

Justice system and the cases of miscarriages criminology essay



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INTRODUCTION

Cases of miscarriages of justice have come to light in recent years and have become a celebrated issue in the society. Different reasons have been given for it like poor investigative interviewing practices, court processes and custodial practices. However, investigative interviewing practices is the most rated as the cause of these injustices, hence, the purpose of this essay is to see how these cases of miscarriages of justice have helped in changing investigative interview practices for better.

INVESTIGATIVE INTERVIEWING

An interview is a conversation intended to yield information, it is essential to obtain correct, detailed and comprehensive explanations that are rich in detail from all those involved within the criminal justice process; from victims, witnesses, colleagues, friends, neighbours, family and suspects.

Interviews are generally non-accusatory; during the course of an

investigation the investigator will conduct interviews with all available witnesses and potential suspects. (Milne & Bull, 2003, p. 111)

Investigative interviewing is an important part of the investigative process for patrol officers, loss prevention agents, detectives or other investigators. Most information is derived from people, which makes it important to have knowledge and skill in interviewing, in order to get the best of the interview process. The investigator should ask open-ended questions in an attempt to elicit as much information as possible. The interview subject should do most (75%) of the talking during the conversation (Reid & Associates, 2001). If, during the interview it is found that the subject has lied, the investigator should generally not confront the subject. In most cases it is best to challenge a lie during a follow-up interview or once the interviewer has moved into an interrogation.

Interviews are conducted at different levels of the investigative process, ranging from the initial police interview of a victim, witness, or suspect to an in-court interview in front of a judge or other decision makers. Interviews conducted during the initial phase of the police investigation are usually the most critical in determining whether a criminal case is solved (Fisher, Geiselman, & Raymond, 1987), especially when there is little or no physical evidence and only one witness to guide the investigation. At this point in the investigation, there is considerable potential to extract extensive, accurate information, because the event is still fresh and, hence, relatively accessible in the witnesses' memory. Furthermore, witnesses have had little time to think about the event, so their immediate perceptions are likely to be

pristine, untainted by later influences. Properly conducted interviews may
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thus advance the police investigation immeasurably by yielding thorough, accurate records of the crime details. On the other hand, poorly conducted interviews have the potential to distort the witnesses' memories and contaminate the entire investigative process. (Hoffman, 2005)

Among the most important traits for a successful interviewer are Empathy, Communication and Professionalism. All three of these characteristics combine to send a powerful message to the subject. That is, that the interviewer is an honourable person, who has all of the necessary evidence, and truly understands the feelings of guilt within the subject. Empathy is considered an essential characteristic of a good interviewer.

EMPATHY

Empathy is the ability to understand and share in another's feelings (Webster, 1972). Investigators who adopt empathy easily identify with other people " see things through another's eyes". An interview or interrogation is a conversation between two human beings. The subject and interviewer are on an equal basis. Unlike the interviewer, the subject likely has no training whatsoever in interviewing. But as a person the interviewee communicates with others all the time and can identify when dealing with someone who is insincere. It is difficult to convincingly offer explanations and understanding to a subject when the interviewer cannot identify with the other person. This might make the interviewer seem insincere and make it difficult to obtain a fair account of the issue on ground.

COMMUNICATION

One of the most important traits of a good interviewer is being able to communicate excellently. When people communicate they use more than words. Tone, inflection, volume and pauses are all essential aspects of Para-verbal communication. Non-verbal communication is as important as what is actually being said. Gestures, posture, hand, eye and head movement (or lack thereof) are vital parts of a person's non-verbal communication. The interviewer should also take note of the messages sent by the subject's physiological responses such as skin tone, sweating and respiration. In some circumstances the interviewer will notice that one can visibly monitor the subject's heart rate by observing the carotid pulse. The most important communication challenge for the interviewer is to be aware of all of these methods of communication. The interviewer must take note of what he or she is receiving and also of what one is passing across. The core of interviewing is communication, but how the interviewer presents oneself to the subject is the first communication that occurs.

