Emotionally Triggered Involuntary Violent Behaviour not Attributed to a Mental Disorder: Conceptual Criteria and Their Reliability

Pierre Mauritz Joubert

Submitted in partial fulfilment of the requirements for the degree

Doctor of Philosophy (Psychiatry)

Supervisor: Prof C.W. Van Staden

Department of Psychiatry

School of Medicine

Faculty of Health Sciences

University of Pretoria

July 2014

Acknowledgments

I would not have been able to do this thesis on my own. People and institutions were involved who made it possible for me to complete the thesis. I dearly thank the following:

Prof. C.W. Van Staden, my supervisor. He was a teacher, guide, and supporter during this endeavour. I am grateful that I could make use of his invaluable expertise and knowledge.

Prof. J.L. Roos, Head of the Department of Psychiatry. His support as Head of Department made possible a space in which the research could be done. What he made available is broader than can be described. It included, but is not limited to, a motivation for a total of seven months study leave (which I took in periods) that proved very necessary to complete the thesis.

The Faculty of Health Sciences of the University of Pretoria for allowing the doctoral thesis, approving a bursary to support it, for the use of its information resources, and allowing for study leave with remuneration.

Ms. M.A. Mabena, Chief Executive Officer of Weskoppies Hospital. She ultimately made the study leave, which I had to take to complete the thesis, possible.

Dr. G.P. Grobler, who was willing to act as Independent Evaluator for the five précis.

The study participants: you know who you are. I appreciate your time, effort, and constructive criticism.

My colleagues at Weskoppies Hospital, who supported me by lessening the official work-load from time to time and for standing in for my duties while I was on study leave. I also thank colleagues for their participation in the study and for their useful comments to me after their participation. A special word of thanks

My wife, Dr. M.J. Jakuszko-Joubert, who was a friend and colleague during the years I worked on the thesis. Her love and support was invaluable.

Ms. M. Lee, the information specialist of the Medical Library, who helped me find books and documents relevant to my research. I owe her even greater thanks for showing me additional ways of obtaining online documents through the University of Pretoria and assisting me with the correct abbreviations of journals.

Ms. S. Gillmore, an information specialist of the Law Library, who helped me find cases of possible relevance to the study.

Ms. L. Viljoen, also an information specialist of the Law Library, who helped me find cases of possible relevance to the study.

Ms. J. Jordaan, the research consultant of the Departments of Statistics, who checked the data and operators of Part 2 of the study with me.

Dr. L. Fletcher, the statistician of the Department of Statistics, who guided me through the statistical analysis of the data of Part 2 of the study.

Mr. S. James, the departmental administrator, who showed me how to create an appropriate data sheet in Microsoft Excel for Part 2 of the study.

My daughter, Ms. C.M. Joubert, who studied hard during her final year at school, thereby helping by setting my mind at ease.

Last, but not least, my parents, the late Mr. G.M. Joubert and Mrs. L.N. Joubert who encouraged in me a desire to learn and study from a young age.

Contents

List of Tables **v**

Abstract **1**

Chapter 1: Introduction and Overview **2**

Background and Relevance 3
Overview of the Study 5

Chapter 2: Emotionally Triggered Involuntary Violent Behaviour and Automatism **8**

Automatism: an Unclear Concept 10

Chapter 3: Methodology of the study of Emotionally Triggered Involuntary Violent Behaviour **13**

Part 1: The Conceptual Component of the Study 13
Part 2: The Reliability Component of the Study 23

Chapter 4: Violent Behaviour in 'ETIVB' **37**

Violent Behaviour in 'ETIVB' is Defined by the Consequences of Physical Injury or Physical Damage 37
Violent Behaviour in 'ETIVB' is Observable 39
The Features of Behaviour in ETIVB can be Described 40

Chapter 5: What Counts as 'Emotionally Triggered' in 'ETIVB'? **42**

How Emotions are Related to Stimuli in 'ETIVB' 42
How Emotions are Related to Socio-Cultural Context in 'ETIVB' 45
How Stimuli, Emotions and Behaviour are Related in 'ETIVB' 47

Chapter 6: What is 'Involuntary' in 'ETIVB'? **49**

An Inability to Exercise 'Control' or 'Choice' as Necessary Qualities of 'ETIVB' 50
'Involuntary' in Terms of 'Cannot Be Helped', Willing, Unconscious Behaviour, and Memory 54
Comparing 'Involuntary' in 'ETIVB' with Other Forms of Involuntariness 56

Chapter 7: Recognising 'ETIVB' **61**

Recognising 'Violent Behaviour' in 'ETIVB' 61
Recognising 'Emotionally Triggered' in 'ETIVB' 62
Recognising 'Involuntary' in 'ETIVB' 64
Indications of Having 'Control' and 'Choice' 70

Chapter 8: Formatting Criteria for the ETIVB-Instrument **73**

The ETIVB-Instrument 73
Recording of whether Criteria Are Met or Not Met 79
Addendum B to Chapter 8 82
Addendum B to Chapter 8 88

Chapter 9: 'ETIVB' Attributed to Mental Disorder and Alike **90**

Addendum A to Chapter 9 93

Chapter 10: Case Demonstration: Assessing Two Cases with the ETIVB-Instrument 95

Applying the ETIVB-Instrument to Sanders and Jacaranda 94.2 95
Attributive Considerations of ETIVB 104
Applying the ETIVB-Instrument to S v Campher 105

Chapter 11: Results of Assessing Study Cases with the ETIVB-Instrument 114

Results 114
Discussion 116

Chapter 12: Validity of the ETIVB -Criteria 127

Content Validity of the ETIVB-Instrument 127
Construct Validity of the ETIVB-Instrument 128
Face Validity of the ETIVB-Instrument 131

Chapter 13: Results of the Reliability Study 134

Demographic Data of Study Participants 137
Study Results 138
Discussion 159

Chapter 14: Summary and the Way Forward 173

The Way Forward 174
Testing the ETIVB-Instrument with a Larger Sample of Participants 180
Conclusion 180
Addendum A to Chapter 14 181
Addendum B to Chapter 14 184
Addendum C to Chapter 14 185

References 195

List of Tables

Table 1:	List of Study Cases and Whether Psychiatric Evidence was Given.	43
Table 2:	Case with One Candidate Behaviour that Qualifies as 'ETIVB'.	131
Table 3:	Cases with One Candidate Behaviour that Does not Qualify as 'ETIVB'.	132
Table 4:	Cases with Multiple Candidate Behaviours that Do Not Qualify as 'ETIVB'.	133
Table 5:	Cases with One Candidate Behaviour with the ETIVB-Outcome Being Uncertain.	134
Table 6:	Cases with Multiple Candidate Behaviours with the ETIVB-Outcome Being Uncertain.	135
Table 7:	Ratings of Attributive Considerations in Sanders and Jacaranda 94.2.	135
Table 8:	Study Cases for which the ETIVB-Criteria Were Not Met Compared with Court Verdict.	140
Table 9:	Demographic Data for Participants Who are Qualified Psychiatrists.	146
Table 10:	Demographic Data for Participants Who are Psychiatrists-in-training.	147
Table 11:	Criterion Ratings of Sanders.	148
Table 12:	Criterion Ratings of Dhlamini.	149
Table 13:	Criterion Ratings of Mahlinza.	150
Table 14:	Criterion Ratings of Gesualdo.	151
Table 15:	Criterion Ratings of Campher.	152
Table 16:	Uncorrected and Corrected I-Criteria Ratings by Case and Participant.	153
Table 17:	Frequency of Criteria Ratings in Sanders Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).	154
Table 18:	Frequency of Criteria Ratings in Dhlamini Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).	155
Table 19:	Frequency of Criteria Ratings in Mahlinza Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).	156
Table 20:	Frequency of Criteria Ratings in Gesualdo Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).	157
Table 21:	Frequency of Criteria Ratings in Campher Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).	158
Table 22:	Frequency of Criteria Ratings in All Study Cases Combined Regarding the Requirements of 'ETIVB' Being Satisfied (n=125).	159
Table 23:	Total Observed Agreement Uncorrected for Chance and Modified Fleiss' kappa by Criteria Unit and Study Case.	160
Table 24:	Degree of Agreement between Participants as Calculated by the Modified Fleiss' kappa by Criterion Unit and Study Case.	161
Table 25:	Derived Variable Values of Campher.	162
Table 26:	Derived Variable Values of Dhlamini.	163
Table 27:	Derived Variable Values of Mahlinza.	164
Table 28:	Derived Variable Values of Gesualdo.	165
Table 29:	Derived Variable Values of Sanders.	166
Table 30:	Frequencies of Outcomes of Derived Variables by Case (n=25).	167
Table 31:	Completion of Attributive Consideration of ETIVB in Cases where ETIVB-Criteria were Considered Satisfied	181

Abstract

Emotionally triggered involuntary violent behaviour not attributed to a mental disorder: conceptual criteria and their reliability.

This study conceptualised emotionally triggered involuntary violent behaviour (ETIVB), developed criteria for the identification of ETIVB, and examined their validity and reliability.

South Africa criminal courts allow for a defence called “non-pathological criminal incapacity”. It refers inter alia to extreme emotional arousal triggering involuntary violent behaviour. This is usually called an “emotional storm” or a so-called “psychological blow automatism”. Psychiatrists are often called to give expert testimony in this regard, but there is no conceptual clarity or criteria upon which to base it. This difficulty is compounded by the requirement set by the criminal courts that the behaviour may not be attributed to a mental disorder (in this thesis the terms mental disorder and mental illness are used interchangeably).

The first advance in obtaining clarity was afforded by focusing on the behaviour as distinct from 1) legal and jurisprudential considerations as well as 2) whether the behaviour is (not) attributed to mental disorder. The subsequent research questions driving the study were, “what counts as ETIVB?” In particular, what counts respectively as ‘emotional triggered’, ‘involuntary’, ‘violent’, and ‘behaviour’.

Through conceptual methods suggested in the work of J.L. Austin, draft ETIVB-criteria were developed and then repetitively applied to a set of 28 cases. Twenty seven of these cases involved a charge of murder. The other one had behaved violently, but was not charged. The criteria were refined and their content validity derived by a repetitive to-and-fro process between comparative exploration of the concepts and their empirical application to the set of cases. The criteria were formulated into an instrument by which a psychiatrist can identify ETIVB. In addition provision was made to record whether ETIVB is, or is not, attributed to specific causes including mental disorder, but only as an attribution that follows after ETIVB has been identified.

The ETIVB-instrument was subjected to reliability testing among 14 psychiatrists and 10 psychiatrists in training. They applied the ETIVB-criteria to a set of 5 externally validated case summaries. The participants had first been trained in the use of the instrument by considering other example cases. Statistical analyses of inter-rater reliability were performed. The modified kappa agreement ranged from 0.388 (fair) to 0.636 (substantial) across study cases for all criteria A.1 – H.1. The criteria for violence had exceptionally high inter-rater agreement, all being 0.947 and higher. The complexity of the ETIVB-construct transpired when inter-rater reliability analyses were compared between cases in that different cases posed different challenges for inter-rater agreement. The reliability testing across cases however, showed which less agreed-upon items would benefit from refinement.

Chapter 1

Introduction and Overview

The study aims to gain clarity about a particular kind of behaviour, namely emotionally triggered involuntary violent behaviour, by developing and testing criteria whereby it can be identified. The main reason for doing this study and focusing on the behaviour specifically is that psychiatrists need to have clarity about this particular behaviour when providing courts of law with expert testimony. The need for clarity about this behaviour thus arises particularly in the context of court processes. Even though this need arises in the context of court processes, in providing expert testimony psychiatrists need to have clarity on the behaviour *per se* as being distinct from the associated jurisprudential issues. For this reason the study is about *behaviour* and *not* about the jurisprudential issues. Being about behaviour and not about jurisprudential issues, the study is not about court judgments or the interest of good jurisprudence when this particular behaviour is being considered.

The particular behaviour, other than being specified as emotionally triggered involuntary and violent, carries a particularly problematic specification - that is, its being not attributed to a mental disorder. This attribution derives from jurisprudential interests. This specification also exposes the area in which this behaviour becomes particularly difficult, because when attributed to a mental disorder this behaviour poses apparently less difficulty – it may then be explained in terms of the symptomatology of the illness. Hence, this study presents an approach to - this specification to this particular behaviour by which the attribution or the non-attribution of mental disorder does not cloud the conceptual clarity about the behaviour *per se.* Accordingly, the study first examines the behaviour and takes the attribution or non-attribution of mental disorder as a secondary consideration that follows separately from the identification of the behaviour.

Aiming for clarity on the particular behaviour in this study is a rather modest focus, although it is nonetheless challenging, in that it does not propose to examine related sociological matters, the prevalence of the behaviour, or its biological, psychological and social causes. Rather, the study is principally drawing on conceptual means. That means, moreover, the study does not purport to be a quantitative or qualitative study in the ordinary sense of these methodologies, except for its second phase in which the developed conceptual criteria are subjected to quantitative reliability testing.

Instead, being about the behaviour, the study seeks to demarcate conceptually this particular behaviour by drawing comparisons with related concepts used in the psychiatry and court proceedings. Congruently, the methodology of the first phase of the study draws on conceptual analysis and theory of behaviour.

Background and Relevance

The research question arises practically when psychiatrists are called upon to give expert testimony on accused persons who were charged with a crime of violence, usually murder, where the accused person submits a defence to the effect that he or she was so overwhelmed by dysphoric emotions triggered by an upsetting event or events that a court of law should not find him or her guilty of an offence, because the behaviour was in some way or another involuntary owing to the uncontrollable effects of the emotions. This defence goes hand in hand with an insistence that there had been no mental disorder at the time of the alleged offence. However, what counts as such emotionally triggered involuntary violent behaviour (ETIVB) is unclear in both psychiatry and law. Both disciplines use concepts that are related to ETIVB, but they underscore the need for more clarity about ETIVB as will be introduced next.

The Need for Clarity on ETIVB in Psychiatry

Psychiatrists are often called upon to evaluate and comment on the behaviour of an accused person and whether such behaviour qualifies as an “automatism” or an “emotional storm” or for a “non-pathological criminal incapacity” defence. In addition, the psychiatrist is called upon to testify as to whether the relevant behaviour was lacking in an appreciation of wrongfulness, or as an inability to act in accordance with an appreciation of wrongfulness, in South Africa (usually in the terms of sections 77, 78 and 79 of the Criminal Procedures Act (Act 51 of 1977 as amended).

One main difficulty is that psychiatrists are called upon to do so in spite of the absence of adequate conceptual clarity and criteria based on that clarity. Psychiatrists evaluate the behaviour that occurred during an alleged crime of violence, and are informed by the behaviour and other relevant factors surrounding an alleged crime (reported antecedent events, reported emotions, reported cognitions, reported events after the alleged crime etc.). This is done to decide whether or not the accused was or was not able to appreciate wrongfulness and act accordingly. However, making such a decision without a clear conceptualisation and clear conceptual criteria of ETIVB is both difficult and problematic. Psychiatrists or groups of psychiatrists (for example at a certain department or in a certain area) are left to determine their own interpretation of what counts as ETIVB and what does not. Such interpretations are made in the absence of rigorous conceptual and empirical research, for the reason that such research had not been done. This state of affairs is likely to cause confusion and may tarnish the professional reputation of psychiatry in courts. However, psychiatrists’ testifying about these matters are accepted by the professional discipline, often upon demand by the courts in South Africa.[1]

The difficulty for the psychiatrist in testifying about ETIVB without having conceptual clarity about the behaviour is made even more difficult considering the insistence by the courts that this behaviour should not be attributed to mental disorder. In the author's own experience, some psychiatrists in South Africa respond to this by refusing to comment on the behaviour, because, so they argue, if the behaviour is not attributed to mental disorder, then testifying on such behaviour would fall outside the scope of their expertise. Other psychiatrists not only disagree about such testifying being outside their scope of expertise but consider it their duty to give expert testimony in this regard.

Moreover, the specification that the behaviour should not be attributed to mental disorder is part and parcel of the conceptual problem (and the research aim of this study), because when such behaviour is attributed to a mental disorder, this behaviour poses apparently far less conceptual difficulty, for it may then be explained in terms of the symptomatology of the illness. It is then in most instances not that difficult to identify behaviour as a manifestation of illness. Then the critical question, formulated in the Criminal Procedures Act (Act 51 of 1977 as amended), is whether there is a causal connection between the alleged offence (i.e. behaviour) and the mental disorder without requiring that much clarity about the behaviour other than its being a manifestation of illness. In other words, the property of the behaviour that is critical in the psychiatrist's assessment is whether that behaviour is causally connected to a mental disorder. The other properties of the behaviour, for example whether involuntary, are of implicit importance and/or assumed to be clear by virtue of the mental disorder.

However, when required by the courts that the behaviour be not attributed to mental disorder, the properties of the behaviour other than the property of being a manifestation of illness become critical in the identification of the behaviour. Hence, the research question is posed in a way that would address the non-attribution of ETIVB to a mental disorder and the conceptual place of this specification to this particular behaviour. Doing so addresses the need for clarity in this respect as insisted upon by the courts. Doing so also tackles the difficulty at the core, where the conceptual wheel squeaks most, so to speak.

The Need for Clarity on ETIVB in (South African) Criminal Law

The law grapples with the concept of ETIVB as is evident in various takes on the concepts closely related to ETIVB, which are the concepts of automatism; so called "emotional storm"; and "non-pathological criminal incapacity". The law's take on concepts related to ETIVB is confounded by the interests of good jurisprudence, case specific difficulties, legal procedures etc. For example, in referring to "non-pathological criminal incapacity" in a relatively recent verdict by the Supreme Court of Appeal, Judge of Appeal Navsa (Navsa JA) said, "The time has come to face up to the fact that in some instances our courts, in dealing with accused persons with whom they have sympathy, either because of the circumstances in which an offence has been committed, or because the deceased was a particularly vile human being, have resorted to reasoning which is not consistent with the

approach of the decisions of this Court [the South African Supreme Court of Appeal]."[1] Nonetheless, South African courts of law accept the notion that one can (rarely) be so overwhelmed by emotions that were triggered by a severely upsetting event or events, for that to count as a complete defence in cases of violent crimes like murder. However, according to Navsa JA, "…Courts should bear in mind that the phenomenon of sane people temporarily losing cognitive control, due to a combination of emotional stress and provocation, resulting in automatic behaviour, is rare."[2] The threshold that Navsa JA insists on is "automatism", nothing less: "It must now be clearly understood that an accused can only lack self-control when he is acting in a state of automatism."[2]

Lawyers often refer to incidents where a defendant lost control over his or her behaviour due to overwhelming emotions as a defendant having "suffered from an emotional storm". By referring to "emotional storm" lawyers indicate the central role of unruly emotions in the alleged crime. Sometimes the behaviours performed during such alleged crimes are considered to be possible automatisms by a court of law. However, as will be pointed out in the next chapter, it is not completely clear when behaviour should be considered as an automatism. Consequently, different courts may interpret 'automatism' differently. This holds not only for South African courts, but also for courts in other countries. This will be revisited in more detail in the next chapter.

In summary, the practical relevance of this study focusing on the particular behaviour (ETIVB) lies with the development of conceptual clarity on and reliable criteria for the identification of this behaviour, which offer the possibility of first, providing psychiatrists with the tools to equip them better for their task, thereby being of more value to a court in clarifying conceptual confusion regarding "non-pathological criminal incapacity," and ultimately to serve the jurisprudential interests of society more effectively in this regard. Clarifying the concept of ETIVB and developing conceptual criteria should help to alleviate at least some of the difficulties about ETIVB for psychiatrists and courts alike. This study hopes to be instrumental in doing so, notwithstanding that further conceptual and empirical work will need to follow.

Overview of the Study

In pursuit of the above aim, the methodology of the study is described in Chapter 3. But before that, Chapter 2 considers the concept of automatism in more detail, for that underscores the need for clarity and the issues at stake. It is shown that an automatism, being a particular type of involuntary behaviour, is described differently by different experts in psychiatry (and medicine) and the law. Those differences are significant and are likely to give rise to confusion. Although there are differences in how automatism is described, in forensic psychiatry, whether practiced in South Africa or in other countries, automatism always refers to a particular involuntary behaviour. This aspect of automatisms is taken up and examined in the ETIVB-construct, but the concept of automatism is set aside for this study owing to its confusing historical references.

Following the methodology Chapter, Chapters 3 to 6 describe the ETIVB-construct. The description begins at the core of the construct in Chapter 3, namely 'violent behaviour'. The subsequent chapters specify the 'violent behaviour' progressively as 'emotionally triggered', and 'involuntary'. Once the ETIVB-construct was clarified in the foregoing manner, we shall turn to how 'ETIVB' can be recognised in practice.

In essence, Chapter 3 describes 'violent behaviour' in 'ETIVB' in terms of its consequences, namely observable physical injury or damage. Furthermore, 'violent behaviour', being a particular behaviour, may be described in terms of a behaviour analysis. That is, as having a topography, frequency, duration, latency, intensity, quality and context. The context may also be specified in behavioural theory terms as having antecedents, the behaviour itself, and consequences.

Developing the ETIVB-construct further, the 'violent behaviour' in 'ETIVB', is specified as 'emotionally triggered' in Chapter 4. Emotions in the ETIVB-construct are distinguished from their antecedent stimuli, which should not be confused with the triggering effect of the 'emotions' or the 'violent behaviour' they trigger. This is clarified in terms of a chain of events, beginning with an antecedent stimulus, followed by emotions, a behavioural response, and the consequences of the behavioural response, being observable physical injury or damage. In the exploration of 'emotionally triggered', this chain is followed for purposes of distinguishing between the emotions and the antecedent stimulus, even though they are both required concurrently in 'ETIVB'. In a similar manner, emotions are distinguished from the behaviour they trigger, yet both necessarily occur concurrently in 'ETIVB'. The 'emotions' in turn must be severe negative emotions that result in 'involuntary violent behaviour' and its consequences. These considerations include descriptions of the relations between emotions and stimuli, as well as between emotions and socio-cultural context, in 'ETIVB' are described.

Having clarified 'violent behaviour' and 'emotionally triggered', the last chapter in developing clarity about the ETIVB-construct addresses 'involuntary' in 'ETIVB'. Thereby, 'involuntary' in 'ETIVB' refers to an inability to exercise control and choice about performing violent behaviour. Being about 'violent behaviour', 'involuntary' in 'ETIVB' is not about acts of omission, but about acts of commission. Moreover, 'involuntary' in 'ETIVB' is distinct from the legal concepts of 'culpability', 'duress' and 'necessity'. It is argued that involuntary as an inability to exercise control and choice regarding violent behaviour is preferable to describing 'involuntary' in terms of behaviour that cannot be helped, behaviour that is not willed, behaviour that is performed unconsciously, and behaviour for which there is amnesia. 'Involuntary' in 'ETIVB' is further clarified by comparing it with social involuntariness, involuntary autonomic functions, involuntary body movements, and involuntariness related to psychiatric disorders.

Chapter 7 builds on the previous chapters, by describing how 'ETIVB' may be recognised in practise, translating the conceptual work of the preceding chapters into ways of recognising the violent

behaviour, the 'violent behaviour' as being emotionally triggered', and the 'violent behaviour' as being involuntary in practice. That sets up Chapter 8, which is about the construction of an assessment instrument that brings the work of the preceding chapters together. The ETIVB-instrument is a research instrument comprising a set of criteria by which ETIVB is meant to be identified in practice.

The issue of attributing or not attributing mental disorder to 'ETIVB' that hitherto has been put on hold for purposes of first gaining clarity on the behaviour *per se* is addressed in Chapter 9. The chapter suggests, that in the application of the ETIVB-instrument, the attribution (and non-attribution) of 'ETIVB' to a mental disorder or the like should be a secondary consideration after the candidate behaviour has been assessed for whether it qualifies as being 'ETIVB'.

The ETIVB-instrument that was formulated in Chapter 8 was applied to all the study cases by the researcher. It is actually so that the researcher applied draft ETIVB-criteria to the study cases from the start of the process of gaining clarity regarding 'ETIVB'. Chapter 10 presents 2 of the study cases as demonstrations of how the researcher used the ETIVB-Instrument, while Chapter 10 reports the results of the researcher's final assessment of all the study cases. It will be reported that by using the ETIVB-Instrument only one study case qualified as 'ETIVB'. Most cases did not qualify as 'ETIVB', while the outcomes of some cases were uncertain for reasons that will be clarified.

Supported by Chapters 4 to 11, the validity of the ETIVB-instrument is considered in Chapter 12. It will be shown that although predictive validity of ETIVB-instrument cannot be evaluated, the ETIVB-Instrument nonetheless has face validity, content validity and construct validity. Having demonstrated the validity of the ETIVB-Instrument, Chapter 13 is about its reliability. It will be demonstrated that the ETIVB-Instrument has satisfactory reliability. However, as will be shown, there are areas where the ETIVB-Instrument can be improved. Modifications to the ETIVB-Instrument and Attributive Considerations of ETIVB are discussed in Chapter 14. In Chapter 14, the final chapter of the study, proposals for a refined version of ETIVB-criteria and Attributive Considerations of ETIVB are presented.

Chapter 2

Emotionally Triggered Involuntary Violent Behaviour and Automatism

The previous chapter has introduced the context that underscores the need for clarity on emotionally triggered involuntary violent behaviour – a context in which the concept of automatism contributes to the muddle. Nonetheless, since this thesis aims to examine behaviour principally without the potential blurring effects of jurisprudential concerns of culpability, the term, automatism, will be averted. It should be clear why the term automatism was averted as being not suitable for the clarification sought through this thesis. Thus, in this chapter the relationship between 'ETIVB' and 'automatism' will be described with the objective to clearly differentiate between the concepts for the remainder of the thesis. That is, the thesis will clarify involuntary (violent) behaviour that is emotionally triggered, and not whether that involuntary (violent) behaviour counts as an automatism. In other words, the thesis is about the potential involuntariness of emotionally triggered violent behaviour, irrespective of it counting as an automatism. Nevertheless, the need for the ETIVB-construct came about because of the lack of clarity on the concept of an automatism. That means some may consider 'ETIVB' a form of automatism while others may not. For example, as will be discussed below, some authors like Briscoe et al.[3] consider impaired consciousness as a necessary feature of an automatism, while others do not. Those who do not take impaired consciousness as an indicator of automatism, emphasise the loss of control over behaviour as the main consideration,[2,4] The inability to control behaviour is also a critical feature of 'ETIVB', meaning that 'ETIVB' and that sense of an automatism are similar indeed. Notwithstanding, there are other differences as will be discussed in this chapter.

Since 'ETIVB' is about emotionally triggered involuntary violent behaviour, there is a specific subtype of automatism (if one can call it that) that is specifically relevant to 'ETIVB'. That subtype is the psychological blow automatism. Psychological blow automatism is primarily used in the context of a defence in criminal law, and not as a construct in medicine.[5-9] Thus, the construct, psychological blow automatism, has more meaning in law than it has in medicine (or more specifically psychiatry). Yet psychiatrists (and psychologists) may be called upon to give expert evidence relevant to psychological blow automatism. On such evidence a lawyer may base his or her client's legal defence. Consequently psychological blow automatism is also of importance to psychiatrists. Despite the fact that psychiatrists can be called to testify about psychological blow automatism, there is no generally accepted definition of psychological blow automatism, or clear guidelines on how to establish evidence for it in a specific case. Despite that being so, one can still infer what is meant by psychological blow automatism form the literature in which this concept is used. Accordingly, psychological blow automatism is used to denote involuntary behaviour (which within context means involuntary violent behaviour that makes out a possible crime) that follows a severely distressing

emotional trigger.[5-6,9] Moreover, the behaviour involved in psychological blow automatism is not due to a mental disorder, and, as can be inferred from descriptions of it, psychological blow automatism is also not a consequence of a medical illness (which may affect the mind but is not considered a mental disorder in criminal law) or a substance. Not being the result of a mental disorder, medical condition or substance, the violent behaviour of the psychological blow automatism is assumed to be the consequence of dissociation that is evoked by severe emotional trauma. However, the dissociative process of the psychological blow automatism is not considered to be a mental disorder. However, despite psychological blow automatism not being regarded as a mental disorder, some courts may prefer to regard it as a mental disorder. This happened for example in the Canadian case, R v Stone.[9]

Psychological blow automatism is assumed to be due to dissociation, but that assumption does not underpin 'ETIVB'. For reasons that will become clear in later chapters, 'ETIVB' is assumed to be the result of severe to extreme negative emotional arousal, mediated by the limbic system, that overcomes the usual behavioural control mechanisms of the brain mediated by the frontal lobes. Although the researcher does not assume that this process is one of dissociation, others may be of the opinion that 'ETIVB' is a form of dissociation. The reason for that possible disagreement resides in there being controversy about how dissociation is conceptualised.[10-11] Consequently, it may for example be said 'ETIVB is a form of dissociation since it involves loss of control over motor movements, which is also a feature of dissociation (at least in some definitions.[12-13] However, 'ETIVB' refers to much more specific behaviour than can arguably be subsumed as dissociative. As will be seen in later chapters, there are limits to what counts as 'involuntary' 'violent behaviour' in 'ETIVB'. Such limits would be inappropriate if the mechanism of 'ETIVB' were to be considered dissociative. For example, the relatively brief latency between 'triggering event' and 'violent behaviour', the relatively brief duration of 'violent behaviour', and the relatively unsophisticated behaviour in 'ETIVB' need not describe dissociative violent behaviour in general. If dissociation is assumed to be relevant to 'ETIVB', longer latency and duration periods for the 'violent behaviour' should be allowed that required for 'ETIVB'. Moreover, if dissociation is assumed to be relevant to 'ETIVB' allowances should be made for relatively sophisticated behaviour, because sophisticated behaviours occur during dissociation, for example in dissociative identity disorder.[12,14] However, as will be seen, relatively sophisticated violent behaviour is not congruent with 'ETIVB'.

Having clarified this distinction between 'ETIVB' and psychological blow automatism, more will be said about automatism in a South African context. To the best of my knowledge the term, psychological blow automatism, is not generally used in South African courts. In South-African courts the term, "sane automatism"[2,15-17] is used. Sane automatism however, is a broader concept than psychological blow automatism, since it incorporates any automatism that is not due to a mental disorder.[15-16] Thus, what would be called psychological blow automatism in countries like Canada and Australia would be included under sane automatism in South Africa. In South Africa even the term sane automatism has come to being used less often, courts now preferring to speak about non-pathological criminal incapacity.[15] However, as pointed out by the South African Supreme Court of Appeal in *S v Eadie*,

non-pathological criminal incapacity in South Africa means automatism.[2] However, despite insisting that non-pathological criminal incapacity means automatism, the Supreme Court of Appeal did not describe what it means by automatism. Therein, namely what automatism is, lies to problem as will be described next.

Automatism: an Unclear Concept

Authors in forensic psychiatry readily acknowledge the problem about what automatism means. Peter Fenwick, for example, wrote, 'Where the professions [referring to the legal and medical professions] differ is on what constitutes automatism and what constitutes unconsciousness, and this remains a point of conflict'.[18] The issue Fenwick raises, namely about what is meant by unconscious, played out during the trial of the Canadian case, R v Stone,[9] where unconsciousness meant, "flat out on the floor" to a psychiatrist, but as can be inferred from the text, not-being-aware to the lawyers. Julio Arboleda-Flórez wrote that, "Automatism in law, therefore, is fraught with deep social and political implications, let alone scientific controversies about its existence outside of a narrow range of neurological and psychiatric conditions.[19] Also, recognising that automatism is a contentious issue, Sean Kalisky, a forensic psychiatrist in South Africa, wrote that few concepts have caused so much confusion in the courts as automatism.[16] The reason the topic is so controversial seems to stem from the issue of responsibility – an issue that the law grapples with. Automatism may be a complete defence in South African law[15] as well as in many other places in the world.[19] Because it may be a complete defence, automatism is regarded with scepticism by South African courts.[15] Apart from automatism being a term loaded with judgments about responsibility and jurisprudential considerations, there is also a lack of general agreement about what it means. The subsequent paragraphs do not aim to clarify automatism per se, which was attempted by others,[4,19] but to show the lack of clarity regarding automatism and the established use of it in relation to jurisprudential issues. Considering the lack of clarity and accepting the jurisprudential connotations to 'automatism', this thesis strategically constructed the concept of ETIVB by which the behaviour is clarified without the blurring effects of issues about responsibility and good legal process and judgment.

To demonstrate the differences in opinion about what 'automatism' means, and the confusion that may arise due to descriptions of automatism, four psychiatric descriptions of automatism will be compared, namely those of Simon,[20] Sadock,[21] Briscoe et al.,[3] and Sean Kalisky.[2] The reasons for choosing the descriptions of these authors are that the first three are captured in textbooks of psychiatry, and the fourth, although a description given in court, is by someone who is the editor of "Psycholegal Assessment in South Africa" (a textbook of forensic psychiatry).[22] Thus, the descriptions by these authors are likely to be fairly well-established.

All descriptions have it that an automatism involves involuntary behaviour by either stating it explicitly (Briscoe et al.[3]) or implicitly as behaviour that is unconscious (Simon and Sadock[20-21]) or over which

there is no control (Kalisky[2]). Although they agree about automatism being involuntary, the role of impaired consciousness in an automatism is, however, a contentious matter.

Unconscious behaviour is a central requirement for behaviour to be considered an automatism according to Simon[20] and Briscoe et al.,[3] but not so in the descriptions of Sadock[21] and Kalisky.[2] For Sadock it is about behaviour about which one has no conscious knowledge,[21] while for Kalisky it is about loss of control over behaviour, stated as "...where one's cognitive functions are absent and consequently one's actions are unplanned and undirected.[2]" By unconsciousness, Briscoe et al. mean mental obfuscation.[3] For Simon unconscious may include mental obfuscation, but it is not clear that mental obfuscation is a requirement, because Simon allows for "dissociation without full awareness",[20] while and Sadock writes about "…activity carried out without conscious knowledge…[21]" On the one hand Simon refers to conditions that cause mental obfuscation as examples of automatism, but he also allows for "dissociation without full awareness".[20] It is not clear what "without full awareness" would mean. Does it for example mean partial awareness? Does dissociation without full awareness mean being in a dissociative daze as may happen after a severe traumatic experience, or does it include the states of having a clear sensorium as found during the dissociative states of dissociative identity disorder? Answers to these questions are not clear. For Sadock automatism is about behaviour of which one has no knowledge.[21] However, not having knowledge of one's behaviour does not mean the behaviour was done during mental obfuscation, because the behaviour could also have been done with a clear sensorium during a dissociative state. However, not having conscious knowledge of one's behaviour does not mean it was involuntary. That is so, because if the behaviour is forgotten for some reason, that does not say anything about whether the behaviour was involuntary even though one would also have no knowledge about the behaviour. Yet, the behaviour would technically fit the description of Sadock's 'automatism', creating confusion by virtue of an inappropriate overinclusiveness.

Where confusion may arise from describing automatism as behaviour about which one has no knowledge, confusion may also arise from descriptions requiring impaired consciousness. The descriptions of automatism given by Simon and Briscoe et al. as well as by Kalisky may give rise to another confusing issue in that they require the behaviour of automatism not to be goal directed.[2-3,20] The reason for confusion is that there are automatisms with behaviour that may be, or may seem to be goal directed. Examples are complex partial seizures[23] and the dissociative behaviour (should it be considered an automatism) in dissociative identity disorder.[12,14]

In addition, Simon explicitly brings the issue of will into his description of automatism by writing that an automatism is done without will.[20] The issue of will is not explicitly raised by Briscoe et al., Sadock or Kalisky. However, Briscoe et al. requires an absence of planning,[3] while Kalisky requires an absence of cognitive functions.[2] An absence of planning and cognitive functions may imply an absence of will. By an absence of will, it is meant that behaviour occurs that the person does not will into its happening. Perhaps it may be more clearly stated as behaviour the person cannot control; that even if

he or she chooses not to do it, the behaviour still happens (because he or she cannot control it). The matters of control and choice will considered further in Chapter 6.

Collectively, the themes the psychiatric authors Simon, Briscoe et al., Sadock, and Kalisky present in their descriptions of automatism are behaviour that occurs with impaired consciousness, behaviour done without full awareness, behaviour about which one has no knowledge; behaviour that is not willed, planned, purposeful, that is not produced intentionally, where cognitive functions are absent and behaviour a person cannot control. The same themes regarding the descriptions of automatism arise from the legal profession. In the much quoted R v Charlson,[24] Judge Barry said, "If he did not know what he was doing [cf. and absence of knowledge], if his actions were purely automatic and his mind had no control over the movement of his limbs [cf. no control], if he was in the same position as a person in an epileptic fit [which may include all the mentioned themes] and no responsibility rests on him at all, then the proper verdict is "not guilty" of all the three charges." The same themes present in another much quoted case is R v K[25] where, "Automatism is a term used to describe unconscious, involuntary behaviour, the state of a person who, though capable of action is not conscious of what he is doing. It means an unconscious involuntary act where the mind does not go with what is being done." Unconscious, as used in R v K, means mental obfuscation. However, automatism is viewed in a new light since a recent landmark Canadian case, R v Stone.[9] In that case unconsciousness was not considered a key requirement for automatism. Judge Bastarche, speaking for the majority of the panel of judges said, "Furthermore, lack of voluntariness, rather than consciousness, is the key legal element of automatism."[9] That unconsciousness is not a key requirement for automatism, is also a theme that Stanley Yeo took up in his writings on automatism. According to him, the issue in automatism is not whether the person is unconscious in the event of an automatism, but whether he or she is able to control his behaviour.[4]

This chapter has shown that the term automatism carries a loaded meaning in law, namely being possibly not culpable, and that there are different opinions about what automatism means. Since this thesis aims to examine behaviour principally without the potential blurring effects of jurisprudential concerns of culpability, the term, automatism, will be averted. It should be clear why the term automatism was averted as being not suitable for the clarification sought through this thesis. Thus, in describing and clarifying 'ETIVB' in the course of the following chapters, it will be about involuntary behaviour and not about responsibility. That is justified because involuntary behaviour does not necessarily mean not being responsible or not being culpable. That for which a person may be held responsible is another matter even if based on clarity about the 'ETIVB'. One may add that it is probably more appropriate for the psychiatrist to judge about behaviour than about responsibility (for which society uses courts among others). The next chapter describes the methods in gaining clarity on the ETIVB-construct, distinct from the concept of automatism.

Chapter 3

Methodology of the study of Emotionally Triggered Involuntary Violent Behaviour

The aims of the study are to describe the construct of emotionally triggered involuntary violent behaviour (ETIVB), consider the issues of attributing this behaviour to mental disorder, derive and formulate criteria as well as develop an instrument with which to assess whether candidate behaviour qualifies as ETIVB, and to establish the validity and reliability of that instrument. These aims are pursued in two parts. Part 1 develops criteria for the identification of ETIVB and establishes their validity. Part 2 tests the reliability of the criteria for 'ETIVB' developed in Part 1.

In order to meet the aims of the study a combination of conceptual and empirical methods are used. For developing criteria of ETIVB, that is part 1 of the study, two methodological approaches are followed. They are followed concurrently, whereby one method informs the other and vice versa. The first methodological approach draws on conceptual analysis for the clarification of the individual components of 'ETIVB'. These components are 'violent behaviour', 'emotionally triggered', and 'involuntary'. As the conceptual understanding of the individual components of 'ETIVB' develops, draft criteria are formulated. By using the second methodological approach, these draft criteria are applied to the verdicts of criminal court cases and one non-criminal (bunt nonetheless violent) event. This makes up the empirical component of Part 1. At the same time, for both these methodological approaches, the conceptual component is informed by behaviour theory as used in therapeutic behaviour modification interventions. The subsequent part of the study tests empirically for reliability after the criteria has been compiled into a clinical instrument for the identification of ETIVB.

Part 1: The Conceptual Component of the Study

Presenting the methodology of this study will begin with the conceptual component of the study. First the aims and objectives will be described, followed by the methods for the conceptual component.

Aim and Objectives

In order to develop, explore and clarify what is meant by the ETIVB-construct, to format criteria for the ETIVB-construct, and to establish their validity, the overarching guiding question is, "what counts as 'ETIVB'?" After much grappling in the process described below, it has become apparent that this question would hardly be possible to address when not separated from causal-attributive

considerations, specifically the requirement on which courts of law are keen, namely that the behaviour should not be attributed to mental disorder. Hence, this attribution or lack thereof is suspended as a secondary consideration only after the behaviour has been made clear. This is a research strategy to gain conceptual clarity on the specific behaviour first. As it has turned out it is furthermore the suggested practical strategy when psychiatrists assess candidate behaviour for counting as 'ETIVB'. More will be said about the latter in Chapters 7, 8 and 9.

The secondary objectives to the overarching question, "what counts as 'ETIVB'?" is to:

a) Ascertain what counts as 'violent behaviour' in the 'ETIVB', addressed in Chapter 4.

b) Ascertain what counts as 'emotionally triggered' in the 'ETIVB', addressed in Chapter 5.

c) Ascertain what counts as 'involuntary' in 'ETIVB', addressed in Chapter 6.

d) Ascertain the conceptual differences and similarities between the 'ETIVB' and similar behaviours 'not attributed to a mental disorder', addressed in Chapters 9, 11 and 12.

e) Ascertain the conceptual differences and similarities between 'ETIVB' and similar behaviours attributed to a mental disorder, addressed in Chapter 9, 11 and 12.

f) Ascertain which are necessary, sufficient, contingent, and incongruous conceptual conditions for candidate behaviour (the potentially involuntary violent behaviour under consideration) to qualify as 'ETIVB', addressed in Chapters 4 to 12.

g) Construct and refine a set of criteria for the identification of the 'ETIVB' from the preceding examinations (a to g), addressed in Chapters 7, 8, 10 – 12.

Methods (of the Conceptual Component)

This study follows the approach of the Oxford philosopher, J.L. Austin,[26] who encouraged an empirical approach for analysing concepts. Thereby, the actual *use* of concepts is taken as a better guide to meaning than mere passive reflection. Like this study, Austin used the proceedings of courts of law for his examination on the concept, 'excuse', which culminated in the paper, "A Plea for Excuses" in 1956.[26] The present study however, does not focus on 'excuses', but on a particular behaviour (which may or may not count as an 'excuse'), namely involuntary violent behaviour that is triggered by emotions.

Since the focus of this study is on a particular (observable) behaviour, the above mentioned Austinian approach is supplemented by behaviour theory. Behaviour theory (and its clinical component namely behaviour analysis) is used to inform the secondary objectives of Part 1 (a – g). The properties of behaviour are used in the examination of emotionally triggered involuntary violent behaviour.

The measures needed to address the objectives (a - g as stated above) will be described in steps. It is done to present the method clearly even though the processes of gaining clarity about what behaviour counts as 'ETIVB' and what criteria identifies 'ETIVB' are actually not clearly distinct processes that has unfolded in a step-wise fashion. Rather, the process of gaining clarity about what behaviour counts as 'ETIVB' and what criteria identifies 'ETIVB' are intimately associated with each other. Thus, while clarifying the ETIVB-construct (by addressing the objectives, a – g), new draft criteria are formulated each time greater clarity has been gleaned about what respectively counts as 'violent behaviour', 'emotionally triggered' and 'involuntary'. The draft criteria so formulated are then tested against criminal case law (the study cases described under the heading, "Materials"). The reason for challenging the draft criteria against the study cases is to reveal the strengths and shortcomings of the draft ETIVB-criteria. If shortcomings are discovered it will require rethinking the individual concepts. Rethinking and reshaping the individual concepts will then deliver greater clarity, which in turn will ultimately result in changes to the draft ETIVB-criteria. This iterative process continues until a point of saturation is reached. That is, a point where no further changes seem necessary or possible for further clarification of the ETIVB-construct.

Step 1 (Formulating Draft ETIVB-Criteria)

At the start of the study a very preliminary set of draft ETIVB-criteria has been formulated. This set of criteria has served as a practical starting point. They have been based on the researcher's experience and knowledge of forensic psychiatry. They are:

The Triggering Event

The triggering event was of such a nature that most people sharing the culture of the individual would accept it as a matter of self-evident truth that it could have had an extremely distressing effect on almost any person in that culture who is otherwise considered as not suffering from a mental disorder.

Emotional (Reaction)

The "subject" experienced an intensely/overwhelmingly distressing emotion that is readily recognizable as such by an 'experienced/mature/reputable in some way' person. Irrespective of the quality of the distressing emotion, it should be intensely unpleasant and there should have been a sense of having been overwhelmed by the emotion.

Violent (Behaviour)

Violent behaviour is behaviour that seems to be / appears to be / and may indeed have been performed with the intention to cause significant harm or damage irrespective of whether such harm or damage actually occurred.

Involuntary Behaviour

The individual who experienced the triggering event and the intensely/overwhelmingly distressing emotion experienced the behaviour consequent to the intensely/overwhelmingly distressing emotion as having occurred without his or her intending to behave in that way; in other words it was experienced as having been outside the control of the individual. It was rather like the behaviour happened to him or her instead of he or she executing the behaviour intentionally.

Attribution

The intense/overwhelming distressing emotion consequent on the triggering event is not better accounted for by a mental disorder as described by the DSM IV-TR or ICD 10.

Step 2 (Challenging and Refining Draft ETIVB-Criteria)

Step 2 will be described as involving two different tracks. Track 1 is about challenging potential ETIVB-criteria against cases, while Track 2 is about clarifying 'violent behaviour', 'emotionally triggered' and 'involuntary' in the ETIVB-construct by using an approach that draws on conceptual analysis. Thus, Step 2 consists of two more or less contemporaneous tracks (one nonetheless informing the other), each with its own emphasis on route to clarifying the ETIVB-construct and formulating criteria for it.

Track 1 (Challenging and Refining Draft ETIVB-Criteria against Cases)

Track 1 is about challenging potential ETIVB-criteria against criminal case law. The steps involved in that process are described below.

Track 1.1 (Initial Exploration of Draft ETIVB-Criteria against Cases)

Armed with the preliminary set of draft ETIVB-criteria set out in Step 1, the researcher identified published criminal cases against which the preliminary draft ETIVB-criteria could be challenged. These criminal cases were not the same as those identified by purposive sampling as the study cases (the process of the purposive sampling is described below under "Materials"). The criminal cases used in "Step 2" were cases that had been rejected for the main study, because they obviously had not fitted in with the concept "psychological blow automatism"[5-9] That was so because, they do not involve any 'violent behaviour' (which will be clarified in Chapter 4), or they do not involve being 'emotionally triggered' (which will be clarified in Chapter 5), or they do not involve an automatism (or, more clearly, 'involuntary behaviour' as clarified in Chapter 6). Nevertheless, it has become apparent

that some of these rejected cases might be helpful to pilot the method that is set out below in “a” to “g”.

A pilot study would give the researcher some experience with the method of testing criteria against published criminal cases and some experience in ironing out obvious problems regarding both what is meant by the individual elements of ‘ETIVB’ (namely ‘violent behaviour’, ‘emotionally triggered’ and ‘involuntary’) as well as problems regarding the clarity of the criteria.

In the way described above, 7 cases were selected from the rejected cases. All the pilot study cases are published in the “South African Criminal Law Reports”. I shall list the cases and clarify why they were used as well as why they are far removed from counting as ‘ETIVB’.

S v Alfeus 1979 (3) SA 145 (A): The case is about possibly performing an illegal act out of necessity (under duress). The case does not involve any violent or involuntary behaviour.

R v Damascus and Others 1965 (4) SA 598 (SR): The case is also about possibly performing an illegal out of necessity (under duress). The case does not involve any violent or involuntary behaviour.

S v Kibi 1978 (4) SA 173 (E): The case is about a sworn statement allegedly made under duress while in police detention. The case does not involve any violent or involuntary behaviour.

S v Pretorius 1975 (2) SA 85 (SWA): The case is about possibly violating traffic laws out of necessity. The case does not involve any violent or involuntary behaviour.

S v Rabodila and Others 1974 (3) SA 324 (O): The case is about possibly violating border control laws out of necessity. The case does not involve any violent or involuntary behaviour.

Rex v Victor, 1943, TPD 77: The case is about automatic behaviour following a spontaneous epileptic attack that happened while driving. The consequence of the epileptic attack was an accident that resulted in damage to property, but not to injury to people. There was no emotional trigger.

S v Van Rensburg 1987 (3) SA 35 (T): The case is about a reputable incidence of mental confusion due to hypoglycaemia that happened while driving. The consequences of the hypoglycaemia are that traffic laws have been broken and that an accident have occurred, but without injury to people (as far as might be inferred from the report). There is no emotional trigger.

Track 1.2 (Systematic Behavioural Challenging of Draft ETIVB-Criteria against Cases)

Having identified the criminal case studies presented in Track 1.2, the following steps are used to apply the preliminary set of draft ETIVB-criteria to the study cases:

a. A behavioural analysis, in line with the general properties of behaviour as described in behaviour theory,[27] is done for each case. However, unlike in "Step 3" below, the behavioural analysis has been cursory.

b. Having done the analyses in "a" above, the preliminary draft ETIVB-criteria are applied to the first case with the purpose of challenging the usefulness of the criteria to identify the ETIVB-construct.

c. While applying the ETIVB-criteria it has been noted whether individual criteria are met or not met, whether meeting or not meeting the individual criteria are in line with what is understood by psychological blow automatism, whether the individual criteria are useful to identify the ETIVB-construct (meaning that assessing face validity of the ETIVB-criteria has always been part of the process), whether the individual criteria are clear and easy to understand, and whether are any other practical issues that may need reformulation.

d. Problems identified in "c" above are addressed by refining the preliminary draft ETIVB-criteria.

e. The refined version of the preliminary draft ETIVB-criteria is then reapplied to the first case (or all of the cases to which it has already been applied) and, in the process of doing so, "c" and "d" above are repeated.

f. Steps "c", "d" and "e" are repeated until no further modifications are apparent. That is, when a point of saturation (as far as modifications) is reached.

g. Once saturation is reached as described in "f", a new case is introduced against with which to challenge the preliminary draft ETIVB-criteria. For example, at the point where saturation has been reached by challenging the preliminary draft ETIVB-criteria against *S v Alpheus*, the next case, *R v Damascus and Others* is introduced. Any modifications resulting from *R v Damascus and Others* is then tested again with both *S v Alpheus and R v Damascus and Others*, which again may lead to modifications and a new version of the preliminary draft ETIVB-criteria. That last (new) version of the criteria is then again applied to both cases, and so on until saturation is reached. At that point *S v Kibi* is introduced and the whole iterative process repeats itself until a final point of saturation is reached after having applied the preliminary draft ETIVB-criteria to all 5 cases.

At the point of “final saturation” a set of draft ETIVB-criteria was formulated. This set of criteria was then to be used in Step 1.3. The method described in “a” to “g” is the same method that was used for the main study cases (which will be introduced shortly).

Note: During this pilot study it has become apparent that, while keeping the ETIVB-construct close to what is meant by a psychological blow automatism, attributive considerations like mental disorder needs to be separated from the ETIVB-criteria proper. Consequently the heading, “Attribution”, which has appeared in the first set of preliminary draft ETIVB-criteria above, has fallen away.

Track 1.3 (Refinement of Draft ETIVB-Criteria against Case)

The set of draft ETIVB-criteria that has been formulated in Track 1.2 are applied to the study cases (see under the heading, “Materials”. The same process (“a” to “g”) described in Step 2 is used to challenge the draft ETIVB-criteria with. However, this time around a thorough behavioural analysis (and not a cursory one) of the candidate behaviour (the allegedly criminal violent behaviour) has been performed before the draft ETIVB-criteria are applied to a study case (see next paragraph). This is done for all 27 study cases. The iterative process described in “a” to “g” (in Track 1.2) is continued until a point of saturations is reached, that is, when no further modifications to the draft ETIVB-criteria are apparent.

While doing a behavioural analysis the following are identified regarding the candidate behaviour: antecedents, response (or behaviour), and consequences (which could be antecedents for further responses and consequences until the chains of behaviour stop.[28]) Furthermore, the behaviours are assessed in terms of latency (the time between stimulus and behaviour), duration (the time the behaviour lasts), frequency (how often the behaviour occurs in a given period of time), topography (what the behaviour looks like), intensity (the force exerted by the behaviour), and quality (an assessment of how skilful the behaviour is performed).[27] Over and above the behavioural analysis, emotions that occur during the behaviour are also assessed regarding their quality and intensity.

When saturation has been reached (having applied the iterative process in “a” to “g”), and when the processes described in Track 2 below have been completed, the draft ETIVB-criteria becomes the ETIVB-criteria (or ETIVB-Instrument) that will be used during the reliability component of this study.

Track 2 (Conceptual Clarification of the ETIVB-Construct)

Track 2 is about clarifying ‘violent behaviour’, ‘emotionally triggered’ and ‘involuntary’ in the ETIVB-construct. Doing so uses an approach that draws on conceptual analysis.

Track 2.1 (Conceptual Clarification of 'Violent Behaviour' in 'ETIVB')

Track 1.2 initiates a strategy to build up clarity about 'violent behaviour', which progressively will be specified as 'emotionally triggered' and 'involuntary' in subsequent steps. This step addresses the question of what counts as 'violent behaviour' in 'ETIVB' as under point "a" in the secondary objectives stated above. The clarification about what counts as 'violent behaviour' in 'ETIVB' is the topic of Chapter 4.

To address the question, "What counts as 'violent behaviour' in 'ETIVB'?" both academic literature and information gleaned during Step 1 and Step 2 of Track 1 above are used. To ascertain what violent behaviour means, and specifically how they are used in psychiatry, and even more specifically what counts as 'violent behaviour' in 'ETIVB', dictionaries and a textbook on psychiatry are used. Here, the sources will be mentioned briefly, but in Chapter 4 the specific references are given as appropriate. The dictionaries are "The Concise Oxford Dictionary of Current English, Eighth Edition",[29] the "Merriam-Webster" (an online dictionary at http://www.merriam-webster.com), and "The Mondofacto Online Medical Dictionary" (an online dictionary at http://www.mondofacto.com/dictionary). The textbook of psychiatry is, "Kaplan & Sadock's Comprehensive Textbook of Psychiatry, Ninth Edition".[30]

Both the online version and the book version of "Kaplan & Sadock's Comprehensive Textbook of Psychiatry, Ninth Edition" are used. Using the online version with the search key phrase, "violent behavior", has yielded 56 hits. The 56 hits are scrutinised to glean what violent behaviour means and how violent behaviour is used in psychiatry. It is done by determining the context in which the phrase, "violent behaviour", is used. More specifically single themes and groups of related themes regarding violent behaviour have been identified until saturation has been reached. From the single themes and groups of related themes the uses and meanings of violent behaviour in psychiatry, and specifically clarity about what counts as 'violent behaviour' in 'ETIVB' has been clarified. The outcome of Track 2.1 is reported in Chapter 4.

Track 2.2 (Conceptual Clarification of 'Emotionally Triggered' in 'ETIVB')

Track 2.2 proceeds with the strategy to build up clarity concerning the ETIVB-construct, now by exploring what counts as 'emotionally triggered' in 'ETIVB' (thereby addressing point 'b' in the secondary objectives stated above). To address the question, "What counts as 'emotionally triggered' in 'ETIVB'?" both academic literature and information gleaned from the previous steps above were used.

