



BASIC INSPECTOR TRAINING MANUAL

*GUYANA ENVIRONMENTAL CAPACITY
DEVELOPMENT (GENCAPD)*

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Prepared for the CANADIAN INTERNATIONAL DEVELOPMENT AGENCY
by David A. Latoski, Regional Manager Mining Inspection Division, Indian and
Northern Affairs Canada, Yukon Region

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1.0 INTRODUCTION

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Guyanese legislation uses the term “officer” and “mines officer” to denote individuals responsible for inspection and ensuring compliance with the relevant legislation. This manual utilizes the term “inspector” in place of officer or mines officer to ensure clarity of the functions and responsibilities of individuals charged with the functions conferred by the relevant Acts of Guyana. The term inspector is synonymous with officer and mines officer.

Reference is made to “commission” which refers to the Guyana Geology and Mines Commission (GGMC) and “agency” which refers to the Environmental Protection Agency (EPA) of Guyana.

This manual focuses on the fundamental protocols of pre-inspection planning, preparing various required plans, quality control and quality assurance, entry procedures, interview techniques, statements, identification of potential violations, documentation methods, evidence, records review, sampling and report writing, and the inspector as a witness.

Higher level training such as expert witness training, knowledge of the legal system and the courts, identifying personal liability and ethical issues should be delivered by competent Guyanese government officials such as lawyers and judges.

Wilderness first aid should also be a prerequisite of any training of field staff.

1.1 DEFINITIONS:

Inspector: Inspector is the name given to certain officers whose duties are to examine and inspect things over which they have jurisdiction.

Inspection: To inspect is to examine, scrutinize, investigate, look into, check over, or view.

Officer: An officer is a person holding an office of trust, command or authority.

Public Officer: A person occupying an office created by law. One of the necessary characteristics of a public officer is that they perform a public function for public benefit and in so doing they be vested with the exercise of some sovereign power of state.

Sovereign: A person, body or state in which independent and supreme authority is vested.

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2.0 WHAT IS A GOVERNMENT INSPECTOR?

The inspector is often the personification of the entire commission or agency that he or she represents. It is the inspector who visits the site. The inspector is often the only image many will ever have of your commission or agency. Polite diplomacy is therefore a **mandatory skill**. Aggressiveness should show itself in thorough work rather than the inspector's overbearing demeanor. Inspectors are the commission's or agency's five senses to the real world. How accurately those senses will record that world is the subject of this manual.

Through the proper authority under the respective legislation inspectors have been appointed to carry routine inspections and possibly investigations on behalf of the government of Guyana. These inspections or investigations seem simple enough when one sits in an office and have them explained to you. The impact that these inspections and investigations have on industry on one side and government on the other cannot be taken lightly. Ideally your inspection or investigation would be beneficial to both industry and the government commission and agency you represent. An inspector is a direct liaison between the commission and agency which are responsible for the legislation aimed at administering mineral rights, the right to explore and mine for minerals and pollution abatement and control and those who may be responsible for operations which could be detrimental to the environment and cause ecological impacts.

As an inspector you have considerable responsibility, more than you may realize. Your reports make their way from the frontier of the country to the heart of government. They can also greatly affect the economic well being of an industry. Technical capabilities are required. However, good common sense and honesty should dictate how your expertise is applied. You are a technical advisor, liaison officer, public relations officer, investigator and an enforcer.

3.0 WHAT AN INSPECTOR DOES

Every inspection must be conducted as if it would go to court and be hotly contested. Inspectors should imagine themselves on the witness stand, under cross examination by highly skilled counsel for the defense. Every piece of evidence and documentation supporting that evidence may be contested as inaccurate, misinterpreted or compromised. It becomes obvious that the inspector's entire case often hinges upon the expertise and **professionalism** of the inspector as a witness of fact.

What does **professionalism** mean? You are an agent of the government who represents the very people you must regulate. Fairness and equity are cornerstones of your position. It is common for some inspectors to become obsessive in the authority and power given to them. The axiom "...power corrupts..." is true and requires constant attention to prevent. We are all equal citizens, subject to the same rules and social responsibilities.

Improper protocol and cover up are neither professional nor ethical. It is imperative that the inspector set the example in the implementation of proper procedure. Those procedures must routinely be better implemented by the regulators than those performed by the regulated community. Comparisons between the government's work and that of the regulated community is often at issue in a court. Agents of the government should never feel justified in hiding their own impropriety in order to enforce against those they regulate. A little bias can rapidly lead to decay.

How would you like to be treated by a government inspector? Apply the "Golden Rule" to your work. *Treat others as you would have others treat you.* As an agent of the government you must constantly strive to maintain the highest standards of thoroughness, ethical conduct and quality assurance. Inspectors must train and retrain so that he or she can set an unimpeachable example for those whose laws they enforce.

As public servants you are accountable. You have an obligation to make sure that your work contributes to the mission of the GGMC. You are expected to meet high standards of conduct, of honesty and integrity and to approach your work in a spirit of openness, compassion, co-operation and commitment. These high standards of conduct serve as a guide for staff at all levels of the organization. Managers and supervisors, however, have special obligations. As leaders, they are expected to set an example by demonstrating high ethical and professional standards in their own conduct. They must be sensitive to the conditions of the work environment, and actively concern themselves with assisting, advising and motivating their staff.

When on occasion, an employee's conduct falls short of acceptable standards, the disciplinary process may come into play. It is the supervisor's responsibility to take prompt action in correcting the problem. Such action must be fair and must respect the employee's rights.

Inspections of the extraction of the country's natural resources are broad spectrum, politically sensitive and are, to the government, resource consumptive compliance activities. These inspections have high visibility. They achieve a "snapshot in time" of a mining operation's compliance under several or many regulatory authorities. Inspections, along with any criminal enforcement activities by inspectors, represent a significant portion of the total compliance impact on the regulated community and can provide for a better foundation to establish more efficient and innovative routes to compliance. Many factors contribute to

effective inspection activities. Inspections are a government wide activity rather than an individual or one agency or program activity. This means you must elevate the importance and use of **Teamwork, Confidentiality, Chain of Command, Communication** and **Coordination** in all inspection and/or investigation activity preparation:

1. **Teamwork** is vital to the ultimate success of every activity in inspections and/or investigations. The members of your “team” are your colleagues along with inspectors, staff from other divisions and agencies and your legal counsel. Even a veteran inspector may not realize the necessity to work as a member of a team.
2. **Confidentiality of Enforcement** activities **must** (emphasis added) be maintained throughout the entire process from the earliest planning stages to enforcement referral. This applies to all activities and communications. The routineness of some inspections may cause some inspectors to forget that they are part of a **team**.
3. **A Chain of Command** of the **team** must be maintained. Activities must be coordinated carefully to insure efficient management, quality assurance and quality control and control of confidential communications.
4. **Communication** amongst members of the **team** must be maintained through all phases of the planning, preparation and execution of the inspections and/or investigations.
5. **Coordination** among all of the regulatory actors, or members of the **team**, is crucial.

4.0 GUYANA GEOLOGY AND MINES COMMISSION

The Guyana Geology and Mines Commission (GGMC) was created in 1979 from the Department of Geological Surveys and Mines which itself was the successor to the Geological Survey of British Guiana. The GGMC is the statutory body that administers the Mining Act 1989 and its regulations and processes all applications regarding mineral properties in Guyana. Currently the GGMC is divided into the following divisions:

- Geological Services
- Mines
- Environment
- Petroleum
- Administration and Finance to assist the technical divisions above to carry out their respective mandates.

The Guyana Geology and Mines Commission's roles are:

- To act as development change agent in the diversification of the economic base of Guyana through its activities in the mineral sector;
- To create the opportunities for rapid economic development which an expanding mineral sector is ideally suited to provide;
- To act as a national repository for all information relating to geology and mineral resources which will facilitate an understanding of the resource base of the country;
- To provide to the general public with basic prospecting information and advisory services on the available economic mineral prospects;
- To provide advice to government on appropriate mineral policy matters so that Guyana's mineral resources can be rationally developed and utilized;
- To regulate all activities in the mineral sector on behalf of the government.

The functions of the Guyana Geology and Mines Commission are:

- The promotion of mineral development;
- The provision of technical assistance and advice in mining, mineral processing, mineral utilization and marketing of mineral resources;
- Mineral exploration;
- Research in exploration, mining and utilization of minerals and mineral products;
- Enforcement of the conditions of Mining Licenses, Mining Permits, Mining Concessions, Prospecting Licenses (for Large Scale Operations), Prospecting

Permits (for Medium Scale and Small Scale Operations) and Quarry Licenses;

- Collections of Rentals, fees, charges, levies etc. payable under the Mining Act;
- Hall Marking;

Under the Memorandum of Understanding between the Environmental Protection Agency and the Guyana Geology and Mines Commission, signed October 15, 1997, the Guyana Geology and Mines Commission agree to:

- Develop and share with the Environmental Protection Agency (EPA) and others an environmental database on petroleum and mining industries;
- Assist in the reviewing of Environmental Impact Assessments for mining and petroleum exploration, exploitation and development projects and recommend to the EPA whether an Environmental Authorization should or should not be issued;
- Ensure compliance with the requirements of the Environmental Protection Act before issuing GGMC licenses/permits for mining and petroleum exploration, exploitation and development projects;
- Prepare an annual report on the activities of the Environmental Unit;
- Carry out investigations of incidents of perceived non-compliance with Environmental Authorizations for mining and petroleum exploration, exploitation and development projects and report to the EPA;
- Give technical support to the Environmental Assessment Board and Environmental Appeals Tribunal proceedings.

In the interest of implementing environmentally sound practices for the exploration, exploitation and development of mineral and petroleum resources of Guyana as per the Memorandum of Understanding between the Environmental Protection Agency and the Guyana Geology and Mines Commission. The EPA and the GGMC agree to:

- Establish Inter-Agency administrative procedures for the application for and issuance of Environmental Authorizations;
- Review, as necessary, environmental reports of mining and petroleum license/permit holders;
- Establish a joint working group for assessing applications for Environmental Authorizations;
- Identify topics for environmental research and support for such research endeavors;
- develop and implement environmental standards, monitoring protocols, regulations and guidelines;
- Promote activities to safeguard the environment;
- Develop and implement programs to promote and improve environmental standards

and practices;

- Develop and implement programs to promote public awareness for environmental management and protection;
- Develop, support and implement programs to acquire and upgrade logistical and scientific equipment and facilities required by the GGMC for environmental monitoring;
- Implement environmental monitoring and enforcement procedures;
- Develop and implement training programs for the GGMC personnel in environmental monitoring and management;
- Make available to each other their libraries, laboratories and field facilities;
- Develop strategies for Environmental control of small and medium scale mining;
- Establish and implement compliance monitoring policies;
- Address on a as-required basis other issues of mutual concern to both the GGMC and the EPA in areas of environmental protection.

5.0 ENFORCEMENT AND COMPLIANCE

The statutes and regulations of Guyana governing mineral exploration and exploitation are designed to administer and monitor the development of a responsible mining industry and protect the natural environment for all Guyanese. Laws and regulations are not sufficient in themselves. Enforcement of these laws must be fair, consistent, effective and predictable. Companies and individuals operating under this legislation and those who administer the laws need to understand how the rules apply to their activities and need to know how the rules will be enforced.

Compliance means a state of conformity with the governing legislation and regulations, as well as the terms and conditions of licenses and permits. Inspectors should promote voluntary compliance by employing a policy of **Educating** their clients through consultation and **Encouraging** compliance through technical assistance and, when necessary, ensuring appropriate **Enforcement** actions are taken such as, but not limited to, administrative sanctions and/or utilizing the courts through prosecutions. It is important that inspectors use rules, sanctions and processes securely founded in law.

Measures to promote compliance through education include verbal and written explanations, an ongoing dialogue between the inspector and operator, written comments on inspection reports, explanatory letters and other forms of communication.

Measures to promote compliance by encouragements; include timely reminders, readiness to acknowledge a job well done, showing understanding of an operator's aims and the conditions under which they are working, involving operators in decisions affecting their activities, and maintaining an effective field presence.

Enforcement activities include inspection and monitoring to verify compliance, verbal or written warnings, directions by inspectors, investigations of suspected violations and prosecution.

6.0 PRE-INSPECTION PREPARATION

About 50 % of your time should be spent planning and preparing for your inspection. This will prevent classic oversights; like starting on your inspection trip without having any idea how to get to the operation.

Your first objective should be to check with other staff and files to gain all the knowledge you can about the site. There may be other personnel that have visited the site before. Other considerations are permits, licenses or special agreements or even previous litigation if any exists.

There may be other agencies which have been involved or should be involved. Not informing an entity who feels they also have an interest about an operation can cause serious backlash. Showing up at an operation which is accustomed to seeing a particular individual or an agency that does not support you being there, can make life very difficult. Make sure your immediate chain of command is familiar with your objectives and schedule. Inspectors often complain that there is little supervisory support for their field work. This may be because supervisory staff was not fully informed and prepared before you did the work. A supervisor can only provide support if they are fully informed and support your intentions.

Prepare your field kit. Fill out your paperwork as much as you can before entering the site. It is a nuisance when you end up hurriedly doing it in front of an impatient representative of the company or operator who has taken time off from a critical breakdown just to deal with you. For example, if you have business cards exchanging them is a good way to introduce yourself and get information about your site contacts without lengthy and redundant questioning. You may want to write down in your notebook before you leave the office a few reminders to yourself to make sure you cover a topic or see an operation.

7.0 POLICY AND PROCEDURES

7.1 Procedures:

The following are excerpts taken from GGMC's *Standard Operational Procedures*" (Copy 2) prepared by the Mines Division for the inspection of dredges, dredge camps, licensed premises, etc.

1. *The Senior Officer shall first identify themselves and any other officer in their company, with each officer displaying their identification card to confirm their identity.*
2. *Enquire for the person in-charge there of the dredge owner, proprietor/proprietress or their manager.*
3. **Inspection of Mining Privileges:**
 - a. *Ensure same is valid: the duration of a **Mining Privilege** is twelve (12) months from the date of issue. (**Regulation 146**).*
 - b. *Ensure that the **Mining District** as stated in the **Mining Privilege** relates to the district the Tributor is working.*
 - c. *Ensure that each **Mining Privilege** is endorsed in the manner prescribed in **Regulation 147**:*
 - i. *Name of claim on which the Tributor is to work.*
 - ii. *Name of the holder of the claim.*
 - iii. *Date of arrival of such Tributor on the claim.*
 - iv. *Signature of claim holder or his representative. The representative must be authorized in writing.*
4. **Dredge/Specified Machinery:**
 - a. *Ensure that the dredge is registered and licensed for the current year. [**Regulation 206 J(4)**]*
 - b. *Ensure that the dredge/specified machinery identification marks are affixed thereon. [**Regulation 206 I**]*
 - c. *Ensure that the main component of the dredge/specified machinery correspond with that stated in the **Production Book** and license.*
 - d. *Ensure that the dredge is operating on the claim as stated in the endorsement of the **Mining Privilege**, any person who desires to move any dredge or specified machinery from one claim to another shall notify the Commissioner before doing so.*
 - e. *Ensure that all specified machinery in a **Mining District** is registered [**Regulation 206 A(1)**]*

5. **Production Book:**
 - a. Ensure that the production book is written up daily.
 - b. The **Production Book** is to be kept on the claim. (**Regulation 181**)
 - c. Ensure that the information required in the **Production Book** is filled in, that is:
 - i. Name of holder of Concession/License/Claim/Permit,
 - ii. Mining District No.,
 - iii. Number and name of Concession/License/Claim/Permit,
 - iv. Location of Concession/License/Claim/Permit,
 - v. Permit No.,
 - vi. Dredge Owner,
 - vii. Dredge Number, SD
 - d. Compare the quantities of gold/diamonds, as stated in the **Production Book**, with that on hand at the time of visit. (**Regulation 183**).
 - e. If no new **Production Book** is on hand and one is needed, advise that a **Production Book** is to be acquired immediately.
6. **Gold on Hand:**
 - a. Gold on hand to be produced when requested, if gold on hand is more than that recorded in the **Production Book**, all excess should be detained.
7. **Occupational Safety and Health:**
 - a. All dredging activities should be in the opinion of the Mines Officer, carried out in a safe manner, e.g. vertical pit walls should not be in excess of twenty (20) feet when in excess benching should be practiced.
 - b. Where in the opinion of the Mines Officer, a potential Occupational Safety and Health threat is observed, this should be brought to the attention of the Operator via writing on the prescribed form and appropriate instruction given for corrective action(s).
 - c. Ensure that the proper toilets are constructed and that same is kept clean. (**Regulation 101**).

