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The police interview using videoconferencing with a legal interpreter: a critical view from the perspective of interview techniques

1 The police interview as the backbone of a judicial investigation

During many years of conducting police interviews at the Local Police of Antwerp, we sometimes asked fellow police officers what it means for them to carry out a police interview. We received a wide range of answers, some more meaningful and profound than others. Answers included:

- 'A police interview is a goal-oriented interrogation (although there is a difference between a general interview and an in-depth interrogation).'
- 'I start with the "weakest" person in the group and then use the statements I obtained against the other suspects.'
- 'A police interview starts with a casual chat, so that it becomes easier to assess the person you are about to interview.'
- 'Conducting a police interview means in fact having a confidential conversation through direct contact.'
- 'A police interview has to be constructed differently, depending on whether you are interviewing a victim/witness or interrogating a suspect.'
- 'A police interview is a question and answer game, and requires the necessary preparation.'
- 'A police interview is a constant and laborious search for "the truth".'
- 'A police interview has only one objective: to obtain a confession.'
- 'A police interview can only be considered successful if the written version directly corresponds to what was said during the interview.'
- 'A police interview starts with bringing about a good mutual understanding.'
- 'Sometimes the interview consists of people talking across each other, and it turns into an argument between clashing egos.'

We can say that all these answers are meaningful, that all these replies and descriptions shed light on some essential aspects of a police interview and that they all contain elements of the cover term "police interview". They are all answers that refer to the police officers' on-the-spot assessment and understanding of the following questions: what is a police interview, what is its objective and how is it perceived by police officers? It is virtually impossible to draw up a sound, comprehensive definition of the "police interview".

In the international specialist literature the following description of a (good) police interview is given:

The police interview is the fair, objective, authorized and goal-oriented interviewing or questioning of a victim, witness, informer or suspect to gather the qualification, evidence and relevant details of the criminal offence, where the initiative is taken by

the interviewer. The interview is a dynamic interaction process with intrinsic and relational aspects. (Bockstaele 2007)

Conducting a police interview on a high-quality level (which is what the justice department expects of its police forces) with respect for the interviewee and convinced of the fact that this interview will be used to give the legal professionals an objective and clear idea of the circumstances requires thorough and continuous training and coaching of police officers.

In the past few decades police forces have encountered a multitude of science-based interview (or conversation) techniques and strategies.¹ Fortunately part of police academies' philosophy is to explore and teach some of these interview techniques either in basic training for police officers or in more specialised courses for the criminal investigation department of the police.

In many interview techniques it is explicitly mentioned that before starting the actual interview (concerning the content, the facts, the *modus operandi*, the confrontation with collected evidence and forensic investigation, and checking compatibility with witness/victim statements), the police interviewer should invest in "making contact" and "creating a personal bond" with the interviewee and "gain his or her trust" based on mutual respect. This is the so-called "intake conversation".

Many authors (including e.g. Gudjonsson 2002 and Zuring 2009) even state that an interviewer who omits, disregards or minimizes these steps at the beginning of the interview and who consequently almost instantly starts the interview itself and only focuses on "the facts" does not have a solid basis to start a well-structured, gradual, objective, accurate and complete interview.

The attitude required from the police officer at the beginning of the interview is stated clearly (in *inter alia* Rabon 1992, Simons 2007, Vanderhallen 2007 and Beune 2009) as follows: during the first interview the interviewer should invest in establishing personal contact with the interviewee (without becoming over-familiar), the interviewer should provide an environment where the interviewee will be prepared to talk without any pressure or suggestion by the interviewer. The interviewee should feel, so to speak, "comfortable". By being empathic the interviewer will facilitate the rest of the interview.

It all amounts to the fact that when starting the interview the interviewer should try to make the interviewee feel at ease and bring the interviewee to his or her normal behaviour in a non-threatening situation. The interviewer should be alert and critical during this phase and should assess and capture certain behavioural patterns, sayings, phrasings and non-verbal signals.

None of this is easy given that the police interviewer is often thwarted by people's general assumption that "it is not pleasant to be interviewed by the police". A police interview is not about everyday, trivial things. The search for truth, the strategy and methodology used by the police interviewer to get to the core of the matter will not result in a cosy, social chat.

¹ These include interview techniques such as: investigative interviewing, cognitive interviewing (and enhanced cognitive interviewing), lie detection through non-verbal and verbal signals, the credibility of witness testimony, questioning of suspects, interviewing vulnerable people, the confession, interviewing minors, questioning psychopaths, interviewing victims and interrogating perpetrators of sexual offences, the video interview, the police interview and personality profiling.

