

**SOCIAL WORKERS' EXPERIENCES OF THE COURT
PROCESS :
AN EXAMINATION OF THE PERSPECTIVES
OF SOCIAL WORKERS
IN THE DURBAN METROPOLITAN AREA**

BY

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ABSTRACT

Forensic social work is a fairly new concept in the South African context. However, the activities of forensic social work began with the dawn of the profession itself. In recent times the demand for social workers in court has spiraled.

The researcher endeavored to explore the perceptions and experiences of social workers functioning in the courts. Further, the problems that they encountered were also examined. The results of this qualitative study stem from in- depth interviews with thirteen social workers.

The main findings indicate that the majority of social workers had not received any training in legal processes prior to their first experience in court. Social workers also perceived legal officials to be lacking in training in respect of child related issues. Social workers are generally called to testify in relation to their expertise of a specific child, and not in relation to their expertise of subject matter.

In view of the demands placed upon social workers to appear in court, it is recommended that social workers endeavor to organise themselves into a group that can lobby for the recognition of social workers as experts. It is the researcher's contention that such a concerted effort by social workers will improve the status of the profession in the legal system.

DECLARATION

I declare that that this dissertation is entirely my own work, except as indicated in the text, by quotations or references or the suggestions and alterations made by my supervisor.

A. KISTEN

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CHAPTER ONE

INTRODUCTION AND METHODOLOGY

1. INTRODUCTION

Social workers provide a wide range of services. The legal system and court of law is only one area where services are provided. Social Workers have for decades had a long association with the courts, initially as probation officers and since the Children's Act , Act 31 of 1937 also as generic social workers. Recently, the demand for social work reports by the courts has increased. This has resulted in the profession having to focus more attention on the rendering of services in this secondary setting where social work has two consumers, namely the client and the judicial system (Howes 1990: 67). Traditionally, the training of social workers has not included familiarity with the adversarial nature of courts especially on the issues that civil and criminal justice systems frequently confront. Without such training social workers who are called on to provide forensic services have found themselves at a distinct disadvantage.

As a social worker employed by the South African Police Service, the researcher successfully underwent training and was subsequently appointed as a forensic social worker.

1.1 MOTIVATION FOR THE STUDY

The specialized field of forensic social work will remain in its embryonic stage until more practitioners learn about the field. The available literature on forensic social work is scant and has originated overseas thus reflecting conditions of host countries. This study aimed to make available a previously untapped reservoir of knowledge about forensic social work in the South African context.

The researcher was also personally motivated to undertake the study since her

training and subsequent appointment as a forensic social worker in the South African Police Service. It was this exposure to the specialized field that prompted the researcher to search for a better understanding of the concept.

1.2 AIMS AND OBJECTIVES

The aim of the study was to explore the experiences of social workers who practice in the Durban Metropolitan Area.

The objectives of the study were :

- i) To establish whether the social workers under study experienced similar trends / problems in their practice of social work in a legal setting.
- ii) To determine whether social workers in a legal setting were at present qualified to meet the requirements that this specialized field demands.
- iii) To determine the extent to which social workers functioning in a legal setting were accepted as experts in their field.
- iv) To add to the existing body of knowledge on forensic social work.

1.3 KEY QUESTIONS TO BE ANSWERED

The following questions were answered in this study :

- a) What does forensic social work mean in the practice of social work in South Africa?

- b) To what extent have social workers been able to fulfill their functions as experts in a legal setting?
- c) What problems are experienced by social workers in a legal setting?

1.4 RESEARCH METHODOLOGY

1.4.1 RESEARCH DESIGN

The main aim of the study was to explore the nature of forensic social work in South Africa. The research design is a qualitative one which seeks to provide an in-depth understanding of the relevant factors for a small sample of participants. The research approach was appropriate, given the exploratory nature of the study and the scarcity of available literature on the subject under study in South Africa.

The design was intended to satisfy the researcher's quest for a better understanding of the subject and to add to the existing body of knowledge. According to Babbie (1992: 91) exploratory studies are invaluable in social scientific research and is essential whenever a researcher is breaking new ground. Grinnell (1988:225) maintains that the idea of an exploratory study is to "explore and build a foundation of general ideas and tentative theories which can be explored later with more precise and hence more complex research designs and corresponding methodologies".

Dixon in Schnetler et al (1989:13) states that the insights gained in exploratory studies usually serve to inform the desirability and priority rating of further research. Dixon adds further that exploratory studies typically assumes one of the following forms:

- a survey of the relevant literature.
- a survey among people who have practical experience of the problem.
- an analysis of examples that stimulate insight.

The purpose of exploratory research is to gain a broad understanding of a situation, phenomenon, community or person (Bless and Higson-Smith 1995:41).

The present research study adopted a qualitative approach. Bryman (1988 : 46) defines qualitative research as an approach to the study of the social world that attempts to describe and analyze the culture and behavior of humans and their groups from the point of view of those being studied.

Schurink in De Vos (1999:41-42) mentions three aspects that differentiates qualitative research from quantitative research. These three aspects are :

a) ONTOLOGY

In qualitative terms, ontology refers to the nature of reality and human behavior. Qualitative research is used to describe social reality from the point of view of participants being studied. This according to Grinnell (1988:188) is based on the assumption that people in a social situation tell us most about what they are doing and why.

Qualitative researchers attempt to understand people from their own frame of reference. The researcher thus empathizes and identifies with the participants in the study in an effort to understand their views of the world (Taylor and Bogdan 1984:6). The relationship between the qualitative researcher and the subject involves close contact with each other. Bryman (1988 : 96) maintains that the need for fostering such close relationships is a product of the qualitative researchers need to see the world through the subjects eyes.

b) EPISTEMOLOGY

Qualitatively, epistemology refers to the relationship of the researcher's reality and the road that they will follow in the search for truth. The researcher interacts with the subject and regards reality as subjective (Schurink in De Vos 1999 :241). The stance of the qualitative researcher to want to be close to the subject in order to understand the subjects world has its drawbacks. Bryman (1988 : 96) cites the problem of " going native " whereby the researcher loses sight of his or her role and is " seduced " by the perspective of the subject.

The close contact with the participants in the study permitted a penetrating account which explored incidents in great detail and illuminated the full extent of the participant's accounts of a variety of phenomena.

c) METHODOLOGY

Schurink in De Vos (1999:242) describes qualitative methodology as being dialectical and interpretative. Qualitative research broadly refers to research that attempts to elicit the social meanings that people attach to the world around them and their interpretations of their experiences. It produces descriptive data that is both verbal and written. The qualitative methodology, similar to the quantitative methodology is more than just a set of data gathering methods. It is a way of approaching the empirical world (Bodgan and Taylor 1984 : 5).

In this study, the researcher conducted interviews using an interview schedule. This permitted the researcher an opportunity of capturing and interpreting both verbal and non- verbal information.

1.4.2 THE RESEARCH INTERVIEW

Interviewing is a fundamental characteristic of social work practice. Interviewing as a data gathering technique has a number of advantages relating primarily to naturalness, spontaneity, flexibility and control of the environment. In addition, they have a high response rate (Grinnell 1988:267).

Grinnell (1988: 274) elaborates that an important variable in planning the research interview is the degree to which the interview is to be structured. There are three options regarding structure in qualitative research interviews, namely, structured, semi - structured and unstructured.

a) STRUCTURED INTERVIEWS

The instrument in a structured interview prescribes the nature of items to be asked, their sequence and also their wording. Both open and closed - ended questions are used. The structured interview has several advantages, among them being : coding is easy since all the participants are asked the same items, in the same order. There is greater consistency in the nature of the data collected from each interview. Also, the interviewers do not need to undergo training or to be highly skilled(Grinnell 1988:268).

Structured interviews also has its drawbacks. Interviewers lack the freedom to elicit fully a participant's knowledge of research questions. Nor is the researcher free to explore or to expand on the answers with probes. The structured interview also has the disadvantage of being more expensive and time consuming.

b) SEMI - STRUCTURED INTERVIEWS

This type of interview schedule may include specific items. However, the

interviewer is afforded some latitude in respect of the research questions. The focused interview which is a semi - structured interview focuses on selected topics and hypotheses, however the specific topics are not predetermined. This type of interview is used for participants who have shared a similar experience (Grinnell 1988: 268).

The interviewer needs to be trained and skilled to conduct this type of interview. The interviewer acquires as much information as possible on the shared experience of the participants. Using this knowledge the interviewer decides, prior to the interviews, which aspects of the participant's experience needs exploration and develops hypotheses which can later be tested in the interviews. Questions are very rarely formulated in advance. Semi - structured interviews make allowances for unanticipated answers from participants. Exploration in semi -structured interviews initially uses techniques whereby specific probing questions follow a general item. Open and closed - ended questions may be used (Grinnel 1988:269).

c) UNSTRUCTURED INTERVIEWS

In this type of interview only the general problem areas to be studied are predetermined. The interviewer has latitude in terms of choosing the structure, timing and the content of the items that need to be asked. An advantage of the unstructured interview is that the interviewer has freedom to elicit information on a wide range of items to receive clarification on their answers and to explore other areas that may provide useful information for the study. The interviewer uses neutral probes to draw out responses from participants. This type of interview probes the participants' emotions and experiences and can unearth emotions, attitudes and beliefs that they might have been unaware of prior to the interview. This type of research has its limitations in respect of coding but is useful in determining initial data in previously untapped areas of knowledge and can lead to the development of hypotheses(Grinnell 1988:270).

In this study, the researcher used an interview schedule with open ended questions as a data collection method. This was the preferred method as it ensured the systematic collection of data and prevented instances where certain information could be overlooked. An obvious advantage of using the semi structured interview was that it made provision for respondents to form their own answers. Respondents were able to express themselves in their own words.

1.4.3 THE INTERVIEW SCHEDULE

The questionnaire was divided into six sections.

SECTION ONE : DEMOGRAPHIC DATA

Demographic data such as current occupation, qualifications, years of experience was obtained in this section.

SECTION TWO : TRAINING

This section examined the participants' level of training in respect of court work and their knowledge of courtroom processes.

SECTION THREE : PERCEPTIONS OF SOCIAL WORKERS

This section contained open and closed ended questions on the reports and recommendations made to court by social workers and the reception of these by other role players in the legal system.

SECTION FOUR : EXPERT WITNESS IN COURT

Questions in this section ascertained the challenges experienced by social workers in the legal system, the extent to which they are called upon as expert

witnesses and the reception that they receive from the various role players in the legal system.

SECTION FIVE : PROBLEMS EXPERIENCED

Questions in this section focused on the problems experienced by social workers functioning in the legal system.

SECTION SIX : GENERAL

This section attempted to elicit information from the participants relating to their understanding of the concept of forensic social work.

1.5 SAMPLING

Grinnell (1988 : 240-251) describes two major types of sampling procedures. The first type of sampling is probability sampling in which each person or sampling unit in the population has the same probability of being selected. The selection of the sample from the population is based on some form of random sampling procedure. The second type of sampling procedure is non - probability sampling which, when used, results in the probability of inclusion in a sample being unknown. Non - probability samples are appropriate for exploratory studies.

In this study, the researcher used the non - probability sampling technique called snowball sampling because of the difficulty in locating subjects to participate in the study. This sampling technique according to Rubin and Babbie (1997 : 271) is used when the members of a special population are not easily located. Rubin and Babbie elaborate that this method is implemented by collecting data on a few members of the population that the researcher is able to locate and then asking them to provide information on other members of the

population whom they know. Snowball refers to the process of accumulation as each located subject provides information on other possible subjects. The snowball technique is an excellent method especially in those cases where the researcher is investigating a relatively new phenomena.

In this study the sample was selected from the social workers who practice social work in the courts in the Durban Metropolitan area. The sample consisted of social workers from Child Welfare, Child Line and Department of Health and Welfare, probation officers, family counsellors. The aim was to obtain a representative sample of social workers who work in a legal setting. The researcher personally approached twenty social workers and outlined the purpose and aims of the study. Social workers of the SAPS were not part of the study as their management did not grant authorization for them to participate. Thirteen social workers agreed to be interviewed for this study. Interviews took approximately one hour each. The responses were manually analyzed by the researcher.