- d. Appoint suitable spots for the depositing of refuse, rubbish, etc. **(Regulation 102)**.
 - e. Accidents, which result in eight (8) or more man-hours lost, should be recorded on the Form “**Notice of Accident on Mineral Property**”.
- 8. Certificate of Registration:**
- a. Persons employed by holders of licence to trade must be issued with a **Certificate of Registration**.
 - b. **Certificate of Registration** should be issued to every individual for whom application is made by an individual/company for work permit in favor of those persons.
 - c. Registered laborer on claim. **(Regulation 161)**
- 9. Licensed Premises (Trading License):**
- a. Ensure **Trading License** and **Business Permission** is in force. Check date of expiry.
 - b. Ensure that surroundings of shops are clean, free of litter, empty tins, bottles, and other receptacles. **(Regulation 105)**.
 - c. Inspect **Transaction Book**. **(Regulation 196)**
 - d. **Transaction Book** to be kept on the premises.
 - e. Request quantities of gold/diamonds on hand.
 - f. Compare quantities of gold/diamonds as stated in **Transaction Book** with that on hand at the time of visit. **[Regulation 197(1)]**
 - g. If gold/diamonds on hand is more that recorded in **Transaction Book**, all excess should be detained. **[Regulation 197(2)]**
- 10. Inspection of Claims:**
- a. Confirm claim boards are erected and boundary lines are cut. **(Regulation 10)**
 - b. If **Mining Privileges** or dredge crew are not endorsed by Claim Holder or his Representative, all gold/diamonds must be detained and all work to be suspended until endorsement is done.
 - c. Ensure that all over hanging trees over the work area are cut down.
 - d. Ensure that all tailings are deposited on the said claim, save and except

creeks and rivers. **(Regulation 59).**

NB. Regulation 67, where depositing of tailings, etc., on another's claim is prohibited.

- e. No dredging should take place within 200 m of the boundaries of any township, road, railway, etc. **(Section 82)**
- f. Ensure that there is no overlapping of claim boundaries. IF there is overlapping you may need to put a Cease Work Order or recommend verification.
- g. Ensure rental for claim is paid via receipt. **(Regulation 27)**
- h. Conduct search of claim and person thereon. **(Regulation 183)**
- i. Inspect document submitted for application for Claim License and Notice of Location of claim. **(Regulation 14)**
- j. To ascertain validity of claim (verification process). **[Regulation 22(2)]**
- k. To ensure that no one who having located a claim alter the date of location on the claim board. **[Regulation 14(2)]**
- l. To ensure that no one destroys, defaces, injures or removes either wholly or in part any tree, post, become location boards or other working to a claim, whether in the exercise of any right as regards such claim or otherwise. **[Regulation 10(2)]**
- m. To ensure that the person in-charge of a claim or a Tributor thereof does not interfere with the work of any other Tributor which was already permitted to be or to work on the claim or any part thereof within a distance of one hundred and fifty feet from where he is working or within such distance as the Commissioner or Mines Officer had decided. **[Regulation 148 A(1)]**
- n. Where the Tributor holds a license for a dredge issued under part XXI A of these Regulations, unless the Commissioner or has permitted him in writing to work on that claim. **[Regulation 149(1)]**
- o. Ensure that there is no contravention of a **Cease Work Order. (Regulation 99)**
- p. To ensure that all minerals being conveyed are so done in accordance with the Mining Act and Regulations. **[Regulation 185 (1 - 4)]**
- q. All detention and issuance of **Cease Work Order** must be carried out in the manner prescribed by memorandum dated **24th of November, 2000.**

11. Any Mines Officer may challenge the right of a holder of a claim to remain in occupation thereof on the grounds laid down in **Regulation 29** and the procedure shall be the same as in the case of a challenger by the holder of a Prospecting Permit small-scale except that the matter shall be heard by the Commissioner in Georgetown or by an Officer appointed by the Commissioner. (**Regulation 31**)

Grounds of Challenge:

- a. If a claim is left unworked for a period of two (2) years.
 - b. If the boundary lines are not kept reasonably clear and the boundary marks erected and marked in accordance with these Regulations for a period of six (6) months in any one year.
 - c. If the area located is greater than that allowed by these Regulations.
- **Regulation 29**
12. No holder of a License shall sublet the claim in respect of which he holds the License or any part thereof, unless he shall have **first** obtained the permission in writing of the Commissioner or Mines Officer to do so. [**Regulation 143(1)**].

A. Payment of Claim in the Field:

1. On receipt of **Notice of Location** and **Application** for claim licenses, the Officer shall ensure that the description given is adequate to assist him to identify the position of the claim on the **Stock Sheet**.
2. If such position is found to be in a closed area the applicant shall be notified immediately and his location is disallowed in accordance with **Regulation 4(6)**.
3. If the applicant insists upon paying for his location, the Officer shall accept such payment and issue **Notice of Verification** immediately and shall suspend work on the said locator. [**Regulation 4(6)**]. The **Verification** shall be done immediately.

B. Payment at Head Office:

1. On receipt of **Notice of Location** and **Application for Claim Licenses**, the Officer shall first confirm with the **Manager Geological Services** that the description as given on the **Notice of Location** is within a closed or open area. Such confirmation shall be written on the **Notice of Location** forms.
2. The Officer on confirmation that the area is open shall allow the applicant to effect payment for his locations(s).
3. If the area is closed as so stated by the **Manager Geological Services** same shall be communicated to the applicant. If the applicant desires to effect the payment of the locating(s) having

knowledge that the area is closed, the Officer shall allow the payment thereof and immediately serve a **Notice of Verification** and order all work suspended. **Regulation 4(6)** and proceed to have the verification done immediately via field officers.

13. **Evaluation Information:**

- a. Officers are required to complete the small and medium scale **Evaluation Form** in accordance with the information required.

14. **Prospecting Permit Small Scale:**

1. Person prospecting shall produce, when requested, their **Prospecting Permit** (Small Scale) or authority to prospect on behalf of the **Permit Holder. (Regulation 6)**
2. A **Prospecting Permit** (Small Scale) shall entitle the person to whom it is issued to prospect and locate claims in every Mining District but under and subject to these Regulations. [**Regulation 4(5)**]
3. A **Prospecting Permit** (Small Scale) issued to any person shall unless the location is null and void, or he is informed by the Commissioner of Mines Officer that his location is disallowed or is ordered to suspend work, be deemed to entitle and to have entitled them to work the ground located there under from the date of location until his application for claim licenses can be published or such licence either issued or refused. [**Regulation 4(b)**]
4. The Mines Officer shall without delay report in writing to the Commissioner all **Prospecting Permit** (Small Scale) issued by the Commissioner shall file and preserve such report. [**Regulation 5(2)**]
5. A **Prospecting Permit** (Small Scale) shall be issued to the following persons:
 - a. An individual who is a citizen of Guyana and an adult.
 - b. A partnership consisting of two or (2) or more citizens of Guyana.
1. Where a **Prospecting Permit** (Small Scale) is applied for in the names of more than **one** person, the **Prospecting Permit** shall be granted to **one** of such persons **only** for and on behalf of himself and the other persons named in the application. [**Regulation 3(4)**]
6. A **Prospecting Permit** (Small Scale) shall not be issued to a minor. [**Regulation 3(5)**]
 - a. To any person who is the holder of a valid authority to prospect under an existing permit. [**Regulation 8(b)**]
 - b. To any person who is the holder either in his own name or for and on behalf of himself and other persons of a valid **Prospecting**

Permit.

15. Search of person at Mining Station - Sections 119 - 120

- Where the Mines Officer in-charge of a station has reason to suspect that evidence of the contravention, or intended contravention, of any provision of the Mining Act, the Guyana Gold Board Act 1981 or the Customs Act may be found on any person who has reported to a station or on or in any container or thing in the possession of that person. Such Officer may search the body of that person or the thing.
- For the purpose of the above mentioned search, the Mines Officer mentioned above may obtain such assistance or may use such force as in their opinion is required and may break open any lock or thing.

NB: A female person shall be search only by another female and a male only by another male.

16. Enter and Search - Section 101 - 102

- Any aircraft, ship or carriage, together with all animals and things, or any dredge or machinery made use of in the commission of any act, or for a purpose prohibited by or under the Mining Act shall be liable for forfeiture under the said Act.
- When the Commissioner, or any authorized person has reasonable cause to suspect that any of the items mentioned above is being, or was, made use of in the commission of any act, or for a purpose, prohibited by or under the Mining Act. **They may apply to a Magistrate for the issue of a warrant under the hand of the magistrate authorizing a search of any things mentioned** The Magistrate by special warrant under his hand may authorize the applicant to enter and search by day or night for any of the items mentioned above.
- Having obtained the warrant mentioned above, the Commissioner or authorized person may enter and search such thing as specified in the warrant and it shall be lawful for them, in the case of resistance, to break open any door and to force and remove any other impediment or obstruction to such entry.

NB: Where it is not practicable for the Commissioner or authorized person to apply and obtain a search warrant as in so doing there would be a delay, which is likely to defeat the purpose of the search, the Commissioner or the authorized person may carry out the search without the warrant. However, they must make a report in writing regarding the search to the nearest Magistrate within a period of twenty-four (24) hours of the search or where such cannot be made within that period, as soon as it can be made.

THE AXIOM THAT REFERS TO THIS POWER UNDER LAW TO SEARCH AND SEIZE EVIDENCE WITHOUT A SEARCH WARRANT DUE TO THE

POSSIBILITY THAT EVIDENCE MAY BE LOST IF THE INSPECTOR HAS TO TRAVEL AWAY FROM THE SITE TO OBTAIN A SEARCH WARRANT AND RETURN, CAUSING A DELAY, IS KNOWN AS “EXIGENT CIRCUMSTANCES”. IT MAY BE A PRUDENT CONSIDERATION TO INSTITUTE A PROCEDURE WHEREBY AN INSPECTOR MAY OBTAIN A WARRANT BY TELEPHONE. THIS IS KNOWN AS A “TELE-WARRANT”. A WARRANT OR PERMISSION TO SEARCH GRANTED OVER THE TELEPHONE WITH THE PAPER COPY OF THE WARRANT TO BE SECURED BY THE INSPECTOR UPON RETURN TO THE OFFICES OF THE MAGISTRATE, HAVING JURISDICTION OF THE AREA, WHICH WOULD SUBSEQUENTLY BECOME PART OF THE MATERIALS FOR THE CASE, THE “COURT BRIEF”.

17. A Mines Officer may at reasonable times - Section 126 a-c:

- Enter and inspect of any area, structure, building, vehicle, vessel or aircraft, which in their opinion has been, or is being, or is to be, used in connection with prospecting or mining operations.
- Inspect, examine or test any machinery or equipment which in their opinion is being used in the above operations or they shall cause the same to be examined or tested by a qualified person.
- For the purpose of analysis or testing, take or remove samples of minerals or other substances from any area where the above operations are conducted. Inspect and take extracts from and make copies of any document relating to the above operations.
- Make such examinations and enquires as are necessary to ensure compliance with the provision of the Act, or any directions issued, restrictions or conditions imposed or orders made under the Act.
- Obtain and record statements from witnesses, and appear at, or conduct enquires, regarding accidents occurring in the course of mining or prospecting operations, and appear at inquests, and call and examine witnesses and cross-examine witnesses.

18. A Mines Officer may at reasonable times:

- By instrument in writing issue direction to and impose restrictions on the holder on any license or permit granted under this Act, or any person employed by him in, or in connection with, any prospecting or mining operations with respect to health, safety and welfare of person employed by the holder of the license or permit.
- If in the opinion of a Mines Officer the area, structure or building or machinery or equipment of any prospecting or mining operation is unsafe, direct the holder of the license or permit in writing to the effect;
 - i. The cessation of any of the operations referred to above (a) on or in, and the withdrawal of all personnel from, any area, structure or

building being used in connection with any such operations and specify in the direction; or

- ii. The discontinuance of the use of any machinery specified in the direction, unless and until such action as is necessary for safety, specified in the direction, is taken by the holder of the license or permit and completed.
- Where the Commission has reason to believe that a person has in his possession or under his control information or data relating to prospecting or mining operations in Guyana or mineral obtained in Guyana or the value thereof by notice require that person;
 - i. To submit to the Commission such information or data within the period and manner specified in the notice;
 - ii. To attend before the Commission or a person identified in the notice, at such time and place specified therein and to answer the questions relating to those operations of the value of such minerals; and
 - iii. To produce before the Commission or a person identified in the notice, at the time and place specified therein, books and other documents in his possession or under his control relating to those operations, minerals obtained as a result of the operation or the value of such minerals.
- Where pursuant to a notice mentioned above any book or other document is produced before the Commission or a person, the Commission or the person may make copies of or take extracts from the book or other document.

19. Seizure from person searched at a Mining Station - Section 119(4):

- A Mines Officer in-charge of a station may seize anything they find in consequence of a search of a person at a mining station which he has reason to believe provides evidence of the commission of an offence under the Mining Act, the Guyana Gold Board Act or the Custom Act or anything which has reason to believe is liable to be forfeited under any of the above mentioned Acts.
- Where a Mines Officer in-charge of a station seizes anything under the Mining Act he shall forthwith prepare a list of the things they seized in the presence of the person from whose possession it was seized and two witnesses and a copy of the list signed by such officer and such witnesses shall at the earliest possible date thereafter be sent by such officer to the Magistrate having jurisdiction over the place where it is situated.

20. A Mines Officer may institute Criminal Proceedings against any person

- Who, explores or prospects or searches the ground (except in the case of private land) without a license or authority or refuses or neglects to produce their license or authority when required by an officer.
- Who, destroys, defaces, injures, or removes either wholly or in part any tree, post, beacon, location board or other marking to a claim, whether in the exercise of any right as regard such claim or otherwise or procures any other person to do so.
- Who, having located a claim:
 - i. Alters the date of location on any location board; or
 - ii. Without the permission of the Commissioner or Mines Officer previously had and obtained, re-located such claim.
- Who backs the water of any river, creek or watercourse upon any claim or cause any claim to be flooded, either wilfully or by neglect through the construction of any dam or stop-off or in any other way.
- Who shall under any pretense whatever, damages, destroys or otherwise interferes with any race, title-race, am, sludge-channel or draining machine or other appliance connected therewith or with any claim or areas, unless same has been abandoned or the sanction of the owner thereof, or the authority of the Mines Officer has first been obtained in writing for that purpose.
- Who deposits or causes to be deposited upon any claim or site in the occupation of any other person except with the consent of such person, any earth, stone, debris or tailing or any other substance.
- Who, having felled or causes to be felled any tree across or upon any road, foot path, crossing place, claim, water-race or other mining property refuses or fails without reasonable cause to remove same within twelve hours after the felling thereof.
- Who contravenes a Cease Work Order.
- Who, being party to an opposition or dispute refuses or neglects to give effect to any order or decision lawfully made therein.
- Who, willfully or negligently causes the water of any well or reservoir on or near any claim, or of any creek used for drinking purposes and set aside by the Mines Officer for that purpose, to become contaminated.
- Who, being the holder or the person in-charge of a claim refuses or neglects to comply with a reasonable requirement of a Mines Officer to see the land to the extent of fifty yards (if under his control) surrounding the dwelling of the persons employed by him and living on or near the claim is as far as possible properly drained and kept clean, so as not to be injurious to the health and comfort of such persons.

