

Processing of Information for Prosecution Purposes

By

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PREFACE

Criminal investigation has evolved with time as technology has developed and made our world easier and more comfortable. Unfortunately criminal elements have evolved as well and use this technology to stay one step ahead of the criminal investigator. In this increasingly growing struggle to catch up with criminals the investigator must keep the basic fundamentals of criminal investigation in mind, as the basic activities and concepts have remained unchanged. The investigator is ultimately still responsible for formulating an investigation hypothesis and for identifying, recording and analysing all available information and evidence. The ultimate test for the investigator is whether he or she is able to reveal what happened during the incident in court by presenting the evidence, and whether he or she can prove every element of the crime and who committed it, to the prosecutor and supporting the prosecutor, throughout the court process until a verdict has been given.

Throughout this whole process the criminal investigator has to keep in mind that criminal investigation is a search for truth and should therefore stay unbiased and not get personally involved as there is always the possibility that the suspected individual may be innocent. In this event it is expected of the investigator that he or she prove this.

SUMMARY

The purpose of the research was to establish action steps that can assist the criminal investigator in the processing of information into evidence for prosecution purposes, by focusing on the basic principles of criminal investigation from where information sources could be utilised to their full potential in the search for the truth.

The researcher evaluated the current methods that investigators within the SAPS use and read extensively on the topic in international literature sources. The research used an empirical research design because of the limited information available, and a qualitative research approach which enabled real-life observations. Simple random sampling was used to interview 30 experienced investigators each with more than five years experience and purposive sampling was used to identify five expert respondents who had more than 30 years' investigation experience. Data was obtained from their real-life experiences and data was further collected through case studies of case dockets.

Key terms:

Process; Information; Intelligence; Evidence; Prosecution; Cycle; Investigation; Criminal; Sources; Proof; Procedure; Conviction; Interviewing; Elements of crime

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To:

Dr Olivier, whose support and guidance made it possible to transform thought into action;
My family, who had to cope with me through late nights and difficult circumstances; and
Our Creator, Who made a difference through sacrificing His Son – sacrifice brings
freedom.

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CHAPTER 1

GENERAL ORIENTATION

1.1 INTRODUCTION

Throughout the investigation process the investigator receives information concerning the criminal offence under investigation from different sources, which includes indirect information sources and direct information sources. The information that the investigator receives is contained in statements, reports, hearsay, unconfirmed rumours, circumstantial evidence, clues and general vague ideas. Investigators must be able to process this information into evidence if they want to present it in court during the trial. The information can be compared to the pieces of a puzzle, which on their own seem insignificant, but which, when slotted into the right places, form a picture.

Through 15 years of experience in the detective service and daily contact with investigators, perusing investigation diaries and sworn statements in case dockets, it became clear to the researcher that investigators do receive information and evidence. On the examination of case dockets that had been withdrawn by the public prosecutor in court, the researcher found that the main reasons for the withdrawal of the charges against the accused were that the accused could not be linked to the crime, that there was a lack of sufficient evidence, and that there were no prospects of successful prosecution. This meant that a watertight case had not been built by the investigator through evidence and that the State could not prove the alleged offence against the accused beyond reasonable doubt.

The question that arises then is: if evidence is found and information is received during the investigation process, as is confirmed by the researcher's experience, then why are cases withdrawn in court and the accused acquitted? It seems that investigators are unable to submit sufficient evidence for successful prosecution. This might be because they are

sometimes unable to process the information that has been received into evidence that can be used in court to prove their cases. A general comment made by investigators is that, although they sometimes know who the suspect is, they often do not know how to prove it. This confirms what the researcher has found on a day-to-day basis in case dockets.

On visiting the Training Section of the South African Police Service (SAPS) in Pretoria, the researcher was unable to find any training script in the Detective Learner Programme or the Crime Information Gatherers Course to assist investigators with the processing of information into evidence. The general feeling of the investigators approached by the researcher was that the skills and knowledge needed for the effective processing had to be obtained through experience and gained through years of carrying out criminal investigations.

1.2 AIM OF RESEARCH

According to The Oxford Advanced Learner's Dictionary (2007:31), an aim is defined as the purpose of doing something, or the result that wants to be achieved. The aim of this study is to research action steps that investigators can utilise to process information into evidence for prosecution purposes.

1.3 PURPOSE OF RESEARCH

The purpose of research indicates the direction and focuses of the research and provides the criteria against which the outcomes of the research can be evaluated (Denscombe, 2002:25). In line with the purposes for doing research suggested by Denscombe (2002:26-27), the researcher's research purposes were to evaluate the existing procedure that investigators in South Africa use to process information into evidence, with the intention of determining the strengths and weaknesses of the procedure. The researcher wanted to consider how this procedure can be improved, by exploring how investigators internationally process information into evidence.

To accomplish this, the researcher read extensively in an attempt to explore the field and find new information which could be used to address the problem under investigation. The researcher wanted to apply the new knowledge of international practice to develop good practice in South Africa. This he intended to do by recommending new procedure to enhance performance and to improve the conviction rate in court cases. The researcher wanted to empower investigators with the new information by making it available to them. The researcher intends to give lectures, to write a journal article and to make the information available to training sections within the SAPS.

1.4 RESEARCH QUESTIONS

Mouton (2001:53) states that the purpose of formulating research questions is to focus on the research problem by breaking it down into questions. With the research problem in mind the researcher broke the topic down into the following research questions:

- What evidence is needed for successful prosecution?
- What steps should be followed to process information into evidence for prosecution purposes?

1.5 KEY CONCEPTS

This section presents definitions of the key concepts used in this study.

1.5.1 Evidence

Van Rooyen (2004:9) defines evidence as all relevant information that is admissible and presented in court.

1.5.2 Information

Information is unevaluated but relevant material of every description derived from observation, communication, reports, rumours, imagery and all other sources from

which evidence is processed (Bell, 2002:194).

1.5.3 Prosecution

Prosecution is the process of being charged with a crime in court or the attempt to prove a crime in court (Oxford Advanced Learner's Dictionary, 2007:1167).

1.5.4 Process

A process is a series of things that are done in order to achieve a particular result (Oxford Advanced Learner's Dictionary, 2007:1157).

1.6 METHODOLOGY

Leedy and Ormrod (2005:12) states that the methodology of a research project can be described as the general approach that the researcher takes in carrying out the research project, to some extent this approach dictates the particular tools the researcher selects.

1.6.1 Research Design and Approach

The study used an empirical research design because an initial investigation revealed that there is limited information on the research topic. The researcher considered this design as the most useful in the circumstances for finding information. Real-world observations were made of detectives so that steps to convert information into evidence could be determined. These steps were determined when the researcher interviewed experienced and expert investigators. This comes down to what Denscombe (2002:6) states about empirical research, that it involves the idea of getting out of the chair, going out of the office and purposefully seeking necessary information.

The study used a qualitative research approach. Qualitative research focuses on phenomena that occur in natural settings, which is the real world, and involves studying those phenomena in all their complexity (Leedy & Ormrod, 2005:133). To meet these requirements, the researcher interviewed experienced and expert investigators in practice to

get a real understanding of the problem. Qualitative research involves the studied use and collection of a variety of empirical materials (Creswell, 1998:15). The researcher used a case study, personal experience and interviews as instruments for collecting data.

1.6.2 Population

The ideal would have been to conduct the research with all the investigators in South Africa in order to obtain the answer to the research problem because they are the real population of this research (Welman & Kruger, 1999:46). Unfortunately, it is practically not possible to interview all the investigators because of time, geographical and financial constraints.

To represent the population the researcher decided to take the Northern Free State as the target population, which consists of 33 police stations with 460 investigators. The target population is the population to which the researcher ideally would like to generalise his or her results (Welman & Kruger, 1999:122). The researcher considers the target population as representative of the population because members are all appointed under the Police Act, Act 68 of 1995; they use the same standards of investigation all over South Africa; and investigators in the Northern Free State administer the same Acts, are bound to the same Constitution and process their cases through court under the same Criminal Procedure Act, Act 51 of 1977, as the rest of South Africa.

Out of the target population, all investigators with five years or more experience were selected as part of the sample. The reason for this was that their experience is vital for identifying the procedures that are being investigated by the study. Name lists of all detectives in the Northern Free State were drawn from the Human Resource Management office at Area level, with an indication of how many years the members had spent at the detective service, performing criminal investigation functions. The researcher established that there were 284 detectives with five years or more experience in the investigation of crime.

1.6.3 Sampling

The sample for this research was 30 investigators from the target population with five years or more investigation experience and five expert investigators with more than 30 years' investigation experience. Bailey (1987:82) defines a sample as a subset or portion of the total population. For this research, a systematic sampling technique was used which, according to Leedy and Ormrod (2005:203), involves selecting individuals according to a predetermined sequence. Further more it is important that the sequence must originate by chance, so as to not deliberately exclude certain respondents.

1.6.4 Simple Random Sampling

To obtain the sample of 30, the names of all 284 investigators were listed randomly as the lists were received from the Area office. This meant that the lists were therefore not arranged alphabetically according to the names of the stations, neither were the investigators' names listed alphabetically on the lists. The names were not written in any particular order on the lists and the lists were not received in any particular order either. Every ninth name was selected from the lists of the 33 stations, until the names of 30 respondents had been drawn. This meant that each and every individual had exactly the same chance of being selected as the others. Before the data collection started, the researcher obtained written authority from the SAPS to conduct the research.

1.6.5 Purposive Sampling

Leedy and Ormrod (2005:206) are of the opinion that in purposive sampling, people or other units are chosen as the name implies, for a particular purpose. For instance, the researcher might choose people who he or she has decided are "typical" of a group or those who represent diverse perspectives on an issue. Purposive sampling may be very appropriate for certain research problems. However, the researcher should always provide a rationale explaining why he or she has selected the particular sample of participants (Leedy &

Ormrod, 2005:206). The basic assumption behind purposive sampling is that with good judgement and an appropriate strategy, the researcher can handpick the cases to be included and thus develop samples that are satisfactory in relation to his or her needs. A common strategy of purposive sampling is to pick cases that are judged to be typical of the population in which the researcher is interested, assuming that errors of judgement in the selection will tend to counterbalance one another (Hoyle, Harris & Judd, 2002:187).

Through the purposive sampling method, the researcher identified five expert investigators who had more than 30 years' criminal investigation experience. Respondent A specialised in the former Security Branch of the SAPS, respondent B specialised in the Vehicle Theft Branch, respondents C and D specialised in the Diamond and Precious Metal Unit, while respondent E specialised in the General Detective environment. After the initial interviews with the 30 respondents had been conducted, the researcher conducted further interviews with these respondents. The researcher used the further interviews to obtain expert information from these respondents because during the initial interviews the researcher could not identify clear practical steps on how information was processed into evidence.

1.7 DATA COLLECTION

Primary data is data that are closest to the truth and is often the most valid, the most illuminating and the most truth- manifesting (Leedy & Ormrod, 2005:89). The authors explain that farther away is a layer consisting of secondary data, which are derived not from the truth itself, but from the primary data instead. The primary- and secondary data in the research were obtained with the data-collection techniques described below.

1.7.1 Literature

The researcher visited the Goldfields Library at Unisa, Florida Campus. The researcher researched for literature on the same topic as the research in the library catalogue, by searching for relevant sources within the fields of study of Law, Criminology, Sociology,

Psychology, Policing and Investigation of Crime, and by searching the Internet via the webpage of the Oasis Library on the Unisa Website at www.unisa.ac.za. None of these fields revealed any literature relevant to the topic and for this reason the researcher then broke the research topic down into the following concepts and repeated the above process: “evidence”, “information”, “prosecution”, “processing”, “litigation”, “intelligence”, “interview”, “investigation” and “criminal”. In doing this he was able to find literature relevant to the study. The researcher also consulted the Training Division Head Office of the SAPS in Pretoria for literature on the topic but, as none could be found, again broke the topic down into concepts and again found literature relevant to the field of study. Attention was given throughout the research to similarities, differences and outshooters to answer the research questions. The research questions were used to focus the search for relevant information during the study.

1.7.2 Interviews

All interviews took place in private, in a face-to-face situation, after the researcher had obtained verbal consent from each respondent. During the interviews the researcher wrote down the answers provided by the respondents. A combination of a structured and semi-structured interview was used because this combination enabled the researcher to identify questions in advance and at the same time provided the researcher with the opportunity to ask more questions to clarify specific areas touched on by the respondent during the interview. When the interview started to cover a new area in response to a question, then the researcher kept the flow going by asking relevant questions from the interview guide. Any topics not covered in the interview were dealt with at the end of the interview. The interview guide was compiled from the research questions (Leedy & Ormrod, 2005:146-149).

During the interviews the researcher gave attention to what Leedy and Ormrod (2005:147-149) have specified about conducting interviews:

- Interviews were conducted in a quiet, peaceful and private location.

- The interviewer established and maintained rapport with the respondents, by asking the questions and repeating answers to hold their attention and clarify uncertainties.
- The interviewer focused on the actual, rather than on the abstract, by asking realistic questions and using realistic examples.
- The interviewer did not put words in the respondents' mouths.
- The interviewer kept his reactions to himself.
- The interviewer did not necessarily obtain facts during each interview. Some interviews provided extensive facts, whilst others confirmed previously obtained facts and some interviews were non-productive.

1.7.3 Case Study

A case study is a type of qualitative research methodology in which in-depth data is gathered relative to a single individual, programme or event, for the purpose of learning more about an unknown or poorly understood situation (Leedy & Ormrod, 2005:108). During the case study, the researcher concentrated on the five largest police stations in the Northern Free State: Welkom, Thabong, Odendaalsrus, Sasolburg and Kroonstad. The time frame that was used for the case study was 1 January 2005 to 31 March 2005. The reason for the time frame was that it was most likely that the cases registered during this time had been completed and the investigation finalised and that the case dockets were available in the archives for perusal, without being out-dated. The case study included all types of crimes that were registered during this period.

The researcher decided on a sample of 75 case dockets selected from the five police stations. The researcher decided to draw five case dockets from each month per station. All case dockets are filed numerically, according to the month in which the crime is reported. The selection was done by using quota random sampling. The researcher simply selected five case dockets from each month from each station to get a sample of 15 dockets per station (five dockets per month, for three months, multiplied by five stations equals 75). The

researcher is aware that this type of sampling may not accurately reflect the sample's proportion of the overall population (Gray, 2004:88), but is of the opinion that this will not influence the results of the research as the purpose of the case study is to support the interviews conducted.

During the case study the researcher assessed:

- Whether information was gathered during the investigation process;
- Whether information was processed into evidence; and
- What steps, if any, were taken to convert the information into evidence.

This assessment was done by studying the investigation diaries as well as the statements taken under oath in the case dockets.

1.8 DATA ANALYSIS

In the study the researcher made use of the data analysis spiral of Creswell (1998), as described in Leedy and Ormrod (2005:150). In accordance with the principles of the spiral, the researcher organised the data (which he had obtained through breaking down the research questions and key concepts) with the use of index cards and by breaking down the large bodies of text into smaller units such as phrases. The researcher read the data several times to get a perspective and wrote down notes on the data. Themes and/or sub-themes were identified and the data organised according to these themes, which gave the researcher a general sense of patterns in the data. He then integrated and summarised the data for the reader. This included offering hypotheses that described the relationships among the categories.

1.9 VALIDITY

Validity concerns the accuracy of the questions asked, the data collected and the explanation offered. Generally it relates to the data and the analysis used in the research (Denscombe

2002:100). Research was done in a real-life setting, which yielded results with broader applicability to other real-world contexts. The sample used in the study can be said to be a representative sample from the target population because it was chosen through the systematic sampling technique and the purposive sampling technique.

The interviews were held in private and the respondents' answers were written down by the researcher. The questions that were asked during the interviews were obtained from the research questions and by breaking the topic down into concepts. The questions were therefore relevant to the topic and thus valid. The interviews were further a true reflection of what the respondents had to contribute to the research.

The literature study was conducted on the research questions and the topic that had been broken down into concepts. All literature obtained was therefore relevant to the topic and thus valid. The case study was carried out with the aim of assessing whether the investigator had obtained information during the investigation process of each case and of establishing what steps had been taken to convert the information into evidence. Because the research was carried out in this way, the results may be considered to be valid.

1.10 RELIABILITY

Reliability relates to the methods of data collection and the concern that they should be consistent and not distort the findings. Generally reliability entails an evaluation of the methods and techniques used to collect the data (Denscombe, 2002:100).

The researcher ensured reliability by evaluating all the results personally and conducting all the interviews, so as to ensure that they were conducted in exactly the same way. The literature study and case study were carried out in a similar fashion and attention was given to aspects of interrelated reliability, internal consistency, equivalent forms and test-retest, where the same instrument yielded the same result on two different occasions, as described

in Denscombe (2002:100). To ensure that the study's results were valid and reliable, extensive time was spent in the field and there was a continuous search for evidence to either support or disconfirm the hypotheses. A negative case analysis was conducted to contradict the hypotheses in order to revise the theory until all cases had been accounted for. A thick description was provided of the situation so that readers could draw their own conclusions. Feedback was sought from colleagues in the field of study to determine whether or not they agreed that the researcher had made appropriate interpretations and had drawn valid conclusions from the collected data. Conclusions were taken back to respondents to validate whether they agreed with the conclusions and for them to evaluate whether the conclusions made sense in terms of their own personal experiences (Leedy & Ormrod, 2005:100).

The researcher collected multiple sources of information, which Leedy and Ormrod (2005:99) refer to as "triangulation". The authors explain that triangulation of information sources is carried out in the hope that the sources will all converge to support a particular hypothesis or theory. This approach is especially common in qualitative research; for instance, a researcher might engage in many informal observations in the field and conduct in-depth interviews and then look for common themes that appear in the data gleaned from both methods.

1.11 ETHICAL CONSIDERATIONS

The researcher adhered to what Leedy and Ormrod (2005:101) and Mouton (2001:238) state about ethical issues. These references confirm that most ethical issues fall into one of four categories, as elaborated on below:

1.11.1 Protection from Harm

The researcher protected all respondents from harm by not exposing them to undue physical or psychological harm. The nature of the study did not involve any psychological discomfort and no sensitive information of any victim of crime was revealed.

1.11.2 Informed Consent

Written authority was obtained from the SAPS Head Office in terms of National Instruction 1/2002 to conduct the research within the SAPS environment. Verbal consent was obtained from all the research participants after they had been informed about the nature of the study and that they were participating voluntarily and could withdraw at any time they chose to do so. All the participants provided their informed consent and participated in the research. The information was communicated to them individually during the interviews and was included in writing in the interview schedule.

1.11.3 Right to Privacy

The researcher respected every individual's right to privacy. The interviews were conducted in a safe and private location where the respondents were put at ease. Each respondent's results were kept confidential from other respondents and no person was embarrassed during the research.

1.11.4 Honesty with Professional Colleagues

All findings were reported in a complete and honest fashion. No participant was intentionally misled about the nature of the findings. No data was fabricated to support a particular conclusion. Full acknowledgement was given to all material that belonged to other authors.

Keeping in mind what Mouton (2001:239) and Leedy and Ormrod (2005:102) have stated, regarding objective and open reporting of study findings, the researcher was objective and conducted the research with integrity. The researcher is accountable for the results of the research and no clandestine research was conducted. The research was conducted openly and transparently. All results were made available as public knowledge.

1.12 RESEARCH STRUCTURE

To present the research report in a logical way and to ensure that all the research questions are addressed the researcher has structured his themes and arguments into chapters, as outlined below:

Chapter 2: Successful Prosecution

In this chapter the researcher discusses “criminal investigation” as a concept and as part of the prosecution process, including the role the investigator plays within the process, with the aim of establishing how the investigator can obtain the successful prosecution of a case.

