

**THE USE OF SOCIAL WORK SERVICES IN
CRIMINAL MATTERS: AN EXPLORATORY
STUDY OF EAST LONDON ATTORNEYS**

**Thesis submitted in partial fulfilment of the requirements for
the Degree of Master of Social Science (Social Work),
Rhodes University, East London**

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January 2003

ABSTRACT

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This study explored the use of social work services by East London attorneys in criminal law matters. Semi-structured interviews were conducted and the data was saturated after 10 such interviews.

In exploring the use of social work services, the study also considered the challenges and constraints experienced by lawyers in their use of expert witnesses from the Humanities generally; discussed the expectations lawyers have of expert witnesses and the presentencing reports they write and described the perceived impact of social work services on the presentation of cases in criminal matters. The focus on social work was aimed at exploring ways of increasing the use of social work as the profession of choice when attorneys call on expert witnesses.

The literature review focussed on the individualisation of sentences, the general principles of punishment, finding an appropriate sentence, the so-called Triad of Zinn, the role of the social worker in criminal justice, the role of the legal social worker, the report, courtroom skills and the relationship between social work values and the law.

Using purposive sampling of all legal firms in East London doing criminal work, ten attorneys were asked to participate in the study. A semi-structured interview based on a schedule of questions was used. The interviews were recorded and transcribed. The transcripts were analysed thematically. After ten interviews no new data was being

generated and the topic was considered saturated. Further research is needed to build on the themes that emerged.

The study argues that there is a place for social work services in criminal matters. It also, however, revealed that some of the respondents had had negative experiences when dealing with social workers. There were also positive responses and a commitment to establishing a more co-operative relationship between law and social work.

Based on the research findings, the most important recommendation was to develop communication between the two professions and to provide inter-disciplinary training so as to promote an understanding of the roles and expectations of all involved in the criminal law process.

ACKNOWLEDGEMENTS

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I would like to express my appreciation and gratitude to the attorneys who gave up their valuable time to participate in this study.

A heart-felt thank-you goes to my supervisor, Mr Peter Clarke-Mcleod, for his support, assistance and patience during the completion of this research project. No words can express my deep-felt gratitude and appreciation.

To Dr Felicity Coughlan, friend and colleague, for her ongoing encouragement and support throughout the research process.

To my husband, Andrew, and my children, Todd and Lauren-Lee, for allowing me the space and time to complete this project; also to my parents, family and friends for so often stepping in to assist.

To Linda Drinkrow for her enthusiastic assistance and encouragement from start to finish.

Finally, to Andre Malan who spent hours assisting me with data analysis, editing and general support. Thank you.

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

This is a study of the use of social work services by attorneys in East London when dealing with criminal matters.

In making decisions about sentencing and convictions, the legal system is increasingly making use of experts from the humanities – there is increased recognition that the context in which a person lives impacts on decisions they make about what they do. It follows that this context should be taken into consideration when making decisions about the consequences of the actions people take. Expert testimony about the human context of behaviour is thus important when those in the justice system consider sentencing options. This expert testimony has traditionally been provided by psychologists, psychiatrists and, to a lesser extent, social workers.

Much of social work training involves developing the capacity to investigate the context of human lives, to assess this context and to write reports for use in decision making. Using these skills in the criminal arena has long been part of the work of social workers and state employed probation officers are frequently social

workers. From this basis there has been an increased use of social workers as expert witnesses in family law. The Mediation in Certain Divorce Matters Act 24 of 1987 provided opportunity for mediation in certain divorce proceedings as well as other matters related to divorce proceedings, with the specific objective of safeguarding the interests of minor children. The Act provides for Family Advocates and family counsellors to be appointed to assist the office of the Family Advocate in custody evaluations. The family counsellors are usually qualified, registered social workers, appointed by the office of the Family Advocate. The use of social workers by defence attorneys in family law is a more recent development. This study seeks to examine, from the perspective of the legal profession, what the challenges and constraints are that inform the extent to which social work is the preferred profession for giving expert evidence in the criminal field.