- Who, being the holder or person in-charge of the premises or claim who refuses or fails to comply with any direction or a Mines Officer to abate or remove any nuisance.
- Who, being the Manager or person in-charge of or giving orders or directions relating to the carrying on of any mining operations in a mine, contravenes or does not comply with any of the General Rules to be observed in working of a mine as prescribed in mining **Regulation 117**.
- Who, being the owner, Manager or person in-charge of a mine who in respect of a situation not provided for by any expressly in any regulations fails forthwith to remove or remedy any danger in any mine or part thereof, or any matter or thing, or practice in or connected therewith, or defect which in the opinion of the Commissioner, Mines Officer or Mines Inspector threatens or tend to the bodily injury of any person as required in a written notice relating to that situation to such person from such officer of the Commission.
- Who is guilty of a breach of any regulation contained in **Regulation of Mines PART XIII (Regulation of Mines)** of the **Mining Regulations**.
- Who, being the holder of a Claim License shall sub-let the claim in respect of which he holds the License or any part thereof unless he shall first obtain the permission in writing of the Commissioner or Mines Officer to do so.
- Who, being in-charge of claim permits a Tributor (the holder of a Mining Privilege) to be or to work on such claim until he shall have endorsed on the Mining Privilege the name of the claim on which the Tributor is to work, the name of the holder of the claim and the date of the arrival of such Tributor on the claim and have signed such endorsement.
- Who, being in-charge of a claim or a Tributor interfered with the work of any other Tributor who is already permitted to be or to work on a claim or any part thereof, within a distance of one hundred and fifty feet from where he is working, or within such other distance that the Commissioner or Mines Officer had decided.
- Who, being a Tributor worked on a claim without the person in-charge thereof having first endorsed on the Mining Privilege in the manner prescribe by the regulation as mentioned above, and where the Tributor holds a license for a dredge issued under Part XXI A of these regulations, unless the Commissioner has permitted him in writing to work on that claim.
- Who, being the holder of a claim or his representative neglects or fails to forward by the end of each month to the Mines Officer of the district within which his claim is situated a list in such form approved by the Commissioner, of all Tributors who may worked on the claim during the past month.
- Who, not being a Tributor or registered laborer whose contract has not terminated, refuses to leave any claim when ordered to do so by the holder

or person in-charge thereof.

- Who, resists or obstructs the carrying out of an order of an officer for any person to remove from the claim.
- Who, not being a registered laborer working on a claim to which he is registered and being within a Mining District refuses or neglects without reasonable cause to produce to any Mines Officer when required to do so a valid Prospecting Permit or Claim License or Mining Privilege entitling him to work on the land.
- Who, not being an Amerindian working as a laborer in any Mining District without being duly registered, being at the time on any claim, refuses or neglects without reasonable excuse, to produce to any officer, when required to do so, a valid Certificate of Registration to work on the claim where he is or works as a laborer in any Mining District without being duly registered.
- Who, not being the holder or lessee or other person in-charge of a claim on which Tributors are permitted to work fails or neglects to have open for the inspection of by an officer, the book being the register to be kept on the claim in which is recorded the Tributors who worked on the said claim as required by the Regulation.
- Who, being the holder of a claim or his representative refuses or neglects to comply with the provisions of the Regulations relating to the payment of wages.
- Who, being the holder of a claim or his representative refuses or neglects to comply with the provisions of the Regulations relating to the payment of wages.
- Who, being the holder or lessee of a claim or the person carrying on mining or dredging operations thereon or is the person in-charge of such operations or his representative fails or neglects to comply with the provisions as to the keeping in a book on the claim an accurate account of all gold, valuable mineral or precious stones obtained on the claim; or refuses to allow any officer to inspect such book; or to produce any gold, valuable minerals or precious stones when required by an officer to do so.
- Who, contravenes any of the regulations relating to the conveyance of, or the payment of royalty on, or the sale and purchase of gold, valuable minerals or precious stones or the export of precious stones.
- Who, being the owner of a dredge or specified machinery fails or neglects to inform the Commissioner or Mines Officer within seven (7) days of any circumstance or event which affects the accuracy of the entries of the register of dredges or specified machineries and at the same time did not forward his certificate of registration for amendment.
- Who, being the owner of any dredge or specified machinery which has been destroyed or rendered permanently unserviceable or has been removed

from the Mining District or is no longer engaged in mining or had been permanently removed from Guyana failed or neglected to have notified the Commissioner or Mines Officer in writing of the fact within twelve days (12) of the happening of the event.

- Who, removed any dredge or specified machinery from one claim to another without first having notified to the Commissioner.
- Who, takes or keeps or being the owner, permits any other person to take or keep in a Mining District or claim any dredge or specified machinery, which is not registered under the Mining Act.
- Who, operated a dredge or specified machinery the identification mark of which is not affixed thereon as prescribed or being so affixed is in some way obscured or not easily distinguishable.
- Who, takes into or keeps or being the owner, permits any other person to take into or keep, a dredge, in respect of which a license is not in force in a Mining District or on any claim.
- Who, without reasonable excuse, obstructs or prevents the holder of a license or permit under the Act in or from doing any act, which such holder is authorized to do by or under the said Act or his license or permit.
- Who, not being the holder of a license or permit under the Act, in relation to any mineral and the area from which that mineral was obtained removed that mineral from the area from which same had been obtained to any other or dispose of same in any manner.
- Who, being the holder of a license or permit under this Act in relation to any mineral and the area from which same was obtained takes samples from within the area covered by the license or permit and sends same out of that area without the written consent of the Commissioner given under subsection 122(2) of the Act.
- Who, contravenes an order of the Minister that no person shall remove any gold or precious stones or any mineral specified in that order, from a Mining District, to outside that Mining District without the permission in writing of the district Mines Officer of the district.
- Who, in or in connection with, any application for a license or permit under the Act, gives or permits to be given information which he knows or has to believe is false or misleading in a material particular.
- Who, in any report, return or affidavit, submits in pursuance of the Act or his license or permit, includes or permits to be included any information which he knows or has reason to believe is false or misleading in a material particular.
- Who, places or deposits, or is an accessory to the placing or depositing of, any material or other substance, in any place with the intention of misleading, or knowing that it is likely to mislead, any other person as to the

possibility of any minerals existing in that place.

- Who, without reasonable excuse, obstructs or hinders a Mines Officer, or other officer in the exercise of any of these powers under Section 126 of the Act.
- Who, knowingly or recklessly makes a statement or produce any document which is false or misleading in any material particular, to or before a Mines Officer, or other officer engaged in the carrying out of his functions under Section 126 of the Act.
- Who, with the intent to mislead or deceive a Miners Officer or other officer, when so engaged, conceals or withhold any information.
- Who, refuses or fails to comply with a Notice under subsection (1) of Section 127 of the Act, to the extent to which he is capable of complying with same.
- Who, in purported compliance with a Notice, in respect to the matters referred to in subsection (1) (a), of Section 127 of the Act, knowingly or recklessly makes a statement or furnishes any information or data to the Commission or any person which is false or misleading in any material particular.
- Who, in purported compliance with a Notice in respect to any matter referred to in subsection (1) (c) of Section 127 of the Act, knowingly or recklessly produces before the Commission or any person any book or document which is false or containing any statement or entry which is false in any material particular.

21. **Procedure for Prosecutor:**

- a. Prepare complaint without oath, placed in Magisterial Jacket.
- b. Prepare summons to defendant.
- c. File complaint with Clerk of Court of the Magistrate District in which the offense is committed and signing of summons to defendant by Magistrate.
- d. Serving of summons to defendant to be done by a Police Officer.
- e. Attendance at Court in defense of the charge by Prosecutor (GGMC).

NB: Statutory limitation for filing of complaint is six months from the date offense is committed.

22. **Mines Officers to inform offender of the Mining Act and Regulations of Out of Court Settlement - Section 131**

- a. Notwithstanding any other provision of this Act, the Minister may, in any case he thinks proper and in substitution for any proceedings in a court, accept on behalf of the State a sum of money by way of compensation

from any person reasonable suspected of a contravention of this Act.

- b. Provided that such compensation shall be accepted only where the person reasonable suspected of such contravention has expressed his willingness in such form as may be prescribed that the contravention as aforesaid shall be so dealt with.

23. **Procedure:**

- a. Take statement from the accused of his willingness for an Out of Court Settlement.
- b. Send statement to Head Office.
- c. Inform accused of amount of compensation to be paid.
- d. Prepare affidavit for signature of accused.
- e. Issue receipt for monies received.
- f. Prepare letter to Minister responsible for approval.

24. **Attitude:**

Notwithstanding the foregoing an officer should, at all times, in his interaction with the miners and the public, be courteous and make a conscious effort to follow the three E's principles, that is:

- a. Educate;
- b. Encourage;
- c. Enforce.

7.2 DISCUSSION

As regulatory law enforcement officers you have broad and substantial powers. Your conduct should be fair, reasonable, polite, courteous and helpful; be pro-active and try to look ahead to prevent potential problems before they occur by working with the operator. Keep an open mind while discussing issues and possible solutions with the operator. Give the operator the opportunity to explain their views and if there are problems allow them to suggest their own solutions. Scrutinize the physical aspects of the operation carefully. Use your experience and knowledge to carefully analyze site conditions and work out with the operator, the best available practices to ensure the mitigation of the potential impact of their mining activities on the environment. **However you must be cautious that the technical advice and support you provide to the operator is well-documented and defensible so that it cannot be perceived as officially induced error.** Clear understanding facilitates voluntary compliance.

When a problem is perceived at an active mining operation, discuss the situation openly with the operator on site. In a calm and professional manner, be courteous and helpful. Allow the operator the opportunity to explain their views and suggest their solutions. Be fair and reasonable as you work toward mutually acceptable solutions which ensure adequate environmental mitigation which is compatible with relevant legislation, licenses and permits.

If agreement cannot be reached, or the operator fails to comply with the inspector's directions enforcement may be necessary. Enforcement actions range from warnings (verbal and written), cease work orders and conducting investigations.

The appropriate level of response to any non-compliance will be specific to each situation and will depend on many factors including, but not limited to:

- *degree of co-operation*
- *the significance of impacts*
- *obvious negligence on the part of the operator*
- *duration and persistence of the non-compliance*
- *evidence of due diligence (reasonable care that any reasonable person would take to prevent a contravention)*

At all times when visiting a site, and especially if it appears that there may be a non-compliance, it is essential that established procedures for gathering evidence, taking samples, conducting interviews and the taking of statements are followed. Consistent use of these procedures will stand an inspector in good stead in the event of follow-up actions.

When you encounter non-compliance at a mining operation, it is important to remember that you are dealing with business people who have the presumption of innocence and deserve to be treated with respect. Taking a heavy handed approach to environmental enforcement often makes finding a resolution much more difficult. You are more likely to get the results that you want if you give the operator the chance to explain and correct their own mistakes.

In a professional, and non-threatening manner, you should give the operator fair warning that

a non-compliance may result in prosecution. You have this **discretionary power** as an inspector which is a very powerful tool, use it carefully and to your advantage. Inform the operator, using the relevant section of the legislation, what they are liable to be charged with. In addition, review the offenses and punishment section which apply, so that the operator knows what the possible consequences of non-compliance could be. These simple statements of fact will usually be very effective in convincing the operator of the seriousness of the situation.

When faced with hostility or intimidation from a client, do not reciprocate or engage in argument or threat. Taking a heavy handed approach to administrative and environmental enforcement often makes finding resolution difficult. If the situation escalates, find someone else on site to deal with, or suggest meeting at a later date when the person has had time to “cool down”. If the situation is serious enough or requires immediate action on the part of the operator, considering coming back with backup (i.e another inspector).

The miners have detailed first hand knowledge about their operations and the skill to facilitate compliance with the legislation. It is your role as an inspector to know and be able to explain the legislation and what is required by the legislation, to provide technical support and advice, and to establish a rapport with the individual operators which will generate trust and respect necessary to allow you to take full advantage of their experience and cooperation in order to maintain compliance.

8.0 COMMUNICATION

8.1 INTRODUCTION

Enforcing the law in today's society is getting more and more demanding for the inspector/investigator. The inspector/investigator is more accountable for his or her actions and may be subject to civil and criminal liability. More than ever, investigators are confronting people who are stressed and potentially dangerous. Inspectors/investigators need a method of protection against these elements. The method has to be something simple and available to him or her at all times. It may be used at work or anywhere else, any place, any time. The method is based on the Principles of Judo, a style of Japanese wrestling using the energy of the opponent to your advantage. This is called **Verbal Judo**.

Every time we open our mouths we are being evaluated, estimated, gauged and commented on with respect to our professionalism, self-control, empathy and communication skills. We have to defend ourselves. **Verbal Judo** can help us do that.

Verbal Judo is simply using verbal skills to talk your way out of a situation. It is a series of tactics based on the principle of non-resistance. It teaches us to turn aggressiveness aside and use others' energies to achieve a positive goal. OR It is the art of selecting the best available verbal means of communication at any given instant. It is a way to use words and communication strategies to modify or change the behavior of others.

8.2 FIVE STEPS TO VERBAL JUDO

There are 5 steps to verbal judo that we will examine. They are:

Step One - Control your anger

Step Two - Listen and check

Step Three - Empathize

Step Four - Get them involved

Step Five - Act or Disengage

8.2.1 STEP 1 - CONTROL ANGER

Massage your own feelings, control your anger. People in crisis are in a state of high emotions, frustrated, irritated etc.. The natural human response is to meet anger with anger which could fuel theirs even more. Remember that you are in charge and therefore there is no need to become angry.

Endure the heat, don't mind taking the blame. They are expecting resistance and when they don't get it, it takes the wind out of their sails.

8.2.2 STEP 2 - LISTEN AND CHECK

You can't solve someone else's problem if you don't have an idea as to what the problem is and/or why they are angry.

Ask questions, get some information and feedback to them in your own words what you thought you heard them say. This will force people to think and to check what you are saying against what they thought they said. Once you have them thinking rationally about the problem, its harder for them to get angry. It is a proven principle that it is hard for someone stay angry at someone who's trying really hard to listen to them!

8.2.3 STEP 3 - EMPATHIZE

People need to be understood, but how can we relate this feeling to them? One way is to show empathy. Empathy is the reading of one's state of mind or the capacity of understanding another's feelings. This is not to be confused with sympathy. Sympathy is the inclination to think or feel alike or the capacity of entering into or sharing the feelings of another.

If you can do these first 3 steps right, you have demonstrated your own willingness to listen, so the person will listen back. The crisis will be under control.

8.2.4 STEP 4 - GET THEM INVOLVED

People cannot solve problems, think of a solution and remain focused on their anger at the same time. You must get them involved in the finding of a solution to the problem. Get them on your side. People are less hostile while they are helping.

8.2.5 STEP 5 - ACT OR DISENGAGE

A person practicing Verbal Judo cannot control every crisis. If someone was coming after you with a stick, how would you protect yourself? Probably with more than just words and so would most people. Words are a civilized way to disagree but not everyone is civilized. Sometime we will make every effort and use all previous steps in Verbal Judo with no success in diffusing the anger of other people. In these cases, the best action is to disengage from an interaction to avoid escalation to physical altercation. You can always resume Verbal Judo, if and when appropriate.

8.2.6 THE BENEFITS OF USING VERBAL JUDO

Some of the benefits of using verbal judo include:

- fewer complaints against you
- reduced personal stress
- less civil/criminal liability
- satisfaction of a job well done
- greater inspector/investigator efficiency - better cooperation later
- greater inspector/investigator safety
- enhance credibility
- better public safety
- better public image

Your goal, no matter what your job is, is to return home **SAFELY** to your family at the end of your working day. Verbal Judo will help you do just that. However, always remember that not all people are rational and no matter what efforts you use to quell a situation, disengagement may be the only option. You must be able to read the situation and know when you should retreat.

8.2.7 CONCLUSION

Rhetoric (the art of using language effectively) is pretty much a lost art. But the goal of rhetoric from its first development has been to adapt our language to our purpose. The point to emphasize is that we will communicate more successfully if we comprehend the other's context and point of view rather than insist on our own.

