

WITNESSES AND VICTIMS

A guide for police on good practice

Centre for the Study of Violence and Reconciliation

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A VERY IMPORTANT NOTE

This handbook has been written to assist members of the SAPS in improving their practice in working with witnesses. It is not an official curriculum, and all standing orders or other official instructions take precedence over this guide.

The main things this handbook intends to achieve are:

- To encourage members of the SAPS to be aware of how good practice in working with witnesses can improve their performance and the performance of the SAPS.
- To provide ideas and encourage SAPS members to think about how they can improve their practice in working with witnesses. It is not intended to provide all the answers, and SAPS members are encouraged to reflect in a critical way on the guidelines provided here.

SOME TIPS ON USING THIS HANDBOOK

If you are looking for information on specific topics, the following sections of the handbook may be helpful:

- The table of contents provides a list of all the headings and subheadings in the handbook, as well as all focus topics, figures, tables and matrices.
- The index on pages 115–116 provides an alphabetical list of many of the topics, issues, policy documents and laws covered in the handbook.
- At various points in the text we also draw attention to other areas where similar topics are covered.

IN THIS CHAPTER

This chapter introduces some issues that are necessary to understand when dealing with witnesses. It looks at:

- Why witnesses are important.
- Who are state witnesses and what we mean by witnesses in this handbook.
- Victims as witnesses, including victims' rights and special issues to do with victims of sexual offences and child victims (discussed in more detail in Chapter 4).
- Developing a positive climate for working with witnesses.
- Establishing rapport.
- Problems with witness evidence.
- Good practice with witnesses and police effectiveness.

There are also special inserts on:

- International research on crime investigation.
- Confessions, admissions and "pointing outs".
- Consultation by the defence with prosecution witnesses.
- Special types of witnesses, including accomplices and expert witnesses.
- Informers.
- Secondary victimisation.
- Victims or survivors.
- Motivating witnesses.
- The criminal justice system and the criminal justice process.
- Eyewitness memory and police practice.

1. ABOUT THIS HANDBOOK

Because witnesses are very important to the criminal justice process and to your job as a police member, it is important for you to make the best use of their evidence and to get the best out of them that you possibly can. To do this, you need to make sure that witnesses are treated in such a way that they feel comfortable about reporting crime and remaining involved in the process once a case has been reported.

This handbook is about good practice in working with witnesses. It was written to help you in your work as a police member by motivating you and providing you with suggestions on how to work with witnesses in a positive and constructive way.

The handbook is a starting point. It is intended to get you thinking about how to improve your work with witnesses. Some of the topics we touch on are covered in more detail in other publications. The list of references at the back of this handbook may be referred to for further reading on some of the topics discussed.

2. WHY ARE WITNESSES IMPORTANT?

Most police and prosecutors would agree that witnesses (including the complainant or victim) are among their most important assets in solving and successfully prosecuting crimes.

Although there are some cases when there are no witnesses to a crime, where there *are* witnesses they can assist the police by:

- Helping to identify suspects. Even when they do not know the suspect, they may be able to provide information on the number of suspects and details about their gender, race, age, weight, the kind of clothing they wore, the colour of their clothing, their hair colour and style, facial hair, other characteristics (for example, missing teeth,

scars, glasses, tattoos) or the direction in which the suspects left the scene of the crime.

- Explaining what happened, including details of the type of crime, the time at which it took place or the weapons that were used.
- Helping the police decide whether they have arrested the right person.
- Providing other information that may assist the police in solving a crime, such as information on a vehicle (make, registration number and colour, or whether it had dents or bumper stickers) or a description of the weapon used.
- Identifying other witnesses.
- Suggesting possible suspects. For example, where there has been a break-in at a block of flats, they may be able to suggest who was involved even though they did not see the crime take place.
- Assisting in psychological profiling of the perpetrator (although only members who have been trained to do this should attempt it).

In any prosecution of a crime, there are three main types of evidence:

- Witnesses (including the complainant or victim, eyewitnesses, expert witnesses and character witnesses).
- Physical evidence (also called real evidence) such as documents, including medical reports; fingerprints; a bloodstained knife or skin under the fingernails of a victim.
- Oral or written incriminating statements or actions, including confessions and admissions and “pointing outs” by suspects (see Focus Topic 2 below).

Witness evidence can be useful on its own or used in combination with other types of evidence. For example, once a witness has identified a suspect, fingerprints may help to confirm whether the witness has identified the right person.

Witness evidence can also lead to confession, which may greatly reduce the time and cost

1 INTERNATIONAL RESEARCH ON CRIME INVESTIGATION

“The major findings of studies of the process by which crimes are cleared up [in the United Kingdom] is that the prime determinant of success is information immediately provided by members of the public (usually the victim) to patrol officers or detectives when they arrive at the scene of the crime. If adequate information is provided to pinpoint the culprit fairly accurately the crime will be resolved; if not it is almost certain not to be. The proportion of crimes cleared up [that is, detected] almost immediately (as a result of the offender still being at the scene when the police arrived, or being named or very precisely identified by victim or witnesses) was as high as 57% in Steer’s study and 62% in Mawby’s” (Reiner, 1992, pp.150–152).

“[A] sample of High Conviction Rate (HCR) and

Low Conviction Rate (LCR) officers was surveyed in Manhattan and Washington, D.C. [in the US] [...] HCR officers indicated that they tended to focus greater attention on locating and dealing with witnesses than LCR officers. HCR officers were more willing to use both a direct, factual line of questioning and a psychological, indirect approach; LCR officers preferred the indirect approach. Furthermore, HCR officers reported success in improving witness cooperation by locating additional witnesses in order to create mutual support” (Forst, *et al*, 1982).

2 CONFESSIONS, ADMISSIONS AND “POINTING OUTS”

A **confession** is where a person makes a full acknowledgement of guilt. Where a person acknowledges some facts, even if they constitute

involved in conducting a full investigation and trial. When suspects become aware that there is an eyewitness to the crime who can positively identify them as the perpetrator, they may decide to confess and even to plead guilty.

Witnesses are extremely important to the detection and prosecution of many cases. But in order to get the best results from them they need to be motivated and supported in the best way.

3. STATE WITNESSES AND DEFENCE WITNESSES (and other people who have information that can assist the police)

The two main categories of witnesses are:

- **State witnesses**, who could be:
 - » Victims.
 - » Eyewitnesses.
 - » Other people who have information that is

relevant to the case.

- » Expert witnesses (such as fingerprint experts, psychologists and chemists).
- » Police officials, who are also often called to testify for the state.
- » Suspects who agree to testify against other suspects in the hope of receiving a lighter sentence or escaping prosecution (see Focus Topic 4 on page 14 on special types of witnesses).
- **Defence witnesses**, who are called in by the defendant's legal representative to provide information supporting the defendant's innocence.

According to General Council of the Bar Uniform Rule 4.3.2, a person becomes a witness for the prosecution if the prosecutor or police have taken statements from them, whether or not they have been called by the prosecution to testify during the trial. By implication a person may be a defence witness if the defence takes a statement from them

elements of the offence, but does not acknowledge that they are guilty of the offence, it is an **admission**.

A “**pointing out**” is where a suspect points out something, such as where the crime was committed or where a weapon or the stolen goods are hidden that only someone involved in the crime would know about.

Confessions, admissions and “pointing outs” are dealt with in sections 209, 217, 218, 219, 219A and 220 of the Criminal Procedure Act.

3 CONSULTATION BY THE DEFENCE WITH PROSECUTION WITNESSES

Until the **Shabalala** case, the defence was not allowed to interview state witnesses without the permission of the prosecutor. In most cases, the prosecutor would also

demand to be present or have a representative at the interview, which reduces the possibility of intimidation.

However, the judge in **Shabalala** was asked to consider whether or not this rule violated the Constitution. The judge held that, in *some* cases, it would be possible for the defence to interview a witness without the permission of the prosecutor (if this is necessary to ensure a fair trial). However, before they can do so they must first get the permission of the Attorney-General, and the witness must *consent* to the interview — they cannot be forced to attend.

(Also see Focus Topic 7 on page 94.)

first and then calls them to give evidence, or if the person is a state witness who is not called to give evidence and is then made available to the defence at the end of the state's case.

In addition to these two main types of witnesses there may also be other people who provide information to the police. Some people may provide tips to the police that can help the investigation, but the information they provide is not necessarily important to proving the case in court. Other people (sometimes these are paid informers) may provide information on the understanding that their names will not be mentioned in court. Although these people will not testify, they may still be of great assistance to you in solving the case.

Also note that the prosecution may not be allowed by the law to call certain types of people, as witnesses — except in special circumstances (see section 195 of the Criminal Procedure Act regarding the wife or husband of the accused, and

section 201 regarding the accused's lawyer).

3.1 What we mean by witnesses in this handbook

In this handbook the witnesses who are discussed are state witnesses, particularly the victim, other eyewitnesses or members of the public who have information that may assist you in solving crimes. This is because they are the most common types of witnesses you deal with.

4. VICTIMS AS WITNESSES

Often the victim is one of the main witnesses in a case and has evidence that is crucial to investigating and prosecuting a crime. Victims usually have a greater interest in the case than other witnesses, including whether a suspect has been arrested or got bail, whether the case has been closed, or the outcome of the trial. Because of this they often have a greater need to be kept updated about

4 SOME SPECIAL TYPES OF WITNESSES

Below we look at some special types of witnesses. There are important issues to consider when dealing with these types of witnesses. These issues are not discussed in detail in this handbook, but you should find out more about them.

Accomplices as witnesses

In many cases, accomplices to the crime may agree to help you with your investigation and to testify at the trial. Usually they do this to try and get themselves out of trouble, because the Criminal Procedure Act (section 204) allows a magistrate or judge hearing the case to order that they not be prosecuted if they give their evidence honestly. Where it seems that an accomplice will testify if you offer them this opportunity to escape prosecution, discuss the matter with the prosecutor immediately.

In other cases, an accomplice might decide to plead guilty, either as part of a formal plea and sentence agreement (see section 105A of the Criminal Procedure Act) in order to get a more lenient sentence, or informally in the hope of negotiating a lesser charge, or — more rarely — because they feel remorse for what they have done. Because guilty pleas can be taken very early in the trial and the presiding officer can then separate the trials of those who plead guilty and those who plead not guilty, these people are also available to the police and prosecution.

Very often, accomplices who agree to help the police and to give evidence are intimidated by those they have agreed to testify against (or their family or friends). A good example of this would be a gang member who agrees to give evidence against other gang members involved in the same crime.

progress (or the lack of it), and about what is likely to happen with the case.

Victims are more likely to be traumatised than other witnesses. Victims of crime are more likely to suffer all or some of the following:

- Loss of dignity.
- Emotional trauma.
- Physical injury.
- Loss of their property.
- The death of a loved one.
- Disorientation, fear and anxiety.
- Anger and frustration with the perpetrator and, sometimes, with the police.
- Feelings of guilt.

Victims may be more vulnerable, not only because of trauma but also because intimidation (discussed in Chapter 9) is often directed at the victim.

However, victims often choose not to report crimes (especially violent and sexual crimes) to the

police. Many victims choose not to report crimes because:

- They may fear being blamed for the crime or being exposed or embarrassed. This is particularly true of rape, sexual violence and domestic violence cases (although it happens in other cases as well).
- They may have had a bad experience with the police in the past, which led to them suffering secondary victimisation (also see Focus Topic 8 on motivating witnesses on page 21).

4.1 Victims' rights and human rights

In order to prevent secondary victimisation, to improve the lives of victims, to combat crime and to respond to perceptions that the rights of victims are not protected, government has developed the **Service Charter for Victims of Crime in South Africa**. The charter outlines victims' rights to:

- Be treated with fairness and with respect for

You should remember that, even though you might really dislike the person for what they have done, these people could be of great assistance to you. You will need to build rapport with them (see page 19), and you may need to take special precautions to protect their safety.

Expert witnesses

Expert witnesses are often highly trained professionals who may have very busy schedules. They may be reluctant to assist the court unless you can minimise the inconvenience to them by making special arrangements so that they will not have to wait at court unnecessarily.

for detectives. If they are called to give evidence in court their identity will be revealed. Police try to avoid using informers as witnesses although this may be done in certain circumstances. If this happens the prosecution may request that the court order that people be barred from the court, and that the publication of information about their identity be prohibited in terms of sections 153 and 154 of the Criminal Procedure Act. However, their identities will still be revealed to the accused and his or her lawyer. Also, because they are paid to provide information, the court is expected to treat their evidence with caution, which means you will need evidence to back up and corroborate what they may say.

5

INFORMERS

Informers are people who are specially paid to provide information to the police but whose anonymity is protected. Informers are important sources of information

Find out more

Read up on the law relating to informers, or discuss it with colleagues and prosecutors.

their dignity and privacy.

- Offer information.
- Receive information.
- Protection.
- Assistance.
- Compensation and restitution.

The **Minimum Standards on Services for Victims of Crime**, which is linked to the Service Charter for Victims, is intended to guide all those involved in the criminal justice process (including the police) on how to deal with victims.

The Service Charter for Victims and the Victim Empowerment Programme set out a number of rights for victims and witnesses at court, and what can be done to help them. However, only those relating to the role of the police are dealt with here.

This handbook looks at how best to do your job and work with victims (and other witnesses) while taking the rights identified in the Service Charter

for Victims into account.

A selection of provisions relevant to the police from Part III of the Minimum Standards on Services for Victims of Crime can be found in Appendix A on page 108 of this handbook. Both the Service Charter and the Minimum Standards documents are available at <http://www.doj.gov.za>. Go to “Documents” and then “Policy Documents”.

Issues relevant to the Service Charter and Minimum Standards are also discussed throughout this handbook, particularly in the chapter on witness protection (Chapter 9) and the chapter on providing information to witnesses (Chapter 10).

It is worth remembering, though, that the right to be treated with fairness and with respect for the dignity and privacy of a victim of crime is the first right referred to in the Service Charter for Victims and in the Minimum Standards. In terms of the Constitution the right to dignity (section 10) and the right to privacy (section 14) are fundamental

6

SECONDARY VICTIMISATION

Secondary victimisation is where a victim is made to feel like a victim again because of the way they are treated. The term is also used where non-victim witnesses are badly treated. This can happen at a number of stages in the criminal justice process. For example:

During the first contact with the police and the investigation it happens when the police:

- Try to convince them not to lay a charge or to withdraw a charge that has been laid. You should remember that the police are expressly forbidden from refusing to accept serious cases (including rape, sexual violence and domestic violence cases). And, once a case has been opened, you may *never* withdraw it — only a prosecutor is allowed to do that.
- Let victims or witnesses know that they do not believe them.

- Do not inform them when deciding to close a case.
- Interview them in public (rather than in private) when their case is sensitive in nature.
- Treat them insensitively.
- Leave them confused by not explaining the procedures involved in the process.
- Fail to return telephone calls.
- Fail to provide them with protection when they have said they would.
- Telling a witness that it is a domestic “civil matter” so that they do not lay a criminal charge. Any civil case may also be criminal.
- Fail to ensure that the witness is properly prepared for court, resulting in the witness being abused in court.

Secondary victimisation also happens at other points in the criminal justice process. For example, when prosecutors deal with cases badly or do not protect victims from over-aggressive cross-examination.

human rights. In terms of the Constitution, victims and witnesses, and all other people, are therefore entitled to these rights and police members should aim to respect these rights with all people they deal with in so far as they are able to (also see Focus Topic 1 on page 35 where the right to equality is discussed).

4.2 Victims of sexual offences and child victims

Although victims of sexual offences and child victims are entitled to all the rights and protections that other victims have, they need even more protection because of the nature of the crime committed against them or because of their age and vulnerability.

Some examples of the steps government has taken to improve the services provided to victims of sexual offences and child victims are:

- A new law on sexual offences has been drafted

It is also recognised that police and other people who work with victims may suffer stress or other negative emotional or psychological effects. This is known as tertiary victimisation.

7

VICTIMS OR SURVIVORS?

Many people working in the area of support to rape victims and child victims prefer the term “survivor” to “victim” when talking about them. However, there are arguments that say the term “victims” should be used.

To avoid confusion, we use the term “victim” to refer to all victims of crime.

(although it is not clear when it will come into operation — see page 46).

- Sexual offences courts at some magistrates’ courts. These are courts that have special equipment and whose staff members have been trained to deal with cases in a way that does not cause secondary victimisation.
- Creating special rooms at some police stations where victims can give their statements and be examined in private. However, many police stations do not have these facilities.
- Creating Thuthuzela (which means “to comfort”) centres. These are “one-stop facilities” based at hospitals, including Manenberg in Western Cape, and Ntlaza and Cecilia Makiwane in Eastern Cape. Similar facilities are soon to be opened in Nelspruit, Natalspruit and Kimberley. Here, victims reporting to the hospital are treated for injuries, provided with counselling and can make their statements to police members based at the centres. Forensic evidence is also gathered at the same time.
- Setting up special police units and courts to deal with children.

Just as importantly, the SAPS have issued their own special National Instruction that sets out how you should act when dealing with such victims. This is discussed in more detail in Chapter 4.

5. DEVELOPING A POSITIVE CLIMATE FOR WITNESSES

Under apartheid the police and the criminal justice system were responsible for enforcing discriminatory and oppressive laws. Many people saw them as part of the system of oppression. Those who were fighting against apartheid discouraged people from cooperating with the police. People who cooperated were labelled as collaborators, or *impimpis*, and sometimes were punished by community members for helping the police. Criminal elements in the community also

promoted these ideas because they saw them as working to their advantage.

Since the transition to democracy in South Africa in 1994, a lot has been done by the SAPS to improve their relationship with communities. Police are now seen as a “service” and are responsible for assisting all people who are victims of crime. By using community police forums (CPFs) and sector policing forums, the police have also gradually been able to improve their relationships with people in communities.

However, while there have been big changes in South Africa many people are still reluctant to serve as witnesses. There are many reasons for this, including:

- **Old attitudes:** some people still retain their old attitudes to the police. They do not see assisting the police as a positive social duty, or still feel that helping the police is to sell out.
- **Safety fears:** even if they want to help the police, some people may be afraid that they will be seen as *impimpis* for doing so. They may have other reasons for worrying about their safety, for example, if the suspect is a powerful person in the community they live in.
- **Stress and inconvenience:** the stress and inconvenience of being a witness. Witnesses may think that the process will take a lot of time, and that their lives will be disrupted, especially if they are called to testify in court. They may have heard of other people who have had bad experiences as witnesses, such as being treated badly by the police, or bad experiences during cross-examination.
- **Hopelessness:** people may think that it is futile to give evidence as the police will not solve the crime, or that the suspect will be acquitted anyway.
- **Don't understand:** they simply may not

FIGURE 1: THE NEGATIVE CYCLE CAUSED BY LACK OF WITNESS COOPERATION



understand the criminal justice process and the role of witnesses in it.

- **Ties to the perpetrator:** the person may be financially dependent on the perpetrator or still be fond of the perpetrator (as happens in many domestic violence and child abuse cases), and may not want to get them into trouble.
- **Think they cannot help:** they may not be able to identify the perpetrator, and may believe, accurately or not, that they cannot help the police.

These reasons may lead victims and witnesses to not report a case or to not want to be involved in the case. This leads to a vicious cycle. Because people do not want to report or get involved, trials fail, criminals walk free and people lose even more confidence in the system and lose the motivation to become involved (see Figure 1 on page 18).

It will obviously help the police if people in communities are much more positive about serving as witnesses. There is a lot that can be done to motivate witnesses to come forward and give evidence. This is not just about what you can do as an individual police member but involves station commissioners and other police leaders working with others to create an environment where witnesses are more positively motivated to assist the police. This can include using CPFs, sector policing, the media and other channels of communication to inform people about the importance of serving as witnesses and to promote a positive attitude to those members of the community who serve as witnesses.

Alongside promoting positive attitudes in communities it will also be important to:

- Improve services to witnesses to minimise the inconvenience and stress of serving as a witness, and to enable witnesses to have confidence that they will not be harmed as a result of giving evidence.
- Promoting confidence in the criminal justice

GLOSSARY

The criminal justice system and process

- The **criminal justice system** is the system for dealing with crime and includes the police, the prosecution, the courts and the prisons.
- In this handbook the **criminal justice process** means the process of investigation and prosecution.

Rapport

The Oxford English Dictionary defines “**rapport**” as “a close and harmonious relationship in which there is common understanding”.

system through promoting its effectiveness and publicising its successes. Because witness evidence is so crucial to the effectiveness of the criminal justice system, this includes recording the evidence of the witness in a professional way, and ensuring that they understand how to present it in court. Otherwise, even if the witness is positively motivated, their evidence may be of little value to the court. This will contribute to a positive cycle in which good practice by police feeds into greater witness cooperation and better conviction rates (see Figure 2, page 20).

6. ESTABLISHING RAPPORT

Because many witnesses are reluctant to come forward and give evidence, we need to find ways of motivating them and encouraging them to become, and remain, involved. While trying to minimise the inconvenience to witnesses, and to ensure that concerns about their safety are attended to, something that will also help is to build rapport with witnesses.

The question of how to build rapport with people is relevant in many fields, including sales, education, conflict management and negotiations.

People working in sales are advised to stand, shake hands, smile and use a pleasant tone of voice when introducing themselves. They are also advised to allow a brief period for discussion of non-business matters (for example, about the weather or family). This helps to relax people and establish common ground between them.

In addition to this, people who need to establish rapport are also encouraged to attend to the following issues:

- Adjusting the pace of the interaction to one that suits the other person.
- In a subtle way matching or mirroring their body language.
- Using a similar tone of voice and similar expressions to the other person.

- Taking note of the communication style, or the “representational system”, which the other person uses.

A person’s communication style, or “representational system”, refers to how they speak about their understanding of things. For example, some people will tend to focus on the visual (“I see your point”) while others focus on sound (“I like the sound of what you are saying”). If you can adapt your language to mirror their communication style, it may encourage them to feel more comfortable.

While some of these techniques may be useful, what is often most important is your ability to *identify* with the other person. Try and see things from their point of view. Do not be judgemental — show interest and concern and communicate with them in an open way while expressing what your purpose is in interacting with them.

FIGURE 2: GOOD POLICE PRACTICE CONTRIBUTES TO POSITIVE WITNESS ATTITUDES



Building rapport means building a common understanding with witnesses. When you approach or speak to victims or witnesses you should not just see them as a source of information, but as someone with whom you need to establish a bond. How you approach them, and how you first speak to them, will make a big difference in this regard. Irrespective of who the witness is (see Focus Topic 4 on accomplices on page 14, for instance) it will greatly help your interactions with them if you can establish a level of rapport with them.

In addition, problems like stress and anxiety, which prevent you from feeling relaxed, may prevent you from establishing rapport. If you feel relaxed and confident this will enable you to respond with empathy to the other person, as well as making it easier for them to relax and interact with you.

It is clear that improving the way we work with, treat and relate to witnesses will also improve the type of cooperation we get from them. This will help to improve their confidence in the police and the criminal justice system — which will lead to better witness cooperation, improved attendance of witnesses at trials, improved conviction rates, and so on. Building rapport is important but it also needs to be followed up by good and consistent standard practices when working with witnesses.

7. PROBLEMS WITH WITNESS EVIDENCE

Although we stress how important witnesses are in this handbook, it is important to recognise that there are sometimes weaknesses in their evidence. Witnesses are people who come from all walks of life. They could be doctors, priests, accountants, street children, homeless people, prostitutes — in fact, anyone. They may not be very polite or considerate when dealing with you. In some cases they may even try to mislead you.

Some of the problems you may have with witnesses include:

7.1 They may be mistaken or not tell the truth

Generally, people are bad observers, especially when they are under stress (such as when they are watching a crime happen in front of them), when their eyesight is poor or the lighting is poor, and when something happens quickly.

As Osterberg and Ward (1992, p.246) state:

[...] experienced detectives have learned that eyewitnesses can be mistaken; indeed, it is not uncommon to find various eyewitness reports on an identical event to be incompatible. It is the task of the investigator to resolve such contradictions.

On the other hand, some people may hide some or all of the details of the case or even provide

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MOTIVATING WITNESSES

Many of the chapters of this handbook are relevant to questions about motivating witnesses. See in particular:

- Section 6 of this chapter on establishing rapport with witnesses (see page 19).
- Focus Topic 7 on dealing with reluctant witnesses (page 30).
- Focus Topic 4 on page 56 raises the issue of forcing witnesses to testify.
- Chapter 9 (page 82) discusses protecting witnesses who are in danger, and witnesses who are frightened.
- Chapter 11 (page 103) discusses preparing witnesses so they feel confident about giving evidence.

completely inaccurate information to the police. This may be because:

- In rape cases and some other cases the victim may feel embarrassed or humiliated talking about the incident. Or the person may feel embarrassed about the way in which they reacted. They might have hid or run away and be afraid that other people will ridicule them for this.
- An inaccurate crime complaint may also be lodged when some of the facts are correct, but the person wishes to conceal other details of the incident, such as the location where the event took place, or some of the events leading up to the incident.
- They may have been bribed, threatened or put under pressure not to give evidence. They may be afraid because they fear retaliation from the suspect (threats to witnesses are discussed further in Chapter 9).
- In some communities people who assist the

police may be seen as “spies” or informers. They may be afraid that they will be ridiculed, ostracised or hurt because of this.

- In some cases the witnesses you deal with may be closely linked to the crime or to the perpetrators. They may want to protect themselves or someone close to them who was involved in the crime.
- The crime may not have happened at all. They may have ulterior or malicious motives for opening the case. They may have fabricated the story to deceive someone about a particular incident, or they may want to get back at someone with whom they are upset or angry.
- The crime may have been “staged”, such as an alleged burglary or robbery or case of arson, where the person wants to claim insurance.
- They may be afraid of being cross-examined in court, or just do not want to get involved.

On page 59 of this handbook we discuss what to do when there are indications that the evidence

9

EYEWITNESS MEMORY AND POLICE PRACTICE

Factors that affect the quality of memory include characteristics of the witness (for example, age) but other factors can also play a part. Examples are the following:

- The amount of time spent between the event and the time when the statement is taken increases the chances of forgetting.
- Suggestive or leading questioning can distort memories, leading witnesses to doubt their own true memories.
- Where other people (including police or other witnesses) provide the witness with their own version of events, this may also distort memories as witnesses incorporate aspects of the other version of events into their own.

- During identification parades, if only one of the people actually resembles the suspect while other people in the parade have completely different physical characteristics, the witness may unconsciously “adjust” their memory so that they believe the similar-looking suspect in the parade is the perpetrator.
- Witnesses may also feel pressure to identify one of the participants in an identification parade as the perpetrator, which may also encourage this type of unconscious memory adjustment.