1.6 LIMITATIONS OF THE STUDY

Grinnell (1988:441) stated that potential limitations are often numerous in even the most carefully planned research study.

The following were the limitations of this study :

- i) The study was restricted to one city in South Africa. For reasons of accessibility, time and cost constraints not all provinces were included.
- ii) The use of the snowball technique resulted in a sample whose representivity was questionable. The sample consisted of a group of people with the characteristics of the target population. This means that the findings are not generalizable to the wider population .

1.7 DEFINITION OF KEY CONCEPTS

In this study the terms respondent, participant and subject were used interchangeably.

- a) Forensic means concerned with or connected with or used in a court of law.
- b) Forensic social work refers to a professional specialization within the field of social work that concentrates on the relationship between the law and social work.
- c) Social worker refers to any person who is registered as a social worker in terms of Section 17 of the Social and Associated Workers Act, 110 of 1978.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Social workers are frequently being called upon to appear as expert witnesses in court, especially since lawyers and prosecutors have become aware of the contributions that social workers are able to make to the criminal justice system. Social workers are capable of assisting the legal system and courts of law in a wide range of circumstances. These circumstances according to Hurford (1985:269) relate to people who have committed a criminal offence and their sentencing, to persons awaiting trial, to parents involved in a legal battle for parental power, to children who may be in need of care, to problem drinkers who are in need of treatment, to parents who wish to adopt children, to minors seeking consent to marriage when parents refuse consent, and to mentally disabled persons needing certification.

The participation of social workers in the traditional fields of social work with the poor and mentally ill has resulted in them forging closer relationships with legal institutions as part of their work. The involvement of social work in the law and legal institutions has created an awareness in many social workers of the dire need for more knowledge of jurisprudence, the way laws are made, changed, interpreted and enforced. Social workers also need to know about courtroom procedures and the roles of the different people involved in trials (Barker and Branson 2000: 11-12).

Barker & Branson (2000:14) elaborate that as social workers enter and participate in the legal field, and testify in court as expert witnesses they help the legal fraternity to present more cases effectively. That which the social

worker offers must be of value and expressed in language that the court can relate to. His or her conclusions and recommendations must withstand critical review and rebuttal from opposing parties.

This chapter seeks to introduce the subject of forensic social work and its related legal activities to the reader. It describes what forensic social work is, in addition to providing a list of forensic social work functions. It also describes how forensic social work is being practised in South Africa. The chapter also explores how forensic social workers testify in court and examines the core aspect of their work, that of expert witnessing.

A review of the literature showed clearly that in the South African context there exists very little information on the topic being researched. This chapter and the study in totality seeks to add to this knowledge.

2.2. Origins of Forensic Social Work

Forensic social work has its origins in the beginnings of the social work profession. According to Barker and Branson (1993:2) the earliest social workers fulfilled several legal functions including determining whether parents were abusing their children, serving as witnesses in courts of law, reporting on the findings of their social investigations and working as probation officers .

Writing from an American perspective, Gothard (1989a : 65) states that social workers prior to 1980 seldom qualified as experts in legal proceedings despite a broad range of social work practice. Upon recognition as an expert in court, they were limited to child custody and child protection cases. This evolved in the 1980's with social workers being recognized by courts as having sufficient expertise in different fields of practice and hence being qualified as experts in courts of law. What emerged was parity between social workers and other professionals who were already recognized as experts in the court.

Stutterheim and Weyers (1999:11) comment that forensic social work in South Africa has not yet come strongly to the fore and that the research and work done by the South African Police Services (SAPS) necessitates that this field be fully explored.

2.3 What Is Forensic Social Work?

According to Faulk (1988:229) the term forensic means pertaining to, or connected with or used in courts of law. Consequently, a forensic social worker is a person who works in a court of law in terms of his or her profession.

Forensic social work is a professional specialty that focuses on the interface between society's legal and human service systems. It includes activities such as providing expert testimony in courts of law, investigating cases of possible criminal conduct, assisting the legal system in such issues as child custody disputes, divorce, non- support, delinquency, spouse or child abuse, mental hospital commitments and relatives responsibility (Barker and Branson 2000:1).

For the purpose of this dissertation, forensic social work refers to a professional specialization within the field of social work that concentrates on the relationship between the law and social work. As such it includes aspects such as probation services, child protection services, intermediaries, police forensic social work, statutory social work, and the services of the family counsellor in the family advocates office.

In South Africa, the concept of forensic social work is still fairly new. Stutterheim and Weyers (1999:11) maintain that it is because of this newness that the concept "forensic social work " as it would apply in the South African context, has yet to be defined. From an analysis of the views expressed by

various social work authors, Stutterheim and Weyers (1999:11) concluded that forensic social work can be defined in both broader as well as narrower terms. Broadly, forensic social work according to the American National Organization of Forensic Social Work (NOFSW), as cited by Stutterheim and Weyers (1999: 11), refers to the application of social work knowledge to questions and issues pertaining to the law and legal system. As a specialty it goes far beyond clinics and mental health facilities for criminals being evaluated and treated on issues of competency and responsibility. The broader definition includes social work practice that is in any way related to legal issues and litigation. Stutterheim and Weyers (1999: 12) propose that it is more practical, and has more conceptual value, if forensic social work is used in terms of its narrower meaning. In this regard they subsequently cite the definition of Barker (1993: 140) which defines forensic social work as "a specialized field of social work practice that is characterized by the social worker's primary function of providing expert testimony in courts of law".

Stutterheim and Weyers (1999:11) elaborate that the American description of forensic social work is in essence synonymous with the South African concept of "statutory social work". Statutory social work is defined in the Dictionary of Social Work (1995:62) as a specialized field in social work that aims to improve the social functioning of individuals, families and communities by applying administrative procedures that have been prescribed by legislation. Thus, it includes a wide range of aspects such as social security, legal aid, correctional services, probation services and matters relating to child custody. Stutterheim and Weyers (1999: 11) maintain that forensic social work therefore involves a specialization within statutory social work with the social worker functioning primarily as an expert witness. The researcher agrees that in the context of forensic social work, the social worker functions essentially as an expert witness. However, the researcher does not agree that forensic social work is a specialization within statutory social work. The researcher proposes that forensic social work is a specialization within the broader field of social work and that statutory social work is just one facet of forensic social work in

South Africa as will be discussed in the latter part of this chapter.

2.4 THE FUNCTIONS OF FORENSIC SOCIAL WORK

Barker and Branson (2000:15-17) developed ten major functions of forensic social work as it applies to the American legal and social work system. However, Stutterheim and Weyers (1999:12–15) propose that four of these are presently applicable to South Africa. The researcher, on the other hand, contends that six of Barker and Branson's functions are applicable to South Africa. These functions as developed by Barker and Branson (2000 :15-17) are listed below:

1. "The forensic social worker testifies in a court of law as an expert witness".
2. "The forensic social worker systematically evaluates individuals so that the resulting information can be presented in court or to legal authorities".
3. "He or she investigates cases where criminal conduct has possibly occurred and presents the results to judges, juries, and other law authorities".
4. "The forensic social worker recommends to courts of law and other legal authorities ways to resolve, punish, or rehabilitate those found guilty of crimes or negligence in civil actions".
5. "The forensic social worker can facilitate the court - ordered sentence for the convicted person which involves monitoring the person and

reporting any progress to the court”.

6. “They mediate between individuals and groups who are involved in disputes or conflicts that might otherwise require extensive intervention in the courtrooms”.
7. “The forensic social worker testifies about the professional standards of social work to facilitate cases of possible malpractice or unethical conduct ”.
8. “They also devote considerable attention to educating their colleagues about the influence of law on their profession. They teach courses and give workshops on legal aspects of social work practice ”.
9. “Forensic social workers facilitate the development and enforcement of licencing laws to regulate professional social work practice”.
10. “They maintain relationships with their own clients that uphold the letter and spirit of the law and the ethical principles of their profession ”.

It is proposed that the following six functions are particularly applicable to the South African situation:

- i). **“Forensic social workers testify as expert witnesses in a court of law”.**

The forensic social worker in respect of this function provides, in general, the required information regarding the needs of individuals, families, groups or

communities. An example of this is when a social worker might disclose the traumatic effects of sexual abuse on children. The aim of this function is to enable the court to understand the factors that may have played a role in the crime or the behavior of the defendant, victim or a witness. The forensic social worker's testimony is not based on an investigation of persons involved. Rather, the testimony takes the form of opinion evidence and aims to inform the trier of fact with regard to the nature of human behavior, the impact of a crime or trauma on an individual, and the circumstances that could predispose a person to commit a crime. The social worker could for example be asked to explain the effect of a traumatic event on the memory of a child or the symptoms associated with child sexual abuse (Barker and Branson 2000:16 ; Stutterheim and Weyers 1999:14).

The opinion of the expert witness is admissible only when by reason of their specialized knowledge and skill they are better qualified to draw inferences than the judicial officer (Hoffman and Zeffert 1988: 97). This reflects a reluctance on the part of courts to accept opinion evidence, which is one of the core functions of forensic social work. The court does occasionally allow such evidence to be heard. A case in point is that of *Holtzhauzen v Roodt* 1997 4 SA 776 (w) where the presiding officer allowed the testimony of a social worker regarding the behavior of a rape victim even though the social worker had no personal knowledge of the victim (Stutterheim and Weyers 1999:14). Expert testimony is also provided to legislative committees and lawmakers in order to reach a decision regarding whether or not new legislation should be introduced.

- ii) **The forensic social worker “systematically evaluates individuals so that the resulting information can be presented in court or to**

legal authorities”.

The aim of this function is not to prove or disprove guilt but rather to assist the court to understand the psycho - social functioning of a specific defendant, victim or witness. The evaluations are aimed at answering questions for the court such as the following: How has the defendant's actions psychologically and socially harmed the complainant? What has caused the person to behave in this manner? Is the accused competent to stand trial? What happened in this person's past that explains his/her current behavior? Is the child a competent witness? (Barker and Branson 2000:16). This function is restricted to criminal investigations and the criminal courts with the Criminal Procedure Act No. 51 of 1977 being the applicable statute in South Africa. Social workers are increasingly being called upon to testify as experts in court. However, with the exception of the South African Police Service (SAPS), South Africa has yet to formalize the concept of forensic social work as a specialized field in social work. The SAPS has been the pioneering agency in introducing forensic social work as a specialist field in social work in South Africa. Presently, they represent the only organization that clearly differentiates between clinical social workers and forensic social workers (Stutterheim and Weyers 1999:13).

- iii) The forensic social worker “investigates cases where criminal conduct has possibly occurred and presents the results to judges, juries, and other law authorities”.**

In terms of this function a social worker could, for instance, be asked to testify about home visits to the home of a family whose child has been physically and sexually abused. The core of this function lies within the Child Care Act No. 74 of 1983 which provides the direction for what is referred to

as statutory work in South Africa. In South Africa, the SAPS forensic social work service operates along these lines. The services rendered take place in the pre -conviction phase where the social worker undertakes a forensic investigation of a particular case and presents these findings to court. In cases where children perpetrate crimes the Probation Services Bill 15A of 1999 makes it compulsory for all children arrested to be assessed by a probation officer within 48 hours of arrest. The probation officer also conducts interviews with the family of a juvenile offender in respect of placement and makes recommendations to court in this regard.

Stutterheim and Weyers (1999:14) interpret this function as involving the investigation of civil cases and administrative inquiries, and the presentation of findings to a court of law. They elaborate that as such this function of forensic social work has two elements: firstly, it relates to non-criminal cases only and secondly, evidence is given prior to a court order being made. In South Africa this function is firmly rooted in and governed by the Child Care Act No.74 of 1983 and the Prevention and Treatment of Drug Dependency Act No.20 of 1992 (Stutterheim and Weyers 1999:14). The role of the social worker in both these Acts is that of an investigator and a witness and hence his or her role is limited accordingly (Department of Welfare 1998:14). In terms of this function, the social worker assists the court to determine whether the persons involved are persons as described by these Acts or not. The social worker is thus regarded as a competent person capable of forming an authoritative opinion in his or her particular field. This clearly confers on social workers the status of an expert in respect of these Acts.