As professionals, you should not express our personal feelings to a situation or crisis, but you are obligated to make a positive impact on the behavior of others in a situation or crisis, that requires change. This is the justification of **Verbal Judo**.

8.3 SIX PRINCIPLES OF COMMUNICATION

8.3.1 INTRODUCTION

The body talks. Sometimes, your body will give off signals and as an inspector/investigator it is important to be aware, not only of your **non-verbal behavior/communication** but that of the people you deal with as well. The following are the six principles of non-verbal communication.

8.3.2 CONTEXT

Context is how we define a situation in which interaction occurs.

The context of the interaction structures communication and behavior which are permitted. Unwritten rules (and sometimes written rules) prescribe what are considered appropriate transactions in various settings. The actual physical area or location and circumstances will affect your body language.

Examples:

- How you present yourself in a place of worship - you may sit erect, and/or kneel in reverence, speak quietly and listen respectfully.
- How you communicate with others at the grocery store. You would be friendly, nonchalant and less rigid in your body language.
- What we say is often less important than how we say it.

Example:

- When someone is told that they cannot have their planned vacation, they may reply "that's great" - the tone and pitch of voice would indicate disappointment though the

words convey delight.

8.3.3 ENVIRONMENTAL INFLUENCES

- Temperature, size and shape of a room
- Furniture arrangement
- Accessories

Everyday Examples:

- Going into a home decorated Victorian style, may cause you to feel reserved and restrained. You likely would not put your feet on the chesterfield or coffee table.
- A small hot office with no windows may cause you to feel claustrophobic and uncomfortable. This could make it difficult to do your work.

Investigating Examples:

- Interview Room for taking statements: small, uncluttered, no pictures on the wall and no windows.
- Front counter with protection windows.
- Under both circumstances reiterated above, communications will be perceived as being reserved and less personal.

8.3.4 APPEARANCE AND DRESS

Clothing suggests the wearer's:

Age	Race or ethnic background
Occupation	Status
Sex	Personality

Erroneous assumptions can be made based on a person's appearance and dress.

Everyday Examples:

CLOTHES	RESPONSE/PROJECTED FEELINGS
1. Uniform	authority, safety, security, punishment
2. Magistrate or judges robe, priest's collar	influence, recognition, authority, services
3. Clothing worn by the general public	people will likely follow a well dressed person into an area where they should not go

8.3.5 KINESICS (body language)

8.3.5.1 GESTURES

Kinesics is the study of body movements, gestures, facial expressions etc., as a means of communication. It is important to know and comprehend that people do speak with their bodies (non-verbal communication). Examples such as hands moving along with speech, hands placed on the hips, feet being shuffled along with our verbal communication. Inspectors should understand the fact that they can read the clients and that the client can also read the inspector by their body language.

Everyday Examples:

- Extremities of our bodies e.g. a hitchhiker's outstretched thumb, thumb-index finger circle for "OK", and use of our middle finger.
- Directly tied to speech - Mother in the window moving her hand to her mouth, pretending to eat, to indicate to her child outside the window that he/she has to come in for dinner.

Investigating Examples:

Possible indicators of guilt by someone whom you may suspect of non-compliance:

- Avoiding eye contact: uncertainty
- Dry mouth - bite/lick lips: nervousness
- Hand tapper, lint picker: nervousness
- Folded arms - elbows/arms tight against body: protecting oneself
- Legs/feet - folded - tapping - tucked under chair: protection and nervousness
- Observable pulse - neck/heart: nervousness
- Profuse sweating (palms, temples, forehead, armpits)

These may or may not be indicators of guilt, but in combination with other indicators they may help the inspector/investigator define the situation at hand.

8.3.5.2 FACIAL EXPRESSIONS

These are similar across all cultures. Facial expressions readily reflect different feelings: happiness, surprise, fear, sadness, anger, disgust and interest. In fact, within the first minutes of contact with someone, the emotional status of a person can be established by looking at the face.

Everyday Examples:

- A child opening a present. You can observe the joy and delight in his/her eyes and

facial expression.

- Adults receiving news that they owe the government or someone a large amount of money. Facial muscles would become tight and rigid indicating anger and disbelief.

Investigating Examples:

- Notify the next of kin of a death. Your facial expression should show sympathy and genuine concern.

- A smile and joyful eyes when receiving expressions of gratitude from someone.

8.3.5.3 EYE GAZE OR EYE CONTACT

This is an important means of giving social recognition. In some cultures, people of lower status tend not to look into eyes of people of higher status or authority. When an individual of lower status does directly look at someone of authority, that directness may indicate hostility or confrontation. Avoiding eye contact may accompany emotions such as anxiety, shame and embarrassment.

Everyday Examples:

- Someone very much in love with their partner gazing into their eyes. Their eyes will express warmth, affection and passion.

- A individual having purchased their first car. Their eyes will express pride and satisfaction.

Investigating Examples:

- During an interview of a suspect, the alleged accused may avoid direct eye contact with the inspector/investigators in the denial of his/hers actions.

- During a sexual assault interview, the victim's eyes may express shame and embarrassment as they describe the events which took place.

8.3.5.4 BODY POSTURE or BODY MOVEMENT

This kinetic factor can communicate attitude, self-image and relationship.

Everyday Examples:

- The body movements of a potential employee in a job-related interview. Palms may be sweaty, may be biting their nails.

- A father confronting his child about his wrongdoing. The child will fidget on the edge of the chair as he looks for a way out of the situation.

Investigating Examples:

- Posture, during an interview may indicate that someone is open or closed to communication, the level of their interest in what the interviewer is saying.

Furthermore, the level of emotion and comfort are demonstrated by changes of posture.

8.3.6 PROXEMICS (Interpersonal distance that surrounds each person)

Interpersonal Distances:

- a. Intimate distance - up to 18 inches away
- b. Personal distance - 1 ½ feet to 4 feet
- c. Social distance - 1 foot to about 12 feet
- d. Public distance - 12 feet or over

People usually communicate with each at an arm's length distance from each other. Narrowing the gap and actually touching the person being spoken to identifies the communication and establishes power. Restricting and invading another's personal space creates tension for him or her. These can be applied by or to the investigator. If an investigator knows what is happening they can act accordingly, after all they are the ones that are in charge.

Everyday Examples;

- In the observation of an argument, you will notice one of the parties involved moving in close to the other while trying to make a point.
- When you meet someone for the first time, you leave them a polite distance and if the person moves within this distance, you become uncomfortable and uneasy (perhaps move away).

Investigating Examples:

- Interaction with surroundings and cultural difference (interpersonal distances).
- Inspectors/investigators put hands on someone: denotes confrontation - "the strong hand of the law". In the normal course of duties it is usually unacceptable for an inspector to touch someone..
- Domestic dispute - separation of parties - decreases tension/stress.

8.3.7 PARALANGUAGE

Factors

Tone of voice indicates attitude, authority, and empathy, also the

- pitch of voice indicates emotion, and tension and stress;
- volume, indicates the importance of certain words or phrases as well as emotions.

Investigating Examples:

- Arriving at the scene of blatant non-compliance at a mining operation the inspector/investigator has to take charge of the situation. Their voice will need to be strong and firm expressing authority.

- When an investigator is giving evidence in court, the voice will be steady and confident, showing impartiality.

8.4 VALUES AND ATTITUDES

8.4.1 INTRODUCTION

Since all people do not share exactly the same values and attitudes within a given society, these differences may create many of the significant conflicts and problems with which the inspector/investigator must deal with. We have the multiple task of not only understanding our values and attitudes, but those of the public we serve. Our actions are constantly monitored by our co-worker and more importantly by the public. Nobody can see his or her values or attitudes but can detect them by your behavior. People act towards you on the basis of the opinions they have about you and what they think you think about them.

8.4.2 DEFINITION OF VALUE

Values are broad, abstract opinions, beliefs or feelings that serve as standards for our behavior.

8.4.2.1 HOW DO WE ACQUIRE OUR VALUES?

Our values come from family, friends, church and religion, school, and the media such as radio, television, newspapers, magazines etc..... Here are 4 principle steps that establish our values:

1. Imprinting (1 to 7 years)
During this period we learn our rights and wrongs and what is considered appropriate behavior in a family unit.

2. Modeling (7 to 13 years)
The child choose heroes and models his or her behavior after them. The conception, formed earlier, of what constitutes an appropriate behavior, is solidified. By age 10, children have pretty well developed the value system that will guide their behavior for the rest of their life.

3. Socialization (14 to 20 years)
The youths will associate only with those that share the same interests and it reinforces their value system.

4. Locking in (21 and over)
Abstract values are established. Now they can only be changed by a significant emotional event.

8.4.3 DEFINITION OF ATTITUDE

Attitude is an orientation of disposition toward any object or situation which provides a tendency to respond favorably or unfavorably to the object or situation. Attitude have three elementary components:

1. Beliefs
2. Feelings
3. Behavior

Attitudes are different from values. Values, which are broader and more abstract, serve as standards for our attitudes. For example, the feeling of belonging to our race is a value, but if exaggerated, we could develop an unfavorable attitude towards people of other races.

8.4.3.1 HOW ARE ATTITUDES FORMED?

Attitudes are formed through interacting with our environment, that is people around us, politics, current events, the different forms of media etc.....

8.4.4 CONCLUSION

Values and attitudes influence the way we perceive individuals, groups and situations and how they perceive us. They influence the inspectors/investigator's **discretion**¹, decision and problem solving process. Finally, they serve as limits for determining what is and what is not ethical behavior.

Often times and inspector/investigator will be dealing with people whose values and attitudes differ from his or her own. It is imperative that he or she remains objective and neutral and not let his or her personal values and attitudes interfere in his or her work.

9.0 INFORMATION GATHERING, NOTE TAKING

9.1 INTRODUCTION

¹Discretion: When applied to the functions of your job as an inspector, discretion means a power or right conferred upon them by law of acting officially in certain circumstances according to the dictates of their own judgement and conscience, uncontrolled by the judgement or conscience of others. As applied to public officers it means the power to act in an official capacity in a manner which appears to be just and proper under the circumstances. Wise conduct and management; cautious discernment; especially as to matters of propriety and self control; prudence; wariness; circumspection.

Notes are an essential inspection and investigative tool. Note taking is also an important tool for calming down a situation. It is important that they be made as soon as possible after the inspection and/or incident, if that be the case, they must be complete, accurate, and legible to ensure their utility during - and years after an inspection and/or investigation. If you do not have a note book, get one. The value of any inspection and/or investigation is largely a function of how it is recorded. Without notes, inaccuracies and total omissions in the inspection and the report that follows and/or investigation, can result. It follows that it is annoying, embarrassing, and even an invitation to criticism to see an essential phase of your work greatly lessened in value as a result of being lost from your memory because of a lack of proper notes. Your note book is your official memory. Notes will assist you in compiling your official report later in true context and chronological order.

9.2 IMPORTANT CONCEPTS

9.2.1 WHAT BELONGS IN YOUR NOTES?

While the specific contents of your notes will depend on the type of inspection and/or investigation you conduct, they should, in general, record what you observe, hear, say and do during the course of your inspection and/or investigation. In order to be an efficacious inspector the requirement to take good notes cannot be emphasized enough.

9.2.2 FUNDAMENTAL NOTE TAKING PRACTICES

- Make sure your notes are complete, accurate and readable.
- Take your notes as events occur or you can take them at the first available opportunity, but this is less desirable.
- Maintain secure custody of **your notes** to prevent unauthorized access.

9.2.3 KEEP IN MIND

- Your notes may be part of the relevant information disclosed should a case proceed to trial. So they should be logical and legible.
- You may want to use your notes to refresh your memory years after an inspection and/or investigation.

9.2.4 CONFIDENTIALITY

Your notes should be kept confidential. However you may be required to disclose your notes to:

- your supervisor or legal advisor,
- court officials,
- other law enforcement agencies on a need-to-know basis,
- other individuals as directed by your supervisor or legal advisor.

9.2.5 AN IMPORTANT INSPECTION and INVESTIGATIVE TOOL

Your notes are one of the most valuable tools you can use during the course of your inspection and/or investigation. As a permanent, ongoing record of events your notes:

- contribute to the development of an investigation.
- can assist in reconstructing events long after they occur.
- can be used to refresh your memory for a trial or other legal proceedings.
- serve as a record of your conduct should questions arise.

It is in your own best interest to follow simple practices that will maximize the utility of your notes.

9.2.6 WHAT BELONGS IN YOUR NOTES?

Essentially, your notes are a daily record of what you observe, hear, say and do in the course of your inspections and investigations. They provide the basis for further incident analysis. However, your **analysis** of any evidence collected does not belong in your notes.

It is important to ensure that your notes are complete and accurate. You may need to rely on them years after the initial entries. If there is any possibility that information may be relevant, **make a note of it!**

While specific contents of your notes will depend on the type of inspection and/or investigation you conduct, in **general** your notes should record:

- Your inspection and/or investigative observations and activities,
- The collection, identification and handling of any samples and when in the case, any evidence gathered,
- The grounds to support any detention, search or seizure,
- Any cautions or warnings given to individuals and details of the surrounding

circumstances,

- Anything said by any witness or suspects. These should be recorded word for word if possible,
- The demeanor and emotional and physical state of suspects, particularly when they make statements
- The full names, positions, addresses and means of contact of all persons involved, *except for confidential sources, who should not be identified in your notes*,
- The date, time and location that each note was made,
- Notes are a professional record because they contain only work related information. They should not contain any personal information.

[For further information refer to the section titled *Are your notes complete?* further on in this section.]

9.2.7 WHEN SHOULD YOU TAKE NOTES?

Take notes as events occur or at the first available opportunity. If any delay is necessary, be sure to make your notes while the facts are still fresh in your memory - this will minimize the risk of loss or distortion of information. Make a note of the reasons for the delay.

Be aware that too much of a delay can raise questions concerning the reliability of your notes. As mentioned earlier, it cannot be emphasized strongly enough that taking notes as events occur is the best practice to follow.

If you use your notes to refresh your memory either before or while giving testimony in a court of law, you may be asked when you made your notes. So, be sure to record "when" you made your notes as well i.e. the correct time and date.

9.3 PROCEDURES

9.3.1 A SYSTEMATIC APPROACH

The procedures outlined in this section suggest a systematic approach to Note Taking. Consistent identification and presentation of investigative material improves the utility of your notes. Note taking should not be rushed. Note taking can be a means of slowing things down when things get hectic.

This section lists key practices that apply to all investigative notes and then outlines specific practices for paper notes.

9.3.2 KEY PRACTICES

- Takes notes as events occur, or at the first available opportunity.
- Note the date, time, location and conditions such as weather etc. be sure to reference the incident by a case name or number to identify the incident to which the notes pertain.
- Be accurate. **Make sure that you record names, addresses, methods of contact such as telephone numbers, licenses, permits, serial numbers** and other figures correctly. If any dates, times or figures are approximate, label them as such.
- Use business like language, do not use derogatory terms or vernacular expressions unless you are quoting someone.
- Use reasonable abbreviations and avoid obscure ones that may be meaningless when consulting your notes at a later date. You should create a bibliography of abbreviations.
- Restrict the use of your notes to inspection and/or investigative material only. **Do not include material of a personal nature.**
- **Do not include your personal opinions on any aspect of the incidents.**
- **Keep your notes secure against unauthorized access to them.**

9.3.3 PAPER NOTES

1. Use notebooks issued by your organization, if available. If you choose your own notebook the main considerations are durability, unalterability and ready access. To meet these concerns, look for a notebook that:
 - is suitable size to carry on your person at all times,
 - is bound, to prevent page loss,
 - has a large enough margin to note the date, time, location and incident or case name and/or number,
 - has a sufficient number of pages to avoid frequent replacement,
 - has a sufficient quality of paper and cover to withstand the rigors of daily use such as waterproof paper.
 - has prenumbered pages.
2. On the first page of your notebook, record:
 - your name, and identification information, department, position etc.,

- your work address and contact information such as your telephone number, e-mail address etc.,
 - the date you began entries.
 - leave a space for the date of your last entry and fill it in once the book is full.
 - Don't knowingly use more than one book for an investigation.
3. On the second page it is useful to list contacts and ways of contacting them such as telephone numbers etc.
 4. Number the pages of your notebook if they are not pre-numbered.
 5. Use the pages of your notebook in sequence. **Do not remove or destroy any pages.**
 6. Write your notes legibly, so that you will be able to understand them in the future.
 7. Make your notes in **ink**. Write only on one side of the page as ink tends to bleed through pages.
 8. Start a new page when making an entry about a new incident, so that all the information on any one page will relate to the same incident, inspection and/or investigation.
 9. **Do not leave any blank pages.** Draw a diagonal line through any page or portion of a page that you do not use.
 10. If you make a mistake, **do not erase it**. Instead:
 - cross it out with a single line and initial, marking the time and date; and
 - make the correction adjacent to the incorrect entry, or on another page with a cross-reference to the incorrect entry.
 11. If you later recall a detail you should have included in your original notes, prepare a fresh notation in your notebook. Cross-reference it to your original notes.
 12. You may expand on your original notes in memos and reports. These do not replace your original notes, which you **must retain**.

