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**'The Forgotten Soul of the Criminal Justice System'**  
- A critical discourse analysis of the legislator's legitimation of witnesses' legal position in Sweden

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## Abstract

With a starting point in the notion that witnesses are a neglected category of individuals of the criminal justice system, this study critically examines policy discourses within the jurisdictional process regarding witnesses' legal position. By conducting a discourse analysis with a critical approach, the study analyzes a corpus of textual data comprised by a subset of policy documents on the area released during the period 1990 to 2018, in which policy discourses are produced and reproduced. The study aims to identify the dominating discourses in the representation of witnesses, thus in this study, representation is seen as integral to the legitimation of witnesses' legal position. The results reveal that in policy discourse, the representation of witnesses mainly pertains to their role within the criminal justice system, and they are thus primarily represented as a requirement to the democratic society. The reason to why witnesses must be protected and provided sufficient support is hence to enable them to deliver proper evidence in investigations and court proceedings. Moreover, the study also critically examines how the conceptualization of witnesses have been utilized over time to legitimize witnesses' legal position. The conclusions suggest that witnesses' legal position is legitimized by ideological features such as justice, where the individual needs of witnesses becomes a second priority. The path dependency of policy discourses on witnesses' legal position is in this way maintained, causing that witnesses remain as a neglected category of individuals of the criminal justice system.

**Key words:** Legitimacy, critical discourse analysis, witnesses' legal position, jurisdictional process, representation

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## 1. Introduction

The title of this thesis is a quote borrowed from Jeffrey R. Harris (1991), who argues that the Government should owe a duty of protection to individuals who involuntarily are endangered by governmental action. Witnesses of crime are one category of individuals that indeed is exposed to this kind of governmental action, thus through the power of a simple court summon they are legally obliged to testify even if they wish not to. Moreover, witness participation in judicial procedures is crucial to uphold the purpose of the criminal justice system. It can however be argued that the notion of reciprocity that Harris (1991) claims should exist often has been ignored by the criminal justice system, where witness participation usually has been taken for granted.

During my time as an administrative court official at one of Sweden's district courts, I have learned that the number of canceled criminal court proceedings is a source to a substantial degree of frustration among representatives of the judicial system. In Sweden, every fourth criminal court proceeding is canceled (Riksrevisionen 2010:7), and there is no doubt that this has considerable consequences for the criminal justice system in terms of additional costs and reduced effectiveness. There are several reasons to the cancellation of court proceedings, one being witnesses' reluctance to attend the hearing due to fear of reprisals by the defendant or their associates.

The number of canceled criminal proceedings due to absent witnesses almost doubled between 2009-2014, from 421 to 736, and during the last three years, the figure has remained high, causing the cancellation of nearly 2000 court proceedings (The Swedish NCA, 2018). The tendency that witnesses are reluctant to get involved in the machinery of law enforcement creates an issue not only for the judicial system but for society as a whole. The process of providing the public with notification and a detailed explanation to the Governments decisions is an important part of the parliamentary democratic process, through which the relationship between the elected authorities and its citizens is continually negotiated.

In this study, the dynamic forces of the relationship between witnesses and the Government are examined through textual patterns in debates related to witnesses' legal position within the criminal justice system. The scope of this study is to critically examine how discursive structures within fragments of jurisdictional preparatory works, produce and reproduce the legal position of witnesses as a neglected category of individuals of the criminal justice system. In the view of the jurisdictional process as a part of the parliamentary democratic process, constituted and shaped by different ideologies and worldviews, the political elements of the discussions cannot be overlooked. Thus, the legal-political influences that can be traced in the discussions within the jurisdictional preparatory works regarding witnesses' conditions can be understood as the production and reproduction of certain 'policy discourses'.

'Policy discourse' can be understood as "an ensemble of ideas, concepts, and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of practices" (Hajer, 2005, p. 300, cited in Winkel & Leipold 2016, p. 112). In other words, policy discourse is constituted by an interpretive scheme in which experiences are transformed into 'truth' that exerts power by means of a dominant perception of truth. Moreover, the truth is produced through a process that is subject to change, thus this kind of discourse holds notions of both structure and practice, where the resulting tension between stability and dynamic is the essence of the policy discourse concept.

Furthermore, "policy discourses usually contain problematizations (what "the problem" is in a certain policy domain), solutions (including proposed governance modes), and responsibilities (who is responsible for a problem, who needs to act, who cannot act, etc.)" (Winkel & Leipold 2016, p. 112). In this way, the discourse produces storylines in which interpretations of certain social or physical events are provided, which in turn legitimizes social actions (Hajer 1995, cited in Winkel & Leipold 2016, p. 112).

This study concentrates on the legislator's representations of witnesses and how the conceptualization of witnesses' conditions are used to legitimize their legal position, thus the terms 'conceptualization' and 'legitimacy' are central to the study. According to van Dijk (2008), conceptualization is a requirement to limit the properties of a communicative situation that are relevant for the production and understanding of discourse, i.e. to delimit the context that is studied. Moreover, the term 'legitimacy' is in this study understood as a 'mode of discourse' within the jurisdictional process, through which power, control and domination are exercised. From an external perspective on law, the legitimacy of the law is gained through its ability to meet the interests and values of certain domains of society (Peczenik 1995, p. 48). A precondition is thus that the judicial system maintains an openness to the public by providing them with information regarding their motivations and justifications of decisions related to the jurisdictional process.

In a democratic society, the principle of publicity enables the public to control and verify the content and applicability of the law. It is through this process that the law, as well as the reasoning and discussions they are founded on, gains its legitimacy – given that they are recognized as adequate and relevant to the matter of concern (ibid. p. 49). Thus, the discussions on witnesses' conditions within jurisdictional preparatory works may either lead to incentives of action or pertain to purposes that legitimize inactivity on certain matters, which in turn will evoke more or less positive or negative reactions among the public. The development of law is however generally conservative and retrospective, thus the values and principles it is founded on are long-lasting and to some extent "outdated". Since society hardly ever change according to stable curves, the retrospectivity inherent to law and the rhetorical repertoires found in policy documents, now and then result in regulation that suffers from legitimacy issues (Larsson 2011, pp. 8ff). In other words, the law's failure to incorporate social changes due to its strong 'path dependency' can cause conflicts between the social and the legal spheres. This may in turn result in internal legal "legitimizing processes" where the public's opinions and interests become less relevant (ibid. p. 26), and thus the legal position of witnesses can be maintained.

## 1.1 Purpose, Aim & Research Questions

The purpose of this study is to describe how discursive structures within the jurisdictional process potentially contribute to witnesses' reluctance to testify. Moreover, the primary concern of the study is to contribute to the research field regarding witnesses by providing potential strategies that may increase witnesses' willingness to participate in judicial procedures.

The aim of the current study is twofold. First, the study identifies the dominating discourses in the representation of witnesses within fragments of jurisdictional preparatory works, released between 1990 to 2018. Secondly, the study critically examines how the conceptualization of witnesses have been utilized over time to legitimize witnesses' legal position as a neglected category of individuals of the criminal justice system.

In attempting to investigate the prevailing policy discourses of the jurisdictional process that may account for witnesses' reluctance to testify, this study raises two interrelated questions:

- *What characterizes the dominating discourses in the representation of witnesses within the jurisdictional preparatory works from 1990-2018?*
- *In what way do the conceptualization of witnesses within the jurisdictional preparatory works legitimize witnesses' legal position over time?*

## 1.2 Originality & Value

A qualification to the viability of a constitutional State is that the public has trust and confidence in the authorities. This is also claimed to be a precondition to ensure that the public is willing to participate in practices that society require to sustain its stability and endurance (Berthelot, McNeal & Baldwin, 2018). The tendency that witnesses of crime are reluctant to get involved in the machinery of law enforcement could be seen as a sign of lacking confidence in the authority's ability to provide sufficient protection if necessary.



The intention of this study is to contribute with new perspectives on the role of witnesses within the criminal justice system. Previous researchers on the topic have mainly been focusing on the existing issues connected to witnesses' unwillingness to testify and the magnitude of the problem (see e.g. Brown, 1994; Tarling et al., 2000; Whitehead, 2001). Other studies have also looked into possible solutions to the issues, often with a focus on strategies related to the criminal justice system's response to and treatment of witnesses in general (e.g. Fyfe & McKay, 2000b; Niemi-Kiesiläinen, 2007). Some potential solutions do already exist within Swedish legislation and policy frameworks, but it can be questioned if they are sufficient enough to convey the effects of frightened witnesses adequately.

From a socio-legal perspective, this study pertains to the implicit effects of laws and policies in society, or perhaps rather to the explicit effects of inadequate and inconsistent regulation. Although interferences in judicial matters are criminalized, incidents of intimidation occur regularly, and even though witnesses are less affected than e.g. victims of crime (Brå 2008), the perceived fear of becoming exposed is a problem that cannot be disregarded.

With a point of departure in the notion that witnesses are 'the forgotten soul of criminal justice system' (Harris, 1991), this study intends to view the jurisdictional process from a critical standpoint by applying critical discourse analysis as the theoretical and analytical framework, drawing on inspiration from the works by Teun A. Van Dijk.

### 1.3 Delimitations & Definitions

The material included in the analysis of this study encompasses a selection of the jurisdictional preparatory works regarding the safety and protection of witnesses. The sample of data comprises a subset of Swedish Government Official Reports (SOU), Commission Reports (Bet.) and Ministry Publications (Ds.) on the matter, released between 1990 to 2018. The time frame has been determined due to the increased focus on not only victims of crime, but also on conditions related witnesses during this period.

In 1989 the Government assigned a commission of inquiry to inspect the prevalence of threats and violence against victims and witnesses in connection to criminal investigations and court proceedings. Although it has not been any major changes in Swedish legislation regarding witnesses' obligations and rights during the past 30 years, this was the launching point to an increasing debate regarding witnesses' legal position. Due to the aim of this study, current provisions concerning witnesses are only briefly demonstrated, but not included in the analysis of the study. Moreover, there are of course causes to witnesses' legal position that cannot be traced within the policy documents, such as lack of resources. However, in this study, the reasons in themselves are not of interest. Instead, this study examines how the aims and intentions are motivated and justified through discursive strategies, regardless of outcomes.

The current study is only focusing on individuals who have witnessed criminal activities, meaning that the study only problematizes and analyzes utterances and statements regarding witnesses involved in criminal court proceedings. In most of the included material, issues regarding victims of crime or other categories of court users is a priority and the authors have only partially been focusing on witnesses' conditions.

Moreover, in many of the documents victims of crime has been treated as one category of witnesses. However, this study does not make any explicit categorization of witnesses; thus, all variations of witnesses are treated as one single group. For instance, children and vulnerable witnesses have had a specific status in both the included documents and in previous studies. If these categories of witnesses are explicitly mentioned as such, utterances regarding them are not included in the analysis. However, if victims of crime and witnesses are discussed in general in the documents, these utterances will be included.

For the sake of clarity, in this context, the term 'witness' refers to what Endre (2015) calls 'personal sources'. In her understanding, based on the legal definition of witnesses that applies to most jurisdictions, the personal source:

Can be present at the scene of the crime, in its more distant surroundings, who may have information about the perpetrator and the participants of the action. The personal source may become a witness if they are aware of the fact to be proved. A person being aware of the fact to be proved becomes a witness if they are summoned by the proceeding authority to an inquiry.

(Endre 2015, p. 72)

Moreover, if the witness possesses information that is deemed relevant to the criminal investigation or criminal court proceeding:

The summoned witness must give a testimony unless otherwise provided in the act.

(Endre 2015, p. 73)

## 1.4 Disposition

In this first section of the thesis, the topic, purpose, and aim of this study have been outlined and clarified. The second section provides a brief overview of the current legal obligations and rights that apply to witnesses, including a few of the informal services of support that currently are available for witnesses. The intention of this section is to provide the reader with sufficient background knowledge about witnesses' current position within Swedish legislation. The background is then followed by a presentation of previous research on the field in section three. This section has been divided into subsections, in which different themes of previous research on the topic are presented separately.

The fourth section of the thesis presents the theoretical framework that has been applied in the study to analyze gathered data and explains how the choice of theory relates to the study. In the subsequent and fifth section of the thesis, the chosen research strategy and the methods used for conducting this study are presented. This section also provides a presentation of the material that has been selected for the study and the reasons to why they have been included. The sixth section of the thesis covers the analysis of the results of the study. In this section, findings drawn from the data is presented and explored in relation to the theoretical framework applied in the study. The subsequent and final section of the thesis provides a concluding discussion on the findings of the study and what they may entail in practice, as well as a few recommendations for future research studies on the topic.

## 2. Legal Background

The following section has been included in order to ensure that the reader has sufficient background knowledge about the current status regarding witnesses' obligations and access to support within Swedish jurisdiction and policy. There is no law that explicitly addresses witnesses, thus the obligations and rights that apply to them are to be found within different segments of Swedish law. Some components of support services available for witnesses are currently only found on a policy level.

