

## **Visualising children’s credibility: The role of the visual in psychological research and child witness practice**

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This chapter explores the role of the visual in legal practice and psychological research, focussing on issues of children’s memory and testimony in the context of child abuse investigations. Reporting experiences and findings from a research project that compared child witness practice in England/Wales and Germany (Motzkau, 2007a), the chapter illustrates how the visual asserted itself throughout the research process, emerging as an important and often equivocal arbiter within practices negotiating children’s memory and credibility. It is outlined how the effect of the visual ambiguously shapes children’s experience of giving evidence and the conditions under which the credibility of their statements are assessed. The chapter focuses in particular on the role of video technology introduced in the UK, as part of special measures to provide better access to justice for children and vulnerable witnesses. Drawing on courtroom observations and data from interviews with legal professionals it is illustrated how in practice the video asserted itself as a participant, an autonomous proxy witness with a gaze and an ambiguous voice of its own.

The chapter underlines the importance of considering visual alongside textual data; it highlights the need to reflect about the direction and efficacy of the gaze as mediated through visual technologies; it points to the problem of invisible spaces produced as a result of the use of visual data; discusses how the visual raises questions about the integrity of the data and researchers’ own integrity; and examines the way time influences how data is collected, interpreted and viewed. In the context of the analysis, the chapter reveals a constant slippage between what is visible and what can be said about the visible, a disjunction between seeing and speaking (Deleuze 1986). In this context it is suggested that the work of Deleuze (1986) about Foucault could play an important role for consolidating the theoretical framework of visual research in psychology.

## 1. Introduction

Children have traditionally held a problematic position as witnesses in courts of law, historically facing a deeply rooted mistrust about the reliability of their memory, and their capability to comply with the laws of evidence (Spencer & Flin, 1993; Ceci & Bruck, 1995). Still, as a result of growing awareness of child sexual abuse since the 1970s, courts across Europe and Northern America began to amend the law enabling children to be admitted as witnesses more frequently. Yet, following a number of high profile miscarriages of justice that hinged on children's evidence (Ceci & Bruck, 1995; Bull 1998), there was renewed wariness about the reliability of children's testimony. Psychological research has helped to better understand children's testimony, generally affirming children's ability to give reliable accounts (cf Goodman & Clarke-Steward 1991). Yet, research also cast further doubt on children's reliability, variously highlighting their vulnerability to suggestion and their potential problems understanding and conforming to the requirements of legal procedure and the laws of evidence (Ceci et al 1994; see also Motzkau 2007, 2009).

Since the early 1990s legislators in England and Wales introduced a range of special measures (e.g. the police video records witness interviews so they can be played later on in court), designed to protect child witnesses by accommodating their perceived needs, while at the same time ensuring the admissibility of their evidence in court (Motzkau 2007; Westcott 2008). This positive effort, stands in contrast to the fact that conviction rates for cases of rape and sexual abuse in England and Wales have dropped from 32 per cent in 1977 to a continuous low of around 6 per cent in 2005/2006 (Kelly et al, 2005; Feist et al, 2007). Additionally researchers in the field point to persisting problems with the prosecution of rape and child sexual abuse (Westcott 2006, Plotnikoff & Woolfson, 2004).

It is against this backdrop I conducted a research project that compared child witness practice in England/Wales and Germany, looking particularly at cases of alleged sexual abuse and the impact of psychological research and expertise on legal practice (Motzkau 2007a). The empirical part of the project combined an ethnography (Latour 1987) of English-Welsh and German legal practice with the analysis of data collected in semi-structured interviews. In both countries I observed criminal trials including child witnesses, attended police interview training, and psychological expert practice, and conducted interviews with a total of 35 researchers and practitioners (police officers, judges, barristers, social workers,

psychological experts and researchers). One of the main objectives was to examine what constituted the concrete conditions of children's credibility in each country's practice. It focused particularly on the special measures put in place to see how practitioners dealt with the problem of giving children a voice in legal proceedings while remaining wary about their reliability as witnesses and their ability to comply with the legal 'call to truth'.

Methodologically the project was situated within a critical qualitative framework combining tools related to discourse and conversation analysis (Wetherell & Potter, 1992; Potter & Wetherell, 1987), with an analytic approach following what Parker termed 'critical discursive research' (Parker, 1992), to inform the analysis of the historical and socio-political context of child witness research and practice.