Chapter 3: Information Processing

In this chapter the researcher discusses “information” and “intelligence” as concepts and as integral parts of criminal investigation, including comparing the two concepts with the concept of “evidence”. The researcher wants to establish how information is processed into evidence that can be used during the prosecution process.

Chapter 4: Findings, Recommendations and Conclusions

In this chapter the researcher draws the results of the previous chapters together and discusses his findings and conclusions. He then addresses shortcomings in the current procedure and makes recommendations on proposed processing of information procedure. Lastly, the researcher makes recommendations for future research.

CHAPTER 2

SUCCESSFUL PROSECUTION

2.1 INTRODUCTION

The vision of the SAPS is to provide a safe and secure environment for all the people in South Africa by participating in endeavours to address the root causes of crime in the community; prevent action which may threaten the safety or security of any community; investigate criminal conduct which has endangered the safety or security of the community; and bring the perpetrators of this criminal conduct to justice. Total crime prevention would be the ultimate goal, but realistically this is almost impossible to achieve and, therefore, whenever crime has been committed, the SAPS should do everything in its power to successfully solve the crime. Re-actively then, criminal activities must be combated to address the re-occurrence of crime pro-actively.

The criminal investigator has a big role to fulfil in this endeavour as he or she is responsible for the obtaining of information and evidence and for preparing the case for the prosecutor, who presents it during the trial. The gathering of evidence should be done by experienced and well-trained investigators, as crime investigation is becoming a more specialised field in policing; as described by Dienstein (1970:4) – Criminal investigation is an art requiring a knowledge of self, society and people. Just as a craftsman cannot do a job without his tools, neither can an investigator do a job without knowledge of investigation procedures. However, a word of caution tools do not make a craftsman, neither will the knowledge of techniques alone make an investigator.

In this chapter the researcher covers the field of criminal investigation, including the objective and purpose of investigation; the investigation process; the prosecution process and the role that the investigator plays within the process; evidence, the types of evidence, and the admissibility and credibility of evidence; what evidence is needed for

successful prosecution; and the chain of evidence. The researcher wants to establish how the investigator can obtain a successful prosecution.

2.2 CRIMINAL INVESTIGATION

Van Rooyen (2004:6) confirms the viewpoint of Van Heerden (1986:188), who states that criminal investigation is a systematic search for the truth, primarily to resolve the criminal incident with the help of objective and subjective leads and explains that “objective leads” refer to exhibits and their analyses, as well as to circumstantial evidence. Van Heerden (1986:188) explains that “subjective leads” refer to evidence from people (victims, complainants, eye witnesses and suspects) who were directly or indirectly involved in the incident.

Gilbert (2004:37) adds value to the discussion by defining “criminal investigation” as a logical, objective and legal inquiry involving a possible criminal activity. The results of the inquiry, if successful, will answer the following questions:

- Did a criminal violation as described by a code or statute occur?
- Where, and what time and date, did the crime occur?
- Who were the individuals involved in the planning, execution and aftereffects of the violation?
- Is a witness to the criminal activity present?
- Is there evidence of the criminal offence?
- In what manner or by what method, was the crime perpetrated?
- Is there an indication of guilt or innocence to aid judicial officials in determining a just solution to the case?

According to Berg and Horgan (1998:6), criminal investigation is the lawful search for people and things to reconstruct the circumstances of an illegal act; apprehend or determine the guilty party; and aid in the State’s prosecution of the offender. The authors propose that investigators sift through all available information and determine which pieces can be linked together to accomplish the goal of punishing the criminal

responsible for the crime. Berg and Horgan (1998:7) argues that the criminal investigator therefore, needs to utilise and analyse all objective and subjective leads and that the result of the investigation then needs to be based on the balance of these leads analysed and utilised.

During the interviews with the 30 respondents, the respondents were asked what criminal investigation was and they answered as follows:

- Twenty five respondents stated that criminal investigation is a search for the truth.
- Five respondents differed and placed an emphasis on the arrest of the suspect and on proving the case against the accused.

The 25 respondents confirmed what the literature suggested, that criminal investigation is a search for the truth. The remaining five respondents focused on convicting the accused. This is a valid point made by the five respondents, if the truth reveals that the accused is guilty, but the investigator should try to establish the truth first, rather than forcing the investigation process into the direction of a conviction at all cost.

2.3 THE CRIMINAL INVESTIGATION PROCESS

Bozza (1978:1) states that a systematic plan of action in terms of which information is gathered is the foundation of criminal investigation because it directs the investigation process and helps to determine if a crime was really committed and if so, who committed it. The author states further that the plan of action also helps to prove the guilt or innocence of the accused beyond reasonable doubt.

Cloete and Stevens (1990:196) confirms that criminal investigation is conducted through a process and they explain that the process can be divided into two interlocking categories: criminal tactics and criminal techniques. The authors elaborate on these categories as follow:

Criminal tactics

Criminal tactics are defined as the methods and techniques that the investigator applies to resolve the crime hypothesis, such as the interviewing of people, observations and the tracing of people and/or objects.

Criminal techniques

Criminal techniques on the other hand, are defined as the analytical methods of certain science that is applied in a laboratory through technological resources, such as tracing, safekeeping, analysing and judging of physical evidence and the compiling of a report on the results for the trial.

Marais (1988:2-3), however, is of the opinion that the crime investigation process is made up of three phases: the crime identification-, victim identification- and suspect identification phases. He explains the phases as follows:

Crime identification

During the crime identification phase it is important to confirm whether a crime was committed and if so, which crime. This will enable the investigator to formulate an investigation hypothesis.

Victim identification

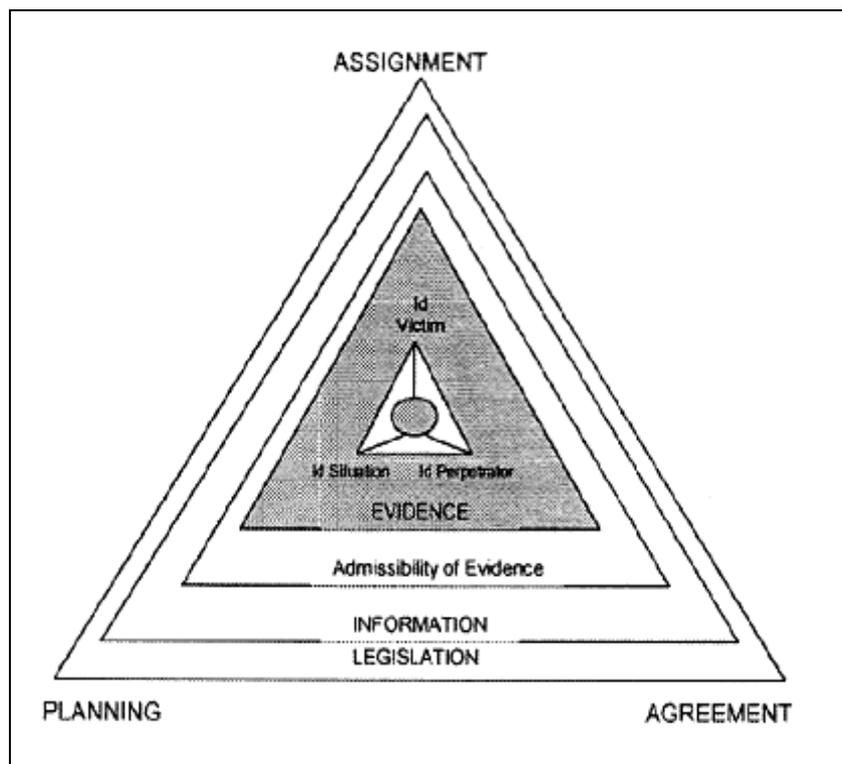
In the victim identification phase it makes no difference whether the victim has died or is still alive. If the victim has died at his residence, he can be identified by next of kin, neighbours or documents (mail, etc.). If the victim was murdered in a field, the investigator will have to determine his identity through information and evidence from the crime scene. Clothing, personal documents, receipts, engraved jewelry and personal possessions which can help the investigator in the identification of the victim. As a last resort, fingerprint and dental records can assist the investigator.

Suspect identification

“Suspect identification” refers to the identification of the suspect rather than the unlawfulness of his deeds. The identification of the suspect plays a major role in resolving the crime and according to Marais (1988:5), both direct- and indirect evidence can be used to identify the suspect.

Van Rooyen (2004:18) states that the entire investigative process can be summed up in the form of a three sided pyramidal model. The three aspects affecting the approach to investigation (agreement, assignment and planning) are the first to be considered and provide the framework for all investigative activities. Van Rooyen’s (2004:14) model is shown in Figure 2.1 below.

Figure 2.1: Three-sided Pyramidal Model of the Investigation Process



(Source: Van Rooyen, 2004:18)

When viewed upward from its open end, a series of triangles can be seen converging at the apex of the pyramid. When viewed from the outside, the three edges of the pyramid can be seen rising from the floor, passing through three major levels and meeting at the apex.

Outer framework

The inner view of the investigative model presents the framework of the investigation, represented by the outer edge of the pyramid base. The three aspects of the framework are the following:

- Agreement, which indicates the agreement between the client and the service provider;
- Assignment, which represents the particular assignment the investigator has been instructed to investigate; and
- Planning, which represents how the investigator is going to approach this particular investigation; the determination of needs and requirements in terms of equipment, time and assistance; and also the techniques and tactics the investigator will employ to conduct the investigation.

Van Rooyen (2004:18) identifies in the outer view of the investigative process, the individualisation process, which consists of three aspects, which confirms the viewpoint of Marais (1988:2) as the identification of the situation, victim and perpetrator and which identifies three distinct phases in the investigation process. These phases are:

- The preliminary investigation phase, which is usually associated with the investigation that is conducted at the crime scene or during the initial inquiry;
- The follow-up investigation phase, during which the investigator conducts follow-up interviews and obtains corroborating information, including obtaining the assistance and cooperation of other specialists, such as forensic accountants and computer experts; and

- The trial phase, in which the investigator must ensure that all witness statements have been taken, documentary evidence is available in court and exhibits to be presented in court and all witnesses are present to testify.

From the above discussion, the researcher concluded that criminal investigation is a process that should be planned systematically. The authors focused on different aspects of the process to find the truth. These aspects should be utilised optimally to guide the investigator in finding the results which are presented to the prosecutor.

From the interviews, when the 30 respondents were asked what the criminal investigation process is, they responded as follows:

- Eighteen respondents stated that, when the investigator is called out to a crime scene, the investigation process normally starts there, where the investigator is responsible for compiling the investigation hypothesis and the necessary evidence is collected. The rest of the investigative focus then turns to witnesses and informants, and thereafter to the analysis of forensic evidence. The researcher could assess that the respondents focused on serious crime, where the investigator is called out to the crime scene directly before a case docket has been registered.
- Seven respondents stated that the victim is the start of the investigation process, and then the crime scene for physical evidence, and then the witnesses and informants. The researcher could assess that these respondents were mainly focusing on less serious crime that had already taken place, where a case docket had been registered for the investigation purposes, which the investigator obtains from the police station.
- Five respondents stated that it depends on whether they have received information of a crime that is going to be committed, in which case they would start from the source of the information; whether it was a serious crime, in which case they would start from the crime scene; or whether it was a less serious crime, in which case they would start by interviewing the victim.

Analysing the interviews, one can say that the respondents started at different areas of the investigation process as circumstances dictated and then moved on to other focus areas.

During the analysis of the 75 case dockets the following was found:

- Fourteen case dockets revealed that, in serious offences, the investigators were called out to the crime scenes from where the investigation process started.
- Fifty nine case dockets revealed that, in less serious offences, the investigators obtained the case dockets from the police station from where the victims were interviewed and the rest of the investigation process developed.
- One case docket revealed that information was obtained from an informant, from where the member effected an arrest and the rest of the investigation process developed.

The case docket analysis confirmed what the interviews suggested that the starting point of the investigation process differed as circumstances and the seriousness of the criminal incident under investigation changed.

2.4 THE OBJECTIVE OF CRIMINAL INVESTIGATION

Sennewald and Tsukayama (2001:11) state that the primary objective of criminal investigation in the public sector is to serve the interests of the society by staying unbiased and serving the needs of both the victim and the suspect within the society. This suggests that the investigator should strive towards finding the truth and towards providing a safe and secure environment to the society by combating crime. Van der Westhuizen (1996:4) and Berg and Horgan (1998:6) are of the opinion that the objective of a criminal investigation is to:

- Deal with emergencies;
- Establish crime scene priorities;
- Identify the crime;
- Gather evidence;

- Individualise the criminal;
- Arrest the suspect;
- Trace stolen property; and
- Assist in the prosecution process to prosecute and convict the defendant(s).

To the question “What is the objective of criminal investigation?” the respondents responded as follows:

- Ten respondents said to find the truth.
- Eight respondents said it is to successfully solve the crime, which basically boils down to finding the truth, which concurred with the definition of criminal investigation as explained in section 2.2.
- Twelve respondents stated that they ask themselves questions as to how the crime was going to be resolved during criminal investigation.

The interviews confirmed what the literature suggested in terms of the objectives as mentioned by Van der Westhuizen (1996:4), as well as Berg and Horgan (1998:6) and showed that, in practice, investigators knew what had to be done as far as the objective of criminal investigation is concerned.

During the analysis of the 75 case dockets the following was found:

- The cases investigated in 62 case dockets were positively solved or detected because all relevant evidence was obtained and the truth of what had happened during the incidents was revealed. In 11 of the 62 cases, the victims did not want the perpetrator to be prosecuted and withdrew the cases. Twenty-nine of the remaining 51 cases were sent for a decision to institute criminal proceedings to the public prosecutor, who decided that there was sufficient or “prima-facie” evidence to start criminal proceedings against the perpetrator in 20 of the cases. These cases were placed on the court roll, with an accused being charged with a crime. The prosecutor denied prosecuting in nine cases. This means that, in practice, the aim of solving the crime was achieved in these 62 cases.

- The remaining 13 of the 75 case dockets were closed as undetected, as no information was found to successfully identify and trace exhibits or suspects and the crime hypothesis could therefore not be answered successfully.

2.5 THE PURPOSE OF CRIMINAL INVESTIGATION

Van der Westhuizen (1996:4) states that the purpose of criminal investigation is an open ended long-term goal that has been set or has to be strived towards. He further explains that re-active policing is intended to reinstate order, which has been disturbed by the criminal incident.

Van der Westhuizen (1996:4) argues that reactive action has pro-active value because it discourages the future committing of crime and goes further to state that the reactive actions should focus on preventing crime in general by assuring tracing, prosecution and conviction. Van der Westhuizen (1996:4) agrees with the view expressed by Van Heerden (1986:158-161) that individual tracing, prosecution and conviction also physiologically link the sentence with the crime. This will have an impact on potential criminals who might be reluctant to commit a crime if they know what the consequences are likely to be. In summary the purpose of criminal investigation, according to these authors is mainly to prevent future crime from being committed.

From the interviews the following results were obtained when the 30 respondents were asked what the purpose of criminal investigation was:

- Five respondents stated that the purpose of crime investigation is to combat crime by preventing future crime through crime investigation.
- Twenty of the respondents varied in their answers and named tasks that had to be carried out during the investigation process, from tracing of witnesses, suspect(s) and physical evidence to searching for the truth.
- Five respondents stressed the conviction of the accused as the purpose of criminal investigation.

The viewpoint of the five respondents who stated that the purpose is to combat crime by preventing future crime concurs with the literature reviewed, while the answers given by the 20 respondents, who named the tasks of the investigation process corresponds, according to the literature, with the objective of criminal investigation. The viewpoint of the last five respondents was supported by Van Heerden (1986:23).

2.6 FORENSIC INVESTIGATION

The Oxford Advanced Learner's Dictionary (2007:583) defines "forensic" as being connected with the scientific tests used by the police when trying to solve a crime or connected with or used in court. Roberts and Zuckerman (2004:3) explains that the word "forensic" as it is commonly used nowadays is a shortened form of "forensic science evidence", but add that its original meaning is much broader. Deriving from the Roman forum where legal and other business was transacted, "forensic" literally means "pertaining to legal proceedings". This confirms the definition as set out in the Oxford Dictionary.

From the above definitions, it appears that "forensic" can commonly mean "forensic science evidence", for example exhibits that have to be analysed and the evidence that derives from that, but also more widely it means "pertaining to legal proceedings", which basically refers to "court-driven" investigation. The latter definition suggests that the criminal investigation, as undertaken by the criminal investigator, should be conducted with the objective of resolving the criminal hypothesis and with the intention of finalising the outcome of the investigation in a court of law, where all evidence can be introduced and tested.

Van Rooyen (2004:7) joins the discussion by arguing that the term "forensic investigation" has become a buzzword used by many people directly or indirectly involved in investigations and that widespread confusion exists within the investigation industry regarding the true meaning of "forensic investigation". Van Rooyen's (2004:7) explanation confirms the definition of the Oxford Advanced Learner's Dictionary

(2007:583) in that he suggests that the word “forensic” refers to courts of law, with juristic or court-directed application and relating to the application of science to decide questions arising from crime or litigation, but that it also includes the function of examination or analysing.

In the interviews the respondents were asked what forensic investigation was and the following was found:

- All 30 respondents stated that the term “forensic” can be defined as “forensic science evidence” and that the phrase describes a process within the frame work of criminal investigation.

The viewpoints of the sample concur with the shorter commonly used definition as set out in the literature study. Not one of the respondents mentioned that “forensic” also meant “pertaining to legal proceedings” or related to conducting court-driven investigation. The researcher could come to the conclusion that the investigator should have this as the goal in mind when starting the investigation process - to reveal the results of the investigation in court during the trial.

2.7 THE PROSECUTION PROCESS

Section 179 of the Constitution of South Africa Act 108 of 1996 provides for a single National Prosecution Authority (NPA), which consists of:

- “(a) The National Director of Public Prosecutions, who is the Head of the Prosecuting Authority,
(b) Deputy National Directors,
(c) Directors,
(d) Deputy Directors, and
(e) Prosecutors.”