### 2.1 The Obligations of Witnesses

The Swedish Code of Judicial Procedure (SFS 1942:740) provides regulation concerning the organization of courts, instructions for court proceedings as well as directives regarding the usage and assessment of evidence. Witnesses are primarily obligated to appear before the court in person, an obligation that is restrictedly diverged from. The provisions in Chapter 36 of the Code addresses witnesses and the obligation to give evidence, which applies to everyone who is not on legal grounds exempted from the duty, such as the parties of the case. Moreover, witnesses may decline to testify if they are closely related to a party, under the age of 15 or suffer from serious mental disturbances (if deemed inappropriate). If these categories of witnesses do accept to testify and the court finds them eligible, they are released from the obligation to testify under oath.

The principle of oral proceedings obliges parties to present their evidence verbally, thus the reading of witnesses' previous testimonies is rare and only carried out in exceptional cases. The person who shall be heard as a witness is summoned by the court under penalty of fine to appear at the hearing. The summons to attend must contain necessary information of the parties and the case, as well as a brief description of the purpose of the testimony. Moreover, the summons must contain information regarding the witnesses' rights and duties pursuant to the provisions in Sections 20 and 23-25 of the Code. Said provisions, along with Sections 21-22, address the legal sanctions that may occur if a witness fails to appear in court or refuses to take the oath, to testify or to answer a question during the hearing.

Failing to attend a court hearing may result in a fine that may be augmented if the violation is expected to be repeated. It may also result in that a witness is brought into custody before the court at once or, if a court proceeding must be canceled, at the scheduled subsequent date. Furthermore, a witness who without valid reason refuses to actively participate in the hearing may be ordered by the court to do so under the penalty of fine, and if the refusal persists, under the penalty of detention. A witness can be held in detention for up to three months, to be brought before the court at least every two weeks where they get a new chance to fulfill their obligation to testify. Failing to submit to the obligation to give evidence may also result in that the witness must compensate the parties for their litigation costs.

The defendant and injured party have no obligation to speak the truth in criminal proceedings, thus they are allowed to use all means at their disposal to prove their point. On the contrary, witnesses under oath who deliberately tells a lie that potentially would affect the outcome of the case can suffer from legal sanctions. According to the provisions in Chapter 15 of the Swedish Penal Code (SFS 1962:700), witnesses that deliberately lie or withhold the truth in court may be charged for perjury. The penalties for committing perjury ranges from having to pay a fine to, if the crime causes significant damages to the case, imprisonment in up to eight years.

## 2.2 The Rights of Witnesses

In Sweden, the principle of publicity means that all court proceedings (with a few exceptions) are open and accessible to anyone who wishes to attend. This means that there is an imminent risk that spectators get the opportunity to influence witnesses' statements, intentionally or accidentally, unless it is discovered and countered. In Chapter 5 of the Swedish Code of Judicial Procedure (SFS 1942:740), it is stated that the judge is responsible for the maintenance of order at court sessions and for issuing necessary regulations during the session. Disruptions that violates someone's personal integrity, jeopardizes the rule of law or the public's trust and confidence in the judicial system are considered serious violations (Fitger et al.

2014). Influencing witnesses' testimonies is a suitable example of such disruptions, which should be avoided as far as possible.

If the order is disrupted, the judge has the right to refuse access to those behaving inappropriately and, if the violation persists, to place them in detention for the duration of the session. This also applies if an actor of a court session is affected merely by the presence of spectators, meaning that also unintentional interference may lead to that some or all spectators are asked to leave the courtroom or that the remainder of the court session is held behind closed doors. Occasionally, the risk of intentional or unintentional interference leads to that either side of the parties' requests that the whole session is held behind closed doors in advance, in order to avoid anxious witnesses or other actors of the case that may be adversely affected by spectators.

Another strategy to counter interference with witnesses during a court hearing is to keep the witness and defendant separated whilst the witness is testifying, i.e. relocating the defendant to another room with only an audio connection to the courtroom. Moreover, although the main principle is that all witnesses shall be present physically in court, there are situations where witnesses due to fear or safety reasons are allowed to attend a hearing by telephone or video link to avoid confrontation with potentially intimidating situations.

During the past ten years, there has been a development regarding the security conditions in courts all over Sweden. Not only have the physical environment been improved through the use of technical solutions such as the installation of metal detectors and increased use of safety guards; security has also been improved by raising an awareness among the staff of potential risks (Courts of Sweden – Annual report 2017, p. 67). The implementation of security measures in courts has possibly contributed to a better experience for both users and professionals within the judicial sector. Moreover, to further improve the experience for witnesses in particular, but also for victims of crime and regular visitors, the Government has decided that all courts should provide a service of witness support.

The project was initiated in 2001, when the Crime Victim Compensation and Support Authority, together with the National Courts Administration and Victim Support Sweden, was commissioned to see to that witness support is established and maintained in all criminal courts in Sweden (prop. 2000/01:79). When the project expired three years later most courts offered local witness support (Ju2001/4716/KRIM). In order to further improve the conditions for witnesses the Government decided to extend the project, and in 2015 a report was published that showed that witness support is a much needed and appreciated service, but also very expensive. Although witness support is delivered by volunteers who offer practical information, guidance, and support to witnesses and others when needed, the organization is claimed to falter in terms of stability due to lack of resources (Ju2014/3767/KRIM).

A witness who has been, or is at risk of becoming, exposed to intimidation or other means of coercion may be entitled to special protection measures by the police force. According to the Swedish Police Act (SFS 1984:387), the police force is responsible for the protection of endangered witnesses. Together with other Governmental agencies and organizations, witnesses can receive counseling, surveillance and technical supplies for their personal protection (Polismyndigheten, 2018). If needed, the police may also relocate witnesses to a secret location and provide them with a fictitious identity.

Moreover, some individuals are entitled to be included in the police force witness protection program, which is the most intervening and comprehensive form of protection available. The program is however restricted to only admit individuals in criminal cases of serious or organized crime; individuals who provide the police force with covert information (informants); individuals working within the justice system; and relatives to said categories if it is considered necessary (SFS 2006:519). Occasionally the procedures are extended to also include politicians, journalists and others working in official positions, as well as potential victims of honor crime (PMFS 2016:11).

In other words, the possibilities for the “regular” witness to become admitted to the witness protection program is rather limited. There are however a few other alternatives, but they mainly apply to individuals who have already suffered from illegal means of coercion. First, violence, threats and other forms of intimidation intended to discourage witnesses’ involvement in a judicial matter, is according to the Swedish Penal Code (SFS 1962:700) considered a crime. For criminal liability, the purpose of the misconduct must be to prevent disclosure of information or to prevent witnesses from partaking in a judicial matter.

The criminalization is intended to satisfy the general interest that the execution of litigation and court proceedings are not being adversely affected. Moreover, interference in a judicial matter is classified as a strict liability offense, meaning that there is a presumption of imprisonment at a minimum for individuals who have committed the crime. The criminal protection covers not only witnesses but also other interrogators and even members of a party, provided that information has been shared at a hearing.

Furthermore, a second alternative that is available for witnesses who are at risk of becoming exposed to intimidation is to file for a restraining order. A restraining order is a legal protection that temporarily forbids an individual to either contact or approach the person who has requested the prohibition (SFS 1988:688). This kind of protection is used when there is a risk that someone may commit a crime, persecute or seriously harass another person. Violations of the prohibition may result in having to pay a fine or imprisonment in up to one year.

To sum up, witnesses are obliged to give evidence in court unless otherwise is stated in the law. There are a few alternatives of support and legal action available for witnesses to allay their fear and anxiety, and to counter the effects of intimidation. However, the process of seeking support and to receive support and information adequately can presumably be rather problematic in terms of access, availability, and capability. Issues related to witness intimidation and its implications to the criminal justice system is further discussed in the next section, in which previous research on the topic is demonstrated.



### 3. Literature Review

In order to gain a general understanding of the field and to determine the scope of this thesis, the process was preceded by a thematic literature review. The intention was to generate an overview of what previous researchers have been focusing on regarding witnesses, which also enabled and contributed to deeper considerations on what kind of research questions to seek answers to in the current study. The included articles were obtained through a thematic literature search by using relevant keywords in the EBSCOhost database as the main source to find relevant articles.

#### 3.1 Witness Intimidation

Witness intimidation as a research field has been a growing area since the beginning of the 1990's when the extent of victims and witnesses subjected to harassment and intimidation became a matter of increasing debate (Fyfe & McKay 2000a). Even though the use of witness protection measures can be traced back to the middle of the 1970's, only a small amount of earlier studies focusing on witness intimidation has been found (see e.g. Burke, 1975; Connick et al. 1983; Davis et al. 1984; Fishman 1957; Gerver 1957; Mass 1981; Morris & Fishman 1957; Morris 1957). The main body of articles found within the scope of this thesis has been authored during the middle of the 1990's and onwards.

At the time when the research area started to emerge there was an apparent lack of empirical evidence of how widespread the problem was (Fyfe & McKay 2000a), which at present-day still is claimed to be difficult to fully comprehend due to under-reporting and under-recording (Bowles et al. 2009; Doek & Huxley-Binns 2014). As a result, since the middle of the 1990's, agencies in the UK and other countries are regularly conducting nation-wide surveys in an attempt to capture hidden statistics regarding the prevalence and nature of witness intimidation (Brown 1994; Tarling et al. 2000; Whitehead 2001).

Healey (1995) conducted a study focusing on gang-related crime, in which prosecutors were asked to estimate the prevalence of witness intimidation within

this category of crime. The results of the study showed that the estimation of witness intimidation was suspected in up to 75-100% in cases of violent crimes. The extent of witness intimidation has been claimed to be particularly high in gang-dominated neighborhoods (ibid.). Moreover, the risk of being exposed to witness intimidation is dependent on the seriousness of the crime that has been committed, the relationship between offender and witness, geographical distance between those involved and if the witness belongs to a culturally oppressed group (ibid.).

Hamlyn et al. (2004) found that intimidation of witnesses mainly occur before a case reaches court, but also while the witnesses are waiting to give evidence in the court facilities. The study was conducted before and after the implementation of improved legislation and special measures to enhance witnesses' experiences of testifying in court. Results showed that changing of procedures and the use of assistance and support increased witness satisfaction significantly (ibid.).

Studies have also been focusing on what kind of intimidation that occurs (Browning 2014; Hamlyn et al. 2004; Kayuni & Jamu 2015; Tarling et al. 2000). Witness intimidation can be case-specific, in which the victim or witness is threatened from testifying in a particular case. It can also be community-wide, where gangs or organized crime has an influencing position that fosters a general atmosphere of fear or noncooperation towards involvement in the legal system (Brown, 1994; Healey, 1995). There is also a form of 'cultural intimidation', which occurs when family or friends try to dissuade a victim or witness from cooperating in an inquiry (Dedel 2006; Tarling et al. 2000).

In other words, witness intimidation may involve inflicting activities by the offender or someone affiliated with him/her, but it can also involve the mere perception or fear of intimidation. Furthermore, perceived intimidation may not only emerge from fear of the offender, thus the discomfort of being part of a court procedure, i.e. by testifying, being cross-examined and appearing in a court environment, is also potential sources (Bruce 2005; Whitehead 2001).

According to Browning (2014), the forms of witness intimidation has evolved since the middle of 1990's. The digital age has brought an explosion of users on the Internet and social media, which has become an area to anonymously intimidate witnesses and victims of crime. The Internet makes it possible to not only explicitly threaten someone to make them not cooperate, it also provides the possibility to easily access and distribute personal information about witnesses and victims as a means of coercion. The increased prevalence of intimidation online is claimed to be one of the arguments to withhold information about witnesses until trial (ibid.).

### 3.2 (Un)willingness to Testify

Several studies have been focusing not only on the extent and nature of intimidation but also on its potential effects on witnesses and the judicial system (Brown 1994; Browning 2014; Doak & Huxley-Binns 2009; Hamlyn et al. 2004). A precondition to the ability to manage society is compliance and legitimacy for the authorities, as well as societal efficiency, effectiveness, and viability (Tyler 2003). Legal authorities gain when they receive deference and cooperation from members of society, and the criminal justice system is dependent on witnesses' willingness to participate in criminal proceedings (ibid.)

It has been claimed that the participation of witnesses in the criminal justice system has been largely taken for granted (Fyfe & McKay 2000b) and that the need to be more responsive to witnesses has not been a policy priority (Bruce 2005). Moreover, the criminal justice systems tendency to inadequately inform witnesses about the procedure and the progress of a case has been identified as a key determinant to witnesses' unwillingness to testify (Bruce 2005; Endre 2015; Hagsgård 2008; Hayes & Hayes 2013; Niemi-Kiesläinen, 2007).

The importance of providing witnesses with necessary information was also examined in a study by the British Home Office, which included interviews with 2 500 witnesses (Whitehead 2001). The view of the criminal justice system was according to the results, mainly dependent upon prior information given by the police. Knowledge about the procedures and prior contact with the judicial system was shown to significantly affect witnesses' willingness to testify (ibid.). Similar

findings were reported in a later study, including the opinions and experiences of 38 000 victims and witnesses (Franklyn 2012). Apart from being provided adequate information, clarity, the progress of a case and judicially correct decisions was regarded as important determinants for willingness to testify (Franklyn 2012; Angle et al. 2003).

