

Gaining best quality evidence from witnesses

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How does memory work?



VS



WIKIPEDIA
The Free Encyclopedia

Public perception



“Human memory works like a video camera, accurately recording the events we see and hear so that we can review and inspect them later.”

63%

“Once you have experienced an event and formed a memory of it, that memory does not change.”

48%

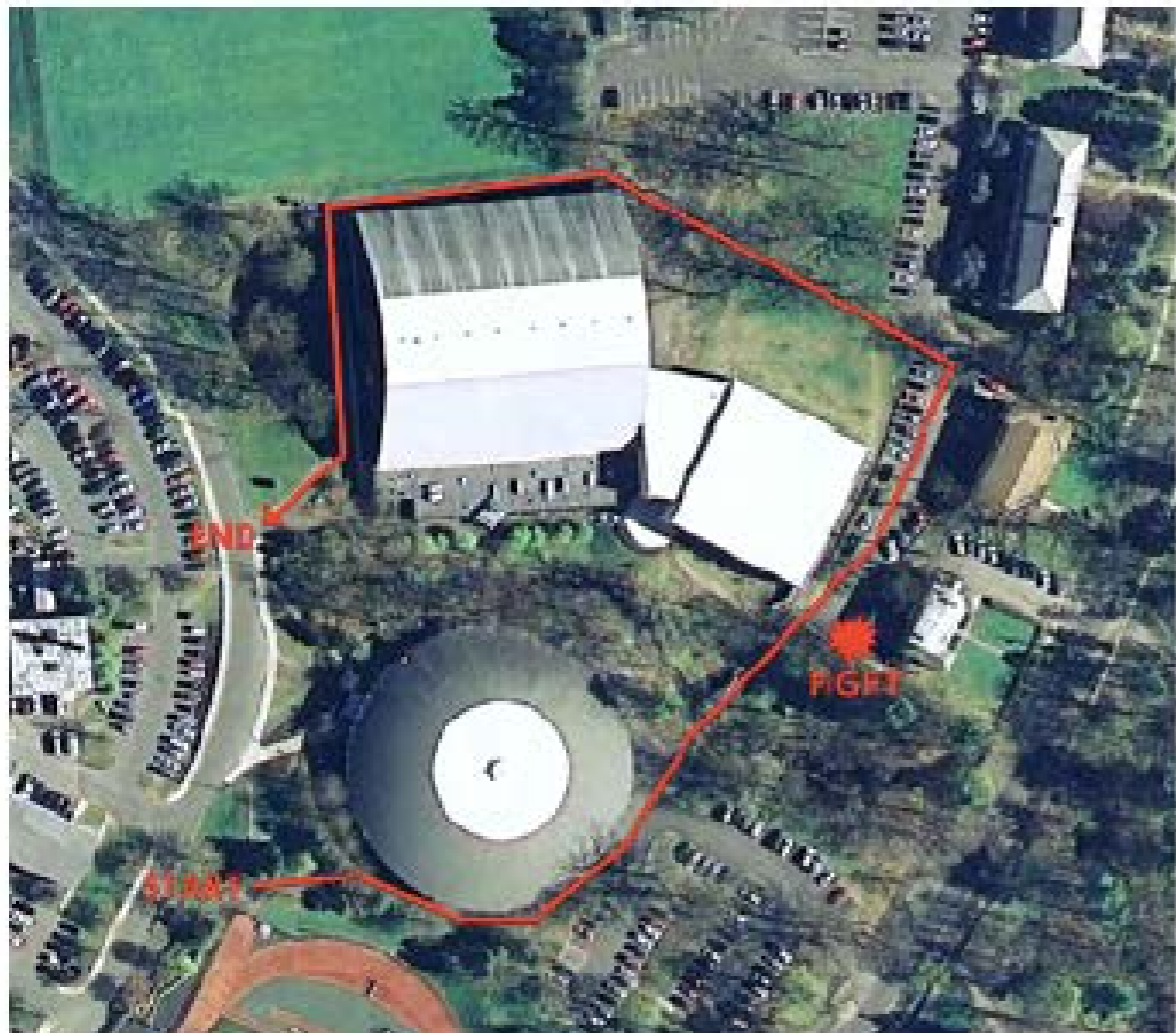
Witnesses don't encode everything they see because they're distracted, not paying attention, mightn't realise significance of an event in the moment it occurs

Inattentional blindness — failure to see visible and otherwise salient events when one is paying attention to something else



Kenny Conley

Is it possible to see something really obvious, and still fail to perceive or remember it?