9.3.4 WHEN MORE THAN ONE INSPECTOR IS PRESENT

Take and retain your own notes for all events at which you are present, whether or not another inspector is taking notes of the event. If necessary, one inspector may be designated to take notes for a group of inspectors present at an event. If you do not take your own notes during the event, read the notes taken by the designated note-taker at the first available opportunity, while events are still fresh in your memory, and either:

- Use them as an aid to write your own notes, indicating this is in your notes; or
- Make a notation in your own notes that you have verified the accuracy of the designated note-taker's notes and adopt them as a complete and accurate record.

9.3.5 STORAGE AND RETENTION OF NOTES

Store your notes in a safe place or as required by your organization's policies and procedures.

Do not destroy any notes unless specifically authorized to do so by your supervisor, no matter how old the notes are.

Follow your organization's procedures for the transfer of notes if you stop working as an inspector in the organization.

9.3.6 ARE YOUR NOTES COMPLETE? SOME USEFUL TIPS

If you are ever required to recall incidents accurately or appear as a witness in court, the questions that you are going to be asked will focus on **who, what, when** and **where**. Ask yourself the following to ensure that your notes are complete. Of course, you will include only what you observe, hear, say or do; it is unlikely that any one inspector's notes on an inspection and/or investigation would cover all of the points below.

9.3.6.1 WHO WAS INVOLVED? HAVE YOU NOTED:

- the names, positions, addresses and ways and means of contacting individuals such as witnesses or suspects?
- if the matter was reported to you who reported or referred the matter to you?
- who assisted you in the inspection and/or investigation.
- who searched for, seized, identified and handled and secured the evidence and how that was achieved.

9.3.6.2 WHAT DID YOU - AND OTHERS - OBSERVE, HEAR, SAY OR DO? HAVE YOU:

- included a record of your inspection and/or investigative activities and observations?
- included all the facts that are relevant to the elements of the incident, or if the case may be, of the offense?
- noted the evidence obtained?

- noted what is done with the evidence?
- included inculpatory (meaning guilty) and exculpatory (meaning clearing of guilt) evidence in your account? What about contradictory evidence or statements?
- made notes of missing information or discrepancies such as the failure to locate physical evidence that might reasonably be expected to be at the scene?
- noted any damage done?
- made note of what people say or do and how they behave?
- noted descriptions of individuals?
- described the scene of the incident in detail and drawn a sketch, if pertinent?
- measured and made note of any relevant distances?
- noted any significant actions taken by other inspectors in your presence?
- recorded the grounds to support any detention, search or seizure of items?
- noted any cautions or warnings given?
- recorded anything said by everyone, word-for-word if possible?

9.3.6.3 WHEN DID THE EVENTS OCCUR? HAVE YOU NOTED:

- when was the incident reported?
- when you arrived or were called to the scene?
- when you arrived at the scene and how?
- when any assisting inspector arrived?
- when you began and completed your inspection and/or investigative activities?
- when any witnesses were contacted?
- the time when you detained, cautioned, warned, questioned or searched anyone and why?
- the times attached to the recollection of anyone you spoke with?

9.3.6.4 WHERE DID THE EVENTS OCCUR OR WHERE ARE PERTINENT ITEMS LOCATED? HAVE YOU NOTED:

- the location of your inspection and/or investigative activities?
- where the events recalled by witnesses took place?
- where evidence was found and seized?

9.3.7 TAPE-RECORDED NOTES.

Tape recorded notes are allowed but must be transferred to paper notes as soon as possible while events are fresh in your mind. Follow the Key Practices outlined under Procedures and follow or adapt the procedures for paper notes to the fullest extent as possible. If not possible to exactly transcribe your tape recorded notes to paper notes state why.

9.3.7.1 ADDITIONAL POINTS TO REMEMBER:

- Ensure that the recording device is in good working order and that you have extra batteries.
- Use new tapes.
- Label tapes with the appropriate date, location and incident name and/or number, and initial the label.
- Do not erase anything from a tape. To make a correction, indicated that what you are recording is intended to correct previously recorded material.
- At the first available opportunity after taping notes, while the facts are still fresh in your memory.
 - Use the taped notes to make complete paper notes. Describe in the paper notes how you made and relied on the taped notes.

OR

- Have the taped notes transcribed by someone else and verify the transcript. Make written, signed and dated paper notes concerning the recording and verification process.
- Retain all tapes as originally recorded as well as any paper notes and transcripts. Follow your organization's procedures for the storage, retention and destruction of records.

9.4 NOTES BY COMPUTER

Do not use a computer to take notes unless your organization specifically authorizes this. If you do use a computer to take your notes, follow the Key Practices outlined under Procedures and follow or adapt the procedures for paper notes to fullest extent possible.

9.5 TAKING A DESCRIPTION

When a complete description of an individual is required, include the following information:

- full name
- nick name or any aliases
- last known address
- sex
- race
- age
- height
- weight
- build, e.g. heavy set, husky, thin etc.
- complexion
- shape of head and face
- color of hair and eyes
- state if there is any facial hair such as a beard or moustache
- clothing worn
- any physical characteristics which may facilitate identification, such as tattoos, scars, a limp when they walk or a distinguishing voice or accent
- observed mannerisms, actions, behavior and attitude.

9.3.10 USE OF NOTES AT A LEGAL PROCEEDING

1. Have your notes available when you testify at a legal proceeding.
2. Consult your legal advisor before the proceedings if you have any questions or concerns about the possible use of notes.
3. If you wish to refer to your notes while testifying, ask for the court's permission

first.

4. The magistrate may permit you to refresh your memory from notes you made contemporaneously. You may also be permitted to use notes made by someone else if you checked the notes to ensure that they were accurate while the events were still fresh in your mind.
5. Do not plan to read from your notes when you testify. If you need to, refresh your memory by reviewing the notes before you testify. Make sure you know how your notes are organized. Then, when you testify you can ask permission to check on a specific point if you need to and you will be able to find it quickly, without embarrassing delays as you flip through your notes. Before you testify, you may isolate the relevant notes in your notebook by using elastic bands or paper clips. This will facilitate access and show that only certain pages of the notebook apply to the case in question.
6. Be prepared to have your notes inspected and questioned by the defense and the magistrate, whether or not you use them to refresh your memory.

9.3.11 SKETCHES

1. Draw a sketch if it will make your notes more complete or understandable. Remember the adage: “A picture is worth a thousand words”. Some things may be easier to explain through a proper sketch.
2. Make a note of the following information for each sketch:
 - the case name or number
 - the identification of the scene
 - the detailed location of the scene
 - the date and time the sketch is made
 - a north arrow
 - include all of the above items and other relevant items in a legend.
3. Simplicity is the controlling virtue. Include all essential elements of the scene. Do not include unnecessary details. You may use standard symbols (such as stick persons) to further simplify the sketch.
4. Label the sketch and all important elements. To avoid cluttering the sketch with labels you may identify objects with a letter or number, and then describe the objects in detail in your notes or make a legend to the sketch.
5. Indicate direction with an arrow pointing North on any sketch of a location.
6. If possible and if measurements are relevant, take accurate measurements. If possible, draw the sketch to scale and indicate the scale. If it is not possible to draw

to scale, draw the scene with the proportions approximated and the appropriate measurements indicated.

9.3.12 MEASUREMENTS

1. When outdoors, make all measurements from permanent objects such as trees and rocks or fixed things, i.e. things that are likely not to have the potential to be easily moved. When indoors, use walls or corners of the room.
2. Verify all measurements, either by re-measuring or by asking another inspector to make a second measure.
3. Record all measurements taken.

10 REPORT WRITING

10.1 THE REPORT IS THE CLEAR, SUCCINCT, FACTUAL; AND OBJECTIVE DESCRIPTION OF EVERYTHING RELEVANT TO WHAT YOU DID.

The permanent product of an inspection or an investigation is the report. You probably won't be the one that uses the report so you should write it so that, if the subject of the report results in criminal proceedings, and/or the case is taken over by another inspector, the case could proceed without you. An indication that your report is inadequate is when the replacement inspector or the Prosecutor has to keep calling you to clarify things in the report.

The report is the listing of everywhere you went, everything you did and everything you obtained. It answers the questions of **who, what, where, when, why** and **how**. It is logical and accurate. It is concise yet complete. It identifies all areas of regulatory concern that were covered and what was found. And it does this clearly, succinctly, factually and objectively.

10.2 HOW IS THIS DONE?

- A. The report is constructed so that it has a professional appearance.
 - 1. It should be written in the "active voice". "Joe asked Susan where the licenses and permits were."
 - 2. It should be written in the first person. "I asked Joe where he lived."
 - 3. It should be written in a logical order.
 - 4. It should be written so that information is clear and easy to find.
- B. The report should be grammatically correct. This does not mean that it is written in excessively formal or technical language. It means that it avoids the use of colloquialisms, jargon, or offensive language. It uses good sentence and paragraph structure. Ensure that words used are spelled correctly.
 - 1. Sentences should be simple and direct rather than complex or convoluted. Clarify information rather than making it unnecessarily complicated.
 - 2. Use words appropriately and use words that are found in common usage. The report is often read by those with less technical knowledge than you have.
- C. The report is factual and objective.
 - 1. Who did what, when, where, why and how?

2. State opinions as opinions and not as facts.
3. Write so that the reader can reach their own conclusion from the logically ordered facts presented in the report.
4. If you choose to state a conclusion, though this is not desirable, state that it is a conclusion and you should identify the logic, information and procedure you used to reach the conclusion.
5. All mathematical, scientific or technical conclusions must be accompanied by the method and calculations.

D. Write the report as you did the inspection.

1. I did this
2. I asked Mr. Smith.....
3. I sampled the.....
4. Mr. Smith said this.....

Style is often interpreted as discretionary. In the court room, style is strictly “first person singular.” The less translation between the report and testimony in court the better.

Good reports are not great prose. Good reports are a detailed narrative of what happened during a specific event in time. Clarity is far more important than sounding academic.

Avoid drawing conclusions. Write the facts in such clarity that the reader can draw their own conclusion. “Mr. Smith was very hostile” is a conclusion. “Mr. Smith began swearing and punching holes in the wall”, is a statement of events from which the reader can draw their own conclusions.

Avoid making assumptions. “I determined that the records were acceptable after a review of several examples.” The most you can say is that in your opinion, the specific records reviewed appeared acceptable to you. In most cases you should take example copies of those records and also allow your supervisor to review them and make a determination.

10.3 REPORT CONTENTS: THE 5 “W’s”.

1. **What** is it?
2. **Where** did you do What?
3. **Who** let you do it and who did you do it with?
4. **When** did it happen?
5. **Were** samples taken?

The following outline of report subsections is generally accepted:

- **Heading**
This should include the type of inspection, site or activity name, and the date of the inspections.
- **Facility Address**
The Corporate or head office address (if applicable)
- **Site Address**
Exact geographical location of the site i.e. the coordinates
- **Site Contacts**
Name, position or title, owner, and ways and means of contact
- **Site History**
This includes compliance history.
- **Inspection Times**
The day, month, year and time of the inspection (e.g. 2-3-2002 @ 11:00 hours)
- **Opening Conference**
Who did you show your credentials to; write the names down of all persons present; their titles or positions; what was discussed (i.e. scope and timing of the inspections events); specific arrangements; if entry was granted or denied.
- **Field Inspection**
Narrative of the field inspection events and observations. Where did you go? What did you see? What did you do?
- **Record Inspection**

What was reviewed, copied and taken? Were there and where were the records kept and who was in charge of them.

- **Closing Conference**

Who was there? What was discussed? What was agreed to? Were any directions or orders given? etc.

- **Samples**

Were any samples taken? Of what? Where? How? When? Why?

- **Compliance Concerns**

Cite the relevant section of the Regulations.

- **Attachments**

List and identify all notes, documents, photographs, notices and documentation. This may be done in an index of attachments or in the inspection narrative itself.

- **Date and signature**

It is your report, so sign it!

It is so important to avoid certain words and phrases in your report writing. Statements that cannot be substantiated or supported by documentation can get you into trouble because they lead to drawing a premature conclusion. They can also be so vague that they do not answer the “who”, “what”, “where”, “why”, and “how” questions your report must address.

It is often a good idea to have someone else read your report in draft form before placing it in final form. They are often able to point out ways to clarify things that you may have overlooked.

The report should clarify information. It should also be written in the simplest form of English, so that readers less qualified than the writer can reach their own conclusions. Avoid unnecessary high tech language.

11.0 SAMPLING

Sampling and sample analysis may be necessary to document compliance or potential evidence of non-compliance. Sample taking and analysis is expensive. Make sure that they are necessary. Fundamentally there are three types of sampling:

1. Composite samples;
2. Grab samples; and
3. Continuous

However, either of these may be “planned samples” or “samples of opportunity.”

When one goes out to a site to specifically sample, these are planned samples. You may conduct this sampling on a regular basis i.e the license or permit requires that a monthly sampling regime be carried out and the results recorded.

Samples of opportunity are events that were not generally anticipated. They may be required because of a new process or expansion of the operation or they may be necessary due to an incident of non-compliance i.e. a spill or discharge.

Regardless of the circumstances, there must be a plan and a method identified for the specificity (what to look for) and the concentration parameters (such as parts per million) required from the analysis.

11.1 WHEN TO CONSIDER TAKING SAMPLES:

1. There is no data available
2. There is insufficient data
3. The available data is in doubt
4. Data is needed to document an error
5. Sampling is required by law or permit or license.

All of the above should be contained in standard operating procedures which should be kept on file and available to all staff. All samples must be representative of the material or event. Standard operating procedures are written documented procedures that should be used for the collecting of **any** type of sample. Each organization or agency should have standard operating procedures on file. This ensures defensible repeatability and consistency and a written record of what was done which may have to be referred to several years after the sampling event. While there may be modifications of the method to fit unique circumstances, all deviations from the standard operating procedures must be thoroughly documented.

Sampling is a big responsibility for the inspector. Your sample must be representative. It must be taken and analyzed using an appropriate standard operating procedure. This brings us to the area of overall responsibility for quality assurance and quality control of the entire sampling event. This falls squarely on the inspector or lead inspector if more than one inspector is present to carry out a sampling program. The inspector must control and ensure that the proper methods and procedures are followed throughout the entire process. This includes acquiring "clean" sample containers, transporting those containers to the field without contaminating them, taking the samples, transporting them back the laboratory without contaminating them and, in consultation with the laboratory, determine what analysis is required and the method of analysis to ensure that the sampling event is productive and useful. The inspector must determine the precision and accuracy. This will ensure that the analysis will identify the proper concentration (if for sediment analysis) or proper chemical analysis with an acceptable level of accuracy and confidence. Precision and accuracy impact quality assurance and quality control, the laboratory and enforcement. For example, the inspector knows that for a particular substance 1,000 ppm is the action required for enforcement, yet the methodologies may produce data in + or - percentiles. The inspector must ensure that the laboratory uses a methodology that will report results in a usable format for taking action. The inspector must understand and manage how precision and accuracy is applied to both field sampling and laboratory analysis. You are accountable for the technical accuracy and legal supportability, through ties to policy and established acceptable standards, of the entire program and product. What and why you are sampling will determine the method you use. It is your responsibility to assure that the correct methods are selected and documented satisfactorily. You must document or **track** your samples from the time that they were acquired onward. Your name will be on the sampling information. You may have to be a witness in a court of law to defend your activities. Take charge and know what you are doing.

