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Communication in Investigative and Legal Settings: Introduction and Contexts

Gavin Oxburgh1, Trond Myklebust2, Tim Grant3 and Rebecca Milne4

1 Newcastle University, UK
2 Norwegian Police University College, Oslo, Norway
3 Aston University, Birmingham, UK
4 Portsmouth University, UK

INTRODUCTION

Society cannot afford investigative interviewing to be poor. This affects people’s perception of the criminal justice system. The guilty get away, the innocent are convicted, justice for children and vulnerable adults is inadequate. Poor interviewing is of no value to anyone; it is a waste of time, resources and money. No one wins. People will not come forward if they have no confidence in the quality of investigators’ interviewing techniques.

(Milne & Bull, 1999, p. 191)

Although some 16 years old, the above quote is still valid today. That said, there has, without doubt, been a paradigm shift within the field of law enforcement interviewing during the past two decades, from the traditional interrogation model, with its emphasis on persuading the interviewee to confess, to the investigative interviewing model
emphasizing the search for accurate and reliable information. One can trace the scientific perspective on investigative interviewing back to the German scientist William Stern (1903/1904). Stern was occupied with examining techniques that achieved the most valid information from children. He was the first to introduce the important distinction between open (bericht) and closed (verhör) questions. In his research, he clearly demonstrated the superiority of open questions, showing that they gained more quantity and with a better quality of information compared to closed questions. Today, there now exists a large body of scientific research that has investigated various elements of the investigative interview, including: (i) the interviewer; (ii) the interviewee; (iii) the context of the interview (e.g. where the interview takes place) and (iv) the interplay between these factors.

There have also been many studies over the past decades that have critically evaluated police interviewing skills. These studies have considered the impact of the information gathering approach to investigative interviewing (including training), the various skills that effective interviewers display and the structure of good quality interviews with suspects (e.g. Baldwin, 1993; Cherryman & Bull, 2001; Clarke & Milne, 2001; Clarke, Milne & Bull, 2011; McGurk, Carr & McGurk, 1993) and witnesses (e.g. Ceci & Bruck, 1995; Lamb, Orbach, Sternberg, Esplin & Hershkowitz, 2002; Lamb, Sternberg, Orbach, Esplin & Mitchell, 2002; Walsh & Bull, 2010; Walsh & Milne, 2008). The amount of research cited above is purely indicative of the comprehensive dataset available and it is sometimes difficult to get an overall picture of the relevant available research and training manuals that are available across the world. Taken together, the myriad of information might appear overwhelming for the practitioner. However, since the first scientific studies by Stern, almost all the scientific efforts illuminate potential in the interviewing process and, as a result, they offer an opportunity to improve the quality of the interview and bridge the gap between the fields of psychology, law enforcement and (forensic) linguistics.

FORENSIC LINGUISTICS

Linguistics as a discipline involves the description of texts and linguistic interactions and involves the description and explanation of the nature of communication at a variety of levels, including at lower levels, word choice and syntax, and, at a higher level, issues of context and the functional intent of the interactants. Forensic linguistics takes the methods and insights of linguistics and applies these to forensic texts
and contexts. A large part of the work and research in forensic linguistics considers language evidence, evidence of authorship, evidence of meaning and evidence of textual origin (e.g. Grant, 2008). Forensic linguists also examine written legal texts explaining the historic context of legal language and how legalese can be reformed to ensure that the widest possible section of the community can understand it (see, for example, Tiersma, 1999). Finally, forensic linguistics examines interactions associated with the forensic and judicial process. This interest can include mono- and multilingual interactions in both the civil legal processes and the criminal justice process, but there has perhaps, to date, been a greater concentration on the criminal side. Research has been carried out into the caution and explanation of rights (e.g. Rock, 2007), into police interviewing (e.g. Heydon, 2005) and into witnesses and judges in Court (e.g. Heffer, 2005). Today, as demonstrated in this book, one area where psychologists and linguists work very closely together is in the area of police and law enforcement investigations with a particular focus on the investigative interview.