In most jurisdictions, the person who gives a statement is required to physically appear before the court as a witness (Kayuni & Jamu 2015). Successful witness intimidation or fear of reprisals that makes witnesses withdraw or alter their testimonies may result in injustice when the offender walks free from charges, which by extension puts the rule of law at play. It has been argued that a criminal justice system should not only be able to prosecute those who have committed a crime, but also have the ability to treat witnesses with dignity in terms of safety, health and welfare to sustain the legitimacy of the system (ibid.). The legitimacy of the judicial system may also be interrupted when witnesses' fear of reprisals by the defendant (or those associated with him/her) causes them to lie in court. Studies have shown that lying while giving evidence occur even in cases when the witnesses are aware of that they can be charged for perjury (Bridenball & Jesilow 2005; Endre 2015).

Victims and witnesses' willingness to participate in a criminal investigation and to testify in court has been found to fluctuate depending on what kind of crime that has been observed (Helfferich, Kavemann & Rabe 2011). It has been shown that in criminal cases of human trafficking and sexual exploitation, not only actual or perceived intimidation of the offender influences the willingness to participate, but also the actions and behavior made by representatives of the criminal justice system (ibid.). In other words, the relationship between victims and witnesses and the justice system plays a vital role to establish a foundation of confidence, where key factors such as power, control, and trust must be balanced carefully to support participation (ibid.). How representatives of the criminal justice system treat, communicate and respond to witnesses have also been recognized as vital in order to foster future engagement in judicial procedures (Ames et al. 2003).

According to Healy (1995), a high level of witness intimidation will affect society negatively by giving the impression that anyone may become exposed to illegal means of coercion. The potential consequence may be that victims and witnesses avoid participation in criminal proceedings by conducting so-called 'self-censorship' on themselves. The only ones who will gain from this are the offenders, who successfully have created a fear of involvement even in cases where no witness intimidation has occurred (ibid.). Moreover, the perceived risk of being exposed to witness intimidation is not seldom overestimated among members of society (Dedel 2006). Nevertheless, the effects may still remain, and by extension, trust and confidence in the authorities may be affected negatively when the public does not believe that they will be protected.

Bowles et al. (2009) examined the phenomenon of interrupted investigations and court hearings due to witness intimidation from a cost-benefit perspective. The results showed that propensity to report a crime (and to give evidence) increase with the size of loss entailed (ibid.). The study concluded that the decision to cooperate in a criminal investigation can be regarded as made on the basis of rational choice, where personal costs and benefits are weighed against each other. Since some of the costs and benefits would impinge societal interests, the study argues that criminal justice policy must provide support to victims and witnesses that help them internalize those interest in their decision. This would subsequently reduce unnecessary costs for society and simultaneously benefit the interests of society when offenders can become prosecuted (ibid.).

It has been claimed that people with extensive social ties and people with elevated social status have advantages in attracting the evidence necessary to sustain their legal cases (Cooney 1994). The social patterns in the production of evidence vary between cases due to a variation in the amount of 'support' people possess. High-status litigants are claimed to be advantaged because they attract high-status witnesses, thus the willingness to testify appears to increase with the status of the litigant (ibid.).

### 3.3 Witness Protection Programs and Anonymous Witnesses

In cases of serious forms of intimidation, a range of potential strategies exist to protect witnesses. Most countries have deployed some sort of witness protection measures where witnesses may adopt various forms of ‘target protection’, such as house alarms and personal attack alarms (Fyfe & McKay 2000b). In more serious cases, witnesses may be taken into a witness protection program that arranges a permanent and secret relocation of the witnesses and their family. Although such protection programs may give a sense of relief for the intimidated witnesses, it also brings negative consequences for these witnesses and their families as they have to start a new life at the new, safe location (ibid.).

The use of witness protection measures is most common in serious and organized crime prosecutions. In most jurisdictions, this area has been strictly formulated and tend to function as a ‘gatekeeper’ that only offers certain categories of witnesses access to protection (Fyfe & McKay 2000b; Niemi-Kiesiläinen 2007). It has been argued that in order to obtain successful criminal investigations that reach court, witnesses right to safety must be regarded during the whole process (ibid.), and all witnesses shall receive information about their protection opportunities at an early stage (Endre 2015).

As a result of the problems connected to witness intimidation, the use of anonymous witnesses in court has become more common to avoid unwanted influence on the justice system. According to Article 6 of the European Convention on Human Rights, everyone shall have the right to a fair trial, including the right to examine prosecution witnesses. A few years ago, the European Court of Human Rights did however change their position on the right to examine witnesses, where anonymous witness statements suddenly became a possibility as valid evidence in court (de Wilde 2013). Researchers have been focusing on the implementation of anonymous witnesses in court hearings and its implications to the right to examine witnesses (see e.g. Doak & Huxley-Binns 2009). The conclusion is that the use of anonymous witnesses strongly would violate the defendant’s right to insight in the case that

concern them, as well as prevent them from the possibility to defend themselves to the information that is presented in witness statements.

The use of anonymous witness statements has already been implemented into the judicial system in some Scandinavian countries, such as Denmark and Norway. In Sweden, this possibility has not yet become a part in the ruling of evidence, but the matter is discussed on a governmental level and may perhaps become implemented in Swedish legislation shortly. Witness protection has repeatedly been on the agenda over the past 30 years, but only a few and not very major changes have been made in legislation related to witnesses' legal position during this period.

### 3.4 Witness Research in Sweden

The research field regarding witnesses' legal position in a Swedish context has been proven to be rather limited. While reviewing the literature on the topic, only two articles were found focusing on the treatment of witnesses from a legal perspective in a Swedish setting (Hagsgård 2008; Niemi-Kiesiläinen 2007). Other Swedish researchers have mainly been focusing on the treatment of vulnerable witnesses and how witnesses' memory may become biased, thus most studies have been conducted within the discipline of psychology (see e.g. Cederborg et al. 2000; Eriksson 2011; Gumpert & Lindblad 2001; Lindholm et al. 1999). The main body of literature on the topic from a Swedish perspective has been found in the form of reports by governmental agencies, in which some conclusions of the material has been drawn from scientifically recognized procedures.

One of these governmental agencies is the Swedish National Council for Crime Prevention ('The Swedish NCCP'), which to some extent is responsible for providing the Government with information regarding key features of the judicial system. The agency is annually assigned by the Government to summarize the crime situation in Sweden, where citizens are asked about how they perceive the crime situation, and to what extent they feel confident in the authorities within the judicial system (for the latest version, see Brå 2018a). It has been claimed that trust and confidence in the authorities partially are reliant on how the public are treated when they come in contact with the institutions. A report from 2013 showed that

witnesses who have been summoned to court often feel that they have not received adequate information prior to the hearing. The report also stated that witnesses are the category that most frequently contacts the court due to anxiety or lack of knowledge about the procedures (Brå 2013).

Many of the Swedish NCCP reports revolves around the treatment and well-being of victims of crime during the judicial process, where a substantial share of the reports has been used as the foundation for improvements within law and policy on the area (Brå 2007; Brå 2009; Brå 2010; Brå 2016). The situation is slightly different concerning witnesses, even though their conditions have also been highlighted to some extent in reports focusing on other issues. There is only one report by the Swedish NCCP that explicitly have focused on witness intimidation (and intimidation of victims of crime) (Brå 2008).

In the report, it is stated that illegal activities intended to prevent witnesses from testifying are rather uncommon (Brå 2008, p. 8). It is argued that intimidation of witnesses in a judicial matter is unusual when the persons involved have no previous connection to the perpetrator. Attempts to influence witnesses mainly occur in criminal cases regarding youth crime, domestic violence, and organized crime, thus in cases when the perpetrator is known to the victim or witness. However, according to a recent survey, the general opinion among the public is that the legal system cannot sufficiently protect witnesses (Brå 2018b, p. 11). Variables that have a significant impact on witnesses' willingness to testify has been proven to be gender, trust in the police and courts, the perception of the prevalence of criminal gangs and organized crime, and the frequency of shootings in the community (ibid. p. 65).

Although evidence indicates that risks connected to testifying are uncommon, representatives within the legal system have claimed that they frequently need to negotiate with and persuade witnesses to participate in the judicial process (Brå 2018b p. 11). The obstacles to finding and convincing witnesses often occur already at the investigation stage, especially in socially deprived areas of society. This can raise difficulties and cause delays that may jeopardize the quality of the



investigation. Even in cases where witnesses have not been directly affected by illegal means of coercion, self-censorship occasionally emerges as a tactic to avoid being part of the judicial process (Brå 2008, p. 61). Not seldom, these difficulties continue as a case reaches the court.

The Swedish National Courts Administration ('The Swedish NCA') has also frequently been commissioned by the Government to evaluate and examine features on the security area within courts. They have published a few reports and guidelines that apply to security issues within the judicial system from the professional's point of view (DV-report 2002:6; DV-report 2007:1; DV-report 2012:2). One of their reports explicitly focuses on the security conditions in court for victims and witnesses (DV-report 2014:1). The report addresses the importance of creating an atmosphere that makes victims and witnesses feel safe, which among other things can be done by improving the physical environment. According to the report, the level of security is varying among the courts in Sweden (ibid. p. 5). One of the reasons is that many court buildings no longer are adequate for its intended use due to lack of space and outdated technical devices.

The report concludes that in order to obtain a higher level of safety in courts, the physical environment and technical supplies must be improved, the use of security checks, metal detectors and safety guards must increase, and routines and guidelines must be drawn up regarding security (ibid. p. 5ff). Furthermore, external aspects of the security work must be enhanced by putting more efforts on cooperation with other governmental agencies and organizations, providing victims and witnesses with sufficient information prior to a court proceeding, and by establishing policies on how to treat victims and witnesses (ibid. p. 8ff).

### 3.5 Reflections on Previous Research

The thematic literature review resulted in a body of articles that reveals that emphasis mainly revolves around witness intimidation; the extent of the problem and its implications to society, the criminal justice system, and to the individuals who become exposed. The conditions that are discussed mainly proceed from witnesses' perspective and how they may be affected by interferences, which by

extension will have further consequences. Furthermore, previous research shows that there are several different components that contribute to witnesses' unwillingness to testify, thus in addition to perceived fear or actual events of intimidation, reluctance may arise from poor treatment and bad experiences from governmental agencies.

In many of the referred studies above, no explicit distinction is made between victims and other witnesses of crime when discussing 'witness intimidation', thus both categories and their well-being are perceived as equally vital in the different procedures of the criminal justice system - and the potential causes and consequences of their reluctance to cooperate are often seen as rather similar. Furthermore, the empirical material of the studies is mostly founded on official national surveys, which are further utilized by other researchers in their studies instead of gathering first-hand data. In order to capture a more holistic perspective on the issue, some researchers have also examined other target groups and individual variables related to the matter.

The lack of witness research in a Swedish context was overwhelming, thus only two articles focusing on the topic were found. However, the Swedish NCCP stands for a great portion of reports that gives a general idea of issues regarding witnesses and the prevailing conditions in Sweden. As has been demonstrated above, a large portion of the reports has been focusing on the treatment and well-being of witnesses, where ensuring and sustaining quality has been the key questions.

The reports have also investigated the security conditions at courts and other facilities, as well as the extent of incidents related to witnesses. Similar to other previous research, the reports by the Swedish NCCP also confirms that actual witness intimidation is relatively rare, but a few aspects have been identified that increases the risk of becoming exposed. However, in terms of witness intimidation, the main issue appears to be related to the perceived risk of becoming exposed. In other words, attention should instead be directed towards the authority's efforts and accomplishments to convince and ensure the public that the obligation to testify is quite harmless.

To sum up, although many scholars and other experts have looked into the matter over the years, witness intimidation tends to be a problematic issue that perhaps is impossible to eliminate completely. The main body of found articles is focusing on issues of witness intimidation and what it may entail to the purpose of the criminal justice system, and to the individuals who become exposed to threats and violence. The main suggestions to combat the problems seem to be aimed at adjusting and improving the application and quality of witness protection programs. Furthermore, the advantages and shortcomings of enabling witnesses to be anonymous in judicial procedures have also been discussed.

These kinds of solutions could potentially affect witnesses positively on an individual level and thus contribute to increase the willingness to testify. However, if any changes are going to be made, the issues and potential solutions must be placed on the political agenda and become thoroughly investigated before they perhaps can become accepted as law.

### 3.5.1 Concluding the Research Gap

In contrast to most of the previous studies presented above, this study proceeds from a ‘top-down’ perspective, thus it emphasizes the jurisdictional process regarding witnesses’ legal position within Swedish jurisdiction. Moreover, although it is important to examine the prevalence and potential effects of issues connected to witnesses, it is also important to investigate what efforts that are being made by the authorities to combat the problems. Consequently, if there is an observable movement in society that is causing issues, the criminal justice system cannot possibly defend a notion of status quo on the matter. This study examines witnesses conditions as they are described, understood, emphasized, improved, neglected etc. by the political power elites, i.e. the elected authorities.

In conclusion, this study highlights the structural and strategic patterns within legislation that potentially contributes to legitimize and maintain witnesses’ legal position as a neglected group of individuals of the criminal justice system.

## 4. Theoretical Framework

In this section, the theoretical framework applied in the study is presented and described. The section provides an explanation of the relationship between theory and the aim of the study. Moreover, by describing the theoretical framework and how it relates to the study, the reasons behind the choice of theory are clarified.