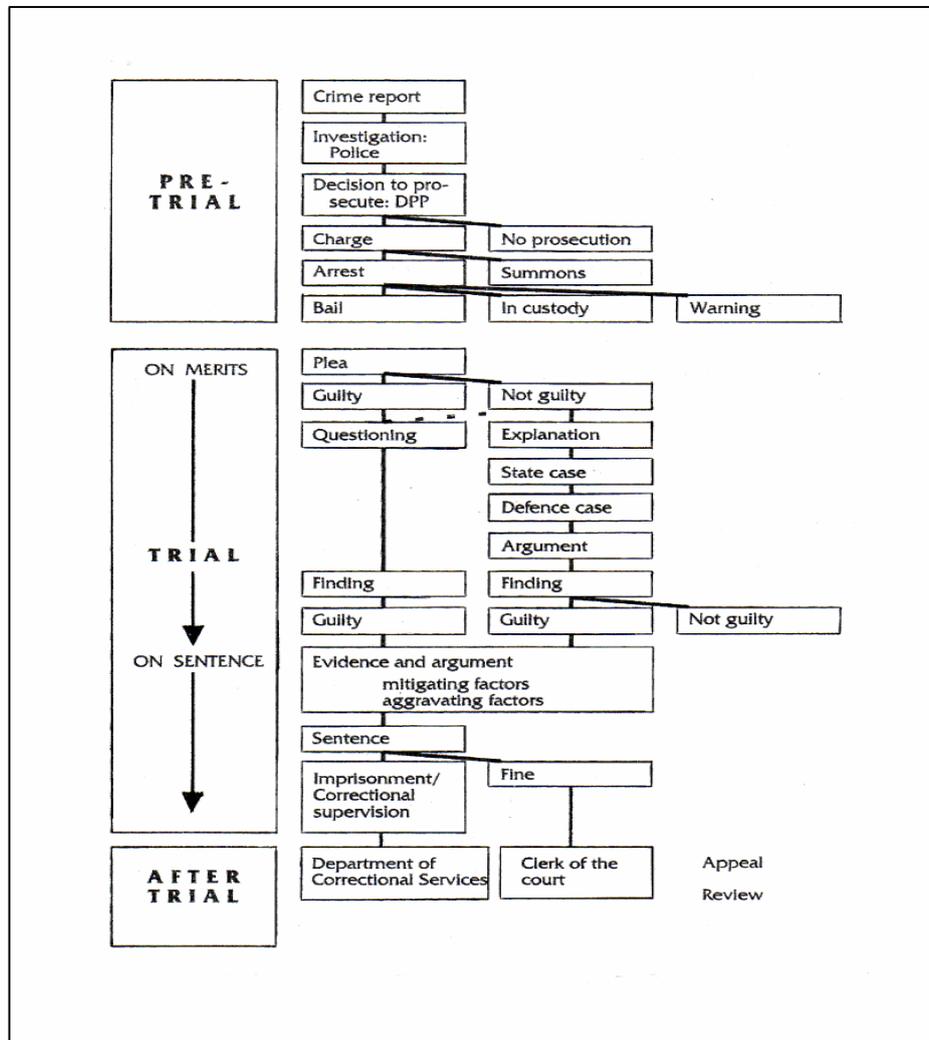
The National Prosecution Authority Act, Act 32 of 1998 regulates the daily activities of the NPA, by regulating matters incidental to the NPA and providing for matters

connected with this. In terms of section 1 of the Act, the NPA has the power and responsibility to institute and conduct criminal proceedings on behalf of the State and to carry out any necessary functions incidental to these proceedings. The Act gives the NPA and prosecutors the discretion with regard to how they perform their functions, exercise their powers and carry out their duties. This discretion must, however, be exercised according to law and within the spirit of the Constitution of South Africa.

The NPA has delegated its prosecution authority in terms of section 22 (9) of the Act to the Directors of Public Prosecution (DPPs), provincially. In terms of section 20 (5) of the Act, DPPs have been designated to issue authorisations to prosecutors in their areas of jurisdiction to institute and conduct prosecutions and, where necessary, to prosecute appeals arising from these. According to the NPA Policy Manual (1999:A2), each prosecutor must ensure that a valid authorisation appears on his or her personal file to enable him or her to institute criminal proceedings. The manual further specifies that prosecutors must, at all times, act in the interest of the community and not necessarily in accordance with the wishes of the community.

The primary function of the prosecutor is to assist the court in arriving at a just verdict and, in the event of a conviction, a fair sentence based upon the evidence presented. The criminal process is mainly concluded in courts where these statutory articles are applied in real cases. According to Kleyn and Viljoen (2002:157-158), the prosecution process's frame work is set out by the Criminal Procedure Act, Act 51 of 1977 through a set of rules, which is outlined below in Figure 2.2.

Figure 2.2: The Prosecution Process



(Source: Kleyn and Viljoen, 2002:158)

From the interviews the following results were obtained:

- Twenty seven respondents mentioned that the prosecution process starts when the case docket is sent to the public prosecutor to make a decision to prosecute, or for first appearance of the accused.
- Three respondents stated that the investigation process and the prosecution process is interlinked and that the one process flows into the other sometimes to

and fro, like when cases are postponed for further investigation after first appearances or formal bail applications.

The analysis of the case dockets revealed the following:

- Twenty court cases were found that were placed onto the court roll by the prosecutor for first appearance. Formal bail applications were held in three of these cases and in four cases the case docket was referred back to the investigator to complete the chain of evidence, during further investigation.

The case docket analysis confirmed the viewpoint of the three respondents that the prosecution process is interlinked with the investigation process. The fact that the investigator should conduct court-driven investigation, and the literature that suggested that actions from the investigation process will impact on the results that are obtained in the prosecution process, confirms that these processes are interlinked with each other.

2.8 THE ROLE OF THE INVESTIGATING OFFICER IN THE PROSECUTION PROCESS

According to Marais (1988:208), the preparation of a case for trial does not merely mean to organise information, but is a systematic approach to gather information during the investigation process and to submit it to the public prosecutor in a chronological and ordained fashion for evaluation and presentation in court. Marais (1988:208) adds that success can only be obtained in court if the investigation has been prepared thoroughly and evidence presented effectively; this means that the ultimate intent of the investigator should be to submit the evidence he found during the investigation process in court.

Caldwell (1965:321) takes the discussion further and stresses the importance of the investigator supporting the prosecutor in the prosecution process when he remarks that the successful prosecution of criminals depends to a great extent upon the skill and efficiency of those who conduct the criminal investigation. Hails (2005:353) argues that the investigator is, in addition to investigating the case and asking the prosecutor to file

the charges, also responsible for the preservation of the physical evidence and the serving of subpoenas on witnesses to ensure their presence at the trial. He explains that both these tasks have one thing in common keeping track of the location of potential evidence.

According to Marais (1988:208), the investigator should assist the prosecutor in that:

- Evidence should be arranged in a chronological order to prove the case against the accused.
- Gathered evidence must be presented in Court and testified about by a third party.
- The investigator has information which the court does not.
- The ultimate test for the investigator's results lie in presenting them in court. Marais (1988:208) states that "no matter how brilliant the investigator...he cannot expect to advance if he fails in the court-room".
- The extent to which a case has been investigated and any shortcomings will be revealed in court.

Marais (1988:208) further states that prior to the trial, the investigator must assist the prosecutor with operational preparation and preparation of witnesses, as outlined below:

Operational preparation

Responsibilities of the crime scene must have been adhered to for example; identification, tracing and interviewing of witnesses; reconstructing of the crime scene; detailed information has been documented of who, when, where, how, and with what was involved in the criminal incident. Marais (1988) further points out what Buckwalter (1984:306) said, that "a case well investigated is a case that is well prepared". Operational preparation will also include obtaining fingerprints of accused for previous convictions and wanted information.

Preparation of witnesses

The investigator has the responsibility to prepare witnesses for the court proceedings and should keep in mind that detailed information can easily be forgotten because of the time

it takes to finalise trial dates. He or she also needs to inform the witnesses of the following:

- The date, time and instance when he or she will be testifying;
- That the witness only states the truth;
- The court proceedings like testimony in chief, cross examination and re-examination;
- Basic Law of Evidence rules;
- What the witness said in his or her statement; and
- That the witness testifies to the best of his or her ability and testifies as accurately as possible.

The investigator must ensure the availability of witnesses, all enquiries of the prosecutor are answered adequately, the accused is available, and all necessary exhibits are available for the trial to proceed. The investigator should remind the prosecutor that it is imperative to consult with the witnesses before the hearing, which is the prosecutor's responsibility.

Van Rooyen (2004:250) agrees with Marais' (1988:208) suggestion but argues that the primary function of the investigator in court is to testify about the facts and the manner in which he discovers them: accurately, complete and clearly. The argument is based on the fact that the ultimate test for the findings of the criminal investigator is that it should stand up in court. The degree to which a case is fully and effectively investigated and possible deficiencies of the case are all revealed in court. In the witness box, the expertise and credibility of the investigator, or possibly his poor judgement or illogical reasoning, are revealed.

During the interviews the respondents were asked what role they play in the prosecution process and their responses were as follows:

- Six respondents stated that they mainly assist the prosecutor in explaining their investigative method and technique and that they go through the case docket and all relevant evidence step by step with the prosecutor.

- Thirteen respondents stated that they mainly assist the prosecutor in attending the trial and seeing that the witnesses for the State are present, and that the practical arrangements and proceedings of the court are explained to the witnesses.
- Eleven respondents stated that they assist the prosecutor to go through the case docket, to identify possible charges and accused, and to assist with the preparation of the witnesses at court, until the verdict has been given on the finalisation of the trial.

During the case docket analyses it was found that:

- In 20 cases the prosecutor requested the investigator to warn the witnesses of the respective trials, which they did.
- In six instances the witnesses were warned about the next trial date by the court, but that was the exception, not a general tendency.
- Six cases were put on the Regional Court roll and the case dockets were kept at court. The investigator only received a witness list from the prosecutor with the names of the witnesses that had to be warned of impending court trials. On the witness lists there were inscriptions that the investigator had to avail him or herself for the court proceedings. The reason that this was requested was not specifically addressed by the respective prosecutors.
- The prosecutor's enquiries during the court process were annotated in the investigation diaries of seven cases. These enquiries were noted and successfully and adequately addressed by investigators in the investigation diaries.
- If there were any verbal discussions between prosecutors and investigators they were not noted in the investigation diaries or the preparation of witnesses by investigators.
- No difficulties or problems were noted by prosecutors in the investigation diaries. The total support that was given by investigators in practice, therefore, could not be calculated accurately in the case dockets.

From the interviews and the case analysis the researcher came to the conclusion that the investigators fulfil their role in the prosecution process, and investigators mentioned the different aspects they assist the prosecutors in. No tasks were mentioned in the interviews that were not covered in the literature study.

2.9 EVIDENCE

Schmidt (1990:3) states that evidence is said to encompass all the information given in a legal investigation to establish the fact in question and that it is a flexible term that may bear different meanings for different purposes. According to Buckwalter (1984:26), evidence is all relevant information that, if admissible in court, can be presented. Hails (2005:2) defines evidence as something that proves or disproves allegations and assertions, and confirms that evidence, in the legal sense, includes only what is introduced at the trial and that the key to evidence is that it must be presented; if it has not been presented during the trial then it cannot be classified as evidence yet.

Gardner and Anderson (2004:54) join the discussion by stating that evidence is ordinarily defined as the means of establishing and providing the truth or untruth of any fact that is alleged. The authors quote the famous English lawyer and writer Sir William Blackstone's definition of evidence as "that which demonstrates, makes clear or ascertains the truth of the very fact or point in issue, either on the one side or other", while Berg and Horgan (1998:40) describes evidence as any item that helps to establish the facts of a related criminal case.

During the interviews the respondents were asked what evidence was and the results were:

- Twenty-two respondents stated that evidence is given in court and proves what happened during the criminal incident. Four of the 22 respondents stated that evidence can be seen as the building blocks of the case as investigated and revealed by the investigator and presented in court by the prosecutor.

- Three respondents stated that evidence is the means by which the investigator proves or disproves certain allegations in court during the trial. They were adamant that no prosecution can take place without sufficient evidence.
- Five respondents stated that evidence is the information that the investigator finds during the investigation process and that this information is given to the prosecutor to assess and start the prosecution process with, if it is found to be sufficient.

Twenty-five of the respondents stated that evidence is used in court to prove the crime, while five respondents were of the opinion that evidence is also information that the investigator obtains during the investigation process.

During the docket analysis it was found that:

- The public prosecutor decided that 20 cases contained sufficient evidence (“prima-facie”) to charge the accused with a crime and place the cases on the court roll. In five of the 20 cases the accused were convicted because the evidence was sufficient to prove the case, and in three cases the accused were acquitted after the completion of the trial. In 12 of the 20 cases prosecution was stopped at some point in the prosecution process and the cases against the accused were withdrawn in court, because of a lack of sufficient evidence.

From the literature reviewed it was concluded that evidence must be presented in court during the trial to enable the prosecutor to prove the case. It is important that the investigator keeps this in mind during the whole investigation process because that has to be the ultimate goal – to submit evidence in court and establish the truth. The authors agreed that evidence proves the truth of what happened during the incident. Twenty-five of the respondents confirmed what the literature suggested and the docket analysis confirmed that a case cannot be proven against the accused if the evidence is not sufficient, even if initially there was sufficient “prima-facie” evidence to put the case onto the court roll.

2.10 TYPES OF EVIDENCE

According to Buckles (2003:62), Palmiotto (2004:156) and Hails (2005:59), all evidence is classified by type and form and the authors distinguish between two basic types of evidence: direct evidence and circumstantial evidence. These are expanded on below.

Direct evidence

Direct evidence is based on personal knowledge or observation of the person testifying. It is evidence that proves or disproves a disputed fact directly and relies on the senses and perception of the eyewitness and does not require any intervening or indirect fact to be proven first. If the testimony is believed, the fact it relates to is conclusively established.

Circumstantial evidence

Circumstantial evidence proves or disproves a fact indirectly by first proving another fact, from which an inference may be drawn as to the original disputed fact. It requires the trier of fact to use an inference or presumption in order to conclude that the fact does exist, e.g. a witness placing the accused on the scene with no other possible suspect present or physical evidence, which in itself does not prove or disprove the guilt of the perpetrator.

The viewpoints of Buckles (2003), Palmiotto (2004) and Hails (2005) are confirmed in South African Law of Evidence when Zeffert, Paizes and Skeen (2003:93) successfully argue that all evidence requires the trier of fact to engage in inferential reasoning. Zeffert et al. further states that evidence that involves only the first tier is called direct evidence, while evidence that asks a trier of fact to consider the second tier of inferential reasoning in addition to the first is referred to as “circumstantial evidence”. They explain this by suggesting that direct evidence generally concerns the assertion of a fact by persons who claims to have perceived it with their own senses and that circumstantial evidence depends, of course, ultimately upon facts which are proved by direct evidence.

Kleyn and Viljoen (2002:182-185), Buckles (2003:63), Hails (2005:3) and Blake (2005:321) identify four forms of evidence: testimonial-, physical/real-, documentary- and demonstrative evidence. Their explanations of these forms of evidence are presented below:

2.10.1 Testimonial/Oral Evidence

Testimonial evidence is oral evidence presented by witnesses at the trial under oath. Expert evidence about crime-scene evidence such as bloody clothing, fingerprints, and exhibits found on the scene is also introduced by the testimony of the witnesses who have gathered this evidence at the scene of crime.

2.10.2 Physical/Real Evidence

Physical evidence is evidence that can be tangibly perceived by the tier of fact. It is evidence that “speaks for itself”, and includes exhibits found such as murder weapons, fingerprints or blood stains. O’Hara and O’Hara (2003:81) states that physical evidence can serve several investigation purposes and can be divided into the categories of “corpus delicti evidence, associative evidence, identifying evidence, and tracing evidence.

2.10.2.1 “Corpus Delicti” evidence

This is evidence that refers to objects or substances that are an essential part of the body of the crime and tend to establish the fact that a crime has been committed. An example is where the corpse is found in a murder case.

2.10.2.2 Associative evidence

Is evidence that links the suspect to the crime scene or the offense like finger prints found on a crime scene that corresponds with the finger prints of a suspect.

2.10.2.3 Identifying evidence

This is associative evidence that tends directly to establish the identity of the perpetrator. Examples of this evidence are bloodstains found at the place of occurrence.

2.10.2.4 Tracing evidence

Tracing evidence consists of articles that assist the investigator in tracing the suspect. A laundry mark, for example, found among the suspect's effects may assist in tracing the suspect. Similarly a credit card that the suspect uses may assist the investigator in tracing his whereabouts

Palmiotto (2004:156) engages the discussion by writing that physical evidence is generally defined as any unspoken evidence: a thing, an object, a substance, or a visible or invisible gas which has some connection with a crime under investigation, which can prove an element of the crime or the theory of a case. The author explains that physical evidence falls into two classifications: as evidence with individual identifying characteristics and as evidence with class characteristics only. Evidence with individual characteristics is evidence that can be identified as coming from specific sources or people because it contains enough identification characteristics, markings, or microscopic evidence, such as handwritings, fingerprints and tool marks. In contrast, evidence with class characteristics is evidence that can never be definitely identified, since there is more than one possible source of it, such as blood, soil, hairs, fibre, glass fragments, shoe prints and tool marks with not enough markings for positive individual identification.

2.10.3 Documentary Evidence

Documentary evidence is evidence that consists of "writings", e.g. affidavits, letters, typewriting, notes, printings, pictures, etc. As with physical evidence, a proper foundation must be presented through a witness who can testify as to the documentary evidence's authenticity.

2.10.4 Demonstrative Evidence

This is evidence that "demonstrates", illustrates or recreates evidence that has already been presented, e.g. a sketch, photograph or sketch of the crime scene.

2.10.5 Other Probative Material

This constitutes the circumstances and rules that play a role in the giving of evidence, such as, presumptions and judicial notice which are explained below.

2.10.5.1 Presumption

A presumption is an inference which the court draws and which does not need to be proved by evidence because it reflects the normal course of events; for instance, that a child under the age of seven cannot commit a crime. This is an irrefutable presumption because evidence cannot be presented to prove the contrary. On the other hand, refutable presumptions are found where the court's inference can be rebutted by evidence to the contrary. An example is where a woman's husband is presumed to be the father of her child. Although the court can make the presumption, the husband can give evidence to the contrary.

2.10.5.2 Judicial notice

A judicial notice is made in court when the court accepts something as a fact because it is so well known that it would be unnecessary and absurd to require it to be proved. An example is the fact that a woman's pregnancy lasts more or less nine months.

During the interviews respondents were asked what types of evidence could be found in the investigation of crime and they responded as follows:

- All 30 respondents named testimonies of victims and witnesses, which falls into the category of testimonial evidence.
- Twenty-eight of the respondents also named exhibits and fingerprints that had to be examined by laboratories as examples of physical evidence or real evidence.
- Twenty-one of the respondents also named video-material and documents which falls into the category of documentary evidence.
- Sixteen respondents included sketch plans and photographs, which forms part of demonstrative evidence, in their answers.

Not one respondent provided any of the four categories of evidence by name, and neither did a single respondent give an example of any of the four categories of evidence. The researcher is doubtful whether the respondents knew exactly into which category the evidence they spoke about is divided.

The case analyses resulted in the following:

- The evidence included testimonial evidence, such as written statements from victims, witnesses, expert witnesses and investigating officers, that was found in all 20 court case dockets.
- Physical evidence which had been seized from crime scenes and suspects was found in seven cases.
- Demonstrative evidence, which included photographs and sketch plans from crime scenes, was available in 17 case dockets.
- Documentary evidence was also found in four of the 20 court cases that were on the court roll.

In studying the 20 court cases it was found that different types of evidence were available which fell into the four categories or types, thus confirming the literature study.

2.11 EVIDENCE GATHERING PROCESS

According to Marais and Van Rooyen (1990:19), the gathering of evidence starts at the crime scene because that is the terrain of visible and hidden information.

2.11.1 The Gathering of Evidence from the Crime Scene

Inman and Rudin (2001:197) define the crime scene as the aftermath of an event that is considered, by law, to be illegal. Van Heerden (1986:13) quotes that the crime scene is a field laboratory where doubtful objects can be obtained for later analyses in a laboratory. Van Heerden (1986:14) states further that it is the place where direct and indirect evidence is available of the committed crime.

Van Rooyen (2004:6) agrees with the views expressed by Marais (1988:1) and by Van Heerden (1986:188), who states that Hans Gross (1847-1915), who was a pioneer in the development of scientific crime investigation methods, was of the opinion more than a century ago that investigators could solve a far greater number of crimes by searching for, preserving and analysing physical evidence, such as blood, splashes or imprints found at crime scenes than by only relying on their skills as interrogators.

Van der Westhuizen (1996:2) states that criminal investigation is an information-gathering process that can be divided into the following phases:

- Reporting phase
- Information-gathering phase
- Arrest phase
- Prosecution phase

Van Rooyen (2004:95) and Marais (1988:28) describe three basic and simple stages in processing the crime scene properly and explain the stages as follows:

2.11.1.1 Scene recognition

This phase is characterised by the arrival, taking over, and protection of the crime scene in preparation for detailed, systematic, and thorough searching of the crime scene. The recognition and discovery of evidence begins with the initial search of the crime scene. The search can be defined as the organised and legal examination of the crime scene to locate items of evidence of the crime under investigation, whatever recognised search method the investigator use. Since most investigations start with limited information, care and common sense are necessary to limit the chances of destroying evidence. A plan of operation is developed and initiated from an initial walk through in order to decide what evidence may be present, what evidence may be fragile and may need to be collected as soon as possible, and what sources, equipment and assistance are necessary for the processing.

