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Eye Witness Testimony;
Understanding Post Identification Feedback and Witness
Confidence Inflation as System Variables:
A Review of Police Practice.

by

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Thesis submitted for the degree of Master of Philosophy

2014

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Abstract

The confidence witnesses experience in their selection decisions, when participating in formal identification parades, has been the subject of much criminological research. The findings suggest that confidence is far from being a static construct; instead it is understood to be highly malleable and capable of being ameliorated by post-identification information. Although the effects of post-event feedback are well documented, no research has been conducted that establishes the nature and extent of information passed to witnesses by police investigators in real crime case scenarios.

The dissertation reviews the current training provision for detectives and establishes an absence of any official guidance in regard to the information that should or should not be provided to witnesses post-identification. This is indicative of the current belief that witness confidence is conceptualised as being outside of the control of the criminal justice system. The research in this thesis challenges this position and suggests that information provided by police investigators is capable of affecting witness confidence, and, in addition, is also wholly capable of being placed within the scope of statutory control.

The research establishes the views and practices of operational investigators and concludes that witnesses are frequently provided with positive reinforcement. The altering of witness confidence in this way has serious ramifications for the judicial system, meaning that the confidence a witness displays at trial is unlikely to be indicative of that they experienced at the point of identification.

In my conclusion I suggest that witness confidence should be understood as being equally susceptible to contamination as any other form of forensic evidence. That being the case, its management should be safeguarded within a legal framework and subject to intrusive scrutiny to establish its integrity at court.

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Abbreviations

BOCU	Borough Operational Command Unit
CCTV	Closed-Circuit Television
CID	Criminal Investigation Department
CJS	Criminal Justice System
CLRC	Criminal Law Review Commission
CPS	Crown Prosecution Service
DC	Detective Constable
DNA	Deoxyribonucleic Acid
DS	Detective Sergeant
FLO	Family Liaison Officer
ICIDP	Initial Crime Investigators Development Programme
MIB	Met Intelligence Bureau
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
NCALT	National Centre for Applied Learning Technologies
NIE	National Investigators Exam
NPIA	National Police Improvement Agency
OIC	Officer in the Case
PACE	Police and Criminal Evidence Act (1984)
PC	Police Constable
RIPA	Regulation of Investigatory Powers Act (2000)
SC&O	Specialist Crime and Operations
SRAU	Strategic Review and Analyses Unit
TDC	Trainee Detective Constable
TSU	Technical Support Unit
TP	Territorial Policing
UK	United Kingdom
USA	United States of America

Chapter 1

Introduction

Eye witness testimony has been a primary source of evidence in criminal investigations since the notion of crime existed; there is no more rudimentary method of identifying an offender than pointing at them and verbalising an accusation.

In most modern criminal justice systems this form of offender identification has been formalised into identification procedures managed within the construct of a legal framework. In the United Kingdom that 'legal framework' is the Police and Criminal Evidence Act (1984), or PACE as it is commonly referred to.

The management of identification procedures through the medium of statutory control is important and necessary as, when used appropriately, formal identification procedures are not only capable of generating major lines of enquiry, but additionally of providing prima facie evidence at court (Kebbell & Milne, 1998).

In the most part the necessity for statutory oversight has been brought about by the historic misuse and poor management of identification parades by the police and other criminal justice actors. Miscarriages of justice that have resulted from unsafe identifications have invariably been the catalyst in generating or otherwise stimulating statutory reform, a review of which is conducted in chapter 2.

While the sustained implementation of legislation, such as PACE, have drawn identification procedures firmly under the umbrella of statutory control, the reach of these legal instruments has been limited to the management of aspects of the process perceived

as being within the control of the judicial system, elements referred to by Wells (1978) as 'system variables' (discussed in detail in chapter 1, page 29).

Facets of the process that are not so perceived, such as the lighting conditions at the time or distance from which the witness saw the offender, Wells refers to as 'estimator variables'. By virtue of the fact that 'estimator variables' are understood to be outside of the remit of the judicial system, they remain unregulated.

Some aspects of the identification process are readily ascribable as being either 'system' or 'estimator' variables. It would be hard for instance to construct a compelling argument as to why the facial appearance of 'stooges' used in the construction of an identification parade should not have some likeness to that of the suspect; the criminal justice system has control of this process and so, rightly, it is a 'system variable' governed, in this case by Code 'D' of the Codes of Practice. (Police and Criminal Evidence Act, 1984)

The designation of 'system' or 'estimator' variable status to other aspects of the identification procedure are however not so easily resolved. The information that police provide to witnesses post identification, for example, such as whether or not the witness picked the suspect out as opposed to a stooge, is not addressed within PACE or the Codes of Practice. Similarly, the certainty with which a witness expresses to the court how sure they are that person they identified in an identification procedure was in fact the person they saw commit the offence also falls outside the scope of any current legal provision. In essence both post-identification feedback by police and witness confidence are currently understood and conceptualised as an 'estimator variable'.

The practical ramifications within the UK justice system are that presently there exists no obligation on the police, after a formal identification parade, to quantify the degree of confidence experienced by a witness at the time they made the identification. The current policy within the Metropolitan Police Service (MPS) [host organisation in which this research was conducted] is for a 'pro-forma' statement to be obtained in which the witness merely declares whether or not they were able to make an identification. No attempt is made within the statement to quantify or otherwise record the confidence experienced by the witness at the time of identification.

In addition, the absence of specific direction within PACE, or any other statutory instrument, as to what information police officers should or should not provide to witnesses about their participation in an identification parade, post identification, creates a procedural vacuum. Without the necessary legal framework officers are presumably left either to decide for themselves what information they disseminate to participating eye witnesses, or to base that decision on existing training, corporate policy or peer learning.

The absence of any legislative governance, i.e. 'system' variable status, is problematic as the academic literature suggests that witness confidence is highly malleable and capable of being inflated or deflated by external factors such as post-identification information provided by the police as alluded to earlier (Loftus, 1979; Penrod, Loftus & Winkler, 1982; Semmler, Brewer & Wells, 2004). In essence, where post-identification confirming information is provided to witnesses, the confidence that witness experiences in their selection decision is likely to be progressively ameliorated. This inevitably creates a fundamental disparity between the level of confidence they actually experienced (at the time of selection), to that which they subsequently express to the court.

Unfortunately for those either wrongly accused as a result of erroneous identification evidence or those against whom inflated confidence statements are presented, the ramifications go beyond the limited effect capable of being exerted by a single witness in isolation. The impact within the judicial process is compounded by the fact that the literature suggests that, when assessing the veracity of eye witness evidence presented to them, juries use confidence as the main determinant of accuracy (Wells et al., 1998). Furthermore, research has consistently found that having adopted confidence as the 'yard stick' against which to assess accuracy of the evidence of eye witnesses, juries go onto attribute disproportionate evidential weight to it (Loftus, 1979). It is thought provoking to consider that cases are likely to be being progressed in circumstances where an eyewitnesses tentative identification provides sufficient evidence to support a jury's findings of guilt, yet where the witness themselves may not be sufficiently certain so as to convict the accused themselves if asked to do so.

In essence, juries are being asked to provide a secondary judgement on identity, meaning that the impact of out and out erroneous identification decisions and, more worryingly, those identifications that are correct, but only tenuously so (in terms of confidence), are perpetuated or compounded.

Loftus (1979) comments that eye witnesses who express confidence in their identification decisions at court, and have no motive to lie, are likely to be highly influential in terms of jury decisions. Practitioners similarly recognise the compelling nature of eye witness evidence, in the United States for example, in the appeal case of *Watkins v Sowders* (1981) Judge Brennan commented:

‘...there is nothing more convincing to a jury than a live human being who takes the stand, points a finger at the defendant, and says “That's the one”’
(Supreme Court Justice, William Brennan, 1982)

The increased awareness of the limitation of eye witness evidence amongst the judiciary and legislators, added to academic concerns over the validity of eye witness evidence, have resulted in a reduction in its status within criminal trials. Where previously in the UK trials could, and frequently did, proceed based on the testimony of an eye witness alone that is no longer the case¹.

The contemporary trend towards the marginalisation of eye witness evidence has occurred as a result of a number of converging factors. Firstly, a long and comprehensive body of critical academic research, which is significant in its size and scope and, secondly, the proliferation and increased reliance on new forms of evidence, such as the forensic sciences, deoxyribonucleic acid testing (hereafter referred to as DNA) and CCTV.

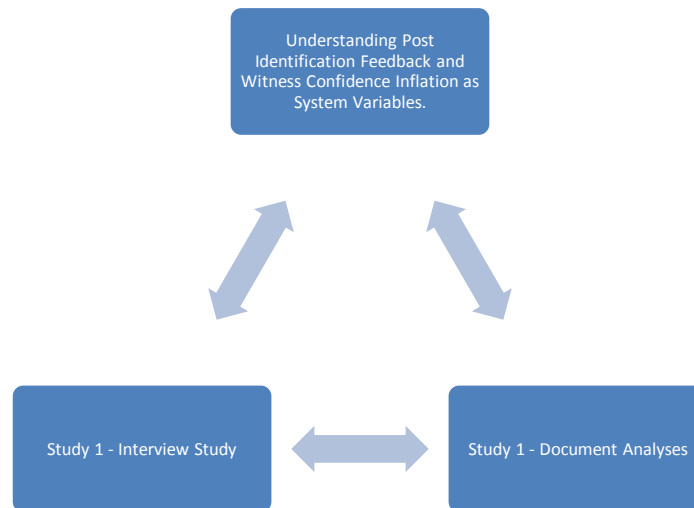
Despite the gravitation towards more scientific forms of evidence, the compelling nature of live human testimony, its probative value and the basic legal principle that aggrieved parties should be able to confront their transgressors, means that eye witness evidence continues to be an important evidential contributor (Cutler & Penrod, 1985; Kebbell & Milne, 1986).

If eye witness evidence is to sustain its already reduced evidential status however, it needs to be seen to be forensically robust, legitimate and credible. The prevalence of

¹ Devlin Report (1976): Recommendation 8.4, page 86: *‘We do ... wish to ensure that in ordinary cases prosecutions are not brought on eye-witness evidence alone and that, if brought, they will fail.’*

post event feedback and the presentation of false confidence by witnesses in their selection decisions at court, the ‘final bastions’ for the proliferation of miscarriages of justice from eye witness evidence, need to be addressed. This thesis argues that the mechanism through which to address these shortcomings is by the assignation of system variable status and the inevitable and necessary judicial control such assignation will bring.

The research conducted in this thesis is made up of two studies, each designed to contribute to the clear comprehension of the overarching research objectives set out below. The research has been structured in this way both to provide a more holistic insight into the forces at play and to allow triangulation of findings.



Study 1 is a qualitative study employing semi-structured interviews with operationally active police investigators (n=38). This facet of the research grounds the thesis in real crime case scenarios, establishing the reality of police practice and the views of operational investigators.

Study 1 is complemented by the secondary research instrument, an archival / documentary review assessing the current training provision within the host organisation as it pertains to eye witness evidence. Specifically study 2 seeks to establish the legal and organisational guidance provided to police investigators in regard to the information they convey to witnesses, post-identification.

Research Objectives

The research activity seeks to realise a number of objectives:

- 1) Establish what formal guidance is provided to police investigators within the host police service in regard to the provision and content of post-identification information they provide to witnesses who have participated in an identification parade.
- 2) Explore the views and practices of police investigators within the host police service and establish whether confirmatory post-identification feedback is provided to participating witnesses.

Practical & Theoretical Value of the Research

‘All public services require timely, robust and quality research in order to drive improvement. The police are no exception to this.’ (Dawson & Williams, 2009, p373)

The motivation for undertaking this research is borne from the authors’ aspiration to improve the integrity and reliability of eye witness evidence and to safeguard the vulnerabilities of police investigators who may, either in ignorance or otherwise, be permitting the proliferation of erroneous evidence being put before the court.

The practical value of this research is consistent with the view of Brown (1996) who comments that, in order to ensure the police service functions efficiently, effectively and economically, continued and sustained research is required at all levels. Greenhill (1981) and Chan (1997) provide further encouragement for the active pursuance of research, suggesting that research is capable of enhancing internal perceptions of professionalism.

It is hoped that the research activity undertaken will be consistent with Browns aspirational outcomes, realised by way of formal recommendations to the host police service in terms of changes to their training content and provision. Additionally, I'm hopeful that any contribution made to the existing body of academic knowledge will be recognised as originating from an operational police officer - that recognition may go some way to enhancing the professional profile of policing and the perceptions of actors operating within it.

More directly it is hoped that specific, practical, direction will be given to police officers about the information they should and should not provide to witnesses post identification, and, more importantly, the reason why the untimely dissemination of information can be so detrimental to the interests of justice.

More broadly, recommendations will be made that better ensure fairness at trial by correctly presenting the confidence experienced by participating eye witnesses at the time of their identification selections, as opposed to that which they display some time later at court. This seems to me to be most important, and fundamental if we are to ensure fairness at trial to both witnesses and defendants.

As alluded to in the introduction, the contemporary trend towards a reliance on other forms of 'scientific' evidence, along with the recognition of the fallibility of eye witness evidence has meant that, increasingly, the position of eye witness evidence is becoming marginalised, to the point that some academics question whether it has any place within the modern criminal justice system.

‘...if eyewitness testimony were a new form of evidence that was being introduced to the court for the first time, it might well be disallowed.’
(Ainsworth, 1998, p23)

This position is worrying, primarily because the shift away from live evidence has the capacity to further disenfranchise victims and witnesses from the judicial process. In addition, the reliance on forensic and technical evidence increasingly removes the 'humanity' and personal engagement between jurors and other actors, creating a disconnected, almost 'X factor-esque' approach to their decision making.

The trend towards victims being 'distanced' from the court process is by no means a recent phenomenon, although arguably the speed with which it is occurring has increased exponentially with the proliferation of scientific and technology based forms of evidence. In his article "Conflicts as Property" drafted in the 1970's, Christie suggested that the original conflict between the victim and offender had been taken away or, as he phrased it, "stolen", from them by the professionals of the system. At the time of writing Christie pointed to the professionals as being the police, lawyers and the judicial system - a contemporary interpretation might well point to 'expert' witnesses and the forensic sciences as those usurping the position of victims and witnesses in the judicial process.

‘The victim is a particularly heavy loser in this situation. Not only has he suffered, lost materially or become hurt, physically or otherwise ... above all he has lost participation in his own case.’ (Christie, 1977, p8)

It is hoped that the realisation of the research objectives may go some way to sustaining the longevity of eye witness evidence within the judicial process, and contribute to the continued engagement or ‘voice’ of witnesses and victims within it.

While much research has been conducted into the theoretical mechanisms through which confidence inflation can occur, little research has been conducted that is capable of grounding those theories in real crime case scenarios. This research seeks to fill the current lacuna.

Having considered the practical value of the research activity the theoretical value, or means by which it is capable of adding to the existing body of knowledge, needs to be set out. The research activities theoretical value can be understood in its contribution to knowledge, specifically the thesis adds weight to the argument that, where presently witness confidence is perceived as being an ‘estimator variable’ i.e. a facet of the identification process that is outside of the control of the criminal justice system, instead it should be understood and contextualised as a ‘system variable’.

The thesis argues that the content of feedback provided to witnesses (either directly by the investigating officer or indirectly by discovering a co-witness has also made a positive identification for example) are wholly capable of being effectively managed within the criminal justice system. Moreover, an opportunity exists to quantify witness confidence prior to any such feedback occurring and that it is this measurement that should be presented to the jury at any subsequent trial.

Author's Personal Background

It is important to make clear from the outset that I am an operationally active serving police officer. The design of this research has been informed not only by my academic reading but also by my personal experiences as a criminal justice professional.

I joined the Metropolitan Police Service (MPS) as a Constable in 1994 at the age of 24 and completed the first 10 years of my service in uniform as a first responder. I transferred from uniform branch to the Criminal Investigation Department (CID) in 2004 and entered the Detective Development program which I quickly completed. While in the CID I undertook a number of investigative roles in both re-active and pro-active units² and also became an accredited Family Liaison Officer (FLO).

In July 2005, when Islamic extremists detonated a series of bombs in London, I was seconded to the Counter Terrorism branch and deployed as an FLO to a victim from the Edgware Road scene. Despite suffering the most horrific injuries, including the loss of an eye, spleen and above the knee amputations of both legs, the person I was assigned to did survive. After 3 months in intensive care and almost a year as a hospital in-patient, my survivor was eventually discharged.

My deployment as an FLO was complex for a number of investigative reasons which it is not appropriate to discuss in this forum. The circumstances and unique nature of the incident meant that the deployment became the subject of a significant amount of

² While on borough I completed re-active (secondary investigation) roles in the CID main office, burglary & community safety units as well as pro-active roles in the drug squad and auto crimes unit.

academic³ and media interest⁴. The person I was assigned too (who was the most severely injured survivor of the bombings) and I participated in a number of research interviews and gave presentations at conferences in the UK⁵ and USA⁶. Some of the organisational learning gained from those interviews went on to directly influence the MPS FLO training programme.

This was my first exposure to academic research, an experience that afforded me a unique insight into the academic world, but more importantly opened my eyes to the practical utility that could be brought to bear as a result of academic scrutiny. Having been enlightened I became aware of the influence that research had had and continued to have in all aspects of my professional life as a police officer.

My exposure to the world of academia brought about through my experience as an interviewee, motivated me to pursue my own academic ambitions and, as a result, in 2007 I enrolled in the BSc (Hons) Police Studies programme at Canterbury Christ Church University. My employer, the MPS, supported me in this activity by providing tuition fee funding and study leave.

During the course of my undergraduate study I successfully applied for a post as a Detective on the Homicide Command. In 2008, whilst attached to the Homicide

³ The author participated in a number of research interviews with Dr Caroline Coarsey PhD - co-founder of the Family Assistance Foundation, a non-profit organisation conducting research training in critical incident management. See www.fafonline.org for more information.

⁴ Interviews conducted with the author and his associated survivor became the subject of a BBC documentary 'Fiona Bruce: Real Story' aired on BBC1 (28/06/2006)

⁵ Association of Train Operating Companies (ATOC) - Disaster Management Conference. Sheffield, UK (2010).

⁶ Family Assistance Foundation (FAF) Conference. Atlanta, USA (2010).

Command, I took promotion to the rank of Detective Sergeant (DS) and returned to borough policing as part of the promotion process.

In 2010, after 2 years on borough, I made a successful application to return to the Homicide Command, this time as a DS. In the same year I completed my undergraduate study and was awarded a first class honours degree.

The personal sense of achievement I experienced from completing my undergraduate degree, along with encouragement from Canterbury Christ Church University and an opportunity from my employer to conduct ‘in house’ research motivated me to develop my academic ability, the realisation of which is the submission of this MPhil thesis.

When I conducted an initial feasibility study into my chosen research area I was buoyed by the fact that my ‘insider’ status located me in a unique position in terms of access, one unlikely to be availed to an ‘outsider’ (discussed in detail in chapter 3).

My desire to pursue my own academic aspirations, added with a genuine desire to improve police training and practices, led me to submit an MPhil research proposal to Canterbury Christ Church University; this thesis is the realisation of that aspiration.

Thesis Structure

This thesis is made up of five chapters. Beyond this chapter, chapter two sets out by providing the reader with an overview of the historic and contemporary position of eye witness evidence within the judicial system and the ‘cyclic’ nature of its reform. The phenomenon of DNA exoneration cases is discussed and Wells’ notion of ‘system’ and ‘estimator’ variables is explained. A review of the relevant published literature is

conducted and critically reviewed. The chapter concludes with an overview of detective training within the host organisation, brought about through the implementation of the Initial Crime Investigators Development Programme (ICIDP).

Chapter three moves the thesis on from the literature to provide the reader with an overview of the overarching theoretical framework adopted in this thesis and the methodological issues relevant to this research. The author reviews the main ontological and epistemological position and sets out those to which the research is aligned.

Deductive and inductive research models are considered along with a commentary on qualitative and quantitative methods. 'Reflexivity' as a research approach is discussed along with the author's ruminations as to his situational research position as an insider / outsider. The discussion moves the reader from theoretical methodological issues to practical ones, discussing in detail issues of access and gatekeepers. An overview is provided of the role of the MPS Strategic Research and Analyses Unit (SRAU) and the impact internal sponsors have had on the research.

The penultimate chapter, chapter four, establishes the methods used in each of the two studies. For consistency and ease of digestion each study is addressed individually, the research design and sampling strategy are expounded and justified in each case. The content and evolution of the main research instrument in study 1 (semi-structured interviews) is discussed along with the need of, and ultimate learning gained from, the pilot study. The author then discusses some of the practical challenges experienced when implementing the research activity for study 1 and the processes adopted to overcome them. Ethical issues associated with the research are discussed. The findings from each

of the two research components are discussed and comment made by the author on data analyses.

The final chapter, chapter 5, presents the authors conclusions to the reader, comment is made as to the limitations of the study and specifically about the implications of the legal concept of 'disclosure' under the Criminal Procedure and Investigations Act 1996. The Thesis concludes with proposed future research as well as recommendations, based on the findings, as to mechanisms and processes that could be adopted in order to mitigate or otherwise negate the effects of post event feedback.

Chapter 2

Relevant Literature & a Review of Police Training

Introduction

This chapter explores the current published academic research in regard to formal eye witness evidence in criminal investigations, specifically the concept of confidence in regard to selection decisions made by participants in parades and the factors capable of influencing it during the witness's journey through the criminal justice system. Where possible the texts included focus specifically on this area of research.

Traditional manual research practices were adopted to source and identify relevant material from the libraries at Canterbury Christ Church University, the University of East London and the College of Policing formerly known as the National Police Improvement Agency (NPIA) at Bramshill.

Open source material has been accessed on the internet via the world wide and deep web, in addition a thesis search has been conducted via the British Library thesis database. Journal articles, mass media and published literature have been accessed via the online catalogues available at the Police College library and the e-portal at Canterbury Christ Church University.

Eyewitness evidence has been the subject of sustained and comprehensive academic research, meaning that searches conducted using simple generic key words⁷ often produced results of such numeric scale that they were incapable of being used effectively.

⁷ The following key words were used in this search process: Accuracy: Certainty: Confidence: Decision: Eye: Eyewitness: Identification: Line Up: Parade: Procedure: Selection: Testimony: Witness.

A search of the British Thesis Library, for example, on the key word 'confidence' produced a result of 1677 thesis', while a key word search for 'witness' provided a similarly high return of 935. A common sense approach was adopted to filter the results, principally by the application of key word strings, combination searches and Boolean operators. In the example given the result was narrowed to 29 matching thesis' by the simple application of a combination search in which the database was searched for thesis titles in which the key words of 'confidence' and 'witness' were both present. In situations where the application of combination searches failed to sufficiently reduce the result (and where the search engine / e-portal allowed) I further applied Boolean operators to exclude material that I knew would be included in the result but not suitable for inclusion in my research.

The majority of the literature and research reflected on in this thesis has been conducted either in the United States of America (USA)⁸ or the United Kingdom (UK). If conducted elsewhere, effort has been made to ensure it is capable of correlation to UK policing and the British criminal justice system. The material comes from a number of different academic perspectives including Psychology, Criminology and Sociology.

The literature review uses the historic context of eyewitness evidence, and academic concerns over its validity, as a datum point from which to set out. Importantly an overview of the judicial reform of eyewitness evidence in the UK is included as a means to evidence a premise of the thesis that such reform has unfalteringly focused on the management of variables perceived as being capable of being controlled within the

⁸ The USA has historically been the principle provider of research around eye witness evidence and erroneous conviction, likely driven by the pioneering work of the 'Innocence Project' founded in 1992 at Yeshiva University to assist convicted prisoners capable of being exonerated through DNA testing. See: www.innocenceproject.org for more information.

criminal justice system, elements helpfully characterised by Wells as ‘system variables’ (Wells, 1978) discussed in detail at page 29.

The phenomenon of DNA exoneration cases and the unique opportunity they have presented for academics to retrospectively assess the validity of eye witness evidence, is discussed. The review moves on to explain the three stage theoretical framework of memory and explores Wells’ distinction between the variables that are capable of being managed within a legal construct, ‘system variable’ and those that are not, ‘estimator variables’.

An overview is provided of both the legislation that governs formal identification procedures in the UK and the circumstances in which parades are used. The increased application of video identification parades to volume crime cases, proliferated by the increased convenience of parades brought about by developments in digital imagery, is reviewed and discussed.

The question as to whether or not the criminal justice system is sufficiently equipped to identify erroneous identifications and discern accurate from inaccurate witnesses is considered. The perceived probative value of eye witness evidence in criminal trials is reviewed and evidence put forward that not only demonstrates an implied direction that confidence be utilised as a diagnostic indicator of witness accuracy, but also an explicit one from the judiciary that it be used as such. The academic literature reviewed suggests an over reliance on confidence as a primary determinant in assessing witness accuracy when, in fact, a consensus in the published research suggests it to be of little diagnostic value in this context.

The literature review then moves onto consider factors capable of influencing witness confidence, dispelling the premise that confidence is a constant linear commodity, instead identifying a number of processes through which subjective measures of certainty are capable of being ameliorated.

In conclusion the review considers the concept of eye witness confidence and the prevailing expectation that exists among laypeople and triers of fact alike, that a positive correlation should exist between witness confidence and witness accuracy.

A Review of Eyewitness Evidence within the Judicial System

Despite a significant body of academic research highlighting concerns over the limitations and vulnerabilities of eye witness evidence it remains an important source of evidence in contemporary criminal trials (Cutler & Penrod, 1995). These concerns are by no means a recent phenomenon. Perhaps the earliest record of such concern was that raised by Alfred Binet (1900) in his book “La Suggestibilite’” in which Binet was critical of the suggestive questioning techniques being used by the police when interviewing eyewitnesses. Binet argued the need for more academic research and the creation of a ‘practical science of testimony’ in order to gain further understanding of the malleable nature of witness evidence (Binet, 1900). Binet was not alone in his concern over the validity of eyewitness evidence, other academics of the time such as Hugo Munsterberg (1908) were also making comment:

‘Might they [miscarriages of justice] not indeed work as a warning against the blind confidence in the observation of the average normal man, and might they not reinforce the demand for a more careful study of the individual differences between those on the witness stand?’ (Munsterberg, 1908, p31)

A century ago the comments of Binet (1900) and Munsterberg (1908) must have seemed extraordinary and revolutionary and yet, with the benefit of hindsight and a significant catalogue of miscarriages of justice over which to ruminate, their comments seem both intuitive and forward thinking. These revolutionary thinkers were not without their critics however, in response to Munsterberg's book "On the Witness Stand" a contemporary, Wigmore (1909), argued that eyewitness evidence was not yet sufficiently understood and that the ability of psychology to inform the legal profession had been overstated. Wigmore argued that psychologists were ill-equipped therefore to offer practical solutions to perceived procedural deficiencies. The comments of Wigmore (1909), although critical of the writings of Binet (1900) and Munsterberg (1908) were none the less just as prophetic. It seems the scepticism expressed by Wigmore and the Judiciary more generally at the turn of the century still remain to some extent. That said, reform is increasingly being influenced by the findings of academic research; see for example the implementations of the Devlin report (1976) (discussed later at page 34).

The criminal justice system has moved on significantly since the writings of Binet (1900) and Munsterberg (1908), motivated primarily by a need to respond to significant, often high profile miscarriages of justice. As a result judicial reform has been both reactive and sporadic in nature, often emerging concomitantly with advances in science that have exposed procedural weakness such as DNA (discussed later at page 38) or more traditional challenges to court decisions through the appeal process (see for example *R v Beck* 1896: *R v Virag* 1969: *R v Doherty* 1972)

For obvious reasons the judicial consequence, in terms of amelioration, has primarily focused upon the regulation of aspects of the identification process perceived as capable

of being managed within the criminal justice system as opposed to those understood to be outside of its control.

In 1978 Gary Wells made the distinction between these two groups of elements and developed the notion of ‘system’ and ‘estimator’ variables. In general terms ‘estimator’ variables relate to the witnesses experience pre-engagement with criminal justice actors, whereas ‘system’ variables relate to the witness experience at and beyond the point at which police and other legal actors engage (Horvath, 2009). The distinction between the two is a significant one; arguably more significant however, is the determination as to which category a particular aspect of the identification process falls into.

Academic research into ‘system’ variables, which is often stimulated by miscarriages of justice, has progressed more rapidly than it has for ‘estimator’ variables, primarily because ‘system’ variable research has greater applied utility for criminal justice (Wells, 1978).

The recognition and acceptance therefore that a particular aspect of the identification process is capable of being managed within a legal construct is a crucial one, and one upon which reform is contingent⁹. In order to contextualise Wells concept of ‘system’ and ‘estimator’ variables it is necessary to have some basic comprehension of the cognitive process through which the human mind interprets events and stores them.

⁹ A practical example of an element of the identification process determined to be a system variable, and the subsequent outcome in terms of legislative change, is the direction given to witnesses about to view an identification parade that: “...*the person you saw may or may not be present in the identification parade*” (Police and Criminal Evidence Act 1984), see appendix 1: Code D ‘Guidance on conducting the identification parade’ point 11. This direction was introduced by legislative change implemented as a result of recommendations made in the Devlin Report (1976). The Devlin Report, in turn, was instigated as a result of a number of miscarriages of justice (R v Virag 1969; R v Dougherty 1972).

When exposed to a significant experience or event, the human mind doesn't simply record it with the ability to retrieve and replay it at whim. Instead it goes through a much more complex cognitive encoding process. The mechanism through which the event is implanted in memory is universally accepted and understood as the three stage theoretical framework, first developed by Loftus and Loftus (1976):

Stage one. '*Acquisition*': The perception of the original event in which information is perceived, encoded and laid down or entered into memory.

Stage two. '*Retention*': The second phase in which information is subsequently stored in memory, the period between the event and eventual recollection of it.

Stage three. '*Retrieval*': The process by which memory is searched and pertinent information is retrieved and communicated.

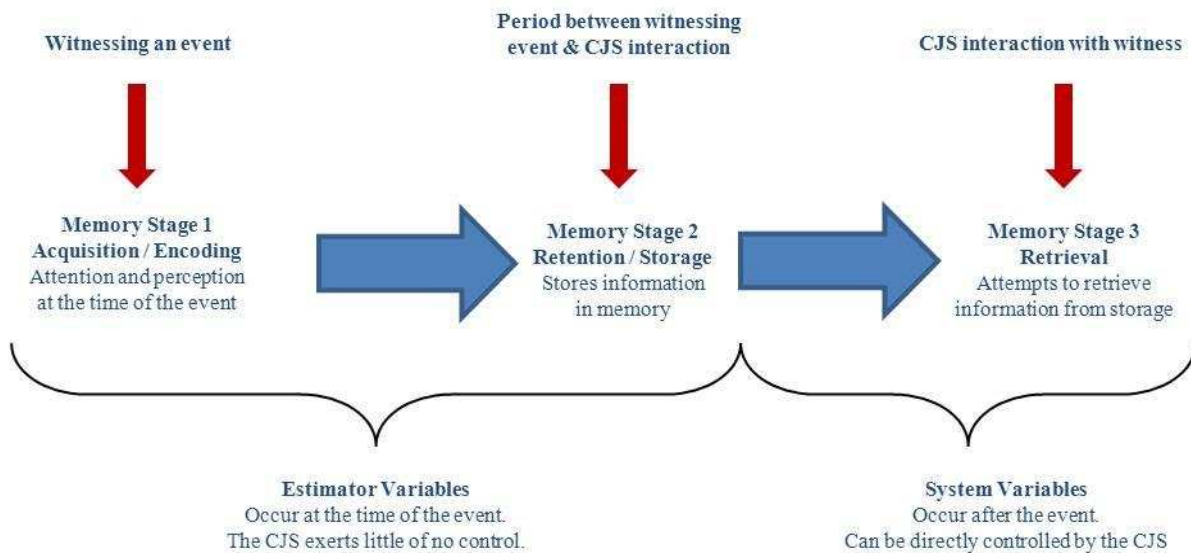
'Estimator' variables tend to relate to factors that fall into stages 1 and 2 of Loftus and Loftus' theoretical framework i.e. the acquisition and retention phases of memory; factors such as the length of time the witness saw the suspect, lighting conditions and distance for example. Although 'estimator' variables have the capacity to impact significantly upon the accuracy of eyewitness identifications, by their very nature they are incapable of being controlled within a legal construct, consequently the practicalities of how the police manage 'estimator' variables is largely left to guidance and local practice.

'System' variables however, tend to pertain to factors involved in the final stage – retrieval. Inevitably it is at this point that the police and other legal actors engage with victims and witnesses in order to extract evidence, testimony and information. As a result of the sustained judicial focus on 'system' variables these aspects of the

identification process, such as the means by which police actors retrieve, record and implement identification parades, are now tightly regulated.

Figure 1, below, provides a graphic representation of how the 3 stage theoretical framework is applied to eye witness evidence:

Figure 1: Graphic representation of the cognitive encoding process and its relationship to system and estimator variables. Adapted from Kapardis, 1997; Loftus & Loftus, 1976; Sporer et al., 1996; Wells, 1978.



From a theoretical perspective the acknowledgement of the construct of system and estimator variable is important. It not only vindicates the theories of Munsterberg and Binet, but also addresses Wigmore’s primary argument that psychologists and criminologists are unable to provide practical recommendations to address the frailties of eyewitness evidence. More importantly however, from a practical perspective, the

acknowledgement of system variable status is critical in terms of legislative change and the implementation of statutory oversight.

This assertion is capable of validation by conducting a brief summary of the judicial reform of eye witness evidence which demonstrates, not only the cyclic nature of the change alluded to earlier, but more importantly the unerring focus of such vicissitude on elements of the process understood to be 'system' variables.

In 1860 the Metropolitan Police took the first tentative steps to implement formal control over the process of identification. Shepherd et al. (1982) posit that this change was brought about earlier research that had highlighted a number of cases of misidentification in which the police had failed to administer identification parades in an equitable manner. Not long after these changes the high profile case of R v Beck (1896), in which Beck was wrongly accused of a series of thefts, again raised academic and judicial concern over police practices. During the police investigation Beck was wrongly identified by 10 of the 15 victims and was subsequently tried, convicted and imprisoned. Beck, who had maintained his innocence at trial and continued to do so while serving his sentence, was later vindicated when the true perpetrator of the crime confessed. The identification process used in Beck's case was reviewed by a Court of Enquiry in 1904 who noted that the identity parade was composed of nine men, only two of whom had grey hair similar to Beck. Furthermore, neither of these two men bore any other physical resemblance to Beck who sported whiskers where they did not. In light of Beck's case the Home Office revised the Metropolitan Police Codes of Practice for identification parades and recommended that they be used by all the Constabularies in England and Wales (these rules were only advisory and not publicly available).

Not long after these recommendations a further Court of Enquiry was conducted in the case of a senior Army Officer, Major Shepherd, who had been falsely identified from a similarly unfair identification parade. In response the 1925 Circular on Parades was revised to emphasise: (i) the importance of fillers bearing a good resemblance to the suspect; and (ii) that the suspect should be advised that he could have a legal representative present during a parade.

1968 saw 15 cases (most involving people convicted on the basis of mistaken identification) referred to the then Home Secretary, James Callaghan, by the National Council of Civil Liberties. As a result, in 1969, the Home Office issued new advisory guidelines for the conduct of identification parades which included much of what had gone previously, but also that; (i) the police officer conducting the parade should be of Inspector rank with no knowledge of the case, and (ii) that witnesses should be explicitly told that they should say if they cannot make a positive identification. Criminal justice contemporaries will recognise these recommendations, and those introduced by the 1925 circular on parades, as being some of the key components of Code D of the Codes of Practice, contained within the Police and Criminal Evidence Act 1984.