### 4.1 Critical Discourse Analysis

There is a range of diverse ways to deal with discourses, making it rather confusing and difficult to fully comprehend its meaning in a wider sense. Furthermore, scholars often tend to use the term as if it has a clear, agreed upon meaning (Alvesson & Kärreman, 2000 p. 1126), thus ignoring to provide a clear definition of their understanding of the term. Somewhat simply put, it can be said that while discourse analysts in general deal with talk and text in a specific context, discourse studies with a critical approach goes beyond the structural properties of text and talk and relates these structures to social structures.

The theoretical framework adopted in this study is inspired by Teun A. van Dijk's understanding of critical discourse analysis. The purpose of most critical discourse analysis research is to study the relationship between discourse structures and social structures of domination, inequality, power, organizations, groups, institutions etc. As has been mentioned above, discourse structures and social structures constitute the major dimensions in the critical study of discourse. However, in van Dijk's (1993) understanding of critical discourse analysis, the two major dimensions are accompanied by a third essential dimension, which he refers to as a 'cognitive interface'. Thus, according to van Dijk (1993), one can only relate discourse to society through the mind of participants, i.e. through the minds of language users.

Although the definition of discourse is not fully agreed upon within the discipline of discourse analysis, van Dijk (1993) builds his definition of discourse on a three-dimensional model which he calls socio-cognitive discourse analysis. The model is an extension of the traditional concept of discourse analysis that combines the social and discursive components with a cognitive interface through the following three

dimensions; (1) *language use*, (2) *social cognition*, and (3) *social situation*. According to van Dijk (1993), the three dimensions are separate entities, where the relationship between them are of specific interest and meaning. The coexistence of these three dimensions urges the necessity to analyze discourse from a multidisciplinary perspective, which van Dijk successfully achieve in his socio-cognitive model of discourse analysis.

The multidisciplinary perspective of van Dijk's model provides an openness to the issues that are studied, positioning the researcher on the side of the oppressed, in this case witnesses. The choice to adopt critical discourse analysis as the theoretical and analytical framework of this study is based on the premise to critically emphasize the conceptualization of witnesses within the jurisdictive process. The aim is to identify the dominating discourses that legitimize and maintain their legal position. Among other things, critical discourse analysis can be used to pinpoint which individual or individuals that have access to discourse and what consequences this may result in.

The socio-cognitive model holds a wide range of key features of importance, which altogether confirms the interdisciplinary nature of the concept. A few of the central features within van Dijk's model that are of relevance for this study will be explained further in the following subsections, starting with power and dominance. Understanding the nature of social power and dominance is crucial to adequate critical discourse analysis (van Dijk 1993 p. 254).

#### 4.1.1 Power & Domination

According to van Dijk (2006), critical discourse analysis is primarily interested and motivated by pressing social issues, and in his understanding the term 'dominance' is central to discourse studies with a critical approach. There are several definitions of 'dominance', but the version used in this study refers to what van Dijk (1993), describes as the exercise of social power by elites, groups or institutions that results in social inequality (p. 249). According to van Dijk (1993), a sign of social power is access to discourse. The level of access is determined by the privileged

“possession” of socially valued resources in the form of e.g. income, status, education, group membership and knowledge, among other things (p. 254).

Social inequality may derive from socio-political decision-making, thus the production and reproduction of intentions, values, and principles within e.g. the jurisdictional process may involve ‘modes’ of discourse that favors some individuals, while others may be more or less ignored. This does not necessarily mean that the view on dominance is merely a form of power imposed on others; dominance and power can to a varying degree be a jointly produced phenomenon (ibid. p. 250). In other words, although it is not always officially recognized as such, dominance can be jointly produced by being perceived as something ‘natural’ and necessary. For instance, the level of legitimacy that the elected authorities enjoy from the citizens set a suitable example of how dominance can be represented as jointly produced.

In a top-down perspective, which also is the one perspective that this study proceeds from, “/.../ legitimation involves strategies that seek to establish, maintain or restore social positions and acceptable authority of a group or institution, usually the State” (Rojo & van Dijk 1997, p. 560). Moreover, from a ‘top-down’ perspective the strategies that shape power relations may involve ‘modes of discourse’ that more or less overt or covert support, enactment, denial, representation, mitigation or concealment of domination (van Dijk 1993, p. 250). Furthermore, the power relations may also be contested and restricted to specific domains, thus it may be challenged by counter-powers.

Irrespective of whether power is jointly produced or not, dominance always involves elements of control by one group over other groups (ibid. 254). The control can either pertain to the minds of individuals or limit their freedom of action in a literal sense. The cognitive mode of control is often more effective and are enacted by strategies of persuasion, dissimulation or manipulation etc. aimed at changing the mind of others into one’s own interests (ibid. p. 254). This is one of the main functions of dominant discourse; to achieve consensus, acceptance, and legitimacy. The strategies of manipulation do however not always explicitly signalize control, thus as has been mentioned previously, dominance may be enacted and reproduced

in a ‘natural’, routinely manner that is accepted. However, dominance is seldom total and it is when the counter power starts to challenge those who hold power over others that the dominance stops being something ‘natural’.

Many forms of dominance and power are organized and institutionalized, such as the obligation to give evidence in court. The obligation to testify is legitimated by law and if a witness refuses to participate, the action is sanctioned by courts. The political, social and cultural organizations of dominance in society imply a hierarchy of powers, in which members of the dominant groups have a special role to control and enact the power of dominance (p. 255). These members of groups are what van Dijk (1993) refer to as the power elites, groups that always have special access to discourse, i.e. the ones who literally have the most to say on a specific matter. For instance, in his work on prejudice in discourse, van Dijk (1996) found that immigrants had passive access to discourse rather than active. His conclusions were drawn on the fact that immigrants were restricted from speaking for themselves, and instead they were spoken about by other social actors as a subject of discourse.

#### 4.1.2 Ideology & Knowledge

Van Dijk (2006) recognizes ideology as a significant element of discourse, thus all discourse is in some way ideological since it constantly expresses a worldview or a particular standpoint. According to van Dijk (2003), ideology should be understood as:

General systems of basic ideas shared by the members of a social group, ideas that will influence their interpretation of social events and situations and control their discourse and other social practices as group members.

(van Dijk 2003, p. 380)

In other words, his concept of ideology does not suggest that ‘system of ideas’ is individually-held belief systems; ideology is social and shared by the members of a collectivity of social actors, and not individual opinions (van Dijk 2006, p. 116). Moreover, individuals are usually not aware of the ideologies they hold; thus, ideologies are internalized in our minds as something ‘natural’ rather than a

political position. Attitudes and opinions about something specific are on the other hand something that individuals are more likely to be aware of and what shapes them are ideological influences (van Dijk 2011, p. 8). Furthermore, the attitudes and opinions of a social group eventually form a basis of knowledge. According to van Dijk (1996):

Knowledge [...] is a specific sociocultural form of beliefs, viz. those that are held to be true by a speaker or a community, because they can be justified by sociocultural criteria of truth.

(van Dijk 1996, p. 9)

Furthermore, since humans are members of different social groups simultaneously, each individual may hold and enact different ideologies, thus different types of ideologies are defined within each group (van Dijk 2006, p. 116). At the same time, the different ideologies individuals hold and enact shapes the discourse and other social practices of the social group.

In the concept of ideology, the fundamental, shared beliefs of a social group function to control and organize other kinds of shared beliefs, such as knowledge (van Dijk 2006, p. 116). In this way, the discourse, actions, and interactions in a group of social actors are coordinated in the view of the goals and interests of the group as a whole, resulting in social representations. These processes specify the central cultural values that are of relevance for the group, such as justice, equality, freedom etc. One category of social practices that are influenced by ideologies is language use and discourse, which in turn influences the way we acquire, learn or change ideologies (ibid.). Legal texts, similar to the subset of policy documents that are included in the current study, is a form of legal practices in which the language use and discourse are produced and reproduced. Furthermore, not all collectivities are 'ideological groups', thus several social criteria must be fulfilled to be a member of a social group, such as permanence, social practices, interests, relations to other groups etc. The legal sphere of professionals within the criminal justice system is one typical group, bound by ideologies that control and organizes their social (legal) practices, language use, and discourse.



Moreover, many of the fundamental beliefs are so widely accepted that they have become a part of an entire community in the form of ‘common sense’. For instance, ideologies may function to legitimate domination, such as the relationship between the elected authorities and the citizens. Ideological collectivities are in this sense also communities of practice or communities of discourse, in which its members organize themselves around their shared beliefs. Ideology should in this sense be understood as a concept and value system that inform our norms (van Dijk 2011, p. 11).

The cognitive function of ideology is to provide ideological coherence to the beliefs of a group, and thus facilitate their acquisition and use in everyday situations (van Dijk 2006, p. 117). In other words, the social and cognitive functions of ideology operate as the interface between the social structures and discourses that shapes social representations, which will be further explained in the next subsection.

#### 4.1.3 Mental & Context Models

According to van Dijk (2006), the language users of a specific situation or event controls the meaning of the discourse through their subjective interpretations of the situation (p. 121). The way people understand a discourse is dependent on their ability to construct a model for it, which van Dijk refer to as mental models (ibid.). Mental models of our social situation are needed to guide us in the world, so we do not have to reinterpret the situation from scratch each time we interact with other people, events, and situations. Thus, by having mental models of various situations, we can presuppose a certain degree of knowledge related to the specific situation, i.e. knowledge that is relevant at a specific time and space (context). In other words, mental models function to ‘define the situation’, as it is interpreted and constructed by people, which also forms the context of that situation (ibid.)

According to van Dijk (2006), context and language are related to pragmatics, thus when you speak, you want it to be not only grammatically correct (syntax), meaningful (semantics), and refer to things you know about (referential semantics), but also socially *appropriate* (p. 121). The fundamental notion of pragmatics is context, and since the context is not “out there” but in our minds, the

‘appropriateness’ of discourse depends on one’s own definition of the communicative situation, which is a subjective mental model in each individuals mind.

All of our definitions of ‘appropriateness’ originates from our episodic memory, i.e. the long-term memory where personal experiences are stored. These personal experiences form mental models of our everyday lives, and when these mental models are activated by e.g. talking about them, the stories that are told becomes semantic models that varies depending on who the recipient is (ibid.). For instance, if I would become witness to a crime, the story that I tell my friend about what happened would be different from the one I told earlier to the police. Hence, stories are told differently depending on what context it is expressed in and are based on subjective mental and semantic models that define and shape our construction of the communicative situation. In other words, contexts take the mental model of an event and make it adequate to the communicative situation, a process that van Dijk (2006) refer to as epistemic models of human mind (p. 130).

Furthermore, the subjective interpretations are sometimes influenced by ideology. Ideologically biased mental models typically give rise to ideological discourses, in which certain events or actors are described in a more or less positive or negative way (van Dijk 2006, p. 121). In other words, the discourse structures of a context may influence the way knowledge, attitudes and opinions are expressed, meaning that ideologies are at play when language users engage in the ongoing construction of context as subjective mental models of the situation.

## 5. Methodology

In this section, the methodological strategy applied for this study is presented and explained. Moreover, the section includes a presentation of the corpus of data that has been included in the study, as well as a description of the analytical procedure. The section is concluded with a discussion on ethical concerns related to the study and reflections on the methodological choices made during the process.

### 5.1 Research Strategy

In this study, the qualitative method of discourse analysis is applied in combination with the research strategy that of a case study with a critical hermeneutic approach. In general, critical discourse analysis attempts to explore how socially produced ideas and objects are created and reproduced through language use, thus it views discourse as constitutive of the social world (Phillips & Hardy 2002, p. 6). In other words, discourse studies with a critical approach are in epistemological terms strongly grounded in the philosophy of social constructivism. Moreover, with van Dijk's (1993) third dimension of discourse (the cognitive interface), discourse is also socially shaped, meaning that there is a constant interplay between the social world and discourse.

The case study strategy has been chosen on the premise that it intends to explore a unit or system bound by space and time, and the explicit conditions and processes connected to the case (Yin, 1994 p. 10). The case does in this study involve a subset of policy documents released during the period 1990-2018, thus the case study takes on an idiographic approach by examining the development of discourse structures regarding witnesses' legal position from a historical perspective (Bryman 2008, p. 54).

In a case study, the entity that is studied is an object of interest in its own right, with the research aim to provide an in-depth interpretation of it, i.e. to elucidate the unique features of the case (ibid.). In contrast to other research strategies, such as ethnographic research, experimental research or surveys, the case study strategy "is an empirical inquiry that investigates a contemporary phenomenon in depth, within

its real-life context” (Yin 2003, p. 13). In other words, the case study strategy is best suited to perform an in-depth critical discourse analysis of the chosen corpus of data.

Critical discourse analysis is generally not considered as one single theory or method, but rather as a collection of theoretical and methodological approaches. A common feature for critical discourse analysts is however to form a work that is judged by its ethical and political significance, meaning that it should be evaluated by its ability to attain socio-political goals (Wetherell, 2001 p. 288). Put in another way, critical discourse studies do not leave the analysis of the social at the level of how talk and texts are formed and function, but instead it goes further and consider how it functions politically.

According to Van Dijk (2011), critical discourse analysis is a committed form of research that indeed should not be seen as a method, but rather as an interdisciplinary approach, perspective or attitude of doing committed research (p. 6). On the basis that discourse analysis in itself is not regarded a method, the critical approach of this study has been combined with the case study strategy to enable a systematic strategy to obtain data for the analysis.