To ascertain what the phrase, "emotionally triggered", means and specifically how it is used in psychiatry, and even more specifically how it is to be used in 'ETIVB', dictionaries, a textbook on psychiatry and a textbook on behaviour modification are used. Here, the sources are the same as

mentioned in Step 4 above, namely the dictionaries "The Concise Oxford Dictionary of Current English, Eighth Edition",[29] the "Merriam-Webster", and "The Mondofacto Online Medical Dictionary", while the textbook of psychiatry is "Kaplan & Sadock's Comprehensive Textbook of Psychiatry, Ninth Edition". Proper reference will be made to these sources in Chapter 5.

Both the online version and the book of "Kaplan & Sadock's Comprehensive Textbook of Psychiatry, Ninth Edition" are used. The online version is used to do an electronic search with the search terms, "emotion", and "behavior". The hits resulting from the search terms are then further explored to ascertain how the words "violent" and "behaviour" are used in psychiatry. Furthermore, searches are made employing the keywords and key phrases, "emotion", "emotional behaviour," "emotional outburst," and "violent behaviour", and "emotional outburst." These search terms has yielded 284 hits. Other search terms namely, "overwhelming anger", "overwhelming aggression", "overwhelmed by anger", "overwhelmed by aggression", "overwhelmed by emotion", "overwhelming emotion", "anger outburst", "aggressive outburst", "outburst of aggression", "outburst of violence", "violent outburst", "emotional violence", "violent emotion", and "disruptive emotion" delivered have yielded no hits.

The 284 hits are then scrutinised to glean how the word, emotion, is used in psychiatry. It is done by determining the context in which the word, emotion, words related to emotion, and phrases related to emotion are used. More specifically single themes and groups of related themes regarding those words and phrases are identified until saturation is reached. From the single themes and groups of related themes the uses and meanings of the word, emotion, in psychiatry, and specifically clarity about what counts as 'emotionally triggered' in 'ETIVB' has become clear. The outcome of Track 2.2 is reported in Chapter 5.

Track 2.3 (Conceptual Clarification of 'Involuntary' in 'ETIVB')

Track 2.3 proceeds with the strategy to build up clarity concerning the ETIVB-construct, now by exploring what counts as 'involuntary' in 'ETIVB' (thereby addressing point 'c' in the secondary objectives stated above). To address the question, "What counts as 'involuntary' in 'ETIVB'?" both academic literature and information gleaned from the previous steps are used.

To ascertain what counts as 'involuntary' in 'ETIVB' dictionaries and an essay by P.J. Fitzgerald[31] are used. The dictionaries are "The Concise Oxford Dictionary of Current English, Eighth Edition",[29] and "The Mondofacto Online Medical Dictionary". The essay of P.J. Fitzgerald is "Voluntary and Involuntary Acts"[31] in which Fitzgerald has thoroughly considered the issue of involuntariness. Proper reference will be made to these sources as well as to supplementary sources in Chapter 6, where the outcome of Track 2.3 is reported.

Fitzgerald's essay is scrutinised for all statements regarding involuntariness. Themes and groups of related themes concerning involuntariness are identified. From these themes and groups of related

themes clarity regarding 'involuntary' for the ETIVB-construct has emerged. Gaining clarity about 'involuntary' for the ETIVB-construct is the final step in gaining clarity about the elements of the ETIVB-construct, which started with 'violent behaviour' and 'emotionally triggered'.

Step 3 (How the ETIVB-Construct Can Be Recognised as Behaviour)

With 'violent behaviour', 'emotionally triggered', and 'involuntary' in 'ETIVB' having been clarified during Tracks 1 and 2 of Step 2, the next step is to clarify how violent behaviour (in the context of a possible crime) can be *recognised* as being 'ETIVB' in the "real world". This is done by comparing the conceptual elements of 'ETIVB' with behaviour as they have been reported in the study cases and the behaviour of a sportsperson. This is set out in Chapter 7.

Step 4 (Formulating ETIVB-Criteria for Assessment)

Having clarified how violent behaviour can be *recognised* as qualifying for 'ETIVB', Step 4 is about formulating criteria by which violent behaviour may *be assessed* for 'ETIVB'. This step involves the culmination of a process that have started with Step 1 and ended with Step 3. It also involves a final round of assessing the study cases with the draft ETIVB-criteria, the outcome which is reported in Chapter 8.

Step 5 (Accounting for Attributive Considerations)

Having separated attributive considerations from the ETIVB-criteria in Step 1, Step 5 is about how to report the attributive considerations of mental disorder and alike. This is done in Chapter 9.

Materials Used for Part 1

The materials used for Part 1 (Tracks 1.2 and 1.3) of the study are 28 purposely selected study cases of which all but one are murder cases. Except for *S v Rittmann*, which was tried in Namibia, and *Sanders and Jacaranda 94.2*, which did not involve a criminal trial, all the other study cases were tried in South African criminal courts. The study cases are listed in Table 1 at the end of this chapter. Except for Sanders and Jacaranda 94.2 (for which there is not court verdict) referencing is done as is standard for criminal case reports in South African. Study cases and law cases are printed in cursive for example, *S v Rittmann*.

The 27 murder cases were selected because 1) they involve the most serious consequences of interpersonal violence, and 2) they carry the heaviest possible sentences (including the death penalty in South Africa until 1995). Consequently it is to be expected that serious thought would have been given to the prosecution, defence and verdict of these murder cases. The majority of study cases were obtained with the help of information specialists from the law library at the Faculty of Law of the

University of Pretoria. The information specialists used LexisNexis to search among the South African Criminal Reports using key words, “automatism” and “non-pathological criminal incapacity”.

From the cases that had been identified by the information specialists, the researcher selected murder cases for the reasons stated in the previous paragraph. In this way 26 study cases were identified. The researcher also performed his own search for potential cases on the website, SAFLII, which resulted in the identification of 1 more study case, namely *S v Abrahams*.[32]

By serendipity the researcher found a case (*Sanders and Jacaranda 94.2*) which, although it did not involve a criminal trial, nonetheless involved interpersonal violent behaviour and could have resulted in a trial if matters were handled differently. The author chanced upon this case by hearing the event on the radio. Later the author read about the event and watched a video clip of it on the website of Jacaranda 94.2. At that time the video clip was still available on the website of Jacaranda 94.2 and thus was in the public domain. Unfortunately the clip is not available anymore. It was also not available for downloading. Fortunately, the researcher has written down the Sanders-event from the video clip. Thus it is available in Addendum A of Chapter 14.

Part 2: The Reliability Component of the Study

In part 1 of the study the clarification of the ETIVB-construct and the formulation of criteria for ‘ETIVB’ in ways to ensure their validity culminated in the synthesis of an instrument for identifying ‘ETIVB’. In Part 2 of the study, the reliability of this instrument, namely the ETIVB-Instrument will be examined.

Aims and Objectives

The aim of Part 2 of the study is to test the reliability of the ETIVB-Instrument that have been formulated and formatted in Part 1 of the study. A secondary objective is to identify areas of concern regarding the ETIVB-Instrument so that they may be refined.

Methods (of the Reliability Component)

For the assessment of the reliability of the ETIVB-Instrument, Part 2 of the study involved consenting participants who applied the ETIVB-criteria (as formulated into the ETIVB-Instrument) to selected study cases. All psychiatrists and psychiatrists in training, who were working full-time at Weskoppies Hospital at the time of the study, were approached for possible participation. This was done during personnel meetings and sometimes individually. Their participation depended on their availability and willingness to take part in the study. The researcher, study supervisor, and Independent Evaluator of the précis (the role of the Independent Evaluator and what the précis involve will be clarified in due course) were excluded from becoming a study participant.

These study participants were recruited to apply the ETIVB-Instrument and, where applicable, the "Attributive Considerations of ETIVB" to selected study cases, which were presented to the participants in the form of an externally vetted précis of the law report or violent event. The précis were compiled by the researcher. Their correctness was verified by an Independent Evaluator.

The reason for selecting the study cases will be clarified next. It will be followed by how the précis have been compiled, how the Independent Evaluator fits into the picture and how participants were trained before applying the criteria. The methodology section concludes with a description of how data was collected and how the statistical analyses were done.

Cases for Assessment by Participants

Five study cases are used. Four of them are criminal case reports namely *R v Dhlamini*, *S v Mahlinza*, *S v Gesualdo*, and *S v Campher*. The fifth study case is not a criminal case report, but a case that involves interpersonal violence, which might have (but have not) resulted in a criminal charge. That study case is *Sanders and Jacaranda 94.2*. The reasons for having added *Sanders and Jacaranda 94.2* to the study cases are clarified under the methodology of Part 1 (see above). Next, the reasons for selecting these 5 cases will be clarified.

The cases of *R v Dhlamini* and *S v Mahlinza* were selected, because, based on the researcher's experience after having applied the ETIVB-Instrument, they were considered as presenting relatively few challenges for the application of the ETIVB-Instrument. That was the researcher's opinion because, in the case of *R v Dhlamini* involuntary violent behaviour (as found by a court of law) is the consequence of sleep-related confusion with the obvious implication that the candidate behaviour does not qualify as 'ETIVB'. In the case of *S v Mahlinza,* a severely mentally ill person performs acts of violence that are clearly incongruent with 'involuntarily' as described in the ETIVB-construct. The researcher forecasted that most participants would find that that the candidate behaviours of *R v Dhlamini* and *S v Mahlinza* do not qualify as 'ETIVB'.

Where it was assumed that *R v Dhlamini* and *S v Mahlinza* present relatively few challenges, the author was of the opinion (based on the his experience with them) that the next two cases, *S v Gesualdo* and *S v Campher*, were challenging cases for the application of the ETIVB-Instrument. The reason for the researcher's opinion is that in both cases, but especially so in *S v Campher*, participants may have much reason to sympathise with the accused persons. While the victims of both crimes are portrayed as obnoxious individuals, the accused persons are portrayed as victims themselves. Adding to the challenge is identifying a 'triggering event'. Furthermore, (especially so in *S v Campher*) identifying that the candidate behaviour is not 'involuntary' is challenging. That is so because, in *S v Gesualdo*, it may be challenging to recognise that the final actions of the accused persons consists of their having taken measures to perform the candidate behaviour (Gesualdo has been acquitted in the High Court and that verdict has gone unchallenged by the State). In the case of

S v Campher it may be challenging to identify that the candidate behaviour is not 'involuntary' because it is challenging to recognise that the candidate behaviour is performed after having thought about it. (The guilty verdict in *S v Campher* has not been unanimous in the Supreme Court of Appeal.) Nonetheless, despite the challenges in *S v Gesualdo* and *S v Campher* the forecast was that most participants would find that the respective candidate behaviours do not qualify as 'ETIVB'.

The case of *Sanders and Jacaranda 94.2* was selected, because the candidate behaviour in this case qualifies as 'ETIVB'. The case of *Sanders and Jacaranda 94.2* has its own challenges. The first challenge is to identify that the electric shock (see précis) qualifies as a 'triggering event'. The second challenge is to recognise that the candidate behaviour is relatively unsophisticated for the agent and that the candidate behaviour does not involve any measures or considerations to perform it. The forecast was that most participants would find that all the candidate behaviour in Sanders and Jacaranda 94.2 qualifies for 'ETIVB'.

While the 5 study cases selected for Part 2 of the study has been evaluated by the researcher by using the published criminal case reports, the participants of the study are spared that much labour by requiring them to examine précis of the study cases instead. The reason for compiling précis is that applying the ETIVB-Instrument in the reliability study is already a lengthy procedure, and it has been thought that matters should not be made even more challenging by requiring participants to glean the relevant behavioural, emotional and cognitive detail from all the lengthy legal arguments. Thus, the researcher has compiled précis of the study cases. However, it has been necessary that the précis be as accurate a rendition of the relevant behavioural, emotional and cognitive actualities as possible. Consequently, to ensure the accuracy of the précis, an Independent Evaluator is asked to review the précis.

Independent Evaluator

The researcher compiled a précis for each of the cases, *R v Dhlamini*, *S v Mahlinza*, and *S v Gesualdo*, *S v Campher* from criminal case reports. The event description for *Sanders and Jacaranda 94.2* was compiled from a video clip of the event on the Jacaranda 94.2 website (the reference is given above, but the video clip is unfortunately not available anymore).

After compiling the précis and events summary the researcher submitted them to an Independent Evaluator, Dr. G.P. Grobler. Dr. Grobler (hereafter the Independent Evaluator) holds a senior post in psychiatry (a principal psychiatrist at the Steve Biko Academic Hospital), was the incumbent president of the South African Society of Psychiatrists (at the time of the study, while at the time of writing he is the president), and has experience in forensic psychiatry. The published court verdicts of the study cases along with the précis were submitted to the Independent Evaluator. In the case of *Sanders and Jacaranda 94.2* the internet link (active at that time) was supplied and consequently the Independent Evaluator was able to (and did) view the video clip.

The reasons for having submitted the précis for evaluation were 1) to ensure that the behavioural, emotional and cognitive aspects of the study cases had been accurately reflected in the précis; 2) to ensure that there were no ambiguities other than those also found in the court verdicts; 3) to ensure that the researcher did not biased the information in any way.

After evaluating the précis, the Independent Evaluator pointed out problems and made suggestions for improvement. The researcher continued to make improvements until the Independent Evaluator was satisfied with the précis. The Independent Evaluator was blind to the ETIVB-criteria and "Attributive Considerations of ETIVB" and was disqualified from entering the reliability study as a participant.

Study Participants

All psychiatrists and psychiatrists-in-training who were working full-time at Weskoppies Hospital, Pretoria at the time of the study were invited to participate in Part 2 of the study. Twenty five (25) participants were recruited. The participants were trained on how to use the ETIVB-instrument. This was done in a group or individually. The following demographic data were captured for each participant:

1) Whether the participant is a psychiatrist or psychiatrist-in-training.
2) For psychiatrists the number of years of experience in forensic psychiatry as a psychiatrist.
3) For psychiatrists-in-training the number of years of experience in forensic psychiatry while being a psychiatrist in training.
4) For psychiatrists-in-training the number of years in training.

Participants were informed that their identities will be kept confidential. That was done by allocating numbers to the participants, which were allocated according to whether the participant was a psychiatrist or a psychiatrist in training and when he or she submitted his or her assignments. Assignments were done after participants had been trained in the use the ETIVB-Instrument and the "Attributive Considerations of ETIVB".

Training of Participants

Before doing their assignments (that is, evaluating the 5 selected study cases with the ETIVB-Instrument), participants were first trained in the use the ETIVB-Instrument and the "Attributive Considerations of ETIVB". To train participants, they were supplied with an information document describing how the ETIVB-criteria were to be applied as well as with two training cases (which did not include any of the five study cases used for the actual research).

During the training session the ETIVB-Instrument and the "Attributive Considerations of ETIVB" were described in detail by means of an oral presentation. Instructions on how the ETIVB-Instrument and "Attributive Consideration of ETIVB' should be used were provided both in print and during the training. It was made clear that the ETIVB-Instrument is a research tool and that it should not be used in court. The two training cases were précis, which the researcher had compiled from *S v Calitz* and *S v Els.* (These two précis were not reviewed by the Independent Evaluator, because verified accuracy was not that critical for training purposes). The cases of *S v Calitz* and *S v Els* were selected because, based on the researcher's experience with the study cases, they are not too challenging, but are nevertheless instructive.

During the training, participants first applied the ETIVB-Instrument to S v Calitz (the "Attributive Considerations of ETIVB" did not apply). Thereafter their ratings of the individual criteria were discussed with them. Issues were clarified as they arose. Participants were allowed to make notes. The same was then done *for S v Els*. Study participants were allowed to keep the two training cases together with their notes and ratings to assist them with their assignments. However, all research material had to be returned to the researcher after their assignments had been completed.

After completing their training, participants were handed the five précis mentioned above, together with an ETIVB-Instrument as well as an "Attributive Considerations of ETIVB" for each case. Participants then completed their assignments at their own pace over a period of about 2 weeks. To ensure that participants did their own evaluations participants were instructed (and trusted) not to discuss cases with others. The researcher did not assist participants in completing the cases, but was available to answer questions about the criteria (not about how the criteria were to be interpreted or used regarding the assigned case studies).

Data Capturing

For each one of the study cases used in Part 2 of the study, a Microsoft Excel® spread sheet was generated. Each spread sheet contained the descriptive data about participants, criterion variables, derived variables, and variables related to the 'Attributive Considerations of ETIVB'.

Statistical Analysis

Appreciating that the details of the statistical analyses will only become comprehensible when read in conjunction with Chapter 13, the details of the data processing and statistical analyses are nonetheless presented here for the sake of completeness. The statistical analysis was done by the Department of Statistics, University of Pretoria, using the SAS 9.3® software for IBM® computers. In consultation with a statistician Dr. L. Fletcher, the inter-rater reliability of the ETIVB-criteria was calculated using a modified Fleiss' kappa.[33]

The researcher of this thesis expresses his gratitude to Dr. Fletcher for clarifying the statistical analysis and complexities related to it. That clarity will be described in the author's own words. Any mistakes in describing the statistical analysis of Part 2 of the study are the sole responsibility of this author and not that of Dr. Fletcher.

Of the many statistical measures that capture the extent of agreement (or concordance) between *two* raters giving categorical ratings on a nominal scale, the Cohen's kappa[34] is probably the best known and is relevant to this study, since this study has raters (study participants) giving categorical ratings (the ETIVB-criteria). To clarify: participants rate (for example) the A.1-criterion as "met" and thus rate the A.1-criterion as "1", not in the *ordinal* sense, but in the *nominal* sense. That is, the "1" is nominal, because there is no ordinal relationship between the other possible ratings of the A.1-criterion, although they are "2" (not met), "3" (unsure), or "4" (not applicable). Thus the numbers, "1", "2", "3" and "4" are used simply because numbers are convenient. However, instead of numbers the ratings could just as well have been "a", "b", "c" and "d", or even "!", "@", "#", and "*". Now that the values used in this study have been clarified as nominal, the researcher will continue to depict the kappa. The kappa measure is an improvement over agreement calculated as a simple percentage, because it provides for agreement that is more apparent than real – that is, agreement that occurs by chance alone. If the kappa measure is used, the best possible degree of statistical agreement will result in a statistical outcome of 1. The extent to which the outcome is less than 1 progressively reflects lesser degrees of statistical agreement.[34]

However, because Cohen's kappa[34] provides for only two raters it would not be suitable for this study using twenty five (multiple) raters. Fleiss' kappa is used to overcome the limitations of Cohen's (unweighted) kappa. Unlike Cohen's kappa, Fleiss' kappa makes provision for multiple raters (as is relevant to this study). Again, a statistical outcome of 1 reflects the best possible agreement, with the extent to which the outcome is less than 1 progressively reflecting lesser statistical agreement.[33] However, using the Fleiss kappa has proved problematic when the results of Part 2 of the study have been analysed. It has then been noticed, in the case of *Sanders* for example (see Table Chapter 14, Table 29), that the inter-rater agreement at face value was 96% (reflecting a high level of inter-rater agreement), while Fleiss' kappa calculated to -0.02 (reflecting poor agreement). Said differently, the Fleiss kappa outcome of -0.02, reflecting no agreement beyond chance, was not useful, since it did not reflect the obvious degree of concordance among the raters at face value. Furthermore, some derived variables (see Chapter 13, Table 29, Vi for *Campher*, *Dhlamini*, *Gesualdo*, and *Mahlinza*) with a perfect face value rater agreement have delivered "dot" values (no values) when Fleiss' kappa has been calculated for the same derived variables (see Chapter 13, Table 22).

The present study is not the first to encounter such a problem. Similar problems have also been described by Feinstein and Cichetti.[35]. Consequently, it has been decided to modify Fleiss' kappa to obtain more realistic values for the measure of inter-rater agreement. Instead of using the marginal proportions of agreement for each category, i.e. the proportion of all assignments to the j^{th} category[33],

the principle that raters made their assignments purely at random has been used, by assigning equal probabilities to each category. The expected mean proportion of agreement is therefore 0.25 (for each of the 4 categories). Using this principle, an inter-rater agreement is then calculated using the same statistical formula as for Fleiss' kappa. The results of the calculation are reported, together with the total observed agreement uncorrected for chance. The latter are included (see Chapter 13) because different opinions exist on the need to incorporate chance-expected agreement into the assessment of inter-rater reliability at all.[36-37] Furthermore, the use of guidelines to assist researchers with the interpretation of kappa is controversial since the magnitude of kappa is affected by the number of categories and subjects: kappa will be higher when there are fewer categories. However, in this study where many categories were assessed, guidelines were used (see Chapter 13).

Using the statistical procedures described above, the inter-rater agreement for each of the 5 study cases used in Part 2 was calculated for:

All the criteria A.1 – H.1 (all criteria excluding the conclusion criteria) to ascertain overall participant agreement.
All the inclusion criteria: A.1 – E.1 to ascertain participant agreement regarding the inclusion criteria.
All the exclusion criteria: F.1 – H.1 to ascertain participant agreement regarding the exclusion criteria.

Inter-rater agreement was calculated for smaller units of criteria namely:

The A-criteria: A.1 – A.3
The B-criteria: B.1 – B.3
The C-criteria: C.1 – C.2
The D-criteria: D.1-D.2
The F-criteria: F.1-F.5
The criteria E.1, G.1 and H.1

The E.1, G.1 and H.1 criteria were grouped together because they are "stand alone" criteria and thus a modified Fleiss' kappa could not be calculated (for a kappa calculation at least two values are needed).

The Operators

Having described the statistical analysis, the operators that were also used to ascertain rater agreement, will be presented, although here too the details will only become comprehensible when read in conjunction with Chapter 13. To clarify how the operators work, the researcher will use the operators for Em (the D.1- and D.2-criterion that are about emotions). But first, to clarify the notation:

"=" means "equals" (which in turn means "rated as").

"→" means "if….then".

"•" means "and".

"v" means "or".

The numbers have the following meaning:

1: The required conditions are met.

2: The required conditions are not met.

3: There is uncertainty as to whether the required conditions are met or not met.

4: The variable is not applicable.

0 The outcome is invalid.

The operators for the derived variable **Em** are:

1. D.1=1 • D.2=1 → Em=1
2. D.1=1 • D.2=2 → Em=2
3. D.1=1 • D.2=3 → Em=3
4. D.1=1 • D.2=4 → Em=0
5. D.1=2 • (D.1=1 v D.2=2 v D.2=3 v D.2=4) → Em=2
6. D.1=3 • D.2=2 → Em=2
7. D.1=3 • (D.2=1 v D.2=3 v D.2=4) → Em=3
8. D.1=4 • (D.2=1 v D.2=3 v D.2=4) → Em=0

Look at the operator in row 8, D.1=4 • (D.2=1 v D.2=3 v D.2=4) → Em=0. In plain language it reads: If D.1 is not applicable and (D.2 is met or D.2 is uncertain or D.2 is not applicable), then Em is invalid. The outcome of a derived variable is invalid if a participant rated the criteria in a way that makes no sense. In the example the outcome is invalid because the D.1-criterion is about whether a case has severely to extremely distressing emotions. Severely to extremely distressing emotions may be identified, not identified, or there may be uncertainty about it. However, severely to extremely distressing emotions cannot be not applicable in the assessment of 'ETIVB'. Thus, a rating of not applicable would make no sense. Next, to the rest of the operators will be clarified.

If the requirements of both D.1 and D.2 are met (first row where "1" means "met"), then the ETIVB-requirements for emotions are met. If the requirements of either D.1 or D.2 are not met, then the ETIVB-requirements for emotions are not met (second and fifth row where "2" means "not met"). If either D.1 or D.2 is uncertain, and neither D.1 nor D.2 is *not met*, then the outcome of whether the ETIVB-requirements for emotions are met (not met) is uncertain (third and seventh row, where "3" means "uncertain"). If D.1 is rated as not applicable (which would be a wrong rating) then nothing can

be said about the E-criteria, and consequently the outcome is invalid (eighth row where “4” means “not applicable” and “0” means “invalid”).

Over and above the Em operators, other operators for derived variables were also formulated. They were used to calculate whether the conditions of ‘ETIVB’ as assessed by the ETIVB-criteria were satisfied (not satisfied) for the respective study cases used in Part 2 of the study. The operators (also called logic operators), were formulated by the researcher to calculate the outcome of each group of criteria. The analyses were done by the SAS 9.3® software for IBM® computers. Operators were formulated for the following derived variables:

1. TE: Computing the outcome of the A-criteria (Triggering Event).
2. CB: Computing the outcome of the B-criteria (Candidate Behaviour).
3. Vi: Computing the outcome of the C-criteria (Violence).
4. Em: Computing the outcome of the D-criteria (Emotions).
5. EB: Computing the outcome of the F-criteria (Excluded Behaviour).
6. ES: Computing the outcome of the I-criteria (Conclusion Criteria).

The derived variables were calculated according to operators, which will be presented below. The researcher checked and rechecked all of the operators for the correctness, by having assessed the correctness of the computations that had been done by the SAS 9.3® program. Corrections were made until the operators gave correct results as evidenced by the operators’ calculated outcomes agreeing with the researcher’s calculations. This does not mean that the researcher’s calculations were always taken to be correct. It at times happened that the researcher’s calculations were proved incorrect, while the computed outcomes have been correct. The point is that the computer calculations and those of the researcher had to agree.

The operators are as follows:

TE:

1. A.1=1 • A.3=1 → TE=1
2. A.2=1 • A.2.1=1 • A.3=1 → TE=1
3. A.1=1 • A.3=3 → TE=3
4. A.1=4 • A.2=2 → TE=2
5. A.1=4 • A.2=4 → TE=2
6. A.1=1 • A.3=4 → TE=0
7. A.1=2 • A.2=3 → TE=3
8. A.1=2 v 4 • A.2=3 → TE=3
9. A.1=3 • A.2=2 → TE=3
10. A.1=3 • A.2=3 → TE=3

11. A.1=3 • (A.2=2 v A.2=4) → TE=3
12. A.1=1 • A.3=2 → TE=2
13. A.1=2 • A.2=4 → TE=2
14. A.1=3 • A.3=2 → TE=2
15. A.2=1 • (A.2.1=2 v A.3=2) → TE=2
16. A.2=1 • (A.2.1 v A.3=2) → TE=2
17. A.2=1 • (A.2.1=3 • A.3=3) → TE=3
18. A.2=1 • (A.2.1 v A.3=3) → TE=3
19. A.2=1 • (A.2.1=3 • A.3=4) → TE=3
20. A.2=1 • (A.2.1=4 • A.3=3) → TE=3
21. A.2=1 • (A.2.1=4 • A.3=4) → TE=0
22. A.2=1 • (A.2.1 v A.3=4) → TE=0
23. A.1=4 • A.3=4 • → TE=0
24. A.2=4 • A.2.1=4 • A.3=4 → TE=0

The TE derived variable will be clarified as was done for Em. This should suffice for understanding the remainder of the derived variables. If (see row 1) A.1 is rated as “met” (1) and A.3 is also rated as “met” (1), then the conditions for a ‘triggering event’ (TE) are met (1), irrespective of the outcomes of A.2 and A.21. Likewise if (see row 2), A.2 is rated as “met” (1) and A.2.1 is rated as “met” (1) and A.3 is rated as “met” (1), then the conditions of TE are “met” (1). If (see row 3) A.1 is rated as “met” and A.3 is rated as “uncertain” (3), then the outcome in *this study* is of TE in this study is also “uncertain (3). (Note that, strictly speaking, it should be if A.1 = 1 and A.3 = 4 then, as long as it is not true that A.2 = 1 and A.2.1 = 1 and A.3 = 1, then TE = 3. However, there have been unexplained problems with computing the outcomes with SAS9.3 ®, and since no study outcome has a combination where A.2 = 1 and A.2.1 = 1 and A.3 = 1, while at the same time A.1 = 1 and A.3 = 3, the more simple operator is sufficient. There have been other instances too where such simplifications have been necessary. If A.1 equals “not met” (2) (see row 13) and A.2 is “not applicable” (4) then, irrespective of how the other A-criteria are rated, the conditions for a TE cannot be “met” (2). If (see row 13) a participant have rated all of A.1, A.2.1 and A.3 as “not applicable” (4) then the ratings make no sense and consequently the outcome for TE is invalid (0).

The operators for the other derived variables (excluding Em, which has already been presented) are:

CB:

B.1=1 · B.2=1 · B.3=1 → CB=1
B.1=2 • [(B.2=1 v B.2=2 v B.2=3 v B.2=4) • (B.3=1 v B.3=2 v B.3=3 v B.3=4)] → CB=2
B.2=2 • [(B.1=1 v B.1=2 v B.1=3 v B.1=4) • (B.3=1 v B.3=2 v B.3=3 v B.3=4)] → CB=2
B.3=2 • [(B.1=1 v B.1=2 v B.1=3 v B.1=4) • (B.2=1 v B.2=2 v B.2=3 v B.2=4)] → CB=2
B.1=3 • [(B.2=1 v B.2=3 v B.2=4) • (B.3=1 v B.3=3 v B.3=4)] → CB=3

B.2=3 • [(B.1=1 v B.1=3 v B.1=4) • (B.3=1 v B.3=3 v B.3=4)] → CB=3
B.3=3 • [(B.1=1 v B.1=3 v B.1=4) • (B.2=1 v B.2=3 v B.2=4)] → CB=3
B.1=4 • [(B.2=1 v B.2=4) • (B.3=1 v B.3=4)] → CB=0
B.2=4 • [(B.1=1 v B.2=4) • (B.3=1 v B.3=4)] → CB=0
B.3=4 • [(B.1=1 v B.2=4) • (B.2=1 v B.2=4)] → CB=0

Vi:

C.1=1 • C.2=1 → Vi=1
C.1=1 • C.2=2 → Vi=2
C.1=1 • C.2=3 → Vi=3
C.1=1 • C.2=4 → Vi=0
C.1=2 • (C.2=1 v C.2=2 v C.2=3 v C.2=4) → Vi=2
C.1=3 • (C.2=1 v C.2=3 v C.2=4) → Vi=3
C.1=4 • (C.2=1 v C.2=3 v C.2=4) → Vi=0

EB:

F.1=1 v F.2=1 v F.3=1 v F.4=1 v F.5=1 → EB=1
F.1=2 • F.2=2 • F.3=2 • F.4=2 • F.5 → EB=2
F.1=2 • [(F.2=3) • (F.3=2 v F.3=3) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.1=2 • [(F.2=2 v F.2=3) • (F.3=3) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.2=2 • [(F.1=3) • (F.3=2 v F.3=3) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.2=2 • [(F.1=2 v F.1=3) • (F.3=3) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.2=2 • [(F.1=2 v F.1=3) • (F.3=2 v F.3=3) • (F.3=3) • (F.5=2 v F.5=3)] → EB=3
F.2=2 • [(F.1=2 v F.1=3) • (F.3=2 v F.3=3) • (F.4=2 v F.4=3) • (F.5=3)] → EB=3
F.3=2 • [(F.1=2) • (F.2=2 v F.2=3) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.3=2 • [(F.1=2 v F.1=3) • (F.2=2) • (F.4=2 v F.4=3) • (F.5=2 v F.5=3)] → EB=3
F.3=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.4=2) • (F.5=2 v F.5=3)] → EB=3
F.3=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.4=2 v F.4=3) • (F.5=2)] → EB=3
F.4=2 • [(F.1=2) • (F.2=2 v F.2=3) • (F.3=2 v F.3=3) • (F.5=2 v F.5=3)] → EB=3
F.4=2 • [(F.1=2 v F.1=3) • (F.2=2) • (F.3=2 v F.3=3) • (F.5=2 v F.5=3)] → EB=3
F.4=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.3=2) • (F.5=2 v F.5=3)] → EB=3
F.4=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.3=2 v F.3=3) • (F.5=2)] → EB=3
F.5=2 • [(F.1=2) • (F.2=2 v F.2=3) • (F.3=2 v F.3=3) • (F.4=2 v F.4=3)] → EB=3
F.5=2 • [(F.1=2 v F.1=3) • (F.2=2) • (F.3=2 v F.3=3) • (F.4=2 v F.4=3)] → EB=3
F.5=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.3=2) • (F.4=2 v F.4=3)] → EB=3
F.5=2 • [(F.1=2 v F.1=3) • (F.2=2 v F.2=3) • (F.3=2 v F.3=3) • (F.4=2)] → EB=3
F.2=3 • [(F.1=2 v F.1=3 v F.1=4) • (F.3=2 v F.3=3 v F.3=4) • (F.4=2 v F.4=3 v F.4=4) • (F.5=2 v F.5=3 v F.5=4)] → EB=3

F.3=3 • [(F.1=2 v F.1=3 v F.1=4) • (F.2=2 v F.2=3 v F.2=4) • (F.4=2 v F.4=3 v F.4=4) • (F.5=2 v F.5=3 v F.5=4)] → EB=3
F.1=4 • [(F.2=2) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.1=4 • [(F.2=2 v F.2=4) • (F.3=2) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.1=4 • [(F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.4=2) • (F.5=2 v F.5=4)] → EB=0
F.1=4 • [(F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4) • (F.5=2)] → EB=0
F.2=4 • [(F.1=2) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.2=4 • [(F.1=2 v F.1=4) • (F.3=2) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.2=4 • [(F.1=2 v F.1=4) • (F.3=2 v F.3=4) • (F.4=2) • (F.5=2 v F.5=4)] → EB=0
F.2=4 • [(F.1=2 v F.1=4) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4) • (F.5=2)] → EB=0
F.3=4 • [(F.1=2) • (F.2=2 v F.2=4) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.3=4 • [(F.1=2 v F.1=4) • (F.2=2) • (F.4=2 v F.4=4) • (F.5=2 v F.5=4)] → EB=0
F.3=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.4=2) • (F.5=2 v F.5=4)] → EB=0
F.3=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.4=2 v F.4=4) • (F.5=2)] → EB=0
F.4=4 • [(F.1=2) • (F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.5=2 v F.5=4)] → EB=0
F.4=4 • [(F.1=2 v F.1=4) • (F.2=2) • (F.3=2 v F.3=4) • (F.5=2 v F.5=4)] → EB=0
F.4=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.3=2) • (F.5=2 v F.5=4)] → EB=0
F.4=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.5=2)] → EB=0
F.5=4 • [(F.1=2) • (F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4)] → EB=0
F.5=4 • [(F.1=2 v F.1=4) • (F.2=2) • (F.3=2 v F.3=4) • (F.4=2 v F.4=4)] → EB=0
F.5=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.3=2) • (F.4=2 v F.4=4)] → EB=0
F.5=4 • [(F.1=2 v F.1=4) • (F.2=2 v F.2=4) • (F.3=2 v F.3=4) • (F.4=2)] → EB=0

ES:

I.1=1 • I.2=2 → ES=1
I.1=2 v I.2=1 → ES=2
I.1=3 • (I.2=2 v 1.2=3) → ES=3
I.2=3 • (I.1=1 v I.1=3) → ES=3

(Note: the EB-operators have initially been much longer, since there are many more permutations. Many of those permutations are superfluous to study participants' ratings. Hence the EB-operators have been pruned so that only those relevant to the study are presented.)

Ethics Approval

The Ethics Committee of the Faculty of Health Sciences of the University of Pretoria has approved the study from an ethics perspective (Protocol No:132/2009, while the Chief Executive Officer of

Weskoppies Hospital gave permission for the study to be done on the Weskoppies Hospital premises using consenting Weskoppies Hospital medical practitioners.

Table 1: List of Study Cases and Whether Psychiatric Evidence was Given.	
Study Case	**Psychiatric Evidence Given?**
R v Dhlamini 1955 (1) SA 120 (T)	No
R v Kennedy 1951 (4) SA 431 (A)	Yes
S v Abrahams (32/92) [1993] ZASCA 127	No*
S v Bezuidenhout 1964 (2) SA 651 (A)	Yes
S v Calitz 1990 (1) SACR 119 (A)	Yes
S v Campher 1987 (1) SA 940 (A)	Yes
S v Di Blasi 1996 (1) SACR 1 (A)	Yes
S v Eadie 2002 (3) SA 719 (SCA)	No
S v Els 1993 (1) SACR 723 (O)	Yes
S v Gesualdo 1997 (2) SACR 68 (W)	Yes
S v Goliath 1972 (3) SA 1 (A)	No
S v Henry 1999 (1) SACR 13 (SCA)	Yes
S v Ingram 1995 (1) SACR 1 (A)	Yes
S v Kalagoropoulos 1993 (1) SACR 12 (A)	Yes
S v Kensley 1995 (1) SACR 646 (A)	Yes
S v Laubscher 1988 (1) SA 163 (A)	Yes
S v Lubbe 1963 (4) SA 459 (W)	No
S v Mahlinza 1967 (1) SA 408 (A)	Yes
S v Moses 1996 (1) SACR 701 (C)	Yes
S v Nursingh 1995 (2) SACR 331 (D)	Yes
S v Pederson 1998 (2) SACR 383 (N)	Yes
S v Potgieter 1994 (1) SACR 61 (A)	Yes
S v Rittmann 1992 (2) SACR 110 (NM)	No
S v Smith 1990 (1) SACR 130 (A)	Yes
S v Van Der Sandt 1998 (2) SACR 627 (W)	Yes
S v Van Vuuren 1983 (1) SA 12 (A)	No
S v Wiid 1990 (1) SACR 561 (A)	No
Sanders and Jacaranda 74.2, 23 October 2009 (not a legal case). URL: http://www.jacarandafm.com/kagiso/content/en/jacaranda/jacaranda-blogs-blogger-off?oid=409530&sn=Detail&pid=6085&Corrie-Sanders-knocks-John-out-cold- (accessed 27 October 2009).	Not Applicable

* A psychologist gave testimony, but not a psychiatrist.

Chapter 4

Violent Behaviour in 'ETIVB'

This chapter begins at the core of the ETIVB-construct: that is, 'violent behaviour'. It describes specifically the concept of violent behaviour as it relates to the ETIVB-construct as part of a strategy that aims to build up clarity from 'violent behaviour' and progressively specify it as 'emotionally triggered', and 'involuntary' in the subsequent chapters. This chapter addresses thus the question of what counts as 'violent behaviour' in 'ETIVB'.

Taking into account that 'violent behaviour' in 'ETIVB' is about behaviour that is a possible offence, 'violent behaviour' may be described as an event within a chronological chain of events as is standard in the assessment of behaviour in behaviour theory[27] as well as reflected in dictionaries on 'behaviour'.[29,38-39] Accordingly, antecedents or stimuli are distinguished from both the behaviour and its consequences. The next chapter, Chapter 5, addresses the antecedents or stimuli aspects of ETIVB, being about the triggers and emotions preceding the violent behaviour. But this chapter describes the behaviour and the consequences that are part and parcel of ETIVB. In summary, the consequential aspects are described as necessary in defining 'violent' in 'ETIVB', being physical injury or physical damage. Physical injury or damage, in turn, requires the behaviour that resulted in the physical injury to have been observable. And since the violent behaviour in ETIVB is observable, the behaviour necessarily allows for it to be described (if witnessed) and be distinguished within a chronological chain of events.

Violent Behaviour in 'ETIVB' is Defined by the Consequences of Physical Injury or Physical Damage

The consequential aspect of behaviour is particularly important in the ETIVB-construct, since it defines and justifies the 'violent' specification in 'ETIVB'. Dictionaries explain 'violence' accordingly as a consequence of "great physical force",[29] "extreme force",[40] and/or "acting with physical strength".[39] When such "great physical force" 'is directed at a person, this violent behaviour has victims.[41] Lewis writes further "…the terms human violence and human aggression are used simply to denote behaviors by one person intended to cause pain, damage, or destruction to another'.[41] He gives homicide as an unequivocal example of violence.[41]

In all cases when the consequence of behaviour is physical injury or physical damage and that consequence has been intended by the person behaving so, that gives licence to call such behaviour

as being violent. Here are thus two warrants by which behaviour is called violent, both related to the consequential aspect of behaviour: the consequence being physical injury or physical damage; and such a consequence being intended. The intention is distinct from the very consequence, and subject of Chapter 5.

Although distinct, physical injury or physical damage together with it being so intended, are persuasive warrants for calling behaviour as being violent. We may notwithstanding also speak of violent behaviour in the absence of the former warrant (and it may even be a possible offence). Say for example, X takes a knife and stabs at Y but misses. Then there is no physical injury (nor physical damage), yet we may speak of violent behaviour. Then we have at best potential physical injury (or physical damage) rather than actual physical injury (or physical damage) as a warrant.

For the purposes of 'ETIVB', however, the author decided to take actual physical injury or physical damage as a necessary feature of 'ETIVB'. The reasons are: physical injury or physical damage is a persuasive warrant in making claims regarding 'violent behaviour'; the forensic context from which the need for clarity about the concept of ETIVB arises, calls for answers in the most serious cases, being murder, rape, assault, and damage to property rather than attempted murder and attempted assault; and doing so provides for clarity at least in the cases when violence is unequivocally established. Restricting 'violent behaviour' in its conceptual scope for the purposes of the concept of ETIVB may be considered as being no less than a first step towards clarity for cases where violence is evidenced by physical injury or physical damage. Further studies may extend the work by examining 'violent behaviour' in 'ETIVB' for cases where there is no physical injury or physical damage.

This means that in the case above where X stabs Y "unsuccessfully" that behaviour does not count as violent in the ETIVB-construct. Similarly, as also mentioned by Lewis,[41] pain *per se* does not count as a defining consequence of violence because pain is not necessarily accompanied by physical injury. It would be the same for so-called, emotional injury. Emotional injury, devastating as it may be, does not count in 'ETIVB' 'as a warrant for calling candidate behaviour as being violent.

Physical injury or physical damage as consequence of behaviour does not necessarily equate to violence, however. An example is a person, X who cleans his gun without realising there is a round in the chamber and unfortunately, while cleaning his gun a shot goes off injuring his son. In this instance there is physical injury as consequence of behaviour (i.e., cleaning the gun), but this behaviour would not be count as violent. It would not count as violent because the behaviour was not directed at someone. Similarly, behaviour that causes physical damage has to be directed at something in order to be called violent. The directedness of violent behaviour in causing physical consequences relates to the intentions of the person who behaves violently, which will be considered in Chapter 5. The point here is however, that the behaviour is directed at someone or something (as opposed to being accidental) by virtue of which physical injury or physical damage would be a consequence of violent

behaviour. Congruently, in all of the study cases that were examined in this study, violent behaviour was directed at persons, resulting in physical injury and often death or it caused damage to property.

Violent Behaviour in 'ETIVB' is Observable

Since violence in 'ETIVB' is a consequence of "great physical force" that necessarily results in physical injury or physical damage, the violent behaviour of 'ETIVB' is necessarily observable. No violence can result without observable movements in a person's muscles. Observable movement must take place if physical injury or physical damage is to occur, even if it is only the small movement of a finger that triggers the great force of a firearm. In other words, since behaviour in 'ETIVB' results in physical consequences by which that behaviour is described as violent (as considered above), it must necessarily involve actual body movements, which are necessarily observable. For that reason, the behaviour in 'ETIVB' should be such as to be describable by a witness, if a witness is present. Even when a witness is absent, the behaviour in 'ETIVB' still has the potential to be described had a witness been present.

The observability of violent behaviour is necessarily evidenced by motor activity performed by muscles categorised physiologically as voluntary,[20] meaning those muscles that are usually under voluntary control. Martin and Pear provide examples of observable behaviours: "Walking, talking out loud, throwing a baseball, yelling at someone – all are overt (visible) behaviors that could be observed and recorded by an individual other than the one performing the behavior".[27]

Contrary to the behaviour in 'ETIVB', all behaviours are not necessarily observable. Some behaviours are not observable even if a witness is present, such as behaviours that are done only in the mind.[27,42] Examples are planning, counting only in the mind, repeating in the mind a phrase one wants to learn, working out chess moves without moving the pieces, remembering an event, etc. An example from pathological behaviour that is not observable is that of obsessions in obsessive compulsive disorder'.[12,14]

Nonetheless, unobservable behaviours, in particular behaviours that are done only in the mind, are also important in the identification of ETIVB even though it is not accounted for in specifically the 'behaviour' aspect of the ETIVB-construct. As will be clarified in Chapter 5, these are accounted for as antecedents to the behaviour in 'ETIVB'.

The Features of Behaviour in ETIVB can be Described

Since the behaviour in 'ETIVB' is necessarily observable, it can be described by an observer in third person terms and in terms of behavioural theory. The features of 'ETIVB' in behavioural terms will transpire in subsequent chapters by virtue of it being involuntary and emotionally triggered. But first the terms in which behaviour is usually described in behaviour theory. They are the topography, the frequency, the duration, the latency, the intensity, and the quality of the behaviour. I shall demonstrate how a specific behaviour can be described by using an example of a ballerina moving her arm gracefully. The topography of behaviour refers to the form of the movement, in the case of the ballerina, the form of her arm movement,[27] whether in circles or lines for example. When repetitive, behaviour has a frequency. In the case of the ballerina, frequency refers to how often she moves her arm in that specific way.[27] Duration refers to the time it takes from the inception of the (arm) movement until it ends.[27] Latency refers to the time between the occurrence of a stimulus and the behaviour.[27] In the ballerina's case it may be the time it takes between the start of a particular musical note and the moving of her arm. The intensity of behaviour is the force with which a specific behaviour is performed.[27] In the case of the ballerina one may expect very little force. The quality of behaviour refers to an evaluation of the behaviour by an observer who gives his or her impression of how well the movement has been performed.[27] In the ballerina's case, the gracefulness of her arm movement refers to the qualitative aspect.

In addition to these features of behaviour, its situational context in a chain of chronological events may also be described. So may the antecedents to violent behaviour be described and clarified (see the next chapters) as well as the consequences (see above). The consequences in turn may be antecedents to further behaviours, and they may impact on the behaviour through a feedback loop in the chain of events, so to speak. So is the case also for violent behaviour. Two consequences, well-established in learning theory, are of note because they have bearing on what happens once violent behaviour is initiated. The first is that the violent behaviour may be reinforced with the effect that it continues.[27] The second is that the violent behaviour is "punished" with the effect that it discontinues.[27] An example of the former is where violent behaviour continues because it is experienced as sadistically gratifying. One may find this in revenge behaviour. I shall later explain that 'violent behaviour' for the purposes of revenge is an important issue to consider when an assessing psychiatrist looks for indications of 'control' over and 'choice' about 'behaviour'.

In learning theory punishment refers to a specific behaviour's unpleasant consequences which decrease the occurrence of that specific behaviour.[27] Considering unwanted connotations with the concept of punishment, I prefer instead to say the behaviour is inhibited. For example, a person who performs 'violent behaviour' may observe the consequences of his violent behaviour with a sense of horror and then stops doing it. This event may be of importance for the purposes of identifying ETIVB

in two ways: The first is that the consequences of the violent behaviour may be an unpleasant (punishing or inhibiting) stimulus which evokes new emotions and new (non-violent) behaviour. The second is that it may indicate the point where 'involuntary violent behaviour' stops and where voluntary behaviour is initiated again. But I shall return to these aspects in the next chapters.

So observed and described then, within a chain of chronological events using behaviour terms of topography, frequency, duration, latency, intensity, quality and context, the behaviour in 'ETIVB' can be observed and described. Moreover, criteria will be formulated for 'ETIVB' in these terms, and as it will turn out in Chapter 6, these terms are particular useful to assess whether a specific behaviour is 'involuntary'.

Chapter 5

What Counts as 'Emotionally Triggered'in 'ETIVB'?

In the previous chapter the core of the ETIVB-construct, namely the concept of 'violent behaviour' as it relates to the ETIVB-construct has been explored and clarified. This chapter proceeds with the strategy to build up clarity concerning the ETIVB-construct by now exploring the concept 'emotionally triggered'.

Emotions in the ETIVB-construct are distinguished from their antecedent stimuli, which should not be confused with the triggering effect of the emotions or the 'violent behaviour' they trigger. This means that we may think in terms of a chain of incidents, beginning with an antecedent stimulus, followed by emotions, a behavioural response, and then the consequences of the behavioural response. In the exploration of 'emotionally triggered', this chain will be followed and it will be shown that although the emotions can be distinguished from the antecedent stimulus they are both required concurrently in 'ETIVB'. In a similar manner, although emotions can be distinguished from the behaviour they trigger, they both occur concurrently in 'ETIVB'. The emotions in turn must be severe negative emotions that result in 'involuntary violent behaviour' and its consequences. The consequences though mark the termination of behaviour that would qualify as ETIVB.

Before clarifying how emotions are related to stimuli in 'ETIVB', I shall point out that those emotions relevant to 'ETIVB' are referred as negative emotions in the academic literature. Negative emotions are considered to be essentially adaptive emotions[43-44] with survival value[43] and do not refer to something being wrong or abnormal regarding the emotions. That being said, it is yet possible for negative emotions to become maladaptive (or abnormal). Negative emotions refers to unpleasant emotional states like fear,[45] anxiety,[45] anger,[46] depression',[47] discouragement,[47] guilt,[47] sadness,[43] hostility,[48] irritability,[48] shame,[49] envy,[49] jealousy,[49] and disgust.[49] It is assumed that the negative emotions which are likely to be associated with 'violent' 'behaviour' are emotions like anger (and its intense form, rage), hate, hostility, vengeance, jealousy, despair, greed, fear (and its intense form, being terrified), and panic. It is possible that the overwhelming negative emotions of 'ETIVB' may occur as an isolated emotion like pure anger. However, it is also possible (perhaps even likely) that the overwhelming negative emotions of 'ETIVB' are mixed, for example a combination of jealousy, anger, hate, vengeance and fear of losing a lover to the victim.

How Emotions are Related to Stimuli in 'ETIVB'

In 'ETIVB' a stimulus (or stimuli) evokes culturally warranted severely to extremely distressing emotions ('emotions'), which are potentially overwhelming, and that trigger 'involuntary' 'violent behaviour'. In the ETIVB-construct 'triggering event' is used to refer to a single stimulus or multiple stimuli that evokes severe to extreme emotional distress that triggers 'involuntary' 'violent behaviour'. The stimulus and the emotions it evokes are so intimately associated that they form a whole. Nevertheless, they are distinguished in that the stimulus occurs first and it then evokes emotions. Similarly 'emotions' and 'violent behaviour' occur concurrently in 'ETIVB', but they can nevertheless be distinguished in that 'emotions' occur first and trigger 'violent behaviour'. The stimulus (or stimuli) and the evoked emotions constitute a unitary incident, because of 1) a practically inseparable temporal association and 2) the stimulus (or stimuli) being emotionally salient for someone observing the stimulus (or stimuli).

Regarding their temporal association the evoked emotion follows so quickly on its 'triggering event' that they are for practical purposes temporally inseparable. This is not only a matter of high self-evident truth, but can also be inferred from several neurophysiological studies using stimuli and evoked emotions. In such studies response times are measured in tenths of a second.[50-57] The inseparable association between stimulus and emotion is reflected by phrases researchers themselves use, for example, "emotional stimuli,"[58] "emotionally salient stimuli,"[59] "emotionally provocative stimuli,"[60] and "unpleasant emotional stimuli."[58] In 'ETIVB' an appropriate description for the triggering stimulus would for example be "extremely distressing stimulus".

Despite the inseparable temporal association between stimulus and emotional response, it does not mean that the full range of emotional reactions is necessarily always evoked immediately. For example the most immediate reaction to an emotionally provocative stimulus may be a transient feeling of being stunned as evidenced by what is often referred to as the "freeze-response".[43] Although the freeze-response (also called tonic immobility in the academic literature[61]) has been described in relation to trauma and fear,[62-66] I have not found evidence of tonic immobility before an anger reaction. Yet, the possibility remains. A little time, for example 2 seconds, may be needed in practice. A time delay between stimulus and response is well recognized in behaviour analysis, called "latency".[27]

In the research finding that negative emotions leading to specific behavioural tendencies[46] the association between negative emotions and the behavior they trigger is revealed. The presence of intense negative emotions may lead to rash actions[67] which presumably last until the triggering emotions can be brought under control.[68] This common sense presumption has to be made, since empirical research does not provide clarity about how long behaviour triggered by negative emotion may last. In the ETIVB-construct the stance is taken that 'involuntary' 'violent behaviour' triggered by intense negative emotions lasts for as long as the triggering emotions rage uncontrollably. It is also

assumed that healthy individuals are able to bring such emotions under control relatively quickly and that therefore, 'involuntary' 'violent behaviour' in 'ETIVB' will be of relatively brief duration. There is at least some support for this assumption from study cases that closely resemble 'ETIVB' like *S v Campher*, *S v Wiid*, *S v Gesualdo*, and *S v Els*. Likewise the study case which is an example of 'ETIVB' (*Sanders and Jacaranda 94.2*) also supports it.

Regarding emotional salience, a stimulus (or stimuli) has to be associated with a specific emotional outcome for it to become an emotionally salient stimulus. A stimulus' meaning depends on a person's experiences.[47,69,70-71] For example, for an experienced driver the driving of a motor vehicle may be an emotionally neutral stimulus because it evokes little or no emotions. However, it can be a very unpleasant emotional stimulus for someone who survived a harrowing motor vehicle accident such as is found with posttraumatic stress disorder. Note how driving in a motor vehicle comes to have a specific emotional value, for example being scary or terrifying. The emotional valence stems from the consequences of driving (the stimulus in this case). This renders the occurrence of driving a motor vehicle an emotionally severely distressing stimulus.

In the ETIVB-construct the emotional salience of the stimulus for emotions is that it is severely to extremely distressing. This is so because severely to extremely distressing emotions have the potential to overwhelm a person's ability to control behaviour triggered by the distressing emotions. By such means 'involuntary' 'violent behaviour may be triggered. Intense anger, for example, disrupts mental processes involved in complex tasks, interferes with cognition, and overrides inhibitory controls which may lead to impulsive behaviour.[72] To explain how this may happen one needs to understand the effect of negative emotions like anger. Unlike positive emotions, which signal safety, [46] negative emotions signal danger, [46] and danger requires an immediate behavioural response. Negative emotions have cognitive and behavioural consequences that are very different from those of positive emotions.[43,73] Over and above causing an unpleasant subjective experience, negative emotions narrow a person's horizons, signal danger, and decrease a person's response options.[43,73] Negative emotions are linked to specific action tendencies.[46] Such actions may be taken in haste to avoid or undo whatever danger is signalled.[43] The consequences of negative emotions' effect of cognitive and behavioural constriction include what Cyder *et al.* calls an "emotion-based disposition to rash actions".[67] In the process evaluative abilities become restricted in contrast to the broadening effects that happen during positive emotions.[43,73] If these cognitively restricting effects of negative emotions become pronounced under extreme negative emotional arousal, it generates the possibility of such severe cognitive restriction that the negative emotions may override cognitively mediated inhibitory controls. The effect may then be that the triggered behaviour occurs uncontrollably, according to the specific predisposition generated by the specific distressing emotion, which triggered it. In the case of the ETIVB-construct the behaviour under discussion would be 'involuntary' 'violent behaviour' – 'violent behaviour' which occurs 'involuntary' as a consequence of extremely distressing emotions.