Despite the best efforts of the Home Office to implement guidelines to limit the potential for erroneous identifications, miscarriages of justice continued to dog the English criminal justice system. The trend of reactive judicial reform brought about by miscarriages of justice continued with the infamous appeal cases of *R v Virag* (1969) and *R v Dougherty* (1972). In both the *Virag* and *Dougherty* trials the prosecution relied on eye witness testimony to form the basis of their case and secured convictions at trial. Post-conviction however, new evidence came to light that proved the innocence of both

defendants. Their cases became a cause célèbre and were subsequently referred to the Court of Appeal who overturned their convictions. In response to these and other cases where convictions had been secured on the uncorroborated evidence of eyewitnesses, and growing concerns from within the legal profession about the reliability of eyewitness testimony, the Government established the Devlin Committee.

The findings of the Devlin Committee come to be known as the Devlin Report (1976). In it a number of recommendations were made that were designed specifically to address what we now recognise as ‘system’ variables, such as the structure and form in which identification parades were presented, the wording provided to eyewitnesses at the point of viewing and so on.

As with the previously discussed Home Office recommendations of 1968, many of the recommendations made by Devlin ultimately became enshrined in law within Code ‘D’ of the Police Codes of Practice and the Police and Criminal Evidence Act 1984. The enactment of the Police and Criminal Evidence Act marked a watershed in judicial reform within the English legal system. Where previous reviews had resulted in the recognition of best practice, guidelines and instruction, (breaches of which had little implication for police transgressors) PACE placed a statutory obligation on compliance, breaches of which would likely result in the dismissal of the case concerned or the exclusion of evidence tainted by such a breach (Police & Criminal Evidence Act, 1984, s.78).

Evidently the often cited phrase that ‘the wheels of justice turn slowly’ has some validity. It is a harsh reality that recommendations made in the late 1960’s took over two decades

to be enacted. The reasons for this can be partly explained by the necessary, but lengthy, processes associated with the amendment of existing laws, or the enactment of new ones.

Beyond the delays associated with implementation, observers put forward a number of other explanations for the reluctance of the legal system to apply research knowledge to operational policing. Sherman (1998), for example, compares the criminal justice system to the medical professions who he argues are similarly resistant to the ready integration of research knowledge in medical practice. Wells (2001) posits that it is the difference between the narrow focus of psychological experiments and the wider impact policy changes have more broadly across the entire legal system that inhibits progress. If implemented, argues Wells, such changes can have far reaching repercussions for the judicial system that are difficult to apply. Levi and Lindsay (2001) similarly recognise reluctance to change motivated by practical problems of implementation. They argue however that policy changes should not depend on the ease with which they are capable of being implemented, rather they contend that policies should be guided by the adoption of the best practices approach that science has discovered with regard to eyewitness evidence.

Reform has also, in some cases, been hindered by an inability to categorically discern between the genuine mistakes on the part of witnesses and the systemic failures of processes being employed. Importantly, DNA testing changed this position, providing observers and researchers with a hitherto unobtainable datum point from which to assess the accuracy and validity of eyewitness evidence (Huff, 1987). Furthermore, DNA testing procedures have facilitated the retrospective testing of suspects convicted prior to the introduction of forensic DNA science. This process has provided a unique

opportunity to consider the validity of eyewitness evidence adduced in those cases from the elevated and enlightened perspective of hindsight; unsurprisingly it has also resulted in a significant number of convictions being quashed.

Such cases are important as they have not only reinvigorated the debate around eyewitness evidence but have also demonstrated the fact that eyewitnesses can be absolutely positive about their evidence, genuinely believing it to be “true to the best of *their knowledge*” and yet absolutely mistaken at the same time.

A poignant example of just such a case is that of the State of Carolina v Cotton (1987): In 1984, Thompson, a then 22 year old university student, was raped in her own home. In an article she later wrote for the New York Times in 2000 she says that during the ordeal her mind-set became one of a determination to ensure she would later be able to identify her attacker:

‘I studied every single detail on the rapist's face. I looked at his hairline; I looked for scars, for tattoos, for anything that would help me identify him. When and if I survived the attack, I was going to make sure that he was put in prison and he was going to rot.’ (New York Times, 2000).

During the investigation Cotton was arrested and participated in an identification parade in which he was positively identified by Thompson as her assailant. In the article Thompson recalls her identification of Cotton at the ID procedure:

‘I identified my attacker. I knew he was the man. I was completely confident. I was sure. I had picked the right guy, and he was going to jail. If there was the possibility of a death sentence, I wanted him to die. I wanted to flip the switch.’ (New York Times, 2000).

Having been positively identified Cotton stood trial in 1986 and, based solely on the eye witness evidence of the victim, was convicted of rape. No doubt at trial Thompson, an educated and articulate woman, gave a convincing and emotive account of her ordeal and convinced the jury that her identification was sound based on her conscious determination during the ordeal to remember her attacker.

A year later the case was retried as, by pure co-incidence, Cotton (who was now a serving prisoner) had become aware that another convict, Bobby Poole, had been telling fellow inmates that he [Poole] was responsible for Thompson's rape. During the retrial Poole was brought into court by Cottons defence team and presented to Thompson for confirmation that he was in fact her attacker. Thompson recounts that her response to the court was unequivocal: 'I have never seen him [Poole] in my life. I have no idea who he is.' The re-trial concluded with Poole's acquittal and an increase in Cotton's sentence from life to two life sentences.

The story would have ended there had it not been for advances in DNA profiling. Eleven years after the offence, in 1995, DNA evidence not only proved Cotton's innocence, but also proved Poole's guilt. Poole later pleaded guilty to the charge of Thompson's rape. In the article, Thompson recalls the moment she was told of the DNA result:

'I will never forget the day I learned about the DNA results. I was standing in my kitchen when the detective and the district attorney visited. They were good and decent people who were trying to do their jobs -- as I had done mine, as anyone would try to do the right thing. They told me: "Ronald Cotton didn't rape you. It was Bobby Poole." The man I was so sure I had never seen in my life was the man who was inches from my throat, who raped me, who hurt me, who took my spirit away, who robbed me of my soul. And the man I had identified so

emphatically on so many occasions was absolutely innocent.’ (New York Times, 2000).¹⁰.

A review of DNA exoneration cases such as that of Cotton provide for a compelling argument to question both the validity of eyewitness evidence and its current place within the criminal justice system. This point is made by Wells, et al. (1998) in their examination of the first 40 successful appeal cases brought about by DNA exoneration in the USA. They found that, in 90% of the cases, mistaken identification had played a significant role. Similarly Huff (1987) studied 500 wrongful convictions identified as a result of post-conviction DNA exoneration and concluded that mistaken eyewitness identification had occurred in 60% of the cases. This figure is more compelling when one considers that eyewitness evidence is adduced as primary evidence in only 5% of all criminal trials (Loh, 1981).

Huff (1987) comments that at present there exists no means capable of authoritatively determining how many erroneous convictions occur each year. He does however posit that estimates within the literature range in number from a few cases per year to as much as one fifth of all convictions.

The volume of academic evidence and supporting archival data provide for a persuasive argument to support the premise that mistaken eyewitness identifications not only occur, but seemingly that they occur on a significant scale. As Wells et al. (1998) succinctly comment:

¹⁰ Since Cottons release he and Thompson have become close friends, they are active campaigners for judicial reform and have since collaborated on a book aptly titled ‘Picking Cotton’ in which each document their experience. See: http://www.innocenceproject.org/Content/Fighting_Injustice_Together.php for more information.

‘...eyewitness identification evidence is amongst the least reliable form of evidence and yet [it is one of the most] persuasive to juries.’ (Wells et al., 1998, p606)

There is no doubt that DNA evidence has played a significant role in identifying and preventing miscarriages of justice (see innocence project web site for a comprehensive review of cases). Caution must be exercised however when considering these cases. The retrospective identification of the presence of a DNA profile that does not belong to the suspect does not mean that the suspect was not responsible. Similarly the inability to obtain a full DNA match to a convicted person, from an historic sample subsequently profiled, is not categorical evidence of innocence, yet these scenarios are likely to form adequate grounds for an appeal and may introduce sufficient doubt in the minds of jurors to result in the appellants’ conviction being overturned.

Against the backdrop of DNA and other exoneration cases the rigorous regulation of system variables is unsurprising, representing the legislatures desire to implement mechanisms and processes to address areas of perceived weakness within the incumbent system. Such action is in the interests of both justice and equitability to both the witness and suspect, and yet despite this, witness confidence remains as yet, uncontrolled.

Previously in this chapter the attribution of ‘estimator’ or ‘system’ variable status has been discussed along with its importance in determining whether or not a facet of the process is governed by Statute. Eye witness confidence has hitherto been understood and conceptualised as an ‘estimator’ variable (Terrance, Thayer & Kehn, 2006). This is perhaps due to the complexities of understanding and quantifying the notion of confidence.

Perhaps the interpretation of its status as an ‘estimator’ variable is based on the premise that the confidence a witness experiences when making an identification is assessed against their assimilation of parade image likeness to that of the suspect as they encoded it to memory at the point of observing the offence - i.e. stage 1 of Loftus and Loftus’s (1976) theoretical framework. That being the case, it could arguably be understood as possessing estimator variable qualities.

Unfortunately, as this thesis argues, even if that were the case, from the point of identification, to the point of trial, factors under the control of the criminal justice system (such as the post-identification information provided to witnesses by police officers) are capable of, and frequently do, manipulate or otherwise alter witnesses perception of confidence. If we accept this proposition then logic suggests that witness confidence should be understood and contextualised as possessing ‘system’ variable properties.

The absence of system variable status is exemplified by the fact that, at present, there is no provision or requirement to record measures of witness confidence immediately after a parade - or indeed at any time. Wright and Skagerberg (2007) comment that eyewitness measurements of confidence in selections taken at this point (prior to the opportunity for feedback to occur) were moderate predictors of confidence and thus had practical utility and diagnostic value when criminal justice actors sought to assess the reliability of such evidence. Similarly, Wells et al. (1998) comment that this is the optimal time for recording a ‘pristine’ measure of witness confidence, as it is prior to any contaminating influence being introduced by post-identification information, a view similarly progressed by Wells and Olson (2003) and Wright and Skagerberg (2007).

At this juncture current policy and legislation seem to be at odds with academic findings. I have pondered this as a practitioner and propose that one explanation as to why the police and other legal actors may be resistant to recording confidence statements is that, inevitably, any confidence response by the witness below 100% would tend to suggest an element of doubt in their identification. The introduction of an element of doubt (no matter how small) is likely to be exploited by defence lawyers at trial and has the potential to undermine prosecution cases. Under the current regime an evidential statement is obtained post-identification which merely records that a positive identification occurred and which number the witness indicated as being the suspect. In essence a positive identification is regarded as just that, an expression by the witness that they have unequivocally identified the suspect and that they are absolutely certain.

There has however been one recent notable deviation from the current rule of law. In the high profile case of *R v George* (2007), which concerned the murder of television presenter Jill Dando, the Court of Appeal was invited to rule that where no unequivocal identification was made, a partial identification, as it was, should be put before the jury. The circumstances were that three witnesses, independently of each other, viewed the same parade within which George, the suspect, was present at position 2. The first witness vacillated during the identification between picking number 2 (George) and number 8 (a stooge of very similar likeness), the witness ultimately settled on number 8. The second witness was similarly torn between numbers 2 and 8, stating during the parade that '*I would say it was number 2*' but was not sufficiently sure so as to make an identification. The third witness likewise focused their attention on positions 2 and 8 but refrained from making a selection.

After the parades, and perhaps motivated by the fact that each witness had come so close to making an identification (and perhaps as a result of the intense pressure to secure a conviction) the investigation team took the unusual step of trying to qualify the negative and incorrect identifications.

The first witness, who had erroneously identified number 8, was asked to provide a statement in which they qualified how certain they were that number 8 (as opposed to number 2) was the suspect – they reported that they were 80% - 85% sure (presumably the investigation team had hoped for a much lower confidence rating?). The second witness, who had intimated that they believed the suspect was number 2, but failed to make an identification, was asked to qualify the statement they made during the parade (*'I would say it was number 2'*). They provided a further statement in which they reported that number 2 *'had brought something back'*. In the absence of a positive identification the Crown sought to adduce what were negative identifications, with the associated qualifying comments. The Court of Appeal upheld the decision that the evidence should be put before the jury, but in passing judgement made it clear that the case was an exception to the rule and that their decision was not *carte blanche* to introduce qualified identification evidence. Nevertheless, the case of *R v George* does demonstrate the potential value of what could be termed 'partial' identifications or those where the witness seeks to qualify any identification made or rejected.

Bogan (2006) comments that the value of qualifying identifications (be they positive or negative) depends upon which side of the fence you are:

‘...a person who made an unqualified identification might, with the encouragement of further questioning, add a tiny note of doubt and hence

weaken what might otherwise have been an apparently certain identification. This is balanced by the converse situation: a person being only 98% certain and who conscientiously does not identify might in fact have a very helpful evidential contribution.’ Bogan (2006, p3)

It does seem odd that presently the judicial system comprehends identification decisions in absolute terms when, in reality, it seems unlikely that such certainty is ever likely to exist. As Bogan (2006) comments, there must be an infinite range of responses between a positive identification and complete failure, which, at present, are excluded from evidence and incapable (except in exceptional circumstances) or being put before a jury.

Interestingly, the suggestion made by Bogan (2006), that negative identifications should be qualified, is something that was suggested in the Devlin Report (1976: paragraphs 5.58 to 6.62). Devlin proposed that witnesses should be asked two questions:

- 1) Can you positively identify anyone on the parade as the person you saw?
- 2) If not, does anyone on the parade closely resemble the person you saw?

Ultimately the recommendation made by Devlin was rejected for fears it may confuse witnesses.

Whatever the result of an identification procedure, what we can be certain of is the fact that participating witnesses will seek reassurance as to any decision they’ve made. Brewer and Palmer (2010) comment that this is often the case as witnesses will seek feedback in order to validate their own identification decisions. Whilst the seeking and providing of such feedback seems perfectly natural, research suggests that its provision, be it confirming or disconfirming, influences the witness’s confidence in their own

selection decisions (Loftus, 1979; Penrod, Loftus & Winkler, 1982; Semmler, Brewer & Wells, 2004).

Although feedback is capable of effecting witnesses in a variety of ways Douglas and Steblay (2006) found the post-identification feedback effect stronger for measures of certainty than for any other measures (such as responses regarding the eyewitness's view of the suspect and their memory in general). Collectively research consistently shows that eye witnesses who receive post-identification confirmatory information experience significantly higher levels of confidence in their identification decisions than do those in receipt of no such feedback. Wells and Bradfield (1998) labelled this phenomenon 'the post-identification feedback effect'.

Where the provision of positive confirming feedback can dramatically inflate witness confidence, as demonstrated by Wells and Bradfield (1998), disconfirming feedback is capable of producing a diametric, deflatory effect (see; Bradfield, Wells & Olson, 2002; Hafstad, Memon & Logie, 2004; Luus & Wells, 1994; Wells, Olson & Charman, 2003). The effect of post-identification feedback is further compounded by a tendency for eyewitnesses not to believe that such feedback has influenced their decisions. Wells and Bradfield (1999) found that witnesses who reported that post-identification feedback had not affected their response to retrospective confidence questions were, nevertheless, affected to the same extent as the smaller portion of witnesses who admitted that post-identification feedback may have influenced their own, self-ascribed, confidence rating. The findings of this research, when transferred to real crime case scenarios, suggest that when cross examined in real trials, witnesses may continue to express an honest held

belief that the degree of confidence they exude to the court is indicative of that which they experienced at point of identification, when, in reality, that is unlikely to be the case.

Positive reinforcement and the post-identification feedback paradigm are perhaps best demonstrated in the original study by Wells and Bradfield (1998) from which the phrase 'post-identification feedback' was first coined. In the experiment subjects were shown video footage of a staged crime after which they were asked to participate in a formal identification process. After making an erroneous identification, which was unavoidable as the actual suspect was absent from the parades, participants were allocated to one of three different feedback conditions; confirming feedback, disconfirming feedback and no feedback at all. Despite the fact that the subjects in all three feedback conditions witnessed the same event under the same conditions and were equally duped into making the same mistaken identification, participants who received confirming post-identification feedback not only expressed feeling greater confidence in their identification but also recalled having had a better view of the suspect and having paid more attention to their face. Additionally these witnesses also reported finding the identification easier to make than those who received disconfirming or no feedback.

Furthermore, the witnesses in the confirming feedback condition reported having made the identification quicker and, when asked, were more willing to testify in court on the basis of their identification as compared to participants who received negative or no feedback (Wells & Bradfield, 1998). Wright and Skegerberg (2007) had identical results and found that witnesses who were provided with confirming feedback reported finding the identification process easy, while witnesses who were told that they had erroneously identified a stooge reported finding the process difficult.

This phenomenon was further explored by Harley, Carlsen and Loftus (2004) who presented participants with a series of photographs of a familiar face [Harrison Ford was used in the experiment]. The images were revealed in a sequence that ranged from an image that had been severely degraded by blurring to one that was unedited and in full clarity. After the identity of the face became apparent, participants were then asked to retrospectively predict the degree of image distortion [blur] that would permit a naïve observer to identify Ford. Having already learned the identity of the image participants consistently predicted that a naïve observer would be capable of identifying it at levels of distortion that were in fact too severe for any identification.

The retrospective tendency for witnesses to overstate the ease of an identification task has significant practical implication for eyewitness evidence in real cases, as it suggests that witnesses who have received positive post-identification feedback, i.e. had their ‘correct’ answer confirmed, are inclined to believe that what in reality were objectively poor viewing conditions, were none the less sufficiently good for accurate identification. This could be an important component of the propensity for eyewitnesses to experience retrospective overconfidence in their identifications.

When this effect is combined with inflated confidence statements, it is likely to have an accumulative effect and can become highly persuasive to jurors when the witness is cross examined and overstates both the conditions in which they witnessed the incident, as well as the confidence in their identification selection.

Another dimension to potential sources of feedback comes from co-witnesses. It is a social reality that a disproportionate volume of crime is committed in built-up urban

areas. These 'hot spots' of criminal activity are frequently in areas in which we find an increase in population density. The concomitance of these two factors increases the likelihood of an offence being observed by more than one person, which, in turn, creates an opportunity for co-witness information to be passed from one witness to another (Patterson & Kemp, 2006).

Luus and Wells (1994) termed this process the 'co-witness feedback effect', and demonstrated the phenomenon by exposing 136 subject witnesses to a staged crime (video footage). Having observed the crime in pairs the subjects were then separated from each other. By the method adopted, once apart from each other, false identifications were obtained from each witness [the witnesses remained unaware of the fact that they had made an erroneous identification]. Once the false identification had been made the witnesses were then assigned to one of several experiment conditions. In the control sample witnesses were provided with no information, either confirming or otherwise about the identification decisions of their co-witness. In the experimental conditions however, witnesses were provided with one of three versions of post-identification feedback information; that the co-witness had identified the same suspect, that the co-witness had identified a different suspect or that the co-defendant had indicated that the suspect was not present in the identification parade. Once 'primed' with post-identification co-witness feedback the witnesses were then interviewed by one of the experimenters posing as a police officer. During the interview each were asked to provide a confidence rating of their identification on a Likert scale of 1 to 10 (10 being the highest confidence rating and 1 being the lowest).

The results, although inevitable, are nonetheless troubling as the most significant

inflation in confidence occurred in witnesses who were told that the co-witness had identified the same suspect. An average confidence rating of 8.5 was recorded versus 6.9 in the no-information control condition, an increase of more than 1.5 on the Likert scale. This degree of inflation is significant when viewed in isolation and on its own merit but becomes even more dramatic when compared to the confidence rating of 3.6 for witnesses who were told that the co-witness had indicated that the offender was not present in the identification parade.

The potential scale of this problem is highlighted by the research of Skagerberg and Wright (2008) who conducted a survey of witnesses taking part in identification parades and found that most of the witnesses reported seeing the crime with another person present. Additionally, they found that over half of those canvassed admitting to talking with co-witnesses prior to the parade.

Luus and Wells (1994) comment that co-witness reinforcement of selection decisions is bound to increase the eyewitness' certainty in their selection decisions but, while this may be the case, Wells and Loftus (1984) comment that it does nothing to increase accuracy. Arguably, the findings of Luus and Wells (1994) are transferable to situations beyond those explored in their research; theoretically to circumstances where identification decision are confirmed by other forms of consensus information, other than that of co-witnesses, such as the existence of CCTV, DNA or other trace evidence.

The opportunities for the effects of post-identification and co-witness feedback to be realised are not only provided by the criminal justice system but, unwittingly, are engineered into its very fabric. In cases where participating witness are not explicitly told

the outcome of their identification selection decisions, the very act of informing them that the suspect has been charged and / or that the case is proceeding to court, is likely to have a similarly confirming effect. It seems reasonable for witnesses so informed to assume that the identification they made was a contributory factor to the progression of the case i.e. that they made a positive identification. I am able to say, anecdotally and from my professional experience, that investigating officers take great pleasure in surreptitiously expressing their satisfaction in a positive identification to the witness. Not only is such action seen as a means of reassuring the witness but additionally as a form evidencing the officers own proficiency and investigative ability (a positive identification surely means that we have our man).

In essence, the current process systemically provides implicit confirmatory post-identification feedback; similarly recommendation 8.4 of the Devlin Report (1976, p149) that recommends that no prosecution should be progressed on the basis of eye witness evidence alone, ensures that any eye witness identification is supported or otherwise corroborated by a co-witness or other sources of trace evidence .

In summary, it seems that eye witnesses who are most likely to be susceptible to confidence amelioration, one of the most influential aspect of witness evidence in terms of jury decision (Loftus, 1979), are the same witnesses who are most likely to find themselves involved in cases being progressed through the criminal justice system.

Eye Witness Confidence

Is it wrong to assume that relationship should exist between confidence and accuracy?
The answer is somewhat ambiguous; Deffenbacher (1980) conducted a meta-analysis of

studies carried out since the turn of the century and concluded that there was little evidence to support a strong reliance on witness confidence as a guide to witness accuracy. Ainsworth (1998) went further and stated that no correlatory relationship existed between the two. Wells (1984) comments:

‘I am willing to argue that there is at least one important aspect of eye witness testimony that is misunderstood by the trier of facts. All four methods of assessing people’s intuitions converge on the same conclusion that confidence and accuracy are perceived as being strongly related...When we compare human intuition with scientific data...we must conclude that intuition is inadequate on this matter.’ (Wells, 1984, p271 – 272)

A more tempered view is that expressed by Loftus (1979) who comments that the research rarely confirms a measurable relationship. Loftus later qualified this statement in subsequent research with Penrod and Winkler in which they identified the existence of measurable, albeit moderate correlation (Penrod, Loftus & Winkler, 1982). This finding has been confirmed by other research such as a field study conducted by Behrman and Richards (2005) and a meta-analysis of data collected in 31 previous studies undertaken by Wells and Murray (1984). In both cases a moderate correlation was identified. Behrman and Richards (2005) addressed a shortcoming of earlier field-based research (that it is impossible to know for certain whether the suspect, in real crime cases, is in fact the real culprit) by identifying and assessing only those cases in which there was other substantive evidence that implicated the suspect (e.g. the presence of confessions, fingerprints, DNA and / or other trace evidence at the scene), in addition to the identification evidence. Their data showed that 43% of correct suspect identifications

were made with high confidence, whereas just 10% of the erroneous identifications (in which stooges were selected) were made with the same high level of confidence.

The findings of Behrman and Richards (2005) are interesting as they not only suggest that a correlation exists between high levels of confidence and accuracy but, importantly, that high confidence is also capable of being experienced in cases where the witness wrongly identified a stooge. In this experiment erroneous, positive, identifications accounted for a not inconsequential 10% of identifications made.

Comprehending the confidence / accuracy relationship is problematic for a number of reasons; firstly some witnesses may express confidence in their identifications routinely, whereas other witnesses, dependent upon their individual characteristics, may express less confidence despite experiencing the same degree of certainty. Furthermore, although witnesses in this context may express a desire to provide a relative judgement about their own confidence level, such judgements are not capable of being objectively assessed as their responses are incapable of being calibrated against any previous self-reported measure (Hollins & Perfect, 1997).

The debate about the relationship between confidence and accuracy continues, and one has to bear in mind a parallel debate about the appropriateness of some of the methodologies used. For example Wells and Lindsay (1985), who are supporters of the moderate relationship hypothesis, claim that extremes of result i.e. strongly positive or strongly negative correlation may be due to methodological issues. Along a similar vein Kebbell and Milne (1998), who found a high correlation between the two variables, warn that confidence accuracy resulting from experimental research may be dictated by the

ease or otherwise of the question asked of the participant. When, for example, they asked relatively easy questions of subjects, the relationship between confidence and accuracy was high. However, when the questions became progressively more difficult, the resulting confidence levels decreased.

The practical utility of this type of self-assessed confidence ratings is further hindered by the fact that such ratings are unique to the individual. This becomes problematic when practitioners attempt to place a witness's self-reported rating into a league or chart against which they seek to make assumptions about the likelihood of accuracy. This is perhaps best summarised by Luus and Wells (1994):

‘If we look within experiments, we might find a confidence-accuracy relation. Suppose, for example, the mean confidence of a witness is 4.1 in the first experiment and the mean for an inaccurate witness is 3.5. Similarly, suppose that the means for accurate and inaccurate witnesses in the second experiment are 5.6 and 5.0 respectively . . . Consider the case where we have a real world witness who is 4.8 in confidence. Do we consider that level of confidence to be high or low? In the context of the first experiment, we should consider this a high level of confidence and tend to believe the witness's identification decision. In the context of the second experiment we would consider this low confidence and tend not to believe the witness.’ (Luus & Wells, 1994, p351)

As Luus and Wells comment, in the ‘real world’ there is no context in which to interpret a single observation, as a result attempts to quantify accuracy and draw conclusion from self-reported confidence ratings across different contexts becomes problematic.

Despite an ongoing debate about methodology, the general consensus within the published literature seems to be that confidence in a correct identification is, at best,

modestly associated with identification accuracy (Penrod, Loftus & Winkler, 1982; Wells & Murray, 1984; Cutler & Penrod, 1995; Behrman & Richards, 2005). The extent of that relationship however remains far from clear. The position eloquently summarised by the prolific researcher Elizabeth Loftus:

‘...although there are many studies showing that the more confident a person is in a response, the greater the likelihood that the response is accurate, some studies have shown no relationship at all between confidence and accuracy. In fact, there are even conditions under which the opposite relationship exists between confidence and accuracy, namely, people can be more confident about their wrong answers than their right ones...one should not take high confidence as any absolute guarantee of anything.’ (Loftus, 1979, p101)

The academic dubiety highlighted by Loftus remains unresolved some thirty years on from her research. The relationship between confidence and accuracy is still not completely understood. It does however appear to be unsuitable as a legitimate means solely from which to extrapolate judgments of witness accuracy. This is fortuitous as the published research also demonstrates the ease with which confidence can be altered.

Beyond trying to assess confidence by asking parade participants to self-report the level of confidence they have experienced, other researchers suggest that confidence can be better measured objectively. A number of studies have found that accurate identification selections tend to be made instantaneously (Dunning & Stern, 1994; Dunning & Perretta, 2002; Sporer, 1993). Spontaneous recognition suggests the witness has made an immediate match of the face on the parade to the memory trace of the suspect they observed.

Stern and Dunning (1994) found that eye witnesses who aligned their cognitive decision making process with the statement 'I compared the photo [in the line-up] to each other to narrow the choices' were more likely to have made a mistaken identification than were those who endorsed the statement 'I just recognised him, I cannot explain why' or those who reported that an image 'Popped out'. Such self-reported decision processes have been found to be a good indicator of decision accuracy (similar results have been reported by a number of other researchers, see for example: Dunning & Stern, 1994; Lindsay & Bellinger, 1999; Smith, Lindsay & Pryke, 2000; Smith, Lindsay, Pryke & Dysart, 2001).

Where accurate witnesses appear to make an instinctive, often involuntary selection decision, inaccurate witnesses tend to employ a different cognitive process, reporting that they made a relative judgement by comparing each image on the parade and selecting the one that most resembled their memory image. This technique inevitably takes longer as the participant needs to view all the images in order to make a comparative judgement decision. Wells (1984) comments that mistaken identifications tend to occur most when witnesses employ this latter technique.

Sporer (1993) examined response latency by studying mock witnesses who made an identification decision as well as witnesses who failed to make any choice when presented with the parade. The results revealed that witnesses were significantly faster when making correct identifications than false ones. Furthermore those who refused the parade, i.e. failed to make any choice, took longer to make a correct rejection than an incorrect rejection. Smith, Lindsay and Pryke (2000) found that witnesses who made an identification quickly, between 1 to 15 seconds, were significantly more likely to be

accurate than those that took between 16 to 30 seconds. This second group however were, in turn, more accurate than witnesses with decision latency in excess of 30 seconds.

Dunning and Perretta (2002) conducted a similar study but found that the witnesses who made an identification decision in a timeframe of between 10 and 12 seconds were the most likely group to be accurate. Witnesses making their identifications faster than 10 to 12 seconds were likely to be accurate 90% of the time, whereas accuracy dropped to 50% amongst witnesses who took longer than 12 seconds. This type of research is particularly well-suited to laboratory based, mock witness experiments, although Weber, Brewer, Wells, Semmler and Keast (2004) warn that the results are capable of being moderated by various factors such as the age of the witness, how memorable the suspects' face was and the degree of similarity between the suspect and stooges used. Furthermore experiments such as these are incapable of generating the same emotional reaction that is created in real witness / suspect confrontations.

Valentine, Pickering and Darling (2003) addressed this criticism by reviewing response latency in real identification cases (sample size of 323 parades). They recorded an accuracy rate of 87% among witnesses that made a fast identification decision compared to 31% accuracy for witnesses who were slow in making a decision.

Unfortunately the usefulness of response latency within the British criminal justice system is somewhat limited as the Police and Criminal Evidence Act (1984), which governs identification parades in England and Wales, dictates that witnesses are instructed to view each of the sequential images on the parade twice prior to making an

identification decision¹¹. This requirement is intended to ensure that each member of the line up is inspected before a decision is made.

The Judicial Weight Attributed to Eye Witness Evidence

One would assume that legislative reform and the judicial scrutiny of eyewitness evidence would eradicate the prevalence of erroneous identification evidence. Similarly an assumption may prevail that we can rely on the adversarial nature of the judicial system, cross-examination and probing by legal professionals to unearth inaccurate witnesses. Sadly this is not the case as the judicial process is largely ineffective in detecting witnesses who are trying to be truthful but are genuinely mistaken, as is frequently the case when an erroneous identification is made by a witness mistakenly convinced of their accuracy (Heaton-Armstrong, Shepherd, Gudjonsson & Wolchover, 2006).

Wells, Lindsay and Ferguson (1979) demonstrated these inaccuracies by enacting a staged theft (individually) for 127 witnesses, who were then asked to participate in an identification parade. 24 eyewitnesses who had made a positive identification were subsequently cross-examined as were 18 eyewitnesses who had made an incorrect identification. The results demonstrated that the mock jury members who observed the cross-examination tended to maintain a high degree of belief in the eyewitness evidence, returning a verdict of guilt nearly 80% of the time. Jurors were no less likely to believe eyewitnesses who had made an erroneous identification of an innocent person than they were to believe an eyewitness who had identified the correct person (see also Loftus,

¹¹ See appendix 2 for the Police and Criminal Evidence Act 1984, code D 'Guidance on conducting the identification parade' point 11.

1979 - discussed later at page 58).

This led Wells et al. (1979) to conclude that human observers have little or no ability to discern between eyewitnesses who have made a correct selection in identification and those that have mistakenly identified an innocent person. Furthermore, from the findings of this experiment, they posit that there is little or no relationship between the eyewitness's self-confidence that they were accurate and the same eyewitness's actual accuracy.

The belief held by subject-jurors in the previously mentioned experiment, that confidence should be a predictor of accuracy, is unsurprising. It seems perfectly rational and inviting to think that a positive relationship should exist between the two, after all it is a premise we accept in everyday life. Yarmley and Jones (1983) comment that people are intuitively inclined to believe that eyewitness confidence is a valid predictor of eyewitness accuracy. In light of this it seems unsurprising that legal professionals should be similarly predisposed to accept such a notion. A number of researchers using a variety of methods have found this to be the case. Rahaim and Brodsky (1982) for example canvassed the views of 50 practising criminal lawyers and asked them whether or not they agreed with the statement that: 'Identifications by confident eyewitnesses were most likely to be correct?' They found that the majority, 64%, indicated that they agreed with this statement. A year later Brigham and Wolfskeil (1983) surveyed 70 Public Prosecutors, 75% of which expressed a belief that a witness who was more confident was likely to be more accurate. These findings have been replicated by a number of other surveys (Brigham & Bothwell, 1983; Deffenbacher & Loftus, 1982; McConkey & Roche, 1989; Noon & Hollin, 1987; Sporer, 1993; Yarmley & Jones, 1983).

The seemingly erroneous assumption that a strong positive correlation exists between confidence and accuracy may have little consequence in everyday life. In criminal trials however, the ramifications for an innocent man, wrongly identified, are hugely significant. This is compounded when we reflect upon the previously referenced research conducted by Loftus (1979) that found that eyewitness evidence was not only extremely influential in terms of jury decision, but worryingly remained so even when the testimony was shown to be discredited. In her experiment a mock jury reviewed a staged robbery case and were later asked to indicate a guilty or not guilty verdict. The first group (control sample) were provided only circumstantial evidence, no eyewitness testimony was included. Based on the evidence in front of them they returned a finding of guilt at a rate of 18%. When the evidence of an eyewitness was added, findings of guilt rose significantly to 72%. When however the testimony of the eyewitness was discredited and proved to be unreliable (by adducing evidence that the witness had 20/400 vision and was not wearing spectacles), findings of guilt did not return to the previous datum point, as set by the control sample (18%), but instead decreased only slightly to 68%. The comment made by the fictitious attorney at law, Ranking Fitch (played by Gene Hackman) in the 2003 film 'Runaway Jury' seems appropriate:

'Gentlemen, trials are too important to be left to juries' (Runaway Jury, 2003)

When assessing the relevance of Loftus' research, and other mock jury style experiments, one has to recognise that subject jurors, often assembled from students, do not reflect either the intellect or demographic of a live jury. An alternative criticism is that the scenarios employed do not stimulate the same emotional duress as that experienced by an eyewitness (Cutler & Penrod, 1995). Furthermore, the identification decisions of mock

juries do not result in any 'real' social outcome for those found guilty and therefore do not carry the same decisional burden for participants.

A further criticism of some of the research is that the timescale between the subjects experiencing the mock crime and then being cross examined (one week in the case of Wells et al. (2003)) is not reflective of real life cases which frequently exceed one year to reach trial. That said, the extended period of time experienced in real cases may further compound the problem by allowing greater opportunity for post-identification feedback to occur. Wright and Skagerberg (2007) went some way to addressing this problem by taking the earlier findings of Wells and Bradfield (1998) and others out of the laboratory with a view to replicating their experiments with real witnesses participating in real identification parades. Their results endorsed the earlier research and concurred with previous findings but, importantly, grounded the academic knowledge in real, tangible crime case scenarios. Although this type of 'field-based' experimentation is to be applauded it does paradoxically raise a converse argument: When analysing data from real identifications, it is impossible to know for certain whether the suspect is indeed the real culprit (DNA testing has resolved this issue in some cases). Inevitably, as with all experiments pertaining to the performance of the human mind, some assumptions have to be made. Recognising the limitations of each experimental methodology should however be borne in mind when drawing conclusions.

And yet, despite these criticisms, this and other similar experiments do graphically demonstrate a fundamental problem with eyewitness evidence; that is that juries appear not only to add a disproportional weight to eyewitness evidence, but they do so on the false premise that confidence is indicative of accuracy.