This study focuses on the theme ‘representation’ as integral to the legitimization of witnesses’ legal position. Representation does in this context refer to utterances and statements within the corpus of data where witnesses are represented as:

- a requirement of the democratic society, and
- a neglected category of individuals of the criminal justice system

The analysis of this study investigates the intertextuality of these themes with each other and with previous texts to unveil the dominating discourses on the themes within the jurisdictional process over time. In the next subsection, the sampling technique and the data collection procedure of this study are described.

## 5.2 Sampling Technique & Data Collection

In general, language in the form of talk, written texts or non-verbal interactions etc. that occurs ‘naturally’ within the specific context of a study, are considered the most suitable sources of data to discourse analysis (Philips & Hardy, 2002 p. 70f). In other words, data that is gathered from the language-in-use forms examples of the discourse in that specific context. Depending on the character of the topic of inquiry, it is sometimes necessary to collect different types of data, e.g. written texts accompanied by interviews in order to obtain an understanding of the social context of the primary text (ibid. p. 72). However, the outset of this study is to gain a deeper understanding of the legislator’s view on witnesses over time, making data that represents witnesses’ point of view irrelevant.

As has been mentioned previously, the corpus of data included in this study consists of a subset of Swedish Government Official Reports (SOU), Commission Reports (Bet.) and Ministry Publications (Ds.) concentrating on security issues regarding the safety and protection of witnesses as a vital component of the jurisdictional process on matters concerning witnesses’ legal position. The main criterion of the selected data was that it contained components related to witnesses’ conditions, i.e. that the policy document was fitting to the context of this study.

When studying the sources of law, the traditional approach is to apply a legal method in order to establish existing law and what the judicial rules entail in practice (Zetterström 2012, s. 97f). In this study, the intention is not to examine established law, but rather to identify the reasoning and discussions within relevant policy documents that form the foundation of existing law. In doing so, the corpus of data was thus collected by the technique of convenient sampling (Bryman 2008, p. 183), with elements of the snowball sampling strategy as other relevant data was discovered in the already included policy documents (Denscombe 2009, p. 38). Furthermore, since the intention with this case study is not to obtain generalizable results, the choice of the sampling strategy for this study is justified since the findings from a convenience sample do not intend to be representative (Bryman 2008, p. 183).

All data were obtained through the official website of the Swedish Government, and when needed, through the search engine Google.com. The whole corpus includes policy documents released between 1990 to 2018 and was subdivided into three periods to allow for a comparison over time. Policy documents that were released between 1990-1999 form the first period, publications between 2000-2009 the second, and publications from 2010 till present day forms the third period.

### 5.3 Describing the Corpus of Data

The subset of policy documents included in this study has been chosen on the basis that they can be seen as communicative tools, in which the Government formally communicate and describe its policy intentions to the wider public and the various stakeholders in that policy area. The communicative purpose of these documents is to be expository and hortatory, thus in the documents, the Government's plans for legislation is outlined, explained and justified. The main purpose of the documents is to investigate the potential consequences a new law or law amendments would entail to the general interest as well as to the circumstances intended to be changed (The Government Offices of Sweden Website, 2018). A key feature of the documents included in the study is that they frequently refer back to other legal texts of similar character, thus all textual data hold a notion of intertextuality.

Furthermore, the process of providing the public with notification and a detailed explanation to the Government decisions is an important part of the parliamentary democratic process through which the relationship between the elected authorities and its citizens is continually negotiated. The dynamic of the relationship between witnesses and the Government can be examined through textual patterns in debates related to witnesses' position within the criminal justice system. In this study, the policy discourse regarding the representation of witnesses and legitimation of activities related to witnesses are central.

The policy documents included in the analysis of this study are outlined in *Table 1* (see next page). The policy documents have been categorized according to type and sorted in chronological order. However, in the analysis, the policy documents have been categorized in accordance with the aforementioned division of the documents.

Type of Document	Ref. number/Title														
<b>Swedish Government Official Reports (SOU)</b>	<p><b>SOU 1990:92, Våld och brottsoffer</b> (<i>Violence and victims of crime</i>)</p> <p><b>SOU 1998:40, Brottsoffer - Vad har gjorts? Vad bör göras?</b> (<i>Victims of crime – What has been done? What else needs to be done?</i>)</p> <p><b>SOU 2002:71, Nationell handlingsplan mot våld i nära relationer</b> (<i>National action plan on domestic violence</i>)</p> <p><b>SOU 2003:74, Ökad effektivitet och rättssäkerhet i brottsbekämpningen</b> (<i>Increased efficiency and legal certainty in law enforcement</i>)</p> <p><b>SOU 2004:1, Ett nationellt program om personsäkerhet</b> (<i>A national program on personal safety</i>)</p> <p><b>SOU 2008:106, Ökat förtroende för domstolarna – strategier och förslag</b> (<i>Increasing confidence in the court system – Strategies and suggestions</i>)</p> <p><b>SOU 2009:78, Ökad säkerhet i domstol</b> (<i>Increasing security in court</i>)</p> <p><b>SOU 2010:14, Partsinsyn enligt rättegångsbalken</b> (<i>Party's insight according to RB</i>)</p> <p><b>SOU 2017:46, Stärkt ordning och säkerhet i domstol</b> (<i>Strengthened order and security in courts</i>)</p> <p><b>SOU 2017:98, Tidiga förhör – Nya bevisregler i brottmål</b> (<i>Early interrogations – New rules regarding evidence in criminal cases</i>)</p>														
<b>Commission Reports (Bet.)</b>	<table> <tbody> <tr> <td>Bet. 1992/93: JuU24</td> <td>Bet. 2013/14: JuU16</td> </tr> <tr> <td>Bet. 1992/93: JuU6</td> <td>Bet. 2014/15: JuU15</td> </tr> <tr> <td>Bet. 1993/94: JuU25</td> <td>Bet. 2015/16: JuU1</td> </tr> <tr> <td>Bet. 1993/94: JuU4</td> <td>Bet. 2015/16: JuU19</td> </tr> <tr> <td>Bet. 1995/96: JuU14</td> <td>Bet. 2016/17: JuU17</td> </tr> <tr> <td>Bet. 1996/97: JuU19</td> <td>Bet. 2016/17: KU21</td> </tr> <tr> <td>Bet. 2011/12: JuU24</td> <td>Bet. 2017/18: JuU15</td> </tr> </tbody> </table>	Bet. 1992/93: JuU24	Bet. 2013/14: JuU16	Bet. 1992/93: JuU6	Bet. 2014/15: JuU15	Bet. 1993/94: JuU25	Bet. 2015/16: JuU1	Bet. 1993/94: JuU4	Bet. 2015/16: JuU19	Bet. 1995/96: JuU14	Bet. 2016/17: JuU17	Bet. 1996/97: JuU19	Bet. 2016/17: KU21	Bet. 2011/12: JuU24	Bet. 2017/18: JuU15
Bet. 1992/93: JuU24	Bet. 2013/14: JuU16														
Bet. 1992/93: JuU6	Bet. 2014/15: JuU15														
Bet. 1993/94: JuU25	Bet. 2015/16: JuU1														
Bet. 1993/94: JuU4	Bet. 2015/16: JuU19														
Bet. 1995/96: JuU14	Bet. 2016/17: JuU17														
Bet. 1996/97: JuU19	Bet. 2016/17: KU21														
Bet. 2011/12: JuU24	Bet. 2017/18: JuU15														
<b>Ministry Publications Series (Ds.)</b>	<table> <tbody> <tr> <td>Ds. 1993:29</td> <td>Ds. 1995:1</td> </tr> </tbody> </table>	Ds. 1993:29	Ds. 1995:1												
Ds. 1993:29	Ds. 1995:1														

Table 1. List of policy documents included in the study

#### 5.4 Analytical Procedure

The analysis of the gathered corpus of data was conducted by using the qualitative method of content analysis with a critical discourse analysis approach. At the initial stage of the analysis, all the included data were cataloged according to type and the period they were released. The intention of sorting the documents in this way was to enable the possibility to explore potential discursive shifts over time. The next step consisted of a thorough reading of the texts to get familiar with the content in its rawest form. This step is crucial when analyzing an extensive material, thus by returning to the material several times, patterns and implicit information can be discovered, enabling an in-depth understanding of the data (Denscombe 2009, p. 371f).

Data was analyzed qualitatively by an interpretative approach, with the intention to find the use of specific utterance and the underlying meaning of them (ibid. p. 377). The texts in themselves were classified according to predetermined 'key indicators' formulated on the basis of the research interests underpinning the study. For instance, texts from a 'subjective' stance where witnesses were conceptualized as social actors with personal needs were separated from those that were constructed from an 'objective' stance, i.e. statements that exhibited problems concerning witnesses in general. Within these categories, the production and reproduction of legitimation were distinguished and placed into additional categories.

In order to avoid that significant elements of the text were overlooked, the decision was made to manually go through the content of all policy documents step by step. There is suitable software available for the initial stages of analysis of extensive documents, but since most of the included material involves more than only issues regarding witnesses, this strategy was deemed unnecessary. Moreover, since most of the material was structured in a way that enables a satisfying overview merely by looking at the table of contents, a software that does this automatically was not needed. Also, since all the material was available as pdf-files, the existing search function of the software could be used to find important keywords without losing the context of the extracted text in which the keyword was found (van Dijk 2008).



The intention to explicitly focus on these keywords was to maintain a systematic approach to the material, thus letting them function as a guide while going through the material. All units of text that was deemed relevant to the study were extracted from the documents, and all data was then organized into different sections to which one of the predetermined key indicators mentioned above were suitable, while other parts of the text were excluded from the analysis. Through the application of specific key indicators, guiding what units of the material to analyze, potential subjective bias was reduced (Denscombe 2009, p. 379).

The final stage of the analysis consisted of coding and further categorization of units of the data in order to identify themes and patterns in the texts (ibid. p. 374). The themes were accumulated into the scheme below, in which utterances regarding the representation of witnesses was classified according to a theme and the definition of that theme (see Table 2). Drawing on the analysis strategy by van Dijk (1993), the analysis of the themes was further utilized through the identification of discursive properties of the text that demonstrated the exercises of dominance and by extension legitimation of the statements (p. 265ff).

<b>Subject</b>	<b>Themes</b>	<b>Definition of Themes</b>
<i>Witnesses</i>	- Obligated	Represented as a requirement of the democratic society, founded on the needed obligation of participation that will entail sanctions if it is not obeyed.
	- Liable	
	- Required	
	- Exposed	Represented as a neglected category of individuals of the criminal justice system, which fails to protect and support them sufficiently and that entail further victimization of witnesses.
	- Victims	
	- Requiring protection & support	

Table 2. Summary of coding

## 5.5 Methodological Reflections

The role of the researcher in a study demands specific attention, thus the potential impact and personal agenda to the study cannot be disregarded. Discourse analysis with a critical approach has often been criticized for being too influenced by the researcher's own interest and passion for intervening with a specific problem (Gee, 2014 p. 9). Although this to some extent may be true, it does not necessarily need to be something negative. The main interest of this study is to highlight witnesses' legal position in relation to their obligation to testify in court as well as their right to support and protection. The intention to emphasize witnesses position in this context entails a study that not only provides a neutral description of certain circumstances, thus by the use of a critical approach it also illuminates problems and controversies connected to the topic.

Due to the interpretative nature inherent in the critical approach, it has been claimed that critical discourse analysis is "unscientific" (ibid. p. 9). In any study that is focusing on a specific context, it is important to distinguish the aspects that belong to the context from those aspects that fall outside. Any aspect of a context can affect the meaning of a specific utterance, which makes it important to not only set a frame for the context that is examined but also to remain open to other aspects that may appear significant (ibid. p. 85). The claim that discourse analysis as a method is lacking in validity may not be completely irrelevant since the interpretations of the discourse are always vulnerable to change. However, if seen as a tool, the frame of a study can be widened to the point when other aspects of the context become irrelevant.

With regards to the 'top-down' perspective of this study, the voices of witnesses have been excluded. Thus, one of the limitations of this study is that it only captures one side of the picture. However, since the outset of the study is to examine the policy discourse on witnesses' position, witnesses' views are not meaningful to the study. Moreover, the existing legal framework that applies to witnesses is not part of the data analysis. The applicable laws are thus only presented as a result of the previous debates on the matter, to elucidate witnesses' current legal position.

## 5.6 Ethical Considerations

In all research studies, it is necessary to reflect upon and pay attention to ethical issues connected to the study. The ethical considerations of this study are based on the ethical guidelines and recommendations regarding proper research conduct provided by the Swedish Research Council (SRC 2017). Proper research conduct is based on prevailing norms and values of society and forms the fundamental requirements of the research process. The requirements can be summarized in a few general rules of thumb, where some are of specific relevance to this study.

First, it is vital that the researcher is truthful about the purpose and aim of a study. The implicit intentions shall be clearly articulated in order to not deceive the reader nor those who may become affected by the study's results (p. 25). Due to the critical approach of this study, the requirement to express the underlying intentions are inherent to the chosen theoretical and analytical framework, thus in order to be critical about something, the goals and objectives must be explicitly stated. Moreover, the requirement to maintain openness about the intentions also involve reviewing and reporting about the basic premises of the study (p. 25ff). This thesis takes account of these requirements through the endeavor to provide a detailed and profound description of the methods used in the study. The decisions made through the research process has been declared and explained, as well as the applied procedures of gathering and analyzing data.