Also see Venter, A. and Louw, D.A. (2005). System variables and eyewitness testimony. *Acta Criminologica* 18 (3).

of a witness may be unreliable.

7.2 They may not remember

Like all people, witnesses' memories are not always that good. The information that one gets from witnesses may sometimes be very sketchy, and they may sometimes not remember any details of the incident clearly.

In addition, the longer the time between the event and when they are interviewed, the greater the chance they will forget — which is why it is important to interview them as soon as possible. Where they are elderly, this problem may be even greater.

However, as discussed later (see page 37), when dealing with witnesses who have been traumatised by their experience, it may sometimes be better to wait a short while before interviewing them.

It is also important to remember that the quality of evidence one gets from witnesses is not only important to solving (detecting) the case, but also important at the trial. Witnesses may give clear evidence to the police but then give confusing evidence to the court. The police can help to ensure that witness evidence in court is of a high quality by ensuring that the statement taken from them accurately reflects what they are saying and by preparing witnesses properly for court.

8. GOOD PRACTICE AND POLICE EFFECTIVENESS

As we have said, this handbook deals with good practice in working with witnesses, which is important for three main reasons:

- As part of **community policing**, dealing properly with witnesses helps to build a positive image of the police and good relationships between the police and the community.

- As part of **victim empowerment**, it helps to prevent secondary victimisation and increases the chance that victims will be able to deal with their experience in a more positive way.
- As part of **effective policing**, it can help in finding out the facts and in ensuring that perpetrators are held accountable for their actions.

The skills of working with witnesses are part of a broader group of skills related to interacting with other people. In police work this group of skills also includes skills to do with resolving confrontations skilfully and successfully.

At the same time, some of the skills that we will look at in this handbook (such as communication, listening, empathy and objectivity) are skills that you can use in all areas of your life — both at work and at home. Improving these skills can have benefits in many aspects of your professional and personal life.

FIRST CONTACT WITH WITNESSES

1. INTRODUCTION

Although much of this handbook focuses on the responsibilities of detectives when they deal with witnesses, for many witnesses (and victims in particular) the first contact they have with the police is with a uniformed member, either at the station or at the scene of the crime.

This initial contact with the police is a vital stage in the process. As one detective said:

The guy in the uniform has the most important role. He is the first guy at the scene of crime and can make or break a case.

This ability to “make or break” a case relates to the overall response by uniformed staff, including:

- How the member at the Community Service Centre (CSC) answers the phone or deals with complaints in the office.
- The conduct of the first member at the scene of the crime.

2. IF A PERSON TELEPHONES THE COMMUNITY SERVICE CENTRE

In many areas, it is better for a victim or witness to call 10111 than to call a CSC (what used to be known as the charge office) to report a crime.

However, if the person does call the CSC and it is appropriate for the call to go through to 10111, the person at the CSC who receives the complaint should give the complaint through to radio control. Here you need to record information from the person very carefully and report it very clearly to radio control.

Where it is not appropriate for the person to call 10111 but to call you, your most important role is:

Note

This chapter deals mainly with the responsibilities of uniformed personnel but is also relevant to detectives.

IN THIS CHAPTER

This chapter is especially relevant to uniformed members of the SAPS. It looks at the first contact with victims and other witnesses. It discusses:

- How the first member’s response can be decisive for a case.
- Dealing with calls by telephone to the community service centre.
- Dealing with victims and witnesses at the community service centre.
- The responsibilities of the first member at the crime scene in relation to witnesses.
- What to do if the case requires investigators with specialised skills.

There are also special inserts on:

- Proper contact information.
- Special concerns regarding witness statements.
- When a person may die or lose consciousness.
- Dealing with reluctant witnesses.
- Domestic violence cases.

- To find out where the crime is taking place or where the victim is.
- To send police. This may involve calling through to the patrol van. The people staffing the van may be at the CSC, in which case you can give the case to them directly.
- Medical or other help may also be needed and this should also be sent.
- To find out as much as you can about the complainant or victim (including their home and work addresses and any telephone numbers they have) so that it will be easy for the detectives to find them later. Obviously, it may not be possible to get all this information in cases where people are injured or in danger.

In some cases the crime is still in progress (for example, a witness calls in a report of a housebreaking). In such cases the person should be kept on the line as long as possible so as to provide information, such as directions and information on the whereabouts of the suspect, to members who

are en route to the scene.

Particularly if the victim is reporting a crime in progress in their residence, the person receiving the call should keep them on the line until the police arrive, if it is safe for the victim to keep talking on the phone.

If the person resents being asked too many questions, they should be informed that the police are on their way to the scene and that the police will need further information that will be relayed to them by radio.

2.1 When dealing with a call

- Be polite and pay close attention. **Don't put the phone down** and don't make them wait while you do something else.
- Find out where the crime is taking place and where the victim is. Try to get precise details, like the exact street address and the nearest cross street.

1 DOMESTIC VIOLENCE INCIDENTS

The SAPS National Instruction on Domestic Violence (National Instruction 7/1999 Version 02.00) sets out the responsibilities of SAPS members when incidents of domestic violence are reported.

In terms of section 4(3) of the National Instruction, if an incident of domestic violence is reported by telephone, or at the CSC by someone other than the complainant, "the community service centre commander, or person answering the phone, must, —

- "a) without any unreasonable delay, ensure that a police vehicle from the appropriate radio control unit or station is dispatched to the complainant to attend to the matter;
- "b) ensure that the crew of such vehicle is informed —
 - "i) whether any violence or threatened violence is allegedly or has allegedly been involved in the

incident; and

"ii) who the complainant is."

SAPS members should refer to the full National Instruction for detail and proper explanation of the above. See <http://www.info.gov.za/gazette/notices/2006/28581a.pdf>.

2 PROPER CONTACT INFORMATION

In many situations it will be sufficient to get an address and telephone numbers from a person. But with homeless people and those who live in informal settlements and rural areas, where there are no proper street addresses, special care must be taken. This is to assist detectives and uniformed personnel to find them again, and it is therefore important to take down as much information about them as you can. For example, you need to record:

- Find out if the crime is still going on, whether the perpetrator is still around or the victim is in danger. If so, send a police member to them **immediately**. Once you have done so, tell them when the police will get there. If you are unable to send a police member immediately, tell them approximately when you will be able to.
- Find out if anybody is injured. If so, call a medical service (like an ambulance, paramedics or fire service) **immediately**.
- Do **not** try to get a statement out of them. Instead, try to get as much information on who they are, where they are and how to find them. You can also ask for the identity of the perpetrator, but don't insist on this if they do not know.
- Advise them not to touch anything. If the person calling is the victim, gently try to persuade them not to bath if they have been sexually assaulted. If they are not the victim, you could ask them to gently convey this request to the victim.

3. AT THE COMMUNITY SERVICE CENTRE

When a victim or witness comes to the CSC to report a crime, you should:

- Get medical help if the person is injured. If they are taken to hospital, be sure to get the name of the person, the ambulance driver and the hospital they are going to.
- **If the person reporting is not the victim** find out where the victim is and if they are in any danger — if they are in danger, send help **immediately**.
- If the matter is a sensitive one (like rape or domestic violence), or if the victim is a child, disabled or an elderly person, take them away from the service desk before talking to them, in private, about what happened. If possible, find a qualified member to deal with them.
- Take a statement from the victim recording all information from them that is relevant to the offence (see the discussion in Chapter 6, page

- The name of the area where they live and a description of how to get to their house. For example, it might be near a shop or school.
- Their telephone number or cellphone number if they have one. If they do not, try to obtain a work number or the number of a friend or relative who will be able to contact them.
- A work address and phone number if they have one.
- The work address of a family member or friend.
- Other identifying information such as the names of next-door neighbours, or other localities, such as shops, that are close by.
- Information about where they usually are or who you can ask if you are trying to find them.

Remember, though, that when taking a statement you need to take care with the recording of contact information to protect victims and witnesses (the next

Focus Topic deals with contact information on statements — see page 27).

You can also make it easier for them to get in touch with you by giving them your card or writing your number down for them. You may also give them the telephone number of your branch commander and of the detective section at your station so that they can do proper follow-up once you have handed the case over. If you have a reference number for the case, give it to them as well.

3

SOME IMPORTANT CONCERNS ABOUT STATEMENTS

Before 1996, the witness statements in the police dockets were regarded as “privileged”, that is, the statements were for the state’s eyes only and the accused and

- 61, on the best time to interview the victim).
- Ask whether they need help contacting a relative or friend.
- If they seem traumatised (as discussed in Chapter 4, page 37) advise them of any trauma support services.
- Check whether there are any other witnesses. Victims who report cases at the CSC are often accompanied by other people (who may be witnesses), and it is worth checking with them whether they know anything about what happened. If they do, attend to the needs of the victim first and then ask the others what happened. If appropriate, take a statement from them.
- When more than one victim or witness is present, it is important to talk to them separately so that they do not hear what other witnesses say. This is important because of the risk of suggestion as well as in relation to the admissibility of evidence in court. For example, you could ask people to sit or stand a suitable

distance away from you (“out of earshot”) while you talk to each one.

More on domestic violence incidents

- See Focus Topic 1 on page 25 for when a domestic violence incident is reported at the CSC by someone other than the complainant.
- See Focus Topic 8 on page 31 for the steps to be followed when a complainant reports a domestic violence incident at a CSC.

Other steps not discussed here

There may be other things that you need to do after you have received a victim or witness that are not discussed in detail in this handbook. For example, you may need to arrange for a fingerprint expert to visit the scene, call the detectives, enter the call in your registers, and so on.

their lawyers were not allowed to see them (unless the prosecutor handed the witness over to the defence).

However, in the case of *Shabalala and Others v Attorney-General of Transvaal and Another* 1996 (1) SA 725 (CC) (often called the “Shabalala case”), the Constitutional Court decided that the defence should be allowed to see these statements unless there are special reasons for them to be withheld.

Note that this means that the defence will usually be allowed to have copies of the witness statements in the docket (section A of the docket), although it does not necessarily mean that they will have access to correspondence (section B) or the investigation diary (section C) in the docket.

Accuracy

Research has shown though that, in some cases, the statement taken from a victim or witness at the CSC or at

the scene of the crime differs from the statement that the detectives take. Because the accused and their lawyers get to see both statements, it makes it easy for them to trip up the victim or witness during cross-examination — which could lead to a guilty person going free. It is therefore exceptionally important that the statement be taken in an accurate manner.

Contact information on the statement

In addition, in some cases there is a risk that the witness will be harmed or intimidated by the accused or people associated with the accused. Ensuring that the address and telephone number (and in some cases even the name) of the witness is withheld from the defence may assist in protecting the witness from intimidation. While it seems that it is necessary to record the name, age, gender and address of the witness on the statement, this should be done in such a way as to make it easy to delete the address from copies of statements that are

4. THE FIRST MEMBER AT THE SCENE

When you are the first member to arrive at the scene of a crime, there are many things you need to do. For example:

- The crime or confrontation may still be going on, in which case you may need to intervene to stop the crime and to arrest the perpetrator, or try to calm the situation down.
- The victim may be seriously injured or traumatised and may demand your attention.
- The situation itself may be very dangerous to the victim, other witnesses and to yourself.

GOOD-PRACTICE IDEA

Station commanders could arrange with the local ambulance service to provide training to members on basic first aid.

provided to the defence. This may be done by recording the address in one clearly visible place on the statement or on a separate page. Any contact information that need not be on the statement should be recorded clearly in the investigation diary. In this, write down:

- Work address.
- Telephone numbers (at home, work and cellphone numbers).
- Contact numbers for neighbours or a friend if they don't have a phone.

Trauma

Lastly, witnesses and victims are often traumatised by the event and should not be asked to make a detailed statement until they are able to (see "The importance of time" on page 61).

- Even if not at the scene, the suspect may be in the vicinity of the incident.

As a result, you need to try to prioritise which of these to do first. The following approach is suggested:

4.1 Remember it is a crime scene

As far as reasonable, treat the scene as a crime scene and try to prevent interference with potential evidence. However, standard safety procedures and emergency care take priority and must be attended to first.

4.2 Safety first

Once you are at the scene, your first priority is to protect the safety of everyone there, including yourself and other police members.

- Check to see whether you need backup — if so, call for it immediately.

4 NOT ALL CRIMES ARE VIOLENT CRIMES

Of course, not all crimes are violent crimes and in many cases the perpetrator will have left long before the case is discovered. However, in this handbook we are looking at the needs of witnesses and victims, and what you can do to protect them, particularly when the crime is a violent one.

5 WHERE A PERSON MAY DIE OR LOSE CONSCIOUSNESS

Where a victim (or a witness) with key information is fatally injured or ill and is likely to die or become unconscious soon, you may need to try to get basic information from the person. In such cases, you should try and ask questions about who the perpetrator is

- Check to see whether there are any dangerous people around and try to stop any violence that may be taking place.

4.3 Emergency care and calling in assistance

After controlling any dangerous people, your next responsibility is to get medical attention for anyone who is injured. When doing so, try to make sure that no one contaminates the scene.

Paramedics should provide medical assistance wherever possible, but there may be situations where a person is injured and there are no paramedics. If there are basic steps that you can safely take — such as stopping the bleeding from an open wound, or providing mouth-to-mouth resuscitation — then you should do so. In anticipation of such a possibility you should also be careful about your own safety and risk of infection and therefore always make sure that you are carrying protective gloves.

However, in many situations it may be risky to try and assist an injured person, such as where the person has spinal injuries and your actions run the risk of aggravating these injuries. It is therefore far preferable that police should have some basic first-aid training so that they can make more informed decisions in such circumstances. Police who are attending basic training now do receive some accredited first-aid training but many police have never done so.

Where a victim (or suspect) needs to be taken to hospital, make sure a police member goes with them or explain to the medical personnel that they should try to protect any evidence and record anything the victim or suspect says.

In addition, you may need to call the CSC to inform them to dispatch detectives or other personnel (for example, forensics) to the scene.

(although this should obviously be done with great sensitivity).

One of the reasons for this is that a **dying declaration** may be admissible evidence in murder cases and can be used to show who the culprit is, although other evidence will still be needed to prove their guilt. Also, it could help you a great deal with your investigation. Of course, if the victim dies, you will be called to give this evidence and so you should write down exactly what they told you as soon as possible.

The admissibility of dying declarations used to be governed by section 223 of the Criminal Procedure Act, but is now dealt with in terms of section 3 of the Law of Evidence Amendment Act, 45 of 1988, which deals with hearsay evidence.

6

ARRESTING SUSPECTS

You may need to arrest the suspect(s) at this point. While we do not deal with the rules and procedures to be followed in this regard in this handbook, remember that, in terms of the judges' rules and the Constitution (section 35(1)(b)), you need to read suspects their rights.

4.4 Secure and control people at the scene

Once you have dealt with emergency care, try to **control** everyone at the scene. Prevent anyone from damaging or interfering with evidence by keeping them away from the scene.

Next, **identify** who is there. These could be suspects, victims, witnesses, bystanders or family and friends of the victims or suspects. As far as possible, keep all of the victims and witnesses to one side and make sure you have control over the suspects (who should be kept separate from victims and witnesses). For example, if you have arrested a suspect, you could place them in your van while you talk to witnesses, and you can ask witnesses to stand or sit out of earshot while you talk to them individually.

Because many crimes take place in public, there are quite often a number of witnesses. Even where crimes take place in private (like domestic violence,

murder and many rapes), there are still often people who heard something — perhaps a scream or a car pulling up. Or they may suspect someone — perhaps, in a murder case, a jealous ex-husband who has come around and beaten the murdered woman on other occasions.

Should you find someone who knows something, don't worry too much about getting statements from them. Instead, try to get a name and proper contact information from people so that the investigating officer can follow up later (see Focus Topic 2 on "Proper contact information" on page 25).

Once you know who the victims, witnesses, suspects and their families are, and depending on the circumstances, try to remove everyone else from the crime scene (although not necessarily the area). This is usually done to protect the scene, to protect the victim and to prevent harm to the suspect, and to allow witnesses to find you without other members of the community or other

7

DEALING WITH RELUCTANT WITNESSES

Sometimes, witnesses may be reluctant to come forward to tell you that they saw or heard something. As we have already discussed in Chapter 1, there are many reasons for this, including that some people are frightened of the police or are afraid to be seen cooperating with the police. The right attitude when approaching witnesses at the scene will go a long way to making people come forward. As one detective said:

You know you need to build rapport quickly. You have a minute or so to build rapport — you're either winning or losing.

Building rapport (discussed on pages 19–21) is a skill that will improve with practice. It will help you a great deal if you do not judge people (by who they are, what they look like or wear, and so on), if you talk softly, have a

non-threatening tone of voice and body posture, and if you try to just listen to what is being said. (You will find more on interviewing witnesses in Chapter 6 — see page 58.)

Sometimes, it helps to ask directly whether anyone saw anything. At other times (perhaps when you are in a community where people are scared to cooperate with the police) you may be more indirect. For example, you could casually walk around and engage people indirectly, perhaps talk to them about the terrible thing that has happened, and ask them if they think anyone saw anything. If you think there are people who know something but may be scared to come forward, you could give out your card to people standing in the group, or announce your name to them and ask them to contact you at the local police station. If there are opportunities to approach specific individuals, you could discreetly give them your card or write your name and phone number

perpetrators seeing them do so.

In some cases, such as when the crowd is large and very hostile, this may be extremely difficult and it may make more sense not to anger them further. It is still advisable, though, to at least try to prevent people from contaminating the scene (for example, by cordoning it off).

Unless there is a danger to them, you should not necessarily chase small crowds of people away from the area (although you should keep them off the crime scene itself). Many of the people in the crowd could be witnesses, and one or more could be perpetrators. Instead, wait for the detectives to make a decision about whether or not to encourage people to leave.

4.5 Identify, establish, protect and secure the boundaries

Defining and controlling the boundaries of the crime scene will help to protect and secure it, and

to make sure that no one who should not be there interferes with any evidence. Generally, you should set the boundary beyond the actual spot where the crime took place. For example, there may be a footprint a little way from the scene or the perpetrator may have thrown away their weapon close by. You can use tape, rope, cones, vehicles or anything else to set the boundary.

Securing evidence

Remember to secure all evidence properly.

4.6 Turn over control of the scene and brief the detectives who take control

You should remain at the scene until a detective arrives. Then, hand over the scene to the detective and give them a proper briefing about what you saw, any witnesses, what happened to victims, anyone who was arrested, and so on.

on a piece of paper and give it to them when no one is looking.

Research suggests that police members who use both a direct and an indirect approach, depending on the circumstances, are the most successful. This means that, depending on the circumstances, they may either ask people questions directly or else may focus much more on establishing rapport and then raising the questions they have once they have established a bond with the person.

8

DOMESTIC VIOLENCE CASES

The responsibilities of members attending a scene of domestic violence are set out in National Instruction 7/1999. The Instruction is in line with the Domestic Violence Act, 116 of 1998. The instruction indicates that a member who attends a scene of domestic violence must:

- Determine whether the complainant is in any danger and take all reasonable steps to secure the scene and to protect the complainant from any further harm. This includes seizing any arms or ammunition which have been used to threaten anyone, or where it appears that the person is not fit to possess the firearm due to being inclined to violence or for other reasons.
- Once this has been done, the member must:
 - » Render such assistance to the complainant as

4.7 Document your actions and observations

The last thing you need to do is to write down a statement saying exactly what you found at the scene, what you observed and what you did. Very often, the first member on the scene becomes an important witness in the trial, and your statement and evidence may be important to the outcome of the trial. The SAPS Procedure Manual: Crime Scene (National Instruction 1998) contains details on information required in crime scene reports by the first member and others attending a crime scene.

This section uses information from "Crime scene investigation: A guide for law enforcement" by the Technical Working Group on Crime Scene Investigation of the United States Department of Justice's Office of Justice Programs. See <http://www.ncjrs.org/pdffiles1/nij/178280.pdf>.

Other steps not discussed here

Of course, there are many other things you may need to do at the scene. For example, you may need to call for a fingerprint expert, and you may need to secure evidence properly so that the chain of evidence can be maintained. However, we do not deal with these issues here.

5. WHAT TO DO IF THE CASE REQUIRES INVESTIGATORS WITH SPECIALISED SKILLS

Some victims and witnesses, such as child victims and witnesses, require specialised personnel to interview them and deal with their cases.

Such personnel were previously based in specialised units (like the Family Violence, Child Abuse and Sexual Offences units and Child Protection units) but are now (2006) being relocated to stations to increase their accessibility. If

may reasonably be required in the circumstances, including assisting the complainant to lay a charge or contact a family member or friend.

- » If it is reasonably possible to do so, hand a written notice to the complainant and explain the contents of the notice to the complainant, for example:
 - The right to lay a criminal charge.
 - The right to apply for a protection order.
 - The right to lay a criminal charge as well as apply for a protection order.
- » It is important to inform the complainant that laying a criminal charge is not a prerequisite for applying for a protection order. The notice must be provided to the complainant in the official language of his or her choice, wherever possible.
- » Assist the complainant or make arrangements for the complainant to find suitable shelter and to obtain medical treatment.
- » Investigate the alleged incident of domestic

violence and gather all available evidence in respect of any offence which may have been committed during such an incident.

Where a complainant reports an incident of domestic violence in person at a CSC, the CSC commander must ensure that steps 2(a)–(d) are taken (see paragraph 4(4)).

Also see:

- Section 11 of the National Instruction, which sets out other powers and duties of members in dealing with domestic violence.
- Section 12 of the National Instruction, which sets out details regarding the keeping of records relating to incidents of domestic violence.
- Sections 13 and 14 of the National Instruction regarding steps to be taken when there are allegations of failure by members to comply with the Domestic Violence Act and the National Instruction.

one of these members is not immediately available, but you are the first member on the scene or the victim comes to your CSC, you should contact one of these members immediately. If they are unable to attend, they will instruct you to:

- Treat the victim with respect for their dignity.
- Open a skeleton docket, that is, collect enough basic information that will allow the unit to follow up.
- Get a case number.
- Complete the investigation diary and remember to include all the contact details of all victims and witnesses (see Focus Topic 2 on “Proper contact information” on page 25).
- Assist in the medical examination by providing the victim with transport to a medical facility if you can, or call for an ambulance.
- If it is a rape or sexual assault case, gently advise the victim not to bath or wash before they reach the medical facility (they will be allowed to do so once all of the necessary tests

have been done). Note, though, that many such victims feel a great need to wash or bath, and that they may already have done so. This does *not* mean that a medical examination cannot be conducted — forensic evidence can still be found up to 72 hours after the offence (and sometimes even longer).

- Get new clothes for the victim if you can — either from among their own clothes or from a friend or relative. “Bag” the clothes of any victims so that they can be tested for forensic evidence. But be careful when folding clothes belonging to victims of sexual offences — semen stains may crack when they dry and can be destroyed by improper handling.

Note

Dealing with victims of sexual offences is covered in much more detail in Chapter 4, page 37.

The above reflects some of the key points from the National Instruction but SAPS members should refer to the original document, Domestic Violence (National Instruction 7/1999 Version 02.00), for full detail on the provisions. See <http://www.info.gov.za/gazette/notices/2006/28581a.pdf>.

Members of municipal police services should refer to the National Standard for Municipal Police Services Regarding Domestic Violence (Government Gazette, 3 March 2006, no. 28581). See <http://www.info.gov.za/gazette/notices/2006/28581a.pdf>.

WORKING POSITIVELY WITH OTHER PEOPLE

1. INTRODUCTION

South Africa is a country with a long history of discrimination. Although we now have a democratically elected government, a Constitution and a Bill of Rights that outlaw discrimination, it does not mean that all South Africans hold values that are in line with the principles contained in these documents.

While the Constitution also upholds our rights to freedom of conscience, religion, thought, belief and opinion (section 15(1)) and we are not required to hold attitudes or views of one kind or another, a problem arises when our attitudes prevent us from being able to work with people effectively. For police and other state officials this can present a problem as the Constitution also provides that everyone has the right to equal protection and benefit of the law (section 9(1)) and obliges officials of state to respect, protect, promote and fulfil the rights in the Bill of Rights (section 7(2)). We should therefore try to be aware of our own attitudes, and not allow negative attitudes to one or other group to influence the way we work. We should always try to treat all people fairly and with respect for their human dignity.

2. NEGATIVE WAYS OF RELATING TO OTHER PEOPLE

This and the next section draw extensively on training notes compiled by Rick Barrata in "Human relations for enforcement officers".

Prejudices usually involve **stereotypes**, which are beliefs that people from certain groups always behave in a certain way or have other fixed characteristics. As a result of stereotypes we cannot see the person clearly as an individual, and our picture of them is dictated by the stereotype. This makes us unable to relate directly to that person. In fact, what we are relating to is our stereotype (or internal mental image), rather than to the person themselves.

IN THIS CHAPTER

This chapter looks at how to develop a positive, non-discriminatory approach to working with other people, which is crucial in order to be able to work effectively with different witnesses. It examines:

- Negative ways of relating to other people.
- More positive ways of relating to people.
- Aspects of diversity, such as language differences, culture and religion, and socio-economic status.

The equality clause of the South African Constitution is outlined in Focus Topic 1 on the opposite page.

GLOSSARY

Prejudice means having a negative attitude towards some people just because they are different to us — for example, because they are of a different ethnic background, race, gender, culture or religion, or because they come from a different country or have a different sexual orientation.

Because we are prejudiced against some people and hold stereotypes about them, we may **discriminate** against them — by treating them unfairly, not believing them, or not taking them seriously just because they are of a different ethnic background, gender, and so on.

Overcoming prejudice and stereotypes, and treating all victims and witnesses fairly, is an important part of improving the relationship between the police and the communities they serve. But other attitudes, such as cynicism or arrogance, will also undermine your ability to interact with people in a productive way.

3. POSITIVE WAYS OF RELATING TO PEOPLE

An alternative to these negative attitudes is a way of relating to people that is based on openness, objectivity, perspective, courtesy and compassion:

- **Openness** involves being willing to hear and consider what others have to say as well as a willingness to share with them your own perspectives or views.
- **Objectivity** involves being aware of your own feelings and prejudices, and putting these aside when you are dealing with situations so that you can deal with the situation in terms of what is actually going on.
- **Perspective** involves looking at situations in terms of the big picture and from a point of view that combines an awareness of principle with the need to deal with situations in practical terms. Perspective enables you to see the situation from many points of view, rather than simply taking sides in a situation of conflict.
- **Courtesy** involves respect, consideration, cooperation and politeness.
- **Compassion** is a sympathetic awareness of the pain or distress others are suffering.

