

Forensic Methods and Techniques



Only study guide for FOR1501



Department of Police Practice
University of South Africa, Pretoria

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INTRODUCTORY ORIENTATION - OVERVIEW OF THE MODULE

Dear Student

Welcome to the first module of Forensic Methods and Techniques. We hope that, as you work through this module, you will come to understand that there is more to the work of an investigator than meets the eye. Forensic investigation is hard work and requires the utmost dedication. Furthermore, it has to be conducted in a systematic way within the law of the land for it to be successful.

Before we continue, critically reflect on the following questions:

- Why have you enrolled for this module?
- What do you expect to learn from it?
- Do you think studying forensic investigation in this way will make you a better investigator?
- If you think so, how do you think this will happen?

You may wonder why we have asked you to consider these aspects. We have done so in order to emphasise that while we may be looking at forensic investigation from a theoretical point of view, it remains a practical field and you will have to be able to apply what you have learnt to practical situations. If you work in the field of corporate, private and public service law enforcement agencies and you administer cases, we hope that this module will help you to develop competencies to investigate crimes or incidents successfully within the ambit of the South African Constitution. We focus on guiding you to be able to

- understand your role as investigator, authorised by a specific mandate to conduct your work in the larger forensic investigation arena (and if you don't have a specific mandate, how to determine this)
- understand the universal principles of investigation despite the changing contexts of public, private and corporate investigations
- assess and identify the nature of an incident or crime scene and to gather

relevant information and evidence in an attempt to reconstruct and understand what happened

- make investigative decisions within the ambit of the Constitution, relevant legislative pieces and policies based on a given scenario
- write a statement
- deliver a professional presentation of evidence at a relevant platform, that is a criminal, civil or disciplinary hearing

To assist you in achieving these goals, we will be using one case study as the backbone to this module, with a number of incidents that branch out of this case study. There will necessarily be some repetition because you need to get a good understanding of the investigative principles, processes and procedures. Please do not become disheartened if you find it difficult to understand some of the concepts that will be discussed, as we will explain them as we go along, to make the learning experience pleasant and rewarding.

Please page through the study guide to familiarise yourself with the layout and structure. The module consists of the following nine study units:

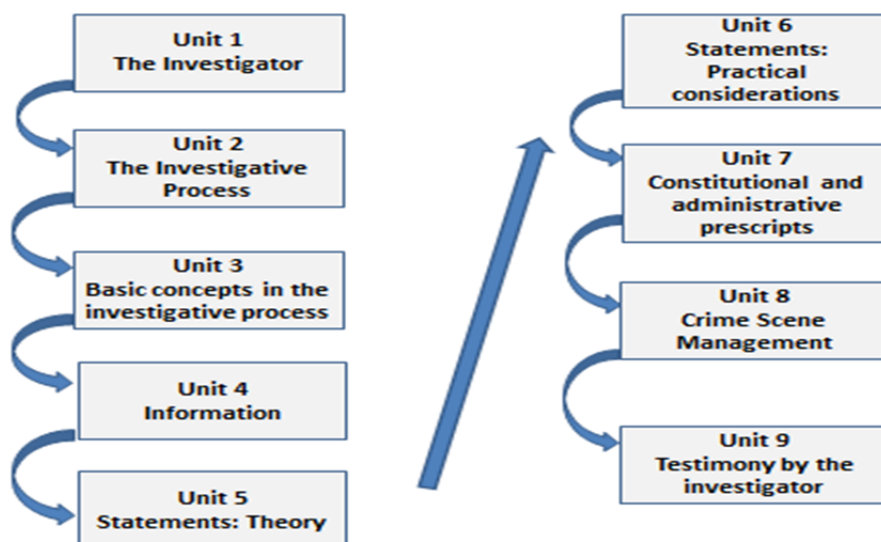


Figure 1. Layout and structure of the module

You will see that there are many activities that have been created to assist you, not only in working through the contents of the module, but also in applying what you

have learnt. Also, you will see that there is a copy of the case study at the beginning of the text, as well as at the back of the study guide. We suggest that you cut out the one at the back of the guide to keep with you as you work through the material. This will eliminate the need to page backwards and forwards as you work.

We strongly advise you to engage with all the self-assessment activities. Doing the activities is vital for your understanding of the module content and for completing the assignments. The examination will be based on similar activities, so you can see that there are both short- and long-term advantages to being actively involved in your own learning and interaction with the study materials.

Please note that the same terminology is not always used in all environments; you may find some terms different from those that you are used to. We have tried to use the most common terms, but there may still be words that could cause confusion. For example, we use the word "statement", which should be seen as referring to a sworn statement, which is also known as an affidavit. Where we think there could be confusion regarding the terminology, we will provide an explanation.

We hope that you will find this module informative and enjoyable.

The development team

The following case study forms the backbone of all of our discussions in this module. Please read it carefully and refer to it whenever necessary. Remember that there is a copy of the case study at the back of the guide for you to cut out and use.

Corporate environment:

M & B Insurance is a successful company situated in Sandton, Johannesburg. The company has a BBBEE status and provides insurance-related services to prominent financial institutions based in South Africa. The Corporate Risk Manager is Mr Luvuyo Mbeta. He is a 43-year-old bachelor and manages the risk profile at M & B Insurance. Cynthia Khumalo is one of the risk officers working in the corporate investigation team. Luvuyo is her team leader. Her responsibilities include, amongst others, the investigation of disciplinary misconduct and/or criminal offences

committed by employees at M & B. Her duties further include the investigation of threats emanating from external sources. Cynthia's close friend and colleague, Melanie Smit, works as an admin clerk at Human Resources and is responsible for procurement and sourcing independent contractors. Her office manager is Mr Reg Abrahams. He has a reputation for inappropriate behaviour towards female employees. He is a heavy drinker with a love for imported whisky. The general maintenance at M & B Insurance is the responsibility of Tupac January and his maintenance staff, Thabo Dube and Klaas van Tonder. Tupac's wife, Evelina January, works as the general assistant at the company.

UNIT 1: THE INVESTIGATOR

1.1 INTRODUCTION

Welcome to the first unit of FOR1501: Forensic Methods and Techniques. As the study guide unfolds, you will see how many so-called "side-issues" there is that impact on the outcome of an investigation. These issues are important and include day-to-day occurrences that affect the way in which you, as investigator, or aspiring investigator, interact with the larger arena within which the investigation of crimes, irregularities, transgressions or other wrongdoing takes place. Elaborating on these issues will enable you to address them in a constructive manner should you encounter them in your work environment.

The first step in the investigation process is to understand that there are different kinds of investigators. These include criminal investigators, civil or private investigators and corporate investigators. We will have a look at each type and discuss their various roles. It is fundamentally important to understand that every investigator is guided and empowered by a specific mandate to investigate. Without a mandate that authorises you to engage in the information and evidence-gathering activities central to forensic investigation, you are bound to expose yourself to multiple risks. It is of the utmost importance for you to be well versed with the mandate that guides your work as an investigator.

The different kinds of investigators have diverse roles because of their different mandates and the particular focus of their work. However, even though their focus

and responsibilities may differ according to their specific mandate, they are still able to assist one another. It is therefore vital that you understand these roles so that the people with the right skills can be approached when special assistance is required. It is also important to be able to distinguish between criminal investigations and civil/departmental investigations. Not only do they differ in nature and purpose, but the burden of proof that is necessary to secure a conviction or positive finding also differs. Criminal investigations relate to common-law and statutory-law offences, while civil investigations relate to actions between individuals and also departmental/disciplinary transgressions. These will be explained in more detail as we go along as these can, and often do, overlap.

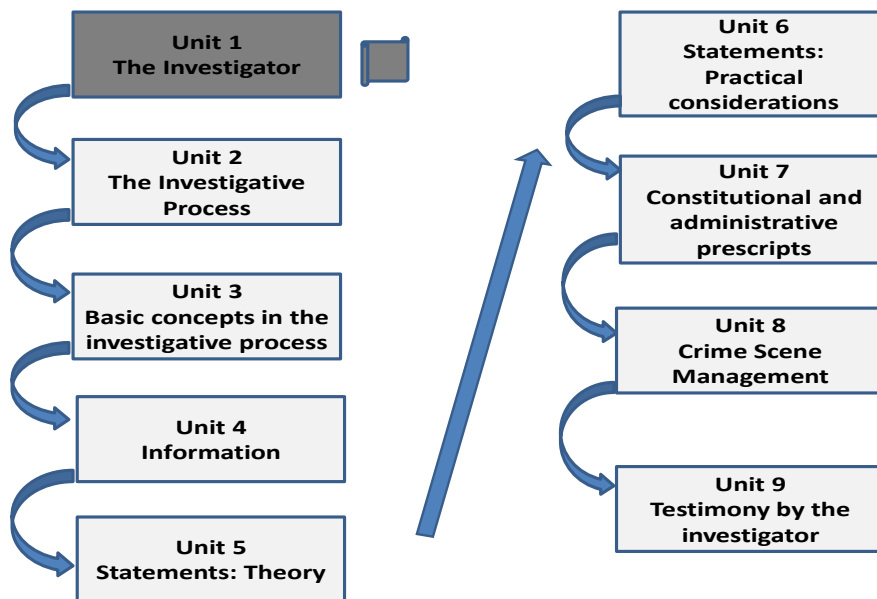
UNIT 1

OUTCOMES

After completing this unit you should be able to

- explain what an investigator is
- identify the different categories of investigators in the public, private and corporate domain
- explain the importance of a mandate for the investigator

Figure 1.1: How are we progressing?



1.2 WHO IS THE INVESTIGATOR?

In this qualification (the BA in Forensic Science and Technology) when reference is made to an investigator or detective the following definition applies:

The investigator is a private, corporate or law enforcement official/person who investigates and gathers information and evidence about possible crimes, irregularities, transgressions or other wrongdoing.

An investigator is therefore a person who is always searching for the truth. The pursuit for truth is in effect what investigation is all about. It is defined by Van Rooyen (2001:50) as "a systematic search for the truth". For that reason, the approach should be focused and targeted. Guided by a specific mandate, the investigation should be conducted with strict regard to the law, the disciplinary code, rules of evidence and human and individual rights. To ignore these basic requirements will mean that the investigation process is flawed and that the case will probably be lost.

The judges' rules and the Bill of Rights will also be discussed to give you an understanding of how fundamental these are to lawful and proper conduct when undertaking an investigation.

Self-assessment activity 1.1

Write your own definition of an investigator, with specific reference to your work environment. If you are not currently working as an investigator, think about a specific environment where you aspire to work and write a definition of an investigator as it would be advertised in the newspaper.

Feedback and suggested solutions to self-assessment activity 1.1 will be provided in the online discussion forum and follow-up tutorial letters.

Next, we will explore the different categories or types of investigators. The first category/type that we will be dealing with is the criminal investigator or police detective.

1.2.1 Criminal investigators or police detectives

The police detective is in the employ of a policing agency. In South Africa, this is the South African Police Service (SAPS). Its members are vested with extensive powers, ranging from the right to enter premises question people, search premises and seize evidence, to the right of arrest and detention. The SAPS is the default agency (the prime agency) for the investigation and prevention of crime in South Africa. However, there are a number of other agencies in the country that have mandates that either conflict with or complement that of the SAPS. All these agencies do investigations of some sort or another, whether they are criminal, civil or departmental in nature.

In the matter of *S v Botha and Others* (1) 1995 (2) SACR 598 (WLD) the court stated that "... society have become so specialized and that there are so much legislation and industries which are being administered and regulated, that no police service in a modern society can investigate and prevent all crime without the assistance of private instances". Police officials, including detectives, are appointed in terms of the provisions of the Police Service Act 68 of 1995. Their powers are set out in, among others, Section 215 of the previous Constitution, which is still in force by virtue of

item 24 (1) of Schedule 6 of the new Constitution, the Police Service Act, the Criminal Procedure Act 51 of 1977 – hereafter referred to as the CPA – as well as other empowering legislation. There are also various acts of Parliament that specifically empower the police to do investigations.

Before the start of an investigation, the first important issue to consider is whether the investigator has the legal right to do the investigation. This is important because, as will be shown later, there are other investigating agencies that have similar powers to the police. In some instances these agencies can use their powers only when the investigation is sanctioned by law. These laws must therefore be studied carefully to determine whether the investigation is lawful. If an investigation is not conducted within the confines of the law, it is not lawful.

The powers and functions of the SAPS, as set out in Section 215 referred to above, are the prevention of crime; the investigation of any offence or alleged offence; the maintenance of law and order; and the preservation of the internal security of the Republic (South Africa).

In order for the police to be able to do their work, the CPA has certain provisions which allow the police to (amongst others)

- search and seize articles (with or without warrant)
- question persons
- enter premises
- overcome resistance and use force
- take fingerprints and ascertain bodily features of an accused
- arrest and detain persons
- serve summons and other legal documents
- release persons on bail under certain circumstances
- do undercover investigations

These are not the only powers that have been conferred upon police officials, and you are urged to study the CPA to see what other powers there are. There are various acts of Parliament which entrust the police with the responsibility and powers to enforce such legislation. One example is the Firearms Control Act 60 of 2000,

which grants the police wide-ranging powers in respect of firearms. Does this suggest that police officials' powers are unlimited? No. They must obey the laws of the land and act in accordance with the Constitution. For instance, police officials who act wrongfully while conducting search and seizure operations are liable to be prosecuted. Apart from a fine of R600, such a police official may be ordered to pay damages to the person who suffered as a result of the wrongful actions. The aggrieved party may also institute a civil action for damages against the department.

Unfortunately, however, there are some police officials who abuse their powers, such as arresting and detaining citizens on trivial charges. In some reported cases, such arrests have been regarded by high courts as being malicious and unlawful and the courts have consequently awarded substantial damages against the Minister for Safety and Security and the National Commissioner of Police.

Police officials are also commissioners of oaths. This means that, in terms of their appointment as police officials, they are entitled to take an oath or affirmation, that is, administer an oath or take a solemn declaration. Such an appointment is referred to as an "ex officio" appointment, meaning "by virtue of office" in terms of the provision of Section 6 of the **Justices of the Peace and Commissioners of Oaths Act 16 of 1963**.

Self-assessment activity 1.2

Consider the court's remark above in S v Botha and Others (1) 1995 (2) SACR 598 (WLD) and share your opinion on this with your fellow students on the discussion forum 1.1.

Feedback and suggested solutions to self-assessment activity 1.2 will be provided in the online discussion forum and follow-up tutorial letters.

1.2.2 Peace officers (i.e. Metropolitan police services)

There are also the various metropolitan police services. Although their functions are mainly to do with the enforcing of traffic and local ordinances and bylaws, they also have policing powers. Metropolitan police officials are appointed "peace officers" in

terms of the provisions of Section 334 of the CPA. A "peace officer" includes the following categories of persons:

- any magistrate
- any justice
- any police official
- any correctional official
- any person who is a peace officer under Section 334 (of the CPA)

Peace officers have extensive powers, including the right of arrest without a warrant. Although they may not enter premises for the purpose of search and seizure, they have the power to search arrested persons and to seize certain articles (see Section 23(1)(a) of the CPA). Metropolitan police officials are primarily responsible for the investigation and enforcement of local government by-laws. They are an invaluable aid to the police as they may assist in setting up and controlling roadblocks, assist at scenes of serious traffic collisions, disasters, crowd control and a host of other functions that alleviate the work of the SAPS. Owing to the wide and varied responsibilities of the different categories or types of investigators, cooperation among them is vital to achieve the ultimate goal of fighting crime successfully.

1.2.3 Private investigators

A private investigator does not have the same legal status as a police official. Such a person acts in his/her private capacity and cannot force any person to cooperate in an investigation or to be questioned. Witnesses cooperate with private investigators voluntarily and may refuse to answer their questions.

A "private investigator" is defined as follows in Section 1(1) of the Private Security Industry Regulation Act 56 of 2001:

"private investigation" means a person who, in a private capacity and for the benefit of another person, investigates the identity, actions, character, background or property of another person, without the consent of such person, but does not include:

- (a) auditors, accountants, attorneys, advocates or forensic scientists conducting investigations which fall within the normal and reasonable course and scope of their professional functions;
- (b) internal investigators conducting normal and reasonable investigations into employee misconduct;
- (c) internal investigators conducting investigations which a business, other than an investigation business, may undertake in the course and scope of its normal and reasonable endeavours to safeguard its security, strategic, operational or business interests;

Provided that no person is excluded from the definition of a private investigator if he or she conducts any investigation which falls within the exclusive functions of the State."

The operative words in the definition are "... in a private capacity and for the benefit of another person ...". It is therefore quite clearly stated that the investigator is acting in a private capacity and is doing the work for someone else. You may question the role of private investigators if they do not have the same powers as police officials, yet they do have a very important role to play. Whereas police investigators are restricted to criminal matters, private investigators can investigate both criminal and civil matters. Private investigators are employed by industry to conduct claims investigations, credit checks, background investigations and to locate missing people. They are also hired to conduct investigations in divorce matters, perform surveillance and conduct undercover operations, for example where there is stock shrinkage in stores and the private investigator has to infiltrate the syndicate. Private investigators are also contracted by companies that feel that the involvement of the police will undermine the integrity of their company, or they may fear negative press reports. All they really want is recovery of the loss or damage and to get rid of the person(s) responsible without having to go to court or face damaging media coverage.

The role of private investigators is not limited to these functions because, in the course of their investigations, they also sometimes come across criminal matters and

can then enlist the assistance of the police, once a criminal charge has been laid. It is therefore vital that private investigators be aware of their responsibilities because, as will be discussed later, if their actions are illegal, the case may be lost. In this regard, I am referring to obtaining information in an unconstitutional manner, such as where a private investigator taps another person's telephone illegally, and the tapping device is discovered or the victim becomes aware of the illegal actions. Even if the device is not discovered, it remains an illegal practice. Private investigative companies are as successful or unsuccessful in performing their roles as the people they employ. Their success depends on the quality of the evidence they are able to present to their clients. Once the private investigator has sufficient evidence to support a criminal charge, the matter may be handed over to the police for arrest and prosecution.

The integrity of any investigator should be beyond reproach or no court of law will accept the evidence of this person. There will always be a suspicion that the evidence was obtained illegally or unconstitutionally. Van Rooyen (2004:19) lays down the following principles for private investigators to follow:

- Perform investigations in a professional, moral and ethical manner.
- Work within the framework of the law.
- Conduct investigations in a lawful manner.
- Protect confidential information.
- Tell the whole truth when presenting evidence.

1.2.4 Corporate investigators

These are private investigators that are in the full-time employ of an organisation/company or a bank. Van Rooyen (2004:35) states that there are three kinds of threats clearly identified against any organisation:

- The personnel are threatened.
- The organisation's information is threatened.
- The organisation's property is threatened.

One of the major threats that a company's personnel may face is a strike, where workers are intimidated. It is important for you to understand what the role of the

corporate investigator is. A corporate investigator usually has full access to the company's information with regard to staff records, financial dealings and a great deal of other valuable information that the police detective may require. It is very important, when conducting an investigation in an organisation that employs a corporate investigator, to meet with that person and enlist his/her assistance. These persons know the subculture in the organisation and can be of enormous help. Quite often they are former police officials and are well-disposed to a serving police member and other investigators. A police detective may be faced with a complaint of corruption in an organisation. If this happens, it is likely that the police detective could be approached by the security official or manager who wants to discuss the issue before laying a complaint. This happens from time to time and is not irregular, as long as the complainant is aware of the fact that the police will not force a culprit to confess or repay the stolen money by threatening him/her. If such an attempt is made and the culprit resists, it will reflect badly on the integrity of the investigation when the case goes to court. Besides, such actions are illegal, as they constitute the offence of compounding. It can only be sanctioned by a court of law as part of a sentence arrangement. The corporate investigator has quite a variety of roles and responsibilities. He/she may be called upon to investigate information-related investigations which include theft of intellectual property (patents or ideas that the company is working on); misuse of programs (abuse of the information technology of the organisation); hacking (attempting to gain access to the company's database) or malicious e-mails (distributing hate mail and other offensive material such as child pornography).

A second field of involvement covers dealing with employee grievances; screening new employees and doing background checks; issues of sexual harassment; ethical issues; drug or alcohol abuse and other disciplinary issues. There are also financially related issues such as fraud, theft, abuse of expense accounts and travel and subsistence claims, or kickback payments from service providers. Maladministration in connection with the company's affairs is another, more serious issue because it threatens the very existence of the organisation. The task of the corporate investigator is also to ensure that all persons in the organisation act with integrity and the utmost good faith, to the benefit of the organisation. Corporate investigators can also be responsible for the investigation of property-related matters such as internal

theft and fraud; misuse of property; procurement irregularities; stock shrinkage and damage to the company's property. The abuse and unauthorised use of company vehicles also form a large part of the corporate investigator's task. Because these actions all contain an element of fraud, the company should have a policy that regulates these issues.

The corporate investigator must have a very good knowledge of legislation relating to labour issues and other industry-related matters. He/she must also be aware of the rules and procedures of conducting disciplinary hearings, because the organisation will require him/her to do the investigation, to assist the prosecutor during the proceedings or even to conduct the investigation. In FOR1502 you will learn more about disciplinary hearings.

Van Rooyen (2004:39) summarises the responsibilities of the corporate investigator as follows:

- investigation of crime, disciplinary issues, offences and irregularities
- tracing and recovery of stolen property
- gathering of information and evidence
- determining company risks
- protection of company assets, personnel and finance
- building well-developed relationships and networking with other security officials, police agencies and external employees in the safety and security environment
- compiling investigative reports for management, including recommendations
- giving evidence in a court of law or in disciplinary/internal hearings

1.2.5 Statutory investigators

These investigators are not police, private or corporate investigators. They fall into a different category altogether and enforce the particular laws that govern their responsibilities. These may include the following:

- Special Investigating Unit investigators
- South African Revenue Service (SARS) investigators
- South African Broadcasting Corporation (SABC) investigators

- Department of Sea Fisheries investigators
- South African Reserve Bank investigators
- Customs and Excise investigators
- South African Post Office investigators

Each one of the above categories of investigators has different powers and responsibilities. Some of them have wide-ranging statutory powers, while the powers of others are limited to particular functions.

Self-assessment activity 1.3

***Are there differences between police detectives and other investigators?
Share your thoughts in discussion forum 1.2.***

Feedback and suggested solutions to self-assessment activity 1.3 will be provided in the online discussion forum and follow-up tutorial letters.

1.3 MANDATE TO INVESTIGATE

Every investigator needs a mandate which gives him/her authorisation to proceed with a specific investigation. In the South African context, this mandate has to fall within the parameters of the **Constitution of the Republic of South Africa** 108 of 1996. Legislation, policy and almost every kind of framework within which investigators work and perform their duties are informed by principles contained in the Constitution. It is fundamentally important for every investigator to be well versed in the mandate that guides his/her actions during an investigation. A mandate serves as authorisation to initiate or proceed with a specific investigation.

1.3.1 Risks and considerations

There are many do's and don'ts in the world of an investigator in the public, private and corporate sectors. Investigations should be carried out within the parameters of the law and, where applicable, according to specific rules and regulations. Ethical and moral standards should prevail and the investigator should apply his/her trade according to an acceptable code of conduct. Working outside the scope of a specific

mandate can expose investigators to a range of problems as a result of illegal or unethical conduct. These may include the following:

- disciplinary action by the employer, that is where a corporate investigator communicates the findings of his/her investigation to the media when he/she was not authorised to do so
- civil claims being instituted against the company authorised to do an investigation due to the unsanctioned actions of an investigator
- criminal charges where a private investigator interferes with a police investigation
- departmental charges against a uniformed police official at station level who investigates cases that fall within the mandate of the Organised Crime Unit and who is not mandated or authorised to do so

Examples of private investigation practices which may amount to illegal or unethical conduct are as follows:

- the search of private premises without the owner's consent
- obtaining restricted, confidential information such as bank statements
- effect an illegal arrest
- intercept third party communication

The approach to private and corporate investigations differs from the approach of members of the SAPS. A much gentler approach is generally followed, for example witnesses are always interviewed in private and care is taken not to affront anyone involved in that investigation. Police involvement is not always sought in a private investigation, even when the conduct of the person being investigated amounts to a criminal act. This should, however, not be encouraged. Private investigations are usually conducted in confidence and their results submitted in a report to the person who initially provided the mandate for the investigations to be conducted.

Self-assessment activity 1.4

Is a mandate really so important? Share your thoughts regarding the positive and negative implications of a mandate in discussion forum 1.3.

Feedback and suggested solutions to self-assessment activity 1.4 will be provided in the online discussion forum and follow-up tutorial letters.

1.3.2 Format of an investigation mandate

A mandate is usually a written document in which a person who has the necessary authority approves an investigation. The mandate itself, as well as the way to obtain it, may differ widely from company to company, agency to agency and place to place. Again, the way in which this is done may vary greatly: a large company may have an in-house investigation department that identifies, initiates and conducts investigations according to company policy and procedures. In another instance, a designated company manager, such as the risk manager, may appoint a private investigator to conduct an investigation on behalf of that company. Irrespective of how such an investigation is initiated and conducted, some form of official mandate is required. Verbal authorisation is never a good idea, as responsibility for decisions may be denied if such an investigation reveals sensitive information or threatens the position of key people. The investigator may be left to "bite the bullet" for decisions that he/she did not make. You as the investigator also need to know that the company, institution or entity that authorised the investigation is supporting you when the going gets tough. Investigations are usually sensitive issues that contain enormous potential for conflict. Your career or business may be at stake when you undertake an investigation without a written mandate.

Below is an example of a letter of engagement in a private investigation. When signed, the letter of engagement forms an investigation mandate. Again, it is important to note that the format of such a letter can drastically change from company to company and institution to institution. Often, investigators of different companies and institutions are tasked in a totally different manner. What is important is that the investigator receives his/her instruction or mandate in a clear and understandable way.