Proper research conduct also involves the requirement to maintain a structured and organized research process (p. 25). The end result should be able to illustrate a clear connection between the different stages of a study and be of good quality in terms of originality, innovation, validity, and relevance. These aspects have been accounted for during the process of this study and the benefits and drawbacks, as well as weaknesses and strengths of the study, have been dealt with in separate sections of the thesis. The final general rule that relates to the current study involves the works of other researchers. As with most research, this study contains claims, arguments and statements founded on others' conclusions. The use of others' material has been made with care, to avoid unjust treatment and plagiarism (p. 52ff).

## 6. Results & Analysis

In this section, the results from the coding and categorization process of the included corpus of data, as described in the Methodology-section, are presented and analyzed. Segments of gathered data from the respective time period with significance for the aim of the study are illustrated and analyzed. The section is concluded by applying the theoretical framework of this study to the accumulated results from the whole time frame, in order to establish the dominating policy discourses regarding the legitimation of witnesses' legal position.

### 6.1 Representations of Witnesses in Policy Discourse

The analytical vantage point of this study is that witnesses are a neglected category of individuals of the criminal justice system. Deriving from this perspective, this study examines the evolvement of policy discourses within fragments of jurisdictional preparatory works, in which witnesses have remained as 'the forgotten soul' over the past 30 years. The content of the corpus of data included in this study is characterized by legal language use and practices, while at the same time signifying political preferences and influences, thus the textual data hold notions of what in this study has been termed as 'policy discourses'.

In the following subsections, extracts from the textual data that expresses significant aspects related to the representation of witnesses as well as other aspects of relevance to the research interest of this study are presented. The results have been divided into three separate parts, in accordance with the predetermined division of the decided time frame. The intention is to provide a chronological overview of the evolvement of policy discourses regarding witnesses' legal position.

#### 6.1.1 1990 – 1999

Many of the initiatives to implement new laws or make amendments to existing legislation in the area of witnesses' conditions were initiated at the beginning of the 1990's. The Swedish Government's decision to assign a commission of inquiry to inspect the prevalence of threats and violence against victims and witnesses in

connection to criminal investigations and court proceedings was the launching point to increased attention on witnesses' conditions. In the resulting Swedish Government Official Report (SOU 1990:92), the section about threats against witnesses is opened by stating that according to a survey, the prevalence of violence and threats against witnesses are rather uncommon. Instead, the conclusion is drawn that:

Much indicates that the reluctance people sometimes feel towards testifying is due to a general feeling of inconvenience and discomfort about acting in public, and because of what they have heard from media regarding witnesses and parties being subjected to abuse and also the belief that they may be mistreated by lawyers and prosecutors.

(SOU 1990:92, p. 24)

Moreover, in the report, it is claimed that Sweden more or less has been spared from the worst thinkable examples of abuse against witnesses. Any given means of action that potentially would violate central principles of the justice system is therefore deemed as groundless. Efforts should instead be directed to physical protection and better opportunities to obtain protected identity (SOU 1990:92, p. 24). Due to lacking resources of reliable information about the prevalence of actual witness intimidation, the commission found it difficult to suggest any further improvements and changes of existing law (SOU 1990:92, p. 173). The only suggestion that the commission presented is that the penalties for interfering in judicial matters are toughened and adjusted to the penalty scale of the crime perjury.

After the comprehensive report, a range of additional Commission Reports (Bet.) and a few Ministry Publications (Ds.) was made regarding witnesses' conditions. A follow-up report on what had been done on the area during the past ten years was later published, in which efforts made to improve witnesses conditions were evaluated. In the evaluation, the commission states that the extent of witness intimidation has remained on the same level (ibid. p. 21). However, in contrast to previous debates, they claim that the judicial system possesses sufficient measures of protection for threatened witnesses. Thus, the suggestions they put forth mainly concern further initiatives to review witnesses' conditions and minor improvements of administrative aspects related to safety measures that apply to witnesses.

The view on witnesses in the policy documents from 1990-1999 is primarily demonstrated by representations of witnesses as a requirement of the democratic society. For instance, their role is emphasized through the following statements:

The condition that witnesses freely and truthfully can deliver their statements to the police and in court constitute one of the foundations the Swedish justice system rests on. Assault against witnesses is an attack on society. If society is not able to protect witnesses it would threaten the rule of law.

(SOU 1990:92, p. 24)

We must strive for that witnesses who testify in court are able to deliver their statements without feeling threatened.

(Ds. 1993:29, p. 56)

Witnesses play a vital role in our judiciary. Particularly in criminal matters, where evidenced by testimonies often is the most important evidence of the case. A criminal procedure requires the public to participate in the investigation of crimes.

(Ds. 1995:1, p. 3)

The Swedish justice system is based on the fact that witnesses freely and truthfully can submit their stories to the courts. An attack against a witness can therefore be said to be an attack on the rule of law and by extension, an attack on society. To avoid threats against the rule of law, it is important that those involved in legal proceedings are protected against various forms of abuse. Certain protection is offered in the law in force, through penal sanctions against those who abuse a witness, and by the ability to withhold personal data.

(Ds. 1995:1, p. 19)

Utterances representing the obligations pertaining to witnesses are also frequently occurring in the policy documents from this period, e.g. by outlining the provisions of existing regulation, but also in the form of responses to sections of the text where potential reasons to an unwillingness to testify are presented. The obligations are expressed through the following examples:

Those who have been summoned to testify have no possibility to withdraw from the obligation to give evidence due to fear of reprisals from the parties or an outsider.

(SOU 1990:92, p. 165)

This obligation is sanctioned by more or less extensive measures. Witnesses who become exposed to violence or threats of violence or other reprisals due to information they have provided have no opportunity to refuse to leave that information.

(SOU 1990:92, p. 172)

In Sweden, it is a general duty to testify in court. This obligation is not limited to criminal proceedings, but is usually more pronounced there.

(Ds. 1995:1, p. 3)

The utterances above also emphasize sanctions that may occur if a witness refuse to testify, thus the fact that witnesses would be held liable if they do not participate appears to be important to specify. A few statements regarding witnesses' need of protection and support was also identified in the policy documents. The need of support and protection does however only apply to certain groups of witnesses, thus not all witnesses can expect these services:

For certain groups of witnesses, the risk of becoming exposed to violence or other reprisals due to involvement in judicial matters seems to be concrete.

(SOU 1990:92, p. 174)

For certain vulnerable witnesses, it should be possible for the courts to order a special support person (witness counsel).

(Ds. 1995:1, p. 33)

To exposed witnesses, it would be a significant support to have an "own lawyer" in order to achieve some form of equilibrium in relation to other actors.

(Ds. 1995:1, p. 35f)

Furthermore, the policy documents also expresses slightly discouraging details regarding witnesses' legal position:

For reprisals from the opposing party, e.g. from the defendant of a criminal proceeding, the abovementioned legislation is not sufficient.

(SOU 1990:92, p. 174)

In terms of physical protection for threatened witnesses, it is primarily a matter of resources.

(SOU 1990:92, p. 175)

If threats are of serious character, it is e.g. possible to receive protection by a bodyguard. However, this kind of protection is rare due to high costs and the effects it will have to a person's privacy.

(Ds. 1995:1, p. 22)

Sometimes the information and measures taken by the authorities are not enough to meet the requirements of a witness.

(Ds. 1995:1, p. 33)

As has been demonstrated above, the conclusion is drawn that the magnitude of witness intimidation is rather limited. This notion is further displayed and confirmed by the following statements:

For the vast majority of witnesses in criminal cases, no special safety measures are required.

(SOU 1990:92, p. 177)

We estimate that there are a very few witnesses per year that would need special safety measures.

(Ds. 1995:1, p. 35)

Other difficulties related to witnesses are also described in the policy documents, where complaints by individuals who have testified are met by the claim that discontent is a natural consequence of participating in criminal proceedings (SOU 1990:92, p. 177). Moreover, the causes to unwillingness are believed to depend on:

That the defense counsel have treated them badly and perhaps even questioned their credibility. This, in addition with the experience that they did not receive the support and help they expected from the prosecutor and the court, has made many witnesses declare that they would not come forward in the future. Some police districts also mention that the legal process often is lengthy and inconvenient which reinforces a feeling of reluctance.

(SOU 1990:92, p. 163)

People's unwillingness to inflict with other's business, or to expose themselves to the inconvenience and discomfort of having to participate in future trial.

(Ds. 1995:1, p. 46)



The majority of the content in SOU 1990:92 is to a great extent repeated in the policy documents by the Ministry of Justice (Ds. 1993:29; Ds. 1995:1). Only minor adjustments of specific statements and utterances regarding witnesses and their conditions can be distinguished, but overall they signalize similar standpoints. The main difference is the purpose of the documents, thus the Ministry's publications discusses a few more suggestions on how to improve witnesses conditions:

One way to increase the protection of witnesses is thus to ensure that certain information about witnesses, i.e. age, occupation and residential address, will not be shown in the documents distributed to the defendant.

(Ds. 1993:29, p. 51)

The opportunities for witnesses to be accompanied by a volunteer assistant do not need to be implemented to law. The organizations providing such non-profit services should instead receive support and encouragement from the state.

(Ds. 1995:1, p. 33)

The style and language of the summons must be softened. There should be information in the summons about who to contact if you have any questions. Disclosure of sanctions if you do not show up should be given a more neutral meaning.

(Ds. 1995:1, p. 70)

Information about the obligation to testify and the procedure should be sent together with the summons. Such information should also be provided during the investigation to witnesses heard by the police and prosecutors.

(Ds. 1995:1, p. 72)

A special service person for witness who appear in court is deemed unnecessary. It should be a responsibility of all employees at the court to help witnesses. (Administrative) guards should be able to offer a certain host function.

(Ds. 1995:1, p. 74)

It should not be mandatory for the courts to establish special waiting rooms for witnesses in current court buildings. However, when planning and renovating court buildings, attention should be given to the matter. Those who wish to wait in a secluded space should receive this. The courts should be prepared to arrange a special waiting room if the need arises.

(Ds. 1995:1, p. 76)

Some of the suggestions listed above have been addressed in a number of Commission Reports. The proposals to have secluded waiting rooms for witnesses, to create a special safety package for witnesses and to have the penalties for those who interfere with judicial matters toughened was however declined (Bet. 1992/93: JuU24; Bet. 1995/96: JuU14; Bet. 1996/97: JuU19). Moreover, the question of allowing witnesses to be anonymous in criminal court proceedings have also been addressed repeatedly (Bet. 1992/93: JuU6; Bet. 1993/94: JuU4; Bet. 1993/94: JuU25). However, the proposals were declined in favor of the fundamental principle of the defendant to have full insight into the material of a criminal investigation and prosecution.

In the Official Report that came about at the end of 1990's, many of the issues mentioned above were addressed once again. One specific aspect of interest was identified, thus the approach towards witnesses had slightly changed. In contrast to previous assessments, the committee opened up the possibility for witnesses to receive special support when attending court (SOU 1998:40, pp. 146, 352). Moreover, due to the discoveries in their evaluation of previous efforts, the committee concluded that a stronger protection of witnesses is certainly needed. In order to achieve this, they suggested that an expert group should be assigned to look further into issues related to witnesses (*ibid.* p. 313).

#### 6.1.2 2000 – 2009

In December 2001, the Swedish Government decided to assign a committee to investigate issues related to the safety and protection of witnesses. The resulting report was released in 2002, drawing on the conclusions in the abovementioned Official Report from 1998. The conclusions in the report from 2002 needed further elaborations, which resulted in yet another report in 2004. At this point, no national witness protection program existed in Sweden, and the committee of the final report in 2004 requested a more structured way of managing situations where witnesses are threatened (SOU 2004:1, p. 51). The report was in other words the launching point to the implementation of a national witness protection program in Sweden.

Similar to previous reports, utterances where witnesses are represented as a requirement to the democratic society are used frequently also during the period 2000-2009. The following statements has been found on this theme:

In Sweden, attempts to sabotage criminal investigations or trials by influencing the witnesses through violence or threats has been taken very seriously. The fact that witnesses can feel safe and thereby dare to tell what they have observed is a requirement for effective law enforcement.

(SOU 2002:71, p. 126)

It is of fundamental importance that citizens who have information about a crime dare to do this to the police and prosecutors so that the crime can be investigated and the perpetrator is brought to justice. All attempts to sabotage a criminal investigation or trial is a serious attack on the legal system.

(SOU 2004:1, p. 73)

If the public cannot offer sufficient protection to witnesses, there is a risk that they will choose not to cooperate with the police, which in turn may result in that serious crimes remain unsolved.

(SOU 2004:1, p. 124)

By offering witnesses a protection program, more people will be willing to get involved in investigations and trials, which by extension leads to that a greater number of serious crimes are solved.