PROFESSIONALIZATION OF INTERVIEWING

In many countries around the world, police interviewing, and police training per se, has undergone a transformation in terms of professionalization due, in large part, to scientific experimentation and analysis. For example, Fisher, Geiselman and Raymond (1987) observed that interviewers’ level of competence directly affected their responses in interviews of adult interviewees. The authors thus recommended formal, scientifically based training of police officers at the institutional level. They also suggested that training programmes would be most successful if they were divided into intensive short, practical sessions, rather than longer sessions, with extended feedback to the individual interviewers (Fisher & Geiselman, 1992; Fisher, Geiselman & Amador, 1989; Fisher et al., 1987).

Moreover, Lamb and his colleagues argued that long-time improvement in the quality of investigative interviews are observed only when the training is distributed over time (Lamb, Sternberg, et al., 2002; Lamb et al., 2000). In their studies, the length of training varied between three to five days of initial training, with follow-up supervision and feedback (Lamb, Sternberg, et al., 2002; Orbach et al., 2000; Sternberg, Lamb, Davies & Westcott, 2001). There has been much research that has shown that complete transferance of training into the workplace is rather elusive (e.g. Myklebust & Bjørklund, 2006; Powell, Fisher & Wright, 2005; Wright & Powell, 2006). Particularly difficult to sustain over time are the more complex skills (e.g. rapport, use of open questions) as opposed
to more procedural interviewer behaviours (e.g. outlining persons present in the interview, giving legal rights, etc.; Griffiths, Milne & Cherryman, 2011).

Although we are unable to go into detail from every country that has undergone improvements, we have highlighted below two broad geographical areas that are indicative of such improvements.

The Nordic Countries

The Nordic countries (i.e. Denmark, Finland, Iceland, Norway and Sweden) have vastly different systems compared to other European countries, where the police are provided with shorter basic training. Across the Nordic countries, they train their police officers to become so called ‘generalists’ within their work as police officers. They are authorized for a multitude of responsibilities, from crime prevention via operational patrolling police duties, to profound and scientifically based detective work (Birkeland, 2007; Granhag, 2010; Ministry of Justice and the Police, 2005).

Focusing on the basic ‘generalist’ training, the central police educational institutions in the Nordic countries are heading towards a system with Police University colleges. Norway was the first and founded the Norwegian Police University College (NPUC) in 1992, receiving their college charter in 2004. They have a three-year basic education that provides all police officers with a bachelor degree in policing. In their education programme, the students are taught about psychology, law and police tactics in communication, investigative interviewing and general policing. Methodically, the theory and practice in NPUC’s interview training is based on structured interview models, such as the English PEACE model and Achieving Best Evidence in Criminal Proceedings guidelines (see Myklebust, 2010). The students also receive theoretical and practical training in the Cognitive Interview and the Self-Administered Interview. The underlying principle is that all police officers are given basic training in methods to deal with the volume and day-to-day crime, whilst the more specialist and practical training (and evaluations) are provided during further educational programmes during postgraduate studies.

England and Wales

In England and Wales, following Clarke and Milne’s (2001) national evaluation of police interviewing, a tiered structure of interviewing skills was developed, which were categorized as: (i) Tier 1: Probationer training; (ii) Tier 2: Detectives (a prerequisite to attending the Initial Crime Investigators’ Development Programme (ICIDP); (iii) Tier 3: Specialist interviewers (victim/witness/suspect); (iv) Tier 4: Investigative interview supervisor/ assessor; and (v) Tier 5: Specialist interview advisor. In 2005,
the Initial Police Learning and Development Programme (IPLDP) was introduced, which was designed to support student officers throughout their two-year probationary period and to meet their individual development. In 2007, investigative interview training (and the five tiers outlined above) was enhanced and incorporated into the Professionalizing Investigation Programme (PIP), which was intended to increase professionalism of all police investigators and to establish a structured, professional approach to investigations and interviewing. The IPLDP provided officers with the necessary accreditation at PIP level 1, which was for all uniformed police officers and supervisors. PIP level 2 was designed for dedicated investigators (e.g. detectives) who investigated serious and complex investigations including victims, witnesses and suspected offenders. PIP level 3 was for Senior Investigating Officers (SIOs) in cases of murder, stranger rape, kidnap or crimes of similar complexity. Finally, PIP level 4 was for SIOs and Officers in Overall Command (OIOC) who managed critical, complex or protracted and/or linked serious crime.