2.11.1.2 Scene documentation

At this stage of an organised approach to processing the crime scene, all functions have to correspond and be consistent in depicting the crime scene. All available evidence is identified and documented because the final results of a properly documented crime scene are the ability of others to take your finished work and reconstruct the events that occurred at the scene. The mere fact that evidence was found is not enough. Who discovered the evidence and the exact location of the evidence is as important as its discovery as this will contribute to the completion of the chain of evidence and to the discovery of more evidence. The three ways to document the scene properly are through written notes/reports, photographs/video, and sketching. Once evidence has been lost or destroyed on a crime scene it is lost to the investigator forever.

2.11.1.3 Evidence collection

This is the stage in which the methods, techniques and procedures are used in retrieving evidence. Patience and care are very important at the crime scene and the investigator should take the proper time and care in processing the scene even if the work is tedious and time consuming. All identified and documented evidence is gathered and packed, so as to ensure the integrity of the evidence. This means that the evidence must reach the laboratory uncontaminated for analyses. Contamination of evidence will influence the accuracy of results and the ability of the laboratory to analyse the evidence.

Identification marks should always be brought on evidence for further reference. The continuous possession of the evidence is preserved in court through the chain of evidence. The investigator has to prove that the evidence has not been tampered with or altered in any way while being handled and analysed, up to receiving the results back from the laboratory. The integrity of the investigator plays a big role in this phase. The number of people handling evidence should therefore be minimised.

Berg and Horgan (1998:40) express agreement with the ideas of the above authors by writing that evidence may be found at the scene of the crime or on the victim or may be

taken from the suspect or the suspect's environment. They add that the way in which the evidence is protected, collected, secured and transported will affect its later usefulness when introduced in a criminal case during the trial and that the obtaining of evidence is a continuous process in crime investigation.

Inman and Rudin (2001:196) conclude the discussion on the crime scene by stating that the ultimate purpose of a crime scene investigation is to seek information to solve the commission of a crime that falls under the umbrella of six questions:

- What happened?
- When did it happen?
- Where did it happen?
- Who was involved?
- How was it done?
- Why was it done?

2.11.2 The Gathering of Evidence from Other Sources

Van Rooyen (2004:247-248) states that there are four primary sources of evidence, which are: people, documents, things, and personal observation, and explains these sources as follows.

2.11.2.1 People

People as evidence sources include witnesses, victims, complainants, contacts and informants. They also include clients, litigants, suspects, police and any other person with relevant information who can testify to any evidence that the circumstances and their personal knowledge determine.

2.11.2.2 Documents

Documentary evidence is made up of public and private records, and relevant documents, including all types of writings as defined in the rules of evidence, which the investigator

may obtain from government or private sources, and print as material documentary evidence.

2.11.2.3 Things

Things includes the many forms of real evidence, which include material objects, substances, impressions, prints, stains, marks, transfer evidence, liquids, secretions and other such objects.

2.11.2.4 Personal observations

Personal observations constitutes knowledge that is obtained by the investigator through his or her personal efforts involving what he or she has seen, discovered, learned or observed.

Buckles (2003:71) is of the opinion that most evidence will be found and gathered through extensive interviewing of the victims and the witnesses. Through these interviews, facts must be gathered and verified, and a plan developed to obtain the other evidence needed.

During the interviews the respondents were asked what sources they use to gather evidence and the following results were obtained:

- Seventeen respondents confirmed that they used both focus areas for gathering evidence – the crime scene for objective evidence and, for subjective evidence, victims and witnesses.
- Eight respondents stated that they focused on the crime scene and the utilisation of experts on the crime scene such as the fingerprint expert and experts that could obtain samples to be sent to the laboratories for analysis.
- Five respondents stated that the victim and the witnesses to the criminal incident are the most valuable sources of evidence as they can testify and link the perpetrator directly to the incident under investigation.

The case docket analysis resulted in the following:

- On perusing the 20 court cases, 12 were found to have been withdrawn by the prosecutor because of a lack of sufficient evidence against the accused.
- In five cases, the only evidence against the accused was the testimony of the victims. No collaborative evidence was available and all five cases were withdrawn because there were no prospects of successful prosecution.
- In three cases the victims withdrew the charges against the accused in court before the accused pleaded and the cases were subsequently withdrawn.
- In eight cases however the truth was revealed and three accused were acquitted and five were convicted.

The docket analysis confirms exactly what the researcher found on a day-to-day basis, that investigators are sometimes unable to submit sufficient evidence for successful prosecution. The accused was seen on or nearby the scene of crime in four of the cases, but no evidence suggested that the accused was involved in the crimes. No physical evidence was seized from the different crime scenes to analyse and compare with any control samples from the respective accused. Also the circumstances of the incidents could not be confirmed by any testimonies from eye witnesses, and the cases were withdrawn because of a lack of evidence.

2.12 THE ADMISSIBILITY OF EVIDENCE

According to section 210 of the Criminal Procedure Act, Act 51 of 1977, “no evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and which cannot conduce to prove or disprove any point or fact at issue in criminal proceedings”.

In the commentary of the Criminal Procedure Act revision service 31 (2004:24/12) the meaning of “relevance” is defined as the logical tendency to show or indicate the material fact for which the evidence is offered. If evidence does not logically show or indicate the fact sought to be proved it is inadmissible. It takes matters no further and is said to be

logically irrelevant. A finding that evidence is logically relevant, on the other hand, does not end the enquiry. It must still be asked whether the evidence is sufficiently relevant to be received.

In the Law of Evidence, according to Zeffert et al. (2003:219), relevance is regarded as the basic criterion for admissibility. This criterion is applied in both a positive and a negative form. The authors add that all relevant evidence is generally admissible, and all irrelevant evidence is generally inadmissible. In explaining the concept of relevance, they state that relevance is essentially a matter of reason and commonsense, according to everyday standards of reason prevailing at the time of a particular case, and that much depends on the experience of the judicial officer.

Kleyn and Viljoen (2002:185) agree with the views expressed by Zeffert et al. (2003:219) and add that evidence of character, hearsay, and opinion, and privileged evidence are in principle inadmissible because the evidence is unreliable and will prejudice the chances of a fair trial. Kleyn and Viljoen (2002:158) argue that the Constitution of South Africa 108 of 1996, in terms of section 35(5), creates a new ground for the exclusion of evidence that was obtained in violation of the Constitution. This could also happen if any evidence was not obtained legally (e.g. not with an authorised search and seizure warrant) it will be inadmissible.

During the interviews the respondents were asked what influences the admissibility of evidence and they responded as follows:

- Twelve of the respondents stated that evidence had to be relevant to be admissible.
- Seven respondents stated that the evidence had to be reliable and relevant to be admissible.
- Eleven of the respondents stated that the public prosecutor would decide which evidence was admissible and which evidence would be introduced during the trial.

The seven respondents who stated that evidence had to be reliable and relevant to be admissible touched on the aspects of character, hearsay, opinion, privilege and evidence unconstitutionally obtained, although only four of the respondents could mention all five of the aspects by name. The responses of the 11 respondents who stated that it was the task of the public prosecutor to decide which evidence was admissible could not be confirmed in any literature and the researcher is of the opinion that these respondents did not know what aspects influences the admissibility of evidence.

2.13 THE CREDIBILITY OF EVIDENCE

According to Buckles (2003:206), in questioning a witness, for testimonial evidence, the first goal is to determine what the witness saw or heard, what the witness remembered, and what specifically the witness can testify to. Buckles (2003) suggests that the interview and questioning should be structured to cover all of the factors that ensure credibility of evidence by assessing whether the witness testifies from first-hand experience and knowledge, and whether the witness perceives the event to be testified about in an accurate manner.

Marais and Van Rooyen (1990:96) argue that the perfect witness is non-existent because the average person never develops the ability to accurately describe another person as this is not a basic skill needed in normal life. Witness descriptions are, therefore, likely to be inaccurate. The whole description is subjective and given as the witness perceives it, and that perception may change from person to person. Different witnesses might therefore describe the suspect differently as well.

Gardner and Anderson (2004:232) agree with the views of Marais and Van Rooyen (1990:96). They remark that the International Association of Chiefs of Police recognised in 1960 that “witnesses’ identification and description is regarded as the most unreliable form of evidence and causes more miscarriages of justice than any other method of proof”. Gardner and Anderson (2004:232) and Buckles (2003:206) share the same point

of view and explain that factors that influence the reliability and accuracy of the evidence of eye witnesses include the following:

- Time of the incident; the opportunity that the witness had to observe the incident, including how far he or she was from the incident; weather conditions; lighting conditions; the degree to which the witness's view was unobstructed; the percentage of the witness's eye-sight; and the state of mind the witness had at the time of the incident;
- Whether the witness was a casual observer, not giving attention to what happened, or whether he or she showed a high degree of attention, specifically observing the incident;
- The accuracy with which the witness described the suspect prior to an identification parade, or the trial, and whether the witness kept unusual features such as scars, tattoos, moles and birthmarks in mind;
- What level of certainty was demonstrated by the witness on confrontation with the suspect at an identification parade and whether the witness was certain or uncertain of the identification;
- The time element that had elapsed between the incident and the identification of the suspect by the witness on a parade;
- The witness's age and any physical or emotional limitations, as this might influence his or her ability to accurately describe the event.

During the interviews the sample was asked how they test the credibility of evidence and they mentioned the following:

- All 30 respondents mentioned interviews and questioning of witnesses with what happened on the crime scene during the incident.
- Additional confirmation found from physical evidence was also important to ten of the respondents.
- Two respondents remarked that witnesses should not be "schooled" with the knowledge, gained from the crime scene and other witnesses by the investigator, but witnesses should preferably be asked open-ended questions so that they told

their version of the incident, rather than being led during the interview to confirm what had happened according to the investigator, as this would lead to words being put into the mouth of the witnesses, result in information being lost, and could hold problems for the trial and the testimony of those witnesses under oath.

The testing of the credibility of the evidence by questioning direct sources mentioned by the respondents corroborates what the literature suggests. None of the respondents mentioned how the credibility of physical evidence should be adhered to.

During the case analysis the following results were found:

- No inscription could be found in the 20 court dockets from any prosecutor in the investigation diaries that a witness was not credible or was said to be unreliable during the trial.
- On perusing the statements under oath, no conflicting statements from witnesses were found. This again stressed why cases are not taken to court with sufficient evidence because the credibility of evidence was cross-confirmed between physical evidence and testimonial evidence by only ten respondents during the interviews and in only eight cases from the case analyses.

From the discussion it is clear that investigators should give more focus to physical and corroborating evidence rather than rely only on witnesses' statements. The researcher is of the opinion that a combination of evidence types would enhance the credibility of all the evidence obtained. Using one type of evidence to corroborate another is referred to in research literature as "triangulation" as discussed in Leedy and Ormrod (2005:99). Similarly investigators should obtain different kinds of evidence, which corroborates each other, and supports the same criminal hypothesis or theory.

2.14 EVIDENCE NEEDED FOR SUCCESSFUL PROSECUTION

According to Schmidt (1990:50), the Law of Evidence specifies that the onus lies with the State to prove the case against the accused. The State has to prove “beyond reasonable doubt” that the accused committed the crime. Schmidt (1990) writes that this burden of proof is adopted from *Woolmington v Director of Public Prosecution* 1935 AC 462 where Woolmington stated that there is a golden thread woven through English Law that the burden of proof lies with the State to prove that the accused committed the crime and that a mere assumption or “prima facie” proof does not shift this burden to the defence. Only where the defence implies mental incapacity as a ground of justification – unaccountability – or when a statutory rule takes effect does the defendant have the burden of proof. According to Schmidt (1990) South African Law has adopted this viewpoint.

Van Heerden (1986:194) agrees with Schmidt’s (1990:50) view and argues that the focus lies on the involvement of the perpetrator in the committing of the offence; in other words, the probability on grounds of the acquired information and evidence that an individual committed the crime. The overall process of individualisation, according to Van der Westhuizen (1996:6), exists to prove the committing of a crime as the action of a specific individual. Schmidt (1990:78) states that the prosecution has to submit evidence for every element of the crime that allegedly has been committed by the accused. This proof has to be sufficient to establish the element and also to persuade the magistrate or judge that no reasonable doubt exists about the existence of the facts on the basis of the evidence produced. It is, therefore, important that the investigator is able to identify the crime, which is one of the categories of identification, which he or she needs to investigate at the start of the investigation process, in order to align the investigation process and focus all available resources in obtaining evidence that proves the elements of the crime under investigation. It is important for the investigator to know, from the elements of the crime, what he or she needs to prove. This will enable the investigator to focus on the evidence that he or she has to obtain for a successful prosecution.

Hails (2005:4) agrees with the arguments put forward by Schmidt (1990:78) when he argues that society, has decided that it is better to let the guilty go free rather than convict innocent people. Hails (2005:4) quotes the Black's Law Dictionary's (2001) definition of beyond reasonable doubt as "proof that leaves you firmly convinced".

Gardner and Anderson (2004:54) states that, when the quality and quantity of the evidence presented are so convincing and are sufficient to prove the existence of the fact sought to be proved or disproved, the result is proof of fact. Proof is, therefore, the result of evidence, and evidence is the means of attaining proof. Gardner and Anderson (2004:231) argue that in order to convict a person of crime, the government must prove:

- That the crime charged did occur; and
- That the defendant committed it or was a party to the crime charged.

This proof can be obtained by direct or circumstantial evidence, or a combination of both direct and circumstantial evidence.

Hails (2005:2) is of the opinion that the investigator should gather as much evidence as possible as this will enable the prosecutor to systematically build the case against the accused during the trial. Matson, Daou and Soper (2005:5) confirms the importance of evidence as set out by Hails (2005:2) by arguing that "the outcome of any case ultimately can depend on the presentation of evidence before a judge who will sort out the merits of the claims and defenses and render a judgment".

During the interviews the sample was asked what evidence was needed for successful prosecution and the following results were obtained:

- Eighteen respondents stated that the elements of the alleged crime that was being investigated had to be identified and that the investigator had to obtain sufficient and relevant evidence to prove each of the elements of that specific crime and that the accused committed the said crime. If each of the elements were proven, then the alleged crime could be proven beyond reasonable doubt and the prosecution would be successful.

- Five respondents focused more on proving the guilt of the accused than on first proving the crime that was committed through the elements of the crime, and stated that in order to obtain a successful prosecution the evidence needed had to connect the accused with the committing of the crime.
- Seven respondents stated that the prosecutor would give the investigator guidance on what evidence was needed to prove the case in court, after the first appearance of the accused in court or once the case docket had been sent to court for a decision by the prosecutor.

The 18 respondents that stated that the elements of the alleged crime had to be identified confirmed what the literature study suggested. The response of the seven respondents who relied on prosecutor guidance brings the question to the fore of whether as investigators they focus on obtaining evidence from the start of the investigation process, or whether they merely follow a couple of basic investigation steps, and then start relying on the guidance of the prosecutor for obtaining the necessary evidence for successful prosecution.

During the case analysis it was found that:

- Five cases were found in which the accused was convicted. These cases all contained sufficient evidence to prove each of the elements of the different crimes as well as evidence to link the accused with the committing of the crime.

The case analysis therefore confirmed what the literature and 18 of the respondents suggested.

2.15 CHAIN OF EVIDENCE

Buckles (2003:81) defines the chain of evidence as the means for verifying the authenticity and legal integrity of evidence by establishing where the evidence has been and who has handled it prior to the trial. Because a chain is only as strong as its weakest link, the chain of evidence is vulnerable to attack from the defence if the evidence has

been tampered with, damaged or is found to be missing or cannot be accounted for during any period. It is, therefore important to keep the chain of evidence as short as possible by limiting the people who have custody of the evidence to as few as possible. Palmiotto (2004:34) agrees with the views expressed by Buckles (2003:81) and Matson et al. (2003:44). The author states that it is the responsibility of the investigator to maintain the integrity of the evidence, by knowing who has possession of the evidence at all times.

Matson et al. (2003:44) argue that, if any object is ruled as inadmissible, then that evidence may not be presented during the trial. This might jeopardise the case if the object is a crucial part of the evidence that has to be presented to prove the case beyond reasonable doubt, and the unintentional alteration of evidence may result in unpredictable outcomes and challenges from the defence, while intentional alteration is a criminal offence and might lead to charges of defeating the ends of justice.

Gardner and Anderson (2004:309) confirm the opinion of the above authors and add that in order to use physical evidence in a criminal or civil trial, the party offering the evidence has the burden of proving that the evidence is genuine and authentic. This requires testimony establishing an adequate foundation about where and how the object was obtained and that the object offered in evidence is the object that it claims to be.

In a South African context, Marais (1988:9-18) agrees with the international authors and stresses the importance of the steps outlined below in connection with the chain of evidence.

2.15.1 Identification

Identify the correct evidence or objects for analysis. The evidence needs to be identified in accordance with the crime that is being investigated as all evidence might not be visible to the naked eye.

2.15.2 Safe guarding

It is imperative to safeguard the scene of crime. This will prevent the contamination or even destruction of possible evidence.

2.15.3 Recording

The accurate recording of evidence is as important as the identification of the evidence. Taking photographs, sketches and making notes on the crime scene not only assists the investigator to formulate an investigation hypothesis but also enables him or her to accurately reconstruct the events and to focus the investigation process in the right direction.

2.15.4 Gathering and packaging

Great care must be taken to gather and pack all evidence with precision so as to ensure that the evidence is not contaminated and that it does not contaminate other evidence. Evidence must be packed individually in clean and sterile containers so as to keep its authenticity. The extent to which the investigator handles the evidence will greatly influence the ability of the expert to analyse the evidence.

2.15.5 Marking and labeling

Identification marks should be made on the packed evidence as soon as possible to ensure that all evidence is processed and that it does not get lost within the investigation process. The investigator should refrain from altering and contaminating the evidence, just for the sake of marking it.

2.15.6 Conserving the integrity

Conserving the integrity of the evidence from the time that it is identified on the crime scene until it is presented in court is an ongoing process. This is the central idea of the chain of evidence.

2.15.7 Possession continuity

The ongoing continual possession of evidence is important in the individualisation of the evidence. The investigator must ensure that the whereabouts of the evidence are always known. This will include location of the evidence during the analysis stage and during the comparison of the control samples that have been obtained from the suspect.

2.15.8 Presentation

Ultimately all evidence must be presented in court, where the results can be verified and tested. Oral testimony has to be given to introduce the evidence in court. The testimony has to authenticate the origin of the evidence, the relevancy of the evidence, and the credibility of the results.

Matson et al. (2003:44) engage the discussion by stating that the chain of custody refers to the ability to:

- Establish the existence of a piece of evidence currently within a person's possession, custody or control; and
- Illustrate the safeguards taken to preserve the condition of the evidence while in that person's control or possession.

Van Rooyen (2004:12) states that, when a question arises as to the authenticity of an item offered as evidence or its possible alteration or contamination, the location and the condition of the article from the time of its discovery must be proved. Proof of this "chain of custody" demonstrates that:

- The evidence offered is the same evidence found at the scene;
- There has been no opportunity to replace or improperly alter the evidence; and
- Any change in the condition of the evidence can be explained; for example, when evidence has been destroyed through laboratory analysis.

During the interviews the respondents were asked what they understood by the concept of the chain of evidence and they responded as follows:

- Twenty-two respondents mentioned that the chain of evidence is a chronological chain of events that follow each other, as well as how it is practically used in crime investigation to forward exhibits for analysis to the Forensic Science Laboratory, from the crime scene up until the moment that the results of the analysis have been received from the laboratory and introduced during the trial.
- Eight respondents stated that the chain of evidence explains the chronological order in which the incident under investigation took place. They stated that the testimonies of eye witnesses and the victims form part of the chain of evidence to explain the events during the incident, even if this testimony has no reflection on the physical evidence that is sent to the laboratory for analysis.
- Ten of the respondents mentioned that the credibility of the evidence can be influenced by the chain of evidence.