(a)

(b)

Figure 1. (a) The area on the Union College campus where the studies were conducted (image from Google Maps, maps.google.com). The route run by the confederate and the subjects is shown in red. (b) A close-up view of the fight from the point where the subjects passed closest to it.

Research shows that people can fail to notice even salient events that occur in close proximity

35%

reported seeing the fight (night)

56%

reported seeing the fight (day)



Eliciting information from witnesses

Simple and effective evidence-based guidelines

Based on commonly used and structured approach to interviews called PEACE (Plan, Engage, Account, Closure, Evaluate)

This approach will increase the efficiency of obtaining evidence and enhance the quality of evidence obtained



Planning & Preparation

- Consider the information already held
- Consider needs and expectations of the interviewee (witness categorisation)
 - unwilling to talk, upset, traumatised
 - unwilling to provide accurate info
 - intimidate the investigator
 - feel pressure to provide answers despite forgetting?
 - worried about being blamed, potential threats to their employment/position
 - worried about “snitching” on others
 - fear of senior managers
 - undergone other, challenging interviews
 - language difficulties



Planning & Preparation

- Determine the interviewer roles (if necessary)
- Make practical arrangements
 - Are special measures required?
 - Access to a quiet area
 - local office, non-work related location, witness's home
 - Sufficient time
 - Separate interviewees
- Reluctant witnesses
 - Explore why, provide reassurance and seek to resolve any concerns
 - Avoid anonymising witness statements if possible, but may be appropriate in exceptional circumstances (e.g., witness has a genuine fear of reprisals)
- Ask if they have encountered any info about what happened (from other colleagues, witnesses, social media etc)



Engage & Explain

Introductions

- Introduce yourself (and colleagues if present)
- Explain where you are from
- Clarify what you're doing and why (e.g., “to establish the facts to prevent a recurrence and not to allocate blame”)
- Explain how the interview will run, how confidentiality is maintained, use of evidence, legal issues/requirements

Engage

- Establish use of preferred name
- Calm and reassure the witness if necessary (address concerns/anxieties)
- Use rapid rapport skills to encourage engagement and cooperation...



Rapid rapport skills

- Acknowledge shared interests, preferences, or experiences — feelings of similarity can promote trust (e.g., “I think/do/like that too”)
- Using similar communication styles and phrases can reduce any perceived social differences
- Subtle use of mirroring, non-verbal feedback shouldn’t be qualitative (e.g., expressing surprise)
- Empathy when appropriate (e.g., “I can see you’re upset; I understand this is difficult”)
- Active listening (non-opinionated feedback; no interruptions)
- Relaxed, open, body language (non-confrontational)