- iv) **“The forensic social worker recommends to courts of law and other legal authorities ways to resolve, punish, or rehabilitate those found guilty of crimes or negligence in civil actions”.**

This function according to Barker and Branson (2000:16) mainly involves monitoring the person and reporting progress to the court. According to Stutterheim and Weyers (1999:19) this function of forensic social work is characterized by the forensic social worker's recommendations to court regarding appropriate sentences and court orders. They elaborate that the social worker's input is made after the court has found the defendant guilty but prior to him or her being sentenced. It has applicability in criminal and civil cases as well as administrative enquiries. Stutterheim and Weyers (1999 :15) elaborate by stating that in practice this would include the following case scenarios:

- i) “ a person is found guilty in terms of the Criminal Procedure Act No.51 of 1977 and a pre - sentencing report is requested by the court, the state or the defense”;
- ii) “ a child is found to be in need of care in terms of the Child Care Act No 74 of 1983 but an order in terms of Section 15 of the Act regarding the future care of the child has yet to be made”;
- iii) “ a divorce has been granted but an order in respect of the minor children has still to be made, or when an existing order regarding custody or guardianship is changed. The Mediation in Certain Divorce Matters Act No.24 of 1987 is applicable here where the services of legal professionals and social workers are effectively combined to render an effective service to children”.

The aim of this function of forensic social work is to assist the court to decide upon an appropriate sentence or court order and it usually takes the form of pre

- sentence reports, investigative reports and/or testimony by probation officers.

- v) **“The forensic social worker can facilitate the court- ordered sentence for the convicted person which involves monitoring the person and reporting any progress to the court.”**

This function according to Barker and Branson (2000:16) mainly involves monitoring the person and reporting progress to the court. It also includes providing treatment to persons or advising those working with the convicted person. For example, the worker can supervise the convicted person during his or her community service sentence or advise the staff at the site of the sentence in respect of coping with the convicted person (Barker and Branson 2000: 16). The duties of the probation officers indicate that this function is at present being fulfilled by them. This will be investigated further in this study.

- vi) **Forensic social workers “ mediate between individuals and groups involved in disputes or conflicts that might normally require extensive courtroom intervention.”**

An attempt to avoid the adversarial nature of legal proceedings prompts a number of people to seek mediation services. This is especially with married couples and has the added advantage in that it emphasizes the participants' responsibility for making decisions that affect their lives. In South Africa, the Mediation in Certain Divorce Matters Act 24 of 1987 and the appointment of family advocates and family counselors to safeguard the interests of minor children in divorce has highlighted the importance of mediation in the divorce

process. The family advocates office has the role of investigating and giving evidence in a trial of what is in the best interests of the child (Grant 1998:178).

2.5 FUNCTIONS OF FORENSIC SOCIAL WORK CURRENTLY NOT APPLICABLE IN SOUTH AFRICA

The remaining four functions listed by Barker and Branson (2000:15-17), are currently not utilized as extensively as the preceding six. The South African Council for Social Work regulates the actions and professional standards of social workers in South Africa. The teaching of legal aspects of professional practice is done to some extent by individual social work agencies as part of their in-service training. This takes place as the need arises. For example, Childline in Durban provides training for social workers of the agency to assist them to operate from a position of confidence as they sometimes need to establish their credibility in court.

2.6 THE PRACTICE OF FORENSIC SOCIAL WORK IN SOUTH AFRICA

2.6.1 Statutory Social Work

The concept of statutory social work is aimed at improving people's social functioning by the application of administrative procedures which have been prescribed by the written laws of a legislative body. In relating the definition of forensic social work to that of statutory social work it is evident that they are synonymous and focus on the link between social work and the law. In forensic

social work the emphasis is on the application of social work knowledge to questions and issues relating to the law and legal system, while in statutory social work it is legislation that prescribes the administrative procedures that need to be employed by social workers to improve people's social functioning. Statutory social work refers mainly to work done in relation to the Child Care Act No.74 of 1983.

a) The Role of the Social Worker in Terms of the Child Care Act

The Child Care Act provides a legislative structure within which the justice system, social workers and other specialists interact with each other on behalf of children being assessed for alternative care. Social workers working in this sphere operate from the standpoint that the family is the basis of a healthy and balanced community. The social worker's role involves the provision of prevention and early intervention services and where necessary , statutory services (Zaal and Matthias 2000 ; Department of Welfare 1998).

i) Prevention Services

The Department of Welfare (1998 :4) reports that the aim of these services is the maintenance of family life through the execution of ' effective, preventive, developmental and social welfare services.' Preventive services focus on the anticipation and elimination of the onset and development of a problem, and is directed at promoting sustained relationships between parents and children. The programmes offered by social workers take into account the physical, intellectual, emotional, spiritual and social abilities to assist parents and children to benefit from developmental opportunities.

ii) Early Intervention

These services come into effect when a child has been identified as being at risk and concerted efforts are made to solve family problems in order to prevent the removal of the child from the parents to alternative care. The Department of Welfare (1998: 4) indicates that in order to render an effective and meaningful service, the social worker needs to have the knowledge, understanding and right attitude in respect of the following:

- * the family is the natural and logical environment in which a child is socialized and it is of primary importance that everything possible should be done to assist the family , as a unit, to function in a desirable manner;
- * early intervention includes assessment of the developmental needs of the child;
- * the bond between parents and children is significant and is an aspect of family life that should be kept in mind at all times during the rendering of treatment services. Family bonds should be developed and maintained through a process of education, support and empowerment; and
- * serving the interests of a child necessitates that the interests of the family receive priority attention (Department of Welfare 1998:4).

iii) Statutory Services

Statutory services come into effect when prevention and early intervention services fail and the child is referred to the courts for a decision to be made

regarding what should happen in their particular case. These services focus on children in conflict with the law and / or children in need of care. Hence, it could include either the Children's Courts or the Criminal Court or both. These proceedings operate in terms of the Criminal Procedure Act No 51 of 1977, the Probation Services Act No 116 of 1991, the Correctional Services Act No 8 of 1959, and the Child Care Act No 74 of 1983. The aim of statutory services is to ensure the most appropriate placement option for a child in terms of the need for protection and/or containment, and for developmental and or therapeutic programmes, and in the best interests of the child and family.

iv) The Continuum of Care Services

These services refer to a range of alternative care interventions which offer diverse programmes which are consistent with the varying degrees of the child's need for protection and/or, containment, and for developmental and/or therapeutic programmes. The services range from adoption and foster care to various forms of secure care and youth correctional facilities.

The social worker when considering the placement of a child should put forward the most suitable available option for the child to deal with his or her need for care, protection and development while continuing to serve the best interests of the child. The removal of a child from its parents is considered only when no other alternative exists and when the well being of the child is threatened (Department of Welfare 1998:17).

b) The Social Worker's Report

The social worker's report is a significant document that can have a tremendous influence on the life of a child. Therefore, the report needs to be of a standard

that “bears its own integrity (Department of Welfare 1998: 15). Reports to the Children’s Court generally take the form of a recommendation. Prior to the submission of the report to the Children’s Court, the contents must be explained to the parents, and in the case of older children with them as well. The report must be made available to parents and lawyers to peruse prior to submission to the court with the consent of the children’s court. This report is read out by the social worker during the court proceedings (Department of Welfare 1998:7).

The report of the social worker detailing the “circumstances of the child concerned and his or her parents or guardian or the person having the custody of that child” is compulsory in care proceedings. Regulation 2 (4) of the Child Care Act provides the following comprehensive guidelines of what the contents of the social worker’s report should incorporate for an inquiry:

- b) the biographical details of the family such as the ‘marital, financial, educational, physical and mental health, religious and socio - cultural circumstances’ of the child and his or her care giver;
- c) a ‘brief summary of prevention and early intervention services rendered’ and a brief reference to previous child care proceedings that the child may have been involved in;
- d) the circumstances that led to the child being identified as a child in need of care;
- e) the motivation for state intervention on behalf of the child;
- f) a recommendation by the social worker to the Commissioner regarding the most appropriate, ‘empowering and least restrictive order’ in terms

of the Act that will 'serve the best interests of the child';

- g) a realistic plan that can be practically implemented to facilitate the reunification of the child and his or her family and the ultimate restoration of the child to his or her community;
- h) a rational conclusion by the social worker after he or she has considered all pertinent aspects of the case.

c) The Evidence of the Social Worker

The social worker is generally the only expert witness who is called in a children's court inquiry. This is done in order to admit his or her report into evidence. This requires the social worker to read out the report, confirm its contents, adhere thereto and to add any further evidence if available. When the social worker gives evidence viva voce he or she appears as an expert (Zaal and Matthias 2000:123). Social workers have the function of gathering information and evidence by investigating the circumstances of children and their families. The social worker must collate, evaluate and act on whatever information that is available prior to the parent or guardian of a child 'in need of care' appearing before the court. The children's court can at its discretion accept hearsay evidence which would otherwise be inadmissible and in so doing relies upon the social worker's information when better evidence is unavailable (Department of Welfare 1998 : 13,15).

The social worker is generally accepted as an expert witness regarding a case that falls within his or her field of expertise. He or she is regarded as being competent to give evidence on the social and welfare background of an

individual which is in line with the definition of an expert witness whose function is to guide the court to a correct decision in respect of questions falling within his or her specialized field of training. The court need not accept the opinion of the social worker. The social worker needs to show practical application of his or her knowledge in factual situations in order for his or her opinion to be relevant.

According to Wilson et al as cited in Ryan and Wilson(1995:158) there is an "inherent tension" in presenting information to a court of law that has been obtained during therapy. The courts which are generally adversarial in nature rely on facts and are consequently not always receptive to information that has a high emotional content. Writing from an English perspective, Ryan and Wilson(1995:166) report that the social worker giving evidence in court should initially provide information on what the child actually said and did during the interview sessions. This need not be undertaken selectively , but should include all the relevant evidence from the sessions. The social worker must be open to the possibility of alternative explanations for a child's behavior. This trait in the social worker emphasizes his or her ability to be objective and convinces the court that the social worker has not adopted a narrow stance in assessing a child, but has considered alternative explanations. Gothard (1989b:8) elaborates that in essence "... this means that it is important to be impartial and avoid tendencies towards showing bias. While the judge will be influenced by the social worker's knowledge of the facts in the testimony, honesty and trustworthiness are demonstrated by the impartiality and willingness to recognize facts which do not necessarily assist in achieving the worker's desired result".

Ryan and Wilson (1995:169) elaborate that the social worker is subjected to cross - examination in respect of the extent to which he or she has guided and

suggested to the child. Therefore, in the UK, social workers are required to video or audio record sessions which are made available to the prosecution and the defense prior to the court proceedings. The use of such recordings, although not mandatory in South Africa, is encouraged by the forensic social work service of the SAPS. This helps to counter problems in respect of the possibility of the child changing his or her testimony and cross examination regarding leading or suggesting to the child.

2.6.2 PROBATION SERVICES

One of South Africa's prevalent social problems is reflected in its high prison population. Probation officers act as both change agents for their clients and control agents for society. In South Africa, social workers are employed in the capacity of probation officers.

Probation is intended as a combination of treatment and punishment. An offender on probation is treated in the context of community – based supervision. Ideally, the probationer receives counseling and guidance to assist him or her to adjust to free society. However, probation is also punitive in that restrictions are placed on the probationer. A major problem for probation officers is the conflict they experience in their roles. Are they police officials or counselors? Is their main responsibility surveillance or should they be agents of change? (Vetter in Weiner and Hess 1987:320-321).

a) Role of The Probation Officer

- The probation officer investigates the circumstances of the accused with a view to reporting to the court on his or her treatment and committal to an

institution as well as rendering assistance to the family.

- ❑ He or she renders assistance to probationers placed under their supervision in order to improve the probationers social functioning.

- ❑ The probation officer reports to court when a probationer fails in any manner to comply with or deviates from his or her probation conditions.

- ❑ The probation officer compiles pre-trial and pre- sentence reports in respect of the Criminal Procedure Act 55 of 1977. Currently diversion programmes are offered by NICRO which has limited options available for children who come into contact with the law. The new Child Justice Bill makes provision for the majority of children who have committed criminal offences. In terms of this Bill it is compulsory for the probation officer to conduct assessments of juvenile offenders for first appearances in court. The various levels of diversion offer a unique way to deal with juvenile offenders. These levels of diversion range from writing an apology which is the first level to a six month community service programme which is the fourth level in terms of diversion. Barberton (2000: 4) maintains that these options are the key to channeling cases away from the courts and prisons while still holding the child responsible for his actions. Currently, the probation officer conducts family interviews for juvenile offenders in respect of their placement and provides further recommendations to court in respect of this.