If you cannot maintain quality assurance and quality control you should not take samples at all. Each sample must be supported with documentation providing the **5-W's** and the key word **HOW**. Without that documentation it will be impossible to meet the criteria for evidence admissibility.

11.2 WHEN AND WHY SHOULD YOU TAKE SAMPLES?

The determination on that is the lead person in the field.....you!

- **When** to sample is determined by the best chance to obtain a representative sample.
- **Why** a sample is taken is more subjective. It is initiated if there is a lack of confidence in available data or because of incomplete data or no data at all.

Sample documentation centers around three prime issues: **representativeness, tracking and methodology.**

- Was the sample **representative** of what you need to evaluate for compliance? Does it represent a specific waste stream, site, event or activity?

- Can you prove through your **tracking** documentation where the sample came from, where it went, what was done to it and that there was no opportunity to compromise the sample along the way?
- Was the correct **methodology** followed to ensure that your sample was:
 1. Taken properly for the substance in question; and
 2. The proper analytical method was used to make an accurate evaluation of its presence.

11.3 HERE ARE SOME OF THE TOOLS USED TO ACCOMPLISH THOROUGH TRACKING:

- Field log or notebook
- Field photography
- Field lab data sheet
- Sample number
- Analysis request
- Sampling plan
- Standard operating plan to ensure quality assurance and quality control
- Check lists
- Field generated diagrams and maps showing sampling locations
- Chain of custody
- Receipt from laboratory of samples received

11.4 COLLECTION OF WATER SAMPLES

Sampling is a vital part of examination of natural-water composition and is perhaps the major source of error in the whole process of obtaining water-quality information. This fact is not well enough recognized, and some emphasis on it is desirable. In any type of water quality examination in which only small samples of the whole substance under consideration may be examined, there is inherent uncertainty because of possible sampling error. The extent to which a small sample may be considered reliably representative of a large volume of material depends on several factors. These include the homogeneity of the material being sampled, the number of samples, the manner of collection, and the size of the individual samples. The sampling of a completely homogeneous body is a simple matter and the sample may be very small.

Because most material is not homogeneous, obtaining truly representative sample depends to a great degree on the sampling technique. A sample integrated by taking small portions of

the material at systematically distributed points over the whole body of water that you want to sample represents the material better than a sample collected from a single point. The more portions taken, the more nearly the sample represents the whole. The sample error which would reach zero when the size of the sample becomes equal to the original volume of material being sampled, but for obvious reasons this method of decreasing sampling error has practical limits.

To determine adequately the instantaneous composition of a flowing stream, the sample or sets of samples taken simultaneously, must be representative of the entire flow at the sampling point at that instant. This is difficult to accomplish when alone and requires a number of persons sampling. Furthermore, the sampling process must be repeated if the results of analysis are to be extrapolated in time, and the sampling interval chosen must represent adequately any changes that might occur. Changes occurring along the length of the stream can be evaluated by adding more sampling points.

The homogeneity of a stream at a cross section is determined by such physical factors as proximity of inflows and turbulence in the channel. Locally, poor lateral or vertical mixing can be observed in most stream systems. Immediately below the confluence of a stream and a tributary there may be a distinct physical separation between the water of the tributary and that of the main stream, and, particularly in large rivers, this separation may persist for many kilometers downstream. The effect is more pronounced if the water of the tributary differs markedly from the water of the main stream in concentration of dissolved or suspended solids or in temperature.

These effects may be of special interest in some studies, but if the average composition of the whole flow of a stream or its changes in composition over a period of time are the factors of principal significance, sampling locations where mixing is incomplete should be avoided.

A composite sample that will represent accurately the water in a vertical cross section of a stream can be obtained by combining appropriate volumes of samples taken at a series of points along the cross section. At each point, samples should be obtained at enough different depths to compensate for vertical inhomogeneity. Obviously, it is physically impossible to obtain all these samples at one instant. The water in the stream is in motion at different rates in different parts of the cross section, and this further complicates the problem.

11.5 SAMPLING TECHNIQUES

There are three commonly used sampling techniques for the collection of stream and river water samples: *Grab*, *Composite*, and *Continuous*.

A ***grab*** sample is collected at a point in time and space. If you open a tap and fill a sample bottle from it you have collected a grab sample of the tap water, at that moment in time. This is the simplest method of sampling and serves many purposes such as the analysis for bacteria and certain unstable substances like dissolved oxygen. The disadvantage of this method is that, if an event happens before or after the grab sample has been taken, the event may go unnoticed and your sample will be of no value.

When fluctuations occur in the system, such as a tailing or effluent outfall, ***composite*** (or pool) sampling is more appropriate. A composite sample is made up of several grab samples, taken at regular intervals of time and space. Consider a tailing's pond outfall. If every hour

on the hour, you collected equal portions of the discharge and pool them into one container, you have collected a composite sample of the tailings effluent over a time element.

When dealing with the three-dimensional space element, there are two ways of collecting a composite sample. Imagine yourself in a boat at a stationary point on a stream. If you collect equal portions of water at various depths, and pool them into one container for analysis, you have collected a composite sample of the water column at that point on the stream. If, however you are in a boat moving along the stream and every so often collect equal portions of water at the surface of the stream and pool them together into one container for analysis, you have collected a composite sample of the surface water of the stream.

A composite sample is a mean of the sample. It evens out fluctuations in a system. It gives an overview and is a good method to sample a fluctuating or inhomogeneous system like tailings pond discharge. A limitation of this method is that it does not identify the magnitude and duration of any fluctuation.

In some industrial operations, like mining, effluents come in “slugs” and the composition of the waste effluent changes continuously throughout the day.

Continuous sampling is used to identify this kind of fluctuation. It is almost invariably done by attaching an automatic sampling device to the discharge outlet.

11.6 CHOICE OF SAMPLING TECHNIQUE

The method of sampling you choose, whether grab, composite or continuous depends on one or more of the following factors:

- Your objectives;
- Fluctuations in the system
- Type of water to be sampled (i.e. lake, stream or a discharge pipe);
- Nature and stability of the parameter to be analyzed;
- The wording of the licenses, permits or authorizations that you are enforcing.

It is important to remember that the method of sampling is site specific and depends on the parameter to be analyzed. However some general observations can be made:

- For lakes and streams, grab samples may be collected. Composite samples may be used to get an overview;
- For effluents, best results are obtained by collecting continuous samples. Composite samples are the next best but if you have no other choices, collect grab samples;
- Samples that are collected for the determination of suspended and settleable solids should be made up from pooled water samples collected at fixed site locations but at various depths. That is why at least three (3) samples of

effluent should be collected along with a background sample for comparative purposes. A background sample is a sample collected above all influences to water quality at a mining site.

11.7 SAMPLING OF STREAM WATER

Stream and river sampling can be accomplished using a variety of methods. Three cases should be considered:

1. Sampling a stream from a bridge or overpass;
2. Sampling a stream shallow enough to wade into;
3. Sampling from a stream bank.

11.7 .1 WHEN SAMPLING FROM A BRIDGE, THE FOLLOWING STEPS SHOULD BE OBSERVED;

- Choose a sampling point midway across the stream;
- Determine the approximate depth of the stream by lowering your grab sampler to the bottom of the stream;
- Retrieve your sampler and wait a few minutes until all the stirred sediments have been carried away;
- Using a swinging motion upstream and parallel to the flow, lower the sampler into the stream;
- Retrieve it when it reaches a point perpendicular below you;
- Rinse the bottle and discard the wash water;
- Repeat this procedure until the bottle is filled; and
- Transfer the contents into your sample bottle.

Note that an integrated sample can be collected by lowering the sampler to various depths in the stream. A good rule is to sample at 60% of the total depth, 40 % of the total depth and, at the water surface.

11.7.2 WHEN SAMPLING A SHALLOW STREAM, THE FOLLOWING STEPS SHOULD BE OBSERVED:

- Choose a place where the water is flowing freely and is clear of floating debris. Attach a safety line to the shore if conditions have any significant risk.
- Obtain pre-labeled bottles and wade into the middle of the stream, downstream from the point at which you will collect the samples, then wade upstream to the sample site (this ensures that you will not disturb sediments upstream of the sample point.) Wait until all the sediments stirred up have been carried away.
- Stand perpendicular to the flow and face upstream, remove the cap of the sample bottle and hold it aside without touching the inner surface. If rinsing is required (due to the type of bottle), fill and rinse three times²
- With your other hand, grasp the bottle well below the neck. Plunge it beneath the surface in front of you with the opening facing directly down, then immediately orient the bottle into the current. Avoid collecting surface scum and film. Point the mouth towards the current and allow it to fill.
- Once the bottle is full, remove it from the water by forcing it forward (into the current) and upwards.
- Replace the cap immediately.

Never sample the edge of a stream from the bank as it usually contains a large portion of stagnant water and always sample facing upstream and if possible up wind of your position in the water. There is a concern of picking up unwanted debris when sampling downwind of your position.

Whenever practical, samples should be collected at mid point rather than near shore. Samples collected from mid-point reduce the possibilities of contamination or alteration (i.e. shore effects, back eddies, seepage from near shore soils). Sample should not be taken in back-eddies or brackish waters. **SAFETY** is the most important issue to consider when deciding where the sample should be collected from.

If the flow is sufficiently slow that you can wade into the stream without risk, then the sample can be collected at a depth that does not pose a threat.

²Note: If sample bottles have not been pre-cleaned by the laboratory, then they must be rinsed three (3) times with either de-ionized water or sample water. The exception to this is when a sample is to be analyzed for suspended sediments, for contaminants likely associated with the suspended solids, or for oil and grease. In these cases, the bottles should not be rinsed with sample water as suspended particles or grease-like materials are retained on the interior surface of each bottle with each rinsing. For specialized analyzes (trace metal, organics) use pre-cleaned bottles, they should not be rinsed. Rinsing is not a recommended practice. Use of pre-cleaned bottles is recommended, where practical. Where bottles are rinsed, the rinsate should be discarded.

11.7.3 WHEN CONDITIONS DICTATE THAT THE SAMPLE BE TAKEN FROM THE STREAM BANK, THE FOLLOWING STEPS SHOULD BE OBSERVED:

- Secure yourself to a solid object on shore (with a safety harness and line if necessary);
- Remove the lid from the sample bottle and place it into a clean bag;
- Secure the sample bottle to a pole grab sampler;
- Reach out as far as possible with the pole sampler and plunge the bottle under the water and immediately orient it into the current;
- when the bottle is full pull it up through the water while forcing it into the current;
- immediately recap the bottle

11.8 SAMPLE HANDLING

Once you have collected all your samples they need to be properly labeled. Exact information should be noted in your field notebook regarding the sampling and anyone who was with the sampler should be noted as being present and they too should note the circumstance in their field notebook.

Each sample container should be initialed or marked with an identifying mark on the container itself, the label and lid. Each label should have the following information:

- Sample identification i.e. number
- Name of sampler
- Date and time of collection

The container should be sealed in such a manner that it would be easily recognized if the container had been tampered with (masking tape which is initialed or marked above and below the opening is sufficient).

Samples in fragile containers such as glass bottles must be packed in such a manner as to avoid breakage. No other material other than the samples themselves, a memo and an analytical request form should be included in the package containing the samples. A memo describing the samples and the type of analysis required should be located inside the package **and** in an envelope taped or otherwise attached on the outside of the package. The container and any wrappings should be initialed for identification and the package should be labeled as "Water Samples".

If the samples are shipped, a receipt should be obtained from the shipper. If the samples are to be delivered in person to the laboratory, a notation should be made describing the required analysis, method of delivery to the laboratory and a signature from the recipient should be

entered into your notebook. If the samples are “legal samples” or samples that may be used in a prosecution **continuity** must be maintained and recorded and the samples labeled as “legal samples”. The remaining portion of the legal samples will be returned to the inspector along with the sample analysis results. They are exhibits and will be used as evidence and therefore must be retained in a safe, secure place until the proceedings along with all documentation.

Deteriorated samples negate all the efforts and cost expended in obtaining good samples. In general, the shorter the time that elapses between the collection of a sample and its analysis, the more reliable will be the analytical results. For certain constituents and physical values, immediate analysis in the field is required in order to obtain reliable results because the composition of the sample almost certainly will change before it arrives at the laboratory, see table below. Determination of temperature, pH, and specific conductance should be made in the field. Samples that are to be used for the determination of suspended solids should not be frozen in as much it is not always possible to reconstitute the original sample exactly as it was before freezing. Freezing can also effect the particle size of some solid constituents in a solution, thus distorting any analysis.

Sample Preservation Methods for Specific Parameters in Water Quality Analysis

Parameter	Preservation	Maximum Holding Period
Acidity - alkalinity	cool to 4 degrees C	24 hours
pH holding	None available	Should be determined on site
Solids	cool to 4 degrees C	7 days
Specific conductance	cool to 4 degrees C	7 days
Turbidity	None available	7 days
Clarity/color	cool to 4 degrees C	7 days

12.0 INTERVIEWS AND STATEMENTS

Interviews are part of any inspection or investigation and are vital to the investigative process. Although an inspector has authority as an enforcement officer, interviews should not always resemble interrogations, but should be conducted in a business like manner. Prior to an interview, an inspector should be well prepared with the knowledge of the law, details of terms and conditions of approvals and all other relevant information.

Just as the hammer and saw are the tools of a carpenter, words and how you use them are the tools of the interviewer. Every time you meet with someone at a mining site you enter into an interview. How well you utilize your words and your communication skills will be the measure of your success, as you are judged on what you say and how you say it.

Interviews should be conducted as soon as possible after the event you are inspecting and/or investigating has occurred. Interviews must be private and not conducted with more than one person at a time. When you are interviewing someone suspected of non-compliance you are asking them to reveal a secret. If you had a secret would you find it easier to confide in one person or would you rather stand up before a crowd of people to divulge it? Naturally you would find it easier to talk in **PRIVATE** and one on one. If you would not want to be interviewed on the incident in question in public, then it follows neither would the suspected person. Consideration should always be given to comfort and privacy of the individual.

The basics of an investigation include interviewing everyone on site to determine how long they have been where they were at the time that you arrived, how long they have been working at that particular operation and how long they have been involved in the particular activity. Find out who is normally on the site and who is currently away and when they will be returning. Interview absent employees later. It is the knowledge that a witness has, not their geographical location that determines whether that witness is significant or not.

Before starting the interview, determine what information you want and what information you want to confirm. Your questions have to be focused, thorough and considered. Remember the **5-W's, WHO, WHAT, WHERE, WHY, WHEN**. Don't let the witness control the interview. You ask all the questions deemed necessary, even if it means your are becoming tedious. Get all the facts. The accused and/or witness/es maybe willing to give you all the necessary information but only if you ask the right questions.

Remember, it is human nature to think of assumptions and conclusions as facts. The classic example of this is saying someone is drunk. That is a conclusion. It is probably based on the facts that the person staggered, smelled of alcohol, and had slurred speech. Your job when someone gives you a conclusion, e.g. "he is drunk", is to get the facts behind it. If you ask "why?" after the "what or where" question you will expunge most assumptions/conclusions from the statement. Ask questions that show negligence. Negligence that you are confident that you can prove.

12.1 PHASES TO GOOD INTERVIEWING

- Planning
- Observing
- Understanding
- Questioning
- Minimizing
- Exaggerating

12.1.1 PLANNING

Sometimes even the worst interviews are successful, but by carefully planning your percentage of successful interviews can be greatly increased.