At the outset the project had no specific focus on the visual, nor was there a plan to employ visual methods or analysis. However, early on during data collection, and particularly in relation to the new special measures implemented in England and Wales, the visual emerged as a distinct feature, posing a number of perplexing questions. For example, while attending a police training course, where officers learn how to conduct video recorded interviews with children and vulnerable witnesses, I was surprised by the amount of time spent by officers discussing, and worrying about, the impact and nature of what could be *seen* on the video, and how this 'visibility' could variously affect what could/should be said by the interviewer and the child. I had expected officers to focus much more on what is *said* during interviews, as this is what the rules of evidence and the training guidelines are concerned with (e.g. explaining questioning techniques, conversational rapport, how to avoid suggestion).

Officers' preoccupation with the visible is interesting because witness interviewing or the reliability of an account would usually be associated with conversational issues, i.e. the quality of the questions asked, or the consistency and quality of detail provided in the witness statement. Throughout my data collection however it became clear that the visible played a distinct, and often ambiguous, role for the way children experienced giving their evidence, and for the way their credibility was viewed; a role that could not be subsumed under, or grasped via the textual or spoken aspect of the practice. Hereby special measures also highlighted an unexpected disjunction between evidence/testimony as 'spoken', and the nature of what the visual would add to this evidence and the perception of its reliability.

In the following I will briefly sketch the role of the visual in legal practice, outlining how some of the questions raised resonate with visual research. I will then *return to the* findings of my research and give a detailed example of the efficacy of video technology as a measure to improve child witness practice.

## **2. Child witnesses and the visual in legal practice**

Legal practice and qualitative research in psychology have very different agendas. Still, legal practice is a site where complex institutional, societal and psychological discourses come into play while concrete questions of experience, memory and truth are negotiated with real life consequences for those involved. Hence the law can be seen to operate as an epistemological practice that encounters and deals with specific methodological problems of evidence and experience, some of which resonate in an interesting way with issues faced by researchers using visual methods in psychology. It is interesting to look at the visual in contemporary legal practice because it seems the English/Welsh legal system is undergoing a ‘turn to the visual’ not unlike the one seen in qualitative research in psychology. Legal practice thereby encounters and illustrates some of the issues the visual raises.

In the past the visual has often played a rather problematic role for legal practice, as it invokes a ‘naïve empiricism’ reflected in the widely held assumption that visual media render objective accounts and thus provide a ‘visual truth’, as Banks (2001) highlights out “...Euro-American society has constructed photography – and in due course, video tape – as a transparent medium, one that unequivocally renders a visual truth.” (p. 42). Banks (2001) points to Mirzoeff’s analysis of CCTV footage used in the case of James Bulger (the grainy footage shows James Bulger being led away from a shopping mall by two young boys). Mirzoeff (1999) emphasizes the symbolic value this footage acquired as proof of the defendants’ guilt despite the fact that it did not actually show any of the acts of violence they were convicted of. Another example for the problematic role of the visual in law is the use of images in expert testimony. Research demonstrated that the presentation of random fMRI images alongside meaningless or circular statements about brain functioning, dramatically increased the likelihood that participants considered the statements to be relevant and valid, rather than recognizing them as meaningless and rejecting them (which the majority did in the absence of fMRI images) (Scolnic Weisberg 2008). These issues resonate with a recent critique by Buckingham (2009) who reviews creative visual methods in media research,

highlighting that the apparent immediacy of the visual means that it is often taken too literally, introducing a 'naïve empiricism' into research.

In this context, attempts at visualizing children's evidence highlight a particularly disconcerting analogy between assumptions about the benefits of creative visual methods held in legal and research practice. Guided by the assumption that children are less able to speak, or indeed less reliable in their speaking (which, *as outlined earlier*, has a long tradition in legal practice), it was at some point thought they might find it easier to provide evidence about traumatic experiences through drawings. A similar sentiment is expressed in visual research, when researchers highlight the potential of the visual to provide a voice for those who are often not heard when speaking, or are less literate and capable to express themselves in language, e.g. children (Reavey & Johnson 2008; Frith et al 2005). While this is a valid point, it inevitably also carries and perpetuates the negative implication of visual accounts being just as 'immature', 'irrational', and 'inferior' in their expression as those who are seen to benefit from using them, i.e. they are 'childish' types of expression (Lynn & Lea, 2005; Burman 2008). In this sense they might not just inadvertently devalue children's accounts, but in turn also perpetuate the implicit sense that children indeed cannot speak and or are not worth listening to (Buckingham 2009).