This situation is problematic and represents a significant potential for miscarriages of justice. In 1971 the Criminal Law Review Committee commented:

‘...cases of mistaken identification constitute by far the greatest cause of actual or possible wrongful convictions.’ (Criminal Law Review Committee, 1971)

In response to the successful appeals of two such cases of wrongful conviction, secured on the uncorroborated evidence of eyewitnesses (*R v Virag*, 1969 & *R v Dougherty*, 1972) the Government established the Devlin Committee. The resultant Devlin Report (1976) found that 82% of suspects ‘picked out’ from an identification parade went on to be convicted at trial. In the cases they reviewed in which eyewitness testimony was the only evidence against the defendant, the prosecution still managed to secure a conviction rate of 74% (Devlin Report, 1976). Lord Devlin went on to make a number of recommendations designed to introduce greater integrity into the identification process, many of which later became enshrined in law within Code ‘D’ of the Police Codes of Practice and the Police and Criminal Evidence Act 1984.

The misconceptions around eyewitness evidence are not limited to lay people and members of juries. Wise and Safer (2003) conducted a survey of 160 trial judges and asked questions about their beliefs and understanding of eyewitness testimony. They found that although judges were correct on some issues, they were incorrect on numerous important questions, such as whether eyewitness confidence at trial was a strong indicator of accuracy and whether jurors were capable of distinguishing accurate from inaccurate witnesses. The misconception that confidence predicates accuracy is not only an implied one for fact finders, in some cases it is explicitly referred to by judges as the yard stick against which accuracy should be measured. For example, in the case of *Neil v Biggers*

(1972), the United States Supreme court explicitly listed eyewitness certainty as a factor to consider in determining witness accuracy;

‘As indicated by our cases, the factors to be considered in evaluating the likelihood of misidentification includethe level of certainty demonstrated by the witness...’ Neil v Biggers (1972, p201–202)

Although the comments made in the case of Neil v Bigger predate this research by some forty plus years, it seems, based on the findings of Wise and Safer (2003), that the position amongst trial judges has changed little. This is significant as we know that, despite all its apparent failings (and perhaps the very reason it is so favoured by prosecutors), when adduced as evidence, eyewitness testimony is hugely persuasive to both Judges and Jurors.

It is evident that eye witness evidence has been the subject of a great deal of academic research in which a variety of methodological approaches have been adopted including live staged crimes and filmed events (Wells & Olson, 2003). Aside from the question as to the limitations of each of the experimental paradigms, the findings converge on the same conclusion; that the post-identification feedback effect exists and is capable of influencing witness confidence which, in turn, influences Judges and Jurors decision making by over-reliance on confidence in relation to accuracy.

There is evidently a broad body of knowledge that has sought to understand the process of feedback and its resulting effect on those exposed to it. There is, however, an obvious knowledge gap in terms of establishing what information police officers in real crime case scenarios provide to participating witnesses i.e. how feedback might be occurring in real cases. This is likely to be due to the inherent problems associated with interviewing

operational police officers and, perhaps more importantly, legal 'disclosure' issues that arise from interposing oneself into the evidential chain. For a discussion on the impact of disclosure rules under the Criminal Procedure and Investigations Act 1996 on research see Chapter 5, page 211.

Having recognised that the feedback effect exists, research has been directed to exploring mechanisms capable of moderating its outcome. Bradfield Douglas and McQuiston-Surrett (2006) investigated whether providing witnesses with information about the identification process prior to participation would counteract any post-identification feedback effect but found that this was not the case. Lampinen, Scott, Pratt, Leding and Arnal (2007) had greater success in inoculating witnesses to post event feedback by warning witnesses that the feedback they had received had been randomly generated by a computer. Unfortunately when they adapted the warning to be more forensically relevant (by instructing witnesses to ignore any feedback and rely upon their own recollection, as instructed by a Judge in court) the feedback effect returned.

The implication of these findings are that in real court room situations the witness is likely to demonstrate a genuine belief to jurors that the confidence in their identification has not been influenced by any external effect, when in fact that is likely to be far from the truth.

When and How Identification Parades are used in the UK

Worldwide, criminal justice systems incorporate mechanisms designed to record and direct the way in which eye witness testimony is validated. Domestically the overarching legal instrument governing the administration and application of police identification procedures is the Police and Criminal Evidence Act (1984), and Code D of the Codes of

Practice within it. The legal intricacies surrounding when it is necessary and / or appropriate to conduct an identification procedure are involved and complex, and beyond the needs of the reader of this thesis (for a comprehensive review see Wolchover, 2011). The fundamental principle however, is one of ‘proving or disproving’ the suspects involvement in an offence (Code ‘D’ of the Police and Criminal Evidence Act, 1984).

In addition to circumstances in which the officer in the case believes a parade would be of probative value, there are also statutory obligations to conduct identification procedures in certain circumstances:

An identification procedure must be held whenever:

(i) a witness has identified a suspect or purported to have identified them prior to any identification procedure.

or

(ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so

and

the suspect disputes being the person the witness claims to have seen. Code D, Police and Criminal Evidence Act (1984)

As well as setting the parameters as to when a procedure should be administered, PACE also defines the three types of identification procedures available for investigators to use: Video Identification, Identification Parade and Group Identification¹². PACE defers responsibility for selecting the most appropriate identification procedure to the police. It does however, state that a Video Identification would normally be the most appropriate as it can be completed more expeditiously than the other two options. Invariably, for

¹² See appendix 1 for the Police and Criminal Evidence Act 1984, code D ‘Guidance on circumstances in which an identification procedure must be held and selecting an identification procedure’ **point 3.12 – 3.14.**

reasons of convenience, transparency and fairness, this is normally the case. As a result the use of traditional identification parades, in which the police sought suitable volunteers to act as stooges for live ‘line ups’ on an ad hoc basis, has all but been eradicated by the evolution of digital technology.

Digital imagery and the synchronisation of technology have facilitated the creation of nationally co-ordinated systems such as ‘Viper’¹³, which is operated and maintained by West Yorkshire Police and used by 30 police forces in the UK (Viper, 2014) and ‘PROMAT’¹⁴ an independently funded system currently being used by the MPS and 33 other Home Office Police Forces (PROMAT, 2014)

The ‘Viper’ and ‘PROMAT’ systems typify the application of technology to the task of implementing identification procedures. They provide for the ready generation of high quality moving image parades at the touch of a button. The simplicity with which video parades can now be generated has meant that, where historically identification parades had been the preserve of major crime investigations, they are now frequently used in volume crime case scenarios.

Although technology has allowed for greater use of identification procedures, their use does remain predominantly the preserve of officers employed within CID roles. The current drive within the host organisation to separate policing functions has meant that any investigation that requires some form of secondary investigation (identification parades included), is generally taken from uniform first responders and reallocated to

¹³ ‘Viper’ provides subscribing forces access to a database of around 27,000 moving images for the purpose of creating ID procedures. In 2010 ‘Viper’ was used by 30 police forces to generate over 50,000 identification parades - see www.viper.police.uk for more information.

¹⁴ ‘PROMAT’ provides subscribing forces with access to a database of around 240,000 moving images for the purpose of creating ID procedures - see www.promatenvision.co.uk for more information.

secondary investigation units.

What processes then can be said to equip secondary investigators with the requisite skills to pursue such investigations? The answer to that, hopefully, can be found in a review of the detective training provision within the MPS – study 2.

Overview of Detective Training within the MPS

Police training and ‘detective’ training within it has been the subject of much review over the past two decades (see for example HMIC, 1999a & HMIC, 2002), perhaps reflecting the increased role detectives now have in routine, ‘volume’ crime as opposed to being limited within the remit of specialised investigations.

As a result of the increased demands for detectives, the training provision has necessarily had to become more strategic and corporate, reflecting the skill set required by contemporary investigators. Tong and Bowling (2006) comment that there are competing perspectives on what these skill sets are, arguing that understanding the role of detective work as either an ‘art’, ‘craft’ or ‘science’, phrases first coined by Reppetto (1978), assists us in our understanding.

The ‘art’ of detective work points to behaviours and character traits incapable of being learnt, ‘internalised and instinctive’ processes (Simon, 1991) or ‘feelings and hunches’ (Tong et al., 2009, p8) that we have come to associate with detective work through popular media.

Where the ‘art’ of detective work is innate, the ‘craft’ is one learnt through experience, pragmatic characteristics that emerge from the experience of ‘doing’, consistent with the

learning approach of 'informal apprenticeships' that Morris (2007, p19) says preceded formal training. Tong et al. (2009) say that the practical application of 'craft' is realised in the ability of detectives to transfer the reality of police work into the courtroom context.

Conversely, the 'science' of detective work, according to Tong et al. (2009), is indicative of an evolving 'professional' - a detective who is conversant with the management of crime scenes, the application of forensic science and cognitive interview approaches. As Tong et al. comment, all three are ideal types, but it is perhaps the notion of detective work as a 'science' that is most readily applied to the role of a contemporary investigator. Where the 'art' of detective work is incapable of being taught, the 'craft' and 'science' of it are translatable into a structured training regime.

So what is the current detective training provision within the host organisation - the MPS? Historically, since 1935, training for detectives within the MPS was provided through instructors at the Detective Training School at Hendon. In 2003 the Detective Training School amalgamated with the Forensic Scientific Support College and the Analyst Training Unit to create the MPS Crime Academy (Metropolitan Police Service, 2014).

The Crime Academy is made up of a number of faculties, each of which is responsible for delivering training provision within their specialist areas. These include, but are not limited to, forensics, intelligence, criminal justice and investigations.

The development of officers from 'police' to 'detective' constable is facilitated through the Initial Crime Investigators Development Programme (ICIDP) which is delivered by

the Investigative Faculty. In order to obtain 'detective' status, which ordinarily takes officers between 12 and 24 months to achieve, constables have to satisfactorily complete four stages of development via ICIDP:

- Phase one Attendance at three seminars
- Phase two Successfully pass the National Investigators Examination (NIE)
- Phase three Attendance at the 4 weeks DC's foundation Course
- Phase four Completion of a Work Based Assessment

It cannot be said that the development process from PC to DC is poorly managed or lacks rigour in its application. In fact the opposite is true. Some elements of the process, such as content and administration of the NIE and the syllabus content of the ICIDP, are managed at a National level by the College of Policing. This ensures both consistency of training and a national standard of knowledge for all investigators, regardless of the force area they happen to be posted to.

On the College of Policing website the aims of the ICIDP are set out as being:

'To equip trainee Detective Constables with the knowledge, understanding and skills to be able to conduct professional and objective investigations, whilst maintaining an approach which recognises and acknowledges the concerns and needs of all parties involved, in accordance with the Professional Investigation Process (PIP) Level 2 and National Occupational Standards.' (College of Policing, 2014)

In reality, the volume of material that needs to be covered by trainers delivering the ICIDP (within the four week set aside for the course in the MPS) means that subject areas are covered in general terms with no focus on the mechanisms through which any learning can be practically implemented. This conclusion is consistent with the findings

of Tong (2004) who conducted an in depth ethnographic study of detective training and found that:

‘The training course in crime investigation ... did not fully provide the knowledge and skills required to do the job effectively...The content of the course was not always appropriate or sufficient (for example, not enough law).’
Tong (2004)

The practical outcome is that actual processes, such as the application and co-ordination of identification parades, are conspicuous by their absence. In recognition of the limitations of the ICIDP, the MPS added an additional component to the development programme which takes the form of two, one day, TDC seminars (referred to in the MPS as components D1 and D2).

Attendance at the TDC seminars is mandatory and consists of presentation by officers in a lecture theatre. Day one is made up of presentations from officers from the Firearms Unit (CO19), the Kidnap Unit and Identification Command. Day two is made up of presentations from officers from Operation Artemis (child abuse investigation), the International Unit and Intelligence Bureau (MIB).

While the ICIDP seems to approach the detective training from the perspective of its comprehension as a ‘science’ it does also encompass, in the form of the work-based portfolio, an opportunity for aspiring detectives to learn the ‘craft’ of investigation.

The impact of each of these learning typologies is drawn out from participating police officers by means of the semi-structured interviews conducted in study 1. The views of officers are explored and questions asked as to the origins of the beliefs and views they

hold. As a means of validating the findings of study 1, study 2 (archival and documentary research) seeks to qualify the current content of the host organisations training provision as it relates to the identification evidence.

Chapter 3

Theoretical Framework & Methodological Issues

Introduction

Chapter three sets out by presenting the overarching theoretical framework upon which this thesis is constructed and then moves the reader onto the practical methodological issues experienced by the author when implementing the research.

A review is conducted of quantitative and qualitative research approaches and the methodological traits, advantages and disadvantages associated with each. The rationale for selecting a qualitative approach is set out and explained.

The authors situational position as a practicing professional conducting research within the organisation in which I'm employed is discussed and leads the reader onto a broader discussion around 'insider / outsider' research status and the need for the adoption of reflexivity as a research approach.

The chapter concludes with a review of the inherent problems researchers experience in gaining access to the research arena, particularly when conducting research within the criminal justice system. The discussion moves to the specific issues associated with this research and the means by which they were overcome.

Theoretical Framework

The process of constructing a credible and valid research project requires the application of a logical, systematic and ordered approach. Additionally it requires clear expression to the reader of the beliefs and assumptions made by the author about such things as the nature of social reality, 'ontology' and the means by which we can gain and acquire knowledge of it - 'epistemology'.

These philosophical assumptions, which upon first consideration appear to be somewhat abstract, shape the very form our research takes. Furthermore, they provide necessary coherence to our methods and validity to the conclusions we ultimately seek to draw.

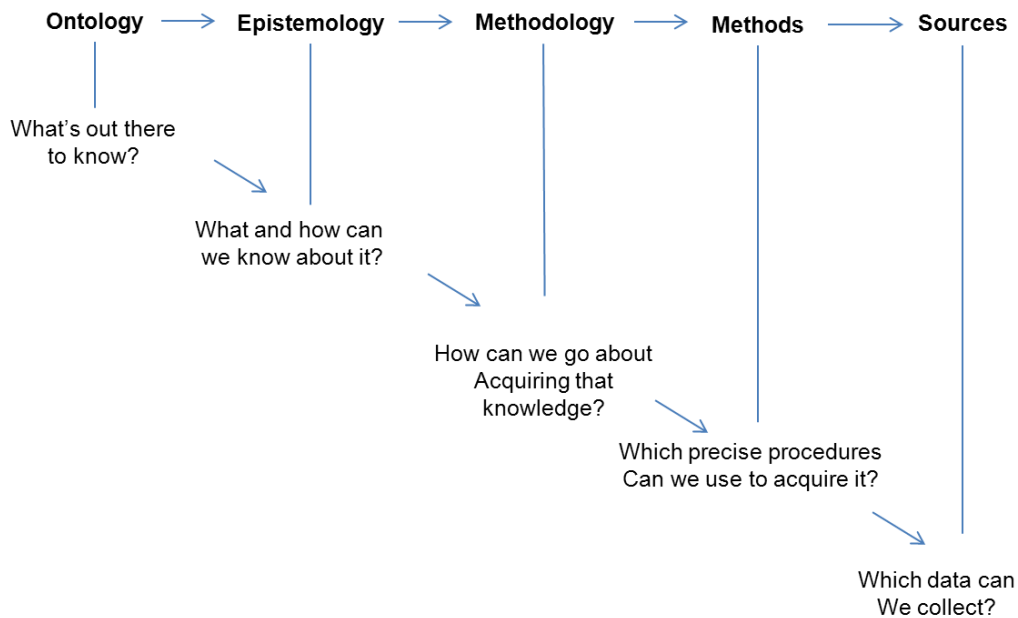
This is particularly pertinent to research endeavours in the social sciences where our individuality brings to the interpretation of research findings a degree of 'free will' and a depth of complexity and understanding beyond that seen in the natural sciences (Blaikie, 1996).

Fortuitously, the order by which we should address such philosophical issues, and how they fit into the overall structure of our research design, is well documented by academics within the social research arena. Guidance provided by Crotty (1998) and Grix (2010), in particular have been instrumental in framing the research design of this thesis. Both Crotty and Grix provide schemata that visually represent the directional inter-relationship between what they perceive as being the main components or building blocks of research.

Figure 2: Research schema, adapted from Crotty (1998)



Figure 3: The interrelationship between the building blocks of research. Grix (2010)



Both schema in figure 1 and figure 2 share a commonality in that they bring a logical directional order to the process of research design, significantly, Crotty (1998) omits ‘ontology’ from his schema, positing that both ‘ontological, [what is] and epistemological [what it means to know] issues tend to emerge together’. Furthermore, he comments that, over time, the true ‘philosophical’ meaning of ontology has been lost to social science, coming to be replaced instead with a more contemporary academic understanding, far removed from the abstract one first expressed by the Greek philosopher, Parmenides.

Crotty (1998) cites a number of contemporary expressions of the definition of ontology in social research to demonstrate the deviation from its original meaning. An example he points to is that provided by Blaikie (1993) who defines ontology as being:

‘...the claims or assumptions that a particular approach to social enquiry makes about the nature of social reality.’ (Blaikie, 1993, p6)

It seems unsurprising that our understanding of ontology should have changed since Parmenides first contemplated its meaning around 500BC; clearly the march of time has necessitated a more apropos interpretation, more befitting its application to modern, au courant, social research.

The diversification of definition, and loss of clarity in its articulation, has contributed to a general lack understanding, both in terms of the meaning of ontology, and its relevance to social research.

The situation is further compounded by the conceptual confluence within the literature of ontology with epistemology. This confusion could be made no more apparent than by the fact that Crotty (1998, p5) refers to ‘constructivism’ as an epistemological, while Grix (2010, p60-61) suggest it is an ontological position.

In light of this, Crotty suggests we move away from the term ‘ontology’ and reserve it for situations where we genuinely need to ponder the profound question of ‘being’. He suggests instead, that in the context of social research, we adopt the phrase ‘theoretical perspective’ (Crotty, 1998). This approach seems to me to be sensible and is one I have adopted in this thesis and, for this reason, the terms ‘theoretical perspective’ and ‘ontology’ will be used interchangeably. Having said that I do question the directional

order that Crotty has applied in his schema as it seems to me that if we transpose 'ontology' with 'theoretical perspective' then the latter (theoretical perspective) should logically precede epistemology.

Theoretical Perspective / Ontology

Blaikie (1993) describes the root definition of ontology as 'the science or study of being' and goes on to state that in the context of the social sciences, he takes ontology to mean:

'...the claims or assumptions that a particular approach to social enquiry makes about the nature of social reality...claims about what exists, what it looks like, what units make it up and how these units interact with each other.' (Blaikie, 1993, p6)

In short our theoretical perspective, or ontology, describes our perspective on the nature of reality and, importantly, whether such reality is an 'objective' one (that really exists independently in and of itself) or one that is social constructed i.e. meanings of reality are 'subjectively' created in a social dimension.

Expressing this, our most basic of philosophical assumptions, is not only key to providing context to our overall research design, but inevitably and necessarily it informs the methodology we adopt to execute it. Furthermore, it illuminates the reader as to the veracity of any conclusions we may seek to draw. We cannot reasonably expect our findings to be accepted if we have not articulated the assumptions we have made when forming them.

Regardless as to whether we choose to contextualise the distinction as a 'theoretical perspective' or 'ontology', a consensus is that, to varying degrees, these assumptions are

embedded within us. James and Vinnicombe (2002), for example, caution that we all have inherent preferences that are likely to shape our research designs, while Grix (2010) goes further, suggesting that:

‘...whether you know it or not, it [your ontological position] is implicit before you even chose your topic of study’. (Grix, 2010, p60)

In line with the fundamental distinction between ‘objective’ and ‘subjective’ realities Grix (2010) asserts that our ontological position can be understood as taking shelter under one of two umbrella terms, ‘objectivism’, which he defines as:

‘...an ontological position that asserts that social phenomena and their meanings have an existence that is independent of social actors’,

and ‘constructivism’, which he defines as:

‘...an alternative position that assert that social phenomena and their meaning are continually being accomplished by social actors [and that] social phenomena and categories are not only produced through social interactions, but that they are in a constant state of revision.’ (Grix, 2010, p61)

It is helpful to our understanding to visualize these two positions as being at opposing ends of the theoretical perspective or ontological continuum. Having done so, we can further stratify that continuum with more specific ontologies sitting under each umbrella term. Figure 1 below graphically represents how, if we were to do that, ‘positivism’ would be at the far left of our continuum, underneath objectivism, and ‘interpretivism’ would be at the far right, underneath constructivism. Sitting between them would be ‘critical realism’.

Figure 4: Theoretical perspective / ontology continuum.



It would be impractical, and beyond the scope of this thesis, to provide a comprehensive critique of all ontological positions, and, while there are a plethora of alternative ontologies to those shown on the continuum, the three shown do exemplify the main contrasting philosophical perspectives. An overview of each paradigm is set out below to demonstrate the key differences between them.

Positivism

‘Positivism is a term with many uses in social science and philosophy. At the broad end, it embraces any approach which applies scientific method to human affairs conceived as belonging to a nature order open to objective enquiry.’
(Hollis, 1994, p41)

This definition by Hollis (1994) encapsulates the core concepts associated to the positivist movement: an affinity to the natural sciences and the scientific model of research and the objective view of reality that naturally follows. Positivists place value on the explanation of phenomena, whereas interpretivists, who as the name suggests, lay greater weight on interpretation and understanding.

Denscombe (2002, p14) reinforces the notion of positivist parallels with the natural sciences by asserting that positivist believe that there are ‘...patterns and regularities, causes and consequences, in the social world just as there are in the natural world’. This

reference by Denscombe to ‘causes and consequences’ points to the fact that positivist research can be characterised by its preference to theory testing, the adoption of deductive reasoning and the need to make causal statements (Grix, 2010). This approach inevitably lends itself to a reliance on empirical research and the application of quantitative as opposed to qualitative methodologies.

Interpretivism

The tension between contrasting theoretical perspectives could be made no more apparent than by contrasting positivism to interpretivism, its antipodal, polar opposite on the theoretical perspective continuum.

Where positivists draw parallels between the social and natural sciences, and claim that research methods developed in the latter can and should be applied to the former, interpretivists make a clear distinction between the two. By doing so interpretivists reject objective, scientific models of research, instead choosing to adopt research methodologies that seek to understand social phenomena, rather than explain it. This position is described by Hatch and Cunliffe (2006) as being ‘anti-positivist’ and by Blaikie (1993) as ‘post-positivist’; both of these phrases seek to draw attention to the fundamental difference between the subject matters of the natural and social sciences.

The theoretical void between these two camps is further typified by the contrast between the methodologies commonly associated to each paradigm. At one end of the spectrum positivist might, for example, invoke experimental research models that isolate and manipulate independent variables, the results of which would be quantitatively measured, while at the other end, interpretivist might enter into an ethnographic study from which

they generate qualitative data and subjective meaning. Although, for the purpose of illustration, these examples have been deliberately selected from extreme ends of the research spectrum, they do demonstrate the fundamentally dichotomous nature of these paradigms.

Key to understanding the origin of this disparity is in recognising the core ontological premise upon which each paradigm is founded; significantly positivists advocate a detached, objective research position, while interpretivists adopt a subjective view to social reality, asserting that the researcher is an integral part of the social reality being researched. Interpretivists would argue therefore, that aspirations of complete objectivity, so fervently defended by the positivist camp, are rendered futile.

Critical realism

Critical realism occupies the middle ground in our continuum and rightly so as it straddles both positivist and interpretivist paradigms. The position it occupies is by no means accidental, as it finds its origins in the frustration researchers experienced with the limitation imposed by each of the diametrically opposed alternatives. On the one hand, positivism is construed as being over-deterministic and restrictive in its inability to deviate from methodologies rooted in causal effect theory, while on the other, interpretivism is perceived by many as being overly contextual and devoid of scientific reasoning.

Critical realism was born of this frustration and the need to construct a research paradigm capable of answering both to the 'how' and the 'why' elements of a research question,

each of which of course, are respectively associated to the positivist and interpretivist paradigms (May, 2001).

As an ontological position, critical realism reaches across the theoretical chasm by accepting and acknowledging aspects of each paradigm. In this sense it could be analogised as the 'liberal democrat' of ontologies, occupying the middle ground while finding favour with proponents of its more radical alternatives.

In common with interpretivist positions for example, critical realism recognises difference between the natural and social sciences, but equally holds that all scientific endeavour must be rational, objective and empirically-based. It argues therefore that social phenomena may be studied 'scientifically' as social objects, not simply via an interpretivist perspective through language and discourse. Consequently critical realists can make use of the same methods as the natural sciences regarding causal explanation, but are equally capable of adopting interpretive understanding (Sayer, 2000). Sayer qualifies this statement by elaborating that critical realists conceive of causation differently from their positivist colleagues, while positivists seek to claim that causes should necessarily determine action, critical realists instead claim that:

'What causes something to happen has nothing to do with the number of times we have observed it happening. Explanation depends rather on identifying causal mechanisms and how they work, and discovering if they have been activated and under what conditions.' (Sayer, 2000, p14)

Blaikie (1993) provides further clarity on this point by explaining that realists recognise that underlying social mechanisms and structures can operate independently, or, as he terms it, 'out of phase' with any resulting observable event. Furthermore, he posits that

these observable events can also occur independently of them being experienced. Thus, while the more clinical expression of causation - so familiar and comforting to positivist researchers - may not be immediately obvious, critical realist believe that it is still operating, albeit in a more discreet fashion. This view of reality, in which observable surface events result from latent underlying structures and mechanisms, is described by Hatch and Cunliffe (2006) as being a 'stratified' form of reality.

By rationalising the positivist and interpretivist paradigm positions critical realism ameliorates the researchers' position, and, critically, lends itself to a multitude of research methods previously bequeathed to researchers following one of the two binary alternatives. Furthermore, where the researchers choice of research method was hitherto limited by paradigm compliance, critical realism adopt a singularly pragmatic approach, suggesting that the choice of method employed by the researcher should be determined by the nature of the object of study and what we want to learn about it (Sayer, 2000).

Epistemology

Intrinsically linked too, and logically following on from, our philosophical assumption about what constitutes reality (our theoretical perspective or ontology), epistemology asks us to consider and express our beliefs as to:

‘...the possible ways of gaining knowledge of social reality, whatever it is understood to be. In short, claims about how what is assumed to exist can be known.’ (Blaikie, 2000, p8)

It seems obvious therefore that we cannot reasonably be expected to address questions of epistemology until we have first reconciled our theoretical perspective. The two concepts

not only share an intimate interrelationship but also a hierarchical one in terms of our overall research design. It is for this reason that I question the logic of Crotty (1998) and his schemata that suggest we deal with epistemological issues before moving onto ponder those pertaining to our ontology.

Regardless as to whether we are proponents of Crotty's approach or that which I propose, it will be apparent that a common thematic thread running through these two concepts, and indeed one that transcends the entire research process, is the diversification of philosophical perspectives around the notions of object and subjectivity.

As with ontology, it is this distinction that helps us to comprehend and articulate our epistemological position, and again, as we found with our contemplations of ontology, it is helpful to first assimilate ourselves to one of two antipodal positions. Grix (2010) asserts that these positions, in an epistemological context, are those based on foundationalism (objective) and those based on anti-foundationalism (subjective). Pivotal to the foundationalism / anti-foundationalism argument is the tenet asserted by the former that central values exist which can be rationally and universally grounded.

Hughes and Sharrock (1997) posit that foundationalism believes that:

‘...true knowledge must rest upon a set of firm, unquestionable...indisputable truths from which our beliefs may be logically deduced, so retaining the truth value of the foundational premises from which they follow.’ (Hughes & Sharrock, 1997, p4-5)

Conversely, anti-foundationalism rejects this assumption, claiming instead that ‘reality’ is socially and discursively ‘constructed’ by human actors (Grix, 2010). Eriksson and

Kovalainen (2008) summarise the objective, and therefore foundationalist, epistemological position as beginning with the premise that a world exists that is external and theory neutral. In contrast, an anti-foundationalist subjective view suggests that there is no access to the external world beyond our own observations and interpretations.

It is apparent, as we found with theoretical perspectives, how the rudimentary declaration of our epistemological position corollaries and necessarily informs the methodological approach we subsequently seek to apply. More importantly however, by affiliating our research to foundationalist or anti-foundationalist epistemologies we predetermine the limitations of any truth claims we are able to make, equally claims of objectivity and validity are similarly bound within the parentheses of our asserted epistemology (Feast & Melles, 2010). On this point Saunders, Lewis and Thornhill (2007) highlight a view expressed by some researchers which holds that data gathered from objects existing separately from the researcher (external realities), are less susceptible to bias and by virtue, more objective. Further they posit that, if social phenomena are to be studied, and the findings are to have any academic authority, then they must be presented quantitatively.

This position is profoundly foundationalist in its rationality. Were we to follow the thematic thread to its origin, we are likely to find positivist ontology tied to the end. Unsurprisingly this position finds itself challenged by a number of academics (see for example Meuser & Loschper, 2002).

Similarly, it becomes clear that assumptions embedded in the primary element of the hierarchical structure, theoretical perspective, inform each decision we make each in

subsequent elements (Crotty, 1998). If, as I have, we express an affinity to a constructivist theoretical perspective, then it logically follows that our epistemology should lean towards those of an anti-foundationalism persuasion. Alternatively, we may feel a closer affinity to a positivist ontology, which is inherently foundationalist in its epistemology (Guba & Lincoln, 1998).

These distinctions, at the upper end of our philosophical contemplations, do seem relatively straightforward; the demarcation lines are very clear and often expressed in diametric terms. It does seem however, that the further we move away from these initial dichotomous alternatives, the more difficult it becomes too clearly define our position. While for example, I frame my epistemology as being anti-foundationalist, I do adopt methodological elements in my research design that are more commonly associated to positivist research paradigms which, in turn, sit more comfortably within the foundationalism camp.

Grix (2010) provides reassurance in such a situation stating that, in reality, research is often carried out 'on the border' or in the shaded area between alternate research paradigms. Feast and Melles (2010) similarly inform us that each epistemology represents a spectrum of similar approaches, rather than a discrete, homogenous class.

Having discussed the importance of theoretical perspective, ontology and epistemology it seems appropriate to make my own philosophical assumptions explicit to the reader.

My overall theoretical perspective is certainly subjective; I believe that my understanding of reality is being constructed in a social dimension by my own experiences and interactions. I draw subjective meaning from objects and social phenomena based on my

life experience, cultural history and position in society. In this regard I recognise my theoretical perspective as leaning towards the constructivist end of the continuum. Although I see considerable merit in the positivist approach which seeks 'precision, exactitude and [the] power of prediction' Grix (2010, p82), I do not believe it to be the most appropriate to the endeavour of social research.

Grix (2010, p82) says of positivism that it attempts to understand the social world by applying 'rules and laws' and by doing so it makes sense of the 'messiness' that is human science. That summarises for me the inadequacies of this approach, the 'messiness' is, in my mind, the very nub of the matter, the axle from which the spokes of our understanding should radiate. Any social science research approach that is incapable of valuing the 'messiness' is, I argue, missing the point, as it is within the 'messiness' that true understanding of social phenomena lies. For this reason a purely positivist approach is incapable of meeting the research needs of this thesis. Similarly an approach that adopts a purely interpretivist perspective seems to me to be equally incapable of making sense of the 'messiness'. For all its limitations, what positivism does bring to the table is clarity of logic and notions of cause and effect.

Perhaps, because of my policing background and its reliance on proving or disproving a suspects involvement based on an objective review of the available evidence, I find it easy to relate to the causal proposition put forward by the positivists. Punch (2005) suggests that, in this regard I am in good company, as he posits that causal rationalities are:

'...deeply ingrained in our culture and saturate[s] our attempts to understand and explain the world'. (Punch, 2005, p48)

Although I find comfort in the simplicity of the cause and effect argument, I am equally minded that every criminal investigation I've been involved in has needed to be understood within a social context. There are always explanations, situations of duress, of circumstance, or of necessity, that contribute to the offenders actions. The criminal justice system understands these as 'mitigating' circumstances, a notion that seems to me to be equally applicable to social research.

While the positivist may seek to understand social phenomena in purely causal terms, I would argue that all social phenomena outcomes need to be understood against the background of their mitigating circumstances, if we choose to look into the 'messiness' that Grix (2010) alludes too, we may find a greater depth of understanding that we might have, had we chosen to draw more elementary conclusion based on causal explanation.

For this reason I find that my theoretical perspective is best understood as a synthesis of these opposing paradigms, sitting more comfortably in the virtual research lounge amongst the critical realists, as opposed to the positivists or interpretivists.

Having defined the more abstract notions of theoretical perspective and epistemology, we turn now to the more practical considerations of how to action our research - our methodology.

The research conducted for this thesis is broadly nomothetic in its design in that the overall research objective is to identify general laws and traits that contribute to the distortion of witness's confidence in their identification selection decisions. The methodology does additionally encompass ideographic elements which seek to amplify

the generality of the nomothetic findings and, by doing so, produce actionable recommendations for the criminal justice system.

The study approaches the research questions from a singularly pragmatic stance, in the first instance by making a distinction as to whether the research seeks to test a theory by generating data, or to generate data with a view to forming a theory?’

This most basic of methodological junctures inevitably leads the researcher down one of two paths, that of ‘*deductive*’ (in the case of theory testing) or ‘*inductive*’ (in the case of theory generating), reasoning. Maxfield and Babbie (2010) helpfully define ‘deductive’ reasoning as that which:

‘... moves from the general to the specific. It moves from a pattern that might be logically or theoretically expected, to observations that test whether the expected pattern actually occurs in the real world.’ (Maxfield & Babbie, 2010, p24)

Similarly they define ‘inductive’ reasoning as that which:

‘...moves from the specific to the general, from a set of particular observations to the discovery of a pattern that represents some degree of order among the varied events under examination.’ (Maxfield & Babbie, 2010, p24)

Reconciling, at the outset of our research, whether we are adopting an ‘inductive’ or ‘deductive’ model, is crucial for a number of reasons:

Firstly, because such a distinction determines the suitability, or otherwise, of certain research methodologies; ‘grounded theory’ for example, ‘which is probably the most widely employed interpretive strategy in the social sciences today’ (Denzin & Lincoln,

1994), seeks to generate theory from the analyses of generated data, and is thus theory generating and not theory driven, making it incongruous with methodological research of a deductive nature.

Secondly, the distinction determines how our research is framed and executed. An inductive research approach for example posits a question and constructs the research design around identifying the data necessary to answer it. Conversely, a deductive approach necessitates the expression of a hypothesis (Blaikie, 2000), which focuses our research design on identifying the data required to test it.

Thirdly, deductive and inductive models are each capable of drawing different conclusions from the resulting data. It follows, for example, that deductive reasoning, which asks of the research verification of hypothesis by application of theory, precludes us from drawing direct conclusions of causation. If hypothesis is proven then we may be able to assert that a causal relationship exists between independent and dependant variables, but not go so far as to claim that there is a necessary connection. As Punch (2005) comments ‘...we cannot prove the if-part (the theory) by validating the then-part (the hypothesis)’.

The suggestion that we ‘adopt’ one of these binary alternatives is perhaps misleading in this context, as with our ontology, I would argue, the distinction is not one of choice on the part of the researcher. Moreover it is one imposed upon us in light of our research situation and reasons of pragmatism.