Engage & Explain

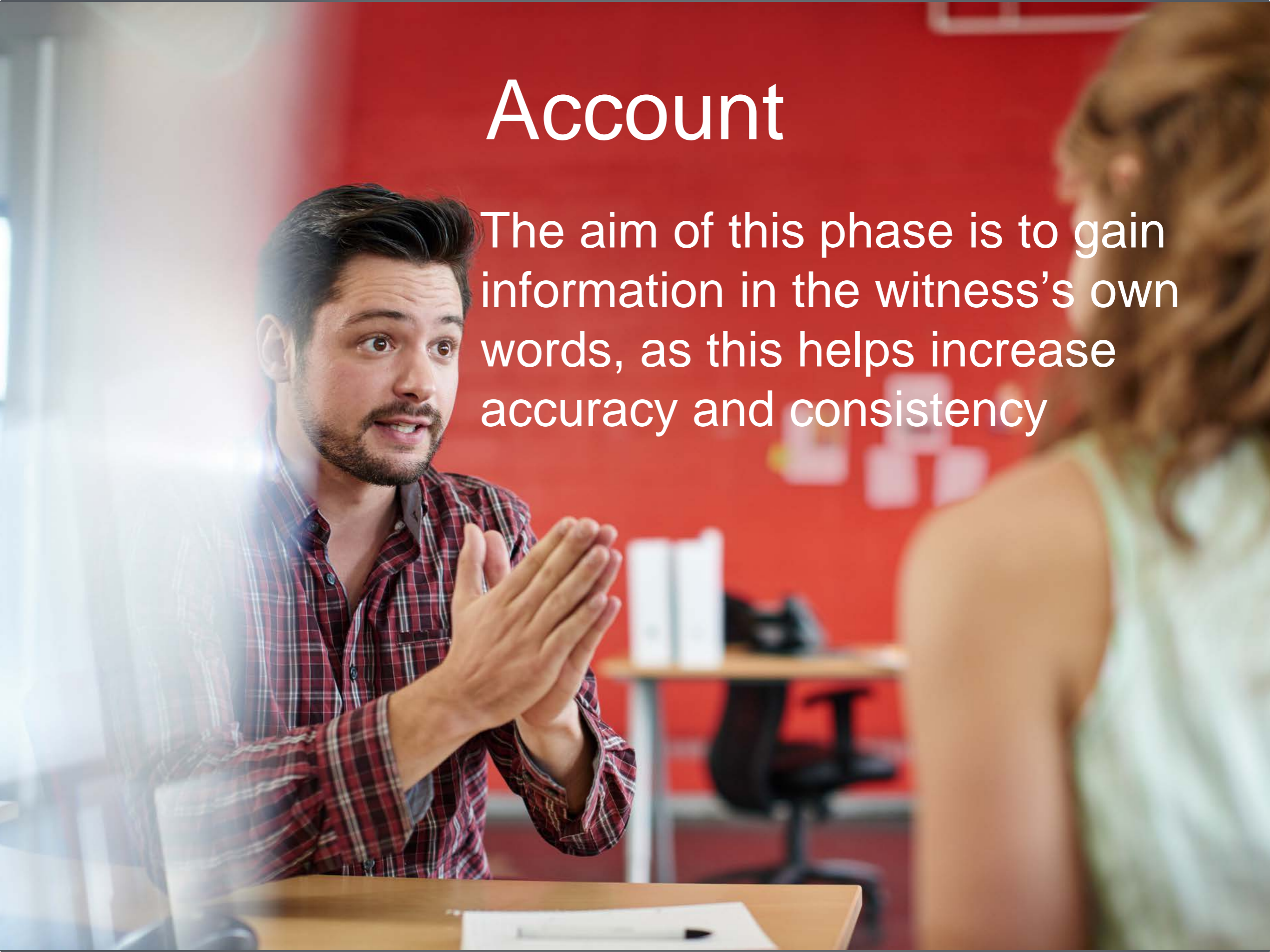
Explain

- Stress the importance of their contribution to the investigation (e.g., “I wasn’t there and I don’t know what you saw”)
- There is a difference between remembering info and reporting info. Tell them to report everything that comes to mind, in as much detail as possible
- Encourage them to use qualifiers (e.g., “I don’t know” or “I’m not sure”) and monitor their reporting
- Tell them not to guess



Account

The aim of this phase is to gain information in the witness's own words, as this helps increase accuracy and consistency



USE OPEN QUESTIONS FOR BREADTH OF INFORMATION

- “Tell me what happened”

Use neutral facilitators (nodding, “uh huh”, etc) to encourage them to keep talking
Do not interrupt

USE OPEN QUESTIONS FOR DEPTH OF INFORMATION (*TED*)

- T “Tell me more about X, Y, Z”
- E “Explain in more detail what you mean about Y”
- D “Describe in more detail Z”

*X, Y and Z should be details that have already been mentioned by the witness (use their words rather than your own, e.g., “big guy”)

Use neutral facilitators (nodding, “uh huh”, etc)

Use echo statements (repeating back the witness’s words in instances of silence, e.g., “So, you said you were in the shop...”) to encourage them to resume talking.