It is important to note that, although such enhancements in training will doubtless continue, there have been debates regarding the long-term effectiveness of interview training per se (e.g. see Griffiths & Milne, 2006; Lamb, Hershkowitz, Orbach & Esplin, 2008). However, Powell et al. (2005) outlined the elements of training that have been found to be the most successful. The core elements of success included the use of:

- Structured interview protocols;
- Multiple opportunities to practice over an extended period;
- Expert feedback and ongoing supervision;
- Internal motivation by the interviewer to enhance his or her individual performance.

Griffiths and Milne found that although training levels were higher one year after officers completed advanced training, there was a ‘marked decline’ (p. 187) in interviewing officers’ performances (in some of the assessed criteria) between their first and last assessed interview. These authors argued that despite this ‘marked decline’, the advanced training had nevertheless improved the skills of officers (in their sample).

GLOBAL COHERENCE

For such improvements outlined above to continue, it is vital that training and the professionalization process is continued, not just at a national level but, more importantly, internationally. There are many organizations that do such work, including:

1. INTERPOL, whose role is to enable police around the world to work together providing (amongst other things) targeted training,
expert investigative support, relevant data, and secure communications channels.

2. The European Police College (Collège Européen de Police; CEPOL) is a European Union (EU) agency dedicated to providing training and learning opportunities to police officers on issues vital to the security of the European Union and its citizens. Training covers issues ranging from leadership to law enforcement techniques and EU cooperation to economic crime. Activities are designed to facilitate the sharing of knowledge and best practice and to contribute to the development of a common European law enforcement culture.

3. The International Police Executive Symposium (IPES) brings police researchers and practitioners together to facilitate cross-cultural, international and interdisciplinary exchanges for the enrichment of the policing profession in general. The IPES encourages discussions and writing on challenging topics of contemporary importance through an array of initiatives including conferences and publications.

4. The International Investigative Interviewing Research Group (iIIRG) is an international network of academic researchers and practitioners committed to improving investigative interviewing worldwide. They provide annual conferences and specialist master-classes, and conduct specialist training for international organizations such as: (i) the International Criminal Court (ICC); (ii) The United Nations High Commissioner for Refugees (UNHCR); and (iii) The United Nations Development Programme (UNDP). They also have an international journal Investigative Interviewing: Research and Practice, from which they disseminate academic research articles and practitioner case studies on legal matters relating to investigative interviewing.

Such organizations are vital for the continued professionalization of police and law enforcement organizations regarding the complex area of communication to ensure greater engagement between academic researchers and law enforcement practitioners. Such professionalization can only help further the knowledge base in this area – this book goes some way to achieve this goal.

OUTLINE OF BOOK

The purpose of this book is to provide readers with an in-depth coverage of the complex area of communication in forensic contexts. This includes the investigative interviewing of victims and witnesses, the
investigative interviewing/interrogation of suspected offenders and high-interest groups, during discourse in courtrooms and via legal intermediaries and interpreters. The book is unique in bridging the gap between the fields of psychology, linguistics and law enforcement practitioners (worldwide), with clear recommendations for best practice. Highly specialist and international teams of authors comprising psychologists, linguists and dedicated practitioners in the field from Australia, Canada, the United Kingdom, New Zealand, Scandinavia and the United States of America have written most chapters.

The chapters in this book will provide an up-to-date knowledge base on developments in the ever-changing complex area of communication in forensic and investigative contexts. Through the discussions of theoretical and methodological issues, we will attempt to bridge the gap between the fields of psychology, linguistics and law enforcement. This is a vitally important blend of integrated dialogue across the disciplines for us to move forward and fully understand the underpinning issues with regard to communication in such settings. We have separated the chapters into six domains: (i) communication, language and memory; (ii) communicating with victims and witnesses; (iii) communicating with suspects; (iv) communication in the courtroom; (v) specific communicative tasks; and (vi) conclusions and future.