If you are able to integrate these five principles

into the way in which you approach your work, they will enable you to work in a positive way with people who you regard as different from you perhaps because they speak differently, or come from different cultures, religions or socio-economic backgrounds.

4. LANGUAGE

South Africa has 11 official languages as well as numerous other languages that are spoken by ethnic minorities (such as Chinese, Portuguese, Gujarati and French). Obviously, no police member will be able to speak and understand all of these and, in fact, many cannot understand more than two or three.

Trying to communicate with someone when neither of you understand the other's language is very difficult, or impossible, and misunderstandings are bound to occur.

1

EQUALITY IN THE SOUTH AFRICAN CONSTITUTION

Section 9 of the South African Constitution states, among other things, that:

- Subsection 1: "Everyone is equal before the law and has the right to equal protection and benefit of the law."
- Subsection 3: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."
- Subsection 4: "No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). ..."

Even using interpreters does not always help, because some words and phrases are culturally linked and do not translate well at all. Something always gets lost in the translation.

Often, people will treat those who do not speak their language as stupid or deceitful because of prejudices they may have, but also because they just do not understand. Also, they will become very impatient with them.

Translation is discussed further on page 74 (see in particular information on the Telephone Interpreting Service for South Africa (TISSA) in Focus Topic 3).

5. CULTURE AND RELIGION

It is also important to develop an attitude of respect towards other people's religion and culture. For example, many faiths have specific holy days or days of religious observance, and some faiths have rules about men talking to women. All of these need to be respected.

Cultural differences between police members and witnesses can also lead to difficulties when we misunderstand each other's culture. For example:

- Speakers of many African languages prefer to take longer to get to the point than other people. In fact, it would be considered rude by them to get to the point too quickly. Other people often see this as being vague, which creates suspicions of dishonesty.
- In some cultures, people look down when they are talking to people they regard as superior to them as a sign of respect. Others regard such behaviour as an indication that the person has done something wrong, or is dishonest, because the person "cannot look me in the eye".

6. SOCIO-ECONOMIC STATUS

Socio-economic status (sometimes called "class status") refers to how much money a witness has, where they live, where they work (or don't work), and so on.

Poorer witnesses and victims sometimes feel that their issues or problems are not taken as seriously as someone who is richer or more powerful. This is a real concern and you should always try to make sure that you treat all witnesses equally and fairly, regardless of how poor or rich they are and where they live.

In Chapter 4 we look in more detail at some categories of witnesses with special needs.

WITNESSES WITH SPECIAL NEEDS

IN THIS CHAPTER

This chapter looks at some different categories of witnesses with special needs. It discusses:

- Witnesses who are traumatised.
- Victims of sexual offences.
- Victims of domestic violence.
- Child victims and witnesses.
- The elderly.
- Mentally and physically disabled witnesses.

There are also special inserts on:

- Defining the term “vulnerable witnesses”.
- Secondary victims.
- A register of service providers.
- Symptoms of post-traumatic stress disorder and rape trauma syndrome.
- Myths about rape and sexual violence.
- Victim impact statements.
- Mental and learning disabilities and illnesses.
- The impact of disability.
- Results of a study on police practice with deaf people.

1. INTRODUCTION

Because of the experience they have been through, the crimes committed against them, their age or their position in society, some witnesses are more vulnerable than others and will need special attention and care if you want them to open up, trust you and tell you what really happened.

Vulnerability is a broad concept that applies to many different witnesses. As described in Focus Topic 1 on page 38, it refers to the characteristics of specific individuals. In addition, factors such as age or disability, the type of offence which one has been subjected to (particularly sexual and other violent offences), and discriminatory attitudes may also increase the vulnerability of specific victims or witnesses.

Apart from child witnesses, however, in South Africa the main focus has been on specific categories of victims who, for one or other reason, have special needs. Some measures have already been taken to assist these people, including new laws and the creation of special units and courts for some. But these do not constitute a comprehensive system for working with vulnerable witnesses and there is a lot more that you can do, and many skills and types of understanding that you can develop, to improve your ability to work with people with special needs.

In this chapter, we look at ways of dealing with:

- Victims and witnesses who have been traumatised by their experience.
- Victims of sexual offences.
- Victims of domestic violence.
- Child victims.
- The elderly and disabled.

2. TRAUMATISED WITNESSES

Many witnesses (and particularly victims) are severely traumatised by their experience. “Trauma” is the word

used to define the way we feel after a violent or threatening experience. These experiences make us feel shocked and powerless. In some cases, these feelings go away quite soon, while in others they can last for weeks or months.

People suffering from trauma go through different phases. These are sometimes described as:

- The **impact** phase.
- The **recoil** phase.
- The **reintegration** phase.

2.1 Impact phase

This phase starts immediately after the traumatic event and lasts from a few seconds to a few days afterwards. In this phase, victims and witnesses will be in a “state of shock”. They may seem emotionally numb, disoriented, confused, irrational and disorganised. Some may look calm while others may scream or cry. They may also

become confused and be unable to hear, speak or think clearly.

Unless it is a priority to interview the person very urgently, it is generally not a good idea to interview someone early on in this phase. Instead, you should:

- Allow the person to tell you their story if they want to (this is a common reaction to trauma), but do not push them and do not ask too many detailed questions. If it does not disturb them too much, take notes with which to jog their memory later when you take their statement (or jot down your notes immediately after speaking to them).
- Be calm and reassuring and try to get their name, address and contact details so that you will be able to find them later. (Note: if the victim is accompanied by a friend or a relative, try to get their contact details from this person rather than from the victim.)
- Refer the person to someone at the station who

1

VULNERABLE WITNESSES

“Vulnerability [can be] an individual thing, related to one or more of age, sex, experience, social and emotional maturity, disability, communication difficulties, dependence on those you are minded to criticise, misunderstanding of what is at issue, anxiety to please, a misplaced sense of guilt, general fears of unknown consequences, lack of experience of anyone wanting your opinion, cognitive disability, etc. [...] Someone with a learning disability of any degree is likely to suffer from one or more of these vulnerability factors, and quite often most of them” (Home Office, 1998).

2

SECONDARY VICTIMS

It is important to note that it is not only victims who experience trauma. Sometimes witnesses to an event are traumatised by what they have seen, and sometimes family members who were not even there at the time can be traumatised. These are known as secondary victims. (This is a different concept from the one of secondary victimisation, which is discussed in Focus Topic 6 on page 16.)

While trauma is most commonly found in crimes involving violence, it is also possible for people to be traumatised by crimes committed against their property.

can provide information about support services, or refer them directly to counselling or other services that are available (as discussed in Focus Topic 4 below). Then ask if they would like you to refer them to one of these service providers.

- Offer them practical support such as:
 - » Help with contacting family members or friends.
 - » Help to cancel a stolen ATM card.
 - » Transport to a shelter for survivors of domestic violence.

As one detective said, in exceptional cases you may even go a lot further than this:

You give that little bit extra, even though it's not your job. Where a witness is in hospital, you visit. You say, "I know there's no one at home, so I'll go around. Don't worry, I'll ask the neighbour to feed the dogs." Then you go back and say, "I've been to your house and everything is OK. If you need anything, just give me a call. Don't go to the shop to buy

groceries, just give me a call. I'll come around and buy them for you."

2.2 Recoil phase

During this phase (which usually starts a few hours or days after the incident), the witness begins to realise what they have been through and to express emotions like anger, sadness or guilt. Although the witness may still be traumatised, they will at least be able to think more clearly and to remember what happened to them (or what they witnessed).

2.3 Reintegration phase

In this phase, the person begins to live with the trauma as a memory. They start to function normally and feel whole again. Hopefully, it will be during this phase, or even after it, that the trial will take place. However, you should remember that it is very easy for victims and witnesses to become re-traumatised by having to face their attacker in (and outside) court, and by having to remember and tell

3 IN-DEPTH INTERVIEWS AND THE IMPACT PHASE

There is a tension between the need to be sensitive to the fact that a person may still be in a state of shock, and the need to carry out the in-depth interview as soon as they are physically and emotionally able to do so. (Also see "The importance of time" on page 61.)

4 REGISTER OF SERVICE PROVIDERS

There are many non-governmental organisations, community-based organisations and government services that provide trauma-counselling services to victims for free. Examples are the trauma support workers with the National Peace Accord Trust, LifeLine, Rape Crisis, ChildLine, Thuthuzela Rape Care Centres, Crisis Centres ("one-stop-shops" established at some hospitals), CSVR's

Trauma Clinic and government health clinics (which often have a trained psychiatric nurse).

The Service Charter for Victims and Victim Empowerment Programme give the station commissioner and commanding officer the responsibility of drawing up a register of these services and service providers. Supervisors are expected to ensure that this directory is available at station level.

What should be in a register of service providers?

The "Gauteng Directory of Service for Victims" (produced by Business Against Crime and SPAR) includes contact information for the following types of service providers:

- Emergency numbers.
- Counselling centres.
- Trauma and abuse.

their story to the court. Also, incidents where they are threatened or intimidated may remind them of the trauma. This is why it is important to try to reduce the amount of distress witnesses, and particularly vulnerable witnesses, are exposed to at court (see Chapter 11).

2.4 Referral to trauma services

Many police stations have groups of volunteers based at the stations to provide support, which includes basic emotional support, practical assistance and information, to victims of crime and violence.

Where such people are available you may refer victims to them. They should then refer people who are severely traumatised to counselling organisations such as Lifeline or Nicro, or to private psychologists for follow-up counselling. However, the victim-support people at the station should not provide trauma counselling themselves, and, in fact, may be acting illegally if they do so,

unless they have a professional qualification.

Where there are no victim-support volunteers at your station, you should refer traumatised witnesses directly to any service providers that offer trauma counselling in your area. Whenever you refer a victim or witness, you should:

- **Explain** that it is normal to feel the way they feel.
- **Explain** what services are available.
- **Ask** the person whether they want to be referred. If they do not, there is nothing you can do about it.
- **Choose** an appropriate service.
- **Call** while the person is there and make an appointment for them.
- **Give** the person as much information as you can about how to find the service. Tell them where it is, how to get there, what the telephone number is, who they should speak to, who the appointment is with, and so on. If possible, provide them with a map.

- Crisis centres.
- Gay and lesbian.
- Drug and alcohol abuse.
- Eating disorders.
- Advice centres.
- Services for the aged and disabled.
- YMCA and YWCA.
- Aids information.
- Legal.
- Family planning.
- Places of safety.
- Shelters for unmarried mothers.
- Shelters (for women and children mainly).
- Children's homes.
- Hospitals (and clinics).
- SAPS.
- Magistrates' offices.
- Embassies and consulates.

The directory should obviously include (for each service provider):

- An explanation of services provided.
- All contact details (including a contact name, if appropriate).
- Emergency details.
- Directions and, if possible, a map.

5

THE DOMESTIC VIOLENCE ACT

As discussed in Focus Topic 8 on pages 31–33, the Domestic Violence Act makes it obligatory for police members to assist victims of domestic violence to find shelters and medical assistance.

- If possible, you should **take** the person to the service provider yourself.

2.5 Post-traumatic stress disorder

All people will experience some trauma after a violent or threatening incident. Sometimes these effects may only last for a few minutes or maybe a few days. But when the psychological effects of the traumatic incident continue long after the incident itself, a person is said to be suffering from **post-traumatic stress disorder** (PTSD). In cases of rape, victims are often particularly prone to a form of PTSD that is known as **rape trauma syndrome** (RTS). PTSD and RTS have many of the same symptoms, although some symptoms are more common or stronger in RTS. Both PTSD and RTS affect different people in different ways. Examples of behaviour that may be symptoms of these conditions are:

- Nightmares or difficulty sleeping.
- Flashbacks or intrusive memories.
- Constantly thinking about the experience.
- Difficulty concentrating.
- Depression or thoughts of suicide.
- Losing interest in life or in things they used to enjoy.
- Problems with sex.
- Not looking after themselves or other people.
- Trying to avoid things that remind them of the trauma or rape.
- Memory loss.
- Feelings of detachment.
- Feeling humiliated or ashamed.
- Loss of self-respect and self-confidence.
- Just after the rape, victims may feel cold, faint, tremble, become confused, feel nauseous and sometimes vomit.
- Tension headaches.
- Pain in the lower back or stomach.
- Eating disturbances.
- Crying a lot.
- Being unable to relax.
- Feeling sick and experiencing body pains.
- Feeling guilty or bad to be alive.
- Numbness.
- No energy and feeling tired all the time.
- Changing quickly from one mood to another or getting upset over minor things.
- Anger and increased aggressiveness or irritability.
- Feeling nervous and worried.
- Being more easily frightened than usual.
- Grief.
- Helplessness.
- Not wanting to go outside, see friends or family or socialise.
- Stuttering or stammering.
- Problems in relationships with family, friends, lovers and spouses.
- Problems at work or at school.
- Increased use of alcohol, cigarettes and drugs.
- Always feeling dirty.
- Acting as if the rape never happened.

3. VICTIMS OF SEXUAL OFFENCES

Rape and other forms of sexual assault involve psychological damage, physical injury and risks of disease and pregnancy. In addition to the symptoms of rape trauma syndrome (see above), the victim may suffer from the following:

- The victim may be worried about pregnancy or may actually be pregnant and may need advice on termination of pregnancy.
- Problems with their sexual organs, including painful periods, vaginal discharges and sexually transmitted diseases (such as gonorrhoea or HIV).
- Bleeding from cuts in the vagina or rectum.
- Throat irritation or soreness from forced oral sex.

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TABLE 1: COMMON MYTHS ABOUT RAPE AND SEXUAL VIOLENCE

	MYTH	FACT
1	Rapes usually occur at night in dark alleys and parks.	A high percentage of rapes occur in the victim's home, or at the home of someone the victim trusted.
2	If a woman leads a man on, or allows him to spend a great deal of money on her, or changes her mind after having commenced foreplay, the man has a right to sex.	Sexual assault is a forced sexual act done without the consent of the victim. Without consent, it is a crime, regardless of the previous actions of the victim or assailant.
3	If there is no semen present, there was no rape.	In cases in which the assault was interrupted prior to the rapist ejaculating, there would not be semen present. In many sexual assaults the assailants fail to get an erection or to ejaculate.
4	The rapist is most often a stranger.	More than half of rapes are committed by a person known to the victim.
5	A rapist is a psychopath and looks like one.	Rapists come from all walks of life, frequently have families, and include clergy, police members, teachers and others who are generally respected as "model citizens". Less than 5% can be classified as clinically insane.
6	The rapist is most frequently a "sex-starved" pervert.	The majority of convicted rapists did not rape out of sexual frustration, but for the emotional gratification they received from the act of sexual violence.
7	A rapist is a man who cannot control his sexual desires — rape is a crime of passion.	Rape is most often a premeditated crime. It is an act of aggression and violence, whatever the role sexual desire may play in it.
8	The victim was "asking for it" by the manner in which she was dressed, by flirting, or where she was walking or spending time.	The attitude that the victim "asked for it" takes the responsibility for the attack away from that assailant, shifting it to the victim. No one asks to be hurt, and no one has the right to force another person to engage in sex, regardless of circumstances or the victim's prior actions. Only the rapist is responsible for the rape.
9	Rape only happens to certain kinds of women.	Rape happens to women of all ages. Victims of sexual assault come from all races and socio-economic, ethnic and religious groups.
10	No one would rape an "unattractive" woman; rape only happens to young, "sexy" women.	Victims are chosen because of their vulnerability, not their physical appearance. Rape victims are of all physical types, appearances and ages.

Adapted from GTZ (Zambia), "Training manual for local court justices", and Centre for the Study of Violence and

	MYTH	FACT
11	No woman can be raped against her will; it is physically impossible to rape a woman who does not want to be raped.	Rape is most frequently committed through use of threat or force. Rape is not sex; it is physical assault. Any individual, male or female, can be physically overcome by a larger and stronger assailant.
12	A man cannot be raped.	The rape of men is believed to be even more under-reported than that of women.
13	Women enjoy being raped or secretly want to be raped.	Rape by its very nature is an unwanted act of violence against the body and mind of the victim. It violates and destroys the victim's normal perception of and assumption about her world; highly valued beliefs of trust and safety are shattered. The psychological damage of rape lasts long after the physical damage has healed. Although some women do fantasise about being overpowered, that does not mean she wants to be raped in reality.
14	A husband cannot rape his wife.	Although this used to be the legal position in South Africa, the Prevention of Family Violence Act makes rape in a marriage illegal. If a husband forces his wife to have sex with him against her will, it is rape.
15	Prostitutes cannot be raped.	The fact that prostitutes have sex for money does not mean they cannot be raped. Forced sex with a prostitute is rape. It should be noted, too, that a reported problem of prostitutes being forced to have sex with police members to avoid arrest is also rape.
16	If there are no visible injuries, there has been no rape. If the woman did not fight or scream, it was not rape.	Often threats of violence are used to force a woman to have sex. The mere fact that you cannot see any injuries to her does not mean she was not raped. Because of these threats, some women cooperate to avoid being injured or killed.
17	Women who drink alcohol or use drugs are asking to be raped.	If a woman cannot consent because she is drunk, drugged or unconscious, it is rape.
18	White men rape black women and black men rape white women.	Most rapes occur within the rapist's own community. Men of all racial and ethnic groups rape women.
19	Only gay men get raped — only gay men rape men.	Men of all sexual orientations are raped. Men who rape other men are often heterosexual.

Reconciliation, "Challenging the secondary victimisation of survivors of sexual offences: SAPS resource pack".

CONTINUED FROM PAGE 41

In addition to dealing with these problems, victims of rape often take a long time to recover from the psychological impact of the crime. Not only do they take longer to recover, the experience of having to confront their attacker (at an identification parade or at court) can lead to the person feeling highly traumatised. This can lead to them wanting to withdraw the case, being reluctant to testify, and to them breaking down in court, forgetting certain important details and even not being able to speak at all.

Often, the attitude of the police to these victims can be just as traumatic. Many victims complain of having to tell their stories in the CSC (where everyone can hear), being interviewed by male police members who are insensitive to their needs, or being taken to male doctors for examination (when they have just been sexually assaulted by a man).

Note

Although most of the notes in this section refer to women victims, you should remember that male victims of sexual assaults experience similar effects as women. The new Sexual Offences Bill, discussed on page 46, recognises this by redefining rape to include the rape of men — until now, only women could be raped according to the law.

3.1 Guidelines for dealing with victims of sexual offences

The most current guidelines for dealing with victims of sexual offences are set out in Sexual Offences: Support to Victims and Crucial Aspects of the Investigation (SAPS National Instruction 22/1998).

The Instruction is very detailed, and sets out the rights of victims as well as how to deal with them, how to gather evidence, and so on. It is

recommended that all police members get hold of and read the Instruction. For reasons of space, these are only touched on in what follows.

Basic rules

- Immediate attention must be given to all reports, no matter how long after the attack the report is made.
- You may **not** turn any victim away.
- Protect the privacy and dignity of the victim and **always** interview victims in private.
- Take statements in a professional manner.
- Provide the victim with:
 - » The case number.
 - » The details of the investigating officer.
- Provide the victim with information on the progress of the investigation.
- Inform victims (at each step of the process) of the procedure followed by the police and the criminal justice system.
- Refer the victim to service providers in your community.

When the report is received by telephone

- Send a police vehicle immediately.
- If the victim requires medical attention, get attention immediately.
- If possible, stay on the phone and talk to the victim. Tell the victim you have sent help and that the police will be there soon.
- Try to get a description of the perpetrator.
- If someone at your station has been designated as the investigating officer in sexual-offence cases, notify them immediately.

First member at the scene

- Do **not** touch the victim unnecessarily.
- Do **not** ask questions about the intimate details of the offence.

Safeguarding physical evidence

The National Instruction notes that physical evidence will need to be recovered, both from the

victim and the place where the crime took place. When dealing with victims at the scene:

- Explain to the victim *and* their family, if they are present, why it is important to preserve evidence such as semen samples, and why the victim should not wash before they have been examined.
- If the victim needs to use the bathroom, tell them to keep any sanitary materials (such as toilet paper) that they use.
- If the victim has been forced to have oral sex, they should not be given anything to drink (unless they have already washed or rinsed their mouth, or six hours have passed).
- Warn the victim not to change clothes. If they are at home, ask them to bring a change of clothing so they can change after the examination.
- It is important that a police member remains with the victim until the investigating officer arrives.

Taking the victim for the medical examination

- Victims should be taken for a medical examination in all cases, even if 72 hours have passed and even if the victim has washed.
- A male police member must not be present during the examination of a female victim, and vice versa. (For mentally disabled witnesses, see pages 50–51.)

Taking the victim's in-depth statement

Investigating officers should not rely only on the initial statement taken by the first member on the scene or by the person first interviewing the victim. Instead, an in-depth statement is required. This should only be taken after the victim has recovered sufficiently (ideally between 24–36 hours). When doing so, take into consideration the victim's cultural and religious background. Some points to remember are:

- Explain that the taking of the statement will

involve the discussion of intimate details of the assault.

- If the victim has a friend or family member with them who may inhibit them from talking about these details, suggest that this person wait outside.
- On the other hand, if the victim wants a family member or friend to be present, this person may not:
 - » Comment on the merits of the case.
 - » Prompt the victim.
 - » Interfere in any other way.

The Instruction has a very useful checklist for you to use when taking the statement.

Victim after-care

Most victims will need some form of counselling. They may also fear that they have been infected with HIV or another sexually transmitted disease.

The National Instruction says the station commissioner and the commander of the detective service must obtain and keep details of all non-governmental organisations, government organisations, medical institutions and any other groups in their area that provide medical, legal and counselling services to victims of sexual offences. This information must be kept in the CSC and the office of the detective service. Details of shelters must also be kept. Note that this register should be combined with that required by the Service Charter for Victims and the Victim Empowerment Programme — see pages 15–17 — and copies placed wherever they are needed.

Safety of victims

- In cases of **sexual offences as a result of family violence**, the police member at the scene must inform the victim of the right to apply for a **protection order** in terms of the Domestic Violence Act, and of the right to lodge a criminal complaint.

- **If the victim is a child**, properly trained SAPS members must be contacted. If it is in the best interests of the child, remove them to a place of safety.
- If the investigating officer has difficulty when dealing with a **mentally disabled person**, an urgent application to court will be required to appoint someone to act on behalf of the person — discuss this with legal services (also see pages 50–51).

Identification parades

- Explain the purpose and procedure to victims when identification parades are necessary.
- Use a facility where a one-way mirror is available, and do **not** make the victim touch the suspect.

Impact statement

The investigating officer must take an impact statement from the victim before the trial starts. This sets out the impact the assault has had on their life. If the victim is a child, the statement must be from a parent, guardian, psychologist, social worker or forensic social worker.

Preparation for court

It is the duty of the investigating officer to prepare the victim for court and to put them at ease by explaining what will be required from them. The investigating officer must arrange a pre-trial consultation meeting between the victim and the prosecutor, as well as between the prosecutor and other witnesses. Each witness must, of course, meet the prosecutor individually and not in a group.

The day of the trial

Give the victim a copy of their statement to read. If there are members of the media at the court, reassure the victim that they are not allowed to report anything that will reveal their identity.

Explain the court proceedings to the victim and encourage them to persist with the case, despite any delays in the court proceedings that may occur.

3.2 Sexual Offences Bill

A new Sexual Offences Bill has been prepared and is waiting to be passed by Parliament. The Bill deals with sexual offences in great detail. The Bill changes the definition of rape. Once the Bill is passed, rape will no longer only be a crime against women, and it is no longer only the penetration of the vagina by the penis. At the time of writing this handbook the Bill had not been finalised but a draft of the Bill produced early in 2006 defines the offence of rape as unlawfully and intentionally committing an act of sexual penetration with another person without that person's consent. Sexual penetration is defined in the Bill to include, among other things, any act which causes penetration to any extent whatsoever by the genital organs of one person into or beyond the genital organs, anus or mouth of another person.

As of December 2007 the Bill is still being finalised. Please check the Act once it is passed by Parliament for the final wording that has been adopted.

3.3 Anti-retrovirals and treatment for sexually transmitted diseases

Because of the violence involved and the injuries that are common in sexual offences, victims are at increased risk of contracting HIV and other sexually transmitted diseases (STDs).

It is government policy to provide drugs for treating STDs free of charge to victims through all clinics. With regard to anti-retrovirals (to reduce the chance of contracting HIV), these will be supplied at clinics and hospitals that have already become part of the government's roll-out programme. It is important that you establish where these are available so that you can advise victims of sexual

offences where to go to find them.

3.4 Special courts

A major initiative to protect the rights of such victims is the creation of special sexual-offences courts. By 2005, a total of 53 such courts had been created, with a further 20 courts planned.

Ideally, these courts are staffed by prosecutors specifically trained to treat victims of such offences in an appropriate manner and to prosecute sexual-offences cases effectively. The courts have separate waiting rooms for victims and witnesses, and special equipment to facilitate the giving of evidence by victims, such as closed-circuit television equipment. Staff from the Department of Social Development are also expected to act as intermediaries, and members of non-governmental organisations are often available to provide general assistance to complainants and witnesses.

4. VICTIMS OF DOMESTIC VIOLENCE

Domestic violence often takes place in relationships where there are a number of other problems. Sometimes both partners contribute to these problems, which even the best and most experienced social worker would find hard to deal with.

However, regardless of the reasons for the domestic violence, domestic violence is against the law and it is your responsibility to enforce the law. It is especially not up to you to try to solve the relationship problems, or to decide who is responsible for causing them. Your job is to assist the victim of violence to protect herself or himself against being further victimised.

In 1998 a new Domestic Violence Act was passed. This Act allows for people to lodge criminal complaints or to apply for protection orders against a partner who is abusing them. This is not limited

to husbands and wives, but includes people living together and same-sex couples.

As with all victims, victims in domestic violence cases may be very traumatised and it may be helpful to refer them for counselling. Police are authorised to arrest the person accused of domestic violence if they have reasonable grounds for suspecting that they have committed an act of violence. However, this may not be sufficient to protect the victim as the accused person may be released on bail and you may need to assist the person in accessing one of the many shelters available for survivors of domestic violence (whose details will be in your register of service providers).

The duties of police members at the scene of domestic violence, or when a domestic violence case is reported, are set out in the Domestic Violence Act and are summarised in Focus Topic 8 on pages 31–33. Failure to comply with these obligations can result in a disciplinary action against the police member concerned (see section 18 (4) of the Act).