PRIVATE & CONFIDENTIAL

Ref: JSC 22/01/2015

The Manager

The Loss Adjuster Company

P O Box 10111

Pretoria

1000

Att: Mr Daniel Jack

22 January 2015

Proposed investigation

Disappearance of computers on 10 January 2015

Request background

JSC hereby confirms that we will be able to conduct an investigation into the disappearance of five notebook computers on the 10th January 2015 from the offices of LAC, 1223 Daniel Avenue, Pretoria.

As yet, no police case docket has been opened.

Scope of work

We have been requested to conduct an investigation and determine the following:

- Conduct an investigation into the disappearance of the five notebook computers.
- Establish whether the five missing notebook computers have indeed been stolen.
- Determine if any LAC employees were involved in the disappearance of the notebook computers.

Strategy and time frame

Should this proposal be approved, the investigation will commence on Monday, 2 February 2015. The investigation will be carried out over a period of five working days and be completed on Friday, 6 February 2015. A total number of 25 investigation hours are needed to finalise the investigation. The investigation will be conducted by an experienced investigator, Mr Watson Holmes. As part of the investigation, he will do the following:

- conduct an investigation at the premises of LAC to obtain any possible physical clues as to what happened
- conduct interviews with personnel of LAC

Cost

The cost of the investigation will be as follows:

- one investigator @ R350 per hour x 25 hours
- the total cost will be R8 750 (eight thousand seven hundred and fifty rand), excluding V.A.T.

Risks and consequences

It is essential that the full cooperation of all LAC employees is obtained to conduct this investigation successfully.

JSC provides a professional and effective service and uses experienced investigators. However, it is not possible to guarantee that the case will be successfully solved and the notebook computers retrieved.

Mandate

Should this proposal be favourably considered, acceptance of the proposal will serve as a mandate for JSC to conduct the investigation as set out in this document.

Kind regards

Gideon Jones

1.4 PRIVATE PERSONS

It is important to understand that private persons are not formally mandated to investigate crime, civil or disciplinary irregularities. As far as the Criminal Procedure Act (CPA) is concerned, private persons do have certain powers. However, these powers are limited. For example, the Act allows for the search of premises by a person who is lawfully in charge or occupies any premises, if that person reasonably suspects the presence of stock (animals), produce, intoxicating liquor, dependence-producing drugs, arms, ammunition or explosives on the premises. If these are found, they are to be handed over to a police official immediately.

It may also happen that a member of the public is the first to arrive on the scene of the incident and accost the suspect while the commission of a crime is in progress. In such instances, Section 42 of the CPA authorises a private person to arrest, without a warrant, any person:

- Who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in Schedule 1. The private person is furthermore authorised in terms of Section 42(2) to pursue such person, and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.
- Whom he reasonably believes to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence.
- Whom he by any other law is authorised to arrest, without a warrant, a person for an offence specified by such law. An example of this can be found in Section 9 (1) of the Stock Theft Act 57 of 1989, where a private person may, upon reasonable suspicion that such other person has committed an offence mentioned in the act, effect an arrest without a warrant.
- Whom he sees engaged in a fight.

Section 42 (3) authorises the owner, lawful occupier or person in charge of a property to arrest any person who is found committing any offence, and any person authorised thereto by such owner, occupier or person in charge, may, without a warrant, arrest the person committing the offence. Every male inhabitant of the country between the age of 16 and 60 years is furthermore obligated in terms of Section 47 of the CPA to assist any police official who calls upon him to assist in the arrest and detention of a person.

1.5 DISCUSSION

From the discussion above, it became clear that investigators can be found, appointed or called upon in almost every industry. These include a broad range of public sector, private sector or non-governmental organisations. In criminal cases the state is the complainant, irrespective of who the victim is. This is because a law of the state has been broken. In such matters, the state prosecutor acts on behalf of the state. In civil matters, the individual is the plaintiff (complainant). In departmental matters, a person to whom the chief executive officer has delegated the power acts on behalf of the organisation. Terminology differs where civil and criminal procedures are concerned. In criminal cases, persons under investigation are referred to as “suspects” and, when charged before court, they are referred to as “the accused”. The party taking action in a criminal trial is called the prosecution (the state) and the victim (person that has suffered the injury/prejudice) is called the complainant. Criminal prosecutions are instituted by the senior public prosecutor, who prosecutes on behalf of the state. Such a prosecutor receives a delegation from the Director for Public Prosecutions to be able to prosecute in a criminal court. In civil matters, the person against whom action is taken is referred to as the defendant. The party taking action is referred to as the plaintiff. An action for damages is instituted in a civil court by way of a notice of action, in which the defendant is informed of the pending action. The strength of a court case depends on the witnesses. This is determined by the contents of the statements they have made. The value or the quality of the statement depends on the way in which it was taken and whether it conforms to legal requirements.

1.6 SUMMARY

It is of fundamental importance to understand that investigators are always guided by a specific mandate. For police detectives this may be, amongst others, the CPA, as well as the specific mandate of a unit, that is The Family Violence, Child Protection and Sexual Offences Unit (FCS) that specialises in sexual crimes against women and children. A corporate investigator's mandate may only consist of procurement irregularities or risk assessments while the company policy lays down the involvement of the SAPS once a crime such as fraud has been committed. Other corporate investigators may be responsible for all types of crimes and irregularities within the corporate domain and only hand over the investigation to the SAPS once the investigation has been completed. Every investigator has the responsibility to be well versed in the mandate, legislation or policy framework that guides his/her actions.

In this unit we looked at who the investigator is, the different categories of investigators and why a mandate to investigate is of the utmost importance. In Unit 2 we will discuss the investigative process.

UNIT 2: THE INVESTIGATIVE PROCESS

2.1 INTRODUCTION

In this unit we will look into the investigative process. The notion of "process" is fundamentally important in everything that an investigator does and should be considered in every decision that is made and every action that is taken. "Process" furthermore suggests that an investigator follows a step-by-step methodology which can be reflected on at a later stage and, should the process be repeated or replicated by another investigator, the same conclusion would be reached. During the course of your studies you will also find how different authors in the fields of criminal and forensic investigation refer interchangeably to the terms "crime scene", "scene of crime" and "scene of incident". When a crime is committed, the location where the crime took place is referred to as the "crime scene". However, in forensic investigation, an investigation may not only relate to criminal cases but may also include civil cases, corporate investigations and disciplinary cases (Van der Watt, 2014). In such cases it is more appropriate to refer to a "scene of incident" when referring to the place where the investigation is focused on. Notwithstanding the different terms being used or where an investigation is taking place, it is important to remember the principles of investigation which are at the centre of the search for the truth.

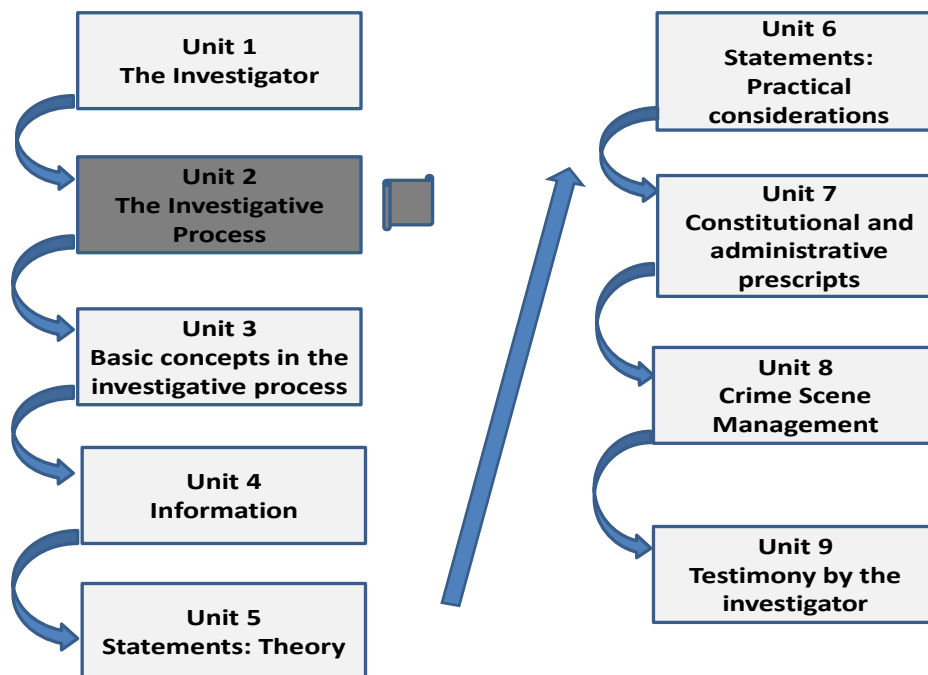
UNIT 2

OUTCOMES

After completing this unit you should be able to

- explain the meaning of investigation
- explain the purpose of investigation
- explain the concepts "criminal investigation" and "forensic investigation"
- highlight the steps and processes involved in investigation

Figure 2.1: How are we progressing?



2.2 INVESTIGATION

Consider the following three definitions of "investigation" and complete the self-assessment activity:

"Investigation refers to a 'systematic fact finding and reporting process with a multi-disciplinary characteristic covering, amongst others, the law, sciences and communications'" (Gunter & Hertig 2005:1).

Investigation is a process that develops and tests hypotheses to answer questions about events that occurred. The questions that an investigation attempts to answer could include "What caused the incident to occur?", "When did the incident occur?" and "Where did the incident occur?" (Carrier & Spafford 2004:2).

Investigation is defined by Van Rooyen (2001:50) as 'a systematic search for the truth. It means to observe intensely, to question systematically and to gather information that will reveal the truth'.

Self-assessment activity 2.1

Consider the discussions above in 2.1 (Introduction) and 2.2 (Investigation) and formulate your own definition of investigation by highlighting the main principles. As an example, you can use your own work environment as an example, i.e. the investigation of a crime, disciplinary case, civil matter or corporate irregularity.

Feedback and suggested solutions to self-assessment activity 2.1 will be provided in the online discussion forum and follow-up tutorial letters.

2.3 THE PURPOSE OF INVESTIGATION

Swanson, Chamelin and Territo (1977:2) describe the purpose of investigation as "... to establish that, in fact, a crime was committed; to identify and apprehend the suspect; to recover stolen property; to assist the state in prosecuting the party charged with the offense". The definition by Swanson – and, in fact, by many other authors on the subject – refers to criminal investigations. However, the process of investigation is the same in all types of investigations, be they criminal, civil or disciplinary in nature.

Criminal investigations

The wider purpose of any investigation is to find out what happened, who is responsible and what steps are to be taken to restore the situation. In criminal matters the public interest is infringed (Joubert 2001:34). This means that the community's rights, as far as safety and security are concerned, have been infringed. These rights are contained in the Constitution and in the various laws that govern our daily lives. For example, it is illegal to commit theft. If a person steals something it harms not only the person whose property has been stolen, but also the community in general, because the community is the state and the state makes the laws to ensure harmony and good order. It is for this reason that, in criminal cases, you will always find that the charge sheet reads: "The state versus (against) ..." The state is, in fact, the complainant because its laws have been broken. The victim – or the

complainant, as the victim is called in criminal cases – is merely a witness to prove that the law has been broken. So, when you are investigating theft, which is a criminal offence, the purpose is to find out the truth about what happened, who was responsible and to recover the stolen property. The reason is, firstly, to deny the perpetrator the illegal possession of the goods that were stolen. Secondly, it is to return the goods to the lawful owner and, lastly, it is to use the recovered stolen property as physical evidence in a court of law so that the accused may be found guilty and punished. The process that this entails will be discussed in more detail later on. If you now compare the definitions that were discussed above, you will see that the purpose of criminal investigation fulfils the requirements of the suggested definition mentioned above.

Civil investigations

As far as a civil investigation is concerned, we need to consider the purpose of private law, which is that the aggrieved person must be put in the same position that he/she would have been in had his/her rights not been infringed (Joubert 2001:36). This is done by obtaining a court order forcing the other party either to perform in terms of the provisions of a contract or to pay the aggrieved person compensation (damages). In disciplinary proceedings, the purpose is to sanction the accused person either to be warned, to pay a fine, to be demoted or to be dismissed. In this regard, there is no question of recovery of stolen property because the accused employee has contravened a disciplinary regulation. The purpose of the investigative process in this case, then, differs from the criminal one because here we are finding out what the truth is and who was responsible. An additional purpose is to prevent the incident or a similar one from happening again. Always remember that as an investigator, you must be objective in your approach and not prejudge a person or assume that the person is guilty. That is the function of the courts or whoever presides over a disciplinary matter or corporate irregularity. You must just collect evidence in a legal and transparent way that falls within your specific mandate, and with due regard to the law and Constitution.

Self-assessment activity 2.2

Reflect on the differences between the purpose of a criminal investigation and the purpose of civil investigation.

Feedback and suggested solutions to self-assessment activity 2.2 will be provided in the online discussion forum and follow-up tutorial letters.

2.4 CRIMINAL VS FORENSIC INVESTIGATION

In the following section, we will briefly explore the concepts of criminal and forensic investigation, followed by a basic overview of the processes involved in each. Remember that the main difference between the concepts relate to the context within which the investigation takes place.

2.4.1 Criminal investigation

Marais (1992:1) states that a criminal investigation involves the lawful tracing of people and instruments which may, directly or indirectly, contribute to the reconstruction of a crime situation and supply information about the people involved in it. In reality, crime investigation is a process of identification of people and physical objects from the time the crime is committed until the guilt of the perpetrator is either proven or disproven in court. Stelfox (2009:1) gives a more elaborate explanation and states that criminal investigation involves locating, gathering and using information to bring offenders to justice, or to achieve the objectives set for it by the police service.

The following are three broad steps in the criminal investigation process:

Preliminary investigation

The crime scene is the area or place where there will be direct or indirect proof that a crime has been committed, and should be viewed as the focal area during the preliminary investigation phase. Proof of the fact that a crime was committed can be furnished by collecting evidential material or evidence that is then used in court

(Joubert 2001:331). This may include physical evidence, such as blood, hair, semen, saliva or weapons. The injuries or wounds to the body of the victim also form part of the crime scene. Physical evidence found at the crime scene can be scientifically analysed and can provide the court with entirely objective information.

Follow-up investigation

Van Rooyen (2004:18) highlights that this phase involves the investigator or detective conducting follow-up interviews and finding corroborating information with regard to the alleged crime committed. During the follow-up investigation the investigator will look for and collect any physical evidence that is still available. The information and evidence gathered at this point provide the investigator with an initial sense of the crime situation that has taken place, as well as an understanding of the criminal's modus operandi (Mohamed & Pauleen 2005:8).

Judicial process

The primary reason for the investigator's involvement in the judicial process has to do with the presentation of the information gathered, and making sure that everything and everyone that needs to be present is present at court (Du Preez 1996:7). The relationship between the investigator and prosecutor, with their mutual goal of presenting the true facts in court, is very important. Cooperative investigators will ensure that all witness statements have been taken down; exhibits are presented in court; indications of bail circumstances are available; and witnesses are present to give testimony (Van Rooyen 2004:18; Marais 1992:202; Du Preez 1996:7).

2.4.2 Forensic investigation

Rarely does one find a definition purely dedicated to the term "forensic investigation", and those definitions available are often kept exclusive to a particular field of study. Van Rooyen (2004:7) highlights that confusion prevails within the investigation fraternity with regard to the true meaning of forensic investigation, and states that it is more often than not associated with the investigation of computer-related crimes, as well as crimes such as fraud and corruption. Do remember, however, that forensic investigation may not only relate to criminal cases but may also include civil cases, corporate investigations and disciplinary cases.

2.5 THE INVESTIGATIVE PROCESS

The following broad steps make up the investigative process:

- Obtain a clear mandate to investigate a particular matter. You, as an investigator, must adhere to this mandate and not go beyond its scope (remember, we discussed mandate in unit 1).
- Gather evidence and evaluate it. You must gather all relevant information and evidence and evaluate the gathered data.
- Complete an investigation file and submit an investigation report.
- Submit your findings to the person who mandated the investigation.
- Upon instruction and if applicable, open a case docket and submit the gathered evidence to the police.
- Assist in any criminal and/or civil investigation or proceedings (such as a court trial) that arise from your investigation.
- Testify if required to do so.

From the above discussion the systematic nature of investigation becomes clear. Investigation is never a haphazard or compulsive response to finding the truth. Rather, it is an organised and well-considered effort in building the larger crime or incident puzzle in an effort to reconstruct what happened.

Self-assessment activity 2.3

Briefly define the concepts “criminal investigation” and “forensic investigation” and, by using your own example, highlight the investigative steps that you will follow in a specific investigation.

Feedback and suggested solutions to self-assessment activity 2.3 will be provided in the online discussion forum and follow-up tutorial letters.

2.6 SUMMARY

In its broadest sense, investigation boils down to the systematic search for the truth. It is of the utmost importance that investigators understand the importance of doing their work in an organised and well-planned fashion. Investigators should always keep the end in mind. This may include a criminal, civil or disciplinary hearing and it is at this platform where the work of the investigator will be scrutinised. The investigative principles that underpin criminal and forensic investigation are very similar and it is ultimately the context within which the investigation takes place that may differ.

In this unit we looked at the meaning of investigation and its purpose. Furthermore, we explored the concepts "criminal investigation" and "forensic investigation" and looked at the generic steps and processes involved in investigation. In Unit 3 we will look at some basic concepts in the investigative process.

UNIT 3: BASIC CONCEPTS IN THE INVESTIGATION PROCESS

3.1 INTRODUCTION

In this unit we discuss four basic concepts which form the basis of any investigation imaginable. Every investigator should have an operational understanding of these basic concepts and know how to apply them in an investigation. If understood and applied correctly, these concepts will ensure that the approach to an investigation is systematic and organised. These concepts are the following:

- identification
- individualisation
- the Locard exchange principle
- continuity of possession

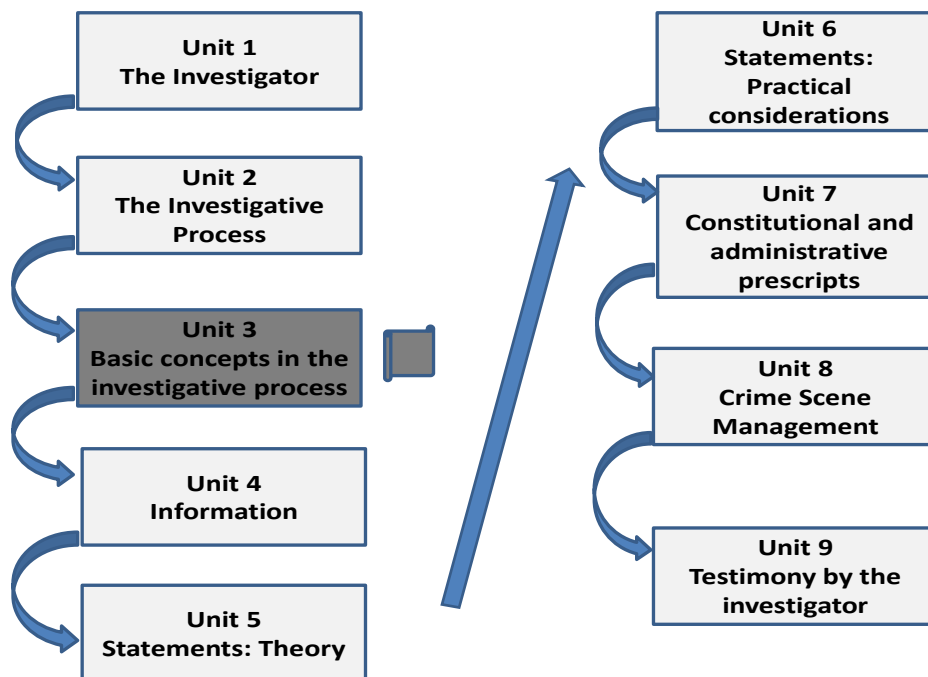
UNIT 3

OUTCOMES

At the end of this unit you should be able to

- explain the meaning of "identification" by identifying the concept in a practical case study
- explain the meaning of "individualisation" by identifying the concept in a practical case study
- explain the meaning of the "Locard exchange principle" by identifying the concept in a practical case study
- explain the meaning of "continuity of possession" by identifying the concept in a practical case study

Figure 3.1: How are we progressing?



3.2 IDENTIFICATION

3.2.1 Definition

The following definition will serve as the operational definition of "identification" throughout this module:

"Identification is based on the theory that everything in the universe is unique because it has certain distinguishing characteristics. This concept is used by science to place objects in specific groups or classes" (TSA, Study Guide. 2001 OVM 151 RE 5:4).

3.2.2 Discussion

Identification is nothing more than recognition. It is recognising something for what it is. If I see a fluid, I can recognise it as blood because it looks like blood. It may be water if I see that it is colourless and tastes like water. If I'm not sure what it is, I can use my senses to identify it. I can look at it, smell it, taste it or feel it. If it is a sound, I can listen to it. In the case of a fingerprint, I can see that it is a fingerprint, but the

question is: Whose fingerprint is it? That involves something else, referred to as individualisation, and will be discussed below.

In criminal investigations the term "identification" is used when we ask a witness if he/she saw the perpetrator. If the answer is "yes" we ask whether the witness could possibly be identified if seen again.

Case study 3.1: "The lunchtime theft"

An incident is reported to Mr Reg Abrahams, the HR office manager at M & B Insurance. It is alleged by one of his administrative staff, Ms Pinki Moloji, that she went out for lunch, and upon her return to her desk found that her company-issued Dell laptop as well as her private cellular phone was missing. Mr Reg Abrahams reports the matter to the Risk Management Office, after which a corporate investigator, Ms Cynthia Khumalo, is tasked with the investigation into the matter. Cynthia immediately opens a case file and obtains a statement from Ms Pinki Moloji which captures exactly what happened and records the relevant serial numbers and descriptions of the cellular phone and laptop that went missing. Cynthia continues with her investigation and decides to look at the Closed Circuit Television (CCTV) footage captured by the camera that overlooks the entrance to the specific office where the laptop went missing. She narrows down the viewing of the CCTV footage to the lunchtime period of 13:00 to 14:00. During the viewing Cynthia notices Mr John Platt, an office administrator, entering the office with a rucksack and again walking out after 10 minutes. Furthermore, Cynthia notices that the bag is not entirely closed and an object, which appears to be a standard company-issued Dell laptop, is positioned inside the rucksack.

FEEDBACK

At this stage, the investigator has done good investigative work and managed to identify a possible suspect, as well as a laptop which appears to have been taken from an office under suspicious circumstances. However, it should be remembered that the suspect, Mr John Platt, is an office administrator and has right of access to the specific office. Furthermore, everybody in the office has been issued with a standard grey Dell laptop, and if confronted with only the CCTV footage, Mr Platt

could argue that it was his company-issued laptop that he was carrying. The investigator therefore has no idea what will be found once the suspect is confronted. There may even be an innocent explanation for the disappearance of the laptop, although it is highly unlikely.

At this stage, only identification has taken place, which has nothing to do with positively linking the person or perpetrator with the crime, incident or wrongdoing – there are other issues that assist in that regard. Make sure that you can distinguish between identification and individualisation, because they create a lot of confusion among investigators.

3.3 INDIVIDUALISATION

3.3.1 Definition

Before you look at the operational definition of individualisation, let's consider the following definitions:

"Individualisation is only possible if it is preceded by a series of identifications. Individualisation is based on, and takes place through comparison. It refers to the demonstration that a particular sample is unique even among members of the same class" (Marais 1992:19).

"When there is a positive match between a fingerprint and that of a specific person, it becomes vitally important for the crime investigator. This process is called individualisation. However individualisation is only possible after identification" (TSA, Study Guide. 2001, OVM 151 RE 4).

The following will serve as the operational definition of individualisation:

Individualisation is the positive linking of a person, suspect or perpetrator with a specific incident, crime, irregularity, transgression or other wrongdoing through a process of identifications.

3.3.2 Discussion

Many investigators confuse the concept of individualisation with recognition or identification. They see these two concepts as being synonymous, whereas they are actually totally different. The essence of individualisation lies in the fact that you must be able to link an object or a person positively with the scene of an incident, crime or other wrongdoing and thereby prove the person or object's involvement.

Case study 3.2: "The follow-up investigation"

The corporate investigator, Ms Cynthia Khumalo, realises that her time to follow up the information is limited as the suspect, Mr John Platt, may leave the office at the close of business and remove the "missing" items from the business premises. She decides to call in the assistance of two security guards and waits in the parking area where Mr John Platt's official company vehicle is parked. M & B Insurance has a very clear security policy in terms of the search of employees and vehicles on the premises. Furthermore, every employee has signed a waiver as part of their employment contract which qualifies search and seizure interventions in specific circumstances. Cynthia and her colleagues then notice Mr John Platt exiting the office block and walking in the direction of his company-issued vehicle. The suspect is stopped by Ms Cynthia Khumalo and informed of the details of the case she is investigating. Cynthia reminds the suspect of the company security policy and he is then searched by a male security guard. Both the cellular phone and the company-issued Dell laptop are found in Mr John Platt's possession, with both serial numbers corresponding to those provided by Ms Pinki Moloi in her statement.

FEEDBACK

Through good investigative work the corporate investigator, Ms Cynthia Khumalo, has positively linked Mr John Platt with the theft of Ms Pinki Moloi's cellular phone and laptop.

One important physical attribute of which investigators often lose track is handwriting. Handwriting is such an important vehicle in the individualisation process and yet we often overlook it. It is as much a part of a person's identity as their facial

features. It will change over the years, but there will always be someone who will be able to identify whose handwriting it is. The process of linking particular handwriting on a disputed document with a particular person is preceded by comparing the handwriting from a known source or sources until a positive link is made.