An important element in this phase of the interview is the unique personal contact that the interviewer establishes with the interviewee. In this phase the attitude of the police interviewer and the approach of the interviewee is often as follows: "We don't know each other. You are going to tell me things you have possibly never told anyone else. I was not present at the events, yet I wish to receive a story as complete as possible. I have all the time in the world to listen to your story."

The start of this unique contact between interviewer and interviewee is initiated and carried out on different levels and in different phases, so that the transition from introduction phase to fact phase is made almost naturally (indemonstrably).

Crucial aspects of this essential introduction phase are:

- Is the police officer conducting the interview alone, or with somebody else? What arrangements have possibly been made between both interviewers?
- Welcoming the interviewee.
- Determining the language usage of the interviewee (as/needs? to be able to anticipate).
- What is the level of development and intelligence of the interviewee?
- What is the interviewee's background (profession)?
- Does the interviewee sit in the 'willing chair' or in the 'non-willing chair' (i.e. is s/he cooperative or not)?
- Will the interviewer try to convince the interviewee to talk (without putting the interviewee under any pressure)?
- Physical distance between the interviewer and interviewee, and positions at the table (and possible modifications of this setting).

When this introductory phase comes to an end and the police interviewer arrives at the facts, the details and the circumstances surrounding a crime, the police interviewer will continue to benefit from the personal contact he or she has established with the interviewee, namely by demonstrating an attitude such as "willingness to listen" and "listening actively". In this way, the interviewer will continuously invest in an appropriate approach to the interviewee.

Not only will the interviewer listen quietly and actively to the story of the interviewee without interrupting, he or she will also show empathy and adopt an overall attitude that indicates that he or she is prepared to listen. The interviewer can give small encouragements and hints to keep the interviewee talking; for instance, his or her facial expression can be kind and encouraging. Additionally, the interviewer's attitude and posture (and playing with the physical distance between interviewer and interviewee) can play a certain role in obtaining an accurate statement.

Lastly, during the entire interview the interviewer (if the interviewer is conducting the interview alone) will adhere to a certain rhythm and timing: asking a question - encouraging the interviewee to answer - listening and, most importantly, recording in writing exactly what was said by the interviewee including all possible nuances and twists, since the written statement should be an accurate record of the interview. A good interviewer will feel when the time has come to do this, for example when the interviewee is winding up a certain item. However, typing out the statement at the time remains in any case an interruptive element in the normal course of the interview.

2 Challenges for the interviewer in videoconferences involving a legal interpreter

2.1 Interviews with legal interpreters

2.1.1 Challenges for the police interviewer

Conducting a police interview with the help of a legal interpreter requires from the police officer extra preparation, insight, attitude and procedure. This is quite a task for the interviewer given the fact that all that is said will be phrased by a third, external channel. Just as in a face-to-face interview where he or she speaks the same language as the interviewee, the interviewer will have to invest in the introductory phase. The interviewer has to create a level of confidence with the interviewee, even if this has to happen through a legal interpreter. The fact that an interpreter is used renders the necessary direct interaction between interviewer and interviewee for the most part impossible.

As far as the verbal channel is concerned, the interviewer is completely dependent on the legal interpreter. An interviewee's non-verbal channel can be detected and analyzed by an experienced police interviewer, although the interviewer will only later (after the translation) hear what part of the verbal output the possible non-verbal channel corresponds to.

It is as if the two signals (verbal and non-verbal) are not sent out at the same time and the interval between both is too long to discover and understand the correct meaning of the non-verbal signal.

Before the interview the interviewer should give the interpreter a short briefing (putting the facts in context, as far as the facts are known by the interviewer) without entering into details. The interviewer should be trained in following the rhythm of an interview with a legal interpreter, which means s/he needs to respect the following order: question – translation – answer – translation.

Finally the police should have at their disposal specially-qualified legal interpreters, who can produce an appropriate and accurate translation that will contribute to a well-structured police interview.

2.1.2 Challenges for the legal interpreter

The legal interpreter should demonstrate the following competences to successfully participate in a police interview:

- The interpreter should have knowledge of the subject (the police interviewer should give the interpreter a short briefing before the interview, without going into much detail).
- The interpreter should have a clear understanding of certain interview (conversation) techniques, in particular respecting silences and pauses that can occur during the interview.
- The interpreter must not take control of the interview; this should be the interviewer's task at all times.
- During the entire interview the interpreter should remain impartial, and should in no way reply to personal questions from the interviewee.

