

PSYCHOLOGICAL AND PRACTICAL ASPECTS OF IMPORTANCE FOR APPLYING WITNESS PROTECTION MEASURES

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Introduction

Two basic questions:

- ◆ How can we increase witnesses' readiness to testify?
- ◆ How can we exert positive influence on the completeness and accuracy of testimony?

Aim of witness and victim protection measures is to ensure that full and accurate testimony is obtained

Overview

IMPORTANT PSYCHOLOGICAL FACTORS to be considered in witness protection measures:

- I What is the motivation to testify?
- II Is the person exposed to stress/intimidation?
- III Is it a vulnerable witness?
- IV What category of vulnerable witness is he/she?
- V What is good practice in questioning different categories of vulnerable witnesses?

I Motivation to testify

There is continuum of readiness to testify (full readiness to testify v. absolute refusal to give evidence)

- ◆ Person makes decision on the basis of cost-benefit analysis (what is gained v. what is lost)
- ◆ Perception of gains and losses is individual
- ◆ Because of fear, perception of losses prevails perception of gains. Fear of intimidated witness should be mitigated – how - respect their wishes about time and place of interview, offer support and protection measures

I Motivation to testify

- ◆ There is also role of broader social context in establishing a climate conducive to testifying (f.e. trust in police and court protection)
- ◆ There is also role of individual motivational factors (e.g. Influence of family members)

I Motivation to testify

To increase motivation to testify one should:

- ◆ Understand victim's perception of giving testimony
- ◆ Alter victim's perception to make giving evidence a better option than not testifying

I Motivation to testify

Tactics for doing this:

- ◆ Find reasons to co-operate:
 - Prevention of future criminal offences that could harm the witness
 - Protection
- ◆ Find and reduce possible reasons to refuse co-operation:
 - Fear for oneself and related persons
 - Exposure of self to criticism and disbelief

II Role of stress

People under stress:

- Remember less,
- Recollect less from the past
- Find it more difficult to understand questions, particularly complex ones
- May speak in a confusing manner
- May worsen a condition they may have (for example suffer EPI seizures)

II Role of stress

- The influence of stressors should be eliminated or reduced
- The first step is to recognise the sources of stress

II Stressors linked with reactions to criminal offences

- ◆ Conditions such as post-traumatic stress disorder may develop as a reaction to serious crimes
- ◆ In recollecting the crime the victim re-lives it, causing discomfort

II Stressor linked with the procedure

- ◆ Procedure of questioning and court procedure:
 - Place unfamiliar to victim, procedures unfamiliar to victim
 - Secondary victimization is possible (Blaming of victim instead of empathy with victim)
 - Interview which is not compatible to victim (rhythm, the way of questions are designed)

Investigator is responsible for adjusting to the victim and for decreasing the victim's stress as much as it is possible.

II Are all victims equally sensitive to stress? No

- ◆ Perception of stressors is individual
- ◆ Reaction to stress is also individual
- ◆ Some categories of witness's are more sensitive to stressors - they react more at the same stress, i.e. they experience higher stress

III Why do we need to recognise vulnerable witnesses?

- Vulnerable witnesses have special needs that must be taken into account during interviews and questioning to ensure proper giving of evidence
- Due to their vulnerability they cannot fully stand up for themselves (for example they need an interpreter), they may show reluctance (for example due to fear of the perpetrator), they require a specially-adjusted communication style (for example due to intellectual

III Recognising vulnerable witnesses

- ◆ As soon as possible – at the very start of the criminal proceedings – in order to adjust communication and establish whether the witness is fully ready to give evidence (ask for expert evaluation)
- ◆ Necessary so that if needed professional assistance can be sought to obtain statements/evidence
- ◆ Criterion for suspecting vulnerability: confused state of person

III Who should recognise that a vulnerable witness is involved

- ◆ The person undertaking the interview/ questioning
- ◆ If uncertain, an expert assessment should be sought

IV Reasons of vulnerability of witnesses (basis for categories)

- ◆ Age
- ◆ Witnesses under stress (on account of experienced criminal offence or sensitivity)
- ◆ Various difficulties (for example intellectual), disabilities and illnesses relevant to testimony
- ◆ Feeling of intimidation

V Good practice in questioning vulnerable witnesses

- ◆ Quality of interviewing affects quantity and accuracy of information obtained from witness

A good interview with a vulnerable witness is planned rather than haphazard: the style and duration of interview and possible support for witness must be planned in advance.