PROFESSIONALISM

The interviewer should be dressed in a professional manner. The interviewer should put into consideration the subject and the location of the interview before deciding on attire, the interviewer's attitude should always be professional. No matter the outcome of the interview, the interviewer should not make sarcastic or disapproving remarks during or after the interview. The interview should begin civilly with a handshake and end in the same manner. The final role that professionalism plays in the interview is the attention to detail paid to the confession and statement. Someone, perhaps

the interviewer, spent valuable time preparing the investigation. The investigation file will likely be full of detail and description. Once the subject confesses, the professional interviewer will follow through with developing the confession and capturing it in a detailed and accurate statement.

Investigation is a core duty of policing. Given that the interviewing of victims, witnesses and suspects is central to the success of an investigation, the highest standards need to be upheld. In order to do this, forces need to develop and maintain the valuable resource that the skills of their interviewers represent. Interviews that are professionally undertaken and quality assured can realise several business benefits. In particular, they can:

Direct an investigation, which in turn can lead to a prosecution or early release of an innocent person;

Support the prosecution case, thereby saving time, money and resources;

Increase public confidence in the Police Service, particularly with witnesses and victims of crimes who come into direct contact with the police.

Conversely, failure to professionally undertake and assure quality interviews can have adverse consequences in terms of failure to adhere to legislation, loss of critical material, unsolved crime, lack of credibility and loss of confidence. The gathering of information from a well-prepared victim and witness interview will contribute significantly to the investigation. An effective interview of a suspect will commit them to an account of events that may include an admission. In the admission, the suspect may detail how the offence was committed and thus the investigation can be more focused.

The value of a properly obtained admission can prove the mens rea of the offence, beyond doubt. (Hoffman, 2005)

MISCARRIAGES OF JUSTICE

The mistakes that occur within the criminal justice system can be described in various ways; the criminal justice system is founded on the presumption of innocence; a legal fiction intended to insulate the individual from abuses of state power and reduces the likelihood of a factually innocent person being convicted. In order to cast this protective net as widely as possible, the appellate test has to be expressed in the neutral term of 'safety'. The media and campaigners have different motivations and usually focus upon cases of innocence in order to attract public interest and to achieve reform. Despite the moral and political impact of innocence cases, for those who seek to safeguard the rights of defendants and to uphold the integrity of the criminal justice system, it is imperative to resist allowing the criminal justice debate to degenerate into competing claims of guilt versus innocence.

Miscarriage of Justice has been defined as "A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite lack of evidence on an essential element of the crime." (Barak, 2007). This definition can be attributed to wrongful arrests, wrongful charges or indictments, wrongful sentences, but most notably wrongful convictions arising from improper and insufficient investigations. According to Barak, There are two general types of miscarriages of justice which are 'errors of due Process' and errors of impunity'. "Errors of due process involve unwarranted harassment, detention or conviction, or excessive sanctioning of people suspected of crimes". Errors of impunity refer to a "Lapse of <https://assignbuster.com/justice-system-and-the-cases-of-miscarriages-criminology-essay/>

justice that allows a culpable offender to remain at large or escape justice in some way. Error of due process can lead to error of impunity, thus, if a person is wrongly arrested, convicted and imprisoned for a crime that he/she did not commit. There is a good chance that the real offender will remain free to commit other offences, meanwhile, there is a probability that the real offender will be arrested, convicted and arrested for another crime. Both types of error can undermine the integrity and legitimacy of the Criminal Justice system.

The origin of most miscarriages of justice can be said to be from the roots, which is the law enforcement agents. The police have a big role to play in ensuring justice is carried out always, but in doing this, proper investigations and interview have to be carried out to ascertain the right facts. There have been many celebrated cases and many more of miscarriages of justice, as in the case of Stephen Downing who was convicted of the murder of Wendy Sewell in a Bakewell churchyard in 1973. The 17-year-old had a reading age of 11 and worked at the cemetery as a gardener, he was made to sign a confession that he was unable to read by the police. The case gained international notoriety as the "Bakewell Tart" murder. After spending 27 years in prison, Stephen Downing was released on bail in February 2001, pending the result of an appeal. His conviction was finally overturned in January 2002.