The case docket analyses showed the following:

- A chain of evidence was available in 12 of the case dockets, where exhibits were gathered, from the crime scene to the submission of the results in court.
- On perusing the 20 court cases the researcher discovered that a chain of evidence was available in seven case dockets, from the crime scene where physical evidence was gathered to the submission of the results in court.
- In four cases the chain of evidence was completed during the court process, after first appearance, before the trial had started, because of a backlog of cases that had to be analysed at the Forensic Science Laboratory.

None of the court dockets that were withdrawn or those where the accused were acquitted had any flaws in the chain of evidence, and the chain of evidence was not attacked by the defence in any of these cases.

2.16 SUMMARY

The objective of criminal investigation is to identify the crime that has been committed, gather sufficient evidence, individualise the perpetrator, link the criminal to the crime and arrest the criminal, trace the possible stolen property, and be involved in the prosecution process. This means that the duty of the criminal investigator does not stop once the criminal has been arrested, nor when the case docket has been sent to court for the prosecution process to commence. At this stage the investigator has to support the prosecutor throughout the prosecution process until a verdict has been given at the end of the trial. This fact was highlighted Caldwell (1965:321) more than 40 years ago when he expressed the importance of the investigator's support for the prosecutor, in writing: "The successful prosecutions of criminals depend to a great extent upon the skill and efficiency of those who conduct the criminal investigation".

The investigation process consists mainly of phases, while the gathering of evidence is an ongoing task throughout the whole investigation process and leaps over these phases. This implies that the successful prosecution will be affected by the gathering of evidence even from the start of the investigation. The conduct of the investigator throughout the investigation process and how the process is planned are, therefore, imperative for the outcome of the investigation. The phrase "forensic" investigation further stresses this fact because the broader definition of the word suggests that the investigation has to be court driven; in other words, it must have the intent to introduce the evidence collected during the investigation in the trial for examination.

Ultimately the purpose of criminal investigation is to combat crime through successful prosecution. This concurs with the vision of the SAPS as an organisation. The following chapter will deal with the processing of information.

CHAPTER 3

INFORMATION PROCESSING

3.1 INTRODUCTION

Information is the lifeblood of police work, without which a police investigation can very quickly come to a complete standstill. The crime scene itself, evidence found on the crime scene and the people involved in the criminal incident provide an abundance of information to the investigator. It is true, however, that this information cannot be used on its own to prove a case but that it needs to be identified, gathered, analysed and processed to obtain the necessary evidence to prove the case in a court of law.

Evidence is the proof that a crime was committed and of who committed it. For this reason, the investigator has to present his evidence in court during the trial. Evidence, however, is not always found lying around, neither is all the evidence needed to prove all elements of the crime easily available for that matter; therefore, the investigator has to focus on information. Information of the possible criminal incident that has been committed will be more readily available than will be the evidence that is needed to prove the case in court.

Information utilisation places the investigator in a better position to formulate an investigation hypothesis and get an indication of what happened during the incident. Information gives the investigator something to work on, to explore, to evaluate and to use to get an indication of how the pieces of the puzzle should fit together and possibly why. During the normal investigation process it is a given that more information sources can be identified than sources of evidence, as evidence itself is also a source of information. Information itself can never be evidence. This makes the processing of the information vitally important.

The key to obtaining information is identifying information sources and gathering and processing as much information as possible from these sources. It is only through follow-

up actions, confirmation, and working in a focused way towards a goal that the relevancy of information can be determined. Relevant information should be the result of the information-gathering process even if it does not prove any elements of the criminal incident at this stage. The information will, after a while, start laying the footprints on the path to finding the necessary evidence which builds the case that the prosecutor presents in court during the trial.

In this chapter the researcher covers the fields of information and intelligence, including providing the definition of both concepts, discussing the gathering, processing and utilisation of information and intelligence; and comparing the two concepts with the concept of evidence. In this chapter, the researcher intends to establish what action steps are used to process information into evidence.

3.2 INFORMATION

O'Hara and O'Hara (2003:7) define "information" as knowledge which the investigator gathers from other persons. Van Rooyen (2004:9) joins the discussion by arguing that the investigator cannot regard all information about the crime scene as evidence. "Information" refers to knowledge that has been acquired through observation, experience or word of mouth, and which could be of assistance to the investigator in directly or indirectly assisting in the reconstruction of a crime scene, the tracing of suspects, the recovery of missing property, or the identification of witnesses.

O'Hara and O'Hara (2003:198) quote a saying in investigation that "an investigator is no better than his information". Ordinarily this principle refers to the investigator's informants, but in the true sense it refers to all the sources of information and suggests that no aspect of information is more important than any other aspect. Nor according to the authors, are any sources of the information more important than the other source, as long as the information is relevant to the crime being investigated.

From the literature reviewed, the researcher was able to come to the conclusion that information can be in the form of observations, reports, notes etc. Information and

information sources hold to a great extent the key to the successful investigation of a criminal incident. Information and the value of it in the whole investigation process must not be underestimated by the investigator.

During the interviews the respondents were asked to explain what they understood by the term “information” and the following results were obtained:

- All the respondents explained that information consists of leads or clues that the investigator obtains throughout the investigation process.

The interviews confirmed that information is all unevaluated material as the literature suggests.

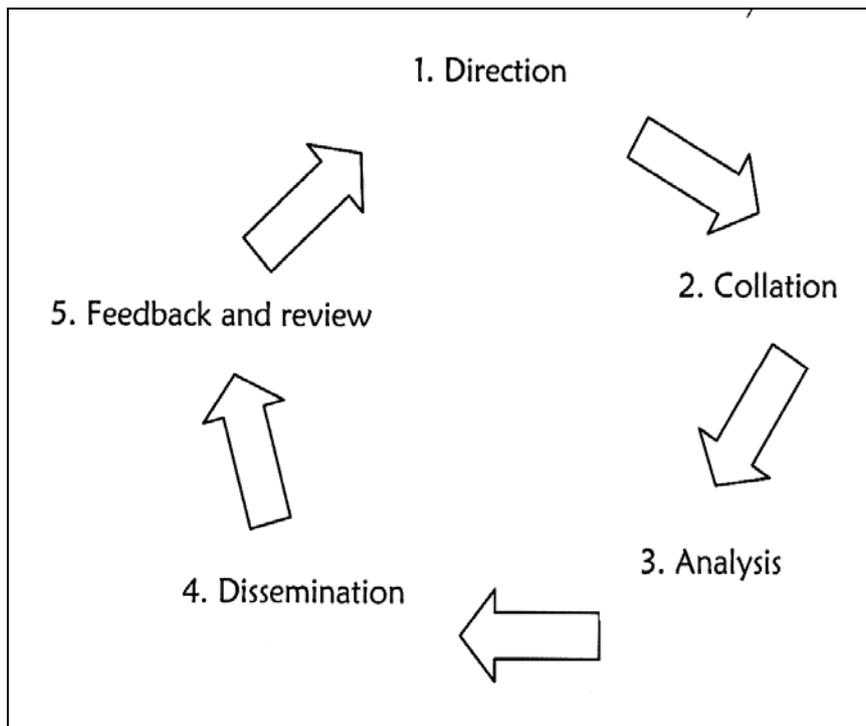
3.3 INTELLIGENCE

The National Strategic Intelligence Act, Act 39 of 1994 defines criminal intelligence in section (1) (vii) as the product used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders, while the White Paper on Intelligence (1995) defines intelligence as the product resulting from the collection, evaluation, analysis, integration and interpretation of all information. Haag, Cummings and McCubbrey (2002:420) argue that intelligence is the first step in the decision-making process, in which one finds or recognises a problem, need or opportunity. This implies that intelligence can be used to address a crime hypothesis; in other words, a criminal investigator can process information into intelligence which can be utilised to obtain evidence.

According to Ratcliffe (2004:5), the intelligence cycle is a repetitive cycle of stages that has been used effectively within defence and military circles prior to its adoption by law enforcement. The author explains that the basic intelligence cycle consists of five stages: direction, collation, analysis, dissemination, and feedback and review.

Figure 3.1 shows the stages in the intelligence cycle (Ratcliffe, 2004:6). These stages are detailed below.

Figure 3.1: Stages in the Intelligence Cycle



(Source: Ratcliffe, 2004:6)

3.3.1 Direction

In this stage the direction of the project is established. It is important to define the task and to understand the needs of the client because that will determine whether the intelligence product succeeds or fails. An important task in this stage is task definition, which will help to identify what it is that the client wants and to do the necessary planning to reach this goal (Ratcliffe, 2004:53).

3.3.2 Collation

This stage refers to the collection of intelligence after possible sources of information have been identified. These sources can be primary sources, from which first-hand information is collected, or secondary sources, from which other people have collected the information. The idea is to focus the collection effort on the gaps in knowledge and to identify operational sources that are relevant (Ratcliffe, 2004:79).

3.3.3 Analysis

Information can come in a variety of ways and it is important for the analyst to wade through the vast amount of information, assigning it some value to the task and turning it into a product that can be understood, through utilising tools like reasoning and logic, systems thinking, process mapping, trend analysis, Delphi-technique, SWOT-analysis, Ishikawa diagrams, PESTEL analysis, morphological analysis, and competing hypothesis (Ratcliffe, 2004:87-117).

3.3.4 Dissemination

The function of the dissemination stage is to ensure that the finished intelligence product is circulated to those that need to see it. An intelligence product which remains locked up in the intelligence unit and is only read by intelligence personnel fails to achieve the primary objective of intelligence (Ratcliffe, 2004:155).

3.3.5 Feedback and Review

“Feedback” and “review” refers to the continuous monitoring of the tasks and details of the stages in the development of the intelligence product. This monitoring will enable the supervisor to rethink activities so that the required goal is met (Ratcliffe, 2004:163-170).

From the interviews the following results were obtained:

- Seven respondents stated that intelligence is the product of information.
- Nine respondents stated that intelligence is information, but that intelligence could also be evidence, if the intelligence proved an element of the crime which was under investigation.

3.4 THE DIFFERENCE BETWEEN INFORMATION, INTELLIGENCE AND EVIDENCE

From experience the researcher has learned that information, intelligence and evidence can be gathered from the crime scene, objects and people, and play an evenly important role in the investigation process. The investigator should, therefore, not discard information as useless or as being of less importance than evidence that is found during the investigation process. “Information”, “intelligence” and “evidence” as concepts should be used in the search for the truth. Evidence, however, is the proof that the accused was involved in committing the criminal incident which will be presented during the trial. According to the researcher, information and intelligence can be seen as the indicators on the path to finding sufficient evidence for the trial.

Table 3.1 compares the concepts of “information”, “intelligence” and “evidence” with each other to reveal the differences:

Table 3.1: Differences between Information, Intelligence and Evidence

<u>Information</u>	<u>Intelligence</u>	<u>Evidence</u>
<p>1. <u>Definition:</u> All unevaluated but relevant material of every description derived from observation, communication, reports, rumors, imagery and all other sources from which evidence is processed (Bell, 2002:194).</p>	<p>1. <u>Definition:</u> The product resulting from the collection, evaluation, analysis, integration and interpretation of all information (White Paper on Intelligence, 1995).</p>	<p>1. <u>Definition:</u> The means of establishing and providing the truth or untruth of any fact that is alleged (Gardner & Anderson, 2004:54).</p>
<p>2. <u>Sources:</u> Information can be gathered from direct sources (people) and indirect sources (objects) (Van der Westhuizen, 1996:2).</p>	<p>2. <u>Sources:</u> Intelligence can be gathered from direct sources (people) and indirect sources (objects) (Ratcliffe, 2004:79-81).</p>	<p>2. <u>Sources:</u> Evidence can be gathered from direct sources (people) and indirect sources (objects) (Marais, 1988:19).</p>
<p>3. <u>Uses:</u> Information points the investigator to the knowledge of what was seen, heard, and/or experienced during the criminal incident (Marais, 1988:206).</p>	<p>3. <u>Uses:</u> Criminal Intelligence is the product used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders (The National Strategic Intelligence Act, Act 39 of 1994).</p>	<p>3. <u>Uses:</u> Evidence forms the proof from which the court must reach a conclusion (Van Rooyen, 2004:9).</p>

During the interviews of the 30 respondents they were asked what the difference was between information, intelligence and evidence and they answered as follows:

- All 30 respondents stated that information could not be used during the trial to prove or disprove any of the elements of a specific criminal incident and that evidence alone could be used for this purpose during the trial.
- Seven of the 30 respondents, in addition said that intelligence was a product of information, and that information could be processed into evidence or confirmation or the proof of what the evidence already suggested.
- Thirteen of the 30 respondents in addition claimed that evidence was more important than information because evidence could be presented during the trial, while 11 of the 30 respondents differed from these 13 and said that information was as important to the investigation process as evidence.

3.5 OBTAINING INFORMATION DURING THE INVESTIGATION PROCESS

According to Du Preez (1990:376), criminal investigation as a process revolves around the gathering of information, either from direct- or indirect sources, in terms of which the whole truth of the crime situation can be revealed. Van der Westhuizen (1996:2) agrees with Du Preez's argument (1990:376) and explains the sources as mainly: (1) people or direct information sources, such as victims, witnesses, informants, experts and suspects, and (2) objects or indirect information sources, such as exhibits, direct physical evidence, circumstantial evidence and collateral evidence.

Palmiotto (2004:43) emphasises the importance of information because investigators cannot solve crimes without accurate information and add an important aspect, which is that sources of information are innumerable. Criminal investigators must become familiar with those sources that will be most beneficial to investigating the specific type of offence they are concerned with. Since investigators cannot know everything, Palmiotto (2004:43) argues that they need to know the various sources of information. Investigators who develop many sources of information will make their own work easier and increase their value to the law enforcement agency. The author explains that a source of information is any record, custodian of records, directory, publication, public official, or

business person, or any other person or object which might be of assistance to an investigator. Investigators acquire information by communicating with people, studying various publications, and researching private and public records. As part of the current study, the researcher took a closer look at the different sources of information available. These sources are examined in detail below.

3.5.1 Direct Sources (People)

O'Hara and O'Hara (2003:7) divide people as sources of information into two categories: regular sources, which are found from the crime scene and include witnesses, victims, and reports, and cultivated sources, by which they mean paid informants. Regular sources will differ from crime to crime whereas cultivated sources may be shared among different crimes if the need arises, especially if the crimes are committed in the vicinity in which the informant is tasked to operate.

3.5.1.1 Interviews

Berg and Horgan (1998:122) define an interview as a conversation with a purpose, which is to gather information. To accomplish this purpose, police officers must be able to communicate in a self-aware and effective manner with witnesses, victims and informants. An interview with any person who is a source of information, according to these authors, should be planned and approached with caution.

Bennet and Hess (2004:134) cite Einspah, who argues that "solid interviewing skills stand as the cornerstone in law enforcement's arsenal of crime-fighting weapons". Bennet and Hess (2004:134) further describe interviewing as talking to people, questioning them, obtaining information, and reading between the lines. They list the sources of direct information at the crime scene as being the victim, the complainant, and the witnesses. The authors explain that it is important to separate all these people to obtain their individual statements, or subjective accounts of the incident, as this will ensure the authenticity of their accounts. The investigator should not allow any of these people to contaminate each other's versions of the incident. Details are very important during these interviews and, if possible, the victim should be interviewed first, as the

victim might have the most information regarding the criminal incident that happened to him or her. After this the witnesses should be interviewed individually. Not all people with relevant information are at the crime scene. People in the vicinity might have witnessed an incident prior to, or after the crime has been committed. These people might include neighbours, people on the street in the neighbourhood, friends of the victim, informants, and people reacting to media reports. Bennet and Hess (2004:134) explain the traditional interview technique and highlight the following aspects of the technique which are important to them:

Beginning the interview

It is important to start correctly, as the interviewer and interviewee size each other up. The investigator should identify him or herself, and put the interviewee at ease and make him or her as comfortable as possible.

Establishing rapport

Rapport is an understanding between individuals created by genuine interest and concern. It requires empathy which is an active process in which one person tries to learn all that he or she can about another person rather than having only a superficial awareness of that person. Establishing rapport is crucial when dealing with people who are mentally unstable, mentally deficient, have a temporary loss of memory, or fear the police. People who do not condone criminal behaviour are more likely to open and give information more freely. Reluctant witnesses should be given confidence by the interviewer demonstrating self-assurance. Indifferent witnesses should be given a sense of importance by explaining how the information will help the investigation and the victim. Careful listening enhances rapport. The interviewer should never indicate verbally or non-verbally that he or she considers an incident trivial or unimportant and should take a personal interest into the witness.

Interviewing techniques

Most cases can be solved through good interviewing techniques. How people act and react during the interview can reveal much more about them than their statement does.

Signs of unusual nervousness, odd expressions, rapid breathing, visible perspiration or a highly agitated state all point to the truthfulness of the interviewee.

Bennet and Hess (2004:135) state that, interviewing the person through the traditional interviewing technique, one should make use of direct questions which are to the point, allowing little possibility of misunderstanding. To clarify uncertainties the interviewee should be allowed to repeat certain questions. These questions can also be rephrased during the interview to expose inconsistencies in responses. Principles for the interviewer to keep in mind are the following:

- Ask one question at a time and keep your response simple and direct.
- Avoid closed questions, to which the interviewee can answer only “yes” or “no”.
- Rather ask open-ended questions to which the interviewee has to react by describing or explaining as this will reveal more detail and will highlight any inconsistencies.
- Be positive in your approach.
- Give enough time for the interviewee to answer. Silent pauses in the interview create more opportunities for the interviewee to elaborate on his or her version.
- Listen to answers carefully, and do not interrupt the interviewee during his or her answer, as this will provide him or her with the opportunity to rethink the whole answer.
- Watch your body language and tone of voice.
- Start the interview on neutral grounds.
- A tape recorder can be frightening to the interviewee and might make the interviewee reluctant to speak open heartedly.
- React to what you hear, and make notes for clarification after the whole version has been given.
- As you move into difficult territory, slow down.
- Do not rush to fill silences.
- Pose the toughest question simply and directly.
- No meltdowns; you must establish professional distance.

Closing the interview

The interview should be brought to a close with the interviewer thanking the person interviewed for cooperating with the investigation. Two basic requirements for obtaining information are to listen and to observe.

Milne and Bull (2003:33) engage with the issue by writing that there was a pressing need in the 1980s for an interviewing technique which was based on established psychological findings concerning memory. To meet this need Ed Gieselman and Ron Fisher, two American cognitive psychologists, embarked on the development of an interviewing procedure. This resultant set of techniques is collectively known as the “cognitive interview”, which primarily aims to increase both the quantity and quality of information elicited from cooperative witnesses, victims and suspects.

Berg and Horgan (1998:125) argue in favour of using the cognitive interview technique above the more traditional interviewing technique described by Bennet and Hess (2004:135). They justify this opinion by claiming that 50% more information has been received from people who have been interviewed with this technique than with the traditional interviewing technique. They suggest that the cognitive interviewing style is important in determining the amount and type of information that subjects provide. The technique involves jogging the witness’s memory or doing what social scientists might refer to as “triggering memories” and includes four procedures for triggering memories.

Reconstruct the circumstances

The subject is asked to close his or her eyes to “see” him or herself back at the scene of crime and to remember how he or she felt at the time of the crime.

Questioning might include:

“How were you feeling just before the suspect entered the premises?” Or “What were you thinking just after the suspect entered the premises?”

Report all information

The subject focuses on the incident and tells all that comes to memory, trying not to edit or omit anything, no matter how trivial it may seem.