This is reflected in the tragic history of such methods in legal practice where they were used for children who were suspected victims of sexual abuse. During the mid and late 1980s when awareness for child sexual abuse increased (Haaken, 1998) and more children were heard as court witnesses, there was a widespread assumption that particularly children struggled to speak about traumatic experiences such as sexual victimisation. In this context the idea emerged that one could access children's potentially repressed memories, unavailable to language, by interpreting children's drawings (existing ones, or drawings children were encouraged to create). This method was considered a valid means of diagnosing sexual abuse in children who were suspected victims but had not disclosed (or actively denied anything had happened). Painting and drawing are used routinely in therapy, and undoubtedly many children (and adults) find it helpful in the process of working through or disclosing traumatic experiences. However, the coercive and unprofessional way in which such techniques were used in investigative contexts in the late 1980's and early 1990s, was highly problematic. Motivated by good intentions but driven by an exaggerated assumption of the epidemic proportions of sexual abuse, investigations were based on biased

interpretations that vastly overestimated the sexual implications of drawings, contributing to a number of high profile miscarriages of justice with tragic consequences for families and children involved (cf Bull 1998, Steller 2000). (For a broader discussion of the use of visual devices for detecting sexual abuse see also Wakefield & Underwager 2006.)

Within a research context visual methods are often considered to offer a richer, ‘more powerful way of capturing emotions associated with it [the image] that can be far removed from verbal articulation.’ (Gillies et al 2005, p. 201), thus grasping more ‘fully’, or, deeply our embodied experiences, potentially giving participants the opportunity to ‘speak to the often un-speakable’, as Reavey and Johnson (2008, p. 311) put it. While these are valid points, the over generalized way in which children’s drawings were sometimes interpreted for investigations in the late 1980s, is a striking reminder that the uncritical assumption of a direct link between an inner ‘un-speakable experiential truth’ and a drawing can have rather problematic implications. The example highlights that visual researchers need to remain wary about lapsing into naïve empiricism. We should remain skeptical about suggestions that visual methods could in and of themselves empower research subjects by apparently overcoming “the rationalistic or logocentric tendencies of verbal approaches, [...] [allowing] subjects of research to express their views more directly, and with less interference or contamination” (Buckingham, 2009, p. 633), or by seemingly providing more authentic accounts of an embodied ‘inner self’. Still, looking at this example around children’s drawings, it is also clear that the problem rests not so much with the image, or the visual itself; the problem rests with the institutional and societal discourses driving the interpretative operations that establish a specific alignment between what can be said and what can be seen (in this case taking various features of drawings to be expressions of traumatic experiences).

Firstly, this underlines that the discursive plays a crucial role alongside the visual, and thus must not be neglected in analysis if naïve empiricism is to be avoided. Secondly, the way the drawings operate in legal practice also exemplifies the disjunction between the visible and the spoken. The drawings as such, before their meaning is linked into the dominant concern for sexual abuse, can invoke multiple interpretations; hence the visible entertains no definite relationship to what can be said about it. This disjunction causes what is often referred to as the polysemic nature of the visual (Gillies et al 2005). I will trace this further in the next

section, when looking at my research findings and examining special measures and child witness practice in England and Wales in more detail.

### **3. Video technology in child witness practice in England and Wales**

The special measures introduced in England/Wales since the 1990s for children, vulnerable and intimidated witnesses (see for example Criminal Justice Act 1991; Youth Justice and Criminal Evidence Act 1999), include the video recording of testimony given to the police, which can later be played in court as evidence; cross-examination of a witness via CCTV-link from outside the courtroom; removing lawyers' wigs and gowns or using screens to hide the witness from the defendant. Additionally, special guidelines and training have been introduced for police officers conducting witness interviews (Motzkau 2007, Westcott 2008). Most of these special measures engineer changes to the visual field of the courtroom. They mediate absences and presences, and manipulate visual immediacy in a way that is designed to preserve the rights of the accused, thus guaranteeing a fair trial, while at the same time facilitating children's testimony by reducing the potential for them to feel intimidated or confused. It is hoped that this will provide conditions under which children are more likely to provide accurate and detailed accounts, thus creating circumstances under which they can give better, less ambiguous, evidence and that allow the jury to assess their credibility more objectively.