Learn all you can about the incident being investigated. There should be no doubt in the interviewee's mind that you, the inspector, are knowledgeable in the subject at hand.

Learn all you can about the individual to be interviewed

You must get yourself in the proper frame of mind. Decide exactly what you wish to learn from the individual in the interview. You must look forward to the interview. You must be confident that the individual will provide you with the information that you are seeking. You must sell the individual on the idea that they are in need of telling the truth. You should approach the subject not as a person who is eagerly seeking a confession of guilt but rather as one who is truly interested in the truth.

In any interview there are three (3) variables:

1. **THE INTERVIEWEE** - No two individuals are exactly the same. What works on one person may not work on another. In fact, the interviewee's mental attitude can change so rapidly that it could be like talking to two different people within a few minutes. You should approach the individual in a firm but tactful manner (i.e. you are in charge.).
2. **THE INTERVIEWER** - Our moods and personality are continually changing. We differ greatly when we are fresh and well rested as compared to a day when we are tired and listless. Sometimes we are more effective than others.
3. **THE INCIDENT UNDER INVESTIGATION** - Know all you can about the facts of the incident.

Never lie to the interviewee, if they discover it they will not co-operate.

Never make a promise that cannot be fulfilled. You will only succeed in losing their trust and respect.

Never hurry. A good interviewer must possess great patience. Hurrying will only convince the subject you are only interested in a fast confession.

12.1.2 OBSERVING

Guilty people all have one weakness in common, the strain involved in keeping back an admission of guilt causes certain body reactions which are visible to the trained interviewer. There is a desire in everyone to tell the truth. While no one of the following observation points indicates guilt, an interviewee who shows some or all of the signs listed below is giving a good indication that they might be guilty.

Sweat: When you meet the subject and shake hands, is their hand perspiring?
During the interview are they sweating at the temples?

- Pulse:** The artery at the side of his head and his neck may be pulsating visibly.
- Voice:** Some guilty subjects develop a nervous tremor in their voice. The more they become aware of it the more pronounced it becomes. They may repeat back exactly what you have said or rephrase the question that they were asked. They may ask you to repeat the question. They may hesitate, stutter or have mental blocks. They may say that they cannot remember, OR they don't think so. They may use such words as honestly, truthfully, believe me, to tell the truth, I swear to God. They may speed up their talking or slow it down noticeably. Voice may become louder or softer.
- Mouth:** Is the person really smiling? At the point of a lie a person often bites lips, squeezes lips together or licks their lips. They may have a dry mouth. Their lips may make a clicking sound when they talk. White foam may form at the corners of their mouth.
- Elbows:** Elbows tight against the body is a sign of tension. Elbows out is a sign a person is relaxed.
- Hands:** Important - guilty persons frequently move their hands about the head area, or pick at lint, or hand or finger tapper.

Movement of the feet - Important

1. When feet are moved back under chair signifies tension.
2. Legs crossing, including double cross, signifies tension
3. Raising of the feet, signifies tension.
4. Tapping of the feet, signifies tension.

Body: Hunched forward is sign of tension. Let them be and watch for when they sit back and relax. Squirming also a sign of tension. As an interviewer you must know what physical and vocal gestures to look for and you must force yourself to look for them.

Remember, just as you are observing the subject so are they observing you, therefore, always talk and act with confidence and control your own body motions.

12.1.3 UNDERSTANDING

Remain objective - The interviewer who becomes overly impressed with the seriousness of the incident will become tense and over anxious. This anxiety will be transformed to the subject and the effectiveness of the interviewer will be destroyed.

Keep in mind that you are questioning a human being. It is paramount that simple courtesy and respect for human dignity be shown.

Do not show disgust to the individual. By showing disgust towards the individual you will only succeed in making them less communicative.

An interviewer must possess **EMPATHY**. This is the ability to put oneself in the other person's position. Every person craves understanding. Remember even if a person has acted foolishly they do not look upon themselves as a fool.

Understanding the interviewee and their motives and telling them that you understand goes a long way towards bringing about a confession even when other methods fail.

12.1.4 QUESTIONING

At the beginning of an interview you can be sure that the subject is listening to every word you say even though he pretends to be unconcerned.

At the start of the interview get whatever particulars you require then put your pen away. Let the interviewee relax and let them talk. There is no better way to caution a person than to start writing down what they say right away. Also, by fiddling with your pen you indicate to the subject you are nervous and are unsure of yourself. You need to be relaxed as well.

Think positively - use words such as "Tell the truth" instead of "don't lie". Nobody likes to be called a liar.

Begin the questioning of the subject in a calm even voice. Ask short direct questions and allow them to supply all the lengthy details. Remember your silence will often induce the interviewee to continue talking. Let them fill in any gaps. Do not supply them with any information they are not in possession of. You are the interviewer. Make it difficult for the subject to deny the crime by asking questions where they have two answers - both incriminating.

Examples:

Did you do it on purpose or was it an accident?

Have you sold the gold or can you get it back?

Have you been doing this often or is this your first time?

Did you plan this for a long time or did it happen on the spur of the moment.

This type of question is most effective at crucial moments.

It is important not to run out of steam, even if you have to repeat a question while formulating another one. Try not to allow for a lapse between your questions.

The word "no" is contagious. Word your questions in such a way as to get a "yes" for answer. If you see a person is going to give a denial cut them off by asking another question, the more they can deny the offense the more courage they will gather from this.

There is absolutely no difference in the principles used in the interview of an individual who committed a major crime with that of a thief or someone who wilfully disobeyed an order to correct some deficiency noted during a safety officer's inspection.

All criminal suspects are subject to a rather loose flexible classification.

1. Emotional Offenders
2. Non-emotional Offenders

Emotional offenders - They commit crimes of passion, anger or revenge, they APPEAR sympathetic.

Non-emotional offenders - They commit thefts, burglaries, robberies, they APPEAR - logical

In the situation where the subject's guilt is established or probable, use the POSITIVE approach. This is the approach when you ask leading questions and you assume the subject has committed the offense.

Consider The case of the missing car keys: if you know that Joe had the car keys last you say:

"Where are the car keys?" (positive)

If you are not sure who had them:

"Do you know where the keys are?" (neutral)

If you think that you had them last you say:

"You don't know where the car keys are do you?" (negative)

In this approach never say to a person statements such as *"If you are charged"* rather say *"When you are charged"*.

EXCEPTION: Witnesses and individuals whose guilt is doubtful use the neutral approach.

12.1 .5 MINIMIZING AND EXAGGERATING

Listen to any guilty subject and you will note that they minimize or rationalize the offense in their own mind when they speak of it. From this you should realize that the interviewer should also minimize these same acts. Tell the subject what they want to hear. Throughout the entire interview minimize the non-compliance, the subject's part in it, and whatever they did. Exaggerate other incidents of non-compliance compared to this one, exaggerate the part played by their accomplices. Exaggerate what the subject didn't do as well.

12.2 GENERAL RULES

Never swear at a person.

They have a dry mouth - tell them that they can drink a gallon of water but that they will still be thirsty. The only thing that will quench their thirst is when they tell the truth.

Try to match your personality with that of the interviewees. Do not mimic them so as to insult them. Use the language that they understand.

Sell yourself. Convince them that their best course of action is to tell the truth.

When you have exhausted your interview and feel you cannot go any further force yourself to go another 15 minutes or so.

When all has failed and you are about to have the person leave say as a parting shot:
“Remember when you walk away you are walking out on the one person in this world who understands what happened. Are you going to continue living with this thing, having it gnaw away inside you or do you have the courage to tell the truth?”

IF THE INTERVIEW HAS GONE WELL ALWAYS END THE INTERVIEW ON A PLEASANT NOTE. TELL THE INTERVIEWEE THAT YOU UNDERSTAND HOW DIFFICULT IT WAS FOR THEM TO DIVULGE TO YOU ALL THAT THEY DID AND THAT YOU APPRECIATE THEIR TRUTHFULNESS.

12.3 STATEMENT FROM SUSPECTED OR ACCUSED PERSON

Suggested procedure when taking a statement from an accused or suspected person.

The taking of a statement from an accused or suspected person forms a very important part in any investigation. The single most important aspect to remember is that if any such statement is to be admissible in a court of law, it must be proven that the statement was voluntarily given. Here are some important things to consider:

1. Was the accused properly **warned** that the statement may be used against them.
2. Did the accused **understand** the warning.
3. Was the accused **threatened** in any way or **felt compelled** to give his statement due to an environment of **oppression**.
4. Was the accused **induced** to give the statement or **promised** anything in order to obtain the statement.

It is therefore, very important to record in your **notebook**, everything that was said and done to the suspect from your first contact with them until such time as the statement is completed. This holds true with all investigations that involve making contact with the accused. It is, therefore, recommended that contact with the accused be kept to a minimum.

Introduce yourself and explain why you are interviewing the individual. If the individual is going to be charged or has been charged with an offense, you should **advise** them of this circumstance.

The **warning** should be given at this time, it should be fully explained to the suspect and you

must take steps to ensure it is fully understood.

Since an interview may be viewed as detention and any information and statement would be used as evidence the individual should be advised of their rights regarding such situations. This may involve their right to counsel and the opportunity to exercise this right.

12.4 WARNED STATEMENT

Statement from suspected or accused person

Once the warning has been given, put down your pen, sit back and begin the interview. Do not emphasize your note taking. It can be intimidating. Let the suspect tell his/her version from the start to the finish, you may wish to ask questions to clarify points that you are not sure of. Give people time to answer and listen carefully to what they say. While the suspect is talking evaluate the information based on your knowledge of the events. It is usually easier to allow the suspect to give their side in total, then ask questions. Avoid leading questions. Avoid double negatives and other complex phrases. Avoid multiple subjects in your question.

There are three ways of taking statements.

1. **Narrative format**, where the statement is recorded according to the facts as disclosed by the subject. Always record in the first person, language is always the language of the subject, either yourself or the subject can write it out, however it is preferable to have the subject write it out themselves. The main objection to the narrative form is that if any one fact is proved unreliable the statement could be challenged or impeached.
2. **Question and Answer format**. It is a suitable format to use for those who find it difficult to construct a chronological narrative due to:
 - language problems
 - lack of educationThe main advantage to using this format is that each question is treated separately. If one answer proved unreliable the other answers may be acceptable.
3. **Combination of Narrative and Question and Answer format**. This method provides the subject with free narrative and questions and answers can be used to clarify specifics.

Once you have decided on the format begin the formal process of writing or recording the statement. Begin by completing the header format. This format will differ from individual to individual but whatever format you use it must include certain information. Your header format should include the following:

1. Date, time and location of commencing a statement
2. Full name, date of birth, address, occupation of the person giving the statement

3. Identify all persons present including other inspectors/investigators
4. Warning and any explanation given, also, the reply of the individual, have the individual sign after the warning and reply. Interviewer signs, dates and times this acknowledgment.
5. Record informing right to counsel and any explanation thereof. Individual's response to be recorded verbatim.
6. Ask if they wish to contact counsel and record reply.
7. Ask if they wish to give a statement and record reply.

Once this is done lead into the statement with an opening directive in the spirit of *"In your own words tell me what happened concerning(whatever the event under investigation concerns)"*.

Record statement **verbatim**. The V's to remember then are **VOLUNTARY** and **VERBATIM**.

At the end of the statement, have the individual read over the statement, or if they cannot read or refuses to read it, read it to him, ensure that they are aware that they can add to it, delete or alter any portion thereof, offer the opportunity to do so. Also, advise them that they can make amendments as noted before, record any alterations requested and have the subject initial same, investigator must initial all alterations also. Include the date and time of concluding the statement on the last page, if interviewee refuses to sign, note this on the document and have the interviewer sign.

Have the individual and any other person present in taking the statement initial each page. The date and time of finishing must be recorded on the last page and signed by the interviewee and any other person present in taking the statement. If you require further clarification of any points begin with a new page.

Ensure that the interviewee understands that there is no requirement to answer the questions, however the questions and answers will be written down and may be used as evidence, record any clarification and replies (Warning).

Write out question first, read it to the individual, record any reply **verbatim**.

Statements should be taken on one side of the paper only. The statement should be handwritten and must be legible. NO pencils are to be used unless indelible. Grammar, punctuation and spelling must not be corrected. No erasures should be made, cross out and initial and have subject initial.

Warned statements are evidence and are at times the main source of information you have in your investigation. The courts refer to a statement, when produced in a court of law for the proceedings, as an "exhibit." When used as a noun, an exhibit usually refers to a paper, document, chart, map or the like. Make a photocopy of the original statement, put the copy on file and make the original the "exhibit", record on the exhibit report, the same as you would any other exhibit. Where the "exhibit report" is your list of tangible items, such as those referred to above, that you wish to present in court to prove your case.

12.5 SECONDARY WARNINGS

If the accused has had contact with other persons in authority concerning the matter under investigation, it may be necessary to ensure that the effect of any inducements or promises made or a deal to talk, that may have been made previously, be removed. In such a case, a “secondary warning” must be given to the accused. It is wise to read the warning from a card prepared that every inspector carries with them to ensure consistency. This way there will be no doubt in anyone’s mind as to the wording used. The wording of the secondary warning may vary, but must state to the effect that anything said previously must in no way influence the accused to speak now. Sample wording of a “secondary warning” is as follows:

SECONDARY WARNING

You must clearly understand that anything said to you previously should not influence you nor make you feel compelled to say anything at this time. Whatever you felt influenced or compelled to say earlier, you are not now obligated to repeat, nor are you obligated to say anything further, but, whatever you say may be given in evidence. DO YOU UNDERSTAND?

From here continue as with any warned statement.

The following page contains a sample warned statement using one suggested format. It is a valid format and can be adapted to field use:

STATEMENT FROM SUSPECTED OR ACCUSED PERSON

Page Of

Date

Time

Location of interview

Location of interview

Persons present: Interviewer and any others present

Statement of: Name of interviewee

Address:

Means of contact such as all telephone numbers:

Occupation:

Q.

A.

Q.

A.

Note: When you have reached the bottom of the first page and on every page thereafter, each page is to be initialed by the interviewee and any person involved in taking the statement.

(Inspector's or interviewer's initials)

(Interviewee's initials)

Note: On the LAST PAGE of the statement in addition to the initials of the inspector or interviewer and the interviewee's initials, the date and the time the interview concluded must be noted along with the signed acknowledgment that the interviewee read the statement.

I have read this statement and it is true and correct to the best of my knowledge.

Signed _____ (Person giving statement)

(Inspector's or interviewer's initials)

(Interviewee's initials)

Date

Time

13.0 EVIDENCE

The commission of non-compliance or an offense requires people and things. People are perpetrators, but they use things either to commit the offense or to conceal identity. It is these things which are referred to as "evidence". Forensic science is the study and understanding of one kind of evidence known as "physical evidence". Physical evidence is where you find it, anywhere the violator has been, or anything the violator has touched, done or used. It is a silent witness to their actions. It could be a sample from a discharge outfall or a revealing photograph. It could be a statement made by a witness or the person who committed the offense. It is your responsibility to obtain any relevant evidence, record what that evidence is and how you obtained it, and how you preserved it, so that it can be properly analyzed and/or interpreted by the appropriate specialists. When evidence is shown or "exhibited" in a court of law it is known as an "exhibit." This is the language of the courts.

13.1 THREE TYPES OF EVIDENCE:

- A. Testimonial evidence; statements taken from witnesses and/or the suspected guilty person, this is known as "direct evidence."
- B. Documentary or visual evidence; your notes or papers you may have seized from the site or photographs that you may have taken, these may be referred to as "indirect evidence."
- C. Physical or real evidence; any samples that you may have taken at the site, these may be also be referred to as either "direct" and/or "indirect" evidence.