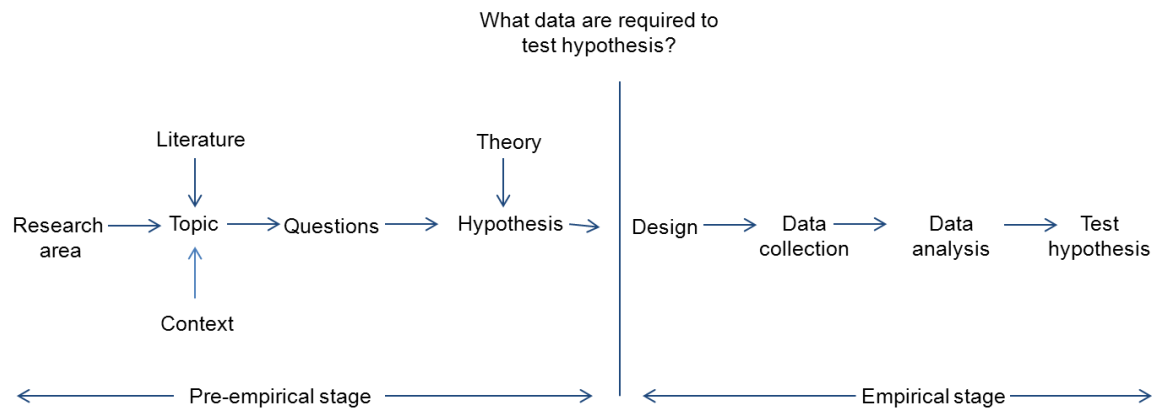
As a criminal justice professional, practising within my chosen field of study, I have inevitably brought to the research preconceived ideas and theories based upon my

experiential learning. Such a research situation seems to me to instinctively lean towards the adoption of a theory testing approach. My main concern with such an approach is the tendency, despite the researchers' best effort to negate any bias, for the findings to simply support the pre-declared priori. For this reason the application of a hypothetico-deductive reasoning model was discounted, instead the research conducted in this thesis is inductive, allowing conclusions to be generated from the research data.

The specific research design for each study is set out in detail in chapter 4, having said that, chronologically it was at this point that I first began to consider the 'shape' that the research should take. At the point we first begin to contemplate our research design the research is likely (as was mine) to still be at the pre-empirical stage, in essence it is theoretical. The next stage is to consider the research questions and establish what data is required to satisfactorily answer them.

As is common in most areas of research, in which we set out to walk a well-trodden route, there are numerous frameworks provided by those who have gone before us, helpfully designed to make our passage easier. In the case of research design, Punch (2005) provides us with a simplified model of research that clearly delineates a logical process through which the research design should pass:

Figure 5: Simplified model of research. Punch (2005)



Although Punch’s model pertains to a ‘deductive’ model of research (specifically hypothesis testing), the principles set out are able to be transferred to other research design approaches. Having clearly set out our research questions Punch suggests that the researchers ruminations move away from abstract notions of ontology and epistemology to the practical means through which the appropriate data can be gathered to illuminate our understanding - our research design. De Vaus (2001, p9) says that the principle function of research design should be to ensure that any evidence obtained through the research activity enables us to answer the previously set out research questions as unambiguously as possible. Inevitably this presents the aspiring researcher with an innumerable number of alternative research design options, each of which must be considered not only in terms of their ability to provide the necessary data output, but also their ability to be implemented with the resources available to the researcher.

The mechanism through which the research data is generated inevitably leads us to consider whether a quantitative or qualitative approach is better suited to the task at hand.

The Quantitative / Qualitative Dichotomy

This thesis adopts a qualitative approach to its research design. In selecting a qualitative approach in the research design, the alternative, a quantitative or a combination of both, a ‘mixed’ data gathering methodology, was dismissed. In order to justify such a decision it is helpful in the first instance to familiarise ourselves with how each of the primary alternatives (qualitative / quantitative) have come to be perceived in the academic world.

Table 1 provides an overview of the methodological traits associated to each approach:

Table 1: The quantitative - qualitative dichotomy, adapted by Grix (2010) from Mason 1998; Silverman 2000; Neuman 2000; Danemark et al., 2002.

Quantitative	Qualitative
interested in finding out numerical qualities of an event or case: how many, how much?	interested in the nature and essence of an event, person or case
goal of investigation is prediction, control, description, hypothesis-testing.	goal of investigation is understanding, description, discovery, hypothesis-generation.
uses hard data (numbers)	uses soft data (words or images from documents or observations, etc.)
objective	subjective
usually tackles macro-issues, using large, random and representative samples	tend to analyse micro-issues, using small, non-random and non-representative samples
employs deductive research strategy	employs inductive research strategy
its epistemological orientation is argued to be rooted in the positivist tradition	its epistemological orientation is argued to be rooted in the interpretivist tradition
aims at identifying general patterns and relationships	aims at interpreting events of historical and cultural significance
measures are created prior to data collection and are standardised	measures are created during interaction with data and are often specific to the individual setting
survey methodology	Interview (in-depth study)
procedures are standard, replication is presumed	research procedures are particular, replication rare
value-free	political

abstract	grounded
concepts are in the form of variables	concepts are in the form of themes and motifs
findings attempt to be comprehensive, holistic and generalisable	findings are seen to be precise, narrow and not generalisable

Grix (2010) suggests that the methodological approach should be determined according to the substantive questions the research seeks to answer; Punch (2000, p88) eloquently couches this in terms of ‘the substantive dog’ wagging the ‘methodological tail’ and not the other way round.

Typically, qualitative researchers seek to interpret the contextual dimensions of social phenomenon through the thorough examination of what are often [relatively] small number of cases and, by so doing, a ‘depth’ of understanding is achieved in preference to a ‘breadth’ (Patton, 1990).

The ‘uniqueness’ of this thesis, the element of ‘new and original research that adds to human knowledge’, cannot be found in its desire to assess whether or not post-event feedback affects witness confidence. This area has already been well researched and conclusively proven (see for example; Shaw & McClure, 1996; Luus & Wells, 1994; Wells & Brasfield, 1998). Instead, it seeks to establish in ‘real’ crime case scenarios’ whether or not the requisite post-identification information is being passed from police investigators to participating eye witnesses in order to facilitate such inflation.

To achieve this objective the ‘substantive dog’, as Punch (2008) phrases it, can be identified as the gathering of personal accounts from practicing professionals, the ‘tail’

then becomes the pragmatic choice of how best to execute the research objective, which, in this case is qualitatively.

Qualitative research is, by its very nature, inherently 'reflexive', in that the researcher is an integral part of the research process. The need for reflexivity becomes amplified when the researcher is not only part of the research, but also a practising professional within the field in which the research is being conducted. In such cases, in my mind, it seems sensible to give voice to the researcher's situational position and acknowledge the potential for researcher bias, in other words, to embed 'reflexive' practices into the research design.

Reflexivity as a Research Perspective

'The qualitative researcher's perspective is perhaps a paradoxical one: it is to be acutely tuned-in to the experiences and meaning systems of others—to indwell—and at the same time to be aware of how one's own biases and preconceptions may be influencing what one is trying to understand.' (Maykut & Morehouse, 1994, p123)

A contemporary trend within social research is a move towards greater transparency by the researcher in terms of their personal motivation for pursuing their chosen topic of study and their situational identity within the subject group. Angrosino (2005) posits that a critique of the researcher role has developed in response to a greater consciousness of these issues and the relative power the researcher is capable of exerting over the subject group.

Dwyer and Buckle (2009) argue that the principle of transparency should be afforded, not only to the readership of one's work, but additionally to the subject group being

researched. This issue of transparency could not be more pertinent than to academics conducting research into policing, a vocation that engenders an instinctive mistrust and suspicion of outsiders (Reiner, 2000; Crank, 2004).

The revelation of the researchers' situational identity is a fundamental prerequisite to sound research. Such disclosure not only permits the reader to contextualise the narrative interpretation of the researchers observations, but adds a richness and viscosity to the work that may have otherwise been lost had the reader not known of the writers' background and motivation. This disclosure, both to the reader and the subject group, does however need to be made in a timely fashion; there is little benefit to the reader if such information is communicated in the concluding chapter of one's thesis; or to the subject group if revelation is made post-event.

In order to be consistent with my own beliefs about the need to be candid about my personal situation, I have broken with tradition and located information about my personal background in the opening chapter of this thesis as opposed to documenting it here in the methodology chapter. By doing so it is anticipated that the reader will not only be aware of my research position from the outset (an operational police officer conducting research within the organisation in which I'm employed) and acknowledge the continued issue of researcher bias with which I've grappled, but also be afforded the opportunity to add credibility to my interpretation of findings brought about by my shared history with those being researched and professional knowledge of the field under study.

I am very much alive to the fact that two decades of police service have, to some degree, 'institutionalised' me. Furthermore the process of 'doing' the research and the need to be critical of some of the processes adopted by the police has made me acutely aware of my own protectionist feeling for the service. I highlight these realities, not because I believe that they detract from my research, but because I believe it is important to accept they exist and give voice to their presence. This approach has a commonality with other police 'insider' researchers, James (2011) for example, a 'career' detective who worked within the MPS comments:

'I tried to ensure that the independence and impartiality of the research was clear...it was inevitable that my research was influenced by my own assumptions and beliefs as an insider.' (James, 2011, p69)

The 'gift' of contextualisation is particularly beneficial to the readers of studies such as this one that adopt qualitative methodologies which, by their nature necessitate the construction of meaning from observational data (Patton, 2002). In addition to the benefit of contextualisation afforded to the reader, the very process of considering one's research perspective acts to focus our own mind on the need to be vigilant to our own partialities and biases. This process of consciously self-referencing and the need to consider the circular relationship of the researcher and the researched, is commonly referred to as 'reflexivity'.

The notion of reflexivity is particularly relevant to this thesis, primarily due to my personal status within the research arena, but additionally because the research design makes use of semi-structure interviews. As Rose (1985) comments;

‘There is no neutrality. There is only greater or less awareness of one’s biases. And if you do not appreciate the force of what you’re leaving out, you are not fully in command of what you’re doing.’ (Rose, 1985, p77)

The issue of objectivity presents researchers with something of a conundrum; on the one hand we hold it aloft as the ‘holy grail’ of research, but on the other we have to accept that as human beings the meaning we draw from our interactions and experiences is shaped by our own background, culture and the environment in which we exist. Recognition of the nexus between our humanity and our research aspiration must lead us all to the realisation that complete objectivity, although a goal of all researchers, is ultimately unobtainable. Nevertheless, as Bell (1993) comments; despite objectivity being an ‘impossible goal’ researchers must nonetheless strive to attain it.

My research position, although not intentionally determined at the outset, is very much feminist in orientation. This approach is certainly more accepting of the humanity we bring to our research and reflects the reality of my own research experience.

Such a position does however challenge the more traditional view, such as that held by Schutz (1976, p101) who suggests that research is ‘merely an instrument’ and that researchers should remain as disinterested scientific onlookers of the social world. This approach does seem inviting and perhaps instinctively, as social scientists, one to which our research ethos should resonate. The reality however is that, unlike the other sciences, social science requires the interpretation of human behaviour; such interpretation cannot be achieved without the researcher investing elements of their own history and experience in their reasoning. The result may not be as ‘clinical’ as those obtained by the

other sciences, but why should it be? Social research is a dynamic process in which each experience is unique in and of itself.

Unlike other disciplines the results are often incapable of being replicated time after time and, once observed, these social experiences becomes part of the researcher's own history, to be carried with them, consciously or otherwise, as they traverse their own, unique, research experience. To suggest, as Schutz does, that social researchers can remain emotionally removed from their research seems to me to be disingenuous and anachronistic.

Contemporary academics, such as Hubbard et al. (2001), are critical of this outmoded view and the regressive research culture it engenders which indoctrinates researchers to be 'rational and objective, and 'extract out' emotion'. I for one have been unable to detach myself from my research in this way and ponder whether those that can (or claim to) are as sufficiently meshed with their research project as they should be.

The benefit of adopting a reflexive approach from the outset is not only that afforded to the reader, whose experience and understanding is enhanced, but additionally to the researcher who, armed with the recognition of their own limitations, is empowered to make informed decisions about where best to site themselves to maximise the research potential.

For me, as an operational police officer conducting critical research within the criminal justice system, the most logical datum point from which to consider my research perspective is to define my research relationship in terms of an insider or outsider, a simple task one might think.

The Researcher as an Insider / Outsider

There exist a number of different models against which we can seek to assimilate our own research situation. Van Maanen (1978) for example, suggest that the researcher adopt the role of ‘spy’, ‘member’, ‘fan’ or ‘voyeur’, while Adler and Adler (1987) suggests the research roles are better understood in terms of ‘peripheral member’, ‘active member’ and ‘complete member’. Brown (1996) however qualifies the researcher’s role in broader terms, highlighting four ideal types, the ‘insider-insider’, ‘outsider-insider’, ‘insider-outsider’ and ‘outsider-outsider’.

Each of these typologies shares a commonality in that they seek to ascribe a situational position upon the researcher. Such a process can of course be helpful as it assist the researcher in clarifying their role within the research domain (Bonner & Tolhurst, 2002). Equally however, the application of such a label can be limiting and restrictive, incapable of acknowledging the fluidity and unstable nature of identities and perspectives that develop as we traverse our research experience (Mercer, 1992).

Ellis and Bochner, (2000) take issue with such prescriptive distinction and argue that ‘...as communicating humans studying humans communicating, we are [all] inside what we are studying’ (Ellis & Bochner, 2000, p743). Similarly, DeLyser (2001) points to the inertia of this type of obtuse label, commenting that ‘In every research project we navigate complex and multi-faceted insider-outsider issues.’ (DeLyser, 2001, p442)

At first glance my own position seems intuitively to be that of insider / insider, and yet, even within this definition, there exists scope for further clarification: As, within the police service, a number of ‘sub cultures’ exist. Two decades ago Hobbs (1988) said of

the MPS that it had become ‘ a divided force, partitioned into two separate branches, each with rigidly defined functions’ (Hobbs, 1988, p41) this comment was a reference at that time to what he perceived as being an ideological internal rift between uniform and detective branches.

The current situation is much more complex with specialisms now operating within each branch - in essences ‘circles within circles’ and, although the historic rivalry alluded to by Hobbs (1988) between the antipodal stereotypical roles (uniform/detective) still exists, the annexing of specialist units within both uniform and detective branches has resulted in further internal distinctions and allegiances. Borough based detectives, for example, who fall under the funding stream and control of the Territorial Policing (TP) management structure, see themselves as entirely different to their detective colleagues posted to specialist roles (such as Homicide; Counter Terrorism; Trident) who fall under the governance of the Specialist Crime and Operations directorate (SC&O). Each of these groups are managed and funded separately within the organisation. Unsurprisingly, detectives working on specialist crime within SC&O are regarded by their TP colleagues as elitist and detached from what they perceive as ‘real’ police work (Reiner, 2010). Separate funding streams and access to better equipment and resources reinforce these feelings of difference.

These internal role conflicts inevitably impact upon my own understanding of my situational research position, making Browns typology less straightforward to apply than one may have initially thought:

Table 2: Insider / Outsider Research status: Browns typology.

Researcher	Subject	Researcher Status
Police Officer	Police Officer	Insider Inside
Detective Officer	Uniform Officer	Insider Outside
Detective	Detective	Insider Inside
SC&O Detective	TP Detective	Insider Outside

Although Brown's (1996) typology of researchers' roles and others of its kind are helpful in understanding our research position, and may in some way assist us when considering methodological and ethical issues, they do seem somewhat prescriptive and inflexible. Their static nature seems to me to be incapable of dealing with the dynamic nature of research and the constantly changing landscape within which the researcher operates. It seems paradoxical therefore that we should seek to apply binary alternatives to our research position that unduly narrow the range of our understanding or experience.

A more contemporary approach, put forward by social researchers Dwyer and Buckle (2009), is for the researcher to move away from these blunt diametric distinctions and instead for the researcher to occupy the middle ground, or 'space between'. This approach resonates with the earlier comments by Song and Parker (1995):

'Dichotomised rubrics such as 'black / white or 'insider / outsider' are inadequate to capture the complex and multi-faceted experience of some researchers such as ourselves, who find themselves neither total 'insider' nor 'outsider' in relation to the individuals they interview.' (Song & Parker, 1995, p243)

In the context of my own study I chose to conceptualise my research position more in terms of a continuum than as an either/or dichotomy. By adopting this approach the researcher is best placed to take advantage of benefits afforded by each role type, whilst remaining unencumbered from any adverse connotation associated with such prescriptive labels.

Gaining Access to the Research Arena

One of the most problematic areas for a researcher starting out on any fieldwork based activity is the issue of access. Gaining legitimate access to the research arena can present the researcher with a number of problems. This is particularly true of research into policing which is not only bureaucratic and hierarchical, but also characterised by attitudes of ‘machismo, solidarity, suspicion and cynicism’ (Dawson & Williams, 2009, p375). Other commentators, such as Reiner (1992) suggest that the police can be defined by their apparent sense of loyalty and scepticism of research. Fox and Ludman (1974) expound a similar view:

‘As others have reported and as we have experienced in our own research, police organisations are somewhat different from other formal, bureaucratic organisations. Although police departments share many characteristics with other types of organisations, the police concern with maintaining distinct boundaries between their procedures and non-police study of them creates particular problems for the researcher who desires to penetrate the boundaries and study the procedures.’ (Fox & Lundman, 1974, p65)

Although this reference pre-dates my research by almost four decades, it continues to be relevant and will chime with academics and researchers who have attempted to conduct research in this area of the criminal justice system (see for example: Chan, 1997 who

refers to the ‘code of silence’; Mannin: cited in Reiner, 1992 who uses the term ‘sacred canopy’).

I cannot claim that the success I have enjoyed, in terms of gaining research access, is solely attributable to my tenacity or proficiency in negotiating access rights. Moreover it is from within the distinction that Lundman (1974) makes about the police’s organisational discomfort with ‘non-police study’ and my situational position outside of this definition from which I’ve profited.

The advantages accorded to me by my ‘insider’ status, such as a capacity to communicate ‘internally’ via email and to obtain an audience with senior officers, have been significant contributory factors in circumnavigating, or at least, expediting the process of gaining research access. Furthermore, having gained access, I have experienced unhindered exposure to the field and access to data and personnel unlikely to be afforded to ‘outsiders’ or other ‘non-police’ personnel.

Gatekeepers

Regardless of my position as an ‘insider’ however, the requirement to negotiate sustained access, via a ‘*complex web of gatekeepers [each with] the power to grant or deny access*’ (Tong, 2005), remains. Some of these gatekeepers, such as the MPS Strategic Research and Analysis Unit (SRAU), operate at an organisational level, others, such as participant police officers and their supervisors, can operate autonomously. As Tong (2005) comments, problematically for the researcher, gatekeepers [autonomous and organisational] are often found in different locations, operating at different hierarchical planes. These positional variances make for a complex power dynamic both internally,

between hierarchical gatekeepers, and for the researcher seeking to appease multiple gatekeepers in order to secure or sustain access.

The maintenance of the researcher / gatekeeper relationship is one easily neglected once initial access has been granted. It is imperative however that harmony is maintained to avoid the need of having to rebuild relationships and / or restart access negotiations if such a relationship fails.

In some regards the expectations of organisational gatekeepers, such as the MPS's Strategic Research and Analyses Unit (SRAU – discussed latter in Chapter 3), are easier to satisfy as their criteria for approval is clearly set out in policy and capable of being referenced should any dispute or disagreement arise. The burden then is upon the applicant to design their research proposal in such a fashion as to meet the requirements set out by the host organisation. As Punch (1993) posits:

‘The researcher’s task becomes, then, how to outwit the institutional obstacle-course to gain entry and...penetrate the minefield of social defences to reach the inner reality of police work.’ (Punch, 1993, p184)

Conversely, non-organisational gatekeepers, such as the participant police officer supervisors, act outside of these formal parameters and can be less predictable in their decision making.

Regardless of the hierarchical position of the gatekeeper, or the rationality of the criteria they choose to adopt when making decisions about access, each, paradoxically, has the equivalent ability to veto the strand of the research activity over which they have

jurisdiction. This reality demonstrates the need for the gatekeeper / researcher relationship to be maintained if sustained access is to be enjoyed.

At an organisational level the renunciation of access can be catastrophic, curtailing the research or necessitating a fundamental reappraisal of the research design. Ordinarily denial of access at a 'non-organisational' level is less problematic; the experienced researcher expects a degree of attrition within the subject group and engineers it into the research design. In quasi-military organisations that have distinct rank structures and disciplined staff however, a lack of compliance by gatekeepers operating in a 'non-organisational' capacity can be equally ruinous.

The operational infrastructure of the police is such that Sergeants, the lowest ranking supervising officers, have direct responsibility for the greatest number of subordinates, over whom they have the power to grant or deny research access. Furthermore, unlike other organisations, live issues of operational necessity and exigencies of duty effectively 'trump' any pre-arranged or provisionally booked agreement for research access.

Certainly, when attempting to conduct research with front line operational police officers, availability and authority from supervisors for release becomes a dynamic decision, based on organisational needs at that moment in time. When deciding whether subordinate officers should be released from operational responsibilities and permitted to participate in structured interviews, the Sergeant in question is exercising authority of rank and therefore operating as an 'organisational' gatekeeper. Such decisions are however made at the discretion of the authorising officer, autonomously, in a 'non-organisational' way.

Frustratingly the researcher can be in receipt of access authority from the top of the hierarchical structure (in this case Chief Superintendent / Borough Commander), only to be defeated at the whim of the least empowered gatekeeper. As Coffey (1999) comments, success at one hierarchical level by no means guarantees success at another. I would go further and posit that access is contingent not only upon overlapping vertical authorities, but on the dual consent of organisation and non-organisational gatekeepers.

The need to sustain access, through concentric organisational and non-organisational gatekeepers, suggests that it is best conceptualised more as a 'fragile state of being' requiring the researcher's unceasing attention, as opposed to a simplistic binary locus. Fox and Lundman (1974) succinctly conveyed this notion when reporting upon their own criminal justice access experiences:

'We conceive of gaining research access in police organisations as a process rather than a stable condition...involving passage through two 'gates'. The first gate is manned by the top level administrators of the organisation, while the second gate is controlled by the aggregate group of proposed subjects of one's study. Access is successful when each 'gatekeeper' approves the research.'
(Fox & Lundman, 1974, p53)

Although my earlier reference to 'maintaining' a relationship with gatekeepers reads somewhat contrived and superficial, the reality was that this process occurred naturally once I begun to engage with supervisors in the field.

On reflection my relation to these supervisors as an organisational peer, stood me in good stead when forming relationships and negated any need to 'establish' myself in the field. I, unlike Schutz's 'visitor or guest who intends to establish a merely transitory contact

with the group' (Shutz, 1976), shared with the supervisors and participants a common organisational history and an understanding of their role known only to those who have performed it.

The absence of this 'insider' knowledge and shared history not only makes the establishment of these relations more challenging for the non-insider, who has to work hard over a long period of time in order to gain the levels of trust they require (Brewer, 2000), but also excludes the 'outsider' researcher from the unspoken situational subtleties and nuances so vital in the researchers assimilation into the social world of their participants.

An example used by Schutz (1976, p107) to illustrate the plight of the 'outsider', and one that is particularly relevant to the 'outsider' trying to interpret police culture that makes use of acronyms, jargon and idioms to convey meaning, is that of language. Schutz (1976) comments that whilst language may have a formal structure, capable of being translated and understood by others, its content is made up of far more than the sum of its component vocabulary parts:

'But, in addition, every social group...has its own private code, understandable only by those who have participated in the common past experiences in which it took rise...' (Schutz, 1976, p101)

A further contributory factor in negating any tension in my relationship with gatekeepers was a predetermined decision, formed as part of my methodology design, that I would pro-actively adopt an open and transparent approach to communicating my research once in the field; I freely discussed my research with gatekeepers and found that, once initial suspicions about its purpose were overcome, they [gatekeepers] expressed a genuine

interest in the research and the organisational learning that may result. Had the research been more 'theoretical' and less easy for practitioners to relate to, then the maintenance of this relationship may have been more demanding in terms of my attention. Similarly, had gatekeepers not been able to envisage the potential for the research findings to improve internal processes, they may have been less inclined to accede to my research access requests.

MPS Strategic Research and Analysis Unit (SRAU)

Brewer, Wilson and Braithwaite (1995) comment that increasingly police services, in common with other organisations, have begun to rely less on externally contracted research, but have instead taken a more active role in undertaking and managing their own research activity (Brewer, Wilson & Braithwaite, 1995). In-house research is not only valuable in terms of directing and informing policy, but also, as Morgan (cited in Brown, 1996) argues, is capable of performing an accountability function to the public and others

For the MPS this trend has manifested itself in the creation of the SRAU in 2003. The SRAU currently employs approximately 25 members of staff and is headed up by Professor 'Betsy' Stanko, an accomplished and well respected criminologist and social researcher. They define their role as:

'The Strategic Research and Analysis Unit (SRAU) conducts research and analysis to inform the Metropolitan Police Service corporate policy and organisational learning. It manages a number of the corporate surveys including the Public Attitudes Survey, Safer Neighbourhoods Survey and delivers Corporate Performance Analysis for Management Board and the Metropolitan

Police Association (MPA). In addition, the unit conducts bespoke research for internal business groups and is the single point of contact for research in the MPS. (Metropolitan Police Service, 2010)

Although the units *raison d'être* is to undertake internal research, its secondary function is to 'gatekeep' research proposals (both internal and external) to ensure they are ethically and methodologically sound and consistent with the service's own strategic objectives. The desire of the SRAU to endorse research proposals that share a commonality with the organisational aspirations of the MPS seems obvious, but may have been an aspect of the research design that I would have neglected had it not been for the comments of Fox and Lundman (1974):

'...concerns over the purpose of the research focused on the department's desire to be assured that the results of the research would in some way contribute to their organisational objectives. It became apparent that our research could not be isolated from these objectives.' (Fox & Lundman, 1974, p56)

As part of the research design the strategic objectives of the MPS were reviewed and the submitted proposal aligned to the MPS' core values, specifically the aspiration expressed by the then Commissioner, Sir Paul Stephenson, to 'learn from experience and find ways to be even better'. Furthermore the application made reference to the Metropolitan Police Authorities 'Policing London Business plan for 2009 – 2010', the core of which is a desire to 'build confidence in our communities'.

Internal Sponsorship

Fox and Lundman (1974) suggest that the existence of informal ‘pre-research’ relationships with police administrators in positions of authority is key to later securing research access. They argue that these informal contacts allow feelings of mutual trust and friendship to be nurtured, creating a positive multidimensional background through which access applications can be made. Forming these relationships may prove challenging for the ‘outsider’ and is likely to result in delay while relationships are formed with appropriate MPS employees. The realisation of these informal relations is an internal sponsor who is willing not only to vouch for the validity of the research, but who are also able to make provision for access via relevant ‘gatekeepers’.

My first ‘posting’ on joining the MPS was to a busy East London Borough, on which I served for over a decade. While on borough I built up a rapport and good working relationship with the senior management team, including the borough Commander. It was this ‘pre-research’ relationship that I sought to realise when seeking internal sponsorship for this research. The borough Commander, a Chief Superintendent, was courteous enough not only to endorse the research by providing a formal letter of support (see appendix 3), but also to provide a letter of introduction addressed to the officers under his command inviting them to participate in the research and to facilitate access to witnesses where possible (see appendix 4).

Having such a sponsor, in a position of hierarchical seniority within the organisation, not only adds gravitas to the proposal but, additionally, their patronage can act as a lubricant to the hinges of some internal gates through which the researcher seeks to pass.

The existence of a letter of introduction proved effective in legitimising my research project and facilitating my egress through the first of many access portals. It did however come with an unforeseen, disadvantageous side effect as, by having the overt support of the Commander responsible for the borough in which I was conducting the research, I had inadvertently positioned myself firmly within the administrative hierarchical structure of the organisation. The means by which I addressed this issue are discussed in the methodology chapter

Chapter 4

Method

Introduction

Chapter 4 seeks to situate the adopted research design, methodology and methods for each of the two studies within the body of relevant published academic research. A timeline of the research activity is documented by way of a research timetable and the ‘mechanics’ of the research design, i.e. the methods are explained and justified.

Each of the two studies is dealt with separately and explanation provided for each as to the rationale behind the chosen research designs. In turn each of the two studies is expanded upon under a number of key headings, leading the reader logically from a restatement of the research question through to the methodological approach adopted in each case. The sample selection strategy for each study is discussed along with any associated ethical considerations. The practical means by which each study was implemented, the ‘procedure’ is set out along with an explanation of the method of analysis used. The findings of each study are clearly set out.

For ease of reference I’ve set out the research timetable in the table below:

Table 3: Research Timetable.

Research Activity	Dates
Research proposal submission to CCCU	October 2010
Access and internal sponsorship negotiations with MPS	February 2011
Registration and approval of research with MPS SRAU	March 2011
CCRU ethics committee approval	June 2011
Site and sample selection	July 2011
Pilot study (7 interviews)	September 2011
Empirical research (38 interviews)	November 2012 – May 2013
Archival / documentary research	May 2013 – June 2013
Attendance at ICIDP training seminars	25 th and 26 th of June 2013
Transcription / proof reading of interviews	January 2013 – June 2013
Coding and analyses	June 2013 – September 2013

Study 1

Objectives

- 1) Explore the views and practices of police investigators within the host police service and establish whether confirmatory post-identification feedback is provided to participating witnesses.

Methodological approach

This study approaches the research questions from the perspective of participant police officers, and explores the possibility that their interaction with identification procedure participants may be a variable capable of contributing to witness confidence variance.

It seems logical therefore that the requisite data, or research product, capable of exploring the research question will come from the observation of, or interaction with, police investigators involved in identification procedures. A number of research approaches seem ideally suited to the task. Ultimately the decision came down one of two approaches, that of a case study or a phenomenological approach in which interviews were conducted with police actors.

Case studies, as a research design method, have been considered and discussed by a number of authors (Punch, 2000; Stake, 1995; Yin, 1999) and have come to be defined in a number of different ways. Stake (1995) for example frames it in terms of being ‘the study of the particularity and complexity of a single case, coming to understand its activity within important circumstances’, while Yin (1999) understands it to be ‘an empirical inquiry that investigates a contemporary phenomenon within its real-life

context.’ While Stake’s definition points to the case study being the investigation into a single event, he does suggest that this can be extended into a ‘collective case study’ in order to learn more about the phenomenon, population or general condition under scrutiny (Stake, 1995). While this does suggest that the methodology could be extended to multiple cases, its fundamental purpose for being is to provide the researcher with in-depth research data into a limited number, if not singular, social phenomenon. Although such an approach may be well suited to ideographic studies, it is not best placed to serve the research needs of nomothetic projects.

Additionally, the case study approach was discounted as it is one synonymous with a lack of generalisability of finding. This, perennial criticism, is well founded, although some would argue, a little unfair. Punch (2005), for example, argues that generalisability is achievable from case studies, but that it takes the shape of generalisation of theory or of case-to-case transferability, as opposed to sample-to-population generalisation. Punch posits that the latter interpretation of generalisability is not normally an aspirational objective of a case study in any event. This view is shared by Hoepfl (1997) who suggests that:

‘...unlike quantitative researchers who seek causal determination, prediction, and generalisation of findings, qualitative researchers instead seek illumination, understanding, and extrapolation to similar situations.’ (Hoepfl, 1997, p1)

While a case study may have provided a complimentary, secondary methodology for this thesis, and is perhaps one capable of being pursued in any follow up research, its lack of ability to contribute to transferable findings make it incompatible with the research objective of this thesis. Furthermore, I have previously indicated that a desired research

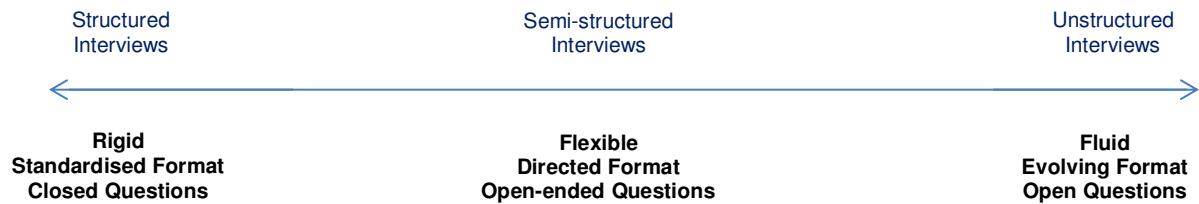
outcome is that any findings be capable of being translated into some practical outcome for the criminal justice system. That outcome may be realised in the identification of organisational training needs within the MPS, or more broad recommendations for the management of identification parades within the current legal framework. Neither of these research outcomes can be achieved by the detailed analysis of one or two cases in isolation.

Having rejected the case study as a suitable mechanism through which data could be gathered the interview was considered and ultimately adopted as the primary data gathering instrument. This decision is consistent with the published literature addressing research design, the consensus of which is that in situations where we seek to obtain records of personal experiences beliefs and views, interviews remain a popular research tool (Punch, 2005, p9: Grix, 2010, p126)

As is the case with so many academic research instruments there exists within 'interviews' a wide range of different interview 'types', each of which are available to the researcher to meet their specific research need. When confronted with the need to make strategic research design decisions, such as the selection of the most appropriate interview typology, I have found it to be consistently beneficial to first assess the available options in terms of a continuum.

The continuum below provides a visual representation of these types and their associated characteristics:

Figure 6: Continuum of interview types.



At the extremities of the continuum are opposing interview types. At the far left, ‘structured’ interviews provide for a tightly managed, consistent experience for both the interviewer and the interviewee. The application of this type of interview approach is designed to restrict the respondent to very specific answers, often limited to binary ‘yes’ or ‘no’ responses. The aim of structured interviews is to expose each interviewee to an identical experience (Fontana & Frey, 2005) and, by doing so, any variance in outcome response can, with confidence, be solely understood in terms of participant variation, to the exclusion of variance introduced by the interview process itself (Singleton & Straits, 2002).

At the opposite end of the continuum, ‘unstructured’ interviews expose each participant to a singularly unique experience, in which questions and narrative themes are allowed to evolve as the interview progresses. Kvale (1996) says of unstructured interviews:

‘Sometimes only a first, topic-introducing question is asked and the remainder of the interview proceeds as a follow-up and expansion on the interviewee’s answer...’ (Kvale, 1996, p127)

Often, the conceptual framework of the interview strategy, as well as the interviews themselves, are informed dynamically by the responses of participants in the interview

being conducted as well as those of participants in preceding interviews. As such, no two interview experiences are ever the same.

Whereas structured interviews produce a data set which is easily comparable across participants, the product of un-structured interviews, although rich in content, are not so readily contrasted or analysed.

Although this study seeks answers to some very specific questions, such as those pertaining to length of service, investigative experience and statistical data around volumes of parades (found at questions 1 through to 7), which, it could be argued are ideally suited to a structured interview approach, it also sought to capture the personal experiences and views of investigating officers as well as their perceptions as to how juries interpret the presentation of identification evidence at trial. Conversely, the harvesting of these narrative accounts is perhaps better gathered via a more 'ethnographic', 'un-structured' interview approach.

Situated equidistance on our continuum from each of the interview typologies discussed above is 'semi-structured' interviews. As the name suggests, semi-structured interviews adopt some of the elements of interview rigidity found in 'structured' interviews (in that each respondent is posed with an identical question protocol) but also embraces a degree of fluidity so familiar to practitioners of an un-structured approach. While semi-structured interviews similarly facilitate the same, pre-determined questions being asked of each participant, the interviewer is permitted the autonomy to probe and develop narrative themes in more depth as they emerge (DiCicco-Bloom & Crabtree, 2006). Additionally, whereas the interviewer / interviewee relationship is of little significance to

the outcome of structured interviews, that relationship becomes of increasing importance when we seek to employ semi or un-structured interview typology.

These latter interview approaches, semi-structured and unstructured interviews, inevitably play to my strengths as an ‘insider’, allowing me to capitalise on the rapport I have with participants through our shared professional histories. Furthermore, semi-structured and unstructured interviews allow me to utilise interview techniques that I have developed during my professional career, such as probing, re-questioning and clarifying, which Gillham (2005) describes as ‘core interview skills’.