So far it was explained that severe to extreme emotional distress that is potentially overwhelming (in the sense of overcoming voluntary control about the behaviour that is triggered by the emotions) is needed to generate the possibility of 'involuntary' 'violent behaviour'. In the ETIVB-construct the potentially overwhelming negative emotions are described as ranging from severe to extreme emotional distress. The reason for using a range of severe to extreme is that we may not all agree about what counts as *overwhelming emotions* or an *overwhelming 'triggering event'*. It is assumed that it is easier to give an opinion about whether specific negative emotions, and also specific 'triggering events', fall in a range of severely to extremely distressing, than to designate either of them as being overwhelming (or not) in a definitive sense, for example by saying, "These emotions overwhelm one's ability to control one's consequent behaviour." Because of differences of opinion, the range, "severe to extreme", may in practice capture distressing emotional stimuli that are of lesser severity than those actually conceptualised for 'ETIVB'. Consequently, the range, "severe to extreme", may also capture negative emotions that are of lesser severity than those actually conceptualised for 'ETIVB'. However, the price of being somewhat overinclusive seems worth paying when compared to the price of being overexclusive. For example, it seems more acceptable to include a triggering stimulus regarding which there is doubt as to its being adequate as an authentic 'triggering event', that to exclude an authentic 'triggering event' because the emotional stimulus is considered not intense enough to be overwhelming. Moreover, the acceptability of capturing a less than "legitimate" triggering stimulus is also offset by the following: 1) the 'triggering event' only allows for the *possibility* of 'involuntary' 'violent behaviour' - it does not mean that any possible violent behaviour *is* involuntary; 2) 'involuntariness' itself is not assessed by the 'triggering event', but by 'violent behaviour'.

How Emotions are Related to Socio-Cultural Context in 'ETIVB'

In 'ETIVB' the emotional severity of the stimulus (or stimuli) must be socio-culturally warranted as being of severely to extremely distressing when all relevant issues are taken into consideration. This is so because 1) persons are part of a specific socio-cultural group and it can be assumed that they would share emotionally salient stimuli and 2) socio-cultural considerations are useful in the sense of being a standard by which to gauge a specific individual's emotional reaction to a specific stimulus (or stimuli).

It can be assumed that persons from the same socio-cultural group share emotionally salient stimuli. For example, there are phenomena like pride in national symbols and hatred of enemy symbols. What may be severely to extremely distressing for one socio-cultural group may not be so for another. For example, a cartoon caricature of a religious figure may be very distressing to members of one specific religious group while being funny to others. Since it can be assumed that socio-cultural groups share emotionally salient stimuli, it can be assumed that persons of the same socio-cultural group would understand that a specific stimulus may be severely to extremely upsetting for other members of that same socio-cultural group. This is why the emotional salience of a stimulus, and indeed the evoked

emotions, can be gauged against a given socio-cultural context. This way of gauging an emotional reaction already happens in courts of law where psychiatrists grapple with what is sometimes called the "psychological blow automatism"[5-9] and "sane automatism".[2,15-17] It seems that courts of law use socio-cultural context as a standard by which to gauge the intensity of distressing triggers and the severity of distressing evoked emotions.

It is important to establish a standard by which the intensity of an emotional reaction can be gauged. Without it any person can claim that any stimulus was severely to extremely distressing. For example, X would be able to claim that Y looked at him in a supercilious way which evoked extremely distressing emotions that triggered 'involuntary violent behaviour'. If the stimulus (or stimuli) is conceptualised as all inclusive it would render criteria formulated from it all inclusive too. If that were so, the ETIVB-criteria would likely identify voluntary 'violent behaviour' as involuntary – a situation which would obviously be unsatisfactory. By taking the stimulus (or stimuli) to be socio-culturally warranted a standard is established. Using this standard one may, for example, consider that most persons from my socio-cultural context would concede that rape is severely to extremely distressing. On the other hand, being mildly reprimanded would not usually be understandable as severely to extremely distressing in my socio-cultural context. However, it may be so if there are other relevant factors at play. It follows that stimuli which are socio-culturally not considered as having the potential to evoke evoking lesser degrees of negative emotional arousal and stimuli which evoke positive emotions do not count as stimuli for 'ETIVB'. Neither do such lesser degrees of negative emotional arousal or positive emotions count as 'emotions' in the ETIVB-construct. That does not mean that it is denied that less severely distressing triggers cannot cause severe to extreme emotional distress in specifically vulnerable individuals. For example, relatively minor distress may evoke extreme emotions in a person suffering from intermittent explosive disorder (which does not mean the behaviour is involuntary).[12,14] However, if relatively minor distressing events are included in the ETIVB-construct, it will lead to an overinclusion of distressing events that in turn will leave the construct to broad for practical use, especially if one considers that it is meant for 'violent behaviour' that is a possible offence.

When gauging emotional salience and a specific evoked emotion against socio-cultural context all relevant factors must be taken into account. The reason is that a specific stimulus may at first glance seem to be of less than severe emotional distress, and the evoked distressing emotions may seem to be excessive, while it is not so when all relevant factors are taken into account. For example, in *S v Campher* (see précis) the appellant shot her husband after he told her, "You little bitch, now you are going to pray this little hole straight." This utterance on its own is unlikely to be considered as a severely to extremely distressing stimulus. However, when a spate of preceding humiliations and intimidations by Mrs. Campher's husband is taken into consideration the distressing valence of the emotional impact of those words is more likely to become apparent.

How Stimuli, Emotions and Behaviour are Related in 'ETIVB'

The 'triggering event' can be understood as a collective phrase for the stimulus or stimuli that evokes severely to extremely distressing emotions that trigger 'involuntary violent behaviour' in 'ETIVB'. Like in "psychological blow automatism",[5,7,9,19] a concept closely related to 'ETIVB', the stimulus (or stimuli) which trigger 'involuntary violent behaviour' is constituted by interpersonal incident (or incidents). The 'triggering event' has certain qualities. It has to have the potential to evoke severely to extremely distressing emotions (see previously) and therefore, must potentially be severely to extremely distressing in itself when socio-cultural context and all other relevant factors art taken into consideration (see previously). It is also an observable incident and it may consist of a single severely to extremely distressing incident or a series of distressing incidents that as a whole constitute a severely to extremely distressing incident.

In 'ETIVB' the 'triggering event' has the quality of being observable because the severely to extremely distressing incident or incidents happens in an interpersonal context. In an interpersonal context the 'triggering event' is constituted by what a person or persons do and/or say. Such incidents must be observable to an agent of 'involuntary violent behaviour' to have an emotional effect on him or her. Therefore, unobservable (and therefore also not interpersonal) incidents that may evoke distressing emotions like hallucinations,[74-76] delusions[77-79] and distressing memories (for example those of posttraumatic stress disorder[12,14] do not count as 'triggering events' in the ETIVB-construct.

The other qualities of the 'triggering event' are that it can be constituted by a single incident or a series of incidents. For the 'triggering event' to consist of only one incident it is required that the distressing incident must be considered severe enough, socio-cultural context and all other relevant factors having been taken into consideration, to evoke severely to extremely distressing emotions (which may trigger 'involuntary violent behaviour'). However, the 'triggering event' may also be constituted by a series of distressing incidents which cumulatively form a severely to extremely distressing incident (cultural context and all other relevant factors taken into consideration). The cumulative effect of individual distressing incidents may be ascribed to a perception of intentionality on the part of the agent of the distressing stimulus and frustration on the part of agent of 'violence'.[68,80] This is well demonstrated in *S v Calitz*. This may involve distressing incidents which on their own cannot be considered severe enough to evoke severe to extreme emotional distress, but if they form a whole, they do. For example the cumulative effect of distressing incidents is seen in the verdict of Navsa JA in *S v Eadie*, "A person who acts in a state of sane automatism would typically have been subjected to a great deal of stress producing a state of internal tension building to a climax which in most cases is reached after the person concerned has endured on-going humiliation and abuse."

However, as mentioned, the distressing events' being related to each other accounts only in part for the individual distressing events in *S v Els* in their forming a whole as a 'triggering event'. The individual distressing events also followed each other quickly, one seamlessly flowing into the other so to speak. If each distressing event in *S v Els* were separated by hours, they would not form a whole as was actually the case. To explain the issue of time between individual distressing events more: it is not difficult to imagine how someone can become severely distressed by being repeatedly harassed over a period of seconds or minutes. It is a common human experience with a high degree of self-evident truth that a person's emotional control can be eroded by such repetitive distressing events. When it comes to everyday life the repetitive distressing events are usually relatively minor and the consequent emotional outbursts too. Take, for example, a parent whose emotional control has been taxed by the repetitive unacceptable behaviour of a child. At some point the parent may scream at the child or even smack it, even though performing such behaviours may be unacceptable to the parent and are soon regretted. This does not mean that such a parent behaves involuntary; it simply illustrates a point, namely that less severe distressing events following each other in quick succession build up towards a more severe distressing event as a whole. When it comes to 'ETIVB' the distressing events are severe to extreme and they build up towards what qualifies as a 'triggering event'. That this may happen is based on common human experience and self-evident. That this is so can be also be inferred from the take the Supreme Court of Appeal has on this issue, namely, "A person who acts in a state of 'sane automatism' would typically have been subjected to a great deal of stress producing a state of internal tension building to a climax which in most cases is reached after the person concerned has endured on-going humiliation and abuse."[2]

It being so that lesser distressing events may escalated to form a greater distressing event if they are related to each other and follow each other closely, it remains to be specified how close in time the individual distressing events should be so that they can form a whole. Said slightly differently, it remains to be specified how much time may elapse between individual distressing events before they lose cohesion and do not form, as a whole, a more severely distressing event. In the absence of research to help settle the issue, I used the previously described iterative process with the criminal case studies while exploring 'ETIVB'. From the case studies it emerged that in those cases where a series of distressing events formed an identifiable 'triggering event', the individual distressing events could not have been separated by more than a few minutes. Consequently, it is taken that in the case of multiple distressing events, the individual distressing events should not be separated by more than a few minutes so that together they form a whole as the 'triggering event'. However, it is not possible to be more specific than specifying "not separated by more than a few minutes", because there would be little evidence to base such a specification on. In the final assessment the specification, "not separated by more than a few minutes", together with the relatedness of the individual distressing events in a series of distressing events, and together with the overall opinion of the assessing psychiatrist, has to suffice for considering a series of distressing events as forming a whole as a 'triggering event'.

Chapter 6

What is 'Involuntary' in 'ETIVB'?

In the previous chapters the constructs of 'violent behaviour' and 'emotionally triggered' as they relate to the ETIVB-construct have been described. This chapter proceeds with the strategy to build up clarity concerning the ETIVB-construct by describing the concept 'involuntary'.

The ETIVB-construct is about a specific type of behaviour, namely 'involuntary violent behaviour'. This being so, an inability to exercise control regarding 'violent *behaviour'* and an inability to exercise choice regarding 'violent *behaviour'* lies at the core of 'involuntary' in the ETIVB-construct. An inability to exercise control and choice does not aim to depict distinct categories of involuntariness, but are used as descriptive angles for the illumination of the various aspects of involuntariness in the ETIVB-construct. Before considering 'involuntary' in the ETIVB-construct in terms of an inability to exercise control or choice, 'involuntary' will be qualified as distinct from the legal concepts of an 'act of omission', not being 'culpable', 'duress', and 'necessity'.

The complexities of involuntary omissions, irrespective of whether they have violent consequences, are not considered for the purposes of the ETIVB-construct, because omissions do not count as 'behaviour' as conceptualised in the ETIVB-construct (see Chapter 4). The reason for considering omissions in this chapter, and restating the fact that they are excluded, will now be explained. Omissions, referring to behaviours that are not performed, but that should be performed, may theoretically come into consideration for 'ETIVB'. It is for example, possible that X has a duty to warn Y when a situation arises which puts Y's life in danger. If Y fails to warn X of danger, X would commit an "act of omission" as it is referred to in criminal law.[15] There may be many reasons why X fails to warn Y for example negligence, spite, a disease of the mind, sudden loss of consciousness, or perhaps even overwhelming emotions. It is for example possible that X is, for some reason, emotionally overwhelmed to such an extent that he or she cannot fulfil his or her obligation to warn Y. As a consequence Y may die or suffer bodily harm. This example demonstrates the possibility for an emotionally triggered involuntary omission with violent consequences. Since omissions are form of behaviour, it may be tempting to them into consideration for ETIVB. However, an act of omission, which refers to the absence of wanted behaviour, is very different from an act of commission, which refers to the presence of unwanted behaviour. Involuntary omissions, whether emotionally triggered or not, need to be considered very differently in terms of an evaluation than acts of commission. For example, how does one exactly describe absent behaviour for example in terms of topography, latency frequency, duration, and intensity?

Having excluded 'acts of omission' from 'involuntary', 'involuntary' in the ETIVB-construct is distinct from being considered 'not culpable', doing something 'under duress' or 'in necessity' as understood

in law.[15] Although 'involuntary' may be associated with 'not culpable' in some instances, these two concepts diverge in other instances. It is common in jurisprudence that involuntary behaviour in general may mean 'not culpable' but it is not synonymous with 'not culpable'. Say, a man who knows that he suffers from uncontrolled epilepsy has a fit while driving and causes an accident. Although the accident is due to involuntary loss of control over behaviour, the man voluntarily decided to drive knowing that a fit may occur. As a result he may be held 'culpable'.[31] Another example is substance intoxication. In South African jurisprudence it is accepted that a person can be so intoxicated by a substance as to behave involuntarily.[15,17] Yet, should such an intoxicated person perform an act that makes for an offence, he or she may nevertheless be considered 'culpable' of an offence if becoming intoxicated was voluntary.[15] 'Not culpable' is similar to notions like not imputable, having an excuse before the law, and not being responsible. All these notions, like 'not culpable' are therefore also distinct from what is meant from 'involuntary' in the ETIVB-construct.

Two further legal concepts that must be qualified as distinct from the 'involuntary' in the ETIVB-construct are 'doing something under duress' and doing something as a 'necessity'. They are considered together because in South African law 'necessity' is used in the same way as 'duress'.[15] 'Duress' or 'necessity' is about not being 'culpable'.[15] Not being 'culpable' is distinct from 'involuntary' as previously said. However, despite 'duress' or 'necessity' being distinct from 'involuntary' in this way, confusion may still occur, because some consider doing something 'under duress' as doing something involuntarily.[31] The potential confusion can be cleared by considering an example. Say a woman X breaks the law because of the coercive demands by her abusive husband, Y, who threatens to kill her if she does not do as he demands. In such case X's breaking the law is done under 'duress' (or in 'necessity') and because of that, she may be exculpated. Notwithstanding the possibility of X being exculpated, X's behaviour is not 'involuntary', because 'duress' and 'necessity' (although excuses) do not preclude exercising control or choice regarding behaviour. In the example, X does exercise a choice (even if the choice is very difficult) and she is able to control her body movements towards exercising that choice. For another example, take the common occurrence that one must pay taxes. It may be said that paying tax is involuntary. It may be said that one has no choice in the matter. However, one does exercise a choice, namely to pay taxes rather than not to pay taxes and face the legal consequences. In the ETIVB-concept it is about an inability to *exercise* control and choice regarding a specific behaviour, namely 'violent behaviour'.

An Inability to Exercise 'Control' or 'Choice' as Necessary Qualities of 'ETIVB'

Being unable to exercise control or choice regarding 'violent behaviour' is at the core of the ETIVB-construct. An inability to exercise control and choice are angles for describing involuntariness here and are not meant to imply different categories of involuntariness. This is rather so for practical reasons that will be addressed later. That an inability to exercise 'control' and 'choice' regarding 'violent behaviour' is central to the ETIVB-construct does not mean that they are the only way to think

about involuntary behaviour in general (including 'involuntary violent behaviour'). It may, for example, be said that involuntary behaviour is behaviour that cannot be helped,[31] or behaviour not accompanied by certain subjective features like willing,[15] or an inner effort,[31] or that involuntary means unconscious behaviour.[3] I shall explain that all of these ways of thinking about involuntary behaviour comes down to an inability to exercise control or 'choice'. I shall also use the idea that involuntary behaviour can be described as unconscious behaviour as an opportunity to address the issue of memory for involuntary behaviour. However, before doing all this, I shall explain what is meant by an inability to exercise 'control' and 'choice' by using breathing behaviour as an example. In doing so I shall explain that an inability to exercise 'control' or 'choice' are closely related to each other, but that they contribute complimentary to the concept, 'involuntary', in the ETIVB-construct.

As seen in the example of a wife X being coerced by a husband Y, a distinction should be drawn between *having* control or choice and *exercising* control or choice. It may be said regarding the previous example, as a manner of speaking, that X does not *have* control or choice regarding her behaviour, because she is forced into doing what she does not want to do by her husband Y. Yet she *exercises* control and choice regarding her behaviour by going along with her husband's demands, rather than facing the consequences of her defying her coercive husband. In the ETIVB-construct it is about lacking the ability to *exercise* control regarding 'violent behaviour' ('control') and about lacking the ability to *exercise* choice regarding 'violent behaviour' ('choice'). I shall explain why lack of the ability to exercise control or choice regarding 'violent behaviour' means that the behaviour is involuntary by using breathing as an example.

The reason for using breathing behaviour as an example is that breathing is an everyday human experience, which can easily be understood experientially. Breathing is driven, like emotions, by a lower central nervous system centres that has the ability to overcome voluntary control by a higher nervous system centre. In the case of breathing these systems are allocated in the brain stem[71] and in the case of negative emotions they are allocated in the limbic system (refer to Chapter 5). In both cases "lower" central nervous system urges and drives overcome "higher" central nervous system centres (like the frontal lobes) [81] that are involved in control and decision making (refer Chapter 5). Taking this into account there are other important similarities that make it possible to apply the explanation regarding involuntary breathing behaviour to 'ETIVB':

1. During involuntary breathing it is the urge to breath that overwhelms a person's ability to exercise control regarding breathing so that breathing takes place involuntarily. During ETIVB it is the emotional urge to perform 'violent behaviour' that overwhelms a person's ability to exercise control regarding 'violent behaviour' ('control') so that 'violent behaviour' occurs involuntarily.
2. During involuntary breathing it is the urge to breath that overwhelms a person's ability to exercise choice regarding breathing so that breathing occurs involuntarily. That is, the person cannot choose to breathe or choose not to breathe. During ETIVB it is the emotional urge to

perform 'violent behaviour' that overwhelms a person's ability to exercise control regarding 'violent behaviour' ('choice'). That is, the person cannot choose to perform 'violent behaviour' or choose not to perform 'violent behaviour'.

Normally, breathing, which is a form of behaviour, goes on involuntarily, but we have a choice about breathing deeper, slower, quicker, or holding our breath and, at the same time, we control breathing to accomplish these ends.[71] In other words, we perform the said breathing behaviours voluntarily. If we choose to hold our breaths, we find that we can control the urge to breathe for a while, but then it becomes so strong that it *overwhelms* us and we are unable to hold our breaths any further.[71] Consequently, we breathe involuntary. In the course of the events that have us breathing involuntarily, we lose the ability to exercise control regarding breathing behaviour and we lose the ability to exercise choice regarding breathing behaviour. Perhaps, if we have greater resolve, persistence, or determination, we would be able to hold our breaths until we pass out. However, we lack such superhuman determination. We cannot exercise a choice to continue to hold our breaths and we cannot exercise a choice *not* to breathe. We also cannot exercise control regarding breathing. When we breathe again we do so *involuntarily*. The fact that we breathe involuntarily may be indicated by the fact that we lack the ability to exercise control and choice regarding breathing. In fact, involuntary breathing (breathing regarding which we lack the ability of exercising control and choice) happens to us, even though it may appear as if we are breathing voluntarily. Although we lack both the ability to exercise control and choice regarding breathing, it is actually so that lacking any one of the two (control or choice) suffices to count for us breathing involuntarily.

The reason that lacking either of the ability to exercise control or the ability to exercise choice regarding breathing suffices to count as involuntary breathing is that they are interdependent. They are interdependent even though each describes a complementary aspect of involuntary breathing (behaviour). Since they are interdependent a person who lacks the ability to exercise control regarding breathing also lacks the ability to exercise choice regarding breathing and *vice versa*. It is self-evident from everyday human experience that if we cannot exercise control regarding breathing, we then also cannot exercise a choice regarding breathing. Also, if we cannot exercise a choice regarding whether or not to breathe, we are at the same time unable to exercise control regarding breathing. Consequently, if we have reason to believe that someone has lost the ability to exercise control regarding his or her breathing, he or she would also have lost choice regarding breathing and *vice versa*. Therefore, if we know that someone could not have exercised control regarding his or her breathing we can infer that he or she must have breathed involuntarily. The same goes for when someone could not exercise choice regarding breathing.

Despite being interdependent, lack of exercising control regarding breathing and lack of exercising choice regarding breathing describe complementary aspects of involuntary breathing. Lack of the ability to exercise control regarding breathing informs us that a person is not in charge of his or her breathing. Lack of an ability to exercise choice regarding breathing informs us that breathing does not

happen 1) as something the person decides to do and 2) that it does not happen as something the person has the ability to decide *not* to do.

Since involuntary breathing (after having held one's breath) is the same as 'involuntariness' in 'ETIVB, it can now be said that lack of control regarding 'violent behaviour' or lack of choice regarding 'violent behaviour' is what one will find during 'involuntary violent behaviour'. If X punches Y involuntary, X punches Y while lacking one of the abilities to control or choose the behaviour, punching Y. In the case of 'ETIVB' lacking 'control' means that X is not in charge of his 'violent behaviour' – punching Y. Punching Y, so to speak, happens to X and is not the consequence of any voluntariness. In the case of 'ETIVB' lack of 'choice' means that when X punches Y, X does not decide (or choose) to punch Y and X can also not decide (or choose) *not* to punch Y. Also, if it can be established that X lacks 'control' regarding punching Y, it means that X at the same time lacks 'choice' regarding punching and *vice versa*. That is so because lack of 'control' and 'choice' as previously indicated, are interdependent.

Although interdependent, these two different aspects of involuntariness, namely the inability to exercise 'control' and the inability to exercise 'choice' are of practical value. For this reason both are emphasised in the ETIVB-construct and that neither is dropped in favour of the other. For example lack of 'choice' is not dropped from the ETIVB-construct simply because it can be inferred from lack of 'control'. To explain why, let's take involuntary breathing again as an example. Say one would like to establish whether a man, X, has at some point breathed involuntary. If one can establish that X could not exercise control regarding his breathing, one can infer that X has breathed involuntarily. However, it may be that for some reason it is difficult to establish that X lacked the ability to exercise control over his breathing. In such an instance it may be easier to establish that X lacked the ability to exercise choice regarding his breathing. At other times, however, it may be easier to establish that X lacked the ability to exercise control regarding breathing, than to establish that X lacked the ability to exercise choice regarding breathing. It is expected that the same holds true regarding the 'involuntariness of 'ETIVB'. At times it may be easier to establish that there was an inability to exercise 'control', but at other times it may be easier to establish that there was an inability to exercise 'choice'. It follows that for 'involuntary' in the ETIVB-construct it must be established that there was an inability to exercise 'control' or 'choice', and, as will be explained in the next paragraph, not merely a partial inability to exercise 'control' or 'choice'.

If it is established that rather than an inability to exercise 'control' or 'choice' there was only a *partially impaired* ability to exercise 'control' or 'choice', then it cannot be said that any 'violent behaviour' was 'involuntary'. For example, intoxication[23] disinhibits a person's impulse control. Because intense negative emotions like anger narrow a person's response options'[43,73] disrupts mental processes involved in complex tasks,[72] lead to rash actions[67] and consequently may also have a disinhibiting effect on a person's behavioural responses. However, such disinhibited impulse control is not 'involuntary' except if the ability to exercise 'control' or 'choice' is disabled. Moreover, merely doing

something on impulse does not mean that it is necessarily 'involuntary', because even when something is done impulsively, it can nevertheless be done while exercising control and choice regarding a specific behaviour. I may for example eat a piece of cake on impulse, but I nevertheless exercise choice and control regarding my behaviour, namely eating the cake. Maybe eating the piece of cake is also a matter of poor or even impaired 'judgment' (judgment being used as a psychiatric term[20]), but even then I am nevertheless able to exercise control and choice regarding my behaviour. I may also find that eating the piece of cake on impulse is the result of a refusal to resist an urge to eat it. However, such a refusal is a choice I make and I am yet able to exercise control and choice about my behaviour. This is not to say that all impulsive behaviour is voluntary. My impulsively eating the piece of cake is quite different from a person suffering from the Kluver Bucy syndrome[23] doing the same thing. It is quite likely that such a patient may not be able exercise control over his or her behaviour and that he or she can't help it. Not being able to "help it" is another way of talking about involuntary behaviour. Such other ways of talking about involuntary is the next topic.

'Involuntary' in Terms of 'Cannot Be Helped', Willing, Unconscious Behaviour, and Memory

There are other ways of thinking about 'involuntary', but for ETIVB-purposes they mean they mean the same as an inability to exercise 'control' or 'choice'. One may, as previously said, describe involuntary behaviour as behaviour that cannot be helped,[31] or behaviour not accompanied by certain subjective features like willing,[15] or an inner effort,[31] or unconscious behaviour.[3]

What does it mean, regarding involuntary 'violent behaviour' if, for example, a man, X, punches Y while being unable to help it? It would mean that for some reason X cannot stop himself from punching Y, similarly to X not being able to stop himself from breathing after having held his breath for too long. This, as previously explained, means that X lacks 'control' or 'choice' regarding punching Y. Consequently, lacking 'control' or 'choice' has the same meaning in this context as not being able to help what is being done.

If it is so that X punches Y while X lacks 'control' or 'choice' regarding punching Y, it is to be expected that X will not experience features associated with voluntary behaviour. For example, willing, in the sense of forming intention[15] is absent. Likewise, an inner effort to perform a behaviour, in the sense of an inner mental effort associated with such mental activities as thinking about, planning, and deciding, is absent. Experiencing willing or an inner effort to perform a behaviour, for example X punching Y are absent, because if X does not have 'control' or 'choice' regarding punching Y, 1) the punch cannot involve X willing it at all – it happens involuntarily, and 2) the punch cannot involve an inner effort, since X is not spending any mental effort towards punching Y. As a matter of fact, theoretically it may even be possible that X spends a mental effort toward *not* punching Y as happens when we try not to breath in an attempt to continue to hold our breaths longer.

Another way of thinking about involuntary behaviour is to say that involuntary behaviour is unconscious behaviour and there may even be an insistence on unconscious behaviour[3] When there is an insistence on unconscious behaviour, a further requirement may be that there has to be a condition (for example a medical condition like epilepsy) that explains the unconscious, involuntary behaviour.[3] I shall mention two problems with an insistence on unconscious behaviour and a condition that explains it. The first problem is that necessitating that involuntary behaviour is unconscious assumes that all involuntary behaviours are unconscious. I shall point out that it is not so. The second problem is that the insistence on a medical or psychiatric condition to explain unconscious behaviour as requirement for involuntary behaviour, it may seem that a medical or psychiatric condition is necessary to explain all involuntary behaviour, even if it may transpire that involuntary behaviour needs not be unconscious. I shall explain that this is not so either.

Unconsciousness behaviour does not sit well as a requirement for involuntary behaviour, because involuntary behaviour may occur in persons who are aware of their involuntary behaviour. In some cases of frontal lobe epilepsy the sufferer may perform involuntary movements of which he or she is aware despite the fact that there is no choice or control regarding the movements.[23,82] Moreover, in such cases the sufferer may remember the episodes, including the involuntary movements.[23] Indeed, involuntary, violent behaviour during an epileptic seizure has been described where persons were aware of what was happening and who remembered the involuntary behaviour afterwards[83] Involuntary, post-ictal aggression with a memory of the involuntary aggressive behaviour has been documented.[60,84-86] Such cases demonstrate that awareness (or consciousness) and a memory for violent behaviour is compatible with involuntary violent behaviour. What all of the foregoing means is that an insistence on unconscious (violent) behaviour and an amnesia for that (violent) behaviour as reflected in *S v Potgieter* is a doubtful, if not erroneous, prerequisite for involuntary violent behaviour. This is also the view of Stanley Yeo[4] and seems to be the position of the Supreme Court of Canada as implied by the verdict of R v Stone.[9] For Yeo, speaking about involuntary behaviour during automatism, automatism "…comprises involuntary conduct involving a complete lack of capacity to contain one's conduct." In other words, an inability to control or choose one's conduct, or, in Yeo's own succinct words: "Automatism involves lack of control and not lack of consciousness."[4]

The second problem that needs to be addressed is that some may possibly insist on a medical or psychiatric condition that explains involuntary behaviour, even when it has been explained that unconscious behaviour cannot be a requirement for involuntary (violent) behaviour. The problem with this requirement is that a medical or psychiatric condition need not be present for behaviour to be involuntary. That this is so is accepted by in research[87-90] and criminal law.

Having explained that involuntary behaviour is not necessarily unconscious behaviour and that involuntary behaviour is not necessarily the result of a medical or psychiatric condition, I shall now explain that amnesia for 'violent behaviour' cannot be considered as a necessity for 'involuntary' in the ETIVB-construct. An explanation is needed because some authors and courts consider amnesia as a

necessary consequence of involuntary behaviour.[3,18,91] If it were true that amnesia necessarily follows involuntary behaviour, it would mean that remembering (violent behaviour) would be incompatible with involuntary (violent) behaviour. However, I shall explain that the requirement that involuntary behaviour should necessarily be followed by amnesia for the (violent) behaviour is dubious, if not erroneous.

The reason that some authors and some courts require amnesia as a prerequisite for involuntary behavior may be because there often is amnesia for involuntary behaviour. The reasons for that is because, 1) involuntary behaviour in the presence of a medical or psychiatric condition is well described and accepted in courts (for examples see Mellers,[82] Moore,[23] Fenwick,[18] Gould,[92] and Arboleda-Flórez[19]); 2) there may be a psychogenic amnesia for the involuntary behaviour. However, I have pointed out that neither a medical nor a psychiatric condition is necessary for involuntary behavior to occur. Because this is so, a cause for amnesia is also not necessarily present, which means that it should be possible to remember involuntary (violent) behaviour. However, even though it should be possible to remember involuntary (violent) behaviour, it may not be remembered because of another reason for amnesia, namely dissociation. Taking into account that 'violent behaviour' in 'ETIVB' is a potential offence it can be noted that amnesia for violent crimes are common (ranging from 10% - 70%).[7,93-94] While psychoactive substance intoxication may explain at least some of the amnesias for violent crime,[7,95-96] and while it may a form of malingering (in which case the violent crime is actually remembered),[97] the current literature indicate that dissociation is the most likely reason for amnesia for violent crime. The position taken in the current literature, namely that dissociation may explain amnesia for violent crime, sits well with my own experience of amnesia of violent crime. However, dissociative amnesia is potentially reversible.[98] Taken together, everything said in this paragraph means that if amnesia for 'violent behaviour' occurs in a case of 'ETIVB' it will not be a surprise, since the 'violent behaviour' of 'ETIVB' is behaviour that is a potential offence. However, it is not a certainty that amnesia for 'violent behaviour' will occur. The 'violent behaviour' may be remembered and because of that amnesia for 'violent behaviour' is not a necessary condition in the ETIVB-concept.

Comparing 'Involuntary' in 'ETIVB' with Other Forms of Involuntariness

Having described 'involuntary' in relation to 'violent behaviour' in the ETIVB-construct and having explained that memory (or loss of memory) of 'violent behaviour' that was performed 'involuntary' does not feature in the ETIVB-construct, I shall next proceed to compare 'involuntary' in the ETIVB-construct with other form of involuntariness. Doing so will show the differences and similarities between 'involuntary' in the ETIVB-construct with other form of involuntariness. I shall consider social forms of involuntariness, involuntary autonomic functions, involuntary body movements, and involuntariness related to psychiatric disorders.

Social Involuntariness

The main difference between social involuntariness and 'involuntary' in 'ETIVB' is that the ability to exercise control and choice regarding behaviour is maintained during 'social involuntariness'. Social involuntariness is used in this discussion as a short-hand way of referring to behaviours that are performed not because a person wants to, but because he or she has to. The reason such behaviours must be performed arises from social circumstances. Should a person refuse to perform such social involuntary behaviours it may have undesirable consequences (which a person tries to avoid), for example going to jail, paying a fine, or even getting killed.

One form of this so-called social involuntariness is legal obligations, like paying taxes or doing military service. Another form of social involuntariness is when a person is forced to do something under direct physical threat. Examples are slave labour and being forced to assist with a crime. For example, a person may be compelled to break the law 'under duress' or 'in necessity' as happened in *S v Goliath*, where Goliath was threatened on pain of death to assist with a murder.

If something is done 'under duress', 'in necessity' or under obligation, it may be considered involuntary, because doing it under such circumstances is against a person's will. It may be said a person has no choice in the matter. However, unlike with 'involuntary' in 'ETIVB', which is qualified as an inability to exercise 'control' or 'choice' (regarding 'involuntary' 'violent behaviour'), in social involuntariness the ability to exercise choice regarding behaviour remains. It may be difficult to exercise the choice, for example choosing to assist in a murder rather than be killed, but a choice can nonetheless be exercised. Likewise the ability to exercise control over what one finally chooses to do, remains.

Involuntary Autonomic Functions

While one is able to exercise control and choice regarding behaviour in situations of 'social involuntariness', control and choice about movements involving the body's autonomic functions are impossible or limited. While autonomic functions are always involuntary or only temporarily voluntary (as for breathing), the situation with 'ETIVB' is different. Although the behaviour of ETIVB' is 'involuntary', the behaviour involved in 'ETIVB' are normally under voluntary control. However, they temporarily become 'involuntary' during 'ETIVB'. Unlike 'ETIVB' functions like temperature regulation, blood pressure, and smooth muscle movements are permanently involuntary.[71] Put in other words, humans are always unable to exercise control or choice regarding these autonomic functions. However, although most autonomic functions are involuntary, some are subject to transient voluntary control over some. Examples are breathing, blinking of the eyelids as well as urinary and faecal sphincter control. Breathing and the similarities it has with 'ETIVB' has already been explained.

Involuntary Body Movements

While the muscles we use to move our limbs are normally voluntary, there are diseases that render them involuntary. Abnormal involuntary and semi-voluntary body movements are characteristic of a number of neurological diseases. Such abnormal, involuntary or semi-voluntary movements may be goalless or may appear goal-directed.

I shall digress a moment to explain “goalless” and “goal-directed”. An involuntary movement is taken to be goalless if it does not involve the purpose of a person, like for example to move an object. An involuntary movement is taken to be apparently goal-directed if it seems as if there is a purpose behind it. However, an involuntary movement only seems to be goal-directed, because it happens without a person exercising any control or choice (with any purpose in mind) regarding it. If the abnormal involuntary movements are goalless, they are obviously different from the seemingly goal-directed involuntary movements of ‘ETIVB’. However, if abnormal involuntary movements seem to be goal directed, then it is in this regard it is the same as the ‘involuntariness’ in ‘ETIVB’.

Examples of goalless, involuntary movements are chorea, which are for example expressed by Huntington’s disease (for a description see Moore[23]); there are also the various goalless movements of epileptic seizures. Over and above presenting with goalless movements, many forms of epilepsy (like grand mal and petit mal epilepsy) also present with impaired consciousness. Such impairment in consciousness is not expected in ‘ETIVB’ for reasons that will be explained below while discussing complex partial seizures. Examples of goalless semi-voluntary movements are tics. Tics straddle the boundary between psychiatric and neurological symptoms and signs. They are discussed here, because tics have more in common with involuntary body movements than with the involuntariness of psychiatric disorders (which will be discussed below). Tics are goalless movements that may be involuntary and partially involuntary.[99-100] It means that there may be no control or choice regarding some tics, there may be partial control or choice regarding other tics. In the latter case a person may suppress the tics for a while, but eventually the urge to perform the tics becomes overwhelming and is done involuntarily. Such semi-voluntary control over tics strongly reminds one of the control over breathing and also ‘ETIVB’. However, unlike ‘ETIVB’ tics do not appear goal-directed.

Unlike tics and chorea there are neuropsychiatric conditions that manifest with involuntary body movements that appear goal-directed. If the involuntary behaviour happens to be ‘violent behaviour’, then it would be the same as the ‘involuntariness’ of ‘ETIVB’. There may be other factors that distinguish such involuntary ‘violent behaviour’ attributable to neuropsychiatric conditions from ‘ETIVB’. There may for example by no ‘triggering event’, or ‘emotions’. A useful example of a neuropsychiatric condition that may present with involuntary movements that appear goal-directed is epilepsy; it is specifically so for complex partial seizures. Epilepsy is a useful example, because 1) it is prevalent,[101-102] 2) epilepsy may involve what seems like goal-directed violent behaviour (which may

even be emotionally triggered)[23,85,103-104]), and 3) epilepsy is used as a defence in criminal courts.[105] That latter reminds of 'ETIVB', which involves behaviour that is a potential offence.

The epileptic seizures that involve what seems like goal-directed behaviour are complex partial seizures. Complex partial seizures are characterized by some degree of impaired consciousness or awareness.[23,106] Although epilepsy is as an example, epilepsy is not the only neuropsychiatric disease that may present with the combination of impaired consciousness and seemingly goal-directed behaviour. Other conditions are for example concussion[107] and Hypoglycaemia.[108] Common to all such conditions is that executive control and choice regarding the seemingly goal-directed behaviour may be disabled. For example, a man who suffers a complex partial seizure that involves violence may have no executive control or choice regarding his performing violent behaviour.

Because the involuntary violent behaviour attributable to neuropsychiatric conditions like epilepsy involve impaired consciousness, it is tempting to consider impaired consciousness as a means to differentiate between such conditions and 'ETIVB. However, impaired consciousness actually does not help to differentiate between seemingly goal-directed involuntary violent behaviour cause by neuropsychiatric conditions and ETIVB. I shall explain why. It is so that no impairment in consciousness is *usually* expected in 'ETIVB'. The reason is that it is unlikely that someone would be subjected, at the very same time, to one of the neuropsychiatric conditions that impairs consciousness as well as to the necessary 'triggering event' for 'ETIVB'. The reason for being subjected to both such conditions at the same time is that, 1) epilepsy involving violence is not common,[109-111] 2) epilepsy involving violent crime is uncommon,[109-110,112] and 3) 'sane automatisms' (as conceptualised by South African courts)[2,16] are reportedly rare. However, it remains possible for goal-directed, 'emotionally triggered' 'violent behaviour' to occur in the presence of a condition that impairs consciousness. The case of *S v Wiid* comes very close to being an example of such an occurrence. Wiid was presumably suffering from concussion when her husband severely abused her. She shot him with a gun that was available coincidentally. *S v Wiid* is the only case to date where the South African Supreme Court of Appeal found in favour of non-pathological criminal incapacity (otherwise known as a "sane automatism"). Unfortunately, as will be clarified in Chapter 11, there was not enough information about the case to properly evaluate it with the ETIVB-criteria.

Involuntariness Related to Psychiatric Disorders

Severe psychiatric disorders do not necessarily disable a person's ability to exercise control and choice regarding behaviour (which may be violent), but severe psychiatric disorders may disable a patient's ability to exercise control and choice regarding behaviour (which may be violent). Take for example, the case of X, a deluded man who suffers from schizophrenia and is convinced that a harmless man, Y, is a danger to him. X may choose to kill Y and consequently X controls his behaviour in order to do so. X makes his decision based on a delusion. It is also possible that compelling hallucinations may contribute. If thinking is disorganized it may further contribute to the

maladaptive behaviour, for example by impairing X's judgment. X's behaviour differs from 'ETIVB' in that X's behaviour is the consequence of his having exercised control and choice regarding his behaviour. However, say X suffers from a psychiatric disorder that disables impulse control, for example bipolar I disorder with a severe, psychotic manic episode. X may then become overwhelmed by negative emotions that drive him to kill Y, without X having exercised any choice or control regarding his violent, psychotic behaviour. Such an occurrence would be the same as the 'involuntariness' of 'ETIVB'.

Chapter 7
Recognising 'ETIVB'

The previous chapters have been about a building up clarity concerning 'violent behaviour', that is specified as 'emotionally triggered', and 'involuntary' in the ETIVB-construct. The next chapters will be about generating criteria for the ETIVB-construct that can be used for research purposes. To achieve the aim of generating ETIVB-criteria, there should be clarity about how ETIVB can be recognised in practice. This chapter is about how to recognise 'ETIVB'. It goes further than the previous chapters that described the ETIVB-construct by describing more specifically what 'ETIVB' looks like in practice. Once there is clarity about what 'ETIVB' looks like in practice, criteria can be formatted for research purposes. This chapter describes what 'ETIVB' looks like with respect to 'violent behaviour', followed by 'emotionally triggered' and 'involuntary'. As will be seen, much of what is needed to recognise 'violent behaviour' and 'emotionally triggered' is already evident from the previous chapters. However, recognising 'involuntariness', which was described as an inability to exercise control or choice regarding 'violent behaviour', needs more elaboration.

Recognising 'Violent Behaviour' in 'ETIVB'

Little needs to be added about 'violent behaviour' in 'ETIVB' in this chapter, because what has already been described previously suffices for recognising it in practice. To briefly summarise what has previously been said: 'violent behaviour' is a possible offence, is directed at someone or something, and has physical injury or damage as consequences. Furthermore, 'violent behaviour' as a form of behaviour can be described in terms of behavioural elements that are standard for a behaviour analysis (as is found in behaviour modification) namely in terms of topography, frequency, duration, latency, intensity, and quality.

Taking into account that 'violent behaviour' is a possible offence, the practical aspects of 'violent behaviour' are that it is directed at someone or something and leaves physical consequences namely injury or damage. In practice the consequences of the 'violent behaviour' should be readily apparent from the facts of a specific case, for example there will be a murder victim. While a victim should be readily apparent it must be established from the case information that the 'violent behaviour' of 'ETIVB' is directed as opposed to violence being accidental as is found, for example in the first murder charge of *S v Kensley*. In *S v Kensly* a shot was fired unintentionally while the accused was struggling with a man to get hold of a gun. While recognising 'violent behaviour' should pose little difficulty in practice, recognising '*involuntary'* 'violent behaviour' poses more problems. Recognising 'involuntary' 'violent behaviour' will be described later in this chapter and that is when the behavioural elements of topography, frequency, duration, latency, intensity, and quality will feature again.

Recognising 'Emotionally Triggered' in 'ETIVB'

'Emotionally triggered' was described in Chapter 5 as being constituted by two closely related but distinct events namely 'emotions' and 'triggering event'. In practice they are assessed separately, because even if there is a 'triggering event' it does not mean that severely to extremely distressing emotions will necessarily be evoked. 'Emotions were described as culturally warranted severely to extremely distressing emotions. 'Triggering event' was described as an observable, culturally warranted severely to extremely distressing single event or events. If the 'triggering event' is constituted by a series of events then those events are related to each other and follow each other with no more than few minutes separating them so that, as a whole, they constitute a severely to extremely distressing trigger. This section about recognising 'emotionally triggered' will start with recognising the 'emotions' of 'ETIVB' followed by recognising the 'triggering event' of 'ETIVB' in practice.

There are three ways to determine the severity of the emotions that possibly triggered 'involuntary' 'violent behaviour'. They are 1) information given by the agent of the 'violent behaviour', 2) information given by witnesses, and 3) by inferring the emotions as best one can. The agent of 'violent behaviour' may be able to give information about the emotions he or she experienced before and during the 'violent behaviour'. However, any information given by such an agent has to be corroborated regarding authenticity as far as possible. This is because 'ETIVB' occurs in the setting of 'violent behaviour' that is a possible crime. The agent of the 'violent behaviour' may be charged with a criminal offence. If such is the case, one should assess reports by the accused person with circumspection, because he or she may give a rendition which is favourable to his or her case. Courts also treat the rendition of accused persons in cases involving non-pathological criminal incapacity (to which 'ETIVB' may be related). Courts treat the evidence of accused persons (referred to in law as *ipse dixit*) in such cases with much circumspection.[15] In *S v Henry* the Supreme Court of Appeal (Scott JA) said, "His [the accused] *ipse dixit* to the effect that his act was involuntarily and unconsciously committed must therefore be weighed up and considered in the light of all the circumstances and particularly against the alleged criminal conduct viewed objectively"

Witnesses to the events preceding and during the 'violent behaviour' may provide useful information about the emotions of the agent of the 'violent behaviour'. In *S v Gesualdo* a witness noticed how the accused was very angry and was not in control of himself. Moreover, if all relevant information in *S v Gesualdo* is taken into consideration, one can infer that Gesualdo more likely than not experienced severely to extremely distressing emotions just before shooting his victim. This brings us to one more way to establish emotions, namely that one can infer emotions from what happened before and even after the 'violent behaviour'. What happened before the 'violent behaviour' has much to do with the 'triggering event' and the emotions that may occur because of it. There may also be behaviours like agitation, shouting, and emotional displays before and during the 'violent behaviour' from which the emotions of the agent of possible 'ETIVB' can be inferred. Even the 'violent behaviour' itself may give

an indication of what the emotions were likely to be. However, the 'violent behaviour' must be used with circumspection, because the fact that behaviour was violent does not necessarily mean that severe emotional distress was present. For example, while the behaviour of the accused in *S v Calitz* is compatible with severe anger and is accepted as being the result of severe anger because other information, matters are quite different in *S v Di Blasi*. In *S v Di Blasi* one can infer from what the accused said that there was little emotional distress at the time of his having murdered his ex-wife. On the contrary, in *S v Di Blasi* one may infer that the murder was quite likely accompanied by feelings of satisfaction, since Di Blasi felt justified in his revenge throughout his trial. Of course, such a lack of severe to extreme emotional distress is not congruent with the ETIVB-construct.

For both 'emotions' and 'triggering event' (which will be discussed next), the study participant will have to decide on what counts as socially warranted severely to extremely distressing by considering socio-cultural context. Socio-cultural context is considered in the sense of what most people of the same social-cultural context as the agent of the 'violent behaviour' would concede to be severely to extremely distressing regarding 'emotions' and 'triggering event'. Let's take the study case, *S v Els*, to illustrate what is meant by "severely to extremely distressing" regarding 'emotions' and 'triggering event'. S v Els also illustrates the issue of a series of severely to extremely distressing events that constitute the 'triggering event'. Mrs Els was a victim of an abusive marital relationship. On the day in question her husband took in much alcohol. Mrs Els also used alcohol. There where verbal altercations between the two of them during the day. At some point later in the day Mrs Els was running a bath for her young son before going to the toilet. While in the toilet, her husband entered, swearing and scolding her. She was sitting on the toilet when he grabbed by the hair and pulled her up by her hair. Next he pushed her head down so that she had to go on to her knees. After that he had repeated the sequence once more before plucking her head about by the hair, in the process pulling out a large bush of hair. The reader is invited to decide whether these events as a whole constitutes a severely to extremely distressing event. The author is of the opinion that, even without him providing all other relevant information, most people from most socio-cultural backgrounds will concede that the intensity of the distressing events Mrs Els endured was is at least severe, if not extreme. This is so because the theme that runs through the individual stressful events are about causing physical and emotional pain, as well as humiliation. Furthermore, the individual stressful events follow each other quickly enough so that they form a whole to such an extent that some may wish to consider everything that happened to Mrs Els from the moment her husband pulled her up by the hair to the moment he plucked out a large bush of hair, as one event. Even if viewed as a single (severely to extremely distressing) event, the outcome as far as 'triggering event' is concerned is no different, since the 'triggering event' may consist of a single (culturally warranted) severely to extremely distressing event. While it may not be very challenging to resolve that the individual distressing events formed a whole as a 'triggering event' in *S v Els*, it may be more challenging to do so in other cases. To assist the recognitions of 'triggering event' in more challenging cases, one needs to explicitly recognise the additional qualities of the 'triggering event', when it is formed by a series of distressing events.

While the severely to extremely distressing events related to the 'triggering event' is explicit in the case of S v Els, her emotions are not. Mrs Els claimed an amnesia for the events that had led up to her killing her husband. Her emotions are not explicitly described in the study case. Consequently, her emotions have to be inferred to the extent that it is possible. The author's opinion about Mrs Els' emotions is that the events that she suffered were congruent with evoking severe to extreme emotional distress. If her amnesia, which is most likely dissociative amnesia, is also taken into consideration, then more likely than not, Mrs Els experienced at least severe emotional distress, which triggered 'violent behaviour', which is not to say that the 'violent behaviour' was 'involuntary' the next topic to be addressed.

Recognising 'Involuntary' in 'ETIVB'

So far it was described how to recognise 'violent behaviour' by its consequences and the antecedent of 'violent behaviour', namely its being 'emotionally triggered'. In this section of the chapter it is about recognising 'involuntariness', which was previously defined as an inability to exercise control or choice regarding the performance of 'violent behaviour'. In the section '*involuntary*' 'violent behaviour' will be described as relatively unsophisticated behaviour that has a very brief latency (no more than 5 seconds) and brief duration (no more than 10 seconds), while there is also no indication that the agent of the 'violent behaviour' could exercise control and choice regarding that 'violent behaviour'.

When it comes to '*involuntary* violent behaviour,' the behaviour is described in the usual behavioural components namely, topography, quality, intensity, frequency, latency, and duration. However, as will be seen, not one of these components on their own or together is sufficient to say that the 'violent behaviour' is indeed 'involuntary'. Consequently there a further qualification is needed, namely that there must also be no indication that the 'violent behaviour' was subject to 'control' and 'choice' by the agent of the 'violent behaviour'. Consequently 'ETIVB' is recognised by two overall features regarding the 'violent behaviour'. The first overall feature serves to demarcate 'ETIVB' as not any type of involuntary violent behaviour that is triggered by emotions, but specifically that type of involuntary violent behaviour that is triggered by emotions and with which psychiatrists and the law grapple with at present. That is to say notions like the psychological blow automatism,[5-9] where mental disorder arguably does not seem to play a substantial role in involuntary interpersonal violence, although there are dissenting views.[113] While the first overall features demarcates the 'involuntary violent behaviour' as potentially being 'ETIVB', the second overall feature seeks to ensure that the 'violent behaviour' is indeed 'involuntary' with more certainty than not. The first overall feature is that 'involuntary' 'violent behaviour' consists of, and can be recognised as, relatively unsophisticated movements that require little precision (embedded in this description are topography, quality, intensity and frequency), has a very brief latency (no more than 5 seconds) and a brief duration (no more than 10 seconds). The second overall features is that 'involuntary' 'violent behaviour' is devoid of (and can be recognised by

there being no) indications that the agent of the 'violent behaviour' had an ability to exercise control and choice regarding that 'violent behaviour'.

The first component of 'involuntary' 'violent behaviour' that will be described is one of its qualities, namely that 'involuntary' 'violent behaviour' is relatively unsophisticated. Despite the requirement that the 'involuntary' 'violent behaviour' should be relatively unsophisticated, it does not mean that the behaviour is haphazard. Taking into account that 'ETIVB' occurs in an interpersonal context, the 'involuntary' 'violent behaviour' is not haphazard, but directed, as can be expected, to the source of the 'triggering event'. Because the 'violent behaviour' is directed, the line of distinction between its being 'involuntary' and *not* 'involuntary' is a very fine. This very fine line of distinction is evaluated by assessing the sophistication of the 'violent behaviour'. Relatively unsophisticated 'involuntary' 'violent behaviour' is recognised by being behaviour that displays relatively little skill and precision. For example, it may take relatively little skill and precision to simply throw a punch, to stab someone, or to pull a trigger. However, if a punch, stab or shot is carefully aimed, both skill and precision are needed. Behaviours that need skill and precision require a degree of mental effort. For example, in order to for me to thread a needle takes concentration and precise movements. Performing behaviours with such mental and physical effort are not congruent with 'ETIVB', because in 'ETIVB' there is a lack of the ability to exercise control and choice regarding the 'violent behaviour'. If behaviour is performed with skill and precision it is expected to be of a higher quality than the same behaviour done with no ability to exercise control over it. Over and above the quality of being relatively unsophisticated, there must be another quality to 'involuntary' 'violent behaviour'. That quality (which will be discussed later) is that there must not be indications that the behaviour was subject to 'control' and 'choice' by the agent of the 'violent behaviour'. That is so, because the very fact that behaviour is relatively unsophisticated does not necessarily mean that it is 'involuntary'. I can for example perform relatively unsophisticated behaviour, like banging my fist on the table, quite voluntary.

The reasons why 'involuntary' 'violent behaviour' needs to be relatively unsophisticated are that 1) it is quality of behaviour one would expect if there is no ability to exercise control or choice regarding that behaviour, 2) it is often the quality found in medical conditions that renders a person unable to exercise control and choice regarding a behaviour, and 3) it is supported by behaviour that are the same as ETIVB. When it comes to a person not being able to exercise control and choice regarding a behaviour it means that he or she cannot control behaviour as is normally the case. If a person cannot control his or her behaviour, one would expect that behaviour to be of relatively poor quality. If for example, I cannot control my movements when writing, the writing is of a poor quality. When it comes to medical conditions that result in involuntary behaviours, complex partial seizures serves as a good example. Even the more complex involuntary behaviours of complex partial seizures are relatively unsophisticated. That is, they are simple behaviours like lip smacking, or they lack the precision and skill their voluntary counterparts have.[23] With regards to involuntary post-ictal behaviour Masumi *et al*. described a man who, during the post-ictal phase of his seizures, kicked and banged his head against a wall and who scratched and bit his mother if she approached him.[85] Although directed against

something or someone, the behaviours in the previous patient are unsophisticated. More sophisticated post-ictal behaviours do occur, for example a man who held a knife against his mother's throat during post ictal confusion. Mellers[82] However, this is unusual and may reflect some degree of control despite the confused mental state, since he did not injure his mother with the knife. This man's usual post-ictal behaviour consisted of unsophisticated behaviours like head banging and scratching. Behaviours that are the same as 'ETIVB' are sometimes observed in everyday life. An example of such behaviour happened during the 2010 French Open Tennis Championships at Roland Garros. I personally watched the match between Roger Federer (then number one seed) and Stanislas Wawrinka (rated much lower than Federer) on television. I wrote down the events immediately afterwards. I shall describe what I observed. The event is instructive regarding the quality, intensity, latency, duration and frequency of 'involuntary' 'violent behaviour' and consequently I shall spend some time on it.

Roland Garros: 2010

The first two sets of the match between Federer and Wawrinka were tough, both men being under considerable pressure and fighting hard for their points. Federer, the better player, won the first set, but it looked like Wawrinka had a chance to win the second set, which would have given him better chances at winning the match. However, Federer did not let up and the second set went to a tie-break. During the tie-break Wawrinka lost a *very* important point. Immediately after his mistake, Wawrinka lifted his racket as if to hit with it downwards. I actually thought he was going to slam the racket into the net or onto the court. The gesture might simply have been one of despair, but Wawrinka's body language suggested otherwise. He seemed angry. However, he controlled his behaviour with the racket in mid-air and simply lowered it. Then there was a *second very* important point in the set. Wawrinka again made a mistake and lost that point as well. It immediately showed in his body language. At the same time that his body language displayed his negative emotions, he smashed the racket against the court, breaking it. A television replay revealed that Wawrinka slammed the racked thrice onto the court in quick succession and that the racket broke the third time. After the racket had broken Wawrinka stared at it, looking perplexed. To me Wawrinka's behaviour looked like 'ETIVB' – it even made for an offence in tennis. After the umpire had cited Wawrinka for racket abuse, the commentator said that the umpire was, "a bit unfair", because Wawrinka's behaviour was just reflexive and not intended.

I cannot say beyond all doubt that the Wawrinka's racket abuse was involuntary, but at face value it seemed so to me and probably also to the commentator. Others may say that he slammed his racket onto the court voluntarily. He did not, for example, harmlessly swing his racket around a bit. But could he control his behaviour and could he choose not to swing the racket around a bit rather than slamming it against the court? My answer is that there is at least doubt that he had such 'control' and such 'choice'. The reason for my doubt is that negative emotions have constricting effects on a person's cognitive and behavioural options as described previously. The replay showed that

Wawrinka slammed the racket against the court three times (the frequency). Furthermore, because the duration of the 'violent behaviour (about 1 second); was so brief it is likely that all three (the frequency) hits were 'involuntary'. While Wawrinka's behaviour was unsophisticated, the intensity of his behaviour was still sufficient for 'violent behaviour' to happen. With the racket breaking, actual damage occurred.