(SOU 2004:1, p. 220)

The obligations of witnesses are also mentioned, but in some of the policy documents the obligation is viewed as slightly inconvenient to witnesses, who compared to other actors of a judicial procedure are forced to testify:

For witnesses, the situation may be particularly difficult since there is a witness duty in our country. A witness cannot refrain from testifying due to fear, but is obliged to appear at the main hearing, take an oath and then truthfully answer questions and spontaneously disclose the judiciary about circumstances of importance to the case.

(SOU 2004:1, p. 73)

For witnesses, a completely unreasonable situation may arise. If the person comes forward and testifies, he or she may be of risk to become exposed to serious reprisals. If, on the other hand, the person refuses to fulfill the obligation, he or she may be detained.

(SOU 2004:1, p. 124)

At this point, most courts in Sweden had introduced the use of witness support services in their facilities. The support and protection of witnesses does however still remain as an unresolved issue. The following statements demonstrate representations of witnesses' conditions and requirements:

The need to be eligible for a protection program may also pertain to witnesses who participate in criminal investigations and trials of other crimes than serious or organized crime, e.g. violence or threats of violence within the family.

(SOU 2002:71, p. 37)

The goal of this activity is, among other things, to increase basic needs of safety for witnesses.

(SOU 2002:71, p. 54)

Also those who "only" are witnesses should be entitled to be assisted by a legal person. Having access to such assistance can be perceived as proper legal support, for example in cases where the witness feels questioned in some respect.

(SOU 2003:74, p. 227)

The task of witness support services is to help witnesses before and after the trial. The purpose is to increase the security in public areas of the court, such as waiting rooms, and, if necessary, to explain the procedures of a trial.

(SOU 2004:1, p. 77)

Many witnesses experience the trial as the most stressful moment due to the encounter with the perpetrator and his sympathizers.

(SOU 2004:1, p. 117)

For those who believe it is dangerous to be heard as a witnesses, it is important to provide information and different types of projects to encourage people to dare to testify.

(SOU 2008:106, p. 77)

By providing clear information to witnesses about the role and task of the court and about the procedures, the court may contribute to suppress the expectation that their response should include, e.g. explicit expression of compassion or absence of questioning.

(SOU 2008:106, p. 121)

In general, the judge have to remember that to many witnesses it is an unusual experience to participate in a trial, which often involves a great mental strain, and that a friendly and respectful response often can help to reduce this strain.

(SOU 2008:106, p. 136)

In 2009, a comprehensive Official Report regarding the security conditions in courts was released. The report outlined previous efforts that had been made in order to improve witnesses' legal position, which mainly pertained to investigations of various kinds and rarely any actual changes. The conclusion was that many suggestions had been presented, but the legal position of witnesses had remained. However, many of the suggestions gave rise to an awareness of the issue and encouraged actors within the criminal justice system to keep the requirements of witnesses in mind in their daily work (SOU 2009:78, p. 100ff). The main outcome of the report related to witnesses' conditions was the suggestion to widen the possibility to permanently have security controls and metal detectors at the entrances of court buildings.

### 6.1.3 2010 – 2018

The recurring debate concerning the possibilities to implement anonymity for witnesses who testify in court has continued also during the past decade. In 2010, the Government assigned a committee to investigate potential collisions between the principle of publicity and confidential information within the justice system (SOU 2010:14). In conformity with previous reports, the obligation to give evidence and the consequences that will occur if a witness refuse to testify are mentioned repeatedly. However, the main suggestion made in the report is that the obligation should be restricted in cases where information has been provided by an informant, thus if necessary the informant shall remain unknown and a witness who knows their identity may withhold the information to the court (ibid. p. 16). One of the conclusions that was drawn in the report were that witnesses' unwillingness still constituted a problem for law enforcement:

The widespread fear of providing information and testifying has thus required the police to rely heavily on other methods.

(SOU 2010:14, p. 122)

In 2011, a proposition was issued regarding the existing regulations on security controls and metal detectors in court buildings (Bet. 2011/12: JuU24). The proposition led to the possibility to have more or less permanent access controls in

courts. Moreover, in the report the decision was made to further investigate the security conditions for victims and witnesses attending court facilities.

However, in many of the subsequent Commission Reports, in which several suggestions were presented regarding required efforts connected to witnesses, the commission with representatives from the Ministry of Justice rejected further initiatives with reference to ongoing projects (Bet. 2013/14: JuU16; Bet. 2014/15: JuU15; Bet. 2015/16: JuU1; Bet. 2015/16: JuU19). In the fall of 2017, a series of governmental bills regarding anonymous testimonies was submitted. In the bills, it was yet again argued that witnesses experience fear and anxiety of testifying, which leads to an ineffective legal system (Bet. 2016/17: JuU17; Bet. 2017/18: JuU15). Ensuring witnesses' need of support and protection was in other words once again raised as an important task of the criminal justice system, which previous efforts had failed to accomplish satisfyingly.

A few of the things that had come into force at this point was an increased use of technical supplies during court proceedings, such as video link and access controls. Furthermore, the national witness protection program had come into force. The program was however designed to only admit witnesses of serious crimes. Finally, the Swedish NCA and the Crime Victim Compensation and Support Authority had been assigned to investigate the security conditions in courts and evaluate the witness support services that now had been employed in most courts. However, in 2017, the Committee on the Constitution raised a concern regarding the fact that no deadline had been specified of when the evaluation would be due (Bet. 2016/17: KU21).

In 2017, two comprehensive Official Reports was released, focusing on security and order in courts and potential strategies to avoid repeated interrogations during investigations and court hearings (SOU 2017:46; SOU 2017:98). The representation of witnesses was still strongly expressed through the use of utterances emphasizing their role within the criminal justice system, i.e. as a requirement to the democratic society:

It is crucial for the administration of justice that the courts can conduct hearings in orderly and secure forms. There are several reasons for this. Due to the rule of law, parties and witnesses must feel secure when they attend courts. They must be able to freely and truthfully leave their stories without feeling threatened, disturbed or subject to pressure. This gives the court the best possible basis for its assessment of the cases.

(SOU 2017:46, p. 69)

A safe and secure environment can also be assumed to increase the willingness of witnesses to testify, which is a prerequisite for effective law enforcement and prosecution.

(SOU 2017:46, p. 69)

The requirements of witnesses to be able to freely give evidence and to be willing to participate in judicial procedures were also addressed as a persisting problem:

Witnesses often find it inconvenient to, while waiting for the hearing to begin or during breaks, be forced to encounter the accused and his or her friends. This can negatively affect the statement, when you feel scared and threatened.

(SOU 2017:46, p. 109)

Plaintiffs, witnesses and others who participate in a court proceeding should be able to feel safe and secure before and during the hearing.

(SOU 2017:46, p. 114)

A cornerstone of good treatment is that the fear parties, witnesses and other participants of the court process may feel is taken seriously.

(SOU 2017:46, p. 115)

The pressure in court hearings is likely to affect witnesses' willingness and ability to participate in interrogations at all. In some cases, this risk has already been manifested by difficulties that regularly occur with getting people to testify.

(SOU 2017:98, p. 158)

Witnesses may, due to the current order, suffer from so-called secondary victimization while they are waiting for a court hearing to start. Secondary victimization means that they become exposed to additional stress, which leads to a repeated sense of vulnerability.

(SOU 2017:98, p. 167)

With an increasingly tougher climate for e.g. witnesses in criminal cases, it is an urgent concern to reduce the external pressure against those who come forward and give their information.

(SOU 2017:98, p. 238)

It is however clear from the utterances in the policy documents that the jurisdictional process regarding witnesses holds a range of difficulties that prevents too profound changes:

However, measures for better order and security must always be weighed against other interests. The interest of creating better conditions for the courts to keep order cannot be accentuated to the extent that basic principles are set aside or procedural equity can be questioned.

(SOU 2017:46, p. 70)

In order to reach the goal of good order and high security in the courts, measures of several kinds are required.

(SOU 2017:46, p. 70)

Although the legal regulation in general works well, there are a number of areas where legislation needs to be more fittingly oriented and effective. The legislation should be updated and adapted to technological advances and to the regulatory policy and security issues the courts are faced with today. Overall, we believe that legislation in a number of aspects need to be changed so that legal proceedings will be safer and provide more secure environments for all involved.

(SOU 2017:46, p. 78)

However, current regulation does not explicitly open up for the courts to take into account the risk of interferences, unless a witness declares that he or she is afraid. Some people do not know about the possibility of video conferencing, others do not want to show that they are afraid and refrain from telling the court. As a consequence, vulnerable witnesses may take too much responsibility for their own security in the court. This is not an appropriate arrangement.

(SOU 2017:46, p.116)

The statements above resulted in a series of new suggestions on how to improve witnesses' conditions and by extension their legal position. A few of the suggestions are the following:

Referring the audience to a separate room creates better conditions to have organized and secure hearings in cases where the audience otherwise could have disturbed the order or with subtle means attempted to scare, threaten and affect parties and witnesses.

(SOU 2017:46, p. 105)



Our view is that the courts need to develop their work to recognize and prevent attempts of interferences. This is especially important for incidents outside the courtrooms, which today rarely meet any counteractions.

(SOU 2017:46, p. 114f)

However, the courts should be able to use video conferencing to a greater extent than today to create conditions that ensure safe and secure litigations. In this way, the courts get better opportunities to meet the needs of afraid and vulnerable parties and witnesses without violating legitimate reasons for legal certainty.

(SOU 2017:46, p. 118)

The proposals can be expected to have several positive consequences. Courts will become calmer, safer and more secure environments for all who attend or visit a trial. In the long term, fewer court proceedings may need to be canceled due to afraid and insecure witnesses who do not come to court.

(SOU 2017:46, p. 208)

The suggestions are at the moment processed within the ministry of concern, i.e. the Ministry of Justice. It remains to be seen what the proposals will result in regarding witnesses' legal position.

## 6.2 Legitimation of Witnesses' Legal Position

Focusing on witnesses as a neglected category of individuals of the criminal justice system, this study examines how the conceptualization of witnesses within the jurisdictional process legitimizes witnesses' legal position. The aim of this study is twofold. The first step is to identify the dominating discourses in the representation of witnesses within the included policy documents of this study, which has been completed above. Furthermore, in this subsection, the resulting extracts of text from the corpus of data are combined with the theoretical framework of this study. To secure the research interest of this study, two separate research questions are asked, namely;

- *What characterizes the dominating discourses in the representation of witnesses within the jurisdictional preparatory works from 1990-2018?*
- *In what way do the conceptualization of witnesses within the jurisdictional preparatory works legitimize witnesses' legal position over time?*

In this study, the representatives of the jurisdictional process constitute what van Dijk (1993) refer to as ‘power elites’, thus they are the language users who have predominant access to the policy discourse on witnesses’ legal position; they are the ‘policy-makers’. Moreover, the representatives do in their specific role “possess” social power by being members of a specific social group with a distinct function, in which certain ideologies are shared, enacted, produced and reproduced (van Dijk 2003). Moreover, the representatives are either officials from the ministry concerned, a commission of inquiry or a one-man committee that has been assigned by the Government to investigate certain features and aspects related to the jurisdictional process regarding witnesses. It can be assumed that they have been assigned due to their expertise and level of knowledge on the topic, i.e. knowledge that is relevant to the specific context (van Dijk 2006).

According to van Dijk (*ibid.*), all discourse is in some way ideological since it always expresses a worldview or particular standpoints. Although the term ‘ideology’ generally is associated with political isms or philosophies of different kinds, the shared ideologies of said power elites do not refer to their potential political standpoints. Thus, ideologies are fundamental ‘systems of beliefs’ which are created and shaped by the human mind, beyond our consciousness. Even if parts of the content of the textual data certainly can be labeled as political positions towards the matters of concern, van Dijk (*ibid.*) strongly points out that ideology is something ‘natural’ that individuals are not aware of. Moreover, the function of ideology is to control and organize other shared beliefs of social groups, such as attitudes, opinions and what those within a social group regard as knowledge.

In this way, the discourse, actions, and interactions in a group of social actors are coordinated in the view of the goals and interests of the group as a whole (van Dijk *ibid.*). From the extracts demonstrated above, it is clear that the ideologies of the policy-makers are more or less consistent over the whole period included in the study, thus the utterances are nearly identical, and the intertextuality of the texts implies that the knowledge they rely on are primarily based within the sphere of fellow social groups of power elites. The policy discourse on witnesses’ conditions

does in this way represent the ‘truth’ as it is interpreted and understood by the power elites, which in turn exerts power by means of a dominant perception of truth (Winkel & Leipold 2016).

One of the strong ideologies that are reflected in the policy discourse is the emphasis on the role of witnesses to the democratic society. In several sections of the textual data, the policy-makers set forth the importance of creating conditions that allow witnesses (and victims) to freely and truthfully deliver their testimonies. The background to these utterances appears to be a growing concern to the increasing evidence of instances of witness intimidation, which also is demonstrated through the increasing interest of witnesses conditions within academic circles from 1990 and onwards (see e.g. Fyfe & McKay, 2000a).

In contrast to the parties of a criminal case, who gradually have gained more space within legislation, it is not until recently that witnesses conditions have become a concern of the policy-makers. During the period 1990-1999, the policy-makers emphasized witnesses as a requirement to the democratic society, while at the same time expressing that the current legislation was insufficient. Although many suggestions were presented at this point, no major changes were made. Instead, it was decided that the area must be investigated further, which may be rational due to lack of knowledge on the area at this point.

