

CHAPTER 2

Techniques for Interviewing Witnesses

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Explain the importance of acquiring interview skills.
- Identify the single most important skill an interviewer can acquire.
- Explain theories of memory storage and retrieval and describe how they have influenced the development of interview techniques.
- Describe the fundamentals of the cognitive model of memory.
- Describe the fundamentals of the cognitive and enhanced cognitive interview techniques.
- Conduct a basic witness interview using the enhanced cognitive interview approach.

Introduction

Effective interviewing in a criminal investigation requires good communication skills, which include active listening on the part of the interviewer and a substantial effort by the interviewee to recall what happened. It also requires training, planning, patience, problem-solving, and lots of practice. The primary objective of the investigative interview is to elicit the maximum amount of reliable information from a person's memory of an event, while being careful to minimize both errors in the person's recall and any potential contamination that might be introduced by the interviewer.

In this chapter, we typically use the term *witness* to refer to both observers and non-traumatized victims of crime. The distinction between interviewing a witness or victim versus interviewing a potential suspect is not always clear-cut, and similar techniques are often useful and necessary in both cases. (In some situations, however, special strategies are required for victims.) Furthermore, in the early stages of an investigation, it is sometimes difficult to determine who is a victim, who is a witness, and who is a suspect until information from all involved parties and evidence from other sources is obtained.

This chapter focuses on the issues common to most investigative interviews, primarily with observer witnesses, non-traumatized victims, and people who may end up as suspects after more information is gathered. The key point to remember is that, at least initially, police interviewers should treat everyone with the same reasonable degree of politeness and respect. Despite media depictions to the contrary, veteran interviewers of even the most experienced criminals know that little is to be gained from adopting a confrontational attitude at the outset with a person from whom one needs to elicit information. Establishing rapport and treating a person with respect have been shown to reliably open the lines of communication.¹ Also, by treating all witnesses equally, investigators reduce the risk of displaying bias or acquiring *tunnel vision*, a phenomenon we look at in greater detail in Chapter 7, Portals of Discovery: Investigative Failures and the Lessons Learned.

The Role of the Interview in an Investigation

As mentioned above, the interview is a process by which the recollections of a person who made observations regarding the commission of a crime are gathered in order to create a permanent record of those observations, called a **statement**. The interview will typically be recorded (at least the audio portion,

statement a witness's, suspect's, or victim's account of an event, usually "taken" from a witness or a suspect in the course of a formal recorded interview, although it can be taken anywhere at any time and may be written out; electronic recording is the preferred method of preserving a statement for disclosure and court purposes

but ideally both audio and video), and a transcript of the interview may be prepared from this recording. During and after the interview, the police officer, and perhaps others, will assess both the credibility of the evidence offered by the witness and the credibility of the witness himself or herself. It is important to remember that any formal assessment based on the interview record rises or falls primarily on the quality of the interview process.

The statement is one of the pieces of evidence that the Crown attorney analyzes prior to the court process in order to determine which, if any, of the facts in issue are proven by the witness's statement. The Crown attorney can also use the statement to assess possible problems with the admissibility of the testimony. In Canada, pursuant to sections 7 and 11(d) of the Charter, an accused has the right to make full answer and defence to a charge.² That right can be meaningful only if there is a duty on the Crown to divulge all relevant evidence that it has against a person. This principle takes effect through a process called **disclosure**. The definitive legal opinion on the issue of disclosure is found in the Supreme Court of Canada case *R v Stinchcombe*, in which the court said that the Crown has an obligation to provide the defence with all evidence that could possibly be relevant to the case, regardless of whether it assists the Crown's case and whether the Crown intends to use that evidence at trial. The court made it clear that evidence belongs to the justice system as a whole, not to the Crown: "[T]he fruits of the investigation which are in the possession of counsel for the Crown are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done"³

The Crown meets its disclosure obligations in the case of a witness statement when a copy of the statement is provided to the accused either directly or through his or her counsel. The Crown is obliged to give copies of all statements, and any other relevant information (with the exception of certain *privileged* information) gathered during the course of an investigation, to the defence. This obligation also applies to the evidence of witnesses who have been interviewed by the police but whom the Crown does not intend to call to testify during the course of the trial. In *R v McNeil*,⁴ the Supreme Court created an additional duty on the Crown to disclose records of the discipline or misconduct of officers involved in the investigation of an accused if they might be relevant to the case; this imposed a corresponding obligation on the police to disclose any such records to the Crown.

When a witness is called to testify in court, he or she cannot read from the statement given to the police. The witness's statement is not evidence and

disclosure process in which the Crown attorney is required to reveal to the defence all of the evidence (including physical or electronic copies of all documents, statements, and any other evidence) gathered in an investigation that could be potentially relevant to the defence of the accused, including information that the Crown does not intend to use at trial

cannot be read into the record of the trial except in the most extreme and narrow circumstances. However, the witness may refresh his or her memory by referring to the document before testifying. This serves to improve the accuracy of the testimony and to build confidence in the witness who, as a result of inexperience or the amount of time that has passed since the event that he or she witnessed occurred, may be nervous about his or her performance. The witness statement also gives the Crown attorney the means to confront a witness who is either hostile to the Crown from the outset or who becomes belligerent while testifying.

The Need for Formal Interview Training

Obtaining information from apparently cooperative witnesses and victims of crime has often been regarded as a process that does not require much more than asking a series of questions and accurately recording the responses. However, as we will see in this chapter, it is wrong to assume that even the most motivated witness can accurately and completely describe an event merely by responding to a series of questions from a well-intentioned investigator. The need for specialized police interview skills training was first identified in the United States in 1975, in a seminal study of criminal investigation processes conducted by the Rand Corporation. In addition, Ron Fisher and Ed Geiselman, the originators of the cognitive interview we discuss below, along with other colleagues, carefully reviewed hundreds of actual police interviews conducted in the United States and revealed a number of common shortcomings.⁵ Other academics from around the world have also identified the need for formal training in evidence-based interview protocols.⁶

In Canada, especially over the past decade, the investigative practices of the police have attracted considerable scrutiny as a result of a number of high-profile wrongful conviction cases.⁷ Various commissions of inquiry into cases of wrongful conviction, such as the majority of those mentioned above, have reviewed police practices in these cases and produced detailed reports that set out general guidelines for conducting investigations and make specific recommendations with respect to police interviewing practices. The most common themes to come out of the inquiries with regard to the conduct of police interviews are the following:

- Police investigators require a set of written, research-based interview protocols that they can follow to enhance the reliability, effectiveness, and accuracy of their interviews.
- Police investigators need more training in how to conduct proper investigative interviews.
- All police interviews with witnesses and suspects should be video recorded.

We endorse the many recommendations for the improvement of police interview practices put forth in these reports to both increase the effectiveness of police interviews and reduce the possibility of wrongful convictions. In the next section we look at some of the methods of witness interviewing that have evolved over the years, examine what they are based on, and consider the research that has been conducted into their effectiveness.

The Evolution of Modern Interview Techniques

Current state-of-the-art interview procedures can, in essence, be traced back to four roots: hypnosis; the concept of encoding specificity, or how similar the conditions are in which we originally experienced something to those under which we try to recall that experience from our memory; the problem of misleading post-event information; and research specifically aimed at police interview techniques, which began in the 1980s. We outline each of these roots briefly before considering various models of memory and then turning to a step-by-step examination of the interview technique we recommend: the enhanced cognitive interview.

Hypnosis

Franz Mesmer (from whose name we get the term “mesmerized”) is typically credited with refining and mastering the process of **hypnosis** in the second half of the 18th century, although similar states had been observed in various forms throughout human history.⁸ Part medical treatment and part theatrics, it was *de rigueur* in 1770s Paris to invite Mesmer to high-society gatherings to perform his feats of “animal magnetism” for the guests’ amusement. Mesmer was convinced that, just as Isaac Newton’s recently developed theory of gravity explained the magnet-like attraction between objects, *animal* magnetism explained his own ability to influence other people’s behaviour at a distance. No one disputed the effects of his procedure (hypnotic effects are still fairly easy to demonstrate today, especially with a large enough group of willing people), but his explanation for *how* hypnosis occurred was not well received in his day and he lost favour as a performer and practitioner of hypnosis, or “mesmerism.” In fact, a century passed before hypnosis again became a subject of public and scholarly attention when Sigmund Freud and his colleagues

hypnosis a technique by which a hypnotist purports to put a subject into a trancelike state in which the subject’s responses and actions are under the hypnotist’s control

revived interest in it in the late 19th century with the development of psychoanalysis. (Scholars still debate whether hypnosis represents a distinct state of consciousness, just as sleep is distinct from wakefulness, or whether it merely occupies an extreme—“hyper”—position along some continuum of suggestibility.)

The late Canadian psychologist Nicholas Spanos of Carleton University conducted some of the best research on how hypnosis works and primarily favoured the notion of hypersuggestibility.⁹ In any event, hypnosis is a well-established if not well-understood technique, widely used around the world in therapeutic settings; for amusement by performers with large groups of people; and, most relevant for our purposes, sometimes as a technique to enhance witness recall in police investigations, although less so today than in the past.

“Hypnotically refreshed testimony” is the optimistic term often used to describe the fact that people sometimes recall a greater number of accurate details about an event under hypnosis than they do in a normal state. The problem with obtaining additional information this way is that a greater number of inaccurate details often come with the package, making it difficult to discriminate between what really happened and what a person’s brain might have concocted (called “confabulations” or “intrusions”) under hypnotic influence.¹⁰ As a result, hypnotic interviews are rare, and testimony obtained under hypnosis can also be ruled inadmissible. In *R v Trochym*, the Supreme Court dealt with the issue of “post-hypnosis evidence” in Canada, stating that:

[t]he technique of hypnosis and its impact on human memory are not understood well enough for post-hypnosis testimony to be sufficiently reliable in a court of law. Although hypnosis has been the subject of numerous studies, these studies are either inconclusive or draw attention to the fact that hypnosis can, in certain circumstances, result in the distortion of memory. The potential rate of error in the additional information obtained through hypnosis when it is used for forensic purposes is troubling. At the present time, there is no way of knowing whether such information will be accurate or inaccurate. Such uncertainty is unacceptable in a court of law.¹¹

Is there a way to reap the benefits that hypnosis apparently provides without having to cope with the erroneous details that often accompany it? Fortunately, the answer is yes.¹² The non-controversial fundamentals of hypnosis—such as good rapport between hypnotist and subject, a setting conducive to concentration, and a willingness on the part of the subject to exert some mental effort—can be exploited without the negative consequences associated with the actual hypnotic state. We describe the process later in this chapter when we discuss the cognitive and enhanced cognitive interviews.