It is also worth repeating that a police member may never withdraw a case of domestic violence. Only a prosecutor can withdraw the charge, and then only if they have been authorised to do so by the Director of Public Prosecutions or someone authorised by the Director.

5. CHILD VICTIMS AND WITNESSES

Working with children is a specialised skill and should preferably be dealt with by members or units trained to deal with them.

Although there are no specific guidelines in South Africa for dealing with child victims (except those for victims of sexual offences as discussed on page 48), the International Bureau for Children's Rights (see <http://www.ibcr.org>) has produced guidelines that include:

The right to be treated with dignity and compassion

- Treat child victims in a caring and sensitive manner, taking into account their age, gender, immediate needs, disability and level of maturity.
- Interviews, examinations and other forms of investigations should be conducted by trained professionals.

The right to be informed

Child victims and witnesses and their families or legal representatives have the right to be promptly informed of:

- Any services available to them.
- The court procedures and the ways in which questioning will take place.
- Progress with their case.
- Any support services for the child when making a complaint, during the investigation and at the trial.

6 VICTIM IMPACT STATEMENTS

A victim impact statement is “a statement made by the victim and addressed to the presiding officer for consideration in the taking of sentencing decisions. A victim impact statement consists of a description of the harm, in terms of the physical, psychological, social and economic effect that the crime had, and will have in future, on the victim. Sometimes the statement may include the victim’s statement of opinion on his or her feelings about the crime, the offender and the sentence that the victim feels is appropriate. [It] usually takes the form of a written statement that is presented to the court as part of the pre-sentence report. It can, however, also take the form of an oral statement by the victim during sentencing” (South African Law Reform Commission, 2000. See <http://www.doj.gov.za/salrc/index.htm>).

- The time and place of any hearings.
- Any protective measures available.
- How to get reparation from the offender.

The right to privacy

Child victims and witnesses’ privacy must be protected as a matter of primary importance. Children must be allowed to testify *in camera*. (For more on *in camera* testimony, see page 89–90.)

The right to safety

Measures should be taken to protect child victims and witnesses from intimidation, including:

- Avoiding direct contact between the child and the suspect.
- Using interdicts to prevent the perpetrator contacting the child.
- Setting bail conditions that forbid contact.

5.1 Intermediaries, closed-circuit television and special courts

The Criminal Procedure Act provides for the appointment of an intermediary where evidence is to be given by a witness under 18 years of age where it appears that he or she “will be exposed to undue mental stress or suffering if he or she testifies” (section 170A). The Act also provides for the use of closed-circuit television facilities for certain trials (section 158).

The sexual-offences courts (discussed on page 47) are often used where child witnesses have to give evidence to allow children to testify in court without being subjected to secondary victimisation.

5.2 Child victims of sexual offences

The National Instruction, Sexual Offences: Support to Victims and Crucial Aspects of the Investigation (SAPS National Instruction 22/1998), provides the following guidelines for dealing with child victims of sexual offences:

Usually, the parent or guardian of a child victim must give consent for the medical examination and may accompany the child during it. However:

IF a parent or guardian of a victim:

- Cannot be traced within a reasonable time.
- Cannot grant consent in time.
- Is a suspect in the case.
- Unreasonably refuses consent.
- Has a mental disorder and cannot consent to the examination.
- Is dead.

THEN an application must be made to a magistrate in terms of section 335B of the Criminal Procedure Act for consent to conduct the examination.

IF a magistrate is not available.

THEN an SAPS member who is a commissioned officer, or the local station commissioner, may give consent when presented with the following two affidavits:

- One by the investigating officer, or another member from the station dealing with the matter, which states that a magistrate's consent cannot be obtained within a reasonable time.
- One from a registered medical practitioner which states that the purpose of the medical examination will be defeated if it is not conducted immediately.

Interviewing of child victims and witnesses is discussed on pages 47–48.

6. THE ELDERLY

Age may increase people's vulnerability to crime. For instance, it may be more difficult for them to run away or defend themselves. In addition, age may make it more challenging for them to assist the criminal justice process as witnesses.

The elderly need special attention and care. Some tips for detectives are:

- Interview them and take statements at their homes — but go in plain clothes.
- Explain police and court procedures to them carefully.
- Speak a little louder, but don't shout.

Regarding attendance at court (also see Chapter 11):

- Advise them to bring their own lunch, cold drinks, reading material and toilet paper.
- Provide them with transport to and from court if you are able to.
- Assist them with access to the court if they require such assistance.
- Try not to keep them at court too long. When at court:
 - » Make sure they are comfortable and that they have at least a glass of water.
 - » Explain carefully where the bathrooms are — try to let them sit near a bathroom.
 - » Assist them to claim witness fees.
 - » Assist them with buying lunch, particularly if they are not able to get to the shops easily and they have not brought their own.

RESOURCES

The Department of Justice Directorate: Publications, Community Legal Services and Children's Issues has produced an excellent pamphlet for child victims who are called to give evidence in court. It is called "Busi goes to court" and is available online at <http://www.doj.gov.za>. Look under "Documents" and then under "Brochures".

GLOSSARY

Intellectual or mental disabilities: when the person's intellectual capacity is permanently lowered or underdeveloped to an extent that prevents normal functioning in society (Oxford Dictionary definition of "mental handicap").

Learning disabilities: learning disabilities include a range of conditions, from problems such as dyslexia to more serious cases involving "mental handicap".

Mental illness: refers to psychiatric illnesses such as phobias, depressive or bipolar conditions. Such people may be of average, or even above average, intelligence and most of the time may function just like everyone else.

7. THE MENTALLY AND PHYSICALLY DISABLED

This section draws extensively on Robin Elliot's "Vulnerable and intimidated witnesses: A review of the literature", especially pages 131–150.

Like age, disability may increase people's vulnerability to crime as well as making it more challenging for them to assist the criminal justice process as witnesses. People with disabilities may also have difficulty communicating about the offence to carers or the police.

Some of the major challenges facing police in working with the disabled include:

- Encouraging reporting of offences against disabled people by disabled people or people in contact with them.
- Physical access of disabled people to police stations.

7

THE IMPACT OF DISABILITY

Disabilities and illnesses may impact on the ability of a person to assist as a witness in relation to one or more of the following areas:

- Memory — it may require time and patience to interview the person and lead their evidence in court.
- Communication skills.
- Emotional resilience.
- Mobility.
- Social skills.

Of these perhaps the most important is communication ability. Temkins (1994) has distinguished between two categories in this regard:

- **Category 1:** Those disabled people who can communicate orally (perhaps with difficulty or with the assistance of a "complementary system"), or who

can communicate effectively using some system other than oral communication.

- **Category 2:** Disabled people who are unable to communicate effectively either orally or by using an alternate system.

- Recording reports from disabled people, such as those with speech or hearing impairments.
- Identifying disabled people — the fact that a person suffers from a learning disability or mental illness will not necessarily be apparent to the police.
- Investigation — major considerations here include:
 - » The location of interviews (this applies to both physically and mentally disabled witnesses for different reasons).
 - » Who else should be present during an interview.
 - » How the interview should be conducted.
- Should a decision be made to prosecute (factors to do with the disability may mitigate against this), there are also special concerns relating to disabled people which will need to be addressed at the trial stage.

7.1 When a witness is mentally disabled

- Arrange a support worker or social worker to assist you.
- Don't use uniformed members to conduct interviews.
- Interview them in an environment with which they are familiar (usually their own home).
- Provide them with transport to and from court or meeting places.

Note that section 194 of the Criminal Procedure Act provides that “no person appearing or proved to be afflicted with mental illness [...] and who is thereby deprived of the proper use of his reason, shall be competent to give evidence”. In practice courts exercise their discretion on admitting the evidence of people who appear to suffer from mental disabilities (see Du Toit, De Jager and Paizes, 2006, pages 23–25). It may be required that the witness undergo a psychiatric assessment to test his or her competence as a witness.

FOR DISCUSSION

The evidence of mentally disabled witnesses

For a variety of reasons, the evidence of mentally disabled witnesses is treated differently by courts to that of other witnesses. Discuss with your colleagues and prosecutors what the problems are, and when it may be suitable to use the evidence of such witnesses.

Mentally disabled victims of sexual offences

The Sexual Offences: Support to Victims and Crucial Aspects of the Investigation (SAPS National Instruction 22/1998) provides the following guideline for dealing with mentally disabled victims of sexual offences:

- If a victim cannot consent to a medical examination because they are mentally disabled, consent must be obtained in writing in terms of the procedure set out in section 60A of the Mental Health Act, 18 of 1973.

7.2 When a witness is physically disabled

- Arrange transport for the witness (particularly if the disability affects their mobility) to bring them to court and to take them back home.
- Allow a physically handicapped person to get into the police car unassisted, unless the person asks for help.
- Assist them with access to the court if they require such assistance.
- Try not to keep them at court too long. When there:
 - » Make sure they are comfortable and that they have at least a glass of water.
 - » Explain carefully where the bathrooms are — try to let them sit near a bathroom.

- » Assist them with buying lunch, particularly if they are not able to get to the shops easily, and they have not brought their own.

7.3 Deaf or hearing-impaired witnesses

- Deaf and hearing-impaired people communicate in different ways. Some use only speech; others will use a combination of speech, sign language and finger spelling. Many write and use body language or facial expressions to supplement their statements.

GOOD PRACTICE IDEA

Some police areas have introduced special training for some of their members (one or two from each station or special unit) in basic sign language.

- One way of communicating with a deaf person may be through writing.
- Some SAPS stations or areas have an established arrangement with organisations that work with the deaf — they provide a sign-language interpreter. The interpreter must also give a statement that they have interpreted directly as explained to them.

7.4 Blind or visually-impaired persons

- Identify yourself by saying, “I’m a police member. My name is... Are you blind?”
- Allow the person to feel your handcuffs or cap and badge if they seek confirmation of your identity.
- When guiding a blind person, let them hold your hand or elbow rather than taking that person’s hand or elbow; in so doing, the blind person is able to feel your body movements more readily.

8 POLICE PRACTICE WITH DEAF PEOPLE

A study was conducted, mainly in Gauteng, focusing on eight cases where a deaf person was the complainant or accused. The study found that:

- None of the deaf people were offered the assistance of a trained and skilled interpreter or received the assistance of such a person.
- Statements were mostly made on behalf of the deaf person, either by a hearing relative or friend or by a policeman, or were made by the deaf person with the assistance of an untrained or unskilled family member, teacher or social worker. In some cases relatives or police members made a statement on behalf of a complainant or accused without the person being informed of the content of the statement, and without the statement being read to the person at

any stage, even though the person was then expected to sign the statement.

- Sign-language interpreters who were interviewed stated that it was rare for them to be called to interpret at police stations.

The study states that it is a mistake to think that “people close to deaf individuals can communicate proficiently with the deaf and therefore are competent to interpret for purposes of judicial proceedings”.

The study also indicates that levels of illiteracy in the South African deaf community are very high and, therefore, many deaf people cannot read their statements and need to have these read to them by a skilled sign-language interpreter.

(From Dagut and Morgan, 2003.)

- When guiding a blind person, walk normally; don't pull them along.
- Talk directly to the person, not through an intermediary. Speak clearly in a normal voice. Do not raise your voice or rush through sentences. Blind persons are frequently spoken to in extremely loud voices; they are probably not deaf.
- Do not avoid words such as "look", "see" and "read".
- Blind persons are interested in detailed descriptions, so try to describe visual scenes vividly.
- End your conversation in such a manner that the blind person knows you are leaving.
- When getting into a car, indicate whether the car has four or two doors. When you reach the car, open the door. Place one of their hands on top of the roof and the other on the door, thus allowing them to sit down by themselves. When you close the door, make sure that they are sitting far enough away from the door so that, when you close it, it will not bump them in any way.
- Blind persons cannot read or fill out police forms and other printed documents. They will need your assistance.
- Blind people do not have better powers of hearing than other people. Nevertheless, their memory of sounds, and particularly voices, may be relevant to an investigation, or even as evidence in court. This may be relevant to identifying people or questions about the direction from which sounds came, or the distance from which the sound was heard.
- Blind people will also require special assistance with attending court and entering the court building.

Note

- More tips on preparing witnesses for court and helping them at court are provided in Chapter 11.
- Witnesses who are intimidated may also be said to have special needs — these are discussed in Chapter 9.

From training notes compiled by Rick Barrata on "Police work and people with disabilities".

FOLLOWING UP, TRACING AND FINDING NEW WITNESSES

1. INTRODUCTION

Finding witnesses can be an extremely difficult task. Even where the first officer to encounter witnesses at the Community Service Centre (CSC) or at the scene has managed to get their contact details, detectives (and uniformed officers) have great difficulty in tracking some people down. People move away, they live in areas without street addresses, telephones, faxes or cellphones, and the roads are in terrible shape.

However, for detectives the problem is even greater. Not only do they need to track down witnesses they are already aware of, but they also need to check to see whether there are other witnesses who were not at the scene when the first officer arrived, who the first officer on the scene might have missed, or who did not come to the CSC when the crime was reported.

As De Villiers says:

In addition to witnesses found at the scene and in the immediate surrounding areas, other potential witnesses may have knowledge of relevant matters who may not have been anywhere near the occurrence. These may be fellow workers and business associates, friends, relatives, lovers, neighbours, acquaintances and people with whom the subject socialises and does business (1998, p.8).

In this chapter we look at some of the issues involved in following up, tracing and finding new witnesses, and we suggest some good practice ideas.

2. TRACING WITNESSES

Tracing witnesses can be one of the most difficult parts of detective work, especially if the first officer dealing with the case does not get proper contact information (which is why this is stressed in this handbook — see Focus Topic 2 on page 25).

IN THIS CHAPTER

This chapter discusses a range of issues to do with the use of witnesses. It looks at:

- Tracing witnesses.
- Cases with many witnesses.
- Finding new witnesses.

There are also inserts on:

- Information versus evidence.
- Duties on witnesses.
- Forcing witnesses to testify in terms of section 205 of the Criminal Procedure Act.

FOR DISCUSSION

- Is section 183 of the Criminal Procedure Act helpful to the police in keeping in contact with witnesses?
- At what stage of the proceedings are witnesses usually provided with notification in writing that they will be required as witnesses?
- Do witnesses adhere to their duties to inform police of changes in address? When they do not, why is this?
- Leaving section 183 aside, what can you or others do to make it easier to trace and stay in contact with witnesses? What can you do to motivate them to keep you informed?

Problems differ from one area to the next as well. For example, in inner-city areas, people tend to move quite frequently, whereas this may be less of a problem in rural areas.

Although it is not possible to say exactly how to address this problem in all areas, you should encourage all uniformed members to get as much information as possible at the outset, and you should try to remain in contact with witnesses and victims. Give people your card and your contact details, and advise them to call you should they ever move.

3. CASES WITH MANY WITNESSES

Some police officers believe the smaller the number of witnesses, the greater the chance of the trial succeeding. Others believe the more witnesses, the better the chance of a good one, the better the chance that they can corroborate what other

witnesses say, and the greater the chance of a conviction.

As one detective who was interviewed for this handbook said:

There's a theory that the less witnesses you have, the stronger your case — which is total nonsense. The more witnesses you have, the stronger you can make your case and verify what one witness says with what the others say. So you treat your witnesses equally, whether it be a small amount of information they can give you or the total information. You treat them all equally.

In general, therefore, you should always interview and take statements from as many witnesses as possible. If there are a number of witnesses, you should prepare a memorandum for the prosecutor when you submit the case where you list the witnesses and give a brief summary of each one's evidence.

1 INFORMATION VERSUS EVIDENCE

In some cases, the evidence of some witnesses may not be admissible — for example, it may be something they heard from someone else, or heard on the street. You should remember, though, that, even if this evidence will not be allowed in court, it can be very useful when investigating and solving the crime.

2 DUTIES ON WITNESSES

The law creates an obligation on witnesses to report crimes, to make themselves available during the investigation and to testify at the trial. While this handbook encourages police to try and assist witnesses in such a way that they are positively motivated, they can also be compelled to testify (see Focus Topic 4 on page 56).

In addition to giving victims rights, the Victim Empowerment Programme and the Service Charter for Victims of Crime suggest that there may be duties on victims too that, if followed, would help you a lot. They are:

- To keep you informed of their address, contact particulars and whereabouts until the end of the trial.
- To inform you if the suspect or accused interferes, or tries to interfere, with the investigation of the case.
- To inform you or the investigating officer if the accused will not attend the trial, or if they are threatened by the accused.

Section 183 of the Criminal Procedure Act also states that a person “who is advised in writing that he will be required as a witness in criminal proceedings” must keep police informed “of his full residential address or any other address where he may conveniently be found”.

It is only if you have a really large number of witnesses that it may be appropriate to be more selective about the number of witnesses whose statements you take. For example, if a person is killed at a taxi rank and there are 30–40 possible witnesses, should all of them be interviewed? And what if only *some* of them saw what happened?

In such cases you should try and ensure that you obtain the contact details of all possible witnesses, and that you conduct a basic interview with each of them (summarised in the investigation diary with proper contact details). Where they have something important to say or they have seen different aspects of the event, take full statements from them. It will also be appropriate to consult the prosecutor to discuss how you are dealing with witnesses, and which ones you are taking statements from. In the end the prosecutor will have to decide which witnesses to call if the case goes to trial.

Even where you have what appears to be a perfect witness, it is still important to find others who can corroborate what that witness tells you. As De Villiers (1998, p.2) says:

Some witnesses are such a great improvement over others that one is tempted at times to consider them the perfect witness. At least they have some facts clear and are able to communicate them quite convincingly. At times a single witness will apparently provide a quite accurate account of the main details of a happening. Even then the addition of two or three more independent accounts that are supportive of each other increases the probability of the descriptions being factual and correspondingly reduces the possibility of error.

But on the other hand, your “perfect” witness may also be lying. For example, they may even be the perpetrator trying to place the blame on an innocent person.

3 PROMPT FOLLOW-UP WITH WITNESSES

It is important to trace and find new witnesses as soon as possible after the event so that they do not forget what happened or even move away. In Chapter 6 we look at the “need for speed” when dealing with witnesses (see “The importance of time” on page 61).

4 FORCING WITNESSES TO TESTIFY? SECTION 205 OF THE CRIMINAL PROCEDURE ACT

In some cases it will seem to you that someone knows a lot about what happened but may be reluctant to tell you. They may either refuse to tell you or lie and say they know nothing.

Section 205 provides for a person to be compelled to attend court and give information relevant to the offence unless they can show that they have a “just excuse”. In the past our courts have held that a just excuse is really only where a witness is allowed by law not to testify (which happens very rarely). If a witness refuses to give their evidence at this hearing, they can be sentenced to imprisonment (in terms of section 189). Proceedings under section 205 must be initiated by the public prosecutor or magistrate.

Section 205 is sometimes used to compel a person who refuses to give a statement, or documentation, to the police to provide the required information under oath. But it is not used with all reluctant witnesses. However, the value of the evidence of someone who does not want to be involved is sometimes not that great. As a detective said:

On pages 59–61 we discuss what to do when there are indications that the evidence of a witness may be unreliable.

4. FINDING NEW WITNESSES

The question then arises: how do you find new witnesses? Although experience will increase your skills in this regard, some tips suggested by detectives and experts on crime investigation are:

- Going door to door in the area where the crime took place.
- Revisiting the scene a day or two after the incident (at the exact time of day at which it took place), and again exactly one week after the crime.
- Using local newspapers, broadcasting an appeal on radio, or on SABC television's *Crime Stop*.
- Distributing leaflets in shopping centres, at taxi ranks and at train and bus stops.

- Talking to informers (see Focus Topic 5 on page 15).

However, all this takes time.

While it can be helpful to find and interview witnesses and to try some of the ideas mentioned above, it will usually be only in priority or more serious cases that you will use these techniques to find witnesses.

FOR DISCUSSION

- When is it appropriate to use section 205 of the Criminal Procedure Act to gather evidence from witnesses or other people?
- Is it appropriate to use section 205 to subpoena journalists to give evidence about facts they uncover as part of their work?

How do I force you to talk? I can subpoena you as a witness, but what are you going to do when you come to court? You'll just say, "I don't know what happened — I didn't see." You must have a softer approach. It's all about convincing the witness to volunteer.

It is also worth noting that, when a prosecutor has to decide whether or not to prosecute a case, there is a range of factors to consider that relate to witnesses, such as:

- What sort of impression is the witness likely to make?
- Are there matters that the defence can use to attack the credibility of the witness?
- Will their evidence be regarded as reliable? For example, if it involves identification from a long distance away and the witness wears glasses.
- Are the witnesses available, competent, willing and, if necessary, compellable to testify?

Where it is clear to the prosecutor that the witnesses do not want to testify, it is possible that he or she will decline to prosecute.

Note

In some cases, you can "encourage" a reluctant witness to testify by ensuring that they are protected from intimidation. This is discussed in detail in Chapter 9.

INTERVIEWING WITNESSES

1. INTRODUCTION

Once you have found your witnesses, you need to interview them to find out what they know and to decide whether to take a statement from them. (Taking statements is discussed in Chapter 8.)

Before providing some general guidelines about conducting interviews, this chapter looks at some of the other issues that you need to take account of when conducting interviews, including concerns about the truthfulness and reliability of the witness interview, the risk of suggestion, time and issues of language.

2. WHAT IS THE PURPOSE OF AN INTERVIEW?

The core purpose of interviewing witnesses is to establish what evidence is available to make sure that a crime has, in fact, been committed; to establish what the facts of the case are; and to prepare for taking a statement.

To be able to conduct an interview you need to know, *before you start interviewing witnesses*, what the **elements of the offence** are so that you can be sure to cover all elements about which the witnesses are able to provide you with information.

Where a crime has been committed, witness evidence is often very important in relation to the identity of suspects. Therefore, one needs to take particular care in dealing with questions about identity.

Finally, as covered in the rest of this chapter, interviews are also for assessing the reliability of witnesses, and the likely accuracy of what they are saying.

IN THIS CHAPTER

This chapter looks at the process of interviewing witnesses in preparation for taking a statement from them. It examines:

- The purpose of an interview.
- The risk that witnesses may not tell the truth.
- The danger of suggestion by the interviewer.
- The importance of conducting the interview as soon as the witness is able to do it.
- Questions about language.
- Informal interviews.
- How to conduct formal interviews.
- Communication skills.

In addition to several inserts on witnesses with special needs, there are also inserts on:

- The elements of the offence.
- Trauma and witness interviews.
- Interviewing child victims and witnesses.
- Witnesses who get emotional during the interview.
- Crime prevention advice for victims.
- Barriers to effective listening.
- The cognitive interviewing approach.

Note

Interviewing of suspects and witnesses and taking statements (see Chapter 7) are topics covered in the current SAPS detective learning programme (see “A very important note” on page 10 in this regard).

3. THE RISK THAT WITNESSES MAY NOT TELL THE TRUTH

As stated above, the core purpose of an interview is to establish what information witnesses are able to provide, to establish the facts of the case, and to prepare for the taking of a statement.

Because you need witnesses to provide you with factual information in order to establish the truth about a case, it is obviously important to assess whether they are being honest and can be relied on to provide accurate information.

In their book on crime investigation, Osterburg and Ward distinguish between “interviewing” and “interrogation”. They describe the difference as:

Interrogation applies to a suspect and a suspect’s family, friends or associates — people who are likely to withhold information or be deceptive. *Interviewing* applies to victims or eyewitnesses who can reasonably be expected to disclose what they know. Hence the guiding

principles and techniques of interrogation differ considerably from those of interviewing (1992, p.221).

But just as you may sometimes find suspects who are truthful and honest (they may believe they are innocent, or give a full confession out of remorse), you will sometimes find situations where victims or witnesses do not fully disclose what they know, or try to mislead you.

Victims and witnesses may not tell the truth for a range of different reasons (discussed under “Problems with witness evidence” on page 21), and the way in which to deal with this problem will therefore vary from one case to another.

3.1 When there are indications that the evidence of a witness may be unreliable

When dealing with witnesses one therefore needs to bear in mind that things may not always be

1 THE ELEMENTS OF THE OFFENCE

As you know, each crime or offence is made up of a set of elements (or parts). *Each* of these parts needs to be proved to secure a conviction. For example, the crime of murder has the following elements: it is the

unlawful,
intentional,
killing
of another human being.

If any of these elements are missing, the crime of murder will not have been committed. For example, if the person acted in self-defence, the killing is not **unlawful**, and so the crime of murder has not been committed.

It may only be possible to prove the elements of a crime by using a combination of witnesses. Not all witnesses can provide *all* the facts, and each witness may just

serve as a link in the chain that enables the state to put together a picture of a full series of events.

When interviewing a witness in a murder case, you need to see to what extent they are able to provide information that helps to clarify whether each of these elements is present or not. In a case of murder, in addition to finding out whether the witness can provide evidence relating to the identity of the killer, you would also want to check whether they can help to answer the following questions:

- Did the killer have a lawful reason for what they did? (For example, they may have acted justifiably in self-defence, in which case it will not be murder even if a person was killed.)
- Does it seem as if they acted intentionally, or does what happened look more like an accident?
- Did the person die as a result of the attack on them, or were they alive at the time the ambulance arrived?

what they seem. While it is important to have an open-minded and courteous approach, it is also important to be aware of:

- Indications that the witness is reluctant to be interviewed.
- Indications that the witness is not being honest.
- Inconsistencies in the version of events that the witness provides to you.

It is important to distinguish between (a) inconsistencies in the witness's own version of events (internal inconsistencies), and (b) inconsistencies between the evidence of a witness and other evidence that you are aware of. These are not the same thing — in the latter case it may be that the "other evidence" is wrong for one or other reason.

Where there are internal inconsistencies it is particularly important to question the witness so as to clarify that you are hearing them clearly.

(If they were alive, you need to get evidence to show that they died as a result of the attack and not, for instance, that they were alive until the ambulance was involved in an accident.)

- It would not be an act of murder if, for instance, an animal, and not a human being, was killed.

For common-law offences, you will usually find the elements in a good textbook on the topic, or in the decisions of the High Court, Supreme Court of Appeal and the Constitutional Court. For statutory offences, you need to check what the statute says to work out the various elements. Where you are not sure, find out from others who are properly informed about this, such as colleagues or the prosecutor.

You should in general feel free to ask whatever questions are appropriate to establish the truth. But while you may draw to their attention the fact that there appear to be inconsistencies in the account that they are giving, you should not put pressure on them to change their story or suggest to them how to rectify these inconsistencies.