On many occasions within the included policy documents, phrases that emphasize witnesses’ need of support and protection are used to explain and justify the reasons to why the documents have been initiated in the first place. These ‘strategies’ can be understood through van Dijk’s (2006) view on context and language as strongly related to pragmatics. Thus, in terms of meaning and referential semantics, the use of such phrases can be understood as ‘appropriate’ discourse since the explicit aim is to change witnesses’ conditions to the better. However, the implicit goals and interest of the initiatives cannot be said to primarily encompass supportive suggestions and solutions to improve witnesses’ legal position, thus there are many interests that need to be regarded in the jurisdictional process.

For instance, the representatives of the jurisdictional process have to present ideas that are consistent with statutory procedures and address potential interferences and obstacles related to the fundamental principles of the constitutional state. However, it is their level of knowledge on the area that forms what van Dijk (ibid.) refer to as epistemic mental models of the context, where information is presented and made adequate to the specific communicative situation, to which the potential recipients play a vital role.

The main belief appears to be that actual witness intimidation is rather uncommon and that it is only a smaller group of individuals who become exposed to this kind of pressure. In an international context, intimidation of witnesses seems to occur more frequently in other parts of the world compared to Sweden (Healey 1995; Hamlyn et al. 2004; Brå 2008). The utterances demonstrated above can however be said to express a considerable ambivalence to the question of how widespread the problem is in Sweden. Thus, they express the importance of creating safe and secure conditions for witnesses, while at the same time excluding the majority of witnesses by stating that protection and support are only required for certain individuals.

From a critical perspective, the way the representatives put forth statements and motives to why it is important to protect and support witnesses - without presenting any major efforts to achieve this - can be seen as strategies of manipulation of dominance (van Dijk 1993). Thus, by addressing issues related to witnesses' conditions, individuals who have already testified and those who potentially will be forced to do so receives attention, which possibly gives them the impression that efforts are actually being made by the authorities, even though not all witnesses are included in the debates.

One important principle in a society governed by law is that the public welfare can never take precedence over individual requirements. Basically, the suggested ideas and solutions in the included policy documents cannot interfere with the rule of law and other existing fundamental principles that applies to those who are suspects of crime or subject to prosecution. One such principle pertains to the defendant's right to transparency, i.e. the right to have full insight into the material that forms the

basis of an investigation or potential prosecution against him/her. However, witnesses of crime also have individual requirements and desires, but these aspects are often taken for granted, ignored or deemed as impossible to take into account in the implementation of regulations. In order to restore the legitimacy of the law, when it is not completely anchored among the public, this may induce an internal legal “legitimizing process” to reinforce the legitimacy of existing and impending regulation (Larsson 2011). The self-reinforcement process is in this sense based on previous precedents about what is appropriate, which determines what is considered as applicable also for future decisions.

Consequently, the legal practices that are exercised through the documents can be understood as the reproduction of already established language use and policy discourses (van Dijk 2006), with only minor changes of the underlying ideologies due to the influences from surveys and professionals from outside the jurisdictional process. This also illustrates the retrospectivity of the discussions within the policy documents (Larsson 2011), thus the repeated rhetorical repertoires on witnesses’ conditions as a problematic issue to solve due to existing fundamental principles shows how strong the path dependency of law is in this context.

In other words, the expressed ideologies inherent to the policy discourse mainly pertain to the central principles of already established law. This does by no means come as a surprise, thus due to the fundamental principles of the constitutional state, the rights of witnesses cannot possibly be expected to have an equal bearing to the rights of individuals who have become targeted for criminal proceedings. However, by representing witnesses’ needs of support and protection as essential due to that they are a requirement of the democratic society, the emphasis is removed from the key issue. In other words, it becomes more important to improve witnesses’ ability to deliver proper evidence than to improve their legal position, which through van Dijk’s (1993) understanding can be seen as a discursive enactment of domination. Moreover, in this way, the expressed ideologies also reflect the central cultural values that are of relevance to the procedures of the jurisdictional process, such as justice. According to van Dijk (2011), many ideologies have become so widely

accepted that they have become a part of an entire community in the form of 'common sense'. Even though 'justice' may have diverse meaning to different individuals, it can be claimed to have a prominent position in the Swedish society.

In other words, it can be claimed that ideologies of justice have been internalized into society's value system, which in turn will inform our norms and what individuals perceive as violations of justice (ibid.). Ultimately, this may be the source to why witnesses' conditions have been neglected, thus the fundamental belief in justice may prevent other ideologies from entering the policy discourse within the jurisdictional process on witnesses' legal position. By using utterances that signalizes the importance of having a legal system founded on justice, opposing interests becomes less relevant and the inequality of witnesses' legal position becomes partially jointly produced (van Dijk 1993).

On the other hand, the policy documents do hold other ideologies than 'justice' which are expressed through frequent references to studies and surveys, in which witnesses and practitioners of the judicial system have been asked to give their opinions on certain matters. The knowledge-base is in other words not exclusively founded on the competence of the representatives and the ideological goals and interests they embody. Nevertheless, the sources of information that have been included may also demonstrate a mode of control by the power elites, thus the sources they refer to may have been included for strategical purposes. The language users, in this case the representatives of the jurisdictional process regarding witnesses' conditions, do in their prominent position have the power to control the meaning of the policy discourse through their subjective interpretations of the context (van Dijk 2011).

In other words, since the representatives have main access to the discourse, it is their mental and context models that constitute the foundation to what kind of information to include and pass on to the public, thus it is their interpretations and constructions of the context that defines the situation for witnesses policy discourses. Any possible counter-powers, i.e. the voices of those who show a negative attitude towards witnesses' conditions, can in this way be ignored. From

an external perspective on law, this may result in a reduce legitimacy of existing regulation, thus it fails to meet the interest and values of certain domains of society (Peczenik 1995).

It would be incorrect to claim that no changes at all have been made during the period of focus for this study. However, the changes appear to only have had minor effects to the willingness to testify, thus the utterances of problems connected to making witnesses come to court seem to remain. Many of the proposals that have led to changes of legislation pertain to issues occurring outside of the courtroom (e.g. the possibilities to have permanent metal detectors and to use video links to a greater extent). In other words, the legislation mainly addresses situations of case-specific witness intimidation even though the mere perception or general fear of intimidation appears to be more common (Brown 1994; Dedel 2006; Healey 1995; Tarling et al. 2000). The inability of the jurisdicative process to target the actual problems that have been identified regarding witnesses conditions due to notions of path dependence creates an imbalance between the interests at stake (Larsson 2011).

Consequently, although many aspects of witnesses who are afraid or reluctant to testify have been addresses within policy discourse over the years, and efforts have been made to improve the situation, they have mainly been directed towards witnesses' attending court. The focus on case-specific situations of witness intimidation has resulted in that the long-term needs of witnesses in a wider perspective have become forgotten. The repeated concerns regarding difficulties to make witnesses participate in judicial matters expressed during the period 1990-2018 demonstrates that the legal position of witnesses has remained unresolved. The policy discussions of interest to this study can in a socio-legal perspective be claimed to suffer from legitimacy issues due to its strong path dependency (Larsson 2011). The failure to adapt to social changes, where the problem of witness intimidation constitute a suitable example, demonstrates the political struggle and the limitations of legal frameworks due to legally embedded conceptions which causes a situation where the law lags behind.

## 7. Conclusions & Discussion

The purpose of this study was to describe how discursive structures within the jurisdictional process potentially contribute to witnesses' reluctance to testify. Moreover, the primary concern was to contribute to the research field regarding witnesses by providing insights to the jurisdictional process from a critical point of view, which in turn potentially can result in useful suggestions on how to increase witnesses' willingness to participate in judicial procedures. The suggestions will be returned to in the final part of this section, where they are intertwined with a few ideas for future research studies.

The aim of the study was twofold. First, the study reveals the dominating discourses within fragments of jurisdictional preparatory works released during the period 1990-2018. The results show that within policy discourses, the representations of witnesses mainly pertain to them as a requirement of the democratic society, which also appears to be the main reason to why they must be protected and provided sufficient support. In other words, the utterances demonstrated above show that the dominating discourses in the representation of witnesses is characterized by an emphasis on their significant role within the criminal justice system. Secondly, through the critical approach to the policy discourses on witnesses' legal position, the study has provided insights to the rhetorical repertoires used in the jurisdictional process and how the conceptualization of witnesses legitimizes the legislator's inactivity and failures on the area.

From the analysis of witnesses' legal position, it is clear that the conditions have been slightly improved over time, mainly in terms of physical protection. Furthermore, the awareness of issues related to witnesses appears to have increased over the years among representatives of the jurisdictional process, as well as by research studies on the area. In other words, the topic has been attended to on several levels and attempts have been made in order to emphasize witnesses' conditions and improve their legal position. However, although efforts have been made, the policy discourse on witnesses' legal position is strongly characterized by recurring disputed themes. The repeated question of how to encourage witnesses to



participate in criminal investigations and to become willing to attend court hearings is frequently occurring over the whole period of the study. Similarly, the suggestion to allow witnesses to be anonymous is also returned to on several occasions.

By consistently referring to previous considerations, evaluations, and surveys that have been made within the field, the policy-makers have been able to legitimize many of their rejections to potential solutions by stating that the issues have already been deemed impossible by others. Moreover, the perpetual justification of their rejections due to the fundamental principles inherent to Swedish legislation has created an undisputed legitimation of their decisions, thus the legitimacy of law is in general not easily questioned. Similarly, the tendency to repeatedly outline the obligations that apply to witnesses further stresses the restrained legal position of witnesses, thus they are forced by governmental action to partake in judicial matters even if they wish not to. The obligations of witnesses are also used as the justification to why efforts must be made to improve their conditions, thus as has been mentioned above, witnesses' significant role to the criminal justice system's credibility and efficiency appears to be the main reason to most initiatives within the jurisdictional process.

Moreover, the tendency to mainly focus on situational approaches of witness intimidation instead of social aspects appears to delay the possibility for witnesses to gain a stronger legal position. Thus, the changes that have been made mainly pertain to witnesses' physical security and their participation in judicial procedures. Witnesses' individual well-being does in this way become a secondary issue to solve.

Consequently, the criminal justice system fails to respond properly to the requirements of witnesses, which in turn reinforces the unwillingness to participate in the machinery of law enforcement. This can in itself be understood as a de-legitimation of the law; thus, it is not anchored accurately in society. However, through the strategies mentioned above, the regulation gains its legitimacy merely on the basis that it is 'the law', where potential solutions are rejected in favor of the fundamental principles that cannot be violated. In this way, other ideologies that

may be of relevance from the perspective of witnesses are excluded from the policy discourse, thus the main ideology of 'justice' will prevail unless the representatives of the jurisdictional process change their approach to the matter.

In general, no noteworthy differences have been identified in policy discourse on witnesses' legal position over the period 1990 to 2018. Thus, in the policy discourse on witnesses' legal position, as understood and constructed by the policy-makers, similar conclusions have been drawn regarding existing conditions as well as about what needs to be changed. However, the lack of changes in the rhetorical repertoire within the policy documents over a 30-year period is rather astonishing. The social changes of society that to some extent can be traced within the policy documents as well as in previous research studies indicate that the legislation on the area is falling behind. Thus, the strong path dependence of legislation connected to witnesses within the criminal justice system appears to have resulted in that current debates and decisions on the area still are made on the basis of assessments made 30 years ago. For instance, current legislation is not adapted to the technological advances where witnesses now can become exposed to harassments and intimidation online. Moreover, the path dependence of current legislation on witnesses' legal position mainly serves other interests than the individual well-being of witnesses, signaling that there are power structures that support the imbalance of the interests at stake.

In order to improve the legal position of witnesses', the results from this study suggest that the legislator is required to direct more efforts towards the social aspects of the matter. In terms of witness intimidation, the main issue appears to be related to the perceived risk of becoming exposed. In other words, attention should instead be directed towards the authority's efforts and accomplishments to convince and ensure the public that the obligation to testify is quite harmless. The persisting issue of having witnesses that are afraid of or reluctant to participate in the machinery of law enforcement, even though the risks are claimed to be small, is at the moment unresolved. The inurement of penalties to the crime of interfering with judicial matters and the implementation of physical security measures in court buildings may have decreased the risk of becoming exposed 'in the open', but what

happens when witnesses leave the facilities, or when they have been summoned and are waiting for a hearing to start? Although it may never be possible, the guarantee of feeling and being safe, and not having to withstand attempts of abuse, is at the moment impossible to provide to witnesses with current legislation.

In future research studies on the topic, it would be rewarding to also include the voices of witnesses in relation to the discursive structures of policy documents related to their legal position. By emphasizing the representation of witnesses' conditions, while at the same time including their own views on the circumstances could provide further insights into where efforts need to be made. Moreover, this study only involves the discursive structures of certain policy documents where the impact of other potential sources to e.g. fear of witness intimidation has been disregarded. Media is one of those sources, which most likely plays a vital role to the perceived risks as well as to the general perception of the criminal justice system. In future research studies, it would be interesting to examine the discursive patterns in media's representations of witnesses and the potential risks of testifying in relation to actual events of interferences in judicial matters. It would also be interesting to examine how cases of afraid witnesses are treated by professionals within the criminal justice system on the basis of current legislation and policy regulations.

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