From social work reports in custody disputes to the provision of pre-sentencing reports, social workers are regularly being called on to provide their services to the legal profession. In their training and practice, attorneys specialise in the technical application of legal principles, while social workers are expected to develop expertise in the social, developmental and behavioural contexts of human life. Social work is, perhaps, different from other humanities based intervention type professions because the contextualisation of human behaviour is so central to its theory and practise – this makes the use of social work methods and ways of

understanding the world particularly useful when considering how best to restore the social balances that crime disrupts. It is unrealistic to expect criminal attorneys to develop expertise in the social contexts of crime to the extent required to ensure that sentences are appropriate for the individual and society at large. It thus makes sense to use the social work skills and expertise that is available to meet the overall objective of seeking justice for clients (Dubois & Miley, 1996: 327). It is clear that the combination of the two professions makes for a holistic, humanist perspective of the accused and the crime. In gaining this understanding, magistrates and judges are assisted in their efforts to impose an appropriate sentence. A sentence is passed after the case has been presented and studied from all angles by the legal professionals involved. The sentence is handed down as punishment for whatever crime had been committed. It is important to remember that, according to Hiemstra (1985: 89), the primary purposes of punishment are deterrence, prevention, reform and retribution. Of the above, deterrence is regarded as the predominant universally acknowledged purpose of punishment. It is, however, recognised that on its own deterrence is not effective in reducing either crime rates or the criminal behaviour of an individual and that something much more sophisticated is needed to ensure that punishment works towards restoring social balance.

In the case of the State vs Zinn, 1969 2 SA 533(A), hereafter it was recognised that punishment must take into account the personal position, age, possibilities of

rehabilitation and the best interests of society. These factors have become known as the Triad of Zinn and now frequently inform sentencing decisions. The compilation of a report, that contains these aspects and forms its core, is best done by a skilled social worker able to assess the individual and social context of the crime.

By developing an understanding of how (or whether) criminal lawyers in East London use social workers in criminal matters and how successful they have found this to be, social work would be in a better position to develop services that are useful to the legal profession (it is recognised that more and more social workers are seeking out private practice opportunities and the competition between this profession and others in the field of expert testimony is real). On a wider level, the findings of the study could be used to promote greater inter-professional understanding.

1.2 OBJECTIVES OF THE RESEARCH

The overall aim was to gain a clearer understanding of whether or not criminal lawyers make use of social workers, and if so, in what ways.

The research also aimed to achieve the following:

1. To describe the general challenges and constraints that lawyers experience in their use of expert witnesses from the Humanities.
2. To investigate what lawyers expect from expert witnesses and pre-sentencing reports when representing in criminal cases.
3. To describe the ways in which criminal lawyers use social work services and, if these services are not being used, to seek reasons for this being the case.
4. To explore the perceived impact of social work services on the presentation of cases in criminal matters.
5. To describe how lawyers envisage the potential role of social workers in criminal matters.

1.3 RESEARCH DESIGN AND METHODOLOGY

As it was important to develop an understanding of the lawyers' perspectives, the research strategy needed to be as open-ended as possible. A semi-structured questionnaire asking mostly open-ended questions was, thus, the preferred data collection strategy (Rubin & Babbie, 1992: 362).

Purposive sampling (Grinell, 1981: 88) of all the legal firms in East London doing criminal work was undertaken. Each firm was asked to allow one person to be interviewed. Ten lawyers were interviewed. It was not necessary to conduct further interviews as the data became saturated in that no new themes or ideas were being offered. Clearly, as this is a small study, it is possible that the findings in other contexts could have been broader and the themes that emerged can be further explored with other professions. This will be referred to later.

The interviews were recorded so as to ensure as natural a conversation style as possible and to further ensure that the information collecting process did not take unnecessarily long. Transcribing of the interviews also ensured complete, accurate recall of the data and allowed for a more detailed analysis of opinion that would not have been possible from short, written answers. As the topic was not particularly contentious or sensitive and the data fairly easily categorised, a simple process of grouping responses according to themes was the main method of data analysis. The study contains both quantitative and qualitative elements, which also made the presentation of tables possible.

As the researcher is a social worker, it was very important that the respondents were willing and able to express both positive and negative opinions about social work. A recent study in East London involving attorneys involved in family law

(Tatchell, 1999), demonstrated that attorneys are willing to be open about their opinions and thoughts on social work when interviewed by a social worker. Tatchell (1999) found them to be “brutally honest”. In the analysis of data, it was important to remain true to what was being said and to avoid trying to defend or explain social work (Rubin & Babbie, 1993: 390). This was very important because, as in Tatchell’s case, the attorney’s were honest and expressed their opinions openly.

Had the attorneys at any time felt that they were led in a particular direction, it would have skewed the results dramatically. It was also very important for the researcher to remain neutral and unbiased, and, in so doing, not propose questions in a way that would express preconceived ideas of what would be said.