Encoding Specificity

The second root of modern interviewing recommendations is based on the work of another Canadian psychologist, Endel Tulving of the University of Toronto, whose work is recognized around the world for its impact on our understanding of how memory operates and can be optimized. Tulving's seemingly simple notion of **encoding specificity** reveals that a major factor in how much we remember is the degree to which the conditions that exist during memory retrieval match the conditions that existed during one's experience of the to-be-recalled event.¹³ In an investigative interview, the encoding specificity principle means that a witness will likely recall more if the physical and psychological conditions of the witnessed event can somehow be re-created. We specify how this can be done when we describe the context reinstatement phase of the cognitive and enhanced cognitive interviews.

Misleading Post-Event Information

The third root of modern interviewing recommendations is based on some of the best-known work on eyewitness evidence, conducted by Elizabeth Loftus, originally at the University of Washington and now at the University of California, Irvine. Loftus's early laboratory work on **misleading post-event information** has been followed by more than three decades of research studies, scholarly articles, popular books, expert testimony, case consultations, television appearances, and passionate debate on memory distortion, including the issue of **repressed memories**.¹⁴ Indeed, Loftus is considered to be one of the 100 most influential researchers in psychology in the 20th century.¹⁵ According to Loftus and dozens of other researchers around the world, memories are potentially vulnerable to distortion when exposed to information about an event that is inconsistent either with what really happened or with what the witness actually saw.¹⁶ The modern view of memory as a reconstructive process that attempts to take advantage of all relevant information is consistent with the finding that people often incorporate into their recall of an event information provided by other people; stories that they have read; and, most important with respect to the interview situation, questions posed by

encoding specificity a theory of memory function based on the hypothesis that a major factor in how much will be remembered is the degree to which the conditions that exist during memory retrieval match the conditions that existed during one's experience of the to-be-recalled event

misleading post-event information a theory of memory function that suggests that memories are easily distorted by information acquired after the original memory is formed

repressed memories previously inaccessible memories that are reported to have later been recovered, usually as a result of some sort of therapy or triggering event

those trying to determine what happened. The effect ranges from relatively small quantitative changes in recalled details to the implantation in memory of events that never took place.¹⁷

Research on Police Interview Techniques

Perhaps the most convincing evidence of the need for improved investigative interviewing techniques comes from the most basic source: the interviews themselves. As mentioned earlier in this chapter, one of the best-known analyses of police interviews was conducted by psychologists Fisher, Geiselman, and Raymond.¹⁸ They found that police interviewers varied widely in their interview styles and the techniques they used, were largely unaware of the limitations of their interviewing practices, and had little logic or reasoning underlying the ways in which they interviewed witnesses (many interviews were, quite simply, haphazard). In addition, they found that the following flaws were typical of police interviews:

- Officers typically asked too many closed and potentially leading questions (such as, “Was the offender young?” and “Was the car red?”).
- Officers did not provide sufficient time for the witness to respond to one question before asking another.
- Officers generally did not do much to encourage the witness to recall as much information as was likely available.

The psychologists concluded that police required a method for investigative interviewing that was reliable and based on what had been learned about memory through empirical research. In the light of this conclusion, in 1992 Fisher and Geiselman published the book *Memory-Enhancing Techniques for Investigative Interviewing: The Cognitive Interview*,¹⁹ in which they combined their analysis of police interviews with existing knowledge about hypnosis, encoding specificity, and the effects of misleading information. Both academic research on the cognitive interview and the practical application of the technique by investigators in the field have continued since the approach was first developed, resulting in the enhanced cognitive interview.²⁰

Models of Memory and Their Implications for Interviewing

For investigators who must access the memories of other people to obtain information about events, understanding how memory works is important. Adhering to models of memory that are inconsistent with what science has revealed about memory in recent decades is a potential barrier to gaining that knowledge. Our concern is that a belief in an inaccurate or incomplete model of memory will adversely influence an investigator’s decision to accept or

dismiss particular strategies for enhancing witness recall; it will also affect how an investigator responds to witnesses' claims regarding what they do or do not remember about an event.

Before examining the model that is generally accepted as the best available description of how memory works (the cognitive model), we briefly describe three of the most common models that many people incorrectly believe are accurate accounts of memory functioning.

The Freudian Model

Sigmund Freud is famous for several controversial ideas that he put forth around the turn of the 20th century.²¹ Perhaps Freud's most enduring legacy involves the role of unconscious influences on people's memories, thoughts, and behaviour. Freud argued that our conscious awareness is analogous to the small visible tip of an iceberg and that larger unconscious processes deep below the surface of our awareness cause us to be neurotic, narcissistic, defensive, and so forth. It is important to keep in mind that these ideas are over 100 years old and are not the subject of much training or research in modern-day psychology.

The unconscious influences that Freud was writing about were primarily memories of traumatic childhood experiences, which Freud believed continue to influence our thoughts and behaviour in adulthood, even though we might not have any conscious awareness of them. Freud argued that the only way to rid ourselves of these unconscious influences is to access the memories of our traumatic experiences through techniques such as hypnosis, word association, and the administration of "truth serum." Because accessing memory is what the investigative interview is all about, it's important to know whether memories of experiences from long ago can in fact remain intact in the deep recesses of the mind and, if so, whether there are special techniques that can be used to access them. If an investigator believes in the Freudian model of memory, the two most likely consequences of that belief are that (1) he or she believes that memories of traumatic events, such as sexual assaults in childhood, are routinely "repressed" by the unconscious and then "recovered" in their original form years or decades later; and (2) there is some sort of method that can be used to easily access information in people's memories.

Is the Freudian model convincing? A few clinical psychologists and psychiatrists claim to have helped their clients recover memories that those therapists believe to be true, but there is no universally accepted mechanism by which such repression and subsequent revelation might occur. In fact, some evidence suggests that experiences that Freudian supporters claim are candidates for repression are actually *impossible to forget* for many people, who instead have no choice but to remember them for much of their lives. It is not widely accepted that the brain automatically protects us from remembering traumatic events by repressing our memories of them, although there is also no evidence to prove that repression can *never* happen. Two landmark

publications (by Stephen Lindsay and Don Read, and Kenneth Bowers and Peter Farvolden, respectively) are recommended to readers who want to know more about this potentially controversial issue.²²

In addition to the flaws that little evidence exists to support the Freudian model of memory and that much of the existing evidence actually supports an opposite conclusion, research conducted by Loftus and others reveals that memory is susceptible to distortion from information acquired after the event, thus making it highly unlikely for details to remain intact in the mind for extremely long periods of time.²³ So while it is certainly possible for an event from one's distant past to be forgotten and then remembered, we should be just as wary about the accuracy of the details from such a memory as we are about recalled details from an event that occurred last week. Despite commonly accepted beliefs in "flashbulb memories" and "photographic memories," there is no reliable research indicating that these phenomena occur in such a way or with such frequency to warrant complete faith in the veracity of anyone's recalled details from long ago.²⁴

With respect to the issue of "recovered" memories, certainly no one wishes to re-victimize persons who may have suffered abuse; however, the rights of suspects cannot be ignored either. The courts in Canada have taken the position that a witness should not be believed or disbelieved only because he or she claims to have repressed and then recovered a memory of a past event or series of events. Rather, such evidence should be admitted with cautions regarding its reliability (as noted in *R v REM* and *R v Kliman*).²⁵ Our recommendation, therefore, is that a criminal allegation based on a recovered memory should be treated no differently than an allegation based on a "normal" memory; the court will decide what weight such evidence will carry during a trial.

Finally, let's consider the Freudian proposition that there are special techniques for easily accessing repressed memories. The fact is that no reliable evidence exists to support this contention. Hypnosis, as we have seen, is not a particularly useful tool for accessing reliable information from witness memories. Some of the features of a hypnotic interview can be used to an investigator's advantage, but the dangers of a full-blown trance state outweigh its benefits in most cases. Nor is word association, in which a person is asked to say the first thing that comes to mind in response to a stimulus word, a reliable method. And so-called truth serum (sodium pentathol, sodium amytal, and other agents) is merely a nervous-system depressant that, like alcohol, can reduce a person's unwillingness or inhibitions to talk about something.²⁶ It does not work any better than strategies such as putting an interviewee at ease, withholding judgment about an interviewee's actions, and not creating an air of suspicion without good cause.

The Videotape Model

The videotape model of memory is, in many respects, an updated version of the Freudian model. The idea is that memories (or at least some memories) are stored in a literal, chronological form that can be accessed at a later point; in essence, the model holds that memories are passively “recorded” and later “replayed” at will in great detail. This is not a theory supported by reliable research. In one case in which police interviewed a witness who had a poor recollection of events, they pressured her in a subsequent interview to produce additional details from memory. The interviewers told her that one way to do this was to close her eyes and pretend that she was “watching a movie.” The judge in this case (*R v Post*²⁷) criticized the police, stating that this approach created the potential for the production of false memories. Although many people have the impression that events such as assaults and life-threatening accidents are remembered “like a movie,” in perfect detail, research has repeatedly shown that the accuracy of such memories is no greater than that of other memories.²⁸ Investigators should therefore tolerate imperfections in witnesses’ memories, concentrate on what is remembered well, and not judge a witness negatively for forgetting an important detail.

The Biological Model

An apparently logical consequence of the fact that memory is based on biological processes goes something like this: memories are stored in the brain; the brain is made up of cells; therefore, memories must be stored in individual cells. Furthermore, brain cells die by the thousands each day and are typically never replaced, so the memories stored in those cells must also decay and become inaccessible.

The weak link in all of this is the assumption that memories are stored in individual cells, such as a “grandmother cell” that retains an image of your grandmother’s face. Supposedly, if you lose that cell to decay, you will forget what your grandmother looked like. But research has shown that memory is much more than a simple storehouse of cells that fills up with information as we go through life. Most brain researchers now support the connectionist model of memory, discussed below.²⁹

The Cognitive Model

Cognitive science is the study of how the brain processes information for tasks such as problem-solving, language, decision-making, and, most important for our present purposes, memory. It is a multifaceted approach, picking up where the other models of memory we’ve been discussing leave off, with an emphasis on applied issues and useful parallels with computerized information processing. The three fundamental components of the cognitive model of memory are that (1) information is processed in a series of discrete stages, (2) there is a

“cognitive economy” in the brain that maximizes the efficiency of our limited cognitive capabilities, and (3) memories are stored in overlapping networks of neural connections in the brain.