Recall events in a different order

The subject is asked to recall the events in a different order, out of sequence. The subject is asked what scared him or her the most and to recall the event from there.

Change perspectives

The subject is asked to try to recall the incident from the point of view of someone else, a third party that was present during the incident. The subject basically puts him or herself in someone else's shoes and recalls the incident.

Palmiotto (2004:66) agrees with Berg and Horgan's (1998:122) argument when he states that the cognitive interviewing technique increases the amount of information that investigators can obtain from eyewitnesses. Criminal events, according to him, cause victims and witnesses to forget valuable information. Although faster, the traditional question-and-answer interview loses effectiveness with emotional witnesses and victims.

By contrast, he states, the cognitive interviewing technique focuses on helping eyewitnesses to recollect as much as possible of what they saw or heard. In addition Palmiotto (2004:67) is of the opinion that the cognitive interviewing technique has five specific techniques to help the investigator to obtain the information from the witness, by following the narrative phase of an interview, and suggests that the interviewer should concentrate on these five aspects of the incident during the interview.

Physical appearance

Did the suspect remind you of anyone? If you were reminded of someone, try to think why. Was there anything unusual about the suspect's physical appearance or clothing?

Names

If you think that a name was spoken but you cannot remember what it was, try to think of the first letter of the name by going through the alphabet. Then try to think of the number of syllables in the name.

Numbers

Was a number involved, perhaps a licence plate? Was it high or low? How many digits were in the number? Were there any letters in the sequence?

Speech characteristics

Did the voice remind you of someone else's voice? If so, try to figure out why. Were any unusual words or phrases used?

Conversation

Think about your reactions and the reactions of others to what was said. Were any unusual words or phrases used during the incident?

Berg and Horgan (1998:126) further argue that cognitive interviewing enables the investigator to assist the witness in remembering details or triggering memories. The procedure is designed to draw information along different memory paths, whereas with traditional interviewing methods witnesses are asked mostly open-ended questions and after 10 to 15 minutes witnesses are asked specific questions to gain more information and detail on certain aspects of the incident, or to clarify uncertainties.

In the detail discussion of the two interviewing techniques the differences in the techniques can be clearly seen. According to Milne and Bull (2003:184), the cognitive interview is an innovative interviewing technique based on extant psychological theory and research examining the retrieval of information from memory. The cognitive interviewing technique, if used appropriately, should enhance the quality and quantity of the information gained from an interviewee.

Cloete and Stevens (1990:63) argue that the concept “cognitive” refers to the way an individual mentally processes, evaluates and reacts to incoming information according to his or her resolutions and expectations. Through the cognitive method of interviewing more information is released because the individual focuses on his or her senses and actions during the incident. This argument confirms the view point of the other authors.

In the September 2007 edition of Servamus Magazine (2007:42), it is stated that improvements made to the cognitive interviewing technique have resulted in the enhanced cognitive interviewing technique, which sets out the steps followed by the interviewer in the interview as follows:

- Greet the interviewee and personalise the interview;
- Initiate a free report;
- Question;
- Promote varied and extensive retrieval;
- Summarise; and
- Close the interview.

The author of the Servamus article explains that the enhanced cognitive interviewing technique still incorporates the original cognitive interviewing technique, but also provides additional instructions to ensure that:

- Rapport is established;
- Control is transferred to the witness;
- Questions are compatible with the witness’s own recall;
- The witness is encouraged to use focused retrieval; and
- The witness is encouraged to use imagery.

The author of the article concludes by suggesting that the interviewer should emphasise the importance of concentration by:

- Making witnesses feel relaxed and comfortable;
- Ensuring that there are no distractions;

- Encouraging witnesses to focus their attention on internal mental images;
- Informing witnesses that it is acceptable for them to say they “don’t know” or “don’t understand”; and
- Ensuring that no pressure is put on witnesses to rush their attempts to retrieve information.

From the literature reviewed it is possible to conclude that the traditional interviewing technique, as explained by Bennet and Hess (2004:135) is orientated towards finding facts and substance. The cognitive interviewing technique, as explained by Berg and Horgan (1998:125), is more focused on obtaining detail and information as it is more descriptive in nature.

3.5.1.2 Interrogation

Bennet and Hess (2004:139) explain interrogation as being whenever an officer engages in conduct which he should know is likely to elicit an incriminating response from the suspect. Although it is more difficult to interview a suspect than a witness, most of the principles of the interviewing procedure stay the same. What is important in interviewing a suspect is that the rights of the suspect are not violated, as this can influence the admissibility of the evidence obtained through information that has been obtained in this way. Palmiotto (2004:69) is of the opinion that interrogation is an adversarial situation between the interviewer and the interviewee. Basically, an interrogator questions a suspect about a criminal offence to obtain information. The objective of interrogation is to gather facts and discover the truth. The interrogator has the responsibility to protect the innocent and obtain admissions from the guilty. Other goals of the interrogator are to find evidence specifically related to the crime, to corroborate information, and to locate stolen merchandise.

Van Heerden (1985:205) defines interrogation as the interviewing of a suspect or an accused before his arrest, after his arrest or after a formal charge has been laid against him, with the aim of:

- Obtaining information that can lead to the conviction or acquittal of the suspect;

- Assessing the existence of physical evidence and the subsequent tracing of this evidence;
- Assessing the existence of accomplices and their part in the committing of the crime;
- Obtaining facts and details of other crimes the suspect might be involved in;
- Eliminating the suspect from the investigation;
- Obtaining all the facts, such as “modus operandi” of the crime that has been committed; and
- Evaluating the truth of the information that has been obtained against the version of the suspect.

In the May 2007 edition of *Servamus Magazine* (2007:43), it is argued that early material that provided information on techniques that police used to try to persuade a suspect to confess tended to use the term “interrogation”. The magazine quotes Osterburg and Ward (1990) who claim that “interrogation” applies to a suspect, and also to a suspect’s family, friends or associates – people who are likely to withhold information or be deceptive, while interviewing applies to victims or eyewitnesses who can reasonably be expected to disclose what they know. Hence, the guiding principles and techniques of interrogation differ considerably from those of interviewing. One could say that an interview is a process used to gain information, while interrogation is a process used to gain a confession.

In Nel and Bezuidenhout (1995:223), the Constitution of the Republic of South Africa sec. 25(2) (c) is quoted as:

“Every person who has been arrested from his environment for an alleged crime, not withstanding his rights as detainee, has the right to –

(c) Not be forced to give an admission nor a confirmation that could be used as evidence against him during the trial”.

The section acknowledge the fact that an arrested suspect that is interrogated in detention by the SAPS, and whose freedom of movement has been restricted, is exposed to an atmosphere of constraint. Section 25(2)(c) of the Constitution of the Republic of South Africa confirms further what has been depicted in Judges Rules, according to the Criminal Procedure Act, Act 51 of 1977, in accordance with which a suspect has to be warned on arrest. On giving the warning, the arrested person must be warned that he or she is not compelled to say anything, but that everything he or she says will be written down and may be used against him or her in a Court of Law. This viewpoint is found within English Law as well, which states that a suspect should not be interrogated nor questioned but that, if he or she wants to make a statement, the investigator has the opportunity to ask questions to clarify certain aspects.

If one takes the Constitution of the Republic of South Africa into consideration, the State has to prove its case against the accused, not the accused against him or herself. The burden of proof lies with the State as depicted in the Criminal Procedure Act, Act 51 of 1977. Van der Westhuizen (1996:65) states that this does not mean that a suspect might not be questioned at all. It means that a person may be questioned to assess whether the person is innocent, but that the person must be warned according to Judges Rules before the interview starts. It can then be concluded that the investigator should use his information sources accordingly, and may not force the suspect to incriminate him or herself, as the information and evidence obtain might be inadmissible.

In closing the discussion on direct information sources, it is useful to incorporate Gilbert's (2004) distinction between interviewing and interrogating. Gilbert (2004:114) is of the opinion that, although criminal investigation requires many skills, the investigator's ability to obtain information verbally ranks paramount. The author argues that police questioning of individuals has been divided, by tradition, into two formal categories, which are interviewing and interrogation, and explains that interviewing has been associated with the questioning of those not suspected of being law violators while interrogation, on the other hand, has been used in connection with the questioning of suspected law violators. He argues that the term "interrogation" has come to acquire a

negative connotation that is misleading because it conjures up the image of a “third-degree” approach – a darkened room in which a confession is forced from an unfortunate individual by brutal and coercive means.

Gilbert (2004:114) therefore recommends that investigators refer to all police questioning as interviews. He suggests that the information-gathering process will vary in difficulty in direct proportion to the following factors:

- Cooperative attitude of the subject;
- Perceptive ability of the subject;
- Skill of the investigator;
- Emotional state of the subject; and
- Legal knowledge of the investigator.

3.5.2 Indirect Sources (Objects/Exhibits)

Marais (1988:19) identifies objects as indirect information sources which are objective evidence such as real evidence or physical evidence.

Stuart and Nordby (2005:168-169) agree with the views expressed by Van der Westhuizen (1996:20) and Marais (1988:19), and identify the following as information that can be obtained from the crime scene and physical evidence.

3.5.2.1 Locard-principle information

Linkages of suspects to victims are the most important and common type of linkage accomplished by physical evidence, in criminal investigation. Linking victims and suspects to objects and scenes can also be accomplished through the use of physical evidence, in terms the Locard principal theory. According to Pepper (2005:5), the Locard principle is also known as the principle of exchange of evidence. Edmond Locard, a French criminologist, published his principle which suggests that, when one object comes into contact with another, something is exchanged between them and taken away by both

objects. Locard's principle is the basis of the transfer and recovery of all forensic evidence.

The concept is confirmed by Bennet and Hess (2004:87), who state that the criminal always removes something from the scene of crime, or leaves behind incriminating evidence. The information that the evidence produces consists of organic and inorganic traces that the suspect will leave on the scene, and visa versa. These traces might have certain class- and individual features that hold potential value to the investigator. Valuable information that the investigator can obtain, for instance, might be where two people left a crime scene. This fact can be determined by the number of different footprints left behind, although only a single fingerprint might have been found at the scene. This gives the investigator information of a second person at the crime scene, possibly a suspect observing the crime being committed or a scared witness fleeing out of shock.

3.5.2.2 "Modus operandi" information

Criminals repeat their behaviour, and certain behaviour becomes a criminal's preferred method of operation. Burglars frequently gain entry into scenes using the same techniques. Bombers will use the same types of ignition devices repeatedly. According to O'Hara and O'Hara (2003:666), the summary of the habits, techniques and peculiarities of behaviour is often referred to as the "modus operandi" of the criminal, a term which means no more than method of operation. The authors explain the use by criminals of a particular modus operandi by stating that the repeating criminal judges the value of his methods solely on the basis of successful accomplishments. Having achieved a few minor successes, he is loathed to alter his operational procedure, his reluctance stemming from superstition, lack of imagination and inertia.

Palmiotto (2004:100) agrees with the views put forward by O'Hara and O'Hara (2003:666) and also defines "modus operandi" as method of operation. He explains the use of a modus operandi by stating that most people are creatures of habit. For this reason, the modus operandi differs from crime to crime, but also from offender to

offender. If a burglar was successful in committing one burglary he might intentionally or unintentionally use the same method in another burglary.

3.5.2.3 “Corpus delicti” information

This is the determination of the essential facts of an investigation – the physical evidence, the patterns of the investigation, and the laboratory examinations of the evidence. The red-brown stains in a kitchen may be significant to an investigation, but may be more relevant if their DNA matches that of a victim. Palmiotto (2004:35) states that “corpus delicti” means “the body of the crime” or “the element of the crime”, which must be proved by the prosecutor; for example, a forced open kitchen door and a ransacked house with silverware missing are the corpus delicti of a burglary. The corpus delicti, therefore, explains the judicial criteria of a crime.

3.5.2.4 Credibility

Credibility, proving or disproving statements, is an important issue with witnesses, victims and suspects. The presence or absence of certain types of physical evidence will be useful in the determination of the accuracy of the statements provided by these people.

3.5.2.5 Individualization

Identification of a suspect is accomplished by the individualisation or determination of the source of an item of physical evidence and facilitated by comparison testing, which allows a single fingerprint or bloodstain found on a crime scene to identify or more properly individualise a suspect.

3.5.2.6 Identification

The identification of unknown substances is a common use of physical evidence. Identification of drugs, poison and bacteria, such as anthrax are good examples.

3.5.2.7 Reconstruction of a crime

This is the final step in the forensic examination process. The crime scene investigator is frequently more interested in how a crime occurred than in identifying or individualising

the evidence at the scene. The “how” of the crime scene is more important than the “who”. Van Heerden (1986:13) confirms this viewpoint by suggesting that often the discovery of an object or physical evidence is overshadowed by the positioning of the object, in proportion to the crime scene, victim and suspect. He explains this by stating that the information that has been obtained from this positioning can help the investigator to redirect his resources and time into the right direction.

3.5.2.8 Providing investigative leads

Physical evidence frequently provides not only direct information to an investigator but also investigative leads. This is the most important and significant use of physical evidence in a criminal investigation. Not every crime scene has individualising physical evidence, such as fingerprints, but every crime scene contains physical evidence such as a footwear impression that has information on the size, manufacturer and type of shoe worn by the suspect. This type of information is important as it provides the investigator with information on the possible sex, age and clothing preference or even occupation of the suspect.

3.5.2.9 Signature

In the *SAPS Psychologically Motivated Crimes Course Learner Manual* (2007:155) signature information is identified as the ninth type of information that can be obtained by the investigator. The manual defines signature behaviours as a behaviour that goes beyond what is necessary to commit the crime. It further states that the difference between modus operandi information and signature information in essence is that modus operandi information explains the actions of the suspect in committing the crime, while signature information explains what actions the suspect acts out beyond the actions that are necessary to commit the crime. The signature of the suspect represents the behaviours that the suspect wants to act out for his her own psychological reasons or needs. These needs of the suspect can also be called fantasy, personal expression, or an imprint that the suspect feels psychologically compelled to leave at a crime scene. Examples might include mutilation, overkill, carving on the body, leaving messages, positioning the body or post-mortem activity. It may further include the suspect demanding what the victim

should say, do, or act out, or what the suspect says, does or acts out him or herself, especially in psychologically motivated crimes. The signature can therefore manifest itself verbally or in action. Because the signature of the suspect is the manifestation of a fantasy of the suspect, finding and identifying these signature elements on a scene of crime will enable the investigator to focus and direct the resources and the investigation process in a certain direction and will play a crucial part in identifying the possible suspect.

A Psychological profiler can assist the investigator to obtain this information from the crime scene, or through interviewing the victim, eye-witness or suspect. Van der Westhuizen (1996:55) defines a psychological profile as an educated attempt to provide investigative agencies with specific information as to the type of individual who committed a certain type of crime. In the South African Police Service this is done by the Investigative Psychology Unit.

3.5.2.10 Linkage analysis

Hazelwood and Warren (2003:587) describe linkage analysis as a form of behavioral analysis that is used to determine the possibility of a series of crimes as having been committed by one offender. This, according to the authors, is done by integrating information from various aspects of the crime pattern of the offender. These include the modus-operandi, the ritual based behaviours exhibited and signature or unique combination of behaviours exhibited by the offender. Linkage analysis is done by engaging in five assessment procedures:

- Obtaining data from multiple sources;
- Reviewing the data and identifying significant features of each crime across the series;
- Classifying the significant features as either modus-operandi and/or ritualistic;
- Comparing the combination of modus-operandi and ritual/fantasy-based features across the series to determine if a signature exists; and
- Compiling a written report highlighting the findings.

Sennewald and Tsukayama (2001:243) point out that, in attempting to determine “who” was involved in a crime or incident under investigation, the emphasis is on the search for identity. When attention turns to the question of “where” in an investigation, the emphasis is one of discovery. The question of “who” is people-orientated. The question of “where” is location-orientated. Locating individuals, physical evidence, or stolen goods, when they are not discoverable through the routine of physical search, is often a matter of knowing where to look for the right information. The effective investigator knows where to find the information he needs. Sources of information, according to Sennewald and Tsukayama (2001:243), are all around us and some may be so conspicuous and familiar that their potential is not realised.

From the literature reviewed, the researcher was able to come to the conclusion that physical evidence, which is more readily available than informants, holds a magnitude of information possibilities for the investigator and should be utilised effectively.

During the interviews the 30 respondents were asked what sources of information they use on a daily basis in the crime investigation process and they responded as follows:

- Twenty-three respondents stated that the victim, witnesses and the suspect are their main sources of information. This contradicts literature sources which state that the victim is the most important direct source of information – logically so.
- Seven respondents referred to informants as their main source of information. This was a phenomenon that the researcher found in his daily activities within the detective service among detectives in general.
- None of the respondents stated that evidence contained in the four categories mentioned in the discussion above could be used as information sources. All the respondents named only direct information sources. From the interviews it was found that, because the term evidence was used, often investigators tended to not recognise the informational value of these objects or physical evidence.
- All the respondents, on being questioned, said that they made use of the traditional interviewing technique as this was the technique they had been taught on detective learner programmes. None of the respondents had any knowledge of

the cognitive interviewing technique nor the enhance cognitive interviewing technique, or what these techniques entail.

- Five respondents mentioned other forms of information sources, such as the media, which they said could help with broadcasts and reports; South African Police Service internal sources such as the Criminal Administration System, Criminal Information Management system, and Criminal Record Centre data base; external companies; local municipalities; government departments, such as South African Revenue Service, departments of Home Affairs, Foreign Affairs, and Correctional Services, and the Labour Department. The information obtained through these sources might lead to the identification of suspects or witnesses, but might be even more useful in the tracing of them through possible addresses and location information.

During the case docket analyses the researcher found the following:

- In all 75 cases information was found that was contained in the statements under oath from direct sources, which included victims and witnesses. The information described what had happened during the criminal incident and in 23 cases a description of a possible perpetrator was given.

The indirect information obtained from physical evidence, as pointed out in the literature study was poor, because in only four cases did investigators make mention in the investigation diaries of certain aspects of the crime that the information might point to. No mention was made of experts that had been spoken to or of indirect information that had been received. This concurred with what the interviews suggested, that investigators do not recognise and utilise all sources of information optimally.

3.6 THE PROCESSING OF INFORMATION

Bell (2002:194) agrees with Ward's (1975:17) argument, which explains the concept of information processing essentially as involving "gathering information, assigning it some value, sorting it, and finally utilizing it to develop facts". Bell (2002:194) argues that it is, therefore, important to evaluate all gathered information not only to assess whether it is

relevant and conclusive but also to assess whether it has a positive meaning that reveals evidence to prove the case. Ward (1975:120) further states that it is advisable to compare information obtained from witnesses with gathered information so as to evaluate the validity of the witnesses' information.

Van Heerden (1986:188) states that it has to be kept in mind that not all information which has been gathered in the investigation process can be used as evidence during the trial. The evidence that is ultimately used during the trial is the result of tracing, following up, evaluating and examining relevant information. Criminal investigation, for this reason, does not only comprise the gathering of information, but also the processing of the information.

During the literature study the researcher could not find a clear step-by-step guide on how information is processed into evidence within criminal investigation. The researcher did, however, find literature that described how data was analysed during research. The researcher took a closer look at this concept to establish whether the data-analysis process could be used for the processing of information in criminal investigation.

Leedy and Ormrod (2005:94) state that qualitative research is typically used to answer questions about the complex nature of phenomena, often with the purpose of describing and understanding the phenomena from the participant's point of view. The research starts with general research questions rather than specific hypotheses; collects an extensive amount of verbal data from a small number of participants; organises the data into some form that gives it some coherence; and uses verbal descriptions to portray the situation studied. A qualitative study is likely to end with tentative answers or hypotheses about what was observed.

