Policing the memory of a firearms officer

The Metropolitan Police Authority recommends officers do not confer when making notes. But the suggestion that a police officer should be treated in the same manner as any other significant witness ignores science and the proven differences both in status and task performance. It all comes down to focus of attention, say **David Blocksidge** and **Dr Bill Lewinski**

The inability of police officers to completely and accurately report on all the events of a high-stress, complex encounter, such as violent use of force or a shooting, has been a perplexing problem for administrators, investigators, the courts and the public. This phenomenon has been called 'perceptual distortion'. A considerable body of research indicates the source of this problem primarily lies in the attentional processes of the officer and not in the senses *per se*. This study investigates the officers' 'focus of attention' as a contributor to this inability. The results support the clinical observation that officers narrowly focus their attention under these types of conditions and are able to accurately report primarily that on which their attention is focused. They are unable to report with a higher degree of accuracy those things on which they are not focused.

Perception, or the acquisition of information, has been a focus of philosophy and psychology for millennia. For instance, Descartes' ideas about human information and decision making had a powerful influence over many areas of study on human behaviour. His dichotomisation of the soul (mind) and the body (emotions) into two separate parts and his powerful but chilling notion that issues of truth (including perception and memory) could be decided in light of reason alone became historically prominent in philosophy and then psychology and very appealing to both the fields of theology and the law for centuries. In many countries the field of law still has components that consider the human being as only a factual information-processing machine and a rational decision maker. Appeals to the heart, or the influence of emotions, had no place in Cartesian science.

Cartesian influence had an impact on at least some areas of psychological research and remained influential until the 1950s. However, this dualistic (mind/body separation) approach has been swept aside and leading theorists and researchers in the area, such as the noted Jerome Bruner, have long argued that the deeper question is not *whether* emotions influence our perception, judgment and memory, but *how*.

Well-known psychological researchers in memory, such as James McGough, have understood the impact of emotional reactions on attention and memory and have spent their entire careers examining this influence. McGough's work even examined the impact of emotions on perception and memory formation when the emotionally arousing event occurs before, during or even after the incident was recorded in our memory.

Current neuropsychological giants such as LeDoux and Demasio argue that our brains are constructed in such a fashion that we have been, and are, not thinking beings who happen to feel as Descartes proposed but actually the reverse. We are hard wired as feeling beings that think.

Further, an important question in psychology since the 50s was the extent to which what humans see in the external world is driven by their need to seek out factual information that is simply registered in the storage device of our memory or whether there is something more. The question is – how is our attention attracted to something?

Recently, considerable research has focused on our capacity to direct our attention to something of interest to us – or, phrased another way, how our own cognitive and affective interests lead us to seek out information in the environment. This is a logical way of understanding the direction of attention and our ability to perceive and then process information in our environment. But it is only a limited explanation for understanding how attention is directed. Cartesian science and this type of research cannot explain the seductive nature of modern advertising and its capacity to draw our attention toward an advertisement.

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The overt attention-seizing aspect of an external stimulus, apart from anything we might be thinking about at the time, has been an interesting problem. The research indicates that elements in our environment have an amazing capacity to draw our attention and do so in an automatic or unconscious manner. An everyday example would be an advertisement whose colour, topic, action or some other feature seizes our attention, almost unwillingly.

We can therefore see that attention is both internally directed and driven to something, or externally attracted to it and the process is both a conscious and an automatic unconscious one. A law enforcement example is an officer's attention in a shooting situation. When someone draws or points a weapon at an officer, that motion instantly attracts the officer's attention even if the officer was not even thinking about the incident having any potential for an armed encounter.

This illustration provides us with two ways that an officer's attention can be drawn to something.

Their training and experience leads them to conclude that they need to visually search for something in their environment, or something in the environment grabs their focus of attention. Regardless of the reason for the officer's focus of attention in a rapidly evolving, dynamic and high-stress encounter – that focus is going to significantly influence what the officer is able to perceive and remember. Generally speaking, if something is not perceived, it cannot be remembered.

Within UK policing, the position of any firearms officer deliberately discharging their weapon and taking life, is unique. By default, they are placed into a 'witness' and 'suspect' category that does not exist for any other individual within society. Officers will automatically be investigated by the Independent Police Complaints Commission (IPCC) regardless of public complaint and be viewed as both witness and potential suspect throughout a process concluding only with the verdict of a coroner's jury.