Stages of Information Processing

Scientific research has shown that the brain processes information in stages, an idea first proposed by R.C. Atkinson and R.M. Shiffrin,³⁰ based in part on earlier work by George Sperling,³¹ and subsequently supported by hundreds if not thousands of additional studies and experiments.³²

When we witness an event, the process goes something like this: first, our limited attentional resources typically must be allocated to an object in our visual field if it is going to have any chance of being remembered. Light waves reflected off the surfaces of the object travel through the air and into our eyes through the pupils, where they then move through the thick, vitreous fluid that fills our eyeballs before falling onto light-sensitive receptors in the retina to form an upside-down, two-dimensional image about the size of a dime—only a small part of which is actually in focus. The receptors convert the electromagnetic light energy into electrochemical energy, which travels along the optic nerve to the occipital cortex at the back of the brain. There, the information is decoded back into what seems like a clear, right-side-up, three-dimensional image, only some of which will ever make it into our memory. A portion of what we’ve perceived moves on to the short-term (or “working”) memory stage of the process. This information is typically lost forever unless it is further processed into long-term memory. Transfer from working to long-term memory is accomplished by some combination of simple rehearsal (“his hair is brown, his hair is brown, his hair is brown”), integration with existing memory (“he looks a lot like my brother Dave”), and meaningful interpretation (“he looks more scared than I feel”). If you later want to describe what you saw, the information must be retrieved from the vast repository of long-term memory, placed into working memory, processed by speech centres in the brain, and converted into words that are created by forcing air through your larynx and moving your tongue, lips, and mouth.

Given the above, it seems incredible that we perceive and remember anything at all. This is an important fact to keep in mind when faced with a witness who claims not to have seen something that clearly was right in front of his or her eyes or who can’t remember the colour of the shirt worn last month by an attacker. The cognitive interview is based on this knowledge of how memory functions and offers strategies to at least partially compensate for these built-in limitations.

The Cognitive Economy

Research has also shown that the brain seeks to pare down what needs to be stored so that it is not cluttered with unnecessary details that might slow the

processing of more important information. This **cognitive economy** is evidenced by the many shortcuts the brain takes to combine in memory information from similar events (called “schemas” or “scripts” by Roger Schank and Robert Abelson)³³ and make decisions relatively quickly without waiting to access all of the possibly relevant information (called “heuristics” by Amos Tversky and Daniel Kahneman).³⁴ People have these mental scripts for events they experience repeatedly, such as going to a restaurant or starting a new class. After many such experiences, the brain tends to blend the details so that we don’t necessarily remember the details of each occasion that a waiter brings us our bill or the precise way that each new teacher introduces himself or herself. Instead, the brain often relies on generalized versions of familiar events that include items common to most of the events.

An interviewer, therefore, could facilitate accurate and complete recall by helping a witness remember anything that might distinguish a particular restaurant visit from all other visits. Of course, if the incident in question ended with a violent attack or robbery, it will likely stand out in the person’s memory. In that case, you as the interviewer might have to be aware of memory schemas in order to help a bank teller, for example, who has dealt with hundreds or thousands of customers other than the one who robbed him recently, so that he does not unintentionally incorporate into his statement some aspect of a typical customer interaction that didn’t actually occur in the case of the person who robbed him. And if it is only later that an incident is determined to be important to an investigation (for example, a bank teller cashing what turns out to be a bad cheque), recovering the details with knowledge of memory schemas is also important. In all these cases, the quality of the interview is likely to be improved if you employ the enhanced cognitive interview technique.

The Connectionist Model

The third component of the cognitive model of memory incorporates the connectionist model of memory alluded to earlier.³⁵ According to the connectionist model, the brain perceives and processes incoming information, such as another person’s appearance, by activating a *network* of cells. Different subsets of the network are devoted to different aspects of the incoming information, such as who the person resembles and whether he or she appears trustworthy, as well as contextual information, such as the time, place, and other circumstances. When it comes time to remember the person’s appearance and other details of the event, the brain attempts to reactivate the connections among

cognitive economy a theory of memory function that describes the shortcuts taken by the brain in an effort to store and retrieve an enormous number of individual memories

the cells that were active during the initial exposure. A good interviewer can facilitate that reactivation by getting a witness to think about the many aspects of the person's face that make up the memory, the context in which the person was viewed, what the witness was doing at the time, and so on. This is part of the logic behind the cognitive and enhanced cognitive interviews.

Before turning to what the cognitive interviewing approach offers to investigators, it is worth considering whether there is anything we can salvage from the other memory models. In fact, the Freudian model helps us understand some of the complexities surrounding memory, especially with regard to traumatic events that occurred long ago, and the role that unconscious processes might play in forming and retrieving memories. It helps us realize that there is no simple explanation for how memory functions and that any claim based on memory—perhaps especially for traumatic events from long ago—should be investigated objectively, case by case. The videotape model gives us a useful vocabulary for helping people access their memories. For example, an investigator might say, “Dave, I’d like you to replay in your mind the details of what took place at work last Friday. When you get to the part where you say Don attacked you, I’d like you to think of the event as if it’s playing back in slow motion, and when you get to the part where he pulled the weapon, I’d like you to freeze that frame and zoom in on exactly what that weapon looked like.”

These are meaningful instructions for most people and may assist them in taking the time and effort required to effectively search their memory—as long as both the investigator and the witness understand that this is not how memory actually functions, and as long as the investigator does not put any pressure on the witness to “play back” more than he or she can readily recall.

Finally, the biological model acknowledges the complexity of our memory system and can perhaps help us account for memory abnormalities caused by illness, drug and alcohol intoxication, and/or brain injury.

The Enhanced Cognitive Interview

As mentioned above, in the 1980s, American psychologists Ed Geiselman and Ron Fisher developed the **cognitive interview (CI)** in an effort to improve the quality of police interviews with witnesses. The CI has undergone a number of improvements since it was first developed and, in both its original and enhanced forms, remains one of the most researched and significant interview procedures developed over the past two decades.³⁶

cognitive interview (CI) refers to a group of four techniques (report everything; change perspective; change order; context reinstatement) developed as a result of psychological research conducted on police interviewing practices; designed to facilitate a witness's use of his or her memory during an interview; see enhanced cognitive interview

Background: The Cognitive Interview

As discussed, the CI is based on three ideas that arose out of psychological research on memory, which began formally in the 1970s and 1980s:³⁷

1. An event may be represented in memory in various ways (for example, in central versus peripheral details or in semantic versus episodic information), which means that while one retrieval technique may fail, suggesting that the person has forgotten some detail, another technique may be successful at accessing that detail.
2. The principle of encoding specificity, discussed above, in which the similarity between the context in which a memory was first “made” and the context in which one subsequently attempts to retrieve it, can affect how successful a person is at remembering.
3. The phenomenon of misleading post-event information, also discussed above, helps us understand how memories can come to incorporate incorrect details from sources encountered *after* an event has occurred.

When it was first developed, the CI wasn’t really an “interview”; rather, it was a group of four *techniques* designed for use *during* an interview. The techniques, which could be used either on their own or in combination, were intended to assist cooperative witnesses in recalling events or knowledge from memory and motivate them to make the effort necessary to effectively search their memories.³⁸

The four original CI techniques consisted of the following points (on which we elaborate further in this chapter when we discuss the enhanced cognitive interview):

1. *Report everything.* The interviewer asks the witness to report everything he or she remembers about the event and the circumstances surrounding it, stressing the importance of leaving nothing out, even if the witness thinks the details are unimportant or believes that the police may already know about them. The rationale for this technique is to increase both the total amount of information given by the witness and the likelihood that additional remembered aspects of the event will be “triggered” (that is, in the course of providing potentially “insignificant” information, more connections in the network of brain pathways associated with the event will be activated).
2. *Change order.* The interviewer asks the witness to recall the events in a variety of chronological orders (for example, beginning to end, end to beginning, or from a particular point either forward or backward). The retrieval of information from memory can be influenced by prior knowledge or “mental scripts” that affect how we make sense of what we recall (that is, we piece together our stories based on inferences from our past experiences and what seems to make sense in a given situation, not necessarily on the basis of specific details we can actually recall).

Attempting to recall the components of an event in a different order can shake up our retrieval strategy and potentially limit the effect of such “mental shortcuts,” resulting in improved recall.

While *change order* and *change perspective* were part of the original cognitive interview protocol, subsequent research indicated that they could potentially increase witness confusion, and that they were rarely used by police. They have since been replaced by draw/demonstrate (see Figure 2.1, later in this chapter).

3. *Change perspective.* The interviewer asks the witness to consider what the event might have looked like from different perspectives (for example, from the point of view of someone else who was present during the event or through an imaginary video camera in a corner of the ceiling). Research has shown that witnesses can sometimes recall more information if they think about an event from a number of different perspectives rather than from a single perspective. At the same time, as we discuss below, this strategy could lead to a person making inferences about what they *might* have seen from another perspective, so investigators should be wary of that problem and potential subsequent criticism from the defence.
4. *Context reinstatement.* The interviewer asks the witness to focus his or her attention on the context surrounding the event (for example, the physical environment, or what the witness was thinking or feeling at the time) in order to mentally re-create the context of the event the witness is trying to recall. The rationale for this technique is connected to the principle of encoding specificity, which has shown that the more similar the context in which a person attempts to recall an event is to the context in which the event was initially experienced, the more likely the person is to recall it.