The CCTV-link for example mediates visual and textual presences across space. During cross-examination, rather than being in the courtroom, the child will be in a small CCTV room, sitting directly in front of a television screen, with a video camera focussed on their face. For the child this means that the court personnel (defence barrister, prosecutor and judge) are replaced by the television screen the child is looking at, where their faces will appear or vanish depending on who is addressing the child. In turn the measure allows for the child to be absent from the courtroom, by transmitting the child's televised image onto a television screen in the courtroom. So in a sense the television screen takes the child's physical place in the witness box, as a proxy-witness that is perceived as less ambiguous by the court and the jury, because the child is affected less by what goes on in the courtroom.

Throughout my research however it emerged that the way in which the CCTV-link mediated children's experience of giving evidence did not have a straightforwardly protective effect. Practitioners reported that child witnesses have been known to get very distressed

about the fact that the video link will expose them to the gaze of an unknown and (to them) invisible group of strangers (in the courtroom). This was particularly unsettling because it meant the defendant would be able to see them on screen, while they were unable to look back at the defendant. This illustrates that, even when mediated the effect of the gaze is always reciprocal, it goes both ways, and being ‘on display’ while not being able to reciprocate the gaze, can cause anxiety and feelings of loss of control (see also Lee 2001). This underlines ethical issues with visual data researchers need to bear in mind, as similar problems could emerge in relation to video recorded data and images.

A further concern I encountered throughout my research related to the way this practice mediates the perception of children’s credibility. Practitioners and researchers worried that the ‘televised’ image of the child is too indirect, too remote (‘antiseptic’), not allowing the jury to experience the physical presence of the witness, meaning the jury would be less likely to find the child’s account credible. For example a judge commented that in his experience many surprising acquittals could be related to the use of CCTV. He suspected that children’s credibility is undermined by CCTV-links, because most people are “anodised”<sup>1</sup> against empathising with a witness over CCTV link, because they are used to seeing terrible things on television. Contrary to this, legal practitioners also mentioned the concern that mediating children’s presence via a CCTV-link could emphasise children’s vulnerability. This, it was feared, would appeal to jurors’ general desire to protect them, in turn encouraging jurors to subsume the defendant’s dangerousness and thus guilt. In summary, following one interpretation the CCTV-link bolsters children’s credibility, as it is seen to highlight their preciousness and vulnerability as victims; while following the other interpretation, the televised image undermines children’s credibility, because it is seen to deprive the jury of immediately experiencing children’s physical presence, introducing a distance that, as practitioners suspect, makes it difficult to resonate with the child’s distress and to sense their sincerity.

These examples illustrate that the CCTV-link can constitute a rather unreliable proxy-witness; one that, rather than transparently mediating the witness account, adds problematic effects to the witnesses’ experience and that provides an ambiguous voice of its own to the

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<sup>1</sup> Interview with Judge2: 588-628. All data quoted in this chapter was collected by the author in 2004/2005 for Motzkau (2007a).

expression of their evidence in court. Just as in the previous example relating to children's drawings, we can see that there is a friction, a disjunction, between what is said (testimony) and what is seen (screened image). And where court practice previously only had the live statement of the child, the introduction of a visual mediation invokes an equivocal, polysemic set of readings and effects that resonate in contradictory ways with different assumptions about how presences and absences bolster or discredit the credibility of children's testimony.

In my research this was even more evident in the use of video recorded evidence. Following this measure the police will video record the investigative interview they conduct with the child, and in case of a trial this video will be played in court as the child's 'evidence in chief'.<sup>2</sup> Similar to the CCTV-link this video poses as a proxy witness on the child's behalf, but the video does not just mediate the child's image/presence and statement across space, but also across time. It preserves their image and statement at the initial interview and transports it to the time of the trial, in a sense allowing the two time zones to overlap. This is meant to ensure that children's account is collected as early as possible, before they forget information, and to preserve it on tape making sure it does not alter or is contaminated in the meantime (the time between reporting and trial can be in excess of 10 months). So by recording the video the officers aim to create a stable forensic exhibit that can be stored and later presented in court, directly transmitting the account from one time zone into another, while also displaying the evidence more predictably than the child would do in person. In Motzkau (2007) I have analysed the problems resulting from this practice in more detail. To illustrate the ambiguous role of the visual as it emerged in this research, I would like to revisit the three main themes of that analysis, and examine them with a focus on the visual and the disjuncture between the visible and the spoken. The three themes are total visibility, integrity and time.

