers to undertake roles unconnected with witness interviewing.

Table 3.7: Suggestions for improving the recording of witness interviews.

How could the recording of witness interviews be improved?	n	%
More interview rooms/suitably located	8	32
More trained staff	5	20
Better availability of video recording equipment	5	20
More/appropriate time to interview the witness	4	16
More training	2	8
More use of the tapes at court	1	4
	Number (n) =	25 100

How could the recording of witness statements be improved?

The participants were asked if administrative support available to them. In response to this question there were eighteen replies with eleven percent (n=2) saying they always had access to typists and other support and fifty-six percent (n=10) stating that this is sometimes available. However it is a concern that thirty-three percent (n=6) say they have no access to administrative support. The concern arises when a third of the sample of trained Tier 3 interviewers has no such support because it means that key investigative individuals are being used not to interview but to create documents from interviews often under time pressure. This may lead to the introduction of errors through the use of the interviewers' memories of the conversations and their own schema (Milne and Shaw 1999). That cannot be appropriate and the ultimate error would be a miscarriage of justice.

Then the officers were asked where errors may occur between the interview and the artefact that is produced from it for the court? There were fifteen replies and the responses indicated that pressure of work and a perceived lack of time for interviewing properly would allow errors to occur accounted for sixty-seven percent (n=10). A further thirteen percent (n=2) explained that poor quality recordings and a further thirteen percent (n=2) that the process of creating a précis could cause a loss of detail. Finally seven percent (n=1) stated that the interviewers tiredness caused a loss of detail when creating a document from a tape or from notes. This suggests that interviewers feel under pressure to perform within strict time scales which is not surprising considering the time limits on

detention delineated by PACE or the time limit from charge to court directed by the Home Office.

The following question was ‘what is the importance of the loss of detail to the investigation?’ This elicited fifteen replies and sixty percent (n=9) indicated that it could allow the guilty to escape justice or conversely convict the innocent and in either case it would cause a miscarriage of justice. The further twenty percent (n=3) stated the loss of detail by any means can skew the interview’s meaning which supports the miscarriage of justice argument and the final twenty percent (n=3) did not regard this loss of detail as a problem. It was clear that eight out of ten interviewers realise that their activity is key to achieving of safe convictions and minimising miscarriages of justice.

The participants were asked how the loss of detail could be prevented and provided eighteen responses see table 3.8 below. Of these twenty-eight percent (n=7) recommended a supervisor or a peer interviewer reviewing the statement against the original tapes. A significant twenty-two and a half percent (n=4) requested more training for interviewers to carry out this process with thirty-three percent (n=6) recommending more video-interview suites, more resources and more equipment (including mobile video-recording equipment) to video-record more witnesses. Lastly five and a half percent (n=1) believed that supervisors who had been advanced interviewers managing the procedure could combat the issue and led to consideration of how objectivity could be assured.

Table 3.8: Loss of detail between the interview record to legal use document.

What practitioners suggest would mitigate the loss of detail.	n	%
Review by peers or supervisor	5	28%
More training	4	22.5%
Review tapes against the statement made	2	11%
More resources	2	11%
More equipment	2	11%
More interview suites	1	5.5%
Supervisors who have been ad/interviewers	1	5.5%
More and trained statement readers	1	5.5%
Number (n) =	18	100%

How can objectivity be assured during the making of a statement?

The question was then posed, how can a statement be made objective by a person who is involved with the case? There were eighteen replies of which fifty-six percent (n=10) reported no issues with the objectivity required to create accurate ROVI's, ROTI's or statements by transferring details from tapes of interviews they had recorded. Whereas thirty-three percent (n=6) stated that objectivity was hard to quantify and harder to achieve. They suggested that the detail transfer from tape to statement should be completed by a non-involved person and suggested a typist or other assistant could do this role objectively. Finally twelve percent (n=2) said that it was impossible to be truly objective and added their support to the suggestion that best practice be that the transfer of detail be carried out by independent typing services to be checked by the interviewing officers against the original tapes.

This caused the question of what supervision was provided to this critical task and there were twelve responses with forty-one percent (n=5) saying that they had none. However a total of forty-two percent did have independent 'supervision' that was made up of twenty-five percent (n=3) having a peer review and a further seventeen percent (n=2) supervised by a line manger. Lastly seventeen percent (n=2) relied upon their own review to try to maintain accuracy and objectivity throughout the transfer process. But supervision may not be the same as checking detail transfer as seventy percent (n=7) who answered the question on this subject said they did. Clearly if there is a supervised independent method of creating the document from a tape it is reasonable that the original participants in the interview the witness and the interviewer should agree the product's accuracy.

Because fifty-eight percent (n=7) of the interviewers that replied to this question stated they were working without independent supervision the participants were then asked how often they evaluated their own interviewing and ROVI making skills. From the fourteen responses seventy-one percent (n=10) said that they did this every interview, twenty-two percent (n=3) said most times and seven percent (n=1) said they self-evaluated their work sometimes. Whilst this maybe commendable the key point is about maintaining objectivity throughout the process and this it may be argued requires a second, independent perspective which brought in consideration of the role of the statement reader of the investigation team.