A number of studies conducted after the introduction of the CI indicate that the CI significantly and consistently increases the amount of correct information produced by witnesses when compared to the standard police interview or to forensic hypnosis, and that it does so without an increase in the amount of erroneous information recalled.³⁹ However, it is apparent that, owing to the lack of a standard police interview structure and the tendency for officers to engage in counterproductive behaviours (for example, interrupting, using short-answer questions, jumping haphazardly from one topic to another, and using judgmental language), in order to maximize the effectiveness of the CI, the techniques need to be placed in an appropriate structure and interviewers provided with instructions on how best to use them.⁴⁰ Additional impetus for enhancing the CI came from research that indicates that witnesses often display more anxiety, poorer communication skills, and more confusion about their roles in real-life interviews than subjects do in the laboratory settings in which the CI was originally developed.⁴¹

In response to these issues, Fisher and Geiselman developed what has come to be called the **enhanced cognitive interview (ECI)**. In addition to the original four techniques of the CI, the ECI includes witness-compatible questioning and focused retrieval, and stipulates that all components of the ECI be used in a particular sequence to maximize their effect. Unlike the original CI, which covered only the four memory enhancement techniques, the ECI covers the entire interview process.⁴²

Preparing for an Interview

Conducting an investigative interview can be a complex process, with a number of steps that need to be taken in the right way at the right time. Before we explore the seven steps of the ECI, we will briefly examine the preparatory steps that investigators must take to ensure that their interviews will be as effective as possible and explain how to “package” an interview.

Gathering Information and Preparing an Outline

There is no easy way to conduct a good interview, but there is no better way to try than by being prepared. The importance of thorough preparation cannot be overstated. The investigator who will conduct the interview should prepare by learning as much as reasonably possible about the case, including becoming familiar with

- information from previous interviews with other witnesses;
- evidence collected through other aspects of the investigation (such as physical evidence collected at the crime scene or video surveillance evidence); and
- available information on any special characteristics of the witness (such as extreme youth or age, state of mind, and relationship to the suspect(s)).

enhanced cognitive interview (ECI) an interview that uses the four original CI techniques, but attempts to maximize their effectiveness by placing them in an appropriate structure and providing interviewers with instructions on how best to use them to minimize the tendency of police interviewers to engage in counterproductive behaviours such as interrupting or using short-answer questions; see cognitive interview (CI)

The investigator should devise a plan around which to structure the interview. Flexibility is important, but no one can conduct a good interview by “winging it,” so the investigator should keep a rough outline at hand in case he or she is at a loss for words at some point or wants to remember key points to address later. The headings used to describe the steps in the ECI (explored below and summarized in Figure 2.1, later in this chapter) can be used to structure the outline.

CI/ECI Significantly More Effective Than Standard Police Interview

While research on the original CI had indicated that it was about 30 percent more effective than a standard police interview,⁴³ research on the ECI indicates that it results in approximately 45 percent more correct details being produced by witnesses than the original CI.⁴⁴ It was thus concluded that the ECI elicits almost 90 percent more correct details from witnesses compared to the standard police interview.

The effectiveness of the ECI has been demonstrated in both laboratory and real-world conditions. North American studies have proven its effectiveness in significantly increasing the amount of information detectives are able to elicit from witnesses,⁴⁵ and similarly positive results have been found in developing countries.⁴⁶ Research has consistently shown that the CI/ECI enhances the *quantity* of information witnesses are able to recall without decreasing its *quality*. These effects have been demonstrated in a number of countries (the United Kingdom, Canada, Spain, and Germany) and among a number of different witness populations (children, individuals with special needs such as learning disabilities, and the elderly).⁴⁷

Choosing the Time and Place

Generally speaking, a witness’s ability to recall the details of a crime decreases as time passes. Witnesses and potential witnesses are usually briefly interviewed at the crime scene (assuming they are present and have been identified by the first officer or investigating officer), but this often serves merely to identify the witness and where he or she may be located at a later time. During the on-scene interview, a witness’s bare-bones observations may be recorded to assist in a future determination of the evidentiary value of the witness’s testimony. In addition, a rough description of an offender provided by an on-scene witness can be useful in trying to locate the offender in the area soon after the event. Witnesses should be advised that they may be contacted soon by the interviewing officer or other officers to make a formal statement.

There are several factors to consider in selecting a location for the main interview, such as the witness's age, the type of crime that he or she witnessed, the time that has elapsed since the crime was committed, and the witness's work and/or school schedules. Only some of these will be under the control of the investigator. A number of experienced investigators suggest that the best place to take a formal witness statement is in a controlled setting, such as a police station. This may in fact be the best location in many situations, but using a police station is not always possible or desirable.

Before the interview, the necessary materials and equipment must be prepared. Recording equipment should be checked and double-checked, and related supplies, such as DVDs and fresh batteries for digital audio recorders, should be on hand. Beverages, pens, and paper should be available in the interview room in sufficient quantities.

Usually, police officers must be flexible in choosing a location and must make the best of what is available. A formal witness statement can be successfully taken at a witness's home or place of employment, or in any setting that provides privacy and comfort. The location selected or agreed on should be one that allows the witness to concentrate without interruption and to reflect on his or her observations. Although a police station may provide geographical and psychological distance from, for example, the scene of a traumatizing domestic dispute or act of workplace violence, conducting an interview at the scene of the crime can have significant advantages with respect to memory recall.

The location should also provide a physical layout that allows the police officer to conduct the interview and take notes in a professional manner. A room with a table on which interview materials can be placed and a door that can be closed to minimize distractions and maintain privacy is ideal. A police officer attempting to learn the details of an event while balancing a clipboard on one knee in his or her patrol car does not present a professional image to the witness and may in fact give the witness the impression that the statement is not important. Also, the witness will be unlikely to exert the necessary mental effort to recall the event as completely as possible and the officer will be unlikely to listen as effectively or observe the witness as carefully.

If the statement is to be taken at the witness's residence, the officer should consider taking it at a time when the witness will not be interrupted by family members or other persons. Distractions lead to poor concentration, which in turn may produce a less than optimal interview. Privacy must also be considered when the witness suggests that the police drop by his or her office or other place of employment.

Sometimes, if it is impractical for a witness to meet with an investigator in person (for example, if the witness had been visiting the city when he or she witnessed the event and returned home before he or she could be interviewed), it may be necessary to interview a witness over the phone. Although taking a statement from a witness over the phone is not ideal, it is a reasonable option, especially when the alternative is not obtaining a statement at all. Investigators

who conduct interviews over the phone should be guided by the process outlined below for conducting in-person interviews, including arranging to have the interview audio recorded.

“Packaging” the Witness’s Statement

In the past, most interviews were recorded manually by the investigator, who took handwritten notes of the statement as it progressed. On the basis of these notes, the investigator prepared a summary, usually about one or two pages in length. The summary, known as a **will say**, is a summary of what a witness “will say” in his or her testimony at trial.

Today, most if not all statements taken during the course of any significant criminal investigation are recorded in their entirety (preferably on video in addition to audio; see the discussion in Chapter 3, Interviewing Suspects I: Legal Issues and Preparation, under the heading “Planning to Create a Complete Electronic Record”) and that record is commonly referred to simply as a “statement.” A copy (on DVD, for example) of all witness statements, and sometimes also a summary or transcript of the statement, is included in the *Crown brief*, or the package of materials that is sent to the Crown attorney to assist in reviewing the case and prosecuting it in court. The law also requires that a copy of all witness statements be disclosed to the defence, whether or not the Crown intends to call a particular witness to testify at trial.

Although there is no one single format, or template, for “packaging” a statement, all statements should include certain basic information aside from the actual account of the witness. As part of establishing rapport with a witness and reducing their level of anxiety (the first step in the ECI process), an investigator can explain that, as a normal part of the interview process, certain legal steps will be taken (for example, in the form of a “sworn statement caution,” otherwise known as a “KGB caution,” discussed below) and certain preliminary information will be put on the record (the preamble, chronology, and so on) before the interview begins.

Investigators should start all statements with a “preamble,” which is simply an introduction to the statement. The preamble provides such basic information as the following:

- the investigator’s name and position, and the name of the investigator’s partner if more than one investigator is present
- the name of the witness being interviewed
- the date, time, and location of the interview
- the fact that the interview is being recorded (if it is), and that the witness is aware of this fact and consents to being recorded.

will say a formal witness statement prepared for disclosure to the opposing party

The introductory phase of the interview process, prior to the witness giving their account, is the appropriate time to read the sworn statement caution, discussed in the box, “Identify Yourself and Read the Sworn Statement Caution,” later in this chapter. It is also the appropriate time to explain for the record how the witness came to be sitting in the interview room with the investigator; this can be accomplished by simply running through the chronology of events that led up to the interview. For example:

Mr. Smith, you are here today because on Tuesday, after the robbery occurred at the National Bank, you told the first officer who arrived at the scene, Officer Jones, that you had seen what had happened, and you gave Officer Jones your name and phone number. I then took over the investigation of the robbery, and on Wednesday I called you to make arrangements to have you come in today for an interview. And other than that, we have had no other contact or communication regarding this case. Is that correct?

The witness will normally confirm the account, if it is indeed accurate, and then the investigator can proceed to the point where the witness begins to describe what it is he or she observed or experienced. When the witness has finished giving the account and the investigator has completed all the steps in the interview process, the investigator should remember to state the time the interview concludes, prior to turning off the recording equipment.

If an investigator or a uniformed police officer has to take a full statement (as opposed to a “bare-bones” on-scene statement, referred to above) from a witness in person in the field—for example, because the witness refuses to attend a police facility—and the officer does not have access to recording equipment, an approach similar to the one described above should be used—namely, record the person’s full name, date of birth, and contact information on paper; make a note of why it was necessary to take the statement in the field instead of at a location where recording equipment was available; record the starting time of the interview and the location; record the witness’s statement in writing as close to verbatim as possible; and record any of the follow-up questions you ask and any answers the witness gives. When the interview is complete, have the witness read through your notes and make any necessary corrections (by putting a line through the entry and writing above it). When the witness is finished reviewing the statement, ask the witness to initial each page and then place the witness’s signature and the date at the end of the statement. The investigator should also place his or her signature and the date at the end of the statement following the witness’s entry.

The Enhanced Cognitive Interview: Step by Step

The following sections provide an in-depth examination of the seven steps of the ECI. The steps and their associated techniques are summarized in Figure 2.1.