1.4 SCOPE AND LIMITS OF THE STUDY

As the study was only of criminal lawyers in the East London area, the information generated may not be applicable to all lawyers or to the legal system as a whole.

The fact that only ten attorneys were interviewed also decreased the generalisability of the findings. The majority of the responses to many of the questions were, however, very similar, which does allow for some generalisability of certain issues.

The study did not explore the experiences of social workers; it was, therefore, important to avoid taking the position that what the lawyers want is necessarily professionally appropriate from a social work perspective. It was important to focus on the fact that this was the study of only one side of an inter-professional relationship, which may set the foundation for the increased use of appropriate social work services in the presentation of legal matters.

There was no pilot study, other than the first interview, which was used to test the schedule for timing, ease of response and clarity.

1.5 DEFINITIONS OF THE CONCEPTS

The following are definitions of terms and concepts central to this research project:

Researcher: The author is the researcher in this thesis.

Respondent: This term is used in reference to the attorneys who were interviewed for the purpose of this study.

Social work: “The social work profession promotes social change, problem-solving in human relationships and the

empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.”

(International Federation of Social Workers, 2000)

The social worker: According to the National Association of Social Workers (NASW, 1994), “the primary mission of the social work profession is to enhance human well being and help meet basic human needs, with particular attention to the needs of the vulnerable, oppressed and poor people.”

Forensic social work: This is the application of social work to questions and issues relating to law and legal systems. This specialised area of the social work profession goes far beyond clinics and psychiatric hospitals when evaluating criminal defendants on issues of competency and responsibility. A broader definition includes social work practice, which is, in any way, related to legal issues and litigation, both criminal and civil. Child custody issues involving separation, divorce, neglect, termination of parental rights, the implications of child and

spousal abuse, juvenile and adult justice services, corrections and mandated treatment all fall under this definition.

Pre-sentence report: A multi-dimensional assessment that reaches back through time to encompass the cultural, social and environmental factors that have woven together to create a particular individual. This effort creates the humanisation of an individual who is dynamically related to the social and cultural events that have occurred within the family or community in which they were raised.

(<http://www.fourdirections.org/forensic.html>)

Expert witness:

- An expert witness has an overriding duty to assist the court on matters relevant to the experts' area of practice.
- An expert witness is not an advocate for a party.
- An expert witness's paramount duty is to the person retaining the expert but the person should be bound by the ethics of his or her profession.

Attorney and lawyer: The term has been used interchangeably throughout the study as is common practise in South Africa where the really meaningful differentiation is normally between attorney and

advocate. The Oxford Advanced Learners Dictionary (2002: 62) describes an attorney as "...a lawyer, especially one who can act for somebody in a court of law." and a lawyer as "... a person who is trained and qualified to advise people about the law and represent them in a court of law and to write legal documents"

Terblanche (1999: 220) describes a lawyer as: "The legal representative appearing on the behalf of the accused has an extremely important role at the sentencing stage. His (sic) most important duty is to place all the relevant information regarding the accused persons personal circumstances before the court... to ensure that the court is fully informed of all relevant facts."

1.6 ORGANISATION OF THE STUDY

The thesis is set out in the following manner:

Chapter One

This chapter introduces and outlines the research topic. It gives a brief overview of the complete study and focuses on the following areas:

- The background of the study
- The research design and methodology

- The scope and limits of the study
- Problems experienced with the study
- The definition of the concepts used

Chapter Two

A literature review of related literature covering past studies regarding the role of social work and criminal law.

Chapter Three

Presents the design and methodology of the research. The instrument of data collection, as well as the analysis of the data, is examined.

Chapter Four

This chapter entails a discussion of the findings.

Chapter Five

This chapter contains the conclusion and the recommendations of the researcher.

An appendices and bibliography complete the thesis.

CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

“Recently more and more attention has been paid to the increase in crime, especially to violent crime. Through the media, daily we are faced with calls for harsher penalties against criminals. Yet not all crimes committed are the same, some are violent others are crimes committed merely to survive, such as the theft of a loaf of bread. The people who commit crimes do so for various reasons, and the social circumstances of each criminal may differ from one to another.

(Diesel & Mnyani, 1995: 1)

It is in assessment of mitigating and extenuating circumstances that the actual outcome, or sentence, is decided upon. The nature of this process hinges around various steps, which need to be taken.

“The court also has to collect all the information which may be relevant to the determination of a suitable sentence.”