**Communication, Language and Memory**

Chapter 2 highlights the proliferation of categorization schemes, which have mostly been developed from psychologists’ understanding of the nature of linguistic interactions. Tim Grant, Jennifer Taylor, Gavin Oxburgh and Trond Myklebust demonstrate how empirical research using a Conversational Analysis approach can enrich research into the police interview and, in particular, the categorization of questions during forensic communication. As demonstrated by the authors, this requires a switch of focus from the ‘words’ used by interviewers in question types to the ‘function’ of conversational turns within interviews.

In Chapter 3, James Ost, Alan Scoborio, Tim Grant and Gary Pankhurst outline research concerning memory for events before moving on to discuss the ways in which our attempts to validate and communicate those memories can bias what is eventually reported. They then focus on some of the implications this can have for investigative interviews, specifically the problem of ‘skill fade’ in interviewing, the impact of implicit beliefs about memory and issues surrounding the reliability of recollections of direct speech. They conclude that appropriately structuring the retrieval context is the key to achieving best memory evidence.
Communicating with Victims and Witnesses

In the first chapter of this domain, David La Rooy, Julia Korkman, Trond Myklebust and Georgina Heydon examine ‘the consensus’ surrounding the complex nature of communication with children in forensic contexts and the key aspects about which all investigators should be knowledgeable. They argue that over many decades of psychological and linguistic research, an enormous amount has been learnt concerning childrens’ cognitive strengths and limitations, together with their motivations and emerging abilities to communicate their experiences. They argue that over the course of several decades, steady advances made through the integration of psychological and linguistic knowledge, experimental research and field studies of forensic interviews have led to untested and sometimes dangerous interviewing approaches being replaced by practices around which there is considerable professional agreement.

Chapter 5 moves us on to interviews with adult witnesses and victims. In this chapter, Coral Dando, Ed Geiselman, Nicci MacLeod and Andy Griffiths discuss the interviewing of adult witnesses and victims with reference to how the extant psychological and linguistic literature has contributed to understanding and informing interview practice over the past 20 years. They argue that contemporary research has only scratched the surface of this important and complex topic. They introduce the PEACE model of interviewing, and describe the Cognitive Interview procedure and its development. They discuss numerous other important topics including rapport building, question types and communication style, all with reference to adult witness memory and practical interviewing. Finally, they highlight potential future areas research.

The final chapter in this domain, Chapter 6, focuses on the initial contact with a witness, whose evidence invariably plays a vital role in the investigative process. Fiona Gabbert, Lorraine Hope, Elizabeth Carter, Roel Boon and Ron Fisher explore the type of information that is typically sought at this first point of contact and how the goals of eliciting information at an early stage of an investigation differ from the goals of subsequent interviews. A range of relevant issues are explored, including factors that should be considered when eliciting an initial account, whether the format (written versus spoken) of the initial account matter and whether the quality of the initial account might affect the quality of subsequent accounts.

Communicating with Suspects

Gavin Oxburgh, Ivar Fashing, Kate Haworth and Pete Blair highlight in Chapter 7 how poor practices in interrogation and interviewing techniques have led to many miscarriages of justice around the world,
undermining the reputation and trust of the legal processes and organizations involved. They provide a background and history of interrogation and interviewing, highlighting the fundamental differences in the two primary philosophies in Western countries. They then explore the ultimate purpose of interviewing and interrogation and argue that modern, scientifically backed, interviewing approaches should be used at all times, no matter the challenge or situation, as a pathway towards both the collection of accurate information and diligent adherence to the standards of international human rights.

Chapter 8 explores the sensitive area of information-gathering intelligence interviews and Fadia Narchet, Melissa Russano, Steve Kleinman and Chris Meissner set new ground by setting forth a multidimensional perspective on interrogations conducted for this purpose in support of the global war on terrorism. A series of semi-structured interviews and surveys involving practitioners yielded them unique data that provided previously undocumented insights into the process involved in the interrogation of high-value targets. Such an examination of the interrogative process from differing perspectives has generated a richer and unprecedented understanding of the respective roles, responsibilities and perceptions of an interrogation team.