To not take advantage of these potential benefits seems foolhardy and contradictory to a research design that seeks to make the most of my research situation. Taking these factors into consideration, the ‘best fit’ interview approach to the research needs of this study, and that which best exploited my unique research situation, was the application of ‘semi-structured’ interviews. This approach encompasses the favoured characteristics of the alternatives at opposing ends of the continuum, allowing for the speedy and accurate collection of raw data, while still providing an environment in which personal narrative accounts could be explored and captured.

Sample selection – Participant Inclusion / Exclusion criteria

The importance of designing and applying a valid sampling strategy cannot be overstated as sampling and sample selection are intrinsically linked with questions of validity and the ability to generalise research findings. As a setting out point the first issue to be reconciled when formulating a data sampling strategy is whether to adopt a probability (which includes for example, simple random sampling; stratified random sampling;

systematic sampling, and cluster sampling) or non-probability sampling approach (which includes for example, purposive sampling; quota sampling; accidental sample, and self-selected sampling).

While it is generally accepted that randomised probability sampling techniques allow for results to be more readily generalised from sample to the population (Robson, 2002), Mays and Pope (1995) argue that qualitative researchers are more likely to choose non-probabilistic sampling methods (such as those adopted in this thesis) as their interests lie in understanding social processes, not achieving statistical representativeness. Similarly Powell (1997) suggests that:

‘...it may seem preferable to select a sample based entirely on one's knowledge of the population and the objectives of the research.’ (Powell, 1997, p69).

Given the qualitative nature of the research and that the research objective was directed at establishing the content of any post-identification information provided to witnesses, not from police officers in general but specifically from those ‘actively involved’ in investigations, non-probability data sampling methods were considered to be best suited to the research task. This decision is consistent with the views of Miles and Huberman (1994) who state that, for that very reason, qualitative samples tend to be purposive rather than random.

Having been assisted and informed by the work of Miles and Huberman (1994) in the determination as to the adoption of a purposive sampling strategy, they assist us further with the provision of a useful ‘checklist’ against which they suggest we consider any proposed sampling strategy. The questions they propose we ask of our sampling frame

are as follows (italics are as they appear in the original text, clearly highlighting the key concepts Miles and Huberman wished to convey):

- Is the sampling relevant to your conceptual frame and research question?
- Will the phenomena you are interested in appear? In principle can they appear?
- Does your plan enhance generalisability of your findings, either through conceptual power or representativeness?
- Can believable descriptions and explanations be produced, ones that are true to real life?
- Is the sampling plan feasible, in terms of time, money, access to people, and your own work style?
- Is the sampling plan ethical, in terms of such issues as informed consent, potential benefit and risks, and the relationship with informants?

(Miles & Huberman, 1994, p34)

In the context of the research conducted for this thesis, the question of relevance, as proposed by Miles and Huberman (1994) necessitated the narrowing of the sampling frame from all 'Police Officers' within the sample population (n=396), to 'operational investigators' (n=74) i.e. those officers within the sample population who fell within the authors definition of being:

'Police officers who, at the time of sample selection, are directly involved in operational policing and secondary investigations.'

By narrowing the sample frame in this way participants could be limited to those amongst who the phenomenon under investigation was likely to appear. Furthermore, the distinction precluded the inclusion of officers employed in training roles, or other 'back hall' activities, whose lack of investigative experience would have called into question

the believability of any account or explanation produced and could potentially skew the result. For the same reason the definition limits the sampling frame to officers '*directly*' involved in operational policing and secondary investigations. This rider was added to the sampling definition so as to exclude senior officers (Inspector and above) as, although strategically involved in investigations, they do not ordinarily engage directly with witnesses.

In applying a sample frame in this way the research adopts a deliberately non-random method of selecting participants, in essence, a purposive sampling approach in which participants are included based on their unique roles or knowledge relevant to the research being undertaken (Bowling, 2002). This is consistent with the research approach used by Leedy and Ormrod (2001, p219) who apply the term purposive sampling in circumstances in which subjects are selected for a pre-defined purpose; implying the application of judgment on the part of the researcher. Mays and Pope (1995) argue that purposive samples generated in this way, while they are not generally representative statistically, are both relevant to the research question and theoretically informed.

Despite the fact that the primary driver for adopting a purposive sampling approach was a desire to interpret social processes in action, as alluded to by Mays and Pope (1995), the research design remained alive to the secondary need of addressing any criticism regarding statistical relevance. As Miles and Huberman (1994) alluded to earlier, statistical relevance is critical if the research aim seeks to make findings generalisable to the wider population. Similarly, Punch (2005) points to the need to demonstrate

‘representativeness’ in the sampling strategy if an objective of our research is to draw sample-to-population inferences.

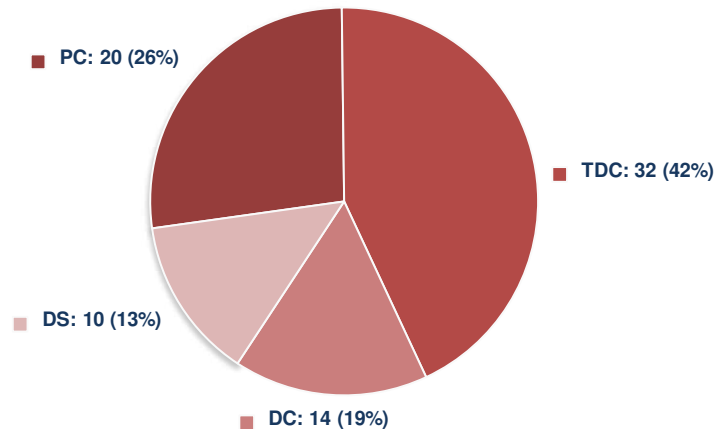
With these issues in mind the remaining sample population, made up of officers below the rank of Inspector (post application of the sample selection definition), were then stratified into sub groups of rank¹⁵. Although, in real terms, the cohort only actually represents two official ranks; that of Sergeant and Constable, the distinction between Police Constable, Trainee Detective Constable and Detective Constable, are understood within the organisation to be hierarchically significant. This comes from a historic perspective in which Detectives were seen as being intellectually superior to their uniformed colleagues and is reinforced by the fact that, in order to be a Detective, uniformed officers are required to sit the NIE¹⁶ and go through a period of personal and professional development. That’s not to say that there are any intellectual differences, merely that actors within the organisation perceive these roles as being hierarchically significant. This hierarchical sub culture is seen not only in the difference between detectives and uniformed officers, but can also be found internally within the uniform branch where specially trained officers, such as authorised firearms users and dog handlers, receive a similarly elevated hierarchical position. For this reason the use of the word ‘rank’ is not to be understood in its truest sense, moreover it is used in this thesis in its hierarchical connotation to distinguish between PC’s, TDC’s, DC’s and DS’s.

¹⁵ **PC** = Police Constable; **TDC** = Trainee Detective Constable, a PC who has passed the National Investigators exam but has yet to complete their work based assessment portfolio; **DC** = Detective Constable, a PC who has successfully completed the National Investigators exam, work based assessment portfolio and probation period to become a substantive Detective; **DS** = Detective Sergeant, Sergeant being the first supervisory rank in the hierarchy, Detective denoting have become or were prior to promotion, substantive Detectives.

¹⁶ The National Investigators Exam (NIE) consists of 80 questions over two hours designed to test the candidate’s knowledge of law and procedure relevant to the role of trainee investigator (College of Policing 2014).

A breakdown of the rank demographic within the data set is detailed in the chart overleaf:

Figure 7: Pie Chart showing Rank Demographic of Investigators at Research Site (N = 76).



Ideally I would have liked to have been able to include the complete data set within the study. Unfortunately such a task was beyond the scope of the resources available to me as a sole, part time researcher. As Miles and Huberman rightly comment, as much as you might like, you cannot study everyone, everywhere, doing everything.

In recognition of the limitations of my own research capacity, once stratified into 'rank', a sampling ratio of 2:1 was applied to reduce the cohort to a more manageable size. This approach is consistent with the previously documented advice of Miles and Huberman (1994) that the implementation of the sampling plan should be within the means of the available research resources, i.e. it should be feasible. Post application of the sampling ratio to the sample population, the cohort was reduced to 38 participants made up of 5 DS's, 7 'DC's', 16 'TDC's' and 10 'PCs'.

In addition to ensuring all ranks were represented in the sample, consideration was also given to ensuring representation of each of the secondary investigation units. This was discounted for a number of reasons; firstly as the each of the investigative units are similarly placed to have necessity to incorporate identification procedures within their investigations, meaning that the data sought is not department specific, and, secondly, that the BOCU on which the research took place implemented a 'tenure' policy on each unit, ensuring rotation after twelve months to a different department or unit. For these reasons, the need to ensure representation of department within the sample frame was discounted.

At this juncture it is perhaps sensible to explain the rationale employed in determining that the available population should be limited, in the first instance, to police officer - to the exclusion of other members of the police family:

Although participants in identification procedures may potentially receive feedback from a number of sources, in addition to the officer responsible for investigating their particular crime (referred to within police circles as the Officer in the Case or 'OIC'), this thesis is concerned only with those sources under the control of the judicial system i.e. 'system variables' (Wells, 1978).

At varying points in the judicial timeline witnesses and victims are updated by police staff case builders (who have responsibility for trial preparation) as well as police staff employed in borough witness care units (who have responsibility for updating witnesses about trial dates and the like). After consideration these potential sources of information were excluded from the study as, although they do interact with witnesses and victims,

any updates they provide are limited to post charge information such as forthcoming trial dates, court attendance and judicial outcomes. The responsibility for providing 'investigative' updates remains the responsibility of the OIC. Furthermore, with the implementation of the Victims Code of Practice contained within the Youth Justice and Criminal Evidence Act 1999, the responsibility of OIC's to maintain regular contact and provide 'investigative' updates, the likes of which might include information about identification procedures, the existence of CCTV and forensic evidence for example, has now been placed within a legal framework.

Under the Youth Justice and Criminal Evidence Act 1999 strict time parameters are set, within which victim and witness updates should occur. If an arrest is made for example, the OIC has to notify the victim within 5 days, or within 1 day if the victim is deemed as being vulnerable or intimidated (Youth Justice and Criminal Evidence Act 1999). Regardless as to whether there have been any developments in the case or not, contact must be maintained on a monthly basis.

In order to comply with this legislation, the OIC remains the principle point of contact for victims of crime, and the conduit through which investigative updates are passed¹⁷. We can therefore, with certainty, exclude other police family members from the study cohort.

¹⁷ Compliance with the victims codes of practice is recorded on the Mets Crime Reporting Information system 'CRIS', which prompts OIC's for action

Ethical Issues

Any academic enquiry that involves the gathering of data from or about people, be it quantitative or qualitative, will inevitably generate a number of ethical questions. These questions become more acute in qualitative research however as its human interaction is invariably more intrusive (Punch, 2005). The need to address ethical concerns will not come as a surprise to any researcher; the general issues are well documented and easily anticipated: Punch (1994), for example, suggests that the main areas that necessitate the researcher's attention are harm, consent, deception, privacy and confidentiality of data. Soltis (1989) identifies similar areas of concern, suggesting we understand research ethics in terms of its ability to violate privacy, abridge confidentiality and cause others harm. Others, such as Haverkamp (2005), recommend professional codes of ethics, such as those provided by the British Criminology Society, should be adopted and amalgamated with underlying ethical principles.

All of these suggestions are valuable and informative. In the absence of any single model however, I've found Miles and Huberman's framework of 11 ethical issues particularly useful.

The table below, table 5, lists each of the 11 ethical issues Miles and Huberman (1994) point too as requiring the researcher's attention. The table has been adapted so as to include a brief overview of how each element has been addressed within this thesis (research response) and the location within the thesis or appendices where further information or explanation can be found (location in thesis or appendices where addressed)

Table 4: 11 ethical issues researchers need to address before, during and after research. Adapted from Miles & Huberman (1994, p290-297)

Issue to be Addressed	Question Posed to Researcher	Research Response	Location in Thesis or Appendices where Addressed
Worthiness of the Project	Is the contemplated study worth doing Will it contributed in some significant way to a domain broader than my funding, my publication opportunities, my career?	Research activity adds to the existing practical and theoretical body of knowledge. Research will generate recommendations for training and / or policy.	Introduction: Research objectives Practical & theoretical value of the research
Competence Boundaries	Do I have the expertise to carry out a study of good quality? Or, am I prepared to study, to be supervised, trained or consulted, to get the expertise? Is such help available?	Previous study - undergraduate degree. Research training. Thesis supervision.	Chapter 3: Methodological issues. Chapter 4: Research design
Informed Consent	<i>Do the people I'm studying have full information about what the study will involve? Is their consent to participate freely given? Does a hierarchy of consent affect such decisions?</i>	Participant information sheets prepared and provided. Written consent obtained. Consent confirmed on tape	Participant information sheet (see appendix 5). Consent form (see appendix 6) Interview transcript (see confidential folder).
Benefit. Cost, Reciprocity	What will each party to the study gain having taken part? What do they have to invest in time, energy or money? Is the balance equitable?	Organisational benefit in the form of recommendations. Personal benefit through implementation of recommendations.	Chapter 5: Recommendations
Harm & Risk	What might this study do to hurt the people involved? How likely is it that such harm will occur?	No foreseeable risk to participants identified.	Chapter 4: Ethics section for Study 1 and Study 2
Honesty & Trust	What is my relationship with the people I am studying? Am I telling the truth? Do we trust each other?	Researcher – Participant. Research position is explicitly set out in the participant information sheet.	Chapter 3: Reflexivity as a research approach. Chapter 3: The researcher as an insider / outsider. Participant information sheet. (see appendix 5)
Privacy, Confidentiality & Anonymity	In what ways will the study intrude, come closer to people than they want? How will information be guarded? How identifiable are the individuals and organisations studied?	Data set is retained by researcher in secure location. Participants and research site is anonymised. Confidentiality agreement obtained from MPS typist.	Participant information sheet. (see appendix 5) Interview transcripts (see confidential folder) Confidentiality contract (see appendix 7)
Intervention & Advocacy	What do I do when I see harmful, illegal or wrong behaviour by others during a study? Should I <i>speak for anyone's interests besides my own? If so, whose interests do I advocate?</i>	My position as a supervising officer places an obligation on me to report wrong doing or criminality as does compliance with the BCS code of ethic	British Criminology Society code of ethic.
Research, Integrity & Quality	Is my study being conducted carefully, thoughtfully and correctly in terms of some reasonable set of standards?	Research has been approved by the CCCU ethics committee and the MPS SRAU	Chapter 3: Methodological issues. Chapter 4: Research design

Ownership of Data & Conclusions	Who owns my field notes and analyses: myself, my organisation, my funder? Once written, who controls its diffusion?	All material including generated data remains property of the researcher. Researcher determines where published or how research is to be disseminated.	Thesis declaration.
Use & Misuse of Results	Do I have an obligation to help my findings be used appropriately? What if they are used harmfully or wrongly?	An objective of this research is to inform current policy and make recommendations for reform.	Introduction: Research objectives Practical & theoretical value of the research

In addition to the general ethical issues that are common to most research undertakings (which are set out above) a number of research specific ones also emerged as a direct result of the implementation of the pilot study.

The first is linked to the previously discussed research situation and its juxtaposition to my organisational and hierarchical position within the organisation. While some of the theoretical implications for potential bias associated with my research situation are capable of being considered and anticipated at the development stage, it does seem that it is only upon implementation that some of the more practical issues emerge. In the first example the emergent ethical issue was one of simply how to dress, while this may seem on first consideration to be rather innocuous it quickly became apparent that it was an aspect of the research design that was capable of exerting significantly impact, not only on how I was perceived by participants, but also on assumptions they were likely to draw about my alignment with the MPS, my hierarchical independence and the autonomy of the research.

Having identified a suitable location in which to conduct the interviews I made sure that, when conducting subsequent visits, I did so in 'plain clothes'¹⁸. When actually conducting the research I deliberately wore clothes that implied I was present in my capacity as a civilian as opposed to merely on duty but 'in plain clothes', I found the student staple of tatty jeans, tee-shirt and converse trainers achieved this objective to good effect.

In addition to trying to distance myself from my organisational identity by my attire, I also chose not to wear my lanyard displaying my warrant card. Despite being a security requirement when in a police building out of uniform I was conscious that the lanyard, and warrant card within it, not only exposed me as an insider but also encouraged the participants to defer to my rank. Such deference, and differences in status and power, had the potential to seriously inhibit my ability to develop rapport (Oakley, 1981).

'It is incumbent upon the researcher to overcome disadvantageous identification with the administrative structure of the organisation and seek contingent acceptance of the research from the proposed subjects where necessary.' (Fox & Lundman, 1974, p59)

As part of the research design consideration was given to obtaining a visitors pass, which would have satisfied both the security requirement as well as my desire not to display my warrant card. I discounted this idea on ethical grounds as it introduced a degree of deception which had the potential to undermine my position and alienate me from the subject group.

¹⁸ 'Plain clothes' in a policing context is implied to mean 'smart casual wear', jeans, training shoes and tee shirts are generally not acceptable unless deployed in a role that requires such attire (such as drug squad).

Because of my own concerns about the potential for researcher bias to infiltrate the study, and an awareness of the need for continued vigilance as to my research position and status, the adoption of a reflexive methodological approach has been critical. This issue becomes particularly pertinent when interviewing subordinate officers. An area of specific ethical and methodological concern was that participating police officer may have been worried that any shortcomings in their knowledge, discovered through the research process, may have been made known to their supervising officers or peers. Fox and Lundman comment upon their own experience of a similar situation as follows:

‘When observation of organisational activities is focused on the lower levels of a hierarchical structure, those observed can become suspicious that data being gathered are being fed to their superiors. Subjects may fear that such information could be damaging to their future lives within the organisation.’
(Fox & Lundman, 1974, p58)

I was very much aware that, had I not pro-actively addressed this ethical issue in the research design, subject police officers may have refused to participate or participated reluctantly and with real concerns about the integrity of the process. Clearly both scenarios had serious ramifications ethically and in terms of the likelihood of obtaining a meaningful research product.

This issue was addressed by the provision of a comprehensive participant information sheet (see appendix 5) which dealt explicitly with ethical issues, questions of participant confidentiality and data storage. Additionally the participant information sheet iterated that the research product would be anonymised prior to publication and that participant’s responses would not be reported to their organisational superiors.

I sought to further clarify my research position by making sure that my role as a 'researcher' preceded the revelation that I was an employee of the MPS. Similarly under 'any questions' I ensured that my principle contact address was my university email account. By implementing these measures I hoped it would be apparent to the participant in which capacity I was primarily operating, while at the same time ensuring that everyone involved was aware of my 'insider' status.

To further propagate my 'non organisational' role I adopted a deliberately more relaxed attitude than I ordinarily would when at work in 'plain clothes'. I addressed senior officers by their first name and encouraged junior officers to address me in the same manner. I found that these measures, when operating together, provided the required degree of reassurance and confidence, effectively establishing me in the research arena as a 'researcher' while making it patently clear that I was also a police officer.

Another ethical issue that presented itself during the pilot interviews was an unexpected request by one of the participants for a copy of the interview tape. In hindsight such a request could have been anticipated and a strategy developed to deal with it, in the moment I elected to provide a copy as requested, and was able to accommodate the request at the time as, rather fortuitously, the recording equipment being used made both a master and working copy tape simultaneously. Upon supplying the working copy I did, however, ask the participant to maintain its integrity and not to allow it to be disseminated amongst the sample population. After the incident I reflected upon the decision to provide a copy of the interview and maintain that the decision was correct. I considered that to have denied the request would have been unethical and contradict my research ethos of openness and transparency; moreover such a denial could have

introduced an element of distrust and suspicion, capable of undermining the research. Aside from the ethical issues it could also be argued that both the interviewer and interviewee share an equal degree of intellectual copyright and therefore legal entitlement, over the tape and its content.

Having confronted this issue consideration was given to amending the police officer participant information sheet to include some guidance on the availability of a copy of the interview. This was decided against for two reasons; firstly, I had concerns that, if offered, the majority of participants would instinctively elect to have a copy for no more reason than one of availability, and, secondly, once out of my control, the interviews could be disseminated outside of the pilot sample and contaminate the study group. As a result no amendment was made to the information sheet, if requested a copy of the tape would be provided.

Interview Development and Pilot

The syntax, structure and sequence of the questions used in the semi-structured interviews went through a number of developmental changes prior to being applied. The changes made to the question design were influenced by the learning obtained from the pilot and feedback from the research thesis supervisors.

As a means of monitoring the evolution of the interview questions design I maintained a record of significant revisions and the rationale behind any changes made. A summary of the main changes is recorded below.

As I suspect is common with the development of most semi-structured interview designs the first draft, in hindsight, was very utilitarian; reflecting my focus at that time on the data that I sought to gather with little consideration to the conversational realities and etiquette that need to exist in order to develop a relationship with the participant.

Version one, for example, started without introduction or lead in and immediately asked the question ‘What investigative role do you currently perform?’ While this question is valid, and in fact remained through to the final draft, when asked in isolation and without the normal conversational foreplay it inevitably comes across as rather abrupt, unnatural and a little confrontational. My realisation of this phenomenon is by no means groundbreaking, Seidman (1998) for example advises researchers to invest time and effort at the start of interviews in order to establish an appropriate level of rapport. For this reason the final interview structure design incorporated an introductory paragraph that was read out upon commencement of the interview.

The need to ensure the interviews adopted a more relaxed and natural approach became apparent when the questions were trialled during the pilot study. When implementing the initial version of the questions I found it necessary to introduce ad hoc conversational ‘fillers’ in order to avoid the social discomfort created by the bluntness of the overall interview design. On reflection I decided that, if I was feeling uncomfortable with the conversational situation the interview was creating, then the participants must be feeling equally uncomfortable, a situation unlikely to be conducive to maximising my research opportunity. In addition, the compelling desire to fill the conversational void created by the absence of any lead in sub text meant that the uniformity I sought to instil by the

application of semi-structured interviews had the potential to be lost or otherwise confounded through the introduction of un-orchestrated conversation.

For these reasons subsequent versions of the interview question plan adopted a structured conversational approach, typified by changes made to the format of the question below that appeared (in some guise) in all three versions of the interview.

In the first version question 8 asked of the participant:

'How do witnesses who participate in Identification Procedures find out whether or not they have made a positive selection?'

Despite participating in numerous suspect interview training courses, in which the use of 'closed' questions is actively discouraged, this question still managed to infiltrate the preliminary draft of the questionnaire. Clearly couching the question in a manner which implies that witnesses do find out whether or not they've made a positive identification creates a situational pressure on the participant to respond in accordance with that suggestion. This question was rephrased into an 'open' question in a subsequent version in which the same question appears as:

'If you were a witness would you want to know if you made a positive selection?'

In the final questionnaire question 9 posed substantively the same open question but frames it in a structured conversational context, thus:

'I'm going to ask you about the experience eye witnesses have when they become involved in an investigation. Try and put yourself in the position of a witness when answering these questions: If you were a witness involved in an ID procedure, would you want to know if you had made a positive selection?'

While it could be argued that the conversational element introduced in the final question format was somewhat contrived, it did introduce a conversational framework in which questions could be posed in a more natural setting. Inevitably, strict adherence to the question structure had the capacity to re-introduce the unnatural, prescriptive, element to the interactions that I had been so keen to move away from; I avoided this by permitting myself the autonomy to introduce minor deviations to the lead in sentences to suit the individual interview dynamic. By so doing the interviews became more ‘conversational’ and natural but, critically, retained the desired degree of consistency across the interview portfolio. As Seidman (1998) comments, developing the appropriate level of rapport in the interview relationship can indeed be a delicate balance!

While some questions were capable of being redrafted so as to achieve their inquisitive objectives, others were removed in their entirety. Question 10, as it appeared in the second version of the questionnaire asked:

‘On a scale of 1 to 10 how persuasive do you think eye witness evidence is when presented at court?’ (1 being not at all persuasive and 10 being very persuasive)

During the pilot I found that this question was just too obtuse, as it asked participants to articulate a numerical value, from a Likert scale, to their interpretation of how persuasive eye witness evidence was when presented at court. This proved problematic for two reasons, primarily as it expected participants to put a value on how persuasive someone else (the court) perceived eye witness evidence to be, and secondly as participants instinctively sought to qualify the question by applying it to individual experience that they had had. It raised the obvious question in participants’ minds of, *‘well it depends doesn’t it?’* Evidently a good witness who saw the suspect clearly and presents that

evidence to the court in a confident manner could be highly persuasive, while a poor witness, who only had a fleeting glance at the witness in the dark, is likely to be less persuasive. This dilemma in interpreting the question manifested itself in the participants' responses:

'Depends on ... well, you would think every witness would be credible anyway wouldn't you, so I think the jury should take it at eight to ten.'

Pilot participant 'P2'

and

'It depends on the witness doesn't it, a good witness who says what they saw and are sure are going to be 10.'

Pilot participant 'P1'

For this reason the question, which in hindsight was ill conceived, was removed and supplemented in the final version with question 8:

'How significant is it for you as an OIC if a witness in one of your cases makes a positive identification at an ID procedure?'

In rephrasing the question, participants were asked to qualify the significance from their own experience as opposed to asking them to interpret how significant they thought eye witness evidence was to a court, a question that, in hindsight was clearly incapable of being answered with any degree of certainty.

While some questions, such as the ill-fated question 10 from version 1, fell by the wayside others were added. In the final sequence of questions for example, a new question (question 15), was introduced asking participants how they prepare witnesses for court:

'Giving evidence at court can be quite daunting for witnesses. As an OIC how do you prepare witnesses for court?'

This question was deliberately framed in general, nonspecific terms, so as to allow participants to provide a genuinely honest and unprompted response. Having read so widely on issues of suggestibility I decided that to direct participants to the area I wished to address may be rather self-defeating; instead the question facilitated respondents with the opportunity to provide their own accounts, ultimately allowing the data to speak for itself.

The probative purpose of this question was to establish whether officers were limiting their advice to issues of witness 'preparation' (such as explaining the layout of the court and the different roles of actors within it) or whether, unwittingly or otherwise, the officers were 'coaching' witnesses; and by so doing encouraging them to portray characteristics, such as inflated confidence, likely to affect a Jury's perception of their evidence (see: Rahim & Brodsky 1982; Bringham & Wolfskeil 1983).

The distinction between witness 'coaching', or 'training' as it is referred to in legal circles, and witness 'preparation' is an important one and one that is set out in case law. In the Court of Appeal case of R v Momodou and others (Court of Appeal 2005) the now Lord Chief Justice, HHJ Judge, made that distinction clear; witness 'preparation' he said, which encompasses familiarisation of a witness with the court layout, judicial process and the like, was entirely acceptable, witness 'training' however, which amounted to coaching the witness about the evidence they were to give and the manner in which they gave it, would be regarded by the court as wholly inappropriate as it created a risk that the accuracy of the evidence might be affected.

‘The witness should give his or her own evidence, so far as practicable uninfluenced by what anyone else has said, whether in formal discussions or informal conversations. An honest witness may alter the emphasis of his evidence to accommodate what he thinks may be a ... more accurate or simply better remembered perception of events.’ (Lord Chief Justice, HHJ Judge Court of Appeal, 2005)

As a result of the Court of Appeals decision the regulatory body representing Barristers in England and Wales provided the following advice to their members:

‘A Barrister must not...rehearse, practice or coach a witness in relation to his evidence.’ (Bar Standards Board Code of Conduct, 2005)

Similarly, the regulatory body representing Solicitors in England and Wales, the Law Society, provided this, slightly more ambiguous, advice:

‘...coaching may amount to attempting to influence a witness and so misleading of a court but it is not clearly prohibited.’ (Law Society, 2011)

While the findings on R v Momodou and others resulted in professional guidance to other legal professionals, no such guidance can be found for police investigators in the National Detectives Development Program, the ICIDP. Inevitably, the ramifications for a case, should the court discover that the police had so ‘trained’ a witness, are likely to be the same as one in which a member of the Bar Council or Law Society had transgressed the rules. The judicial result is likely to be one of the following, from a sliding scale:

- A cautionary word of guidance from the Judge to the Jury on their acceptance of the evidence that any ‘trained’ witness had provided.
- Inadmissibility of that witnesses evidence.
- Dismissal of the case.

- Consideration by the Judge of a report to the offending legal professionals governing body.
- Consideration of charges of contempt of court or perverting the course of justice.

The very existence of these rules and the associated case law, are, in my mind, evidence that other legal professional (lawyers and barristers) have begun, probably unwittingly, to regard some forms of post-event information as 'system variables'.

Considerable thought was given not only to the content of the questions but also to the order in which they were introduced into the interview. Bryman (2004) comments that, in conducting an interview significant importance should be placed on question order, and that:

'Researchers should be 'sensitive to the possible implications of the effect of early questions on answers to subsequent questions.' (Bryman, 2004, p221)

This is particularly important when participants are asked challenging questions that make them feel uncomfortable or anxious; once again Bryman (2004) provides valuable advice:

'Potentially embarrassing questions or ones that may be a source of anxiety should be left till later. In fact, research should be designed to ensure that, as far as possible, respondents are not discomforted, but it has to be acknowledged that with certain topics this effect may be unavoidable.' (Bryman, 2004, p221)

For this reason, and additionally because Bryman suggests that questions dealing with attitude and opinion should precede questions to do with knowledge, questions that tested the officers familiarity of legislation and police procedure (questions 17 and 18) were left to the very end of the interview. Conversely, non-contentious, confidence building

questions, such as the officer's rank, length of service and investigative experience were located at the start (questions 1, 2 and 3).

At the conclusion of the interviews a 'catch all' question was introduced which provided participants with an opportunity to 'say, add or clarify' any issues previously discussed.

Pilot Study

In order for the pilot process to be reflective of the intended study a minimum requirement was made of it that at least one interview be conducted across each of the sample strata. In reality this requirement was exceeded in most cases. The decision to include all ranks in the pilot was borne out of a desire to validate the questions and interview structure across the full spectrum of knowledge and experience.

When determining the scale of the pilot consideration was given to the comparative size of the complete data set. The pilot had to be sufficiently large to test the questions, while remaining small enough so as not to impinge on the sample group that would remain 'available' for the study proper. As previously documented, in all, 7 semi-structured interviews were conducted in the pilot.

Learning from Recording of Pilot Interviews

Upon being provided with suitable recording equipment the pilot interviews commenced and were recorded in the same manner anticipated for the study proper. Upon undertaking the first pilot interview a significant, unanticipated, problem presented itself; all police audio recording equipment used for interviewing suspects and witnesses, including portable devices such as that used in this research, incorporate a loud, extended,

audible 'beep' at the commencement of recording. The 'beep' serves a number of distinct purposes:

Firstly, it serves a practical purpose in that the 'beep', which lasts for 10 seconds, ensures that the interview does not begin while the non-magnetic lead in part of the recording spool winds through the machine, as, during this time the machine is incapable of recording.

Secondly, it clearly delineates the beginning of the formal, evidential aspect of an interview, making it patently clear to the interviewee and the interviewer alike that all conversation from that point forward will be recorded and, as such, form part of the evidence capable of being adduced as evidence at court. At the conclusion of the beep the officer conducting the interview is required by law to make a formal announcement in which they introduce the persons present, the time, date and location of the interview and of course explain the caution (Police & Criminal Evidence Act, 1984, Codes of Practice, Code 'E' para 4.3–4.6). Officers are well versed in this process and often recite the paragraph from memory, instinctively at the conclusion of the beep. On the first occasion that I used the portable police recording equipment as part of the pilot process, I found myself compelled to enter into such verse and, in doing so, inadvertently cautioned my interviewee that *'You don't have to say anything but it may harm your defence if you don't say now something which you later rely on in court, anything you do say may be used in evidence.'* Police & Criminal Evidence Act, 1984.

Furthermore, I became acutely aware that the 'beep' had changed the very nature of the interview and introduced a formality to the situation that was not previously present. It

was apparent that the audible trigger had a noticeable effect on the officers, clearly putting them on edge, presumably as a result of the fact that the only time they are likely to be the interviewee in such a situation is when interviewed for disciplinary matters by the Department of Professional Standards (DPS). All of these feelings associated with the beep had a negative connotation for the interview and clearly needed to be addressed.

The obvious solution was to de-activate the beep, unfortunately, despite my own efforts, and that of the TSU, the device seemed reluctant to comply and, as a result, a number of techniques were trialled during the pilot designed to remedy the situation. The first approach was to activate the recorder immediately upon entering the room with the participating officer, allowing the audible queue to come to an end while the officer and I were making ourselves comfortable. An alternative approach used during the pilot was to talk over the beep and engage the officer in general conversation until the sound had subsided. Although both approaches went some way towards reducing the impact of the 'beep', its presence continued to change the dynamic of the situation. Ultimately I opted for starting the device prior to the officer entering the room. This process, although inconvenient, seemed to be the most efficient solution to the problem.

In addition to the effects brought about by the device's audible presence in the interview, I also became aware during the pilot that its physical presence was having a bearing. To mitigate any negative effect I not only adopted a strategy of starting the tape prior to the officer entering the room, but also elected to locate the device out of the interviewee's line of sight. The pre-interview information sheet and consent form both made it clear that the interview was going to be recorded, a point I re-iterated on tape at the start of each interview.

Minimising Contamination of Sample Group by Pilot

Ideally I would have liked to have conducted the pilot at a location separate from that at which I later conducted the research, my motivation being borne out of a desire to limit the degree of exposure to the sample group of the research design. I was primarily concerned that the officer interviewed during the pilot would go onto discuss their experience with colleagues who later formed part of the sample group. The potential ramifications of this being that officers I had yet to interview may conduct research around the interview topic to ensure they were appropriately informed so as to provide me with what they perceived to be the 'correct' answers to questions asked. Such an outcome would, of course, invalidate the research and provide false data incapable of reflecting reality. This concerned me not only during the pilot study but later, during the research proper.

Teijingen and Hundley (2001) provide a cautionary note regarding cross-contamination between the pilot study and the study proper, which they suggest may arise in two ways: Firstly where data from the pilot study are included in the main results; and secondly where pilot participants are included in the main study, but new data are collected from these people.

Both of these comments seem sensible, the former however seems to me to be contingent on the size of the available sample group. Certainly in this research undertaking there were sufficient numbers of officers available for interview so as to negate any need to include their data in the final study. Had the sample group been numerically challenging however, the advice from Holloway (1997) that the researcher should 'do away' with the

pilot and instead review the transcripts of early interviews in order to inform and improve subsequent ones, would seem to be a sensible and pragmatic solution.

The latter advice from Teijingen and Hundley (2001) [not to include pilot participants in the final study] seems equally sensible, inevitably collecting new data from participants who have previously been exposed to the research would invalidate any result, as their responses would reflect their previous experience and subsequent learning. I ensured that this was not the case in this study by highlighting officers on the spread-sheet of participants and prefixing their transcripts with 'P' indicating their participation in the pilot.

The limitations of the research authority from the MPS SRAU prohibited me from expanding the research area so as to be able to conduct the pilot at an alternative site. Clearly this would have been the ideal research design scenario as it would have negated the need for me to consider and implement mechanisms designed to prevent contamination between the pilot cohort and that of the study proper.

As a means to avoiding such contamination, prior to conducting the pilot, contact was made with the Human Resources department in order to identify officers that met both the sample frame criteria but were also imminently due to leave the BOCU either on compulsory transfer, selection to a new post or retirement. By adopting this strategy the potential for these officers to be present when the research proper was undertaken was reduced. In addition, the research design incorporated a fallow period of several months between the pilot and research proper. This period of research inactivity allowed any

contaminant effect amongst the research population, or increased awareness around the subject area, to dissipate naturally and revert to normal levels.