Similarly, if there appear to be inconsistencies between what they are saying and the evidence of other witnesses, you may go as far as to say to them: "Sir, you said such and such happened. However, the other witnesses said something else. Could you perhaps clarify this for me?" However, you should make sure that you stop short of explaining the evidence of other witnesses to them, as this would amount to suggestion and could be seen as an attempt to influence the witness to change their evidence to conform to that of other witnesses.

Even in the absence of obvious inconsistencies there may be other indications, such as body language, that the witness is not telling the truth. If there are such indications it will be important to bear these in mind and take appropriate steps to try and clarify the truth with the witness, if at all possible, before you take a statement from them.

While it is not your job to judge witnesses you nevertheless need to exercise your discretion and try to evaluate who is telling the truth or actually saw or heard what happened. You should try and clarify what happened and understand why there may be different versions coming forward. In doing so the ability to keep an open and objective mind and not jump to unjustified conclusions will be very important.

If it is not readily apparent why there are contradictions between two witness statements, especially if there are contradictions that are central to the case, this will require that you investigate the matter further. The prosecution cannot place

two conflicting witnesses on the stand, nor hide the fact that it has this contradictory evidence.

There are some police officers who will not take statements from witnesses that contradict the complainant or other witnesses in the case because they believe that this will weaken their case. For example, they may contradict the complainant because the complainant is lying and the suspect is, in fact, innocent. This is not your decision to make and it is not your job to try and get a conviction at any cost. At the end of the day, even if witnesses provide contradictory evidence, you should take statements from them and give these to the prosecutor with any comments that you have as to your impressions of the reliability of witnesses.

4. THE DANGER OF SUGGESTION

One of the dangers of investigating crime is that you may end up putting a case together against the wrong person. One factor that can play into this is the danger that the witness may *unconsciously* adjust their memory in line with new information that comes to their attention. Because memory can be very fragile, witnesses are often vulnerable to **suggestion**, which is when they start to believe a version of events that is different from the original experience, or adjust their memory of the identity of the suspect. Factors that can encourage this (see also page 21) include:

- Suggestive or leading questioning.
- Where other people (including police or other witnesses) provide the witness with their own version of events it may also distort memories.
- Unprofessional conduct of identification parades.

It is therefore of primary importance that in your dealing with witnesses, and particularly during interviews, you:

- Emphasise to witnesses that they should not discuss the incident with any other potential witness.
- Interview witnesses completely separately from other witnesses.
- Do not provide the witness with your own ideas, or other information, about the suspect or case during or prior to the interview.
- Avoid suggestive or leading questions.

5. THE IMPORTANCE OF TIME

It is important to remember that, as time passes, people forget more and more of the details of the original incident. Also, older people and young children forget details much more quickly. While it may not be possible to interview victims and eyewitnesses immediately after the crime (because they may be injured and are receiving treatment, or they may be traumatised), you should still try to interview witnesses **as soon as the witness is physically and emotionally capable of being interviewed**.

Even waiting until a few days after the incident is therefore not advisable as key details of the incident might have started to fade by that time. By interviewing and taking a statement from the witness as soon as they are able to, you will be helping them to give the best evidence they are able to because they will later be able to refer to the statement to refresh their memories before giving evidence at court.

Where the person has been involved in a very traumatic incident it may not be a good idea to carry out the interview immediately after the incident while they are in a state of shock. For this reason the SAPS National Instruction on Sexual Offences indicates that the in-depth interview and statement should only be carried out 24–36 hours after the incident.

There is not only a danger that witnesses will forget important details if you do not interview them soon enough, but also that they may lose interest. As one detective said in an interview:

In many cases, because of the adrenaline, the witnesses are prepared to come forward and say: “I saw what happened — here’s my name and address.” But because of the system, it could take a day or a week before the investigating officer gets to the witness. And when they contact the witness he’s not interested anymore. The quicker you can get to him, the better, because it’s still fresh in his mind as well.

6. LANGUAGE

As with many areas of police work, language issues can impact on formal and informal interviews. Although interpreters can help, there are very few interpreters available to the police. Instead,

most police officers rely on their colleagues when confronted with someone who speaks a language they do not understand.

Where none of this is possible, the following is recommended.

- When you need to speak to someone whose language you do not understand, and where there is no interpreter or colleague to assist you, you may need to ask a passer-by to help you. Be aware, though, that this person’s interpretation may not be correct and that you may still need to find a proper interpreter.
- Try to get the person to agree to come with you to the station to see if there is anyone else who could help.
- Where no one understands the language of a person you are interviewing, see if you can arrange for a court interpreter to help you. However, please note that this interpreter should **not** be allowed to interpret during the trial because they will have prior knowledge of

2

MORE ON TRAUMA AND WITNESS INTERVIEWS

Not all victims and witnesses who are in a state of shock behave in the same way. In fact, some may seem to be perfectly in control or even just exhausted, while others may be very emotional and upset. Some may seem calm and emotionless while others may become hysterical. What you will notice, though, is that their answers to questions will usually be very “flat”, and that they display very little emotion.

You will not necessarily be able to tell whether the person is in a suitable state of mind to carry out the interview. However, in incidents that have been very traumatic you should be aware of the risk that the person may still be in a state of shock. If they are still very upset, or very “flat”, this may indicate that it is still not a good time to go ahead with the interview. Before starting, you should

ask the witness if they feel okay about being interviewed at this point.

Trauma is discussed in more detail in Chapter 4.

3

INTERVIEWING CHILD VICTIMS AND WITNESSES

Interviewing children is a specialised skill and should really only be undertaken by trained personnel.

Approaches to questioning that are followed with adults may be inappropriate with children, and it can be confusing for them to be interviewed by a number of adults at different times. Some children think that, because they are being asked again, they must have said something in the first interview that was wrong, and they will change their story to try to find the “right” answer for the adult. They may also adjust their story

the incident.

Lastly, remember to treat people with respect, no matter what language they speak, and try not to talk down to them when trying to make yourself understood. (For more on translation, see Focus Topic 3 on page 74 and Focus Topic 4 on page 76.)

7. INFORMAL INTERVIEWS

Often you will need to informally interview people before conducting a formal interview and taking a statement. For example, the first officer on the scene may have given you the contact details of someone who said they had seen what had happened, but you may want to first check with them how much they saw before deciding to formally interview them.

Such interviews could be conducted over the telephone or in person. When conducting them it helps to remember a few basic rules:

- Be polite.
- Treat everyone with equal respect. Don't discriminate against people because of their race, culture, wealth and so on.
- Show respect for people's age. In many cultures it is extremely rude not to call someone by a title that reflects their age.
- Don't judge. In some cases, your contacts may be criminals themselves. It is not your role to judge them, but rather to find out the truth.
- Explain what information you are looking for and why you are interviewing them.
- Be on time. If you tell someone you would like to talk to them at a particular time, make sure you are there on time. If you simply can't make it, be absolutely sure to let them know!
- Expect witnesses to be late and occasionally to even miss meetings with you. When this happens, be firm but do not bear a grudge.

from one interview to the next to try and say what they think the person wants to hear. Children find it difficult to remember things in detail, especially if they are very young. Younger children can also be easily persuaded to lie for a parent or loved one.

Some general rules that should be applied where a child needs to be interviewed as a matter of urgency and there are no specially trained personnel are:

- Try to make the child as relaxed and comfortable as possible.
- Interview the child in private. It can be a good idea to allow a parent or guardian to be present (unless this person is a suspect), but children may not want to say what happened if a parent is present because they may be embarrassed or may have to admit to having already had sexual relations.
- Keep your body language open and genuine.
- Sit lower than the child.

- It is better if you are dressed in a non-threatening way.
- Make sure that the child understands the process and the need to tell the truth.
- Find out who the perpetrator is. Does the child know the person? If not, can the child describe the person?
- Ask what happened. Let the child describe the events in the language they understand.
- Ask where it happened.
- If it is a case of abuse, how often has it happened? An exact number is not necessary, though.
- Were threats or promises used?
- Were any other children involved?

8. FORMAL INTERVIEWS

The following general rules apply to most interviews. Although we look in detail at witnesses with special needs in Chapter 4, it is important to remember that these witnesses need special care if you want to get the best out of them. Focus Topics 4–8 on pages 64–66 look at how to deal with witnesses with special needs, that is:

- Witnesses who run the risk of intimidation.
- Traumatized victims and witnesses.
- Victims of sexual offences and domestic violence.
- Elderly and disabled victims and witnesses.

8.1 Where to conduct the interview

Ideally you should ask the witness where they would prefer to be interviewed. Some people will

be more prepared to cooperate if you agree to see them at home or at work, rather than asking them to come to your office.

(Also see Focus Topic 4 below.)

8.2 No interruptions

Make sure that there are no distractions and interruptions. Switch off your cellphone and take your telephone off the hook, and ask the witness to do the same. Make sure that you have all the equipment (for example, pens and paper) that you need. You can also put a notice on your office door, telling people you are busy and not to disturb you. Allowing interruptions (by answering the phone or letting people into the room) will make victims and witnesses think that you don't really care about them.

(Also see Focus Topic 5 below.)

4 WITNESSES WITH SPECIAL NEEDS: WHERE TO CONDUCT THE INTERVIEW

Vulnerable witnesses (including victims of sexual offences and people who lack confidence, or are frightened or intimidated, for whatever reason) will find it very difficult to open up to you and tell you anything if they do not feel safe in the space where the interview takes place.

- **Interview all vulnerable witnesses in private.** Victims of sexual offences may prefer to be interviewed at home. Some, however, prefer not to — especially when the attack took place at their homes. You should ask them to choose.
- See the section on page 45 that deals with taking the victim's in-depth statement. In this section we discuss whether or not to allow a friend or family member to sit in on the interview as a support person.
- Unless there is a very good reason not to, conduct

interviews with the elderly and disabled at their places of residence.

Dealing with witnesses with special needs is discussed in more detail in Chapter 4.

5 WITNESSES WITH SPECIAL NEEDS: BEFORE STARTING THE INTERVIEW

Before starting, it is important to remember that you need to be sensitive to the fact that the witness may still be in shock (see "Traumatized witnesses" on page 37 and "The importance of time" on page 61). You need to take this into account in deciding when to conduct the interview, particularly with victims of sexual and other violent offences.

And, before conducting any interview with these witnesses, you should **always** check whether they need

8.3 Greetings, establishing rapport and introductions

As soon as a witness arrives (or you arrive at their home or work), make them feel at ease and comfortable by:

- Smiling, shaking hands and introducing yourself.
- Developing rapport with the witness (see pages 19–21).
- Asking how you should address them.
- Explaining your role.
- It may be helpful to explain how the interview fits in with the crime investigation process.

(Also see Focus Topic 6 below.)

8.4 Seating arrangements and body language

Obviously, when in a witness's home or at their place of work, it is up to them to decide where you

sit. If there is space in your office, it is recommended that you sit on the same side of the desk as the witness so that there is no physical barrier between you. Keep your body language open. Show interest with your face by keeping eye contact and by your tone of voice.

(Also see Focus Topic 7 below.)

8.5 Witnesses who get emotional during the interview

Some witnesses may become upset or emotional during the interview. If this happens consider doing the following:

- Stopping the interview.
- Offering them a glass of water.
- Giving them a chance to relax and calm down.
- Asking them whether they would rather continue or postpone the interview (although you should encourage them to continue).

counselling and, if they do, refer them to a relevant service provider (as discussed in Chapter 4).

6 WITNESSES WITH SPECIAL NEEDS: GREETINGS, ESTABLISHING RAPPORT AND INTRODUCTIONS

- Don't start by discussing the case. Instead, make sure the witness is relaxed and calm by talking to them about general topics or issues — even their health.
- Explain that you might have to ask sensitive or personal questions.

7 WITNESSES WITH SPECIAL NEEDS: SEATING ARRANGEMENTS AND BODY LANGUAGE

Vulnerable witnesses need to feel that you empathise with them. With **traumatised witnesses** and **victims of sexual and domestic violence**, it can be helpful to:

- Sit on the same side of your desk as them.
- Place your chair fairly close to them (because they may want to speak quietly), **but do not touch them**.
- Keep your body language "open". The ideal body posture is covered by the acronym "SOLER", which stands for:
 - S = Squarely face the witness.
 - O = Have an Open posture.
 - L = Lean towards the witness.
 - E = Make and keep Eye contact.
 - R = Stay Relaxed.

EXAMPLE OF GOOD PRACTICE

In some countries, special crime prevention officers are appointed and trained to visit victims and offer them crime prevention advice.

FOR DISCUSSION

How can your station or unit improve its use of crime prevention information, and what is the best way to provide this to victims?

- Keeping a steady and friendly expression on your face and making sure you make eye contact tells the witness that you are paying careful attention to what they are saying.

With elderly and disabled witnesses

Be sure to sit close enough for them to hear you, and you them.

8 WITNESSES WITH SPECIAL NEEDS: TAKING NOTES

Vulnerable witnesses may have a special need to feel that you are paying full attention to them. In these cases it is especially important that you keep note-taking to a minimum and, where possible, avoid it altogether.

Sometimes it may help to let them tell you their story and then to ask them whether they would mind if you repeat it to them and take notes to make sure you have

8.6 General tips for conducting the interview

From *“Eyewitness evidence: A guide for law enforcement”*, developed by the Technical Working Group for Eyewitness Evidence of the United States Department of Justice’s Office of Justice Programs. See <http://www.ncjrs.gov/pdffiles1/nij/178240.pdf>.

- Encourage the witness to volunteer information without prompting.
- Encourage the witness to report all details, even if they seem trivial.
- Ask open-ended questions (for example, “What can you tell me about the car?”); augment these with closed-ended, specific questions (for example, “What colour was the car?”).
- Avoid leading questions (for example, “Was the car red?”).
- Caution the witness not to guess.
- Ask the witness to mentally recreate the

got the story right, and to help you when writing up their statement.

9 THE COGNITIVE INTERVIEWING APPROACH

The cognitive approach to interviews is a special approach which can be valuable, especially where the witness does not know how to explain the story, or if they have difficulty remembering, or in cases where it is very important to get a very high level of detail. Without going into this too deeply, the approach is one involving the following stages:

- Rapport-building — where you develop a calm, relaxed atmosphere and relationship.
- A brief explanation of what the interview is about.
- The key aspect of the interview involves trying to “take the witness back” to the date, time and scene of the crime. This is done by directing them to think

circumstances of the event (for example, “Think about your feelings at the time.”).

- Encourage nonverbal communication (for example, drawings, gestures, objects).
- Avoid interrupting the witness.
- Encourage the witness to contact investigators when additional information is recalled.
- Instruct the witness to avoid discussing details of the incident with other potential witnesses.
- Encourage the witness to avoid contact with the media or exposure to media accounts of the incident.
- Thank the witness.

8.7 Taking notes

You may feel that you need to make brief notes while the witness explains what happened, especially to remind yourself if there are questions you need to ask or areas that don’t make sense. Also, these notes will be extremely useful when

you come to write up the witness’s statement (as discussed in the next chapter).

If you are going to take notes, De Villiers (1998, p.19) suggests that you should first explain to the witness why you are going to do so.

But be aware that taking notes may make the witness think you are not really concentrating on what they say. Also, they may slow down or lose their train of thought if they stop to allow you time to write your notes.

If the witness is uncomfortable with you taking notes, you should not. If you do take notes, try to keep them to a minimum. For example, use one word rather than full sentences. You will have time after the interview to write your notes up in full.

(Also see Focus Topic 8 on page 66.)

about what they were doing, thinking or feeling at the time of the incident. As Osterberg and Ward (1992, p.250) explain, these instructions could be:

“Think about the context surrounding the incident. Think about what the place looked like and that you are in the place. Think about how you were feeling at the time.”

“Many people will hold back information because they are not quite sure about what they remember. Don’t leave anything out. Just write down or tell me everything you remember, even if you think it is not important. Just tell me if you are not sure about something.”

“Think about how the crime happened, from beginning to end. You might even try remembering it backwards — from end to beginning. Or, if you would like, start with the thing that most impressed you and then go forwards or backwards as you like.”

“Try to think about what other people may have seen. Put yourself in the perspective of one of the witnesses and try to tell me what they would have seen.”

- Review. It will help you to understand what happened if you review what the witness says from time to time by telling the story back to them (in **their own words** if you can). That is, try to see that you have understood what they said clearly, and that you have not “improved” what they said to suit your own needs.
- Written statement. Once it is clear what the witness saw and remembers, write the statement down (or have them write it down) and read it back to them.

Find out more about the cognitive approach

A lot has been written on this approach. Look for books or articles on the topic on the Internet.

FOR DISCUSSION

Barriers to effective listening

Have a look at some of the things people do that reduce their ability to hear clearly. Then ask yourself: "Which of these do I do?"

- Interrupting.
- Assuming you know what the person will say next or what they mean.
- Thinking about something else.
- Changing the subject.
- Being distracted by outside interruptions.
- Rushing or becoming impatient.

8.8 Electronic recording equipment

Although these are not generally available, there will be certain situations where it can be useful to use electronic recording equipment. Find out more about the availability of such equipment and when it is appropriate to use it.

Sometimes it may help to let a witness tell you their story and then to ask them whether they would mind if you repeat it to them and take notes to make sure you have got the story right, and to help you when writing up their statement.

9. COMMUNICATION SKILLS

Improving your listening and communication skills and your overall style of communication will help to ensure that you are able to establish rapport with witnesses (also see page 19 on establishing rapport), and that you are able to carry out interviews effectively.

TABLE 2: COMMUNICATION STYLES

AGGRESSIVE STYLE	SUBMISSIVE STYLE	ASSERTIVE STYLE
Closed-minded	Doesn't talk to the other person directly	Believes they (and their opinions and ideas) are valuable
Bad listener (because they think they are always right)	Always agrees	Effective, active listener
Interrupts a lot (because they think they know all the answers)	Doesn't speak up	Says what they believe
Tries to control the conversation	Doesn't ask questions	Does not label or judge others
Must always win an argument	Hesitates a lot when speaking	Checks on the other person's feelings
Bossy	Apologises for their point of view	Observes the other person's behaviour
Points or shakes fingers	Fidgets a lot	Open, natural gestures
Rigid posture	Nods head a lot; slumped posture	Pays attention to what the other person is saying
Loud tone of voice	Won't look the other person in the eye	Confident and relaxed posture
Shouts a lot	Speaks quietly	Speaks at a volume that is appropriate to the circumstances

Adapted from Marshall Rosenberg's book, "Nonviolent communication: A language of life", published in 2003.

9.1 Communication style

There are three basic communication styles (see Table 2 on page 68):

- Aggressive.
- Passive.
- Assertive.

Of these, the most appropriate style for interviewing witnesses is assertive.

9.2 Listen carefully

Listening is by far the most important communication skill you have. Most of us are bad listeners, for a variety of reasons.

We can all improve our listening skills by:

- Relaxing and focusing on what is being said.
- Letting the other person finish what they want to say before interrupting.
- Knowing what to listen for.
- Not judging the witness because of their race, economic status, job, religion, gender, sexual orientation, and so on.
- Avoiding interruptions — switch off your phone, lock your door.
- Thinking before responding.
- Watching the witness's — and your own — body language.

If you find that your attention has shifted elsewhere (for example, when you are tired and your mind wanders), apologise to the witness and ask them if they could please start again from where you lost track.

It is also important to listen to what is **not** being said. People may “cover over” or hide or distort some of the details. They may feel bad because they think you or other people will judge them for something they did or didn't do before or during the crime. Or they might feel that they need to tell the story as quickly as possible because otherwise they will be wasting your time. It may help to

reassure them that you are not judging them, or that they don't need to rush. Also, make sure that you ask about any obvious omissions.

9.3 Take what witnesses say seriously

If you laugh at what a witness says, or you tell them they are silly to feel the way they do, they will think you don't take them seriously and will not trust you or open up to you.

9.4 Note the attitude of the witness

The body language and attitude of the witness will tell you a lot about what they are saying. For example, is the witness nervous, vague, elusive, open, cooperative or uncommunicative? Are there a lot of inaccuracies and inconsistencies in what they tell you? If so, the witness may be holding back information from you. They may be trying to protect a friend or family member. They may have been threatened. Or they may even be trying to protect themselves. (See the section on the risk that witnesses may not tell the truth on page 59.)

9.5 Asking questions

Preferably allow the witness to tell the whole story, uninterrupted, until they stop. It might help to start off by saying: “OK, why don't you tell me what happened the other night?” Only once they are finished should you ask questions. This helps to allow the witness to say whatever comes into their mind, and to remember things that they may not if they are interrupted. This is especially recommended for witnesses with special needs.

However, you may need to stop a witness and to ask questions of clarity (that is, to ask them to explain something in a bit more detail, or to clear up something that is confusing you). This can be very important when a witness starts rambling and telling you things that are of no relevance to the case, or where it is a long story and the details are confusing. However, make sure you only do this if it

is absolutely necessary as there is a danger that the witness may lose their train of thought.

Where you do interrupt it can help to say things like “excuse me for interrupting”, or “I’m sorry to interrupt, but can you clarify...” or, after the person has clarified, to say “would you like to continue?”.

To prevent interrupting the witness, it may help to jot down what they say in your pocket book (or a notebook) to help you to write the statement (see page 67 on taking notes).

When you do need to ask questions, try to remember the following general rules:

Question types

As indicated above you should ask:

- open-ended questions (for example, “What can you tell me about the car?”), and supplement these with
- closed-ended, specific questions (for example, “What colour was the car?”).

However, you should *always* avoid leading questions (for example, “Was the car red?”).

Clarify

If someone tells you something that doesn’t make sense or that you cannot understand, ask them to clarify what they said (or to explain what they meant).

How the person felt

Reflection questions are usually asked when you want to know how someone felt. In other words, you ask them to reflect on their feelings at the time (for example, “What was it about what happened that concerned you the most?” or, “How did you feel about it at the time?”).

Asking a person to remember how they felt is a key aspect of the cognitive interviewing approach (see Focus Topic 9 on page 66).

Questions about how the person felt can be important in terms of defining the crime. For example, to threaten assault *is* an assault, but only if the person believed the threat. How the victim felt may also be relevant to the sentence the perpetrator may get at the end of the trial.

Also, remember that one of the main reasons for asking questions is to make sure that all of the elements of the offence are present. So, you may ask things like:

- Did you give anyone permission to take your car (to show unlawfulness in a case of car theft)?
- Did you give him permission to have sex with you (to show lack of consent in a rape case)?

(See Focus Topic 1 on page 59 for more on the elements of a crime.)

The don’ts of questioning

- Don’t ask multiple questions because this will confuse the witness. For example, don’t say something like: “When you got home, what happened? Was the window broken? Were the lights on? And what time was it?”
- Don’t rush. If you keep hurrying the witness on, they will think you are not really interested in their story.
- Don’t use legal terms. Although you might easily understand the difference between “suspect”, “perpetrator” and “accused”, your witnesses will probably not.

Adapted from Dawie de Villiers’s 1998 conference paper, “The importance and legal implications of witness interviews”.

1. INTRODUCTION

Having interviewed a witness, the next step is to record what the witness said in a statement.

2. WHAT IS A STATEMENT?

This section is closely based on Van Veenendaal's 1998 paper, "I never said that! Current problems in statement taking from a juridical point of view".

A statement is a record of what witnesses have said, and is the basis on which the state will decide whether or not to prosecute. Before prosecutors will do so, they must be satisfied that all the elements of the offence have been covered. So, as with interviewing witnesses, your statements should clearly address these elements and show whether or not they have been satisfied.

A statement should be as accurate a record as possible of what a witness has said. It consists of three parts:

- A preamble.
- The content.
- A certificate by a commissioner of oaths.

All of these are important and should be correctly completed.

2.1 The preamble

The preamble contains the details of the person making the statement.

The personal details of witnesses are very important. The standard statement forms used by the SAPS have space for the personal details of the person making the statement. However, in terms of the Constitutional Court judgement in Shabalala (see Focus Topic 3 on page 90), the accused and their lawyers may sometimes get access to these. This could lead to intimidation of witnesses.

IN THIS CHAPTER

This chapter looks at taking statements. It discusses:

- What is a statement?
- The importance of statements.
- Language and translation.
- Problems with statements.
- Ending your meeting with the witness.
- Supplementary statements.

There are also special inserts on:

- The dangers of bad interviewing and statement-taking.
- The Telephone Interpretation Service for South Africa (TISSA).
- Learning more about translation.
- Paraphrasing.
- Is a detailed statement required from all witnesses?
- Advice on writing and using language.

It is necessary that basic information about the witness — including the full name, age, gender and address — be included in the statement. In order for these details to be easily withheld if the defence requests the statements, it is recommended that this information be written in only one clearly visible place on the statement, for example, on the first page of the statement only, with the statement starting on the second page. Then, when the defence requests these, the personal details of the witness can easily be removed from the copy (this is also discussed in Focus Topic 3 on page 26; also see Focus Topic 2 on page 25 on proper contact information).

Other basic information that should be in the preamble include:

- The Crime Reference and Case Number (if available).
- Whether the statement was translated and, if so, from which language.

Apart from the full name, age, gender and address, any personal details that do not have to be in the statement should be clearly written in the investigation diary. In addition to the name and address, the details in the investigation diary should include:

1 THE ELEMENTS OF THE OFFENCE

As discussed in Focus Topic 1 on page 59, each crime or offence is made up of “elements” or parts. For a crime to have been committed, the person charged must have satisfied all these elements. If any of the elements of the offence are missing, the offence would not have been committed.

- Home language.
- Occupation.
- Address.
- Telephone numbers (including home, work and cellphone numbers, or the numbers of a neighbour or relative if witnesses don’t have access to a phone).
- Any other relevant particulars that will help investigators to find witnesses again (see also Focus Topic 2 on proper contact information on page 25).

2.2 The contents

This is the “body” of the statement, where the story is told. Ideally, it should cover all information relating to the elements of the offence (see Focus Topic 1 on page 59) that the witness is able to provide. If the witness has information dealing with a number of different offences, the elements of each of these need to be included in the statement, in so far as they are able to provide information on them. The statement should also cover:

- The witnesses’ involvement in the matter, if any.
- Basic information about the offence, such as:
 - » At what time it took place.
 - » Who was involved: was it just one person or more than one?
 - » Who saw it.
 - » What goods (if any) were lost or stolen.
 - » What injuries were sustained.
 - » Who the suspect is.
- If the witness doesn’t know the suspect but saw them committing the crime, it should say what the suspect looked like, what he or she was wearing, and anything else that will help to identify them.
- If the witness was not an eyewitness but is rather corroborating evidence, it should say what evidence they are corroborating and provide information relevant to this.