### *3.1 Video and total visibility*

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<sup>2</sup> 'Evidence in chief' is the initial evidence given by a witness under the guidance of the lawyer who called them. It forms the basis of the subsequent cross-examination which, for children and other vulnerable witnesses, will be conducted via CCTV.

Traditionally police officers would have interviewed a child witness, recording their statement literally or paraphrasing it in writing for the file. Hence the trail of evidence would have been entirely textual, leading up to further testimony given (and cross examined) verbally in court. With the introduction of video recorded evidence a sense of total visibility, of complete, unadulterated footage has now been introduced to the trail of evidence, and thereby to the work of the police officers. By offering an extremely detailed visual account of the interview itself, the video also highlights the relative lack of visibility everywhere else in the process. This heightens the sensitivity and demand for transparency and accountability. This is for example reflected in a section of the police's interviewing guidelines ('Achieving Best Evidence') that instruct officers to accompany a child out of the interview room to the toilet to make sure they do not speak to anybody during comfort breaks (Home Office 2007). This instruction became the centre of an intense discussion at a police training course I attended.<sup>3</sup>

**[Excerpt 1]**

- 1 TO: [...] but why do we do it? It's this issue about whether they've been what? (.) conducted  
2 cajoled (1) threatened that's the issue (.) ((PO1: *hmm*)) if they'd been conducted (.) cajoled  
3 (.) or threatened it's likely to be by (.) the person that we've brought with them as their  
4 witness supporter (.) ((PO1: *hmm*)) another family member who happens to be at the  
5 police station (.) or a police officer (.) ((PO1: *yea*)) ok (.) which can happen at anytime (.) it  
6 can happen before they arrive at the p'lice station (.) as they arrive at the p'lice station  
7 after they leave the p'lice station (.) s::o (.) y'know I find that (.) the fact that they say that  
8 you gonna do this and that (.) but I find that (3) a little bit a bit a bit you know (1) it it's  
9 a:::almost like saying like you are (.) hhhfff taking this person into custody [...]
- 10 PO2: if the tape's running whilst they go to the toilet (2) you're gonna be seen on the tape  
11 anyway (1)
- 12 TO: you're gonna be seen?  
13 (1)
- 14 PO2: if the tape's still running (.) while they nip out to the toilet (.) ((TO: *yea*)) you stay in the  
15 interviewroom (.) (TO: *yea*) you're gonna be shown (.) on there anyway
- 14 TO: you're gonna be seen?  
15 (1)
- 16 PO2: you're gonna ruin the rapport  
17 (1)
- 18 TO: you're gonna ruin the rapport? by going to the toilet with them?=  
19 PO2: Yeah I think so it's quite intimidatin'

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<sup>3</sup> Data set - Pol2: 720-866. 'TO' = training officer and 'PO' = participating police officers. The excerpts were edited with omissions indicated by square brackets '[...]', but the overall character of the exchanges is not altered. The transcript notations used are a simplified version of Jefferson (1984): Pauses appear in rounded brackets indicating seconds: '(1)' or less '(.)'; speaker emphasis: 'underlining'; overlapping turns: '[square brackets]'; minimal acknowledgement tokens by other speakers: '((double rounded brackets))'; words drawn out: 'col::ons'; a turn interrupted by a take up of another speaker: equals sign '='; rising intonation: question mark '?'.

