interviewing witnesses.

Some countries have also taken steps designed to improve the interviewing of witnesses, especially (i) those who may have been victims of serious crimes such as sexual abuse and (ii) those who need most help to remember accurately (e.g. children and vulnerable adults). These steps, like the police interviewing of suspects described above, have often accompanied governmental decisions to tape record interviews with alleged victims or bystanders who witnessed what took place.

England and Wales have pioneered the routine video taping of investigative interviews with children. The Criminal Justice Act 1991 allowed a video recorded interview (usually by the police and/or social services) to be used as part of a child’s evidence, pro- vided that the judge deemed the interviewing to have been con- ducted appropriately. (The judge could order that some or all of the recording not be shown to the jury.) To provide guidance to interviewers the Government commissioned a Professor of Psychology (Ray Bull) and a Professor of Law (Di Birch) to write the first working draft of the 1992 Memorandum of Good Practice On Video Recorded Interviews With Child Witnesses For Criminal Proceedings (MOGP). This extensive guidance document summarized what was known at the time, largely from psychological research, about how best to interview children, in a user-friendly format. Research from several countries (e.g. Germany, Canada, Australia, the USA) seemed to be in agreement that such inter- views should involve a series of sequential phases that could be described as:

establish rapport,

obtain free recall,

ask appropriate questions,

achieve closure.

This phased approach made it clear that in order to assist children to tell the interviewers as much as possible about what may have happened, the interviewers must first of all devote time to establishing a positive relationship between themselves and the child, but in a way that could not be criticized as serving to bias or unduly influence what the child might say. A wealth of psychological research has demonstrated that to assist people to recall often complex and distressing events, they must be in as positive a frame of mind as possible and have positive regard for the interviewer. (This applies strongly to many aspects of criminal psychology.)

Another body of psychological research has demonstrated that when people are remembering events, what they say in their own words (in psychology this is called ‘free recall’) is more accurate than what they say in response to questions. Thus, good inter- viewing first allows witnesses to provide free recall before asking them questions. On the face of it, this might seem easy to do but, in fact, research has repeatedly shown that untrained interviewers interrupt witnesses’ free recall with questions. It is actually quite difficult to hold one’s questions until the witness has finished his or her free recall. It is important to do so not only because interrupting conveys to the witness that the interviewer wants short accounts, but also because questions run the risk of biasing the replies.

Some question types are more biasing (or suggestive) than others. Leading questions suggest the desired answer. For example, ‘You are enjoying reading this book, aren’t you?’. Research has shown that children and vulnerable adults are very inclined to reply ‘Yes’ to leading questions. The problem, therefore, with such questions is that one does not know whether the answer is a true representation of what is in the interviewee’s mind or is merely compliance to the question (especially if it is asked by an adult in authority). Thus, the MOGP pointed out that some types of questions were preferable to leading questions. It advised that in the questioning phase ‘open’ questions should be asked first, then ‘specific’ questions, then ‘closed’ questions and preferably no leading questions.

Open questions invite the interviewee to provide information additional to that given in their free recall. For example, ‘A few minutes ago you said that your uncle hurt you. How did he do that?’. Specific questions focus on detail. For example, ‘You said your uncle pushed something into your mouth. What did he use?’. Closed questions contain a list of alternatives but, of course, they run the risk of not including the correct alternative or of suggesting an alternative (that makes more ‘sense’ than the other alternatives). Closed questions that contain few (e.g. two) alternatives are especially risky, since research has shown that children and vulnerable adults may choose one of the alternatives even though doing so provides an incorrect account of what happened. One reason why young children do this is because they believe that adults (especially authority figures) already know what happened and that their role (i.e. the children’s) is merely to confirm that the adult is correct. This is one of the reasons why the MOGP (and similar guidance documents) emphasizes that the witnesses must be told that the interviewer will be happy if the witness says ‘I don’t understand’ or ‘I don’t know’ (contrary to what school teachers may say).

Leading questions, because they suggest the answer (e.g. ‘Your uncle touched your bottom, didn’t he?’ – when the child has given no indication of this) should rarely, if ever, be used when inter- viewing witnesses (or suspects). If one is used, it should be followed up not by the use of further leading questions (as often happens in everyday conversations) but by the use of open questions.

Finally, the closing phase has two major parts. The first involves the interviewers checking that they have correctly understood the important parts, if any, of what the interviewees have communicated. The second involves ensuring that the interviewee leaves in as positive a frame of mind as possible (by, for example, returning to some of the neutral topics covered in the rapport phase).

In 2002 the Government in England and Wales published an update of its 1992 (MOGP) guidance document. This extensive update is entitled Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable and Intimidated Witnesses, Including Children (ABE) and it was written by a team (including criminal psychologists) led by Professor Graham Davies at the University of Leicester School of Psychology. More recently, the Scottish Executive (2004) published similar guidance regarding child wit- nesses. Such guidance documents play a number of important roles. For example, in June 2005 the Court Of Appeal in London quashed a man’s conviction to 18 months imprisonment for indecent assault of an eight-year-old child. The Court decided this largely because the judge in the original trial had not properly directed the jury regarding the defendant’s claim that the interviewing by the police of the child was not in accordance with the official guidance document (i.e. ABE).

Psychological research has repeatedly demonstrated just how easy it is for inappropriate questions to bias what witnesses say. Over thirty years ago one such experiment found that when asked about the height of a man they had seen, those asked ‘How tall was the man?’ produced, on average, responses that were twenty-eight centimetres greater than those asked ‘How short was the man?’. Other studies have shown that when asked about items that were not in the original event, more people replied ‘yes’ to questions worded ‘Did you see the ...?’ than to ‘Did you see a ...?’.