Individualisation can also be illustrated by the following example: You are a police detective and the only clue that you have found at a crime scene is something that you identify as being a fingerprint. You don't know whose it is, but you suspect that it may belong to the perpetrator. Through good detective work you have managed to arrest a number of suspects, but you cannot prove whose fingerprint was found at the scene. In terms of the provisions of Section 37(1)(i) of the CPA, you are entitled to take the suspects' fingerprints. You do so and thus have a number of sets of fingerprints, each marked with the person's name. You take these sets to the fingerprint expert who examines them and then compares each fingerprint with the one that was found at the scene. A positive match is found and the process of individualisation has been completed. The expert has therefore been able to positively link the fingerprint found at the scene with a particular individual.

Self-assessment activity 3.1

Consider the above definitions and discussions related to identification and individualisation. According to your understanding, what are the differences between the two concepts?

Feedback and suggested solutions to self-assessment activity 3.1 will be provided in the online discussion forum and follow-up tutorial letters.

3.4 THE LOCARD EXCHANGE PRINCIPLE

3.4.1 Definition

Any action of an individual, and obviously, the violent action constituting a crime, cannot occur without leaving a mark. There is usually a variety of marks left behind

which may include prints, simple traces and stains. It is impossible for the criminal to act, without leaving indications of his/her step (Chisum & Turvey 2011:35).

3.4.2 Discussion

The above definition of Locard's exchange principle is a direct translation from the original French source *La Police et Les Methodes Scientifiques* by Locard (1934:7-8). Other definitions of the Locard exchange principle include "when two objects come into contact, there would be a cross-transfer of traces of materials" (Ogle 2012:2). The Locard exchange principle is also "the basis for linking physical evidence from or to the victim, suspect, and crime scene" (Miller 2009:171). The value for investigation is that it means that there will always be physical evidence at a scene. The Locard exchange principle highlights that there will always be some form of evidence or proof left behind that suggests the involvement of a specific individual in a specific incident. It is thus the responsibility of the investigator to find it, identify it, protect it, recover it, study it and interpret what it says or means. It is of the utmost importance that the different types of evidence left behind at a scene of incident be safeguarded against any form of contamination. Consult the list of aides and experts at the back of the study guide that can be used.

Self-assessment activity 3.2

The Locard exchange principle became renowned in an era where social media and the internet were non-existent. Do you think this principle can be applied in the area of social networking and the internet?

Feedback and suggested solutions to self-assessment activity 3.2 will be provided in the online discussion forum and follow-up tutorial letters.

Self-assessment activity 3.3

Go to the online discussion forum 3.1 and discuss what evidence may be left behind by individuals engaging in criminal activities or other transgressions on the internet or social media space.

Feedback and suggested solutions to self-assessment activity 3.3 will be provided in the online discussion forum and follow-up tutorial letters.

3.5 CONTINUITY OF POSSESSION

3.5.1 Definition

Continuity of possession is "the identification and continued safe possession of physical evidence from the moment it has been found to when it is accepted as evidence in court" (TSA, Study Guide. 2001, SA OVM 151 RE 5:4).

3.5.2 Discussion

You are reminded that we are currently looking at the basic concepts in investigation. Even though the above definition refers to the presentation and acceptance of evidence in a court, there are other platforms where evidence can also be presented, which may include a formal enquiry or disciplinary hearing. Physical evidence proves that the perpetrator was at the scene of incident or had some or other interaction with the events being investigated. Not only does physical evidence that was found in a suspect's possession prove that he/she had it, but it also links the suspect positively, in one way or another, with the scene of incident. A suspect may have an explanation of how a stolen item got to be in his/her possession and it is the responsibility of the investigator to follow this up. Once the value of the evidence has been recognised, it must be safeguarded in its original form until it is presented as evidence in court or at the relevant platform. The process does not end there because the court or presiding officer must then accept it as proof. (Note that there is a difference between the words "proof" and "evidence". The word "proof" refers to the fact that if sufficient "evidence" has been produced in court and the court accepts the evidence, it can be said to have become "proof".)

"Continuity of possession" is also referred to as the "chain of evidence". If you take a chain, you will see that it consists of various links that are bound together to form a long, continuous steel cable. This chain is only as strong as the weakest link. If one of the links in the chain breaks, the chain comes apart and is useless. Evidence works in exactly the same way. If, for example, you have found a valuable piece of evidence at a scene of incident – for example a firearm – and you then hand it to a ballistic expert for testing, without noting that person's name, you will not be able to remember who the person was that received it. You will also not be able to trace the path the firearm followed from one expert to another if it was handed to another expert for fingerprint analysis. Physical evidence, when identified and recovered at a scene, forms such a chain. It will tie up the case, so to speak, as long as it remains intact and reaches the court in the same condition as when it was found. For that reason, it must either remain in the possession of the person who found it at the scene or, if it changed hands, a record must be kept of who had it and what happened to it. If physical evidence has changed in any way from the moment it was found until it is presented in court, without a good explanation, the court will reject it as evidence. If it cannot be taken to court, you must have photographs taken of it and present the photographs as evidence. Make sure that the photographs show the points of identification or recognition, and that you attach an affidavit from the photographer to say that he/she took the photograph.

3.6 GUIDELINES FOR MAINTAINING THE CHAIN OF POSSESSION

You are once again reminded that investigation is a “systematic fact finding and reporting process”. Marais (1992:15) lays down the following guidelines for maintaining this chain:

- "Limit the number of individuals who handle the evidence from the time it is found to the time it is presented in court.
- If the evidence leaves your possession, record in your notes to whom it was given; the time and date; the reason for being given to another; and when and by whom it was returned.
- Make sure that the persons handling the evidence affix their names, force numbers and assignment to the package.

- Obtain a signed receipt from the person accepting the evidence.
 - When the evidence is returned, check for your identification mark and ensure that it is the same item. Determine if it is in the same condition as when it was recovered.
 - Any change should be brought to the attention of the court."
-

Self-assessment activity 3.4

Consider the basic concepts in investigation that was discussed in this unit. Use your own experience or work environment as a context and compile a fictitious scenario where all the basic concepts are illustrated, that is identification, individualisation, Locard exchange principle and continuity of possession. Finally, make sure that you include the guidelines for maintaining the chain of possession in the fictitious scenario.

Feedback and suggested solutions to self-assessment activity 3.4 will be provided in the online discussion forum and follow-up tutorial letters.

3.7 SUMMARY

It is important for every investigator to understand how the basic concepts of investigation discussed in this unit should be considered in every investigation. You will see that the importance of identifying physical evidence and its safe custody are linked with the Locard exchange principle, because evidence transferred by the perpetrator will, firstly, be identified and, secondly, used to individualise (link) the perpetrator with the scene of incident. You must look for fingerprints, hair, bodily fluids or any other solid or liquid material that could link the perpetrator with the victim, the scene or any weapon that may have been used in the commission of the crime.

In this unit we explored the meanings of "identification", "individualisation", the "Locard exchange principle" and "continuity of possession" as basic concepts in the investigative process. In unit 4 we will look at "information" and its importance in the continuum of forensic investigation activities.

UNIT 4: INFORMATION

4.1 INTRODUCTION

Information is fundamental to any investigation. Without information it will be impossible to realise that a problem exists and, without information, an investigation will not have any foundation from which to start. The next step in your learning process is to discuss the various sources of information and how to obtain information. The various methods of obtaining information and preserving it for further use will also be discussed. Any successful investigation is dependent upon the quality of the information that is gathered by the investigator. If the information is poor or unreliable, there is little chance of a successful outcome.

UNIT 4

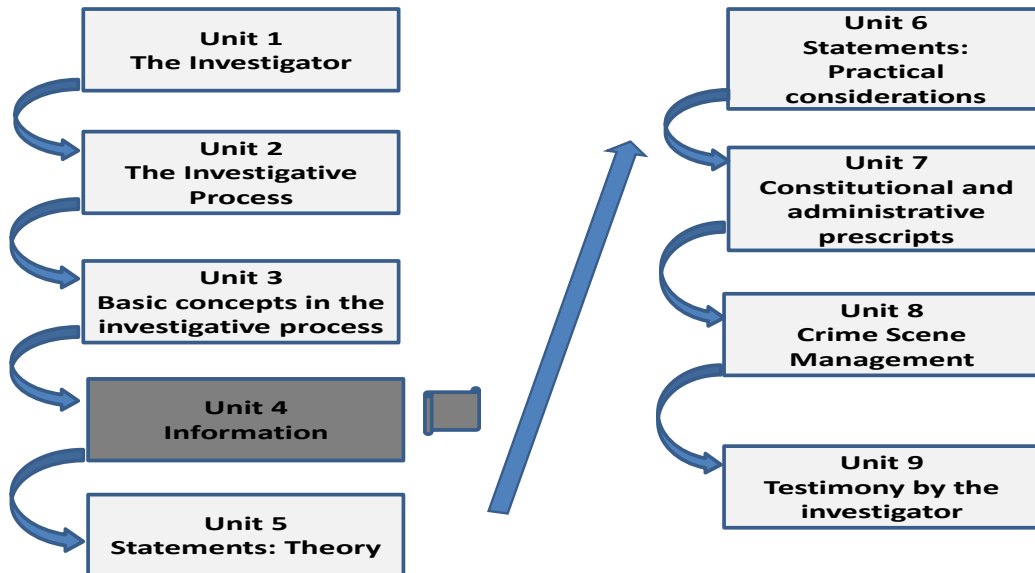
OUTCOMES

At the end of this unit you should be able to explain

- the meaning of "information" and its importance in the investigation process
- people as sources of information
- the importance and methods of taking notes
- practical tools for systematic information gathering and recording, that is The "Five Whiskeys and One Hotel" principle, the TED principle and the Five Question Rule (FQR)
- the difference between interviewing, interrogation and extraction
- the meaning of "standard of proof" and "burden of proof"

4.2 DEFINITION

Figure 4.1: How are we progressing?



The following will serve as the operational definition of information:

Information is any knowledge which results from experience, instruction or study and includes knowledge of specific events or situations that has been gathered or received by communication.

4.3 INFORMATION AND INVESTIGATION

Once the information has been obtained, it must be recorded and stored in a retrievable form. The two most common ways of recording and storing information includes

- in writing after which it is filed in a case file, case docket or other filing system
- typed in electronic format after which it is saved and filed electronically on a computer or external hard drive

It is fundamentally important for every investigator to be proficient in the recording of information. Statement taking and report writing are skills that every investigator should master. Every investigator should know how to take a proper statement and, when taking a sworn statement, how the oath or the affirmation should be administered.

During the course of your career you will often hear the words "intelligence" and "information" being used. Although it is not the purpose of this study guide to discuss these terms in detail, it is necessary for you to know the basic difference between them. Information is anything that you learn through your sense of sight, smell, touch and hearing, while intelligence is information that has been verified. When these terms are used in this context, it means that information is something that has come to your attention but which has not yet been proved. Intelligence means that there is proof of what has come to your attention. Information comes in so many different forms that it is almost impossible to list them all. It is sufficient to say that everything we hear, see or read is information in some form or another. The news bulletin we hear over the radio or watch on television, read in the newspaper or even the news we hear from others is information in different forms. Some of it is funny, some is serious; some parts make us emotional while others prompt us to make decisions or act in a particular way. The investigative process is no different. Some people may argue that it is not necessary to obtain information before recording a statement. They believe that the deponent (the person whose version of events is recorded) is the person who knows what must be said and that the role of the investigator is merely to record it in an acceptable form. No proper statement can be taken unless all the relevant information has been obtained from the deponent. The investigator is the person responsible for putting the facts in a logical, coherent and legally acceptable format, without changing or adding to them. Thus the deponent must be interviewed, firstly to establish the facts and, secondly, to determine what has to be done about the matter.

Self-assessment activity 4.1:

Answer the following questions:

- ***What is the definition of information?***
- ***What are the two most common ways of recording and storing information?***
- ***How would you describe the difference between "information" and "intelligence" to a new investigator that you have to mentor?***

Feedback and suggested solutions to self-assessment activity 4.1 will be provided in the online discussion forum and follow-up tutorial letters.

4.4 PEOPLE AS SOURCES OF INFORMATION

Van der Westhuizen (1996:5) highlights the following direct sources of information:

- victims and complainants
- witnesses directly involved in the events
- persons involved in the events but not present when they occurred, or persons who are simply sources of information (for example informers)
- accomplices or suspects

Obtaining information from a person is a process that depends on the circumstances surrounding the investigation. Depending on whether you are dealing with victims, witnesses, complainants or suspects, your approach will differ, as will your attitude. Let's now consider each category of persons briefly.

4.4.1 Victims

These are people who have suffered some kind of loss or experienced trauma and have approached the authorities for assistance. Unfortunately, some so-called victims have an ulterior motive and merely pretend to have suffered loss to cover up their own criminal activity. An example is a person who falsely claims that his home has been broken into, just to be able to claim from the insurance company. When these persons are found out, they may be charged with any number of offences, ranging from fraud to making a false declaration under oath or defeating the ends of justice.

4.4.2 Complainants

It may sound as if there is a contradiction when one refers to victims and complainants; however, there is a difference between them. Not all complainants are victims. Consider a situation where a person employed in a supermarket receives a fraudulent cheque. The person receiving the cheque is not the victim because he/she did not suffer the loss personally. The supermarket that employs that person suffers the loss. Because the supermarket is a company and therefore not a natural person;

an authorised employee must complain on its behalf. This person is usually the financial clerk or manager, who is the complainant because he/she complains on behalf of the supermarket. Especially in civil matters, that person will often state that he/she is "duly authorised" to act on behalf of the plaintiff.

4.4.3 Witnesses

Direct witnesses are people who have seen the events. They saw or heard what happened and can give direct evidence in court by telling the court their version of what happened. They are also referred to as primary witnesses. Indirect witnesses are people who were not directly involved in the matter. They are also referred to as "secondary" witnesses because they did not see or hear what happened but can still give very important evidence. An example is a person who is in the employ of a bank and who can give evidence that when an accused issued a cheque, there was no money in his/her account. Another example is a person who is a forensic scientist and gives a statement on the content of alcohol in a blood sample in a case of drunken driving. Although they did not actually see the crime being committed, their testimony is vital to the success of the prosecution. These persons are officials in banks, government departments, local authorities and various other organisations responsible for maintaining official books and records. When entries in those books and records are required to be used as evidence in a trial, such an authorised person issues a certificate, which sets out and certifies the copies made from the original entries as true extracts from the contents of the original records they control (see Section 212 and Sections 233 to 236A of the CPA). A word of caution: in certain instances a witness may turn out to be an accomplice or even an accused, so you should always be vigilant.

4.4.4 Suspects/accomplices

Persons who are involved in crime as possible perpetrators are referred to as suspects. People who have assisted them in any way are referred to as accomplices. Joubert (2010:94) refers to an accomplice as someone who has committed an act that amounts to "furthering" or "assisting" the commission of an offence. Although they may or may not have been arrested, suspects have not yet been formally charged and have not appeared before court. These are individuals

whose involvement in the commission of the crime has not yet been established beyond all doubt and, as such, they have certain rights in terms of the Constitution and the judges' rules. Great care should be exercised when dealing with this category of persons because an infringement of their rights may lead to all kinds of problems, which may include an acquittal or civil claims being instituted. The provisions of the judges' rules and the Bill of Rights will be discussed at a later stage. Suspects and accomplices are also witnesses. Their version cannot be rejected just because you feel that they are guilty and are therefore telling lies. Your responsibility is to follow up on any explanation that they may offer. In some instances a co-accused or accomplice may want to cooperate and give evidence against the perpetrator. A court of law will always treat the evidence of an accomplice with caution. You will therefore have to obtain evidence to support or confirm their information. Discuss this with the prosecutor and do not become involved in their negotiations for fear of being accused of trying to influence the decision to cooperate.

4.4.5 Accused

Once a suspect has been charged, that person is referred to as an accused. The next step in the process is to get the accused to appear in court. This is done either by arresting and detaining the accused until the next appearance in court, by releasing him/her on bail, or by serving a written warrant or summons on him/her (see Section 38 of the CPA). As with suspects, accused persons have certain constitutional rights, the most important of which is being entitled to a speedy trial and, of course, being regarded as innocent until proven guilty. You should take note of the provisions of Section 35 of the Constitution in this regard.

4.5 TAKING NOTES

No person is able to remember everything that is said during an informal conversation or interview. This applies especially when an investigator is called upon later, during a trial or hearing, to testify about what a witness, suspect or accused said or did not say, hence the need for taking notes. Such notes are referred to as contemporaneous notes and can be used during the trial either to refresh the investigator's memory or to rebut a particular defence. Circumstances may not always allow for an investigator, witness or any person for that matter to make

detailed notes regarding something deemed to be important. In many instances, cryptic notes are made on pieces of paper, on the backs of cigarette boxes or other surfaces. Remember that these are vital pieces of evidence and should be seized by the investigator because, during stringent cross-examination, it is bound to emerge that the witness relied on some form of note. If the surface on which the note was made cannot be seized, for instance a wall, a floor or surface like sand (too large/impractical/fragile), it should be photographed (see Section 232 of the CPA). Certain conditions are applicable when making use of notes during a trial or disciplinary hearing. Joubert (2010:348) highlights the following important requirements when witnesses want to refresh their memories by using notes or documents:

- **The note or document must be authentic.**

The note or document is authentic if the witnesses wrote it themselves; or it was written on their instruction; or the witnesses read the notes at the time when the events were still fresh in their minds.

- **The notes must be contemporaneous.**

The witnesses must have made the notes during or immediately after the events.

- **The notes must be disclosed.**

Once a witness has refreshed his/her memory from a note or document while giving evidence, the other party is entitled to inspect the note or document and the court may also view it.

- **The note(s) must be the original document(s).**

The usual requirement is that the document(s) that the witnesses use to refresh their memories must be the original documents.

Self-assessment activity 4.2

Reflect on the requirements highlighted by Joubert (2010:348) for notes to be used by witnesses as a means to refresh their memories. Go to the online discussion forum 4.1 and share your thoughts on why you think these requirements are important.

Feedback and suggested solutions to self-assessment activity 4.2 will be provided in the online discussion forum 4.1 and follow-up tutorial letters.

4.6 METHODS OF TAKING NOTES

There are various ways in which notes can be taken. The most common ways will be discussed below.

4.6.1 Audio/sound recording

An audio or sound recording of what a person says is extremely useful in the investigation process. In the past, these recordings used to be referred to as "tape recordings". Currently, there are electronic devices that record and store audio sounds in electronic digital format. Most cellular phones also have quite sophisticated voice recording capacities. This is a handy piece of equipment to have available and such a recording is an excellent way of proving what a person said. Once transcribed, it can be used to formulate a statement.

There are always disadvantages to using technological aids. Among these is the unavailability of suitable recording apparatus, limited battery life or a shortage of cassettes. It is suggested that electronic digital recording devices that contain evidence of some sort be taken to an expert in their original condition and that no attempt whatsoever be made by the investigator to duplicate the contents. This is because the digital nature of the sound recording will lead the defence to explore various options in an attempt to create doubt in the mind of the court as to the originality and truth of the content of the recording. Remember that in a criminal matter the prosecution must prove its case "beyond reasonable doubt". It is always better to be safe than sorry afterwards. When dealing with an electronic digital sound recording device, rather seize the device intact, seal it properly and observing continuity of possession, and deliver it to the expert for analysis.

4.6.2 Visual recording

This refers to a video recording, which is a digital recording of an image. It is an effective way to disprove any allegation of impropriety, assault, harassment or other form of intimidation on the part of the investigator. It can be shown to court and, if

properly identified by the person who made it, should be readily accepted as evidence.

4.6.3 Written notes

Notes are usually made in the presence of the interviewee and can be made in a number of different ways. Some individuals may find this intimidating and feel uncomfortable, so the decision depends on the situation and how well the investigator is able to handle it. Taking notes of everything a person says is almost impossible. A more acceptable and easier way is to make cryptic notes of what the person says. It is important to stress that the actual words used by an interviewee should be written down verbatim (word for word) when something of importance is said. Never give your own interpretation of a word. If you don't know what a word means, ask the interviewee to explain what he/she means and also to spell it for you, if necessary. Remember that a good investigator is a good listener and that a good listener is a good investigator. Taking notes and interviewing go hand in hand. An investigator will ask a witness to repeat his/her story a number of times so that a sequential line of events can be established. This provides a chronological record of events that took place, starting at the beginning and extending right down to the end. Use the story the witness has given and divide it into a series of events/incidents. This means that there may be a number of incidents that make up the whole story. These incidents are events that took place either in succession, simultaneously or over a period of time.

The "Five Whiskeys and One Hotel" principle (5WH) is fundamental to any investigator to apply when trying to obtain complete information in a well-structured and systematic manner. Consider this principle and remember that the questions associated with each category will change depending on the type of incident that you are investigating and the type of information that you are searching for.

"Five Whiskeys and One Hotel" principle (5WH):

WHO? – Who are the persons involved in the matter? Are they known? Can they be identified?

WHAT? – What exactly happened? What can be determined from the events?

WHERE? – Where did this happen? Where was the witness when the events took place?

WHEN? – When did the events take place (date, time, etc.)?

WHY? – Why was the witness able to see the events? Why could this have happened?

HOW? – How did the event/s take place?

The advantage of this method is that each event is established as a separate occurrence and can be fully explored later on during the interview. Therefore, when you focus on each event individually later on, the witness may remember something which can be added. Using this method saves the investigator from having to make changes to a statement afterwards. Please bear in mind that you should not take more than one statement from a witness in the same matter unless new information comes to light at a later stage necessitating the first statement to be cleared up. The reason for this is the danger that the witness may perjure him-/herself and run the risk of facing a charge of statutory perjury in terms of the provisions of Section 319(3) of the Criminal Procedure Act 56 of 1955.

Another advantage of this method is that, where there are several witnesses, each one may be able to elaborate on or add something to a particular event, which could be of great importance to the case. You must remember that no two witnesses will agree perfectly on what happened. An investigator will have to examine each event separately to see where there is agreement and where further investigation is needed. It is suggested that the page on which notes are to be made be divided in two by drawing a vertical line, about three-quarters of the way across the page. The wider section on the left-hand side is where the interview notes are made. The narrower section on the right-hand side is where the investigator makes notes next to the places where further explanation may be required later on. In this way, the witness is not constantly being interrupted and can relate the story in a relaxed way.

Once the case has been divided into a chronological series of events, it is relatively simple to draw a schematic presentation of what happened in blocks and then insert

the names of the various witnesses that are able to testify to that particular event under each block. This is sometimes referred to as a timeline of events. No matter how hard you try, you will never succeed in investigating a case in chronological order, so this method is a practical way of overcoming this problem. You now have the names of all the witnesses and the reference numbers of their statements handy. This saves you from having to page through the whole file when looking for a particular statement. (Case files are never arranged in chronological order of events because statements and other documentary evidence are usually filed as they are acquired during the course of the investigation.) Bear in mind that this will greatly assist the prosecutor, who will be responsible for reading the case to make a decision. A person who is not acquainted with the way in which a particular case file has been arranged may want to take it apart and rearrange it so that it makes sense to him/her. If this has happened to your case file, the schematic presentation will make it very easy to put it back together again and will save you a lot of frustration.

4.7 TECHNIQUES IN OBTAINING INFORMATION

Obtaining information is a tedious and time-consuming process. It requires dedication, perseverance, tact and a sound temper. When information is required, the five-question rule determines the process to be followed. If the rule shows that an individual is a complainant or a witness, the person is then interviewed to establish what happened, or how that person is involved as a witness. There are various techniques to obtain information, of which interviewing and interrogation are the most common.

4.7.1 Interviewing

An interview is a conversation between an investigator and a person who is not suspected of being involved in a crime. The conversation can be either formal – referring to the process leading up to the recording of an affidavit, or informal – referring to a general discussion of the case. Whether formal or informal, the purpose is basically the same, namely to obtain information that will lead to the tracing of the suspect, the instituting of proceedings or the recovery of assets.

A very handy and effective aid to obtain information from a witness is the application of the TED principle. TED is an acronym for TELL, EXPLAIN and DESCRIBE. TED is used to prompt the witness to start talking, without just replying to a series of questions like a robot. TED can be used successfully in getting the person to relax and to communicate better with the interviewer. Here are some examples:

TELL – when trying to establish a person's background: "Tell me about yourself."

EXPLAIN – when trying to find out what a person was doing at a particular place: "Explain to me what you were doing there."

DESCRIBE – when trying to get a person to tell you what he/she saw: "Describe the scene to me."

The TED principle may be referred to as an "open-ended" questioning technique. This is so because it is designed to encourage the witness to relax and to talk without the interviewer having to keep on asking questions and thereby interfering with the person's train of thought. The opposite of open-ended questions are called "closed-ended" questions. They differ in that the witness is not encouraged to speak but merely required to answer "yes" or "no". Very little information is obtained in this way because it only requires an agreement or a denial. An example is asking a person whether his name is Jim Fish or whether the incident took place on a Friday. The answer can only be "yes" or "no".

4.7.2 Interrogation

Interrogation takes place when an investigator – either a police official or a corporate investigator – questions a suspected person to elicit a confession or an admission. It is a formal discussion and the suspect's constitutional rights as well as the judges' rules (see Section 9) are to be taken into consideration. Note that in criminal investigations a person who is suspected of having committed an offence is referred to as a suspect while in a civil or disciplinary matter the person is referred to as the defendant. An interrogation is less friendly than an interview because you are trying to link the person to the offence. The questions are aimed at achieving this goal by getting admissions or a confession.