20 TO: I think it's potential to offend them

The training officer criticizes this requirement and notes that it is almost “like you are (.) hhffff taking this person into custody (lines 9-10). He also points out that this requirement exclusively focuses on, and thus highlights, potential misconduct by the police and during the interview. Yet, if a witness was ‘conducted, cajoled or threatened’ (1-2), the training officers underlines, this could not just happen during an interview break, but it could “happen at anytime (.) it can happen before they arrive at the p’lice station (.) as they arrive at the p’lice station after they leave the p’lice station” (5-7). Still, as we can see, with the introduction of video interviewing the attention is firmly focused on the interview, casting doubt on those activities that are now visibly ‘off camera’. The further discussion then reflects the officers’ confusion as to whether the video is a neutral witness on their behalf, confirming their good conduct as they are “seen on the tape” (13 -18) doing nothing untoward; or whether the video is actually a surveillance device eying the officers’ activities suspiciously. The latter is expressed poignantly at the end of this discussion, where one officer added resignedly, and to the other officers’ bemusement, that “next thing an’ we’ll have cameras in the toilets” (Pol2: 863-866). He thereby illustrates the effect an idea of total visibility as implied by the video, because ultimately this would imply that only seeing/recording everything that goes on would really suffice. The officer’s remark is likely to have been uttered in jest, as this kind of total surveillance seems unrealistic. Still, the way in which the video suggests the need for ‘total visibility’ and the problems this brings, is interesting to consider for visual researchers, who might find themselves in a similar position, implicitly creating and then having to account for the invisible spaces around their data.

### *3.2. Video and integrity:*

Looking at excerpt 2, a passage from the same discussion quoted above, we can see that officers come to the conclusion that what is at stake here is their own integrity as police officers. So regardless of their training officer’s critique of the guidelines, the officers see it as paramount to follow this requirement to the letter, as it is the only way they can preserve their own integrity. And this is considered crucial, despite the fact that accompanying a child

witness to the toilet might frighten the child, thus ruining the rapport and consequently undermining the collection of reliable and detailed evidence (excerpt 1, 16-20).

**[Excerpt 2]<sup>4</sup>**

- 1 PO1: but effectively your integrity is supposed to be intact isn't it because if anybody else=  
2 TO: why? 'cause you'r a policeofficer?=  
3 PO1: yes absolutely  
4 (2.5)  
5 TO: yea ok I I'm you know (1) it's horses its its what the the the=  
6 PO1: I think you can stand up in court and answer all the questions that they're asking you  
7 and you'll say no they weren't interfered with no this didn't happen that didn't  
8 happen ((TO: yes)) [umm]  
9 TO: [all the time] they were with me  
10 PO1: yes  
11 TO: I can say that nothing untoward occurred=  
12 PO1: your honour

Preserving their own integrity, the officers find, will also protect that of the interview, and thus bolster the credibility of children's evidence. This also means that if necessary they can later on stand up in court to again assert that integrity. We can see how via the video, children's credibility is directly tied to the officers' integrity, which in turn is challenged by the video's presence. So paradoxically, the video is not a reliable witness on behalf of officers' integrity, but it is the video that, by expanding visibility, first introduces the ambiguity that makes integrity a specific issue. Before the introduction of video recording, the textual practice of recording evidence was organised around the principle that police officers were reliable recorders of evidence by virtue of being police officers, by virtue of being part of the investigative legal machinery. And while, at times, there may have been doubt about the integrity of their practices, it was not expected for them to routinely display and assert their integrity. But as soon as the video allows us to see what they are doing, their routine performance becomes a central matter of concern, exposing it to multiple interpretations, while fostering a demand for even more transparency. Hence officers now have to actively and routinely produce their integrity, and potentially affirm it again by performing it verbally in court, as the exchange in lines 6-12 (excerpt 2) illustrates in an almost stage like fashion.

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<sup>4</sup> Data set - Pol2: 720-866.

Again we can see that the visible, here illustrated through the use of video, is not a mere addition to the spoken, it is not just an additional channel that doubles and confirms what is being said. On the contrary, it seems notoriously ill-aligned with what is said, it opens up a space for multiple interpretations and adds ambiguity that now needs to be tackled. Visual researchers face a very similar problem. This example highlights that researchers' integrity, the integrity of the data, and the way in which the analysis aligns what is visible with what is said about the data, needs to be considered with great care.

### *3.3 Video and time:*

The example of video recorded evidence illustrates further problems emerging around the fact that the officers are operating in one time zone (the interview) but as a result of video mediation are expected to simultaneously perform in another, future, time zone (that of the trial, where the video will be viewed). Further excerpts from the training course show that officers are aware that certain aspects of their interview, which at the time of conducting the interview would be considered to bolster the credibility of a child's statement (e.g. a challenge may be needed to clarify a point in the child's account), might have the opposite effect later, when the video is seen in the courtroom. Here a jury might take an officer challenging a child witness to mean that the officer thought the child was lying, thus "implanting a seed" (excerpt 3, line 4) of doubt in their mind.