13.2 IMPORTANT POINTS TO REMEMBER IN CONNECTION WITH EVIDENCE:

1. **Locating evidence:**
 - determine the type of offense;
 - be sure of your authority to seize (check statute);
 - consider the type of evidence which might be available;
 - consider its potential as useful evidence;
 - look for it, find it, and take it.
2. **Recording evidence:**
 - make good notes and take photographs of the whole area, general and specific;
 - take evidence in sequence, number the pieces of evidence and show on a map or sketch;

- photograph the evidence before moving, to show the state in which they were found;
3. **Obtaining Evidence:**
- limit the number of persons taking evidence to one unless time is of the essence (exigent circumstances);
 - if soils, muds, hydrocarbons or other types of similar samples are collected they should be placed in suitable containers and preserved properly;
 - mark each sample so you can identify it at a later date (in court);
 - adhesive or other tape should be placed across the top and down both sides and initialed, or marked directly on the item if it will not destroy the evidence. Seal so that if tampered with, it will be noticed.

13.3 WHEN GATHERING PHYSICAL EVIDENCE:

1. Secure and isolate;
2. Record the scene with photographs, sketch and notes;
3. Conduct a systematic search.

13.4 THE RULE OF HEARSAY:

Hearsay refers to a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. In other words if it is not a confession of guilt by the one performing the act or a statement by a direct witness in a court of law, then it is hearsay. In general, such statements are prohibited or inadmissible, but there are exceptions.

13.5 OPINION EVIDENCE:

Evidence of what a witness thinks, believes or infers regarding facts in dispute, as distinguished from their knowledge of the facts themselves. If you are an experienced inspector you can be, once deemed by the court, an “expert witness.” Once determined an “expert witness” by the court you may then be able, and only then, to give your opinion on the matters in question. In general, opinion evidence is prohibited, except from persons, deemed by the court, to be qualified to give opinion evidence.

13.6 VISUAL EVIDENCE:

A form of physical evidence which includes maps, graphs, photographs or other representations of matters and which are material to the proceedings are known to the courts as exhibits. Photographs are essential in your work. They eliminate memory searching, reading, and can tell a story over short and long periods of time. They are admissible in court. You should never embark on an inspection without a camera. In all photographs it is important that a reference point be present in the photo so that the area cannot be mistaken for another area. Photos should not be written on, except for the number, which should be placed on a sticker on the face of the photograph. A legend should be prepared on a separate piece of paper and related to the photographs. Directions and complete descriptions of what the photos depict should be clarified in the legend. Photos should also be tied into the sketch or map. Should the photos be required for court, which they most certainly will be as almost everyone likes to look at pictures, establish what size will be required. It is your responsibility to say under oath that the photographs are a true representation of what you saw.

13.6.1 CRITERIA FOR THE ADMISSION OF VISUAL EVIDENCE:

1. Must be relevant;
2. Must accurately and truly represent the facts;
3. Content must be fair and not leading;
4. Must be verified by oath by a person capable of doing so.

13.7 PRESERVATION, HANDLING AND CONTINUITY OF POSSESSION OF EVIDENCE:

Store the exhibits in locked place. Personal possession of exhibits by the seizing investigator until they are handed to the analyst or forwarded via double registered mail (you must retain receipt as an exhibit), is of the utmost importance.

All recovered evidence must be immediately and properly marked in order to assure its proper identification at a later date. One of the many reasons for this precaution is the rather common occurrence of requesting a witness to identify exhibits introduced as evidence in a trial which is conducted several months later. The correct method employed in collecting, marking and packing exhibits may be nullified if you cannot account for the persons who have handled or stored the evidence.

This process is called “**continuity of possession**”. If you cannot account for a signature or any step in the handling of the exhibit, Defense Counsel is quick to question you on both integrity and admissibility.

In other words, you must be able to state that the exhibit you are entering in a proceeding, was the exhibit that was seized. One way of ensuring this is to mark the exhibit with:

- Date of seizure
- Time of seizure
- Your initials

Mark the exhibit as soon as possible at the scene, bearing in mind safety and security of yourself, other inspectors and the suspect(s), if any.

If the exhibit is to be returned to someone, rather than marking it, place the object in a container, seal it and mark the exterior of the container.

13.8 SEIZURE OF EVIDENCE:

Where circumstances permit, it is important that one inspector/investigator receive and have custody of all exhibits surrounding one investigation or search.

A common practice is to appoint one person to take the exhibits at the time of the search. This cuts down on the number of witnesses resulting in less confusion for the court. **(Remember that any person who involves themselves in any event, in even a small way, that may lead to prosecution and court action becomes a “witness” to the proceedings)**

NOTE: All exhibits and the circumstances surrounding their seizure should be recorded in your NOTEBOOK!

13.9 PACKAGING OF EVIDENCE:

Each exhibit is to be placed in separate containers and/or envelopes to avoid contamination of one exhibit by another.

Liquid exhibits should be placed in clean, dry, glass and/or plastic containers with tightly sealing lids.

13.10 THE MARKING OF EVIDENCE:

The purpose of marking an exhibit is for identification and continuity to present in court. Do not place excessive writings on exhibits or envelopes. All writings must be recorded.

On exhibits, initials may be placed on exhibits or wrapping material, if it does not damage or contaminate the exhibits.

On envelopes, initials, time and date must be recorded on it. The place where it was seized and/or an identification number may be placed on the envelope.

13.11 THE RECORDING/DOCUMENTATION OF EVIDENCE:

It is helpful for exhibit control to record and document in a systematic way.

14.0 THE INSPECTOR AS A WITNESS

Inspectors who build good case files tend not to have to go to court. Those cases with strong documentation of evidence tend to be settled quickly and possibly without the added expense of a lengthy defense. Being an inspector though is a life of exceptions. Some will contest your allegations regardless of your efforts.

Under most circumstances the inspector will be called as a “**witness of fact**” to testify about what they have personal knowledge of through their five senses as a result of being the “informant” or the person who informed the court of the incident. Your “credentials” for having that knowledge will be established prior to your testimony.

The three most common attacks on a witness are **competency, credibility, and impeachment**. The following is a brief discussion of each:

- **Competency** is determined by the “**trier of fact**” (the judge or magistrate) and done on a case by case basis. A competent witness is legally qualified and required to testify.
- **Credibility** refers to your worthiness for being believed. Here the defense counsel has a chance to “peck” at you on the witness stand. “*Where you qualified to make that observation*”. “*Is there any reason the court or hearing officer should not believe what you said actually happened*”? There are many subtleties here. A lack of composure under fire can tarnish your credibility in the view of the hearing magistrate or judge. ***Do not elaborate beyond your direct knowledge*** or you make yourself vulnerable to the defense counsel.
- **Impeachment** is what happens when the defense detects a flaw in your testimony. The job of the defense counsel is to assault that chink in your credibility until it looks like a chasm to the “**trier of fact**”.

Sounds intimidating doesn't it? It can be but should not be as long as everyone sticks to their role. The defense counsel should be aggressive in attacking the evidence and the who has obtained it. Remember you are not alone. You are part of a team and your Counsel will help you.

14.1 REVIEW THIS INFORMATION BEFORE GIVING TESTIMONY:

- Your report
- Your field notebook
- Photographs, diagrams, sketches
- What your counsel plans to ask
- What your answers will be

- Possible flaws in your case.

14.2 HOW TO BE A GOOD WITNESS: MAKING THE BEST OF A TRYING SITUATION:

14.2.1 PREPARATION BEFORE GIVING TESTIMONY WILL HELP ESTABLISH ROLES AND COMFORT

ALWAYS TELL THE TRUTH! Your counsel should prepare you for taking the witness stand or giving your deposition. Your counsel should review the strength and weakness of your knowledge to refresh your memory and also to make you more comfortable with the court proceedings. Your counsel should review the questions they intend to ask and may review your answers as well. In contrast the defense counsel may try to create doubt or insecurity in your mind by asking the question, “*Did you discuss this with your counsel before you came here?*” As if there was something wrong with that. There isn’t. Your answer is, “yes.” The defense counsel might then ask you, “*Where you told what to answer?*” Your answer should be, “*I was told to tell the truth.*”

14.2.2 DO NOT VOLUNTEER INFORMATION AND KNOW WHEN TO SHUT UP!

The more you say the more chance the defense counsel has to find an area of weakness. **DON’T RAMBLE!** Answer only the question put to you and then **shut up!** A common error is to answer a question which is anticipated but has not been asked. You may think you know where the defense is going with their line of questioning, but they may have another agenda or may not have thought of the issue at all. They may not have thought about the question at all and there you are volunteering an answer. What you may have brought up, may or may not be relevant and can take days and even weeks to deal with.

If you do not understand a question then you should **PAUSE** and **THINK** about it. You may ask the magistrate or judge to allow you to refer to your field notes, photographs, inspection report or ask that the question be repeated if you need to. You cannot answer a question you do not fully understand. It is usually permissible for you to ask for rephrasing or that a complicated or compound question be broken up. **Always look at the counsel when you are being asked a question and when answering the question always look at the magistrate or judge.**

Some aggressive defense counsels may press you for answers by establishing a rhythm of easy “yes or no” questions and then abruptly change pace with a complicated question in hopes of getting a poorly considered answer or compromising your composure. Simply pausing before you answer will allow you to reflect and maintain your demeanor. Don’t let defense counsel’s silence motivate you to ramble. Remember how silence was used in interviewing? That art was perfected in the legal arena. Leading questions, intimidation, assaulting your credibility, or twisting interpretations are all counsel techniques which have ethical boundaries. However, some defense counsels may tend to test these boundaries if they find a technique working to their clients favor. Don’t allow any action by the defense counsel to affect your emotions or behavior. Your counsel is allowed to object to possible breaches of protocol and your calm composure will only reflect your professionalism.

Trials are by nature adversarial, recognize it, stick to what you know, and answer only the question put before you. Not all defense counsels are as aggressive as just described. Remember you are there only as a **WITNESS OF FACT**. Relate what you did and what you know and always, **ALWAYS TELL THE TRUTH!**

15.0 COURTROOM DEMEANOR

15.1 BEING A WITNESS - HOW TO GIVE EVIDENCE

15.1.1 BEFORE A TRIAL

- You should have legal knowledge of the case, including elements required to prove the charge.
- Notes, make sure you have all of your notes referring to the case and your investigation with you and you have reviewed them.
- Exhibits, any exhibits you will be required to enter into evidence during the trial should be with you and clearly marked for identification by the court.
REMEMBER to have them in your possession and that you have maintained **CONTINUITY** at all times.
- Legal documents pertaining to the case, should be available and in-order.
- If there are any other witnesses they should have been subpoenaed, they should have been afforded an opportunity to read over their statements again and been given some indication of when they will be required to give evidence according to advice from the prosecutor.
- The prosecutor must be consulted and kept abreast of any changes or problems.
- Dress; men would wear a conservative business suit or sports jacket and tie, women would wear pant suits, business suit or other "business like" attire for women.

15.2 DEMEANOR OUTSIDE THE COURTROOM

- Arrive well in advance of the scheduled start time of the trial.
- Be ready to proceed.
- Avoid loud noises or talking.
- **DO NOT:** discuss the facts of the case, compare notes or compare evidence with anyone. **YOU NEVER KNOW WHO MAY BE LISTENING TO YOUR CONVERSATION.**

15.3 INSIDE THE COURTROOM

- Be professional in approach, dress and demeanor.
- You may relax within reason.
- You will be required to stand. Keep your hands in front of you or behind you.

- Do not lean or rock back and forth, limit any movement.
- When asked a question while on the witness stand, look right at the person asking you the question.
- When answering a question that has been asked of you look right at the judge or magistrate.
- **Always act in a respectable manner.**
- After giving testimony check to see if you can be excused from the courtroom if you so desire.

15.4 RELATIONSHIP WITH THE PARTIES

15.4.1 THE PROSECUTION

- Advise the prosecutor of any anticipated problems that you may think of.
- When in doubt, about anything, ask the prosecutor for clarification.
- The prosecutor has reviewed and is knowledgeable about the case and they may be able to refresh your memory.
- The prosecutor will decide on the order witnesses will be called to give testimony.
- During your testimony, you should never request the prosecutor's **assistance** or **intervention**.
- If the prosecutor objects to a question posed to you by the defense counsel, you must immediately stop talking until the judge or magistrate has ruled.

15.4.2 THE DEFENSE

- You are the **COURT'S WITNESS**, you are neither with the prosecution or the defense.
- You are free to talk about the case with the defense, prior to being on the witness stand, if you decided to share only factual information.

15.5 TESTIFYING

- Be **READY!**
- Speak loudly enough to be heard and speak clearly.
- Acknowledge the judge or magistrate and address the judge or magistrate at all

times.

- Be patient, confident, neutral, articulate and truthful.
- Have a complete understanding of the evidence that you about to present.
- Only bring essential documents to the courtroom.
- It is necessary and quite acceptable for a witness to consult their personal notes after requesting and receiving permission from the court to do so.
- If the defense counsel asks you if you have consulted your notes at any time prior to arriving at trial, do not hesitate to admit that you have.
- Remember, the judge or magistrate were not present when the offense took place therefore you must be clear and succinct when giving your evidence.
- Endeavor to construct the offense for the judge or magistrate.
- Evidence introduced through your testimony helps fit in the pieces of a puzzle to eventually reveal the whole picture.
- You **MUST PRESENT ALL EVIDENCE AVAILABLE.**

15.6 RULES

- You must answer all questions put to you and you must always **STAY CALM.**

15.7 OPINIONS

- Opinion evidence will only be accepted from experts who have been qualified as experts by the court.
- Exception to this: you may give opinions on everyday activities/circumstances, e.g. road conditions.
- Testify as to the facts only.

15.8 HEARSAY

- Repeating what someone else has told you other than in a statement given as evidence in a proceeding; generally, **is not admissible.**

15.9 USE OF NOTES

- You cannot read directly from your notes. You are expected to testify from your memory as much as possible.
- You may ask to refer to your notes in order to refresh your memory.

- This request will be granted if your notes were made at the time or shortly thereafter.
- **REMEMBER:** defense counsel may examine your notes if you use them.

15.10 TITLES AND SALUTATIONS

- When addressing a justice, a judge or magistrate refer to them as “Your Worship” or “Your Honour.”
- When addressing a lawyer refer to them as: “Sir”, “Miss”, or “Madam”.

15.11 QUESTIONING

- **Listen** to the question.
- **Think** about the question.
- **Think** about the answer.
- Give your answer.
- There is no hurry. Take your time. Answer **yes** or **no** whenever possible and **do not volunteer information**.
- Be **patient**.
- Be **courteous**.
- Maintain self-control.
- Keep testimony **accurate**, **relevant** and **concise**.
- Do not hesitate to acknowledge an error and correct it as soon as you realize you have made one.

15.12 CROSS EXAMINATION BY THE DEFENSE COUNSEL

15.12.1 OBJECTIVE OF CROSS EXAMINATION

- To weaken, qualify or destroy the case of the opponent. Both the prosecution and the defense have the right to cross-examine a witness.
- To establish the party’s own case by means of their opponent’s witness.

15.12.2 CONSIDERATIONS

- It is the defense counsel’s right to cross-examine the prosecution’s witnesses.

- It has been said, “cross-examination is the greatest legal engine ever invented for the discovery of truth.”
- Leading and/or suggestive questions are permitted.
- A simple “yes” or “no” answer will suffice.
- Defense counsel’s primary goal is to obtain an acquittal for their client.
- There is an old saying that “confusion gives rise to doubt” and if defense counsel can raise a “reasonable doubt” as the guilt of their client, it goes in favor of the accused and may lead to an acquittal.

15.12.3 COMMON CROSS-EXAMINATION TECHNIQUES

- Dwelling on insignificant details.
- Asking leading questions.
- Mispronunciation of your name.
- Standing close to the witness, trying to intimidate them.
- Standing behind the witness.
- Rapid questioning, one quickly right after another.
- Flattery.
- Threatening the witness.
- Distracting the witness.
- Repeating the same question over a number of times.
- Long periods of silence.
- Alleging contradictions by other witnesses.
- Asking if you have discussed the case with anyone.
- Inviting argument.
- Misleading the witness.

15.13 GOOD TESTIMONY MUST BE:

- Truthful.
- Objective.

- Pertinent.
- Clear.
- Accurate.