The question was posed to the interviewers, who checks the statement reader's work? This elicited eleven replies where fifty-five percent (n=6) did not know and the other forty-six percent (n=5) suggested either the team's supervisor or a peer would do this. Such uncertainty tends to confirm the hypothesis that objectivity can only be enhanced through independent input to the detail transfer process from tapes to documents prepared for court and raised for consideration interviewer training.

How useful did the interviewers find their Tier 3 training?

All the respondents had undergone witness interview training and additionally all of them were trained Tier 3 witness interviewers. The Tier 3 training had been undertaken by three respondents 2004, by ten in 2005 and to a further five staff in 2006. Sixteen officers or 89% of them recalled their training to be a week long while one said the training was two weeks long and one person remembered the course being three days long. This officer had in fact missed two days due to an unexpected court commitment as checks with their force training record revealed.

The respondents were also asked if they had received specific training to create a ROVI or ROTI from video or audio-recorded interview and eighteen replied. Half the officers (n=9) stated they received no training in this task at all while twenty-two percent (n=4) officers recalled they were instructed by a tutor or a colleague, seventeen percent (n=3) of them received an input on a training course and eleven percent (n=2) of interviewers were instructed on a team training day. This result indicates that there is a possible training gap

around officers ROVI/ROTI creation training that could be easily be addressed by Tier 3 training although there is input about ROTI and statement creation for all officers from the beginning of their careers.

The participants were next invited to rate their training for the Tier 3 witness interviewer role and seventeen stated that it either fitted them or was adequate for the purposes of their work while one said that it had not been suitable. This result indicates that the training over a four year period was successfully presented to the students. Furthermore only three officers from the sample commented that the training was unsatisfactory with two people identifying that the pressure of work was not addressed and that there had been a miss-match of student abilities which had held the training back for one student whose knowledge was at a higher level than their colleagues.

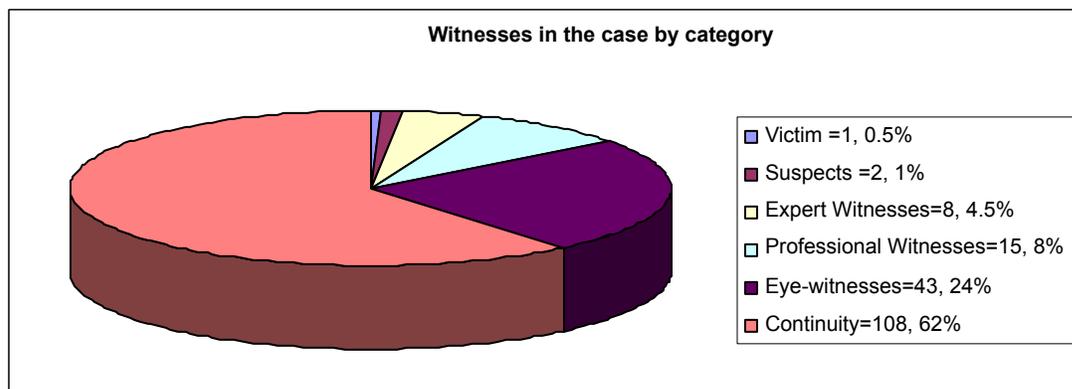
When asked what would have improved the training six participants stated that their training could have benefited by having more practical inputs and using the video equipment while four officers wanted a longer two week course, one wanted personalised input and a further one wanted more independent speakers. Other suggestions to improve the training package were to provide annual refresher training favoured by four officers, but three others recommended additional supervision at the workplace and another three suggested a mentoring programme be introduced.

Overall it may be considered that the training provided has been successful and is valued by the students and prepared them for their role in investigating complex and serious crimes. It is therefore important to consider how these aspects are incorporated into a real life investigation and commence with the witnesses.

Witnesses in the studied investigation:

In the chosen investigation that was studied there were one hundred and seventy seven people involved who provided a recorded witness interview and these are categorised in figure 3.9. Two people were initially treated as suspects although one suspect was not proceeded as there was insufficient evidence. There was one victim and forty-three individuals provided eyewitness statements (see chapter 2: Method *ante*) that were so documented that they could be studied. Other categories included expert witnesses, professional witnesses and continuity witnesses.

Figure 3.9: Categories of witnesses in the studied case.