A witness (who is normally on the side of the prosecution) may also be interrogated, especially when such witness is hostile or uncooperative. There are legal ways to ensure that a witness gives evidence in a criminal matter and investigators should be aware of the remedies available to them in cases where witnesses are reluctant or refuse to give evidence (see Sections 179 and 205 of the CPA).

4.7.3 Extraction

This highly unconstitutional and illegal form of interrogation consists of forcing the "truth" from a person by assault, torture, threats, intimidation or the administering of chemical agents like Sodium Pentothal (the so-called "truth serum"). It goes without saying that such methods are prohibited. Investigators that make themselves guilty of this will not only run the risk of being charged for any number of criminal offences, but may also face civil action for damages. To illustrate this point, there was the incident some time ago in the United States of America, where police officials were found not guilty of serious assault on a suspect, but were ordered to pay compensation for civilly infringing the victim's civil rights.

Self-assessment activity 4.3

Cynthia Khumalo is tasked to interview Ms Tabisile Ngwenya who alleges that she is being sexually harassed by Mr Thabo Dube, one of the maintenance staff members. Ms Ngwenya is very embarrassed about a recent incident that transpired while she was alone in her office with Mr Thabo Dube, and finds it difficult to start talking about the incident.

- ***Illustrate how you would use the TED principle when interviewing Ms Tabisile Ngwenya.***
 - ***Use the "Five Whiskeys and One Hotel" principle (5WH) to obtain complete information from Ms Tabisile Ngwenya which will be taken down in a statement.***
-

Feedback and suggested solutions to self-assessment activity 4.3 will be provided in the online discussion forum and follow-up tutorial letters.

4.8 ACCURACY AND THOROUGHNESS OF INFORMATION

The information that an investigator sets out to obtain is fundamental to reach a successful conclusion of the case. The investigator must make every effort to ensure that the information is accurate. This will depend on the manner and strategy followed when gathering the information. Thoroughness on the part of the investigator is of the utmost importance. A lack of thoroughness cannot be excused and will definitely cause the competence of the investigator and the value of the evidence to be questioned. The five-question rule (FQR) was developed by Grobler (2010) to help the investigator stay focused on the purpose of an investigation while ensuring the accuracy and thoroughness of the information. The rule consists of the following five questions:

What have I got? – In essence, this means exactly what it says. It is a question that needs to be asked at every stage of the investigation because it not only forces you to reflect on the evidence you have, but also determines what to do next.

What do I need? – This question forces you to think about how you are going to obtain the necessary evidence to secure a conviction, whether in the form of additional statements or physical evidence.

Where do I get it? – If you know what you need, you have to find out from where or from whom the evidence can or should be obtained. This forces the investigator to do some planning because it must be remembered that investigation is a "systematic search for the truth".

How do I get it? – If you know the answers to the first three questions but you can't answer the last one, you need to concentrate seriously on how to go about obtaining the required evidence. It could mean having to ask for assistance, obtaining special legal authority or adopting a particular investigative technique. It is all very good and well to get the evidence but you need to keep it safe. (Remember the concept of Continuity of Possession discussed above.)

What do I do with it? – Once you have the information or evidence, what do you do with it? Remember the requirements of continuity of possession discussed earlier.

Are you legally entitled to keep the evidence in safe custody or must it be handed to the police for safekeeping? If it is in police custody, how safe will it be? On the other hand, you need to determine its evidential value. Ask yourself whether it will contribute to proving the case in court, taking into consideration the burden of proof that you have to satisfy.

4.8.1 Discussion

The investigation process is so closely interlinked with a sound knowledge of the law that only a person with a good practical knowledge of the law will become a successful investigator. For example, if you are unaware of the requirements of the Bill of Rights contained in the Constitution as far as suspects and accused are concerned, or the application of the judges' rules, and you infringe a suspect or accused's rights, your case is doomed. You need to know the definition/elements of the crime that you are investigating, because these are the points you have to prove by way of statements. If your statement does not conform, to the letter, with the definition of the crime, and does not cover all the elements, or your sworn statement does not conform to the requirements of the law, you have a serious problem. This is where the accuracy and thoroughness of information play an important role.

An investigator who has a high record of arrests but a poor record of convictions is no match for an investigator whose arrests may not be as high, but who has a 100% conviction rate. The secret lies in knowledge of the law – private law as well as common law and procedural law. Bear in mind that, in most cases, the prosecutor or counsel for the plaintiff must read the case docket/investigation file before making a decision about whether to prosecute or institute proceedings. If the statements do not reflect that a crime has been committed, or that there is a basis for instituting proceedings, or if the statements are deficient in any way, no prosecution or action will be instituted. Do not blame them if they decide not to prosecute a case because you have not presented it properly. Your statements must be written in acceptable language in which grammar, punctuation and spelling are faultless.

4.9 "STANDARD OF PROOF" AND "BURDEN OF PROOF"

4.9.1 "Standard of proof"

Standard of proof refers to the strength or the amount of evidence that you must bring in a case to secure a conviction or a positive result. In other words, it is the amount of evidence you must have to win the case.

In civil matters, the standard of proof is much lower than in criminal cases. To succeed in a civil case, you need only prove that the plaintiff's (claimant) version is more likely to be true than the defendant's. This is referred to as a balance of probability. Expressed as a percentage, your case needs only to be 51% stronger than that of the opposition in order to succeed, which is 51% versus 49%.

In criminal matters it is different. There you have to provide evidence of the person's guilt beyond reasonable doubt, meaning that the court can make no other finding on the evidence than that of guilty. If there is reasonable doubt, the accused will get the benefit and will be acquitted. Percentage-wise, this is expressed as 95% plus (Joubert 2001:35).

This just goes to show the importance of being able to determine what and how much you need to prove your case. Bear in mind that the standard of proof in disciplinary matters is the same as in civil cases. A notable exception is the South African Police Service, where the standard of proof is the same as in criminal matters.

4.9.2 "Burden of proof"

There is a difference between the terms "standard of proof" and "burden of proof". We discussed "standard of proof" in the previous paragraph. The "burden of proof" applies to the side (party) that must prove their case/claim in order to succeed. As a general rule, it is the aggrieved party that must prove their case. As the term suggest, the "burden of proof" therefore rests on the aggrieved party. If they fail to do so, there is no case for the other party to answer.

Self-assessment activity 4.4:

Distinguish between the "standard of proof" and the "burden of proof" in criminal and civil matters.

Feedback and suggested solutions to self-assessment activity 4.4 will be provided in the online discussion forum and follow-up tutorial letters.

4.10 SUMMARY

We began this unit by highlighting that information is fundamental to any investigation. Without information suggesting that a problem exists or that a crime was committed, there will be no start to an investigation. This unit also emphasised how important it is for every investigator to utilise every opportunity optimally to gather and properly record information. Engaging with people as a source of information will always be an integral part of an investigator's work. We have also looked at the different kind of categories of people (victims, complainants, witnesses, suspects, accomplices and accused) and emphasised that the approach an investigator will take will depend on the category and the type of information such a person can offer. It remains fundamentally important that the investigator always consider the legislative framework and mandate that guides an investigation. Losing sight of this will adversely impact the outcome of an investigation and may expose the investigator to civil and criminal charges.

In this unit we discussed the meaning of "information" and its importance in the investigation process. Furthermore, we looked at people as sources of information, the importance and methods of taking notes, practical tools for systemic information gathering and recording, i.e. The "Five Whiskeys and One Hotel" principle, the TED principle and the Five Question Rule (FQR), the difference between interviewing, interrogation and extraction and the meaning of "standard of proof" and "burden of proof". In Unit 5 we will begin by studying the theoretical underpinnings of statements.

UNIT 5: STATEMENTS: THEORY

5.1 INTRODUCTION

In the previous unit we have discussed the issue of information and highlighted that it is fundamental to any investigation. Without information which suggests that a crime, wrongdoing or any other transgression occurred, there are no grounds for an investigation to be initiated. However, once information becomes available, it has to be recorded in some permanent and retrievable form. The best way to do this is to record a written statement. A written statement is the most important document in any legal process. It forms the basis of any investigation and is usually recorded by a person conducting an investigation into a matter, be it of a criminal, civil or departmental nature. There are various kinds of statements that are used for different purposes. In this unit we will discuss the various aspects and important considerations regarding statements and affidavits. We will also examine their purpose, how they should be structured (the format), the importance of correct procedures and why a statement should conform to certain minimum standards. Certain sections of the CPA, which are important for particular kinds of statements, will be referred to. This is such a vitally important part of the investigation process that there will be a certain degree of repetition of facts. This is done to remind you constantly of the necessity of being vigilant when interviewing persons, taking notes and recording statements.

UNIT 5

OUTCOMES:

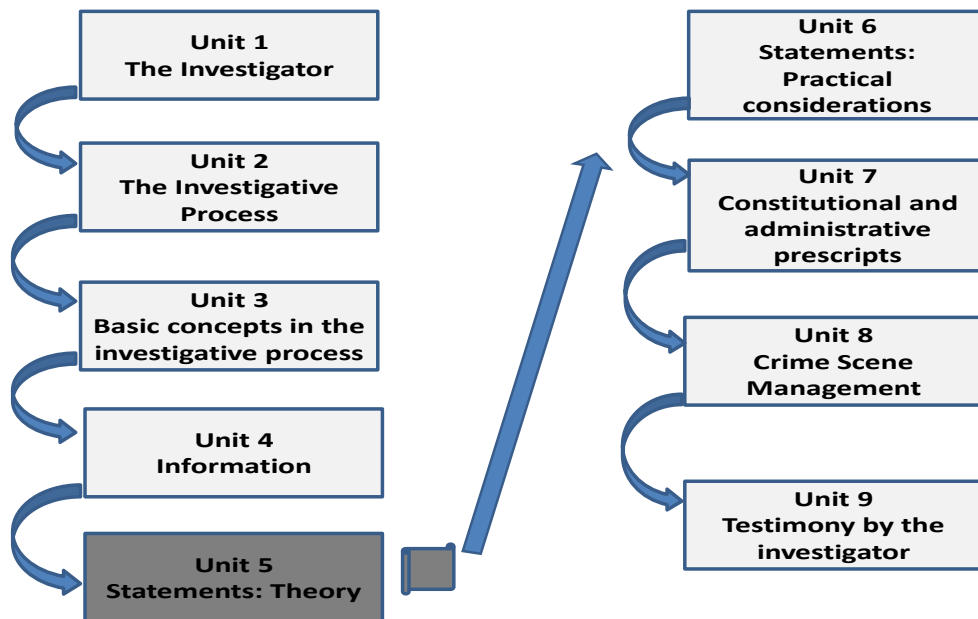
At the end of this unit you should be able to

- explain the basic theoretical concepts related to statements
- explain the requirements and administrative arrangements regarding statements
- highlight important considerations when interviewing and obtaining statements from witnesses and suspected persons

- explain the general rules and legal considerations when interviewing and obtaining statements from suspects

5.2 DEFINITION

Figure 5.1: How are we progressing?



The following definitions are relevant to this unit:

Sworn witness statement

A sworn witness statement is a permanent, written or typed document signed under oath or affirmed, which contains important facts that can be used to investigate a crime, reconstruct what happened in the past, and provide the courts with relevant information (Lochner 2014:118)

Testimony

A formal statement, especially one given in a court of law; or evidence of proof of something (South African Pocket Oxford Dictionary 2002:942).

Commissioner of oaths

A commissioner of oaths is a person who has been appointed as such in terms of the

provisions of Section 5(1) of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 by the Minister for Justice and Constitutional Development. There are also those persons who hold the appointment as commissioner of oaths by virtue of an appointment in a particular official capacity, such as South African Police Service members, postmasters or clerks of court. These appointments are made in terms of Section 6 of the Act and are referred to as "*ex officio*". It means that the persons are appointed by virtue of their official capacity. According to Lochner (2014:115) a commissioner of oaths is a person appointed in a specific area by the Minister of Justice, with the authority to administer an oath or affirmation and to attest to the authenticity of a document.

Admission

An admission is a statement made by an accused that is to his/her disadvantage. The admission may be made by means of conduct or a statement and is a confirmation of a prejudicial or unfavourable fact (Joubert 2010:318).

Confession

A confession is an unambiguous, clear and open admission of guilt where the accused makes a statement admitting all the elements of the crime (Joubert 2010:321).

5.3 SWORN WITNESS STATEMENTS

Sworn witness statements (affidavits) are permanent written or typed documents taken and signed under oath or affirmation. They contain important facts that are used to investigate and reconstruct something that has happened in the past, and to provide the courts with relevant information. To obtain a signed and sworn witness statement requires skill and techniques developed through years of experience. Experienced investigators develop their own techniques, which will differ from investigator to investigator. However, there are general techniques that are used by most investigators.

Sworn witness statements vary according to the use for which they are intended. The most common statement, as far as criminal investigations are concerned, are

those taken by members of the SAPS and other organisations whose members are commissioners of oaths. These are the statements taken under oath or affirmation and are known as **sworn witness statements or affidavits**. They are primarily destined to be used in criminal and disciplinary matters. Sworn witness statements are also used in civil matters, but they are usually drafted by legal practitioners. This does not mean that only persons who are commissioners of oaths can record sworn witness statements, or that all sworn witness statements are to be used in criminal prosecutions. Any person can take a statement, irrespective of whether that person is a commissioner of oaths or not. However, it only becomes an affidavit when the contents are sworn to as the truth before a commissioner of oaths. Simply put, if A (who is not a commissioner of oaths) takes down a statement, for whatever purpose, from B, and B takes that statement in **unsigned format** to C, who is a commissioner of oaths, and B and C comply with the requirements for affidavits below, it becomes an affidavit. However, in this instance, the certificate at the end of the statement will differ. The commissioner of oaths will delete words (I certified that the statement was taken by me).

5.4 REQUIREMENTS FOR AN AFFIDAVIT

An affidavit has to conform to certain legal requirements to be an acceptable and legally binding document. These requirements are set out in Government Notice GNR. 12588 of 21 July 1972, as follows:

1. (1) An oath is administered by causing the deponent to utter the following words: "I swear that the contents of this declaration are true, so help me God".

(2) An affirmation is administered by causing the deponent to utter the following words: "I truly affirm that the contents of this declaration are true".

2. (1) Before a commissioner of oaths administers to any person the oath or affirmation prescribed by regulation 1, he shall ask the deponent –

(a) whether he knows and understands the contents of the declaration;

(b) whether he has any objection to taking the prescribed oath; and

(c) whether he considers the prescribed oath to be binding on his conscience.

(2) if the deponent acknowledges that he knows and understands the contents of the declaration and informs the commissioner of oaths that he does not have any objection to taking the oath and considers it to be binding on his conscience, the commissioner of oaths shall administer the oath as prescribed by regulation 1(1).

(3) If the deponent acknowledges that he knows and understands the contents of the declaration but objects to taking the oath or informs the commissioner of oaths that he does not consider the oath to be binding on his conscience the commissioner of oaths shall administer the affirmation prescribed by regulation 1(2).

3. (1) The deponent shall sign the declaration in the presence of the commissioner of oaths.

(2) If the deponent cannot write, he shall in the presence of the commissioner of oaths affix his mark at the foot of the declaration: Provided that if the commissioner of oaths has any doubt as to the deponent's ability to write, he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.

4. (1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.

(2) The commissioner of oaths shall –

(a) sign the declaration and print his full name and business address below his signature; and

(b) state his designation and area for which he holds his appointment or the office held by him if he holds his appointment *ex officio*.

5. A commissioner of oaths shall not attest any declaration unless the revenue stamps required by law in respect of such declaration have been affixed thereto.

[Note by the author: This has been repealed].

6. A commissioner of oaths shall not charge any fee for administering any oath or attesting any declaration.

7. (1) A commissioner of oaths shall not administer an oath or affirmation relating to a matter in which he has an interest.

(2) Sub-regulation (1) shall not apply to an affidavit or a declaration mentioned in the schedule.

SCHEDULE

DECLARATIONS EXEMPTED FROM THE PROVISION OF REGULATION 7(1)

1. A declaration taken by an attorney which –

(a) is required for being obtaining of registration in deeds registry referred to in section 1(1) of the Deeds Registry Act, 1937 (Act 47 of 1937);

(b) should be furnished to a Minister or an administrator or an officer in the service of the state (including a provincial administration, the South African Railways and Harbours and the Department of Posts and Telecommunications), or to someone who is an officer or employee of the Government Service referred to in section 2 of the Government Service Act, 1980 (Act 2 of 1980), of the National Assembly of South West Africa.

2. A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.

5.5 ADMINISTRATIVE ARRANGEMENTS

Many organisations, notably the South African Police Service, have, for the sake of convenience, designed rubber stamps and other printed forms (referred to as *pro forma*) to facilitate the process of administering the oath. There is nothing wrong with this as long as the words that are not applicable in the *pro forma* are deleted, initialled and dated. It is regarded as good practice to learn the wording of the

certificate prescribed in the Regulations off by heart because there is not always a *pro forma* available in the field. There is an unfortunate tendency amongst certain investigators (who have not learned the wording of the certificates), to leave its inclusion until they are able to use the *pro forma*. This practice is to be strongly condemned as it is not only illegal but also renders the affidavit worthless. It may also lead to civil action for illegal arrest or illegal search if the affidavit on which the issue of the process was based is shown to have been irregularly made and certified.

The question may be asked as to why the full personal particulars of the commissioner of oaths are required. The answer is quite simple. The law requires a commissioner of oaths not only to print his/her full names – first and last names - but also his/her full business address. This requirement is probably due to the fact that many people's handwriting is illegible, that makes trying to identify them very difficult. Printing this information should make it easier to read. The main reason for requiring the names and addresses to be printed is to be able to identify and trace the commissioner of oaths in the event that the deponent denies that the statement was in fact an affidavit. This is a common occurrence in cases where a deponent is prosecuted for making conflicting statements under oath or where the validity of a warrant of arrest or of search and seizure is contested in court. There can be nothing worse, or more demoralising, than losing a case on which a great deal of effort and time was spent, due to an oversight in properly completing an affidavit, not to mention the possibility of facing civil claims for damages due to some illegal action. A deponent must be completely certain of the serious implications of making an affidavit, especially when it is to be used to prosecute another person. Therefore, a deponent must be aware of what the words in the affidavit and their connotation in terms of the crime that is being investigated, mean.

The business address of the commissioner of oaths is equally important. This is to determine at which physical street address the person conducts his/her business and to trace the person should it become necessary to determine whether the affidavit was properly sworn to. Do not give a post box or other address that cannot be physically visited or is impossible to find/trace due to its being vague or incorrect. Any statement, be it an affidavit or otherwise, must be unambiguous, clear,

understandable and to the point. The meaning of words must be the meaning that is given to them in the normal language. Many experienced investigators have, under strenuous cross-examination, been confronted with the allegation that an affidavit was obtained from a witness with the sole purpose of charging the witness for making conflicting statements under oath by using words with meanings that can be interpreted in different ways.

5.6 THE AFFIRMATION OR SOLEMN DECLARATION

In cases where the person making the statement either has a religious objection to making an oath or is not of the Christian Faith, an alternative to the oath is administered. This is an alternative to the oath but has the same binding and legal power with regard to how it is administered and was discussed in paragraph 5.4. The difference is when making an affirmation the deponent does not swear "So help me God" but only says that he/she truly affirms the declaration to be true. To avoid embarrassment, it is suggested that prior to taking the statement, the witness be informed that an affidavit will be taken and asked up front whether he/she has any objections to it. If so, the affidavit will be started off correctly as described below.

Self-assessment activity 5.1

Distinguish between oath and affirmation. What are the differences between them?

Feedback and suggested solutions to self-assessment activity 5.1 will be provided in the online discussion forum and follow-up tutorial letters.

5.7 ADMONISHMENT

The investigator is sure to come across instances where a witness is, as a result of youth, defective education or other cause, not able to understand the nature and importance of the oath or the affirmation. This does not mean that the person is incapable of giving evidence in court or incompetent as a witness. Although Section 162 of the CPA determines that witnesses should be examined under oath at criminal proceedings, Section 164 makes provision for an admonishing by the presiding official for the witness to speak the truth when it is clear that such a person

is unable to understand the nature and importance of the oath or affirmation. This admonishing carries the same weight as an oath or affirmation, and a witness can be prosecuted for perjury or statutory perjury if he/she makes a false statement. It is suggested that, should an investigator come across such a situation, an unsworn statement be obtained from the witness and that the matter be discussed with the relevant prosecutor. In view of the fact that the CPA particularly authorises only a judge or a presiding officer to do the admonishing, it means that this cannot be done by any other person. When a warrant for arrest or search and seizure has to be obtained and the evidence of such a person is necessary, supporting statements from other competent witnesses should be obtained. These should confirm the allegations by the affected person and serve as sufficient grounds for the issuing of a warrant.

5.8 THE UNSWORN STATEMENT

The value of an unsworn statement must not be underestimated merely because it is not an affidavit. There are many examples of unsworn statements that are of great value to an investigator. They do not differ from affidavits in any way except that they are unsworn and cannot be used to obtain warrants. Their value lies in the fact that they can be used in cross-examination to confront a witness with certain facts. Examples of such statements are press releases, statements made by suspects and dying declarations. Their evidential value depends to what extent they can be supported by other facts. Section 164 of the CPA provides for the admissibility of unsworn or unaffirmed evidence if the witness is ignorant arising from youth, defective education, or other cause. In such cases the presiding officer admonishes the witness to speak the truth (as discussed above). For investigation purposes, an unsworn statement is very limited in its application, unless it is either attested to before a commissioner of oaths or supported by other facts. The unsworn statement made by a suspect has great value to check a possible alibi or to contradict a particular defence. It is unfortunate that many good, efficient and experienced investigators – particularly those in private practice, who are not *ex officio* or appointed commissioners of oaths, are unable to take sworn statements. Any statement made by an accused in a criminal matter may be used to oppose bail or for purposes of cross-examination. The only proviso is of course that the accused

person must have made the statement voluntarily by his/her sober sense and with full knowledge of his/her rights.

5.9 THE DYING DECLARATION

The dying declaration is one of the exceptions to the hearsay rule. Hearsay is when a person makes a statement regarding something that was told to him/her by somebody else. An example is where a witness tells you that he heard from the next-door neighbour that an incident took place. A dying or death-bed statement is not a formal, written statement made by the deceased person on the verge of death. It is a statement made by the person to whom the deceased made the declaration shortly before passing away. This person is entitled to state as to what the deceased told him before dying. Under normal circumstances a person cannot give evidence as to what he was told by another. There are certain exceptions to this rule but they do not form part of this discussion. The dying declaration is also subject to certain other requirements that do not form part of this discussion.

5.10 EXCULPATORY STATEMENT

An exculpatory statement is a statement made by a suspect in which he/she clears him/her from guilt. An exculpatory statement made by a suspect or an accused in a criminal matter is referred to in lay terms as a "warn and caution" or a judges' rules statement. These are, as a rule, not sworn to – especially when taken by the investigator. There is nothing in law to prohibit this but the courts will most certainly frown upon it – especially as it may tend to prejudice the accused in his/her defence and infringe upon the accused's constitutional rights. Should an accused prefer to submit an exculpatory statement in the form of an affidavit made before his/her legal representative, this would be in order because the accused is properly represented. The investigator will be well advised to approach this issue with great care and caution, as the slightest infringement of an accused's rights may lead to a case being lost, as well as severe criticism from the judiciary. A replying affidavit by a defendant in civil litigation is totally different and is quite acceptable because the matter is usually dealt with by way of affidavits.

5.11 SUSPECTED PERSONS: INTERVIEWS AND STATEMENTS

5.11.1 Introduction

There are set rules that have to be followed to protect the constitutional and Human Rights of persons when they are being questioned and interrogated as to their suspected involvement in criminal activities. If these rules are not obeyed and the rights of the accused are found to have been infringed, the accused may be entitled to be acquitted on technical grounds. Such an acquittal, apart from being most frustrating to an investigator who may have invested a lot of time and effort in the investigation, also means that a potentially guilty person goes free. Dealing with this subject is like opening a proverbial can of worms. There are many *pro forma* forms available that all attempt to standardise the format in which a statement by a suspect should be taken. These *pro forma* forms have been designed to conform to the requirements of the Constitution and the judges' rules and to save time. They make provision for a full statement by a suspect as well as for a refusal to make a statement. However, in light of the fact that many investigators make use of computers in the performance of their work and have saved various forms to use as templates, it has happened that templates have been incorrectly applied. If you do make use of templates, ensure that they conform to the legal requirements for what they are to be used. A suspect cannot be forced to make a statement in the same way that a witness can. A defence lawyer will ask the client whether he/she has made a statement to the police. If the client answers yes, you are bound to receive a request for a copy. If you have not applied the judges' rules or observed the constitutional requirements that refer to the rights of suspected persons, you can be certain that the defence will attempt to have the statement declared inadmissible. It is for this reason that every investigator, be it a private investigator or an official investigator, should know and abide by the rules.

5.11.2 Interviewing suspected persons

There is a rule in law called the "*audi alteram partem*" rule. Literally translated it means "to hear the other side". This rule is to be applied when dealing with suspects, arrested and accused persons. When a person is being interviewed and it becomes clear that the person is likely to become a suspect, the person is to be warned according to the judges' rules, and his/her rights in terms of the Constitution

explained. It must be ensured that the suspect understands this. It is advisable that notes be kept of the interview. This should be done by the investigator and the notes will ultimately be annexed to the statement of the investigator. If the interview is recorded by mechanical means, the original recording should be duplicated for investigation purposes. The original is to be sealed and kept as primary evidence. The duplicate can be used to make a transcription. This is handed to court as evidence regarding the interview.