FIGURE 2.1 Steps and Techniques in the Enhanced Cognitive Interview

Step	Techniques
Step 1: Greet, personalize, and establish rapport	<ul style="list-style-type: none"> • interact on a personal level • put witness at ease • establish working bond • explain procedures • be sincere and interested • assess special needs of witness and adapt
Step 2: Explain the aims of the interview	Focused retrieval: <ul style="list-style-type: none"> • tell witness to report everything • transfer control to witness • tell witness not to guess • explain need to concentrate hard
Step 3: Initiate a free narrative account	Context reinstatement: <ul style="list-style-type: none"> • pause • <i>do not interrupt</i> • use non-verbal behaviour
Step 4: Questioning	<ul style="list-style-type: none"> • tell witness to report everything, to concentrate hard, not to guess, that it's okay to say "I don't know" and "I don't understand" • use open-ended and closed questions • use witness-compatible questions • activate and probe an image
Step 5: Varied and extensive retrieval	<ul style="list-style-type: none"> • change the order in which events are recalled* • change perspective* • focus on all senses • have the witness make a drawing of the scene • have the witness demonstrate what he or she experienced

* While these two instructions were part of the original Enhanced Cognitive Interview, because research indicated that they were rarely used by police and could increase confusion, they have been replaced by the last two techniques listed in Step 5: having the witness make a drawing of the scene, and having the witness demonstrate what he or she experienced.

Step	Techniques
Step 6: Summary and review	<ul style="list-style-type: none"> • summarize relevant information • go slowly • incorporate witness corrections • request any other relevant information
Step 7: Closure	<ul style="list-style-type: none"> • exchange contact information • indicate interest in hearing from witness with new information • leave a positive impression

Source: Adapted from Rebecca Milne & Ray Bull, *Investigative Interviewing: Psychology and Practice* (New York: Wiley, 1999).

Step One: Greet, Personalize, and Establish Rapport

Prior to commencing the formal interview, the investigator identifies himself or herself; this is done again once the formal interview begins. Just as the police officer will use the interview to evaluate the witness's sincerity, reliability, and credibility, the witness will undoubtedly be evaluating the police officer's credibility and professionalism. It is therefore important for police officers to present themselves in the best possible manner. Witnesses speak more freely when a relationship of trust exists between them and the police and when they believe that the police will value what they have to say and will give them fair opportunity to tell their story. Such trust or rapport is essential to conducting an effective interview.

Rapport can be established relatively easily, but can also be lost quite quickly if the officer begins to send the witness conflicting signals. An investigator can begin establishing rapport by simply interacting with the witness on a personal level. Because an investigator is acting in an official capacity, it is easy to become overly formal, which can intimidate some witnesses. And the use of "legal" or "police" language during the course of an interview does not help to put a witness at ease. Although a degree of professional formality is required and expected to establish a working bond with a witness, a balance must be struck between the investigator's official persona and his or her human side.

On first meeting a witness, it is suggested that you discuss everyday events prior to beginning the interview (for example, "Did you have any difficulty finding the office today?" "It can be hard to find a good parking spot around here, can't it?" "There is a washroom right across the hall if you would like to visit it before we start."). Ask the witness to please turn off any electronic devices for the duration of the interview—ringing phones or audible text message alerts can be significant distractions. Try to make witnesses feel

comfortable. Tell them that it is normal for some witnesses to feel anxiety about sitting down to talk with the police, but that you will fully explain how the interview process works before you start. Advise witnesses that there are certain procedures that are an important part of conducting all witness interviews and that, before they can begin to give you their account of what they witnessed, you must follow these procedures. Procedures include

- starting the recording device to ensure that everything that is discussed is “on the record” and an accurate record of the interview is created;
- reading introductory information such as date, time, and location of the interview; and
- reading any legal cautions (such as a KGB caution, discussed in the box, “Identify Yourself and Read the Sworn Statement Caution,” below).

Once these procedures are complete, acknowledge that some people find it stressful to be a witness to a crime. Explain to the witnesses that, if they wish, once the interview is concluded you can put them in touch with someone who can help them through the process (for example, a victim witness assistance program, if your agency offers that service). Above all, be sincere, be interested, and value your witnesses.

The aim of the first step is to defuse any unnecessary anxiety the witness might be experiencing about being interviewed. Investigators need to remember that, although they might conduct hundreds or thousands of interviews over the course of their careers, for many witnesses, an interview—especially an interview with the police—is a rare event. The investigator should judge the point at which the witness seems comfortable enough to start the interview. There is no mandatory script or time limit for establishing rapport, and once rapport has been established, it must be maintained. Witnesses will notice if you seem to have lost interest in both them and the interview process and are just “going through the motions.” The following advice comes from a veteran investigator: “It takes far less time to arrange and properly prepare for an effective interview—including the time necessary to establish and maintain rapport—than it does to have to conduct a second interview because you did a poor job on the first one.” Also, in some instances—such as where a witness changes his or her mind about speaking to the police and/or can no longer be located—you may get only one opportunity to interview a particular witness.

A hidden advantage of the rapport-establishment phase is that it gives the investigator an opportunity to gauge the witness’s language abilities and his or her mental state, and to modify the interview process as necessary. If an interviewee has language, hearing, or other difficulties, the investigator may need to ensure that the interviewee has access to, for example, a psychological counsellor, an interpreter, medications, or medical appliances (such as a hearing aid) that may be required, and/or to a legal guardian (in the case of a child or developmentally challenged or elderly person).

The investigator should also attempt to gather additional insight into any issues that may have had an effect on the witness's ability to observe and recall events. Witnesses should be asked if they normally wear glasses or contacts and, if so, whether they were wearing them when they witnessed the event. In some cases, witnesses should also be asked whether they consumed any drugs or alcohol prior to witnessing the event. Determining details such as these is important because they can become relevant later in the criminal justice process if the witness is cross-examined on his or her evidence in court. Such questions should be asked in a non-judgmental, matter-of-fact fashion. Remember, you are trying to build rapport and you do not want to send your witness signals that you believe his or her account may not be accurate or reliable before the interview has even begun.

Identify Yourself and Read the Sworn Statement Caution

You must identify yourself to the witness, not only as a matter of courtesy and professionalism, but also to ensure that there is no doubt in the witness's mind that he or she is speaking to a police officer. Occasionally, and for a variety of reasons, witnesses may lie to or deliberately mislead the police during an interview. Witnesses who do so are liable to be charged with a criminal offence such as public mischief or obstruction of justice; however, in order for the court to find the witness guilty, it must be proven that the witness was aware, at the time of deliberately making the false statement, that he or she was talking to the police and that police had informed the witness of potential criminal consequences for deliberately misleading the police.

A related issue is the situation in which the witness claims at some later proceeding, such as at a criminal trial, that what the witness told the police in his or her original statement was false and that the story has now changed. Many investigators deal with this potential legal issue during the introductory phase of the interview by giving what is known as a **sworn statement caution** (also known as a **KGB caution** after the Supreme Court of Canada case of *R v B (KG)*,⁴⁸ commonly referred to as the "KGB case") to the witness before taking a statement. This caution informs witnesses

sworn statement caution prepared statement read to an interviewee by the police prior to an interview, informing the interviewee that the interview will be electronically recorded and that the interviewee will be swearing an oath to tell the truth and will face potential criminal consequences if he or she lies to or deliberately misleads police during the interview

KGB caution see *sworn statement caution*

that their statement has to be voluntary; that it will be taken under oath or affirmation; that they are agreeing to tell the truth; that they could face potential criminal consequences if they knowingly give false information to, or attempt to mislead, the police during the course of their investigation, which of course includes the interview; and that the interview (including the caution) will be electronically recorded in its entirety (when that is the case).

Reading the sworn statement caution and taking the witness's statement under oath can have an impact on the admissibility of the witness's statement at a trial if the witness later "recants" the statement or claims it to be false. In a situation where a witness changes his or her story at trial, and the original statement was voluntary, sworn, and electronically recorded (the essential ingredients in taking a sworn statement), the Crown can apply to have the original statement admitted for the truth of its contents. Taking a sworn-cautioned statement is also recommended in cases where, for various reasons, the witness may not be able to testify in court (such as if the witness is elderly or has a degenerative cognitive condition such as Alzheimer's and thus may be incapable of testifying later in court, if the witness lives a high-risk lifestyle and may get killed before having the opportunity to testify, or if the witness lives an itinerant lifestyle and may not be able to be subsequently located to compel attendance in court). For Supreme Court discussions regarding the use of the sworn statement caution, see *R v Couture*, *R v Devine*, and *R v Youvarajah*.⁴⁹

Step Two: Explain the Aims of the Interview

It may seem obvious, but in order for a witness to perform well during an investigative interview, you must explain the purpose of the interview and what you expect from the witness. Keep in mind our earlier discussion about hypnotic interviews, no longer widely used by police, and our point that the apparent advantages of hypnosis likely arose from using many of the following strategies common to the hypnotic procedure and not so much as the result of any "altered state of consciousness."

- *Focused retrieval.* Encourage witnesses to make focused retrieval efforts by telling them that in order to use their memory effectively, they must focus and concentrate. During the interview, you must give them as much time as is reasonably necessary to allow them to make those efforts.
- *Report everything.* Tell witnesses to report everything they can remember about the event, and not to leave things out because they don't think they are important. Mention that in the early stages of an investigation, it's impossible to tell what information may end up being significant later in the investigation.

- *Don't guess.* Tell witnesses not to guess or “fill in the gaps” while recalling events, but to say only what they actually remember. (For example, you could say, “If there are some things you don't recall, don't worry about it, no one has a perfect memory. Just do your best, tell me what you remember, and please do not guess. If you are not sure of something, just say so.”)
- *Transfer control.* Make it clear to witnesses that you are transferring control of the interview to them, that you expect them to do most of the talking, and that they can do so at their own pace. (“Of course, I wasn't in the bank when the robbery occurred, so I'm relying on you to tell me as much as possible about what happened. Take as much time as you need.”) Make it clear to them that you are likely to ask some follow-up questions later in the interview, but that you will not do so until they have given their account of the event. (“I might need you to clarify some of your remarks, and I might have some questions for you, but I'll try to hold my questions until after you have told your story.”)

Step Three: Initiate a Free Narrative Account

When conducting a witness interview, it is important that you allow the witness to provide an uninterrupted recollection of events (also called a *free narrative* or *free recall* account). For this **free recall** to be of maximum value, instruct the witness to begin the account at a point preceding the event in question. For example, if the interview concerns a bank robbery that occurred a week ago, you might say the following:

Before you start to tell me everything you remember about the robbery, I'd like you to cast your mind back to what you were doing earlier that day. For example, were you on your way to work or school, or was it a day off? What other activities did you engage in before arriving at the bank? What was on your mind while you were waiting in line? The point of all this is to get you back into the state of mind you were in at the time of the robbery. It turns out that our memory for such things can be much better if we remember as much as possible about everything that was happening in our mind at the time.