The witness interviews' artefacts:

From these witnesses' memories two hundred and eighty-eight artefacts were created of which seven were video records that equals two percent of the total, twelve artefacts were

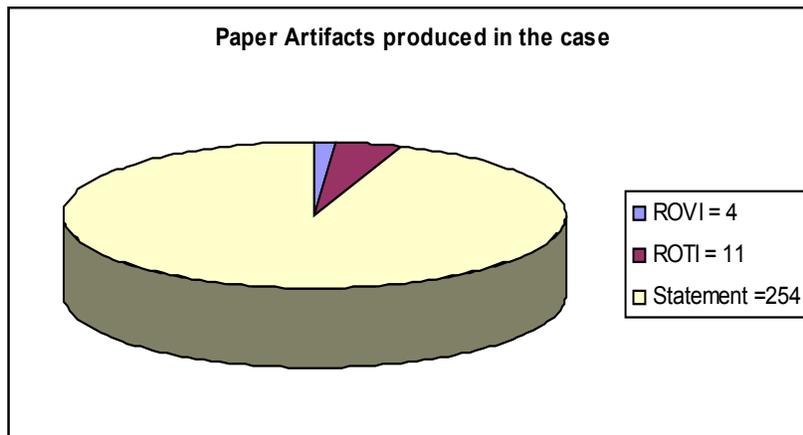
audio tapes or five percent, four were ROVI's equaling one percent, eleven were ROTI's relating to four percent and two hundred and fifty-four were paper statements or eighty eight percent of the total. Of the seven video tapes the detail of one was transferred into statement format, three were converted into individual ROVI's and three were combined into a single ROVI. This latter case was because the tapes related to one lengthy, interrupted interview (time taken 128 minutes). The twelve audio tapes were converted into eleven ROTI's, the apparently 'missing' document is explained as one of the tape-recorded interviews was lengthy and was captured on two tapes.

Of the two hundred and sixty-nine paper artefacts (n=269) the four ROVI's made up one and a half percent of the total (n=4), eleven ROTI's provided four and one tenth percent (n=11) whilst two hundred and fifty-four statements produced ninety-four and four tenths of the total artefacts (n=254). Therefore ROVI's and ROTI's together produced less than ten percent of the total product yet eyewitnesses, expert witnesses, victims and suspects provided thirty percent of the key evidence. This strongly suggests that too few people are selected to be fully, that is video-tape interviewed and more witnesses should have been identified as 'significant' witnesses and required to be video recorded.

In fact there were eight significant witnesses (SW) identified in this case comprising four and a half percent of the total witnesses (n=177) of these only four people were identified as significant and given video-interviews but this figure included the victim and the witnesses who were children. Four other significant witnesses were audio-interviewed.

However from the weak definition of a SW provided by the murder manual (ACPO/NCF, 2000) some twenty witnesses, including eight identified by the researcher could have been described as significant which was eleven percent of the total number of witnesses.

Figure 3.10: Comparison of the witness documents created in the case.

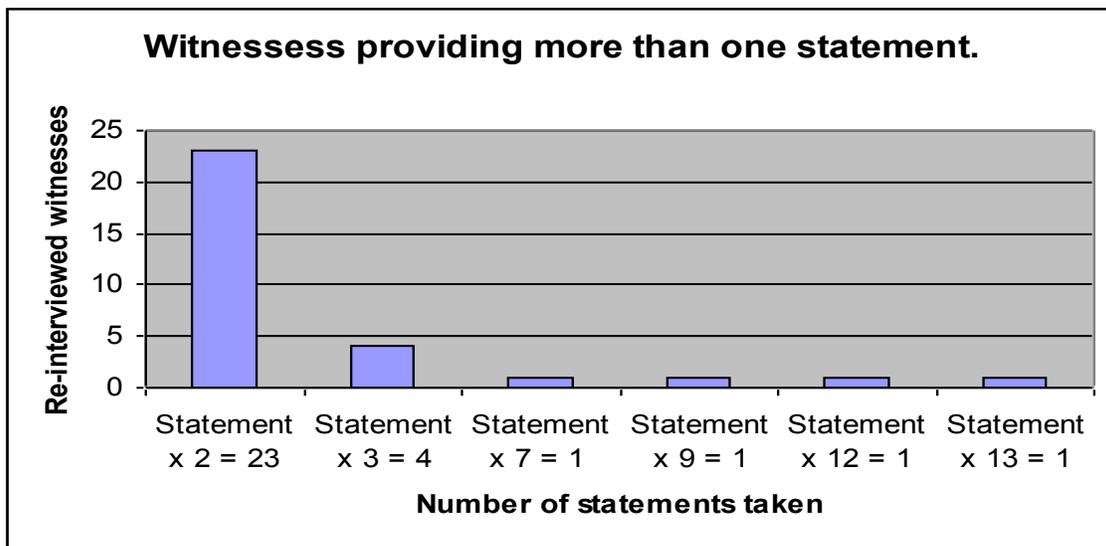


This figure includes a prisoner who shared a cell with the accused and whose testimony may have been coloured by his own predicament, the mother of the victim who provided thirteen separate witness statements, joint associates of the offender and the victim who were vulnerable and stated for the court that they were fearful of retribution for giving evidence against the offender.