Certain laws make provision for a person to be required to appear before a statutory body to be interviewed in connection with a particular matter. These proceedings are usually recorded and are under oath. All that is necessary is for the proceedings to be transcribed and certified. It is then a statement under oath and can be used against a defendant in civil proceedings. It can only be used in a criminal trial if the defendant has deviated from the statement sufficiently to warrant a charge of perjury. Remember that a person can only be charged for making two conflicting statements under oath under Section 319(3) of the earlier CPA (56 of 1955) if the statements are in writing. (See also Section 9 of the Justices of the Peace and Commissioners of the Peace Act 16 of 1963).

5.11.3 Taking a statement from a suspect

The form of the statement is the same as any other statement taken from a witness. The most important aspect of this kind of statement is that the suspect must have been warned according to the judges' rules and his/her constitutional rights explained to him/her. This must be proved, otherwise the statement will not be admitted as evidence. The difference in who is able to take such a statement lies in the fact that it can be recorded either by the investigator, or by the suspect, in writing (or orally), or by the suspect's legal advisor. There are a couple of possibilities when dealing with suspects, especially if there is a possibility of a dispute at a later stage as to whether the statement was made freely and voluntarily. One option is for the suspect to prepare the statement personally and then hand it to the investigator. The other is for the person to consult with a legal representative of his/her choice and then to hand the statement to the investigator concerned. Remember that the suspect must make a statement freely and voluntarily. No threats or promises must be made and the suspect's constitutional rights must be observed at all times. Any

failure in this regard by an investigator may lead to the court declaring an admission or a confession by a suspect or an accused as being inadmissible.

Examples of *pro forma* exculpatory statements abound. These have been prepared by a succession of investigators to suit their particular needs. In essence, they are a mixture of the contents of the judges' rules and the Constitution. Thus, when a suspect in a criminal matter is being interviewed and that person wishes to make a statement, the *pro forma* is completed and the person is requested to sign it. There are no prescripts as far as the application of these requirements in civil matters is concerned. Because members of civilian investigative bodies are not police or law enforcement officers, but private individuals, these requirements do not apply to them. However, admissions that may be regarded as a confession made to these individuals will be regarded with great circumspection by the courts.

5.11.4 General rules

There are some general rules that apply when it comes to interviewing and taking statements from suspects. The following list is by no means exhaustive and should be seen as an example:

- Know the constitutional requirements.
- Know the law – the difference between a confession and an admission.
- Know the judges' rules.
- Be aware of Human Rights.
- Treat the suspect with dignity and respect.
- Be aware of your language usage – do not swear.
- Control your temper and remain calm.
- Do not intimidate the suspect.
- Do not force or coerce the suspect into making a confession.
- Take notes – audio-visual if possible.
- Never take a sworn statement from a suspect.
- Do not make any promises.
- In many cases it may be advisable to refer the suspect to his/her legal adviser. This can benefit your case because the suspect will then be assumed to have been properly protected and advised.

It is not the aim of this module to give a lecture on when and how statements of suspected persons may be used in the investigative process, but rather to caution the investigator when dealing with such cases. It is probably because investigators have made mistakes in this regard, that we find so many decided cases. Take note of these and learn from other's mistakes. (See Sections 217; 218; 219; 219A and 220 of the CPA.)

Self-assessment activity 5.2

You are about to interview a suspect you have identified in the investigation of a procurement fraud case. The suspect warns you that he is a qualified legal expert, knows his rights and states that he "will scrutinise your every move". How will you approach the interview?

Feedback and suggested solutions to self-assessment activity 5.2 will be provided in the online discussion forum and follow-up tutorial letters.

5.12 STATEMENTS MADE BY WITNESSES

5.12.1 Cooperative witnesses

The preferred procedure is to record a written affidavit from a witness who is fully cooperative and prepared to testify in court. There is no objection to this being done in the case of a cooperative witness because the affidavit is given freely and voluntarily. Such an affidavit may be admissible as evidence by itself in a criminal trial under certain circumstances, without the deponent having to appear in person (See Sections 212; 212A and 213 of the CPA).

5.12.2 Uncooperative witnesses

When there is resistance on the part of a witness or where the potential witness is hostile, the provisions of Section 205 of the Criminal Procedure Act should be applied. In such cases the witness is summoned to appear before a judicial officer and examined under oath in court, where the proceedings are recorded. All that needs to be done is that the proceedings are transcribed and certified for it to have the same legal status as that of an affidavit made before a commissioner of oaths. One should try hard to avoid alienating a witness by forcing him/her to give

evidence. This needs to be dealt with somewhat cautiously because a hostile witness, by either not remembering facts or making concessions while under cross-examination, may cause the case to fail. Financial institutions like banks, which have a responsibility of confidentiality towards their clients, will insist on a subpoena in terms of this section to be served on them before they will give the necessary evidence. They are not hostile or uncooperative but merely need to have themselves protected from possible civil claims by the client involved.

5.13 CONFESSIONS

A confession is an unqualified admission of guilt which, when made in court, will be the same as a plea of guilty. Police officers of and above commission rank (captain) are regarded as justices of the peace. They, as well as judicial officers, are entitled to take confessions from suspected persons. There are strict rules that have to be observed before this can happen; it is thus recommended that commissioned police officers be used as a last resort and that the services of a magistrate rather be used. A judicial officer is by far a better suited person to take a confession. The format of the confession is not prescribed and depends to a large degree on the official concerned. There are examples of *pro forma* statements available but the use depends on whether or not the official wishes to make use of it. As an investigator, you should not make any threats or promises whatsoever to induce a person to make a confession. Your role in the process should be seen as professional and independent. If a person expresses the wish to make a confession, you are advised to contact the local director of public prosecutions or an experienced colleague for advice.

5.14 ADMISSIONS

It is not the intention of this module to discuss legal issues. It is to show the differences between the two concepts so that the investigator is able to determine what the legal implications are when interviewing a person who may be implicated in an offence. From the outset, you are referred to the Bill of Rights and the judges' rules, which are discussed in paragraph 9, so that you are aware of your responsibilities and the rights of suspected and arrested persons. According to Joubert (2001:308) "an admission is a statement made by an accused that is to

his/her disadvantage". It differs from a confession to the extent that the person making it does not plead guilty as such but admits to the facts by giving an explanation. A simple example would be where a person accused of murder admits that he killed the deceased, but says that he acted in self-defence against an attack by the deceased. Such an explanation, as has been said, is called an exculpatory statement (see paragraph 5.10). Admissions can be made in various ways, the most common being verbally when the person is confronted.

Self-assessment activity 5.3

Go to discussion forum 5.1 and discuss the importance of adhering to the procedures that were discussed in this unit when interviewing and obtaining statements from witnesses and suspected persons. What are the consequences of ignoring them? How will the case you are investigating be affected by your ignorance of legislative guidelines?

Feedback and suggested solutions to self-assessment activity 5.3 will be provided in the online discussion forum 5.1 and follow-up tutorial letters.

5.15 SUMMARY

It is of the utmost importance for investigators to be cognisant of the broader legislative framework which lays down important guidelines when investigators engage in statement taking. The concepts discussed in this unit represent a theoretical underpinning which must be understood by investigators before they proceed with the practical aspects both of interviewing and the subsequent statement taking from witnesses and suspects. Disregarding the legislative guidelines and best practices discussed in this unit can have serious ramifications for the outcome of an investigation, and may result in the acquittal of an accused or a civil claim being instituted against the state or company who initiated the investigation. In the next unit we will discuss the practicalities of statement taking.

In this unit we looked at the basic theoretical concepts related to statements. The requirements and administrative arrangements regarding statements were discussed and the important considerations when interviewing and obtaining

statements from witnesses and suspected persons were highlighted. The general rules and legal considerations when interviewing and obtaining statements from suspects were also explained. In unit 6 we will move from theory to practice in statements.

UNIT 6: STATEMENTS: PRACTICAL CONSIDERATIONS

6.1 INTRODUCTION

In Unit 5 we discussed the theoretical underpinnings and important concepts associated with statements. In this unit we will cross the bridge between theory and practice and look at the practical issue related to statements and statement taking.

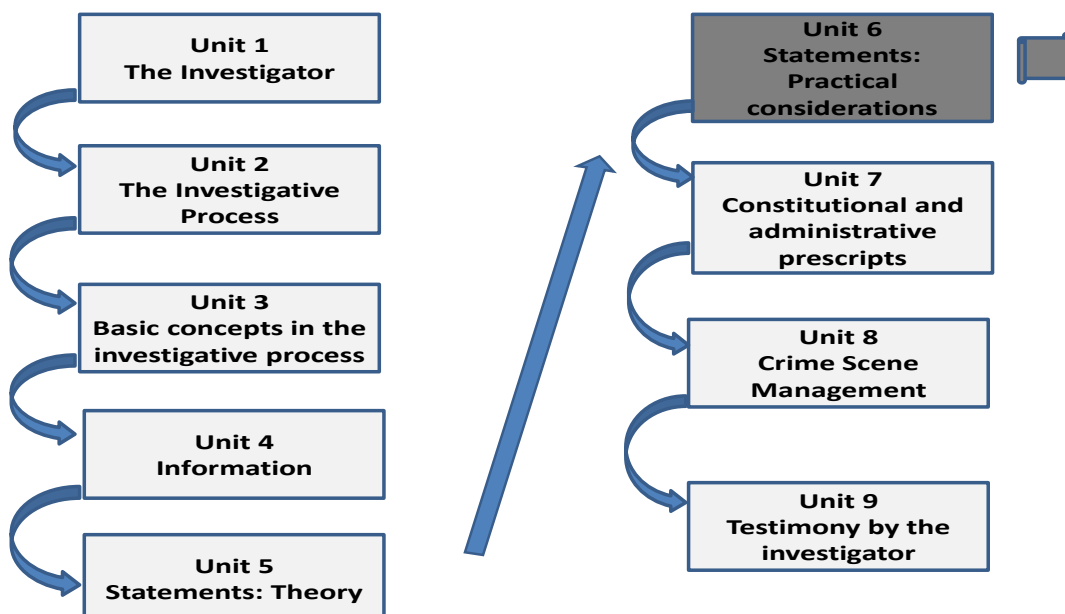
UNIT 6

OUTCOMES:

At the end of this unit you should be able to

- demonstrate how the theory studied in Unit 5 is applied in practical statement taking
- explain the structure and layout of a statement
- demonstrate how to obtain a statement from a witness or suspect while being cognisant of the legal guidelines and considerations

Figure 6.1: How are we progressing?



6.2 PREAMBLE

One assumes that witnesses are reliable, upstanding members of the community, ready, willing and able to do their civil duty. Unfortunately, witnesses have a nasty habit of either being themselves involved in the crime, being untruthful and evasive, or disappearing at the most crucial stage of the investigation or, even worse, the trial itself. There are circumstances when a witness can be detained. Before an investigator can detain a witness (the circumstances in which this can happen are described in Section 185 of the CPA), the witness must first be traced. For this to be done there needs to be sufficient information in the affidavit to make it possible. It is bad enough having to trace an accused, let alone a witness. A statement is certainly the most important document in an investigation. Although the content of the statement will vary from case to case, the format remains the same. The preamble of a statement is extremely important. It must be complete in every detail. There are a number of reasons for this, which will become apparent in the discussion, but the most important is the possibility that the witness may disappear and have to be traced – possibly by another investigator who will need all the information available to be able to do so.

The following information should be contained in the preamble:

- **Title, full first and last names (surname)** – ask the deponent to hand over his/her identity document and make sure that it is the same person and that you have the names spelled correctly. Alternatively, ask the deponent to either spell his/her names or write them on a piece of paper. This may have the added benefit of obtaining a sample of the person's handwriting. Obtain the person's nickname or name by which he/she is normally known. (An example is "Doctor" Khumalo.) The person's title speaks for itself. Many witnesses, especially professional people, prefer to be addressed by their title. This should be respected and an enormous amount of goodwill can be generated between an investigator and a witness if this basic requirement of good manners is observed.
- **Racial group and gender** – are equally important. It is about identification and nothing else. What success can be hoped for if another person has to

trace the witness at a later stage and does not know whether it is male, female, Black, Chinese, Coloured, Indian or White? In many cases it is possible to assume a person's racial group and gender from their names. However, many persons have names that make this impossible.

- **Language** – this is the language in which the deponent is making the statement. The home language of the deponent is also very important because you need to determine whether an interpreter may be necessary. The second reason is that the language of a deponent may provide you with an indication as to his/her ethnic relationship which, in cases of persons from a rural community, may assist you in tracing that person at a later stage.

 - **Identity number** – if you have the identity document, this is fine. If not, obtain the deponent's driver's licence, passport or any other form of identification on which there is a photograph. You can even go to the person's home and collect it there (if practical).

 - **Age** – this may be sensitive to some, while not important to others. Avoid this problem by simply asking the person's date of birth (this is contained in the person's identity document). When searching for a person, you need to know whether the person is young, middle-aged or elderly. People tend to associate with others of the same age, so it should make the tracing at a later stage a lot easier.
- Occupation** – the importance of the person's occupation cannot be overemphasised. A person may be uniquely qualified for a particular occupation that would make locating easier. It is hardly likely that a person who is qualified in a particular job or profession would change to a job for which he/she has no training. There are exceptions, and the next-of-kin will be

able to provide the investigator with valuable information in this regard. Maybe an accountant had a passion to work as a hardware salesperson and changed jobs for no apparent reason.

- **Full residential address** – apart from the obvious reason, it is possible to establish a person's new address from the local metro council. When water and electricity connections are made, a person has to pay a substantial deposit, which is refunded by cheque to a forwarding address when the person relocates. The neighbours may be able to give the new address, especially for forwarding letters and other correspondence. They may even be able to say which removal company was involved in the move. Thus the address where the furniture was taken to can be determined.

- **Contact telephone numbers** – at home and at work. Landlines as well as cellphone numbers are to be obtained. Telkom and the service provider may be able to assist.

- **Full work address** – this is to determine where the person works and to obtain any PERSAL or other employee number. The name of the company will make tracing easier at a later stage, and more so if you know in which department or business unit the person worked, what his/her particular function was and the period of employment. In large organisations this information will make tracing the person easier.

- **Further particulars** – is the person married, single, divorced or widowed? Particulars of the spouse, especially in divorce cases, may assist in tracing because the witness may be responsible for alimony payments. Particulars of friends, family or next of kin are important, because people tend to stay in contact with each other. If a person comes from a rural community, the

particulars of a contact person there is vital. It could be useful to determine which school the deponent's children attend. Schools keep record when children are transferred to another school. The local church may be a valuable source of information. When members of a congregation relocate, the church at the new neighbourhood usually requests the scribe of the former congregation to forward the member's records.

6.3 GETTING STARTED

Start the statement by writing down the deponent's title and full first/Christian names and last/surname. The title is important, because it will serve to further identify the person, and how he/she will be addressed. The deponent's names should preferably be printed and the last name/surname in capitals and underlined. This indicates that it is the person's last name/surname. It is important to indicate a person's last name/surname in this way, because there are many last names/surnames that sound like first names and it is most embarrassing when someone is addressed incorrectly.

A statement is written in the first person, past tense. For example, a deponent would state that: *"on such and such a day (even if it is today) I went to such and such a place."* It would be incorrect to state: *"Today I am going to such and such a place"*. Remember that all statements refer to what has happened in the past. The words "STATES UNDER OATH/OR SOLEMNLY DECLARES [as the case may be] IN ENGLISH "should appear in the very next line. In cases where the deponent is unable to speak English and an interpreter is used, this fact is stated as "STATES UNDER OATH/ OR SOLEMNLY DECLARES [as the case may be] IN (whatever language the deponent speaks) AND TRANSLATED INTO ENGLISH BY (THE FULL NAMES OF THE INTERPRETER – the interpreter's particulars will be recorded at the end of the statement.)" It is therefore important to keep the translator's details in case the translation is later questioned.

Now follows the preamble which serves to identify the deponent as follows: TITLE + FULL FIRST NAME/S AND LAST NAME (SURNAME)

STATES UNDER OATH IN ENGLISH:

1.

I am an adult (language of preference) speaking (race) and (gender) (nationality) citizen, (age), (date of birth) with identity number (full correct identity number according to identity document). My residential address and telephone number is (full street address and area code). I am employed by (name of company and full physical address as well as telephone and cellphone numbers) as a (occupation) – the deponent may be the owner, in which case the statement needs to be amended. My PERSAL or contract number is (state this number correctly) and I have been employed there for (period of employment). My next of kin is (name and relationship) who resides at (different address to the deponent). I am single/married or divorced. My spouse was/is (full names and contact particulars) *The fact that the deponent is divorced may be a sensitive issue, because many divorce cases are unpleasant affairs and the deponent may feel that this information has nothing to do with the case. The deponent may be a widow/widower, in which case you don't need the deceased spouse's particulars Try, in a tactful manner, to obtain this information by explaining the reason why it is required.*

Self-assessment activity 6.1:

You are to obtain a statement from Mr Thobela. Draft only the preamble of the statement that you will take from Mr Thobela by including detailed information based on the discussion above.

Feedback and suggested solutions to self-assessment activity 6.1 will be provided in the online discussion forum and follow-up tutorial letters.

6.3.1 Paragraph numbering

The next paragraph, which is the body of the statement, contains a narrative, in the first person past tense – a description, in sequence, of the facts relative to the statement. The first paragraph is numbered, starting at number 1, in the middle of the page. The numbering of paragraphs is very important because it may be necessary to refer to something in a particular paragraph later on in the statement, and this would make the process very easy. For example: "... The person called Peter, referred to in paragraph 5 below, then took out a knife and stabbed me in the arm."

6.3.2 Introduction

The deponent now introduces him-/herself and states in which capacity the statement is made. If the statement is made in an official capacity, the deponent states that, by virtue of his/her position, he/she has full control over and access to all books, records, registers and documents, both in hard and electronic form kept by the organisation and that all entries so made are done in the normal course of business (see Sections 236 and 236A of the CPA).

6.3.3 Introduction of role-players

Now the deponent starts to identify the role-players, setting out each person's function and relating the role played by each. This is important, because you may have to approach some or all of them at some stage, depending on what the outcome of the statement is. By this time, you would already know what to expect, because you will have conducted a full interview with the deponent beforehand and have taken interview notes.

6.3.4 Narrative

You can now start with the facts as related to you during the interview. Remember to start at the very beginning, dealing with one set of facts per paragraph in a chronological order. Remember the importance of time, date and place of occurrences. Set out in detail what happened and how it happened. Bear in mind that a statement by a complainant has to contain the elements of the crime. A witness testifies to what he/she saw or experienced at first hand.

6.3.5 Annexures

Most statements involving fraud and other similar crimes are likely to contain annexures of some sort. Remember that no document can speak for itself. The only documents that are exceptions to the rule are certificates that are issued by official agencies such as the Registrar of Deeds, the Registrar of Companies and of Close Corporations, the Clerk of the Court and the Registrar of the High Court. Banks also issue certificates to certify their records. In such cases use is made of Sections 212; 234; 236 or 236A, as the case may be, of the CPA. Bear in mind that the court may order that the person issuing such a certificate give evidence in person. See also Section 212A that deals with statements from abroad. Section 213 of the CPA makes provision for written statements which can be handed in as evidence during a criminal trial by agreement between the parties.

6.3.6 Identification of exhibits

A document that is destined to be used in evidence at a trial must be clearly identified by the party wishing to tender it as evidence, either by calling the author, the recipient or other person, who is able to testify as to its origin. Therefore, when a deponent refers to a document in his/her statement, it is annexed and attached to the document and described in such detail as is sufficient to identify it. It is then referred to in the statement as Annexure A, B etc. Remember that such annexed documents are always filed in alphabetical order. Remember too, that the original of the annexure that the deponent referred to in his/her affidavit, must be handed to the presiding officer as an exhibit during a trial. Original exhibits – especially documents – must be safeguarded against theft, damage or contamination. Certified copies are usually made for investigation purposes and for use by the prosecutor and the defence lawyer during the trial. It does happen that the original is lost, destroyed, or, for some reason, cannot be produced in court. In such a case the so-called "best evidence rule" applies. This is where the party wishing to produce the document has to give evidence that the original document cannot be produced for a particular reason and that (where lost), could not be found after diligent search. If the court accepts this statement, it may allow the copy to be entered as evidence.

Self-assessment activity 6.2:

Go to discussion forum 6.1 and give your views on why it is so important to write a complete narrative as provided to you by the person being interviewed. Highlight the importance of being clear when introducing role-players and the identification of exhibits.

Feedback and suggested solutions to self-assessment activity 6.2 will be provided in the online discussion forum 6.1 and follow-up tutorial letters.

6.4 CONCLUSION OF THE STATEMENT

Before the statement is concluded, it must be read to the deponent by the person who recorded it. It is advisable to hand it to the witness in order for him/her to read it personally. All alterations and additions must be initialled and dated by both parties. A statement may be recorded in typed or longhand form. If it is recorded in longhand and later typed for the sake of neatness, the original longhand statement must *under no circumstances* be destroyed or handed to the deponent. It is the original statement and will always remain so. It could happen that the deponent signs the typewritten statement and the original, handwritten statement is destroyed. In court the deponent deviates from the original to such an extent that you want to charge him/her for perjury. What do you have? – only a copy which is not the original. You may try the "best evidence" rule, but the ultimate decision will depend upon the prosecutor.

6.4.1 Administering the oath/affirmation

When all the alterations have been made and both parties are satisfied with the statement, the deponent must answer the following three questions:

Do you know and understand the contents of this declaration?

Do you have any objection to taking the prescribed oath?

Do you consider the prescribed oath to be binding on your conscience?

The deponent's answers, either "Yes" or "No", must be indicated in narrative form. For example: "I understand the contents of this declaration. I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience. I swear that the contents of this declaration are true, so help me God".

If the deponent has an objection to taking the prescribed oath and wishes to affirm the statement, the form will look something like this: "I understand the contents of this declaration. I have an objection to taking the prescribed oath, which I do not consider to be binding on my conscience. I truly affirm that the contents of this declaration are true".

If the witness has indicated that he/she knows and understands the contents of the declaration, that he/she has no objection to taking the prescribed oath and that the prescribed oath is binding on his/her conscience, the commissioner of oaths then requests the deponent to utter the words: "I swear that the contents of this declaration are true – So help me God". There is nothing in the law to require the witness to raise his/her right hand – this is used in court when a witness is sworn in before testifying. Tradition is hard to break and there is nothing to prohibit this when making an out of court affidavit. After making the oath, the deponent signs the declaration and initials and dates each page at the bottom right-hand corner, in the presence of the commissioner of oaths.

Exactly the same procedure applies in the case of an affirmation, except for the wording which is: "I truly affirm that the contents of this declaration are true." An affirmed statement has the same legal binding effect as that of an affidavit. If the commissioner of oaths has used a rubber stamp which contains these certificates, the parts that are not applicable must be deleted, initialled and dated. If not, the certificates are written out in longhand and completed as described above. *Remember that the deponent must sign immediately below the last sentence and that no spaces are left open. This is to protect all parties against allegations of later insertions.* It is good practice to inform a witness beforehand that you intend recording a sworn statement and asking whether the witness has an objection to taking the oath. You are then prepared to administer the oath or affirmation correctly.

6.4.2 Certificate by commissioner of oaths

The person taking the statement, in his/her capacity as a commissioner of oaths, then adds, immediately below the deponent's signature, the following certificate to the statement:

"I certify that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to/ affirmed before me and the deponent's signature/thumbprint/mark was placed thereon in my presence at (Place) on this the (Date) at (Time)"

NOTE: The words that do not apply must be crossed out and initialled when using a rubber stamp; pro forma or so-called template. If not, the correct words must be used.

The commissioner of oaths then signs the statement and adds the following particulars to the statement: COMMISSIONER OF OATHS. FULL FIRST AND LAST NAMES.

RANK: (If signing in an official capacity)

EX OFFICIO: (Member of Organisation e.g. police officer) *AREA:* (Area for which appointed e.g. Republic of South Africa). *These particulars must be printed.*

ADDRESS. (This is the full business street address of the commissioner of oaths. It must be the physical street address where the commissioner of oaths is conducting his/her business AND NOT A POST OFFICE BOX NUMBER.)

6.4.3 Using an interpreter

When an interpreter has been used, the following certificate is added to the bottom of the statement:

"I (Full names) hereby certify that I have translated from (language used by the deponent) to English and *vice versa*."

It is then signed and dated by the interpreter.

6.4.4 Deponent unable to sign

If the deponent is unable to sign, his/her mark or right thumb print must be affixed to the statement in place of a signature. If this happens, the mark or fingerprint must be clearly identified as such and signed by the member/commissioner of oaths.

6.5 SUPPLEMENTARY STATEMENTS

Quite often a witness has to make a second statement to supplement a previous one. This happens when a witness makes a statement about an occurrence at a particular time and date and then, sometime afterwards, further developments take place which influence the statement. Defence lawyers are quick to try and capitalise on this by asking a witness how many previous statements he/she has made in this regard. This is an attempt to show that the witness has made more than one statement and that there may possibly be two, and possibly conflicting, versions regarding the same facts. When a supplementary statement is made, it should be clearly stated in the preamble directly after the words: "STATES IN ENGLISH UNDER OATH: Further to my previous statement made on (date) I wish to make the following supplementary statement ...". The two statements are then bound together so that they form a single document. The first statement can be endorsed in red ink at the end "See supplementary statement dated ... attached". The supplementary statement should be similarly endorsed. There is always the possibility that the deponent may deviate materially from the first statement to such an extent that it constitutes an offence. (See Section 101 of the CPA and Section 319(3) of the previous CPA 56 of 1955.) The offence is described as "Making conflicting statements on oath." In such a case the deponent should be warned and the implications explained to him/her. If the deponent persists, he/she should be taken to another person, if at all possible, and that person requested to complete the second statement. Care should be taken that the investigator does not administer the second oath personally, but that an independent person administers it. This is to avoid the obvious accusation from the defence that the investigator knew that the deponent was about to commit an offence and did nothing to stop it. *Under no circumstances should the original statement be destroyed or handed to the witness, because it is primary evidence.*

If conflicting statements are made orally in court, the charge is perjury. When conflicting statements are in writing, the charge is one of contravening Section 319(3) of the CPA 56 of 1955. To prove this charge, it is not necessary to prove which one of the two statements is either true or false. See also Section 101 of the CPA 51 of 1977. The court may require the production of the two conflicting statements as well as statements made by the two commissioners of oaths who attested the two statements.