2.3 The certificate of a commissioner of oaths

Each statement should end with a certificate stating that the witness:

- Knows, agrees to and understands the contents of the statement.
- Has no objection to taking an oath that what they said is true.
- Considers the oath binding on them.

After this certificate, the particulars of the commissioner of oaths (usually the police officer taking the statement) should be written down and the commissioner of oaths must sign it.

3. THE IMPORTANCE OF STATEMENTS

According to Van Veenendaal, "After reading a statement, one should at the very least know:

- "Who made the statement.
- "What crime has been committed.
- "All particulars the person making the statement can give."

One should also be able to inspect the certificate of the commissioner of oaths.

Witness statements are crucial to the criminal justice process because:

- They explain what happened.
- They indicate what other evidence may be available or may be required.
- They indicate what other witnesses there may be.
- Based on these statements and other evidence, prosecutors will decide whether or not to prosecute and what crimes to charge the suspect with.
- It helps the prosecutor to decide whether to issue a summons or a warrant of arrest for the suspect.

- The accused and their lawyers will probably have access to them, which will help them to decide how to plead. If the statements are so badly taken that it is not clear what evidence there is against the accused, the accused may decide to plead not guilty, even though he/she committed the offence. On the other hand, if the statements are well-written and show that the evidence against the accused is very strong, the accused may be persuaded to plead guilty or to enter a plea-bargain agreement.
- When leading the evidence of witnesses, the prosecutor will rely on what is in the statement and will refer to it when leading evidence. If something is incorrect, the prosecutor may have to advise the court and the defence that the witness is saying something different to what is in the statement. If the accused or their lawyers have copies of the statement and the witness says something different to what is in the statement, they will use it when cross-examining the witness and will try to show that the witness is making up their testimony, has changed it, or that they cannot really remember what happened.
- The statement is a legal document that is used by the court to help it decide whether to convict or acquit the accused.

However, taking statements seems to be a skill that comes with experience and one that many police officers need to work on. As one magistrate said:

The problem we have in court is the statements are not written by the witnesses but are interpreted by police officers who give their own interpretation of the event. When witnesses come to court they contradict themselves and say they did not say what is in the statement. When the defence says, "You said it," they reply, "No, that's what the police said."

4. LANGUAGE AND TRANSLATION

As with interviewing (which usually ends with taking a statement) and other parts of your work, language issues can make things difficult when taking statements.

Because there are rarely interpreters available, you will often have to take the statement in a language other than your own first language, or the witness's first language. This can lead to huge problems during the trial.

A magistrate had this to say in an interview:

You'll find a Sotho-speaking person coming to lay a complaint, and there's a Venda sergeant behind the desk, and they don't understand one another, but he still takes the statement. Then this poor man is confronted in court with a statement taken in English by a Venda police officer who did not correctly interpret

what was said. He's made out to be a liar. It's embarrassing to see this happening in court on a day-to-day basis.

Problems with language are sometimes linked to issues of literacy. This is especially true when it comes to taking statements, allowing the witness to read them and asking them to sign to say that it is correct. Where the witness cannot read or write, and where their statement has been translated into English by an officer and read back to the witness, mistakes are bound to occur.

It is important that you read statements back to the witness very carefully. In addition, where the witness says, "No, that isn't what I said," correct the statement immediately. Any corrections on a statement must also be signed by the witness.

In reality, most police officers rely on their colleagues to help them with translation. The major disadvantage of this is that a colleague may

2 THE DANGERS OF BAD INTERVIEWING AND STATEMENT-TAKING

On 14 January 1999, one of South Africa's best urban-terror detectives, Bennie Lategan, was shot 13 times and killed while he sat in his car at an intersection in Cape Town. The only witness to the killing was a 13-year-old street child who was begging on the corner at the time. Two suspects were arrested, tried and acquitted. In acquitting them, the judge in the case mentioned two major problems with the way the evidence of the child was recorded by the police:

- The police only took the statement of the child four months after the killing.
- The child mentioned in evidence that one of the accused had a "lazy eye" — which was not recorded in the statement that the child made to the police.

Since the judge had to rely on the evidence of a single witness, these problems with the way the child was

interviewed and the way the statement was taken meant that she could not rely on the child's evidence.

3 TELEPHONE INTERPRETING SERVICE FOR SOUTH AFRICA (TISSA)

This is a project of the Department of Arts and Culture. Access to the service is available at 89 police stations in South Africa, and it is an excellent service for ensuring good-quality translation when taking statements. If a translator is needed you call the TISSA call centre. They will put you through to an interpreter who may be anywhere in the country. You and the witness then use a dual handset to speak to each other via the interpreter. There is a serious need for accuracy, especially as many African languages are tonal and easy to misinterpret. It is hoped that this service will soon become more widely available.

not be sufficiently competent in both languages. On the other hand, a fellow police officer has the advantage of knowing what information is needed and how to include it in a statement. Where you need translation, you should make sure you get someone with the best skills possible in both languages to help you, and you should consider having a third person check the statement for you — perhaps having this person read it back to the witness in the witness’s language and in the exact words that have been written down. The person reading the statement back should not summarise what the person said, or mistakes can be made. The real issue is whether the words on the paper are the same, or mean the same, as the words the witness said.

Note

When a statement has been translated, it should say so in the preamble to the statement. For example, the preamble should say, “This statement was made in Zulu and translated into English.” Then, if the defence tries to trip up the witness, the magistrate or judge will be aware of the problems that can occur with translation, and will not take much notice of the fact that there are a few differences.

5. PROBLEMS WITH STATEMENTS

A research report on police statement-taking produced in the late 1990s highlighted the following problems (Van Veenendaal, 1998).

5.1 Contact information

When contact information for witnesses are not included in either the preamble or in the investigation diary (see Focus Topic 2 on page 25 — this Focus Topic includes a section on recording contact information in the statement and investigation diary), it can lead to the following problems:

- Investigators find it very difficult to track witnesses down. This can impact negatively on both the investigation (when detectives cannot trace witnesses and therefore cannot complete the investigation) and on the trial (when subpoenas cannot be drawn up or served because no one knows where the witness is).
- In some cases, witnesses are asked to be on standby (which helps reduce the amount of time they have to spend waiting around at court). Where there are no telephone numbers in the investigation diary, this is not possible and witnesses cannot be called at short notice.

5.2 Problems with the content

The most notable problems with the content are:

- Police officers not knowing the elements of the offence, and a lack of knowledge of criminal law (see Focus Topic 1 on page 59 on the elements of the offence).
- Should the prosecutor base their decision on what to charge the accused with on a statement that has missing information, they may charge the accused with the wrong crime. Although it is possible to add new charges against the accused during the trial and for the evidence in court to correct any errors on the charge sheet, it is possible that these mistakes get overlooked by prosecutors and that the accused is acquitted.
- Police officers often seem not to realise the importance of stating all the facts given to them. It seems that the first officers at the scene will take down a brief statement on the basis that the investigating officer will take a more complete statement later on. Instead, investigating officers see that there is a statement from the witness in the docket and therefore don’t bother taking another one. As a result, crucial and even basic facts are left out. This can be very embarrassing for the witness when they are told when giving

evidence that something they have said is not in the statement. And, of course, it can lead to the acquittal of a guilty person.

- Some members rewrite what witnesses tell them in their own words. This means that the police member interprets what the witness says, and puts his/her own opinions in the statement. They may also miss details they think are irrelevant. However, even information that seems irrelevant or minor may be what wins the case. Persuasion lies in the detail. It is essential that police officers are true to what a witness has told them, down to the most minor details.
- Statements that do not give the facts in chronological order can be very confusing and result in the case being lost. It is essential that events are written down in the correct order.
- Witness statements should not contradict each other. A second statement should clarify or confirm the first statement. If the contents of two statements are contradictory, the reason for

this needs to be clarified before the statements are finalised.

5.3 Problems with a commissioner-of-oaths certificate

Sometimes, police officers do not understand that the person making the statement must be present when the commissioner of oaths certificate is filled in. A witness may deny in court that they swore the oath (because they were not really asked to by the police), which will have a serious effect on their evidence.

5.4 Use of standard forms

Many police stations use printed or photocopied forms for witness statements. While this can help to ensure that important information (such as telephone numbers and so on) is filled in, some police officers think that the space for the statement is the only space they can use. Instead of

4 LEARNING MORE ABOUT TRANSLATION

Most people believe that only a properly trained person should do translations. Some of the principles involved in it are:

- Translators should be totally fluent in both the source language (the language used by the other person) and the target language (the language into which they are translating).
- The translator should be loyal to the person who is speaking and the person who receives the translation. This requires a good understanding of the subtleties in both languages. As a result, translators must have a high level of competency in both languages.
- Translators must understand and be sensitive to the context in which the translation takes place. So, when interviewing and taking statements, one wants to produce a statement that deals with things that are

directly relevant to the case, while at the same time being sensitive to the fact that the person giving the statement may feel intimidated because they are dealing with the police.

- To ensure the correct level of formality, language style, emotional tone, and that social conventions are respected, translators must be sensitive to what the statement will be used for. In criminal cases, this includes understanding the purpose of the preamble (personal details), the need for information to be given chronologically, and knowing how to deal with the oath in the right way.

If you would like to read more about translation, Peter Newmark's "A textbook of translation" will come in handy.

writing everything a witness says down, and using extra paper if necessary, they try to fit everything on the one sheet. As a result, key information could be left out.

Remember that when you use standard forms for taking statements, you should keep the personal information of the witness on a separate page from the actual statement.

6. ENDING YOUR MEETING WITH THE WITNESS

Once you have finished taking the statement, thank the witness for taking the time to talk to you and explain what will happen with the case. Give them:

- The Crime Reference number and the Case Number (if these are available).
- Your name and contact details.

You should also remind witnesses to contact you immediately if they remember anything later.

7. SUPPLEMENTARY STATEMENTS

While it is best practice to get all the information into the initial statement, occasionally witnesses may remember further details at a later stage. In this situation you may need to take a second, supplementary statement. This should be avoided if at all possible by ensuring that the first statement is comprehensive.

5

PARAPHRASING

Some people say it is a good idea to paraphrase (that is, to summarise in your own words) what a witness says in the statement, while others say you should write down word for word what is said. Paraphrasing can result in the following problems:

- You may change what the person is saying.
- The witness may not be familiar with the language you are using, and then will not understand the language in the statement when they have to sign it, or when it is presented to them in court.

In general, therefore, you should use the language used by the witness. Paraphrasing should only be used once you are highly fluent in a language and have good statement-taking skills. It is also important that you read the statement back to the complainant so that they can satisfy themselves that it is correct. Where it is done

properly, summarising can save space and time, but where it is done badly, it can destroy a case.

6

ARE DETAILED STATEMENTS REQUIRED FROM ALL WITNESSES?

With some witnesses (those other than eyewitnesses and victims) it may not be necessary to take such complete statements. For example, if someone is being interviewed because they are able to say that a fingerprint was found at the scene of the crime, they may not even know what crime has been committed. Their evidence is needed to prove that the accused's fingerprint was found at the scene, not that the accused committed the crime they are charged with.

GOOD PRACTICE IDEA

At a police station in Mpumalanga the local prosecutor visits the station for an hour every week so that police officers can discuss cases with her. This helps police officers in compiling accurate statements and in making sure that all the elements of the offence are covered (Van Veenendaal, 1998, p.6).

7 ADVICE, AND A RESOURCE ON WRITING AND LANGUAGE USE

Six rules to apply when writing:

- Use the shortest meaningful word you can.
- Avoid using unnecessary phrases or clauses.
- Use short sentences.
- Deal with only one issue per paragraph.
- Know how to use punctuation marks.
- Consider the physical presentation of your writing.

The above advice is applicable to all writing, including the taking of statements. It is from "Becoming a lawyer: Fundamental skills for law students", written by Palmer, Crocker and Kidd. The chapter on writing skills contains advice that can be applied to taking statements. The book's other topics relevant to witness interviews and statement-taking include the use of words, thinking and logical reasoning, speaking skills and critical reasoning.

8 INTERVIEWING AND STATEMENT-TAKING IN A NUTSHELL

The highly trained investigator will always try to start with an open question and allow the witness to speak freely while noting critical issues. Then they will question the witness to clarify and obtain more facts. Then they will paraphrase slowly to allow the witness to correct/modify their statement. Then they summarise, emphasising the key elements and keeping the statement to the salient points. Then they write the statement after the witness has agreed that he/she did say the things it contains. (This advice comes from unpublished training notes compiled by Rick Barrata, a former Californian police management consultant.)

IDENTIFICATION PARADES AND PHOTOGRAPH IDENTIFICATION

IN THIS CHAPTER

This chapter discusses identification (ID) parades and photograph identification:

- It discusses the need to minimise witness trauma and prevent intimidation at ID parades.
- Other good practice issues for ID parades.
- Photograph identification.

Basic procedure at ID parades is outlined in a special insert.

1. INTRODUCTION

Identification (ID) parades that are not conducted professionally can undermine witness evidence in a number of different ways. If the ID parade does not follow the correct procedure, the evidence may be inadmissible in court. ID parades may add to witness trauma or contribute to intimidation of the witness by suspects. There is also the risk that witnesses may positively “identify” the wrong person.

2. PREVENTING WITNESS TRAUMA AND INTIMIDATION AT IDENTIFICATION PARADES

Some of the practices that are known to be particularly traumatic for witnesses, and particularly victims, are:

- Witnesses are asked to touch the suspect to identify them.
- Victims, even child rape victims, are taken into prisons to identify the perpetrator.
- Witnesses are often asked to identify perpetrators while in full view of them.

ID parades can be very intimidating for witnesses. As one detective said:

If we arrest the suspect, there's going to be an ID parade and a lot of times the people have to go and stand in front of that ID parade and identify the person. With our wonderful court system, we know that tomorrow the guy's going to be out on bail and he's going to remember you, remember your face.

These practices can be regarded as examples of secondary victimisation (see Focus Topic 6 on page 16) and can contribute to undermining the investigation as follows:

- As a result of being afraid of the suspect, and specifically being afraid to touch them, witnesses may refuse to identify the suspect.

- The experience may contribute to the trauma of being a victim and may reinforce post-traumatic stress disorder.
- Where the suspect is able to see the person who identified them, the risk that the witness may be harmed or threatened may increase.

Ultimately these practices may not only discourage individual witnesses from identifying the actual perpetrator, but they may discourage others from cooperating with the police for fear that they will be put through the same experience.

Obviously the best method of preventing these problems is to use a room with one-way glass, where the suspects cannot see the witness. However, not all police stations have this facility available. If your station does not have such a room, you should at the very least take other steps to ensure that the witness is not identifiable to the people in the ID parade, for example, by using some other type of screen.

3. OTHER GOOD PRACTICE ISSUES FOR IDENTIFICATION PARADES

Other issues include ensuring that the witness is fully informed about how ID parades are conducted. One issue that can cause misunderstanding is that the investigating officer cannot be present during a parade (to prevent allegations that they instructed the witness who to point out). Investigating officers must explain this to witnesses in advance so that they are not surprised or concerned when they arrive to find that the investigating officer is not present.

It is also important that the witness should not feel pressure to positively identify anyone at the parade (see Focus Topic 8 on page 21, as well as the discussion of suggestion on page 61). They should only identify the person if they are certain, and not simply point out the person in the ID parade who most closely resembles the perpetrator.

Detailed police guidelines for conducting ID parades are discussed in Focus Topic 1 below.

1

BASIC PROCEDURE AT IDENTIFICATION PARADES

ID parades are governed by section 37(1)(b) of the Criminal Procedure Act, 51 of 1977. It is basically a parade of a number of people who look similar, who are from the same background, and who are dressed more or less the same.

Only the following people can be used in an ID parade:

- People who are in custody on any charge.
- Those who have been released on bail.
- Those released on warning.

A suspect who wants to be cleared might also request that they appear in an ID parade.

The police guidelines for ID parades say:

- You must tell the suspect why you are holding a parade and what the charge is against them.
- They must be allowed legal representation if they want it.
- You should warn suspects that, if they refuse to take part, this could be used against them in court.
- ID parades should consist of between eight and 10 people.
- You must tell the suspect that they can stand anywhere in the parade, and that they can change positions between witnesses (if more than one witness has been invited to the parade).
- You must not allow witnesses to communicate with each other, and they are not allowed to watch the parade being set up.
- You must tell witnesses that the suspect may not be in the parade and that, if they cannot identify anyone, they must say so and not guess.

4. PHOTOGRAPH IDENTIFICATION

Witnesses may also identify people through photograph identification, where they identify suspects from a photograph album. Photograph identification parades will usually only be held when no one has been arrested in order to provide investigative leads.

Care needs to be taken by the police in preparing the book of photographs so that individual photos do not stand out unduly, and in documenting the procedure. Witnesses should review the album without any other witnesses being present. When instructing the witness:

- Describe the book only as a “collection of photographs”.
- Instruct the witness that the person who committed the crime may or may not appear in the photographs.
- Consider suggesting to the witness that they think back to the event and about their frame of mind at the time.

- Instruct the witness to select a photograph if they can, and to state how they know the person, if they can.
- Assure the witness that, regardless of whether they identify someone, the police will continue to investigate the case.
- Instruct the witness that the procedure requires the investigator to ask the witness to state in their own words how certain they are of any identification they make.

From “Eyewitness evidence: A guide for law enforcement” by the Technical Working Group for Eyewitness Evidence of the United States Department of Justice’s Office of Justice Programs. The publication also provides guidelines for developing and using composite images. See <http://www.ncjrs.gov/pdffiles1/nij/178240.pdf>.

- The investigating officer should not be present at a parade. Instead, another officer should escort witnesses, and this officer should not know who the suspect is.
- You should not include more than one suspect in the same parade.
- People in the parade should be of the same height, build, age, appearance, race, gender and dress.
- When the witness points someone out, a photograph or video should be taken of the suspect.

From “ABC of human rights and policing”, published by the Centre for Socio-Legal Studies in 2000. See especially page 55.

Some other tips for ensuring a successful parade, and one that will be difficult to challenge in court, are:

- Do not use police officers in the parade who are known in the area, especially where the only unknown person is the suspect.
- Stick to the rules of accompanying witnesses to one room, *then* taking them to the parade room, *then* taking them to a different room after the parade to fill in the necessary forms.
- Fill in the forms correctly.
- Take photographs during the parade to show how the rules have been complied with.
- *Never* have the investigating officer present at or in charge of the ID parade.

WITNESS PROTECTION

1. INTRODUCTION

One of the main reasons why victims choose not to report crimes and why witnesses may be reluctant to come forward is because they are afraid. This may be because of intimidation, which may involve threats, or other actions by the suspect or perpetrator, or their family or friends, to stop victims reporting a crime, to get them to withdraw the charge, or to prevent witnesses from testifying.

2. TYPES OF INTIMIDATION

In a recent survey of witnesses in three magistrates' courts in Gauteng, roughly a quarter of witnesses who had attended court said that they had felt intimidated. When asked to explain why they felt intimidated:

- A small number of witnesses said they had been physically attacked.
- Some witnesses said there had been threats that they or their family members would be killed or hurt.
- A number said there had been other actions by one of the parties to the case, such as visiting their house to intimidate them, making remarks, or a person pointing, staring or laughing at them.
- Some witnesses said they had not been attacked or even threatened, but that they were worried that they would be hurt at some point in future.
- There were also witnesses who felt intimidated as a result of encountering the accused person at the identification parade, or having to sit in the same room as the accused.
- Others said they were most frightened about testifying and being cross-examined.

From David Bruce and Mark Isserow's 2005 publication, "Putting people first? A survey of witness satisfaction in three magistrates' courts in Gauteng", online at <http://www.csvr.org.za/papers/papdbmi.htm>.

IN THIS CHAPTER

This chapter looks at witness intimidation, witness safety and witness protection. It examines:

- Types of intimidation.
- The effect of intimidation on the criminal justice process.
- The use of the term "intimidation" and its relationship to fear, threats and danger.
- Developing an approach to each situation by assessing danger.
- The use of witness protection programmes.
- Other ways of protecting witnesses and their families.
- Protection at court and in the court.
- Protection after the trial.

There are also special inserts on:

- The risk that family members may discourage a witness from assisting the police.
- Giving priority to protecting the lives of witnesses.
- *Shabalala and Others v Attorney-General of Transvaal and Another* 1996 (1) SA 725 (CC).
- The Domestic Violence Act, 116 of 1998.
- The Intimidation Act, 72 of 1982.
- Intimidation of defence witnesses.
- Defence interviewing of state witnesses and the risk of intimidation.
- Withdrawal statements.
- Testifying *in camera*.

In addition to the types of intimidation listed above, intimidation may take other forms as well, including financial harm (for example, an abusive husband threatening not to give his wife any money if she reports his abuse to the police), or damage to the victim's or witnesses' property.

As indicated, witnesses sometimes feel intimidated as a result of concrete actions by the accused, but this is not the only reason why witnesses may feel intimidated. In some cases witnesses may be intimidated simply by contact with the accused, be afraid that they will be hurt despite the absence of threats or intimidating actions against them, or mainly be afraid of the process of giving evidence in court, and being cross-examined. People may also be afraid of the police themselves, or perhaps afraid of any contact with the criminal justice system because they are in the country illegally. (See Figure 3 on the right.)

Intimidation is therefore a complex problem and there is no "one size fits all" way of dealing with it. This chapter looks in more detail at understanding and responding to witness intimidation.

3. THE EFFECT OF INTIMIDATION ON THE CRIMINAL JUSTICE PROCESS

Witness intimidation relates to all stages of the criminal justice process:

- It makes people unwilling to report crime or to come forward as witnesses at the scene of the crime.
- During the trial, witnesses may be exposed to threats from the perpetrator or their associates.
- Just having to confront the perpetrator (and their lawyers) in court is also intimidating. Even in cases where witnesses cooperate with the police, they may become more reluctant to assist, particularly if they have received direct threats.

FIGURE 3: DIFFERENT LEVELS OF INTIMIDATION



1 THE SERVICE CHARTER AND MINIMUM STANDARDS

One of the key issues emphasised by the Service Charter for Victims of Crime in South Africa and the Minimum Standards on Services for Victims of Crime (see pages 15–17 and Appendix A on page 108) is the right of victims to protection.

2 FAMILY MEMBERS MAY DISCOURAGE SOMEONE FROM ASSISTING THE POLICE

In some cases it may even be a member of the victim's family that will try to stop them reporting the crime or cooperating with the police. For example, in some cultures rape is regarded as bringing shame on the whole family, and rape victims may therefore be discouraged from reporting — especially if a payment has already been made to the family to "restore their honour".

- Witnesses may be afraid to assist because they believe that the perpetrator is unlikely to be convicted and may even be released on bail soon.
- Even if they do believe that the perpetrator will be convicted, some witnesses fear that the perpetrator will take revenge on them after completing their sentence.

As one detective said:

When witnesses become involved, they realise this is serious stuff. They may feel discouraged because of how the system works: What is going to happen? What happens in a court? Why do I have to go to the police? Who can identify me there? Am I really doing the right thing? And they get withdrawal symptoms because of fear — fear of the unknown. So the rapport you build up when you first meet witnesses is to build trust in them that you're there to protect them, irrespective of what happened.

4. FEAR, THREATS AND INTIMIDATION

4.1 Fear

We have explained that witnesses may feel intimidated or frightened for different reasons. Fear is an emotional state (subjective), which may or may not be directly related to the actual danger to the witness. As illustrated in Matrix 1 below:

- In some cases (X) people are afraid, even though there is no actual danger.
- In other cases (Y) people's fear may be proportional to the danger.
- In some cases (Z) witnesses may not be afraid (or say they are not afraid), even when there is real danger to them.

Witnesses may therefore be afraid, even though there is no danger to them from anyone connected to the offence (such as perpetrators or their friends).

On the other hand, even where no threats have been made, some witnesses may be justifiably afraid because they know that people who cooperate with the police, in the community where they live, could be harmed in some way. This harm could be anything from social isolation (where no one will talk to them because they are seen as an informer), to active victimisation (for example, where gang members take revenge on behalf of other members who are in custody).

But regardless of whether the fear is justified or not, the fear of retribution can still be a powerful factor in discouraging people from reporting crimes and helping the police. It can also lead to communities not wanting to assist the police in their work.

Therefore, if witnesses are afraid this needs to be taken seriously, irrespective of whether you think that they have a reasonable motivation for their fear.

MATRIX 1: FEAR AND DANGER			
	NO DANGER	MEDIUM DANGER	HIGH DANGER
No fear	Y		Z
Medium fear		Y	
High fear	X		Y

4.2 Threats and danger

Even where threats are made it does not always mean that there is actual danger to the witness. Also, there may be real danger to the witness without any threat having been made.

Danger but no threats

Danger may be present without any threats having been made. For example, in some organised-crime cases you will know that witnesses are in danger even though no threats have been made — perhaps because witnesses in other cases concerning the same syndicate have been hurt or even killed.

In such a case you could reasonably assume that there is a high level of danger to a witness even when no threats have been made.

Threats but no danger

In some cases there may be threats but this may not mean there is a real danger to the witness. Sometimes people make threats to intimidate witnesses even though they may be unlikely to act on them. At the same time, the person making the threat may be afraid that if they carry out the threat they will be in even more trouble. However, the threat may still be successful in intimidating the witness.

As a general rule, you should take threats seriously because you do not know whether there is danger or not. Also, by taking them seriously you ensure that the witness doesn't become discouraged as a result of them.

4.3 The difference between fear, threats and danger

Fear, threats and danger are therefore different facets that need to be taken into account in dealing with questions of witness protection:

- **Fear** is a state of mind on the part of the witness — which may or may not be related to threats or to an actual danger to the witness.

- **Threats** are a behaviour — someone actually needs to make a threat even though it may not be easy to identify who that person was.
- **Danger** relates to the state of mind of the people who do not want the witness to give evidence. If they are antagonistic to the witness they may make threats to the witness. But it is only if they are actually likely to harm the witness that there is a real danger. However, because you cannot know what the state of mind is of these people you will have to use other evidence and guidelines to assess whether the situation may be dangerous or not.

5. ASSESSING DANGER

If the suspects are accused of an offence involving violence, have a history of violence or have used violence against witnesses before, it will often be reasonable to assume that there is a danger to the witnesses. In other cases, it will often be very difficult to assess whether witnesses are in danger.