Taking into account that Wawrinka's behaviour was relatively unsophisticated, it is useful to note the concomitant circumstances. Note that the tennis racket was already in his hand and the tennis court was right below him. He just had to lift his arm to slam the racket onto the hard surface. There was no fetching the racket or searching for a hard surface on which to slam the racket. I shall digress for a moment to discuss why a said that the foregoing (racket already in hand and so on) should be noted. The fact that the racket was already in Wawrinka's hands should be noted because it indicates how 'involuntariness' may be recognised when a weapon is used. Like Wawrinka's racket, an object that is used as a weapon should be available immediately. The object (used as a weapon) should be available immediately so that relatively sophisticated behaviour is not required to obtain it. If some mental or physical effort is needed to obtain a weapon, it would indicate that 'control' and 'choice' was not disabled. An example of an effort to obtain an object to use as a weapon is seen in *S v Eadie* where the accused picked up a heavy pole and afterwards used it accurately as a weapon against his deceased victim. Both the effort to obtain the weapon as well accuracy with which it has been used is not congruent with 'involuntariness' in 'ETIVB'.

Having digressed to discuss indications of 'involuntariness' when a weapon is used, I shall now return to the Wawrinka-example. Over and above the fact that the racket was already in Wawrinka's hand, there were also no intervening stimuli (which might have evoked a different set of emotions and triggered different behaviour), and there were no intervening behaviour which indicated that a different course of behaviour could have been chosen. For example, it did not happen that a ball boy accidently bumped into him (a different stimulus intervening) so that he nearly fell, reflexively corrected his body so as not to fall, and then, when he felt himself standing firmly, smashed the racket. Although negative emotions would have played a very significant role in the latter action, even that brief waiting would have indicated waiting for a better opportunity. If one is able to wait, one has choice and control regarding one's behaviour. If however, Wawrinka would have smashed the racket onto the court while falling due to the ball boy bumping against him, there would be no indication of being able to wait and consequently, if would indicate possible 'involuntariness'.

Having discussed the reason for, and how to recognise relatively unsophisticated 'involuntary' 'violent behaviour', I shall discuss the intensity component of 'violent behaviour'. The main feature of the intensity of 'involuntary' 'violent behaviour' is that it must always be of sufficient force for 'violence' to occur. That is, it must be of sufficient force to result in physical injury or damage, as previously discussed. The intensity component must not be confused with the sophistication (or quality)

component. Although the quality may be poor, the intensity may be forceful, as can be seen in the case of Wawrinka's slamming his racket against the court.

Now that I have discussed relatively unsophisticated behaviour as a quality of 'involuntary' 'violent behaviour' and described that it differs from intensity, it remains for me to describe latency, duration and frequency of 'involuntary' 'violent behaviour' in 'ETIVB'. In 'ETIVB' 'involuntary' 'violent behaviour' is recognised in part by a latency period (the period between 'triggering event' and 'involuntary' 'violent behaviour') of no more than 5 seconds. Furthermore, in 'ETIVB' 'involuntary' 'violent behaviour' is recognised in part by lasting to longer than 10 seconds. Regarding the frequency of 'involuntary' 'violent behaviour' there is no specific limit, as long as the 'violent behaviour does not t exceed 10 seconds, which is the limit given to the duration of 'involuntary' 'violent behaviour'. I shall discuss the mentioned components of behaviour regarding 'involuntary' 'violent behaviour' by starting with latency.

In the Wawrinka example the latency was very brief, namely less than a second between stimulus and response. The latency between stimulus and 'violent behaviour' was about 1 second in the case of *Sanders and Jacaranda 94.2* (at face value the Sanders-event seemed to be 'ETIVB'). These two events (Wawrinka and Sanders) indicate that the latency of 'ETIVB' should be very brief. However, the latency for 'involuntary' 'violent behaviour' may be longer if there is tonic immobility (also known as the "freeze response") between 'triggering event' and 'involuntary' 'violent behaviour'. The literature does not describe tonic immobility in relation to anger, but it occurs in everyday life. For example, a man is unexpectedly angered and, before displaying anger behaviour, he is stunned for a moment or two. While I have not seen tonic immobility described in relation to anger in the literature, it is well described when the evoked emotion is fear.[43,62-66] Tonic immobility may last for more than 10 seconds after a fear-inducing trigger if a person does not know how to respond.[62] In the absence of research to clarify the latency between trigger and any behaviour related to anger, a 5 second latency was decided on. It takes into account that tonic immobility may occur, for example a man being stunned (tonic immobility) by what he observers and then responding with anger behaviour. Consequently it takes into account and allows for a period between 'triggering event' and 'involuntary' 'violent behaviour'. However, a 5 second limit recognises that the more time there is between 'triggering event' and 'violent behaviour', the more time there is to decide on a course of action, even if that is later regretted.

It is possible that the 5-second limit between 'triggering event' and 'violent behaviour' is too long. That is so because we can make decisions in less than a second, it being a common human experience with a high degree of self-evident truth. It is also possible that the 5-second limit between 'triggering event' and 'violent behaviour' is too brief. However, that is unlikely if the examples of Wawrinka and Sanders are taken into account. Furthermore, in the reiterative process of testing the criteria against the case studies, none of the case studies that are reasonable candidates for 'ETIVB' have estimated latencies of more than 5 second. As the issue regarding the 5-second period between 'triggering

event' and 'violent behaviour' stand, it is subject to research and modification in the same way that any criterion involving a time period (for example the 10-second period between start and peak of a panic attack[12,14]). The same is true of the 10-second limit taken as the maximum duration of 'involuntary' 'violent behaviour' in 'ETIVB', the topic I shall address next.

The duration of 'involuntary' 'violent behaviour' in the ETIVB-construct is taken to be no longer than 10 seconds. As is the case with the latency of 'involuntary' 'violent behaviour', there is no research to guide me in determining the duration of 'involuntary' 'violent behaviour'. Given the examples of Wawrinka and Sanders (see précis) where presumably 'involuntary' 'violent behaviour' lasted for about one second, the 10 second period may seem very long. However, given the uncertainty of what the duration should be, I allow for what I take at this stage as enough time for someone to recover from the emotional forces driving 'involuntary' 'violent behaviour'. I assume that someone who does not suffer from any mental disorder, the effects of psychoactive substances (intoxication or withdrawal), or brain disease to regain the ability to exercise control and choice regarding his or her behaviour within 10 seconds of having experienced severely to extremely distressing emotions. I specify that the duration of 10 seconds is to be expected if someone does not suffer from a mental disorder, the effects of psychoactive substances, or a brain disease, because if any such conditions prevail, the duration may be much longer. For example, it may take much longer for someone in a manic episode to regain voluntary control during 'involuntary' 'violent behaviour' that would be the case for a person who is not mentally ill, does not suffer the effects of a psychoactive substance or brain disease. If mental disorder, psychoactive substances and brain disease are taken into consideration, the duration of 'involuntary' 'violent behaviour' may become very long for example minutes or perhaps even hours. Allowing for such conditions would make the ETIVB-construct too broad to be useful within the context of similar constructs in forensic psychiatry, like the emotional blow automatism.

While a limit of 10 seconds for 'involuntary' 'violent behaviour' may seem too long for some, others may think it is too short. The reason for making it no more than 10 seconds has to do with the possible duration of severely to extremely distressing emotions. The peak of such emotions is considered the trigger for 'involuntary' 'violent behaviour' in the ETIVB-construct. This peak is thought to drive 'involuntary' 'violent behaviour' as part of an involuntary emotional outburst. Because those with mental disorder, psychoactive substance related disorders and brain disease are not taken into account, such a peak of severe to extreme emotional distress is expected to be relatively brief. Consequently the 10-second duration of 'involuntary' 'violent behaviour' runs together with the duration of the peak of the severe to extreme emotional distress.

Both the limit to the latency period of 5 seconds between 'triggering event' and 'involuntary' 'violent behaviour' and the limit of 10 seconds for the duration of 'involuntary' 'violent behaviour' are subject to further scrutiny. Both are at present regarded as necessary, but not sufficient for 'involuntariness'. It is for example possible to decide to 'violent behaviour' within 5 seconds of a 'triggering event'. It is also

possible to execute a decision to perform 'violent behaviour' within 10 seconds. For the reasons mentioned there has to be a further stipulation, namely that there must be no indications that the agent of the 'violent behaviour' executed the 'violent behaviour' voluntarily. That is, there must be no indications that the agent of the 'violent behaviour' could exercise control and choice regarding the 'violent behaviour'. To exclude that there are indications of the ability to exercise 'control' and 'choice', one has to look for behaviour that indicates and ability to exercise 'control' and 'choice'. That is the next topic of discussion.

Indications of Having 'Control' and 'Choice'

An ability to exercise control and choice regarding 'violent behaviour' is indicated by taking measures to perform 'violent behaviour', performing 'violent behaviour' in order to experience revenge, and applying one's mind to the performance of 'violent behaviour'. Such abilities to exercise control and choice regarding 'violent behaviour' are incongruent to the ETIVB-construct. As previously described, that is so over and above the requirements for 'violent behaviour' being relatively unsophisticated, following very briefly after the 'triggering event' (within 5 seconds), and lasing briefly (no more than 10 seconds). While taking measures to perform 'violent behaviour', performing 'violent behaviour' to experience revenge, and applying one's mind to the performance of 'violent behaviour' are indications that one is not dealing with 'involuntariness', behaviour that is performed once 'violent behaviour' already occurred does not come into consideration when evaluating 'involuntariness'. I shall finish this chapter by discussing why that is so.

When a person takes measures to perform 'violent behaviour' it is an indication that the person is able to exercise control and choice regarding that 'violent behaviour'. This is so because central to having an ability to exercise control and choice regarding 'violent behaviour' is the ability to make a decision about what to do and then to act in accordance with that decision. I can for example, decide on the spur of the moment to make use of an opportunity to buy an article of some sorts, ask a question, meet a person, or send a message. I can even construe a plan very quickly (in second or so) to get the article, like 1) go into the shop, 2) search the electronics section, 3) ask for the device I am looking for, 4) find the device, and 5) pay for it. Even though it may later be said that I did not apply my mind adequately, and that I should have given buying the device more thought, I nevertheless did apply my mind in buying the device in the sense of having made a decision on which I then acted. I certainly did not buy the device mindlessly. Performing such a sequence of even very quickly planned actions is contrary to what happens during ETIVB, where a person is unable to exercise 'control' and 'choice' and consequently unable to plan an action.

Although the previous scenario of buying a device qualifies as a plan to my mind, there is disagreement about what counts as planned actions in a forensic setting. Let's say I go into the shop on the spur of the moment not to buy, but to steal a device. That would count as an impulsive crime.[114] Some authors do not consider impulsive crimes as planned crimes.[114] Even if my stealing

the device is not considered planned, it does not mean that I stole the device 'involuntarily', because I was able to exercise control and choice regarding my behaviour. This is evident from the measures I took to get hold of the device, namely having entered the shop, having gone to the section where one would expect to find that device and then having taken it without payment. That in turn means that I have applied my mind to get hold of the device, whether or not having done so qualifies as planning. Consider the case of *S v Eadie* (an incidence "road rage" that lead to murder) in which the defence alleged that the accused, who was severely to extremely angry, lacked criminal capacity. Before performing 'violent behaviour' Eadie obtained a hockey stick from behind the driver's seat of the car in which he had been driving. He used that hockey stick to inflict both physical damage and physical injury. Having fetched the hockey stick indicates that Eadie took measures to perform 'violent behaviour'. Having taken such measures is not congruent with 'ETIVB' since it indicates with more certainty than not, that he was able to exercise choice and control regarding his 'violent behaviour'. Consequently, according to the ETIVB-construct, the 'violent behaviour' was not 'involuntary'. The Supreme Court of Appeal also found that Eadie did not act involuntarily, and that involuntariness is necessary for his actions to qualify for non-pathological criminal incapacity. Consequently his having been convicted of murder was upheld.

In the case of *S v Eadie* it appears form the behaviour of the accused that he wanted to take revenge for the inconsiderate road behaviour of the victim, or alternatively to teach him some lesson. In the iterative process between developing the ETIVB-construct and testing preliminary criteria against the cases studies, the theme of taking revenge was a frequent one. That is, it frequently looked like the 'violent behaviour' was performed with the purpose to experience revenge, or in order to teach the victim a lesson. The attack of Mr. Calitz on his victim (*in S v Calitz*) is a good example. In the Calitz case one can infer both from what the accused said and did that the behaviour is congruent with an intension of teaching the victim a lesson (something to the effect of don't mess with us) and maybe even revenge. In the case of *S v Di Blasi* the accused was quite frank about his behaviour having been to get revenge. It may not always be evident that 'violent behaviour' was performed *in order to experience revenge*, but when it is evident it indicates that the 'violent behaviour' was chosen for a purpose, which would be incongruent with the ETIVB-construct. The reason for placing "in order to experience revenge" in cursive is that the 'violent behaviour' or reports from the accused or others must support it, since revenge may also be arguably also be an overwhelming emotion that may trigger 'involuntary' 'violent behaviour'. In the latter case all the conditions for 'involuntary' 'violent behaviour' must necessarily be met.

While overt behaviours may indicate taking measures to perform 'violent behaviour' and one may infer both revenge (or teaching the victim a lesson) from specific overt behaviours (the 'violent behaviour') as well as revealed covert events (like wanting revenge), some events that indicate that 'violent behaviour' is not 'involuntary' are only covert mental events. Examples of such covert mental events are thinking about the 'violent behaviour', evaluating circumstances, making choices, and thinking about possible consequences before performing the related 'violent behaviour'. When such covert

mental events occur and are followed by 'violent behaviour', the covert mental events indicate that the 'violent behaviour' was not 'involuntary'. In the case of *S v Campher* it is only a covert mental event that indicated that her shooting her husband was not 'involuntary' (see précis). Before shooting her husband at point blank range with a gun, which was already in her hand under circumstances she could not control, she had among other thoughts the specific thought that she had to destroy this monster that was breaking her down emotionally. Having had that thought and then actually shooting her victim indicates with more certainty than not that her 'violent behaviour' was both chosen by her and then executed by her. Consequently her 'violent behaviour' was not congruent with 'ETIVB'.

To finish this chapter I shall discuss why behaviour that occurs after the 'violent behaviour' is not taken into consideration to establish 'involuntariness'. It needs to be discussed, since measures to conceal a possible crime is taken by some authorities to be an indication that the possible crime was *not* involuntary.[18] However, the notion that concealing possible criminal behaviour means that the behaviour was not involuntary, is difficult to support, because there may be good reasons for a person who considers himself or herself innocent to conceal his or her involvement in a possible offence. Let's say 'ETIVB' occurred and as a consequence a man X killed another many Y 'involuntarily'. X may doubt that he will be treated fairly. It is for example so that an inability to act in accordance with an appreciation of wrongfulness is only an excuse in South African law if that inability is due to a mental disorder. That this is so was made explicit by the Supreme Court of Appeal in *S v Campher*. My purpose in noting this is not to criticise the Supreme Court of Appeal or South African law, but to simply make a point, namely that even if someone committed a crime involuntarily he or she may nevertheless wish to conceal it. For that reason concealing involvement in 'violent behaviour' is not a valid indication that 'involuntary' 'violent behaviour' did *not* occur. While concealing involvement in 'violent behaviour' does not mean that the 'violent behaviour' is *not* 'involuntary', being open about 'violent behaviour' does not mean that the 'violent behaviour' is 'involuntary'. Take the example of the accused in *S v Els*. After Mrs. Els shot and killed her husband she went to the police to report what had happened. Yet, her actions were not 'involuntary'. Consequently whether or not a person conceals or does not conceal his or her involvement in 'violent behaviour' does not help one to establish whether or not the 'violent behaviour' is 'involuntary'.

Chapter 8

Formatting Criteria for the ETIVB-Instrument

Having described the constructs of 'violent behaviour', 'emotionally triggered', and 'involuntary' as they relate the ETIVB-construct, having described how to recognise 'ETIVB', and how to use the Attributive Considerations of 'ETIVB', this chapter continues with aims of this thesis by describing how the criteria for 'ETIVB' (of the ETIVB-Instrument) were formatted. In short: the criteria of the ETIVB-Instrument were formatted from the chapters that sought clarity on what is meant by 'violent behaviour', 'emotionally triggered' and 'involuntary'. That being so content validity regarding the content of the ETIVB-Instrument becomes evident. Content validity will be discussed in the chapter on the validity of the ETIVB-Instrument.

This chapter, being about formatting criteria for 'ETIVB', will also present the ETIVB-Instrument that is used in the pilot study. A hand-out ("Guide for Completing the Criteria of Emotionally Triggered Involuntary Violent Behaviour"), which provided guidance regarding the application of the ETIVB-criteria, is also presented (see Addendum B to Chapter 8).

The ETIVB-Instrument

The criteria of the ETIVB-Instrument (ETIVB-criteria) follow a sequence that differs from the sequence of how the different constructs of 'ETIVB' were presented in previous chapters. That is so because it seemed that the sequence into which the different constructs of the ETIVB-criteria were formatted, would be more user friendly. As can be seen in Addendum A to Chapter 8 (where the ETIVB-Instrument is presented), the ETIVB-Instrument is structured in 3 parts. The first part is the inclusion criteria, the second part is the exclusion criteria and the third part is the conclusion based on the inclusion and exclusion criteria (which will be referred to as the conclusion criteria). The inclusion criteria deal with the possibility that a specific 'violent behaviour' may be 'ETIVB'. The exclusion criteria aim to ensure that the 'violent behaviour' is more certainly than not 'involuntary' (although the exclusion criteria also have a cross-checking purpose). The conclusion criteria help the research participant to come to a final conclusion about 'ETIVB'.

The ETIVB-criteria have been developed and refined during the iterative process during which clarity about 'violent behaviour', 'emotionally triggered', and 'involuntariness' were obtained, together with a search for ways to recognise 'ETIVB'. The clarity about 'ETIVB' that has been build up during the

previous chapters, were formatted into the ETIVB-criteria. That being so, the wording and reason for a specific criterion (refer to Addendum A to Chapter 8) is usually evident. However, where criteria are not evident from previous chapters, they are discussed in this chapter. The instrument itself also needs some discussion to describe its structure and use. (Such a discussion has also been done with the research participants and with the help of the "Guide for Completing the Criteria of Emotionally Triggered Involuntary Violent Behaviour".) The discussion starts with the inclusion criteria, followed by the exclusion criteria and ends with conclusion criteria.

Part I: The Inclusion Criteria of 'ETIVB'

The inclusion criteria deal with those features that are unique to 'ETIVB', namely that there is a 'triggering event', that there are extremely to severely distressing emotions, that there is 'violence' and that there is 'behaviour', which is possibly 'involuntary'. The inclusion criteria start with criteria regarding the 'triggering event', followed by criteria regarding 'violent behaviour', which is divided into the behaviour itself (called the candidate behaviour in the ETIVB-criteria) and evidence that 'violence' occurred. The inclusion criteria then continue with criteria regarding severely to extremely distressing emotions and finally a criterion that deals with the possible use of a weapon. The sequence of criteria stands as it is, because based on my own experience with the ETIVB-criteria it seemed a user friendly way to attend to them and help prevent confusion regarding the different components of 'ETIVB'. For example, by inserting the criteria regarding 'violent behaviour' between 'triggering event' and 'emotions', the possible impact of the 'triggering event' may be evaluated on its own, without confusing it with the 'emotions' that actually occurred.

The 'violent behaviour' that is assessed with the ETIVB-instrument is called the candidate behaviour in the ETIVB-instrument, because that behaviour is a candidate for 'ETIVB'. The ETIVB-instrument starts with inclusion criteria for 'ETIVB'. The inclusion criteria starts by describing that for candidate behaviour to come into consideration for 'ETIVB' specific inclusion criteria must be met or be not applicable. In this regard the B-, C-, and D- and E-criteria must all be 'met'. That is so because the B-criteria and E-criterion specify the type of 'violent behaviour' that is potentially 'ETIVB', the C-criteria specify that actual physical violence is involved, and the D-criteria specify that the 'violent behaviour' is 'emotionally triggered'. Consequently, if any of 'violent behaviour', actual physical violence, or 'emotionally triggered' is 'not met', it would mean that the conditions for the ETIVB-construct are not met. Moreover, to meet the requirements of 'ETIVB' there must be a 'triggering event' that is congruent with the ETIVB-construct. Consequently the requirements of the A-criteria, which capture 'triggering event', must be 'met'. The requirements of the inclusion criteria are readily apparent from the chapter, "Recognising ETIVB". There are however, issues related to the evaluation instrument itself that needs to be discussed.

The A-Criteria

The A-criteria are about the 'triggering event'. The A-criteria are introduced under "A" of the ETIVB-instrument. This item is not recorded, but introduces describes what the A-criteria are about. It informs the research participant what the 'triggering event' is and which of the A-criteria must be 'met' so that the requirements of 'triggering event' are 'met'. Moreover, this introduction informs the research participant that the 'triggering event' is about its impact on emotions and not on behaviour.

The A.1-criterion captures part of the requirements for a single severely to extremely distressing event to qualify as a 'triggering event', while the A.2-criterion does the same for cases where there is a series of severely to extremely distressing triggering events. The A.1 criterion captures the requirements that the 'triggering event' can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. The A.1-criterion is recorded as 'not applicable' if the A.2-criteria are 'met'. However, if the A.2-criteria are 'not met' or 'uncertain' the A.1-criterion is recorded 'not met' if its requirements are not met.

While the A.1-criterion deals with a single severely to extremely distressing event, the A.2-criterion deals with a series of severely to extremely distressing events. Like the A.1-criterion, the A.2 criterion requires that a culturally warranted severely to extremely distressing must be present. It also specifies that the individual severely to extremely distressing events must be related and follow each other closely in time, so as to form a whole (see previous chapter for explanation). The A.2.1-criterion specifies that closely spaced in time means that no more than a few minutes separated the individual distressing events.

The final A-criterion, A.3, is about the requirement that the 'triggering event' is an observable event. It applies to both the A.1-criterion and A.2-criteria. If both A.1 and A.2 are 'not met' this criterion is of no value since the conditions for 'ETIVB' are already 'not met'. Consequently, if both A.1 and A.2 are 'not met', the A.3-criterion becomes 'not applicable'.

The B-Criteria

The B-criteria are about 'violent behaviour'; that is the same as to say the behaviour that is a candidate for 'ETIVB'. The B-criterion numbered is not recorded. It serves as an introduction to B-criteria that follow it. The B-criterion describes that the person who performs the candidate behaviour (called the agent of the candidate behaviour) is unable to exercise control and choice regarding the candidate behaviour. The wording of the B-criterion reads the agent was unable to control (instead of exercise control) the candidate behaviour, or to choose a different course of action (instead of *exercise* choice) as indicated by criteria B.1 – B.3. The reason is that the phrase, exercise choice, was developed after the pilot study as a more accurate way to say what is meant by an ability to control and choose behaviour. However, for the purposes of having used the ETIVB-instrument for

the pilot study the wording was nonetheless adequate. The B-criterion also describes that the candidate behaviour involves only the 'violent behaviour' and not the behaviour that precedes or follows the 'violent behaviour'. (Behaviour that precedes the 'violent behaviour' will increase the latency and is therefore indirectly captured in the B.1-criterion. Furthermore, the behaviour preceding the 'violent behaviour' may have to come into consideration when the exclusion criteria are recorded under the F-criteria. Behaviour that follows the 'violent behaviour' is not captured by the ETIVB-criteria for reasons described in the chapter, "Recognising 'ETIVB'"). While the B-criterion is not recorded, the criteria that follow the B-criterion are recorded. They address the requirements that the latency of the 'violent behaviour' be no more than 5 seconds (the B.1-criterion), that the duration of the 'violent behaviour' be no more than 10 seconds, and that the 'violent behaviour' be relatively unsophisticated.

The C-Criteria

The C-criteria are about the required physical injury of physical damage to determine 'violence' in 'ETIVB'. The C-criterion is not recorded, while the C.1-criterion and C.2-criterion are recorded. The C-criterion introduces the C.1-criterion and C.2-criterion by requiring that the candidate behaviour was 'violent' as can be inferred by both the criteria C.1 and C.2. The C.1-criterion requires that the 'violence' was directed as described in previous chapters. The C.2-criterion requires actual physical injury or damage.

The D-Criteria

The D-criteria are about 'emotions' in 'ETIVB'. The D-criterion is not recorded. The D-criterion introduces the D.1-criterion and the D.2-criterion. The D-criterion requires that the 'emotions' that triggered the candidate behaviour should have been severely to extremely distressing as indicated by both the criteria (D.1 and D.2) being 'met'. The D-criterion also reminds the research participants that it is about evaluating emotions and not behaviour. In hindsight, the way that the D-criterion reads at present makes it seem as if behaviour cannot be taken into account at all when emotions are evaluated and may consequently discourage taking even emotional behaviours into account. That was not the intention of the D-criterion and consequently this criterion needs rephrasing.

The D.1-criterion requires that there must be severely to extremely distressing emotions, as previously described. The D.2 criterion requires that the severely to extremely distressing emotions must be socio-culturally warranted, as is required for 'ETIVB'. There is a further instruction in the D.2-criterion, namely that if the D.1-criterion is 'not met', the D.2-criterion should be recorded as 'not applicable'. In hindsight this is not necessary. It would be easier to let this criterion also be 'not met'.

The E-Criteria

Although the E-criteria are separate from the B-criteria, they are also about the candidate behaviour, and specifically for 'violent behaviour' involving a weapon. The E-criterion is not recorded. It

introduces the E.1-criterion, which is recorded. The requirement is that when a weapon is used, it must be immediately available so that no mental or physical effort, which would indicate 'control' and 'choice', is involved.

Part II: The Exclusion Criteria of 'ETIVB'

Having discussed Part I of the 'ETIVB-Instrument', Part II, the exclusion criteria, will be discussed. The exclusion criteria serve two purposes. The first purpose is to ensure (to the degree that it is possible) that any 'emotionally triggered' 'violent behaviour' identified by the inclusion criteria meet the requirements for 'involuntary'. That is the purpose of the F-criteria. The second purpose is to cross check that specific inclusion criteria regarding the 'triggering event' and 'emotions' were correctly captured. In this regard it was thought that it is especially important to ensure that the 'triggering event' and 'emotions' are correctly assessed as meeting the requirements for 'ETIVB'. The second purpose of the exclusion criteria is performed by the G-criteria (regarding the 'triggering event') and the H-criteria (regarding 'emotions'). The reason for cross-checking the assessment of 'triggering event' and 'emotions' is that it seemed to the researcher, based on his own experience with the ETIVB-criteria, that those two issues were most likely to present difficulties.

The F-Criteria

The F-criteria are about 'violent behaviour' where the agent of the candidate behaviour is able to exercise control and choice regarding that 'violent behaviour'. Consequently, the F-criteria are about 'violent behaviour' that is not congruent with 'ETIVB' (see Addendum A to Chapter 8). The F-criterion is not recorded. It introduces the F-criteria and state what the F-criteria are about. The F-criterion describes that the F-criteria are about there being indications that the candidate behaviour is performed while the agent of the candidate behaviour has an ability to exercise control and choice regarding the candidate behaviour. For the same reason as previously described under the B-criteria, the phrase used in the F-criterion is "…the ability to control and choose the candidate behaviour…"

As described in the chapter, "Recognising 'ETIVB'", the indications for 'violent behaviour' (or candidate behaviour) being performed while having an ability to exercise control and choice regarding the 'violent behaviour are taking measures to perform 'violent behaviour', performing 'violent behaviour' in order to experience revenge, and applying one's mind to the performance of 'violent behaviour'. Three criteria capture taking measures to perform 'violent behaviour', one criterion captures performing 'violent behaviour' in order to experience revenge, and one criterion captures applying one's mind to the performance of 'violent behaviour'. While the criteria for applying one's mind to the performance of 'violent behaviour' and performing 'violent behaviour' as reflected in the F.4-criterion and F.5-criterion need no further discussion, the reason for three criteria (F.1 to F.3) to capture taking measures to perform 'violent behaviour' needs to be discussed.

The criteria F.1 to F.3 capture the taking of measures to perform the candidate behaviour, indicating an ability to exercise control and choice regarding that candidate behaviour. The reason for three criteria being devoted to this issue is that taking measures turned out to need more than one criterion during the iterative process of developing ways to recognise 'ETIVB' and format criteria for 'ETIVB'. The F.1-criterion addresses the issue about taking measures explicitly (see Addendum A to Chapter 8). The F.2-criterion addresses a different way of taking measures (and perhaps it would not be seen as taking measures) namely taking measures to overcome obstacles preventing the performance of the candidate behaviour. The F.3-criterion is about another way of taking measures to perform 'violent behaviour' namely to pursue a fleeing victim.

The G-Criteria

The G-criteria are about the 'triggering event'. Unlike the A-criteria, which are about features congruent with 'triggering event' the G-criterion is about a feature incongruent with 'triggering event', namely that the distressing event(s) that triggered the candidate behaviour was a subjective event. The G-criteria also have a cross-matching purpose as previously described.

The H-Criteria

The H-criteria are about 'emotions'. Unlike the D-criteria, which are about features congruent with 'emotions', the H-criteria are about features not congruent with 'emotions' in 'ETIVB'. The incongruent features addressed by the D-criteria are that the emotions of the agent were excessively distressing or inappropriate to the triggering event (which should have read distressing event(s) for the same reason as described under the G-criteria above), or that the emotions were not severely to extremely distressing (for example calm emotions).

Part III: The Conclusion Criteria

Having discussed the inclusion and exclusion criteria of the ETIVB-Instrument, the conclusion criteria will now be described. The conclusion criteria deal with the final outcome of assessing the inclusion and exclusion criteria. The conclusion criteria guide the research participant in deciding whether 'ETIVB' is supported or not. The ETIVB-Instrument refers to 'ETIVB' being *supported* or 'ETIVB' not being *supported* to indicate that the ETIVB-Instrument cannot indicate 'ETIVB' with absolute certainty. Finally, if 'ETIVB' *is* supported, the third part of the ETIVB-Instrument guides the subject to complete the tool following on the ETIVB-Instrument, namely the Attributive Considerations of ETIVB.

The options for rating the conclusion criteria are "Yes", "No" or "Cannot conclude with more certainty than not". The last option is meant for instances when one or more criteria is recorded as uncertain, and consequently renders the outcome of 'ETIVB' as uncertain. To understand why the outcome of 'ETIVB' can be uncertain in some instances where one or more criteria is recorded as uncertain,

consider the following: if any of the inclusion criteria is recorded 'not met' it means than the inclusion criteria are 'not met'. In such an instance it does not matter if one or more of the inclusion criteria are recorded 'uncertain' – the outcome is nevertheless 'not met'. If however, no criterion is recorded 'not met' and one criterion is recorded 'uncertain', it means that while one cannot say that the inclusion criteria are 'not met', one can also not say that all of the inclusion criteria are 'met'. Consequently the outcome cannot be concluded with more certainty than not. The same applies to the exclusion criteria, but because of their being exclusion criteria, matters are different. If any exclusion criterion is recorded as 'met', then the exclusion criteria are 'met' and consequently it is incongruent with 'ETIVB'. If all of the exclusion criteria are 'not met' it is congruent with 'ETIVB'. If any one of the exclusion criteria is 'uncertain', while no exclusion criterion is 'met', one cannot say that the exclusion criteria are 'not met' as required. Consequently the outcome cannot be concluded with more certainty than not.

The conclusion criteria ask two questions. One question is in I.1: "Are all of the inclusion criteria met?" Another possibility is, "Are any of the inclusion criteria recorded as not met?" While the I.1-criterion is about inclusion criteria being 'met', the I.2-criterion asks the question, "Is any one of the exclusion criteria met?" Following the questions asked in the I-criteria there is a note that describes when 'ETIVB' is supported. If 'ETIVB' is supported, the research participant is guided to complete the next tool, namely the Attributive considerations for ETIVB, which was the subject of the previous chapter.

Recording of whether Criteria Are Met or Not Met

There are four possible outcomes for the inclusion and exclusion criteria (see Addendum B to Chapter 8). They are 1) that a specific criterion is **met** with more certainty than not (which will be referred to as 'met'), 2) that a criterion is **not met** with more certainty than not (which will be referred to as 'not met'), 3) that the outcome of a criterion is **uncertain** (which will be referred to as 'uncertain'), or 4) that a criterion is **not applicable** (which will be referred to as 'not applicable'). These possible outcomes are respectively scored by the research participant as 1, 2, 3 or 4 by encircling the relevant number column in the scoring columns of the ETIVB-instrument (see Addendum A to Chapter 8).

The phrase, "with more certainty than not", reflect the inherent complexity of a criminal forensic psychiatric assessment. This complexity is inherent in most (if not all) assessments in criminal forensic psychiatry and not just to an assessment with the ETIVB-instrument. It is, for example, seldom (if ever) possible for a forensic psychiatrist to give, for example, an opinion (in terms of Sec 78 (2) of Act 51/1977) with absolute certainty about whether a mental disorder incapacitated a mentally ill person's ability to act in accordance with his or her appreciation of wrongfulness. That is to say, whether the a mental disorder incapacitated a mentally ill person's ability to withhold himself or herself from doing something, which he or she knew was wrongful at the time of an alleged crime. However, it is mostly possible to give an opinion on a "preponderance of probabilities".[15] The word, probabilities,

is meant in a colloquial sense and not in a statistical sense. If it were the latter, opinions would be impossible, since one would need a statistician in each case – this, of course, does not happen. In the sense that one outcome is more likely than another, a criminal forensic psychiatrist can come to a conclusion about Sec 78 (2) with more certain than not. The same process applies when the ETIVB-criteria are evaluated.

During the iterative process of applying the ETIVB-criteria, it often happened that the information from the criminal case studies clearly indicated that a specific criterion was 'met' or 'not met'. However, sometimes conclusions based on inferences had to be made – inferences that could possibly indicate what was more likely and what was less likely. When this happens clearer guidance is required in order to decide on the outcome of a criterion. The guidance in such instances reads is that if the case information does not explicitly support a specific criterion as being 'met' (or 'not met') that the facts of the case should be considered. Then, considering the facts the research participant can reason about it and make inferences supported by the case information. Based on the inferences a decision can be made. One a whole, there must not be reasonable doubt that a criterion is 'met' or 'not met'. However, inferences should not be made if those inferences are not clearly supported by the case information. The latter means that there should not be any arbitrary inferences.

While this guidance may help when the information pertaining to a specific criterion is not obvious, there are instances where the available information from the criminal case studies is too lacking in substance, or there is too much contradiction for any conclusion to be made regarding a criterion's being met or not met. In such cases the research instrument allows for a criterion to be recorded as 'uncertain'.

Over and above the possibilities of marking a criterion in the ways set out above, it is possible to mark a criterion as, 'not applicable'. As will become evident when the criteria are introduced, the reason for a criterion being not applicable is self-evident. To give an example: because the 'triggering event' cannot be made up of both a single severely to extremely distressing event (A.1-criterion) and a series of such events (A.2-criterion), either criterion A.1 or A.2 can be 'met'. In such case the complimentary criterion becomes 'not applicable'. It is marked as 'not applicable' and not as 'not met' to expedite the conclusion in the third part of the ETIVB-criteria.

Before turning to the ETIVB-criteria, the reason for the option, 'not applicable' will be discussed. The reason for the option, 'not applicable', becomes evident when Part III of the ETIVB-Instrument (see Addendum A to Chapter 8) is considered. The questions in criteria I.1 and I.2 are about in inclusion and exclusion criteria being 'met' or 'not met'. If any of the inclusion criteria are 'not met', or if any of the exclusion criteria are 'met', 'ETIVB' cannot be supported. If, for example, a weapon was not used during 'violent behaviour' (criterion E.1) and it is as a result assessed as 'not met', then one of the inclusion criteria is 'not met'. Even if all of the other inclusion criteria are 'met', and all of the exclusion criteria are 'not met', criterion I.1 would nevertheless have to be assessed as that all the inclusion

criteria are ‘not met’. This in turn would mean that ‘ETIVB’ cannot be supported and that would be incorrect. However, if the use of a weapon is ‘not applicable’ as reflected by the E.1-criterion, it can be ignored in the final assessment, and consequently the problem with one of the inclusion criteria being ‘not met’ does not arise. That the ‘not applicable’ criteria may be ignored in the final assessment is not absolutely clear from the conclusion criteria, but research participants were informed about it during the training session.

The possibility of rating a criterion as ‘not applicable’ gave problems in practice, despite the instructions on the ETIVB-tool and the training session. It happened that some research participants marked ‘not met’ rather than ‘not applicable’, especially when rating the A-criteria. For example, rather than rating A.1 as ‘not applicable’ if A.2 was ‘met’, A.1 was marked ‘not met’. In the final analysis this mistake was easy to account for, since if A.2 is ‘met’, then there was a severely to extremely distressing event that meets part of the requirements for ‘triggering event’. However, some research participants recorded some of the F-criteria as ‘not applicable’ and that means that in the final analysis no conclusion can be reached, since behaviour regarding which ‘control’ and ‘choice’ was *no*t disabled cannot be excluded. Because of these problems with the possibility of ‘not applicable’, it would be best avoided in future studies with the ETIVB-criteria.

Addendum B to Chapter 8

The ETIVB-Instrument

I	**Inclusion Criteria.**	*Criterion is met with more certainty than not (1)*	*Criterion is not met with more certainty than not (2)*	*Uncertain (3)*	*Not applicable (4)*
	To come into consideration for ETIVB: **Either A.1 or the criteria under A.2 must be met.** **<u>All</u> the criteria under B must be met.** **<u>All</u> the criteria under C must be met.** **<u>All</u> the criteria under D must be met.** **Criterion E.1 must either be met or not applicable.**				
	Aspects				
A	**Regarding the triggering event: it is an event that occurs overtly and could either have been a single severely to extremely distressing event, or a series of related severely to extremely distressing events one following the other closely in such a way that as a whole they formed a severely to extremely distressing event that was potentially emotionally overwhelming as indicated by either A.1 or A.2-A.2.2 being met together with A.3 being met.** **NB: Establish the impact of the triggering event *on emotions*, not on behaviour.**				
A.1	The triggering event was a single severely to extremely distressing event as indicated by the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable) here if criteriaA.2 and A.2.1 are met.	**1**	**2**	**3**	**4**

A.2	The triggering event was made up by a series of related severely to extremely distressing events, one following the other closely in such a way that as a whole they formed a severely to extremely distressing event as indicated by both of the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable here if criterion A.1. is met.	**1**	**2**	**3**	**4**
A.2.1	The distressing events that made up the triggering event was spaced close enough in time (with no more than a few minutes separating them) so that together, as a whole, they formed a single triggering event. Note: Circle '4' (not applicable) here if '4' (not applicable) was circled for criterion A.2.	**1**	**2**	**3**	**4**
A.3	The triggering event is of a nature that it is potentially observable by an observer irrespective of whether someone actually witnessed the event. Note: Circle '4' (not applicable) here if A.1 and A.2 are not met. If only one of A.2 or A.2.1 is met, circle '2' ('not met').	**1**	**2**	**3**	**4**
B	**NB: When evaluating the behaviour consider only that *behaviour which makes out the violent behaviour* and not behaviour that includes planning or preparation to perform the violent behaviour, for example fetching a knife. Be careful not to confuse behaviour with emotions even though they are closely related.** **The candidate behaviour (that is the behaviour under consideration for ETIVB) indicates an inability of the agent to control the candidate behaviour, or an inability to choose a different course of action by all of the following being met:**				
B.1	The candidate behaviour was of sudden onset following very rapidly on the triggering event; that is within 5 seconds. For example, the subject was confronted with a triggering event and within 2 seconds performed the candidate behaviour.	**1**	**2**	**3**	**4**

B.2	The candidate behaviour was brief: less than 10 seconds duration.	**1**	**2**	**3**	**4**
B.3	The candidate behaviour was made up by relatively unsophisticated motor movements requiring little precision. For example it consisted of no more than a brief, singular string of related movements. For example, 1 – 3 hits with a fist, stabs with a knife, or shots with a fire-arm. (To decide whether the violent behaviour was relatively unsophisticated ask yourself how much skill and accuracy were needed to perform the violent behaviour.)	**1**	**2**	**3**	**4**
C	**The behaviour was violent as can be inferred from the consequences of the behaviour as indicated by both of the following being met:**				
C.1	The candidate behaviour was directed against someone and/or some property.	**1**	**2**	**3**	**4**
C.2	The candidate behaviour caused actual physical injury, or physical damage, or both.	**1**	**2**	**3**	**4**
D	**Regarding the emotions that triggered the candidate behaviour: they were severely to extremely emotionally distressing, as indicated by the following being met:** **(Note: for the D-criteria take only the emotions into consideration, not the behaviour.)**				
D.1	The reported or inferred emotions were of severe to extreme emotional distress. Examples are being severely to extremely upset, severe to extreme unhappiness, anger, hate, fear, dismay, etc.	**1**	**2**	**3**	**4**
D.2	Almost all people from the same socio-cultural context as the subject would concede that, taking all other relevant factors into consideration, the reported or inferred emotions of severe to extreme emotional distress were of a nature that they would be understandable within socio-cultural context as being appropriate to the triggering event.	**1**	**2**	**3**	**4**

	Note: if D.1 is marked 'not met', then circle '4' (not applicable) for this criterion, D.2.				
E	**If an object was used as a weapon during the performance of the candidate behaviour the following must be met:**				
E.1	That object was immediately available so that no mental or physical effort, which would indicate choosing or controlling, was needed to get hold of it. For example, the object was already in the subject's hand, or within immediate reach. NB: If an object was not used as a weapon, mark this criterion as '4' (not applicable).	**1**	**2**	**3**	**4**
II	**Exclusion Criteria.**				
	If <u>any one</u> of the exclusion criteria, F-H, is met, then ETIVB is <u>ruled out</u>.				
	Aspects				
F	**The candidate behaviour indicates that the agent had the ability to control and choose the candidate behaviour as is evident from any one of the following:** **(Note: all that is important here is that there are indications that the agent could control and choose the candidate behaviour, irrespective whether the behaviour was based on psychotic phenomena, substance intoxication, or mental confusion due to a medical condition.)**				
F.1	The information indicates that the subject took measures in preparing for the execution of the candidate behaviour, or made a plan to execute the candidate behaviour. Examples are: ambushing the victim; searching for and fetching an object that can be used as a weapon; taking measures to prevent noise.	**1**	**2**	**3**	**4**
F.2	The information indicates that the subject made attempts to overcome physical obstacles in order to execute the candidate behaviour. Examples are: opening a door or breaking down a door to get to the victim; pushing people out of the way to get to the victim; obtaining an object that can be used as a weapon with some effort, like removing a knife stuck in it sheath.	**1**	**2**	**3**	**4**
F.3	The information indicates that the subject pursued the victim. Examples are: following a fleeing victim; searching the victim.	**1**	**2**	**3**	**4**

F.4	The information indicates that the subject chose and controlled performing the candidate behaviour by examples like: violent behaviour to 'teach the victim a lesson'; revenge behaviour directed at the victim.	**1**	**2**	**3**	**4**
F.5	The information indicates that the subject spend moments (even if very brief) to apply his or her mind in the period between the triggering event and the execution of the candidate behaviour as was evident in his or her thinking about the candidate behaviour; or considering the potential consequences of the candidate behaviour; or choosing between possible weapons for the candidate behaviour; or waiting for a better moment to execute the candidate behaviour.	**1**	**2**	**3**	**4**
G	**Any of the following is met regarding the triggering event:**				
G.1	The triggering event was only a subjective event like the experience of a memory, hallucination, delusion, or belief that an observer cannot potentially witness.	**1**	**2**	**3**	**4**
H	**The following is met regarding the emotions that triggered the candidate behaviour:**				
H.1	Regarding the reported or inferred emotions: a. The emotions may have been severely to extremely distressing, but they were either *excessive* or *inappropriate* in relation to the triggering event as suggested by the socio-cultural context and all other relevant information taken into consideration **or** b. The reported or inferred emotions were not severely to extremely distressing. An example of 'a' is a man who becomes extremely angry to the point of violence when someone sits on a chair in a classroom he usually uses. An example of 'b' is someone who performs violent behaviour while being cool and calm. (Note: take only the severity of the *emotions* into consideration, not the violence of the behaviour.)	**1**	**2**	**3**	**4**

III	**Conclusion Based on the Inclusion and Exclusion Criteria.**			
	Aspects	*Answer*		
I.1	Are all of the inclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not
I.2	Is any one of the exclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not

***NOTE**: If I.1 above (the inclusion criteria) was answered with 'Yes' and I.2 above (the exclusion criteria) was answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is supported. Then, please continue now to complete 'Attributive Considerations of the ETIVB'.*

If I.1 above (the inclusion criteria) was not answered with' Yes' or I.2 above (the exclusion criteria) was not answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is not supported. Then the evaluation stops here.

Addendum B to Chapter 8

Emotionally Triggered Involuntary Violent Behaviour

Emotionally triggered involuntary violent behaviour is abbreviated, 'ETIVB'.

Cautionary statement: these criteria were developed for research purposes. Their reliability has not been tested empirically. They have not been developed and researched to such an extent that they can be used as evidence in court of law. Using these criteria to substantiate certain findings in a court of law would be wholly inappropriate.

Instructions for Applying the Criteria

When applying the criteria, decide on how much certainty you have concerning whether a specific criterion is met or not met by circling the relevant number in the columns available for it.

Criterion is met with more certainty than not	**1**	Here there are two possibilities: 1. The information clearly supports that the requirements of the specific criterion are met. 2. The case information does not explicitly support that a specific criterion is met. However, by considering the facts of the case, reasoning about it, and making inferences one can come to a conclusion that a certain criterion is more certainly met than it is not met. On a whole, given the available information, there is not 'reasonable doubt' that the criterion is met. Do not make inferences which are not clearly evident from the case information. If this applies, circle the '1' in the applicable column.
Criterion is not met with more certainty than not	**2**	Here there are two possibilities: 1. The information clearly supports that the requirements of the specific criterion are not met. 2. The case information does not explicitly support that a specific criterion is not met. However, by considering the facts of the case, reasoning about it, and making inferences one can come to a conclusion that a certain criterion is more certainly not met than it is met. On a whole, given the available information, there is not 'reasonable doubt' that the criterion is not met. Do not make inferences which are not clearly evident from the case information. If this applies, circle the '2' in the applicable column.

Uncertain	**3**	There is not enough information, or too much conflicting information, or some other reason so that a clear inference that supports either that a criterion is met or not met cannot be made from the case information. If this applies, circle the '3'in the applicable column.
Not applicable	**4**	Sometimes a criterion may not be applicable to the case. In such a case mark as N/A

The use of N/A (Not Applicable)

There are three criteria where the correct evaluation may be, 'not applicable'. For example, the criteria under A.1 and A.2 cannot both be met at the same time. To indicate which one is not applicable, circle '**4**' in the relevant column next to the specific criterion.
Regarding criterion E.1: if a weapon was not used, mark '**4**' (not applicable) in the answer column.
Regarding criterion D.2: If D.1 is not met, D.2 becomes '**4**' (not applicable).

The use of 'Yes', 'No', or 'Uncertain'.

The I-criteria are answered with '**Yes**', or '**No**', or '**Uncertain**' by circling the appropriate answer.

Other Important Notes:

Candidate behaviour refers to the violent behaviour itself – not to the behaviour which preceded it or followed it.

Note that the section dealing with 'Attributive Considerations for ETIVB' is a separate section with its own instructions.

Do not let yourself be influenced by compassion for the accused or victim. Try to assess the requirements of each criterion as objectively as possible.

Chapter 9

‘ETIVB’ Attributed to Mental Disorder and Alike

The previous chapters have worked toward formatting criteria for ‘ETIVB’ by establishing clarity regarding the ETIVB-construct and how ‘ETIVB’ can be recognised in practice. In the process of working towards formatting the ETIVB-Instrument, ‘psychological blow automatism’ has been mentioned as a concept that approximates what ‘ETIVB’ is about in the sense that psychological blow automatism is about intensely distressing emotions triggering involuntary violent behaviour. Furthermore ‘psychological blow automatism’ is about those intensely distressing emotions arising without their being attributable to a mental disorder, and, one may infer neither to medical illnesses or substances (which will be referred to as medical illness and alike).[5-9] Consequently, in the process of clarifying ‘ETIVB’ and formatting its criteria, care has been taken to exclude behaviours and emotions that are likely to be attributed to mental disorder and alike. However, as has been pointed out before, the ETIVB-Instrument could not be designed to exclude all behaviour attributable to mental disorders and the like, for it focusses on a particular behaviour, namely emotionally triggered involuntary violent behaviour. The issue of the possible attribution of that behaviour to a mental disorder or the like has been suspended.

Before addressing the practical issue about how to record the attributive considerations of ‘ETIVB’, mental disorder needs to be discussed. Mental disorder may be understood from a psychiatric perspective and legal perspective. Psychiatric definitions of mental disorder are not about legal issues, as the reader to the DSM IV-TR[14] and DSM-5[12] is warned. What the law regards as mental disorder has to do with issues of jurisprudence.[115] In South Africa courts, the courts (and thus legal practitioners) decide when a specific abnormal behaviour counts as a mental disorder (or insanity).[115] That has been made clear in the report of the Commission of Inquiry into the Responsibility of Mentally Deranged Persons and Related Matters (usually referred to as the Rumpff Commission) whose task it has been to investigate mental disorder and criminal capacity in South Africa.[115] The Rumpff Commission did not define insanity (its preferred term for mental disorder) because “…it is unnecessary, and undesirable to attempt a definition of the concept, insanity.”[115] This thesis, being written by a psychiatrist, is about clinical conceptions of mental disorder. Thus, the researcher will be informed by internationally accepted clinical classifications systems like the DSM-5,[12] DSM-IV TR,[14] and the ICD-10[13] as to what counts as mental disorder. This is not done to reject legal concepts of mental disorder, because, as will soon be seen, sometimes it is necessary for the sake of greater clarity to include legal concepts of mental disorder in the discussion about mental disorder. However, while not rejecting legal concepts of mental disorder, legal concepts of mental disorder are nonetheless not taken into account in any final decisions about what counts as mental disorder for clinical considerations. That is so because this research is about getting clarity about a behavioural

phenomenon, namely 'ETIVB', independent of considerations of jurisprudence, which falls outside the researcher's field of expertise. Because clinical considerations are primary, terms like mental disorder, mental disorder, mental disease, and psychiatric disorder mean the same thing in this thesis.

Having clarified that internationally accepted clinical classifications of mental disorder will inform the researcher about what counts as a mental disorder, does, however, not completely settle the issue regarding what is meant by mental disorder. That is so because mental disorder is particularly hard to define.[116-117] The borders of what counts as mental disorder, and even what a specific mental disorder is, are not hard and fast.[117] Instead, the borders are fuzzy (some might say "sloppy",[117-118] while others say, "uncertain"[119]). That the borders are not clear is readily acknowledged in the DSM-5[12] and DSM-IV TR.[14] Over and above the concept, mental disorder, having fuzzy borders, one may even say that the concept, mental disorder, has shifting borders. For example, The DSM III included ego-dystonic homosexuality (302.00) as a mental disorder,[120] while the DSM IV[121] did not. Because mental disorder has fuzzy and even shifting borders, there may be times when experts in mental health disagree about whether a specific instance of abnormal behaviour counts as a mental disorder (see Pierre[118]). For example, epilepsy may give rise to recognizable patterns of transient ictal and post-ictal behaviour.[122] Usually neither ictal nor post-ictal phenomena are regarded as mental disorders by criminal law[15] or by psychiatrists, who considers them as neurological phenomena. Yet, ictal or post-ictal behaviours may become so problematic that they are considered as mental disorder (for example mental disorder due to general medical condition[14] or mental disorder due to another medical condition[12]), though the line where "neurological" ictal or post-ictal behaviour crosses over to "mentally ill" ictal or post-ictal behaviour is unclear (again the fuzzy borders). Epilepsy is not the only medical illness that may present with behaviour that could be considered mentally ill behaviour. Other examples are the behaviour associated with postconcussional confusion[123] and hypoglycaemia.[124] Mostly criminal law does not consider behaviours attributed to such medical conditions as mental disorder,[15-16] and psychiatrists may also choose not to. Yet, a condition like postconcussional disorder is included as a condition for further study in the DSM-IV TR,[14] but omitted in the DSM-5[12]

Because mental disorder has fuzzy borders, which may give rise to disagreement as to whether emotionally triggered involuntary violent behaviour attributed to a medical condition should or should not be attributed to a mental disorder, the ETIVB-Instrument precedes the judgment of whether behaviour is attributable to a mental disorder or another medical condition (e.g. epilepsy, traumatic brain injury, and hypoglycaemia. That approach has also been taken for emotionally triggered involuntary violent behaviour attributable to psychoactive substances. The reason for doing so is that the problems with attribution do not shipwreck the validity and accurate identification of 'ETIVB'.

Now that it is clear that emotionally triggered involuntary violent behaviour attributable to other medical conditions and psychoactive substances will be listed (as attributive considerations of 'ETIVB') together with mental disorders, the way to record findings regarding attributive consideration of 'ETIVB' needs to be addressed. Thus, it must be emphasised that the process of assessing and

recording attributive conditions that of 'ETIVB', is separate from assessing candidate behaviour for ETIVB (by using the ETIVB-Instrument). Once that (separate) assessment has been completed, findings are recorded on a document named, "Attributive Considerations of ETIVB" (see Addendum A to Chapter 9). This document, "Attributive Considerations of ETIVB", is not part of the ETIVB-Instrument proper, but supplements it. The assessment of its reliability is beyond the scope of this study.

The Attributive Considerations of 'ETIVB' are divided into two groups of options, namely the Y-options and the Z-option. The Y-options are about various possible attributions of 'ETIVB', while the Z-option provides for the absence of any of the listed attributive conditions. It would mean that the candidate behaviour represents a case of 'ETIVB' 'not attributed to a mental disorder'. This is what courts would usually be particularly interested in. There is a column, "Notes", in which guidance is provided regarding how to decide on a specific option.

Options Y.1 – Y.5 are about a mental disorder that can be diagnosed in terms of widely used present-day classifications, like the DSM-IV TR,[14] DSM-5,[12] or ICD-10.[13] Options Y.2 and Y.3 overlap with the Y.1-option, which actually captures both options Y.2 and Y.3. The reason for this overemphasis by having options Y.2 and Y.3 as well (for the purposes of the pilot study) has been to ensure that mental disorders due to general medical conditions and psychoactive substances are not missed. The Y.4-option and Y.5-option are respectively about psychoactive substance intoxication and psychoactive substance withdrawal as disorders in terms of the DSM-IV TR. The Y.6-option however, is about being under the influence of a psychoactive substance while that being-under-the-influence does not meet the requirements for a diagnosable DSM-IV TR disorder. The Y.7-option is about medical illnesses that are known to be excluded for the purposes of criminal law as matters stand at present.[16]

The possible outcome for each option is "fully attributed", "partially attributed", "not attributed" or "uncertain". The tool gives no further explanation about the meanings of the possible outcomes, since it is self-evident. An explanation has however been given during the training session for the research participants. The chosen outcome is indicated by a mark in the particular box (see Addendum A to Chapter 9) in the same row as the option.