6.6 THE ANONYMOUS DEPONENT

It may happen that a witness wishes to remain anonymous. In such a case, the witness should be informed that this is, at best, only a temporary arrangement and that his/her identity is bound to be made public at the start of the trial. Even before the start of the trial the anonymity cannot be guaranteed because the accused is entitled to a copy of the case docket and the names of all the witnesses will thus be known. In such cases, it is advisable to discuss the matter with the public prosecutor who will issue instructions and guidelines to the investigator, after possibly conducting an interview with the witness.

Self-assessment activity 6.3:

It is reported to you by Mrs Sinazo Mpheta, the complainant, that her self-storage facility was broken into over the weekend between Friday 17 July 2015 and Monday 20 July 2015. The self-storage facility is situated at West-Vaal Retail Park, 1232 Samrand Road, Midrand. The complainant informs you that she visited the facility on Friday morning, 17 July 2015 at 08:30 in order to store additional furniture. She was accompanied by a male called "Jonno" from ABC Courier Company who assisted her in storing the furniture. Upon leaving the storage facility at 09:00, she secured the premises and paid "Jonno" for the service provided by ABC Courier Company. It was only when she arrived home that she noticed that the key to the storage facility was not in her possession. Mrs Mpheta again visited the storage facility on Monday morning at 09:00 in an attempt to search for the lost key, and found that her

storage facility was open. The complainant furthermore supplies you with the contact details and description of a potential suspect known only as "Jonno", and supplies you with a list of stolen items.

All details as provided in the scenario should be captured in a complete statement. Special attention should be given to the following:

- **elements of the crime**
 - **description of the scene**
 - **description of the stolen property**
 - **description of the suspect**
 - **administering of the oath or affirmation**
-

Feedback and suggested solutions to self-assessment activity 6.3 will be provided in the online discussion forum and follow-up tutorial letters.

6.7 REQUIREMENTS

According to Lochner (2014:85) there are requirements for a complete well-organised and professionally written sworn witness statement. It must be accurate, complete, concise, objective, comprehensive and the truth.

Accuracy

The statement must be an accurate version of events. Every word used in the statement must unequivocally reflect the meaning intended. In the Oscar Pistorius case, for example, sounds that emanated from the house on the night of the murder were initially described as "shots" but were later called "banging". The witness's words must be written down verbatim. There must be no confusion about concepts and the witness's words must convey what he/she wants to say. The investigator taking the statement may not "tweak" the language to make it sound better or to say what she/he thinks the witness wants to say; the witness statement must say what the witness understood and experienced. Accuracy also manifests in the correct use of words, sentences, names and titles. Spelling errors and using the wrong words create the impression that the investigator is untrained, unprofessional and *laissez*

faire. Full sentences in a logical sequence that paint the full picture of what happened add to the accuracy of the statement. The choice of words should be exact and say exactly what is meant. Ambiguous language that allows for assumptions should be avoided because it could create confusion. Using complex words and terms must be avoided because the aim of a statement is to convey facts and not to try to impress the reader. Poor vocabulary and a lackadaisical approach to taking the statement will create confusion and lead to incorrect assumptions and interpretations. Sketches and diagrams may be used to clarify aspects that are difficult to describe. An accurate statement is reader-friendly and avoids phrases like "as stated herein", "as above" or "see below" – vague references like these could lead to the wrong information being identified or important information being overlooked.

Completeness

The statement should contain all the details about the crime that was committed. The 5WH formula (what, when, where, who, why and how) can be used to ensure that the statement is complete. The testimony of the witness must be clearly set out in the statement. No material information may be omitted. Complete sworn witness statements not only promote the criminal justice process but give a positive reflection of the investigator's training, education, competence and professionalism during the trial.

Conciseness

The statement should be concise and to the point. This does not mean that details should be omitted, but irrelevant words and phrases should be avoided. When a statement is complete and understandable, it meets the requirements of conciseness. A further requirement for conciseness is that the statement must present the relevant facts. The investigator should use short sentences because long sentences could lead to confusion and errors.

Objectivity

When taking sworn witness statements, investigators must guard against including their own emotions and views in the witness statement. A sworn statement taken from a witness must be the witness's version, not the investigator's. The investigator must record the witness's exact version of events and the expressions and words used by the witness verbatim, even if the investigator thinks different words or a different version of the events would be more appropriate. Criminal investigation is about exposing the truth. If the witness reveals information that indicates a person's innocence, those facts must also be included.

Comprehensiveness

Any person reading the statement must be able to easily understand the facts and information given by the witness, or what had transpired at the crime scene. To ensure this, all the facts must be included. There must be no room for assumptions or guesswork. The admissibility of the evidence contained in the statement must be left to the prosecutor or the person who is tasked with making that decision. A thorough knowledge of the law will enable the investigator to identify the elements of the crime during the witness interview and to ask the right questions to elicit facts that can be included in the witness statement.

Truth

Presiding officials in criminal cases make their determinations based on the truth. Testimony is central to the investigator's career and under no circumstances can statements be made that are not true or that do not reveal the truth. Once the witness statement has been attested, the words in the statement and the meaning they carry cannot be changed. In South African courts an affirmed witness statement carries the same evidentiary value as a sworn witness statement. By taking the oath or affirmation the witness confirms that the statement contains the truth and that the oath or affirmation is binding on his/her conscience.

Defects in witness statements

Lochner conducted empirical research and subsequently pointed out in his book *Taking effective witness statements* (2014:80) the defects that appear in witness statements.

- Investigators do not know the elements of the crime that should be dealt with in the statement.
- The crime scene has not been described in detail – the date, time, place and *modus operandi* are often not mentioned.
- Statements do not reflect what actually happened.
- Seal numbers and serial numbers of evidence are omitted or are inconsistent.
- Register numbers are omitted or are inconsistent.
- The descriptions of clothing, injuries and the condition of witnesses and victims are incomplete.
- Ambiguous words are used. One of the respondents used the following example: for one population group “buttocks” means thighs; for another it refers to one's bottom.
- The chain of custody documentation is not included.

According to Van Niekerk and Lochner (in Zinn and Dintwe, 2015: in print) there are also administrative and grammatical defects that appear in witness statements. It is important that these defects are pointed out to you to avoid repeating them when taking witness statements.

- witnesses omit to sign the statement
- poor sentence construction, incoherent paragraphs and poorly composed statements
- clumsy language; spelling and language errors
- investigators do not write the statement in chronological order
- statements are not numbered
- where deletions are made, they are not signed (or initialled) and dated
- statements are incorrectly attested
- statements are not immediately attested

Technical requirements

For a sworn witness statement to meet the requirements, technical aspects of the statement also play a vital role. Statements that meet the technical requirements portray an image of professionalism and dedication. The following technical aspects regarding the format of a sworn witness statement are of the utmost importance:

- **Format:** A sworn witness statement can be taken in various ways and forms. The format and contents will be determined by the type of crime committed. If an organisation has decided on a specific format, Gordon and Fleisher (2010:53) suggest that that format should be used consistently throughout the organisation. The use of different formats within an organisation will appear unprofessional. If statements are obtained from different witnesses about the same event, the statements may under no circumstances be duplicated. This will appear most suspicious. In the Oscar Pistorius trial, for example, defence attorney Barry Roux interrogated state witness Charl Johnson on a number of points in his statement that were very similar to those in the statement given by his wife, Michelle Burger.
- **In writing:** Statements must be in writing. If the statement is typed it must be signed and filed in the case docket or investigation file. Written statements must be readable.
- **Paper:** Some investigators prefer to use lined paper with no margins to prevent additions and amendments, but this is not always possible or practical.
- **Paragraphs:** A sworn witness statement must be divided into paragraphs. Paragraphs should preferably be numbered and the numbers must be centred to facilitate cross-referencing. No lines should be left blank before and after paragraph numbers. The text should flow from left to right to prevent the insertion of paragraphs or other information. There are various opinions about how many sentences a paragraph must contain. The authors (Gordon & Fleisher, 2010:53) suggest that a paragraph should contain no more than 15 sentences.
- **First person, past tense:** The statement must be written in the first person and in the past tense.
- **Chronological order:** If the statement consists of more than one page, the text must flow chronologically from one page to the next to prevent the insertion of additional pages and information. If a statement consists of more than one page it

is suggested that the page number and the total number of pages be recorded at the top of the page, for example "Page 1 of 10".

- Sign and date: The witness (person making the statement) must sign and date every page of the statement. He/she should also indicate which page it is that is being signed, for example 9/15 (page 9 of 15). It is strongly recommended that the investigator who has taken the statement should also sign every page.

6.8 SUMMARY

The importance of complying with the law in general, and prescriptions relating to affidavits in particular, cannot be overemphasised. If an affidavit is not correct in all respects, it is not an affidavit. If it is not correct and a search or arrest warrant is issued on the strength of it, it would mean that the warrant was irregularly issued and without legal foundation. The SAPS or other agency that executes such an irregular warrant will be very embarrassed. Any property seized on the strength of an irregularly issued warrant will have to be returned. The organisation could face civil claims for damages and other consequences, such as an acquittal of the accused. Equally important are the particulars of the commissioner of oaths. In the event that a deponent may deny that the statement was properly attested or that something irregular took place, or that some false information was added to the statement afterwards, the commissioner of oaths will be called to testify. That is one of the reasons why the complete physical street address of the place of business of the commissioner of oaths must appear on the certificate.

As the investigator, you remain solely responsible for recording a statement correctly and properly, whether you are a commissioner of oaths or not. The quality of the evidence and the chances of a successful prosecution will depend on the contents of the affidavit. If these are inadequate, no prosecution will take place, irrespective of how good the case may seem to you. The decision to prosecute rests with someone else, who has to make a decision on the basis of the contents of the statement. If there is little chance of a conviction, the official will decline to institute a prosecution. Make sure that witnesses who are involved in long and drawn out cases provide sufficient personal information so that they can easily be traced if they disappear. The way in which a statement is taken is a reflection of the character of an investigator. A statement provides insight into how you think and act. If you are

overly hasty and do not pay much attention to detail, the statements you take will show this. These statements will always be lacking in some way. Keeping proper and reliable notes of occurrences as they take place is an art that only the truly dedicated fully appreciate and do in order to achieve success and recognition.

In unit 6 we applied the theory studied in unit 5 in practical statement taking. The structure and layout of a statement was explained and a statement from a witness or suspect was obtained while being cognisant of the legal guidelines and considerations. In unit 7 we will delve into the constitutional and administrative prescripts.

UNIT 7: CONSTITUTIONAL AND ADMINISTRATIVE PRESCRIPTS

7.1 INTRODUCTION

The process leading up to the arrest of the suspect is vitally important because it involves human rights that are protected in the Bill of Rights. You must be very careful because if you ignore these rights or are found to have acted unconstitutionally, you run the risk of losing the case. The process of confronting the suspect can be divided into two parts. The first part involves the judges' rules. Here the suspect has not yet been arrested and is given the opportunity to give an explanation that may prove his/her innocence. The second part involves the provisions of Section 35(1) of the Constitution, which deals with a suspect's rights after arrest.

UNIT 7

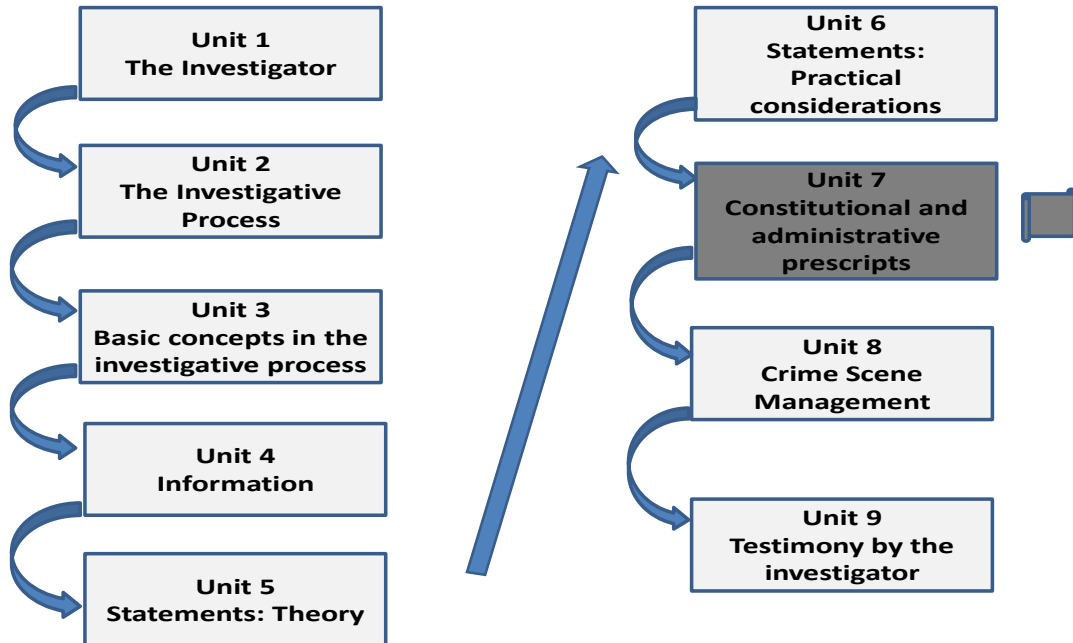
OUTCOMES:

At the end of this unit you should be able to

- explain the judges' rules
- explain how and when to use the judges' rules in a practical situation
- explain Sections 35 (1), (2) and (3) of the Constitution
- explain the importance of the judges' rules and Section 35 of the Constitution when interacting with suspected, arrested, detained and accused persons

7.2 JUDGES' RULES

Figure 7.1: How are we progressing?



The judges' rules are considered to be very important guidelines, even though some people may argue that they no longer apply, in view of the constitutional requirements. The fact that so much emphasis is placed on a person's constitutional rights, as contained in the Bill of Rights, means that a court will look very closely at the process employed to bring the accused before court, as well as how evidence has been obtained – especially evidence obtained from a suspect during the pre-trial process. If these rights have been infringed in the evidence collection process, that evidence may be excluded during the trial and the accused may go free (Joubert 2010:22).

The judges' rules are not contained in an act of parliament and have no force in law. They are administrative guidelines for the police to follow to prevent malpractices, and they were drafted at a judges' conference in 1931. It is therefore of the utmost importance for any official involved in crime investigation and, particularly when dealing with suspects, to have an operational understanding of the judges' rules. They can serve as an effective tool to guard against the infringement of rights, which may result in the exclusion of evidence and the acquittal of a guilty person. The fact that the rights of detained and accused persons are protected under Section 35 of

the Constitution does not mean that the judges' rules are no longer important. In the matter of *S v Nombewu* 1996 (2) SACR 396 (E), it was held that the judges' rules are relevant in the constitutional era (Joubert 2010:225). Take special note of the fact that the judges' rules apply in the pre-arrest stage, when the person is still a suspect and before the police have decided to arrest them. At this stage, the suspect can still give an explanation that would either prove their innocence or justify their actions. The judges' rules do not replace the warning in terms of the provisions of Section 35(1) of the Constitution; they support these provisions and complement the "constitutional" warning that has to be given. Even though the judges' rules apply to the SAPS, it is good for any investigator to use it as a guideline when dealing with a suspect e.g. Be transparent and respectful of the suspect's rights at all times.

The judges' rules are as follows:

"1. Questions may be put by Policemen to persons whom they do not suspect of being concerned in the commission of the crime under investigation, without any CAUTION being first administered.

2. Questions may also be put to a person whom it has been decided to arrest or who is under suspicion where it is possible that the person by his answers may afford information which may tend to establish his innocence, as, for instance where he has been found in possession of property suspected to have been stolen, or if an instrument suspected to have been used in the commission of the crime, or where he was seen in the vicinity about the time when a crime was committed. IN SUCH A CASE CAUTION SHOULD FIRST BE ADMINISTERED. Questions, the sole purpose of which is that the answers may afford evidence against the person suspected, should not be put.

3. The terms of the CAUTION to be administered are: "I am a Police official. I am making enquiries (into so and so) and I want to know anything you can tell me about it. It is a serious matter AND I MUST WARN YOU TO BE CAREFUL WHAT YOU SAY." Where there is any special matter as to which an explanation is desired, the official should add the words such as: "You have been found in possession of ..." and "unless you can explain this I may have to arrest you".

4. Questions should not be put to a person in custody with the exception of questions put in terms of rule (7).

5. Where a person in custody wishes to volunteer a statement he should be allowed to make it, BUT HE SHOULD FIRST BE CAUTIONED.

6. A prisoner making a statement before there is time to caution him, SHOULD BE CAUTIONED AS SOON AS POSSIBLE.

7. A prisoner making a voluntary statement must not be cross-examined, but questions may be put to him solely for the purpose of removing elementary or obvious ambiguities in VOLUNTARY STATEMENTS. For instance, if he has mentioned an hour without saying whether it was morning or evening or has given a day of the week and a day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

8. The caution to be administered to a person in custody should be to the following effect –

(a) Where he is formally charged –

"Do you wish to say anything in answer to the charge: You are not obliged to do so, but whatever you say will be taken down in writing and may be given in evidence."

(b) Where a prisoner volunteers a statement, otherwise than on a formal charge –

"Before you say anything (or, if he has already commenced his statement, anything further), I must tell you that you are not obliged to do so, but whatever you say will be taken down in writing and may be used in evidence."

9. Any statement made should, whenever possible, be taken down in writing and in the language in which it was made. It should be read over to the person making it, and he should be given full opportunity for making any corrections therein that he may wish to and he should then be invited to sign it.

10. When two or more persons are charged with the same offence and a voluntary statement is made by any one of them, the Police, if they consider it desirable, may furnish each of the other persons with a copy of such statement, but nothing should be said or done by the Police to invite a reply. The Police should not read such statement to a person furnished, unless such person is unable to read it and desires that it be read over to him. If a person so furnished desires to make a voluntary statement in reply, the usual caution should be administered" (Coetzee 1983:18).

If you study the judges' rules, you will see that they assist you greatly in doing your job correctly. We will be quoting from the constitutional requirements and you are urged to compare the judges' rules with the constitutional requirements to see whether they overlap, are in conflict or combine to protect you against unconstitutional behaviour.

Self-assessment activity 7.1:

Go to discussion forum 7.1 and reflect on the importance of the judges' rules. Why are these rules important to consider? Should these rules be ignored, what impact will that have on a case that you have investigated and presented before court? How will you apply the judges' rules in a situation where a suspect informs you that he wants to confess to the commission of a crime?

Feedback and suggested solutions to self-assessment activity 7.1 will be provided in the online discussion forum 7.1 and follow-up tutorial letters.

7.3 THE CONSTITUTION

The Bill of Rights (Chapter 2 of the Constitution) is viewed as the cornerstone of democracy in South Africa and affords every person the right to equality, human dignity, life, privacy and freedom and security of the person. However, s 36 of the Constitution (also referred to as the "Limitation Clause") provides for the limitation of these rights to the extent that the limitation is reasonable and justifiable. It goes without saying that the suspect's constitutional rights – as set out in Section 35 of the Constitution – must be borne in mind. You must ask the person for an explanation

and ensure that the provisions of the judges' rules are followed so that the accused is not prejudiced, otherwise the court may find that the accused's rights – in terms of Section 35(5) of the Constitution – were violated and it may therefore exclude the evidence, causing the accused to be acquitted (Joubert 2010:22).

Arrest is one of the more serious infringements of a person's rights in terms of the provisions of the Bill of Rights. Arrest is regarded as an administrative act. For that reason you will be required to have applied your mind, because administrative law requires that such actions be lawful, reasonable and procedurally fair (Joubert 2010:23). This means that before arresting a person, the police official must inform the suspect of the suspicion and give that person the opportunity to justify themselves before deciding on the appropriate action (Joubert 2010:23). In practice, this means that you should consider the reason for arresting the suspect. Is the crime serious enough to warrant the arrest? Or are you just arresting the suspect because you can, or because you want to prove a point, or because the suspect caused you problems and you want to "get even" by arresting them? These are obviously only some of the issues that must be considered before an arrest is made and you should realise that when a suspect has been arrested, the judicial process has started and that you are now in a race against time. The case will not be postponed indefinitely because, in terms of Section 35(5) of the Constitution, the accused has the right to a speedy trial. Arresting the suspect too early in the investigation will mean that you are placing enormous pressure on yourself by working to a deadline.

7.3.1 Arrested persons

Section 35 of the Constitution provides the following:

"35(1) Everyone who is arrested for allegedly committing an offence has the right –

- (a) to remain silent;
- (b) to be informed promptly –
 - (i) of the right to remain silent; and

- (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
- (d) to be brought before a court as soon as reasonably possible, but not later than
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
- (e) at the first court appearance after being arrested, to be charged or be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit subject to reasonable conditions.”

Note that the word "arrested" does not refer to suspected persons who have not yet been arrested or whom you have not yet decided to arrest because the person has given a credible explanation.

7.3.2 Detained persons

Section 35(2) becomes important because it deals with the rights of a detainee or sentenced person.

"35 (2) Everyone who is detained, including every sentenced prisoner, has the right –

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and consult with, a legal practitioner, and to be informed of this right promptly;

- (c) to have a legal practitioner assigned to the detained person by the state and at state expense; if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's –
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner."

7.3.3 Accused persons

At the trial stage section, Section 35(3) becomes relevant because if it is not complied with, it may result in the suspect's being acquitted (set free) on the grounds that his/her constitutional rights were infringed.

"35(3) Every accused person has the right to a fair trial, which includes the right –

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present while being tried;

- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (i) to adduce and challenge evidence;
 - (j) not to be compelled to give self-incriminating evidence;
 - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in this Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice."

The provisions of Section 35 of the Constitution are very clear and you must interpret them strictly – which means that when you interpret the meaning of words, they must be given their normal meaning. You cannot say that you thought that the provisions meant something different.

Self-assessment activity 7.2:

Scenario 1

You are the investigator in a major theft investigation. There is evidence suggesting that the suspect, Joe Marais, is responsible for multiple theft cases reported at the Menlyn Shopping Centre. You have linked him to the thefts and obtained a warrant for his arrest. Two days later, you apprehend Joe Marais by executing the warrant of arrest.

- ***List Joe Marais' rights in terms of Section 35(1) of the Constitution of which you need to inform him.***

Scenario 2

You are busy with a bail application in a housebreaking case where Thabo Siako is charged with 11 cases of housebreaking. You are warned by the public prosecutor to expedite your investigation as the cases have now been remanded for the fourth time, with Thabo Siako remaining in custody because you have not come to court prepared.

- ***Thabo Siako's rights in terms of Section 35(3) of the Constitution that you need to consider.***
-

Feedback and suggested solutions to self-assessment activity 7.2 will be provided in the online discussion forum and follow-up tutorial letters.

7.4 SUMMARY

The constitutional framework should always be borne in mind during every aspect of forensic investigation and should guide investigative decision-making. Section 35(5) of the Constitution clearly indicates that evidence obtained in a manner that violates any right in the Bill of Rights will be deemed inadmissible. Finally, whenever you interact with suspected, arrested, detained and accused persons, consider the following questions before, during and after your investigation:

- Am I acting within the mandate and legislative framework of my profession?
- Have I considered and applied the judges' rules before questioning a person who is under suspicion?
- Are my actions reasonable and justifiable as required by the Constitution?
- Am I following the prescribed procedures for evidence collection, search and seizure and arrest?
- Have I informed a person of his/her Constitutional Rights in terms of Section 35 (1) (2) and (3)?

In this unit we looked at the judges' rules and Section 35 (1), (2) and (3) as fundamental considerations whenever you interact with suspected, arrested, detained and accused persons. In unit 8 we will look at crime scene management.

UNIT 8: CRIME SCENE MANAGEMENT

8.1 INTRODUCTION

The topic of crime scene management will be dealt with in depth during the second year of this subject. In the first year (this module), some basic principles will be discussed that are of importance to you as a forensic crime investigator. It is important to know that these principles have evolved over many years and are accepted internationally as standard operating procedure in almost every investigation agency, institution, organisation, department or entity that deals with investigation. It is important to know that specific guidelines are applicable to different areas of specialised investigation. In this module, the focus will be on some generic principles, without detailed discussion. Since all crime scenes differ, there can be no hard and fast rules about what action to take at the scene. There are, nevertheless, basic guidelines that can be followed to ensure that the scene is processed optimally and all relevant information gathered. Every crime scene, irrespective of its size, location or the importance of the crime or incident that occurred, must be approached cautiously and carefully with a plan on how to process it effectively. A "scene of incident" is a more accepted term used in the corporate environment, as not all scenes are the result of a crime being committed. Remember that it is not expected of you as an investigator to be able to perform all the required functions associated with a crime scene or scene of incident. In modern law enforcement environments the investigator seldom gathers physical evidence. This function is usually carried out by crime scene specialists. Usually, the investigator acts as the crime scene manager, and receives the results of the evidence gathered at the scene from these specialists. The investigator then prepares an investigation file (a police investigator prepares a case docket) in which the efforts and results of the investigation are reflected. Evidence obtained during such an investigation, which includes statements, reports, physical evidence collected and analysed, photographs and notes, are then filed in the file or docket. Remember that the correct actions taken at a crime scene or scene of incident lay the foundation for success.