The effects of inappropriate questions have been found to be even more pronounced if they are asked by authority figures. For example, our research found that when children were interviewed about an event, they remembered less and more frequently went along with misleading questions if the interviewer looked and behaved authoritatively.

An extensive, international programme of psychological research has, in the last twenty years, developed ways of helping interviewees remember as much as possible about events. One major way is to use what is known as the ‘cognitive interview’ (which is often referred to as the CI). This procedure involves a number of techniques based on major research findings and theories in cognitive psychology (e.g. concerning how memory works) and in social psychology (e.g. what constitutes good communication skills). For example, the mental reinstatement of con- text which assists the interviewee to re-instate in their mind key aspects of the original event. These contextual aspects then ‘trigger off’ (that is, then allow to be recalled) other aspects of the event that otherwise would have been very difficult to retrieve from memory. Another major aspect of the CI is to transfer control of the memory retrieval to the interviewee (e.g. the witness) which involves the interviewer realizing that they should behave in a way that allows (indeed, motivates) the interviewee to think hard, to do most of the talking, and not to be unduly influenced by any biases or expectations that the interviewer may have about what happened. The CI procedure has been found in many studies to help people remember more. In 2005 the author of this chapter was surprised to receive the rare honour for a civilian of a Commendation Certificate from the London Metropolitan Police Service for the guidance provided in the interviewing of a woman who had been raped but who, initially, could recall little of the horrendous event. Among the guidance given to the interviewer (prior to and during the four-hour interview) were aspects of the CI approach.

questioning in court.

An important place where the questioning of (alleged) witnesses, victims and suspects also takes place is in criminal courts. However, relatively few studies have been conducted on this particular topic, probably because of the difficulties of doing so. In the late 1980s we conducted one of the first published studies of questioning of child witnesses in criminal courts in which eighty-nine children were observed giving evidence in forty trials in Glasgow, Scotland. Among the wealth of information gathered was that concerning the appropriateness of the vocabulary used by the lawyers when questioning children of various ages. Those lawyers whose ‘side’ had called the child witnesses (usually the prosecution) rarely used vocabulary that the children appeared not to understand (this occurred in only twelve per cent of their ‘examinations-in-chief ’). However, the ‘opposing’ lawyers did this much more often (in forty per cent of their cross-examinations). The inappropriate vocabulary was by no means directed at only the youngest children. Indeed, for these the lawyers appeared to be conscious of the need to keep their vocabulary simple. (The lawyers also largely used age-appropriate grammar, ninety per cent and eighty-three percent, respectively.)

However, in other countries the situation may be less appropriate for child witnesses. For example, in New Zealand, the transcripts of twenty child sexual abuse trials in which children aged five to twelve gave evidence (for the prosecution) revealed that the cross-examinations (by the defence lawyers) contained more leading (i.e. suggestive) questions (thirty-five per cent) than did prosecutors’ examinations-in-chief (fifteen per cent). Furthermore, (i) children’s misunderstanding of questions were evident in sixty-five per cent of the cross-examinations, (ii) there was a relationship between the number of child witness misunderstandings and the defence lawyers’ use of complex questions, and (iii) when children appeared to contradict what they had earlier said in the trials this was very often associated with an age-inappropriate question being asked (which caused the contradiction).

The lawyer Emily Henderson claimed that many of the cross-examination tactics used by lawyers to question children are suggestive and are a ‘how not to’ guide to interviewing (that is, are the opposite of what is contained in guidance documents on how to interview children). She interviewed lawyers in New Zealand and in England who showed good awareness of the dangers of asking suggestive questions, but who still sometimes chose to use them.

A few studies have been published concerning the questioning in court of adult (alleged) victims/witnesses. One looked at the transcripts of rape trials and found that the cross-examinations involved many more ‘yes’/‘no’ questions (which can be suggestive and do constrain the nature of the reply) than the examinations- in-chief (eighty-two per cent vs. forty-seven per cent) but fewer ‘open’ questions (which allow the witness to give an account not suggested by the question – six per cent versus twenty-three per cent). Another study found similar data for ‘ordinary’ (alleged) adult rape victims but it also looked at transcripts of trials in which the alleged victims were adults with learning disability (who can have particular difficulty in understanding questions and in resisting suggestive questions). In these latter trials, not only were there many more ‘yes’/‘no’ questions in the cross- examinations, there also were more leading questions than in evidence-in-chief (twenty-five per cent vs. three per cent). In fact, both the defence and prosecution lawyers questioned the witnesses with learning disability in ways similar to ordinary adult rape victims, thus demonstrating no special skills for these particularly vulnerable witnesses. Perhaps this is not surprising because it is only recently that some countries have taken the trouble (i) to encourage particularly vulnerable adults to disclose that they may have been abused, (ii) to train investigative interviewers to inter- view such people and (iii) to bring in legislation that provides procedures (sometimes referred to as ‘special measures’) to assist such people to present their evidence to the court (e.g. by the use of video-recorded evidence, live television links from a room to the court room, the use of screens between the witness and the accused).

Conclusions.

This chapter has examined work by criminal psychologists (and others) that provides guidance on how suspects, witnesses and victims should be interviewed. However, such guidance is only being supported by Governments and other relevant organizations in some countries. Others, sadly, seem ignorant at present of what can now be achieved.