The current recommendation from the Metropolitan Police Authority (MPA) to prevent officers conferring when making notes is not based upon the latest scientific research. Indeed much of the comment appears to have been informed through emotion rather than research. The suggestion that a police officer should be treated in the same manner as any other significant witness ignores science and the proven differences both in status and task performance.

Most academic research that seeks to professionalise the memory retrieval process for witnesses does not categorise attention modalities. Memory research in general does not differentiate between the allocation of attentional resources and the performance of individuals engaged in resolving a life or death encounter. The expert police officer (expert through training rather than performance) should be operating in an automonomic, external specific focus of vision, necessary for survival and sound, split-second judgment. A bystander will not have these same funnelling effects limiting the periphery of their vision as they are not as emotionally engaged in the same way as police personnel.

The account given by a firearms officer will become central to the individual justification for the use of force. The information contained within any account will form part of the independent assessment of reasonableness, proportionality and ultimately legality. The more factual errors contained within that justification, the greater

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the scrutiny and the more likelihood of a change in status from witness to suspect.

This 'sliding scale' of suspect or witness is not a position encountered by other categories of witnesses or bystanders who play no active part in the incident.

Research and logic both inform us that the officer's attentional focus is going to significantly influence what the officer is able to perceive and remember. It is the focus of attention and not the operation of the senses that determines what information is perceived and then acted upon or remembered.

In recounting an incident it is essential for police officers to report as much factually correct information as is possible; at the same time, because of their vulnerable status, error rates should be kept as low as possible.

Suggestion that the enhanced cognitive interview (ECI) is the best method for memory retrieval must be weighted with the knowledge that on average an ECI has an error rate of 15-25 per cent. That is an error rate equating to one-fifth to a quarter of all information provided being factually incorrect. This is the anticipated error rate for any ECI with well-trained personnel. Although providing two to three times more factually correct information through the ECI the error rate rose dramatically. Which category – witness or suspect – would an independent investigator now move the officer into?

At the time of writing, the Saunders family judicial review will consider the legality of the current procedure, further commenting upon the PIP process. The court will offer a view on the procedures managing the formation of a written account completed through this specific conferring process. If the court upholds the current practice, some observers will conclude that finally the issue has been resolved and officers are safe to continue using the process without criticism; they would have the 'protection of the law'.

However, it will not be a 'legally approved' process of conferring that protects officers from accusation of collusion; nor will it be Association of Chief Police Officers (ACPO) guidelines. Officers have not been protected from 'fabrication claims' in the past and will not in the future simply because of a 'process acceptance' through the high court. It is the credibility of officers' individual accounts presented as evidence after they have had the opportunity to confer that remains the live issue for lawyers to explore and attack at coroners' inquests. The mistrust of the process will never be resolved through case law, since cases will be judged upon the merits or contradictions of written evidence reported by officers. If any suggestion exists that the conferring process may have tainted an officer's memory, the first questions regarding the process will focus on training and process management as a best practice.

Legal acceptance of a conferring process by the courts adds nothing to the debate about the memory 'product' when presented as evidence of recollection, influence, confabulation, collusion, fabrication or witness errors. It is the product of evidence and not the process where the attack will always be focused without supporting research endorsing both the process and methods of capturing best evidence. Officers and their legal representatives will increasingly find themselves having to explain why accounts should be treated as credible when the majority of memory research states that conferring creates false accounts within individuals.

Current memory research may not be applicable to the majority of high-stress policing incidents, since the research has not been conducted in genuine stressful encounters. The majority of influential policy makers and critics of the conferring procedures believe that officers in high-stress incidents should be treated the same as all other witnesses.

Science suggests that there are significant differences; however, the current views are not borne out of UK-based police research.

Academics, without exposure to a police population, cannot defend the current practice nor recommend the credibility of the conferred notes process and cannot provide a scientific explanation endorsing a best practice without first researching it. Pilot studies suggest that there are significant differences between how officers and bystanders attend to information and form memories.

A comprehensive conferring study is needed to provide a scientifically validated endorsement of any 'product' of evidence formalised through the conferring process. Without moving science forward, officers will have to rely upon the logic and assumption of individual jurors rather than expert endorsement of the law and science combined.

While there will always be individuals who will inevitably try to claim that officers collude when conferring, unless we explore the capturing of memories through a scientifically approved approach, police officers will still be vulnerable at inquest despite the fact that current practice has acceptance in the courts.

This autumn a comprehensive research project will commence attempting to further explore and professionalise the process. ■