The following “indicators” will help you to evaluate whether there is a real danger of harm:

- Threats have been made to the witness.
- The suspect knows the witness.
- The suspect lives near the witness. In cases of domestic violence, child abuse and other sexual offences, the victim or witness may live in the same house as the suspect. In such cases, the opportunity for intimidation is very high.
- The crime took place in or around the victim's home (since it is then clear to the perpetrator where the victim lives).
- The suspect has a history of violence and violent crime.
- If the suspect is alleged to have committed serious offences that carry the risk of a heavy sentence, this may indicate that there is danger to the witness even if the crime is not a violent one.

- Gangs or organised-crime syndicates are involved.
- The victim is the subject of a hate crime against a specific racial group or sexual minority (like gays and lesbians).

According to research conducted in Britain:

- Most intimidation involves verbal abuse and then threats, while physical assaults and damage to property are less common.
- Intimidation is more common for sexual offences, assaults and vandalism than in other types of cases. (It is also likely that there will be a greater risk of intimidation in cases where the stakes are high, such as in organised-crime cases where large sums of money are involved.)
- Women are generally more at risk of intimidation than men.
- Victims are more at risk than other witnesses.
- Intimidation is more likely when the victim knows who the offender is.

From Robin Elliot’s “Vulnerable and Intimidated Witnesses: A review of the literature”, pages 114–118.

5.1 Distinguishing levels of danger

In trying to evaluate whether there is danger to witnesses it may also be useful to distinguish between different levels of danger.

Medium levels of danger

This is where there is a danger that the person will be harmed but the harm is not likely to be

life-threatening or involve serious injury. They may be assaulted or their property may be damaged. In most cases danger and intimidation occur at this level rather than at a high level.

High levels of danger

Here there is a danger of a person being killed or seriously injured. This type of danger is less common than medium-level danger, but obviously needs to be taken far more seriously. It is often present in serious cases, such as those where organised crime or terrorist organisations are involved. In some cases there may be an actual threat to kill the witness. In other cases (especially those involving drug trafficking and organised crime) there may not be a threat but the risk of the person being killed may still be very high.

5.2 Developing the right approach

In deciding what type of action is appropriate, whether and how you can protect the witness, or whether what is really needed is just reassurance, you will need to assess both the level of fear and the level of danger.

When you look at Matrix 2 below you can see that the appropriate action will vary depending both on the level of fear and the level of danger:

- **In case A (high fear, no danger)**, the witness (subjectively) may be very afraid even though you know in reality (objectively) that there is no danger. Here the priority may be to reassure

MATRIX 2: FEAR AND DANGER			
	NO DANGER	MEDIUM DANGER	HIGH DANGER
No fear	B		E
Medium fear		C	
High fear	A		D

the witness. You may just (a) try to discuss the situation in an objective way, and (b) give them your name and telephone number and say that if they feel frightened for any reason they should call you immediately. In important cases where there is a real danger that the witness will become demoralised and they are important to the case, you may ask for a patrol past their house every now and then to reassure them.

- **In case B (no danger, no fear)**, no protection would seem necessary. The witness is not afraid, so it is not necessary to take the trouble to reassure them.
- **In case C (medium danger, medium fear)**, because there is *some* danger, you could consider some type of protection (see the suggestions below).
- **In case D (high fear, high danger)**, protection is definitely required (perhaps even placement on the witness protection programme). This may be the only way to encourage the witness to go through with the process of giving evidence.
- **In case E (no fear, high danger)**, even though this may demotivate the witness, you may need to talk to them about the fact that, even though they are not afraid, there is a real danger and that they should be wary of a false sense of security. You will need to assess with the witness whether they are capable of attending to their own safety, or whether it would be preferable to join the witness protection programme. The witness may also merely be saying that they are not afraid when, in fact, they are afraid. This can be described as “bravado” or “acting brave”. You may need to find a way round this (you might say, “Even though you are not worried I am worried about your safety”) so that you can talk to them about the actual situation.

6. WITNESS PROTECTION PROGRAMMES

It is often taken for granted that witness protection programmes provide a simple solution to the problem of witness intimidation. In practice, however:

- They are usually only used to protect witnesses in very serious cases where they are in danger of losing their lives.
- They are extremely expensive to run.
- Many witnesses are reluctant to join these programmes because they are enormously disruptive to the life of the witness.
- Even where they do exist, remoulding the witness’s identity and relocating them on a permanent basis, is an unusual occurrence. Even if costs did not inhibit the relocation of witnesses, the average witness has no desire to completely uproot him or herself in this way.

The South African witness protection programme, which falls under the National Prosecuting Authority (NPA), is only used in a select number of cases. The latest NPA annual report indicates that 247 witnesses, and 252 family members, were on the programme at 31 March 2005. These witnesses were testifying in 329 cases, a fraction of the more than a million cases heard by the courts each year. Some of the witnesses who face the most serious risks are accomplices who have agreed to give evidence for the state, and these make up 80% of witnesses on the programme. (From the NPA Witness Protection Unit annual report for the 2004–05 financial year.)

The programme usually only provides protection to a witness until the time at which the case is completed in court. While an after-care programme is in place and starts at the end of the trial, witnesses are essentially left to protect themselves. Witnesses usually do not completely

change their identities, so it is possible to track them down.

Because it is so disruptive, this type of witness protection is not suitable for many witnesses. As one detective said:

If your child is at school, how do you enrol him in a school in Limpopo? How do you relocate? And, if your wife works at Iscor, how do you move? There is no Iscor in Limpopo. But the younger they are, the less responsible, the lower their income, the easier it is.

While the programme has generally managed to adhere to high standards in terms of witness safety, in a few cases it has not worked and witnesses were found and killed. However, steps have been taken to address the problems in the programme that were highlighted by these killings.

FOR DISCUSSION

The witness's life takes priority

Police members face a difficult choice when there is a very real possibility that the witness will be killed, or when the witness believes they will definitely be killed. What would you do in such a case? Think about this for a while and then look at what one detective had to say (although this is not the only possible solution):

If there is danger to the life of a witness and we cannot protect the witness, I'll send the witness home. They should not be forced to make statements where their lives may be lost. The lives of the witnesses must always come first, even though justice may be delayed. One has to balance the considerations involved. This is not police policy but it is a good thing to do.

Another point to consider is that, sometimes, the witness you are trying to protect may well have been involved in committing the crime. For example, a member of a child abuse ring may agree to testify against others in the ring, provided they are given indemnity and are protected until the case is finalised. Moving such a person to another community puts that community at risk.

The South African witness protection programme is provided for in terms of the Witness Protection and Services Act, 112 of 1998. This Act outlines which witnesses qualify for witness protection and how to get a person onto the programme. For example, it says:

- Anyone who is required to give evidence in a serious case (and who is under serious threat to themselves or their family) can apply by reporting the matter to most people involved in the criminal justice system (including the investigating officer and anyone working for the NPA).
- A panel is then appointed to hear the request.
- If accepted, witnesses have to sign an agreement with the programme that sets out the rights and obligations of both the witness and the programme.
- Anyone who allows an unauthorised person to get access to a protected witness or who reveals anything about the witness can be sentenced to a fine or imprisonment for up to three years.

Should you have a witness that needs such protection, you can call the NPA for assistance and to make sure you do everything correctly.

While you should consider the witness protection programme in cases with high levels of danger, there are other methods you can use in less dangerous cases that are much cheaper and don't cause as much disruption to your witnesses. Using them will make it easier for you to get the most out of them.

7. OTHER WAYS OF PROTECTING WITNESSES AND THEIR FAMILIES

7.1 Ensure that witnesses inform you of intimidation

Ask your witnesses if they have been intimidated when you interview them or take a statement. You should also tell the witness who to contact if threats are made against them, or when they believe they are in danger for some reason. (This needs to be done in a way that is sensitive to the risk of contributing to witness fear.)

An important part of protecting witnesses is to establish **clear and easy communication channels** between them and yourself so that you will know immediately if they are threatened or have other reasons for thinking they are in danger. Failure to do so can result in cases being withdrawn or lost. As one detective said:

In this community, you find that the suspect will often get to the witnesses and threaten them, which they don't tell us about while the case is going on. Then, when the case comes back from court and has been withdrawn, you approach the witness who then tells you the real story.

At the very minimum, you should give them all your contact numbers so that they can reach you if they urgently need to. You must emphasise that they must contact you if anyone threatens them.

7.2 Protect witnesses' identity and prevent their contact information from being revealed

This can usually only be done where the witness is not already known to the accused.

- Don't mention their names over police radios, don't give them out over the phone and never give them to the media.

- Send a note to the prosecutor emphasising that they should not reveal contact details of the witness if they provide copies of the witness's statements to the defence. In such a case the prosecution should remove the contact information — for example, address and phone numbers — before the copies are handed over. (See Focus Topic 3 on page 90 on the Shabalala judgement.)
- The text of the statement may also reveal details that could enable the accused to establish where the witness lives (for example, indicating that they live in the house next door to the place where the crime occurred). Avoid including such information in the statement if this is reasonably possible.

In some cases you can also try not to let anyone realise that the witness *is* a witness. This can help because intimidation often starts *after* the police have contacted a witness. For example:

- Try to invite witnesses (by phone) to come to your station to make their statement rather than visiting them at home. When doing so, make sure that the perpetrator is not at the police station at the same time.
- If you must visit a witness at home, you could conduct house-to-house calls on their neighbours as well, so that it doesn't seem that you are picking out the witnesses.
- If you must visit, do not visit on the same day as the crime and, preferably, not with an identifiable police vehicle or while wearing a police uniform.

Use screens, one-way mirrors or other techniques to protect the identity of the witness during identification parades.

Ask the prosecutor to get an order (in terms of section 153 of the Criminal Procedure Act) that the identity of the witness not be revealed, and for them to testify *in camera*.

7.3 Enforce bail conditions

Witnesses who are at risk of intimidation may be protected either by refusing bail to the accused or by imposing bail conditions on the accused that prevent the accused from interfering with, or intimidating, witnesses.

Section 60(4)(c) of the Criminal Procedure Act states that, when deciding whether or not to grant bail, the court must consider the possibility that the accused will try to influence or intimidate victims and witnesses. Factors that the court may take into

account in evaluating whether the accused may try to influence or intimidate witnesses are listed in section 60(7). These include:

- “(a)The fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her [...].
- “(d)The relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated [...].
- “(e)How effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be.”

Where you believe that there is a risk of intimidation or harm to witnesses you should ensure that the prosecutor is aware of this, too. Verbally draw this directly to the attention of the prosecutor, and attach a note about this to the front of the docket. In addition you should also *clearly* state in the investigation diary (which prosecutors are meant to read) that you have an objection to bail being granted, or that you do not

GLOSSARY

Testifying *in camera*

When a hearing is held *in camera* it means that members of the public are not allowed to attend.

3

SHABALALA AND OTHERS V ATTORNEY-GENERAL OF TRANSVAAL AND ANOTHER 1996 (1) SA 725 (CC)

Prior to this decision of the Constitutional Court, the docket (including all statements in it) was regarded as “privileged”, which meant the accused was not entitled to a copy of it. In this case, though, the Court ruled that, *in some circumstances* the accused *is* entitled to a copy of *most* of the information in the docket, including the statements of witnesses.

However, this does not mean that an accused (or their lawyer) is entitled to *everything* in the docket. Some information can be withheld if there is a good reason for it. While it seems that it is necessary to record the name, age, gender and address of the witness on the statement, this should be done in such a way as to make it easy to delete the address from copies of statements that are

provided to the defence. This may be done by recording the address in one clearly visible place on the statement or on a separate page. Any contact information that need not be on the statement should be recorded in the investigation diary. (See Focus Topic 2 on page 25 for more discussion of recording of contact information in the statement and investigation diary.)

4

THE DOMESTIC VIOLENCE ACT, 116 OF 1998

This Act specifically states that the address of the complainant in a domestic violence case *must* be omitted from any protection order granted to them, unless there is a good reason for it to be included (section 7(5)(a) and (b)).

object but that you would like special conditions to be imposed.

The prosecutor should then either oppose bail or request that bail conditions for the accused make it clear that the accused will be re-arrested and lose the bail money if they speak to the witness, contact them or in any way intimidate or threaten the witness. Make sure that this is explained to the witness (preferably by the magistrate, in front of the accused) so that both the witness and the accused know what will happen.

If there is information the witness may present that will inform the court about the risk of harm or intimidation (or that is relevant to the bail decision for other reasons), you should ensure that the witness is present at the bail hearing to present this information. If the witness is required to give evidence for purposes of the bail hearing, it may be necessary to prepare the witness to give evidence in court. However, the bail hearings take place early in the process. If the victim is still in the first stage of trauma they should *not* be asked to testify at the hearing. Instead, ask the prosecutor to apply for a postponement. If this is not granted, you should be prepared to testify on behalf of the victim to explain why they fear they will be intimidated by the accused.

If bail is granted, make sure the witness knows that they should inform you if they encounter any form of intimidation. If evidence comes to your attention that the accused has been involved in intimidating witnesses, alert the prosecutor so that the prosecutor can arrange to have the person arrested and brought to court for an application to have the bail rescinded (withdrawn) and the accused to be kept in custody (see sections 66 and 68 of the Criminal Procedure Act). This is usually quite simple because there is almost always a condition to bail that the accused does not contact or interfere with state witnesses.

7.4 Law enforcement in cases of intimidation

In some cases it may be sufficient simply to revoke bail but, in general, if a witness is threatened it should be recognised as a criminal offence in its own right. In the absence of other leads, investigative steps could include visiting suspects and asking if they know anything about the intimidation.

If there is sufficient evidence, the people responsible for the intimidation should be charged. This may be under the Intimidation Act, 72 of 1982 (see Focus Topic 5 on page 93) or, for instance, for attempting to defeat the ends of justice or for assault (a threat of an assault *is* an assault).

Responding to cases of intimidation is important, not only in terms of the individual case but also in sending out a message that the police take intimidation seriously. As your community begins to see that people are charged for making threats, so their confidence in your ability to protect them will grow. And criminals will realise they cannot get away with threatening witnesses.

7.5 Help them find a safer place to stay

Check with the witness whether there is a friend or family member where they can stay for a while, where they may feel safer. Of course, the witness may be unable to do this if they have family members who they are looking after. They may also be reluctant to do this if they are afraid that someone may vandalise their home.

7.6 Finish the investigation quickly

Finish the investigation as quickly as possible. As a prosecutor said:

Investigations take a long time and provide the accused with plenty of opportunity to intimidate witnesses.

The longer the case drags on, the more time the witness will have to worry and the more time the suspect may have to carry out acts of intimidation.

7.7 Ask witnesses to keep a journal of events

It can help to ask witnesses to keep a detailed journal of events that describe any incidents where they feel threatened or afraid, and that records the time, date and place where they occur. This can help you assess what the actual threats are that the witness faces, and therefore enable you to decide how to respond to the intimidation. In addition, the journal may be useful if the prosecution needs to apply for bail to be withdrawn, or if you want to lodge charges against the person responsible for intimidating the witness.

7.8 Protective custody

In very serious cases, and with the witness's permission, you can put the witness in protective custody. This is provided for in terms of section 185 of the Criminal Procedure Act if, in the opinion of the Director of Public Prosecutions, the witness will be tampered with, will be intimidated or may abscond. This period ends on the last day of the trial unless the directorate orders an earlier release, or the proceedings have not started within six months of the date of detention. This is a drastic measure, though, and the witness must consent to it.

7.9 Other ideas

Some other ideas are:

- Increase police patrols in the witness's area.
- If the witness has a private security company, notify them that the witness has been threatened so that they can conduct routine patrols and also make sure they respond immediately to any panic alerts.
- Sensitise radio control to the fact that the

witness has been threatened so that they respond immediately to any calls from the witness.

- If the witness is being harassed by phone, suggest they change their phone number.

8. PROTECTION AT COURT AND IN COURT

Some of the steps you can take to protect and support witnesses who are afraid of attending court include:

- Collect witnesses under threat and transport them to court yourself.
- Encourage them to have someone, such as a friend or other supporter, accompany them while they are waiting at court, and also to sit in court when they are giving evidence. However, if this person could also be a witness in the case, this will not be possible, and they also must not discuss the case until all of them have testified.
- If the witness does not have someone that can come to court with them, find out if the community police forum or Victim Empowerment Programme can arrange for volunteers to accompany the witness while they are at court.
- If these measures are not possible, or are likely to be ineffective because of the seriousness of the intimidation, then stay with them, or ask one of your colleagues to stay with them, to make sure they are not harassed.
- Keep witnesses on standby to reduce the amount of time that they are at court and can be intimidated by the accused. If your police station is close to the court building, you could consider allowing the witness to wait in your office or at the station (provided they do not find this traumatic). You can then give the prosecutor your telephone number so that the witness is only called when actually needed.

At the court you can also make use of special facilities that may exist, such as:

- Taking the witness through a separate entrance into the courtroom.
- Making use of special witness waiting rooms. (Where these do not exist, you could ask the prosecutor to provide a separate waiting room from that used by the accused, their friends or family.)

The Criminal Procedure Act provides that evidence must be given in the presence of the accused (section 158), and that witnesses are to testify orally unless they are mute (section 159). But note that:

- Section 153(2) of the Criminal Procedure Act provides for trials to be held *in camera* if there is a risk of harm to a person as a result of them testifying in court. This means that people other than the accused and legal representatives are excluded from the court, and that the identity

of the witness may not be revealed.

- In addition to the power of the court in terms of section 153 to prohibit publication of information on the identity of witnesses, section 154 also provides for limits on the media's right to report the name or any other details of a witness younger than 18 or a witness (especially the victim) in sexual violence cases. Ask the prosecutor to make sure that these provisions are enforced. This will help you to protect the identity of these witnesses.
- Section 158(2) provides that a witness may give evidence by means of closed-circuit television, if such facilities exist at the court.
- In terms of section 170A, the prosecution may also request that witnesses under the age of 18 be provided with the assistance of an intermediary for the purpose of testifying.

Sections 153 and 158 are usually used in relation to cases involving child witnesses or sexual offences, but they can also be used to

5 THE INTIMIDATION ACT, 72 OF 1982

This Act was passed during the height of apartheid, and was really aimed at punishing those who intimidated people because of their political beliefs and membership of political parties. Although it is controversial as a result, it is still law and can be used for intimidation involving **violence or threats of violence**, not just political intimidation.

Section 1 defines the crime. It says that anyone who unlawfully, and with the intention to compel or induce someone to do or not do something or to abandon a particular standpoint:

- assaults, injures or causes damage to the person; or
- in any way threatens to kill, assault, injure or cause damage to the person (or another person, such as a family member)

will be guilty of an offence and liable for a sentence of

R20 000 (which will be *much* more nowadays) or 10 years in prison or both.

It is questionable, though, whether the Act can be used when the threat is to your witness's *property*.

6 INTIMIDATION OF DEFENCE WITNESSES

It is not only witnesses for the prosecution who can be intimidated. A defence witness, particularly a vulnerable person, may be intimidated by the police or prosecution into remaining silent or distorting his or her evidence. A defence witness may also be intimidated by other people. For example:

Mr Sithole is a gang member. One night while he was out with three other gang members, they found a girl walking alone and raped her. Mr Sithole did not actually take part in the rape — in fact, he tried to stop the others

protect witnesses who are in danger or have been intimidated. Even though the accused will know the identity of the witness, in some cases sections 153 or 158 may be of help in protecting the witness and helping them to feel safe.

9. PROTECTION AFTER THE END OF THE TRIAL

Intimidation and the danger to witnesses don't always stop at the end of the trial. Where an accused is acquitted, the risk of retaliation may increase. And even where they are convicted, they can still arrange for gang members, family or friends to take revenge on their behalf. At the same time, the case will be closed as far as you are concerned, and you will have new witnesses to worry about.

For witnesses on the witness protection programme the end of the trial may be a frightening period because the protection they receive in terms

of the programme is likely to come to an end. If you believe that this is likely to expose the witness to serious danger you should take it up with the witness protection unit at the National Prosecuting Authority and ask them to consider longer-term options, such as providing new identities and relocation.

More generally, when a witness reports to you that they are still being harassed, you could try the following:

- Remember that intimidation is usually a crime (either the common law crime of assault or under the Intimidation Act). When someone intimidates your witness after the trial, you should ensure that they are arrested and charged.
- If convicted people phone the witness from prison to harass them, the issue should be taken up with the Department of Correctional Services so that they can limit or control the phone calls of people in custody.

from raping the girl. However, the girl recognised him and he was caught and tried. While under investigation, and during the trial, he refused to say who else was involved or to offer a defence because he feared what the other gang members might do to him. Even someone who may go to jail as a result may be intimidated against testifying in such cases.

When dealing with accomplices who may give evidence for the state, do *not* make promises you cannot (or do not intend to) keep. For example, if you offer an accused a deal whereby you will move them to a prison closer to their family in return for their evidence, you should do so or you run the risk that the person will refuse to testify for the state when called on to do so.

7

DEFENCE INTERVIEW OF STATE WITNESSES AND THE RISK OF INTIMIDATION

As noted in Focus Topic 3 on page 13, in the Shabalala case the Constitutional Court held that the defence, under certain circumstances, may request to interview state witnesses prior to the trial. However, the judge also held that the Attorney-General could refuse to grant such permission if there are reasonable grounds to believe that the consultation may lead to the intimidation of the witness or a tampering with his or her evidence, or that it may lead to disclosure of state secrets or the identity of informers.

- You can also provide the witnesses and victims with information if the accused is up for parole or is about to be released. The National Guidelines for Correctional Services (dealing with sexual offences) suggest that this be done in all sexual offence matters. In certain circumstances the Department of Correctional Services is obliged to inform victims (but not other witnesses) or their next of kin (where the victim is deceased) of Correctional Supervision and Parole Board hearings (see section 75(4) of the Correctional Services Act, 111 of 1998), and the victims or their next of kin may make written representations to the board.

FOR DISCUSSION

What else can you think of to protect witnesses from intimidation once the trial is over?

FOR DISCUSSION

- What are the main types of intimidation that your station or unit has to deal with?
- What are the main steps that your station or unit can take to deal with intimidation more effectively?

8 WITHDRAWAL OF STATEMENTS

In some cases police officers are approached by complainants who want to withdraw the charge against the accused. In many such cases the reason is that the witness has been intimidated by the accused, although they will usually deny this. (Other reasons include that the parties have made up, that “compensation” has been paid, or that the complainant can no longer be bothered with pursuing the case.)

Where this happens, it is important to check why the person wants to withdraw the charge and, if it appears they have been intimidated, to see what you can do to reduce the danger.

It is also important to note that in major cases (especially rape) the police officer is not allowed to withdraw the charge — only a prosecutor is allowed to do so.

In domestic violence cases, only a prosecutor can withdraw the charge and then only if they have been authorised to do so by the Director of Public Prosecutions or someone authorised by the Director.

In all cases, though, you should remind witnesses that a criminal case is a matter between the state and the accused. Just because a victim wants to withdraw the charge does not mean that the charge will be withdrawn. Instead, take a statement from the victim in which they clearly state why they want to withdraw the charge. Then advise them that you will send the docket, with their statement, to the prosecutor for a decision.

PROVIDING INFORMATION TO WITNESSES

1. INTRODUCTION

All victims and most witnesses want information about their cases. However, it is not always easy to provide this information and to keep witnesses and victims informed. In some areas, there are no telephones, faxes, computers or even street and postal addresses. In rural areas, in particular, roads are bad and there are few officers and even fewer vehicles to allow for personal visits.

While it can be difficult, keeping victims and witnesses informed of key events and developments is crucial to improving the cooperation of witnesses, and to improving the effectiveness of the criminal justice process as a whole. In this chapter we look at:

- Why it is important to keep victims and witnesses informed.
- The type of information victims and witnesses need.
- Some ways of doing this in difficult situations.

2. WHY IS IT IMPORTANT TO KEEP WITNESSES INFORMED?

The main reasons for providing information to victims are:

- It is necessary for the criminal justice process to function effectively.
- It contributes to victim empowerment.
- It improves the image of the criminal justice system and builds respect for the law.

2.1 Providing information improves the effectiveness of the criminal justice process

Providing information to victims and witnesses is necessary for them to be able to play their part in the criminal justice process at relevant points. For example:

IN THIS CHAPTER

This chapter looks at providing information to witnesses:

- Why providing information improves the effectiveness of the criminal justice process and other reasons why it is important to provide information to witnesses.
- The different types of information that witnesses and victims need.
- Providing information in practice.
- Communicating bad news, including news about someone's death and dealing with the closing and withdrawal of cases.
- The question of the right of victims to provide information and to be consulted.

There are also special inserts on:

- Compensation and restitution.
- Good practice pilot project: A, B and Z victim empowerment cards.
- Withdrawal of charges.

- They have valuable information that can be used during bail hearings.
- If the victim and witnesses are to testify at the trial they obviously need to be told when it will take place (they will usually be subpoenaed or warned to be at court).

2.2 Information can empower victims

Providing victims with information also serves as a way of confirming that they are key role-players in the criminal justice process. Information on counselling and support services that are available, on how to claim a disability grant and coping with the consequences of disability, or information on claiming insurance will help victims to avoid further victimisation. They may also feel empowered if they are able to see how the information *they* have provided assists the criminal justice system in solving and prosecuting cases.

2.3 Improving the image of the criminal justice system and respect for the law

Providing information (along with other victim support or empowerment measures) will lead to victims and witnesses developing a greater respect for the criminal justice system and the law. Improving the public image of the criminal justice system will encourage better reporting and witness cooperation.

3. WHAT INFORMATION DO VICTIMS (AND WITNESSES) NEED?

The Minimum Standards on Services for Victims of Crime states that victims can request to be informed about:

- The case number.
- The name and contact details of the investigating officer.
- The arrest of a suspect.
- The date of any identification parade they have to attend.
- The court case number.
- The date of bail hearings.
- The outcome of the bail hearings.
- The outcome of the investigation of their case.
- The outcome of the prosecution.
- Any decision to withdraw or seriously alter the charges.
- Whether they will be required to attend the court proceedings and the date(s) on which these take place.
- The date of the trial and the verdict or other result.
- The date of sentencing and the outcome.
- Whether the accused has appealed against conviction or sentence and the outcome of the appeal.
- How and when they can claim confiscated property.
- What services are available to address their particular needs and how to access such services.

1 SERVICE CHARTER FOR VICTIMS AND MINIMUM STANDARDS

The rights of victims to receive and offer information are emphasised by the Service Charter for Victims of Crime in South Africa and the Minimum Standards on Services for Victims of Crime (see pages 15–17 and Appendix A).