Do not interrupt

USE FOCUSED QUESTIONS FOR MORE SPECIFIC INFORMATION (5-WH)

- “You mentioned you were on the platform, **where** exactly were you?”
- “You mentioned you were talking to someone at the time, **who** was this?”
- “You mentioned that the ‘Late Notices’ were not updated, **when** did you first notice this?”
- “You mentioned one of the customers made a threat, **how** was that made?”
- “You mentioned one of the customers had a tattoo, **what** did it look like?”

Use neutral facilitators (nodding, “uh huh”, etc)

Do not interrupt

USE CLOSED QUESTIONS OR OPTION POSING QUESTIONS FOR THE PURPOSE OF CLARIFICATION

Only use closed questions if necessary! They are most frequently associated with errors.

- “Was the platform busy with customers?”
- “Did others hear the customer making a threat?”
- “Did that happen before or after X?”

Do not use leading questions that suggest something to the interviewee that they haven't revealed themselves

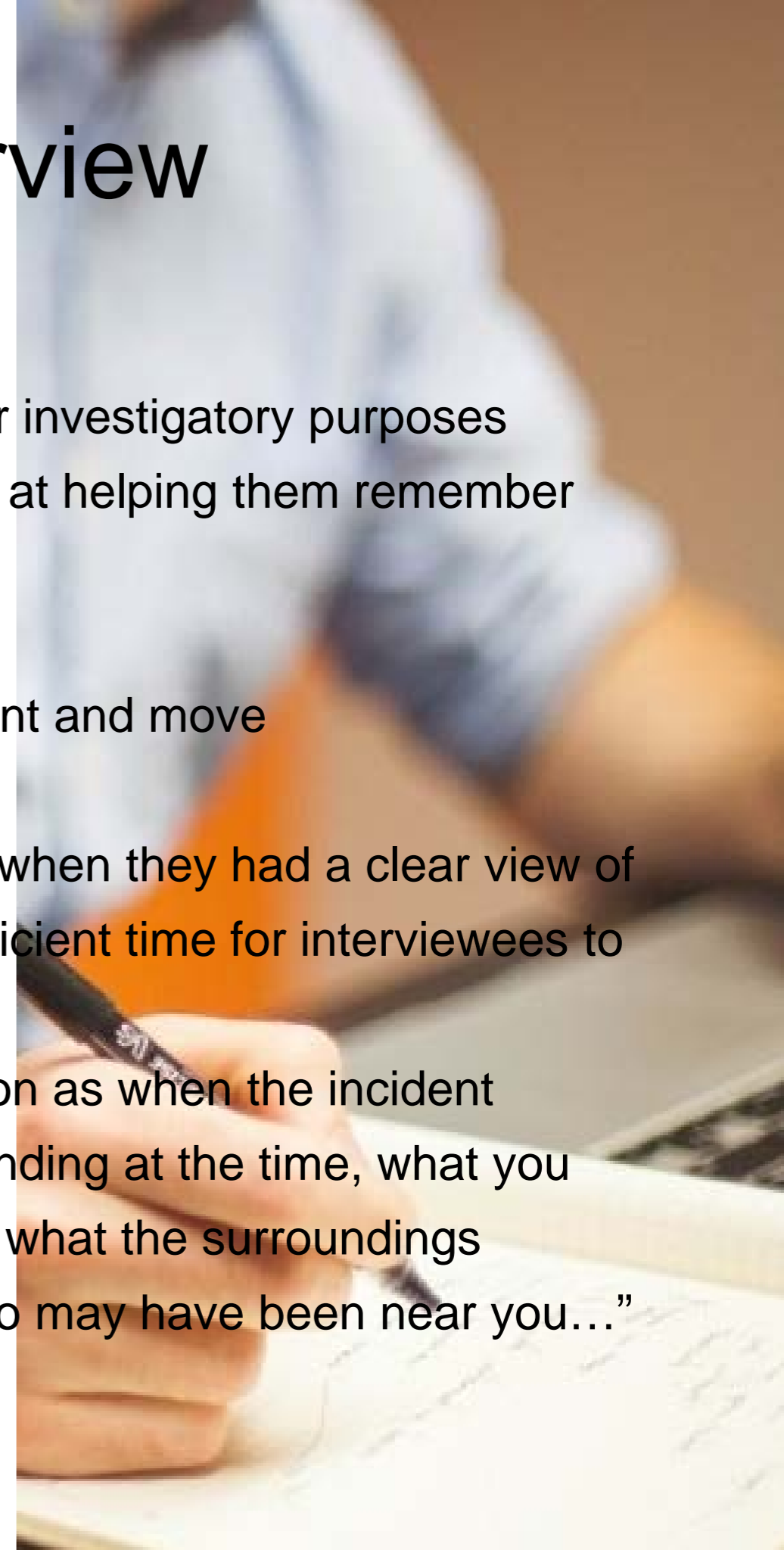
e.g., “Did you hear the driver discussing the incident with the signaller?” (suggesting that there was a discussion)