- ❑ The probation officer initiates Children's Court Inquiries in respect of withdrawals and/ conversions. A **Children's Court Inquiry** is initiated when a child is found to be in need of care in terms of the Child Care Act 74 of 1983 and an order in respect of the child's future care has to be

made. **Conversion** refers to the power of the Criminal or Juvenile court to refer a juvenile accused to the children's court, when it has been found at a trial that the accused is under 18 years and that he is a child as referred to in section 14(4) of the Child Care Act 74 of 1983. The court can halt the proceedings and order that the accused appear before a children's court in order that he be dealt with in terms of sections 13 and 14 of the Child Care Act 74 of 1983.

- The probation officer undertakes home and prison visits to an accused for the purpose of interviewing them.

b) **The Probation Officer's Report**

According to Vetter (as cited in Weiner and Hess 1987:323) probation services is a method of individualization and is predicated on the proper selection of offenders. Thus, to determine which offenders will be the most appropriate candidates, the courts rely heavily on thorough, carefully prepared pre-sentence reports. The court may request a probation officer's pre-sentence report in order to receive direction in terms of sentencing. The High Courts have strictly applied the need to have such a report prior to sentencing especially in serious offences. The probation officer's report includes a thorough assessment of all the important issues including a description of the offence, family circumstances, childhood development, employment history and a recommendation in respect of appropriate sentencing options. The probation officer must indicate the different sentencing options available, explain which is the most suitable one for the particular case, as well as reasons for his / her recommendation. The probation officer consults with a number of resources when compiling a report for court. The probation officer takes into account the balanced interests of the

community, the accused and the victim when making a recommendation in a report. The report can be called for either by the court or by the defense. As alternative sentencing is still in its embryonic phase in South Africa it is essential that probation officers who advise the court are creative in the sentencing options that they recommend for an offence. (Skelton 1997 :173; Vetter as cited in Weiner and Hess 1987:324).

c) The Evidence of the Probation Officer

The probation officer functions as an expert witness in court during sentencing and leads evidence with regards to sentencing and the various sentencing options available. This is in line with the fifth function of forensic social work which consists of the social worker providing input in court following an accused being found guilty, but prior to sentencing. As an expert, the probation officer is subjected to cross examination by the defense, the magistrate and the public prosecutor. The probation officer must be in a position to explain and defend the contents and recommendations of his or her report. The evidence given by the probation officer in respect of the written report is at the request of the court (Byroo 2001).

2.6.3 FORENSIC SOCIAL WORK IN THE SOUTH AFRICAN POLICE SERVICE (SAPS)

SAPS forensic social work is a dynamic and specialized field within Police Social Work Services, focusing on the interface between the legal system and the human service systems through:

- *assessments
- * court reports
- * expert witness
- * networking with resources
- * skills developments (Police Social Work Services :1998)

The forensic social work service of the SAPS was established in 1997 amidst growing concerns over a high number of crimes committed against women and children. The aim of forensic social work in SAPS is to assist in the investigation of child sexual abuse cases and when a case warrants it to testify as experts in court. In terms of service rendering, it aims to fulfill the first two functions of forensic social work as indicated in section 2.5 supra (Stutterheim and Weyers 1999:16).

a) **The Role of the SAPS Forensic Social Worker**

Forensic social work in the SAPS operates and follows the same ethical codes and assumptions as the profession of social work. Forensic Social Work in the SAPS refers to work done mainly in terms of the Criminal Procedure Act No. 51 of 1977. Saunder's (1999:2) maintains that the forensic social worker has three main roles that she fulfills, namely, evaluator, consultant and witness. The researcher concurs with this proposal.

As **evaluator** the forensic social worker assesses the sexually abused child using various scientific assessment techniques,(such as the Fam-A-Gram, Expressive techniques, Creative play) and draws inferences from her observations. The forensic social worker must be able to explain, if asked, why she has used certain techniques to interview the children and whether what she

has done is based upon scientific knowledge.

As a **consultant** the forensic social worker interacts with other professionals involved in the case (such as the district surgeon, the investigating officer, the public prosecutor). This is done either individually or during case conferences.

As a **witness** the forensic social worker is called as an expert. As an expert the social worker must provide the court with information and opinions that are accurate and factual. The forensic social worker must be able to convince the court that she is an expert by virtue of her specialized knowledge and skills. To do this she must be able to provide details of where she studied, who trained her, and the number of years of experience in the field.

b) The Forensic Social Worker's Report

The report of the social worker according to Labuschagne and Engelbrecht (1997) is a comprehensive document outlining the following:

i) The curriculum vitae of the social worker

Included in this part of the report the social worker will include the institution where she obtained her qualifications, the knowledge and skill that she possesses that makes her an expert, and who trained her? What did the training programme contain? Has she written any articles on the subject? How long has she been practicing in this field?

ii) Background Information

This part of the report includes biographical details such as the child's name,

age, school ,family history, medical history (if any). Information on how the case came to the forensic social worker's attention, and who the child initially confided in must also be included in this part of the report.

iii) How was the information elicited?

The social worker must indicate who was present when interviews took place. If a video recording was done during interview sessions this must be indicated as well. The aides that were used during the interview must be explained. For example, the report could read " I used anatomically correct dolls with the child ". Then the report must indicate what research has been done in this area. Is there literature that contradicts these findings? The social worker must indicate what she found. Indicate also what meaning the research attaches to the different reactions of the child with the dolls. Then the social worker must indicate what conclusion she came to.

iv) Are there any theories that explain the subject under investigation?

The report needs to include the different theories that explain sexual abuse. Is the theory accepted? By whom was it accepted?

v) The type of tests used

The social worker must provide a list of the tests used in her report. Further, she must explain each test in terms of : what it is? what does it measure? was it tested by the HSRC? is it accepted in our profession? who has accepted it?

vi) Conclusion

The conclusion of the report must reflect what the social worker's interviews with

the child indicate. The social worker must not suggest the guilt of the accused. The social worker must be in a position to defend her conclusions regarding a particular case.

c) The Evidence of the Social Worker

The forensic social worker of the SAPS testifies as an expert witness in the pre-conviction phase of the court proceedings. The distinguishing characteristic of the forensic social worker in the SAPS is that he/ she functions as an expert witness.

Subsequently, whatever transpires in the initial interview session with the child has repercussions in court. The social worker must have proof of what happened between herself and the child because children are generally unpredictable. The use of a video recording during sessions with the child is recommended to counter this, although the admissibility of such material into evidence is not sanctioned by our legislation (Engelbrecht 1997).

The forensic social worker will give evidence only in a case where she is able to assist the court, through her expert knowledge, to come to a correct finding. Expert testimony is not required in all cases. The forensic social worker must remember that her opinion is that of an expert and that the court as such will only accept this if it is based upon objective facts. The investigation of the forensic social worker must be thorough, leaving no stone unturned prior to forming an opinion. The forensic social worker cannot form an opinion merely on what the child has said, she needs to talk to the teachers, the neighbors, friends and significant others. It is only when the forensic social worker is in possession of all the facts that she would have the expert knowledge to form an opinion (Engelbrecht 1997).

The social worker must be able to explain to the court how she was able to elicit information from the child without suggesting or leading the child. In so doing, the social worker will need to explain what scientific aides(eg fam-a-gram, creative play therapy) were used to obtain information from the child. If anatomically correct dolls were used, as is often the case when children are either too young and/ or unable to verbalize what was done to them , the forensic social worker will need to explain whether the dolls were fully clothed, how questions were phrased to the child and the child's response to these questions, as well as the sex of the dolls used. For instance the forensic social worker in a case involving a little boy could be accused of suggesting to the child if two male dolls were used (Engelbrecht 1997).

A significant milestone was reached in 1997, the year of inception when the forensic social workers of the SAPS were accepted as expert witnesses in courts. The unreported cases in Umtata (case Number CR 88/08/97, State vs Ngangelizwe) and Vereeniging (Case number CR 626/7/97, State vs Jansen) are an indication of the success of the venture pioneered by the SAPS Social Work Services (Stutterheim and Weyers 1999: 18).

2.6.4 THE INTERMEDIARY SYSTEM

Giving evidence in court can be traumatic for any person let alone a child of tender years who must appear as a witness to testify in front of his/ her abuser. Section 170 A was inserted into the Criminal Procedure Act 51 of 1977 to address this situation. Section 170 A makes provision for the appointment of an intermediary through whom examination and cross-examination of the child witness is conducted. This enables the child to give evidence without having to face the accused (Müller & Tait 1999:242).

a) **The Role of the Intermediary**

In terms of Section 170 A (2)(b) of the aforementioned Act the intermediary may, unless otherwise directed by the court, communicate the general purpose of any question to the relevant witness. The intermediary is not a lawyer. The Minister of Justice by notice in the Government Gazette determined seven categories of persons who may be appointed as intermediaries with social workers being one such category of persons. The intermediary is a court official. However, he or she cannot conduct his or her own independent questioning of the witness (Van der Merwe 1995:198- 199). The duty of the intermediary is to convey the content and meaning of the question to the child in a manner that the child understands. The intermediary is also not allowed to discuss the merits of the case with the child. The intermediary therefore has two functions in court:

- i) To remove the hostility and aggression contained in questions, especially those of the defense that aims to intimidate and confuse the witness. This highlights the role of the intermediary as a protector of the child against hostile questioning. This was found to be acceptable in *Kink vs Regional Court Magistrate* 1996 3 BCLR 402 (SE) 4111 412 A.
- ii) The second function of the intermediary stems from Section 170A (2) (b) which grants the intermediary power to rephrase the question in order for the child to grasp what is being asked. The intermediary may not change the meaning of the question. In respect of this function the powers of the intermediary are limited, since the court can insist that the intermediary repeat the question exactly as it was asked. The intermediary is an interpreter, not an expert witness as the law presently stands

and is not allowed to express an opinion (Müller & Tait (1999: 257)).

The intermediary must help the child to relax in a protected environment to enable the child to tell the truth. As a professional working with children he/she needs to have training and knowledge of a child's development. During the proceedings the intermediary needs to acknowledge the child's feelings of fear, anxiety, doubt and guilt. The intermediary also needs to explain to the child that he / she is not the accused but that his or her evidence is crucial to the case. The intermediary must be impartial at all times because it could happen that the accused is innocent.

Müller & Tait (1999: 257) maintain that an intermediary should be seen as an expert and as such should be afforded the power to offer an opinion as to whether a question can be understood by the child and also to represent a child's interests to ensure that a child is given a break and taken care of.

2.6.5 THE FAMILY COUNSELLOR

The Mediation In Certain Divorce Matters Act 24 of 1987 makes provision for the appointment of family counsellors in the office of the Family Advocate. The Family counsellor has been appointed to assist the Family Advocate in providing the court with a report and recommendations in any matter concerning the welfare of a minor child. The Family Advocate is a relatively new office in South Africa, and as such there is a need to add to the current body of information available. This study will endeavor to address this shortfall.

2.7. EXPERT WITNESSING

Witnessing is a significant medium whereby evidence is made available. Effective courtroom testimony requires a concerted effort from the social worker to prepare and ensure that he or she is a credible witness. Providing information that can lead to an informed decision by a court of law is an important role for social workers. The social worker is able to provide this information when he or she testifies as a witness in court.

Expert witnesses are prevailed upon because of their specialized knowledge and skill and their ability to draw conclusions from facts. They can make professional judgements in their area of expertise. As an expert the social worker must qualify in order to testify. This is accomplished by providing information on how his/her expert status was achieved. It may have been through formal education, training, practical experience etc. The main hope of the court is that the social worker's informed professional opinion will assist the court in making the best decision in a particular case. The expert is only an expert in the field of specialization. In any other area the social worker is a lay witness. An expert may be subpoenaed to testify, but cannot be forced to give an expert opinion (Caulfield in Mayhall 1988: 283).

2.7.1 THE SOCIAL WORKER AS A EXPERT WITNESS

The expert witness has been described as a person who has ".....the ability to stand up to an advocate under cross examinationwit and presence, qualities not of the scientist but of the entertainer" (Gross in Saunders 1999:2).