The above is an example of **context reinstatement**—a simple extension of the encoding specificity principle discussed earlier in the chapter. Once the witness has taken the time to cast his or her mind back to the event and the context in which it occurred, ask the witness to begin the free recall account: “Now, in your own words, take as much time as you need to tell me everything

free recall a witness's uninterrupted narrative of an incident

context reinstatement the establishment of background facts or conditions precedent that help put a statement into its proper context

you can remember about the robbery, starting with what brought you to the bank that day and what else you had been doing earlier.” If all goes as planned, the witness will begin to recount the event by saying something like, “Well, I remember it was Wednesday because I get Sundays and Wednesdays off work in the summer. I had stayed out late the night before so I slept in a little later than usual [pauses] ... maybe 10, 10:15.” Once the witness has begun the free recall account of the events, *be quiet*. According to Fisher and Geiselman, *the single most important skill an interviewer can learn is to not interrupt witnesses during their free recall account*. Instead, pay attention; listen carefully; and take some brief, point-form notes to assist you in the questioning stage that will follow.⁵⁰

In the example above, it would have been tempting to jump in during the pause to ask, “About what time would that have been?” *Do not fill a pause*. Leave it alone. It is crucial to not interrupt when a witness pauses during free recall. You want the information to flow from memory the way it is stored, and you want to encourage reinstatement of the event context. During such pauses, you should convey the impression that you are willing to wait for the witness to continue—within reason, of course, for no one can be expected to wait several minutes while the witness says nothing. You can convey such willingness to wait by nodding, saying “Mmmm,” raising your eyebrows slightly, and so forth—these have been termed *non-specific encouraging expressions*. You need to be non-specific so that you don’t provide any clues about which information you consider correct or useful. Saying, “Yes, yes, that’s what we heard from the other witnesses,” can contaminate the current witness and is a practice to be avoided when conducting an interview. The strategic use of silence, which requires conscious effort on the investigator’s part, will ensure that the witness is given the best opportunity to provide the most complete and accurate recollection of the event.

In addition to encouraging total recall from the witness, you need to take notes to provide a basis for follow-up questions. This involves looking for “markers” in the witness’s free recall that you’ll want to return to later. Which aspects of the recall appear to provide the richest sources of untapped information? An extreme lack of or abundance of detail is a good indicator of an area to probe in the next phase of the interview. Consider the following example:

So I was standing in line in the bank ... oh, it must have been about 5:45 or 5:50 because they were locking the doors so no more customers would come in before closing at 6. I remember the guy in front of me was dressed very shabbily, and he was very nervous. He kept looking back at me and at the guards at the door ... then all of a sudden he pulled a gun, grabbed some money, and ran out.

This passage includes examples of both extremes of detail. On the one hand, the investigator should note that the witness had a very good

opportunity to view the offender, so there is likely much more information regarding his appearance stored in the witness's memory. On the other hand, the minimal detail devoted to the climax of the event suggests that that area needs to be explored further. The investigator also needs to record any apparent inconsistencies so that they might be reconciled in the next phase.

With respect to the taking of notes during an interview, it is important to realize that if you devote too much attention to taking notes, you take away from the attention that you should devote to your witness in order to sustain rapport; witnesses are not encouraged to tell the story of what they experienced if they are forced to stare at the top of your head while you scribble away trying to write down their every word. Taking notes can also limit your ability to observe witnesses while they speak. And further, taking extensive notes during particular parts of an interview risks “educating” witnesses about what you feel are the most, or the least, important aspects of their account. Remember, the interview is being recorded (or certainly should be), so the purpose of taking notes is not to create a record of the interview, but to serve as a guide for the investigator during the follow-up questioning phase of the interview.

One good note-taking strategy is to take a pad of lined paper and draw a line down the centre of the page, dividing it into two equal halves. As the interview progresses and the witness expresses certain points or touches on certain areas of interest, note these “markers” on the left side of the page; a phrase or a single sentence is often all that is necessary. The right side of the page will be used later during the questioning phase to record the witness's comments in response to your questions. Once you have made a quick note on the left side of the page, turn your attention back to your witness. This approach allows you to balance the requirement to pay attention to your witness with the suggested practice of taking notes to assist you in asking relevant questions during the latter stages of the interview.

Always remember that the rough, point-form notes you take during an interview, and any other notes that you take during the course of an investigation, must be disclosed to the defence if criminal charges are laid as a result of the investigation.

Step Four: Questioning

In this phase, the investigator follows up on the information that was produced by the witness during the free recall phase with questions designed to elicit additional information and detail. This is where you further explore the markers recorded during the free recall phase.

Before beginning the questioning phase, there are a number of important things you should tell the witness. Remind witnesses once again that they should *report everything* and not edit details out of their answers because they don't think they are significant. Explain to them that recalling additional detail from memory is a task that will require them to *concentrate*. Tell witnesses that, in response to any of your questions, it is okay to say, “I don't

understand,” and that you will take the time to repeat and clarify the question, and remind them once again that when they answer your questions, they are *not to guess*. If they can’t remember something, it is okay for them to say, “I don’t know.”

Before beginning the questioning phase, you should consider how you will phrase the questions you intend to ask, because the types of questions you ask will have a significant effect on the kind of information you receive. Interviewers should begin the questioning process with **open-ended questions**—that is, questions that invite an open, unrestricted response from the witness (for example, “What else can you tell me about the weather on that day?”). **Closed questions**, on the other hand, restrict an answer to a one-word or short response (for example, “Was it sunny or rainy that day?”). Closed questions will be used later in the questioning process to determine fine detail, but they are not appropriate at the beginning of the questioning phase.

When phrasing questions, you should avoid the following:

- compound questions (large questions composed of a number of smaller questions);
- grammatically complex questions (the simpler the language, the better); and
- police jargon or technical language (instead of asking witnesses to tell you what happened “pursuant to the execution of the indictable offence,” simply ask them to tell you what happened “after the man ran out of the bank”).

With those points in mind, a good strategy for posing questions to a witness is to use the witness’s own words to draw his or her memory back to a specific point. For example:

You said before that the offender appeared very nervous and that he kept looking back at you and the guards at the door. I’d like you to concentrate on that point in time for a moment [*focused retrieval*] so that we can get some more detail about what he looked like. Put yourself back in that lineup at the bank and try to imagine the offender standing in front of you in that line. Close your eyes if you think that will help. Now, is there anything else about his appearance that you can remember?

open-ended questions questions that invite a detailed answer from the subject, often phrased as a statement rather than a question—for example, “Tell me more about ...”; open-ended questions can also be phrased as conventional questions, such as, “You said x, what did you mean by that?”

closed questions questions that invite a one-word or short answer from the subject; for example, “What colour was the car?” or “Did you get a good look at his face?”

If you doubt the value of having people close their eyes and pause to remember details, just consider your behaviour when you try to recall something. Most people engage in some or all of these behaviours: closing their eyes, looking at the ceiling, pursing their lips, covering their mouth with the front tips of their fingers, or talking quietly to themselves. Letting the witness know that it's normal to behave like this will work to your advantage.

When posing questions to the witness, try to use what are referred to as **witness-compatible questions**. This simply means questions that are compatible with the witness's personal strengths and the mental images of the event as he or she describes them to you. For example, where a witness is an automobile enthusiast, you might reasonably expect to be able to elicit more detailed information about any automobiles that may have been involved in the event that the witness experienced than might be the case with a person who has no such special interest. In terms of questions that are compatible with a witness's mental images of the event, in the scene described earlier where the witness was standing behind the man in the bank lineup, in order to elicit the maximum amount of information from the witness, as the interviewer, you should initially ask the witness questions based on the witness's perspective when he or she experienced the event, using the words that the witness used in the free recall phase. For example, "You told me that you were 'waiting behind the guy in the bank lineup, he was sloppily dressed, looked nervous, and turned to look at you'; what else can you tell me about him?" This questioning approach is distinct from what often occurs in police interviews, where the witness is simply asked a series of standardized questions about the suspect (gender, complexion, age, height, weight), with no effort being made to activate or probe the mental images that the witness has of the event.

During the questioning phase, the investigator's questions will move from general follow-up questions (such as, "What else can you tell me about the car?") to increasingly specific questions as the investigator seeks to clarify ambiguous information given earlier or elicit specific details. At this point, it is acceptable to use closed questions that invite a one-word or short answer; closed questions should be used by an investigator only to clarify a witness's observations. Improperly used, they can place a witness in the position of adopting a statement made by the investigator, and the testimony becomes that of the investigator, not the witness.

witness-compatible questions questions designed to take advantage of a witness's personal strengths or knowledge, and his or her mental images of an event as described to an interviewer; a component of the ECI designed to help maximize the amount of information an interviewer is able to elicit from a witness

Here is an example of an acceptable closed question:

QUESTION: You stated that the incident took place on Wednesday.

Would that have been last Wednesday, the 17th of August, 2017?

ANSWER: Yes/No.

Here is an example of an unacceptable closed question:

QUESTION: Was the man you saw entering the bank wearing a black leather jacket?

ANSWER: Yes/No.

This type of closed question is unacceptable because it is *leading*—that is, the question itself suggests the answer to the witness. Moreover, if the witness did not mention earlier in the statement that the man who entered the bank was wearing a jacket, the question can also contaminate a witness’s account. An acceptable version of this question, assuming that the witness *did* mention earlier that the man who entered the bank was wearing a jacket, might be, “You said earlier that the man who entered the bank was wearing a jacket. Was it light or dark in colour?”

Step Five: Varied and Extensive Retrieval

If witnesses appear to be having difficulty recalling information about some particular aspect of the event they are describing, the fifth step of the ECI offers a number of strategies that can be used to assist them.