e.g., “Was the car black?” (suggesting 1. there was a car, and 2. it might have been black)

Structuring your interview

Tips

- Consider which topic areas you need to probe for investigatory purposes
- A witness's own retrieval cues are most effective at helping them remember as much as possible, so facilitate this:
 - “You said...(use their words). Tell me more.”
 - “Start from the most salient point of the incident and move forward/backwards from that point...”
- Ask the witness to close their eyes or focus on when they had a clear view of X, Y, Z. Instructions must be delivered with sufficient time for interviewees to picture the events and reinstate the context
 - “Try to put yourself back in the same situation as when the incident happened. Think about where you were standing at the time, what you were thinking about, what you were feeling, what the surroundings looked like, think about the other people who may have been near you...”



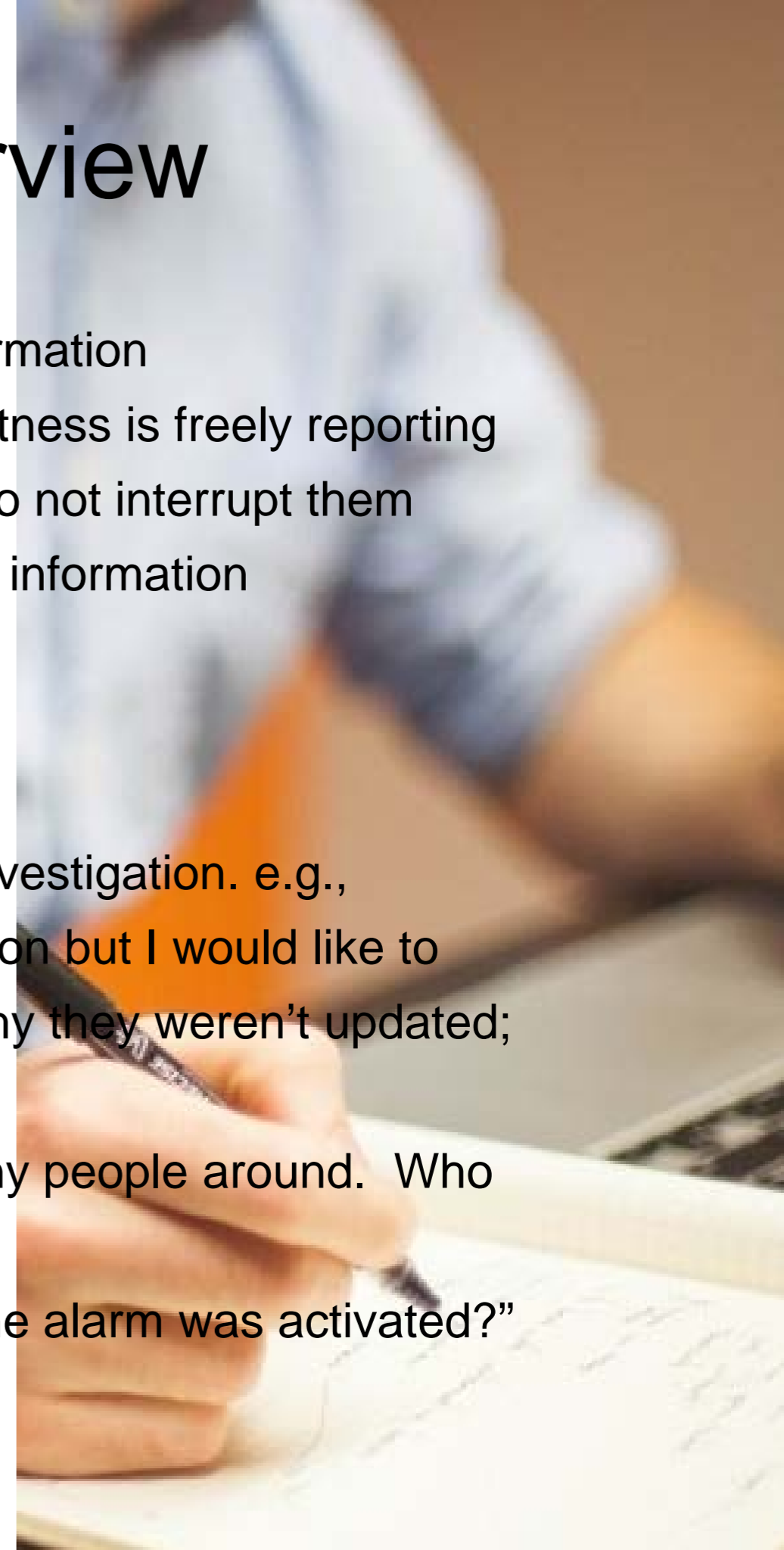
Structuring your interview

Effective note-taking can help identify crucial information

- Note down key words and phrases as the witness is freely reporting what happened. Use their own words, and do not interrupt them
- Use these as topic areas to probe for further information

Unmentioned details

- Probe for additional info that would help the investigation. e.g.,
 - Open - “You have told me a lot of information but I would like to know more about the ‘Late Notices’ and why they weren’t updated; tell me more about that.”
 - Focused - “You mentioned there were many people around. Who else was there?”
 - Closed - “Did this happen before or after the alarm was activated?”



Closure

Encourage the interviewee to add to the interview or ask questions:

- “Is there anything else you would like to tell me?”
- “Is there anything you would like to ask?”

Provide a summary of the interviewee’s information and ask if this is accurate:

- “So you said X, Y, Z; is all of that correct?” “Tell me if I have missed something out.”

Provide information about future processes:

- “Here is my contact information; this is what will happen next...”
- “If you remember further details, please write them down and contact me”

Provide official end point for discussion and thank them:

- “Thats all we need for now. Thank you for your time.”



Evaluate

Did you get all the information you need at this stage?

Reflect on your conduct of the interview:

- Did you follow the interview question hierarchy
- Did you use appropriate non-leading questions?
- Did you use any inappropriate questions?

What might the consequences be?

How could you have re-phrased your question?

Implement appropriate next steps





Questions

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About me....

- Cognitive psychologist in the *Behavioural Science Research Group* at Warwick University
- Research into human memory, particularly memory distortions in legal contexts
- Published >40 refereed articles in international scientific journals, plus numerous chapters and commentaries
- Member of Warwick's *Criminal Justice Centre*
- Deputy Director of Warwick's *Centre for Operational Police Research*
- Associate Editor at *Legal & Criminological Psychology* and sit on 4 editorial boards
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