The study of this particular case shows that the investigators took multiple statements from some witnesses. This is not surprising as the offending behaviour took place over several years however as table 3.11 shows thirty-one witnesses were subjected to multiple interviews which was seventeen and a half percent of all witnesses. Twenty-three people provided two statements and four provided three statements. Interestingly one witness

produced seven statements; another made seven statements, one made twelve statements and the juvenile victim's mother thirteen statements. In one instance an expert witness gave evidence to detectives who had driven two hundred and seventy eight miles to take a statement only for a vital point to be missed which made a second excursion necessary to address the omission. A simple, planned video or audio-recorded interview could have obviated the second journey. In the case of the victim's mother who gave thirteen statements six were continuity statements to allow access to personal data over the period of the investigation.

Table 3.11: Of witnesses who provided more than one statement.



How well were the interviews conducted?

An examination of how well the interviews were conducted was undertaken scoring each section of the interview, the account, greeting, aims, free report, expansion, questioning, summary, conversation and language used, closure and if there was resistance to the

interview exhibited by the subject. The first ten areas of the interview were graded on a Likert type scale from unacceptable (1), poor (2), average (3), good (4) and excellent (5) and from these the overall standard was obtained by averaging each interview's scores. Whether the witness was resistant to the interview was noted with a yes/no closed question and the interviewing system was recorded.

Once the marking scale was set the four video-taped interviews were reviewed, then the audio-taped interviews and lastly the statements made from interviewer notes. The four video recorded interviews provided one statement and three ROVI's. The interviews lasted an average of 43.4 minutes and provided 4017.2 words. The overall standard of video interviewing was rated good (3.8) with the highest score being recorded in 'greeting' (4.3) followed by the subjects 'account' (4.2) with the interviewers 'questioning' and 'construction and language' scoring 'good' (4) too. The interviews 'aims' and the 'summary' scored (3.8) with 'free report' and 'closure' both being above average at (3.5) whilst the weakest area was 'expansion' which was average (2.8). It was noted that resistance was met from the interviewee in twenty-five percent of the interviews and that in fifty percent the subject was supported in the interview by having a friend with them. The results are shown in Table 3.12 below.

Table 3.12: The scoring for video-recorded witness interviews.

The mean video interview scores											
Interview sections											
Account	Greeting	Aims	Free Report	Expansion	Questioning	Summary	Con & Lang	Resistance	Closure	Overall	
4.2	4.3	3.8	3.5	2.8	4	3.8	4	25%	3.5	3.8	mean

Next the twelve audio-taped witness interviews were studied and they provided eleven ROTI's and of these the average interview lasted 37.36 minutes and provided 4247.7 words. It was noticed that the overall the standard was average (2.97) and that with the exception of the 'construction and language' category that was above good (4.2) the rest of the categories averages were less positive than those for the video-recorded interviews with 'account' and 'summary' almost achieving a good standard (3.7 and 3.8 respectively) and 'closure' reaching above average (3.4) with 'aims' almost at average (2.8), 'questioning' below average (2.5), 'free report' just below poor (1.8) and 'expansion' very poor (1.6). It should be noted that resistance was met in fifty percent of the interviews (n=6) as opposed to twenty five percent in the video interviews (n=1, 25%) and the averaged scores are shown in table 3.13. Note however that these are small numbers; 4 video and 12 audio tapes so caution should be used in extrapolating from them.

Table 3.13: The scoring for audio-recorded witness interviews.

The mean audio-recording scores											
Interview sections											
Account	Greet	Aims	Free Report	Expansion	Questioning	Summary	Con & Lang	Resistance	Closure	Overall	
3.7	3	2.8	1.8	1.6	2.5	3.8	4.2	50	3.4	2.97	mean

In the six taped interviews where resistance was not expected the CI was used and in the other six the CM interview system was utilised.

The transfer of detail between interview notes to statement is the most basic and common method of creating a document for presentation at court and in the selected case forty three (n=43) eyewitness statements were analysed using the same criteria as the video and audio recorded interviews. It was observed that the overall standard was lower than the audio and video interviews and below average (2.4). The strongest areas were in the ‘account’, average (3.1) and ‘closure’ categories just below average (2.8) with ‘questioning’, ‘summary’ and ‘language’ being above poor (2.3) and with ‘greeting’, ‘explanation’ of the ‘aims’ and ‘free report’ rated poor (2.1) whilst ‘expansion’ was worst with a rating below poor (1.6) as shown in table 3.14.

Table 3.14: The scoring for witness interviews leading to simple statements.

The mean simple statement taking scores											
Interview sections											
Account	Greeting	Aims	Free Report	Expansion	Questioning	Summary	Con & Lang	Resistance	Closure	Overall	
3.1	2.7	2.1	2.1	1.6	2.3	2.3	2.3	1.3	2.8	2.4	mean

Resistance to the interview was deemed lower in this format but then more of the witnesses had less to fear from involvement or retribution as they were peripheral characters in the events being remembered.

