



Interviewing – an overview

The Witness

The witness statement is one of the most important aids to an investigation but unfortunately can cause an investigator much angst. Physical evidence doesn't lie, suffer a bad memory, feel fear, become nervous or have a bias whereas witnesses can and often do. However some witnesses also surprise the investigator by performing magnificently in the witness box when expectations of them were initially low.

To overcome this, the investigator must be a **good listener** and gain as **much experience** as possible.

Building a rapport with the witness is an essential skill for the investigator as is the mindset of an investigator. Take nothing for granted with a witness and always try to corroborate their story. If inconsistencies are found then make every attempt to clarify them.

The art of interviewing witnesses requires the investigator to hone his skills continually in order to elicit maximum information and prepare it in a logically arranged, detailed and thorough statement.

Perception

Despite witnesses viewing the same incident they will often recall the event differently. This is due to perception. Put simply nearly everyone see the world differently and their attention is often drawn to different areas of an event due to their past experiences. It is not uncommon for people to call a certain color different names. For e.g. various shades



of aqua may be called green or blue by different people. Heights and distances will vary as will descriptions.

Memory

Trauma, distress, excitement and time can all affect a person's memory of an event. Contamination of their memory by other witnesses, friends, relatives, newspapers articles and TV reports is also a very real problem for the investigator. Even being interviewed by more than one investigator will contaminate the memory of a witness.

The memory should be treated like a crime scene. It needs to be preserved in its natural state without contamination by any external agencies until able to be interviewed. Practically however this can be difficult to do due to delays in reporting incidents, limited resources etc.

The Mindset of an Interviewer

“An investigation is a search for the truth in the interests of justice and in accordance with the specifications of the law”

Investigators are evidence gatherers. They must present all relevant facts to the court. They must be unbiased and impartial at all times.

Investigators get misled by suspects, witnesses, victims and sometimes even other investigators. Often this occurs because people are genuinely mistaken and other times it is because they deliberately lie or omit to tell the investigator certain things.

How do we know when someone is telling the truth or not, especially if we weren't there at the time of the incident?



The answer is we don't. That is for the "trier of fact" to decide not the investigator.

Essential Skills for the Interviewer

The ability to establish a rapport! During the early stages of the interview the interviewer should strive to build a rapport with the witness. The subject should be treated with kindness, respect, and empathy. This practice reduces the likelihood of creating an oppressive atmosphere. Building a rapport with the witness builds the necessary trust and comfort that people need to share their deepest secrets. Unless fearful for their well being, people tend not to share their secrets with people they do not like and do not trust.

But how do we do this?

- Prior to speaking to the witness find out as much background information as you can about the witness so that you can plan your rapport building (however always remain flexible)
- Talk to the victim/witness about matters not related to the investigation. Let them see that you are a human being and not just a robotic investigator.
- Encourage them to talk about themselves, discuss common interests where possible. Build a personal relationship with the victim / witness. Use their name frequently. Let them know what they can call you.
- Have something to eat or drink with the witness. "Break bread" or if you both smoke share a cigarette break.



- Empathise with the victim / witness. Show concern for the plight of the victim / witness. Be genuine.
- Use active listening and appropriate body language. 50% of our communication is through body language so be aware of how to show that you are interested.
- Don't be judgmental. An investigator will frequently have to deal with people whose lifestyle choices they may not respect. Don't let your personal prejudices influence your professionalism.
- Learn to "read" the victim / witness and adopt a personality that will suit the situation. E.g. it is appropriate to call some witnesses "mate" whilst others will prefer "sir". Be flexible in your approach.
- Above all, be a good listener. It should be the witness doing all the talking not you!!!!!!

FINALLY, NEVER, NEVER LIE TO A VICTIM / WITNESS OR MAKE PROMISES THAT YOU CAN'T KEEP. IT IS IMPERATIVE THEY CAN TRUST YOU.

The Interview

**During the interview the role of the investigator is to listen.
The role of the witness is to talk.**

The ultimate interview with a witness would contain no questions at all from the investigator. Practically this would be almost impossible however it gives good insight into the best approach to an interview.



Types of Questions

[I keep six honest serving-men \(They taught me all I knew\):
Their names are What and Why and When And How and
Where and Who.](#)

Rudyard Kipling, *The Elephant's Child* (1902)

Kipling's six honest serving-men are also known to investigators as the "5 W's" and a "H". They are of great assistance with framing questions however they must be combined with an understanding of the types of questions available to the investigator.

Who

What

When

Where

Why

How

An **open ended question** is the most desirable type of question. They can be defined as:

- A question that deliberately seeks a long answer and
- Is likely to receive a long answer

They have the following characteristics:

- They encourage the respondent to think and reflect
- They hand control of the conversation to the respondent



E.g

Open ended questions – “What happened?”, “Describe the car”

A **leading question** is the **least desirable** question as it either suggests an answer or assumes a fact before it is established.

e.g. “Did the blue car drive around the corner?” Unless earlier questioning has established that a blue car was driving around this is leading as it assumes there was a blue car and suggests that it drove around the corner. It would be even more suggestive if it was framed as follows, “The blue car drove around the corner, didn’t it?” This is strongly suggestive. Even more suggestive is, “I put it to you that the car that drove around the corner was blue. What do you say to that?”

A better method would be (when using the 5 W’s and a H)

Q. Did you notice any other traffic?	A. Yes.
Q. What type of traffic?	R. A car.
Q. What colour was it?	R. Blue.
Q. Where did it come from?	R. Around the corner.

Another example of a leading question that assumes a fact before it is established would be “What did you do after SMITH hit you?” or asking why a person did something before having established that he did it, or asking how much was paid before proving that payment had been made.

What do the courts think about leading questions?

A case law succinctly describes the problem. In *Mooney v James (1949)* VLR 22 at 28 the judge referred to leading questions and stated,



“Such questions may go so far as to put “into the witnesses mouth the very words he or she is to echo back” .

In disputed areas of testimony, answers to this type of questioning will have little or no credibility and reflect poorly on the investigator.

What about **closed questions**? These are sometimes difficult to avoid when an investigator is trying to clarify with a witness an issue that may not have been clarified as a result of open ended questions. They can also easily be leading questions. If used the investigator should go back to open-ended questioning as soon as possible.

There are **two definitions** that can be used to describe **closed questions**. They are :

- A question that can be answered with a single word or a short phrase or
- A question that is answered with a yes or no (this is a more limiting definition)

Being a closed question doesn't automatically make a question leading. Some non-leading yes or no questions may be :

- a/ “Was anyone else in the house?”
- b/ “Were there any other cars on the road?”
- c/ “What colour was the car?”

These questions will be none leading provided certain facts are established before they are asked. E.g. for

- a/ the fact that a house with people inside it was involved in the incident
- b/ the fact that there were cars on the road
- c/ the fact that a car was involved



Questioning Someone Suspected of Causing the Incident

When interviewing someone suspected of causing an incident (the respondent) how should we speak to them?

Can we use open ended questions? Should we?

Very simply the answer is yes. An investigator should always keep an open mind and not assume guilt until everyone is given an opportunity to provide their account of what happened.

By using open ended questions with a respondent we avoid suggesting answers to them. If the respondent is responsible for the incident then [they should be in possession of information that only the perpetrator would know](#).

When this information is forthcoming without suggestions from the investigator then any admissions or confessions made can be recognised as the truth.

This is important if the respondent is easily intimidated by virtue of the investigators authority.

Young children are particularly vulnerable to simply agreeing with leading questions.