Additionally, for both the pilot and the research proper, effort was made (where practicable), to co-ordinate the interviews so that they fell on the final day of the participating officer's tour of duty. Similarly, where more than one participant was posted to the same investigative unit, the research design was such that their interviews, where possible, were conducted consecutively. By orchestrating the interview timings in this way the opportunity for the participating officer to discuss the research experience with colleagues was reduced.

Although not as far reaching as I would have liked, the contingency protocols implemented complied with the limitations set by the research agreement and were appropriate and implementable with the available resources.

Procedure

Although the time frame for completion of the semi-structured interviews was principally dictated by the availability of participant police officers and my own availability, the research design did incorporate an aspirational completion period of 6 months from beginning to end for data capture. The rationale for setting this research parameter was primarily to ensure that participating officers did not receive any routine mandatory training during the data capture phase. Although training, be it mandatory or role specific, is an inevitable and necessary element of the officer's on-going development, that which had relevance to the topic being researched did have the potential to significantly distort the data.

If, for example, midway through data collection half of the cohort received mandatory training input around eyewitness evidence then, inevitably, their knowledge and understanding would be significantly different from the untrained cohort element. Such a situation would result in a false representation of the officer's knowledge. Had that been the case however, it may have been interesting to review the interviews from each group i.e. those who had and those who had not received training input, in order to establish how effective the training delivery had been.

In order to minimise the risk of such a situation arising, enquiries were made with the training unit on the borough at which the research was being conducted with a view to establishing whether any training was scheduled to be delivered. As it was, no training plan existed around identification procedures and, as a result, none was scheduled to be delivered during the study period.

Perversely, upon making the enquiry, it became apparent that the very act of conducting the pilot research had highlighted the lacuna in training provision around this topic and had been the catalyst for the training unit to contemplate the need to prepare a specific lesson plan aimed at investigators and designed to give instruction around identification procedures and their application.

Although it was not my intention to highlight the lack of training at this stage of the research, the desire to improve the MPS's corporate professionalism around identification procedures, and by association improve the experience of witnesses and victims of crime, is one of the underpinning motivations for conducting the research. It

boded well for the thesis that, at such an early stage it was already exerting some influence over the organisation's training provision.

Had it been the case that training around identification procedures was scheduled to be delivered, consideration would have had to be given to either postponing the research or to completing the data capture in one instance prior to such delivery.

While the former option would have introduced a hiatus into the research timetable, the latter; completing 38 interviews in a single data capture session, would not have been achievable with the research resources available to me for this thesis.

Recording Equipment

Punch (2005) suggests that research design decisions, such as whether or not to audibly record research interviews, are best made at an early stage in the research planning process and further that the decision as to how to record any interview conducted, may be best informed by considering both the location, and situation, in which the interview will take place (Punch, 2005, p175). To elaborate; Punch says that, if the interview situation is likely to occur '*in the field*', [necessitating access to a power supply] then, inevitably, the use of electronic recording equipment may be problematic. Furthermore, if the interview design is highly structured, utilising the use of pre-coded check sheets, then the need to audio record may be redundant.

Despite the fact that the research being conducted was '*in the field*', the '*field*' in this instance was a police building, in which the availability of electricity was not likely to be problematic. That said, in light of recent and ongoing police budget cuts, the availability

of free electricity in a police building may be an area that future researchers need to consider!

As previously documented, the interview approach adopted in this study was semi-structured interviews. Both Punch (2005, p75) and Seidman (1991, p86-87) suggest that there are important advantages in recording interviews of this type. Bryman (2004, p119) similarly encourages us to record conversational interviews, commenting that the strategy of audibly recording provides for fewer errors in transcription as compared to a reliance on written notes made by the researcher. Oliver (2003) expands on this advising us that:

‘...note-taking cannot ensure the same degree of accuracy of recording the actual words spoken, let alone such often important matters as emphasis and pauses between utterances.’ (Oliver, 2003, p45)

Although the decision to record the interviews was primarily driven by the adoption of a ‘best practice’ approach, it was also based on my own prior research experience. In past situations, in which I had undertaken the dual roles of conducting the interview, while additionally trying to maintain a written record of what had been said, I’d found the task to be extremely distracting. Furthermore, it was my experience that the distraction was such that, not only was the natural flow of the conversation lost, resulting in a disjointed, staccato interaction, but additionally the resulting written product was not of the standard required for the purpose of analysis. In attempting to manage both tasks I found that my focus of attention became one of trying to remember what had been said, as opposed to considering a continuance of the conversation in order to pursue what was being said; a situation that detracts significantly from both the experience of the interviewer and the interviewee.

Location of Interviews

Considerable time and effort was invested in identifying a suitable location in which to conduct the interviews and indeed the equipment capable of recording them. Although the borough Commander had given consent for the officers to participate in the research activity while on duty, it was on the understanding that they would remain 'operationally available' while doing so, and that the interviews would be limited to a predetermined length of time. This conditional pre-requisite to the research impacted upon the interview strategy in a number of important ways;

Firstly, the interview location; For the convenience of the officers and so as to ensure they remained 'operationally available', i.e. had the ability to exit the interview at short notice and respond immediately to incidents should they be so required, the interviews were conducted on the site at which they paraded for duty.

Secondly, the interview length; A sensible expectation, agreed by the borough Commander prior to the research commencing, was to try and limit the Officers extraction from duty to a period not exceeding 30 minutes. This inevitably impacted on the structure and content of the interviews which had to be formulated so as to comply with the conditional consent provided by the Borough commander. As it was, the actual length of interviews ranged from the shortest at 17 minutes, to the longest at 49 minutes, while some interviews breached the agreed parameters I was able to truthfully report that the mean interview length was within the 30 minutes being almost four minutes shy at 26 minutes 17 seconds.

Having determined that the interviews were going to be recorded and that they had to be conducted within an operational police building, an obvious choice was to make use of the suspect interview rooms contained within the custody suite. These rooms, purpose-built for conducting and recording interviews contain professional hard-wired recording equipment¹⁹.

Such an option was inviting, not only for practical reasons of accessibility, but also because the technology installed in the interview rooms produces a high quality product, in digital audio and visual media. The quality of recording achieved in the interview rooms was unlikely to be replicated by any equipment available to me as a researcher. I considered this option at length but decided to discount it for the following reasons.

Firstly the interview rooms are located inside a secure custody area. The issue was not one of access as the researcher and the participant interviewees were police officers and thus had access to secure parts of the building; moreover it was one of environment. The custody suite is, by design, an uninviting and unwelcoming place; the décor is sterile, stark and clinical in its execution. Furthermore the tables and chairs within the interview rooms are fixed to the floor to prevent suspects using them as weapons or barricading themselves inside. The permanency of the furniture prevented me from creating a more conducive environment by deformatising the layout. In addition to the physical limitations of the interview rooms, I, along with other police officers I suspect, associate these rooms with formal, often confrontational interactions, a mind-set I was keen to distance the participant from.

¹⁹ Codes C & E of the Police & Criminal Evidence Act 1984 set out the requirement for suspect interviews to be audio recorded and conducted in an adequately heated, lit and ventilated room.

Having discounted the interview rooms as a viable venue other, 'non suspect' areas of the building were considered for suitability. On the first floor of the main building an informal meeting room was identified, suitably equipped with soft furnishings and a table. The room was devoid of any internal windows which provided the interviewee with a degree of privacy and prevented any distraction from curious colleagues. This room was subsequently used for the pilot interviews and all of the 38 interviews conducted in the study proper.

By discounting the custody interview rooms as a viable location for the research activity the opportunity to utilise the in-built recording equipment had been lost. As a result, consideration had to be given to sourcing an alternative means by which to record the interviews.

Prior to starting the pilot a number of portable recording platforms, including digital recorders, lap top based CD recorders and traditional cassette machines were tested. Unfortunately the resulting playback quality and usability proved unsatisfactory in all cases.

I again made use of my 'insider' status and consulted the Metropolitan Police Services Technical Support Unit (TSU). The TSU provide operational support to police officers and provide / build / install technical equipment to meet specific policing needs. The TSU suggested, and ultimately provided the Series 7000 NEAL portable interview recorder which is standard issue to officers conducting interviews at locations other than the police station where portability is an issue. These devices are professional quality evidential recorders designed to be taken to prisons and hospitals to conduct interviews.

The recorder is equipped with four wired microphones and, for evidential reasons, records on two tapes simultaneously; giving the user confidence that no data will be lost. Although heavy, the recorder is conveniently housed in a photographers' style aluminium briefcase for ease of transportation. This equipment, along with a supply of audio cassettes and access to a typist, familiar and proficient in audio tape transcription, was made available to me under my research agreement with the MPS.

Method of analysis

Because the data gathering process was so focused, through directed questions in semi-structured interviews, the level of sophistication required for subsequent analyses was significantly reduced. In the first instance an open coding method was adopted, the collective transcribed responses to each question were read thoroughly and key sentences or phrases were then manually highlighted on the hard copy transcripts. The highlighted sentences or phrases were then transposed into a master coding table. Having distilled the responses into more manageable chunks of relevant content the data was further interrogated and an inductive coding process was applied. Coding in this way allowed common phrases or concepts to dictate appropriate codes.

Perhaps the most straightforward means through which the coding strategy can be explained is by reviewing its application to the data obtained from one of the questions posed to participant police officers, in this case question 8 which asked participants:

'How significant is it for you as an OIC if a witness in one of your cases makes a positive identification at an ID procedure?'

The use of the adjective ‘significant’ inevitably invites participants to respond in like terms. This made the coding of such responses relatively straightforward as, in the majority of cases, participants reflected the terminology back. Responses were then coded into one of four frames: really significant, significant, not significant and not sure.

Examples of the application of each code are documented below:

Not Significant:

Participant No. / name	Q8 - How Significant is a Positive Identification?
37 Stella	<i>'Not so much with CSU jobs because we invariably know who the suspect is anyway, they're normally partners or ex-partner's that's the nature of our work. I suppose for other offences it may be more significant but not so much for CSU jobs'</i>

Significant:

Participant No. / name	Q8 - How Significant is a Positive Identification?
29 Natalie	<i>'Well if he doesn't admit it when he's interviewed and we do a parade and <u>he gets picked out</u> he'll probably be charged.'</i>

Really Significant:

Participant No. / name	Q8 - How Significant is a Positive Identification?
12 Denis	<i>'Well it's <u>really significant</u>, a positive identification is really good evidence, most people go guilty if they've been picked out on a parade.'</i> <i>'...most people will make no comment and wait and see if they get picked out, <u>if they do they know they're going to get charged</u>. If you have a strong case people will plead guilty and try and get a discount on sentence.'</i>

Out of the 18 participants whose responses were coded as ‘really significant’, 8 used that phrase explicitly, the remaining 10 sought to emphasize the fact that a positive

identification was more than merely 'significant' by introducing an intensifying adjective, examples of which are below:

'massively significant'

[Participant 11 'Holly': Detective Constable – 3 years secondary investigation experience]

'highly significant'

[Participant 38 'Frank': Detective Constable – 13 years secondary investigation experience]

'really important'

[Participant 30 'Caroline': Police Constable – 3 years secondary investigation experience]

Once coded the highlighted sentences or phrase that had previously been pasted into the master coding table were annotated with the appropriate code, this process was applied to each question.

To ensure reliability in coding a split reliability test was used in which a random sample of interviews (8 in total, made up of 2 interviews from each rank represented in the study) were coded by the author and then re-coded by a second researcher. The re-coding was conducted in such a way that the second researcher was blind as to the coding result of the first. Had there been any disparity in coding it would have been resolved by mutual agreement.

As a way of making the data more accessible, on completion of the coding process the results were transferred into a data review summary table in which the data was broken

down into responses from each rank as well as cumulatively. An extract from the table, as it relates to question 8, is shown overleaf:

Rank	Q8 - How Significant is a Positive Identification?
DS (5)	Significant - 100% (<i>n</i> =5) Really Significant - 60% (<i>n</i> =2)
DC (7)	Significant - 100% (<i>n</i> =7) Really Significant - 72% (<i>n</i> =5)
TDC (16)	Significant - 94% (<i>n</i> =15) Really Significant - 50% (<i>n</i> =8) Not significant - 6% (<i>n</i> =1)
PC (10)	Significant - 60% (<i>n</i> =6) Really Significant - 20% (<i>n</i> =2) Not sure - 4% (<i>n</i> =4)
Cumulative (38)	Significant - 87% (<i>n</i> =33) Really Significant - 48% (<i>n</i> =18) Not significant - 3% (<i>n</i> =1) Not sure - 10% (<i>n</i> = 4)

To make the dataset more accessible the key data, as it relates to each question, has been extracted and presented on a question by question basis in the findings section (see page 162).

Reliability and Validity

The concepts of reliability and validity have traditionally been associated to research processes that adopt a scientific, positivist research approach, i.e. those falling within the

quantitative research paradigm; their transferability to qualitative methods have been the subject of much debate.

In terms of reliability, on the quantitative side, commentators such as Stenbacka (2001) argue that it generally relates to concepts of measurement and that it is therefore incompatible with research that adopts a qualitative research approach. In fact she is rather vocal on the subject positing that:

‘...the concept of reliability is...misleading in qualitative research. If a qualitative study is discussed with reliability as a criterion, the consequence is rather that the study is no good’. (Stenbacka, 2001, p552)

This view typifies the view of a number of other proponents of the quantitative approach such as Smith (1984) who similarly argues that the traditional quantitative criteria of reliability and validity are not relevant to qualitative research. If we were to accept that as being the case the ‘generalisability’ of findings from qualitative studies also becomes questionable. Benz and Newman (1998) for example observe:

‘...we are unwilling to accept fully that generalisability is consistent with the qualitative paradigm...in principle, generalisability is the purpose of quantitative, not qualitative research.’ (Benz & Newman, 1998, p54)

These views typify the entrenched positions that have become so familiar to this debate. It does seem however, that the argument has moved away from this position in which qualitative researchers sought to bash the square peg of their research into the round hole of quantitative acceptability. Where the term ‘validity’ is clearly defined in quantitative studies, it seems to be accepted that, in qualitative studies, the term is used in a slightly

different way. Winter (2000) for example observes that ‘validity’ should not be understood as a single, universal concept, but, rather as:

‘...a contingent construct, inescapably grounded in the processes and intentions of particular research methodologies and projects.’ (Winter, 2000, p1)

Increasingly it seems the prevailing view is one of an acceptance of the differences between the opposing paradigms. Healy and Perry (2000) for example suggest that the quality of a study should be judged against the predetermined standards of the paradigm in which the research is being conducted.

In a similarly conciliatory tone, Johnson (1997) contends that qualitative researchers should recognise that some qualitative approaches are more suited to validity measures than others and that the application of the term ‘validity’ clearly distinguishes them. Johnson goes onto posit that, when speaking of research validity, qualitative researchers are referring to research that is plausible, credible, trustworthy and, therefore, defensible.

Lincoln and Guba (1985) similarly recognise the diversity of each paradigm, positing that qualitative researchers should transpose the quantitative terms of ‘reliability’ and ‘validity’ with alternative ones better suited to qualitative inquiry; they propose researchers consider ‘credibility’, ‘neutrality’, ‘confirmability’, ‘consistency’, ‘dependability’, ‘applicability’ and ‘transferability’ as being the essential criteria against which we should seek to assess the quality of qualitative research (Lincoln & Guba, 1985, p300) Aside from the debate around appropriate terminology, Lincoln and Guba (1985) also suggest that reliability and validity, or, as they suggest we term them

‘dependability’ and ‘credibility’ are not only intrinsically linked, but also self-propagating:

‘Since there can be no validity without reliability (and thus no credibility without dependability), a demonstration of the former is sufficient to establish the latter’. (Lincoln & Guba, 1985, p316).

Their view, that qualitative research reliability is an inevitable consequence of validity, is also promoted by Patton (2001). Regardless of where we sit in the debate, we must, inevitably, implement some strategy capable of satisfying any interested party that our research is credible. Be it reliability or credibility, or validity or dependability, we have to demonstrate within our research design and execution that these questions have been adequately addressed. This is especially important in evaluating the findings of social research (Bryman, 2004).

In terms of promoting qualitative research validity, Johnson helpfully goes on to provide a list of strategies that he suggests researchers consider. The information has been adapted and transposed into the table below for ease of digestion:

Table 5: Methods of enhancing qualitative research validity, adapted from Johnson (1997).

Method of Enhancing Internal Validity	Explanation
Extended Fieldwork	When possible, qualitative researchers should collect data in the field over an extended period of time
Low inference descriptors	The use of description phrases very close to participant’s accounts and researchers field notes.
Member checking	To enhance internal validity researchers should return to participants and check their interpretation of responses.
Peer Review	Discussion of the researcher’s interpretations and conclusions with other people.

Reflexivity	This involves self-awareness and critical self-reflection by the researcher on their potential biases.
Audit trail	Audit trail is the keeping of detailed and accurate records of what the researcher did and the data collected. The data available as evidence.
Negative case sampling	Locating and examining cases that disconfirm the researcher's expectations and tentative explanations.
Pattern matching	Predicting a series of results that form a 'pattern' and then determining the degree to which the actual results fit the predicted pattern.

The validity framework proposed by Johnson (1997) has been used as a template for this research. I have addressed each of the applicable components in order below:

Low Inference Descriptors

The concept of low inference descriptors seems to me to be particularly important as a means of bringing validity to qualitative research projects. It is my view that, by using codes alone, the data is necessarily 'dehumanised'; of course this may be a legitimate objective of applying any given data management strategy. In this research however a conscious decision was made at the outset to include, as widely as possible, verbatim accounts lifted directly from the interview transcripts. By providing participants with a literal 'voice' the data is not only brought alive to the reader – whose experience is also enriched as a result - but additionally, a quantifiable honesty is brought to the thesis that can be otherwise lost if the data is entirely diluted through coding. This view has resonance with that posited by Coffey and Atkinson (1996) who write:

‘Our interview informants may tell us long and complicated accounts and reminiscences. When we chop them up into separate coded segments, we are in danger of losing the sense that they are accounts. We lose sight, if we are not careful, of the fact that they are often couched in terms of stories – as narratives – or that they have other formal properties in terms of their discourse structure. Segmenting and coding may be an important, even an indispensable, part of the research process, but it is not the whole story.’ (Coffey & Atkinson, 1996, p52)

Where coding has been applied, an inherently non-complex approach has been adopted so as to ensure phrases and terms used by respondents are reflected back in the coding syntax. This is consistent with the advice of Johnson (1997) who suggests that, where possible, descriptive phrases used in the research bear as close a resemblance as possible to the actual accounts provided by the respondents.

Member Checking

Earlier in this chapter I noted that the audio tapes for the study were transcribed by an MPS typist. While this inevitably saved me a considerable amount of time, and represented an effective use of available resources, it did mean that I became one step removed from the process of listening and verifying the content of the audio footage. Had that remained the case I would be unable, with any degree of truthfulness, to verify that the transcribed words used in the data analyses represented an accurate reflection of those uttered by the participants, or indeed myself as the interviewer.

I rectified this potential validity issue by listening to each interview and, at the same time, comparing it to the typed transcript provided by the typist.

Despite utilising professional standard recording equipment, some areas of conversation remained elusive to the typist. Where that was the case, either as a result of softly spoken participants or external noise interference, the typist recorded the word 'inaudible' within the transcript. The research design included a contingency for situations such as this should they arise. In the first instance, where the typist had entered 'inaudible' I populated the written record with the correct words as a result of the proof reading process. On the odd occasion where, despite repeated listening, areas of conversation remained inaudible or indeed the content was contentious, I adopted Johnson's member checking approach and replayed the footage to the interviewee so that they had an opportunity to clarify any unresolved utterances. Once agreed by the participants the areas previously highlighted by the typist as 'inaudible' were overwritten with the correct syntax. In circumstances where I was either unable to facilitate the officer being able to review the audio footage, or where they themselves were unable to discern their own words, the word 'inaudible' remains within the body of the transcript.

Proof reading each transcript proved beneficial not only as it allowed me to rectify any anomalies and thus satisfactorily vouch for the veracity of the transcripts, but also as it re-engaged me with the interviews and the narratives that they contained.

Peer Review

The suggestion by Johnson (1997) that the researcher's interpretation of findings and conclusions are peer reviewed is a sensible one. Fortuitously the MPhil supervision process systemically embeds an ongoing and intrusive review of the researcher's findings

and methods. Furthermore, by submitting the research for viva I inevitably expose my research to further scrutiny.

Reflexivity

From the outset a reflex research approach has been adopted in this thesis. This is documented and explained in detail in the previous chapter (see Chapter 3, page 92).

Audit Trail

Johnson's suggestion that the researcher should maintain, and be able to produce, an audit trail of the research activity seems in itself to be rather obvious. Arguably a comprehensive methodology chapter, that includes a timetable of research, may well be capable of meeting this requirement. More than that though, Johnson (1997) suggests that any data relied upon should be readily available for scrutiny by any interested party. Lincoln and Guba similarly suggest that the dependability of qualitative research can be enhanced by the implementation of what they term an 'inquiry audit' in which they suggest any reviewer examines both the process (methodology) and the product (data) of the research (Lincoln & Guba, 1985, p317). To this end I have made a concerted effort to provide the reader with a comprehensive and detailed methodology chapter, and, additionally have made a hard copy of the complete data set, comprising of 38 transcribed interviews, the master coding table and data review table which are available for review upon request.

Study 1 Findings

Questions One and Two

Q1 - What investigative role do you currently perform?				
	Robbery/Burglary/Crime	Beat Crimes/Case progression	Community Safety Unit	CID Main Office
PC	5	4	-	1
TDC	1	1	5	9
DC	3	1	1	2
DS	3	1	1	-
Q2 - What rank are you?				
	PC 10	TDC 16	DC 7	DS 5

Questions one and two were introduced primarily as lead in ‘ice breakers’ and as a means to demonstrate representation of rank and role within sample. What is evident from question 1 is that not all of the ranks are represented in each department (PC’s working within the Community Safety Unit and DS’s in the CID Main Office). For the reasons set out at page 117, the representation of rank in each investigative role was not an objective of the sampling strategy.

Questions Three and four

Q3 - How many years’ service as a Police Officer do you have?				
PC	<3y	>15y	Total 55y 6m	Average 5y 5m
TDC	<6y	>23y	Total 169y	Average 10y 6m
DC	<6y	>29y	Total 83y	Average 12y 9m
DS	<11y	>30y 6m	Total 91y	Average 18y 3m

	<3y	>30y 6m	Total 398y 6m	Average 10y 6m
Q4 - How much experience do you have in secondary investigations?				
PC	<6m	>7y	Total 19y 6m	Average 2y
TDC	<6m	>8y	Total 62y 6m	Average 3y 11m
DC	<3y	>13y	Total 46y 6m	Average 6y 2m
DS	<9y 6m	>12y	Total 55y 6m	Average 11y 2m
	<6m	>13y	Total 184y	Average 4y 6m

The findings of questions 3 and 4, which ask questions of overall length or service and investigative experience, are as we would expect from a quasi-military hierarchical organisation (in which promotion is linked to service and experience²⁰). Officer rank within the sample group was found to directly correlate to their average length of service. The rank with the least amount of service being Constable, and those with the most being Detective Sergeant. Similarly the same correlation was found to exist between the officers' average length of investigative experience and their rank.

Question Five

Q5 - Have you received any formal investigative training, and if so how long ago was it?					
PC	Y=1	N=9	<1y	>1y	Average -
TDC	Y=9	N=7	<1y	>8y	Average - 2y 1m
DC	Y=7	N=0	<1y	>8y	Average - 3y
DS	Y=5	N=0	<3y	>12y	Average - 5y 3m
	Y=22	N=16	<1y	>12y	Average - 1y 9m

²⁰ Perhaps soon to change with the inception of fast-track Constable to Inspector programmes and direct entry to the rank of Superintendent.

Where the previous question established the amount of experience each participant had in secondary investigations, question 5 sought to establish whether participants had received any formal investigative training and, if so, how long ago that training had been. The data demonstrates that all DS's (n=5) and DC's (n=7) said that they had so received training. This was to be expected as the satisfactory completion of the ICIDP is a professional development requirement prior to confirmation in the substantive rank of 'Detective'. 56% (n=9) of TDC's said that they had received formal investigative training, presumably indicating that the remaining 44% (n=7) who indicated that they had not, were at an early stage in the ICIDP and had yet to participate in the training element of the program. Only 1 PC out of the 10 sampled reported having received any formal investigative training.

Although, for the reasons detailed above, this is unsurprising, it does raise a serious concern about the professional competency of some TDC's (i.e. the 44% who have yet to have benefited from any training provision) and PC's, as combined, this group make up the greater part (61%) of the investigative capacity on the borough sampled. This is perhaps further compounded by the fact that, although DS's contribute a not insignificant 10% of the investigative capability of the sample cohort, their primary role is one of supervision as opposed to investigation, meaning that the numerical representation of TDC's and PC's within the sample group, may in fact, belie the investigative contribution that they make.

The reality, that the least trained and experienced officers may potentially be conducting the greatest number of investigations, is one I am able to comment on anecdotally. My professional experience as an investigator reflects the finding of the research. In the

investigative units in which I have worked the untrained officers, PC's and TDC's, have made up by far the greater part of the work force. In some units it has been my experience that no substantive detectives, other than myself as a supervisor, have been present at all.

While it could be argued that the units in which find a disproportionate level of TDC and PC investigators are often those perceived as being developmental roles, i.e. dealing with low level volume crime, it is in fact these units that are most likely to encounter the greatest number of investigations, and as a consequence, the greater number of associated identification parades.

The length of time that had elapsed since officers had receiving any formal training input revealed a lack of consistency in the provision of training. DS's for example reporting an average of 5 years 3 months since receiving input, but a range from 3 years to 12 years. As we would expect, for those participants that had received some form of investigative training, the elapsed time since receiving it decreased in parallel to their hierarchical position, DC's reporting an average of 3 years (range 1 year to 8 years) and TDC reporting an average of 2 years 1 month (range 1 year to 8 years), although the PC's data is consistent with this pattern only 1 officer out of the 10 sampled reported having received any formal investigative training. In light of the findings from the archival research however, the relevance of that training to this research may be questionable.

Question Six

Q6 - Have you received any formal training about Identification Procedures?			
PC Y=0 N=10	TDC Y=5 N=11	DC Y=1 N=6	DS Y=0 N=5

Having asked at question 5 about participants' exposure to investigative training, question 6 sought to move respondents from the general to the specific by asking participants whether they had received any training specifically about identification procedures. The only respondents who reported positively were DC's (1 out of 7) and TDC's (5 out of 11). In all cases DS's and PC's responded in the negative.

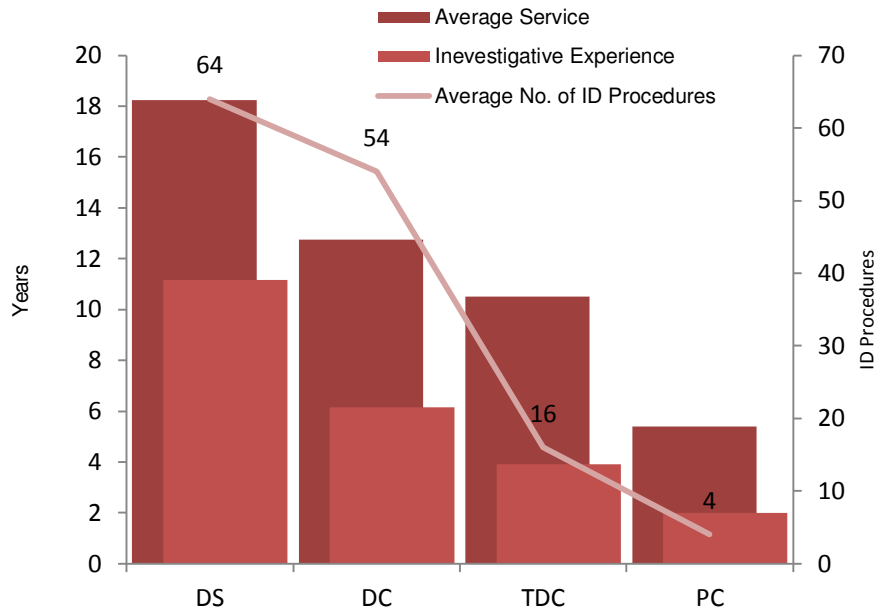
This finding seems to be at odds with what we know about the content of the two compulsory TDC seminars incorporated into the ICIDP development program. The first of which includes a short presentation from the Identification Command specifically about the application and administration of identification procedures. While we might expect a percentage of the TDC's to report that they had not received this input, by virtue of their individual progression positions within the development program, we would expect all the DC's cohort to have had this experience. I am unable to satisfactorily explain this, beyond perhaps, a lack of recall by the officers questioned. Alternatively, this anomaly may be explained by reflecting on the fact that DC's reported an investigative experience range of between 3 and 13 years, while the current ICIDP program has only been in existence in its current form since 2003. (Nottinghamshire Police, 2010)

Question Seven

Q7 - How many identification procedures have you been involved in? Of those, how many were Video Procedures?					
PC	<0	>10	Total 35 of which are were video	35	Average (all) parades per officer 4
TDC	<4	>50	Total 259 of which are were video	250	Average (all) parades per officer 16
DC	<10	>100	Total 377 of which are were video	366	Average (all) parades per officer 54
DS	<45	>100	Total 320 of which are were video	250	Average (all) parades per officer 64
	<0	>100	Total 991 of which are were video	901	Average (all) parades per officer 26

The application of a similar logic to that applied to the interpretation of the results of questions 3 and 4 (service and experience), explains the rise in the average number of identification procedures that officers report having been involved as associated to their rank and experience. Although the ICIDP does not require candidates to evidence the preparation and / or application of an identification procedure specifically, it does require them to expose themselves to a wide range of policing experience in order to build up a portfolio of work capable of demonstrating their investigative competence; meaning that we would expect investigative experience, and by association their experience of ID procedures, to rise in conjunction with the officers hierarchical progression. This phenomenon becomes evident when the data for service, experience and the number of ID parades in which each officer has been involved are presented on one chart:

Table 6: Bar chart showing average length of service & investigative experience in years by rank overlaid with secondary axis showing the average number of ID procedures by rank.



Question Eight

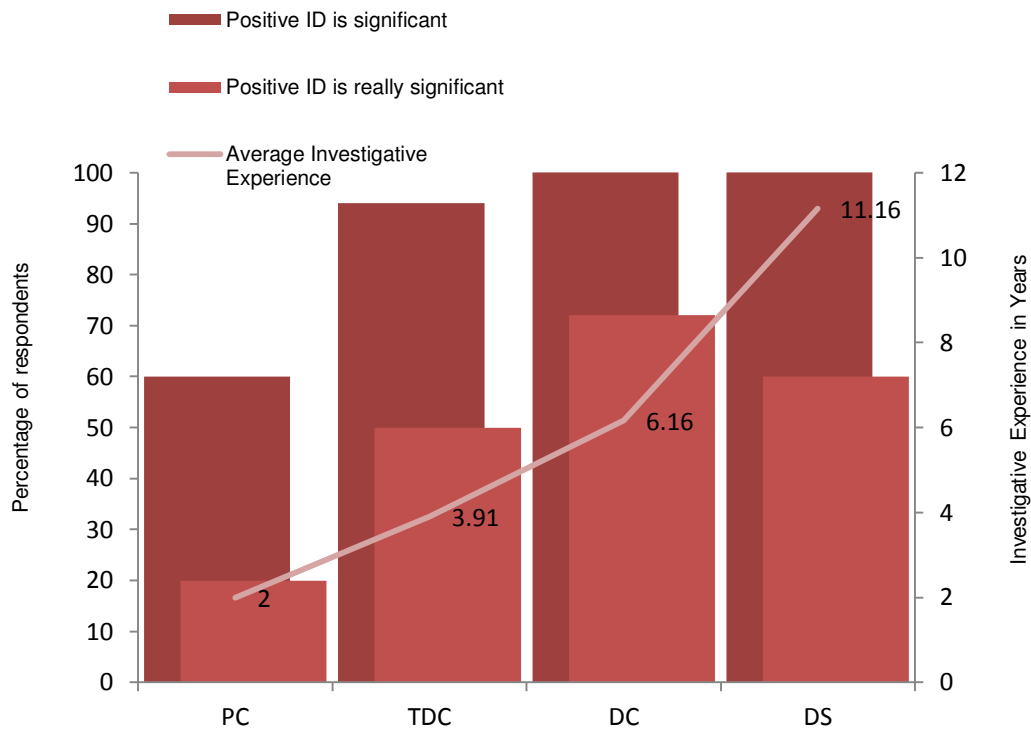
Q8 - How significant is it for you as an OIC if a witness in one of your cases makes a positive identification at an ID procedure?				
	Not Sure	Not Significant	Significant	Really Significant
PC	4	-	4	2
TDC	-	1	7	8
DC	-	-	2	5
DS	-	-	2	3
	4	1	15	18

The recognition by investigators that, having secured a positive identification, the participating witness is likely to be an important, if not pivotal, part of the prosecution case at any subsequent trial, was evident from the responses obtained from question 8.

The frequency with which participant's responses were coded as '*significant*' was, in itself significant, amounting to 40% (n=15) across the cohort. When those participants coded as reporting positive identification procedures to be 'really significant' (n=18) were additionally factored in, the percentage so reporting rose to 87%. This is consistent with the findings of previous research (Loftus, 1979) and the view expressed by legal professionals (Brennan, 1982 – *Watkins v Sowders*)

Interestingly, upon reviewing the data in order to establish whether or not a particular strata of the sample was disproportionately represented in their response to this question, it became apparent that all the participants within the DS and DC cohort reported that they regarded a positive identification as either 'significant' or 'really significant'. The data suggests that TDC's and PC place less investigative value on positive identifications, with 94% and 60% of responses being respectively coded as significant. We can perhaps draw some conclusions from the synchronicity of correlation that we find in this data to that of question 4, which establishes the extent of respondent's investigative experience. As, when we compare the data from these two questions, we find a direct association between experience and reported significance, a conclusion being that; with greater investigative experience comes a greater appreciation of the evidential importance of a positive identification.

Table 7: Bar chart: Showing the percentage, by rank, who reported a positive identification as being 'significant' and 'really significant', overlaid with secondary axis showing investigative experience in years.



The data tend to support this hypothesis in that, the least experienced element of the cohort, PC's, were the only respondents (40%, n=4) coded as responding that they were 'not sure' of the significance of a positive identification. This perhaps suggest that their lack of investigative experience was a contributory factor to their inability to make an informed decision as to the significance or otherwise of such evidence.

It is well established within the literature previously reviewed, that the assumption reported by DS and DC's (that positive identifications have significance to the progression of their investigations) is well founded. The Devlin Report (1976), for example, found that, in cases they reviewed, where the defendant had been 'picked out' in an identification parade the prosecution managed to secure convictions rate of 82%.

Furthermore, in cases in which eyewitness testimony was the only evidence against the defendant, the prosecution still managed to secure a conviction rate of 74% (Devlin Report 1976). Evidently the implications of positive identifications have not been lost on practitioners; this is reflected by a number of respondents in their narrative responses:

'For me it's one of the most important bits of evidence, I steer my investigations towards ID parades because I know how persuasive they are when someone gets picked out..... I found that defence solicitors...regard a formal identification parade as very powerful, and are more likely to plea, when I perform my ID evidence I'm more likely to get a plea than even if I've got Forensic evidence which is much more scientific...I still find that defence barristers and suspects are all inclined to fight tooth and nail against everything except formal ID and they are scared of the impact of getting trial.'

[Participant 16 'Mark': Trainee Detective Constable – 2.5 years secondary investigation experience]

Similarly 'Andy' a DS commented:

'It's probably one of the most important pieces of evidence...Juries like witnesses who've seen what happened and are willing to say so in court.'