(Terblanche, 1999:153)

Part of the required information will relate to the personal history of the accused and may require specialised information regarding an area of human behaviour. In

their training, lawyers specialise in the technical application of legal principles, while social workers are expected to develop expertise in the social, developmental and behavioural contexts of human life. It is unrealistic to expect criminal attorneys to develop expertise in the social work contexts of crime, to the extent that it is required, to ensure that sentences are appropriate for the individual and society in general and it thus makes sense to use the social work skills and expertise available to meet the greater overall objective of justice for clients (Dubois & Milley, 1996: 327).

It is, therefore, evident that social workers can contribute immensely to the criminal justice system. Their skills and expertise equip them to respond effectively to the process of individualising the crime. Individualising the crime refers to the process that the court goes through in order to apply a punishment that best suits the crime. This means that the judge or magistrate needs to take into account personal and social factors and needs to allow these, when properly substantiated, to influence the final decision with respect to sentencing. Although the final outcome does rest with the judge or magistrate, there are precedents, theories and traditional practises that guide their decision-making. They may also make use of the expertise of other professionals, such as legal social workers.

2.2 THE INDIVIDUALISATION OF SENTENCES

Sentencing refers to the action, by an official criminal court, of imposing a sentence on a convicted criminal (Terblanche, 1999: 2). The sentence is the order of the court, which finalises the criminal case against the offender. It is a more formal concept than punishment. Within the criminal justice system, punishment refers to anything that contains an element of discomfort and which then becomes imposed on the offender. As Terblanche (1999: 3-5) says, this can take place in a number of ways; it could be:

➤ The loss of freedom (imprisonment)

This means that the person is placed in a state prison, either in maximum or minimum security depending on the severity of the crime. In prison, all personal freedom is taken away from the person. They have limited contact with friends and family. Although attempts are made to rehabilitate people in prison, a major factor is that imprisonment removes people from society; society is, therefore, protected from people who behave in an antisocial or dangerous manner.

➤ The forced payment of money (fines)

A fine is a court order that forces the offender to pay a certain sum as punishment.

“Fines, which are specifically provided for in Section 276(1)(f) of the Act, are the most commonly imposed sentences in South Africa. They are, however, mainly directed at the lower end of the crime severity scale.”

(Terblanche, 1999: 305)

Although intended to keep the individual out of jail, its primary function is to punish. The fine, therefore, needs to be harsh enough to have an effect on the offender’s quality of life otherwise the fine bears no purpose.

➤ The loss of property (forfeiture)

This is also regarded as punishment because, as Terblanche (1999:303) points out:

“It is clear that other forms of discomfort or suffering which an offender experiences as a result of committing a crime, can also be seen as punishment.”

➤ Providing free services (community service)

This refers to the perpetrator compensating by giving back to the community by providing a necessary service over an extended period

of time. This would take place during their “free” time. This kind of sentence is increasingly used to ensure that the perpetrator remains connected to society and that he or she uses his or her time, skills and talents to restore some of the imbalances their crimes have triggered.

➤ The loss of certain privileges

This would include, for example, the suspension or cancellation of licences, such as in the case of an individual who has been caught driving under the influence of alcohol.

➤ The payment of compensation

This is usually in the form of financial compensation as an opportunity for the accused to show remorse and attempt to repay the damages that occurred. Again, there is a trend in modern sentencing for seeking ways to ensure that the sentence imposed (particularly for crimes involving young people) compensates victims and/or their families directly.

Each case has to be considered unique, as each accused is different. Therefore, various factors are taken into consideration in finding the right sentence.

2.3 THE GENERAL PRINCIPLES OF PUNISHMENT

The basic principles according to which sentences are imposed are not contained in any statute, but are derived from case law and are, therefore, judge-made principles. According to Ball (1989: 5) these decisions (also called judicial precedent), which are binding to courts below them in hierarchy, are to clarify and refine the law and make it more certain. Each sentencing decision then becomes part of the practise of sentencing and part of the way in which other judges will respond to similar crimes. For this reason, finding a sentence that acts as deterrent, retribution, reform and prevention is the primary aim in each sentencing decision.

Terblanche (1999: 153) identifies the following principles created in this way:

- An appropriate sentence based on all the circumstances of the case must be imposed. It should not be too light or too heavy, but should reflect the blameworthiness of the offender.

- There are three main considerations to be taken into account when a sentence is imposed, namely the seriousness of the crime, the personal circumstances of the criminal and the interests of society. This is usually referred to as the Zinn Triad.

- In the interests of society, the purposes of sentencing are deterrence, prevention, rehabilitation (reform) and retribution.