In order to function effectively within a legal setting the social worker requires knowledge of the different professional roles in the court as well as of court

procedures. The role of the social worker in court is that of the expert witness meaning that he or she has to comply with the requirements for an expert witness. As an expert witness the social worker will be subject to cross examination which places high demands on the knowledge, intellectual ability and communication skills of the social worker. Considering that the aim of cross examination is to create doubt regarding the credibility of a witness, the defense uses a variety of tactics to achieve this (Howes 1990 : 67). Gothard (1989b :11) describes these tactics as :

..... rapid fire questioning, usually done to confuse the witness. Another is apparent friendliness, done to lull the witness into a false sense of security in the hope that disadvantageous answers will be disclosed. Leading questions, designed to get the witness to answer in a way that is advantageous to the questioner, is another tactic. These type of questions may also be asked to confuse the witness or lead to overly strong reactions. Another tactic is the question that insists on a 'Yes' or 'No' answer. Lawyers will sometimes try to demand such answers in cases where the proper answer requires an explanation.

As an expert the social worker is able to provide the court with the best relevant evidence. The expert witness according to Labuschagne (1999) is something of an anomaly – he or she is seldom an eyewitness of crime, but must , from the facts presented to him or her, apply his or her expertise to assist the court, either prior to conviction or during the sentencing phase. The expert is only an expert if his or her skills are relevant to the specific matter and should also meet the requirement to fulfill the fact finding tribunals need for the expert's testimony. The opinion of the expert is only of value to the court if it is properly motivated and furnishes sufficient facts to the court in order to be critically

evaluated (Labuschagne 1999: 1-2).

To be accepted as an expert the social worker's testimony must be sufficiently reliable. Sometimes it may need to be shown that the testimony satisfies the standards of acceptability for scientific evidence. Prior to the social worker being allowed to offer an opinion as an expert, it must be established not only that the subject of the opinion is appropriate for expert testimony, but that the individual offering the opinion is skilled in that field (Gothard 1989a :65). When a social worker takes the stand the person who has requested his or her expertise elicits the social worker's qualifications. The social worker's "qualifications have to be measured against the evidence he or she has to give in order to establish whether or not they are sufficient to enable him or her to give evidence". This indicates that "there is no general rule that the expert's knowledge regarding the subject matter of his or her evidence must derive from personal experience rather than from reading" (Hoffman and Zeffert 1988: 101). Gothard (1989a:65) elaborates that although the social worker might not qualify as an expert he or she will still emerge as "more knowledgeable and credible" than a lay witness.

Court decisions are rarely reached solely as a consequence of the expert's testimony. This information is utilized to establish the context within which to examine the actions of the person being tried. The knowledge of the expert witness derives from specialized, formal education, study and experience. The role of the expert is therefore to teach, explain and to elucidate matters not generally available to the lay person. The knowledge that the expert requires includes courtroom procedures, admissibility of evidence and the roles of the various participants in the court case including the specific information required (Barker and Branson 2000: 54-55).

As an expert the social worker can only be asked for opinions concerning

matters within the area of expertise in which they have been qualified. Therefore, the lawyer or prosecutor needs to show that the social worker does possess this relevant knowledge. The expert can also be excluded from testifying when it is determined that the court does not require assistance to understand or evaluate the evidence (Barker and Branson 2000: 62-64).

Some of the areas where the expert witness will be cross examined include the following:

- The level of training, knowledge and expertise of the professional which will provide answers on whether the professional is qualified or not?
- Has the evaluation process been done properly? To what extent has the expert used proven processes and procedures, relied upon appropriate studies and research and drawn logical conclusions based upon the facts and information available?
- Has the expert remained objective and unbiased? Is the professional an expert or an advocate in the particular case? (Stern 1999).

2.8 SUMMARY

Forensic social work refers to the practice of social work that focuses on the relationship between social work and the law. Forensic social work as a specialized field of social work as applicable in South Africa has yet to be defined. Forensic social work in South Africa is still an underused concept with only the South African Police Service making specific reference to it in its service rendering. An examination of the functions of forensic social work from an

American perspective, in relation to South Africa, has revealed that forensic social work is practised only to a certain extent.

Forensic social work takes the form of statutory social work, probation services, forensic social work in the SAPS, the intermediary and family counselors. Statutory social work aims at the development of people's social functioning by means of the application of administrative procedures that have been prescribed by legislation. As such, it refers to work done in relation to the Child Care Act No.74 of 1983. Social workers in South Africa are employed as probation officers and render an indispensable service to the criminal justice system. They provide pre-sentence reports which assists the courts in its sentencing options. The South African Police Service is the only organization that refers to the work done by social workers in relation to the law as forensic social work. The social worker focuses only on crimes that have been committed against children and in this regard conducts assessments, compiles a report for court and may be called to testify as an expert in court. The intermediary as a court appointed official assists the court by acting as a mediator in a case involving a child. This ensures that the adversarial nature of court proceedings does not impact negatively on a child.

The social worker who works within a legal setting requires knowledge of the different professional roles in court. As an expert, the social worker provides information that assists the court in making an informed decision. Court decisions are rarely reached solely as a result of the experts testimony. However, the information given by the expert is used to establish the context within which to examine the actions of the person being tried.

It is evident from the literature that forensic social work in South Africa has yet to emerge from its dormant state.

CHAPTER THREE

ANALYSIS OF FINDINGS

3. INTRODUCTION

The information for this study was collected using an interview schedule. This chapter is divided into six sections. Firstly, demographic data of the respondents will be discussed. Secondly, the respondents' comments of training are examined. Thereafter, the perceptions of respondents in relation to the various role players will be analyzed. This is followed by an analysis of the respondents' experiences as expert witnesses in court. Fifthly, the problems encountered by the respondents in the legal setting are considered. Finally, the respondents' general comments regarding their perception of forensic social work are examined.

The analysis of data does not complement the sequence of questions in the interview schedule and percentages have in most instances been rounded off to the nearest whole.

3.1 DEMOGRAPHIC DATA

The demographic data collected in this study included information on the respondents' current positions, their qualifications, years of experience and the different courts that the respondents have been exposed to.

TABLE 3.1 CURRENT POSITION

CURRENT POSITION	NO	%
Probation Officer	2	15
Family Counselor	1	8
Social Worker (Child Welfare)	6	46
Social Worker (Child line)	3	23
Social Worker (Provincial Department)	1	8
TOTAL	13	100

Table 3.1 clearly illustrates that the majority of respondents in this study were social workers functioning in a Child Welfare setting (46%). All the social workers in the study are involved in court work, some to a greater extent than others. For example, social workers who function as probation officers and family counselors work predominantly in the court system. In comparison, court work is only one facet of the work undertaken by social workers at a Child Welfare agency. There are no social workers, in the study area, who have been employed specifically to function as intermediaries. Probation officers, social workers employed at Child Welfare and at Childline indicated that they are often called to serve in the capacity of intermediaries. This clearly reflects a gap in terms of service delivery, as cases sometimes need to be adjourned when an intermediary cannot be found.

TABLE 3.2 QUALIFICATIONS

QUALIFICATIONS	NO	%
B. A. Social Work	11	84
B. A. Social Science	1	8
M. A. Social Work	1	8
TOTAL	13	100

A tertiary qualification is a prerequisite for a social worker to function in this profession. All the social workers had the required four-year degree and one social worker had a Master's degree. Five respondents (not reflected in the table) are currently registered for post graduate studies. Barker and Branson (2000: 22) maintain that expertise in all fields must be "built upon a foundation of extensive formal education followed by considerable experience". The respondents' years of experience will be discussed in the next table.

TABLE 3.3 YEARS OF EXPERIENCE

NO. OF YEARS	NO	%
0 - 5	3	23
5 - 10	1	8
10 - 20	9	69
Total	13	100

In South Africa, qualifying as a social work expert is not dependent upon years of experience. For instance, a newly qualified social worker is accepted in court as an expert because of his or her qualifications as a social worker. In addition, the Child Care Act 77 of 1983 confers on all social

workers the status of an expert. This is in contrast to Mason’s assertion in Barker and Branson (2000: 54) that experience was one of the characteristics most frequently mentioned as qualifying the social worker as an expert. This is qualified by Barker and Branson (2000:54) who added that experience enables a social worker “to respond to the examiner’s questions in ways that are most helpful to all concerned”. In this study, 69% of the respondents had between 10 and 20 years of experience in the profession of social work.

TABLE 3.4 COURT EXPOSURE

TYPE OF COURT	YES	NO	TOTAL
Criminal Court	10 (77%)	3 (23%)	13 (100%)
Children’s Court	13 (100%)	-	13 (100%)
High Court	8 (62%)	5 (38%)	13(100%)

All respondents had experience in the Children’s Court, while 77% had experience in the Criminal Court and 62% in the High Court. All respondents indicated that whilst they had gained experience in the different courts, that they had experienced problems that impeded their effectiveness in court.

3.2 TRAINING

This section focused on the respondents’ exposure to training in preparation for court work. In addition, the respondents’ knowledge of courtroom processes is discussed.

TABLE 3.5 UNDERGRADUATE EXPOSURE TO LAW AND LEGAL ISSUES RECEIVED AT UNIVERSITY

RESPONSES	NO	%
Yes	2	15
No	11	85
TOTAL	13	100

It is significant to note that 85% of the respondents indicated that they had no training in legal issues prior to their first experience in court. This is surprising, given that the Child Care Act 77 of 1983 forms part of the curriculum for social work students. These respondents did not view the Act as forming part of their preparation for court work. The two respondents who answered in the affirmative, provided the following descriptions of the legal elements of the training programme that they received whilst at university:

- "Welfare law was a subject that formed part of the curriculum. It included all aspects relevant to children in the courts".
- "The Child Care Act and the role of the social worker in the courts".
- "Procedure and protocol in court".

In addition, the two respondents also indicated that whilst they had received some training, more was needed. Respondents indicated that training for court work should form an integral part of the social work curriculum at a university. The following recommendations were made by respondents in respect of training for social workers:

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- ❑ Social workers need to be equipped with information pertaining to “their role in court” and the “relevant legislation applicable in court”.
- ❑ Social workers require “practical exposure” to the court system during their undergraduate training.
- ❑ “Report writing should form an essential focus of training” as “reports presented to court need to be comprehensive and well researched”.
- ❑ The “different types of court work needs to be clarified as they are not all similar”.
- ❑ “The practical application of the law in terms of the different courts” needs to be examined.
- ❑ Social workers “need knowledge of the law” and how to answer questions in court”.
- ❑ Social workers who have no experience in court work “must be accompanied by his/her supervisor for support”
- ❑ As part of their student training, social workers need to undertake field exercises that include “a visit to the court, holding discussions with the clerk of the court and the Commissioner” to orientate oneself on their respective “roles and procedures in court”.

Only two respondents had received in-service training. This is significant as most of the respondents who had not received training at undergraduate level also had not received any in -service training or induction at their respective places of employment.

TABLE 3.6 RESPONDENTS' KNOWLEDGE OF LAW OF EVIDENCE

RESPONSE	NO	%
Have very little knowledge	5	38,5
Have some knowledge	3	23
Aufait with law of evidence	5	38,5
TOTAL	13	100

Barker and Branson (2000 : 13) maintain that social workers need to have a better idea about the admissibility of evidence, that is, what information can and cannot be used at trials. They elaborated further that, in this context the social worker must know how to retrieve accurate information from clients, legally and ethically, so that it can be considered as admissible evidence.

The respondents' understanding of the law of evidence was explored, in order to determine their level of understanding of court processes. The following responses were noted:

Five respondents indicated that they had very little knowledge of evidence. Three respondents reported presently having some knowledge of evidence which was acquired via independent study.

Five respondents reported being presently "aufait with the law of evidence". Four of the five respondents who reported being "aufait with the law of evidence" indicated having "learned from their own experiences". This entailed appearing in court with no prior experience and learning through "trial and error". Another two respondents learned by physically "sitting in on cases at court" and observing proceedings which included social workers.

It is interesting to note that the majority of social workers claimed to have had no knowledge of evidence prior to their first experience in court. It is also significant to note that although social workers serving as probation officers had been introduced to the rules of evidence during their induction program, they reported only a vague familiarity of hearsay evidence.