Across the three recording methods there are other similarities and differences. Clearly the best quality in recording witness memories is by video-recording the interviews producing good or above average responses for a handful of witnesses. Audio-recording was used for a larger proportion of witnesses and provided an average value for the

quality of the interviewing whilst the witness statements presented below average quality for the majority of interviews that sought to record witnesses memories. This tends to confirm the views of the practitioners about these three methods of witness interviewing. It is interesting that the weakest area of all the interviewing systems is the expansion of the initial account. In the CI this includes the change perspectives and temporal change instructions that research has shown interviewers tend to discount from the system by selecting the functions they feel most comfortable with (Nield, *et al.*, 2003). Furthermore the question is raised regarding the quality of the statements made from witnesses without any notes or mechanical recording system. The lack of notes limited the number of statements that could be studied but where notes did exist the standard was poor (2.4) there is no evidence to suggest the unsupported simple statements provide improved detail transfer.

How accurate was the information transferred into a written document?

The quality of the transfer of detail from interview to paper document was then considered. There are three types of document that could be produced from an interview. A transcript that accurately copies all the words of the participants from beginning to end of the interview, or a ROVI/ROTI which is a précis of the interview using sections of conversation for significant statements from the witness, say a description of a person or a confession. Then there is the witness statement that is created on a prescribed form (MG11 and MG11a) to be tendered as evidence at court.

In the victim's interview were one hundred and forty-two individual pieces of information and these were translated into a three page statement by one of the interviewers. Fifty-five (38.73%) pieces of information were left out of the statement while three (2.1 %) were incorrect, five (3.52%) were contrary to the interview, one (0.7%) was a confabulation and there were five (3.52%) typographical errors too.

The following two video interviews averaged 32.5 minutes and provided ROVI's of such complexity that they were almost transcripts consisting on average of 5278.5 words on 21 pages and including four hundred and sixty three (n=463) details. The transfer quality was such that there were no missed details, contrary facts or confabulations but they averaged two (n=2) incorrect details each and one and a half (n=1.5) typographical errors. In one interview the witness was recorded as being upset. The ROVI's were both created by a (specialist) typist.

The final video-interview was made with the suspect and lasted fourteen minutes with 1821 words. The ROVI made from this consisted of ninety-eight details on nine pages with no errors or omissions and was created by a typist.

It is interesting that interviewers have stated that they do not generally have typist or administrative support to create ROVI's yet three-quarters of the ROVI's in this case were completed by typists with very few errors compared to the statement made by the interviewer alone.

In transferring detail from audio recorded tape to ROTI the average detail that was included was 569.83 items with 11.36 being missed, 2.45 incorrect details, 0.45 contrary facts being recorded, 0.09 confabulations and 0.91 typographical errors. In 8.3% of the interviews (n=1) the ROTI was made by the interviewer in every other case (n=11) a typist created the statement supporting that in this case administrative support was available to the interviewers.

It is clear that the video-recording of interviews provides a quantitative and qualitative benefit over audio-taping interviews both during the interview process itself where greater detail was recorded and during the transfer process from interview tape to ROVI/ROTI or statement. Clearly having greater detail to start with assists the transfer process to create a successful document.

The transfer of detail between interview notes to statement is the most basic and forty three (n=43) statements and were analysed. Each document typically provided 1282 words on 3.69 pages taking on average 130 minutes to acquire. However the average witness statement in this case provided 506 words on 2.1 pages with the interview lasting 66.8 minutes. Therefore the statements studied provided almost three times as much detail in almost twice as much time than the average statement in this case. However because there is no agreed and recorded formula for creating a written witness statement directly from an interview this was more difficult to analyse.

Table 3.14 (page 64) identifies that the studied statements were overall below average in their construction while audio-recorded interviews were average and the video-recorded interviews were good although these higher forms of interview recording were less frequently used, in this case for only 14 or 7.9% of the 177 witnesses.

The results recorded here from the analysed statements and the interviewers perceptions raise a number of interesting themes that play into the development of investigative interviewing.

Chapter 4. Discussion

This research was undertaken to review the current practice of recording interviews with significant witnesses, discover if video and audio recording witness interviews assists in creating improved statements and to record interviewers' views about video and audio recording evidence. Firstly consideration is given to support for witnesses, current interviewer numbers, then interviewing practice leading to production of improved statements and finally the interviewers' perceptions as to the efficacy of recording witness interviews.

How witnesses are treated.

Concerns remain about how witnesses are treated within the criminal justice system while eighty-nine percent of the surveys participants acknowledged the role of witnesses as the key to the effective investigation of crime. This result supports earlier research where witnesses were identified as vital (Sanders, 1986; Kebbell and Milne, 1998) yet practitioners report that witnesses are still being disadvantaged and appear to be treated less favourably than suspects when interviewed by police. Such poor investigative behaviour can affect witnesses' testimony and potentially the outcome of an investigation before or at court. To address this it is argued that there must be an increased ability to plan and supervise video-recorded interviews through training more Tier 4 and Tier 5 qualified staff. Additionally with a pool of thirty-five Tier 3 interviewers from an establishment of 1,673 police officers (Surrey Police training records, October 2005) it was discovered that twenty two percent of the eighteen sampled trained interviewers were no longer in investigative roles. Such waste of scarce qualified staff should be minimised as there is an increasing demand for interviewers and because Section 17 of the Youth Justice and Criminal Evidence Act 1999 is waiting to be implemented in England and Wales. This would potentially allow more consideration to the vulnerability and significance of the witnesses in any investigation.