Having addressed the formatting of the ETIVB-Instrument in the previous chapter and the document, "Attributive Considerations of ETIVB" in this chapter, the next step will be to apply the ETIVB-Instrument, and, where applicable, the "Attributive Considerations of ETIVB" to the study cases. Doing this actually marks the final process in gaining clarity about 'ETIVB', as is described in Chapter 3. The next chapter will demonstrate how the researcher used the ETIVB-instrument in two study cases. Then, in Chapter 11, the results of having assessed all the study cases with the ETIVB-Instrument will be presented. That will be followed by the final chapter of Part 1, namely Chapter 12, which is about the validity of the ETIVB-Instrument.

Addendum A to Chapter 9

At this point the assessment by the ETIVB-Instrument has been completed. The following are pointers regarding the possible attributions for the ETIVB-Instrument that should be distinguished from the ETIVB-Instrument themselves. They are best considered as a separate assessment distinct from the assessment of the ETIVB-Instrument. If the ETIVB-Instrument were met then, for each of the items Y.1 to Y.7 make a tick in the appropriate boxes. All items should be completed. Tick Z.1 only if appropriate.

Attributive Considerations of ETIVB.						
Option	**Attribution**	**Notes**	**Fully Attributed**	**Partially Attributed**	**Not Attributed**	**Uncertain**
Y.1	ETIVB attributed to a mental illness including those due to a general medical condition or induced by a substance.	The diagnosis is made in accordance with accepted international criteria.				
Y.2	ETIVB attributed to a mental illness due to a general medical condition (but not a substance) for example Psychotic Disorder due to Epilepsy.	The diagnosis is made in accordance with accepted international criteria.				
Y.3	ETIVB attributed to a Substance Induced mental illness for example Hallucinogen induced Psychotic Disorder.	The diagnosis is made in accordance with accepted international criteria.				
Y.4	ETIVB attributed to Substance Intoxication.	The diagnosis is made in accordance with accepted international criteria.				
Y.5	ETIVB attributed to a Substance Withdrawal.	The diagnosis is made in accordance with accepted international criteria.				
Y.6	ETIVB attributed to the influence of a substance, but not to substance intoxication according to accepted criteria.	Evidence supports the ingestion of a substance, but not of intoxication (further evidence may be				

		required).				
Y.7	ETIVB attributed to a general medical condition known to be excluded as a mental illness for purposes of criminal law. Examples: hypoglycaemia, ictal or post ictal confusion, concussion etc.	Evidence support the presence of a general medical condition (further evidence may be required).				

Z.1	**Tick if ETIVB is NOT attributed to any of the above (Y.1-Y.7)**	

Chapter 10

Case Demonstration: Assessing Two Cases with the ETIVB-Instrument

In this the researcher will demonstrate the use of the ETIVB-Instrument by showing how it has been applied to two study cases, namely *Sanders and Jacaranda 94.2* and *S v Campher*. The reader may refer to précis of the two study cases in Addendum C to Chapter 14. The précis in Addendum A to Chapter 14 are the same précis that have been used by study participants. The researcher however, has had a copy of the original court verdict as reported in criminal law reports at his disposal. The reason for rating criteria will be discussed for both *Sanders and Jacaranda 94.2* and *S v Campher*. This will be done in order of the sequence they appear on the ETIVB-instrument.

The reasons for choosing these two study cases are that 1) *Sanders and Jacaranda 94.2* is the only example of a case study where the requirements of 'ETIVB' are satisfied; 2) *S v Campher* is an example of a challenging case where the requirements of 'ETIVB' are not satisfied, as evidenced by the Supreme Court of Appeal not having reached a unanimous decision; 3) both cases have enough information for the purposes of applying the ETIVB-Instrument to them. Starting with *Sanders and Jacaranda 94.2* the researcher will demonstrate how the ETIVB-Instrument and Attributive Considerations of ETIVB have been used, and following that, how the ETIVB-Instrument (without the Attributive Considerations of ETIVB) was used in *S v Campher*.

Applying the ETIVB-Instrument to Sanders and Jacaranda 94.2

The violent behaviour under evaluation in *Sanders and Jacaranda 94.2* occurred on 23 October 2009. An electric shock was inflicted to the neck of Sanders (the agent), who reacted by punching John Walland (the victim). Corrie Sanders (nicknamed, "the Sniper") was a professional heavy weight boxer, who won the WBO heavyweight title in 2003.[125-126] John Walland was one of the radio presenters who interviewed Sanders during the radio interview (which was part of a prank). Jacaranda 94.2 is a radio station broadcasting in the Gauteng province area of South Africa. The incident was part of a series of radio pranks that was broadcasted live. The researcher listened to the prank while it happened and later repeatedly watched (but could not download) a video clip of the prank on the website of Jacaranda 94.2, because it seemed to teach a valuable lesson about emotionally triggered involuntary violent behaviour. Although one may sympathise with Sanders, who was the victim of a (risky) prank, one must nonetheless not be unduly influenced by sympathy for the

victim of the prank, but must evaluate the candidate behaviour as objectively as possible. The application of the ETIVB-Instrument starts with the inclusion criteria.

The Inclusion Criteria

An inclusion-criterion must be ‘met’ or ‘not applicable’ for the candidate behaviour (the violent behaviour under evaluation) to come into consideration for ‘ETIVB’. If an inclusion-criterion is ‘met’ it counts in favour of the candidate behaviour possibly satisfying the requirements of ‘ETIVB’. However, if any exclusion criterion is ‘not met’, it immediately disqualifies the candidate behaviour from possibly satisfying the requirements of ‘ETIVB’. If an inclusion-criterion is ‘not applicable’ it simply means that it can be ignored for the evaluation of the specific case under scrutiny. The inclusion criteria start with the A-criteria which are about the ‘triggering event’.

The A-Criteria

A	**Regarding the triggering event: it is an event that occurs overtly and could either have been a single severely to extremely distressing event, or a series of related severely to extremely distressing events one following the other closely in such a way that as a whole they formed a severely to extremely distressing event that was potentially emotionally overwhelming as indicated by either A.1 or A.2-A.2.2 being met together with A.3 being met.** **NB: Establish the impact of the triggering event *on emotions*, not on behaviour.**
A.1	The triggering event was a single severely to extremely distressing event as indicated by the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable) here if criteriaA.2 and A.2.1 are met.
A.2	The triggering event was made up by a series of related severely to extremely distressing events, one following the other closely in such a way that as a whole they formed a severely to extremely distressing event as indicated by both of the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable here if criterion A.1. is met.
A.2.1	The distressing events that made up the triggering event was spaced close enough in time (with no more than a few minutes separating them) so that together, as a whole, they formed a single triggering event. Note: Circle '4' (not applicable) here if '4' (not applicable) was circled for criterion A.2.
A.3	The triggering event is of a nature that it is potentially observable by an observer irrespective of whether someone actually witnessed the event. Note: Circle '4' (not applicable) here if A.1 and A.2 are not met. If only one of A.2 or A.2.1 is met, circle '2' ('not met').

The incident that triggered the violent behaviour in *Sanders and Jacaranda 94.2* was an electric shock that was applied to the neck of Sanders (the agent. The interview between Sanders and the radio-interviewers started off amicably. A bit later during the interview, a strange sound occurred that must have troubled the Sanders, because he asked, "What is going on here?" (The sound, which had an electronic quality, served to warn listeners that the prank was about to occur.) One of the presenters, Darren Scott responded to Sanders' question by pacifying him. The electrical shock, which was applied to Sanders' neck, followed a little later.

From the video clip one can infer that the electrical shock (which was a single distressing event) to Sanders neck hit him unexpectedly. It was delivered from behind, but anther radio personality, “Frankie”. The question is whether this electrical shock to the neck can be regarded as a severely to extremely distressing event if the subject’s culture and all relevant information are taken into consideration. From Sanders’ expletive that was uttered immediately after the shock, one can infer that the shock was painful. The researcher is of the opinion that most people of the agent’s culture would find such an event at least severely distressing. The prank was after all done at the agent’s expense in public “view”. Some may say that Sanders is a heavy weight boxer, that getting hurt is part of his “job description” and that consequently he should be used to getting hurt. That may be so, but Sanders’ getting hurt as part of his job may also make it so much less palatable to get deliberately hurt in everyday life. Furthermore, there is the issue of being made to look like a fool, something which adds to the distress caused by the incident. Thus, the researcher considered the A.1-criterion to be ‘met’ with more certainty than not. Because the A.1-criterion is ‘met’, the A.2-criteria are ‘not applicable’. Because the distressing incident is an observable incident, the A.3-criterion is ‘met’. Consequently all the requirements of ‘ETIVB’ as demanded by the A-criteria are satisfied.

The B-Criteria

B	**NB: When evaluating the behaviour consider only that *behaviour which makes out the violent behaviour* and not behaviour that includes planning or preparation to perform the violent behaviour, for example fetching a knife. Be careful not to confuse behaviour with emotions even though they are closely related.** **The candidate behaviour (that is the behaviour under consideration for ETIVB) indicates an inability of the agent to control the candidate behaviour, or an inability to choose a different course of action by all of the following being met:**
B.1	The candidate behaviour was of sudden onset following very rapidly on the triggering event; that is within 5 seconds. For example, the subject was confronted with a triggering event and within 2 seconds performed the candidate behaviour.
B.2	The candidate behaviour was brief: less than 10 seconds duration.
B.3	The candidate behaviour was made up by relatively unsophisticated motor movements requiring little precision. For example it consisted of no more than a brief, singular string of related movements. For example, 1 – 3 hits with a fist, stabs with a knife, or shots with a fire-arm. (To decide whether the violent behaviour was relatively unsophisticated ask yourself how much skill and accuracy were needed to perform the violent behaviour.)

The B.1-criterion is 'met', because the punch that Sanders threw at John Walland (the victim) took place within a second after the electrical shock had been inflicted to Sander's neck. The B.2-criterion is 'met', because there was only a single punch that lasted at the most 1 second. The punch itself did not appear to be precisely aimed. It appeared to be a shoulder high, wild, swinging punch that hit the person closest to Sanders, which was Walland. It appeared that Sanders exerted little effort or precision to execute the punch. Taking into account that a it can be expected of a heavy weight boxer to deliver much more sophisticated punches than a wild swing, the punch is taken to be relatively unsophisticated (with more certainty than not). Consequently all the requirements of 'ETIVB' as demanded by the B-criteria are satisfied.

The C-Criteria

C	**The behaviour was violent as can be inferred from the consequences of the behaviour as indicated by both of the following being met:**
C.1	The candidate behaviour was directed against someone and/or some property.
C.2	The candidate behaviour caused actual physical injury, or physical damage, or both.

The C.1-criterion is 'met', because the punch was directed at someone. The C.2-criterion is 'met', because the punch caused physical injury to the victim, who was struck forcefully enough to fall and

was said to be “out cold”. Because the punch was forceful enough to cause a grown man to fall, it is unlikely that no soft tissue injury occurred. Consequently all the requirements of ‘ETIVB’ as demanded by the C-criteria are satisfied.

The D-Criteria

D	**Regarding the emotions that triggered the candidate behaviour: they were severely to extremely emotionally distressing, as indicated by the following being met:** **(Note: for the D-criteria take only the emotions into consideration, not the behaviour.)**
D.1	The reported or inferred emotions were of severe to extreme emotional distress. Examples are being severely to extremely upset, severe to extreme unhappiness, anger, hate, fear, dismay, etc.
D.2	Almost all people from the same socio-cultural context as the subject would concede that, taking all other relevant factors into consideration, the reported or inferred emotions of severe to extreme emotional distress were of a nature that they would be understandable within socio-cultural context as being appropriate to the triggering event. Note: if D.1 is marked ‘not met’, then circle ‘4’ (not applicable) for this criterion, D.2.

The D.1-criterion is ‘met’ because it was clear from the video clip that Sanders was at least very upset. One can only infer from what one saw and heard as well as from one’s own experience with other humans and oneself as to what the specific qualities of the emotions could have been. It is very likely that Sanders was angry, humiliated, perhaps disappointed and more. He used expletives despite being on air and left the studio immediately afterward the incident, not waiting for explanations or further interviewing. Consequently, the inferred emotions are those of at least severe emotional distress. The D.2-criterion, which is about distressed emotions being culturally warranted, is ‘met’ with more certainty than not for the same reasons as explained regarding the A.1-criterion. Consequently all the requirements of ‘ETIVB’ as demanded by the D-criteria are satisfied.

The E-Criteria

E	**If an object was used as a weapon during the performance of the candidate behaviour the following must be met:**
E.1	That object was immediately available so that no mental or physical effort, which would indicate choosing or controlling, was needed to get hold of it. For example, the object was already in the subject’s hand, or within immediate reach. NB: If an object was not used as a weapon, mark this criterion as ‘4’ (not applicable).

Since no weapon was used, the E.1-criterion is 'not applicable'. It means that the E.1-crierion can (and should) be ignored during the evaluation of the I-criteria.

The Exclusion Criteria

The exclusion criteria must *not* be 'met' for the candidate behaviour to come into consideration for 'ETIVB'. Consequently, if an exclusion criterion is 'not met' it counts in favour of the candidate behaviour to possibly satisfying the requirements of 'ETIVB'. However, if any exclusion criterion is 'met', it immediately disqualifies the candidate behaviour from satisfying the requirements of 'ETIVB'.

The F-Criteria

F	**The candidate behaviour indicates that the agent had the ability to control and choose the candidate behaviour as is evident from any one of the following:** **(Note: all that is important here is that there are indications that the agent could control and choose the candidate behaviour, irrespective whether the behaviour was based on psychotic phenomena, substance intoxication, or mental confusion due to a medical condition.)**
F.1	The information indicates that the subject took measures in preparing for the execution of the candidate behaviour, or made a plan to execute the candidate behaviour. Examples are: ambushing the victim; searching for and fetching an object that can be used as a weapon; taking measures to prevent noise.
F.2	The information indicates that the subject made attempts to overcome physical obstacles in order to execute the candidate behaviour. Examples are: opening a door or breaking down a door to get to the victim; pushing people out of the way to get to the victim; obtaining an object that can be used as a weapon with some effort, like removing a knife stuck in it sheath.
F.3	The information indicates that the subject pursued the victim. Examples are: following a fleeing victim; searching the victim.
F.4	The information indicates that the subject chose and controlled performing the candidate behaviour by examples like: violent behaviour to 'teach the victim a lesson'; revenge behaviour directed at the victim.
F.5	The information indicates that the subject spend moments (even if very brief) to apply his or her mind in the period between the triggering event and the execution of the candidate behaviour as was evident in his or her thinking about the candidate behaviour; or considering the potential consequences of the candidate behaviour; or choosing between possible weapons for the candidate behaviour; or waiting for a better moment to execute the candidate behaviour.

The F-Criteria are about the agent of the candidate behaviour having the ability to choose and control that candidate behaviour as indicated by any of the criteria F.1 to F.5 being 'met'. In *Sanders and Jacaranda 94.2* the F.1-criterion is 'not met', because Sanders did not take any measures to prepare

for punching the victim. It happened almost immediately after the electrical shock was inflicted. There was no time for taking measures. Since Sanders did not overcome any obstacles in order to punch Walland, or tried to pursue the latter the F.2-criterion and F.3-criterion are respectively 'not met'. Furthermore, it cannot be inferred that Sanders punched Walland to take revenge or to teach the latter a lesson. The reason for that opinion is that one would expect gratuitous violence, like multiple punches, if it were the case. Consequently, the F.4-criterion is rated as 'not met'. Since there are no indications that Sanders spent a moment to his mind to hitting Walland the F.5-criterion is also rated as 'not met'. Consequently all the requirements of 'ETIVB' as demanded by the F-criteria are satisfied.

The G-Criteria

G	**Any of the following is met regarding the triggering event:**
G.1	The triggering event was only a subjective event like the experience of a memory, hallucination, delusion, or belief that an observer cannot potentially witness.

As noted in the A.3-criterion the triggering event was an observable event and not only a subjective experience. Consequently the G.1-criterion is 'not met'. Thus the requirements of 'ETIVB' as demanded by the G-criteria are satisfied.

The H-Criteria

H	**The following is met regarding the emotions that triggered the candidate behaviour:**
H.1	Regarding the reported or inferred emotions: a. The emotions may have been severely to extremely distressing, but they were either *excessive* or *inappropriate* in relation to the triggering event as suggested by the socio-cultural context and all other relevant information taken into consideration **or** b. The reported or inferred emotions were not severely to extremely distressing. An example of 'a' is a man who becomes extremely angry to the point of violence when someone sits on a chair in a classroom he usually uses. An example of 'b' is someone who performs violent behaviour while being cool and calm. (Note: take only the severity of the *emotions* into consideration, not the violence of the behaviour.)

The H.1-criterion is 'not met' because, as pointed out under the D-criteria, there was at least severely distressed emotions in required range of severely to extremely distressing emotions. Furthermore, it is the researchers' opinion that the emotions were appropriate and *not excessive* (in cultural context with all other relevant information taken into consideration). That means that the requirements of 'ETIVB' as demanded by the H-criteria are satisfied.

The Conclusion Criteria

I.1	Are all of the inclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not
I.2	Is any one of the exclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not
***NOTE**: If I.1 above (the inclusion criteria) was answered with 'Yes' and I.2 above (the exclusion criteria) was answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is supported. Then, please continue now to complete 'Attributive Considerations of the ETIVB'.* *If I.1 above (the inclusion criteria) was not answered with' Yes' or I.2 above (the exclusion criteria) was not answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is not supported. Then the evaluation stops here.*				

The conclusion criteria gives an evaluator a moment to consider all the findings related to the inclusion and exclusion criteria with the intention of establishing whether all the requirements of 'ETIVB' are satisfied. Since the requirements of the A-, B-, C-, and D-criteria are satisfied, and since the E-criteria can be ignored (because they are 'not applicable'), the I.1-criterion is rated as "Yes" since all the inclusion criteria are 'met'. Furthermore, since, by *not being met* the requirements of the F-, G-, and H-criteria are satisfied, the I.2-criterion is rated as "No". Consequently all the requirements of the ETIVB-criteria are satisfied. Since all the requirements of 'ETIVB' are satisfied, an evaluator should now continue by doing a separate assessment to complete the next step, namely filling out the Attributive Considerations of ETIVB.

Attributive Considerations of ETIVB

Attributive Considerations of ETIVB.						
Option	**Attribution**	**Notes**	**Fully Attributed**	**Partially Attributed**	**Not Attributed**	**Uncertain**
Y.1	ETIVB attributed to a mental illness including those due to a general medical condition or induced by a substance.	The diagnosis is made in accordance with accepted international criteria.				
Y.2	ETIVB attributed to a mental illness due to a general medical condition (but not a substance) for example Psychotic Disorder due to Epilepsy.	The diagnosis is made in accordance with accepted international criteria.				
Y.3	ETIVB attributed to a Substance Induced mental illness for example Hallucinogen induced Psychotic Disorder.	The diagnosis is made in accordance with accepted international criteria.				
Y.4	ETIVB attributed to Substance Intoxication.	The diagnosis is made in accordance with accepted international criteria.				
Y.5	ETIVB attributed to a Substance Withdrawal.	The diagnosis is made in accordance with accepted international criteria.				
Y.6	ETIVB attributed to the influence of a substance, but not to substance intoxication according to accepted criteria.	Evidence supports the ingestion of a substance, but not of intoxication (further evidence may be required).				
Y.7	ETIVB attributed to a general medical condition known to be excluded as a mental illness for purposes of criminal law.	Evidence support the presence of a general medical condition (further evidence may be required).				

	Examples: hypoglycaemia, ictal or post ictal confusion, concussion etc.					
Z.1	**Tick if ETIVB is NOT attributed to any of the above (Y.1-Y.7)**					

Since the researcher did not have information about Sanders' physical health, mental health and substance habits, he concluded that he cannot give an opinion about any of the options, Y.1 to Y.7. Consequently they were all marked as uncertain. Thus, the Z.1-criterion could also not be rated. Thus, it is not possible to conclude that emotionally triggered involuntary violent behaviour in this case cannot be attributed to a mental disorder or the like. With that, the evaluation of *Sanders and Jacaranda 94.2* finishes. The evaluation of *S v Campher* will next be demonstrated. However, before doing so I wish to take the opportunity to express my regret at Corrie Sanders having been killed during an armed robbery in 2009. It is ironic that this man, who displayed the only example emotionally triggered involuntary violent behaviour that could be used for this study, was himself many times the victim of voluntary violence.

Applying the ETIVB-Instrument to S v Campher

S v Campher is about the trial of an abused woman who killed her abusive husband. When Mrs Campher married Mr Campher she had already acquired children by a previous marriage. These children were living with her and Mr Campher at the time the unfortunate events happened. From the criminal law report (and hopefully also as reflected in the précis) one is introduced to the physical and emotional traumas of Mrs Campher, an abused woman with whom one cannot help but empathise (and very likely sympathise). One is also introduced to Mr Campher, an abusive man, who is presented in such a way that one cannot help but be outraged by his behaviour. In the end one may very well be confused as to who is the perpetrator and who is the victim in this case. Because of that, an assessing clinician is well advised to remain as objectively as possible when applying the ETIVB-Instrument to the case.

The A-Criteria

A	**Regarding the triggering event: it is an event that occurs overtly and could either have been a single severely to extremely distressing event, or a series of related severely to extremely distressing events one following the other closely in such a way that as a whole they formed a severely to extremely distressing event that was potentially emotionally overwhelming as indicated by either A.1 or A.2-A.2.2 being met together with A.3 being met.** **NB: Establish the impact of the triggering event *on emotions*, not on behaviour.**
A.1	The triggering event was a single severely to extremely distressing event as indicated by the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable) here if criteriaA.2 and A.2.1 are met.
A.2	The triggering event was made up by a series of related severely to extremely distressing events, one following the other closely in such a way that as a whole they formed a severely to extremely distressing event as indicated by both of the following: The triggering event can be considered, taking the subject's socio-cultural context and all other relevant information into consideration, to have been severe enough to trigger severe to extreme emotional distress. Note: Circle '4' (not applicable here if criterion A.1. is met.
A.2.1	The distressing events that made up the triggering event was spaced close enough in time (with no more than a few minutes separating them) so that together, as a whole, they formed a single triggering event. Note: Circle '4' (not applicable) here if '4' (not applicable) was circled for criterion A.2.
A.3	The triggering event is of a nature that it is potentially observable by an observer irrespective of whether someone actually witnessed the event. Note: Circle '4' (not applicable) here if A.1 and A.2 are not met. If only one of A.2 or A.2.1 is met, circle '2' ('not met').

To evaluate the incident that triggered the candidate behaviour *S v Campher* one must take the background leading up to the incident into account. The background is formed by a long period of physical and emotional abuse that Mrs Campher (the appellant, since the verdict of the High Court went for appeal to the Supreme Court of Appeal) suffered by the hands of Mr Campher (the victim of the candidate behaviour. Thus, the day on which Mrs Campher shot and killed a husband was another one of those days on which Mrs Campher suffered abuse from Mr Campher. However, something was a little different. Mrs Campher testified that on this day she had also suffered from lack of sleep and she also testified that she reported physically and emotionally "down". There seems to

be no reason to doubt her. Furthermore, she also testified that it had felt to her that a “storm was brewing” inside her (which is taken to mean her being in emotional turmoil even before the ‘triggering event’). Then, to make matters worse, Mr Campher told her that she and her children must get out of his house. This however, is not yet the incident that triggered the violent behaviour. This is just part of incidents before the final ‘triggering event’ that one needs to consider. One may ask oneself, “How distressing would an incident like this have on someone like Mrs Campher (taking socio-cultural and all other information into consideration)?” and, “What is Mrs Campher’s emotional state likely to be at this stage and are they socio-culturally warranted?” Such questions help not only with the assessment of the A-criteria, but also with the assessment of the D-criteria. Next the ‘triggering event’ itself will be considered.

In S v Campher the ‘triggering event’ is constituted by multiple severely to extremely distressing events. That is so because they are related to each other and follow each other closely enough in time to form a whole. They series of incidents are related to each other by themes of humiliation, threats, and fear. They happened in a limited period of time so that one gets the impression that the distress evoked by each incident was compounded by the distress evoked by a previous incident. The series of severely to extremely distressing events are as follows:

1. Mr Campher yelling and swearing at Mrs Campher that she “fucked-up” his life.
2. Mr Campher threatening to kill Mrs Campher with a screwdriver.
3. Mr Campher pursuing Mrs Campher, who was fleeing the Mr Campher, to the bedroom.
4. Mr Campher grabbing Mrs Campher in the bedroom (while she had a gun in her hand) and stabbing at her with the screwdriver).
5. Mr Campher physically forcing Mrs Campher back to the aviary.
6. Mr Campher forcing Mrs Campher onto her knees and shouting at the her, “You little bitch, now you are going to pray this little hole straight.” This event is taken, in context, to be the final incident that broke the proverbial camel’s back.

Thus all the requirements of ‘ETIVB’ as demanded by the A-criteria are satisfied.

The B-Criteria

B	**NB: When evaluating the behaviour consider only that *behaviour which makes out the violent behaviour* and not behaviour that includes planning or preparation to perform the violent behaviour, for example fetching a knife. Be careful not to confuse behaviour with emotions even though they are closely related.** **The candidate behaviour (that is the behaviour under consideration for ETIVB) indicates an inability of the agent to control the candidate behaviour, or an inability to choose a different course of action by all of the following being met:**
B.1	The candidate behaviour was of sudden onset following very rapidly on the triggering event; that is within 5 seconds. For example, the subject was confronted with a triggering event and within 2 seconds performed the candidate behaviour.
B.2	The candidate behaviour was brief: less than 10 seconds duration.
B.3	The candidate behaviour was made up by relatively unsophisticated motor movements requiring little precision. For example it consisted of no more than a brief, singular string of related movements. For example, 1 – 3 hits with a fist, stabs with a knife, or shots with a fire-arm. (To decide whether the violent behaviour was relatively unsophisticated ask yourself how much skill and accuracy were needed to perform the violent behaviour.)

The B.1-criterion is rated as 'uncertain' since it is not clear how much time elapsed from the moment Mr Campher shouted, "You little bitch, now you are going to pray this little hole straight," up to Mrs Campher shooting him. It may not have taken more than a second or two, but it is not certain. How much time did Mrs Campher spend on her knees while Mr Campher went about his business in the aviary? The researcher thinks it could not have been long, but, nonetheless he does not know. Take into consideration that things were going through Mrs Camper's mind at that point. She was, for example, thinking that the Mr Campher is not a human being, but a monster. The B.2-criterion is rated as 'met', since the candidate behaviour consisted of a single shot and consequently must have lasted less than a second. The B.3-criterion is 'met', because the deceased was so close to the appellant when she shot him, it is taken that relatively little skill and effort was needed to shoot and hit the deceased.

Since the outcome of criterion B.1 is uncertain, it is uncertain whether all the requirements of 'ETIVB' as demanded by the B-criteria are satisfied. Let's assume that the ETIVB-criteria as they are described here are used in practice and that *S v Campher* is yet to go to trial. Then, hopefully, the uncertainty about the latency period between 'triggering event' and candidate behaviour will be clarified. However, if that is not possible, much will depend on the outcome of the other criteria. If all the requirements of 'ETIVB' are satisfied except that B.1 is uncertain, a decision will have to be made as to whether the benefit of the doubt should go to the accused or not. However, that will be for a court to decide, not a psychiatrist.

The C-Criteria

C	**The behaviour was violent as can be inferred from the consequences of the behaviour as indicated by both of the following being met:**
C.1	The candidate behaviour was directed against someone and/or some property.
C.2	The candidate behaviour caused actual physical injury, or physical damage, or both.

The C.1-criterion is 'met', because the shot was directed at Mr Campher who was fatally injured (meaning that the C.2-criterion also 'met', since there was physical injury. Thus, the requirements of 'ETIVB' as demanded by the G-criteria are satisfied.

The D-Criteria

D	**Regarding the emotions that triggered the candidate behaviour: they were severely to extremely emotionally distressing, as indicated by the following being met:** **(Note: for the D-criteria take only the emotions into consideration, not the behaviour.)**
D.1	The reported or inferred emotions were of severe to extreme emotional distress. Examples are being severely to extremely upset, severe to extreme unhappiness, anger, hate, fear, dismay, etc.
D.2	Almost all people from the same socio-cultural context as the subject would concede that, taking all other relevant factors into consideration, the reported or inferred emotions of severe to extreme emotional distress were of a nature that they would be understandable within socio-cultural context as being appropriate to the triggering event. Note: if D.1 is marked 'not met', then circle '4' (not applicable) for this criterion, D.2.

The D.1-criterion is 'met' because it can be inferred from the severity of the 'triggering event', from what Mrs Campher testified, and from one's experience as a human being, that Mrs Campher experienced at least severely distressed, but more likely extremely distressed emotions. Those extremely distressed emotions were likely to have been a combination of fear, humiliation, despair and anger. The D.2-criterion is 'met' for reasons already set out under the A-criteria. Thus, the requirements of 'ETIVB' as demanded by the D-criteria are satisfied.

The E-Criteria

E	**If an object was used as a weapon during the performance of the candidate behaviour the following must be met:**
E.1	That object was immediately available so that no mental or physical effort, which would indicate choosing or controlling, was needed to get hold of it. For example, the object was already in the subject's hand, or within immediate reach. NB: If an object was not used as a weapon, mark this criterion as '4' (not applicable).

The E.1-criterion is 'met', because the gun with which Mrs Campher shot her husband had already been in her hand for some time when she shot him. It means that she did not have to apply her mind or to make an effort to obtain the gun. Thus, the requirements of 'ETIVB' as demanded by the E-criteria are satisfied.

The F-Criteria

F	**The candidate behaviour indicates that the agent had the ability to control and choose the candidate behaviour as is evident from any one of the following:** **(Note: all that is important here is that there are indications that the agent could control and choose the candidate behaviour, irrespective whether the behaviour was based on psychotic phenomena, substance intoxication, or mental confusion due to a medical condition.)**
F.1	The information indicates that the subject took measures in preparing for the execution of the candidate behaviour, or made a plan to execute the candidate behaviour. Examples are: ambushing the victim; searching for and fetching an object that can be used as a weapon; taking measures to prevent noise.
F.2	The information indicates that the subject made attempts to overcome physical obstacles in order to execute the candidate behaviour. Examples are: opening a door or breaking down a door to get to the victim; pushing people out of the way to get to the victim; obtaining an object that can be used as a weapon with some effort, like removing a knife stuck in it sheath.
F.3	The information indicates that the subject pursued the victim. Examples are: following a fleeing victim; searching the victim.
F.4	The information indicates that the subject chose and controlled performing the candidate behaviour by examples like: violent behaviour to 'teach the victim a lesson'; revenge behaviour directed at the victim.
F.5	The information indicates that the subject spend moments (even if very brief) to apply his or her mind in the period between the triggering event and the execution of the candidate behaviour as was evident in his or her thinking about the candidate behaviour; or considering the potential consequences of the candidate behaviour; or choosing between possible weapons for the candidate behaviour; or waiting for a better moment to execute the candidate behaviour.

The F.1-criterion is ‘not met’ since it cannot be said that Mrs Campher took any measures to shoot her husband. The gun was already with which she shot her husband was already in her hand (as pointed out under the E-criteria).The F.2-criterion is ‘not met since Mrs Campher did not have to overcome any obstacles to shoot her husband. The F.3-criterion is ‘not met’ because Mrs Campher did not pursue her victim. The F.4-criterion is ‘not met’ because there is not enough evidence to infer that Mrs Campher shot her husband to teach him a lesson or to take revenge. However, the F.5-criterion is ‘met’ because there is evidence that Mrs Campher had applied her mind to what she did. That is evidenced by her thinking that her husband is a monster that is denigrating her and that he should be destroyed before shooting him. Since she thought about destroying her husband and then went on to do exactly that, it is ‘more certain than not’ that the appellant applied her mind. That is so despite the thoughts occurred briefly, on the spur of the moment, and even in the confusion intensely negative emotions may incur. Thus, the requirements of ‘ETIVB’ as demanded by the F-criteria are not satisfied. Since that is so, the candidate behaviour in *S v Campher* is disqualified from being designated as ‘ETIVB’.

The G-Criteria

G	**Any of the following is met regarding the triggering event:**
G.1	The triggering event was only a subjective event like the experience of a memory, hallucination, delusion, or belief that an observer cannot potentially witness.

The G.1-criterion is ‘not met’ since, as pointed out under the A.3-criterion, the ‘triggering event’ was an observable event and not only a subjective experience. Thus, the requirements of ‘ETIVB’ as demanded by the G-criteria are satisfied.

The H-Criteria

H	**The following is met regarding the emotions that triggered the candidate behaviour:**
H.1	Regarding the reported or inferred emotions: a. The emotions may have been severely to extremely distressing, but they were either *excessive* or *inappropriate* in relation to the triggering event as suggested by the socio-cultural context and all other relevant information taken into consideration **or** b. The reported or inferred emotions were not severely to extremely distressing. An example of 'a' is a man who becomes extremely angry to the point of violence when someone sits on a chair in a classroom he usually uses. An example of 'b' is someone who performs violent behaviour while being cool and calm. (Note: take only the severity of the *emotions* into consideration, not the violence of the behaviour.)

The H.1-criterion is 'not met' because, as explained under the D-criteria, there was severely to extremely distressing emotions, which were considered appropriate and *not excessive* (socio-cultural context with all other relevant information taken into consideration). Thus, the requirements of 'ETIVB' as demanded by the H-criteria are satisfied.

The Conclusion Criteria

I.1	Are all of the inclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not
I.2	Is any one of the exclusion criteria met? Circle 'Yes' or 'No' or 'Cannot conclude with more certainty than not'.	Yes	No	Cannot conclude with more certainty than not
***NOTE**: If I.1 above (the inclusion criteria) was answered with 'Yes' and I.2 above (the exclusion criteria) was answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is supported. Then, please continue now to complete 'Attributive Considerations of the ETIVB'.* *If I.1 above (the inclusion criteria) was not answered with' Yes' or I.2 above (the exclusion criteria) was not answered with 'No', then based on these criteria, emotionally triggered involuntary violent behaviour (ETIVB) is not supported. Then the evaluation stops here.*				

Since one inclusion criterion, the B.1-criterion, is 'uncertain' the question asked by the I.1-criterion is answered as, "Uncertain". The question asked by the I.2-criterion is answered with, "Yes", since the

F.5-criterion is ‘met’. Thus, despite the outcome of the inclusion criteria being ‘uncertain’ the fact that not all the exclusion criteria are *not* ‘not met’, the requirements of the ETIVB-criteria are nonetheless not satisfied. Consequently, the Attributive Considerations of ETIVB is not completed.

Now that the use of the ETIVB-Instrument was demonstrated with two study cases, the results of all the study cases to which the ETIVB-Instrument was applied will be reported. That is the topic of the next chapter.

Chapter 11

Results of Assessing Study Cases with the ETIVB-Instrument

In In the previous chapter it was demonstrated how the researcher applied the ETIVB-Instrument to two study cases. In a similar manner as demonstrated in the previous chapter, the researcher applied the ETIVB-Instrument to all the study cases. In this chapter the results of the researcher's assessments of all the study cases will be presented. The researcher used the same ETIVB-Instrument as study participants used in the reliability component of the study. However, the study participants applied the ETIVB-Instrument to five selected cases, whereas the researcher applied the ETIVB-Instrument to all twenty eight study cases. In some of the study cases the ETIVB-Instrument had to be applied more than once because more than one candidate behaviour was detected.

The ETIVB-Instrument were applied more than once for a specific study case if there were more than one possible 'triggering event' followed by its own candidate behaviour (which refers to the 'violent behaviour' under assessment by the ETIVB-Instrument), or when 'candidate behaviours' in the same study case were considered so distinct from each other that, even if they shared a possible 'triggering event', they needed to be assessed separately. Such study cases will be referred to as having multiple candidate behaviours. (The reason for referring to a possible 'triggering event' is that the distressing incident has yet to be assessed as to whether it meets the requirements of 'ETIVB'). The reason for having done so is that even in the same study case, different 'candidate behaviours', possibly triggered by different 'triggering events', may potentially have different outcomes regarding 'involuntariness'.

While a single charge might have been associated with more than one possible 'triggering event' (as was the case with *S v Eadie*), it also happened that multiple charges (involving violence) were considered to have been associated by only one possible 'triggering event' (as was the case with *S v Nursing* and *S v Kalagoropoulos)*. Multiple charges (involving violence) were considered associated with only one possible 'triggering event' when the violent behaviours (for which a separate charge was laid) happened in such quick succession that they could be considered as part of the same candidate behaviour. More will be said about study cases with multiple 'candidate behaviours' in the discussion.

Results

Between 1 July 2009 and 31 May 2011 the ETIVB-Instrument was applied to 28 study cases in the iterative process previously described. It is only the results of the finally formulated ETIVB-Instrument that is presented here. Since more than one candidate behaviour was identified in some of the study cases, 33 'candidate behaviours' were identified among the 28 study cases. Thus the ETIVB-Instrument was applied to 33 candidate behaviours. However, the Attributive Considerations of ETIVB was applied only once, because only one study case satisfied the requirements of 'ETIVB' as required by the ETIVB-Instrument.

As described in Chapter 8 there are 3 possible outcomes after an assessment with the ETIVB-Instrument. They are that ETIVB is supported (meaning that the requirements of ETIVB-criteria are satisfied), that the ETIVB is not supported (meaning that the requirements of the ETIVB-criteria are not satisfied), or that the outcome of the assessment with the ETIVB-Instrument is uncertain. In this chapter they are respectively reported as candidate behaviour qualifying as 'ETIVB', candidate behaviour not qualifying as 'ETIVB', and ETIVB-outcome being uncertain.

The results of having applied the ETIVB-Instrument to the study cases are summarized in Tables 2 – 6, and are presented as follows:

1. <u>The Candidate Behaviour Qualifies as 'ETIVB'.</u>
   - 1.1 One study case with one candidate behaviour. See Table 2.

2. <u>The Candidate Behaviour Does Not Qualify as 'ETIVB'.</u>
   - 2.1 Study cases with one candidate behaviour. See Table 3.
   - 2.2 Study cases with multiple candidate behaviours. See Table 4.

3. <u>ETIVB-Outcome is Uncertain.</u>
   - 3.1 Study cases with one candidate behaviours. See Table 5.
   - 3.2 Study cases with multiple candidate behaviours. See Table 6.

The Attributive Considerations for ETIVB was applied to only on case, since only one case (*Sanders and Jacaranda 94.2*) satisfied the requirement of 'ETIVB'. *Sanders and Jacaranda 94.2* was use as a demonstration case in Chapter 10 and in that chapter the reason for rating all the options (Y.1-Y.7) as "uncertain" and not rating options Z.1 were given. The results are displayed in Table 7: Ratings of Attributive Considerations in Sanders and Jacaranda 94.2.

Discussion

As may be seen from Tables 2 – 6, by far the most common finding was that the requirements of 'ETIVB' were not satisfied. Of the 33 'candidate behaviours' assessed with the ETIVB-Instrument, 25 (75.8%) did not satisfy the requirements of 'ETIVB'. The next most common result was an uncertain outcome. The outcome of 8 (23.5%) of the 'candidate behaviours' was uncertain. In only 1 (2.9%) instance were the requirements of 'ETIVB' satisfied. If the results are taken case-by-case (and not by 'candidate behaviours'), the results follow the same pattern. In 20 (71.4%) study cases the requirements of 'ETIVB' were not satisfied, in 6 (21.4%) study cases the outcome was uncertain, and in 1(3.6%) study case the requirements of 'ETIVB' was satisfied. Because the size of this study is small, the results cannot be generalized. With the descriptive statistics presented, the rest of the discussion will be about clarifying the ratings of the study cases by making use of examples. Although many study cases show mixed features of what is to be discussed, the researcher will nevertheless organize the discussion by first discussing how some study cases came to be regarded as having more than one candidate behaviour, followed next by cases with more than one charge that was nevertheless considered to be part of only one candidate behaviour, then followed by cases involving only one candidate behaviour that did not satisfy the requirements of 'ETIVB', and finally concluding with study cases with an uncertain final outcome.

Study Cases with More than One Candidate Behaviour

As noted during the introduction to this chapter and reflected in the results, some study cases had more than one 'candidate behaviour. In one case, *S v Eadie*, there was only one charge (that of murder). Nevertheless, there was more than one incident of 'violent behaviour' and each of them was assessed separately. In *S v Eadie* the accused was (understandably) enraged by the victim's driving behaviour. After both drivers stopped (with Mr. Eadie's vehicle in the front) Mr. Eadie first obtained a hockey stick from his own vehicle. Mr. Eadie proceeded to smash the windscreen of the victim's vehicle with the hockey stick, after which he attempted to hit the victim with it. This was considered to be the first candidate behaviour (see Table 4*, S v Eadie*, behaviour 1, single charge). After the hockey stick had broken, the victim kicked the door of the motor vehicle at the accused. That incident was considered as the next distressing incident, which, together with what had already happened might have triggered involuntary 'violent behaviour, (irrespective of blameworthiness, which is *not* what 'ETIVB' is about). Consequently the behaviour following that incident (the victim kicking a vehicle door at the accused) was considered a second 'candidate behaviour (see Table 4, *S v Eadie*, behaviour 2, single charge). Understanding the rest of the assessment of *S v Eadie* as displayed in Table 4 is uncomplicated.

The other study cases to which the researcher applied the ETIVB-Instrument more than once involved 'candidate behaviours' so separate from each other that each one was assessed in its own right, even though they shared one possible 'triggering event'. This was the case for *S v Henry*, and *S v Kensley*. In *S v Henry* the accused shot his ex-wife (Table 6, *S v Henry*, candidate behaviour 1, charge 1) at

her home after she had screamed at him and started pushing him out of her house (which was considered to be the 'triggering event'). Then, for reasons that are unclear but apparently related to the same 'triggering event' as the first candidate behaviour, the accused also shot his former mother-in-law (Table 6, *S v Henry*, candidate behaviour 1, charge 1) when she appeared on the scene after she had decided to go there to investigate. The researcher considered the second victim's appearance and the violence that followed distinct from the first candidate behaviour, because the second victim had not initially been in the same room as the accused and first victim. (Incidentally, in *S v Henry* there was a third charge that involved pointing a fire-arm. However, because that criminal charge involved no 'violent behaviour' as understood in 'ETIVB', it was not assessed.) As may be seen in Table 6, there is no criterion rating that outright disqualifies 'ETIVB' in *S v Henry*, but many criteria of which the rating is unsure. Thus, the ETIVB-outcome in *S v Henry* is uncertain.

In *S v Kensley* there were three charges resulting from a single 'triggering event'. The 'triggering event' involved Mr. Kensley discovering that the two "women" who were flirting with him and whose flirtation he reciprocated quite intimately actually men (transvestites). The first charge was that of murder. It involved the fatal (but accidental) shooting of a woman by a gun that went off during a struggle between the accused and another man. This struggle took place because the accused tried to get hold of the gun. Since the gun shot was not directed at someone (but merely an accident), the requirements of the C-criteria were not satisfied (Table 4, *S v Kensley*, candidate behaviour 1, charge 1). The second charge was one of murder, which was the result of the accused having shot a victim who was pleading for his life during a verbal altercation (Table 4, *S v Kensley*, candidate behaviour 2, charge 2). Understanding the evaluation of the latter candidate behaviour as displayed in Table 4 is otherwise uncomplicated. The last two charges of attempted murder (which occurred after the events that had led to the second murder charge) happened at the same time (and was considered one instance of candidate behaviour) as Mr. Kensley fired on the two fleeing transvestites, whom he pursued (Table 4, *S v Kensley*, candidate behaviour 1, charges 3 and 4). Understanding the evaluation of the latter candidate behaviour as displayed in Table 4 is otherwise uncomplicated.

Study Cases with More than One Charge, Yet Only One Candidate Behaviour

In the same way that charges 3 and 4 in *S v Kensley* were considered one instance of candidate behaviour for the evaluation of ETIVB, two other study cases also displayed multiple charges that the researcher considered an instance of one candidate behaviour. They are *S v Kalagoropoulos* and *S v Nursing*. In *S v Kalagoropoulos,* three criminal charges involving violent behaviour (one of murder and two of attempted murder) were performed so quickly in succession after the 'triggering event' (which in this case was a growingly tense verbal altercation between the accused and his wife with the accused blaming his wife of marital infidelity) that the researcher considered them as part of the same candidate behaviour (Table 6, *S v Kalagoropoulos*, candidate behaviour 1, charges 1-3). As may be seen from Table 6, the requirements of all the ETIVB-criteria were satisfied, except for the F.4-

criterion being uncertain. The latter made the outcome of the assessment with the ETIVB-Instrument uncertain. The reason for the uncertainty is that after the researcher had taken all the information available into account, he was not as convinced as the High Court was that Mr. Kalagoropoulos was simply in a foul mood (implying that he had acted out of vengeance). As may be inferred from the criminal law report, the High Court's verdict was in no small way influenced by what had happened next. The next candidate behaviour that the researcher assessed (Table 4, *S v Kalagoropoulos*, candidate behaviour 2, charge 4) was the shooting of a servant of the Kalagoropoulos family. He went to where she stayed, having obtained a second fire-arm. Before he shot her in the presence of a visitor, Mr. Kalagoropoulos is reported to have said, "I shoot you, because I will never trust you again." He did not act against the visitor at all. Thus, in the assessment of the second candidate behaviour, the researcher did not find a 'triggering event' that is congruent to 'ETIVB' (the accused acted on a memory, not something that happened there and then). The rest of the assessment of this second candidate behaviour in *S v Kalagoropoulos* is displayed in Table 4.

That brings us to *S v Nursing (*see Table 5). Mr. Nursingh was charged with the murder of his mother, grandmother and grandfather. All of them were reportedly within two meters of him when he shot them. Mr. Nursingh (a student at the time) reportedly suffered sexual, physical and emotional abuse at the hands of his mother, with his grandmother sometimes being an active participant and his grandfather passively allowing it. Mr. Nursing's mother, who is described as domineering, would have allowed Mr. Nursing to go out with a girlfriend to the movies (for the first time in his life) after he had pruned a tree. After having pruned the tree, Mr. Nursingh went to meet with his mother, who was with his grandmother and grandfather. During the meeting an argument started, which seems to have escalated to fever pitch. It also seems that the height of the argument (evidenced by Mrs. Nursing's voice reaching a "screaming pitch" was followed by ten gunshots in quick succession. It means that all three victims were killed during the same episode of 'violent behaviour', hence only one candidate behaviour. There is much about *S v Nursing* that is unclear to the researcher. There was a distressing incident, but what was it exactly? It is not clear what the argument was between Mr. Nursingh on the one hand and his mother (as well as perhaps his grandfather and grandmother) on the other hand. It is also uncertain whether the distressed emotions were *not* excessive, since the distressing event is unclear and Mr. Nursing was reportedly a psychologically vulnerable individual (no mental disorder was mentioned). Consequently the A-criteria, D-criteria and H-criteria were rated as uncertain. A lack of information also made it impossible to rate most of the F-criteria, except F.3 (there was no indication of Mr. Nursing pursuing his victims). Mr. Nursingh was acquitted on all charges in the High Court.

Study Cases with One Candidate Behaviour

Having discussed those study case where there is not a one (candidate behaviour) for one (criminal charge) relationship between candidate behaviour and a criminal charges (of a violent crime), the discussion continues by referring to the study cases in Tables 2 and 3. In Chapter 10 the researcher demonstrated how the ETIVB-criteria were applied to *Sanders and Jacaranda 94.2* (See Table 2).

Thus, it is unnecessary to discuss the case again in this chapter. In Chapter 10 the researcher also described how the ETIVB-Instrument was applied to *S v Campher* (in this chapter the findings are summarized in Table 3). The demonstration in Chapter 10 gives a good idea of how the study cases in Table 3 were assessed. For further clarity two more cases will be briefly discussed here to show how the ETIVB-criteria were applied. Those study cases are *S v Els* and to *S v Bezuidenhout* (both study cases' findings are summarized in Table 3).

In *S v Els* the 'triggering event' is a series of events. It started with Mrs. Els' husband coming into the toilet where she was busy, followed by swearing at her. After swearing at her, Mr. Els grabbed her by the hair and yanked her about. Next he pushed her down so that she ended up on her knees at which point he again pulled her up by the hair and yanking her about. In doing so he pulled out a bunch of hair. After that Mr. Els left the toilet. The individual distressing events are related by their causing humiliation and pain. Taken together the individual distressing events in the series constitute what the researcher considers to be an extremely distressing event. Moreover, the researcher is of the opinion that most members from the same socio-cultural background would agree that the events are extremely distressing (or at the very least severely distressing). Thus the requirements of the A.2-criterion and A.2.1-criterion are 'met'. Since the distressing events are observable, the requirements of the A.3-criterion are met.

To rate the B-criteria the behaviour that followed is taken into consideration. After Mr. Els husband has left, Mrs. Else went to fetch a gun from where it was stored. Then she walked to the kitchen where her husband was. Finding him there she shot him several times (it is not explicitly stated how many times). The researcher thinks that, even if Mrs Els was in a rush, it must have taken more than 5 seconds to fetch the gun and then go to the kitchen. That is likely to be so even if the gun was armed and not locked away (which is not known and the distances were short (the information indicated that she walked at least 10 steps in total). Thus, the B.1-criterion is 'not met'. Because a weapon was not immediately available it can also be recorded that the E.1-criterion is 'not met'. The B.2-criterion is recorded as 'met', because it is unlikely that the shooting continued longer than 10 seconds. It is more likely that the shots would have followed in rapid succession, because otherwise her husband could have defended himself (except if the first shot was lethal) and there is no indication that he had a chance to defend himself. (However, the number of shots and specifics of where the victim was hit is not available). The B.3-criterion is recorded as 'not met'. The reason is that the deceased was hit several times, indicating that Mrs Els either positioned herself close enough to hit her husband or that she aimed at him. Both possible scenarios indicate attempts at accuracy, which is not congruent with unsophisticated behaviour. The C.1-criterion and C.2-criterion are 'met' because the shooting was directed at the victim and caused physical injury.

Mrs Els reported that she did not remember much about the events leading up to the shooting. There is no mention of what emotions she experienced. However, it is most likely that she experienced a combination of extreme (or at least severe) distressing emotions like humiliation, anger, and even

despondency (since she was a victim of long-standing spouse abuse). There can be little doubt that most people of her own socio-cultural group would concede that such severe to extreme emotional distress is understandable. Thus the D.1- and D.2-criteria are 'met'. However, despite the D-criteria and A-criteria being 'met', all the inclusion criteria are not 'met', since the criteria B.1, B.3 and E.1 are 'not met'. Thus it is recorded that the inclusion criteria are 'not met' in criterion I.1.

The F.1-criterion is recorded as 'met' since Mrs Els took measures in order to perform the candidate behaviour (shooting her husband). The F.2-criterion is also recorded as 'met' since she overcame an obstacle to execute the candidate behaviour by fetching the gun from storage. The F.3-criterion is recorded as 'met' because Mrs Els followed her husband to the kitchen. It is difficult to decide whether Mrs. Els shot her husband to teach him a lesson or to take revenge. It is possible, but since it cannot be inferred with more certainty (she may for example have decided that she has had enough of his abuse ant that he must get out of her life), the F.4-criterion is recorded as 'not met'. However, the F.5-criterion is recorded as 'met', because Mrs Els must have applied her mind to executing the candidate behaviour if she first fetched a gun and then followed her husband to the kitchen. The G.1-criterion is recorded as 'not met', since the 'triggering event' was an observable event. The H.1-criterion is recorded as 'not met' since the inferred emotions of severe to extreme distress is not considered excessive or inappropriate. Since a number of F-criteria are met, all of the inclusion criteria are not 'not met'. This is recorded in the I.2-criterion. Consequently, with the I.1-critirion recorded as "No"' and the I.2-criterion recorded as "Yes", the candidate behaviour does not qualify as 'ETIVB'.

The next case for discussion is *S v Bezuidenhout*. It will be done briefly. In *S v Bezuidenhout* it may seem that, with all the criteria recorded as 'uncertain', the outcome of *S v Bezuidenhout* ought to be 'uncertain' as well. However, since in *S v Bezuidenhout* the requirements of 'ETIVB' are not satisfied as evidenced from inclusion criteria being 'not met' (B.1, B.3, and D.1) and an exclusion criterion (F.5) being 'met', the candidate behaviour cannot qualify as 'ETIVB'. The same reasoning applies to other study cases in Table 3 where the same phenomenon occurs i.e. in *S v Calitz*, *S v Campher*, *S v Gesualdo*, *S v Goliath*, *S v Smith*, and *S v Van Vuuren*. The same method of assessment was applied to the rest of the cases in Tables 3 and 4. Since demonstrating how they were assessed will not help clarify this use of the ETIVB-Instrument any further, they are not discussed.

Study Cases with an Uncertain Outcome

While the candidate behaviour does not qualify as 'ETIVB' in the cases of Tables 3 and 4 even though the some of the criteria is were rated as 'uncertain', matters are different regarding the study cases in Tables 5 and 6. In the study cases of Tables 5 and 6 the outcomes after assessments with the ETIVB-Instrument were uncertain. Previously in this chapter *S v Kalagoropoulos* and *S v Henry* (see Table 6) were discussed as cases with more than one candidate behaviour. Those discussions would already have served to clarify why the ETIVB-outcome is uncertain in some cases. Here, two more study cases with the final outcome being uncertain will be discussed. Those cases are *R v Kennedy* and *S v Wiid* (see Table 5).

In *R v Kennedy* the accused was charged with the murder of his girlfriend after the accused has been enraged by something. That something is however, unclear, so that it is not clear whether there is a 'triggering event'. The criminal case report reveals that there is a distressing event involving the accused's lover, but the exact nature of that distressing event is unclear. Consequently the A.1-criterion is rated 'uncertain'. That in turn renders the outcome of the whole assessment uncertain.

S v Wiid is the only example of a charge of murder where, on appeal, the Supreme Court of Appeal acquitted the appellant on the grounds of non-pathological criminal incapacity. However, that verdict was based more on Mrs. Wiid having sustained a head injury than possible involuntary behaviour triggered by stormy emotions. Mrs. Wiid was charged with the murder of her abusive husband. Before she shot him, he had severely physically assaulted her and in the process she sustained a head injury. The 'triggering event' was plain enough – after having recently physically assaulted her, Mr. Wiid reportedly once again came towards Mrs. Wiid and threatened to kill her. Quickly following that threat Mrs. Wiid shot and killed Mr. Wiid. Although the B.1- and B.2-crierion are 'met', it is unclear how Mrs. Wiid obtained the gun. Consequently the B.3-criterion is rated as, 'uncertain'. Furthermore, it is not clear from the verdict whether Mrs. Wiid took measure to shoot Mr. Wiid, whether she did so took take revenge (or the like), and whether she applied her mind to shooting him (after all, she could have intended to defend herself). However, one can infer that Mrs. Wiid did not have to overcome obstacles to shoot Mr. Wiid and that she did not pursue him. Thus, all the requirements for 'ETIVB' are satisfied except for three criteria (B.3, F.1, and F.4) having uncertain outcomes. That in turn means that one cannot come to any conclusion at the end of an assessment with the ETIVB-Instrument. There are more study cases where the outcome after an assessment with the ETIVB-Instrument is uncertain (see Tables 5 and 6). However, the study cases already discussed should suffice to give the reader an adequate idea of why the researcher could not come to a conclusion after applying the ETIVB-Instrument to some study cases.