**TABLE 3.7 RESPONDENTS' KNOWLEDGE OF COURT PROCEDURE
PRIOR TO THEIR FIRST EXPERIENCE IN COURT**

RESPONSE	NO	%
No knowledge	7	54
Some knowledge	4	31
Aufait with court procedure	2	15
TOTAL	13	100

Social workers are not always knowledgeable or aware of legal requirements and procedures in courts of law. As can be seen from Table 3.7 above, 54% of the respondents indicated having no knowledge of court procedure prior to their first exposure to court, while 31% had some knowledge gained either through observation of court cases or independent study. In total, therefore, 85% of the respondents reported having learned about court procedure through "trial and error". Fifteen percent indicated being aufait with court procedure. This was acquired via "in- service, induction programmes" and in their undergraduate training.

Being knowledgeable about court procedure was seen by respondents as significant for the following reasons:

- In “maintaining the image of the profession” and in earning and maintaining respect in a new and often hostile environment.
- Knowledge of court procedure gave social workers “self confidence” as professionals and enabled them to “ respond appropriately” in court.
- It helps social workers “to prepare their case” and enables them to “substantiate their recommendations” when called upon to do so.
- It “helps” social workers “to prepare in respect of what to expect in cross examination” and, as one respondent indicated, it has helped her to “ hold my own in court”.
- Respondents indicated that knowledge of procedure was invaluable to social workers in “preparing their clients for court”. In this regard, Barker and Branson (2000 : 12-13) comment that “social workers need knowledge of general procedures in courtrooms, . . . the roles of the various personae involved in trials”.

3.3 PERCEPTIONS OF HOW SOCIAL WORKERS ARE TREATED BY ATTORNEYS/ PROSECUTORS AND MAGISTRATES

In this section, the extent to which social workers’ recommendations to court were accepted, was analyzed. Additionally, the respondents’ experiences of cross- examination was explored.

3.3.1 Acceptance of Recommendations by Commissioners, Magistrates and Judges

The social worker’s report is a significant document that has the potential to change the lives of people being reported on. The majority of social workers’

reports take the form of a recommendation (Department of Welfare 1998:15). The responses of the respondents strongly indicate that the recommendations of the vast majority (ten) of the respondents were accepted most of the time, that is, 80 to 100 percent of the time in Children's Courts. This differed in the other courts, where social workers needed to "prove" that their recommendations were based on evidence and were "scientific" and hence were more subject to cross- examination.

All magistrates are automatically designated as commissioners of child welfare when they adjudicate at children's court inquiries. Magistrates currently "receive no specialised training for children's court work"(South African Law Commission Issue Paper 13 1998:70). In addition, commissioners are not appointed on a full time basis in children's courts. Zaal (1997:102) points out that "it is only at a few major urban centres that the workload justifies having full- time children's courts in operation". In other areas where the scope of children's court work is not as great, the commissioner according to Zaal (1997:102) "spends most of his/her time serving as an ordinary criminal or civil law magistrate". The conclusion reached by Zaal, is that, these part-time commissioners don't build on their expertise in the Children's Court.

Respondents indicated a high degree of acceptance of the social worker from Commissioners of Child Welfare. This is possible because of a number of factors, as will be enlarged upon. The general consensus among the respondents for the generally high acceptance of their recommendations by Commissioners of Child Welfare was that the social worker's report was, in many cases the only source of information. Further reasons given by the respondents were as follows:

- ❑ “As long as the interests of the child are served”.
- ❑ It is “just a formality” for the Commissioner.
- ❑ He is “forced to accept your report”.
- ❑ They are “dependent on our investigations and our report as evidence”.
- ❑ As long as the report is “comprehensive”.
- ❑ It “meets the expectation” of the commissioner.
- ❑ As long as “relevant Acts” have been referred to.
- ❑ No “debatable issues” are contained in the report.
- ❑ This is because they are “reliant” on the social worker’s expertise and “grateful for the assistance”.
- ❑ As a result it “is seen in terms of a partnership” with “the best interests of a child” being paramount.

The degree to which a social worker is accepted in Children’s Court, especially in cases involving the presence of a lawyer, is to a large extent dependent upon the attitude of the Commissioner. It would seem that the presence of a lawyer generally results in a commissioner “losing his position of authority” to the extent that he/she can change his/her decision that had been agreed on, especially when an aggressive lawyer is present. From interviews with the respondents it appears that the presence of a lawyer leads to some commissioners losing confidence in their abilities to adjudicate in such circumstances. Four respondents, indicated that the presence of an attorney/ lawyer forced the Commissioner to be “vigilant” when the social worker’s report is read out into the record. They further indicated that the Commissioner would “question the recommendation of the social worker in terms of its appropriateness” when a lawyer was present. This, according to the respondents could be attributed to a number of reasons:

- ❑ “The aggressive nature of the lawyer”.
- ❑ “Commissioners are intimidated by the lawyer”.
- ❑ “Commissioner has minimum power to restrain a lawyer who goes above board”.

One respondent likened the process at Children’s courts to a “circus”. She clarified this by stating that the presence of a lawyer often resulted in the Commissioner “giving in to pressure” and as a result “will not act in the interests of a child”. This finding concurs with the S.A Law Commissions Issue Paper 13 (1998: 70-71) that some commissioners “lack of understanding of social work methodologies” results in “an insufficient grasp of the role of the investigative social worker” in child care proceedings. Only two respondents indicated receiving “support” from the Commissioner when an attorney or lawyer was present. These two respondents found that Commissioners in general had “ respect for social workers”, were “cordial”, and “accommodating” to the extent that “a discussion can take place regarding a case”. Social workers’ reports are relied upon in order for a decision to be made. Therefore, Commissioners “accept social workers as part of the Children’s Court”.

While the majority of respondents indicated a positive reception from Commissioners, this was not the case with Judges and Magistrates. For example, one probation officer described a Judge as “intimidating” and who “thinks he is a king with all other role players relegated to being his subjects”. Others reported having “ very little communication with judges” with the result that “not much rapport is established” with them. It must be noted that the nature of cases in the High Court is such that almost no communication takes place with the Judge.

In respect of the Criminal Court, the majority of the respondents indicated that their recommendations were generally accepted by magistrates. Interviews with respondents indicated that magistrates seldom “communicate” with the social worker or “comment on the report”. Magistrates do “occasionally ask for clarification ” but on the whole will “listen to what the lawyer and prosecutor has to say”. Probation officers however, experienced magistrates differently to the other respondents. Interviews with probation officers indicate that while some magistrates “ generally appreciate your report” , there are others who are “harsh” in terms of “ hammering you in cases where you recommend a less restrictive sentence”. One probation officer indicated that the tendency of the magistrate then, is to “cross examine you extensively”.

3.3.2 Social Workers’ Experiences Of Attorneys And Advocates

Most of the respondents had experience of attorneys and advocates in the courts. Ninety -two percent of the respondents had been exposed to a Children’s Court proceeding with a lawyer present. This represents a change from the traditional mode, where parents accepted the intervention of the social worker without a legal representative. This points to the fact that parents have become more aware of their rights and now seek representation when they feel that these are being challenged.

There was general consensus among respondents that social workers receive a “hostile” reception from lawyers and advocates if social workers “recommendations don’t support their expectation or client’s interests”. This is consistent with Whitmer ‘s(1983: 220) comment that “ the forensic social worker makes recommendations which may bring him or her into conflict with the wishes of other parties”. Whitmer (1983:221) further adds, that “such

conflicts strain the working relationship between forensic social workers and attorneys". Respondents described their experiences with lawyers as follows:

- ❑ "You are seen as the bad person".
- ❑ "There is little co - operation especially if your evidence is not in favor of their client. Therefore, they will question your entire report".
- ❑ "Very retaliatory with the lawyer always being defensive".
- ❑ "If you don't support their case they can be aggressive and hostile".
- ❑ "There is no respect for social workers".
- ❑ "Social workers are ignored".
- ❑ "You are seen as an obstacle".
- ❑ "Social workers are regarded as subjective in respect of the child".
- ❑ "You are regarded as not being professional".

A low percentage (23%) of respondents reported a favorable reception in all three courts. These respondents reported their reception as "cordial" with acceptance being guaranteed, but with the proviso that the "social worker knows what she is talking about". One respondent reported that in her 15 years of practice she had only one case where collaboration took place between herself and the lawyer. This effort was also initiated by the social worker. Another respondent reported receiving a "respectful attitude" from an advocate. This could be attributed to the fact that both the social worker and the advocate had similar interests in the case, hence the positive demeanor.

3.3.3 Social Workers' Experiences of Prosecutors

There are no prosecutors in Children's Court matters, although they are

sometimes required to serve as children's court assistants. Zaal (1997:103) maintains that, on the whole, the use of prosecutors to serve as children's court assistants, has generally not been successful. They frequently adopt an adversarial style which is inappropriate in children's court. Research conducted by Matthias and Zaal (1996:57) indicates that prosecutors who are "able to cultivate and develop the specialised and sensitive approach" required to work in the children's court are often "transferred to other duties or other places and are then lost to the children's courts". Matthias and Zaal, in addition, describe the adversarial mode of prosecutors at children's court as "having a bull in a china shop". It is important therefore that prosecutors develop a specialised and sensitive approach required to work in the children's court.

In comparison to the Children's Court, prosecutors do feature more prominently in the other courts. A high percentage of respondents (62%) reported acceptance of their recommendations by prosecutors in Criminal courts. There were various factors that contributed to this, as pointed out by the respondents. A "good working relationship" has been developed with prosecutors who "liaise with social workers and vice versa". This, the respondents felt, led to the "acceptance of the social worker" even though "some are threatened" by the social worker. The perception of respondents is that prosecutors regard social workers as "an aide who assists them with their case". This results in prosecutors "consulting with social workers regarding the contents of their report". The perception of probation officers is that their "report makes the prosecutors work easier" especially the "content which provides information on the offender". It would appear that probation officers receive a favorable response from prosecutors "if you recommend that firm measures be applied against an accused".

In contrast, probation officers also indicated that prosecutors generally viewed social workers as “bleeding hearts who recommend light sentences”. Subsequently, they experienced a fair amount of “disrespect”. A point of frustration for some social workers was that “prosecutors failed to read the reports” of social workers and “expect you to verbally inform them of the contents”. Subsequently, “ they don’t usually comment on your recommendation because they have no knowledge of the content” of the report. Additionally, prosecutors expect social workers to “initiate contact”. There is “no initiative from the prosecutor to discuss a case”.

In respect of their experiences in the High Court, social workers indicated that prosecutors “support the content and sometimes ask for clarification on specific issues” contained in the recommendation. One respondent indicated that the recommendation was accepted if the social worker was perceived to be “working in the interest of the child”. Probation officers functioning in the High Court reported that they are “regarded as an expert” and, as such, prosecutors “make referrals and consult with social workers”. In this scenario the social worker is accorded a measure of “respect”.

Six respondents found that prosecutors were “interrogatory” and attempted to “prove the report to be unreliable”. This clearly indicates confusion on the part of prosecutors of the role of the social worker. The prosecutor and social worker appear to function at cross purposes rather than as a team.

On the whole, respondents indicated that prosecutors were not au fait with children’s issues or “ the role of the social worker ” in proceedings involving children. This finding concurs with that of the South African Law Commission Issue Paper 13 (1998:74) that prosecutors “lack the specialised knowledge and approach required to represent children” in court.

3.3.4 CROSS-EXAMINATION ON THE REPORT

Cross-examination is often adversarial, with the intention of unsettling the witness and undermining his credibility (Muller and Tait 1999: 241). All the respondents in this study had been exposed to cross- examination. Social workers, including those that function predominantly in the court system, described the experience of being cross examined as “ unnerving” , “intimidating” and “fraught with tension”. They further added that they felt “anxious and apprehensive”. One respondent indicated that she found the experience to be “challenging” but “ it brought out the best in me”. Other respondents felt that the cross- examination was “justifiable” as social workers needed to “ substantiate” their reports.