Miscarriages of Justice highlights the shortcomings of the Criminal justice system, it also reflects a tendency for police investigators to develop a theory as to responsibility for a crime and then to exclude all other avenues for investigation. (Dixon 1999). This may occur as a result of not following up
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other potential avenues of investigation or by active manipulation of evidence to support the theory. As in the case of The Cardiff Three, Steven Miller, Yusef Abdullahi, and Tony Paris who were falsely jailed for the murder of prostitute Lynette White, stabbed more than 50 times in a frenzied attack in a flat above a betting shop in Cardiff's Bute town area on Valentine's Day 1988, and jailed in 1990. This was a serious case of miscarriage of justice as a result of poor investigation and interrogation by the police officers involved, the young men were bullied and coerced to falsely confess to a crime they did not commit, they were charged to court with the barest minimum of evidence and were later cleared on appeal in 1992; it was not until 2003 Jeffrey Gafoor was jailed for life for the murder. The breakthrough was due to modern DNA techniques used on evidence taken from the crime scene. Subsequently, in 2005, nine retired Police Officers and three serving Officers were arrested and questioned for false imprisonment, conspiracy to pervert the course of justice and misconduct in public office.

Another celebrated case of miscarriage of justice is that of Rachel Jane Nickell (23 November 1968-15 July 1992) who was the victim of a sexual assault and murder on Wimbledon Common, London, on 15 July, 1992. She was stabbed 49 times. On 18 December, 2008, Robert Napper, 42, pleaded guilty to Miss Nickell's manslaughter on the grounds of diminished responsibility. Colin Stagg had earlier been charged and then acquitted in relation to this murder, as there was no forensic evidence linking Mr Stagg to the scene, the police asked criminal psychologist Paul Britton to create an offender profile of the killer. They decided that Mr Stagg fitted the profile and asked Mr Britton to assist in designing a covert operation, Operation "

Ezdell”, to see whether Mr Stagg would eliminate or implicate himself, an undercover police woman using the pseudonym ‘Lizzie James’ contacted Mr Stagg, posing as a friend of a woman with whom he used to be in contact via a lonely hearts’ column. She attempted to obtain information from him for over five months by feigning a romantic interest, meeting him, speaking to him on the telephone and exchanging letters containing sexual fantasies. Believing on the advice of the Crown Prosecution Service that there was sufficient evidence to convict Mr Stagg, the police arrested and charged him on 17 August 1993 with Miss Nickell’s murder. When the case reached the Old Bailey, Mr Justice Ognall judged that the police had shown “excessive zeal” and had tried to incriminate a suspect by “deceptive conduct of the grossest kind”. The entrapment evidence was excluded and the prosecution withdrew its case. Mr Stagg was acquitted in September 1994. This case is a clear example of a miscarriage of justice from different aspects; bad investigative interviewing, ignorance of other leads, bad decisions and errors on the part of the police officers. The main culprit was left roaming around and went on committing crimes before he was eventually caught for another crime.

There have been lots of other cases of miscarriages of justice with poor investigative interviewing being the major cause and other factors too. This led to the emergence of Judges’ Rules which was drawn by Judges in 1912, which was revised over the years and added to over the years and remained in force until they were replaced by the Police and Criminal Evidence act (PACE) 1984 and the Codes of Practice (Home Office Circular 89, 1978) as a result public outcry concerning highly publicised miscarriages of justice (e. g.

Guildford 4) in the UK, the Home Office is the central government department responsible for the criminal justice system) and Association of Chief Police Officers (ACPO) developed the investigative interviewing; ethos and PEACE training course in the 1990s PEACE continues to be the Police Service framework for interviewing. There are five phases to the PEACE framework which are:

Planning and Preparation: This includes what to consider when planning for an interview, understanding the main aim and the essence of the interview to the case at hand.