One way of assisting witnesses to use their memory effectively is to ask them to make a **varied retrieval** attempt—that is, to try to recall the details of the event in a different order or from a different perspective. Recalling details in a *different order* can be an advantage for a witness who has told the story many times and remembers it only in a familiar order. Recalling the event out of sequence can shake out details that might otherwise be hidden. For example, the investigator can say, “Let’s try something a little different. I’d like you to tell me the story again, but this time I’d like you to start from the end of the crime and work your way back to the beginning.” Another approach might be, “Let’s start at the point where he drew the gun and work back from there to the beginning and then forward from there to the end.” Although it is part of the original cognitive interview model and is likely to be most useful with

varied retrieval one way an interviewer can assist a witness to use memory effectively—for example, the subject may be asked to try to recall the details of the event in a different order or from a different perspective; this can help to stimulate a subject’s memory and trigger recollections of an event that he or she might not otherwise have been able to recall

complex investigations, asking witnesses to recall details in a *different order* is a technique that subsequent research has shown is rarely used by investigators, who regard it as one of the most difficult and least useful approaches to use in practice. As an alternative, investigators can ask witnesses, where appropriate, to *draw a sketch* of what they witnessed and talk about it as they do so. This technique is easy to use and has been shown to assist witness recollection with no decrease in the accuracy of witness accounts.⁵¹

Another way that additional information can be elicited from witnesses is by encouraging them to “activate” all their senses when describing an event. When asked to describe something they experienced, most people will focus on what they saw—and to a lesser extent on what they heard—but they will not normally include as much detail about what they experienced through their sense of smell, touch, or taste. An interviewer may be able to elicit additional information from an assault victim, for example, by asking him to think about the sensation that he experienced when the suspect grabbed him around the neck. The victim may then recall that the suspect had very rough skin on his hands; had long, ragged fingernails; and smelled strongly of alcohol. You are more likely to elicit this type of additional information from a witness if he or she “activates”—that is, if you draw the witness’s attention to all of his or her senses when you ask for a description of an experience.

Having the witness recall the event from a *different perspective* can be especially helpful if the witness appears fixated on a particular aspect of the event (“All I remember is looking at that big silver gun”). Asking the witness to adopt, for example, the perspective of one of the bank tellers looking at the suspect from behind the counter might help to elicit additional details as the witness concentrates on the scene and probes his or her memory. As we mentioned earlier, however, the investigator must be careful to ensure that the witness does not misinterpret such instructions and instead clearly understands that he or she is not to guess about what the teller “might have seen,” but simply to think about the event from another perspective in order to jog the witness’s memory and report only those things that he or she actually witnessed. Although it is part of the original cognitive interview protocol, subsequent research indicates that instructing a witness to recall an event from a *different perspective* (similar to *change order*, above), is a technique that is rarely used by investigators, who perceive it as among the least useful components of the cognitive interview, a finding backed up by empirical research.⁵² As an alternative, investigators may ask a witness, where appropriate, to *demonstrate* what he or she witnessed. Interviewers and subjects typically exchange information primarily through verbal means; however, making use of non-verbal methods such as having witnesses demonstrate to the interviewer what they observed may allow them to better communicate their knowledge. For example, they may be better able to express the actions of a suspect by showing the interviewer what the suspect did rather than by simply describing it.⁵³

These strategies can have the added benefit of assisting an investigator to determine the strength and reliability of a witness's statement. For example, it is very difficult for witnesses who are manufacturing some or all of their stories to ostensibly recall a fabricated version of an event from a different perspective or in an order other than the one they followed the first time they recounted the event.

Step Six: Summary and Review

In the summary phase of the interview, the investigator, using his or her notes as a guide, summarizes and reviews all the relevant information that the witness provided. The purpose of this stage is to satisfy the interviewer that his or her understanding of the witness's statement is complete and correct. It also gives witnesses a final opportunity to review their memory to ensure that they have told the investigator everything they can recall.

It is important for you to go through this stage slowly in order to give the witness time to listen, think, and respond. Witnesses should be told that if they remember something new or if your summary is not accurate, they should interrupt you and tell you so. If the witness offers additional pieces of information, he or she should be allowed to freely recall them, after which the witness should be probed in the same manner as that described in the earlier stages of the ECI process.

When the summary and review process is complete, and moving on to the final stage of the interview, you should ask the witness whether he or she can think of *any* other information that might be relevant and that might assist you. If the witness replies with a comment such as "No, that's about it," or some similar phrase, you must use your judgment to determine whether there is actually anything more that the witness can reasonably add or whether the witness is simply using a common expression to conclude a conversation. What is most important is to give witnesses the opportunity to tell you everything that they can about the event and to allow them to clarify anything that they might have said. Giving them this opportunity ensures that the information they have given you is as complete and accurate as possible; it also gives witnesses the opportunity to "adopt" their statements. In doing so, witnesses confirm that the statement reflects what they said, that they are satisfied with the contents of the statement, and that they believe the statement represents an accurate account of the event as they recall it. Giving witnesses this opportunity prevents them from claiming at some later point that what they said was not what they *meant* to say or that you as the investigator misinterpreted what they said during the interview. Such an approach makes the interview fair in both practice and appearance.

Step Seven: Closure

After their review of hundreds of police interviews, Fisher, Geiselman, and Raymond found that investigators simply stopped their interviews after they ran out of questions, with little thought given to the effect that this might have on the witness.⁵⁴ The closure stage of the interview is an opportunity to leave a positive final impression with the witness; it is also the investigator's last opportunity to gather information that may not be directly relevant to the interview contents—for example, whether the witness is going on any holidays or taking any trips in the short term, how the witness is coping, and whether the witness knows how to get in touch with you if he or she recalls anything new.

Investigators will want to ensure that they have all of the witness's personal and business contact information. They will also want to leave witnesses with their business card. They may want to ask witnesses if they will be available in the coming weeks or months should any investigative follow-up be required. Investigators should tell witnesses that if they recall anything further in the coming days, they should feel free to contact them; this is far more likely to happen if the investigator states it explicitly and indicates a genuine interest in hearing from witnesses should they recall anything new. You should always thank witnesses for their participation and ensure that they are coping well. Some witnesses can be profoundly affected as a result of witnessing a criminal act, and you should ensure that such witnesses are given appropriate referrals to victim and/or witness assistance programs or similar social agencies. Remember, the interview may be over, but the criminal justice process is just beginning. A witness who believes that he or she was given the best opportunity to recall the event and was treated with interest and respect is more likely to agree to further participation in the case, if required, and will more likely be an effective witness if the matter under investigation proceeds to trial.

Differences in Witness Statements

Investigators must be aware that if they conduct more than one interview with a witness, subsequent statements can (and probably will) differ in some respects from the original statement—and this will be an issue that the defence counsel is certain to focus on in court in an attempt to make the witness appear less reliable. For example, the defence may note:

Mr. Smith, in your initial statement to Detective Jones, you said the offender was a white male, about 20 years old, with a scruffy beard. But in your second interview, you described him as a white male, 20 years old, with sandy-coloured hair, and you didn't mention a beard at all. Which one of these descriptions is correct?

Investigators who decide to conduct a second or subsequent interview with a witness must become thoroughly familiar with the witness's original statement so they are able to recognize any differences or inconsistencies that might arise and be prepared to deal with them. In the example above, the investigator could address the differing suspect descriptions by simply reading the first description of the suspect to the witness after he had finished giving his second description, and asking him to reconcile the differences. The witness may confirm that "yes" the suspect did in fact have a beard, but he simply forgot to mention it in his second description. If the matter subsequently progresses to trial, the court would have to determine what, if any, effect such a difference would have on the evidentiary value of the witness's description.

Follow-up Interviews

One strategy for eliciting new information from a witness is to conduct a follow-up interview at a later date. From a psychological perspective, good theory and good data support the notion that people are likely to remember at least a few new details about an event by repeatedly engaging in the recall process.⁵⁵ Take, for example, a witness who remains severely shaken by a crime for several hours after it occurred, so much that he or she is unable to provide all the information that is potentially available in his or her memory. It makes sense in this case to elicit the basic facts of the event and then arrange a time for a more in-depth interview. But even in less dramatic circumstances, conducting another interview can be beneficial. A different setting, a different interviewer, or different instructions or strategies might lead to the recollection of new details. If specifics regarding, for example, the offender's appearance, a vehicle, or a weapon are important to the case, it is possible that the relevant details can be elicited the second or third time around.

It is not unusual for people to forget details they previously remembered and to remember details they previously forgot to mention. Details recalled by a cooperative witness on repeated occasions should be treated as a cumulative whole, as long as there are no serious inconsistencies. When a witness explicitly contradicts information from the initial interview while recalling the event a second time, a bigger problem exists. We discuss this outcome in Chapter 5, *Detecting Deception*, regarding the use of statement analysis to detect deception. The possibility of natural, honest imperfections in memory retrieval from one recall attempt to another, however, should not prevent an investigator from conducting a second interview, if a second interview is deemed potentially worthwhile.

A Modified Cognitive Interview (MCI) Protocol: Shorter but Still Effective⁵⁶

The cognitive interview has been studied in approximately 100 laboratory experiments, and it has been found to elicit significantly more information from witnesses than other interview models, with comparable or higher rates of accuracy. Where investigators are investigating a serious case, and have the time available to use the full cognitive interview protocol, it is recommended. However, some investigators have expressed concern with the amount of time required to conduct an interview following the full cognitive interview protocol; as a result, many investigators do not use all of the cognitive interview components when they are conducting witness interviews. To address this issue, academics have developed various modified cognitive interview (MCI) protocols that are more “practical”; that is, interviews take less time to conduct but are still highly effective at eliciting significant quantities of accurate information. The MCI approach uses only those parts of the cognitive interview that have been shown to be most effective, and omits both the *change order* and *change perspective* components, which investigators rarely use and which can potentially confuse some witnesses.⁵⁷

MCI protocols, especially those that employ *report everything* and *sketching while talking*, have been found to be highly effective while taking significantly less time to conduct.⁵⁸ An example of an MCI protocol that includes *report everything* and *sketching while talking* (but excludes Step 5 of the full cognitive interview protocol, varied and extensive retrieval—*change order/change perspective*) appears in the following sections.

Introduction

It is important when interviewing witnesses to make them feel relaxed and to let them know exactly what you expect of them. This may be achieved in the MCI as follows:

Please have a seat and make yourself comfortable. I am going to ask you about [what was witnessed/experienced]. My job is to collect as much information as possible about what you [witnessed/experienced]. I was not there, and for that reason I am depending on you to tell me all you can remember about what happened. Don't hesitate to ask me if there is something you don't understand and try not to guess. If you don't know something, it's perfectly fine to say, “I don't know.”

Report Everything

Explicitly instructing a witness to report everything he or she can remember and not leave anything out is an essential and effective component of the cognitive interview, and may be employed in the MCI as follows:

I am going to let you speak freely and I will try not to interrupt you or ask you any questions while you tell me what happened. I will be listening carefully to what you are saying. I ask that you please tell me everything you can remember, even if you think it is not important, it is incomplete, or it is not in chronological order.