Significant Witnesses.

How many people could have benefited from being treated as significant witnesses in the case study of this research? From the multiple re-interviewing data (figure 3.10, page 60) it can be argued that a further thirty-one witnesses may have provided more detail if their

interviews had been videoed as they had to be re-interviewed and sixteen witnesses in the study were clearly vulnerable as defined by S17 of the Youth Justice and Criminal Evidence Act 1999. These include the suspect's companion in a cell, the victim's mother, the suspect's ex-wife and the drug user supplied by the suspect for several years, all of who stated they were afraid of giving evidence because of the suspect's violent behaviour. Therefore a conservative estimate indicates the possibility of tripling the number of video and audio recorded witness testimonies (n=24) and further extending this number to four times (n=32) the original figure (n=8) by the wider application of the term 'significant witness'.

But the definition of a significant witness is weak stating, "At any stage of a murder investigation witnesses whose evidence is clearly of significant evidential value will be identified. This is particularly the case in respect of Key Witnesses who emerge at an early stage of an investigation" (ACPO/NCF, 2000, p105.). It is argued that the definition of a significant witness should be reviewed and updated to: "any person who as a witness may be vulnerable under the provisions of S16 or S17 of the Youth Justice and Criminal Evidence Act 1999 or whose evidence in chief should be video-recorded because it is likely to have a significant bearing in any subsequent investigation." However if this were adopted there would be a need for many more Tier 3 interviewers and video-interview facilities. However a more tightly drawn definition of significant witnesses would assist the criminal justice system including those SIO's who have not been Tier 3 interviewers.

In the studied case such re-definition may have saved the taking of some 89 statements and some £17,800 in staff time. But what is current interview recording practice?

The current practice of video and audio recording of significant witnesses.

A cursory view may suggest that current numbers of Tier 3 trained officers appear adequate for the required interviewing tasks. However it is argued that the numbers of interviews are kept artificially small by adjusting the demand for video and audio interviews to fit the supply of Tier 3 interviewers. This is evidenced by the minimal numbers of video and audio interviews conducted in the studied case. Therefore consideration should be given by all investigative interviewing agencies to increasing Tier 3 interviewer numbers before S17 (YCJA, 1999) is enabled as interviewer availability tends to increase the video-interviews undertaken. As the provisions of S17 (YCJA, 1999) are already functioning in Northern Ireland it is recommended this is a subject for study to inform the anticipated increase in demand for Tier 3 Interviewers in England and Wales. Yet even at current levels of demand for interviewers there are too few specialist trained witness interviewers and that raises the question do such staff need to be warranted police officers?

The police service already uses police staff as statement takers for Tier 2 tasks because interviewing does not require the powers of arrest powers of warranted officers. Civilianisation of the Tier 3 role would allow direct entry to the police service for specialist interviewers, a career path for civilian Tier 2 interviewers and an opportunity to

materially increase specialist interviewer numbers. In the meanwhile efforts should be made to retain trained Tier 3 staff.

Retaining Tier 3 interviewers.

From the results of this research it is argued Tier 3 interviewers are committed, professionally minded staff who are attractive to managers of other departments who attempt to recruit them. Interviewers also choose to develop themselves through promotion and are then reassigned within core policing (neighbourhood policing, investigation or response) to broaden their experience and promulgate their knowledge. This has occurred for a significant twenty-two percent of the sampled officers. This churn of staff may also be partly attributed to the perceptions aired in the study that witness interviewers are less well regarded than suspect interviewers and that appropriate interview equipment is not readily available. The positive side to this churn is that Tier 3 trained officers are being spread throughout the organization and therefore will, in time, bring other officers' general knowledge about witness interviewing to a higher level. The current problem is that the number of Tier 3 interviewers has not yet reached the critical mass necessary to perpetuate improvements to witness interviewing so the redeployment of specialist interviewers dilutes the interviewing strategy. The relocation of key interviewers should be addressed and raises the question of whether specialist interviewers should produce the documents for court from their interviews' tapes.