It is interesting to note that 31% of the respondents felt that the experience of cross- examination would have been positive, “ had I been better prepared in terms of court procedure”. Bernstein (1980: 419)has described cross- examination as a “brutal” experience. He elaborated further that “the social worker who is unprepared can be devastated”. The general consensus among respondents was a “fear of being made to look incompetent” as the attorney / lawyer / advocate “looks for flaws in your professionalism”.

There was a general consensus among the respondents in respect of the aspects that social workers were generally cross- examined on. These were as follows:

- “recommendations”
- “contentious issues” in reports
- “qualifications and experience”
- “assessment tools” used

- ❑ “knowledge of the law”
- ❑ “entire contents of the report in terms of how conclusions were reached”
- ❑ “who the social worker consulted with”
- ❑ “issues that parties disagreed with”

The above implies that every facet of the social worker’s report is questioned. This means that a social worker would need to investigate a case thoroughly, compile a comprehensive report and be prepared in terms of what to expect in court.

3.4 EXPERT WITNESSING

Writing from an American perspective, Pollack in Barker and Branson (2000: 53) comments that courts are accepting with regular frequency, social workers who have qualified as expert witnesses. Gothard (1989a:66) elaborates that “opposing counsel will seek to discredit the social worker or the profession”. In this section, the extent to which social workers are requested to give expert testimony in respect of a specific child and in respect of their expertise of subject matter was analyzed. Thereafter, the reception these social workers received from the various legal officials was considered.

3.4.1 Expert Witness in Relation to Subject Matter and Specific Cases Handled

Social workers serve as experts in terms of subject matter, or in relation to a

specific child. In terms of subject matter, this would refer to those instances where a social worker offers expert opinion on specific issues. For example, a social worker from Childline could be called to testify on the effect of sexual abuse on a child. On the other hand, social workers also testify as experts in cases where they have rendered services to children. For example, social workers from a child welfare setting are called to give evidence on the background of children and families, provide data on early intervention services rendered, recommendations in respect of placement of children, etc.

Social workers in South Africa are called more often to testify in relation to a specific child that they have rendered services to, than on their expertise of subject matter. The following responses were noted as reasons for this discrepancy:

- The “social worker’s role is misunderstood”.
- Social workers are “not regarded as experts”.
- “Courts don’t acknowledge social workers’ professionalism”.
- Social workers are “not regarded as credible, on expertise of subject matter, as compared to psychologists”.
- Social workers are generally perceived to be “subjective in their assessments of children”.
- “The Justice Department does not call on social workers for their expertise of subjective matter”.
- The “attitudes of the different magistrates” differ. For example, “in district areas magistrates are more amenable to social workers giving evidence, while in urban areas social workers are not regarded as competent to be experts”.
- The “nature of cases are different”.

3.5 PROBLEMS EXPERIENCED BY SOCIAL WORKERS IN A LEGAL SETTING

The following were listed as problems experienced by social workers in the legal system. In order to analyze these responses they have been grouped into three categories.

3.5.1 Inadequacies of Social Workers

- “Not knowing how the court functions”.
- “Not acquainted with legal terms”.
- “Not knowing the different roles, expectations or protocol especially in high court and criminal court”.
- “Lack understanding of court procedures”.
- “Lack of training on the law”.
- “A social worker not seen as an expert”.
- “The role of the social worker is misunderstood”.
- Subsequently, “the social worker is taken for granted” as the legal officials “don’t know your role and functions”.
- A further consequence is that the social worker appears to be at the “beck and call” of the court.

Most of the respondents pointed out that the “lack of training on the law”, “not being acquainted with legal terms” or knowing the “different roles, expectations and protocol” resulted in them experiencing setbacks in court. This, according to most of the respondents, was a major contributing factor in the perception of the legal fraternity that social workers were not “experts”. Social workers were generally au fait with procedures in the Children’s Court. This was not the case in other courts.

3.5.2 Legally Trained Personnel

Another area of concern raised by respondents was the legal personnel and their contribution to the problems experienced by social workers in the court. Respondents indicated the following:

- ❑ “Prosecutors work in isolation” hence they “don’t communicate with victims”. Victims are seldom kept abreast of the progress of the case.
- ❑ There is a distinct “lack of training of personnel from clerks to the Commissioner, in child related issues”.
- ❑ “Prosecutors are not properly trained. They just accept what the defense says without objecting”.
- ❑ Legal personnel are “territorial”. “They think that only they can assist the client”.
- ❑ There is a lot of “disrespect from legal officials”.

It is disconcerting to note, from the above, that many legal personnel according to the respondents, are not equipped to deal with child related matters and have insufficient knowledge of child development. Also, that they are not sensitive to children’s issues. This was stated by one respondent as “they don’t understand how children behave or react” to trauma. Therefore, “they respond inappropriately to children and families”. The fact that they are perceived as “territorial” clearly points to the lack of teamwork that prevails between social workers and the legal officials in spite of the forum mentioned in section 3.5.4.

This oversight, deliberate or otherwise does not benefit the people it ought to, that is, the child. Matthias (1997:46) reports that a study conducted by

Matthias and Zaal found that “tension and misunderstanding between social workers and commissioners did not benefit the child”. This study supports that finding.

3.5.3 The Court Environment

A third category of concerns relates to the “adversarial” nature of the court environment. Social workers listed the following as their concerns:

- “Courts are not totally child friendly”.
- “There is no specific protocol in Children’s Courts”.
- “The clerk of the court is overwhelmed by the volume of work.”
- “Courts are not user friendly”.
- “Matters are adjourned unnecessarily.”
- “Delays in child abuse cases”.

It is evident, that despite efforts to create “user friendly” courts, there still remains a need for more changes in this regard. “ Protocol” also appears to vary from court to court, which exacerbates the situation for a social worker who is unfamiliar with “protocol” and procedures in the different courts. The “unnecessary adjournment” of cases leads to difficulties in explaining to families and witnesses the reasons thereof.

3.5.4 Attempts by Respondents to Address Problems

Interviews with respondents indicated they have attempted to address these problems in the following ways :

The majority of respondents indicated that there were regular meetings

between social workers and legal officials of the Justice Department to discuss problems and make proposals for changes. It is positive to note that such a forum exists. While it may not alleviate all the problems experienced by these role players, it does to some extent allow for interaction on a more informal level. Four respondents indicated that by attending workshops and, through self study, they have "increased our knowledge base". Other respondents indicated that they ran training programmes with court officials to orientate them on social work related issues. Respondents also indicated that compiling "more comprehensive reports" made their acceptance in court easier.

The family counsellor indicated that she has had discussions with the Liaison Judge regarding the specialisation of judges. Additionally, she consults with other colleagues involved in the National Programme of Action to discuss problems.

The probation officers indicated that they "hold discussions with the offender" and "read him/her my report together with the recommendation". They also indicated that "peer consultation and support" helped them to cope better.

3.5.5 Recommendations of Respondents

Arising from the problems experienced by social workers, the following recommendations were made by respondents to address these. It is encouraging to note that 62% of the respondents favored a team approach with legal officials as an attempt to resolve problems. Respondents strongly believed that working as a team "will ensure that all role players work toward a common goal". "Regular consultations between role players to

“discuss problems and brainstorm possible solutions” would “ensure the smooth flow of work”. Furthermore, teamwork would lead to social workers and legal personnel “working closely together and not in isolation”. Other recommendations dealt with the need for social workers to receive training on legal issues at undergraduate level as they “lack experience of working with legal” officials.

Regarding the functioning of the legal officials in the courts, respondents recommended the following. The “staff in a Children’s Court setting need to undergo training in respect of children’s issues. This includes the Commissioner”. It “should be mandatory for people working at court to be properly trained, for example: in dealing with children’s matters and with victims”. For those already in practice, “the courts need to establish a unit to update the different role players on new legislation”. The “prosecutors especially need training in respect of trauma and children”. This is significant especially when one considers that child abuse victims are interviewed by the prosecutor to establish their ability to testify in court.

In respect of the long delays and adjournments, respondents recommended the following:

- There needs to be “more staff employed at court to deal with the high caseloads”.
- There needs to be a full-time magistrate assigned to Children’s Courts to alleviate the long waiting period.
- “More specialized courts must be established to deal with long waiting lists”.
- Courts should “operate different shifts” to alleviate the backlog.
- “Mobile courts” should be utilized.

Respondents also recommended that “support and guidance” from supervisors of social workers is essential in order for social workers to cope in this type of environment.

3.6 FORENSIC SOCIAL WORK

This section, which concludes the analysis, looks at the respondents’ understanding of the term forensic social work and their perception of how adopting such terminology will impact on the profession.

Eighty-five percent of the respondents had a notion of what forensic social work is. There was a consensus that the adoption of this terminology would be advantageous to the profession. The family counsellor indicated that there was “ already a shift in terms of judges relying on social workers and attorneys using social workers to investigate cases and to report to court”. It would seem then, that once a social worker becomes known in the court environment that legal officials will accept the role that the social worker has to play in court proceedings. Other advantages as listed by respondents were as follows:

- ❑ It will result in the social worker’s “ acceptance as a professional” and “give social workers the confidence to challenge other professions”.
- ❑ Additionally, there will be “more respectability for the profession” as it will be a “specialization in the field of social work”.
- ❑ Specialisation would mean an “improvement in the status of the profession” in terms of “social workers being taken seriously”.

3.7 SUMMARY

It is evident from in this chapter that training for both social workers and legal officials appear to be lacking. Social workers experience problems in their functioning in the legal system which relate to the social workers' lack of knowledge of evidence, courtroom procedure and the role of the different role players in court. Respondents indicated that social workers lack knowledge of court procedure, evidence and the roles of the different professionals in court. It was clear that respondents felt that the lack of "understanding of social work methodologies" and the roles of social workers by legal officials has resulted in tension between social workers and the different role players.

CHAPTER FOUR

MAIN FINDINGS AND RECOMMENDATIONS

4. INTRODUCTION

The aim of this Study was to explore the experiences of social workers practicing forensic social work. In order to achieve this aim the perspectives of social work practitioners in the Durban Metropolitan area were examined. The objectives of the Study were firstly, to examine the problems experienced by social workers in the practice of court work. The second objective was to determine social workers' proficiency in a legal setting. The third objective was to ascertain the level of acceptance of social workers functioning in a legal setting.

In this qualitative exploratory Study the researcher used the snowball sampling technique. This Study incorporates data arising from interviews with thirteen social workers involved in court work. Once the sample was selected, in-depth interviews were conducted with the respondents in the period October to November 2001. The results were analysed manually by the researcher. The main findings and recommendations are described below.

4.1 MAIN FINDINGS

4.1.1 Experience in Court

As indicated in Chapter Three, all the social workers in this Study, are currently involved in court work, some to a greater extent than others. Six of

the respondents in this Study were social workers functioning in a Child Welfare setting, while three were from Childline, two from probation services, one family counsellor and one social worker from the provincial department of Welfare. There are clear gaps in service delivery, as illustrated by the lack of appointed intermediaries in the different courts. Probation officers and social workers employed at child welfare agencies and Childline are frequently called to serve in this capacity.

Research in America presupposes that experience is a significant factor in the acceptance of a social worker as an expert in court. Comparatively, in South Africa, qualifying as an expert is not dependent upon the length of experience of a social worker. South African courts tend to accord a newly qualified social worker and one with considerable experience the same status and degree of acceptance. This is the case in Children's Courts. In the other courts, social workers need to prove that they have the qualifications as well as experience in their field of work. Additionally, legislation in the form of the Child Care Act makes clear reference to all social workers as experts.

4.1.2 Training

With regard to undergraduate training received at university, the findings indicate that the majority of social workers did not receive training in respect of legal processes prior to their first experience in court. Respondents did not regard their introduction to the Child Care Act as sufficient preparation for court work.

As regards in-service training and induction, only two probation officers indicated receiving this prior to their first appearance in court. The following

themes emerged with regard to the training of social workers. Social workers are unclear in terms of “their role in court” as well as the “relevant legislation “applicable in the different courts. Further, they require “ practical” experience of the court system as part of their undergraduate training. Social workers need “knowledge of the law” as well as information on how to conduct themselves in court, that is, how to answer questions in court. The findings in respect of their knowledge of evidence and court procedure points to this being an area that social workers need to improve on in order to be effective in court.