Leedy and Ormrod (2005:94) argue that there is usually no single right way to analyse data in a qualitative study. The researcher begins with a large body of information and must, through inductive reasoning, sort and categorise it and gradually bring it down to a small set of abstract underlying themes. Even with content analysis – an approach that, on

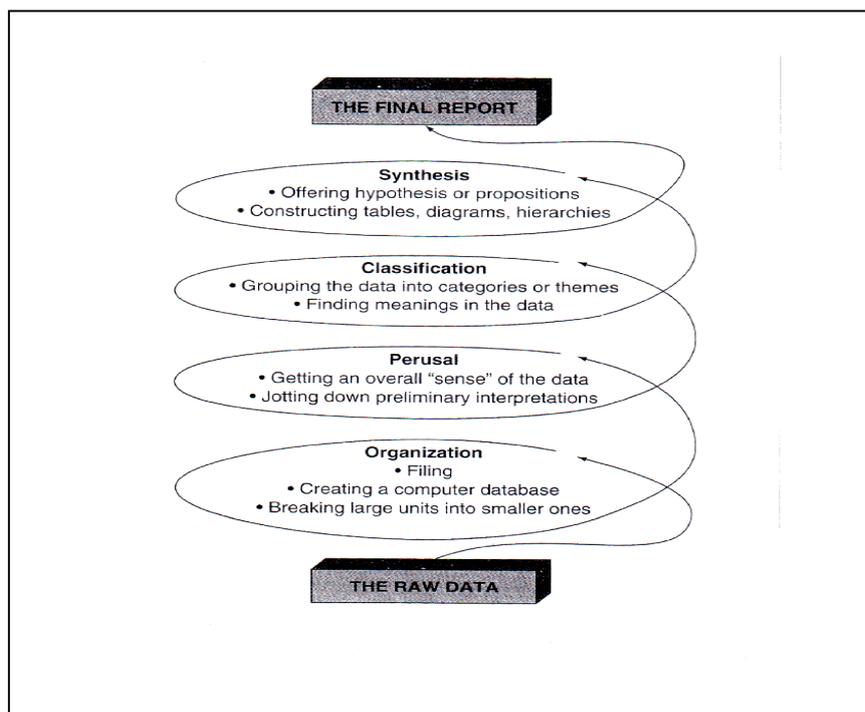
the surface, may seem quite straight forward – the researcher often establishes the specific characteristics to be studied only after carefully examining the body of material for potentially meaningful characteristics to identify and count. Leedy and Ormrod (2005) argue further that, in most qualitative research, the data analysis and the interpretation are closely interwoven and both are often connected with the data collection as well. The researcher is of the opinion that there are some similarities between the analysis of data as described by these authors and the processing of information into evidence.

Leedy and Ormrod (2005:150-151) promote the use of a data-analysis spiral as for the systematic analysis of data. (See Section 1.8, which describes the researcher's analysis of the data obtained for the current study.) This data-analysis spiral follows certain steps, which they describe as follows:

- Organise the data, perhaps using index cards, folders, or a computer database. Larger bodies of text may also be broken down into smaller units, perhaps in the form of stories, sentences, or individual words.
- Read the entire data set several times to get a sense of what it contains as a whole. In the process, you should dot down a few memos, like writing in the margins or using post-it notes that suggest possible categories or interpretations.
- Identify general categories or themes, and perhaps subcategories or sub-themes, and then classify each piece of data accordingly. At this point you should be getting a general sense of patterns – a sense of what the data means.
- Integrate and summarise the data for your readers. This step might include offering propositions or hypotheses that describe relationships among the categories. It might also involve packaging the data into an organisational scheme such as a table, figure, matrix or hierarchical diagram.

Figure 3.2 illustrates the data-analysis spiral as described by Leedy and Ormrod (2005:150).

Figure 3.2: Data-analysis Spiral



(Source: Leedy and Ormrod, 2005:150).

The authors explain that, it does not matter how you proceed, data analysis is a complex and time-consuming process. You must wade through a great deal of information, some of which will be useful and some which will not. Furthermore, the data you obtain is multifaceted and may reflect several different meanings at the same time.

From the above discussion, it is clear that the analysing of the data is made up of different stages. The stages as described by Leedy and Ormrod (2005:150) are: organising, perusing, identifying categories, integrating and summarising. The analysis of data is, therefore, not a single step but involves a process. The researcher is of the opinion that information could be compared to data and that the same principles could be used to process information, as the data analysis spiral utilizes to analyse data.

During the interviews with the 30 respondents the following responses were obtained when the respondents were asked to explain which action steps they take in processing information into evidence for prosecution purposes:

- All the respondents stated that they do not know of any set action steps that should follow each other; although
- Six of the 30 respondents said that the process of the information was an ongoing occurrence within criminal investigation. They described the processing of information as a spiral in which information is processed, resulting in either information or evidence, which is processed, resulting in information or evidence, etc. They felt that it is noteworthy that not only information or evidence is created, but that cross-confirmation also takes place between existing information and evidence. At some stage this process comes to an end and at this point the investigator has to be in a position to submit the evidence to the prosecutor and make a “prime-facie” case against the accused.
- Twenty-three of the 30 respondents were very adamant that this processing of information was not dealt with in any literature, nor had they been taught it in courses. They stated that the way they processed information was the result of experience they had gained through years of criminal investigations and daily investigation activities.

The interviews suggested that, as with the analysis of data, as described by Leedy and Ormrod (2005:150), there is no single right way to process information during the investigation process.

During the case analyses two cases were found where the processing of information had led to the obtaining of evidence. These cases are described below.

In the first case, the investigator received information from an informant regarding possible stolen property at a certain house. The investigator planned an after-hour tracing operation with four colleagues and arrested a suspect on the premises in possession of the stolen property. One of the items of stolen property was a cell phone and the IMEI nr. was compared with the SAPS’s stolen property database. The reference number of the

case in which the cell phone was stolen was obtained and the victim contacted after the case docket had been drawn from the docket archive store. The victim positively identified the cell phone as her property and a sworn statement to the effect was obtained from her and filed in the case docket. The accused were found guilty and sentenced, during the trial.

On analysing the scenario it was found that the informant did not give any evidence to the investigator, only information of possible stolen property at a certain residence. The property could not immediately be identified as no details of the property were available. The investigator therefore had to analyse and process the information. The investigator submitted a sworn statement to the effect with an application for a search and seizure warrant to the Chief Magistrate, who authorised the search in the night. An after-hour tracing operation was planned, with support from additional investigators so as to ensure the safety of the investigator. The investigator did not go to the residence during daytime, as he had a slim chance of finding the inhabitant at the premises. He rather went at 03:00 on a weekday as he knew the inhabitant should be asleep at that time.

On the retrieval of the evidence the investigator did not assault or interrogate the suspect. Rather, he used the information sources available to him (cell phone) and traced a case docket in which the cell phone was recorded as stolen. The occurrence book at the police cells confirms that the suspect was detained without any injuries at the police station. As soon as the case docket in which the cell phone was recorded as stolen was drawn from the docket archive store, the possible owner was contacted and interviewed, and she identified the cell phone as her property. A sworn statement was taken from the victim and filed in the case docket and the suspect was processed for court appearance within 48 hours, as the Criminal Procedure Act, Act. 51 of 1977 prescribes. The outcome of the case was a conviction and a sentence.

In the second case docket the investigator received information from a witness who saw a second person running in an opposite direction from a crime scene where a robbery with a fire-arm had taken place. The investigator was not sure whether this second

person was involved in the crime, as eye witnesses had given statements under oath that the robbery had been committed by one suspect, and this person had been identified, although not traced as yet. On following the second person's trail in leaving the scene, enquiries at a local coffee shop, on the route, revealed that the manager remembered a customer telling him about the incident, and what he had seen. The investigator left his particulars there, and when the customer visited the coffee shop again the investigator was contacted.

During the interview between the investigator and this second person it came to light that he had been an eyewitness to the robbery, and knew where the suspect was staying. The eyewitness had fled from the crime scene during the robbery for his own protection and, secondly, to prevent the suspect from discovering that he had seen the incident. A sworn statement was obtained from him and the suspect was traced. The fire-arm that was used during the robbery was sent to the Forensic Science Laboratory along with empty cartridges found on the crime scene. The Ballistic report linked the fire-arm found in the suspect's possession with the empty cartridges on the crime scene and the accused was convicted and sentenced. The coffee shop manager was not even sure if the second person was involved in the crime or whether he was a witness. The investigator did not merely accept the information, he followed it up, looking for more information until he traced the witness. On obtaining the witness's sworn statement, only then did he have evidence, a written statement identifying the suspect. More information was then obtained and followed up on which the suspect was apprehended and an exhibit (physical evidence), the fire-arm, was found. This evidence was sent for analysis and comparison with other evidence found on the scene (empty cartridges).

The linking of the two sets of physical evidence led to the conviction of the suspect. If the investigator had not attended to, and optimally used the crime scene, he would not have had evidence for comparison. Although none of the stolen money was recovered, the case was proven beyond reasonable doubt, through the investigator making use of a combination of direct- and indirect evidence, which was found after the processing of the information. The case analysis revealed that the investigator gathered the information

(data) from an eye witness (source) that saw a person running away from the scene. At that stage it was unknown what the role of this person was in the committing of the crime, if indeed he was involved. The investigator, therefore, had to state exactly what the extent of the information was and organise the information to get some perspective on it as a whole. He had to peruse the information several times and consider certain possibilities such as: was this person involved in the committing of the criminal incident, was he a witness to the incident, or might he have been another victim of the crime? By following up on the available information the investigator discovered more information at a nearby coffee shop. This meant that a new source of information was identified through the processing of the initial information.

Confirmation was found from this new source that indeed the person had come from the direction of the scene and that he had seen the criminal incident taking place. By leaving his contact details, the investigator ensured that he was later contacted when this person re-visited the coffee shop. The investigator could interview the person and obtain evidence (an eye witness statement) and new information that ultimately led to the identification and tracing of the perpetrator and seizure of the fire-arm. This fire-arm was ballistically linked to the empty cartridge that was seized on the scene of crime after the incident took place.

General categories and themes were identified, such as the committing of the criminal incident, the perpetrator who committed the crime, and the exhibit that the crime was committed with. By integrating all the information (data) and summarising it, the investigator made sure that the public prosecutor was able to successfully prosecute the perpetrator, which resulted in the conviction and sentencing of the accused. As with the first scenario there are also comparisons in this scenario with the data- analysis spiral as described by Leedy and Ormrod (2005:150).

After the initial interviews with the 30 respondents, which did not reveal clear practical action steps about how they process information into evidence, the researcher conducted purposive interviews with five respondents who have 30 years or more criminal

investigation experience, which enabled the researcher to identify action steps how they process information into evidence. The researcher obtained the results described below.

3.6.1 Collection

All five respondents stated that collection is the first step in the process, as all information has to be collected and documented. The collection will enable the investigator to formulate an investigation hypothesis to work on. The respondents mentioned the following aspects within the collection phase:

- Respondent C mentioned that the collection was so important to him that he wanted to be present at the first meeting with the source and was never comfortable processing information from a source he had not interviewed personally. He stated that the reason for this was that an informant never knows what information is important to the investigation process and that solid interviewing skills were imperative for obtaining as much information as possible; how insignificant the information might seem at that moment was irrelevant.
- Respondent D highlighted that he also wanted to be present during the collection step because he was interested in the motive of the informant for revealing the information so he could assess how reliable the information, obtained from the informant was likely to be.

3.6.2 Planning /Analysing

Three respondents stated that planning is the second step in the process but two respondents felt that analysing the information is the second step. The focus of this stage in the process, however, was the same for all the respondents and this was to plan the actions for following up the information. The respondents named the following aspects of the planning/analysing step:

- Respondent A stated that the information had to be analysed and assigned some value so as to assess whether more information was needed, and planning had to be done on how this new information was going to be collected.

- Respondent E stated that all sources of information had to be identified, which meant that possible direct sources had to be identified, but also all indirect sources and physical evidence that had already been obtained.
- Respondent B stated that the planning stage did not only focus on the investigation hypothesis, but also made provision for planning what resources the investigator was going to need to successfully execute the plan of action.

3.6.3 Utilizing

All the respondents stated that the plan of action was then implemented in this step. Collaborating information is obtained, as well as new information. According to the respondents, the first three steps in the process are repetitive in nature until sufficient evidence is obtained to answer the investigation hypothesis. The respondents named the following aspects of this step:

- Respondents C and D stated that the stage had a continuous function in the sense that information was followed up which would result in either more information or evidence that could prove an element of the crime under investigation. The obtained information, however, had to be put through the collection, planning and utilising steps again until the required result was obtained.
- Respondent B agreed and added that all information had to be utilised no matter how insignificant it might seem, because it might lead to more credible information, which might lead to obtaining the required evidence. He argued that investigators should also obtain a warning statement from the suspect at this stage and follow up his or her alibi, which is also a source of information to the investigator, which would help to focus resources and could identify possible grounds for justifications of the accused, during the trial.
- Respondent A stated that in the utilising stage, investigators should obtain evidence to prove each of the elements of the crime under investigation, but should also attempt to obtain corroborating evidence. The suspect then also had to be linked with the committing of the crime. This confirmed what Gardner

and Anderson (2004:231) stated in terms of evidence needed for successful prosecution. The respondent stressed that the more evidence, even different types, is obtained the more options are given to the prosecutor during the trial and the fewer opportunities are given to the accused to escape conviction. This viewpoint of the respondent confirms the statement made by Hails (2005:2) that investigators should gather as much evidence as possible. The opinion of the respondent also confirms the suggestion of Leedy and Ormrod (2005:99) that data be triangulated.

- Respondent E stated that the whole investigation team had to be sensitised that all evidence obtained had to be admissible and therefore obtained admissibly.

3.6.4 Trial

The five expert respondents concluded by stating that the trial is the last step in the process, as it represents the result or the outcome of the investigation and gives the investigator the opportunity to test the result against the investigation hypothesis. They all stated that it was imperative that the investigator supports the prosecutor throughout the prosecution process. They addressed the following aspects of the trial stage:

- Respondent E stated that all evidence was revealed and introduced during this stage by the prosecutor and the investigator. He added that this was not a repetitive stage and that the investigator only had this opportunity to prove the truth.
- Respondent B stated that the investigator had to put all his or her cards on the table in this stage and should not try to hide anything from the court. It was important to him that the investigator should confide in the court and should accept any criticisms that were given. This, according to him, would assist the investigator to grow, but also result in the court, prosecution and defence taking note of his or her credibility and honesty, which would help to build a reputation for the investigator. This is also suggested by Van Rooyen (2004:250), when he addresses the primary purpose of the investigator in court.
- Respondent A stated that he would testify as the investigator during this stage on the methodology of the investigation process and also on behalf of the informant

so as to keep his or her identity secret. He stressed the importance of the investigator accepting responsibility for the investigation process as a whole and testifying and answering all questions honestly during the trial, which would ensure credibility and trust.

All five experts stated that they had never encountered any problems in court with this method of processing information. As a closing remark, Respondent E stated that the investigation team usually held a debriefing session after the trial and analysed good practices during the processing process, as to identify loop holes in their approach which they could address in future. If the team was successful, the session normally ended more informally with a celebration, but only after the verdict and not after the arrest because the arrest was considered to be only one of the steps of the investigation process.

3.7 PROBLEMS EXPERIENCED WITH THE PROCESSING OF INFORMATION

During the interviews the 30 respondents were asked what shortcomings and problems they were experiencing in processing information into evidence. The shortcomings and problems they identified were as follows:

- Eight respondents stated that because of a lack of human and physical resources and a heavy work load they did not have the time to fully exploit all the sources of information available to them. The number of cases they had to contend with kept increasing, while the number of investigators kept declining. This resulted in them not being able to successfully process information into evidence.
- Four respondents made the remark that they and their fellow investigators do not discuss the reported cases on parades with their colleagues as they used to because of the large number of cases that are registered. This resulted in the fact that investigators sometimes did not know that they were looking for the same suspect or that an investigator had arrested a suspect that another investigator was still looking for. The information was not optimally shared and, for this reason, not optimally processed.

- Two respondents stated that investigators in general do not cooperate within a group because of a lack of human resources, and their case loads prevent them from working in bigger groups. The individuals only focus on their own cases.
- Six respondents stated that a lack of curiosity, perseverance, initiative and creativity on the part of investigators were some of the reasons that information was not being successfully processed into evidence. They added that investigators only work on the face value of the available evidence and do not go the extra mile to follow up all the possibilities the available information and evidence hold.
- Six of these respondents stated that the ignorance of the community hampered their ability to process information into evidence because the community did not want to get involved in criminal cases. They argued that the community in general does not want to give information nor do they want to testify in court as it is time consuming and they do not want to expose themselves to criminal elements out of fear of possible revenge.
- Four respondents were of the opinion that investigators do not recruit new informants and do not maintain their informant network. The utilisation of informants in general was important to these respondents.
- A general remark by 18 of the 30 respondents, in addition to what their other responses, was that investigators in general do not know how to process information into evidence and that they only go on what is available and what evidence has already been found. They added that investigators are not taught how to process information into evidence on any course within the SAPS.

The case docket analysis results were as follows:

- Information was successfully processed in two cases of a total of 75 case dockets.
- Informants were tasked in 20 cases, which resulted in information being received in five cases.
- In the other 53 cases the researcher could not come to any conclusion because either information was not gathered, or the information was not noted in the investigation dairies.

The shortcomings as stated by the respondents could not be confirmed or be disputed by the case analyses.

3.8 STEPS TO ADDRESS SHORTCOMINGS

The following recommendations were made to address the shortcomings identified by the 30 respondents:

- Eighteen respondents recommended that members of the Detective Service be trained in the processing of information.
- Twelve respondents recommended that the SAPS as an organisation should ensure that investigators are given the opportunity to fully exploit all sources of information to ensure successful processing, by making all necessary support in terms of adequate human- and physical resources available to investigators at all levels.

3.9 SUMMARY

The whole investigation process is driven by information. Information can be obtained from direct sources (people) and indirect sources (objects), which include physical evidence. Intelligence is a product of information within the information-processing process that leads to evidence that is presented during the trial. The amount of credible evidence that the prosecutor is able to present during the trial will greatly depend on the investigator's ability to process information into evidence successfully.

All evidence is information, but not all information is evidence. This is a valuable point for the investigator to bear in mind and addresses the smallest detail of the criminal incident under investigation. If then, for example, the evidence is symbolized by the pieces of a puzzle, the information might tell the investigator what the pieces look like and where they are most likely to fit into the puzzle, but ultimately the puzzle pieces (evidence) together form the whole picture. The last chapter will deal with the findings and recommendations of the research.

CHAPTER 4

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

4.1 INTRODUCTION

The aim of the research was to identify action steps that investigators can use in processing information into evidence for prosecution purposes. The researcher attempted to achieve this aim by utilising data received from: a review of current literature, interviews conducted with a representative sample of detectives and with a sample of five experts, and the analysis of different case dockets. The findings made by the researcher are described below. Thereafter, the chapter provides recommendations for future training in information processing as well as recommendations for future research. The chapter ends with conclusions about the study.

4.2 FINDINGS

The researcher made findings in regard to the research questions, which are considered to be primary findings, as well as secondary findings, which are discussed as follows.

4.2.1 Findings Regarding the Research Questions

The following primary findings were made in answer to the research questions.

4.2.1.1 Evidence needed for successful prosecution

The findings revealed that the evidence needed for successful prosecution has to prove every element of the crime, as well as the committing of the crime by the accused.

4.2.1.2 Steps to process information into evidence for prosecution purposes

The processing of information is a process that comprises four action steps or stages. Expert investigators follow these steps (which are outlined below) for the successful processing of information into evidence for prosecution purposes.