At this stage of the study the ETIVB-construct has been clarified, an instrument has been formulated and formatted to identify 'ETIVB', cases have been used to demonstrate how the ETIVB-Instrument is used, and the results of applying the ETIVB-Instrument to all the study cases have been presented. The next steps are to discuss the validity of the ETIVB-Instrument (Chapter 12), assess the reliability of the ETIVB-Instrument (Chapter 13), as well as to summarize the study and discuss the way forward.

Table 2: Case with One Candidate Behaviour that Qualifies as 'ETIVB'.																				
Case	**Findings Related to Specific ETIVB-Criteria**																			
	Inclusion Criteria												**Inclusion Criteria**							**Conclusion Criteria**
	A.1	A.2	A.2.1	A.3	B.1	B.2	B.3	C.1	C.2	D.1	D.2	E.1	F.1	F.2	F.3	F.4	F.5	G.1	H.1	I.1	I.2
Sanders and Jacaranda 94.2	Met	N.A	N.A	Met	Met	Met	Met	Met	Met	Met	Met	N.A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	Y	N

The abbreviations that are used in Table 5 – 9 are as follows:

Met: The criterion is met.

N/M: The criterion is not met.

N/A: The criterion is not applicable.

U: The outcome of a criterion is uncertain

Y: Yes.

N: No.

Table 3: Cases with One Candidate Behaviour that Does not Qualify as 'ETIVB'.

Cases	Findings Related to Specific ETIVB-Criteria																			
	Inclusion Criteria												Inclusion Criteria							Conclusion Criteria
	A.1	A.2	A.2.1	A.3	B.1	B.2	B.3	C.1	C.2	D.1	D.2	E.1	F.1	F.2	F.3	F.4	F.5	G.1	H.1	I.1	I.2
S v Abrahams	Met	N/A	N/A	Met	Met	Met	Met	Met	Met	Met	Met	N/M	N/M	N/M	N/M	Met	Met	N/M	N/M	N	Y
S v Bezuidenhout	N/M	N/M	N/A	N/A	N/M	Met	N/M	Met	Met	N/M	N/A	U	U	U	U	U	Met	U	U	N	Y
S v Calitz	N/A	Met	Met	Met	U	N/M	N/M	Met	Met	Met	N/M	N/M	Met	Met	Met	Met	Met	N/M	Met	N	Y
S v Campher	N/A	Met	Met	Met	U	Met	Met	Met	Met	Met	Met	N/M	N/M	N/M	N/M	Met	Met	N/M	N/M	U	Y
R v Dhlamini	N/M	N/M	N/A	N/A	Met	Met	Met	Met	Met	Met	N/M	Met	N/M	N/M	N/M	N/M	N/M	Met	Met	N	Y
S v Di Blasi	N/M	N/M	N/A	N/A	N/M	Met	N/M	Met	Met	N/M	N/A	N/M	Met	N/M	Met	Met	Met	Met	Met	N	Y
S v Els	N/A	Met	Met	Met	N/M	Met	N/M	Met	Met	Met	Met	N/M	Met	Met	Met	Met	Met	N/M	Met	N	Y
S v Gesualdo	N/A	Met	Met	Met	Met	Met	N/M	Met	Met	Met	Met	Met	U	N/M	Met	Met	Met	N/M	N/M	N	Y
S v Goliath	N/A	Met	Met	Met	U	N/M	N/M	Met	Met	Met	Met	N/A	N/M	N/M	N/M	Met	Met	N/M	N/M	N	Y
S v Ingram	N/A	Met	Met	Met	N/M	Met	N/M	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	N/M	Met	N	Y
S v Laubscher	Met	N/A	N/A	Met	N/M	N/M	N/M	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	N/M	Met	N	Y
S v Lubbe	Met	N/A	N/A	Met	N/M	N/M	Met	Met	Met	Met	N/M	N/A	Met	Met	N/M	Met	Met	Met	N/M	N	Y
S v Mahlinza	N/M	N/M	N/A	N/A	N/M	N/M	N/M	Met	Met	N/M	N/M	N/M	Met	N/M	Met	N/M	Met	N/M	Met	N	Y
S v Moses	Met	N/A	N/A	Met	Met	N/M	N/M	Met	Met	Met	Met	N/M	Met	Met	Met	Met	Met	N/M	N/M	N	Y
S v Potgieter	Met	N/A	N/A	Met	N/M	Met	N/M	Met	Met	Met	Met	N/M	Met	N/M	N/M	Met	Met	N/M	N/M	N	Y
S v Smith	N/A	Met	Met	Met	U	Met	N/M	Met	Met	Met	Met	N/M	Met	Met	N/M	Met	Met	N/M	N/M	N	Y
S v Rittmann	N/M	N/M	N/A	N/A	N/M	Met	N/M	Met	Met	N/M	N/A	N/M	Met	N/M	Met	Met	Met	N/M	Met	N	Y
S v Van Vuuren	N/A	Met	Met	Met	U	U	N/M	Met	Met	Met	Met	Met	Met	N/M	Met	U	U	N/M	N/M	N	Y

Table 4: Cases with Multiple Candidate Behaviours that Do Not Qualify as 'ETIVB'.

Cases	Findings Related to Specific ETIVB-Criteria																				
	Inclusion Criteria												Inclusion Criteria							Conclusion Criteria	
	A.1	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
S v Eadie (candidate behaviour 1, single charge)	N/A	Met	Met	Met	N/M	N/M	N/M	Met	Met	Met	Met	N/M	Met	Met	N/M	N/M	N/M	N/M	Met	N	Y
S v Eadie (candidate behaviour 2, single charge)	Met	N/A	N/A	Met	Met	N/M	N/M	Met	Met	Met	Met	Met	Met	Met	N/M	N/M	N/M	N/M	Met	N	Y
S v Kalagoropoulos (candidate behaviour 2, charge 4)	N/M	N/M	N/A	N/A	N/M	N/M	N/M	Met	Met	N/M	N/A	N/M	Met	Met	N/M	Met	Met	N/M	Met	N	Y
S v Kensley (candidate behaviour 1, charge 1)	N/A	Met	Met	Met	N/M	Met	N/M	N/M	N/M	N/M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N	N
S v Kensley (candidate behaviour 2, charge 2)	N/A	Met	Met	Met	N/M	Met	N/M	Met	Met	Met	N/M	Met	Met	N/M	N/M	Met	Met	N/M	Met	N	Y
S v Kensley (candidate behaviour 3, charge 3)	N/A	Met	Met	Met	N/M	Met	N/M	Met	Met	Met	N/M	Met	Met	N/M	Met	Met	Met	N/M	Met	N	Y

Table 5: Cases with One Candidate Behaviour with the ETIVB-Outcome Being Uncertain.

Cases	Findings Related to Specific ETIVB-Criteria																				
	Inclusion Criteria												Inclusion Criteria							Conclusion Criteria	
	A.1	A.2	A.2.1	A.3	B.1	B.2	B.3	C.1	C.2	D.1	D.2	E.1	F.1	F.2	F.3	F.4	F.5	G.1	H.1	I.1	I.2
R v Kennedy	U	N/A	N/A	Met	U	Met	U	Met	Met	U	U	U	N/M	N/M	N/M	U	U	N/M	U	U	U
S v Nursingh	U	N/A	N/A	Met	Met	Met	Met	Met	Met	Met	U	U	U	U	N/M	U	U	N/M	U	U	U
S v Pederson	N/A	U	U	Met	U	U	U	Met	Met	U	U	U	U	U	U	U	U	N/M	U	U	U
S v Van Der Sandt	N/A	Met	Met	Met	U	Met	U	Met	Met	Met	U	U	U	N/M	N/M	U	U	N/M	U	U	U
S v Wiid	N/A	Met	Met	Met	Met	Met	U	Met	Met	Met	Met	Met	U	N/M	N/M	U	U	N/M	N/M	U	U

Table 6: Cases with Multiple Candidate Behaviours with the ETIVB-Outcome Being Uncertain.																				
Cases	**Findings Related to Specific ETIVB-Criteria**																			
	Inclusion Criteria												**Inclusion Criteria**						**Conclusion Criteria**	
	A.1	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
S v Henry (candidate behaviour 1, charge 1)	N/A	Met	Met	Met	Met	Met	U	Met	Met	U	U	U	N/M	N/M	U	U	U	N/M	U	U	U
S v Henry (candidate behaviour 2,charge 2)	N/A	Met	Met	Met	U	U	U	Met	Met	U	U	U	N/M	N/M	U	U	U	N/M	U	U	U
S v Kalagoropoulos (candidate behaviour 1, charges 1 - 3)	N/A	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	N/M	N/M	N/M	U	N/M	N/M	N/M	Y	U

Table 7: Ratings of Attributive Considerations in Sanders and Jacaranda 94.2.							
Option							
Y.1	**Y.2**	**Y.3**	**Y.4**	**Y.5**	**Y.6**	**Y.7**	**Z.1**
Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Not Rated

Chapter 12
Validity of the ETIVB -Criteria

In this chapter the validity of the ETIVB-Instrument will be considered. Previous chapters described how the ETIVB-Instrument was developed and formatted. From those chapters a degree of face validity may already be evident, but in this chapter intends to make the validity of the ETIVB-Instrument explicit. Validity to refers to the "…degree to which the diagnosis, category, rating or score it yields is a reflection of the true state of nature."[127] Validity may be expressed as face validity, content validity, construct validity and discriminant validity, and consequently the ETIVB-criteria will be assessed against those indications of validity.

One kind of validity, being predictive validity, is ordinarily assessed by comparing an instrument with a so-called gold standard.[127] The gold standard refers to an assessment instrument that is regarded as the state-of-the-art valid assessment instrument for assessing a specific issue. There is, however, no instrument that assesses ETIVB or the behaviour closest to it, being psychological blow automatism. All validity does not hinge on predictive validity, however, because "…by triangulation between a better definition of the construct, better ways to measure it, and better exploration of how it operates in clinical practice and research, the field moves to greater validity over time."[127] The process of triangulation started during this research. The ETIVB-construct, from which the ETIVB-Instrument was formulated, was repeatedly refined by challenging specific concepts of 'ETIVB' (for example 'emotional trigger') against study cases until saturation was reached – that is, when no further refinements seemed feasible regarding both the ETIVB-construct and the ETIVB-Instrument. Having done so contributed to increasing the face validity, content validity, and construct validity of the ETIVB-instrument. However, predictive validity, which necessitates a gold standard, 127 cannot be assessed as is the case for all instruments that assess a phenomenon for the first time. Content validity, construct validity, and face validity can nonetheless be demonstrated for the ETIVB-instrument.

Content Validity of the ETIVB-Instrument

The ETIVB-Instrument gained its content validity from the ETIVB-criteria being formulated and iteratively refined as informed by the process of clarification regarding what is meant by 'violent behaviour', 'emotionally triggered' and 'involuntary'. Based on this process of clarification, criteria had been drafted and subsequently tested iteratively against one after the other study case. In the iterative process of refining the ETIVB-criteria until the researcher was satisfied with both the content and wording of the criteria as matching the testing against all the study cases. Thereby, this method of developing the ETIVB-criteria established content validity progressively and qualitatively, whereby

each criterion is carefully inspected for its expressing the concept it is supposed to express. This means, this method is a validation process congruent with the description of content validity by Blacker and Endicott who say, “The assessment of content validity is fundamentally qualitative and depends on a careful inspection of each item by someone who thoroughly understands the intent of the measure.”[127] ;

Construct Validity of the ETIVB-Instrument

Construct validity refers to whether the measure correlates, quantitatively or conceptually, with external validators and is based on convergent and divergent validity.[127] Convergent validity in quantitative terms refers to the expected loading of the items from the construct under study on the same factors from measures of similar constructs.[127] conceptually, convergent validity is about sufficient similarity between concepts. Accordingly, the ETIVB-Instrument has convergent validity insofar as it converges with court verdicts. Divergent validity (also called discriminant validity[128] in qualitative terms is the expected loading of the items from the construct under study on the different factors from measures of different constructs.[127] Conceptually, divergent validity is about the distinctness of the concept from other related concepts.

Construct validity turns out to be a useful external validator for assessing the validity of the ETIVB-Instrument. Blacker and Endicott describe external validators (for external validity) as follows, “External validators are attributes that bear a well-characterized relationship to the construct under study, but are ‘beyond the score’ (i.e., are not measured directly by the instrument).[127] In the context of this study such an external validator (although as will be seen not perfect) turns out to be court verdicts (guilty or not guilty).

Court verdicts help with validation, but with caution. Caution is called for by both reasons related to statistics and reason related to differences in ETIVB-Instrument outcomes and court verdicts. When it comes to statistical reasons the issue is that neither the ETIVB-Instrument, nor court verdicts deliver a score (like the score of an intelligence test) which can be compared with each other with a statistical formula. That issue is addressed in this study by descriptive statistics, which is used to gauge to what degree ETIVB-Instrument outcomes and court verdicts agree and disagree. Another challenge is that the sample size is small and, moreover, only in 1 study case is ‘ETIVB’ supported, and that case did not result in a criminal trial. Consequently, it is only useful to compare study cases where ‘ETIVB’ is disqualified by the ETIVB-Instrument with the court verdicts. To add to the paucity of study cases, there are 6 cases where the ‘ETIVB’ outcome is uncertain. Those cases cannot be used, because they cannot be expected to load onto any specific outcome, and even if they could, the number is too small for meaningful results.

When it comes to differences regarding the outcome of the ETIVB-instrument and the outcome of a court verdict, caution is needed because 'ETIVB' and courts are not similar constructs. At best their outcomes may converge, but even that must be approached carefully. One reason is that the issue in 'ETIVB', unlike with courts, is not about culpability. Moreover, 'ETIVB' is about a specific type of involuntariness and excludes other forms of involuntariness (for example involuntary violent behaviour due to sleep-related behaviour), which may be grounds for a court to find an accused person not culpable. There may also be other reasons (unrelated to involuntariness) for a court to find an accused person guilty or not guilty. That means that the ETIVB-Instrument may find that an accused person does not qualify for 'ETIVB', but a court finds the person not guilty. It is also possible that the ETIVB-instrument qualifies a specific candidate behaviour as 'ETIVB', but that a court finds the person guilty for reasons particular to jurisprudence. Nevertheless, comparing assessment outcomes by the ETIVB-Instrument with court verdicts has merit in the sense that to some extent there is an association between 'involuntariness' and being found not guilty by a court of law.

Taking the reasons for caution into consideration, there are 7 cases (1 qualifying for 'ETIVB' and 6 with an uncertain outcome) that are excluded from this exercise to test for construct validity. That means that twenty one study cases have an outcome of 'ETIVB' not supported and can be considered for this exercise. However, 3 of those cases were acquitted because of factors unrelated to possible 'ETIVB' and 1 more case had a legal defence unrelated to 'ETIVB' (but was found guilty). One case was coerced into a murder (*S v Goliath*), 1 case acted on a nightmare (*R v Dhlamini*), and 1 case was psychotic (*S v Mahlinza*). The fourth case, which was found guilty, had a defence of hypoglycaemia as the reason for an unprovoked murder. To include them into the exercise would give a false impression about 'ETIVB' being disqualified by the ETIVB-Instrument not loading onto a not-guilty verdict. That is so because these cases are not about interpersonal situations similar to a psychological blow automatism as is the case with 'ETIVB'. Another case that is excluded from this exercise is *S v Di Blasi*. The reason for excluding *S v Di Blasi* is that the defence in *S v di Blasi* was not about diminished criminal capacity (not criminal incapacity), which means that including *S v Di Blasi* would give a false impression about 'ETIVB' being disqualified by the ETIVB-Instrument loading onto a guilty verdict. The remaining 16 cases are about criminal incapacity and although 2 cases involve alcohol intoxication and 6 cases involve alcohol use, in essence they are all nonetheless about emotionally triggered violent behaviour (in the general sense of the phrase) and non-pathological criminal incapacity or psychological blow automatism. Those 16 cases are displayed in Table 8: Study cases where the Conceptual ETIVB-Criteria were not Supported Compared with Court Verdict.

The 16 cases used for this exercise involve 20 candidate behaviours (see Chapter 3 for how candidate behaviours were identified in the study cases). One of the candidate behaviours does not involve a charge and consequently cannot be used. That leaves 19 candidate behaviours that can be used.

Nineteen incidences of 'ETIVB' having been disqualified by the ETIVB-Instrument are associated with 17 incidences of a guilty verdict, which means that within this sample 'ETIVB' being disqualified loaded onto a not guilty verdict 89.5% of the time. Even if only the "bare" cases are taken (and not all the candidate behaviour), it would be an association of 16 incidents of 'ETIVB' being disqualified loading onto 14 guilty verdicts (87.5%). The results points toward construct validity at least in identifying cases being disqualified 'ETIVB' by the ETIVB-Instrument

However, 'ETIVB' was disqualified by the ETIVB-Instrument in 2 cases with a not-guilty verdict, which suggest that the criteria may sometimes miss a genuine 'ETIVB'. However, that is not as clear as it may seem at first, because the 2 not-guilty verdicts were criticized in *S v Eadie* by Navsa JA in the Supreme Court of Appeal, meaning that the Supreme Court of Appeal may have found that the behaviours in *S v Moses* and *S v Gesualdo* were not psychological blow automatisms (or another term meaning something similar), and consequently even those 2 cases might have been congruent with the assessments by the ETIVB-Instrument.

Table 8: Study Cases for which the ETIVB-Criteria Were Not Met Compared with Court Verdict.	
Study Case	**Verdict**
S v Abrahams	Guilty
S v Calitz	Guilty
S v Campher	Guilty
S v Eadie (Event 1) (no charge)	Not Applicable
S v Eadie (Event 2)	Guilty
S v Els	Guilty
S v Gesualdo	Not Guilty
S v Ingram	Guilty
S v Kalagoropoulos (Event 1) (3 charges)	Guilty
S v Kalagoropoulos 1993 (Event 2) (1 charge)	Guilty
S v Kensley 1995 (Event 1) (1 charge)	Guilty
S v Kensley 1995 (Event 2) (1 charge)	Guilty
S v Kensley 1995 (Event 3) (2 charges)	Guilty
S v Laubcher 1988	Guilty
S v Lubbe 1963	Guilty
S v Moses 1996	Not Guilty
S v Potgieter 1994	Guilty
S v Rittmann 1992	Guilty
S v Smith 1990	Guilty
S v Van Vuuren	Guilty

Face Validity of the ETIVB-Instrument

In this study face validity is taken to be an instrument's appearing to be a valid assessment for a specific construct in question for a knowledgeable person.[127] The face validity of the ETIVB-Instrument is evident from its ability to discriminate between cases that should qualify for 'ETIVB' and those that should not. This ability of the ETIVB-Instrument to discriminate between 'ETIVB' and not 'ETIVB' will be clarified in this section. It will start by clarifying how a face value case of 'ETIVB' was

identified as 'ETIVB' by the ETIVB-Instrument and then to move on to the many study cases that were disqualified from 'ETIVB'.

The study case in which criteria was met for 'ETIVB' is that of *Sanders and Jacaranda 94.2*. At face value, the *Sanders and Jacaranda 94.2* case is about candidate behaviour that should qualify as 'ETIVB'. At face value, this case is an example of 'ETIVB', because, it involves behaviour that (in the opinion of the author; and without the ETIVB-Instrument being applied) is involuntary violent behaviour that was triggered by emotions. When the ETIVB-instrument is applied to the case of *Sanders and Jacaranda 94.2,* the case is correctly identified as that of ETIVB. Although it is but one case that the author could identify clearly it nonetheless supports the face validity of the ETIVB-Instrument. It would have been worthwhile to give another example the researcher is personally aware of, but the details thereof should not be revealed for ethical reasons. Suffice to say, in this case an accused person was found not guilty on a charge of murder because of "non-pathological criminal incapacity". When the ETIVB-Instrument is applied to this case, the candidate behaviour qualifies as 'ETIVB'.

The face validity of the ETIVB-Instrument is exemplified by the instrument disqualifying the candidate behaviour of a number of study cases that do not involve involuntary behaviour, for example *S v Di Blasi*, where it was about mitigation of sentence and not about involuntariness. In other cases there was not involuntary behaviour in the opinion of the researcher, even though in some cases (like *S v Calitz*) there were psychiatrists who testified in favour of involuntary behaviour. Those cases are *S v Calitz*, *S v Eadie*, *S v Els*, *S v Goliath*, *S v Ingram*, *S v Kalagoropoulos* (second candidate behaviour), *S v Kensley*, *S v Lubbe*, and *S v Moses*.

In two study cases it was difficult for the researcher to decide at face value whether the candidate behaviours were 'involuntary'. That is relevant in the sense that if the candidate behaviours were 'involuntary', then they would otherwise have qualified as 'ETIVB' at face value. They are *S v Campher* and *S v Gesualdo.* However, after the researcher applied the ETIVB-Instrument to *S v Campher* and *S v Gesualdo* it became evident that the candidate behaviours do not qualify for 'ETIVB'. In these two cases the ETIVB-Instrument was actually useful in clarifying uncertainties, thereby supporting the face validity of the ETIVB-Instrument.

Two study cases, *R v Dhlamini* and *S v Mahlinza*, present with candidate behaviours that involve 'involuntary' 'violent behaviours', at face value but do not qualify as 'ETIVB' as assessed by the ETIVB-Instrument. In these 2 cases, the ETIVB-instrument discriminates at face value involuntary behaviour that should not count as 'ETIVB' from involuntary behaviour that at face value counts as 'ETIVB' (*as* in the case of *Sanders and Jacaranda 94.2*). This is so even though (as explained in Chapter 6) the ETIVB-Instrument may not perfectly discriminate between 'involuntariness' that qualifies as 'ETIVB' and 'involuntariness' that does not qualify as 'ETIVB'. Nonetheless, the reasons why the study cases, R v Dhlamini and S v Mahlinza, are at face value not 'ETIVB' are as follows:

In *R v Dhlamini* it was accepted that the accused performed 'involuntary' 'violent behaviour' as a consequence of sleep-related behaviour (an automatism if you like, depending on how automatism is conceptualised). At face value, sleep related ('violent') behaviour does not qualify as 'ETIVB', because the 'violent behaviour' of sleep related behavior is triggered by internal events (like dreams), or by a confused misperception of threat (which make the 'violent behaviour' an inappropriate response to the trigger and consequently incongruent with 'ETIVB'). If valid the ETIVB-Instrument should disqualify such behaviour from 'ETIVB'. The ETIVB-Instrument disqualifies the candidate behaviour in *R v Dhlamini* from being 'ETIVB', because the conditions of the A.3-criterion are not met (but should have been met had it been ETIVB). Neither are the conditions of the G.1-criterion met (but should not have been met had it been ETIVB). That is so because the event that triggered the candidate behaviour was a nightmare. Nightmares are not potentially observable (as is necessary for the 'triggering event' of 'ETIVB') and thus are disqualified from being the trigger in 'ETIVB'. (A précis of *R v Dhlamini* is available).

In *S v Mahlinza*, the accused suffered a severe, but brief psychotic episode, which very likely severely impaired her judgment (consequently severely impairing her ability to distinguish lawful from unlawful behaviour). However, at face value the behaviour consequent to the impaired judgment is not 'involuntary'. The ETIVB-instrument readily disqualifies the candidate behaviour in *S v Mahlinza* from being 'ETIVB', because (among other disqualifying criteria) the event that triggered the candidate behaviour was not severely to extremely distressing (and neither were the inferred emotions), the latency period as well as duration of the candidate behaviour exceeded the requirements of 'ETIVB', and the candidate behaviour was not relatively unsophisticated. Consequently a number of criteria were not met (but should have been met had it been ETIVB) namely respectively A.1, B.1, B.2, and B.3. (A précis of *S v Mahlinza* is available in Addendum C to Chapter 14).

Chapter 13

Results of the Reliability Study

With Part 1 of the study having been completed and with criteria for 'ETIVB' having been formatted, the next part of the study is to establish the reliability of the ETIVB-Instrument, to look at the way forward, and to conclude the report. Part 2 will unfold in that order. In the first chapter of Part 2 the results of the reliability study are revealed and discussed. In the following chapter the way forward is discussed and at the end of that chapter the report on the study will be concluded.

Before turning to the results the convention for referring to study cases in Part 2 needs clarification. Since the researcher will refer to study cases very often, and since reading will be smoother if just the surname of the study cases (with which the reader will be familiar with from Part 1) is used, this is what will be done. Accordingly, *S v Campher* is simply referred to as *Campher*, while *S v Dhlamini* becomes *Dhlamini*, *S v Mahlinza* becomes *Mahlinza*, *S v Gesualdo* becomes *Gesualdo*, and *Sanders and Jacaranda 94.2* becomes *Sanders*.

Now, to turn to the results of Part 2 of the study: first the demographic data are presented and then the main body of study results. In the course of presenting the results of the main body of the results Part 2 of the study, it will be shown that the reliability of the ETIVB-instrument is satisfactory for 4 of the 5 study cases. Even though a fifth case, *Mahlinza*, have not passed the bar set for "satisfactory" by the researcher (which is at least moderate agreement as calculated by a modified Fleiss' kappa), the agreement for that case has nonetheless not been poor, but fair.

The overall outcome regarding reliability of the ETIVB-Instrument is satisfactory. Nevertheless it may be inferred from the results that the ETIVB-criteria might be improved to make them more user friendly and ultimately more reliable. It may also be inferred that, even though the ETIVB-Instrument might be made more user friendly, the ETIVB-Instrument is likely to remain a challenging tool that requires training before it is used. Finally, it may be inferred from the results of Part 2 of the study that, unlike the researcher's forecast about how challenging study cases are likely to be for study participants (see Chapter 3), *Mahlinza* has been too challenging a study case for participants. It means that for future studies on the ETIVB-Instrument cases should be selected more carefully to ensure that all information relevant to the ETIVB-criteria are readily available from the case material and/or that study participants should receive more intensive training before applying the ETIVB-Instrument to study cases. That means, as far as potential study case material is concerned, that although "real life" published criminal case reports is preferred (as was the case in this study), because the idea is to simulate reality as much as possible, it may not always be possible or even the best way forward. That is so because critical information is not always available in published criminal

verdicts, because courts obviously do not take the ETIVB-criteria into account when delivering their verdicts. Even so, one may conclude that there will be challenging cases where it will be difficult to rate a specific group of ETIVB-criteria. An example is rating the A- and D-criteria of *S v Mahlinza*. The reason will become clear during the discussion below. However, despite the challenges that *S v Mahlinza* poses, the study case has been informative regarding the way forward. Furthermore, the set of ETIVB-criteria taken together has nevertheless been able to correctly reject this case as an example of 'ETIVB'.

The results are presented by first reporting on the demographic data of study participants. It is followed by the results of study participants' ratings of the study cases (raw data). Next follows tables displaying (by study case and criteria) the frequencies of study participants' rating the requirements of 'ETIVB' being *satisfied*. These results do not merely summarise the raw data as frequencies, but calculates specifically whether the requirements of 'ETIVB' are satisfied. While this table will display a direct correlation between inclusion criteria being met and the requirements of 'ETIVB' being satisfied, the correlation with the exclusion criteria is an *inverse* one. Next the modified kappa results are displayed. This reveals the degree of agreement between study participants regarding a specific unit of criteria. Next the results of derived variables are displayed. Derived variables will also be clarified shortly. Finally the results of study participants' assessments (where they were appropriately done) of the Attributive Considerations of ETIVB are displayed.

The modified Fleiss' kappa coefficient measures the extent to which the four categories (participant responses of "met", "not met", "unsure" and "not applicable"), deviated from a 25% frequency for each item, which would be the statistically presumed distribution of responses had the item marked out nothing of significance. The results of this calculation reveal the extent of participant agreement corrected for chance (for more clarification about the modified Fleiss' kappa, see Chapter 3).

The derived variables have been calculated according to logical operators written by the researcher. The reason for the derived variables is that it has been noted that, at times, participant agreement at face value have exceeded agreement as reflected by statistical calculation. There are a number of reasons why participant agreement may be less than expected (an issue that is best left to the section on discussion of the results), but one reason lies with the way in which the criteria have been formatted. At times the criteria are not sufficiently user friendly and consequently participants have made negligent mistakes with specific criteria. It has been noted that these mistakes do not necessarily invalidate the outcome of the criteria (although, as will be observed, at times they do). When the negligent mistake or problem with a criterion is not too serious, it can be corrected by a logical operator. Look for example, at the following fictive criteria for "psychotic":

> A case under scrutiny is psychotic if any one of the following is present:
> A. A paranoid delusion.
> B. Delusional jealousy.

C. Bizarre delusions.
D. A grandiose delusion.
E. Any other delusion.

If 20 evaluators rate a case under scrutiny according to this criterion they may well be able to recognise a delusion, but may not be equally able to recognise what a paranoid delusion is. Thus, 90% of them may note that a delusion is present, but they may rate the types of delusion differently and as a consequence agreement as reflected by statistics for each item may turn out as being poor. This poor show at a statistical frequency level may be at odds with what is noted at face level. It indicates that something is wrong (participant incompetency, unclear criteria, etc.) One way to indicate the discrepancy of face level agreement vs statistical agreement is to write logical operators which may look something like this:

If (A=met) or (B=met) or(C=met) or (D=met) or (E=met) then outcome is psychotic.
If (A=not met) and (B=not met) and (C=not met) and (D= not met) and (E= not met) then outcome is not psychotic.
If (A=not met) and (B=not met) and (C=not met) and (D= not met) and (E= unsure) then outcome is unsure.
If (A=met) or (B=met) or(C=met) or (D=met) or (E=unsure) then outcome is psychotic.
(Various other permutations)

The operators will show that 90% of participants rated the case under scrutiny as “psychotic” even though the statistical inter-rater agreement for the individual items is only small. That means something needs attention. If the purpose of the criterion is only about whether a case under scrutiny is psychotic (and not about whether evaluators know how to classify delusions) the criterion can be changed to:

A case under scrutiny is psychotic if the following is present:
A. Any delusion.

With the above in mind the following derived variables have been established by means of logical operators:

1. TE: Computing the outcome of the A-criteria (Triggering Event).
2. CB: Computing the outcome of the B-criteria (Candidate Behaviour).
3. VI: Computing the outcome of the C-criteria (Violence).
4. EM: Computing the outcome of the D-criteria (Emotions).
5. EB: Computing the outcome of the F-criteria (Excluded Behaviour).

The logical operators are displayed in the Chapter 3.

Demographic Data of Study Participants

From a possible 30 psychiatrists and 18 psychiatrists-in-training working at Weskoppies Hospital, Pretoria in South Africa, 15 psychiatrists and 10 psychiatrists- in-training have been willing to take part in the study. While the demographics of the study participants are reported as 2 groups, namely qualified psychiatrists and psychiatrists-in-training, all study participants have been taken as one group to determine the reliability of the ETIVB-Instrument. That has been done to determine the reliability from a larger pool of data. The demographic data are displayed in Table 9: Demographic Data for Participants Who are Qualified Psychiatrists, and Table 10: Demographic Data for Participants Who are Psychiatrists-in-training. The study with study participants was done between 1 June 2011 and 31 December 2011.

As can be observed in Table 9, 15 participants are qualified psychiatrists, 6 being male and 9 being female. On average they have 10.6 years (standard deviation 10.6 years) of experience in psychiatry being qualified psychiatrists (range 0.5 – 30.0 years) and 8 years (standard deviation 10.6 years) of experience in criminal forensic psychiatry (range 0.0 – 30.0 years) being qualified psychiatrist.

Table 9: Demographic Data for Participants Who are Qualified Psychiatrists.

Participant No.	Gender	Years of Experience in Psychiatry	Years of Experience in Criminal Forensic Psychiatry
1	Male	2.5	2.5
2	Female	4.0	4.0
3	Female	20.0	20.0
4	Male	29.0	29.0
5	Male	18.0	0.0
6	Female	4.0	0.0
7	Female	2.0	1.0
8	Male	30.0	30.0
9	Male	20.0	20.0
10	Female	3.0	3.0
11	Female	0.5	0.5
12	Female	8.0	8.0
13	Female	16.0	1.0
24	Male	0.5	0.5
25	Female	1.0	0.5

As can be observed in Table 10, 10 participants are psychiatrists-in-training, 4 being male and 6 being female. On average they have 2.9 years (standard deviation 1.1 years) of experience in psychiatry as trainees (range 1.5 – 4.0 years) and 0.8 years (standard deviation 0.8 years) of experience in criminal forensic psychiatry being qualified psychiatrists (range 0.0 – 2.0 years).

Table 10: Demographic Data for Participants Who are Psychiatrists-in-training.			
Participant No.	**Gender**	**Years of Experience in Psychiatry**	**Years of Experience in Forensic Psychiatry**
14	Female	4.0	1.0
15	Male	3.0	1.0
16	Female	4.0	1.0
17	Male	1.5	0.0
18	Female	3.0	0.0
19	Female	4.0	2.0
20	Female	4.0	2.0
21	Male	2.0	1.0
22	Male	1.5	0.0
23	Female	2.0	0.0

Study Results

Next, participant's assessments of the study cases with the ETIVB-Instrument (or ETIVB-criteria) will be presented in table form, and, thereafter, participants' assessment of the "Attributive Considerations of ETIVB".

The meanings of the symbols used in Tables 11 - 15 are as follows:

M: The requirements for a criterion are met.
N/M: The requirements for a criterion are not met.
U: There is uncertainty about whether the conditions for a criterion are met or not met.
N/A: The criterion is not applicable.

Where participants' conclusions in the I-criteria, criterion I.1 and criterion I.2, are not supported by those participants' respective ratings of the inclusion and/or exclusion criteria, those (incorrect) ratings of the I-criteria are given in ***bold cursive***. For the sake of completion the results that are supported by those participants' ratings are presented in Table 16: Uncorrected and Correct I-Criteria Ratings by Case and Participant.

Table 11: Criterion Ratings of *Sanders*.

	Specific Criterion of ETIVB-Instrument																			
Participant	**A.1**	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
1	M	N/A	N/A	M	M	M	N/M	M	M	M	M	N/A	N/M	N/M	N/M	U	U	N/M	N/M	N/M	***N/M***
2	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
3	N/A	N/A	N/A	M	M	M	M	M	M	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	M	M	***M***	***N/M***
4	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
5	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
6	N/A	M	M	M	M	M	M	M	M	M	U	N/A	N/M	N/M	N/M	N/M	N/M	N/M	U	***N/M***	N/M
7	M	N/A	M	M	M	M	M	M	M	M	M	N/A	N/A	N/A	N/A	N/A	N/A	N/M	M	N/M	M
8	N/A	N/M	N/M	N/M	M	M	N/M	M	M	N/M	N/M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/A	N/M	***M***
9	N/M	N/M	N/M	N/A	M	M	M	M	M	N/M	N/M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	***M***
10	N/A	M	M	M	M	M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M	M
11	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
12	N/A	M	M	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
13	N/M	N/M	N/M	M	M	M	M	M	M	N/M	N/A	N/A	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M	M
14	M	N/A	N/A	N/A	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
15	N/M	N/M	M	N/A	M	M	M	M	M	U	N/A	N/A	N/M	N/M	N/M	N/M	N/M	N/M	M	***N/M***	M
16	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
17	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
18	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
19	N/A	M	M	M	M	M	M	M	N/M	M	N/M	N/A	N/A	N/A	N/A	U	N/A	N/A	M	N/M	M
20	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
21	N/A	M	M	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
22	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
23	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
24	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
25	M	N/A	N/A	M	M	M	M	M	M	M	M	N/A	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M

Table 12: Criterion Ratings of *Dhlamini*.

	Specific Criterion of ETIVB-Instrument																			
Participant	**A.1**	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
1	N/M	N/M	N/M	M	M	M	N/M	M	M	U	U	M	M	N/M	N/M	U	N/M	U	N/M	N/M	M
2	N/M	N/A	N/A	N/M	M	M	M	M	M	U	U	M	N/M	N/M	N/M	N/M	N/M	M	U	N/M	M
3	N/A	M	M	M	N/M	M	M	M	M	M	M	M	M	M	N/M	M	M	N/M	N/M	N/M	M
4	M	N/A	N/A	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	M	M	***N/M***
5	M	N/A	N/A	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	N/M	M
6	N/M	N/M	N/M	N/M	M	M	M	M	M	N/M	N/M	M	U	N/M	N/M	N/M	N/M	M	M	N/M	M
7	N/M	N/M	N/A	N/M	M	M	M	M	M	N/M	N/A	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
8	N/A	N/M	N/M	N/M	M	M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	N/M	N/M	U	N/M	N/M	***N/M***
9	N/M	N/M	N/M	N/M	N/M	M	M	M	M	N/M	N/A	U	U	N/M	N/M	M	N/M	M	N/M	N/M	M
10	N/A	N/M	N/M	N/M	N/M	M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
11	N/M	N/M	N/M	N/M	M	M	M	M	M	M	N/M	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
12	N/A	M	M	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	***M***	M
13	N/M	N/M	N/A	N/A	M	M	M	M	M	U	N/A	M	N/M	N/M	N/M	N/M	N/M	U	U	N/M	**N/M**
14	N/M	N/A	N/A	N/A	M	M	M	M	M	M	N/M	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
15	N/M	N/M	M	N/A	M	M	M	M	M	U	U	M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M	M
16	N/M	N/M	N/M	N/M	M	M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
17	M	N/A	N/A	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	N/M	M
18	M	N/A	N/A	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	U	N/M	N/M	***N/M***
19	N/A	U	N/M	N/M	M	M	M	M	M	N/A	N/A	M	N/A	N/A	N/A	U	U	M	M	N/M	M
20	M	N/A	N/A	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
21	U	N/A	N/A	N/A	M	M	M	M	M	U	M	U	N/M	N/M	N/M	N/M	N/M	M	U	***N/M***	M
22	N/M	N/A	N/A	M	M	M	M	M	M	N/M	N/A	M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M	M
23	N/A	M	U	N/M	U	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	M
24	N/A	M	N/M	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	***M***	***N/M***
25	M	N/A	N/A	U	U	M	N/M	M	M	M	M	U	N/M	N/M	N/M	N/M	N/M	M	N/M	N/M	M

Table 13: Criterion Ratings of *Mahlinza*.

	Specific Criterion of ETIVB-Instrument																			
Participant	**A.1**	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
1	U	U	U	U	U	N/M	N/M	M	M	M	M	N/M	M	M	M	M	M	U	U	N/M	M
2	N/A	U	U	N/M	N/M	N/M	N/M	M	M	M	U	N/M	M	U	N/M	U	U	M	U	N/M	M
3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	M	M	M	N/M	N/M	M	M	M	M	M	M	M	N/M	M
4	N/M	N/A	N/A	N/M	N/M	N/M	N/M	M	M	N/M	N/M	N/A	M	M	N/M	N/M	M	M	M	N/M	***N/M***
5	U	N/M	N/M	N/M	N/M	N/M	N/M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	M	M	M	N/M	M
6	N/A	M	U	N/M	N/M	N/M	N/M	M	M	M	N/M	N/M	M	M	M	U	M	M	M	N/M	M
7	N/M	M	N/M	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	M	N/M	M	M	M	N/M	M
8	U	U	U	U	N/M	N/M	N/M	M	M	U	U	N/M	M	M	N/M	N/M	M	U	U	N/M	M
9	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	M	N/M	N/M	N/M	M	M	M	M	M	U	M	N/M	M
10	N/A	N/A	N/A	M	N/M	N/M	N/A	M	M	M	M	N/A	M	M	M	N/M	M	M	M	N/M	M
11	N/M	M	N/M	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	U	N/M	M	N/M	N/M	N/M	M
12	N/A	M	N/M	N/M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	M	N/M	N/M	M	N/M	N/M	M
13	N/M	N/M	N/M	N/A	N/M	M	N/M	M	M	N/M	N/A	N/M	M	N/M	N/M	U	M	M	M	N/M	M
14	N/A	M	N/M	M	N/M	N/M	N/M	M	M	M	M	U	M	N/M	N/M	N/M	M	N/M	M	N/M	M
15	N/M	N/M	N/M	N/A	N/M	N/M	N/M	M	M	U	U	N/A	M	M	M	M	U	M	M	N/M	M
16	N/A	U	U	U	N/M	N/M	N/M	M	M	U	U	N/M	M	M	N/M	U	U	U	M	N/M	M
17	M	N/A	N/A	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	N/M	N/M	M	N/M	N/M	N/M	M
18	M	N/A	N/A	M	N/M	N/M	N/M	M	M	M	N/M	N/M	M	M	N/M	N/M	M	N/M	M	N/M	M
19	M	M	M	M	N/A	N/A	N/A	M	M	N/A	N/A	N/A	M	M	M	N/M	U	M	M	***N/M***	M
20	U	N/A	N/A	N/M	N/M	N/M	N/M	M	M	M	U	N/M	M	M	M	N/M	M	M	U	N/M	M
21	N/A	N/M	N/M	N/A	N/M	N/M	N/M	M	M	U	N/M	N/M	M	M	N/M	N/M	M	M	N/M	N/M	M
22	N/A	M	N/M	N/M	N/M	N/M	N/M	M	M	M	U	N/M	M	M	M	U	M	M	M	N/M	M
23	N/M	N/M	N/M	N/A	N/M	N/M	N/M	M	M	N/M	N/A	N/A	M	N/M	M	N/M	U	U	M	N/M	M
24	N/A	N/A	N/A	N/A	N/M	N/M	N/M	M	M	N/M	N/A	N/A	N/M	M	N/M	N/M	N/M	M	N/A	N/M	M
25	M	N/A	N/A	M	N/M	N/M	N/M	M	M	M	M	N/A	M	N/M	M	N/M	N/M	N/M	N/M	N/M	M

Table 14: Criterion Ratings of *Gesualdo*.

	Specific Criterion of ETIVB-Instrument																			
Participant	**A.1**	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
1	N/M	M	N/M	M	N/M	M	N/M	M	M	M	M	N/M	M	M	M	M	M	N/M	N/M	N/M	M
2	N/A	M	N/M	M	N/M	M	M	M	M	M	M	N/M	M	N/M	N/M	M	M	N/M	N/M	N/M	M
3	N/A	N/A	N/A	N/A	N/A	N/M	M	M	M	M	N/M	M	M	M	M	M	M	M	M	N/M	M
4	N/M	M	N/M	M	M	M	M	M	M	M	N/M	M	M	M	M	M	M	N/M	M	N/M	M
5	N/A	M	N/M	M	N/M	N/M	M	M	M	M	M	M	M	N/M	M	M	M	N/M	N/M	N/M	M
6	N/A	M	N/M	M	N/M	U	N/M	M	M	M	M	M	M	M	N/M	M	N/M	N/M	N/M	N/M	M
7	N/M	N/M	N/M	M	N/M	N/M	M	M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	M
8	N/M	N/M	N/M	N/A	N/M	N/M	N/M	M	M	M	M	N/M	M	M	N/M	M	M	N/M	N/M	N/M	M
9	N/M	M	N/M	M	N/M	N/M	N/M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	M
10	N/A	N/M	N/M	N/M	N/M	N/M	M	M	M	M	M	M	M	N/A	M	M	M	N/M	M	N/M	M
11	N/A	M	N/M	M	N/M	N/M	N/M	M	M	M	M	U	M	U	M	M	M	N/M	M	N/M	M
12	N/A	M	N/M	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	M	M	M	N/M	M	N/M	***N/M***
13	N/M	U	N/M	M	N/M	M	N/M	M	M	M	M	N/M	M	M	M	M	M	N/M	N/M	N/M	M
14	N/A	M	N/M	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	M	M	M	N/M	M	N/M	M
15	N/M	M	N/M	N/M	N/M	U	N/M	M	M	M	M	N/M	M	M	M	M	M	N/M	N/M	N/M	M
16	N/A	M	N/M	M	N/M	M	M	M	M	M	M	U	M	N/M	M	M	M	N/M	M	N/M	M
17	N/A	N/M	N/M	M	N/M	N/M	N/M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	M
18	M	N/A	N/A	M	N/M	N/M	N/M	M	M	M	N/M	M	M	M	M	M	M	N/M	M	N/M	M
19	N/A	M	M	M	N/M	N/M	M	M	M	M	M	M	M	M	M	M	M	N/A	M	N/M	M
20	N/A	M	N/M	M	M	U	N/M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	M
21	N/A	M	N/M	N/M	N/M	N/M	N/M	M	M	M	N/M	M	M	M	M	M	M	N/M	N/M	N/M	M
22	N/A	M	N/M	M	N/M	N/M	M	M	M	M	M	M	M	N/M	M	M	U	N/M	N/M	N/M	M
23	N/M	N/M	N/M	N/A	M	M	M	M	M	M	M	M	M	N/M	M	U	M	N/M	M	N/M	M
24	N/M	N/M	N/M	N/A	N/M	N/M	N/M	M	M	M	N/M	N/M	M	N/M	N/M	M	M	N/M	M	N/M	M
25	N/A	M	N/M	M	N/M	N/M	N/M	M	M	M	M	U	M	M	M	M	U	N/M	N/M	N/M	M

Table 15: Criterion Ratings of *Campher*.

	Specific Criterion of ETIVB-Instrument																			
Participant	**A.1**	**A.2**	**A.2.1**	**A.3**	**B.1**	**B.2**	**B.3**	**C.1**	**C.2**	**D.1**	**D.2**	**E.1**	**F.1**	**F.2**	**F.3**	**F.4**	**F.5**	**G.1**	**H.1**	**I.1**	**I.2**
1	N/A	M	M	M	N/M	M	N/M	M	M	M	M	N/M	M	M	N/M	M	M	N/M	N/M	N/M	M
2	N/A	M	M	M	N/M	M	M	M	M	M	M	M	U	N/M	N/M	U	M	N/M	N/M	N/M	M
3	N/A	M	M	M	M	M	M	M	M	M	M	M	N/A	N/A	N/A	N/A	N/A	N/A	N/A	M	***M***
4	N/A	M	M	M	N/A	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	***M***	N/M
5	N/A	M	M	M	N/M	M	M	M	M	M	M	M	N/M	N/M	N/M	U	N/M	N/M	N/M	N/M	U
6	N/A	M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
7	N/A	M	M	M	N/M	N/M	M	M	M	M	M	N/M	N/M	M	N/M	N/M	N/M	M	N/M	N/M	M
8	M	N/A	N/A	M	N/M	N/M	N/M	M	M	M	M	N/M	M	M	N/M	M	M	N/M	N/M	N/M	M
9	N/M	M	M	M	N/M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
10	N/A	M	M	M	N/M	N/M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/A	N/M	N/M	***M***
11	N/A	M	M	M	U	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	***M***	N/M
12	N/A	M	M	M	N/M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	N/M	N/M	M
13	N/M	M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
14	N/A	M	M	M	N/M	N/M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N/M
15	N/M	M	U	M	N/M	N/M	N/M	M	M	M	M	N/M	N/M	U	N/M	M	M	N/M	N/M	N/M	M
16	N/A	M	M	M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	M	N/M
17	N/A	M	M	M	U	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	M	N/M	N/M	U	M
18	N/A	M	M	M	N/M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	M	N/M	N/M	N/M	M
19	N/A	M	N/A	M	N/M	N/M	M	M	M	M	M	N/M	N/A	N/A	N/A	U	N/A	N/M	U	N/M	***N/M***
20	N/A	M	M	M	U	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	***M***	N/M
21	N/M	M	M	M	N/M	M	M	M	M	M	M	M	U	N/M	N/M	N/M	U	N/M	N/M	N/M	U
22	N/A	M	M	M	N/M	M	M	M	M	M	M	M	N/M	N/M	N/M	M	N/M	N/M	N/M	N/M	M
23	N/A	M	M	M	N/M	M	M	M	M	M	M	M	N/M	N/M	N/M	M	N/M	N/M	N/M	N/M	M
24	N/M	M	N/M	N/M	M	M	M	M	M	M	M	M	N/M	N/M	N/M	N/M	N/M	N/M	N/M	***M***	N/M
25	N/A	M	M	M	M	M	M	M	M	M	M	M	M	M	N/M	M	M	N/M	N/M	M	M

Table 16: Uncorrected and Corrected I-Criteria Ratings by Case and Participant.					
Case	**Participant**	**I.1-Criterion**		**I.2-Criterion**	
		Uncorrected	**Corrected**	**Uncorrected**	**Corrected**
Sanders	1	N/M	***	***N/M***	U
	3	***M***	0	***N/M***	M
	6	***N/M***	U	N/M	***
	8	N/M	***	***M***	0
	9	N/M	***	***M***	N/M
	15	***N/M***	0	M	***
Dhlamini	4	M	***	***N/M***	M
	8	N/M	***	***N/M***	U
	12	***M***	N/M	M	***
	13	N/M	***	***N/M***	U
	18	N/M	***	***N/M***	U
	21	***N/M***	U	M	***
	24	***M***	N/M	***N/M***	M
Mahlinza	4	N/M	***	***N/M***	M
	19	***N/M***	0	M	***
Gesualdo	12	N/M	***	***N/M***	M
Campher	3	M	***	***M***	0
	4	***M***	0	N/M	***
	10	N/M	***	***M***	0
	11	***M***	U	N/M	***
	19	N/M	***	***N/M***	U
	20	***M***	N/M	N/M	***
	24	***M***	N/M	N/M	***

Legend:

M: Met

N/M: Not Met

U:

0: No valid conclusion can be made from the relevant inclusion or exclusion criteria. The reason for that is that some items has been rated as N/A, where they should have been rated as M, N/M or U and that, furthermore, there has been no other criterion rating clearly indicating that criteria I.1 or I.2 may have been rated with M, N/M or U.

****: No correction has been necessary.

Incorrect ratings are provided in ***bold cursive***.

Uncorrected (rating) in Table 16 means the original rating that a participant has given. Correct (rating) means what the rating should have been (in the case of N, N/ M or U ratings), or, in the case of a rating of 0, that some of the participants' ratings rendered rating the I.1- and/or I.2-criterion invalid.

Tables 17 to 22 display the extent to which the requirements of 'ETIVB' were satisfied according to participants' ratings when using the ETIVB-Instrument.

Table 17: Frequency of Criteria Ratings in *Sanders* Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	15	60	3	12	0	0	7	28
A.2	5	20	4	16	0	0	16	64
A.2.1	7	28	3	12	0	0	15	60
A.3	21	84	1	4	0	0	3	12
B.1	25	100	0	0	0	0	0	0
B.2	25	100	0	0	0	0	0	0
B.3	23	92	2	8	0	0	0	0
C.1	25	100	0	0	0	0	0	0
C.2	24	96	1	4	1	4	0	0
D.1	19	76	4	16	1	4	1	4
D.2	17	68	4	16	1	4	3	12
E.1	2	8	0	0	0	0	23	92
F.1	22	88	0	0	0	0	3	12
F.2	22	88	0	0	0	0	3	12
F.3	22	88	0	0	0	0	3	12
F.4	21	84	0	0	2	8	2	8
F.5	21	84	0	0	1	4	3	12
G.1	23	92	1	4	0	0	1	4
H.1	17	68	6	24	1	4	1	4
I.1	16	64	9	36	0	0	.	.
I.2	18	72	7	28	0	0	.	.

Table 18: Frequency of Criteria Ratings in *Dhlamini* Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	6	24	11	44	1	4	7	28
A.2	4	16	10	40	1	4	10	40
A.2.1	3	12	9	36	1	4	12	48
A.3	5	20	15	60	1	4	4	16
B.1	20	80	3	12	2	8	0	0
B.2	25	100	0	0	0	0	0	0
B.3	23	92	2	8	0	0	0	0
C.1	25	100	0	0	0	0	0	0
C.2	25	100	0	0	0	0	0	0
D.1	12	48	7	28	5	20	1	4
D.2	11	44	6	24	3	12	5	20
E.1	22	88	0	0	3	12	0	0
F.1	20	80	2	8	2	8	1	4
F.2	23	92	1	4	0	0	1	4
F.3	24	96	0	0	0	0	1	4
F.4	21	84	2	8	2	8	0	0
F.5	23	92	1	4	1	4	0	0
G.1	4	16	17	68	4	16	0	0
H.1	11	44	11	44	3	12	0	0
I.1	4	16	21	84	0	0	.	.
I.2	6	24	19	76	0	0	.	.

Table 19: Frequency of Criteria Ratings in *Mahlinza* Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	4	16	7	28	4	16	10	40
A.2	7	28	6	24	4	16	8	32
A.2.1	1	4	11	44	5	20	8	32
A.3	8	32	8	32	3	12	6	24
B.1	0	0	22	88	1	4	2	8
B.2	1	4	22	88	0	0	2	8
B.3	0	0	22	88	0	0	3	12
C.1	25	100	0	0	0	0	0	0
C.2	25	100	0	0	0	0	0	0
D.1	15	60	5	20	4	16	1	4
D.2	8	32	7	28	6	24	4	16
E.1	0	0	17	68	1	4	7	28
F.1	1	4	24	96	0	0	0	0
F.2	5	20	19	76	1	4	0	0
F.3	11	44	13	52	1	4	0	0
F.4	16	64	4	16	5	20	0	0
F.5	3	12	17	68	5	20	0	0
G.1	5	20	15	60	5	20	0	0
H.1	5	20	15	60	4	16	1	4
I.1	0	0	25	100	0	0	.	.
I.2	0	0	25	100	0	0	.	.

Table 20: Frequency of Criteria Ratings in *Gesualdo* Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	1	4	9	36	0	0	15	60
A.2	16	64	6	24	1	4	2	8
A.2.1	1	4	22	88	0	0	2	8
A.3	18	72	3	12	0	0	4	16
B.1	3	12	21	84	0	0	1	4
B.2	6	24	16	64	3	12	0	0
B.3	10	40	15	60	0	0	0	0
C.1	25	100	0	0	0	0	0	0
C.2	25	100	0	0	0	0	0	0
D.1	25	100	0	0	0	0	0	0
D.2	20	80	5	20	0	0	0	0
E.1	14	56	8	32	3	12	0	0
F.1	0	0	25	100	0	0	0	0
F.2	6	24	17	68	1	4	1	4
F.3	4	16	21	84	0	0	0	0
F.4	0	0	24	96	1	4	0	0
F.5	1	4	22	88	2	8	0	0
G.1	22	88	2	8	0	0	1	4
H.1	14	56	11	44	0	0	0	0
I.1	0	0	25	100	0	0	.	.
I.2	1	4	24	96	0	0	.	.

Table 21: Frequency of Criteria Ratings in *Campher* Regarding the Requirements of 'ETIVB' Being Satisfied (n=25).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	1	4	5	20	0	0	19	76
A.2	24	96	0	0	0	0	1	4
A.2.1	21	84	1	4	1	4	2	8
A.3	24	96	1	4	0	0	0	0
B.1	6	24	15	60	3	12	1	4
B.2	19	76	6	24	0	0	0	0
B.3	22	88	3	12	0	0	0	0
C.1	25	100	0	0	0	0	0	0
C.2	25	100	0	0	0	0	0	0
D.1	25	100	0	0	0	0	0	0
D.2	25	100	0	0	0	0	0	0
E.1	16	64	9	36	0	0	0	0
F.1	18	72	3	12	2	8	2	8
F.2	18	72	4	16	1	4	2	8
F.3	23	92	0	0	0	0	2	8
F.4	15	60	6	24	3	12	1	4
F.5	14	56	8	32	1	4	2	8
G.1	22	88	1	4	0	0	2	8
H.1	23	92	0	0	1	4	1	4
I.1	10	40	14	56	1	4	.	.
I.2	10	40	13	52	2	8	.	.