Sketch Reinstatement of Context

Asking a witness to draw a detailed sketch of what he or she witnessed and to talk about what he or she experienced *while sketching*, has been found to be just as effective as asking a witness to mentally reinstate the context of the witnessed event, and may, in some cases, lead to less confabulation by the witness.⁵⁹ This component of the MCI may be employed as follows:

I am going to ask you to draw a sketch of [the event that was witnessed/experienced] and to talk about what you experienced as you are drawing it. Don't worry about your drawing skills, just concentrate on describing for me what you could see, what you could hear, what you could smell, and how you were feeling, while you are drawing your sketch. Take your time, there is no need to rush.

As with the cognitive interview protocol, allow the interviewee to give his or her free narrative account of the event without interruption, while making a few short notes from which you will ask some questions later in order to elicit additional detail.

Questioning

Once the interviewee has produced his or her account of the event, you should follow up by asking some questions. The order of questioning should follow a logic represented by what is referred to as the *questioning funnel*, in which you ask open-ended questions first (for example, tell, explain, describe), probing questions next (for example, who, what, where, when, why, how), and closed questions last (for example, "Was it light or dark?" "Was it a man or a woman?"). Taking the questioning funnel approach helps to ensure that the maximum amount of information is gathered from a witness before questions become more focused on particular details, because while asking more focused questions may produce more detail, such questions typically produce a smaller quantity of information.

Summarize and Review

Once you have asked all the questions you have, and are satisfied that the questions have elicited as much detail from the witness as possible, you need to summarize and review the witness's account to ensure that it is accurate, and to see whether the witness has anything more to add. Summarizing and reviewing a witness's account can often also lead to the witness recalling additional details.

Closure

When you as the interviewer feel that nothing more can be gained from the interview, you must bring it to a close professionally. Closure involves ensuring that you and the witness have one another's contact information, that the witness is informed about what will happen next in the investigative or court process, and that you have answered any questions and/or addressed any concerns the witness may have.

Time-Critical Modified Cognitive Interview (TCMCI): A Very Short but Viable Option

In time-critical situations where a witness interview must be conducted very quickly, researchers have suggested that a drastically shortened version of the cognitive interview, using only two components—*report everything* and *context reinstatement*—is a viable option. Although this approach elicits only about half as much information as the full cognitive interview, it takes only a fraction of the time to conduct, and may therefore be a valuable interview protocol in exceptional circumstances.⁶⁰

KEY TERMS

- closed questions, 52
 cognitive economy, 35
 cognitive interview (CI), 36
 context reinstatement, 49
 disclosure, 25
 encoding specificity, 29
 enhanced cognitive interview (ECI), 39
 free recall, 49
 hypnosis, 27
 KGB caution, 47
 misleading post-event information, 29
 open-ended questions, 52
 repressed memories, 29
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 sworn statement caution, 47
 varied retrieval, 54
 will say, 42
 witness-compatible questions, 53

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REVIEW QUESTIONS

True or False

1. Asking leading questions is an excellent technique for witness interviews.
2. The cognitive interview technique has been criticized because it tends to inspire false confessions.
3. The Crown is obligated to give the defence copies of all statements obtained through its witness interviews.
4. Inability to remember the details of an event is often due to the decay of memory cells caused by drug abuse.
5. Various commissions of inquiry into wrongful conviction cases have concluded that the interviewing of witnesses is a skill that requires no special training.
6. Today, most if not all statements taken during the course of any significant criminal investigation are recorded in their entirety, preferably in both video and audio.
7. Witnesses speak more freely when a relationship of trust, or rapport, exists between them and the police and when they believe that the police will value what they have to say and will give them a fair opportunity to tell their story.
8. Preparation on the part of investigators can enhance the quality of a witness interview.
9. Police should use police jargon and technical terms when taking a statement from a witness because it leaves a lasting impression of professional conduct with the witness.
10. The Crown may use a witness's statement to assess the credibility of the witness and to determine whether the statement proves or assists in proving a fact in issue.
11. If a witness statement is recorded (video and audio), it is not necessary for the police officer to make any notes of the interview.

Multiple Choice

1. According to psychologist Endel Tulving, a subject's ability to recall the details of an event is enhanced when
 - a. the subject is interviewed in a hypnotic state
 - b. the subject is treated with courtesy and respect
 - c. the physical and psychological conditions present during the interview match those present during the recalled events
 - d. the physical and psychological conditions present during the interview reverse the order of the recalled events
2. Which of the following statements is NOT consistent with the idea that treating all witnesses, including potential suspects, with equal respect is important?
 - a. Who is and who is not a suspect may not be clear at the beginning of an investigation.
 - b. Intimidation by investigators may lead to a suggestion that the witness's testimony was not voluntary.
 - c. Establishing a respectful rapport with the witness has been shown to inspire fuller communication.
 - d. Adopting a confrontational attitude with a witness elicits more information.
3. The theory of misleading post-event information suggests that
 - a. learning the details of someone else's memories of an event can influence one's own memories of the same event
 - b. "repressed" memories are as reliable as regular memories
 - c. the older a memory is, the less vulnerable it is to distortion
 - d. witnesses should avoid any news coverage of the event they witnessed until after a potential trial
4. Which of the following statements is NOT consistent with the idea that allowing the witness to relate his or her memories in a free recall manner is important?
 - a. It reduces the likelihood that the investigator's views on the incident will influence the witness's account.
 - b. It encourages the witness to reinstate the event context in his or her mind.
 - c. It allows the witness to volunteer details that might not come up in response to specific questions.
 - d. It leaves open opportunities for the interviewer to interrupt the witness for clarification.

Short Answer

1. On occasion, it may be helpful to have a witness recall an event from a different perspective, especially if the witness appears to be fixated on a particular aspect of an event—for example, “All I remember is looking at that big silver gun.” Why must investigators exercise caution when using this technique?
2. It is important for an interviewer not to “jump in” during pauses in a witness’s free recall of events, but to encourage the witness to resume his or her account. Explain why this is important, and describe some techniques that an investigator could use in such a situation.
3. Explain how asking a witness a “closed” question can contaminate the testimony of that witness at trial.
4. Explain the meaning and significance of witness-compatible questions.

Case Study

After reviewing John Smith’s witness statement below, produce a properly formatted statement for Cheryl, the convenience store clerk. The statement should include facts similar to those provided by John and should reflect Cheryl’s recollection of the entire incident. Use your imagination in creating the details.

DATE: 23 March 20—

LOCATION: Residence of John Smith, 223 Henry Street, Hamilton, Ontario

INTERVIEWER(S): Ian Interviewer

START TIME: 3:20 p.m.

FINISH TIME: 4:25 p.m.

INTRODUCTION: I am a 28-year-old male residing at 223 Henry Street, Hamilton, Ontario. I am married with two preschool children. I am a steel-worker who has worked at Dofasco for the past seven years, and continue to do so.

TESTIMONY: On Thursday, the 22nd of March, 20—, I worked the afternoon shift at the ore docks at Dofasco, which are on Coventry Street in the City of Hamilton. I was relieved by a co-worker at the conclusion of my shift, which ended at 3:00 p.m., and after changing my clothing, I left via the #2 gate on Coventry Street.

I took my usual driving route home, down Coventry onto Main Street and proceeding south toward Henry Street. As is my habit, I stopped at the Mac’s Milk convenience store located at the southwest corner of Main

Street and Portage Avenue for a loaf of bread and a package of cigarettes. I have lived in my house on Henry Street, approximately two blocks from the store, for nearly six years. I have been in the store hundreds of times and am familiar with the owner and all of the employees.

I arrived at the store at approximately 3:30 p.m. I know the time because, depending on traffic, it takes me about 30 to 35 minutes to get to my residence from Dofasco. Traffic was light that day and I punched my time card out at exactly 3:00 p.m.

On entering the store, I knew something was wrong. Cheryl is the clerk during the afternoon shift, and she usually greets me with a smile and a cheerful hello when I enter the store. This day she stood staring at the customer directly in front of her and barely gave me a glance as I entered. This made me uneasy, and I wondered what was wrong.

I was about to ask her what was wrong when I noticed tears on her cheeks as she made muffled conversation with the man directly in front of her at the cash register. There was no one else that I could see in the store at the time.

As I approached the front counter where the man was standing, he suddenly turned to face me. He had a knife in his right hand and a white plastic bag in his left. I was directly in front of him when he turned and I was face to face with him about three feet apart. He looked directly into my eyes, raised the knife to eye level with the point up, and said, "If you don't want to get hurt, get the f*** out of my way." I immediately stepped to my right, and he quickly walked by me to the front of the store. Just before exiting onto the street, he turned back toward the counter and said, "If you know what's good for you, don't call the cops." He then turned away from the counter and left the store.

The man I saw in the store was a stranger to me, and to the best of my knowledge, I have never seen him in the neighbourhood. He was approximately five feet, ten inches tall. I am sure of his height because when he was standing directly in front of me, he was a couple of inches shorter than I am and I am six feet tall. He was thin, perhaps about 140 to 150 pounds. He had a pale complexion, deep-set brown eyes, and dark-brown shoulder-length hair. He did not have a beard but was not clean-shaven. He had about three or four days' growth of beard and was ragged looking. He was wearing a black leather jacket that looked old and faded. There was a long tear on the left sleeve from the elbow to the cuff. He had on a dirty white or faded grey T-shirt and faded blue jeans, which were torn at the left leg inseam. The right knee was also torn. He was wearing a pair of new or nearly new Nike running shoes. The shoes were white with blue trim and a logo. I did not observe any jewellery on his hands, but he did have a gold chain around his neck that was covered in front by the T-shirt.

When he left the store, he turned right and began running south on Main Street. I ran to the window but he had disappeared behind parked

cars and traffic. I did not notice it in the store, but he appeared to be limping, or at least favouring his right leg when he began to run.

I then turned my attention to Cheryl, who was in a state of shock and still standing behind the cash register. I asked her if she was hurt, and she replied “no” in a sobbing manner. She then stated, “He robbed me.” I called 911 and waited for the police to arrive.

I gave my name, address, and telephone number to the police officer who interviewed me briefly at the store and advised him that I am certain I would recognize the man who robbed the store if I ever saw him again.

Witness John Smith

John Smith

Signature

Date 23 March 20—

NOTES

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- 2 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
- 3 *R v Stinchcombe*, [1991] 3 SCR 326.
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