- The interpreter should translate accurately and should pay particular attention to emphases used by the two parties. The interpreter should never decide for her/himself what to stress.
- The interpreter should have a good memory and should be able to order what is said for the transfer of information to be accurate.
- The interpreter needs to have an understanding of certain cultural differences between the interviewee's background and the place (country) where he/she is being interviewed.
- The interpreter should strictly adhere to the code of conduct and should be able to deal with a certain amount of stress that could manifest itself during an interview.

2.2 Interviews using videoconferencing with an interpreter

The need for a videoconference may arise when the interviewer is located at place A and the interviewee at place B. The interpreter may be located at place A or B (i.e. with either the interviewer or the interviewee), or the interpreter may be alone at place C (remote interpreting).

After testing different videoconference-based interview settings in the framework of the AVIDICUS project, the interpreters held different views as to which location they preferred (see Balogh & Hertog and Rybińska & Miler-Cassino in this volume). Some interpreters indicated that it did not matter much to them who they were with, while one interpreter preferred to do the translation while isolated at place C.

However, for the two parties participating in the interview (interviewer and interviewee) the location of the interpreter during the interview did make a difference. Both interviewer and interviewee indicated that it felt more "familiar" if the interpreter was with them and that this caused the communication to be more direct.

The police interviewers commented on the technical aspects such as the camera setup of the videoconference, in particular the necessity of presenting a clear image of the interviewee on the interviewer's monitor. They suggested that three cameras should be provided at the location of the interviewee, so that the interviewer will see on his/her monitor a mosaic of four images at most:

1. a bird's-eye view of the interview room with the interviewee, with or without the legal interpreter
2. an overall, clear view of the interviewee (full-length and not obstructed by, for example, a table)
3. a close-up of the interviewee's face
4. possibly the image of the legal interpreter (showing the head and chest), who in certain cases may find themselves at a third location

On his/her own monitor the interviewee should be presented with a complete image of the interviewer and, if applicable, the interpreter. The same goes for the interpreter: if s/he is located at a third location s/he should see a mosaic of images of interviewer and interviewee.

The reason this set-up is suggested is because it counters the lack of direct contact amongst the three parties and gives the interviewer the opportunity to pick up and analyze the interviewee's non-verbal signals. The interview via videoconference link with a legal interpreter will carry the interviewer and interviewee to a new dimension:

watching, listening to and answering an individual through a “television screen” is completely different from the standard, face-to-face interview. Therefore, it is vital that at the beginning of a videoconference-based interview the interviewer invests in the important introduction phase and explains thoroughly the procedure to be followed.

After the video-based interviews (simulations) conducted in the AVIDICUS Project both the interviewer and the interviewee reported that after a few minutes they had forgotten that cameras were recording the interview.

During a videoconference it can be more difficult for the interviewer than in a face-to-face situation to express empathy or to adjust communication channels. It can be harder to convey a message to the interviewee, and to receive and interpret what was said by the interviewee. The interview may quickly degenerate into sterile communication, without colour or relief. The distance created by videoconference seems very large and almost impossible to overcome. The direct contact necessary to conduct an interview successfully is non-existent and this may lead to superficial and not particularly accurate interviews.

Therefore we can conclude that videoconferencing with a legal interpreter is a tool that can be used in certain judicial inquiries, but with the following restrictions:

To be avoided when (non-exhaustive list):

- conducting the first thorough questioning of suspects in certain judicial investigations (e.g. drug smuggling, indecency offences, violent crimes, frontier-running).
- interviewing vulnerable witnesses and victims.
- interviewing minors.
- interviewing psychopaths.

Can be used when (non-exhaustive list):

- Re-interviewing suspects in certain judicial investigations to confront the suspect with for instance new evidence that surfaced during the investigation, detailed questioning about a certain topic that was not sufficiently dealt with during the first, face-to-face interview, and verifying certain topics that came up during the first interview.
- Interviewing as part of procedural issues, for instance in immigration law, and extradition procedures.
- Re-interviewing victims or witnesses to explore certain topics in depth, and if necessary, showing a picture line-up.

3 Conclusion

The judiciary and the police should evolve and invest in the technical progress and means of communication of the 21st century. This, however, should not be at the expense of many years’ expertise and definitely not at the expense of the professional experience the police services gain within the framework of objective, thorough, structural police interviews respecting the democratic judicial process. It is therefore important to remain alert and to adopt a critical attitude when looking to combine new technologies with years of experience in the field. During their training police officers and legal interpreters should be made aware of both perspectives so as to enable an optimal approach.

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