- Mercy is contained within a balanced and humane approach when deciding on an appropriate sentence.

2.4 DETERMINING AN APPROPRIATE SENTENCE

In using his or her discretion when imposing a sentence, the presiding officer will usually firstly consider the blameworthiness of the offender. There are many factors present before, during and after a crime has been committed. These factors will either seek to mitigate (lessen) or aggravate (increase) the blameworthiness of the offender as well as the punishment of sentencing options.

The Oxford English Dictionary explains the word “extenuate” as “to lessen or seem to lessen the seeming magnitude of (guilt or offence) by partial excuses or circumstances. It describes “mitigate” as to reduce the severity of punishment.

Mitigation and extenuation are terms that can be used interchangeably. All the extenuating, mitigating and aggravating factors are presented to the court after the offender has been found guilty of an offence so as to provide the court with the facts needed to decide an appropriate sentence.

Mitigating factors generally reduce the severity of a sentence. Although there is no specific list of mitigating factors, the Institute of Court School of Law (1993: 202) mentions that the following have generally been accepted as good mitigation:

- Youth and old age.
- Previous good character.
- A guilty plea.
- Assisting the police.
- An expression of genuine remorse.
- An attempt to compensate the victim.
- The offender suffering from stress or mental illness.
- The effects of a conviction on the offender's family situation.

Terblanche (1999: 211-237) points out that there are mitigating factors that refer to the crime and there are mitigating factors relating to the criminal.

Mitigating factors that relate to the crime would relate to issues such as:

- Was the crime attempted or completed? Did the accused carry the act through or stop before the crime was completed? Was the accused interrupted before the crime was completed?
- Was the perpetrator strongly influenced by the main perpetrator? Did the perpetrator think it up or were they acting on instruction from others?

- Was there direct intent? Did the accused mean to commit a crime?

- Was it a technical crime, as in when money was stolen and then returned?

Mitigating factors that would relate to the criminal would be factors such as:

- Provocation: did the perpetrator act in retaliation, but in an unlawful manner?

- Mental and emotional factors: is the perpetrator at a mental disadvantage that prevented sound judgement, e.g. depression?

- Sub-normal intelligence: is the perpetrator able to distinguish right from wrong?

- Intoxication: was the accused under the influence of alcohol or drugs when the crime was committed? This would impair the logical thought processes of the accused.

- Youth: how much life-experience has the accused been through? Is the accused cognitively capable of accepting responsibility for the crime?

- Financial need: was the crime committed out of the need to allay dire socio-economic conditions?
- Lack of planning: did the accused commit the crime on the spur of the moment?
- Remorse: is the client sorry that he committed a crime?
- A plea of guilty: admission of guilt will be considered mitigating in that the accused admits responsibility for their actions.

Aggravating factors relating to the crime would be factors such as:

- The seriousness of the crime: more serious crimes will be looked on more harshly than less serious crimes.
- Planning: a pre-meditated crime is regarded as more serious than an unplanned crime.
- Problem-type crimes: certain crimes perpetuate problems in society. They are regarded seriously in that they contribute to social circumstance.

Aggravating factors relating to the criminal would be factors such as:

- Previous convictions: if the accused has prior convictions, they may be deemed to be serial criminals, with less chance of rehabilitation.
- Motive: the motive may be anti-social in nature and hence prove a hindrance to the functioning of society.
- Lack of remorse: if the accused does not show remorse, they place themselves in a negative light and may be seen as a potential re-offender.
- Abuse of trust: this indicates a negative character trait and hints at poor moral judgement.

For the appropriate sentence to be imposed, it is very important that these factors be taken into consideration. Some of them are simply factual statements which can be argued in a chronological way. Others require that expert or professional links be made between the crime and the person committing the crime and the victim of the crime. Some of these need to be argued on the basis of what is known about the individual and his or her history and also on the basis of what is known and understood about people generally. These are not simply technical legal points but they are matters of concern and within the ambit of the social work (and other) professions.

2.5 THE TRIAD OF ZINN

Snyman (1991: 15) states that in the case of the State vs Zinn, 1969 (2) SA 537 (A), J.A. Rumpff determined that when a sentence is imposed, the court must take into consideration the crime, the offender and the interests of society.

In considering the offender, special attention needs to be given to their personal circumstances, such as the reasons that may have caused the person to commit the crime, as well as assessing the prognosis for rehabilitation; in other words, the chances of the person becoming a law-abiding citizen again. Terblanche (1999: 176) also points out that the protection of society in general must be taken into account. The court needs to take all of these factors into consideration without emphasising one of them at the expense of the others.