A social worker requires basic knowledge of the rules of evidence, court room procedure and techniques of examination in chief and cross examination. The findings that emerge clearly indicate that social workers appearing in court for the first time are seldom cognisant of legal requirements , the roles of the different professionals appearing in court and procedures in court.

Eighty-five percent of the respondents had no knowledge of evidence or procedure prior to their first experience in court. It may therefore be inferred that universities need to review their curriculum, and that social work agencies also need to include court work as part of their “induction and in-service programmes”.

4.1.3 Problems Experienced by Social Workers in a Legal Setting

The findings of this study indicate that social workers are generally au fait with procedures in a Children’s Court which are more informal as compared to those of the other courts. A major problem for social workers in respect of their interaction in court relates to their lack of knowledge of how the court

operates, not knowing the functions of the different professionals and lack of understanding of court procedures. Respondents felt that this has resulted in them being unprepared and lacking in confidence. The perception of other professionals in this environment, that social workers are not “professionals”, can only be reinforced when social workers make an appearance in court unprepared.

Another problem area for social workers in a legal setting relates to the attitudes of legal officials. Eight respondents indicated that there is a distinct “lack of training” of legal officials in child related issues. This includes the commissioner. An important finding in this study, relates to the lack of teamwork that is prevalent between social workers and legal officials. It would seem then, that the different role players function in isolation, with little or no collaboration taking place between them.

What emerges from this Study, is that the adversarial nature of the court is another problem area for social workers. Social workers are trained in non-adversarial methods of interacting with people. Their training generally focuses on rendering support, upliftment and empowerment. On the whole, social workers perceive the courts as not being user friendly and lacking uniform standards in children’s courts. This appears to be an impediment to social workers in their efforts to function effectively in court.

4.1.4 Social Workers as Experts

From interviews with the respondents it was clear that all had experience in Children’s Court matters and that it was in this court that they functioned most often as experts. Therefore, the main assessment in this section will focus to

a large extent on the social worker as an expert in the Children's Court.

From the interviews with social workers, it would seem that the presence of a legal representative influenced the degree to which their recommendations were accepted. The presence of a lawyer, it seems, results in some commissioners becoming circumspect and "giving in to pressure" and invariably failing to act in the "best interests of a child". This finding concurs with other research findings, that some commissioners "lack understanding of social work methodologies sometimes leads to insufficient grasp" of the role of the social worker (S.A Law Commission Issue Paper 13 1998:71).

In addition, respondents commented on the fact that many lawyers who appear in children's courts lacked knowledge of the provisions of the Child Care Act. This concurs with other research findings that indicates that the lawyers lack the aforementioned knowledge and that this is one of the contributing factors to their ineffectiveness in Children's Courts. From the findings, it would seem that legal representatives experience difficulty in making the transition from an adversarial style that is appropriate in other courts to a more informal setting in the children's court that requires special skills and sensitivity.

On the whole, the respondents were of the opinion that the experience of cross-examination is 'intimidating' and 'fraught with tension'. The findings of the study suggests that social workers are cross-examined on their recommendations, the assessment tools used, knowledge of the law, contentious issues in the report and the source of information used. This implies that every facet of the social workers report is questioned. Looking at the aspects that they are cross-examined on, it is highly likely that a social worker who is not knowledgeable of the law will experience difficulties. This

also points to a need for training on how to handle cross-examination.

The findings of this study indicate that social workers testify as experts mostly in relation to specific cases. From interviews with the respondents, it was evident that the two probation officers are called to testify in respect of appropriate sentencing options, while only one social worker was called once to motivate the need for an intermediary in the High court. It would appear, that the courts do not recognise the expertise of social workers in respect of their knowledge of subject matter. It was noted by respondents that psychologists enjoy a higher status and are more often called to testify in respect of their knowledge of subject matter.

On the whole, there was general consensus that social workers are not well received by lawyers and advocates. The findings indicate that in all three courts, respondents reported a negative reception from these role players.

With regard to the adjudicating officer in all the courts, the respondents experienced a high degree of acceptance from these role players. It would appear that the information provided by social workers is essential to assisting these role players in adjudicating over cases. Interviews with respondents indicate that this seems to be particularly true in Children's court matters.

The findings of this study indicate a positive reception of social workers by prosecutors once a "good working relationship" has been established. It would seem however, that despite recognising the value of social workers that prosecutors are reluctant to work together with social workers.

4.2 RECOMMENDATIONS

The purpose of this section is to submit recommendations based on the findings of this study.

4.2.1 Training

The issue of training features predominantly in this study, in respect of both social workers as well as legal officials. What is clear is that social workers wishing to work in the legal setting need to be grounded firmly in respect of the law and its application. What emerges generally from the findings in regard to training of social workers is a strong emphasis for changes in the curriculum of social work students. Also, there appears a need for legal social work as a specialised field of study. Therefore, it is recommended that the curriculum of social work studies be reviewed with the view to including forensic social work as a specialised field of study in social work.

The responsibility for training should not be the responsibility of tertiary institutions only. Social work agencies employing social workers need to develop induction programmes relevant to the services offered by them. Additionally, in- service training to ensure that social workers remain updated on changes in legislation, procedures, trends in the field will help to ensure that clients receive efficient service delivery. This is part of an agency's social responsibility.

In relation to legal officials, the lack of training in child related issues featured strongly in this study. For legal officials, especially those working in children's courts it is recommended that in addition to their law qualifications, that they receive training in social work related subjects as well. It is

envisaged that the training should include child development, interacting with victims of trauma, questioning victims, memory and the impact of trauma on memory, etc. These recommendations have previously been made. However, it is only recently that such changes have been implemented. A recent development to address this issue has been the introduction of an inter-disciplinary masters degree at the University of Durban Westville.

4.2.2 A Register of Legal Officials who Specialise in Children's Court Matters

A further recommendation is the creation of a register of all legal officials (that is, lawyers, prosecutors and magistrates) who specialise in child care proceedings. This register should include their area of expertise, training received, their level of expertise as well as their ability to function in this specialised field. It is envisaged that these legal officials would be required to work in the children and family courts. The system of a register of suitably qualified legal officials to function in a Children's court has generally been successful in England (Zaal 1997: 105). In addition, it is recommended that in-service training should include child related issues as well as changes in legislation affecting children.

Regarding lawyers, this study has shown that generally lawyers are not effective in children's courts because of an inability to change their adversarial approach and their lack of knowledge of child related issues. In line with this, Zaal (1997:105) recommended that lawyers wishing to practice in a children's court setting, undertake supervised field assignments both at Children's Courts and at social work agencies. This will to some extent assist the lawyer in understanding the functioning of the Children's Court as well as

sensitizing him/her to children's issues.

4.2.3 Full Time Commissioners

A suggestion from respondents was for a full time magistrate to adjudicate at Children's courts. Social workers in the study indicated that the procedure and requirements in children's courts changed with each Commissioner. The appointment of a full time Commissioner of Child Welfare will alleviate this problem.

4.2.4 Shift Work For Legal Personnel

In respect of the workload of court officials and the backlog which results in "unnecessary delays", it is recommended that the court examine the possibility of shift work for legal officials. While this might have financial implications for the different departments involved it will, in the long term, eliminate any backlog and ultimately ensure effective service rendering.

4.2.5 Teamwork

In respect of the lack of teamwork, it is recommended that prosecutors and social workers collaborate on cases. Teamwork to prepare the social worker for effective testimony during examination in chief and cross-examination is essential. This will not eliminate all the difficulties but it will, to some extent, increase the effectiveness of the testimony of the social worker.

4.2.6 Social Workers' Reports

A further recommendation relates to the content of social workers' reports. Since cross-examination appears to be an intimidating experience fraught with tension, it is recommended that the reports of social workers be comprehensive. In other words, the report must be detailed, with scientific explanations for pertinent issues, such as effect of trauma on memory. The assessment tools used must be scientific. The social worker must also be updated on the latest research findings in respect of her field of practice. In this regard it is recommended that social workers subscribe to journals as well as conduct their own research via the internet. Knowledge of research findings and how it compares to the case at hand will convince the court of the social workers professionalism and go a long way to proving his/her expertise in the field.

4.2.7 Forensic Social Work

Finally, in respect of the functions of forensic social work as discussed in Chapter 2 it is recommended that the scope of social work be broadened to include social work in the court as a specialist field. It is the view of the researcher that the services should not be fragmented as is currently the practice but that it should emanate from a single unit offering a specialised service. Social workers need to establish themselves into a body that can canvass for the acceptance of social workers as experts. It is envisaged that this will increase the profile of the social worker in this setting and make for easier acceptance.

4.3 SUGGESTIONS FOR FUTURE RESEARCH

- i) There is a need for additional research to further explore the issues relevant to social workers functioning in a legal setting.
- ii) Future research should consist of a larger, more representative sample, including other groups of social workers involved in court work, such as the social workers of the SAPS, in order to enlarge upon the findings of the present study.
- iii) Research should also focus on legal officials and their perceptions of social workers and their effectiveness in court.

4.4 CONCLUSION

Although there is room for additional research in the area of forensic social work, the results of this study do provide some answers to the questions posed at the outset. These answers provide a foundation that can guide practical approaches to improving the experiences of social workers in a legal setting.

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ANNEXURE 1

A. DEMOGRAPHIC DATA

1. Current position

Probation officer	
Intermediary	
Family counsellor	
Social worker (child welfare)	
Social worker (childline)	
Social worker (department)	

2. Qualifications

B.A. Social Work	
B.A. Social Science	
M. A. Social Work	
Other (specify)	

3. NUMBER OF YEARS OF EXPERIENCE :

0 - 5	
5 - 10	
10 - 15	
15 - 20	

4. IN WHICH COURTS HAVE YOU HAD EXPERIENCE :

CRIMINAL COURT	
CHILDREN'S COURT	
MAGISTRATES COURT	
HIGH COURT	

B. TRAINING

1. Did you receive any training prior to your first experience in court ?

YES	NO

2. If your answer is YES elaborate on some of the elements of the training programme.

3. If your answer is NO, do you think that such training could have helped you? What are your recommendations regarding the training of social workers prior to their appearance in court.

4. Comment on your knowledge of evidence for example, the use of hearsay evidence in court, rules of evidence .

5. Comment on your knowledge of courtroom procedure and how this has impacted on your effectiveness

6. Comment generally on training issues.

c) **RECOMMENDATIONS OF SOCIAL WORKERS**

1. Estimate the extent to which the recommendations you make to court are accepted?

PERCENTAGE	Mark with an X
0 - 20	
20 - 40	
40 - 60	
60 - 80	
80 - 100	

2. Comment on your experience / s of how your recommendation was accepted in court by

2.1 a lawyer /attorney/ advocate

a) in a magistrates court

b) in a children's court

c) in a High Court

2.2 a prosecutor in

a) a magistrates court

b) a high court

2.3 a magistrate / Commissioner / Judge in a

a) magistrates court

b) Children's Court

c) High Court

3. Have you ever been cross examined on the content of your report?

YES	NO

4. If yes, describe this experience.

5. Comment on what aspects of the report you cross examined on?

D. EXPERT WITNESS IN COURT

1. Briefly list the challenges that you have encountered while working in the

following courts?

a) magistrates court

b) Children's Court

c) High Court

2. Discuss how you have attempted to address these challenges?

-
3. Briefly list the extent to which you have been called as an expert witness to give evidence in relation to a specific child.

PERCENTAGE	Mark with an X
0 - 20	
20 - 40	
40 - 60	
60 - 80	
80 - 100	

4. Briefly list the extent to which you have been called as an expert witness to give evidence in relation to your expertise of subject matter.

PERCENTAGE	Mark with an X
0 - 20	
20 - 40	
40 - 60	
60 - 80	
80 - 100	

5. What do you attribute the discrepancy (if any) to in respect of the above?

6. What is the reception that you receive from the following roleplayers in relation to the work that you do in the different courts?

6.1 lawyers in

a) Children's Court

b) Criminal Court

c) High Court

6.2 with Magistrates/ Commissioners/Judges

a) Children's Court

b) Criminal Court

b) What would you recommend be done to address these problems?

F. GENERAL

1. What do you understand by the term “forensic social work ”?

2. Do you see any advantages in adopting this terminology?

YES	NO

3. If YES, list some of the advantages.

4. If NO, elaborate on your answer.