2 COMPENSATION AND RESTITUTION

Compensation and **restitution** are also emphasised by the Service Charter for Victims of Crime in South Africa and the Minimum Standards on Services for Victims of Crime (see pages 15–17 and Appendix A). We look at each of these on pages 98 and 99:

Whether or not victims or other witnesses request it, it will be crucial to provide them with some of the information referred to above if they are going to play their role at relevant points in the criminal justice process, such as at identification parades, the bail hearing or the trial. In addition, you should:

- Advise witnesses that they can ask the prosecutor to request compensation or restitution for them in appropriate cases (see Focus Topic 2 on pages 97–99).
- Tell them how to claim witness fees at court.
- Invite the victim to contact you if they need any information.
- Explain court procedure and what they can expect during the trial.
- Complete SAP 62 if sentences of longer than two years are given. This information will be used by the Department of Correctional Services to notify the victim of the release of the offender and of their right to attend parole board hearings.

It is quite clear from the list above that to provide witnesses with *all* information will be very difficult — especially when you are overworked or work in areas where communication is difficult. Note, however, that most cases do not go to trial, and so it is not necessary to provide all this information in all cases. Victims may also have a much greater interest in the trial and what progress is being made than other witnesses (who may only need to know the date on which they have to appear in court). So, it may be appropriate to prioritise providing information to the victim, while the information that is provided to the witness will be that which is important to their participation in the case and to their safety. Lastly, not all people may want the same level of information. In some cases, such as minor cases, they may not have such a great need as in more serious cases.

On the other hand, keeping the victim (and witnesses in some cases) informed of key dates can also help you with your work. For example,

Compensation

Victims are entitled to claim compensation and restitution in terms of sections 300 and 297 of the Criminal Procedure Act.

- Section 300 has the same effect as a civil judgement, allowing for compensation to be paid but only in cases where there is “damage to or loss of property (including money) belonging to some other person”.
- Section 297 allows for an order of compensation to be made by a presiding officer as a condition for the suspension or postponement of a sentence. As an alternative to compensation the court may also order the convicted person to provide the victim with “some specific benefit or service in lieu of compensation”.

Because section 297 can only be used when the sentence is one that is deserving of suspension or postponement, it may be most useful in cases

involving minor offences where such sentences are regarded as more appropriate. But this does not mean that it can never be used in more serious offences (for example, the court could sentence a person to imprisonment for 10 years with the sentence suspended for five years, provided that a certain amount of compensation is paid).

It is up to the complainant to request a compensation order. Because most people are unaware of these provisions they are very rarely used. Another obstacle is that the accused may be destitute and unable to pay compensation or restitution. Although it is not specifically the duty of the police, you should still inform victims of these rights. In appropriate cases you can also remind the prosecutor to request such an order.

In some affluent countries there is a victim compensation fund through which the state pays compensation to victims of crime. Such a fund does not exist in South

your investigation will be less difficult if suspects who are likely to threaten witnesses are not given bail. Ensuring that the victim or witness presents information on any incidents of intimidation to the prosecutor will help to ensure that the accused person does not get bail.

As a result, it is recommended that you consider the list above in light of the circumstances of each case. You may ask a victim what they want to know, and you may also give more information in cases involving violence or more serious offences.

4. PROVIDING INFORMATION IN PRACTICE

Recently there have been experiments in South Africa with using information technology to inform witnesses about the progress of cases. But these initiatives have not yet resulted in changes in the way that things are done and, therefore,

FOR DISCUSSION

Should the victim empowerment cards just be used for victims or should they be used for other witnesses, too?

traditional means (like telephone calls, letters and personal visits) are the main ways of providing information to witnesses.

Although victims especially seem to require a lot of information, you are not expected to provide them with a progress report every day or week. Instead, focus mainly on the key events (as set out above).

Africa and victims can only be compensated by means of sections 297 or 300 or by civil litigation.

Restitution

Restitution is where the court, after a conviction, orders the offender to give back to the victim the goods that he/she is found guilty of having unlawfully taken from the victim, or to repair the property or goods that he/she has damaged. This is intended to restore the victim to the position that he/she was in prior to the offence.

3 GOOD PRACTICE PILOT PROJECT: A, B AND Z VICTIM EMPOWERMENT CARDS

In March 2002 the SAPS launched a project using **victim empowerment cards**. These are actually two cards (they look like postcards so that they can easily be mailed):

- Card A is issued by the officer who records the details of the complaint. It states the case number and the name and contact details of the investigating officer.
- Card B is used to give regular feedback (and a copy of it is kept in the docket).

There is also a Z card that is aimed at the police and deals with the Domestic Violence Act, although this card says that victims will only be contacted by the investigating officer when significant progress is made in the case.

4 WITHDRAWAL OF CHARGES

- Section 18(1) of the Domestic Violence Act states that prosecutors may only withdraw charges relating to the contravention of a protection order if authorised to do so by the Director of Public Prosecutions.

5. COMMUNICATING BAD NEWS

In some cases you will need to provide information that victims, witnesses or their families will not want to hear. In the most serious cases you will need to explain to people that a family member has died, has been raped or seriously injured. In other cases the news may be that the suspect cannot be found, that the case is being closed or that the prosecutor has decided to withdraw the charges. In such cases you need to remember what the person you will be talking to will feel, and you will have to communicate this information with as much sensitivity as possible.

5.1 Where someone died

The Service Charter for Victims and the Victim Empowerment Programme give the responsibility for reporting deaths to investigating officers. They say:

- If someone died during the crime the investigating officer must personally inform the next of kin. (If the next of kin do not stay in the same locality as that in which the incident happened this may be a bit difficult.) You should also help them during the identification of the body. Remember, next of kin will be upset by the death and may need assistance of some kind, including being referred for trauma counselling.

When you are telling someone such awful news, you should:

- Keep the message as short and clear as possible. You may need to repeat it as people often do not take it in the first time they hear it.
- Whenever possible, tell people in private. If this is at the person's place of work or at a hospital, try and find a private room where you can speak to them.
- If possible, use warm and non-technical language.

- There are also restrictions on the withdrawal of charges in relation to other types of serious offences.

5 CRIME PREVENTION ADVICE FOR VICTIMS

People who have been victims of crime may run the risk of being a victim of a similar crime in the future. For example, a house that has been burgled may have been targeted partly because of the secluded place where it is located, or because it is easy to gain access to.

It may be especially useful for victims of some crimes to receive advice and encouragement on how to prevent similar crimes happening. For example, where a person's house has been broken into a few times, you might recommend that they improve their locks or burglar

guards. This will not only help them to feel safe but will also reduce the risk of them becoming a victim again.

However, it is important to note that, especially with crimes involving violence and sexual assault, such advice might sound like you are blaming the victim for the crime and can even be experienced by them as secondary victimisation (see Focus Topic 6 on page 16). For example, even saying to a rape victim that she was walking in a dangerous place may sound to her as if you are saying it was her fault.

In general you should avoid offering anything other than very practical tips, and avoid doing so at all in particularly sensitive cases.

5.2 Closing and withdrawing cases

A case may be closed or withdrawn in a number of different ways:

- The police may close the docket if there is not enough evidence for them to identify a suspect or refer the case to court.
- Sometimes a case is closed because the complainant withdraws the allegations and requests that the case be closed.
- The prosecutor can withdraw the case if the accused has not yet been asked to plead to it (section 6(a) of the Criminal Procedure Act). In such a case the accused may still be charged at a later point (also see section 342A of the Criminal Procedure Act).
- If the defendant has already pleaded to the charges the Director of Public Prosecutions may also stop the prosecution. In such a case the court will acquit the accused person of the charge (section 6(b)).
- Section 174 of the Criminal Procedure Act also provides that if, at the end of the presentation of the state's case, the judge or magistrate is of the opinion that there is no evidence that the accused committed the offence, it may return a verdict of not guilty.

Whatever the reason for the case being closed or withdrawn, you will need to explain this to the victim. If the police have closed the case it may be appropriate to explain that the docket will be closed unless new information emerges. You may also recommend that they try civil remedies and advise them how to get legal aid.

At the very least you should try to reassure the victim that the act of reporting the crime was the right thing to do, and that the police appreciate the trouble they have gone to. If you are using crime reports to evaluate crime patterns so that you can improve crime prevention or detection measures, tell them that the reporting will help with this work.

6. INFORMATION FROM THE VICTIM

In recent years more and more emphasis has been put, in South Africa and in other countries, on giving victims a bigger role in the criminal justice process. This reflects the principles of the 1985 United Nations Declaration on Basic Principles of Justice for the Victims of Crime and the Abuse of Power which states, among other things, that:

[T]he views and concerns of victims should be presented and considered at appropriate stages of the process.

One recent measure that emphasises the views and concerns of victims is section 105A of the Criminal Procedure Act. The section, which was inserted by a 2001 amendment to the Act, provides for "plea and sentence agreements" (often referred to as plea bargaining agreements) between the prosecution and the accused person. Section 105A(1)(b)(iii) requires that the prosecutor take into account the interests of the complainant. The prosecutor must also provide the complainant with the opportunity to make representations regarding the content of the agreement, as well as regarding the inclusion in the agreement of conditions relating to some form of compensation.

There are also various situations where the police receive information from victims (and other witnesses) and also need to take into account their views and concerns. The police, for instance, have an obligation to take a statement from the victim and other witnesses when a crime is reported, and this also means that they must accept other information from the victim or witness in the event that new information regarding the offence becomes available. As emphasised in Focus Topic 2 on page 25, during initial contact with witnesses and victims it is extremely important to obtain proper contact information from them. There is also an obligation on witnesses to keep you informed if they change their address (see Focus Topic 2 on page 55).

The police also need to pay attention to any information from witnesses about acts of intimidation against them, or if they believe they are in danger. This information needs to be conveyed to the prosecutor for the bail hearing, or the possible need later to apply for bail to be rescinded (see Chapter 9).

The SAPS National Instruction on Sexual Offences states that the investigating officer must take an impact statement from the victim before the trial starts (see Focus Topic 6 on page 48). The Department of Justice's Minimum Standards on Services for Victims of Crime also states that when the police take the statement from the victim, "you will be given the chance to explain in your statement how the crime has affected you" (2004, p.6).

SUPPORTING WITNESSES AT COURT

IN THIS CHAPTER

This chapter looks at how to support witnesses at court and in relation to giving evidence. It examines:

- When witnesses are required at court.
- Problems witnesses face at court.
- How to try to minimise the frustration and distress of witnesses at court.
- The issue of compensation and restitution if the accused person is convicted.

The question of whether witnesses can be given money for transport in advance is discussed in a focus topic.

1. INTRODUCTION

For people who have not been involved in the criminal justice process before, going to court can be an unsettling and even frightening experience. Not only are court buildings often not a comforting place for witnesses to pass time in, but they may be afraid of facing the accused person, of impatient interpreters or magistrates, or of being cross-examined by lawyers.

Although the main responsibility for preparing and protecting witnesses at court falls on the prosecutor and the court itself, there are still important things you can do (and may be expected to do) to assist witnesses with participating in the criminal justice process.

2. WHEN IS WITNESS ATTENDANCE REQUIRED AT COURT?

Witnesses obviously need to attend court in order to give evidence at the trial, but their presence may also be required at the bail hearing. This may be because they can provide information to the court that is relevant to helping the court evaluate whether the accused may try to influence or intimidate them, as well as in relation to whether there is a risk that the accused may abscond. In this regard the Minimum Standards on Services for Victims of Crime states that the prosecutor will:

Ask you [the victim] to disclose any information relevant to a decision in connection with the release of the accused on bail, for example, that the accused is interfering with evidence or witnesses or that the accused is intimidating or threatening you or your family or that the accused will not stand trial; and, if appropriate, the prosecutor will call you to give evidence in this regard at the bail hearing.

Bail in relation to witness intimidation is discussed in more detail on page 91.

3. PROBLEMS WITNESSES FACE AT COURT

A survey of 456 witnesses, conducted at three magistrates' courts in Gauteng in 2003, indicates that the following are some of the main causes of the dissatisfaction that witnesses experience:

- **Time:** the length of time spent waiting at court combined with the large number of remands, as a result of which witnesses in many cases have to attend court several times, with the case sometimes being remanded again after the witness has already waited at court for several hours.
- **Officials:** dissatisfaction with the way in which they are treated by various officials, especially police, magistrates and interpreters.
- **Facilities:** the quality of facilities, including waiting facilities, toilets and taps for getting water.
- **Intimidation:** a feeling of not being protected.
- Some complaints also relate to the fairness of the court process, the costs of attending court, and even of being hungry and not having food to eat.

Witnesses may also suffer a loss of income, particularly if they are self-employed, from attending court. Those who are employed may also suffer repercussions from their employer as a result of not being at work.

From David Bruce and Mark Isserow's 2005 publication, "Putting people first? A survey of witness satisfaction in three magistrates' courts in Gauteng", online at <http://www.csvr.org.za/papers/papdbmi.htm>.

4. REDUCING THE FRUSTRATION AND DISTRESS OF WITNESSES AT COURT

Attending court is likely to be inconvenient to witnesses, and part of the process, such as giving

evidence in court, may be difficult for them. It is not possible to guarantee witnesses a court experience that is free of stress. But by working with others, including the prosecutors, court managers and others involved in victim support, you can try and ensure that the process happens as smoothly as possible.

4.1 Informing witnesses and their employers of attendance at court

Witnesses are usually called to court either by means of a subpoena or by being warned to appear in court by the judge or magistrate.

If they are already at court and the case is postponed or held over to the next day, the prosecutor may call the witnesses into the court and the judge or magistrate will warn them to appear in court. If the witness doesn't appear they may be arrested and fined for contempt of court.

Where witnesses have not yet appeared in court, or if they were not warned, it will usually be necessary to subpoena them. Copies of the subpoena (form J32) are usually issued and stamped at court under instructions from the prosecutor. However, section 179(1)(b) of the Criminal Procedure Act also authorises police officials to compile a written notice instructing a witness to appear at court, which has the same authority as a subpoena issued at court.

Whoever the subpoena is issued by, it is the job of the police to serve the subpoena on each witness. If the witness is not at his or her home or place of residence the subpoena can be served on another person at one of these locations, as long as the person is clearly over 16 years of age.

Subpoenas are supposed to be issued well in advance (14 days) of the court hearing, and this should be done wherever possible.

When witnesses have merely been warned to appear in court, or in any other situation where they

have not actually been given a copy of a subpoena, they should be given a letter saying when they are required to attend court that they can give to their employer. In some cases, it may help to actually explain this to your witness's employer.

If you are able to deliver the subpoena personally this will also allow time to brief the witness on what to expect at court.

In order to ensure that they are able to get to court it may be helpful to check that they know the address of the court (otherwise they may go to the wrong court) and the cheapest way of getting there.

It may also be helpful to give them the telephone numbers of the prosecutor (or state advocate) dealing with the case (or the senior or control prosecutors) in case they have questions or some difficulty with getting to court.

4.2 Preparing witnesses for court

Although the prosecutor is expected to prepare witnesses for court (for instance, by providing you with a copy of a statement for you to read in order to refresh your memory), police can also help by explaining some of the basics of the court process.

Some of the issues that you may cover include:

- Advise them to bring something to eat and drink, a magazine or book to read and some toilet paper.
- Advise them not to discuss their case with other witnesses when they are at court, and that they cannot sit in the courtroom to listen to the proceedings in the case in which they are appearing until they have given their evidence.
- Tell them where they can go if they need information or advice at the court.
- Prepare witnesses for cross-examination. Tell them things like: "If they ask you, tell them the truth. Don't backtrack or be intimidated by the lawyer's aggression towards you. If you don't

hear a question, ask for it to be repeated. If you don't know the answer, say so. If you can't remember, say so — it's not the end of the world."

For child witnesses, the Department of Justice pamphlet "Busi goes to court" (details in the Resources box on page 49 and in the list of references at the back of this handbook) may also be helpful.

4.3 Anxieties about attending court, intimidation and facing the accused

When witnesses are frightened of attending court, it may be for a range of different reasons: they may be afraid of having to face the accused, or his/her family and friends; they may be afraid of being cross-examined; they may even be afraid of the magistrate or the interpreters. The appropriate response will obviously depend on the reason why they are afraid, and may vary from allowing them to express their worries and offering some type of reassurance, to focused steps intended to ensure that they are protected and feel secure.

Suggestions for steps that can be taken for witnesses who are afraid of, or may be in danger from, the accused or his or her associates are discussed in Chapter 9. See pages 92 and 104 on intimidation at court.

4.4 Transport, access and witness fees

In general the assumption is that witnesses will make their own arrangements to get to court. However, this may be especially difficult for some witnesses, including, of course, child witnesses, the elderly or disabled, and perhaps some who do not have the money for even minimal transport costs. In such cases it will be appropriate to use a police vehicle, or another vehicle you have access to, to transport the witnesses to court.

Elderly, visually impaired and physically disabled witnesses may also require special assistance with access to the court (discussed on pages 49–53).

In particular, if witnesses are not provided with transport to get to court it is important that they be informed that they are entitled to witness fees. Witnesses who have a statement in the docket and who are warned or subpoenaed to come to court, are generally entitled to receive witness fees, irrespective of whether they testify or not. The witness fees are calculated according to the distance they have to travel. The criteria used to determine how much the witness is to be paid are largely based on local transport fares. Witnesses who live in the vicinity of the court may not be entitled to payment. Payment may also be made for hotel and other accommodation expenses, excluding liquor, that are incurred by witnesses coming from faraway areas. Loss of income may also be reimbursed to witnesses who lose their earnings due to being subpoenaed to appear in

court. The prosecutor fills in a witness fee form, which is sent to the authorising senior prosecutor with the case docket and charge sheet. The form is then sent to the clerk of the court where the fees are paid out. In some circumstances it may be appropriate to assist the witness in obtaining their witness fees.

4.5 Minimise the time witnesses spend at court

One factor that serves to demoralise witnesses and discourages people from wanting to serve as witnesses is the amount of time witnesses have to spend at court. Once witnesses are called to court they often have to wait for many hours before actually being called to give testimony. In addition, sometimes after they have had to wait at court for a long time, the case is remanded and they have to come back to court. Sometimes this process is repeated a number of times.

The task of ensuring that witnesses do not have to spend unnecessary time at court is mainly the job of the prosecutor. But prosecutors sometimes do not attend to this — perhaps because they are too busy — and there may be things that you can do in this regard. If it appears that the witness will not be needed at court that day, clarify this with the prosecutor and arrange for them to be warned or subpoenaed about the day on which they will actually be needed.

Where possible — and especially with witnesses who are self-employed, who are elderly, children, expert witnesses, and those who are at risk of violence or intimidation — you can also try to reduce the time spent at court by agreeing to call them shortly before they are to testify. Of course, keep in mind how long it will take them to get to court when doing so, and be sure to inform the prosecutor of what you have done (or they may believe the witness is not coming and apply for a postponement).

1 CAN WITNESSES BE GIVEN MONEY FOR TRANSPORT IN ADVANCE?

Section 181 of the Criminal Procedure Act, 51 of 1977 allows for transport fees to be paid to a witness who has to travel to another magisterial district to give evidence in advance and when the subpoena is served on them. (This is sometimes done by way of a rail voucher that allows them to travel by train for free.) However, this first has to be demanded by the witness. Where you have a witness in such a situation, you should advise them of this.

Arrange for appropriate cases to be prioritised, especially if the witness is a foreigner and will be leaving the country soon. Where people have health problems, discuss prioritising the case with the senior public prosecutor or the state advocate (in High Court trials).

5. IF THE ACCUSED PERSON IS CONVICTED: COMPENSATION AND RESTITUTION

If the accused is convicted, he or she may be ordered to pay some form of compensation or restitution to the victim. In order for this to happen, however, the victim has to ask the prosecutor to apply for a compensation order to be made as part of the sentence (see Focus Topic 2 on page 97). If the victim has made an impact statement (see page 46 and Focus Topic 6 on page 48), this will also be relevant at this stage and should assist the court in addressing questions to do with appropriate compensation.

EXTRACT FROM PART III OF THE MINIMUM STANDARDS ON SERVICES FOR VICTIMS OF CRIME

MINIMUM STANDARDS PERTAINING TO THE POLICE

Note that the following are a series of excerpts from the Minimum Standards on Services for Victims of Crime. That document is aligned to the Service Charter for Victims of Crime and is intended to set out what victims can expect from the police, prosecutors, the presiding officer, court staff, victim support or social-service providers, health care workers, correctional services officials and officials from educational services. The excerpts presented here are only those relating to the police.

The full Minimum Standards on Services for Victims of Crime is available at <http://www.doj.gov.za>. Go to "Documents" and then "Policy Documents".

1. THE RIGHT TO BE TREATED WITH FAIRNESS AND RESPECT FOR YOUR DIGNITY AND PRIVACY

1.1 You can expect that all role-players will treat you fairly, with respect for your dignity and privacy, and in a sensitive manner.

If a crime has been reported to the police, you can expect that:

1.2 the crime will be investigated;

1.3 if you have reported the crime by contacting the police, they will respond to your report as quickly as they can;

1.4 measures will be taken to minimise any inconvenience to you;

1.5 a police official will take your statement and

complete the forms necessary to register the crime;

1.6 you will be referred for medical attention or counselling if required;

1.7 if you are a victim of sexual violence, you will be interviewed in private by a member of the police;

1.8 you will be interviewed in a language that you understand, and if the person speaking to you cannot speak a language you understand, you may ask for an interpreter; and

1.9 you may ask to be interviewed by a member of the police who is of the same sex as yourself and, if available, your request will be granted.

2. THE RIGHT TO OFFER INFORMATION

During the investigation of the case it can be expected that:

2.1

a. a police officer will take your statement and ask you to read and confirm its contents by signing it;

b. if you cannot read, you should inform the police, in which case the police officer will read the statement to you and require you to confirm its contents by signing it or by placing your thumbprint on it;

c. if an interpreter is available and you wish your statement to be read to you in a language you understand before confirming it by signature or thumbprint,

an interpreter will be engaged for this purpose.

- 2.2 if you realise that your statement is incomplete or incorrect, you will be allowed to add to or amend your initial statement, or to make a further statement;
- 2.3 you will be given the chance to explain in your statement how the crime has affected you, and, where relevant, your interests will be taken into account;
- 2.4 you will be informed that you may request a copy of your statement;
- 2.5 the police will ask you for details of your loss, damage or injury, and this must be recorded;
- 2.6 you will be required to keep the investigating officer informed of your address, contact particulars and whereabouts until the investigation and the trial have been finalised; and
- 2.7 you will be required to inform the investigating officer if the accused interferes or tries to interfere with the investigation of the case, if he or she will not attend the trial or if you are threatened by him or her.

3. THE RIGHT TO RECEIVE INFORMATION

If a crime has been reported you can expect that the police will inform you:

- 3.1 of the nature and purpose of your statement;
- 3.2 of the name and telephone number of the investigating officer assigned to the case and

the police case number (CAS, which stands for Crime Administrative System number);

- 3.3 of the possibility of instituting a private prosecution, at your own expense, if the Director of Public Prosecutions declines to prosecute in the case; and
- 3.4 on request, of the details relating to the following:
 - a. the arrest of a suspect;
 - b. whether you must attend an identification parade and the date of the parade;
 - c. the court case number;
 - d. the dates of bail hearings;
 - e. the outcome of the bail hearings (whether the suspect is to be released on bail);
 - f. the progress of the investigation and prosecution of your case;
 - g. any decision to withdraw or alter the charges substantially;
 - h. whether you will have to attend the court proceedings, and the date or dates of those proceedings;
 - i. the trial date and the final result;
 - j. the date of sentencing and the outcome;
 - k. whether the accused has appealed against conviction or sentence and the outcome of the appeal;
 - l. how and when confiscated property can be reclaimed; and

- m. what services are available to deal with your particular needs, and how to make use of those services.

4. THE RIGHT TO PROTECTION

When a crime has been reported to the police:

4.1 and you are a witness and you or a member of your family is being threatened or your life is in danger, you must immediately report the matter to the police or to the senior public prosecutor at the court and apply for witness protection, in which case you can expect that:

- a. the threat against you will be investigated by the police;
- b. in the event of the threat being confirmed, you will be required to enter into an agreement with the Witness Protection Unit before you are taken onto the Witness Protection Programme;
- c. if you are taken onto the Programme, you must comply with all the rules as set out in the agreement. The information in this agreement will be confidential;
- d. if you do not comply with the agreement you put yourself at risk and may be removed from the Witness Protection Programme;
- e. provision may be made for the payment of allowances while you are on the Programme, as determined by the Witness Protection Act and Regulations;
- f. you will have to give all your financial details to the officials of the Witness Protection Programme, so that the correct allowance is determined;
- g. when accepted onto the Programme, you will be placed in a safe house and

under no circumstances will your address be given to anybody, not even to family members;

- h. after you have testified, you will be served with a notice informing you that you will be removed from the Programme within a reasonable period of time; and

- i. you may contact the investigating officer at the police station or the senior public prosecutor for any further information on the Witness Protection Programme.

4.2 if you do not want the accused to know your personal particulars, you may contact the investigating officer and/or prosecutor and request that the information be withheld from the accused;

4.3 a responsible official will at all times ensure that any property belonging to you and which is being held for evidentiary purposes, is maintained in good condition and returned to you as soon as it is no longer needed; and

4.4 if you are the complainant in a domestic violence case, and it appears to a police officer that there are reasonable grounds that you may suffer imminent harm as a result of a breach of the protection order by the respondent:

- a. you may submit an affidavit to the police outlining the circumstances of the breach by the respondent; and
- b. the police officer will immediately arrest the respondent for contravention of a prohibition imposed by the court under Section 7 of the Domestic Violence Act, Act 116 of 1998.

5. THE RIGHT TO ASSISTANCE

You can expect that the police will assist you:

- 5.1 by making referrals to other service providers for the necessary support and on-site crisis intervention, for example, medical first aid;
- 5.2 by explaining police procedures;
- 5.3 by informing you of your rights;
- 5.4 by treating your safety as a priority;
- 5.5 by preserving evidence;
- 5.6 by giving you advice on crime prevention; and
- 5.7 by stopping the violence at the scene of the crime.

6. THE RIGHT TO COMPENSATION

“Compensation” refers to an amount of money that a criminal court awards you who suffered loss or damage to property (including money) as a result of a criminal act or omission by the person convicted for committing the crime. The compensation award seeks to restore recipients to the position prior to the loss.

If the case goes to court it can be expected that:

- 6.1 the prosecutor and the police will, in appropriate cases, inform you that you may be present at court on the date of sentencing and that you may ask the prosecutor to apply to the court for a compensation order; [...]



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