The individualisation of punishment is a major component of the whole sentencing process. The court has to apply a particular sentence to a particular set of circumstances, which involves the accused with a specific motivation. The factors that are taken into account during the process of individualisation would be:

- The sociological circumstances: this refers to the sociological circumstances of the accused.

- Punishment experience factors: the court uses past experience to determine how perpetrators respond to the different sentence types.

- The prospect of rehabilitation: this is the assessment of how likely it is that the perpetrator can be rehabilitated.

- Other relevant factors concerning the accused: for example, was it a first offence, was the offence committed with intent, etc.

(Visser, et al, 1990: 18)

In light of the above, the individualisation of sentence would certainly rely on the involvement of specialists, as neither the attorney nor the presiding officer would have full knowledge of how each of the above have come together in the life of the particular accused. The specialists referred to would include social workers in private practise or those employed by non-governmental organisations or even the state, criminologists, psychiatrists and clinical psychologists. All of these professionals are trained to give the court insight into the psychological make-up of the accused and some are also able to give useful insight into the social experience of the person being sentenced. This evidence is usually presented to the court in the form of a report, the purpose being to assist the court in determining the most appropriate sentence for a particular individual.

As Terblanche (1999: 111) says, the main purpose of a pre-sentence report is that it provides useful guidance in exercising discretion. As mentioned earlier, it therefore assists the presiding officer in gaining a better understanding of the offender and the reasons for the crime and the extent to which any particular punishment will meet the four intended objectives (deterrence, reform, retribution and prevention).

2.6 THE ROLE OF THE SOCIAL WORKER IN CRIMINAL JUSTICE

Forensic social work is an area of specialisation dealing with the interface between the law and social work and, therefore, between legal and social work professionals. The forensic social worker's role extends beyond education as they are equipped to use their skills in assisting the legal authorities in a variety of ways. Some of these roles include interviewing the victims of crime as well as witnesses. They also carry out other investigations including considering secondary data (written reports) and data generated by formal assessments (such as psychological or medical testing). They then provide their professional evaluations and recommendations in the form of a report to investigators and the courts of law. They may also be used to assist other mental health experts in determining whether the clients are mentally competent to stand trial. They are also frequently used to provide expert evidence in court (Gibelman, 1995, in Barker & Bransan, 2000: 2-3).

With the training that social workers receive with regard to human development, it is evident that it is important for social workers and the law to be able to develop a collaborative relationship.

Van der Merwe (1987: 19) refers in his article to the fact that co-operation between the law and the social work profession has long been recognised as important by social workers. Social workers come into contact with the law daily because of the nature of their work. It is important that the social worker must have knowledge of the laws, the processes, the demands and challenges of their position in order to render an effective service (Froneman, 2000:1). This is an important point to consider in the context of this study in terms of how social work services are being made use of, if at all, by lawyers within the criminal justice system. It is also important to consider and review whether the skills and legal knowledge being taught remain relevant to the legal system as it is currently operating.

In addition to a specialised knowledge of the specific laws that govern the professional duties of the social worker, the social worker also needs to know court procedures, and specifically the rules of evidence, which govern proceedings in court. The social worker needs to be seen by the client and the court as a professional who is knowledgeable about this aspect of their work (Raisbeck, 1977:15).

As can be seen, there is an interdependence that exists between the social work profession and the legal profession. It is often required that lawyers and social workers work together to resolve a clients' problem. The social worker needs to speak the lawyers' language so as to communicate adequately with them and facilitate a successful working relationship. Social workers are often intimidated by the language of the legal system, fearing that they will not be able to gain access into the complex legal system. While this may have been true many years ago, laws today are written in such a way that they are increasingly accessible to non-lawyers (Setzman & Proch, 1990: 16-17). The co-operative relationship will enable the social worker to use his or her understanding to communicate effectively with the lawyer, who is expected to have a more sophisticated understanding of his or her own field (the law). By not being afraid of understanding the law, social workers can demonstrate their own competence while respecting the specialisation of the legal professional.

Courts of law are just one area where social workers can enter the struggle of serving the course of justice and human rights. In presenting expert evidence, social workers are able to carry out their function of facilitating social justice, maintaining social order and helping to eliminate social problems. In doing this, the social worker is able to acquire extensive knowledge within the legal realm; they become equipped to communicate this knowledge, as well as to become

known to those who will employ them (Barker & Branson, 2000: 22-23). This means that social workers need to acknowledge what their role within the legal system is and to equip themselves with the necessary skills together with knowledge in order to make an important contribution.