#### **[Excerpt 3]**

- 1 TO: Is it so urgent to challenge a witnesses evidence at that point in time?=  
2 PO1: well it could be that's the thing couldn't it [[...]]
- 3 TO: (...) if it is one interview that is played before the court we've already particularly if  
4 the jury get to see that aspect of it we have already ahm (.) we're implanting a seed in  
5 their mind that we actually don't believe it [...] which is ammunition for the defence.

This illustrates that the video's future efficacy is difficult to control, even for those who plan and record it. The officers have to fear it might perform as an unpredictable, potentially fanciful proxy-witness, later on presenting the child's account in a different, potentially unfavourable light. Further, this example illustrates how the gaze of the video cameras, trained on the interviewing officers, is also channelling the unpredictable gaze of a potential future jury back in time, into the interview room, where it injects uncertainty into the officers' planning and conducting of the interview. It thereby undermines the officers'

confidence which in turn can be detrimental to the quality of the evidence the child is able to give.

In legal practice it is assumed that officers should conduct the interviews following the guidelines, without concerning themselves with issues surrounding the potential later impact of the evidence, but my research showed that the way this practice is set up makes it difficult for officers to evade the gaze and efficacy of the video technology once it is in place. We could see that much of police officers' concern, and consequently effort, was directed at tackling the multiple interpretations that threaten to emerge from the video, while it remained impossible to anticipate how what is visible on the video, will be seen later on, and it seems to stand in no fixed relationship to the statements made on it.

It is interesting to consider how these problems resonate with the process of planning and recording data for visual research. Clearly, as researchers we are also exposed to the gaze of our potential future audience (which might include research participants). This gaze is cast back in time onto the process of data collection and analysis. Furthermore, by displaying videos or images collected during research, we are creating an overlap of time zones similar to the one police officers produce. In doing this we potentially face similar ambiguity in the way our data is perceived by viewers, for whom it might open up further interpretations, or for whom it might even refuse to support our own analysis (see also Ashmore et al 2004). In this context, the specific problems raised by the visual and enduring nature of the video as it operates across time and space, highlights once more the peculiar phenomenon facing visual research in particular: the disjuncture between the visible and the articulable.

This is further illustrated in the account of a prosecutor I interviewed, who outlines how helpful the police's video recordings are for assessing whether to prosecute or drop a case. The prosecutor said the video helped to see what the witnesses are like and thus how they will come across to the jury. She outlined that some children might look somewhat shifty and would thus be perceived to be less credible. The prosecutor's account highlights that, while children's verbal account is important, the video has introduced a new emphasis on the visible elements of the evidence for assessing credibility. The prosecutor illustrates this by giving the example of a case where the credibility of a very young child, a girl whose statement might have been difficult to bring to court due to her young age, was effectively bolstered by her doll like appearance, and the way her 'innocence shone through on the

video'. Yet, the prosecutor mitigates this account by adding that children might look shifty, less doll like or uncomfortable, not because they are lying, but simply because being interviewed by police about traumatic experiences is as such awkward and uncomfortable. However, by adding this comment, she implies that visible shiftiness could not just be an indicator of an untrue statement, but it could also be considered as visible proof of a true statement, in the same way as 'radiating innocence' is, thereby re-introducing the ambiguity her example about the doll like witness had initially eliminated (for a detailed analysis see Motzkau 2010). This example shows once more how the visible proves polysemic, ambiguous, appears disparate from what is said.

#### *3.4 The visible and the articulable in research and legal practice*

Child abuse investigations are always delicate and complex, and with this analysis I do not wish to imply that the use of video technology is generally detrimental. The introduction of special measures is clearly a positive move and there are many cases where the use of video technology has helped to facilitate prosecution and to achieve just convictions. This is why my research seeks to help support their effective application. In this spirit the examples discussed here are meant to create awareness for the efficacy of the visual, and the potential ambiguity added to this practice as a result of the constant slippage between the visible and the articulable. It is this disjunction between seeing and speaking that creates the impression the video was an autonomous proxy-witness with a gaze and a voice of its own. This phenomenon is corroborated by visual researchers who point to the polysemic nature of visual data that makes it difficult to pin down or agree on interpretations. Gillies et al (2005) describe this as the experience of a constant slippage of interpretations as they tried to negotiate the meanings of images they had created themselves in the context of a research project. Temple & McVittie (2005) report a similar experience when describing the unexpected autonomy visual objects and images, created during therapy, gained during the therapeutic process, invoking complex investments and ambiguous relationships with clients, that could not easily be controlled or resolved. It is variously suggested that such issues could be approached by adopting a thoroughly reflexive position in research (Reavey & Johnson 2008; Lynn & Lea 2005; Buckingham 2009). While this is a valid point, researchers remain vague as to what exactly such a reflexive position entails. In this context further examination of the theoretical and practical framework of visual research is needed.