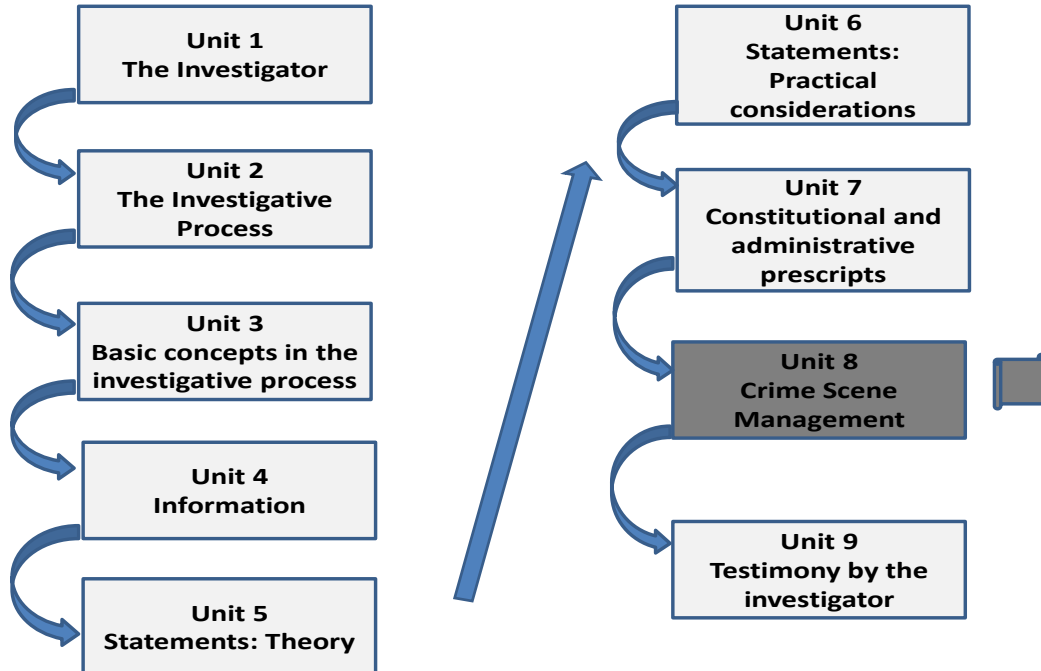
UNIT 8

OUTCOMES:

After completing this unit you should be able to

- explain the importance of crime scene management
- distinguish between the concepts "crime scene" and "scene of incident"
- demonstrate an understanding of decision-making before, during and after attending to a crime scene or scene of incident on the basis of a practical scenario
- explain the importance of record keeping and note taking at a crime scene or scene of incident

Figure 8.1: How are we progressing?



8.2 WHAT IS A CRIME SCENE?

In this module, the term "crime scene" will be used as an operational term, which refers to the place where a crime was committed or an incident occurred. However, it is fundamentally important to remember that in forensic investigation, an enquiry may not only relate to criminal cases but may also include civil cases, corporate investigations and disciplinary cases (Van der Watt 2014). For this reason the term "scene of incident" will be used interchangeably, especially when referring to the corporate environment. The focus of an investigator's efforts at the scene of the crime is to gather and protect information and evidence. Such information and evidence can be used to reconstruct the scene and answer the all-important question: what happened? The information and evidence found at the crime scene may later serve as factual evidence and eventually proof before a court of law. The crime scene is usually the starting point of an investigation. As crime investigation focuses on a search for the truth, the collection of evidence stands central to it. This evidence is usually obtained from the physical place where the crime or incident occurred, the victim (if the crime or incident incorporates a person), or the perpetrator of a crime.

Examples of these are the following:

- physical place – a fingerprint left behind at a crime scene by a burglar (remember the *Locard principle*)
- victim – where a victim was assaulted, the injuries sustained by that person (photographs of the injuries)
- perpetrator – in a sexual offence the perpetrator may have hair of the victim on his body

Clues (physical evidence) are usually found at a crime scene or scene of incident which may help an investigator to solve a case. The following considerations apply to an investigator when dealing with a crime scene or scene of incident:

- You, as an investigator, must know what to search for – do you know the elements of the crime you are investigating, what is needed and relevant to prove a case?
- You must know how to search – how do you approach the scene and do you

have the expertise to search for the specific evidence material?

- You must know how to identify and collect evidence – this may be a highly specialised field and is usually conducted by specific personnel trained in that field.
- All relevant actions and evidence collected at a crime scene need to be processed into statements and reports.

In its physical form, a crime scene or scene of incident may include a person, place or premises (including vehicles, boats or aircrafts) where some physical action has occurred and the likelihood that transference of evidential material has taken place (Trueman 2009:28). On the other hand, implicit or hidden incident scenes are synonymous with crimes such as money laundering, extortion, certain types of fraud and, especially, computer-related crimes. Hidden or implicit incident scenes can include online “chat rooms” used by employees and which bear evidence of collusion, racial slurs, threats or sexual harassment (Van der Watt 2014). Furthermore, Genge (2004:201-202) highlights that incident scenes associated with computers are complicated by the transient nature of electronic evidence, the speed of information transit, the possibility of sophisticated encryption, and the anonymity available to users. Crime scenes or incident scenes can therefore take various forms and manifest in different shapes and sizes. Irrespective of how such a scene presents itself, information must be gathered for the purpose of analysis, interpretation and individualisation (Van der Watt 2014).

Self-assessment activity 8.1:

Consider the concepts "crime scene" and "scene of incident". Is there a difference between the two concepts? List three examples of each.

Feedback and suggested solutions to self-assessment activity 8.1 will be provided in the online discussion forum and follow-up tutorial letters.

8.3 INITIAL ACTIONS OF AN INVESTIGATOR UPON RECEIVING A REPORT OF A CRIME OR INCIDENT

When you as an investigator receive a report of a crime or incident and are instructed to attend to it, you need to do the following before attending to the relevant scene:

- Obtain the name, address, contact details and capacity of the person who reports the incident.
- Determine what crime was committed or incident occurred and obtain as much information as possible, as this will enable you to approach it correctly from the outset.
- Have sufficient stationary such as relevant documentation, paper and pens available.
- Have sufficient resources and equipment available, that is forensic bags and packaging material, gloves and protective gear, handcuffs, torch, additional battery capacity for cellular and radio communication, GPS or map book.
- Have the relevant standby lists and contact details of relevant experts and aids available.
- Determine the location of the scene and the type of premises.
- Establish who are involved, that is perpetrators, witnesses and victims. Is the scene dangerous and must additional help be called in; do victims require medical assistance?
- What is your mandate – is the scene the responsibility of the police? Are you allowed to be there and to conduct an investigation?

8.4 ASSESSING AND ENTERING A CRIME SCENE

Before you start with the actual physical investigation of a crime scene, you should study the scene holistically from the best possible position. From this position, you should be able to formulate a plan on how to best approach and investigate it. Only then should you commence with the actual investigation. When entering the scene, you must proceed with extreme caution and concentrate on the vast array of possible evidence that you might find. This will obviously depend on the type of crime or incident that you are investigating. Don't assume anything. Note important details, record everything and be curious about every object found at the scene. Ask yourself whether it should

be there, what does it signify and whether it has any evidential value to the case in hand. Record everything; you may later return to such objects which did not seem important at the time, but later on prove to be important. Also record how you proceed through the scene and of everybody who enters or leaves the scene. If properly recorded and processed, their evidential value will probably still be intact. Walk very carefully through the crime scene. This will give you an idea of what it looks like and ensure that you are in a position to identify and protect relevant physical evidence (objects and physical traces). This walk-through will also help you to determine the boundaries of the crime scene. Do not step on footprints or move anything. Do not wander around aimlessly, identify routes or walkways and stick to them.

8.5 EVIDENCE FOUND AT A CRIME SCENE

In general, people are very curious when coming across or observing the actions of those responding to a crime scene. This curiosity can result in people trampling a crime scene and in the process destroying, damaging or contaminating evidence. Fingerprints, footprints, palm prints, knee prints, hair, fibres, clothing, broken glass, handwriting, tool marks, saliva, paint smudges, blood, semen and weapons are all examples of physical trace (a very small quantity) evidence that can be found at a crime scene or scene of incident. Every piece of evidence found at a crime scene should be regarded as relevant until proven otherwise. Some pieces of evidence are obviously significant – for example, a firearm found on the scene of a shooting. Identifying, gathering and preserving the integrity of physical evidence is the responsibility of the investigator from the time the evidence is discovered until the time it is presented at a relevant trial or tribunal. Preservation implies keeping the evidence in its original state, so that it is not being altered, tampered with, contaminated, lost or damaged. Preserving the integrity of evidence at the crime scene means that it must not become contaminated.

There are a number of things that you as an investigator should not do on a crime scene:

- Do not touch or pick up any object unnecessarily.
- Do not use a telephone or cellular phone found at the scene.

- Do not smoke, drink or eat at the scene.
- Do not use any facilities such as a toilet.
- Do not allow suspects, witnesses or any other unauthorised people at the scene.

8.6 PROTECTING A CRIME SCENE

Van der Watt (2014) highlights that cordoning off the scene of incident is fundamental to the forensic investigation process and, more specifically, the continuum of evidence preservation. A well-cordoned off scene creates an impression of professionalism and competency. On the other hand, a scene of incident that is not cordoned off usually displays a lack of control and proficiency on the part of investigators and responding personnel. The first official arriving at a crime scene is responsible for protecting it. This is usually done by cordoning it off and restricting access to it. Note that the boundaries of the cordon must be adequate to ensure that undiscovered physical clues and impressions are protected. According to Van der Watt (2014), corporate incident scenes within an office block may be cordoned off by evacuating the relevant section of the building or merely limiting access by the closing of an office door. The cordon should not be removed until all objects and anything with evidential value have been located, sketched, photographed, identified, marked, labelled and removed.

8.7 CONTINUITY OF POSSESSION (CHAIN OF EVIDENCE)

The continuous safekeeping of physical evidence (objects) is of great importance when conducting investigations. This process starts at the scene of a crime when an object (clue/exhibit) is found, and ends when the object is accepted as proof in any formal proceeding stemming from that investigation. You, as the investigator, must prove that the integrity of an object that is tendered as an exhibit is intact. This means that the article has not become contaminated through contact with other articles. The handling of physical evidence may be subject to scrutiny or critical evaluation during a criminal trial or other proceeding. The chain of evidence starts at the crime scene and ends in court or other proceeding, so the handling of physical evidence must be conducted with care.

Self-assessment activity 8.2:

You are tasked with an investigation where two company vehicles were stolen from the basement parking area. The two parking bays where the vehicles were parked are adjacent to one another. At the scene you find pieces of glass, a hammer, an empty briefcase and an identity document which belongs to one of the maintenance personnel. It is 07:00 in the morning and the employees of the company are beginning to arrive at work. They make use of the basement parking area where you are about to start with your investigation. Elaborate in detail as to how you will respond to this crime scene.

Feedback and suggested solutions to self-assessment activity 8.2 will be provided in the online discussion forum and follow-up tutorial letters.

8.8 RECORD-KEEPING AT A SCENE OF CRIME/INCIDENT

An investigator should always record everything of relevance or interest when conducting an investigation. This is especially relevant when conducting a crime scene investigation, collecting evidence, interviewing witnesses or interrogating suspects. Information is usually recorded in written format in a pocket book, notebook or on a pad. Police investigators are issued with official pocket books, while investigators in the private sector usually record information in notebooks or on writing pads. Information that is recorded must be an accurate and factual account of the facts as observed by the investigator and must be retained for future use. When collecting information or evidence you must remember to write down everything you see, hear and do. Once you have completed the investigation, you will have to compile a report or write a statement. Notes are short descriptions or records of everything you observe and do. Often investigators consider making notes as a boring and unnecessary activity; in fact it is totally the opposite. Notes are a memory aid; without them you will definitely forget some of the details. Remember that a case can be delayed for years on end before being finalised. Your notes may just be your only source of memory. The use of notes will also increase your credibility as an investigator. Remember to never destroy your original notes, even if you think you

will remember it or recorded it elsewhere.

8.9 NOTE TAKING

Remember, the more complete and accurate your notes are, the better the quality of your investigation, evidence and testimony. Notes should be accurate, specific, factual, clear and well organised. Detailed, organised and understandable notes describe something to people who were not there and present a reliable view of the actual situation. It is very important to know what you should record in your notes. As you become more experienced as an investigator, you will become more adept at it. There is no substitute for experience. Investigations and crime scenes differ, and each time you conduct another investigation or attend a crime scene, you become more experienced and therefore more proficient in what you do. Always anchor every entry – that means start with a date, time and place. You then start to describe everything that happened in chronological order: what you observed and who told you what.

The following table serves as a guideline when making notes:

Question	Content
When	When did the incident happen? When was it discovered? When did you arrive at the scene? When were the witnesses and suspects interviewed?
Where	Where did it happen? Where do the suspects and witnesses live?
Who	Who are the suspects? Who reported the crime? Who are the witnesses? Who is the victim?

What	<p>What type of crime was committed?</p> <p>What damage was caused?</p>
How	<p>How was the crime committed?</p> <p>How was the crime discovered?</p> <p>How did the intruder gain entry?</p>
Why	<p>Why was the crime committed?</p> <p>Why was the particular time selected to commit the crime?</p>

To summarise:

- "Who" concerns information about people involved in the crime or incident.
- "What" concerns property, objects and articles that are involved.
- "Where" concerns a specific place (such as the crime scene and the location of stolen property and physical evidence).
- "When" concerns dates and times.
- "How" concerns the *modus operandi* of the offender.
- "Why" concerns the motive of the offender – why he or she committed the crime.

8.10 CHARACTERISTICS OF NOTE CONTENT

Saferstein (1981:35) highlights the following key characteristics of notes' content:

- Record everything in chronological order.
- Record in detail, step by step, each and every action you have taken.
- Include a detailed written description of the scene, including the location of items of physical evidence recovered.
- Specify the date and time when the crime was first reported or detected.
- Specify the type of crime.
- Identify the location of the crime scene and give a brief description of the area.

- Mention surrounding houses or buildings, numbers of rooms, windows, terrain, types of plants, soil and animals (as they can contaminate a scene).
- Describe the event that led to the investigation.
- Note the names of all investigators, police officers, witnesses, investigators and, if applicable, special personnel at the crime scene.
- Note the names of the persons who conducted the crime scene search, took the photographs and made the sketches.
- Describe the weather and lighting conditions at the time of the investigation.
- Specify the date and time when the crime scene investigation was concluded.

Self-assessment activity 8.3:

Go to online discussion forum 8.1 and discuss five reasons why you, as an investigator, need to keep an accurate record of your daily activities. In what format do you capture the information? When required to provide an accurate account of an investigation you conducted two years ago, will you be able to do it?

Feedback and suggested solutions to self-assessment activity 8.3 will be provided in the online discussion forum 8.1 and follow-up tutorial letters.

8.11 SKETCH PLANS OF THE CRIME SCENE

Photographs or video recordings alone are not sufficient for recording a crime scene. Sketches of the crime scene should also be made. They should be used to complement the photographs or video recording to depict the crime scene fully. A sketch clarifies the appearance of a crime scene and provides a holistic view of what happened.

A sketch provides the following information:

- It portrays the physical facts.
- It provides information on how things happened.
- It indicates the location of objects at the scene.

- It provides a mental picture for those who were not present.
- It is a permanent record of the scene.
- It is helpful in preparing the investigation report.

The following information should accompany a sketch:

- the details of the official who drafted the sketch
- the location of the scene
- the date and time that the sketch was drafted
- weather and lighting conditions
- any other factors which could prove to be important at a later stage

8.12 SUMMARY

Consider the following handy hints by Van der Watt (2014) when attending to a crime scene or scene of incident:

C-R-I-M-E S-C-E-N-E

C: ***CAUTION! YOU ONLY GET TO DO THIS ONCE!***

R: ***Record everything by using available resources, aides and experts***

I: ***Integrity of evidence at the scene must be maintained***

M: ***Modus Operandi, Who? What? When? Where? Why? and How?***

E: ***Eliminate preconceived ideas and focus on facts***

S: ***Systematic process and procedures***

C: ***Chain of custody and preservation***

E: ***Extensive notes on all aspects of the investigation***

N: *Never assume*

E: *Evaluate the process by retracing your steps*

Investigators should at all times consider that their actions at a crime scene or scene of incident fundamentally contribute to how the entire prosecution process unfolds. Furthermore, the subsequent trial or relevant proceedings during which the evidence will be presented is not the most welcoming environment. The actions of the investigator will be scrutinised and any negligent act or omission will be used by the defence in an attempt to damage the credibility of the investigator. This study unit once again highlighted the systematic and organised nature of forensic investigation and provided a number of practical hints and best practices for ensuring professional conduct at a crime scene or scene of incident.

In this unit the importance of crime scene management was explained. We looked at the concepts “crime ”scene” and “scene of incident”. Record keeping and note taking at a crime scene or scene of incident were also discussed. In Unit 9 we will briefly discuss the aspect of testimony as something that every forensic investigator should be prepared to do when called upon.

UNIT 9: TESTIMONY BY THE INVESTIGATOR

9.1 INTRODUCTION

The ability to testify is one of the most important skills that you as an investigator can have. It is an investigator's primary responsibility to gather and correctly process information gathered at a crime scene and during the course of an investigation. For this information to be accepted as evidence in a court of law, you, as the investigator, must be able to testify about your actions and the evidence you collected. Such testimony may be subjected to scrutiny and cross-examination by the court and defence council.

UNIT 9

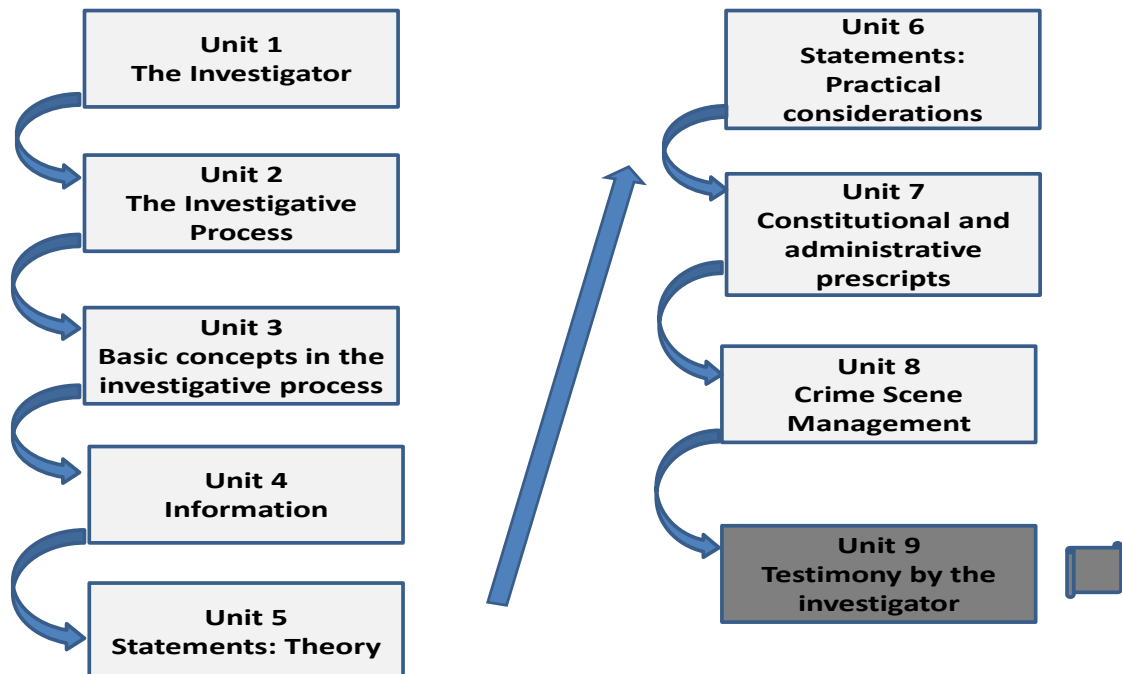
OUTCOMES:

After completing this unit you should be able to

- explain what it means for the investigator to conduct himself/herself professionally in a court or relevant tribunal
- explain the requirements that must be met when an investigator uses notes while testifying in court

9.2 CONDUCT IN COURT

Figure 9.1: How are we progressing?



Testifying in court usually presents an intimidating challenge to the average person, including the seasoned investigator. No matter what the crime is that is being prosecuted in court or the relevant tribunal, the defence will almost always try to attack the integrity of the investigator. Every aspect of your total investigation effort will be scrutinised; knowing that you have done your work well will definitely contribute to give you more confidence when your actions and investigative decisions are examined. Even the best defence council cannot intimidate a witness who has done his/her work thoroughly.

There are a number of aspects that you should consider which will help you to better prepare yourself for court testimony:

- Do not exaggerate evidence to ensure an accused's guilt – tell the truth and just the truth.
- Never become angry, no matter what allegations are levelled against you.
- Retain your composure, stay calm and always be professional.
- Listen carefully to each question and make sure you understand it before answering.

- If you do not understand a question, ask for it to be repeated.
- Be prepared for court – know your case facts, be early and bring along your notebook or pocket book relevant to the case on which you have to testify.
- Be dressed for the occasion and adopt an assured and professional manner.
- Refresh your memory from notes and your statement before testifying.

9.3 NOTES

Notes, photographs, sketches and other recorded information are used to compile a statement relevant to an investigation. Often such material forms part of a witness statement and is handed in as evidence by an investigator when testifying in a court. A witness is allowed to make use of investigation notes when testifying. This is a tremendous advantage to you, the investigator, as it is very difficult to remember detailed information after a long period of time, especially if you deal with a number of investigations.

There are a number of requirements that must be met when you make use of notes while testifying in court:

- You must have written the notes yourself at the time of the incident or as soon as possible afterwards. Remember that you cannot use notes compiled by someone else.
- You must be in possession of the original notes. Should the originals be lost or destroyed a copy of them may be used.
- You must be prepared to place the notes at the disposal of the court.
- The notes must be made available to the defence upon request.

Self-assessment activity 9.1:

Go to online discussion forum 9.1 and discuss the importance of a professional and confident appearance by an investigator who is about to testify at a trial or tribunal. Do you consider this to be important? Provide reasons for your answers.

Feedback and suggested solutions to self-assessment activity 9.1 will be provided in the online discussion forum 9.1 and follow-up tutorial letters.

9.4 SUMMARY

An investigator that testifies about an investigation that he/she has conducted into a specific matter or crime must have a sound working knowledge of what has to be proved regarding the offence that was committed. If you investigate a crime you must know the elements that make up that crime. You are allowed to testify in the language in which you are best able to express yourself. Remember that if you interviewed a witness or interrogated a suspect in another language, your command and understanding of that language may be tested. In court, the presiding officer should always be the person who is addressed. You look at a person who addresses you or ask a question, but direct your answers at the presiding officer.

In the closing unit of this module we briefly looked at what it means for the investigator to conduct himself/herself professionally in a court or relevant tribunal. Furthermore, the requirements that must be met when an investigator makes use of notes while testifying in court were also discussed.

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Case Law

S v Botha and Others (1) 1995 (2) SACR 598 (WLD).

EXAMPLES OF STATEMENTS

Statement by a complainant

PRETORIA CENTRAL CAS 123/04/2012

Mr Pieter MAIMELA

States in English under oath

1.

I am an adult black male. I am an English-speaking South African citizen aged 42 years. My identity number is 700515 5080 089. I reside at 1 Vista Complex, 2nd Avenue, Rietvallei, Pretoria. It is a private home in a security complex. My next of kin is my brother Joseph Phillip Maimela who resides at 591 White Street, Meyerspark, Pretoria (telephone 012 331 4310). My home telephone number is 012 335 6789 and my cellphone number is 078 123 4567. I am employed by APB Interventions as a nuclear scientist at Plot 57, Pelindaba, district of Pretoria. My persal number is 345. My telephone number at work is 012 555 8798. I am married to Eleanor Francis Maimela (née White) (née indicates her maiden name) who is employed as a receptionist at Consul Glass Works, 123 Industrial Township, Pretoria, telephone 012 664 5678, and cellphone number 079 125 4789. We have one child, a girl named Chantal, who is a grade 11 scholar at St. Albans College in Lynnwood, Pretoria. (You can add as much detail as you think necessary here.)

2.

On Sunday 8 April 2012, at about 07:00 I left my house at the above address to go to work. I was the last person to leave the house. Before I left, I made sure that all the doors were closed and locked and that all the windows were properly closed and secured. When I left the house, everything was in order. (This proves firstly that the structure is a house and that it therefore conforms to the requirement set out in the definition, and secondly that the house was properly secured and that the only way in which access could be gained was by breaking in.)

3.

On the same day at about 14:30, while I was at work, I received a telephone call from the security guard at the complex, Mr Johannes Gerbrand van der Walt, informing me that my house had been broken into. Mr Van der Walt is employed by Protex Security Company, which provides security services at the complex. His telephone number is 012 456 7867.

4.

I immediately returned to my house. When I arrived there at about 15:00, I inspected the property. I found that the front door of my house had been broken open and was standing wide open. I inspected the door and found that it had been forced open with an instrument which I suspect to be a crowbar. I then entered the house. (This proves that the house had been broken open.)

5.

I entered the house and inspected all the rooms. When I entered the study on the ground floor, next to the entrance hall, I discovered that a specialised medical chair that was in the study when I left the house that morning was missing. I searched the rest of the house but could not find anything else missing. I did find a steel crowbar that does not belong to me lying on the floor of the study and suspect that this was used to break open the front door. (This proves that someone had broken open the house and had entered it.)

6.