2.7 THE ROLE OF THE LEGAL SOCIAL WORKER

There are many roles that the social worker can play in the area of criminal law, such as:

Witness: The role of the social worker would not be to try and persuade the court, but rather give factual evidence. They may also be asked to make recommendations as well as to provide information.

Petitioner: In this role, the social worker would work from the position of wanting to persuade the courts to take action in certain situations.

Respondent: This would occur when the social worker's performance in a specific situation is questionable and they become part of the process of being accused –

that is, their conduct itself constitutes part of the case being made by a particular legal side.

Interpreter: Far too often, attorneys and social workers assume that proceedings are understood by the client, when in fact they are not. The social worker, already having formed a relationship with the client, is in a position to facilitate the preparation of the client for the legal experience.

Counsellor: After the case is over, the legal professionals involved in the case go back to their offices and the client is left to carry out whatever decisions have been rendered by the court. At this point, the social worker is integral in the process of coming to terms with the sentence and its implications.

(Saltzmann & Proch, 1990: 46-49)

These roles are familiar to many social workers and most social workers are expected to carry out many of them during the course of their professional lives. Others have taken a more proactive role in their involvement in the legal system and this role has come to be known as that of the expert witness. By its very

nature it is more often the social worker in private practise who uses his or her specialisation area to contribute to the legal process in this way.

“The expert witness is (normally) an individual who has no direct knowledge of the specifics of the case being tried, but does have specialised information that provides a context in which to better understand the case.”

(Anderson et al, 2000: 34)

Experts are normally given instructions and are employed by an attorney. The social worker is then expected to do the required investigation and write, submit and usually present the report that is required. It is of utmost importance that the social worker remains objective in the submission of this evidence, as it is his or her role, in this instance, to provide the objective, professionally evaluated evidence that the court can consider.

The reports required by the courts may vary in the specifics regarding the case, for example, it may concern the probation officer making his report or to start the proceedings in a case where there has been a breach of an order, or it can be in a less direct manner where the report compiled by the social worker is then presented by someone else (Raisbeck, 1977: 14).

It can then be said that one of the most important tasks of the social worker in the sentencing process is to humanise the accused in court. Social workers, by virtue of their values, knowledge, skills and training, can bridge the gap between the perceptions of the court and the lived reality of the life of the accused (Saccs, 1994: 159).

Once the social worker is confident in his or her ability to act in the capacity of the expert witness, she or he would need to ensure that they are also prepared to present themselves in an acceptable manner in the legal arena.

Giving evidence in court requires that the social worker be able to state a professional, considered opinion based on facts within their professional and direct knowledge as well as facts proven by others. It is important that the social worker state reasons for their opinion in order to be seen as credible in a court of law. Any errors made by the social worker will be exposed during cross-questioning (Hoffman & Zeffer in Froneman, 2000). Of even more damage to the case would be the presentation of unsubstantiated opinions or the presentation of assumptions, prejudices or "common knowledge" without sound argument.

During cross-examination, the lawyer will ask increasingly complex questions in an often confrontational and suspicious manner. The purpose of this type of questioning, along with the sarcasm and scepticism, is to confuse the witness and,

hopefully, uncover discrepancies. If the social worker responds in a way that appears confused or uncertain, the lawyer has succeeded (Barker & Bronson, 2000: 44).

It is imperative, therefore, that expert witnesses prepare themselves thoroughly before attempting to present evidence in court. If the social worker is new in court, they should examine its organisation and design before giving evidence. The places reserved for lawyers, social workers, probation officers and other role-players should be identified and not used in the incorrect way. It is very important to take note of the position of the witness box so as to prepare for the best position to take and when to face whom in giving the evidence (Carlson, 1984: 29-30). Role-plays, observations of others giving evidence and other efforts to become familiar with the court are important for the new witness.

There are strict, formal laws that govern legal proceedings. It is imperative that social workers, as well as any other specialists providing testimony, make themselves familiar with these in order to contribute in a professional and appropriate manner. Many professions (including social work) jealously guard their rituals and it is tactically sensible to ensure that one “understands the rules of the game before entering the court.”

2.8 THE REPORT

“Not all social workers, of course, are equally effective in their presentation of testimony. Those who are most effective have thoroughly prepared themselves in advance and have given considerable thought and care to the way they want to make their presentation.”