Engage and Explain: This describes how to cope with the special features of getting an interview started, involving the interviewee in the conversation, building rapport, setting the interviewee at ease and informing him/her about rights and other legal necessities, and establishing the ground rules.

Account, Clarification and Challenge: This deals with the central issue of obtaining the interviewee's account, clarifying this and, where necessary, challenging it.

Closure: This is an important aspect of the whole process, a good closure is necessary to ensure that there is a mutual understanding about all that transpired, it describes the considerations before closing an interview.

Evaluation: This consists of asking questions about what was achieved during the interview and how it fits into the whole investigation. Evaluation also includes the development of an interviewer's skill level, through assessment (self, peer and manager) and feedback.

According to Griffith & Milne (2005) " Most of the identified problems with police interviews prior to PEACE were due to miscarriages of justice linked to false confessions". These false confessions were due to bad police interviewing processes, though subsequent legislative which has authorised compulsory audio tape recording of all interviews with suspects and the right for a suspect to have a legal representative present should avoid a repetition of such occurrences. Miscarriages of Justice also led to the need to review police interviewing initiated under the auspices of the Association of Chief Police Officers (ACPO) and the Home Office. The National Strategic Steering Group on Investigative Interviewing exists to ensure the development and delivery of the most effective interview strategy. Its role is to ensure that a consistent and professional approach is adopted by the Police Service, which is able to withstand judicial and academic scrutiny and has the ability to instil public confidence. The overall aim of the National Strategic Steering Group on Investigative interviewing is:

To provide direction on the development of policy, practices and procedures to ensure that the interviewing of victims, witnesses and suspects supports professional investigation. The terms of reference of the National Strategic Steering Group on Investigative interviewing are:

- To maintain an effective dialogue with key stakeholders to ensure high standards of professionalism and service delivery.
- To monitor the potential impact of any changes in law and procedure on interviewing practices and make recommendations on further changes as necessary.

- To provide advice to ACPO and other key stakeholders on technical and procedural issues that impact on the professional practice of investigative interviewing.
- To ensure that the National Occupational Standards applicable to investigative interviewing are fit for purpose.
- To inform the design and development of effective learning and development products that supports the National Investigative Interviewing Strategy.
- To establish an effective partnership with the NPIA to develop professional practice and maintain operational support.

The principles of investigative interviewing (NSLEC, 2004, pp. 16-20) which have generally stood the test of time have been revised. The Principles of Investigative Interviewing 2007 are:

The aim of investigative interviewing is to obtain accurate and reliable accounts from victims, witnesses or suspects about matters under police investigation, accurate information to seek truth and not coercing false confessions.

Investigators must act fairly when questioning victims, witnesses or suspects, vulnerable people must be treated with particular consideration at all times.

Investigative interviewing should be approached with an investigative mindset.

Accounts obtained from the person who is being interviewed should always be tested against what the interviewer already knows or what can reasonably be established, investigative interviewing should be approached with an open mind.

When conducting an interview, investigators are free to ask a wide range of questions in order to obtain material which may assist an investigation.

Investigators should recognise the positive impact of an early admission in the context of the criminal justice system.

Investigators are not bound to accept the first answer given. Questioning is not unfair merely because it is persistent, the interviewer's duty is to get accurate and reliable information from an interviewee no matter the number of times the question is asked, as long as it is done carefully and not in an oppressive manner.

Even when the right of silence is exercised by a suspect, investigators have a responsibility to put questions to them, if the interviewer believes truth can be derived from the person in question.

Miscarriages of justice threaten the very foundation of a society, because in every liberal legal system, legal rights and autonomy are paramount.

Miscarriages of justice undermines these individual rights which has led to an outcry by society and prompted the necessary bodies to build laws, policies and practices to be adhered to in order to prevent further miscarriages of justice arising from investigative interviewing and thus has improved investigative interviewing practices.

RELEVANT CASE LAW

R. v. Downing (2003, March 10) Newstatesman

R. v. Miller, Paris and Abdullah [1993] 97, G. App. R.

R. v. Stagg (1992) The Sun. Retrieved 3 January, 2011.