Loss of detail

It is argued that the provision of administrative assistance assists objectivity in the transfer of detail because the more cognitively complex a task the less able the interviewer is the less able that person is to self-monitor and self-feedback. (Bull and Milne, 2004.) Also writing skills such as transcribing recorded speech are often neglected by officers. (Rock, 2001) therefore interviewers should not be tasked to transfer the interview detail to the ROVI/ROTI or statement. Also because memory is constructive and gap filling or defensive avoidance may skew the detail selected for the ROVI/ROTI by the interviewer (Shepherd, 1986; Mortimer, 1994). One officer stated they had to interview the victim, the offender and all sixteen other witnesses in one investigation. This is concerning because the criminal justice system relies upon ROTI's using them as the key to the crown prosecution service lawyers' decision to charge and as central to the trial (Hooke and Knox, 1995). This research shows that the use of specialist administrators produces higher quality documents in aspects of coverage, accuracy and relevance and is less biased thus supporting earlier studies (Hooke and Knox, 1995). Administrative support to the investigators it is argued is an important safeguard for objectivity and safe convictions.

The majority of interviewers stated that they did not receive sufficient administrative support to make their written records but in the studied case this was not borne out as three-quarters of ROVI's were created by specialist transcribers. This may be explained by the case having an unusually high profile and cost savings required by financial policy but supporting the officers' perceptions there are many narrative examples. Moreover extrapolating about administrative support from this event must be viewed with caution

because this single case was atypical taking six years to complete, including 177 witnesses where most investigations are completed within a month and have a handful of witnesses. However if the aim of the investigation is a search for the truth then the provision of specialist administrative support to investigators must be prioritised in order to produce the best evidence. This leads to the practitioners' views regarding the efficacy of recording interviews.

The efficacy of video and audio recording witness interviews.

The officers who took part in this research were enthusiastic about their specialist witness interviewer role. They were supportive of the witnesses they worked with and it is clear that the small cadre (n=35) of Tier 3 interviewers available to Surrey Police provides professional staff of whom eighty two percent believe that video-recording provides the best quality and quantity of detail to be transferred into a ROVI or statement. However over a quarter of the interviewers are critical of the equipment and locations available for them to video-interview and suggest numerous ways in order to improve this service to witnesses. Interviewers are concerned that few tape recorded interviews are played in court and seventy-four percent of the respondents would prefer their tape records played at court with one officer reporting that had witnesses who have their own agendas been video recorded then the witness's bias could then have been presented to the court which supports the assertion that "to achieve a correct solution to a crime all interviewees need to be interviewed appropriately, by fully trained interviewers" (Milne and Bull, 2006).

However with limited numbers of trained, specialist interviewers that goal has yet to be realised. Moreover there was criticism of managers who did not have a full appreciation of the intricacies of specialist witness interviewing and many Tier 3 interviewers were left to self-review their interview techniques. Yet “the more cognitively complex a task the less able the interviewer is the less able that person is to self-monitor and self-feedback. Good supervisors are critical” (Bull and Milne, 2004. p193.) and the perceived lack of such managers must raise a note of warning in what this research shows as a slowly improving investigative situation.

Indeed these improvements continue for only a minority of the most vulnerable witnesses as is demonstrated by this case study where eight witnesses or four and a half percent of the one hundred and seventy-seven witnesses were video or audio interviewed. This raises the question of how long remains before a defence lawyer uses the number or proportion of video and audio interviews taken as part of the investigation as a reason to suggest that the prosecution is unsound? With S17 (YCJA 1999) waiting to be empowered consideration must be given to the true vulnerability of significant witnesses and new systems of recording their experiences.

It is recommended that research be conducted into the potential for newer technologies to be used to video-record witness testimony for all witnesses. Video-recording is available on many mobile telephone handsets and potentially Airwave radio sets and recording need not just be carried out in a video suite in a building. Witness interviewing could be

undertaken in a suitably equipped motor vehicle such as a people carrier and the records might be downloaded from A4 size data tablets (Shepherd and Milne, 2006) via secure wireless data links direct to specialist administrators. In this way witness interviewers could be made more public facing and freed from hours at computer terminals. The Metropolitan Police Service is experimenting with mobile video interviewing equipment. Such attempts to maximise the interviewing output of officers then feeds into the provision of appropriate numbers of trained officers.

Training

Training in best interviewing practice is important in addressing witness vulnerability but may have a “limited impact unless interviewers are supported by active, informed management or if there is no comprehensive supervisory policy in place” (Stockwell, 1997. p.193). Also it is important that interviewers should be assessed regularly in the workplace to ensure that their skills are maintained as high as possible (Milne and Bull, 2006). But in addition further strategic support can support the practitioners.

From this research it is clear that (i) that an inclusive definition of a significant witness is required, (ii) Tier 3 witness interviewing is recognised for its ability to unlock the route to safe convictions and (iii) appropriate administrative support need to be available and equipment provided for the recognised increase in video-recorded witness interviews. Furthermore (iv) regular supervision of witness interviews should be carried out as part of the interviewer’s development (Bull and Milne, 2006) and (v) the interviewers should be

rewarded and retained in their investigative interviewing roles to help future-proof witness interviewing. However with these suggestions come the limitations of this research.

Limitations of this research.