I would suggest that it is one of the most important contributions of visual psychologies to expose the issue of the disjunction between speaking and seeing, and to make it available to systematic analysis. Still, a clearer theoretical framework is needed to support the exploration of research that examines diverse modes of data within and beyond discourse (see also Motzkau in press). In this spirit I would like to offer a brief theoretical outlook, pointing to theoretical resources that could prove useful to the development of a reflexive and critical version of visual psychologies.

#### **4. Visual psychologies: a theoretical outlook**

Deleuze (1986) finds the question of the relationship between the visible and the articulable to be at the heart of Foucault's exploration of formations of knowledge and his analytic distinction between the discursive and the non-discursive. According to Deleuze, Foucault based this distinction on the fundamental finding that "There is a disjunction between speaking and seeing, between the visible and the articulable: 'what we see never lies in what we say', and vice versa." (Deleuze 1986, p. 64). Here, Foucault does not insist on a primacy of speaking, but upholds the specificity of seeing, of the visible, asserting that neither speaking nor seeing are reducible to another. Crucially, as Deleuze outlines, Foucault marks these as two distinct ontological formations, i.e. forms of 'there is', a light being and a language being. This in turn means, according to Deleuze, that there is no principle, law or pattern that determines their relationship, as their relation is essentially a non-relation. Deleuze illustrates this strange type of phenomenology by drawing on Foucault's commentary on Magritte's famous painting of a pipe presented above the written words 'Ceci n'est pas une pipe.' ('this is not a pipe'). According to Deleuze, Foucault points to the "little thin band, colourless and neutral", separating the drawing of the pipe from the statement 'this is a pipe' to the point where the statement becomes 'this is *not* a pipe', since neither the drawing nor the statement, nor the 'this' as an apparently common form is a pipe: 'the drawing of the pipe and the text that ought to name it cannot find a place to meet, either on the black canvas or above it.' It is a non-relation." (Deleuze 1986, p. 62).

This assertion of the autonomy of the visible resonates with the apparent unwieldiness of the visual and its evasiveness to interpretive capture observed in my own research about child witness practice, as well as in other examples of visual research mentioned above (Gillies et

al 2005; Temple & McVittie 2005). Developing such theoretical resources could provide a better grasp of what this non-relationship, and the resulting interpretive slippage between the visible and the articulable means for visual psychologies (Motzkau in press). This would contribute to research that exploits the benefits of visual methodologies alongside textual modes of analysis while avoiding the pitfalls of naïve empiricism, or a dominance of the visual over the textual.

## **Conclusion**

This chapter has illustrated that, where children become witnesses their memory, testimony and the perception of their credibility is intimately linked to the workings of visual technologies. These have a significant effect on intensifying or multiplying visibilities or channelling the impact and direction of children's and spectators' gazes. In this sense my research underlines the value of developing distinctly visual psychologies that employ visual methods and explore the role of the visual for core psychological questions such as memory, credibility, agency and subjectivity. Yet, it also emphasised that we must not neglect the discursive textual modes of data and analysis. These need to be employed alongside visual methodologies, as the articulable forms an entity distinct from the visual. The disjuncture between the visual and the articulable raises intriguing theoretical and practical questions the analytic value of which needs to be explored further.

The chapter illustrated that, even though research and legal practice differ dramatically in their agenda and the potential consequences for those involved, legal practice as an epistemological and social practice, offers an intriguing backdrop for reflecting about visual methods in research. This backdrop provided evocative reminders that we should be skeptical about claims that visual data could provide absolute 'experiential immediacy', or could by default offer participants an empowered voice. It highlights that we need to reflect critically about the direction and efficacy of the gaze mediated through visual technologies (in relation to participants, ourselves as researchers and our audience); that we should be aware of the invisible spaces visual data produces; and that we must be alert to the specific ways in which the visual raises questions of integrity and time.

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