[Participant 24 'Andy': Detective Sergeant – 12 years secondary investigation experience]

A common theme in determining and qualifying the significance of a positive identification was not only their ability to develop lines of enquiry, but more importantly, their ability to lead to a judicial disposal decision. Many respondents commented that a positive identification would likely be the determining factor when the CPS considers the appropriateness of proffering charges. Nick, for example, a DS commented:

'it [positive ID] can make the difference between getting a charge or not.'
[Participant 20 'Nick': Detective Sergeant – 12 years secondary investigation experience]

similarly, another DS commented:

'...if you have a positive pick out then the CPS will charge.'
[Participant 26 'Steve': Detective Sergeant – 10 years secondary investigation experience]

Conversely, some participants suggested that, where investigators pursue an identification process and obtain a negative result, the outcome can be as equally definitive:

'If you get a negative ID then, most of the time, it means your jobs over really. The CPS doesn't like to charge people if they, if there's a witness and they've not picked out the person.'
[Participant 10 'Imran': Detective Constable – 5 years secondary investigation experience]

The evidential value of positive identification parades are not only understood in terms of their ability to assist the investigation in reaching the threshold for a charging decision, many respondents expounded the merits of a positive identification in terms of trial outcomes. Two DC's commented:

'Well it's really significant, a positive identification is really good evidence, most people go guilty if they've been picked out on a parade.'
[Participant 12 'Denis': Detective Constable – 8 years secondary investigation experience]

‘...I had one a few weeks ago where the suspect was picked out, when we re-interviewed him he still made no comment but his solicitor said he would plead *guilty at court.*’

[Participant 47 ‘Liz’: Detective Constable – 4.5 years secondary investigation experience]

These views resonate with existing published research that has highlighted the influential nature of identification evidence at trial (Cutler, Pernod & Dexter, 1990).

Question Nine

Q9 - If you were a witness involved in an ID procedure, would you want to know if you had made a positive selection?			
PC Y=10 N=0	TDC Y=16 N=0	DC Y=7 N=0	DS Y=5 N=0

The only question within the questionnaire that obtained a consistent response across the cohort range, was the response obtained from question 9. In all cases participants said that they would want to know whether or not they had made a positive identification. This finding is important as, although it is well documented that research participants in staged crimes actively seek feedback (Brewer and Palmer, 2010), prior to this research this had yet to be established in real crime case scenarios from practitioners. Brewer and Palmer (2010), for instance, comment that:

‘If they [real witnesses] behave anything like laboratory participants they are likely to actively seek feedback that might validate their decision.’ (Brewer and Palmer, 2010, p88)

When respondents were asked to elaborate and explain from whom they would seek to obtain this information, the most common response, accounting for 50% (n=29), was that

they would ask the OIC. 18 respondents (31%) said that they would ask the staff at the identification suite, while an equal amount, 9% in each case, said that they would ask either the officer transporting them from the identification procedure or someone from the witness care unit.

These findings highlight a number of issues; firstly as, if as is the case, police officer participants recognise that they themselves would want to know the outcome of any parade they participated in, and, secondly that, that being the case, they, as OIC's, are the most likely person from whom witnesses are likely to attempt to seek the answer to such a question - then it seems unreasonable to assume that any failing on their part to appropriately deal with such a question (when it is inevitably asked of them) could be attributed to an inability to anticipate that such a question is likely to arise. In fact the data demonstrates that the posing of such a question is more than merely a likely hood as, when asked whether or not it is common for witness to ask such a question, 58% of the cohort (n=22) said that it was.

In light of this finding, and other supporting academic research, it cannot be argued that such a question could not be reasonably anticipated. That being the case, and, bearing in mind the important effect such feedback is capable of exerting over witness confidence, there does seem to be a compelling case to include specific, practical guidance within the ICIDP. The research shows that, presently, no such guidance is provided.

In the absence of any prescriptive instruction and, having established that the majority of the cohort (58%) have been asked such a question by a witness, would we not expect investigators to be alive to the fact that such a question is likely to arise and either

research the appropriate response or develop a strategy for dealing with such an issue when it arises? Unfortunately that logic is not supported by the data, which finds that those elements of the cohort that we could reasonably expect to be the most knowledgeable, if not through training, but certainly through experience i.e. DS's and DC's, still report that, respectively, 80% (n=4) and 71% (n=5) would tell the witness the outcome of the parade. In response to the same question 50% of TDC's (n=8) and 60% of PC's (n=6) similarly confirmed that they would inform witnesses of any parade outcome if asked.

This finding is troubling for a number of reasons; firstly, as the learning culture within the police service is very much associated to 'on the job' training and learning from the experience of investigative seniors meaning that, in the absence of specific guidance, bad practice is likely to be perpetuated within the organisation. Secondly, while DS's are likely to be responsible for the least number of investigations numerically, they are likely to be responsible for investigations of a more serious nature. We can reasonably extrapolate from the data that the more serious cases (although likely to be fewer in number) are the most likely to have an OIC (be it DS or DC) who routinely informs the witness of their identification results. While it could be argued that a miscarriage of justice is equally important to the victim or defendant in a minor case, as it is in serious one, the social ramifications in serious crime cases for all parties are, inevitably, greater. In addition, the nature of the English criminal justice system is such that serious crime cases are tried by juries at the Crown Court, perversely it is these cases (tried by jurors), that find themselves most vulnerable to the realisation of fallacious outcomes as a result of artificially inflated confidence statements.

The data demonstrates that the least likely strata to disclose the outcome of an identification parade were TDC's (50%). It would be inviting to suggest that this finding reflects the impact mandatory training via ICIDP has had on forming these officer's investigative decisions. This proposition is however incapable of being adduced as we know from the research that no such guidance is included within the current training provision.

Questions Ten and Eleven

Q10 - How would you go about finding out the result of the ID procedure?					
	Ask OIC	Ask ID Staff	Ask Witness Care	Ask Officer Transporting	CRIS
PC	7	3	1	1	-
TDC	11	7	2	3	-
DC	7	3	-	1	-
DS	4	5	2	-	1
	29	18	5	5	1
Q11 - In your experience how common is it for witnesses to want to know the outcome of ID procedures they have participated in?					
	Not Sure	Common	Uncommon		
PC	8	1	1		
TDC	1	12	3		
DC	1	5	1		

Questions 10 and 11 were introduced as a means to determining where best any recommendations that come out of the research could be implemented. Evidently the route that most participants said they would pursue to obtain information (if they were witnesses) was the OIC, followed in frequency of response by staff and the ID suite. This finding is important as it provides some evidence base for targeting any additional

training in regard to the provision of post identification information on these groups of people. Additionally however it grounds the findings of question 9 (that all of the respondents said that if they had participated in an identification procedure they would want to know the outcome) into some reality, not only do witnesses want to know the outcome of their selection decisions, but, inevitably it is the OIC to whom they are most likely to direct their enquiry. It should come as no surprise therefore that such a question is likely to be asked (indeed this was the finding of question 11 which found that out of the 27 respondents that provided a response other than 'not sure', 81% (n=22) indicated that it was common for witness to so enquire). Having accepted that the question is likely to be asked, and that such a question is likely to be directed at the OIC or staff at the ID suite, then it does seem to be sensible to equip these groups of people with the ability to provide a consistent, legally compliant response.

Questions Twelve, Thirteen and Fourteen

Q12 - As an OIC how do you respond when witnesses ask you whether or not they've made a positive identification?			
	Tell Them	Don't Tell Them	Don't Know
PC	6	1	3
TDC	8	8	-
DC	5	2	-
DS	4	1	-
	23	12	3

Q13 - Do you discuss with witnesses other evidence in the case that may exist such as forensic evidence, additional witnesses or the presence of CCTV?			
	Yes	No	Don't Know
PC	9	-	1
TDC	15	1	-
DC	5	2	-
DS	4	1	-
	33	4	1

Q14 - How would you respond if a witness in one of your cases specifically asked you whether other forms of evidence existed?						
	Don't Know	Don't Tell Them	Tell Them	Tell Them General	Tell Them Specifics	
PC	2	1	7	4	3	
TDC	-	2	14	5	9	
DC	-	2	5	3	2	
DS	-	1	4	2	2	
	2	6	30	14	16	

Whereas TDC's were reluctant (in relative terms) to inform witnesses of the outcomes of their ID parades, the data demonstrated that they experienced less reservation in regard to informing witnesses of the existence of other evidence; 94% (n=15). This perhaps

reflects the fact that there are no policies in place, either formal or informal, to discourage such activity, despite the fact that we know from research that confirming information of this type can have an equally inflatory effect on witness confidence (Luus & Wells, 1994).

Whereas TDC's and PC's collectively responded significantly differently to question 12 than to question 13, (TDC's moving from 50% to 94% and PC's moving from 60% to 90%, in response to questions 12 and 13 respectively), DS's and DC's remained consistent, responding to both questions with an affirmation rate of 80% and 71% respectively. One explanation for such a significant change in response to these two questions within the TDC cohort is that they are actively differentiating between the appropriateness of informing witnesses of the two types of information (identification results and 'other' evidence), and that they are making the distinction based on some understanding that rules exist in regard to confirmation of identification selection decisions.

This explanation is problematic for two reasons, firstly that similar variance can be seen within the PC's cohort, who we know have not received any training, and secondly, having conducted a review of the training input TDC's receive on the ICIDP development program (study 2), no formal written reference was found within it that instructs officers not to inform witnesses of the outcome of their identification procedures. At present I am unable to satisfactorily explain this outcome.

Question Fifteen

Q15 - Giving evidence at court can be quite daunting for witnesses. As an OIC how do you prepare witnesses for court?						
	Attend Court	Tell the Truth	Confident Stick to Story	Read Statement	Meet Barrister	Don't Know
PC	-	2	2	-	1	6
TDC	12	5	2	4	-	-
DC	5	4	3	2	2	-
DS	3	3	3	3	2	-
	20	14	10	9	5	6

Question 15 was deliberately framed in general terms to allow respondents the freedom to provide their own narratives. As expected, the policing ‘craft’, i.e. witness ‘preparation’ was well represented in the data. Participants cited practical witness measures, such as; taking the witness to court for a familiarity visit; providing witnesses with a copy of their statement to read and introducing them to the prosecutor before trial. These responses accounted for 31%, 14% and 8% respectively of all responses obtained [note that this percentage relates to the total of all responses, participants provided more than one response each to this question].

Interestingly a significant percentage of responses related to advice that may be construed as falling into witness ‘coaching’; the third most frequently cited piece of advice from respondents was that witnesses should be confident and or stick to the account they had already provided (n=10).

‘I tell them to stick to the story...Defence will try and you know, make them change their mind...They get to see their statements before they go into court, I tell them to just sort of stick to what’s in it, be confident and stick to it.’

[Participant 11 'Holly': Detective Constable – 3 years secondary investigation experience]

'I talk through the evidence with them...and tell them to stick what they've already said'

[Participant 20 'Nick': Detective Sergeant – 12 years secondary investigation experience]

This latter advice, typified by the examples above, is unsurprising when we reflect upon the academic evidence previously considered and the officer's personal experience, based on the transcribed accounts of participants, that juries place particular credence on the evidence of witnesses who present their evidence with confidence.

It does, however, point to a worrisome finding and that is the degree to which witnesses may adopt the advice to 'stick to the story' despite cross-examination, feelings of self-doubt or other evidence that suggests they may, in fact, be wrong. Arguably juries may perceive such resilience as 'confidence', when in fact that is not the case.

Evidently, there is a fine line between 'coaching' witnesses, which is clearly prohibited, and 'preparing' them. Into which camp individual participants responses fall is, perhaps, a matter that may require further consideration and is beyond the scope of this research and likely to be resolved by case law. That said however, there can be little doubt that this type of instruction from the police to a witness can be understood as a 'system variable', as it has both the capacity to alter the confidence with which witnesses so advised provide their evidence, and it is entirely within the ability of the criminal justice system to control.

It was clear from the data however that participants had some awareness of the issue. A number of participants made reference to it specifically. ‘Lauren’ for example, commented:

‘...we’re not allowed to coach witnesses, you can say things like ‘speak clearly’ and ‘tell the truth’ but nothing else.’

[Participant 41 ‘Lauren’: Trainee Detective Constable – 4 years secondary investigation experience]

Similarly, ‘Steve’ a DS with 10 years secondary investigative experience commented:

‘...you have to be careful about coaching witnesses, if your witness gets in the box and says, the officer dah dee dah dee dah then you’ve got a problem. I just says “you know what you saw, just tell the truth” that sort of thing.’

[Participant 26 ‘Steve’: Detective Sergeant – 10 years secondary investigation experience]

While some officers, cited above, expressed an awareness of the issue of ‘coaching’ it did seem from the data that their understanding of what constituted a potential breach of the rules was unclear, ‘Denis’, for example, when asked said:

“I avoid talking too much to witnesses as you could be accused of trying to coach them...”

[Participant 12 ‘Denis’: Detective Constable – 8 years secondary investigation experience]

It does seem to me to be extraordinary that other legal professionals, such as lawyers and barristers, should have clearly set out rules, supported by case law, that define witness ‘coaching’, ‘training’ and ‘preparation’, while police investigators, who are most engaged

with the witness over the greatest period of time, receive no such instruction. This inevitably leads to uncertainty and a lack of consistency in how witnesses are managed.

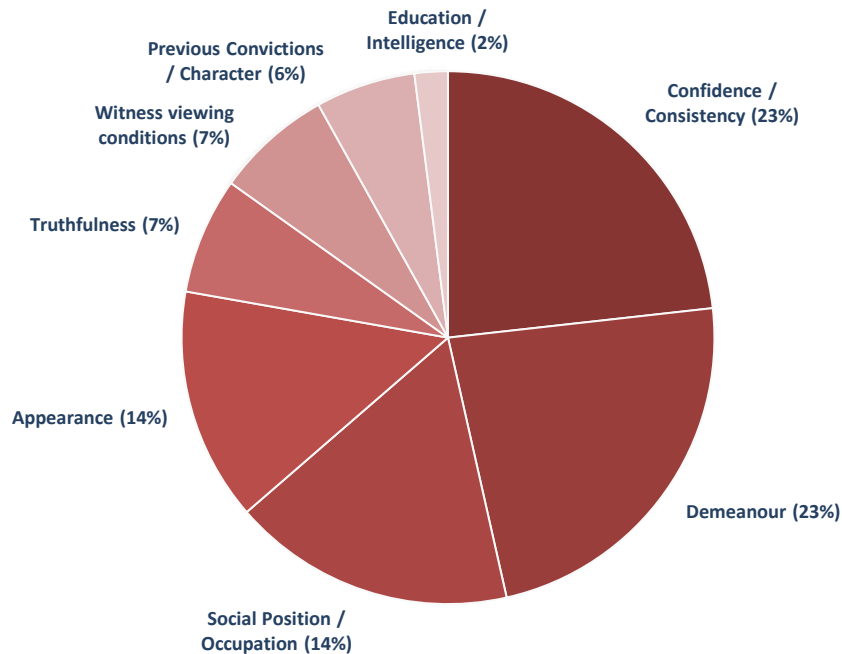
Question Sixteen

<p>Q16 - This question is about the way in which Juries evaluate the credibility of witnesses who provide eye witness evidence.</p> <p>In your mind what factors do you think Jury members consider when deciding whether the evidence an eye witness has provided is accurate or not?</p>								
	Confidence	Demeanor	Social Position Occupation	Appearance	Truthfulness	ADVOKATE	Previous Convictions	Education Intelligence
PC	5	5	6	3	3	2	3	-
TDC	12	8	4	6	1	2	-	1
DC	3	7	2	4	2	1	2	-
DS	3	3	5	1	1	2	1	1
	23	23	17	14	7	7	6	2

Question 16 represents a natural progression from its predecessor, in essence developing the mechanics of how officers prepare witnesses to give evidence, to how the officers subsequently perceive and interpret the evidence put before them by witnesses from the witness box.

Intuitively, we would expect the answer to this question to reflect some of the characteristics that officers sought to amplify when preparing their witnesses for court. It was unsurprising therefore to see that ‘confidence’ was one of two responses that enjoyed the greatest degree of frequency of response.

Figure 8: Pie chart showing participant responses (n=99) to question 16 as a percentage.



Participant's assumption that juries may perceive confidence to be a key determinant when assessing the veracity of evidence put forward by an eyewitness is well founded; Rahaim and Brodsky (1982) for example canvassed the views of 50 practising criminal lawyers asking them a similar question; 'whether identifications by confident eyewitnesses are most likely to be correct' they found that the majority (64%) indicated that they agreed with this statement. Similarly Brigham and Wolfskeil (1983) surveyed 70 Public Prosecutors, 75% of whom expressed a belief that a witness, who was more confident, was likely to be more accurate.

Research tends to support respondent's perceptions that demeanour, social position and occupation, and appearance may be variables operating on the minds of jurors when deciding whether or not to be accepting of the evidence put forward by a witness (see:

Stephen & Tulley, 1977; Stewart, 1980; Bennett & Fife-Schaw, 1993; Dunne, 1994). While some of these references aren't as topical as I would have liked, I see no reason to suggest that the findings are no longer valid.

Inexplicably, 'truthfulness' and 'witness viewing conditions' rated relatively poorly in the data, both contributing only 7% (n=7) of the total responses made. This is disheartening as the legal process, unsurprisingly, places a great deal of importance on truthfulness and the need to forensically document the circumstances in which the witness observed the offender. The need to evidence such matters, which are of course 'estimator variables', came about as a result of the findings of R v Turnbull (1976) at the Court of Appeal (further evidence to support the authors proposition that miscarriages of justice have been a key driver of judicial reform). As a result of the Turnbull case the court set out the factors a jury should be specifically directed to examine when considering identification evidence. Helpfully, albeit rather clumsily, adapted into the mnemonic 'ADVOKATE':

- A**mount of time under observation
- D**istance from suspect
- V**isibility day / night / lighting
- O**bstructions to the view of the witness / visual impairment
- K**nown or seen before
- A**ny special reason for remembering the suspect
- T**ime elapsed since witness saw the suspect
- E**rror or material discrepancy between descriptions

The 'Turnbull Rules', as they've become commonly known, and the ADVOKATE mnemonic, are included in police probationer basic training as well as the ICIDP. It is

disappointing therefore, that officers should consider their application to have such little impact on juror's interpretation and assessment of witness evidence. That said the academic evidence does tend to support the pessimism of respondents. The seminal experiment conducted by Elizabeth Loftus in 1979 for example, found that eye witness evidence remained compelling to mock jurors even after they'd been made explicitly aware that the witness testimony was unreliable. In her experiment the mock jury were told, prior to reaching a verdict, that the witness observed the offender without the assistance of their spectacles, and that the witnesses uncorrected vision was significantly impaired (20/400 vision). Despite this, 68% of the jury returned a guilty verdict, whereas the control sample (who were not informed of the unreliable nature of the witness's eyesight) returned a conviction rate of 72%. When the eyewitness testimony was removed entirely from the evidence put before the jury, they returned a significantly reduced conviction rate of just 18% (Loftus, 1979). It seems therefore, based on the research of Loftus (1979) that, regardless of the credence placed upon ADVOKATE by the judiciary, juries are unlikely to be as discerning of such detail.

For reasons set out earlier in the dissertation (see chapter 4, page 138), questions that could be perceived as being 'challenging' were situated towards the end of the questionnaire.

Questions Seventeen and Eighteen

Q17 - Can you tell me what legislation covers the administration of Identification Procedures?				
	No	Yes	Yes Specifics	
PC	5	5	-	
TDC	1	15	8	
DC	1	6	3	
DS	-	5	1	
	7	31	12	
Q18 - Are there any rules or guidelines about telling witnesses the outcome of their identification procedures?				
	Not Sure	No	Yes	Yes Specifics
PC	-	10	-	-
TDC	-	8	8	3
DC	-	4	3	-
DS	2	2	1	-
	2	24	12	3

An expectation of the research was that the majority of participants would respond to the final two questions by correctly citing the Police and Criminal Evidence Act 1984. This was presumed to be the most likely response for two reasons. Firstly, as it is the correct answer, and, secondly, as, for those participants who were unsure of the legislation but didn't want to appear ill informed, PACE was the legislative instrument most likely to be correct as it covers the application and administration of the majority of contemporary police powers. PACE does therefore represent a 'safe bet' for respondents who were unsure of the correct answer.

As it was, 81.5% (n=31) of respondents correctly cited the PACE in response to question 17. When probed, however, only 31.5% (n=12) were able to correctly identify the

relevant code within the Act that specifically covers identification procedures: Code D. The variance between these responses could be interpreted as an indicator of those who 'knew' the legislation (31.5%) as opposed to those who merely provided the correct response (81.5%). 18% of participants, made up from one participant each from the DC and TDC cohort and two from the PC's, were either unable to correctly identify the relevant legislation or declared that they did not know.

When asked, 63% (n=24) of the cohort indicated that they were not aware of any rules or guidelines about telling or not telling identification parade participants of the outcome of their procedures. 31.5% (n=12) indicated that they were aware of the existence of rules and or guidelines but only a small proportion (25%) were able to correctly explain what they were or the rationale behind them.

Out of the 31 respondents that correctly identified PACE as the legislation within which identification procedures governance is enshrined, the strata of the sample that we know have previously received some form of investigative training, DS's, DC's and TDC's, were well represented; respectively achieving 100% (n=5); 86% (n=6) and 94% (n=15). The untrained strata, PC's, perhaps understandably, performed less well (50%, n=5).

When we reflect upon the fact that, almost two thirds of the cohort was unaware of the implications of informing witnesses of the outcome of their parades, and contrast this to the relatively comprehensive knowledge of the legislation, it does make for a compelling argument to encompass these rules within PACE itself.

Replicating the research

Earlier in this thesis I commented that, if this research were to be replicated, it may be prudent to complete all the interviews in one session. Although such a strategy would necessitate the application of significant research resources in order to conduct the interviews, it is, in my view, the only satisfactory way of completely eliminating the opportunity of cross contamination within the cohort.

This issue came to light when reviewing the audio recording of one of the interviews. In the transcript of one participant a fleeting reference is made to discussing the research with another prior to the latter's participation. When asked, at question 18:

‘Are you aware of any rules or guidelines about telling witnesses the outcome of identification procedures?’

one participant responded:

‘Yeah I’m aware that you’re not supposed to, like I say, until you go to court but that hasn’t actually ever been made clear to me until yesterday...my Sergeant told me.’

Participant 14 ‘Chloe’: Detective Constable – 8 years secondary investigation experience]

Although I am unable to say with complete certainty that ‘Chloe’s’ response is indicative of cross contamination, it seems likely that the timely provision of the Sergeant’s advice is more than merely coincidental, motivated perhaps either by the Sergeant’s own participation in an interview or feedback from officers under their supervision who fell within the cohort. Either way, this example highlights the potential danger of cross

contamination and the need to consider strategies to mitigate the opportunity for such contamination to occur.

Rather troublingly, despite apparently being ‘tipped the wink’ by the supervising officer as to the fact that ‘Chloe’ should not be telling witnesses the outcomes of their identification procedures, his explanation to her as to why that is, is wholly incorrect:

‘... he actually told the witness that we took for the viewing and I was like, I did not know that, I didn’t know that you were not supposed to not tell them if it’s been a positive or a negative and he said because it’s the inspector’s evidence and he’ll write a statement and submit it. I was like yeah but we need to know to send to the CPS and he was like that’s the way it is, that’s the rules, and I was like I didn’t know that.’

[Participant 14 ‘Chloe’: Detective Constable – 8 years secondary investigation experience]

In actual fact the rationale for not telling witnesses the result of their identification parade is twofold. Primarily as that, by informing them of the outcome of the parade, the witnesses confidence in their identification decision is altered and secondly, by so informing them, the ability of defence counsel to effectively cross examine the witness at court is taken away.

As well as highlighting the need to maintain vigilance around cross contamination this apparent by-product of the research does in fact open up a debate as to the dangers of ‘*on the job*’ learning and the prevailing police culture that exists in which junior officers are guided by more experienced detectives. ‘Experienced’, in the context of policing, particularly within the CID, can be understood in terms of length of service, as opposed

to experience through formal learning. The reliance on this type of learning was a common theme in the narratives of the investigators interviewed.

The examples below are responses to question 18 'Are you aware of any rules or guidelines about telling witnesses the outcome of *identification procedures*?'

'I don't think we're supposed to tell them, I don't think that's in PACE or anything it's just what I've been told.'

[Participant 39 'Tim': Trainee Detective Constable – 3 years secondary investigation experience]

'I know you're not supposed to tell them the outcome of the parade at the suite...that's the advice I've been given.'

[Participant 45 'Beth': Trainee Detective Constable – 7 years secondary investigation experience]

'Just it's always been perpetuated in kind of detective circles, hasn't it, that you don't ... yeah come to think of it actually I've never ...'

[Participant 20 'Nick': Detective Sergeant – 12 years secondary investigation experience]

Further exploration of this phenomenon is beyond the remit of this thesis but does pose an interesting topic for future research.

Study 2

Objectives

- 1) Establish what formal guidance is provided to police investigators within the host police service in regard to the information they should or should not provide to eye witnesses post identification parade.

Methodological approach

In order to be able to assess the data product from the semi-structured interviews conducted in study 1, and provide context to the officer's actions, views and behaviours, a review was conducted of the current training provision, available instructional resources and policies. This was achieved by the application of a second research instrument – documentary and archival research.

Archival research and the collection of documents and artefacts has been recognised by a number of authors as a valuable complementary approach to an overall strategy to collect field data during an empirical research project (see: Gillham, 2000; Jankowicz, 2000; Powell, 1997; Saunders et al., 2000; Yin, 1994). In addition to the value that the archival and documentary review brings to the research in and of itself, when triangulated with the data product from the semi-structured interviews with police investigators, that value is compounded so as to contribute more comprehensively to our overall understanding of the findings. In addition to aiding the interpretation of data from study 1, study 2 also gives credibility to any later recommendation for changes to the training regime, or content of existing training provision.

Sample Selection – Document Inclusion / Exclusion Criteria

As part of the empirical data gathering activities the author collated and reviewed artefacts and documentary material from a number of sources. In order to be included in the study the source material had to meet the following criteria:

- Be relevant to the topic of research, i.e. relate to the administration and/or application of Identification Procedures
- and**
- Either be a formal element of the training provision for investigators, i.e. the ICIDP
- or**
- Be material that is corporately available to officers within the MPS at an organisational level.

Ethical Issues

Study 2 did not present any significant ethical dilemmas, beyond ensuring that where reference was made to police training material that material was either already in the public domain or that permission was provided by the owner to publish extracts. An ethical consideration that remained within my consciousness when reviewing police training material was the need to ensure that any sensitivity around the disclosure of police practice or methodology was recognised; fortunately, unlike criminological research in fields such as ‘covert human intelligence sources’ or investigations that make use of legislation such as the Regulation of Investigatory Powers Act 2000 (RIPA), eye witness evidence, and the administration of identification procedures, is not methodologically sensitive.

Procedure

Within the host organisation the conduit through which all investigative training provision is provided is the Crime Academy at Police Headquarters, Hendon. Inevitably the training faculty at the Crime Academy was the location at which the search for material began. In the first instance a request was made of them for information on the current investigative training provision. Although I had already researched the topic via the MPS's internal intranet, I thought it sensible to make a formal request for information to ensure both that my own research findings were correct and that no 'new' training was being developed that may have overlapped the research activity - thus making any findings redundant. As anticipated, upon making the request I was referred to the internal intranet pages that I'd already identified titled 'Professional Investigation – TDC process'. These pages set out the formal route to investigative competence via a four phases of development:

- Phase one Attendance at three seminars
- Phase two Successfully pass the National Investigators Examination (NIE)
- Phase three Attendance at the 4 weeks DC's foundation Course
- Phase four Completion of a Work Based Assessment

As part of the data gathering process two of the three mandatory seminars were attended and observed. Attendance at the first of the three seminars was not necessary as it comprised merely of an explanation to candidates about how the process of development worked and the time scales for completion.

The remaining two seminars (D1 and D2) comprised of oral presentations on a range of policing and legislative topics. Hard copies of the seminar itineraries were obtained and notes were made of relevant presentations.

In order to prepare for the NIE and complete Phase 2 of their development candidates are each provided with a copy of the Blackstone's Police Investigators Manual and associated workbook (from which the NIE questions are drawn). A copy of the Police Investigators Manual was obtained and reviewed.

Phase 3 of the development programme requires candidates to attend the four week DC's foundation course, for practical reasons it was not possible to attend this course and observe its delivery, instead a copy of the syllabus and training material provided to participating students was obtained.

The final element of the development programme requires each candidate to satisfactorily complete the ICIDP Performance Criteria and Assessment Book. This document, commonly referred to as a 'work book' provides the candidate with a set of five skill areas, known as 'Significant Points' or 'SP's' against which candidates must evidence their competence.

In addition to the formal training material available to those officer participating in the ICIDP all officers within the MPS have access to two E-learning portals. The first, the 'Virtual Crime Academy' is provided and maintained by the MPS and accessible via the internal intranet system. The second, the 'Managed Learning Environment', is provided

by the National Centre for Applied Learning Technologies (NCALT)²¹ and is available both internally via the intranet, and externally via password enabled secure internet connection. Both of these systems provide users with access to online source material for a variety of policing activities. In the case of the Virtual Crime Academy the topics are set out in alphabetical order and for NCALT a 'key word' search facility is provided. A search was made of both systems for material pertaining to Identification Procedures.

In addition to the afore mentioned learning portals the MPS intranet site has a specific area dedicated to Special Interest Groups, known as 'SIG's' which is effectively an online 'BLOG' through which officers are able to share best practice and ideas on a variety of policing topics. A review was conducted of the SIG's to identify any relevant material.

At a National level each of the 43 Home Office police forces have access to the Police National Legal Database (PNLD). The PNLD is comprehensive 'online' criminal legal database owned and operated by West Yorkshire Constabulary and available to police officers in each of the 43 Home Office police forces²². Users are able to access case law, legislation and charge wordings through an easy to use search facility. As part of the research the PNLD was accessed through the MPS portal and a search made for relevant material.

As a means of identifying any additional material that may have been available outside of these formal routes an 'open source' search was conducted of the MPS intranet system

²¹ NCALT was established in April 2002 through collaboration between Centrex (the Central Police Training and Development Authority) and the Metropolitan Police Service (MPS).

²² Access to PNLD is additionally available to external users on a subscription basis.

using the following key words: ID parade; Identification Parade; Identification; Parade; ID Procedure; ID; Identification Procedure.

Method of Analysis

The analytical approach to be adopted when analysing a document gathered as part of a research task depends very much on what the document is, from where it has originated and what it is that the analyses seeks to achieve.

As a means of ‘teasing out’ underlying meanings or narratives, some documents, such as personal diaries or newspaper articles for example, may necessitate an analytical approach that contextualises content against the social and historical constraints present at the time of their origin. Other documents, such as those gathered as part of this research, are more factual in content, and, as such are better suited to a more simplistic form of ‘direct’ analyses.

The volume of documentary evidence gathered in this research was not so great as to necessitate any form of electronic data management; instead documents were manually reviewed by the author. Where material was identified that pertained to identification procedures it was further scrutinised to establish whether or not it provided advice or guidance as to the information that should or should not be provided to witnesses by officers.

Study 2 Findings

As part of the research activity the author attended each of the two mandatory TDC seminars. The element that pertained to this research was presented on day 1 by staff from the Identification Command. The presentation lasted for 1 hour and 40 minutes and covered three aspects of visual identification, the first two (Electronic Facial Identification Techniques (EFIT) and Witness Album Display Systems (WADS)), although related to the identification of suspects, were not relevant to this research; each lasted 30 and 40 minutes respectively. The third related specifically to identification parades and consisted of a 30 minutes presentation by a uniformed Police Inspector from the Identification Command.

During the presentation an overview was provided of the circumstances that may necessitate an identification parade, followed by a review of the administrative processes the officer would need to complete in order to request a parade booking. No information was provided in regard to the management of witnesses or what information should or should not be provided to them. At the conclusion of the seminar the panel invited question, I used this opportunity to pose the question directly and asked what the panel's advice was in regard to informing witnesses of the outcome of their parade? The panel responded that no provision within PACE gave guidance on this issue, they did however suggest that case law existed that specifically advised officers not to inform participating witnesses of their identification outcomes. This assertion has been one that I have previously encountered from a number of sources including participants within study 1:

'Yes, we're not allowed to tell witnesses the outcome of the parade... I think it's a stated case but I don't know the details.'

[Participant 43 'Georgina': Trainee Detective Constable – 2 years secondary investigation experience]

It is an inviting, and a seemingly commonly held belief, that case law exists that gives guidance on this matter. Unfortunately, a review of stated cases, conducted via the police national legal database²³ failed to identify any such case law. A subsequent case law review conducted by the CPS special case work²⁴ unit was also unable to identify any relevant stated case that gave guidance on this issue. From this we must conclude that no such case law yet exists.

No relevant material was identified within the MPS Virtual Crime Academy e-learning portal, similarly no Special Interest Group (SIG) was found that related to identification procedures.

A review of NCALT²⁵ did identify two learning packages that contained reference to identification procedures. The first titled '*PIP 2 Managing an Investigation*' provides an overview of available identification methods that can be utilised in an investigation of which an ID procedure was one. The module made reference to PACE but did not provide any practical guidance on how to co-ordinate an identification procedure or how to manage witnesses pre and/or post parade.

²³ Police National Legal database accessed and searched 08/05/2012 & 07/03/2014.

²⁴ Case law review conducted by CPS special case work lawyer Olcay SARAPOGLU 24/02/2014

²⁵ NCALT MPS – National Policing Curriculum accessed and searched 08/05/2012 & 07/03/2014.
MPS – Virtual Crime Academy accessed and searched 08/05/2012 & 07/03/2014

The second, *'Identification of Suspects'* is aimed at probationary officers on the Initial Police Learning and Development Programme (IPLDP), it provides an overview of relevant legislation but again no practical guidance on witness management.

An open source search of the intranet did not identify any additional relevant material beyond a link to the intranet home page for the Identification Command. The Identification Command home page is predominantly aimed at officer seeking to book identification procedures; as such it provides users with contact details and booking requirements for the various ID suites across the MPS. Guidance is provided to officers about Code 'D' of PACE and the situations that may necessitate an ID procedure, no guidance is provide to investigators about the appropriateness or otherwise of passing information to witnesses

Police National Legal Database (PNLD)

As should be expected from the name, the PNLD is primarily a database of statutory legislation and laws developed through stated cases (common law). In essence its remit is the provision of information pertaining to 'system variables'. Helpfully, each legal topic is set out in a prescriptive format, providing a narrative overview of each legal topic, a link to the legislation itself and a 'hot link' to associated stated cases (see appendix 8 for example relating to Identification Procedures). A comprehensive review is made of Code D of PACE and reference is made to the interpretation of specific terminology used within the Act and the related stated cases. It comes as no surprise that the no guidance is provided within the PNLD as to the information that should or should not be provided to witnesses post parade, which is of course an 'estimator variable'. For

completeness, and as a means to identify any stated cases related to the provision of information to witnesses, a number of searches were made of the PNLD's case law category. No relevant case law was identified.

Blackstone's Police Investigators Manual

The Blackstone's Police Investigators' Manual 2014 is the only official study text for the National Investigators' Exam (NIE), which is taken as part of Phase 1 of the Initial Crime Investigators' Development Programme. A review of the Blackstone's manual (Chapter 1, section 8) did not identify any instruction or guidance to investigators about the information they should or should not provide to witnesses post identification.