The chair is a "Medicos" model A7000 chair with serial number ASD 1234-0098-ZA. It is 1.8 m in length, 1.1 m wide and approximately 1.3 m in height. The chair has the serial number engraved at the bottom of the footrest. I attach a copy of the owner's manual which shows a photograph of the chair. See annexure A. (Remember that all articles must be fully and comprehensively described. If a photograph or an illustration of the stolen article can be obtained, it will make the work of the investigator much easier because he/she does not know what the item looks like, and is the person who will be expected to identify it when discovered. This paragraph

proves that certain items had been stolen.)

7.

The value of the chair is R125 000. I will be able to identify my chair. I am insured with Auto and General Insurance Company, policy number 12345k67.

8.

I do not suspect any person. I did not give any person the right to break open my house, to enter it or to remove anything from it. I desire police investigation into the matter. (This proves that the complainant did not give permission for his house to be broken into and property to be taken --- it is an important point to include because "permission" may be a valid defence by the accused.)

9.

I know and understand the content of this declaration.

I have/do not have any objection to taking the prescribed oath.

I consider the prescribed oath to be binding/not binding on my conscience.

The contents of this declaration are true, so help me God. (If the deponent has a religious objection, or is not of the Christian faith, the words that are not applicable are to be deleted and initialled and dated in the margin by both parties.)

.....

DEPONENT'S SIGNATURE

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. This declaration was sworn/affirmed to by me and the deponent's signature/mark/thumbprint affixed hereto in my presence at (place) on (date) at (time).

SIGNATURE OF MEMBER TAKING STATEMENT

COMMISSIONER OF OATHS, REPUBLIC OF SOUTH AFRICA

EX OFFICIO MEMBER OF SAPS (or other appointment)

FULL FIRST AND LAST NAMES AS WELL AS FULL STREET ADDRESS

RANK (if member of SAPS or other appointment)

Statement by a witness

PRETORIA CENTRAL CAS 123/12/ 2012

Mr Johannes Gerbrand VAN DER WALT

Solemnly states in English:

1.

I am an adult white male. I am an Afrikaans-speaking South African citizen aged 41 years. My ID number is 710809 5910 087. I reside at number 9 Villa Flats, Main Road, Eldoraingne, Pretoria, which is my property. My home telephone number is 012 555 6785 and my cellphone number is 076 333 8796. I am a security guard in the employ of Protex Security Company, 345 Suiden Street, Valley View, Midrand. My Persal number is 9087. My office telephone number is 011 456 7867. I provide general access control and security services at the security complex known as Vista Complex which is situated at 2nd Avenue, Rietvallei, Pretoria. My next of kin is my sister Mrs Joleen Susan Marx who resides at 76 Rossmund Avenue, Woodhill, Pretoria, telephone 012 991 8974. (Bear in mind that employees can easily relocate and that you may need the next of kin to trace them.)

2.

I know Mr Pieter Maimela. He is a resident of the complex where I am employed.

3.

On Sunday 2008-04-08 at about 14:00 I was on duty at the complex. I was responsible for access control at the complex. There is only one entrance/exit to the complex. It is security fenced and all entries and exits are through this gate.

4.

While I was on duty, a green Mazda bakkie approached me from the outside of the complex. It stopped at the boom and I approached the driver to determine what he wanted. I saw that there were two white males in the bakkie. They were dressed in blue overalls and spoke to me in Afrikaans. The driver was about 40 years of age and wore a blue cap. He had a brown moustache and wore silver spectacles. Due to the cap I could not see the colour of his hair. He had a scar on the right side of his cheek which I could see clearly. The other occupant was a youth of about 15 years. He was blond-haired and wore sunglasses. It was clear that his nose had been broken as it was flat and skew to one side. He had a distinct stutter when he spoke. (This person is an eyewitness and can identify the suspects. He must give a full description of them.)

5.

I asked the driver what he wanted and he informed me that they had been sent to collect a chair from Mr Maimela for repairs. I was satisfied with the answer and handed the driver a clipboard with the access control forms and asked him to complete it. I watched him as he completed it in his own handwriting. He gave his name as Mr Jim Fish and his address as 10 Ames Road, Valhalla, Pretoria, telephone 012 345 0980. He entered his ID number as 681212 5014 085.

6.

He then returned the access control form to me and I noted the particulars of the vehicle as follows:

Make: Mazda bakkie

Model: 2001 B2500

Registration: ZFG 000 GP.

Colour: Green

It had a pair of Hella spotlights mounted on the front bumper, with silver magnesium wheels. It did not have a canopy. The rear was empty.

7.

I then allowed them access to the complex and lost sight of the vehicle as it turned to the right in the complex. I then checked the video and made sure that it had recorded the incident. I had activated the video camera when the vehicle approached the gate and it recorded everything that had taken place. No one else except me handled the equipment and I removed the cassette afterwards and kept it safe in a locked drawer to which only I have the key. I hereby hand the cassette, marked JGW 1, as well as the clipboard, over to the police. I also hand over the original of the access control sheet of which a copy is attached as annexure A.

8.

On the same day at about 14:15 I was on bicycle patrol in the complex and was going past the house of Mr Maimela at 1 Vista Complex. As I rode past the house, I saw the same green Mazda vehicle parked in the driveway next to the house. The two occupants of the vehicle were in the process of loading a large black chair onto the back of the vehicle. I did not find it strange and then returned to the main gate to relieve my colleague.

9.

While I was on duty at the gate, at about 14:30 on 2008-04-08, the same vehicle approached me to go out of the complex. They had to stop at the gate. When it had stopped, I inspected it. I found a large black chair on the back. The driver then told me that this was the chair they had come to collect for repairs. I opened the gate and they left.

10.

On 2008-04-08 at about 14:45 I was on patrol again and rode past Mr Maimela's house at 1 Vista Complex. When I passed the house, I saw that the front door was standing open. I went to investigate and discovered that it had been broken open. I made sure that there was nobody inside and telephoned Mr Maimela and informed him of what I had found. Mr Maimela arrived a short while later and confirmed to me that the chair had in fact been stolen.

11.

I will be able to identify the two persons.

12.

I know and understand the contents of this declaration.

I have a religious objection to taking the prescribed oath.

I do not consider the prescribed oath to be binding on my conscience.

I solemnly affirm the contents of this declaration to be true.

■

SIGNATURE OF DEPONENT

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. This declaration was affirmed to by me and the deponent's signature/mark/thumbprint was placed hereon in my presence at (place) on (date) at (time).

■

SIGNATURE OF PERSON TAKING THE STATEMENT

COMMISSIONER OF OATHS, REPUBLIC OF SOUTH AFRICA

EX OFFICIO MEMBER OF SAPS (or other appointment)

FULL FIRST AND LAST NAMES AS WELL AS FULL BUSINESS STREET ADDRESS

RANK (or other appointment)

Statement by a law enforcement officer in his/her capacity as both witness and complainant

It often happens that a law enforcement officer (i.e. police or traffic officer) witnesses the commission of an offence while performing official duties. Such an incident can occur at a time and place where there may not necessarily be any witnesses, or the circumstances can be of such a nature that the tracing of witnesses may be an insurmountable task. Due to the serious nature of such an offence and the potential danger or risk to life, the law enforcement officer needs to intervene and fulfil the role as both witness and complainant. Due to the possibility of being a single witness to such an incident, every effort should be made to give a complete and objective account of events that transpired, with sufficient facts that justify the course of action taken.

Please note: The following scenario and statement serve only as an example:

You are posted alone on patrol vehicle Alfa Tango (AT) 142 and responsible for patrols in the Humewood Police Station area in Port Elizabeth. At approximately 03:15 on Friday 13 May 2011 you stop at a red traffic light in Beach Road, Humewood. While being stationary, you notice a vehicle in your rear-view mirror approaching from behind at a significant speed. You immediately switch on your blue lights and hazards in order to deter the oncoming driver from speeding. However, the driver switches off his headlights, increases his speed and drives recklessly across the set of traffic lights which are still red. You immediately pursue the vehicle which ignores any indications from you to stop. After a pursuit the driver loses control of the vehicle and collides with a barrier next to the road. He is seriously injured.

HUMEWOOD CAS 566/05/2012

Mr. John THOBILE

Solemnly states in English:

1.

I am an adult black male. I am an English-speaking South African citizen aged 43 years. My identity number is 6904025065088. I reside at no 43 Willow Park Road, Sydenham, Port Elizabeth. My home telephone number is 041 453 1213 and my cellphone number is 083 657 1234. My next of kin is my brother Siphosiso Vena who resides at no 23 Avontuur Street, Bridgemeade, Port Elizabeth (telephone 041-3711345). I am employed as traffic officer by the Nelson Mandela Metropolitan Municipality, 242 Kempston Road, Sydenham, Port Elizabeth. My Persal number is 04056676. My telephone number at work is 041 453 2000. I am not married.

2.

On Thursday 12 January 2012 at 18:45 I booked on duty sober and free of any injuries as per my pocket book entry 3/2.... on page 35. I was posted as driver of Alfa Tango 142, a marked Nissan Almera with registration number DWC 673 EC. Before the start of my duties, the said vehicle was inspected by me and I found everything to be in order and working condition (i.e. blue lights, siren, hazards, headlights, indicators). I was posted alone on the vehicle as my colleague Mr. Trevor Goosen was booked off sick. I was responsible for patrol duties in the Humewood Police Station area.

3.

At approximately 03:15 on Friday 13 January 2012 I exited the 24-hour McDonalds restaurant in Beach Road, Humewood after buying myself a cup of coffee. I turned right into La Roche drive and immediately left into Beach Road after coming to a standstill at the red traffic light in Beach Road adjacent to the main entrance to Kings Beach. While being stationary at the red traffic light I noticed a vehicle in my rear-view mirror approaching from behind at a significant speed. I immediately switched

on my blue lights, hazards and siren in an effort to deter the driver from both speeding and possibly colliding with my vehicle. In response to this the driver switched off the headlights, increased the speed at which the vehicle was travelling and ignored the red traffic light by continuing driving.

4.

Only as the vehicle passed me I noticed it to be a yellow Fiat Pallio. I immediately pursued the vehicle with my blue lights, siren and hazards still switched on. I informed Control 7 of the situation and requested immediate back-up from any other traffic or police vehicle in the area. At this point in time I have not yet been able to identify the registration number of the vehicle due to its distance in front of me. The yellow Fiat Pallio kept driving at a significant speed as it passed the Virgin Active gym (on the left) in Beach Road. At this stage I took note of the speed at which I was travelling as approximately 145 km/h.

5.

The yellow Fiat Pallio now approached the intersection between Beach Road and Walmer Boulevard while driving in the direction of Central and still made no effort to decrease its speed. The said vehicle then violated the red traffic light at the intersection of Beach Road and Walmer Boulevard and immediately swerved to the right by taking the M4 freeway in the direction of Deal Party. I managed to close in on the vehicle and was able to take note of the registration number as BCW 741 EC. I immediately gave a situation report to Control 7 and also supplied the registration number of the vehicle. At this stage I was informed by Cynthia Davids at Control 7 that only a police vehicle (Hotel 4) responded to her request for back-up and that Hotel 4 is approaching from Rowallan Park.

6.

The yellow Fiat Pallio BCW 741 EC was still driving on the M4 freeway and passed the Russel Road, Albany Road and Mount Road off-ramps. I now noticed the speed at which I was travelling increasing to approximately 150 km/h as we passed the Uitenhage off-ramp. I remained in close proximity to the yellow Fiat Pallio BCW 741

EC and consistently tried to obtain a reaction from the driver by alternating between the dim and bright function of my headlights. As we passed the North End prison while still driving in the direction of Deal Party, I noticed the driver bending down to the passenger side. At that moment the driver briefly lost control of the yellow Fiat Pallio BCW 741 EC and almost collided with a lamp pole on the left-hand side of the road.

7.

I gave another situation report to Control 7 at exactly 03:21 (according to the electronic clock in my vehicle) while the yellow Fiat Pallio BCW 741 EC now took the off-ramp at 'Smelly Creek' to join the N2 freeway in the direction of Cape Town. I made contact with Hotel 4 on the radio and informed him of the direction that the vehicle is now proceeding in and requested him to remain stationary at the intersection of Cape Road and Boshoff Street. This request was based on the information I received from radio control moments before making contact with Hotel 4. The information received from radio control revealed that the ownership of the yellow Fiat Pallio BCW 741 EC was registered to a Mr W van Schalkwyk residing at Plot 41, Greenbushes. The position I requested Hotel 4 to remain stationary at was the most often used route amongst only two roads leading to Greenbushes.

8.

At exactly 03:24 (according to the electronic clock in my vehicle) the yellow Fiat Pallio BCW 741 EC took the Grasvoëlkopbridge off-ramp and again violated a red traffic light at the Disa Street and Burt Street intersection. This time the yellow Fiat Pallio BCW 741 EC caused another motorist driving a silver Mazda Etude (unknown registration number) to collide with a lamppost in Burt Street due to the said violation of the red traffic light. Due to the latter accident not being a high impact collision and personally noticing the agitated motorist disembarking from his vehicle, I requested Control 7 to dispatch a police section vehicle to attend to the accident while I continued to pursue the yellow Fiat Pallio BCW 741 EC who failed to stop at the accident.

9.

At the intersection between Disa Street and Cape Road, the yellow Fiat Pallio BCW 741 EC turned right into Cape Road in the direction of Greenbushes. Hotel 4 was monitoring his radio and confirmed that he is in position on the corner of Cape Road and Boshoff Street. The yellow Fiat Pallio BCW 741 EC again failed to stop at the William Street and Cape Road red traffic light and nearly collided with a cyclist in Cape Road next to the Londt Park Mini-Golf Course. I contacted Hotel 4 and warned him that the yellow Fiat Pallio BCW 741 EC was now rapidly approaching his position at an approximate speed of 160 km/h (according to the speed reflected on my speedometer).

10.

As I approached the Cape Road and Boshoff Street intersection in pursuit of the yellow Fiat Pallio BCW 741 EC, I noticed four (4) marked police vehicles blocking the road. The blue lights and hazards of all four (4) marked police vehicles were clearly visible. The yellow Fiat Pallio BCW 741 EC was now less than 100 meters from the intersection and still took no action to decrease its speed. I immediately decreased the speed at which I was travelling as I knew a collision was now imminent. At an approximate distance of 30 meters before colliding with the marked police vehicles, the yellow Fiat Pallio BCW 741 EC suddenly swerved to the left and protruded through the barrier at the side of the road, causing the yellow Fiat Pallio BCW 741 EC to overturn approximately five times. The collision took place at exactly 03:27 (according to the electronic clock in my vehicle).

11.

I then drove my vehicle onto the side of the road in Boshoff Street, approximately 250 meters from where the yellow Fiat Pallio BCW 741 EC came to a standstill on its roof. I immediately gave a situation report to Control 7 and requested Cynthia Davids to summon an ambulance as well as the collision unit of the South African Police Service. I then proceeded on foot to the scene where I noticed an injured white male who was busy weeping. He was seated approximately 10 meters from the yellow Fiat Pallio BCW 741 EC and was already placed in handcuffs by the police officials at the scene. I walked towards the overturned yellow Fiat Pallio BCW 741 EC and was surprised to find another person still strapped to the safety belt hanging in an

upside down position at the passenger side of the vehicle. On closer inspection I noticed the passenger to be a white female who was decapitated.

12.

The senior police official at the scene introduced himself to me as Captain Johan Barnard of the Port Elizabeth Flying Squad and informed me that the white male, who according to him was swung out of the driver seat after the accident, tried to run away and resisted after being confronted by him. Captain Johan Barnard stated that he arrested the white male for driving under the influence of alcohol and reckless and negligent driving. I agreed to open the case docket while Captain Johan Barnard attended to the medical examination and the taking of a blood sample from the injured suspect. I then interviewed the white male in order to obtain his personal particulars. He introduced himself as Mr. Gregory Watson who resides at no 1 Gordon Terrace, Central, Port Elizabeth. His identity number is 8001025042087. He confirmed that the yellow Fiat Pallio BCW 741 EC belongs to his friend, a Mr. W van Schalkwyk residing on Plot 41, Greenbushes. He identified the deceased female as 19-year-old Catherine Jones, residing at Plot 41, Greenbushes and said she was the girlfriend of Mr W van Schalkwyk. While conversing with Mr Gregory Watson I noticed that his eyes were bloodshot, his speech slurry and his breath smelled of alcohol. I left the scene as the Emergency Medical Services and the collision unit of the SAPS arrived on the scene. Captain Johan Barnard signed my pocket book entry 3/2012 on page 37 (time: 03:55) as confirmation that he took over the management of the scene and the processing of the suspect.

13.

HUMEWOOD CAS 566/05/2012 was registered by me at 04:45. My statement was supplied to Captain Johan Barnard at 06:40.

14.

I know and understand the content of this declaration.

I do not have any objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience. The contents of this declaration are true, so help me God.

.....[signed].....

John Thobile

Persal number 04056676

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration. This declaration was sworn to by me and the deponent's signature affixed hereto in my presence at Port Elizabeth on 2012-05-13 at 06:40.

.....[signed].....

Karel Coetzee

Persal number 05383677

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE

KAREL COETZEE

HUMEWOOD SAPS

NO 1-4 LEA PLACE

HUMEWOOD, PORT ELIZABETH

CONSTABLE

It is important to remember that any statement has to contain sufficient information which will assist the public prosecutor in determining whether to prosecute a case or not. It often happens in practice that law enforcement officers write short and incomplete statements. This can amount to a serious case not being prosecuted or charges against the accused being withdrawn.

Do you think the above scenario could be sufficiently documented in a one-page statement?

EXPERTS	PURPOSE
Accident reconstructionist	An expert who can assist with investigating the causes, circumstances and events related to a motor vehicle accident. These experts rely on the principles of physics and engineering and also make use of computer software for calculations and reconstruction of events.
Arson/Fire investigator	These experts possess an operational understanding of the chemistry and dynamics of fire. They can add value to criminal investigations by establishing whether a fire was intentionally set (arson), or in civil cases with establishing the liability for a fire.
Cyber crime investigator/ Digital forensic expert	An expert who can provide assistance in evidence and data recovery from computers, cellular phones and other software/internet applications. Also provides expertise in the collection procedures of computer-related evidence at incident scenes.
District surgeon or pathologist	Provides assistance with medical examinations and autopsies.
Draughtsman	Compilation of a proper plan or sketch of the scene of incident
Experts attached to the different components of the Forensic Science Laboratory	<ul style="list-style-type: none"> ▪ <i>Biology Unit:</i> trichological (hair) analysis; biochemical and microscopic tests; DNA analysis ▪ <i>Ballistic Unit:</i> internal ballistics; external ballistics; terminal ballistics; intermediate ballistics ▪ <i>Disputed Document Unit:</i> handwriting analysis; determination of the origin, authenticity and age of documents ▪ <i>Chemistry Unit:</i> analysis of prohibited substances, i.e. drugs and medicine;

	toxicology, i.e. insecticides, weedkillers and traditional medicines
Fingerprint expert	Identification, collection and processing of latent and patent prints (finger, hand, palm, foot and shoeprints)
Forensic accountant	Forensic accountants usually have specific areas of expertise which may include accounting, auditing, commercial law, fraud examination, and the collection, analysis and evaluation of financial information as evidence. They use financial and quantitative skills to calculate damages.
Forensic anthropologist / Facial reconstructionist	An expert who can provide assistance on the identification of deceased individuals whose remains are decomposed or unrecognisable. Facial reconstruction entails the recreation of the face of a deceased person from their skeletal remains. The deceased person's identity is usually unknown, and therefore reconstruction serves as an attempt to identify the unknown deceased person.
Forensic archaeologist	An expert who can assist with the location and excavation of evidence that was buried. Evidence may include human remains or any item of physical evidence such as money or a cellphone that was buried.
Forensic botanist	An expert who, through the study of plants, can make valuable deductions from leaves, seeds or pollen found either on a body or at the scene of incident. They can provide valuable input on the timelines of an incident and whether the body or object was moved between two or more different locations.

Forensic engineer	An expert who can assist with an investigation into mechanical processes and failure of machinery or vehicles, which subsequently led to injury or death. They are most often used in civil suits or compensation claims.
Forensic entomologist	An expert who studies insects. He/she is also able to make deductions and provide assistance in establishing the approximate time that lapsed after a person died, based on the lifecycle and types of insects found in a decomposed body.
Forensic odontologist / Forensic dentist	An expert who can assist with the examination and evaluation of dental evidence. This may include age estimation in children, bite marks left on a victim, perpetrator or objects found at the scene of incident, or the identification of an unknown individual to whom the teeth belong.
Forensic osteologist	An expert who can assist with determining the cause and circumstances of death by studying bones or skeletal remains of a deceased person. These experts are usually used in the investigation of genocide-related cases.
Investigative psychologist	An expert who can provide guidance in the investigation of psychologically motivated crimes, i.e. serial murder and serial rape, based on the offender's behaviour exhibited at the crime scene. Also provides assistance in the compilation of a linkage analysis between crimes presenting similar modus operandi.
Photographer	Photography of all aspects at the scene of incident that may have evidential value, i.e. overall features and condition of the scene, exhibits, injuries to the victim or suspect etc.
Police sketch artist	Compilation of a sketch which resembles the facial features and appearance of a suspect, victim, missing

	or deceased person for the purpose of identification or rendering evidence. The information for compilation of the sketch may be provided by a witness or by a family member when a recent photograph is not available. Stolen valuables may also be sketched for identification purposes.
Video operator	Video recording of the overall appearance of the scene of incident, exhibits and bystanders. A video operator is also important during identification parades and subsequent pointing outs by a suspect.
AIDES	PURPOSE
Air wing	The air wing can assist with a rapid response to a scene of incident or when a fleeing suspect or vehicle is being pursued. They also provide assistance to photographers when aerial photography is used for incident scenes.
Cellular network providers	An application can be made for cellular records and itemised billing for a suspect's phone. This information can be used to chart a suspect's movement, identify contacts and accomplices and link the suspect with the scene of incident. The Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2008 (RICA) was implemented on 1 July 2009. This effectively means that, by law, everyone that has an active cellphone number or who purchases a new Prepaid Starter Pack must register their SIM cards with a valid identity document.
Corporate and private investigators	These investigators usually function within a corporate environment, in private capacity or on behalf of another party, which may be a private person or a

	business. Their focus may include criminal, civil or disciplinary investigations, with their skill set ranging from statement analysis, electronic countermeasures, competitive intelligence gathering, audio- and video-tape enhancements, computer analysis, surveillance etc.
Credit bureaus	Can supply information on people who have a credit record.
Customs and border management	Can provide information on the movement of people through South African borders and the import and export of restricted and prohibited goods.
Deeds office	Can provide information relevant to the acquisition of property (ownership and property details).
Dog handler	Types of trained dogs include: tracker dogs, drugs, perlemoen, biological fluids, explosives and rescue. Some dog handlers are also trained in the use of dental stone for the collection of foot and tyre imprints.
Films and Publications Board	Can provide assistance with the classification of pornography and child pornography and the monitoring of compliance with the Films and Publications Act 3 of 2009.
Financial institutions	Bank records (account details, transactions history, investments etc.) can be obtained from banks and other financial service providers if a subpoena is obtained.
Home Affairs	Can provide assistance with the identification of different types of documents, establishing the status of documentation, and investigation into undocumented persons. Can also provide access to birth records, residential details, fingerprints and family records.

Hostage/suicide negotiator	Can provide assistance at active incident scenes such as kidnappings or hostage situations originating from a failed robbery attempt. Furthermore, they can provide crisis negotiations with suicidal persons or incidents of volatile conflict situations.
Informers	An informer is a person who can be tasked by the investigator to search for and gather information.
Internal media liaison officer	Can provide assistance with formulating communication strategies relating to sensitive situations or investigations. They can also act as a communication link with the media, community, clients and employees within an organisation.
Interpol	Can provide assistance to police agencies in cross-border investigations and access to an international police database.
Media (printed, radio and television)	Can provide assistance with the communications of important information to the community, i.e. crime threats or alternative routes as result of an investigation at a scene of incident. Can also assist with the tracing of suspects, stolen property and witnesses.
Municipalities	Most municipalities have a database of, amongst others, building plans, aerial photographs and ownership details of properties and business premises. Every adult who rents or owns a house has to be registered/on record. Almost no credit or financial transaction can be conducted without a copy of a municipal account to verify a person's residential address.
Non-Governmental Organisations (NGOs); Faith-Based Organisations (FBOs) and Non-Profit	Each of these organisations has a different focus and a diverse range of expertise and information sources. They are usually well informed about different societal problems and understand the dynamics within their

Organisations (NPOs)	communities.
Police divers	Can provide assistance with underwater incident scenes and collection of evidence, recovery of bodies and rescue operations.
Prosecutor	Can provide valuable advice and guidance relating to the legality of search and seizure and the expeditious preparation of search warrants. They can also add value to investigative decision-making.
Registrar of companies	Can provide information on registered companies as well as the persons involved in those companies.
SAPS Special Task Force	Can assist with high-risk operations at active incident scenes, i.e. hostage release or suspect apprehension.
Social workers	Social workers can provide valuable assistance at the scene of incident involving children or abused woman. They can also assist with a preliminary psychosocial assessment of a victim and thereby provide advice to the investigator.
Statutory investigators attached to government departments or other public agencies	Can provide guidance or advice on department or agency specific procedures, policies or regulations. They may also be included in a project team focusing on multifaceted investigations. Statutory investigators can come from a variety of agencies including the Special Investigating Unit (SIU), the South African Revenue Services (SARS), the Environmental Management Inspectorate (EMI) and the South African Reserve Bank (SARB).
Telkom	Can provide names and addresses of people who have telephones and internet connections. Wanted persons may be traced through the telephone directory.

Vehicle registration office	Can provide information on the ownership and registration documents of vehicles.
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