This study has provided an insight into the current state of witness interviewing, raised several interesting questions and suggested improvements that might be made in the future. However the study covers only one police force's staff and one case study. It can be argued that further study in both areas should be undertaken. It is also noteworthy that no participant was an SIO nor were any Tier 4 or 5 trained officers involved. Therefore it may be viewed that any implied criticism of SIO knowledge of and influence on significant witnesses may be skewed in this research and further study is recommended. Indeed a study of SIO's from several forces could provide answers to the perceptions of these interviewers. Finally Tier 3 interviewers are perceived as key to the effective interviewing of vulnerable witnesses in serious and complex cases and in this study they are highly committed, professional interviewers. Could this core of officers be expanded and retain these key attitudes? This might be tested by studying several and larger police forces cadres of Tier 3 interviewers and is suggested for future research to enhance and improve witness interviewing.

Chapter 5. Conclusion.

As part of the future of policing “society cannot afford investigative interviewing to be poor” (Milne and Bull, 1999. p.191). The public’s trust in the criminal justice system has been eroded and people will not come forward to be witnesses if they perceive they will be treated poorly (Stevens, 2002). Since the turn of the century there has been investment to improve witness interviewing (Milne, *et al.*, 2006; Shepherd and Milne, 2006) following the introduction of S16 of the YCJA 1999 that defines witness’ vulnerability by their internal state. A solid foundation has been laid for future development. It can be argued from this research that the current cadre of witness interviewers is willing to take responsibility for interviewing additional vulnerable witnesses defined by their external circumstances under S17 of the same act of parliament. However the available specialist interviewer’s numbers are too few and the police service’s investment to increase the numbers of trained Tier 3 interviewers and video equipment lags behind. Does the country have to wait for another miscarriage of justice scandal to correct the process? Let us hope not.

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Appendix A:

Letter provided to each interviewee.

21st October 2005.

Dear Colleague,

Thank you for reading this letter and I hope to complete the semi-structured interview that will inform my MSc research into interviewing and statement construction.

I am conducting this research through the University of Portsmouth Institute of Criminal Justice Studies working with Dr. Becky Milne.

The questions behind the interview are how best to interview witnesses and then how to create a statement from that information in order to provide evidence in criminal proceedings in England and Wales. Thus the interview seeks details of the training that you as an interviewing practitioner or manager receive. It also asks your views regarding the practical use of your training.

Your confidentiality will be fully respected.

The notes of the interview I conduct with you will be identified only by a number and only be used solely for the purposes of this research.

If you later seek further information or want to discuss any matter relating to this interview please contact me (in the first instance) on 07970 911796.

Please accept my thanks for taking the time and trouble to assist in this valuable research.

sincerely,

Roger H. Nield.

Appendix B

Questionnaire

Statement Taking from Significant Witnesses Survey

I am researching into statement taking and I would be grateful if you could spare me a few minutes to discuss the interviewing of witnesses over the telephone/in person. I will ask you a series of questions about yourself and another seven themes. It will take around 30 minutes. Your information will be treated in the strictest confidence and will inform my research into how we can improve the transfer of detail from interview to statement. Thank you for your time and help.

Theme 1:

About Yourself:

Age:

Gender:

Occupation:

Length of time in your occupation:

Job Title: (e.g. rank, manager)

Force:

Role: (e.g. child protection, MCIT, CID.)

Are you a Tier 3 (Complex and serious Crime) Interviewer? Yes/No

How long was your training?

When was your Tier 3 training?

What training have you had to help you create a statement/ROTI from a video or audio interview?

When planning and preparing an interview what points do you consider are the most important?

How many and what type of witness interviews do you conduct a month? (How many are Significant Witness statements?)

Theme 2:

To identify the importance of witnesses to the investigation of serious and complex crimes.

Theme 3:

How best to discover and record witnesses recalled details of 'to be remembered' events?

Theme 4:

What are the pro's and con's of the various methods of witness interviewing?

Check:

What criteria are used?

How should witness detail be recorded?

Identify the perceived benefits of video or audio recording of witness statements.

Are there benefits in video or audio recording witness statements against writing them with the witness?

Who should be video or audio-recorded when being interviewed?

Theme 5:

How could the recording of witness statements be improved?

What would allow you to take better statements?

Why is that not available to you?

Do you have access to admin support?

If not why?

Cover the fracture of detail from interview to artefact

Why does it happen?

What is its importance?

Why do interviewers find this to be so?

What do they suggest to fix the problem?

Theme 6:

When a statement is used how can it be made objective from someone who knows the case?

What supervision do you receive when interviewing?

Do you make the statements from the tapes/notes or have you got access to admin support staff?

Who checks their accuracy of detail transfer?

What supervision do you receive when making the statements from your notes/tapes?

How often (if ever) do you evaluate your own witness interviewing skills?

Who checks the receiver/statement reader's work? Who does that task? What training is given?

Theme 7:

How do you rate the quality and efficacy of the training you have received?

How effective was your training?

Does it fit you for your role?

If not why?

Could anything have been improved in your training package/Could the overall package of training have been improved?

Recap, offer option to amplify later, thank, close.