**Communication in the Courtroom**

Questioning in common law accusatorial trials is dominated by the advocates’ belief that it is a legitimate opportunity for advocacy rather than just investigation. The authors of Chapter 9 (Emily Henderson, Mark Kebbell and Chris Heffer) argue that examination of a witness is a form of story-telling, leading cross-examiners to rely heavily on rhetorical and suggestive questions that advance the preferred narrative. They further argue that empirical research suggests that this style of questioning reduces witness accuracy, reduces public confidence in the trial and deters witnesses from coming forward.

In Chapter 10, Lorna Fadden and Larry Solan discuss the interaction between lawyers and expert witnesses in adversarial systems. Focusing largely on the legal systems of Canada and the United States, they look at the laws that qualify experts and govern their responsibility to the court. They discuss the presumably complementary, but often competing, truth-seeking goals of lawyers and the experts they engage. In an adversarial system, however, the expert’s best intentions can be put to the test and they explore some of the ways in which a lawyer can manoeuvre towards achieving their goals and
how the expert’s analyses and opinions might be massaged during the preparation of a case and when they are questioned on the stand.

**Specific Communicative Tasks**

Specific communicative tasks covers a wide variety of topics, but, in this domain, we will focus on hostage and crisis negotiation, lie detection, vulnerability and the use of interpreters in forensic communication. Hostage and crisis negotiation is a psychological and linguistically complex domain. In Chapter 11, Ole Andre Bråten, Michel St Yves, Terry Royce and Marty Laforest argue that active shooter-scenarios, terrorist attacks and kidnapping have increased the need for effective tactical crisis communication. They discuss resolution through dialogue and argue that the models presented can change unfolding events in high-stress situations and alter presumably un-negotiable scenarios. Starting with a backdrop on the evolution of hostage and crisis negotiation, they provide an overview of contemporary approaches following a psychological, law enforcement and linguistic perspective.

Aldert Vrij, Paul Taylor and Isabel Piccornell discuss in Chapter 12 the important area of verbal lie detection and argue that speech content can be revealing about deception. Starting with a section discussing the myth that non-verbal behaviour is more revealing about deception than speech, they provide an overview of verbal lie detection tools currently used by law enforcement agencies. This is followed by an overview of interview techniques that have been recently developed and that are designed to enhance verbal differences between truth tellers or liars, and by an analysis of deceptive linguistic strategies.

Chapter 13 moves on to vulnerability and discusses how, in some instances, individuals are unable to manage the communication demands that are sometimes inherent in police interviews and/or cross-examination at court. As a consequence, the evidence required to make informed decisions is inaccurately heard, only partially heard or, worse still, not heard at all. Brendan O’Mahony, Ruth Marchant and Lorna Fadden describe, using case studies, the development of intermediary practices in England and Wales, and their use in Australia and Canada. They raise a series of questions about the boundaries and clarity of the intermediary function so that the legislation pertaining to intermediaries is more inclusive. They conclude with a discussion of the need to expand the use of intermediaries across the breadth of interviews and across the globe to help prevent miscarriages of justice.

In Chapter 14, Yvonne Fowler, Martin Vaughan and Jaqueline Wheatcroft then examine the interpreter-mediated police interview from the perspective of the linguist, the psychologist and the police
officer. They document problems experienced by the police when an interview involves an interpreter and expose myths and misunderstandings associated with the interpreting process. The chapter also examines interpretation research and, from this standpoint, makes a number of recommendations as to how better to manage a variety of types of interpreter-mediated interview.

Conclusions and Future

In Chapter 15, Nina Westera, Martine Powell and Yvonne Fowler suggest that, for investigative communication to improve, research needs to take into account the diverse needs of the police/law enforcement operating environment. The authors utilize adult witness interviewing practices, specifically the cognitive interview, to explore the applicability of current methods across varying contexts common in investigative practice. They examine what is known from the research and what still needs to be discovered in relation to the varying contexts of investigative interviewing with reference to the interviewer, the witness and the type of crime.

Chapter 16 concludes the volume with a review of communication in investigative and legal contexts, highlighting the important areas that psychology, linguistics and law enforcement have impacted upon in terms of rigorous and collaborative scientific endeavours. The chapter, written by the book editors, addresses some of the areas they believe are important and of interest to the reader for further research. They discuss in detail some of the important areas that they believe require further research, including vulnerability, the use of intermediaries and interpreters, and questioning techniques.

REFERENCES