Table 22: Frequency of Criteria Ratings in All Study Cases Combined Regarding the Requirements of 'ETIVB' Being Satisfied (n=125).

	Satisfied		Not Satisfied		Uncertain		Not Applicable	
Criterion	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**	**Freq.**	**%**
A.1	29	23	39	31	2	2	55	44
A.2	53	42	30	24	3	2	39	31
A.2.1	35	28	44	35	3	2	43	3
A.3	73	58	35	28	2	7	15	12
B.1	74	59	42	34	7	6	2	2
B.2	100	80	22	18	3	2	0	0
B.3	101	81	24	19	0	0	0	0
C.1	125	100	0	0	0	0	0	0
C.2	124	99	1	1	0	0	0	0
D.1	93	74	18	14	11	9	3	2
D.2	84	67	21	17	7	6	13	10
E.1	76	61	17	14	9	7	23	18
F.1	80	64	32	26	6	5	7	6
F.2	92	74	23	18	2	2	8	6
F.3	97	78	21	17	0	0	7	6
F.4	78	6	34	27	10	8	3	2
F.5	82	66	32	26	6	5	5	4
G.1	75	60	38	30	8	6	4	3
H.1	76	61	39	31	8	6	2	2
I.1	34	27	90	72	1	1	.	.
I.2	41	33	82	66	2	2	.	.

Table 23: Total Observed Agreement Uncorrected for Chance and Modified Fleiss' kappa by Criteria Unit and Study Case.

	Campher		*Dhlamini*		*Gesualdo*		*Mahlinza*		*Sanders*	
Criterion Group	**Uncorrected for chance**	**Modified Fleiss' kappa**	**Uncorrected for chance**	**Modified Fleiss' kappa**	**Uncorrected for chance**	**Modified Fleiss' kappa**	**Uncorrected for chance**	**Modified Fleiss' kappa**	**Uncorrected for chance**	**Modified Fleiss' kappa**
A.1-H.1	0.727	0.636	0.635	0.514	0.692	0.590	0.541	0.388	0.727	0.636
A.1-E.1	0.790	0.720	0.604	0.472	0.665	0.553	0.543	0.393	0.726	0.634
F.1-H.1	0.619	0.492	0.689	0.585	0.740	0.653	0.534	0.378	0.729	0.639
A.1-A.3	0.787	0.716	0.344	0.126	0.559	0.412	0.263	0.017	0.506	0.341
B.1-B.3	0.603	0.471	0.831	0.775	0.557	0.409	0.776	0.701	0.949	0.932
C.1-C.2	1.000	0.947	1.000	1.000	1.000	1.000	1.000	1.000	0.960	1.000
D.1-D.2	1.000	1.000	0.300	0.067	0.833	0.778	0.318	0.091	0.537	0.382
E.1,G.1,H.1	0.712	0.616	0.550	0.400	0.556	0.407	0.448	0.264	0.731	0.641
F.1-F.5	0.543	0.391	0.791	0.721	0.783	0.711	0.583	0.444	0.751	0.668
I.1-I.2	0.433	0.244	0.670	0.560	0.960	0.947	0.960	0.947	0.550	0.400

The interpretation of the kappa values are as follows129:

Less than 0.0:	poor agreement
0.0 – 0.2:	slight agreement.
0.2 – 0.4:	fair agreement.
0.4 – 0.6:	moderate agreement.
0.6 – 0.8:	substantial agreement.
0.8-1.0:	almost perfect agreement.

Although the results of both the total observed agreement uncorrected for chance and Fleiss' kappa are presented in Table 23, only the modified Fleiss' kappa results have been used to evaluate rater agreement in this study (for reasons, see Chapter 3 under the heading, "Statistical Analysis). In Table 24 the meaning of the *modified Fleiss' kappa r*esults are presented in words. Where the researcher took the participant agreement to be satisfactory, the result is underlined.

Table 24: Degree of Agreement between Participants as Calculated by the Modified Fleiss' kappa by Criterion Unit and Study Case.

	Campher	*Dhlamini*	*Gesualdo*	*Mahlinza*	*Sanders*
Criterion Group	**Modified Fleiss' kappa**	**Modified Fleiss' kappa**	**Modified Fleiss' kappa**	**Modified Fleiss' kappa**	**Modified Fleiss' kappa**
A.1-H.1	Substantial	Moderate	Moderate	Fair	Substantial
A.1-E.1	Substantial	Moderate	Moderate	Fair	Substantial
F.1-H.1	Moderate	Moderate	Substantial	Fair	Substantial
A.1-A.3	Substantial	Slight	Moderate	Slight	Fair
B.1-B.3	Moderate	Substantial	Moderate	Substantial	Almost Perfect
C.1-C.2	Almost Perfect	Almost Perfect	Almost Perfect	Almost Perfect	Almost Perfect
D.1-D.2	Almost Perfect	Slight	Substantial	Slight	Fair
E.1,G.1,H.1	Substantial	Moderate	Moderate	Fair	Substantial
F.1-F.5	Fair	Substantial	Substantial	Moderate	Substantial
I.1-I.2	Fair	Moderate	Almost Perfect	Almost Perfect	Moderate

Now that the reader is familiar with the data resulting from participants' assessment with the ETIVB-Instrument the outcome of the derived variables as calculated according to operators presented in the methodology of Part 2 of the study, will be presented in Tables 25- 30.

The legend for Tables 25 - 30 is as follows:

M: The ETIVB requirements for a derived variable are satisfied.

N/M: The ETIVB requirements for a derived variable are not satisfied.

U: There is uncertainty about whether the ETIVB requirements for a derived variable are satisfied (not satisfied).

0: The derived variable is invalid (it is impossible to establish whether it is 1, 2, or 3).

	Table 25: Derived Variable Values of *Campher*.				
Participant	**Triggering Event (TE)**	**Candidate Behaviour (CB)**	**Violence (Vi)**	**Emotions (Em)**	**Excluded Behaviour (EB)**
1	M	N/M	M	M	M
2	M	N/M	M	M	M
3	M	M	M	M	0
4	M	0	M	M	N/M
5	M	N/M	M	M	U
6	M	M	M	M	N/M
7	M	N/M	M	M	M
8	M	N/M	M	M	M
9	M	N/M	M	M	N/M
10	M	N/M	M	M	N/M
11	M	U	M	M	N/M
12	M	N/M	M	M	M
13	M	M	M	M	N/M
14	M	N/M	M	M	N/M
15	U	N/M	M	M	M
16	M	M	M	M	N/M
17	M	U	M	M	M
18	M	N/M	M	M	M
19	0	N/M	M	M	U
20	M	U	M	M	N/M
21	M	N/M	M	M	U
22	M	N/M	M	M	M
23	M	N/M	M	M	M
24	N/M	M	M	M	N/M
25	M	M	M	M	M

	Table 26: Derived Variable Values of *Dhlamini*.				
Participant	**Triggering Event (TE)**	**Candidate Behaviour (CB)**	**Violence (Vi)**	**Emotions (Em)**	**Excluded Behaviour (EB)**
1	N/M	N/M	M	U	M
2	N/M	M	M	U	N/M
3	M	N/M	M	M	M
4	M	M	M	M	N/M
5	N/M	M	M	M	N/M
6	N/M	M	M	N/M	U
7	N/M	M	M	N/M	N/M
8	N/M	M	M	N/M	N/M
9	N/M	N/M	M	N/M	M
10	N/M	N/M	M	N/M	N/M
11	N/M	M	M	N/M	N/M
12	N/M	M	M	M	N/M
13	N/M	M	M	U	N/M
14	N/M	M	M	N/M	N/M
15	N/M	M	M	U	N/M
16	N/M	M	M	N/M	N/M
17	N/M	M	M	M	N/M
18	N/M	M	M	M	N/M
19	N/M	M	M	0	U
20	M	M	M	M	N/M
21	U	M	M	U	N/M
22	N/M	M	M	N/M	N/M
23	U	U	M	M	N/M
24	N/M	M	M	M	N/M
25	U	N/M	M	M	N/M

	Table 27: Derived Variable Values of *Mahlinza*.				
Participant	**Triggering Event (TE)**	**Candidate Behaviour (CB)**	**Violence (Vi)**	**Emotions (Em)**	**Excluded Behaviour (EB)**
1	U	N/M	M	M	M
2	N/M	N/M	M	U	M
3	0	0	M	N/M	M
4	N/M	N/M	M	N/M	M
5	N/M	N/M	M	N/M	M
6	N/M	N/M	M	N/M	M
7	N/M	N/M	M	M	M
8	U	N/M	M	U	M
9	N/M	N/M	M	N/M	M
10	0	N/M	M	M	M
11	N/M	N/M	M	M	M
12	N/M	N/M	M	M	M
13	N/M	N/M	M	N/M	M
14	N/M	N/M	M	M	M
15	N/M	N/M	M	U	M
16	U	N/M	M	U	M
17	M	N/M	M	M	M
18	M	N/M	M	N/M	M
19	M	0	M	0	M
20	N/M	N/M	M	U	M
21	N/M	N/M	M	N/M	M
22	N/M	N/M	M	U	M
23	N/M	N/M	M	N/M	M
24	0	N/M	M	N/M	M
25	M	N/M	M	M	M

	Table 28: Derived Variable Values of *Gesualdo*.				
Participant	**Triggering Event (TE)**	**Candidate Behaviour (CB)**	**Violence (Vi)**	**Emotions (Em)**	**Excluded Behaviour (EB)**
1	N/M	N/M	M	M	M
2	N/M	N/M	M	M	M
3	0	N/M	M	N/M	M
4	N/M	M	M	N/M	M
5	N/M	N/M	M	M	M
6	N/M	N/M	M	M	M
7	N/M	N/M	M	M	M
8	N/M	N/M	M	M	M
9	N/M	N/M	M	M	M
10	N/M	N/M	M	M	M
11	N/M	N/M	M	M	M
12	N/M	N/M	M	M	M
13	N/M	N/M	M	M	M
14	N/M	N/M	M	M	M
15	N/M	N/M	M	M	M
16	N/M	N/M	M	M	M
17	N/M	N/M	M	M	M
18	M	N/M	M	N/M	M
19	M	N/M	M	M	M
20	N/M	N/M	M	M	M
21	N/M	N/M	M	N/M	M
22	N/M	N/M	M	M	M
23	N/M	M	M	M	M
24	N/M	N/M	M	N/M	M
25	N/M	N/M	M	M	M

	Table 29: Derived Variable Values of *Sanders*.				
Participant	**Triggering Event (TE)**	**Candidate Behaviour (CB)**	**Violence (Vi)**	**Emotions (Em)**	**Excluded Behaviour (EB)**
1	M	N/M	M	M	U
2	M	M	M	M	N/M
3	0	M	M	0	0
4	M	M	M	M	N/M
5	M	M	M	M	N/M
6	M	M	M	U	N/M
7	M	M	M	M	0
8	N/M	N/M	M	N/M	N/M
9	N/M	M	M	N/M	N/M
10	M	M	M	N/M	N/M
11	M	M	M	M	N/M
12	M	M	M	M	N/M
13	N/M	M	M	N/M	N/M
14	0	M	M	M	N/M
15	N/M	M	M	U	N/M
16	M	M	M	M	N/M
17	M	M	M	M	N/M
18	M	M	M	M	N/M
19	M	M	N/M	N/M	U
20	M	M	M	M	N/M
21	M	M	M	M	N/M
22	M	M	M	M	N/M
23	M	M	M	M	N/M
24	M	M	M	M	N/M
25	M	M	M	M	N/M

Table 30: Frequencies of Outcomes of Derived Variables by Case (n=25).

Case	Value	TE		CB		Vi		Em		EB	
		Freq	%	Freq	%	Freq	%	Freq	%	Freq	%
Sanders	M	19	76	23	92	24	96	17	68	0	0
	N/M	4	16	2	8	1	4	5	20	21	84
	U	0	0	0	0	0	0	2	8	2	8
	0	2	8	0	0	0	0	1	4	2	8
Dhlamini	M	3	12	19	76	25	100	10	40	3	12
	N/M	19	76	5	20	0	0	9	36	20	80
	U	3	12	1	4	0	0	5	20	2	8
	0	0	0	0	0	0	0	1	4	0	0
Mahlinza	M	4	16	0	0	25	100	8	32	25	100
	N/M	15	60	23	92	0	0	10	40	0	0
	U	3	12	0	0	0	0	6	24	0	0
	0	3	12	2	8	0	0	1	4	0	0
Gesualdo	M	2	8	2	8	25	100	20	80	25	100
	N/M	22	88	23	92	0	0	5	20	0	0
	U	0	0	0	0	0	0	0	0	0	0
	0	1	4	0	0	0	0	0	0	0	0
Campher	M	22	88	6	24	25	100	25	100	11	44
	N/M	1	4	15	60	0	0	0	0	10	40
	U	1	4	3	12	0	0	0	0	3	12
	0	1	4	1	4	0	0	0	0	1	4

Discussion

In this section the results will be discussed. Although a modified kappa of more than 0.0 shows some (slight) degree of agreement, the researcher sets the bar (so to speak) for a satisfactory agreement at moderate. Thus, if agreement is less than moderate it indicates that there is an issue that needs to be addressed. For example a criterion may need refinement, or participants need to be trained better. However, if inter-rater agreement is satisfactory it does not mean that no action should be taken if, for example, it is obvious that a criterion can be refined.

Beginning from a general, overall view, the discussion of the results of the inter-rater reliability (or participant agreement or just agreement for short) will progressively zoom in on smaller units of criteria. Accordingly, the discussion begins by looking at the inter-rater reliability for the combination of the inclusion and exclusion criteria (A.1 to H.1). After that the discussion moves to smaller units, namely the inclusion criteria on their own and the exclusion criteria on their own. Next even smaller units of criteria are discussed, for example the A-criteria. While discussing the smaller units of criteria rating frequencies for single criteria, or a derived variable will be discussed where doing so contributes to clarifying an outcome.

Participant Agreement Regarding Criteria A.1 to H.1 (Inclusion and Exclusion Criteria)

In 4 study cases participant agreement for the combined inclusion and exclusion criteria are satisfactory, but for 1 study case it is not. Furthermore, there are discrepancies between participant agreement and the statistical agreement results for the conclusion criteria (I.1 and I.2). This issue that needs clarification and that will indeed occur as the discussion unfolds in the course of this chapter. Doing so will indicate issues regarding the criteria (that they need to be refined), participants skills (that more participant training is required), challenging study cases (which may test the ETIVB-Instrument and participant skills, but may yet under optimal circumstances remain challenging), and (of course) combinations of these.

Although this section is about participant agreement across a combination of the inclusion and exclusion criteria, the I-criteria are also included so as to compare participant agreement regarding the combined criteria (A.1 to H.1) what that of the I-criteria. Participant agreement regarding the A.1 – H.1 criteria gives an impression of how much agreement participants have regarding how they have rated criteria on which they have based a decision to rate the I-criteria. Should the statistical agreement of I-criteria be clearly better than that of participant agreement across criteria A.1 – H.1, one could infer that participants came to the same conclusions, but by different routes. That in turn means that there are issues that need to be addressed. The way the issues are to be addressed will depend on the most likely reason(s) for the difference in combined statistical agreement on the one hand and statistical agreement for the I-criteria on the other hand. It might for example be due to

criteria that needs to be refined (because the criteria is not sufficiently user friendly, or sufficiently clear), or that study participants need more training (because even though the criteria are sufficiently user friendly and clear the material that is assessed is challenging), or that the study case has not been sufficiently clear on those issues that the ETIVB-criteria evaluate (which means that a different study case will be needed for future research). If participant agreement across criteria A.1 – H.1 is clearly better than the descriptive statistics of the I-criteria or statistical agreement of the I-criteria, one could infer that there have been problems with participants deciding on a rating for the I-criteria, despite their having better agreement about the ratings of the criteria they base their decisions on. This too indicates an issue that needs to be addressed as previously said.

Participant agreement across all the inclusion and exclusion criteria is substantial for *Campher* and *Sanders*, moderate for *Dhlamini* and *Gesualdo*, and fair for *Mahlinza*. That being so, much can be learned when the outcome of the modified Fleiss' kappa results are compared with the statistical agreement of the I-criteria. For example statistical agreement for the I-criteria is almost perfect (Tables 23 and 24). That is a surprising result (and contrary to the researcher's expectation (see Chapter 3) that *Mahlinza* is not a challenging study case) when compared to only fair participant agreement across all the inclusion and exclusion criteria. The reasons for the incongruency will become clear as smaller units of criteria are examined. It may be noted how few participants (3 out of 25) made errors in rating the I-criteria in *Mahlinza* (see Table 16) when compared *to Sanders*, *Dhlamini* and *Campher*. This in turn may contribute to a better statistical agreement for the I-criteria. Another inference is that participants, who have otherwise differed about ratings across A.1 to H.1 for *Mahlinza*, have agreed on *Mahlinza* not meeting the requirements of 'ETIVB'. The reasons why participants have differed about the ratings across A.1 to H.1 are that the ETIVB-Instrument needs refinement, that participants need better training, or that the case have been too challenging. Matters will become clearer as smaller units of criteria are discussed.

In *Gesualdo* the statistical agreement for the I-criteria is almost perfect for *Gesualdo* (Tables 23 and 24). That result is better than the modified kappa result of moderate across all inclusion and exclusion criteria (Tables 23 and 24), which is in line with the researcher's expectation (see Chapter 3) that Gesualdo is a challenging study case. As have been the case with Mahlinza, there have been very few errors (1 out of 25) in rating the I-criteria in Gesualdo, which may have contributed to the good statistical agreement. The reasons why participants have differed about the ratings across A.1 to H.1 are that the ETIVB-Instrument needs refinement, that participants need better training, or that the case have been too challenging. Matters will become clearer as smaller units of criteria are discussed further on in this chapter.

In *Dhlamini* the modified kappa result of the I-criteria is moderate (Tables 23 and 24). This result is in line with a modified kappa result across all inclusion and exclusion criteria of moderate participant agreement (which is less that the researcher expectations concerning a perceived less challenging study case as said in Chapter 3). Yet, 7 out of 25 participants made errors when rating the I-criteria,

which may be due to the now familiar ETIVB-Instrument needing refinement, participants needing training, or the case having been too challenging

In *Sanders* the modified kappa result of (Tables 23 and 24) is somewhat lower than the modified kappa result of substantial agreement across all inclusion and exclusion criteria. This difference may at least in part be attributed to 6 out of 25 participants having made errors in their rating the I-criteria (see Table 16). This result may reflect on the instrument (needing refinement to make it more user-friendly) or participant skills (needing more training of participants before using the ETIVB-Instrument.

In *Campher* participants' agreement regarding the I-criteria are fair (Tables 23 and 24) and thus, unsatisfactory. This result is less impressive than a modified kappa result of moderate (see Tables 23 and 24) across all inclusion and exclusion criteria (which is in line with the researcher's expectation regarding a more challenging study case as said in Chapter 3). This difference may at least in part be attributed to 7 out of 25 participants having made mistakes in their ratings of the I-criteria (see Table 16). This result may reflect on the instrument (needing refinement to make it more user-friendly) or participant skills (needing more training of participants before using the ETIVB-Instrument.

In this section the overall criteria agreement (A.1 to H.1) have been discussed together with the descriptive statistics of the I-criteria and the modified kappa results. Next, keeping the findings and discussion of this section in mind, the next smaller unit of criteria, namely the inclusion and exclusion criteria, will be discussed.

Participant Agreement Regarding Criteria A.1 to E.1 (The Inclusion Criteria) and Criteria F.1 to H.1 (The Exclusion Criteria)

As seen in Table 23 and Table 24 participant agreement regarding the inclusion criteria have been the same as that for the combined inclusion and exclusion criteria. Consequently, it is substantial for *Campher* and *Sanders*, moderate for *Dhlamini* and *Gesualdo*, and fair for *Mahlinza*. For the exclusion criteria, participant agreement (with the exception of *Camper*) is congruent with findings regarding a combination of inclusion and exclusion criteria on the one hand, and the inclusion criteria (alone) on the other. For *Campher*, however, the agreement is moderate (as compared to substantial for the combination of inclusion and exclusion criteria on the one hand, and the inclusion criteria (alone) on the other), meaning that there is less participant agreement for the exclusion criteria of *Campher* than for the inclusion criteria. Taking the outcome of the inclusion and exclusion criteria into account we shall now turn to smaller units of criteria to examine what can be learned from them regarding participant agreement (and how to improve it where needed).

Participant Agreement Regarding Criteria A.1 to A.3 (The A-Criteria)

From the statistical analysis of the A-criteria (see Tables 23 and 24) and the descriptive statistics of the G.1-criterion (see Table 22) (The G.1-criterion is also discussed in this section for reasons that will be clarified) it is inferred that the A-criteria are one on of the most challenging ETIVB-criteria to rate. As will be clarified later in this section, the most feasible reason for that being so is that rating the A-criteria involves judging the severity of a distressing event within a cultural context. That being so, the A-criteria should be refined in such a way that participants will no longer be burdened with a decision about whether a 'triggering event' is made up of a single distressing event or a series of distressing events. Participants should instead only have to decide whether there is (or is not) a 'triggering event'. It can also be inferred that it may be useful to give an example of what is *not* meant by the A.3-criterion, which is about the distressing event (which is a potential 'triggering event') being an observable event. Furthermore, from the results it can be inferred that participants may need more training to improve their skills before using the ETIVB-Instrument. Finally it can be inferred that *Mahlinza* may be too challenging a case when it comes to the A-criteria. The reasons for these inferences are clarified in this section.

Regarding the results themselves, it is only for *Campher* that there was substantial agreement regarding the A-criteria (which are about the 'triggering event'). In retrospect the reason for this is obvious – it was not much of a challenge to judge that the 'triggering event' in *Campher* was made up of a series of distressing events (see précis in Addendum C of Chapter 14). Thus, 96% of participants rated the A.2-criterion as being met (see Table 21 which should translate into substantial agreement. For *Gesualdo* participant agreement is acceptably moderate, but for the remainder of the cases participant agreement is only fair (*Sanders*), or slight (*Dhlamini* and *Mahlinza*). This finding is a reason for concern and so, the A-Criteria need attention. As for the specific attention needed, findings regarding the derived variable, TE, is useful as will be clarified next.

The derived variable, TE, has been calculated using a formula that took care (within reason) of mistakes that participants have made. In the case of Sanders, according to the TE-results (see Table 30) 76% of participants rated that the requirements of a 'triggering event' had been satisfied (meaning that the requirements of 'ETIVB' for the A-criteria had been satisfied). That 76% of participants have rated for the same outcome (namely that the requirements for a 'triggering event' had been satisfied) is at face value better than fair agreement as the statistical analysis indicates. Moreover, according to the TE-results for both *Campher* and *Gesualdo,* 88% of participants have rated in favour of a 'triggering event'. At face value this result is better than the moderate participant agreement for *Gesualdo,* although it is congruent with the substantial participant agreement for *Campher* (as indicated by the modified kappa result). For *Dhlamini* the TE-results are at face value better than the slight participant agreement according to the modified kappa. This is evidenced by 76% of participants having rated in favour of a 'triggering event'. In the case of *Mahlinza* 60% of participants

have rated against a 'triggering event', 16% rated (clearly incorrectly) in favour of a 'triggering event', while a significant 12% have been uncertain and a significant 12% of ratings have been invalid. These results are helpful to indicate what is needed regarding the A-criteria in future versions of the ETIVB-Instrument as will be clarified next.

Considering the different outcomes of the modified kappa results and the TE-results, especially for *Sanders*, *Dhlamini*, and *Gesualdo*, it looks like the problem lies with the criteria. Table 17 indicates the problem. Look at *Sanders* as an example. Taking the criteria A.1 and A.2 together, 80% of participants rated that an ETIVB-congruent 'triggering event' may be present (depending on the outcome of criteria A.2.1 and A.3). However, there is some "disagreement" on whether the 'triggering event' is a single distressing event (60%) or a series of distressing events (20%). This "disagreement" will be reflected in the modified kappa, making it seem as if there is only fair agreement across the A-criteria. The derived variable (TE) takes care of the trivial mistake (whether there is a series of distressing events or only a single distressing event that forms the 'triggering event') and thus points out that in fact participants agree that there is a 'triggering event'.

To conclude this section the descriptive statistic of the G.1-criterion, which is also about the 'triggering event,' will be discussed. The G.1-criterion has the same topic as the A.3-criterion, namely that the potential trigger is an observable, a real life event. The relationship is however, an inverted one – the A.3-criterion capturing inclusion phenomena (the potential trigger *is* a real life observable event) while the G.1-criterion captures exclusion phenomena (the trigger *is not* a real life observable event). Thus, a direct relationship can be expected between the A.3-criterion and the G.3-criterion regarding ratings *in favour of* satisfying the requirements of 'ETIVB'. At face value that direct relationship seems present, because the peak frequency of both for all cases combined are about the same (Table 22). To be specific: 58% (of participants in favour of satisfying the requirements of 'ETIVB') for the A.3-criterion and 60% (of participants in favour of satisfying the requirements of 'ETIVB') for the G.1-criterion. When it comes to individual cases one finds that the peak frequencies for the ratings of the A.3-criterion and G.1-criterion are approximately the same for 3 cases: for *Sanders* (84% and 92% respectively), for *Dhlamini* (60% and 68% respectively), and for *Campher* (96% and 88% respectively). For *Gesualdo* however, the peak frequencies are somewhat weaker for the A.3-criterion than for G.1-criterion (72% and 88% respectively). *Mahlinza* will be set aside for the time being. For the other 4 study cases the questions are (even though there is a correlation between the descriptive statistics results of A.3-criterion and the G.1-criterion): Why is it not better? Why are the results for the A.3-criterion and the G.1-criterion not as close as the combined results are? The problem may lie with the wording of these 2 criteria, but at face value they seem to adequately convey what they should. That leaves participant factors and too challenging study cases as the only other feasible account. However, it does not seem as if the study cases that were now mentioned were too challenging regarding the A-criteria. Thus, it seems that (at least in part) more participant training is needed before the A criterion of the ETIVB-Instrument is used.

We shall now return to *Mahlinza*, which has temporarily been set aside. It seems that as far as the A-criteria are concerned, *Mahlinza* have been too challenging a case. This is suggested by poor concordance between participants' ratings regarding the A.3-criterion and G.1-criterion, and evidenced by the peak frequency ratings of the A.3-criterion. Regarding the latter there are 2 low peak frequencies of 32% for both ratings in favour of and against satisfying the requirements of 'ETIVB' and a significant 24% of participants rating the criterion as not applicable (while it is applicable). This phenomenon can be accounted for by recognising that in *Mahlinza* it may be really difficult to decide if the distressing event in question is severe enough to cause severe to extreme emotional distress. The researcher rated the criteria A.1 and A.2 as not met (and consequently the A.3-criterion as not applicable). Yet, (nevertheless disagreeing) the researcher understands that someone may consider the distressing event in the case of *Mahlinza* as sufficiently severe to cause severe emotional distress. A further indication of *Mahlinza* being too challenging may be seen in the individual peak rating frequencies of the individual A-criteria. The best peak rating frequency is for the A.2.1-criterion at an incredulous 44% of participants rating the A.2.1-criterion as not satisfying the requirements of 'ETIVB'. The reason for the 44% rating response being incredulous is because only 28% of participants rated the requirements of 'ETIVB' being satisfied for the A.2-criterion. This in turn means that no more than 28% of participants should have rated that the requirements of 'ETIVB' for the A.2.1-criterion are not met. Thus, over and above *Mahlinza* being a challenging study case, more thorough participant training seems necessary. Despite participants having done poorly with the A-criteria in general and the A.3-criterion specifically, they have done much better with the rating of the G.1-criterion. Regarding the G.1-criterion 60% of participants have rated (correctly) that the requirements of 'ETIVB' have not been satisfied. Thus, it has been less challenging for participants to rate the G.1-criterion than the A.3-criterion (remembering that in context it is part of the A-criteria). The latter result indicates that giving an example of what is *not* meant by an observable distressing event as possible 'triggering event' might be useful and should be taken into consideration in future refinements of the ETIVB-instrument.

Participant Agreement Regarding Criteria B.1 to B.3 (The B-Criteria)

Participant agreement for the B-criteria has been satisfactory. However, evaluating the statistical results of the B-criteria indicate 2 noteworthy issues. The first is that study participants need more training before using the ETIVB-Instrument. The second issue, but equally important, is that study cases must be selected that as far as possible reveal all the information that is important when using the ETIVB-Instrument. The reasons for these inferences are clarified next.

For *Sanders* participant agreement regarding the B-criteria has been almost perfect, while for *Dhlamini* and *Mahlinza* participant agreements have been substantial. The reasons for this very satisfactory outcome seems to be that it has not been challenging to rate the B-criteria for those 3 study cases. Also satisfactory, but not to the same extent, have been the participant agreements of

moderate for *Gesualdo* and *Campher*. Despite these satisfactory outcomes, comparing the derived variable, CB with the agreement outcomes, indicates that the B-criteria need attention. That is so because at face value the moderate agreement in *Gesualdo* seems too little when compared to 92% of participants rating against 'violent behaviour' according to the CB-results (see Table 30). The reason for this difference becomes apparent when studying the individual B-criterion ratings in Table 20. In Table 20 one notices that although 84% of participants had rated that the B.1-criterion as *not* being met (which necessarily means that as a group the B-criteria, or CB, do not meet the requirements of 'ETIVB'), only 64% had rated the B.2-criterion and 60% the B.3-criterion as not being met. These differences would diminish the statistical agreement across the B-criteria.

Furthermore, most (60%) participants have rated the B-criteria as not being satisfied in *Campher* (as can be inferred from the results of CB for *Campher* in Table 30. However, as will be clarified, it is the author's opinion that study participants' ratings were erroneous. Sixty percent (60%) of participants have rated the B.1-criterion as not being met in *Campher* (Table 21). However, it is not all that clear that more than 5 seconds elapsed since the deceased "final straw" comment and the accused shooting him. The study case is silent on the issue. The researcher is of the opinion that at best one can give *Campher* the benefit of doubt or at worst rate the criterion as uncertain (which is probably most correct). This shows how challenging rating of the ETIVB-criteria can be. Yet, criteria B.2 and B.3 seems to have presented little difficulties in this same case as may be inferred from a peak frequency of 76% for criterion B.2 and 88% for criterion B.3 (Table 21).

The problems regarding the evaluation of the B-criteria do not seem to lie with the criteria themselves, which does not seem difficult to understand or to apply. Thus the problem seems to lie with participants (not having enough skills to rate the criteria), or with the study cases (not giving enough information) or a combination of both. Judging by how the B.1-criterion has been managed by participants, the researcher is that part of the solution lies in providing participants with more training. However, another part of the solution seems to lie with the choice of study cases. Because important information has not been explicitly mentioned in study cases, and this might have confused even well-trained participants, it seems that less challenging study cases (with more necessary information) should be used in future research with the ETIVB-Instrument.

Participant Agreement Regarding Criteria C.1 to C.2 (The C-Criteria)

For the C-criteria participant agreement for all study cases are very satisfactory. That is evidenced by almost perfect agreement regarding the C-criteria for all 5 study cases. The outcome is to be expected since all study cases were selected for their having 'violent behaviour'. Nonetheless, the agreement figures indicate that the C-criteria are clear and easy to understand.

Participant Agreement Regarding Criteria D.1 to D.2 (The D-Criteria)

From the statistical analysis of the D-criteria and the descriptive statistics of the H.1-criterion (which is also discussed in this section for reasons that will be clarified) it is inferred that the D-criteria (as is the case with the A-criteria) are one of the more challenging ETIVB-criteria to rate. The most likely reason for it is that rating the D-criteria involves judging the severity of emotions within a cultural context, which at face value is challenging. From the results of the D-criteria and H.1-criterion it is also inferred that the criteria may need to be refined to render them more user friendly. Furthermore, the results indicate that more participant training may be needed to improve their skills before applying the ETIVB-Instrument. Finally, it seems that *Mahlinza* has been very challenging when it comes to rating the D-criteria. The reasons for these inferences are clarified in the next paragraphs.

Regarding the D-criteria (which are about 'emotions') the results show much diversity. That is also the case for the H.1-criterion (which is also about 'emotions'). Although the H.1-criterion is grouped for statistical analysis with the E.1-criterion and the G.1-criterion, it is advantageous to discuss the H.1-criterion here, where its outcome can be compared with that of the D-criteria. Because the H.1-criterion is about 'emotions' (as are the D-criteria) with the only real difference that it looks at 'emotions' from a different angle (the inverse - not for inclusion features, but for exclusion features), it is expected that there will be a direct correlation between the agreements of the D-criteria and the descriptive statistics for H.1-criterion . If such an expected correlation does not occur, it would indicate that some issue needs to be addressed, for example (as have been said previously) criteria that are not sufficiently clear, criteria that are not sufficiently user friendly, or a study case that is too challenging.

For the D-criteria participant agreement is satisfactory for both *Campher* (with almost perfect participant agreement) and *Gesualdo* (with substantial participant agreement). However, for the D-criteria participant agreement is not been satisfactory for both *Sanders* (with only fair participant agreement) and for *Dhlamini* and *Mahlinza* (with both only slight agreement). For the H.1-criterion the most frequent rating is in *Campher* with 92% of participants rating in favour of satisfying the requirements of 'ETIVB'. This result is congruent with the result of almost perfect participant agreement for *Campher*. Second best is a 68% rating frequency for *Sanders* (68% of participants having rated that the requirements of the D-criteria have been satisfied), which is better than the result of only fair participant agreement regarding the D-criteria for *Sanders*. Third is a 60% rating frequency for *Mahlinza* (60% of participants having rated that the requirements of the D-criteria have not been satisfied), which seems more or less in line with a result of only slight participant agreement regarding the D-criteria in *Mahlinza*. Fourth is a rating frequency of 56% for *Gesualdo* (56% of participants having rated that the requirements of the D-criteria have been satisfied), which is worse than a result of substantial participant agreement regarding the D-criteria in *Gesualdo*. Worst was the rating frequency of *Mahlinza*, where there are 2 peak frequencies, each one 44% (44% of participants

having rated that the requirements of the D-criteria have not been satisfied, while another 44% have rated that the requirements of the D-criteria have been satisfied), which is worse than the result of slight participant agreement regarding the D-criteria in *Mahlinza*. Taking all of these results together it is clear that the expected correlation between the D-criteria agreement results and the H.1-criterion descriptive statistics have not happened. The question about why there is this discrepancy and what the possible answers are will be discussed next.

There are 4 possible answers, which are the same as for previous issues with the criteria. One possibility is that some of the cases are more challenging (even too challenging), another that the problem lies with criteria being unclear or not user-friendly, and yet another that participants' skills at using the ETIVB-Instrument need to be improved, or it could be a combination of these possible answers. Next it will be shown how these possible answers were inferred from the results.

To begin with, at face value it does not seem that, in *Campher and Gesualdo* (where participant agreement for the D-criteria are almost perfect) it has been too challenging to infer the relevant emotions of the accused persons. However, it does appear more challenging to have inferred the relevant emotions in *Dhlamini* and especially *Mahlinza* (both for which participant agreement regarding the D-criteria are only slight). However, although it is so that Dhlamini and Mahlinza may be considered challenging regarding the D-criteria, it does not seem to be the case (at face value) for *Sanders.* Nevertheless, although *Sanders* has fared better than *Dhlamini* and *Mahlinza* regarding the D-criteria, participant agreement is nonetheless a disappointing "fair". That result indicates that the problem does not lie with the criteria (because it is not challenging to apply them) or with the study cases (because the relevant emotions may be readily inferred from the précis), but that the problem lies with participants' skills.

Another indication that the problem lies with participants' skills may be inferred from the results of *Gesualdo*, *Dhlamini* and *Mahlinza*. Although *Gesualdo* seems less challenging regarding the D-criteria, because participant agreement is almost perfect, participants have nevertheless fared disappointingly poorly with the H.1-criterion of *Gesualdo* (with a peak rating frequency where only 56% of study participants' ratings imply that the emotions of the accused in *Gesualdo* are congruent with 'ETIVB'). Since the H.1-criterion is the inverse of the D-criteria (and thus much congruency between these criteria is expected) this result is puzzling. This may be due to one or more of the following reasons: the H.1-criterion has been more challenging to rate in the case of *Gesualdo*, participants have needed better skills at using the ETIVB-Instrument, the H.1-criterion needs refinement, or a combination of these. Which one of these reasons is applicable to *Gesualdo* is unclear. However, without claiming that the criteria need no refinement, a problem with participant skills seems evident from as much as 4% of the Em-results being invalid for *Dhlamini* and *Mahlinza* (Table 30), which means that some participants have rated the D-criteria grossly incorrectly. Staying with *Dhlamini* and *Mahlinza*, both their Em-results have peak frequencies of 40% in favour of, and 40% (see Table 30) against the requirements of 'ETIVB' being satisfied. Furthermore, a rating of

"uncertain" is a significantly frequent EM-result – 20% for *Dhlamini* and 24% for *Mahlinza* (see Table 30). Thus, for both *Dhlamini* and *Mahlinza* it might have been challenging to rate the D-criteria (which are about emotions). In the case of *Mahlinza* that challenge may persist even after adequate training, because in retrospect it appears that in Mahlinza emotions are difficult to judge (as is the severity of the distressing event – see the discussion of the A.3-criteria.) That in turn means that not only may there be a need for refining the ETIVB-criteria and to improve participants' skills, but also to select cases carefully in the sense that they have the necessary information for applying the ETIVB-Instrument.

Participant Agreement Regarding Criteria E.1, G.1 and H.1

Participant agreement across the single criteria is substantial for both *Campher* and *Sanders*, moderate for *Dhlamini* and *Gesualdo*, but only fair for *Mahlinza*. Although this finding gives an idea regarding criteria in this group, it is worthwhile to consider simple descriptive statistics for these criteria to understand more about how they have been rated. The G.1-criterion and H.1-criterion have already been discussed respectively under the A-criteria and D-criteria. Thus only the E.1-criterion will be discussed in this section.

The E.1-Criterion

In *Sanders* 92% of participants have rated that the E-criterion as not applicable (which is correct, since a weapon has not been involved), while 8% have rated that the requirements (of 'ETIVB') have been met (which indicates that criterion has not been understood and thus may need refinement). In *Dhlamini* 88% of participants have rated that the requirements of E.1 have been met, with the remainder having been unsure (an outcome that seems unavoidable, given that opinions may differ). In *Mahlinza* 68% of participants have rated the E.1-criterion as not having been met (therefore not satisfying the requirements of 'ETIVB', while 28% have rated the criterion as not applicable and 4% having been unsure. Here too opinions are likely to differ. For example, will one consider the burning stove that the accused have used as a weapon or not? Most participants seem to have thought that the stove have been used as a weapon (as did the researcher). *Gesualdo* represents a difficult case as far as the E.1-criterion is concerned. Should one consider the weapon that has already been in the accused's hands as having been readily available? Should one consider it as having been brought to the crime scene on purpose? The researcher thinks the weapon has been brought to the crime scene on purpose, but that it has nevertheless (because of that) been immediately available for use when the 'triggering event' has occurred. It is the availability of the weapon with regards to the 'triggering event' that decides the issue for the purposes of 'ETIVB' (although a jurisprudence take on this same issue may be completely different). By a small margin most participants (56%) have agreed with the researcher, while 32% have rated the weapon as not being readily available and the remaining 12% has been (understandably) uncertain.

In the case of *Campher* the majority of participants (64%) have rated that a weapon has been readily available (in agreement with the researcher), while 36% have rated that a weapon has not been readily available. All in all, based on the descriptive statistics, the E.1-criterion, seem adequately reliable, but since it is vulnerable to evaluators' interpretation, it needs refinement.

Participant Agreement Regarding Criteria F.1 to F.5 (The F-Criteria)

The overall outcome of the F-criteria is mostly satisfactory. However, from the results it can be inferred that the F-criteria need to be refined and that participant skills need to be improved upon. The reasons for these inferences are clarified in this section.

For the F-criteria the results of participant agreement are satisfactory for Dhlamini, Gesualdo and Sanders (where participant agreement was substantial), but not for Campher and Mahlinza where participant agreement is respectively only fair and slight. Despite the satisfactory outcome for Dhlamini, Gesualdo and Sanders there is some issue with the F-criteria as can be inferred from discrepancies that are revealed when F-criteria agreement is compared with the derived variable, EB. Since EB takes care (within reason) of mistakes participants have made, better EB results suggest issues with the criteria and/or participant skills. For Dhlamini 80% of participants have rated in favour or the requirements of 'ETIVB' being satisfied (which seems congruent with substantial participant agreement); for Gesualdo 100% of participants have rated against the requirements of 'ETIVB' being satisfied (which seems better than substantial participant agreement); for Sanders 84% of participants rated in favour of the requirements of 'ETIVB' being satisfied (which seem congruent with substantial participant agreement); for Campher 44% of participants have rated against the requirements of 'ETIVB' being satisfied while 40% have rated in favour of the requirements of 'ETIVB' being satisfied (which seem worse than fair participant agreement); finally in Mahlinza 100% of participants have rated against the requirements of 'ETIVB' being satisfied (which seem better than slight participant agreement). From these results it can be inferred that for Gesualdo and Mahlinza all participants have rated that behaviour that excludes 'ETIVB' have been present (Table 30), but that they have selected different F-criteria indicating behaviours incongruent to 'ETIVB'. That this is so may readily be shown in the frequency ratings of Gesualdo (Table 20) and especially Mahlinza (Table 19). Mahlinza is most telling in this regard.

From the results of the F-criteria it may once again be inferred that there is an issue with the criteria. The same candidate answers are applicable as mentioned during discussions regarding the previous units of criteria. That is, the problem can be with the criteria, participant skills, too challenging cases or a combination of these. With the F-criteria it is apparent that simplification can do much to make the criteria more user-friendly. That in turn can improve inter-rater reliability. The first 3 F-criteria might be combined, since they all deal with a person undertaking measures in preparing for the execution of the candidate behaviour. Although they look at the same issue from different angles, they might

nonetheless be merged by simply giving the content of the F.2-criterion and F.3-criterion as examples of behaviour indicating taking measures. Then the participant is not left with having to worry about what "taking measures" all entail; just about whether the subject has taken measures to perform the candidate behaviour. That participant skills are at times questionable can be inferred from respectively 8% and 4% of participant responses being invalid for Sanders and Campher. At face value it does not seem to the researcher that it has been particularly challenging to rate any of the study cases regarding the F-criteria. It seems that a lack of participant skills is to blame for the unsatisfactory agreement in Campher. In Campher only the F.5-criterion is met (thereby excluding 'ETIVB'). It is not reasonable to say that in Campher the accused has taken any measures to execute the candidate behaviour or has done it for the purposes of revenge.

At this point the report and discussion on the results of reliability study of the ETIVB-Instrument has been completed. The "Attributive Considerations of ETIVB" does not make part of the ETIVB-Instrument and consequently has not been included hitherto. Nonetheless, the results about how participants have completed the "Attributive Considerations of ETIVB" follow next, but without any statistical analysis (other than some descriptive statistics) and discussion.

Results of Attributive Considerations of ETIVB

The "Attributive Considerations of ETIVB" has been completed by those participants who have found the requirements of the ETIVB-criteria as having been satisfied in the study cases *Sanders*, as well as (erroneously) *Dhlamini* and (erroneously) *Campher.* No participant has found the requirements of the ETIVB-criteria having been satisfied in the other 3 study cases, and hence (correctly) have not complete the "Attributive Considerations of ETIVB". The outcome of participants' rating the "Attributive Considerations of ETIVB" are presented in Table 31: Completion of Attributive Consideration of ETIVB in Cases where ETIVB-Criteria were Considered Satisfied. The study participants' inter-rater reliability regarding completion of the "Attributive Considerations of ETIVB" has not been subjected to formal statistical analysis, because the "Attributive Considerations of ETIVB" does not form part of the ETIVB-criteria" and it has only been appropriate to one case However, descriptive statistics are presented for the completion of "Attributive Considerations of ETIVB" regarding *Sanders*, *Dhlamini*, and *Campher* in the next 3 paragraphs. Refer to Table 31 for the data.

For *Sanders* 16 participants have identified emotionally triggered involuntary violent behaviour by using the ETIVB-criteria, and consequently have completed "Attributive Considerations of ETIVB". All 16 of these participants have ticked "not attributed" regarding options Y.1, Y.2, Y.3, Y.5, Y.6 and Y.7. For option Y.4 15 out of 16 (94%) participants have ticked "not attributed", while 1 participant (6.25 %) have ticked "uncertain". Fifteen of 16 (94%) participants have ticked Option X.1, meaning that they have considered the emotionally triggered involuntary violent behaviour identified by the ETIVB-criteria in *Sanders* as not having been attributable to a mental disorder. One participant (6.25 %) have not mark option X.1, probably meaning that he or she has been uncertain regarding attribution of the

emotionally triggered involuntary violent behaviour identified by the ETIVB-criteria, because he or she have ticked “uncertain” under option Y.4.

For *Dhlamini* only 3 participants have (erroneously) identified emotionally triggered involuntary violent behaviour by using the ETIVB-criteria, and consequently have completed “Attributive Considerations of ETIVB”. Two of these participants have considered the emotionally triggered involuntary violent behaviour they have(erroneously) identified as not having been attributed to a mental disorder as having been evidenced by their having ticked option X.1. One of the 3 participants has been uncertain regarding all attributive consideration and consequently did not mark Option X.1.

For *Campher* 8 participants have (erroneously) identified emotionally triggered involuntary violent behaviour with the ETIVB-criteria, and have consequently completed “Attributive Considerations of ETIVB”. All 8 participants have ticked “not attributed” regarding options Y.2 – Y.7. Seven of these 8 participants have ticked “not attributed” regarding option Y.1, while one participant has ticked option Y.1 as “uncertain”. Nonetheless, all 8 have ticked option X.1, meaning that they have considered the emotionally triggered involuntary violent behaviour they have (erroneously) identified in *Campher* as not attributable to a mental disorder

.

Table 31: Completion of Attributive Consideration of ETIVB in Cases where ETIVB-Criteria were Considered Satisfied.

	Participant No.	Y.1	Y.2	Y.3	Y.4	Y.5	Y.6	Y.7	X.1
Sanders	2	Not Attr*	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	3	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
(n=16)	4	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	5	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	11	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	12	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	14	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	16	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	17	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	18	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	20	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	21	Not Attr	Not Attr	Not Attr	Uncertain	Not Attr	Not Attr	Not Attr	Not Marked
	22	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	23	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	24	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	25	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
Dhlamini	4	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Uncertain	Not Marked
(n=3)	20	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	24	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
Campher	4	Uncertain	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	6	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
(n=8)	9	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	11	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	13	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	16	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	20	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked
	24	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Not Attr	Marked

* Not Attr: Not Attributed.

Chapter 14

Summary and the Way Forward

In this final Chapter the researcher will briefly summarise the study and then conclude with proposals for the way forward, which includes a proposal for a refined ETIVB-Instrument and a refined Attributive Considerations of ETIVB. In Part 1 of the study the reader has been introduced to the ETIVB-construct. ETIVB has been clarified as violent behaviour that a person is unable to choose or control and which has been triggered by culturally warranted severely to extremely distressing emotions that had been elicited by a socio-culturally warranted severely to extremely distressing overt triggering event. This clarity has been build up starting with getting clarity about 'violent behaviour', and then continued by clarifying 'emotionally triggered', and 'involuntary'. Accordingly, 'behaviour' in the ETIVB-construct has been clarified as observable behaviour that can be described in terms of the usual parameters of a behaviour analysis[27] namely, topography, frequency, duration, latency, intensity, and quality (see Chapter 4), while 'violent' in the ETIVB-construct has been clarified as actual physical damage or injury as a consequence of behaviour that is designated as violent (see Chapter 4). 'Emotionally triggered' in the ETIVB-construct has been clarified in Chapter 5 as referring to 'emotions' that are triggered by a 'triggering event' that may be a single severely to extremely distressing incident or by a series of distressing incidents that as a whole constitute a severely to extremely distressing incident (cultural context and all other relevant factors taken into consideration). 'Emotions' in the ETIVB-construct has been clarified as severely to extremely distressing emotions that are culturally warranted. Finally, 'involuntary' in the ETIVB-construct has been clarified in Chapter 6 as an inability to exercise control regarding 'violent behaviour*'* and an inability to exercise choice regarding 'violent behaviour'.

In the process of clarifying the ETIVB-construct the ETIVB-Instrument has been developed by using an iterative process of testing both the construct and the ETIVB-Instrument against study cases involving the most extreme form of human violence, namely the killing of another human being. The ETIVB-Instrument that has been to be used in the Part 2 of the study has been presented in Chapter 8 and the Attributive Considerations of ETIVB in Chapter 9. It has been pointed out that the Attributive Considerations of ETIVB is not part of the ETIVB-Instrument, but that it merely assists an evaluator in his or her assessment. The Attributive Considerations of ETIVB specifically helps an evaluator to determine whether, on the one hand, a specific case of emotionally triggered involuntary violent behaviour, as identified by the ETIVB-instrument, may be (or should be) attributed to a specific cause (for example a mental disorder) or whether, on the other hand, it cannot be attributed to any cause (other than the triggering event). The latter scenario would be a true case of involuntary violent behaviour not attributed to a mental disorder (or the like).

Having presented the ETIVB-Instrument, the researcher has demonstrated how he applied the ETIVB-criteria to two study cases (see Chapter 10) and has reported his findings after having applied the ETIVB-Instrument to the study cases (see Chapter 11). Thereafter, in Chapter 12, the validity of the ETIVB-Instrument has been demonstrated as evidenced by content validity, construct validity, and face validity. Moreover, the validity of the ETIVB-Instrument has been supported by an adequate reliability that has been demonstrated in Chapter 13. That adequate reliability did however, not extend to all the study cases that have been used in Part 2. Thus, although substantial agreement has been found for *Campher* and *Sanders*, and (a satisfactory) moderate agreement has been found for *Gesualdo* and *Dhlamini*, the agreement for *Mahlinza* has been only (unsatisfactorily) fair.

The reasons for the unsatisfactory agreement have been examined in Chapter 13. In summary the reasons for there being at times unsatisfactory agreement have been that the ETIVB-Instrument deals with complex issues and might not always have been user-friendly. The ETIVB-instrument deals with complex issues for which study participants might not always have been adequately trained and some of the cases might have been too challenging. The way forward is about addressing these challenges.

The Way Forward

Despite the ETIVB-Instrument having adequate validity and reliability, there are issues that need to be refined before taking the ETIVB-Instrument further as a clinical tool. One such issue is that the ETIVB-construct deals with complex human behaviour (as can be inferred throughout this study, but especially so in Chapters 5, 6, and 14), which have implications for future refinement and use of the ETIVB-Instrument. Another issue is that the ETIVB-Instrument can (should) be refined to render it more user-friendly. Accordingly, at the end of this Chapter (see Addendum A to Chapter 14) a more user-friendly ETIVB-Instrument is presented. A further two issues are that the ETIVB-Instrument should be tested among a larger number of study participants and that the cases to which study participants apply the ETIVB-Instrument should contain all the relevant information that is needed for an assessment with the ETIVB-Instrument. Each of these issues will be considered below.

The ETIVB-Construct Deals with Complex Human Behaviour

The ETIVB-construct deals with complex human behaviour that has been challenging to clarify. In Chapters 4 through to 6 of this study ‘ETIVB’ has been clarified as follows: The construct, emotionally triggered involuntary violent behaviour, is ‘violent behaviour’ over which a person cannot exercise control and choice that results in physical injury and/or damage. The ‘violent behaviour’ is triggered by socio-culturally warranted severely to extremely distressing emotions that are evoked by a socio-culturally warranted severely to extremely distressing ‘triggering event’. The complexities contained in

clarifying 'ETIVB' have been shown in Chapters 4 to 6. Contained within these complexities are issues that will be considered next.

Challenges regarding 'ETIVB' that Needs Future Research

There are several challenges regarding 'ETIVB', which, if clarified in future, may contribute to refining the ETIVB-construct. They are: the relation between 'emotions', 'triggering event' and 'violent behaviour'; less distressing emotions or distressing emotions that are not culturally warranted as triggers for involuntary violent behaviour; less severely distressing events or distressing events that are not culturally sanctioned as triggers for involuntary violent behaviour; the relations between the multiple distressing incidents that may make up the 'triggering event'; the concept of involuntariness; involuntary behaviour that is not 'violent' as conceptualised in 'ETIVB'. These issues entail the following:

Consider the relation between 'emotions' and 'triggering event'. In 'ETIVB' 'emotions' follow the 'triggering event' so quickly that, for practical purposes, they are temporally inseparable (see Chapter 5 for the reasons). This claim is open to empirical, experimental scrutiny. So too (if not more so) the relationship between 'triggering event', 'emotions' and 'violent behaviour'. Here the latency period between 'triggering event' and 'violent behaviour' is specifically being referred to. A "freeze response" (tonic immobility) has been provided for in that latency period between 'triggering event' and 'violent behaviour' (for reasons, see Chapter 5). However, a "freeze response" has to the best of the author's knowledge only been demonstrated for fear related reactions, and not yet for other intensely distressing negative emotions (for example intense anger). Thus, research about a "freeze response" evoked by other intensely distressing negative emotions (other than fear) is needed.

Intensely negative emotions evoke the particular behaviour contained in the ETIVB-construct. In 'ETIVB' those intensely negative emotions must be socio-culturally warranted. Yet, what about involuntary violent behaviour (not attributed to a mental disorder or the like) that is triggered by an incident that is not socio-culturally warranted? That is open to clarification in future. Next, remaining with emotions, intensely negative emotions have been defined (in 'ETIVB') as being severely to extremely distressing emotions (for reasons see Chapter 5). Nevertheless, future studies may show that "severely to extremely" should rather be "extremely", or should be even broader, for example "moderately to extremely". This study (see Chapter 5) took intense negative emotions as emotions that have the possibility of triggering involuntary violent behaviour (not attributed to a mental disorder or the like), but nonetheless does not rule out that less intense negative emotions may also trigger involuntary violent behaviour (not attributed to a mental disorder or the like). Thus, this is an area that needs to be studied.

The intensely negative emotions in 'ETIVB' are triggered by a severely to extremely distressing overt (real life) incident that must be culturally sanctioned (for reasons see Chapter 5). But what about less distressing incidents as triggers for involuntary violent behaviour? What about events that are

severely to extremely distressing, but not culturally sanctioned? Those questions need to be considered by future studies. Finally, regarding the 'triggering event', is it possible to better clarify the relations between the individual distressing event forming a 'triggering event' (in cases where a 'triggering event' is formed by multiple distressing events, each of which contributes to form (as a whole) a severely to extremely distressing event)? For example, is there (on the one hand) evidence of a time limit between individual distressing events so that, if that time limit is exceeded, the individual distressing events cannot form a "whole" severely to extremely distressing event anymore? Is there evidence (on the other hand) that such a time limit does not exist? If research can clarify whether there are limits to the temporal relation between individual distressing events (and what they are) it will assist with the future refining of 'ETIVB' and concepts related to it.