Data are needed for planning interviews (age, sex, health status, emotional state of witness, etc.)

V Good practice in questioning witnesses

A good interview uses the following:

- a) Knowledge of interpersonal communication
- b) Psychological knowledge about the functioning of memory
- c) Awareness of the collection of information as a process of testing hypotheses
- d) Specific data about the witness for the purpose of adjustment to him/her (cognitive and emotional)

V a. Knowledge about interpersonal communication

- Good interpersonal communication is a skill rather than the result of chance.
- The art of establishing an appropriate emotional relationship with the witness includes the skill of verbal (e.g. Using appropriate language) and non-verbal communication (e.g. Active listening, suitable eye contact).
- Good interpersonal communication reduces stress in a witness and increased trust and feelings that he/she is respected and motivated for testifying

V b. Awareness of retrieval

On the basis of this knowledge we should:

- ◆ Accentuate memory of retrieval (open questions), rather than memory of recognition (closed questions)
- ◆ Use only suitable questions and expressions (non-suggestive and non-leading) because suggestive questions may lead a person to create inaccurate memories
- ◆ Interviews must be conducted as early as possible
- ◆ Stress in the witness must be reduced as much as possible because stress lessens retrieval

V c. Awareness of collection of information as a process of testing hypotheses

- People tend to make premature conclusions – which leads to non-detailed interviews
- People tend to hypothesise and the consequence is that they search for facts which conform to hypotheses, and are not aware of that
- People tend to hypothesise and therefore have tendency to ask suggestive questions

Professional interviewing requires an “open mind”, mentally set several hypotheses and interview in detail.

V d. Specific data about the witness as a basis for adjustment to him/her (cognitive and emotional)

- Categories of vulnerable witnesses have their own specificities
- Vulnerable and threatened witnesses should be afforded additional care and patience, without prejudice
- Adapt place and communication to the witness:
 - interpreter; professional person; support person; guardian
 - is the person able to come to the interview site on his/her own

V Good interview techniques

There are several good interview techniques. General rules (establish emotional relationship; first retrieval and then questioning; avoidance of suggestive questions, etc.) are the same. There are also some differences in various techniques. Types of interviews:

- Phased interview
- Cognitive interview (result in more data)

These techniques can also be applied to vulnerable and threatened witnesses.

V Good interview techniques: Phased interview

- Introductory part (establishing rapport...)
- Free memory retrieval stage (more reliable information)
- Questioning stage (less reliable data, possibility of suggestive influences on witness to create false memories for peripheral details)
- Stage of closing interview

V Interview v. recognition

A witness is usually required to:

- ◆ Describe what happened (episodic memory – memory of retrieving episodes)
- ◆ Identify the perpetrator (facial recognition memory)
- These are two types of memory with different neurophysiological bases

V Recognition:

During facial recognition manage procedure so as to reduce rather than increase possibility of mistakes

Children and persons with intellectual difficulties are even more sensitive to the procedure

The main problem is how to reduce relative judgment of faces. (People are tend to do relative judgment, i.e. find the face which is the most similar to the original memory, which may not be the absolute identical to the original memory)

V How to increase accuracy of testimony in recognising

- Appropriate instructions (identification)
- Appropriate instructions
- *Sequential and not simultaneous presentation* since sequential lineups are better (17% v. 58% false recognitions, Lindsay & Wells, 1985)
- Double-blind procedure