PC – DC Development Programme

As discussed previously, as part of the PC to DC development programme officers are required to maintain and complete a work based assessment book, effectively providing a portfolio of work that evidences their competence across a number of key skill areas. The five 'SP's' are set out in the chronological order that the officer is likely to experience them in the course of an investigation:

- SP1 Plan and Conduct Allocated Investigations
- SP2 Gathering Evidence and Completing the Investigation
- SP3 Victim and Witness Management
- SP4 Suspect Handling
- SP5 Post Charge, File Preparation and Court Proceedings

Each of the five 'SP's' is further broken down into a number of 'actions' that the officer has to complete and subsequently evidence by providing a reference. The evidence

provided has to be capable of satisfying the ‘underlying knowledge requirement’ for each competence area, this is documented by an assessor who is required to validate the officers entries, confirming that the required standard has been met.

Although some references are made within the work book to identification procedures and managing witnesses, there is no ‘action’ specifically requiring the officer to conduct an ID procedure as part of their development. This seems surprising as identification parades are an important strategic investigative option and one for which the procedural and legal framework is particularly complex.

A number of actions, and the associated underlying knowledge requirements, within the development workbook made general reference to identification procedures and / or the management of witness:

SP3 victim and witness management

3.2 Ensure the victim/witness understands the investigative process.

3.14 Ensure that victims / witnesses are dealt with ethically recognising diversity and human rights

Underlying knowledge requirements (p18)

What information can be shared with victims/witnesses – safeguarding contamination of evidence and future allegations of coaching, contamination, perverting the course of justice.

SP4 Suspect Handling

4.24 Review the outcome of the interview with particular emphasis on: identification issues; identifying further enquiries; whether an offence has been proved

Table 8: Table summarising documentary research findings.

Document or source material	Reference Made to Identification Procedures?	Summary of Content
PC – DC Seminars	Yes	Review of legislation. Guidance on booking procedure. Oral guidance given not to inform witnesses of the outcome of ID procedure.
Blackstone’s Police Investigators Manual	Yes	Review of legislation. Review of Code ‘D’ codes of practice.
DC’s Foundation Course Syllabus	Yes	
ICIDP Assessment Book	Yes	Students advised to consider ‘identification issues’. No necessity to organise / conduct ID procedure.
Virtual Crime Academy	No	No material identified.
NCALT	No	<p>PIP 2 Managing an Investigation LD v1.04</p> <p>This module focuses on the knowledge that an officer in charge of an investigation must have in order to effectively manage an investigation.</p> <p>The importance of the investigative mindset and the need for auditable decision making are included in this module. Considerations relating to all stages of the investigative process are also outlined and include areas such as managing search scenes and understanding how forensic support roles and other specialists can assist an investigation. This module also considers the importance of recognising all possible intelligence sources, the various identification methods which can be utilised and how covert methods of surveillance can all progress an investigation.</p> <p>Identification of Suspects v2.0</p> <p>On successful completion of this module learners will be able to explain the policies, procedures and guidelines in relation to the identification of suspects according to Code D of the Codes of Practice to the Police and Criminal Evidence Act 1984</p>
Intranet SIG’s	No	No material identified.

Intranet Open Source	Yes	Link identified to 'Identification Command' home page. General advice on booking procedure / legislation / Code 'D'.
Police National Legal Database	Yes	Review of legislation. Review of Code 'D' codes of practice. Review of relevant case law.

Chapter 5

Conclusions & Recommendations

Introduction

This, the final chapter, brings the thesis to a conclusion. Its purpose is to summarise the research findings in relation to the previously documented research objectives.

The chapter starts by reviewing the findings of the secondary research task, archival and documentary research focused on establishing the current content of the host organisations training provision for aspiring and accredited investigators.

The narrative logically moves forward from this discussion to the reality of how that training is practically implemented in the field. Analyses is provided to the reader of the findings of the primary research instrument, semi-structured interviews with operational investigators, and interpretation is offered based on a review of the empirical data.

This chapter concludes by triangulating the collective findings of the two research activities and drawing from it a final conclusion. Recommendations are then made, based on the findings, as to how the current training provision could be improved and how the criminal justice system could be reformed to better serve the interests of justice and those actors who find themselves operating within it.

The author gives voice to the limitations of the study, recognising the parameters within which it should be understood. Proposals are made for areas of further research that have been identified as a result of this research activity.

This thesis set out by asking two research questions:

- 1) Establish what formal guidance is provided to police investigators within the host police service in regard to the provision and content of post-identification information they provide to witnesses who have participated in an identification parade.
- 2) Explore the views and practices of police investigators within the host police service and establish whether confirmatory post-identification feedback is provided to participating witnesses.

Conclusions

A review of the learning material available to officers participating in the ICIDP and that available to officers within the host organisation more broadly, identified a number of sources from where officers are able to gain information about identification procedures. The information contained within these sources is however limited to legal definitions, case law and the strategic use of ID parades as part of an overall investigative strategy. No guidance was found that addressed the issue of ID parade integrity through the management of information provided to witnesses after they had participated in an identification procedure.

At present the legislation that governs the management and application of identification procedures, the Police and Criminal Evidence Act (1984), contain no statutory guidance regarding the provision of post-identification information by police or other criminal justice actors. The ICIDP reflects this by similarly omitting it from its syllabus. The position in regard to stated cases, or ‘case law’, is confused. While post-identification information seems an area of law likely to have been historically addressed by the court,

and one that police and legal professionals erroneously believe to be so governed, no such precedence has yet been set and no case law yet exists.

In the absence of any stated case to which officers can refer, or any training provision either within the ICIDP or elsewhere, it seems unsurprising that there should be uncertainty around this issue amongst police investigators. The fact that uncertainty exists is evident from the research which found that of the 38 officers sampled, 31.5% (n=12) said that they were aware of the existence of rules or guidelines while 63% (n=24) said that they were not. Despite the fact that the research has been unable to identify any official rules or guidelines it is the case that officers are told that witnesses should not be informed of the outcome of their parades (PC-DC seminar). Albeit such an instruction is incapable of being grounded in legislation or case law, this advice is consistent with the findings of academic research. This issue is addressed by recommendation 1 and 2.

There can be little doubt, based on the comprehensive research discussed in the literature review, that the state of confidence witnesses experience in their identification decisions is capable of being altered between two important points; the point at which they make an identification - and the point at which they have cause to quantify it at court. The evidence is well documented and irrefutable.

The issue however that, prior to this research, remained unresolved, was not whether post-identification information is capable of altering the state of witness confidence, but whether, in real crime case scenarios, such information is actually being conveyed.

This research provides similarly irrefutable evidence that (in the force in which the research was conducted) such information is being so provided. Furthermore, the findings show that the content of the post-identification information being provided, not only includes confirmatory information about positive selection decisions, but also information about the existence of co-witnesses, CCTV and other forensic evidence – all of which the literature suggest are capable of providing a similar effect on witness confidence.

This is important as it moves the issue from the theoretical to the practical, and, while change can be introduced as a result of theoretical findings, it is much more likely to occur through the demonstration of practical realities.

If we accept that confidence is capable of being altered through the provision of post-identification information, and that police officers are providing such information, then we must accept that the current system of witness management is routinely facilitating the contamination of evidence. This provides a judicial environment conducive to the misrepresentation of evidence at court, with inevitable consequences in terms of the systemic proliferation of miscarriages of justice.

The elicitation of information, from police officer to witness, is wholly capable of being controlled by the criminal justice system. The assignation of ‘system variable’ status is logical, obvious and ineluctable. Were this to be the case, the same rigour could be applied to its management and integrity as is to other forms of forensic evidence. Wells and Loftus (2003) posit that traditional forms of physical evidence, and eye witness testimony, are both equally susceptible to contamination and each should be similarly

retrieved and managed according to the guidance of experts. If that were to be the case, police actors may be minded to metaphorically transfer the age old principle when approaching a traditional crime scene, of putting their hands in their pockets so as not to contaminate anything, to the retrieval and preservation of eye witness evidence.

The absence of clarity around the management and provision of information to witnesses after they have participated in an ID procedure would be remedied as a direct result of the assignment of system variable status. Changes to legislation would be reflected in police training and to the reference resources available to officers such as the Police National Legal database and Blackstone's. This issue is addressed by recommendation 3.

A number of academics, such as Wells & Olson (2003) and Wright and Skagerberg (2007), have highlighted the need to capture some measure of confidence immediately after an identification procedure and prior to any opportunity being realised for the provision of post identification information. Wells et al. (1998) for example recommends that:

'A clear statement should be taken from the eyewitness at the time of the identification and prior to any feedback as to their confidence that the identified person was the suspect.' (Wells et al., 1998, p23-27)

This view is progressed not only by academics but also by criminal justice professionals. Bogan (2006) for example, a practicing criminal law barrister, suggest that witnesses be told prior to participating in the procedure that, if they make an identification, they'll be asked whether the person they picked was 'possibly, probably or certainly' the suspect. It being nonsensical, he argues, that such a question should not be asked of witnesses until months later at trial. This is an interesting point, by asking the question immediately

after the parade we are merely posing the inevitable question (that would be asked of the witness at trial) at a more appropriate time. In essence the process hasn't changed, merely become more timely in its delivery and, by virtue of the fact it is recorded, more readily subject to scrutiny.

One of the principle impediments to legislative change is the impact that academic recommendations can have more broadly on the criminal justice system (Wells, 2001) and, as Levi and Lindsay (2001) comment; the practical reality of implementing what can be abstract academic theories. As a practitioner I recognise the necessity for research to be capable of realisation, recommendations need to have practical utility, be capable of being administered by police officers, unsupervised by qualified personnel. Further consideration needs to be given to implications of cost, convenience and time.

The proposition that we merely expedite the inevitable question to witnesses is an obvious one, and one supported by evidenced based research. The cost of implementation is negligible while the benefit to the criminal justice system is great.

Aside from negating the opportunity for confidence melioration to occur through the provision of post identification information, Bogan (2006) argues that an additional reason for qualifying identifications, regardless of whether they are positive or not, is that even negative identifications may hold some evidential value, as was the case in *R v George* (2007). This issue is addressed by recommendation 4 and 5.

During the review of relevant research and literature I identified a compelling body of knowledge that supports the hypothesis that 'spontaneous' identifications tend to be indicative or accurate identifications (see page 51). Although this issue has not been

specifically addressed in this research (beyond the literature review) it is one upon which I feel it appropriate to comment having spent so much time reviewing the current legal position within England and Wales. In addition, it is a phenomenon that I have experienced professionally when witnesses, despite being told to view the parade twice prior to making an identification, have responded instinctively and involuntarily when presented with an image of the suspect. Presently Code 'D' of PACE actively discourages this, instructing officers who are conducting identification procedures to tell witnesses that they should:

'...not to make any decision as to whether the person they saw is on the set of images until they have seen the whole set at least twice.' Code 'D' (paragraph 3F) of the Police and Criminal Evidence Act 1986

Valentine, Pickering and Darling (2003) comment that, in light of the mounting evidence suggesting a fast identification is more likely to reflect an accurate choice, the direction to witnesses to view each image twice prior to making a selection may be unnecessary or perhaps even counter-productive. I concur with this view and make an appropriate recommendation below (recommendation 6).

An opportunity exists to circumnavigate the status quo of cyclic judicial reform, to pro-actively meliorate legislative change through evidenced based findings, prior to it being necessitated by a miscarriage of justice that seems to me to be inevitable.

Recommendations

- 1) In the short term the Crown Prosecution Service should actively pursue judicial guidance on the provision of post identification information through case law.
- 2) The parade booking process should generate an information sheet to investigators in which guidance is given as to the limitations of the information they should or should not provide to witnesses. This seems to be the most direct and focused means through which to disseminate learning.
- 3) Judicial review should be sought.

Amendments should be made to Code 'D' (paragraph 3F) of the Police and Criminal Evidence Act 1986 to include point 'c' below:

The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 3.2 may be compromised if:

a) before a person *is identified, the witness' attention is specifically drawn to that person;*

or

b) *the suspect's identity becomes known before the procedure.*

or

c) *the participating witness is informed of the outcome of the procedure prior to giving evidence.*

Additionally, Code 'D' (Annex A –Video Identification, para 11) of the Police and Criminal Evidence Act 1986 should be redrafted from its current form:

Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. However, they should be asked not to make any decision as to

whether the person they saw is on the set of images until they have seen the whole set at least twice.

To:

Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. **They should be told that the set of images will be shown to them twice before they are asked to make a decision as to whether the person they saw is on the set of images. If however they are certain of an identification they should say so immediately.**

- 4) Some form of evidential statement should be obtained from witnesses immediately after they have participated in an identification procedure and prior to any feedback being provided, as to their confidence that the person they identified was the suspect.

- 5) Confidence statements should be adduced as evidence at trial and should be understood by the criminal justice system as the most appropriate means through which to assess witness confidence.

Limitations of the Study

The research activity for this thesis has been conducted at one of the 32 Borough Operational Command Units (BOCU) within the MPS.

The content and structure of detective training within the MPS, as with all Home Office approved Police Forces, is dictated and governed by the College of Policing, formerly known as the National Police improvement Agency (NPIA). The delivery of training is orchestrated centrally within the MPS via the Crime Academy and delivered consistently to all officers on the Initial Crime Investigators Development Programme (ICIDP)

regardless of the BOCU to which they are posted. As part of the development programme officers are required to participate in a work based assessment through the completion of a work portfolio, the content of which is similarly dictated by the College of Policing.

Although, theoretically, any conclusions or recommendations made, in terms of the content of formal police training via the ICIDP, should be capable of being generalised beyond the force area at which the research was conducted to other Home Office approved police forces, the limited sample size used in this research is recognised as being a prohibiting factor. A more conservative claim of the research findings is that they are capable of legitimately being generalised to other BOCU's within the host organisation.

The Ethical and Legal Ramifications of 'Disclosure' on Research

An area of ethical and legal vulnerability that seems to be consistently neglected in the published research is that of disclosure. Disclosure is a legal concept that has been within the English legal system for some considerable time. It was formalised with the introduction of the Criminal Procedure and Investigations Act 1996 (hereafter referred to as CPIA).

The underlying principles behind the rules of disclosure are based on a desire to introduce equitability to both the prosecution and the defence through the shared revelation of material. The CPIA forces such revelation by placing a statutory obligation on both

parties to disclose relevant material to each other. In regard to the police investigators²⁶, a legal burden exists within the act not only to identify weaknesses in their own case but also to identify evidence which they possess that is capable of assisting the defence. If material is identified that does undermine the prosecution case, or is capable of assisting the defence, the police have an obligation to disclose it.

Material in this context can be understood to be things that exist, be they physical exhibits, evidential statements or other evidence, it can equally relate to research data or interview transcripts generated as part of an academic study. The legal burden on police investigators to identify 'relevant' material is much broader than merely dealing with that which they come into contact with, or generate themselves, as part of their own investigative activity. The expectation placed upon the police by the CPIA is that investigators will actively seek out 'relevant material' by approaching partner agencies (such as the social services / prison service) and other third parties (medical professionals / researchers) who they believe are likely to be in possession of such material. It would be hard to imagine a situation where an investigator was aware of the fact that a witness had participated in research and yet failed to request sight of any data generated for the purpose of assessment under the CPIA – such an omission would be a breach of policy, the police discipline code and, more importantly, a criminal offence.

Where the investigating officer has reason to believe that a third party possesses material which might be relevant, the CPIA directs the prosecutor to take whatever steps they regard as appropriate to obtain it. This will initially involve a formal written request by

²⁶ CPIA (1996) defines 'Investigator' as: any police officer involved in the conduct of a criminal investigation.

the police to the third party for material to be revealed, this process is commonly made under provisions contained within the Data Protection Act (1998).

My professional experience however is that, more often than not, in circumstances where an information sharing agreement²⁷ is not in place between the police and the third party, this initial request for the revelation of material will be denied by the agency or body holding it. In such circumstances the legal position is further clarified by the CPIA (1996)

‘If the investigator, disclosure officer or prosecutor seeks access to the material or information but the third party declines or refuses to allow access to it, the matter should not be left. If, despite any reasons offered by the third party, it is still believed that it is reasonable to seek production of the material or information then the prosecutor or investigator should apply for a witness summons causing a representative of the third party to produce the material to the court.’ CPIA (1996), Codes of Practice, Code 5.2.

Evidently, continued refusal to reveal material upon reasonable request is likely to result in the holder, or ‘gatekeeper’, of that material (be they researcher or otherwise) being served a witness summons. The effect of the witness summons being to compel the recipient to either produce the material to the court or themselves in order to explain their lack of compliance. My practical experience as an investigator and disclosure officer is that any request, reasonably made for material held by a third party to be disclosed, will be supported by the court.

²⁷ Information Sharing Agreements (ISA’s) form a pre-agreed protocol for the legal disclosure of information between predefined agencies for the purpose of achieving a legitimate objective (in this instance a ‘policing’ objective). ISA’s have to comply with the Data Protection Act (1988), The Human Rights Act (1998) and the common law duty of confidentiality.

When summonsed by the court the 'gatekeeper' of the material can of course continue to refuse to release it. Continued refusal to reveal material when directed to do so by the court is however likely to be construed as 'contempt' - the inevitable result of such a finding being a custodial sentence without trial.

A practical example of how the rules of disclosure might apply to academic research can be demonstrated by reviewing the research of Wright and Skagerberg (2007) which has been previously cited in this thesis. Wright and Skagerberg, who conducted their research with the endorsement and assistance of Sussex Police, replicating a study previously conducted in the USA by Wells and Bradfield (1996).

In the USA study Wells and Bradfield asked questions of their participants about how certain they were in the identification decisions they had made. Inevitably, had such a question been posed by Wright and Skagerberg to their UK respondents the replies would, unquestionably, have amounted to 'relevant material' under the CPIA.

How so? Well, let's take the not unlikely scenario that a participating witness makes a positive identification – they pick the suspect. Then, when asked by the researcher about how certain they are of the identification, they provide a response that suggests anything other than the fact that they were 100% certain '*I'm reasonably sure*'. Such a response meets the CPIA test for disclosure on two fronts, firstly it is 'material capable of undermining the prosecution case' – this is undeniable as the witness has, by their own admission, declared that they are not completely sure of their identification. Secondly, under the same premise, the account provided by the witness is 'capable of assisting the

defence' this is equally undeniable as the defence would evidently want to know that a prosecution witness had expressed uncertainty in their identification.

The experienced researcher may think this is easily resolved by anonymising the responses. Unfortunately however, bearing in mind that the witness is under the control of the police at the time of research intervention, such a strategy is incapable of negating the officers legal responsibility to 'record' and 'retain' 'relevant material'. In any event, in Wright and Skagerberg's method section they document that a police officer was present when the researcher administered the questionnaire.

Perhaps it is for these reasons that, when replicating the earlier study conducted in the USA, Wright and Skagerberg elected to omit the questions that Wells and Bradfield posed of their participants about certainty of confidence, instead they sought to establish confidence by 'proxy'. Unfortunately, other questions that they posed to witnesses, about how good a view of the suspect they had and how good their memory for faces is, are equally capable of, and surely must have, generated disclosable material. How they dealt with this issue is not addressed or expanded upon in their paper.

This particular issue is, of course, the very reason why so much academic research has been conducted with staged crimes using the mock jury paradigm, and is one with which I have grappled as part of the research method design process for this thesis (this issue is further discussed at page 221 – proposed further research).

While professional academics such as Wright and Skagerberg may legitimately rebut any criticism directed at them regarding a breach of CPIA (1996) (but not incidentally regarding the inevitable ethical breach) by pointing to the fact that, as independent

researchers (who are not police officers), they bare no legal responsibility under the disclosure regime, I and incidentally the officer present during Wright and Skagerberg's research, are not so well situated so as to avoid criticism. The situation for police officers conducting research, or those present when it is conducted, is far more problematic as the CPIA (1996) clearly places a legal onus on 'police officers' per se to 'record', 'retain' and 'reveal' material, not just the investigating officer for the crime to which the material relates.

I suspect the shield of 'researcher' would offer little protection for me, other serving officers conducting research, when summonsed before the court or indeed when being interviewed for gross misconduct by the Department of Professional Standards (complaints).

Disclosure and the generation of 'relevant material' are issues that are applicable to a wide range of research activities being conducted within the criminal justice system. Sadly, I have yet to find any academic research (pertaining to eye witness testimony) in which the issue of disclosure is specifically addressed.

This is troubling as the legal ramifications for any researcher, police or otherwise, who fail to correctly deal with CPIA are sufficiently serious as to focus one's mind. In light of this, it may be prudent for all researchers (not only those who happen to be police officers) contemplating criminal justice research design to ask of their proposed methodology the following questions:

- Does the mode of inquiry engage the researcher with witnesses or police actors in live or ongoing criminal investigations?

- Is a consequence of the research activity the generation of any audible, written or other tangible material?
- Is it conceivable that any data so generated could undermine a prosecution case or assist the defence?

If the answer to these questions is 'yes' then either the research design needs to be amended, or a strategy needs to be designed capable of adequately dealing with the materials disclosure.

The research conducted in this study meets all three criteria. Were, for example, officers to disclose during interview that a witness in a specific case had expressed reservation about their identification or that they themselves or another officer had breached PACE then, in both cases, the audio tape and resulting transcript would amount to 'relevant material' under CPIA. The ramifications of this cannot be overstated, evidently there are likely to be serious legal implications. Additionally there would be serious ethical ones as the participants (and associated prosecution witnesses) 'physical, social and psychological wellbeing' is likely to be 'adversely affected by their participation in the research process', which of course is a breach of the British Criminology Societies code of ethics (2010).

The strategy adopted in this study to mitigate any CPIA vulnerability was straight forward. For reasons set out earlier in the method chapter (Chapter 4, page 112) semi-structured interviews were adopted as the principle data gathering tool. The decision to use semi-structured interviews was primarily made as it provided me with an ability to maintain consistency across the interview portfolio. The decision was also informed however by the need to manage the narrative direction that the interviews took so as to

avoid any collateral CPIA vulnerability. Consideration was also given at the research design stage to tightly focusing the questions posed so as to meet the research objective, but additionally to limit the researcher's exposure to CPIA. This was achieved by careful construction of the interview script to encourage participant responses in general, non-specific terms. Were a situation to have arisen in which the narrative veered away from the interview script into potentially litigious territory, an attempt would initially have been made to redirect the interview into safer territory, or terminate the interview completely. This strategy is by no means complex; it is one of simple avoidance. Its' significance to the overall research design should not be considered in terms of its sophistication; moreover, it is in the very fact of its existence. There is little point contemplating such matters post-event as, by that time, the material will have already been generated and, like an unwanted child, once it exists you have an ongoing legal and moral responsibility for it.

Proposed Further Research

In isolation, this research is unlikely to have any real outcome in terms of judicial reform. It does however provide some momentum to the debate and moves previous research findings from a purely theoretical setting into the real world. This momentum could be built upon by similarly replicating other lab based research, specifically the effects that the provision of post-identification information has on witnesses. This seems to me to be a natural progression from this thesis and one I intend to pursue.

There are however, as discussed previously, significant 'disclosure' problems associated with research that interacts with witnesses in ongoing investigations. With the

appropriate research design these problems may not be insurmountable. It does seem to me though that the sensitivities around disclosure under current CPIA rules present a significant prohibitive hurdle to researchers, effectively preventing the realisation of important research findings. It would be helpful if future legislators countenanced within law an exemption from disclosure rules for legitimate academic research. Such a measure would allow previously conducted theoretical research to be tested in real life settings without the associated legal and ethical implications for research participants. The results of such research are likely to be better received by law makers and legislators and more readily translatable into practical criminal justice outcomes.

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Appendix 1

Police & Criminal Evidence Act 1984, Code of Practice D. Circumstances in which an identification procedure must be held.

3.12 Whenever:

(i) a witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held;

or

(ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10, and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen them commit the crime.

3.13 Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

3.14 If, because of paragraph 3.12, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:

a) a video identification is not practicable; or

b) an identification parade is both practicable and more suitable than a video identification; or

c) paragraph 3.16 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade.

Appendix 2

Police & Criminal Evidence Act 1984, Code of Practice D. Guidance on conducting the identification parade.

10. The identification officer is responsible for making the appropriate arrangements to ensure that, before they see the set of images, witnesses are not able to communicate with each other about the case, see any of the images which are to be shown, see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity, or overhear a witness who has already seen the material. **There must be no discussion with the witness about the composition of the set of images and they must not be told whether a previous witness has made any identification.**

11. Only one witness may see the set of images at a time. Immediately before the images are shown **the witness shall be told that the person they saw on a specified earlier occasion may or may not appear in the images they are shown and that if they cannot make a positive identification they should say so.** The witness shall be advised that at any point they may ask to see a particular part of the set of images or to have a particular image frozen for them to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. However, they should be asked not to make any decision as to whether the person they saw is on the set of images until they have seen the whole set at least twice.

12. **Once the witness has seen the whole set of images at least twice and has indicated that they do not want to view the images or any part of them again, the witness shall be asked to say whether the individual they saw in person on a specified earlier occasion has been shown and, if so, to identify him or her by number of the image.** The witness will then be shown that image to confirm the identification (see paragraph 17).

13. Care must be taken not to direct the witness's attention to any one individual image or to give any indication to the suspect's identity. Where a witness has previously made an

identification by photographs, or a computerised or artist's composite or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification by other means in accordance with this Code. Nor must the witness be reminded of any description of the suspect.

14. After the procedure each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

Appendix 3



Working together for a safer London

To whom it may concern

Chief Superintendent [REDACTED]

Telephone: 020 [REDACTED]
Email: [REDACTED]@met.police.uk
www.met.police.uk

Your ref:
Our ref:

15 February 2011

Dear Sirs,

DS Martin Head

This letter is to confirm that I am willing to act as MPS sponsor for DS Martin Head and will seek to facilitate access to, and contact with, staff here at [REDACTED] and through them the witnesses sought.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'M. Head'.

[REDACTED]
Borough Commander

Appendix 4



Police Officers/Police Staff
[Redacted]

Chief Superintendent
[Redacted]

Telephone: 020 [Redacted]
Email: [Redacted]@met.police.uk
www.met.police.uk
Your ref:
Our ref:

15 February 2011

Dear Colleague,

Participation in Research

DS Martin Head is undertaking research, as part of his dissertation at Canterbury Christ Church University, on the relationship between eyewitness confidence at formal identification parades and subsequent accuracy of selection decisions.

I have given DS Head my authority to engage with investigators under my command, to track investigations on the BOCU that involve formal identification and to engage with witnesses involved (subject to CPS approval).

Please accept this letter as my authority to assist DS Head in progressing his research and where possible, to participate in structured interviews.

Yours sincerely,

A handwritten signature in black ink, appearing to be "N. [Redacted]".

[Redacted]
Borough Commander

Appendix 5



The relationship between witness confidence at the point of formal identification and later at point of trial.

POLICE OFFICER PARTICIPANT INFORMATION

The Department of Law and Criminal Justice Studies at Canterbury Christ Church University (CCCU) is conducting research into eye witness evidence. The research seeks to compare the relationship between feelings of confidence experienced by eye witnesses immediately after participating in a formal identification to that which they experience later, at point of trial or other judicial outcome. The research aims to identify any variance in these two measurements and determine the factors that contribute to any change of confidence experienced by witnesses.

The research is being conducted in two phases:

Phase one consists of semi-structured interviews with police investigators.

Phase two consists of researcher engagement with witnesses as they progress through the judicial process. Witnesses will be invited to complete questionnaires immediately after participating in an identification procedure and later, at point of trial or other judicial outcome.

The principal researcher for the study is **Martin HEAD**, a post graduate student at Canterbury Christ Church University and MPS employee (Detective Sergeant SCD1 Homicide command).

This information sheet is aimed at providing you with the background to the study, specifically **phase one** of the research.

Background

Phase one of the research study will investigate the practical experiences of Police investigators with regard to formal identification and their engagement with witnesses.

It is assumed that views expressed by the participants will be their own views and in no way will they represent those of their employer, the Metropolitan Police Service.

The information generated by this research will be used as the basis for a post-graduate thesis.

The research has been approved by the Metropolitan Police Service (MPS) Strategic Research Unit (MPSRU) and the Borough Commander, Superintendent [REDACTED]

A letter of authority is attached to this information sheet for your information.

What will you be required to do?

Police investigators will be required to be interviewed by a post-graduate researcher from Canterbury Christ Church University.

To participate in this research you must:

- sign the consent form
- attend the interview

Procedures

You will be asked a number of questions regarding your role as a police officer and your experience of formal identification procedures.

These may include questions relate to;

- Your general police experience and service
- Your experience of formal identification procedures
- How witnesses obtain information about parade outcomes

The interview will be recorded, anonymised and then transcribed for inclusion in a PhD thesis.

Feedback

All data will be codified and anonymised, prior to inclusion in the thesis.
A copy of the completed thesis will be provided to the National Police Improvement Agency (NPIA) and can be accessed by participants on request.

Confidentiality

All data and personal information will be stored securely within MPS premises in accordance with the Data Protection Act 1998 and internal data handling policy.

Data can only be accessed by Martin HEAD, electronic data will be stored on the researcher's computer in password protected files, paper documents will be stored in a secure cabinet which only the researcher has access to.

After completion of the study, all data will be made anonymous (i.e. all personal information associated with the data will be removed).

The retention period for material has been set at 12 months after completion of thesis submission. After this period all confidential material will be destroyed.

Confidentiality can only be overridden in instances of undisclosed criminality or concerns for participant safety.

Deciding Whether to Participate

If you have any questions or concerns about the nature, procedures or requirements for participation do not hesitate to contact me.

Should you decide to participate, involvement is **voluntary** and you will be free to withdraw at any time without having to give a reason.

Any Questions?

Please contact Martin HEAD at:
The Department of Law and Criminal Justice Studies,
Canterbury Christ Church University,
North Holmes Road,
Canterbury,
KENT.
CT1 1QU.

or email:

m.j.head57@canterbury.ac.uk



Appendix 6



CONSENT FORM (police)

Title of Project: The relationship between eye witness confidence at the point of formal identification and later at point of trial.

Name of Researcher: Martin HEAD

Contact details:

Address:

Canterbury Christ Church University
North Holmes Road
Canterbury
Kent
CT1 1QU

Tel:

[REDACTED]

Email:

m.j.head57@canterbury.ac.uk

Please initial

box

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.
3. I understand that any personal information that I provide to the researchers will be kept strictly confidential
4. I agree to take part in the above study.

Name of Participant

Date

Signature

Name of Person taking consent
(if different from researcher)

Date

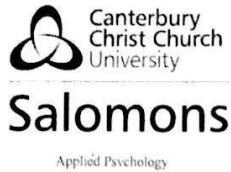
Signature

Researcher

Date

Signature

Copies: 1 for participant
1 for researcher



**Confidentiality Statement for Persons Undertaking
Transcription of Research Project Interviews**

Project title EYEWITNESS EVIDENCE
Researcher's name MARTIN HEAD

The tape/s or recording/s you are transcribing have been created as part of a research project. Tapes may contain information of a very personal nature, which should be kept confidential and not disclosed to others. Maintaining this confidentiality is of utmost importance to the University. Signing this form means you agree not to disclose any information you may hear on the recording to others, and not to reveal any identifying names, place-names or other information on the recording to any person other than the researcher/s named above. You agree to keep the recording in a secure place where it cannot be accessed or heard by other people, and to show your transcription only to the relevant individual/s who is involved in the research project, i.e. the researcher/s named above.

You will also follow any instructions given to you by the researcher about how to disguise the names of people and places talked about on any recordings as you transcribe them, so that the written transcript will not contain such names of people and places.

Following completion of the transcription work you will not retain any recordings or transcript material, in any form. You will pass all tapes back to the researcher and erase any material remaining on your computer hard drive or other electronic medium on which it has been held.

[https://blackboard.canterbury.ac.uk/@/e98f737f1cc62a8fd581fa38383b9977e/courses/1/sa05caspddclipsyr/content/_385282_1/transcribing agreement july 2011.doc](https://blackboard.canterbury.ac.uk/@/e98f737f1cc62a8fd581fa38383b9977e/courses/1/sa05caspddclipsyr/content/_385282_1/transcribing%20agreement%20july%202011.doc)

You agree that if you find that anyone speaking on a tape is known to you, you will stop transcription work on that tape immediately and pass it back to the researcher.

Declaration

I agree that:

1. I will discuss the content of the recording/s only with the researcher/s named on the previous page.
2. I will keep all recordings in a secure place where they cannot be found or heard by others.
3. I will treat the transcripts of the recordings as confidential information.
4. I will agree with the researcher how to disguise names of people and places on the recordings.
5. I will not retain any material following completion of transcription.
6. If the person being interviewed on a recording is known to me I will undertake no further transcription work on the recording and will return it to the researcher as soon as is possible.

I agree to act according to the above constraints

Your name LINDA MANLEY

Signature L Manley

Date 14/09/2011

Occasionally, the conversations on recordings can be distressing to hear. If you should find it upsetting, please speak to the researcher.

Appendix 8 PNLD search result for Code 'D' of PACE

D10512 / PACE Code of Practice D - introduction

NARRATIVE

Code of Practice D under the Police and Criminal Evidence Act 1984 concerns the principal methods used by police for identifying persons in connection with the investigation of offences and the keeping of accurate and reliable records. Section 1 paragraphs 1.1 to 1.7 provide an introduction to the Code

1 Introduction

1.1 This Code of Practice concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records. The powers and procedures in this code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. [The Equality Act 2010](#) makes it unlawful for police officers to discriminate against, harass or victimise any person on the grounds of the 'protected characteristics' of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity when using their powers. When police forces are carrying out their functions they also have a duty to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.

1.2 In this code, identification by an eye-witness arises when a witness who has seen the offender committing the crime and is given an opportunity to identify a person suspected of involvement in the offence in a video identification, identification parade or similar procedure. These eyewitness identification procedures (see Part A of [section 3](#) below) are designed to:

- test the witness' ability to identify the suspect as the person they saw on a previous occasion
- provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural (*hearing*) identification procedures such as a "voice identification parade", where they judge that appropriate.

Important: See the Home Office Circular on [Voice identification](#).

1.2A In this code, separate provisions in Part B of [section 3](#) below apply when any person, including a police officer, is asked if they recognise anyone they see in an image as being someone they know and to test their claim that they recognise that person as someone who is known to them. Except where stated, these separate provisions are not subject to the eye-witnesses identification procedures described in paragraph 1.2.

1.3 Identification by fingerprints applies when a person's fingerprints are taken to:

- compare with fingerprints found at the scene of a crime
- check and prove convictions
- help to ascertain a person's identity.

1.3A Identification using footwear impressions applies when a person's footwear impressions are taken to compare with impressions found at the scene of a crime.

1.4 Identification by body samples and impressions includes taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the scene of a crime, or a victim.

1.5 Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who:

- are wanted for offences
- fail to answer their bail.

1.6 Another method of identification involves searching and examining detained suspects to find, e.g., marks such as tattoos or scars which may help establish their identity or whether they have been involved in committing an offence.

1.7 The provisions of the Police and Criminal Evidence Act 1984 (PACE) and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

[Index - Code of Practice D](#)

SOURCE(S)

[Police and Criminal Evidence Act 1984 - Code of Practice D - identification](#)

RELATED MATERIAL

[1 Introduction](#)

RELATED CASES

[R v Holmes 2014](#)

Problems with identification evidence where a suspect picked for identification parade due to being a man with previous convictions who lived in the area

[R v Moss 2011](#)

Identification evidence given by an off-duty police officer of his identification of a suspect from cctv was admissible

[R v McGrath 2009](#)

The need for an objective means of testing the accuracy of an identification by CCTV

[R v Smith and others 2008](#)

Requirements where a police officer makes an identification from CCTV images.

[R v Flynn, R v St John 2008](#)

Admission of voice recognition evidence

[Wellington v DPP 2007](#)

Aliases in a PNC printout can be admitted as evidence without the requirement for a description of the circumstances in which they are used.

[R v Huntley and Colgan 2006](#)

Breach of Code D PACE will not always render a conviction unsafe.

[Marsh v DPP 2006](#)

Discretion to exclude evidence where PACE code breached not always required.

NATIONAL REGION

England and Wales

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