In 'ETIVB' the already mentioned severely distressing triggering event evokes the already mentioned severely to extremely distressing emotions that elicit violent behaviour that is involuntary. 'Involuntary' in 'ETIVB' is defined (see Chapter 6) as an inability to exercise control and choice regarding 'violent behaviour'. As is evident in Chapter 6, this take on involuntariness is not new. Yet it takes and inability to exercise control and choice over behaviour as the core features of involuntariness, thereby looking at involuntariness from a different angle than other (previous) views, which emphasise other features (for example lack of awareness and/or lack of consciousness). For the purposes of 'ETIVB' this take on involuntariness has been suitable, but the last words about involuntariness have not been spoken.

While there is little (if any) lack of clarity about what 'violent behaviour' is in 'ETIVB' (see Chapter 5), not all harmful involuntary behaviour is necessarily 'violent' in the sense of having physical injury and/or damage as a consequence. This study did not touch on involuntary behaviour that may be triggered by negative emotions and that result in *emotional* harm. This is another potential growth point in future research.

Challenges about Formulating the ETIVB-Instrument that Needs Future Research

The challenges in formulating the ETIVB-Instrument are about those elements of the ETIVB-construct that are difficult to difficult-to-decide upon matters for example *severe to extreme emotional distress* that are *culturally warranted*, 'violent behaviour' following *very briefly* after the 'triggering event', 'violent behaviour' being of *brief* duration and being *relatively unsophisticated*. Challenges inherent to the use of the ETIVB-Instrument are about some issues being left entirely to the opinion of the evaluator, for example *severely to extremely* distressing trigger and emotions, *culturally warranted* distress, *relatively unsophisticated* behaviour. These challenges have already been identified in Chapters 7, but have been demonstrated in practice in Chapter 14 (the reliability study). They are briefly summarised here again, starting with the challenges in the formulation of the ETIVB-Instrument, followed by challenges inherent to its use.

In Chapter 7 it has been clarified that the 'violent behaviour' of 'ETIVB' must follow very briefly on the 'triggering event' and must be of brief duration. Very briefly (following the 'triggering event') has been defined as no more than 5 seconds and brief duration of 'violent behaviour' has been defined as no more than 10 seconds. The reasons for the time limits have been discussed in Chapter 7. In Chapter 7 it has been recognised that these time limits, although not completely arbitrary, are open to refinement – they may be too brief or too long. Yet, at this stage, they are the best time limits for latency and duration (see Chapter 4 and 7) of 'involuntary' ('violent behaviour') the researcher can propose. Nonetheless, future research may find evidence that calls for a modification of the duration limits of latency and duration in 'ETIVB'.

While it may yet be possible to define the latency and duration of 'violent behaviour' in 'ETIVB' in terms of a known measure, namely seconds, the same is not possible for the evaluation of *relatively unsophisticated behaviour*.

The next challenge due to the ETIVB-instrument dealing with complex human behaviour is about using the ETIVB-Instrument. That challenge relates to the reliability of the ETIVB-Instrument - almost perfect reliability across all the ETIVB-criteria is unlikely, although substantial reliability would not be an unreasonable aim. That is so because the ETIVB-Instrument evaluates complex human behaviour calling for opinions from those who apply the instrument. By completing the ETIVB-Instrument psychiatrists are asked to give opinions on issues like: Is the incident (or incidents) that triggered the 'violent behaviour' severely to extremely distressing? If the incident is severely to extremely distressing is it culturally warranted? Are the emotions of the agent severely to extremely distressing? If so is it culturally warranted? Is the violent behaviour relatively unsophisticated so that it seems involuntary? In the future better training may to some extent bring evaluators' opinions closer together, but it is a self-evidently true human experience that opinions may differ nonetheless. However, it is not only so that better training of evaluators are needed, but it is also important to choose study cases that are suitable. That is, cases providing sufficient information for the research – information which in a real life setting may or may not be available. During this study cases have been used that came from reported criminal law reports. The cases have not been reported in ways that are conducive to an evaluation by the ETIVB-Instrument, which made them difficult to assess (see Chapter 14). Thus, in future fictive cases may be considered, or, ethics allowing, suitable cases (observations in terms of sec 77 and 78 of the Criminal Procedure's Act, No. 51 of 1977) that are being assessed for criminal forensic psychiatric report. Such cases can then be assessed by using a refined version of the ETIVB-Instrument, which is the topic that will be addressed next.

The Refined ETIVB-Instrument

The next issue to consider is that the ETIVB-instrument should be made more user-friendly. Accordingly, the refinements proposed in Chapter 14 have been implemented and the text has been

refined where appropriate to make the intentions behind the criteria clearer. This resulted in a refined ETIVB-Instrument (see Addendum A to Chapter 14) that is at face value more user friendly.

As can be seen from the refined ETIVB-Instrument, one of the refinements has been to replace “candidate behaviour” throughout with “violent behaviour”, since it should result in less demands on an evaluator – that is, it is not needed to keep in mind what “candidate behaviour” means, because “violent behaviour” is upfront. The refinements, as is evident from the refined criteria, will now be described, starting with the A-criteria.

As proposed in Chapter 14, the A-criteria needed to be made more user-friendly. That has been done by unburdening participants from having to decide whether it is better to regard the ‘triggering event’ as being constituted by a single severely to distressing incident or by a series of distressing incidents. Note that the word, “event”, has been replaced by, “incident” to better distinguish it from ‘triggering event’. Furthermore the qualifiers, “severely to extremely” have been dropped when referring to the individual distressing incidents, since it is not so that each incident must be severely to extremely distressing, only whole ‘triggering event’ they constitute.

When it comes to the former G-criteria it has been decided that while they had been useful for this study, it is better to omit them, since they had only captured the A.3-criterion in inverse. That is that former G-criteria excluded covert distressing triggers. Nevertheless, the idea behind the former G-criteria lives on in the refined criteria, but now not as a criterion in its own right, but as an example of what kinds of triggering incidents to exclude.

To make the flow of the criteria more user-friendly, the refined ETIVB-Instrument addresses ‘emotions’ (the former D-criteria) next as the new B-criteria. The text is refined to make it more user-friendly and to be in line with the refinement to the A-criteria. As is the case with the former G-criteria, it is considered that the H-criteria (which simply capture what ‘emotions’ should not be) should be omitted. However, as is the case with the former G-criteria, the idea behind the H-criteria nevertheless lives on in the new B-criteria, not as a criterion in its own right, but as an example of which emotions to exclude.

The C-criteria (which are about violent behaviour) gave little problems to participants. They stay essentially the same except that the C.1-and C.2-criterion are amalgamated into a single C-criterion. Having identified the ‘violent’ of ‘violent behaviour’ brings us to the behaviour itself – behaviour that must be ‘involuntary’. This has been captured as inclusion criteria in the former B-criteria and E-criteria as well as exclusion criteria in the former F-criteria. In the refined ETIVB-criteria the B- and E-criteria are amalgamated into the new D-criteria. The text has been refined to make it clearer. The latency of the violent behaviour, the duration of the violent behaviour and requirement of relatively unsophisticated violent behaviour as captured in the former B-criteria remains unchanged. However, the researcher remains mindful that the 5 second latency period of the violent behaviour and the

duration of 10 seconds of the violent behaviour may be too long (less likely too short). Yet, there is no reason at this stage to deviate from the decisions taken (based on the reasons given) in Chapter 7.

The former F-criteria, which captured behaviour that excludes 'involuntary', become the E-criteria in the refined ETIVB-Instrument. As suggested in Chapter 14, former criteria F.1 – F.3 are captured as a single subcriterion, E (2), (with examples extracted from the criteria F.1 - F.3). Furthermore, the text has been refined to make it clearer. Former criterion F.4 becomes, "The person who performs the violent behaviour with an identifiable purpose for example to disable another person, to teach the other person a lesson, or to take revenge. Examples are injuring another person to disable him or her for some reason, continuing to injure another person beyond what is needed to disable him or her, or injuring another person in a clearly sadistic manner." Since this goes beyond what has been previously discussed in Chapter 7, the change will be clarified here. The refinement is made to give an evaluator a clearer idea of other purposes (not captured in the refined criterion D (1)) violent behaviour may have. It may be to disable another person. That may for example happen if someone wants to prevent another person from doing something (like attacking or fleeing). It may also be to take revenge (even in a sadistic manner) as probably occurred in *Lubbe.* In *Lubbe* there has been no reason for the accused to attack the victim (although there has been good reason for the accused to be extremely angry with the victim). Yet, the accused not only attacked the victim, but went on to attack him after the victim had apparently already been indisposed. The continuing attack has been evidenced by several severe injuries including a broken skull, brain injury, and several internal injuries to the neck of the deceased.

The refined ETIVB-criteria are concluded with an instruction to complete the Attributive Considerations of ETIVB if the requirements of the ETIVB-criteria are satisfied. Thus, the refined ETIVB-criteria do not conclude with criteria I.1 and I.2 (which in the previous ETIVB-Instrument let participants rate whether the requirements of 'ETIVB' are satisfied (or not). However, in retrospect (and even for research purposes) it does not seem that the I-criteria are really necessary. One can conclude that the requirements of the ETIVB-criteria are satisfied without adding more criteria – a logical operator suffices and have been added.

The refined Attributive Consideration of ETIVB is present Addendum B to Chapter 14: Refinement of Attributive Considerations of ETIVB**.** The refinement is uncomplicated and little needs to be clarified: option Y.1 is expanded to include all of options Y.2 – Y.5, rendering the document much more streamlined, without sacrificing any of the attributive considerations captured by options Y.2 – Y.5. In doing so, the options are reduced to a lean four options instead of the previous eight.

Testing the ETIVB-Instrument with a Larger Sample of Participants

The refined version of the ETIVB-Instrument should be tested with a larger sample of study participants. During this study 25 study participants have been used. All of the study participants have been working at the same academic hospital. Although the 25 study participants sufficed to indicate reliability, it is preferable to obtain a larger number of study participants from different academic hospitals to test the reliability of the ETIVB-Instrument in future. This will also function to support (or not support) the findings of the present study. The study may again start at Weskoppies Hospital by using the refined ETIVB-Instrument to ascertain the impact of the refinements.

Conclusion

In this chapter a number of growth points relevant to ‘ETIVB’ have been identified that may become matters for further development. Furthermore, in this chapter the ETIVB-Instrument has been refined and should in future be tested.

Addendum A to Chapter 14

The Refined ETIVB-Instrument

Emotionally triggered involuntary violent behaviour is violent behaviour during which a person is unable to choose or control his or her violent behaviour. That involuntary violent behaviour is triggered by culturally warranted severely to extremely distressing emotions that have been elicited by a socio-culturally warranted severely to extremely distressing overt (or real-life) triggering event. Thus, emotionally triggered involuntary violent behaviour is evidenced by all of the requirements of all of the following criteria being satisfied:		**Assessment Outcome**		
A	**The socio-culturally sanctioned overt (real-life) severely to extremely distressing triggering event may be constituted by a single severely to extremely distressing incident or by a series of related distressing incidents, one following the other closely in such a way that as a whole they formed a severely to extremely distressing event. To satisfy this requirement both of the following criteria (A.1 and A.2) must be met:** ***(NB: Establish the impact of the triggering event on emotions, not on behaviour.)*** 1) The distressing incident or incidents must be overt. That is, it must be an actual incident or incidents and not, for example, a memory, delusion, hallucination, illusion, or dream. 2) It must be thought that the incident or incidents that triggered the violent behaviour was/were severe enough to elicit the severe to extreme emotional distress that the agent experienced and that the degree of emotional distress is, (with all relevant information taken into consideration) congruent with the agent's socio-cultural context. **3)** Moreover, it must not be emotional distress that is considered as excessively severe to the distressing incident.	**Met**	**Not Met**	**Unsure**

B	**The triggering event (in criterion A) must elicit actual, severely to extremely distressing emotions that are (with all relevant information taken into consideration) congruent with the agent's socio-cultural context. The degree of the agent's emotional distress may be reported or inferred. The emotional distress must be severely to extremely intense, and not, for example, mild or moderate emotional distress (even if the triggering event is considered severely to extremely distressing). Moreover, the emotional distress following the triggering event (in criterion A) must not be considered to be an excessively emotional distressing reaction to the triggering event.**	**Met**	**Not Met**	**Unsure**
C	**Violent behaviour is evidenced by behaviour that is directed against another person or property resulting in actual physical injury or physical damage.**	**Met**	**Not Met**	**Unsure**
D	**For the violent behaviour (in Criterion C) to come into consideration for being regarded as involuntary, there must be indications that the person who performs the violent behaviour has an inability to choose or an inability to control the violent behaviour as indicated by all of the following being met:** ***(NB: When evaluating the violent behaviour consider only that behaviour which makes out the violent behaviour and not behaviour that includes planning or preparation to perform the violent behaviour.)*** 1) The violent behaviour must follow briefly after the triggering event (in criterion A). That is, the violent behaviour must occur within 5 seconds after the triggering event. The 5 second period starts after the last distressing incident that is considered to have triggered the violent behaviour and ends with the performance of the first violent deed, for example the first punch, stab, or shot. 2) The violent behaviour must be of brief duration. That is, the violent behaviour must last no longer than 10 seconds. The 10 second period starts at the first performance of violent behaviour, for example the first punch, stab, or shot. 3) The violent behaviour must be relatively unsophisticated. That is, the violent behaviour must require little skill and precision for the person performing the behaviour. Examples are a few punches, stabs with a knife, or shots with little or no regard for accuracy. **4)** If a weapon was used it must be immediately available so that no mental or physical effort (which would indicate choosing and controlling the behaviour to obtain the weapon) is needed to obtain it. For example, the object was already in the hand of the person performing the violent behaviour or it is within immediate reach.	**Met**	**Not Met**	**Unsure**

E	**There must be no indication that the person who performs the violent behaviour (in criterion D) has an ability to choose and control the candidate behaviour. *Thus, if any of the following is met, the possibility of involuntary violent behaviour is excluded*:** 1) The person who performs the violent behaviour takes measures to prepare for the execution of the violent behaviour, or makes a plan to execute the violent behaviour for example by ambushing another person; taking measures to prevent noise; opening a door or breaking down a door to get to the other person; pushing people out of the way to get to the other person; searching for and fetching a weapon; making an effort to obtain a weapon, like removing a knife stuck in it sheath; following a fleeing person; searching the other person. 2) The person who performs the violent behaviour does so with an identifiable purpose for example to disable another person, to teach the other person a lesson, or to take revenge. Examples are injuring another person to disable him or her for some reason, continuing to injure another person beyond what is needed to disable him or her, or injuring another person in a clearly sadistic manner **3)** The person who performs the violent behaviour spends a moment (even if very brief) to apply his or her mind before performing the violent behaviour. For example, he or she thinks about committing violent behaviour, considers the possible consequences of the violent behaviour, thinks about using a possible weapon, or waits for a more opportune moment to execute the violent behaviour.	**Met**	**Not Met**	**Unsure**

If all of criteria A, B, C and D are **met** and criterion E is **not met**, then the violent behaviour qualifies as ETIVB.

NB: If all the requirements for emotionally triggered involuntary violent behaviour are satisfied, continue by doing a further assessment to complete Attributive Considerations of ETIVB. If all the requirements for emotionally triggered involuntary violent behaviour are not satisfied, the evaluation ends here.

Addendum B to Chapter 14

The Refined Attributive Considerations of ETIVB.

Option	Attribution	Notes	Fully Attributed	Partially Attributed	Not Attr*	Uncertain
Y.1	ETIVB attributed to a mental disorder including those due to a general medical condition, induced by a substance, or caused by substance withdrawal	The diagnosis is made in accordance with accepted international criteria.				
Y.2	ETIVB attributed to the influence of a substance, but not to substance intoxication according to accepted criteria.	Evidence supports the ingestion of a substance, but not of intoxication (further evidence may be required).				
Y.3	ETIVB attributed to a general medical condition known to be excluded as a mental disorder for purposes of criminal law. Examples: hypoglycaemia, ictal or post ictal confusion, concussion etc.	Evidence support the presence of a general medical condition (further evidence may be required).				

Z.1	**Tick if ETIVB is Not Attributed to any of the above (Y.1-Y.7)**	

***** Not Attributed

Addendum C to Chapter 14

Précis of Study Cases for Part 2

EVENT DESCRIPTION OF SANDERS AND JACARANDA 94.2

This is not a court case. I shall refer to it as: "Sanders and Just Plain Breakfast Show". It can be viewed and heard at the following link:

> http://www.jacarandafm.com/kagiso/content/en/jacaranda/jacaranda-blogs-blogger-off?oid=409530&sn=Detail&pid=6085&Corrie-Sanders-knocks-John-out-cold-

I happened to have listened to this event "live" over the radio as this drama unfolded at the time.

On 23 October 2009, the team of the Just Plain Breakfast Show on Jacaranda 94.2 played a trick on a professional boxer, Mr. Corrie Sanders.

On the video one can see and hear radio personalities interviewing him. Mr. Sanders and a radio personality (Mr. John Walland) are standing next to each other. The impression while watching the start of the video is that it is all jokes and laughter and fun.

In the meanwhile another member of the team, Frankie, surreptitiously moves closer to Mr. Sanders with a live electric wire. Mr. Sanders does not see Frankie. Mr. Sanders is still standing next to Mr. John Walland and conversing with him and others. At one point he becomes worried about something and asked in Afrikaans, "What's going on here?" Since I also listened to the radio at the time when this event took place, I, the researcher, know that what he heard (but cannot be heard on the video clip) was a sound (which I can only describe as an "electronic" sound). This sound was used (as on previous occasions I also heard "live" over the Just Plain Breakfast Show) to indicate to radio listeners that the shock is about to be delivered. However, Mr. Sanders is pacified by a remark from another radio personality, Mr. Darren Scott, who says something to the effect that it is just a buzz in the equipment. Then suddenly and completely unexpectedly for Mr. Sanders, Frankie, who was lurking in the background, delivers the shock. Nearly immediately after the live wire touched him, Mr. Sanders, with an angry voice yells a three word profanity. One cannot clearly see the punch itself. One only sees Mr. Walland falling. Then, audibly upset, Mr. Sanders briefly yells again. Then Mr. Sanders says in Afrikaans something to the effect of, "This is just a lot of shit." He says that he is going to leave and then indeed leaves the studio.

It is not clear from the video exactly where the live wire touched Mr. Sanders, but I accept that it was to the neck, because, to quote from the web page:

> **"**Frankie caught Corrie by surprise when he shocked him in his neck. Corrie reacted by swinging at the closest person to him."

Later the Jacaranda 94.2 publicly apologized to him. Accepting the punch as "reflexive" and acknowledging that they were the culprits, not Mr. Sanders. The apology statement read as follows:

> "Jacaranda 94.2 would like to apologize to both John Walland and Corrie Sanders for this morning's incident during "The Shock Machine". The unprovoked, physical attack on John Walland this morning was due to an involuntary movement by Mr. Sanders that was expedited by the intensity of 'The Shock Machine' mechanism."

For the purposes of this case, accept that it is not correct to say that the swing of the fist was the result of involuntary muscle spasm caused by electricity.

PRÉCIS OF R v DHLAMINI 1955 (1) SA 120 (T)

The accused in this case was charged with the murder of Amos Skosana on or about 13 June 1954 at or near Pongola, in the district of Piet Retief.

Only one person was a witness for the Crown (that is, for the prosecution). He testified that he was in a room, which is occupied by about 15 other men. Each of them used to sleep on a mat on the floor. At the time of the alleged crime, there were 6 men in the room. This included the accused and the deceased, a 15 year old boy. The Crown witness said that the accused sat "still and silent, taking no notice of anyone or of anything, as if (as I understand the evidence) he were profoundly recollected." He said that when another man made a remark about the accused, the accused made no reaction. This witness said that the accused sat hunched up, with his knees drawn up and his eyes open. However, the judge doubted that the witness could have seen that the accused's eyes were open both because of the dark and because it is such a trifle. Furthermore, the Court later came to the conclusion that the Court had to assume that the accused was lying down, not sitting up.

The deceased went to where the accused was lying. There the deceased stooped to pick up a mat. "At that moment the accused lunged at him three times with a knife, inflicting three wounds on him, one of which was fatal." Thereafter the accused "rushed out of the room and disappeared." The Crown witness conceded that there was "no reason whatsoever" for the accused to have killed the deceased. The judge noted that there was no "bad blood between them, and that there had been "no relationship which could have caused the accused to wish to injure or to kill the deceased." The judge also noted: "Furthermore, according to the only evidence on record on the point, the accused was on good terms with the father of the deceased."
The accused said he was lying down (not sitting up). The accused said that he had a vague recollection of having seen faces looking at him through a window, that he dreamed that he was being assaulted by a number of people, and that he was defending himself. According to the judge, "He seemed to have a vague, confused impression of what he was trying to describe. His vague uncertainty struck us as being genuine and not assumed."

The court came to the conclusion that the accused had half-awakened out of a nightmare at the time of the alleged crime.

PRÉCIS OF S v MAHLINZA 1967 (1) SA 408 (A)

This is a summary of how the events relevant to the alleged crimes appeared to the Court of Law.

During the night of the 13th to the 14th of August 1965 the accused left her hut. She took her (about) 6-months old baby and two other young children with her. She went to her parents' hut, which was nearby. Her husband was sleeping in another hut with another wife. He learned of this and went to see her. She told him that she had a dream and "wanted him to slaughter a beast." "She appeared to be upset but he managed to pacify her and take her back to her hut."

At some time in the early morning hours she ran outside her hut, "apparently talking nonsense." She then went back to her hut and went into an adjoining room, which was used as a kitchen. There was a basin which was used as a stove. The accused poured some paraffin over firewood in this basin. Then she set the wood on fire. Immediately thereafter and before the flames had died down she removed her petticoat and placed it in the fire. The accused then placed the baby and her daughter of about six years in the fire. Her daughter managed to escape and she crept under a bed. Next the accused then took the other child and placed him in the fire, but he too managed to escape.

The daughter who had crept under the bed looked out to see what was going on. Again the accused placed her in the fire. She managed to escape again. "The accused stood at the door of the kitchen to prevent the children from running away. "

In the end the baby died, but the other two children sustained burns from which they recovered.

The neighbours eventually found the accused lying naked on the floor, clutching her daughter to her. According to those who found her she appeared mentally ill. She said a lot of things that could not be understood and appeared to be "talking nonsense."

It was noted that the accused was a "devoted mother and very fond of her children." She appears to have had a grievance against her husband, because she was "suffering badly from syphilis and he made no arrangements to have her medically treated."

A medical doctor, who examined her a few hours later on the 14th, testified, "She was laughing and generally was very rowdy. Her mood and behaviour was out of line with the injuries sustained by her children. She could not give an account of herself or of her behaviour; she was disorientated and she had no insight into her condition." He recommended that the accused be detained for two weeks observation.

The psychiatrist said that the accused could not remember the events related to the alleged crimes. He explained it as an hysterical amnesia. His conclusion was, "I am satisfied from my observation of the accused and from examination of the record of evidence that the accused was mentally disordered at the time of the crime . . ." The accused's mental state displayed disorganized behaviour and speech. According to the notes in the verdict, three days after the incident there was no indication of mental illness and neither was there a history of mental illness. The psychiatrist's diagnosis was, "hysterical dissociation."

Note to participants: There were actually three charges against the accused: one of murder (of the baby) and two of attempted murder. ***Apply the ETIVB criteria only to the murder charge*** (that is, the murder of the baby). You may make use of the events around the other two charges to help you form a complete picture of what was going on.

PRÉCIS OF S v GESUALDO 1997 (2) SACR 68 (W)

The accused in this case was charge with the murder of Hugo Fernandez (hereafter the deceased) on 25 September 1994. When the accused was asked whether he intended to kill the deceased, he answered, "I really do not know what was going on at that time."

Both the accused and deceased were Spanish speaking Argentinean immigrants who came to South Africa "in search of a better life." They met and became "friends of sorts". "The accused's evidence in this regard appeared somewhat contradictory. From the very start, he had reason to dislike and distrust the deceased, and he testified that the relationship had its ups and downs."

The accused left his wife and four children for whom he "cared deeply". It was "central to his happiness" to establish himself in South Africa, to eventual transport to and support them in South Africa. The employment and income he had did not suffice for this goal.

According to the evidence the deceased was a dynamic person with "many ideas for making large sums of money and, according to himself at least, possessed large sums of money or contacts from which they could be obtained." The accused came up with a slipper manufacturing venture. The accused developed a sample from which they could work. The accused spent time and money on developing the project. There was no written agreement between the accused and deceased, but the deceased "expected them to be equal partners."

There were many causes for dissent and conflict between the accused and deceased. One of them included the deceased "pestering the accused" to assassinate one of his enemies. However, the biggest problem was "the deceased's clear determination to cut the accused out of the slipper project." "The deceased registered what was referred to as a patent for the slippers in his own name and, when confronted by the accused, retorted that the accused did not have funds to pay for the registration and had thus been excluded from it. This happened despite the fact that the accused had already invested "considerable funds of his own in the development of the project." The clearest indication came some two weeks before the shooting, when the deceased had "exploded" at his house, had ejected the accused and had told him the he was "now out of the business completely."

"As the business relationship between the two deteriorated, so too did the accused's composure and mental state." This was inferred from: many arguments about the "so-called patent" and the role of a Mrs Traversi in the project; the fact that the accused had made a "public scene" at a chess tournament where he had wanted to talk to the deceased; "stormy arguments" over the telephone, which included "vulgar swearing" by the deceased at the accused. The deceased had also threatened the accused, who had consulted the police about it. There had also been two letters from attorneys of the deceased to the accused.

About two days before the shooting there was a "scene" at the Café Wien. "During this conversation the accused became very angry. He told Mr Molino that he was going to go to the deceased's factory the following day to speak to the deceased, and that whatever happened, Mr Molina should not get involved. Mr Molina had been aware of the accused's mounting anger and possible irrational or violent acts, because he told him "not to become violent or he would be compelled to call the police." Mr Molina also formed an impression that "the accused's anger had been building up progressively as a result of the deceased's behaviour and the position in which the accused found himself."

On the Monday before the shooting the deceased visited the accused at tried to get the latter to make a silencer for him to kill his enemy (mentioned earlier). The accused refused. Then the deceased threatened him with a gun and silencer he had brought with him. The accused agreed "in order to be rid of him." The deceased then left.

According to expert evidence, in this period the mental state of the accused was "bordered or "deranged".

The accused testified that he had been so unnerved by the events on Monday that he slept over at a friend's house. From this point on, his recollections were vague. He said that on the Tuesday morning when the shooting took place, the accused drove around aimlessly for hours before arriving at work. At that stage he had his own licensed fire-arm with him, since he had taken it with him when he left his house to sleep over at the friend's house. He said that he remembered nothing about what he had done after having arrived at work, except that he had managed to break a machine. He also remembered a loud noise similar to an explosion. From that point on the accused remembers nothing until his arrest several hours after the shooting. What is known is that he left his work at about 08:21 "on the pretext of having a doctor's appointment." He did not have such an appointment. Neither did he go to his doctor. He went to the deceased's factory.

According to Mr Molina testimony, between 08:00 and 09:00 in the morning, the accused entered the deceased's premises with a packet in his hand. The accused slowly approached the deceased and Mr Molina. While approaching them the accused took a firearm out of the packet. He pointed it towards the deceased. The deceased said something to the effect, "Are you going to kill me?" The words had no effect on the accused, who continued to move slowly forwards, still pointing the firearm at the deceased. Then the deceased said in an "arrogant" and "challenging" way, "Then shoot me."

According to Mr Molina the accused seemed "totally out of his mind'. According to Mr Molina the accused was "very angry, not in control of himself but, as he put it, in a quiet way." This impression had been formed by the "way he [the deceased] walked and the fact that his eyes appeared fixed." According to Mr Molina the deceased's words "drove it to the edge." At that point the accused fired one or two shots at the deceased, who fell to the floor on his back. Then "the accused approached still closer and at very close range (less than half a metre) fired three more shots into the deceased's chest as he lay on the floor." The accused then turned the firearm on Mr Molina. The latter cringed away and when he looked back at the accused, he saw the accused running away.

The accused was arrested several hours later while walking in the vicinity where he had been living. According to the policeman who had arrested the accused, the accused had seemed surprised and had not comprehended why he was being arrested. This continued during the interrogation. When they tried to make him understand that he had killed a man he cried and told the policeman that the policeman should kill him too.

No mental illness was found during a period of forensic psychiatric observation. The accused was considered emotionally overwrought at the time of the shooting.

PRÉCIS OF S v CAMPHER 1987 (1) SA 940 (A)

The appellant was the wife of the deceased. They got married in July 1983. The appellant shot and killed the deceased in May 1984.

According to the appellant the marriage was an unhappy one from the start. She said that the deceased had not only considered him the head of the household, but as her master. She described him as someone who could become very angry, and as someone who could not control his temper. She said that he had physically assaulted her and derided her faith. She said that he did not tolerate arguments from her.

The appellant had custody of three children from her previous marriage. The appellant said that the deceased had derided them, sworn at them, and considered them a nuisance. She said that things had gone so badly that at one stage the children had gone to stay with their biological father. However, at the time of the shooting incident, the appellant's children were again living with her and the deceased.

The appellant said that the deceased had feared spirits. She said that she sometimes had had to sit awake until the deceased had fallen asleep, because of his fear of spirits. She said that she had had to protect him against spirits.

The appellant said that by December 1983 she had initiated a divorce. She said that she had left the deceased, but that she had returned due to a combination of the deceased's request for her to do so and the intervention of his mother. She said that the deceased had made a written undertaking never to hit her again. She said however, that the assaults had not stopped after she had returned.

The appellant said that the deceased had feared that a war will break out and for that reason there had been weapons and ammunition in the house. She said that the deceased had left one of his hand guns in her care. She kept it next to her bed in a bed cabinet and that gun was loaded for such was the deceased's instruction. She described how the deceased had trained her on how to use the hand gun.

The appellant said that the deceased had had a passion for pigeons and pigeon racing. She said the deceased had instructed her to help him with the pigeons and keeping the aviary for the pigeons clean under all sorts of conditions, which she experienced as unpleasant.

According to the appellant, about a month before the shooting incident, the deceased had stopped working. She said that he had then forbidden her to work, to which she complied.

The appellant said that she had slept poorly the night before the deceased was shot, because she had had to stay up again to protect him from spirits. According to her the deceased was in a terrible mood the morning of the day of the alleged crime: he swore at her children and accused them of things, for which she considered the deceased had been responsible himself. She said her daughter had gone to school in tears.
The appellant herself said that she had felt very tired due to lack of sleep. She said she had felt physically and mentally down and as if she could not completely register things. She described how the deceased had told her to do some house-hold chores, with which she complied, but it had felt to her as if a storm had been brewing inside her. She felt she was

going to give in, that to him she was just a skivvy, and that he trampled her as he pleased. Then, he told her that she and her children must get out of the house. She said that this had been something she mentally could not process at all.
According to the report by Viljoen JA, following the foregoing events, the deceased went to the aviary. The deceased shouted that the appellant must come and help him and she complied. He was busy putting a lock on one of the doors of the aviary. He used an electric drill in the process. The deceased told the appellant to hold the lock while he was drilling a hole through an aperture in the lock into the door. She had to lie in a difficult position in order to both press with her body against the door and to keep the lock steady. She had failed to manage doing so and consequently the deceased drilled the hole skew.

According to the report by Viljoen JA, the deceased started yelling at the appellant. He said that she had "fucked up" his life. She was upset and started crying. The deceased grabbed a screwdriver and threatened to stab her with it. She doubted that he would, but, after standing there a little while, thought it would be better to get out of the aviary. She then ran home and wanted to lock the backdoor so that he could not get in, but he followed her too quickly and she was prevented from doing so. According to the appellant, while she had been standing in the aviary and before running away, she had felt that something had been happening inside her, that she could not think anymore, and that she must escape, because she had felt cornered; she had felt hemmed in.

According to the report by Viljoen JA, the appellant ran to her room and upon seeing that he had the screwdriver she took the gun from the bed-cabinet. She thought it would frighten the deceased, but it did not scare him off. He was too angry. She said that she did not want to kill him. She could not remember how she held the gun. She was too scared. Nothing mattered to her anymore. She was scared that he would physically assault her. She said that he stabbed at her, but could not say whether he struck her or not. All she remembered was her praying for help.
Further, while still holding the loaded and cocked gun (as it always was) in her hand, the deceased physically forced her back to the aviary. At the aviary he dragged her inside behind him. Inside the aviary he yelled at her, "You little bitch, now you are going to pray this little hole straight." She was forced onto her knees in the aviary. All she knew is that he had been in front of her.

The appellant said that she had stood on her knees. She was crying and knew it was a crisis time in her life. Emotionally she felt down and that she was going down, as if she was entering a deep, dark pit. She felt as if she could pass out, and that being a child of God, she had failed there. She felt that she could not pray the hole straight and that his instruction to do so was inhuman. She said that at that stage nothing had mattered to her anymore.

In the case report one finds that before the shooting took place, the appellant had experienced the deceased to be like a monster in front of her. It felt as if someone had been busy choking her throat. All the humiliations she had suffered went through her mind. She said that at that stage the deceased had not been like a human being for her anymore, but a monster instead. For her, he was a mere thing that was busy denigrating her. She thought she had to destroy the thing that was busy breaking her down emotionally. She said she could not think clearly anymore. She said that she could not think rationally anymore. She felt she had to destroy him, but did not think of shooting him. When she was asked in Court how she had thought to destroy him, she answered that she did not know.

She said that she could not remember shooting the deceased or in which position he had been standing at that time. She could only remember that he had been in front of her. Furthermore she said that when she had left the aviary she had known that she had shot him. At another occasion she told a police officer that she remembered pulling the trigger and that a shot had gone off.
The appellant said that thereafter she had gone to the kitchen, feeling ice cold. She said the full reality had hit her there: that she had shot him. She then went to seek help from a neighbour.

The rendition of events as it had been given by the appellant was accepted by the Court.

The court accepted that the distance between the appellant and the deceased at the time when the shot went off, was less than 20 cm. It was also accepted that the bullet had entered the deceased's body in the middle of his back on the right side and that the bullet had travelled upwards to the left. The cause of death was a gunshot wound extending from the back through the heart. The doctor who had performed the post mortem conceded that these findings fitted well with the rendition of the appellant by which she had been on her knees or rising from her knees when the shot had gone off.

References

1. Louw R. Principles of criminal law: pathological and non-pathological criminal incapacity. In: Kaliski S, editor. Psycholegal assessment in South Africa. Cape Town: Oxford University Press; 2006. p.34-57.
2. S v Eadie 2002 (3) SA 719 (SCA).
3. Briscoe O, Carson D, D'Orban P, Grubin D, Gunn J, Mullen P, et al. The law, adult mental disorder, and the psychiatrist in England and Wales. In: Gunn J, Taylor PJ, editors. Forensic psychiatry clinical, legal and ethical issues. Oxford: Butterworths Heineman; 1993. p.21-117.
4 Yeo S. Clarifying automatism. Int J Law Psychiatry. 2002;25:445–8.
5. Samuels A, O'Driscoll C, Allnutt. When killing isn't murder: psychiatric and psychological defences to murder when the insanity defence is not applicable. Australas Psychiatry. 2007;15(6):474-9.
6. Wells H, Wilson P. R v Leonboyer*:* the role of expert witnesses in psychological blow automatism cases. Psychiatry Psychol Law. 2004;9:167-73.
7. Bourget D, Whitehurst L. Amnesia and crime. J Am Acad Psychiatry Law. 2007;35:469–80.
8. Livingston JD, Verdun-Jones SN. Sidebar psychology: discussing and challenging the defence of psychological-blow automatism. Crim Law Q. 2002-2003;47:79-110.
9. R v Stone, [1999] 2 S.C.R. 290. [Internet]. Judgments of the Supreme Court of Canada.[cited 2012 Mar 14]. Available from: http://scc.lexum.org/en/1999/1999scr2-290/1999scr2-290.html
10. Spitzer C, Barnow S, Freyberger HJ, Grabe HJ. Recent developments in the theory of dissociation. World Psychiatry. 2006;5:82-6.
11. Van der Hart O, Dorahy MJ. The conceptual unity of dissociation: a philosophical argument. In: Dell PF, O'Neil JA, editors. Dissociation and the dissociative disorders. DSM-V and beyond. New York (NY): Routledge Taylor & Francis; 2009. p.27-52.
12. American Psychiatric Association. Diagnostic and statistical manual of mental disorders. 5th ed. Arlington, VA: American Psychiatric Association; 2013.
13. World Health Organisation. The ICD-10 classification of mental and behavioural disorders. Clinical descriptions and diagnostic guidelines. Geneva: World Health Organization; 1992.
14. American Psychiatric Association. Diagnostic and statistical manual of mental disorders. Text revision. 4th ed. Washington DC: American Psychiatric Association; 2000.
15. Snyman CR. Criminal law. 4th ed. Durban: LexisNexis Butterworths; 2002.
16. Kalisky S. The criminal defendant. In: Kalisky S, editor. Psycholegal assessment in South Africa. Oxford: Oxford University Press; 2006. p.93-112.
17. S v Pederson 1998 (2) SACR 383 (N).
18. Fenwick P. Automatism. In: Bluglass P, Bowden P, editors. Principles and practice of forensic psychiatry. Edinburgh: Churchill Livingstone; 1990. p.271–85.
19. Arboleda-Flórez J. On automatism. Curr Opin Psychiatry. 2002;15:569-76.

20. Simon RI. Clinical-legal issues in psychiatry. In:. Sadock BJ, Sadock VA, editors. Kaplan & Sadofck's comprehensive textbook of psychiatry. 8th ed. Philadelphia: Lippincott Williams & Wilkins; 2005. p.3969-87.

21. Sadock BJ. Signs and symptoms in psychiatry. In: Sadock BJ, Sadock VA, Ruiz P, editors. Sadock BJ, Sadock VA, Ruiz P, editors. Kaplan & Sadock's comprehensive textbook of psychiatry.9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.918-29.

22. Kalisky S, editor. Psycholegal Assessment in South Africa. Oxford: Oxford University Press; 2006. p. 93-112.

23. Moore DP. Textbook of clinical neuropsychiatry.2nd ed. London: Hodder Arnold; 2008.

24. R v Charlson, [1955] 1 All E.R. 859.

25. R v K Ontario High Court of Justice [Internet]. In: R. v. Stone, [1999] 2 S.C.R. 290. Judgments of the Supreme Court of Canada. [accessed 2012 Mar 14]. Available from: http://scc.lexum.org/en/1999/1999scr2-290/1999scr2-290.html

26. Austin JL. Austin JL. A plea for excuses. Proc Aristotelian Soc. New Ser. 1956/57;57:1-30

27. Martin G, Pear J. Behavior modification: what it is and how to do It. 7th ed. New Jersey: Prentice Hall; 2003.

28. Bijou SW, Peterson RF, Ault MH. A method to integrate descriptive and experimental field studies at the level of data and empirical concepts. J Appl Behav Anal. 1968;1:175-91.

29. Allen RE, editor. The Concise Oxford dictionary of current English. 8th ed. Oxford: Clarendon Press; 1990.

30. Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009.

31. Fitzgerald PJ. Voluntary and involuntary acts. In: White AR, editor. The philosophy of action. Oxford: Oxford University Press; 1968. p.120-43.

32. SAFLLI. Southern African Legal Information Institute. [Internet]. Supreme Court of Appeal. S v Abrahams (32/92) [1993] ZASCA 127 1993 Sep 2.0 [SAFLLI. Southern African Legal Information Institute. [Internet]. [accessed 2012 Mar 14].Available from: http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZASCA/1993/127.html&query=s%20v%20abrahams

33. Fleiss JL. Measuring nominal scale agreement among many raters. Psychol Bull. 1971;76(5):378-82.

34. Cohen JA. Coefficient of agreement for nominal scales. Educ Psychol Meas. I960;20:37-46.

35. Feinstein AR, Cicchetti DV. High agreement but low kappa: I. The problems of two paradoxes. J Clin Epidemiol. 1990;43(6):543-9.

36. Uebersax J. The myth of chance-corrected agreement. [accessed 2014 July 27] Available from: http://www.john-uebersax.com/stat/kappa2.htm

37. Goodman LA, Kruskal WH. Measures of association for cross classifications. J Am Stat Assoc. 1954;49(268):732-64.

38. Merriam-Webster Dictionary. [Internet]. Behavior. [accessed 2012 Mar 15] Available from: http://www.merriam-webster.com/dictionary/behavior 2012

39. Mondofacto Medical Dictionary. [Internet]. Violent. Newcastle upon Tyne; Mondofacto; 2010. [accessed 2012 Mar 15]. Available from: http://www.mondofacto.com/facts/dictionary?query=violent&action=look+it+up

40. Merriam-Webster Dictionary. [Internet]. Violent. [accessed 2012 Mar 15] Available from:

http://www.merriam-webster.com/dictionary/violent

41. Lewis DO. Adult antisocial behaviour, criminality, and violence. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.2490-2505.

42. Chambliss RB, McLeer SV. Relational Problems. In Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.2465-2478.

43. Valliant GE, Valliant CO. Normality and mental health. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.691-706.

44. Drevets WC, Charney, DS, Rauch SL. Neuroimaging and the neuroanatomical circuits implicated in anxiety, fear, and stress-induced circuitry disorders. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.1881-98.

45. Pine DS. Anxiety disorders: introduction and overview. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p. 1839-44.

46. Peterson C, Park N. Positive psychology. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p. 2939-52.

47. Dimsdale JE, Irwin MR, Keefe FJ, Stein MB. Stress and psychiatry. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009.

48. Connor DF. Disruptive behavior disorders. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009.p.3580-96.

49. Lazarus R. Appraisal: the long and the short of it. In: Ekman P, Davidson RJ, editors. The dature of emotion fundamental questions. New York: Oxford University Press; 1994. p.208-15.

50. Carretié, Mercadoa F, Tapiaa M, Hinojosa JA. Emotion, attention, and the 'negativity bias', studied through event-related potentials. Int J Psychophysiol. 2001;41:75-85.

51. Fischler I, Bradley M. Event-related potential studies of language and emotion: words, phrases, and task effects. Prof Brain Res. 2006;156:185-203.

52. Scott GG, O'Donnell PJ, Leuthold H, Sereno SC. Early emotion word processing: evidence from event-related potentials. Biol Psychol. 2009;80:95–104.

53. Spreckelmeyer KN, Kutas M, Urbach T, Altenmüller E, Münt TF. Neural processing of vocal emotion and identity. Brain Cogn. 2009;69:121–6.

54. Wang JQ, Nicola,T, Skoea,E, Sams M, Kraus N. Emotion and the auditory brainstem response to speech. Neurosci Lett. 2010;469:319–23.

55. Stewart JL, Silton RL, Sass SM, Fisher JE, Edgar JC, Heller W, et al. Attentional bias to negative emotion as a function of approach and withdrawal anger styles: An ERP investigation. Int J Psychophysiol. 2010;76:9–18.

56. Chai H, Chen W, Zhu J, Xu Y, Lou L, Yang T, et al. Processing of facial expressions of emotions in healthy volunteers: an exploration with event-related potentials and personality traits. Neurophysiol Clin. 2012 Dec;42(6):369-75.

57. Yuan J, Menga X, Yang J, Yao G, Hu L, Yuan H. The valence strength of unpleasant emotion modulates brain processing of behavioral inhibitory control: neural correlates. Biol Psychol. 2012;89:240–51.

58. Savitz JB, Drevetz W. Brain circuits an major depressive disorder and bipolar disorder. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.1675-86.

59. Akiskal HS. Mood Disorders: historical introduction and conceptual overview. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.1629-45.

60. Mendez MF. Neuropsychiatric Aspects of Epilepsy. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.451-63.

61. Abrams MP, Carleton RN, Taylor S, Gordon, Asmundson GJF. Human tonic immobility: measurement and correlates. Depress Anxiety. 2009;26:550–6.

62. Leach J. Why people 'freeze' in an emergency: temporal and cognitive constraints on survival responses. Aviat Space Environ Med. 2004;75:539–42.

63. Nijenhuis ERS. Somatoform dissociation phenomena; measurement and theoretical issues. New York (NY): WW Norton; 2004.

64. Rizvi SL, Kaysen D, Gutner CA, Griffin MG, Resick PA. Beyond fear. The role of peritraumatic responses in posttraumatic stress and depressive symptoms among female crime victims. J Interpers Violence. 2008;23(6):853-68.

65. Roelofs K, Hagenaars MA, Stins J. Facing freeze: social threat induces bodily freeze in humans. Psychol Sci. 2010;21:1575–81.

66. Volchan E, Souza GG, Franklin CM, Norte CE, Rocha-Rego V, Oliveira JM, et al. Is there tonic immobility in humans? Biological evidence from victims of traumatic stress. Biol Psychol. 2011;88:13-9.

67. Cyders MA, Smith GT. Emotion-based dispositions to rash action: positive and negative urgency. Psychol Bull. 2008;134:807–828.

68. Ramírez JM, Andreu JM. Aggression, and some related psychological constructs (anger, hostility, and impulsivity). Some comments from a research project. Neurosci Biobehav Rev. 2006; 30:276–91.

69. Luiz-Fernándes R, Guarnaccia PJ, Ruiz P. Culture-bound syndromes. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.2519-38.

70. Simeon D, Loewenstein R. Dissociative disorders. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.1965-2026.

71. Meyer BJ, Van Papendorp DH, Meij HS, Viljoen M. Human physiology: chemical, physical and physiological principles. 3rd ed. Landsdown: Juta;. 2002.

72. Novaco RW, Jarvis KL. Brief cognitive behavioral intervention for anger. In: Bond FW, Dryden W, editors. Handbook of brief cognitive behaviour therapy. New York (NY): Wiley; 2002. p.77-100.

73. Frijda NH. Emotions are functional, most of the time. In: Ekman P, Davidson R, editors. The nature of emotion: fundamental questions. Oxford: Oxford University Press; 1994. p.112-22.

74. McNiel DE, Eisner, JP, Binder, RL The relationship between command hallucinations and violence. Psychiatric Serv. 2000;51:1288–92.

75. Rudnick A. Relation between command hallucinations and dangerous behavior. J Am Acad Psychiatry Law. 1999;27:253–7.

76. Shawyer F, Mackinnon A, Farhall J, Trauer T, Copolov D. Command hallucinations and violence: implications for detention and treatment. Psychiatry Psychol Law. 2003;10:97-110.

77. James DV, Mullen PE, Pathe MT, Meloy JR, Farnham FR, Preston L, et al. Attacks on the British royal family: the role of psychotic illness. J Am Acad Psychiatry Law.2008;36:59–67.

78. Laajasalo T, Häkkänen H. Excessive violence and psychotic symptomatology among homicide offenders with schizophrenia. Crim Behav Mental Health. 2006;16(4):242–53.

79. Nielssen OB, Westmore BD, Large MMB, Hayes RA. Homicide during psychotic illness in New South Wales between 1993 and 2002. Med J Aust. 2007;186:301–4.

80. Krieglmeyer R, Wittstadt D, Strack F. How attribution influences aggression: answers to an old question by using an implicit measure of anger. Neurosci Biobehav Rev. 2009;45:379–85.

81. Warwick R, Williams PL. Grays' Anatomy. 35th ed. Norwich: Longman; 1973.

82. Mellers JDC. Epilepsy. In: David AS, Fleminger S, Kopelman MD, Lovestone S, Mellers JDS, editors. Lishman's organic psychiatry: a textbook of neuropsychiatry.4th ed. Oxford: Wiley-Blackwell. 2009. p.309-95.

83. Sumer MM, Atik L, Unal A, Emre U, Atasoy HT. Frontal lobe epilepsy presented as ictal aggression. Neurol Sci. 2007;28:48–51.

84. Gerard ME, Spitz MC, Towbin JA, Shantz D. Subacute postictal aggression. Neurology. 1998;50:384–88.

85. Ito M, Okazaki M, Takahashi M, Muramatus R, Kato M, Onuma M. Subacute postictal aggression in patients with epilepsy. Epilepsy Behav. 2007;10:611–14.

86. Marsh L, Krauss GL. Aggression and violence in patients with epilepsy. Epilepsy Behav. 2000;1:160–8.

87. Pietrini P, Bambini V. Homo ferox: The contribution of functional brain studies to understanding the neural bases of aggressive and criminal behaviour. Int J Law Psychiatry. 2009;32:259-65.

88. Penney S. Impulse control and criminal responsibility: lessons from neuroscience. Int J Law Psychiatry. 2012;35:99–103.

89. Victoroff J. Aggression, science, and law: the origins framework. Int J Law Psychiatry. 2009;32:189–97.

90. Siegel A, Victoroff J. Understanding human aggression: new insights from neuroscience. Int J Law Psychiatry. 2009;32:209-15.

91. S v Potgieter 1994 (1) SACR 61 (A)

92. Gould PE. 15 San Diego L. Rev. 1978; 15(4):839-858.

93. Porter S, Birt AR, Yuille JC, Hervé HF. Memory for murder. A psychological perspective on dissociative amnesia in legal contexts. Int J Law Psychiatry. 2001;24:23-42.

94. Pyszora N, Jaldow E, Kopelman M. Amnesia. In: Young S, Kopelman M, Gudjonsson, editors. Forensic neuropsychology in practice. A guide to assessment and legal processes. Oxford; Oxford University Press; 2009. p. 135-63.

95. D'Orbán P, Gunn J, Holland A, Kopelman MD, Robertson G, Taylor PJ. Organic disorders, mental handicap and offending. In: Gunn J, Taylor PJ, editors. Forensic psychiatry clinical legal and ethical issues. Oxford: Butterworth Heineman; 1993. p.286-328.

96. Dåderman AM, Fredriksson B, Kristiansson M, Nilsson L-H, Lidberg L. Violent behavior, impulsive decision-making, and anterograde amnesia while intoxicated with flunitrazepam and alcohol or other drugs: a case study in forensic psychiatric patients. J Am Acad Psychiatry Law. 2002;30:238-51.

97. Cima M, Nijman H, Merckelbach H, Kremer K, Hollnack S. Claims of crime-related amnesia in forensic patients. Int J Law Psychiatry. 2004;27:215-21.

98. Brown P, Van der Hart O, Graafland M. Trauma-induced dissociative amnesia in World War I combat soldiers. II. Treatment dimensions. Aust NZ J Psychiatry. 1999; 33:392–8.

99. Teicher MH, Andersen SL, Navalta CP, Tomoda A, Polcari A, Kim D. Neuropsychiatric disorders of childhood and adolescence. In: Yudofsky SC, Hales RE, editors. The American Psychiatric Publishing textbook of neuropsychiatry and behavioural sciences. 5th ed. Washington DC: American Psychiatric Publishing; 2008. p.1045-1111.

100. Jummani R, Coffey BJ. Tic disorders. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.3609-3623.

101. Banerjee PN, Filippi D, Hauser AW. The descriptive epidemiology of epilepsy-a review. Epilepsy Res. 2009; 85:31-45.

102. Forsgren L, Beghi, Oun A, Sillanpää M.The epidemiology of epilepsy in Europe – a systematic review. Eur J Neurol. 2005; 12:245–53.

103. Victoroff JV. Human Aggression. In: Sadock BJ, Sadock VA, Ruiz P. editors. Kaplan & Sadock's comprehensive textbook of psychiatry. 9th ed. Philadelphia: Wolters Kluwer Lippincott Williams & Wilkens; 2009. p.2671-703.

104. R v Mkize 1959 (2) SA 260 (N).

105. Treiman DM. Violence and the epilepsy defense. Neurol Clin. 1999; 17(2):245-55.

106. Leung LS, McClachlan RS. Behaviors induced or disrupted by complex partial seizures. Neurosci Biobehav Rev. 2000;24:63–75.

107. McCrory P. Medicolegal aspects of automatism in mild head injury. Br J Sports Med. 2001;35:288–96.

108. Beaumont G. Automatism and hypoglycaemia. J Forensic Leg Med. 2007;14:103–7.

109. Fazel S, Phillipson J, Gardiner J. Neurological disorders and violence: a systematic review and meta-analysis with a focus on epilepsy and traumatic brain injury. J Neurol. 2009; 256:1591–602.

110. Fazel S,Lichtenstein P, Grann M, Långström N. Risk of violent crime in individuals with epilepsy and traumatic brain injury: a 35-year Swedish population study. PLoS Med. 2011;8(12):e1001150.

111. Fessler AJ, Treiman DM. Epilepsy and aggression proceed with caution. Neurology.

2009;73:1720-1.

112. Volavka J. Violent crime, epilepsy and traumatic brain injury. PLoS Med. 2011; 8(12):e1001148.

113. McSherry, B. Getting away with murder? Dissociative states and criminal responsibility. Int J Law Psychiatry. 1998;21:163–76.

114. Felson RB, Massoglia M. When is violence planned? J Interpers Violence. 2012;27:753-74.

115. Rumpff F, Van Wyk AJ, Gericke JS, Van Der Merwe AB, Allen JF. Report of the commission of inquiry into the responsibility of mentally deranged persons and related matters. Pretoria: Government Printer; 1967.

116. Kinghorn W. The biopolitics of defining “mental disorder”. In: Paris J, Phillips J. editors. . Making the DSM-5. Concepts and controversies. Montreal: Springer; 2013. p.47-61.

117. Frances A. DSM in philosophyland: curiouser and curiouser. In: Paris J, Phillips J. editors. Making the DSM-5. Concepts and controversies. Montreal: Springer; 2013. p.95-103.

118. Pierre JM. Overdiagnosis, underdiagnosis, synthesis: a dialectic for psychiatry and the DSM. In: Paris J, Phillips J, editors. Making the DSM-5. Concepts and controversies. Montreal: Springer; 2013. p.105-24.

119. Paris J. The intelligent clinician’s guide to the DSM-5. Oxford: Oxford University Press; 2013.

120. American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders.3rd ed. Washington DC: American Psychiatric Association; 1980.

121. American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders.4TH ed. Washington DC: American Psychiatric Association; 1994.

122. Lishman WA. Epilepsy. In: Lishman WA.editor. Organic psychiatry: the psychological consequences of cerebral Disorder.3rd ed. Oxford: Blackwell Science; 1998. p.237-314.

123. Gualtieri CT. Transient sequelae of traumatic brain injury. In: Brain Injury and Mental Retardation Psychopharmacology and Neuropsychiatry. Philadelphia: Lippincot Williams & Wilkins; 2002. p. 101-122.

124. Lishman A. Endocrine diseases and metabolic disorders. In: Organic Psychiatry The Psychological Consequences of Cerebral Disorder. Third Edition. Oxford: Blackwell Science; 1998. p. 507-569.

125. Wikipedia. The Free Encycolopedia. Corrie Sanders. [2014 Apr 18]. Available from: www.http://en.wikipedia.org/wiki/Corrie_Sanders

126. Box Rec. [Internet]. Corrie Sanders. [updated 2013 Jul 13; accessed 2014 May 5]. Available from: http://boxrec.com/media/index.php/Corrie_Sanders

127. Blacker D, Endicott J. Psychometric properties: concepts or reliability and validity in, Handbook of Psychiatric Measures. Rush J, Pincus HA, First MB, Blacker D et al, editors. America Psychiatric Association. Washington, DC. 2005. p. 7-13.

128. Aiken RA. Rating scales and checklists evaluating behavior, personality and Attitudes. New York: Wiley;1996.

129. SAS. [Internet]. Knowledge base samples and notes. Cary NC: SAS; 2014. [accessed 2014 Mar 19] Available from: http://support.sas.com/kb/25/006.html