4.2.1.2.1 Collection

In this step, the investigator collects and documents all available direct and indirect information. Solid interviewing skills are important because the sources of the information are not necessarily able to differentiate between what is important and what not. As part of this step an investigation hypothesis should be formulated. It is imperative that the investigator should know what to look for on a crime scene, as valuable evidence and information could be lost if it is overlooked the first time.

4.2.1.2.2 Planning/Analysing

In this step the investigator should analyse available information and plan action steps to utilise the information. A plan should also be made regarding how additional information is going to be obtained either to corroborate existing information or to supplement the existing information with new information that is focused on addressing the investigation hypothesis.

4.2.1.2.3 Utilising

At this stage the available information is followed up on in terms of the planned action steps. Corroborating information is obtained and all new information is again put through the steps of collection, planning and utilising. These first three steps in the process are repetitive. Once all relevant information has been utilised and the necessary evidence has been obtained to support the investigation hypothesis, the results have to be tested. This testing takes place in the trial step.

4.2.1.2.4 Trial

During this stage the evidence is presented by the prosecutor in court during the trial. The investigator supports the prosecutor throughout the whole prosecution process until a verdict has been given. Only then will the investigator know whether the processing of the information into evidence has been successful.

4.2.2 Secondary Findings

During the research made certain other relevant findings. The findings are presented below.

4.2.2.1 Forensic investigation

Literature sources consulted suggest that “forensic investigation” refers to the conducting of court-driven investigation, although all 30 respondents felt that “forensic investigation” refers to the analysis of physical evidence and samples. The respondents did not know that the term could also be defined as “to conduct-court driven investigation”, and as pertaining to legal proceedings.

4.2.2.2 Types of evidence

According to Buckles (2003), Palmiotto (2004) and Hails (2005) the different types of evidence that can be obtained are:

- Direct evidence; and
- Circumstantial evidence

Kleyn and Viljoen (2002), Buckles (2003), Hails (2005) and Blake (2005) identify the different forms of evidence as:

- Testimonial evidence
- Physical/Real evidence
- Documentary evidence
- Demonstrative evidence

In the interviews with the 30 respondents, not one respondent identified any of the two types of evidence or the four forms of evidence by name, and that neither did any respondent provide an example of each of the four forms of evidence.

4.2.2.3 Obtaining of information

The literature, according to Du Preez (1990), Van der Westhuizen (1996) and Palmiotto (2005), states that information can be gathered from indirect sources (objects) and direct sources (people). The gathering of information is an ongoing activity throughout the investigation process, through the means of analysis (objects) and interviews (people). The 30 respondents only focused on direct sources (people) to gather information. The literature suggests also that people give subjective information and that they are the least reliable of all possible information sources.

4.2.2.4 Method of interviewing

The literature, according to Berg and Horgan (1998), argues that investigators may obtain up to 50% more information when utilising the cognitive interviewing technique than when using the traditional interviewing technique. The 30 respondents all mentioned that they use only the traditional interviewing technique because this is the technique that they were taught in their police training.

4.2.2.5 Processing of information

The researcher is of the opinion that certain aspects of the data-analysis spiral, as described by Leedy and Ormrod (2005:150), could be used during the processing of information. There were some similarities discovered between this process and the responses regarding the processing of information provided in the interviews that were conducted with the 30 respondents. The researcher further realised that the action steps, as described by the five expert respondents, were similar to the stages in the intelligence cycle as described by Ratcliffe (2004:6).

4.3 RECOMMENDATIONS

The researcher recommends the following aspects that will assist investigators to successfully process information into evidence for prosecution purposes.

4.3.1 Training

The researcher recommends that, when members of the Detective Services of the SAPS are trained, the following should be part of their training:

- Investigators should understand the concept of forensic investigation.
- Investigators should know what evidence is needed for successful prosecution.
- The importance of information sources, especially indirect sources, should be stressed during Detective Learner programs and Crime Intelligence Gatherer's courses.
- Investigators should be taught how to process information into evidence.
- Investigators should be provided with cognitive interviewing skills because this will ensure that more information is obtained by them for processing.

4.3.2 Research

The researcher recommends that more research should be conducted to assess whether the action steps detailed in the data-analysis spiral, as described by Leedy and Ormrod (2005:150), could assist investigators in processing information into evidence.

4.4 CONCLUSIONS

Information can be processed into evidence through a process of collection, planning/analysing and utilising the information, and testing the results during the trial. Each of these stages is as important as the others. The first three stages are repetitive in nature, but, once the trial has been concluded, the result is final.

To achieve successful prosecution, investigators will have to: formulate an investigation hypothesis, identify and explore all possible information sources, and be able to process the obtained information into evidence. The investigator should utilise all the different

types of evidence available and be actively involved in the whole prosecution process. The evidence that the prosecutor presents during the trial has to prove every element of the alleged crime, as well as the involvement of the accused in the committing of the said crime.

The researcher is of the opinion that investigators should exploit information from physical evidence and other objects found during the investigation process optimally rather than mainly focusing on informants as sources of information, as these physical sources of information are generally readily available at crime scenes.

LIST OF REFERENCES

- Bailey, K.D. 1987. *Methods of social research*. 3rd edition. New York: The Free Press.
- Bell, W.R. 2002. *Practical criminal investigations in correctional facilities*. Boca Raton: CRC Press.
- Bennet, W.W. & Hess, K.M. 2004. *Criminal investigation*. 7th edition. Wadsworth: Thomson.
- Berg, B.L. & Horgan, J.J. 1998. *Criminal investigation* 3rd edition. Columbus OH: Glencoe / Mc Graw – Hill.
- Blake, S. 2005. *A practical approach to effective litigation*. 6th edition. Oxford: Oxford University Press.
- Bozza, C.M. 1978. *Criminal investigation*. Chicago: Nelson – Hall.
- Buckles, T. 2003. *Laws of evidence*. New York: Thomson.
- Buckwalter, A. 1984. *The search for evidence*. London: Butterworth.
- Caldwell, R.G. 1965. *Criminology* 2nd edition. New York: Ronald Press.
- Cloete, M.G.T. & Stevens, R. 1990. *Criminology*. Halfway House: Southern.
- Constitution... see South Africa. 1996.
- Creswell, J.W. 1998. *Qualitative inquiry and research design: Choosing among five traditions*. Thousand Oaks, CA: Sage.
- Criminal Procedure Act see South Africa. 1977.
- Denscombe, M. 2002. *Ground rules for good research*. Philadelphia: Open University Press.
- Dienstein, W. 1970. *Technics for the crime investigator*. Springfield: Thomas.
- Du Preez, D.U. 1990. *Sekerheidsforum*. Durban: Butterworths.
- Gardner, T.J. & Anderson, T.M. 2004. *Criminal evidence* 5th edition. Wadsworth: Thomson.
- Gilbert, J.N. 2004. *Criminal investigation* 6th edition. New Jersey. Upper Saddle River: Pearson.
- Gray, D.E. 2004. *Doing research in the real world*. London: Sage.
- Haag, S., Cummings, M. & McCubbrey, D.J. 2002. *Management information systems for the information age* 3rd edition. New York: Mc Graw-Hill.

- Hails, J. 2005. *Criminal evidence* 5th edition. Wadsworth: Thomson.
- Hazelwood, R.R., & Warren, J. I. 2003. Linkage analysis: modus operandi, ritual and signature in serial sexual crime. *Aggression and violent behaviour*.vol8, nr6. p.p. 587-598. B.V. Elsevier.
- Hoyle, R.H., Harris, M.J. & Judd, C.M. 2002. *Research methods in social relations* 7th edition. Wadsworth: Victoria.
- Inman, K. & Rudin, N. 2001. *Principles and practice of criminalistics: The profession of forensic science*. Boca Raton: CRC Press.
- Kleyn, D. & Viljoen, F. 2002. *Beginner's guide for law students* 3rd edition. Lansdowne: Juta.
- Law of Evidence Amendment Act *see* South Africa. 1988.
- Leedy, P.D. & Ormrod, J.E. 2005. *Practical research – planning and design* 8th edition. Upper Saddle River, NJ: Merrill.
- Marais, C.W. 1988. *Fisiese getuienis in misdaadondersoek*. Pretoria: Henmar.
- Marais, C.W. & Van Rooyen, H.J.N. 1990. *Misdaadondersoek*. Pretoria: Promedia.
- Matson, J.V., Daou, S.F. & Soper, J.G. 2003. *Effective expert witnessing* 4th edition. Florida: CRC Press.
- Matson, J.V., Daou, S.F. & Soper, J.G. 2005. *Effective expert witnessing* 5th edition. Florida: CRC Press.
- Milne, R. & Bull, R. 2003. *Investigative interviewing psychology and practice*. Chichester: Wiley.
- Mouton, J. 2001. *How to succeed in your master's and doctoral studies*. Pretoria: Van Schaik.
- National Prosecution Authority Act *see* South Africa. 1998.
- National Prosecution Authority Policy Manual. 1999. Pretoria: Government Printers.
- National Strategic Intelligence Act *see* South Africa. 1994.
- Nel, F. & Bezuidenhout, J. 1995. *Menseregte vir die polisie*. Kaapstad: Juta.
- O'Hara, C.E. & O'Hara, G.L. 2003. *Fundamentals of criminal investigation*. Springfield, Ill:Thomas.
- Oxford Advanced Learner's Dictionary*. International student's edition. 7th edition. 2007. s.v. "forensic". Oxford: Oxford University Press.

- Oxford Advanced Learner's Dictionary*. International student's edition. 7th edition. 2007. s.v. "process". Oxford: Oxford University Press.
- Palmiotto, M.J. 2004. *Criminal investigation* 3rd edition. Oxford: Oxford University Press.
- Pepper, I.K. 2005. *Crime scene investigation methods and procedures*. Berkshire: Open University Press.
- Ratcliffe, J.H. 2004. *Strategic thinking in criminal intelligence*. NSW: Federation Press.
- Respondent A. 2007. Statement to author, 5 November, Welkom.
- Respondent B. 2007. Statement to author, 9 November, Welkom.
- Respondent C. 2007. Statement to author, 15 November, Bloemfontein.
- Respondent D. 2007. Statement to author, 15 November, Bloemfontein.
- Respondent E. 2007. Statement to author, 6 November, Welkom.
- Roberts, P. & Zuckerman, A. 2004. *Criminal evidence*. Oxford: Oxford University Press.
- SAPS *Psychologically motivated crimes course learner manual*. 2007. Pretoria: Government Printer.
- Schmidt, C.W.H. 1990. *Bewysreg*. 3de uitgawe. Durban: Butterworths.
- Sennewald, C.A. & Tsukayama, J.K. 2001. *The process of investigation: concepts and strategies for investigators in the private sector*. 2nd edition. Woburn, MA: Butterworth-Heinemann.
- Servamus *Safety and Security Magazine*. 100(5), May 2007. Pretoria: SARP Uitgewers.
- Servamus *Safety and Security Magazine*. 100(9), Sept 2007. Pretoria: SARP Uitgewers.
- South Africa. 1977. Criminal Procedure Act 51 of 1977. Pretoria: Government Printer.
- South Africa. 2004. Criminal Procedure Act 51 of 1977 revision service 31 of 2004. Pretoria: Government Printer.
- South Africa. 1988. Law of Evidence Amendment Act 45 of 1988. Pretoria: Government Printer.
- South Africa. 1994. National Strategic Intelligence Act 39 of 1994. Pretoria: Government Printer.
- South Africa. 1995. South African Police Act 68 of 1995. Pretoria: Government Printer.
- South Africa. 1996. The Constitution of the Republic of South Africa 108. of 1996. Pretoria: Government Printer.

- South Africa. 1998. National Prosecution Authority Act 32 of 1998. Pretoria: Government Printer.
- South African Police Act *see* South Africa. 1995.
- Stuart, H.J. & Nordby, J.J. 2005. *Forensic science an introduction to scientific and investigative techniques* 2nd edition. Boca Raton: CRC Press.
- Van der Westhuizen, J. 1996. *Forensiese kriminalistiek* 2de uitgawe. Pietermaritzburg: Heinemann.
- Van Heerden, T.J. 1985. *Kriminalistiek*. Pretoria: Unisa.
- Van Heerden, T.J. 1986. *Inleiding tot polisiekunde*. Pretoria: Unisa.
- Van Rooyen, H.J.N. 2004. *Investigation the A-Z guide for forensic, private and corporate investigators*. Pretoria: Crime Solve.
- Ward, R.H. 1975. *Introduction to criminal investigation*. Massachusetts: Addison-Wesley.
- Welman, J.C. & Kruger, S.J. 1999. *Research methodology for the business and administration sciences*. Oxford, NY: Oxford University Press.
- White Paper on Intelligence. 1995. Pretoria: Government Printer.
- Zeffert, D.T., Paizes, A.P. & Skeen, A.St Q. 2003. *The south african law of evidence*. Durban: Butterworths.

APPENDIX 1

INTERVIEW SCHEDULE 1

PROCESSING OF INFORMATION FOR PROSECUTION PURPOSES

SECTION A

1. INTRODUCTION

I am a UNISA student doing my Master's Degree in Forensic Investigation. The interview schedule is part of my research. Authorization for the research has been granted by the National Commissioner in terms of National Instruction 1/2006.

2. OBJECTIVE OF THE STUDY

The objective of my research is to identify useful action steps for processing information into evidence that can be used in the prosecution process.

3. INSTRUCTIONS

- Participation in this study is voluntary.
- You will not be identified individually in the research and any information that you provide will be treated as confidential.
- It should take approximately one (1) hour to complete the interview schedule.
- Please answer every question in the schedule.
- Thank you for your participation in this research.

SECTION B

1. HISTORICAL INFORMATION

1.1 Name: _____ and/or Respondent no. _____

Naam: _____ en/of Respondent no. _____

1.2 Years of service as investigator?

Jare diens as ondersoeker?

1.3 Unit:

Eenheid:

1.4 Tertiary Qualification:

Tersiere Kwalifikasie:

1.5 Internal Training:

Interne Opleiding:

1.6 Have you receive training in the processing of information into evidence? Yes/No

Het jy opleiding ontvang in die prosessering van inligting na getuienis? Ja/Nee

1.7 If Yes Where?

Indien Ja Waar?

1.8 Do you as investigator make use of informers? Yes/No – How much do you have?

Maak jy as ondersoeker gebruik van beriggewers? Ja/Nee – Hoeveel het jy?

2. EVIDENCE NEEDED FOR SUCCESFULL PROSECUTION

2.1 What do you understand by the term “criminal investigation”?

Wat verstaan jy onder ondersoek van misdaad?

2.2 What in your opinion is forensic investigation?

Wat volgens jou mening is forensiese ondersoek?

2.3 What do you understand by the prosecution process?

Wat is die hofproses?

2.4 What is the role of the investigator in the prosecution process?

Watter rol speel die ondersoeker in die hofproses?

2.5 What is your understanding of the term “evidence”?

Wat verstaan jy onder die term “getuienis”?

2.6 What types of evidence may be found?

Watter tipe getuienis kan gevind word?

2.7 How do you obtain evidence during the investigation process?

Hoe bekom jy getuienis gedurende die ondersoek proses?

2.8 How do you assess which evidence is admissible?

Hoe bepaal jy watter getuienis is toelaatbaar?

2.9 How do you test the credibility of evidence in criminal investigation?

Hoe toets jy die geloofwaardigheid van getuienis in misdaad ondersoek?

2.10 How do you determine what evidence is needed for a successful prosecution?

Hoe bepaal jy watter getuienis benodig word vir 'n skuldigbevinding in die hof?

2.11 What in your opinion does the investigation process consist of?

Waaruit volgens jou bestaan die ondersoek proses?

2.12 Explain what you understand by “chain of evidence”.

Verduidelik wat jy onder “ketting-getuienis” verstaan.

2.13 What is the objective of investigation?

Wat is die oogmerk van ondersoek?

2.14 What is the purpose of investigation?

Wat is die doelwit van ondersoek?

2.15 What according to your viewpoint is the difference between Forensic investigation and Criminal investigation?

Wat is volgens jou mening die verskil tussen Forensiese ondersoek en Ondersoek van Misdaad?

3. STEPS THAT SHOULD BE FOLLOWED TO PROCESS INFORMATION INTO EVIDENCE

3.1 What is your understanding of the term “information”?

Wat verstaan jy onder die term “inligting”?

3.2 What is your understanding of the term “intelligence”?

Wat verstaan jy onder die term “intelligensie”?

3.3 What is the difference between information, intelligence and evidence?

Wat is die verskil tussen inligting, intelligensie en getuienis?

3.4 How do you obtain information during the investigation process?

Hoe bekom jy inligting gedurende die ondersoek proses?

3.5 What do you understand by processing of information?

Wat verstaan jy onder verwerking van inligting?

3.6 Do you think information can be processed into evidence? Yes/No

Dink jy inligting kan in getuines verwerk word? Ja/Nee

3.7 Why in your opinion is it necessary to process information into evidence?

Hoekom dink jy is dit nodig om inligting na getuienis te verwerk?

3.8 How do you in practice process information into evidence?

Hoe verwerk jy inligting na getuienis in die praktyk?

3.9 What steps do you follow to process information into evidence?

Watter stappe volg jy om inligting na getuienis te verwerk?

3.10 Do you think there are any shortcomings in the current method of processing information into evidence? Yes/No

Dink jy dat daar enige tekortkominge in die huidige metode van verwerking van inligting na getuienis is? Ja/Nee

3.11 If YES: What shortcomings?

Indien JA: Watter tekortkominge?

3.12 If YES: What steps would you recommend to address the shortcomings?

Indien JA: Watter stappe sou jy voorstel om die tekortkominge aan te spreek?

4. ADDITIONAL QUESTIONS ARISING OUT OF THE INTERVIEW

APPENDIX 2

INTERVIEW SCHEDULE 2

PROCESSING OF INFORMATION FOR PROSECUTION PURPOSES

SECTION A

1. INTRODUCTION

I am a UNISA student doing my Master's Degree in Forensic Investigation. The interview schedule is part of my research. Authorization for the research has been granted by the National Commissioner in terms of National Instruction 1/2006.

2. OBJECTIVE OF THE STUDY

The objective of my research is to identify useful action steps for processing information into evidence that can be used in the prosecution process.

3. INSTRUCTIONS

- Participation in this study is voluntary.
- You will not be identified individually in the research and any information that you provide will be treated as confidential.
- It should take approximately 30 minutes to complete the interview schedule.
- Please answer every question in the schedule.
- Thank you for your participation in this research.

SECTION B

1. HISTORICAL INFORMATION

1.1 Name: _____ and/or Respondent no. _____

Naam: _____ en/of Respondent no. _____

1.2 Years of service as investigator?

Jare diens as ondersoeker?

1.3 Which Unit(s):

Watter Eenheid/Eenhede:

1.4 Have you receive training in the processing of information into evidence? Yes/No

Het jy opleiding ontvang in die prosessering van inligting na getuienis? Ja/Nee

1.7 If Yes Where?

Indien Ja Waar?

2. STEPS THAT SHOULD BE FOLLOWED TO PROCESS INFORMATION INTO EVIDENCE

2.1 What do you understand by processing of information?

Wat verstaan jy onder verwerking van inligting?

2.2 Why in your opinion is it necessary to process information into evidence?

Hoekom dink jy is dit nodig om inligting na getuienis te verwerk?

2.3 How do you in practice process information into evidence?

Hoe verwerk jy inligting na getuienis in die praktyk?

2.4 What steps do you follow to process information into evidence?

Watter stappe volg jy om inligting na getuienis te verwerk?

2.5 Did the court accept the evidence that was obtained through your method of processing?

Het die hof die getuienis aanvaar wat op jou wyse van prosessering verkry is?

3. ADDITIONAL QUESTIONS ARISING OUT OF THE INTERVIEW