(Barker & Branson, 2000: 40)

In order to make a professional recommendation, the forensic social worker must be sure that they have researched the individual case as thoroughly as possible. If the social worker fails to do this, the report that is given will fail to give the credible impression it seeks to give. Therefore, careful attention must be given to preparing a report for court presentation. The legal requirements surrounding the presentation of such a report need to be followed exactly. All the formal details need to be adhered to without fault.

In preparing to write such a report, the social worker must be prepared to research all factors. It is important to take note of all the categories that are deemed imperative.

“No matter what type of report you are writing, the style of the writing should be the same : factual, objective, specific, to the point, and without jargon.”

(Saltzman & Proch, 1990: 56)

This means that the report needs to be completely objective and remain centred around the factors for which it was intended. The work of the report is not to prove anything, one way or the other, but to provide factual information around the psycho-social circumstances of the criminal in question.

“Knowledge of criminal law and correctional institutions is also necessary for a professionally sound report.”

(Mach et al, 1986: 30)

Again, this highlights the context in which forensic social workers will be working.

“Obtaining the evidence is a key task if social workers are to be competent in using the law.”

(Braye & Preston-Shoot, 1997: 145)

“The law values and certainties are characterised by an either/or dichotomy.”

(Carson, 1990: 151)

“However, social work deals in shades of grey, in possibilities and probabilities.”

(Braye & Preston-Shoot, 1997: 145)

The strongest evidence is always that which can be given by the witness themselves, but in the field of social work this is often not possible. The kind of situations in which secondary evidence may have to be given include situations in which children are involved and need to be protected from the trauma of the court or where witnesses to particular experiences of the accused are not witnesses to the crime itself.

Therefore, competently written and researched reports have a central role to play in the legal system.

“Reports are submitted to the court within
a pre-determined system of rules and expectations”

(Carson, 1990: 151)

Carson goes on to say that expert witnesses and the report have a very important role to play in providing the courts with the necessary objective information about probabilities as well as being able to give an assessment of the probable outcome of the given information. Even though expert witnesses and reports provide a very important service to the courts, there are obstacles that stand in the way regarding the assessment of the witness and evidence. In preparing the court report, the social worker must pay attention to these obstacles.

van der Merwe (1987: 21) points out that very often the professional language of the two professions (law and social work) becomes a problem when communicating. Legal communication is based on absolute certainty and leaves little room for the ambivalence and ambiguity that characterises most human experience. Social workers need to learn to write reports that anchor some of this uncertainty in as much concrete information as they can muster. The whole issue of confidentiality can also be a problem as the two professions have different ethical systems that govern this issue. This is best managed using informed consent for the use of information as both social workers and lawyers understand this principle. It must, however, be remembered that social workers do not enjoy the same level of protection of their sources and information as do attorneys, so it is important to be mindful of the consequences of revealing who tells you what in a pre-sentencing report.

“The main purpose of the pre-sentence report is to assist the providing officer in gaining a better understanding of the offender, and the reason for the crime” (Terblanche, 1999: 111) and to provide a recommendation regarding the appropriate sentence for the offender concerned. To achieve this, the pre-sentence report must be objective, non-judgemental and analytical (Bosman 1982: 62). There is no space for subjective opinions or the emotions of the social worker. The report need only contain the facts that are important to the purpose of the report, and those details that present a picture of the accused as an individual.

Raisbeck (1977: 7) says that the more information the court has, the better able it is to make a decision but the warning of this author is particularly pertinent:

“...woe betide the report that has left out relevant, detrimental information in the misguided belief that this is in the interest of the accused. The social worker must remember always that the judge, and not the social worker, is the decision-maker in this arena.”

The following information is usually contained in the report:

- Identity details
- Physical and psychological factors that are of relevance (these can include issues related to disability, illness or trauma)
- Environmental factors (including situations of poverty, experiences of violence or lack of education)
- Background information (including the context of the crime)
- Criminal record
- Discussion and recommendation

(van der Merwe, 1975: 162-168)

Neer (1986: 5) examined the perceptions and needs of magistrates and argued that the following are also considered important:

- Educational qualifications
- Work record
- Family relationships
- Causes for criminal behaviour
- Medical history
- An explanation of the circumstances under which the offence was committed
- Alcohol abuse
- Intellectual abilities
- Remorse

Social workers would understand that all of the above contribute to the ability a person has to understand the consequences of what they have done and demonstrate what resources the person has to benefit from the retribution and reform dimensions of any sentence imposed.

Information about these is normally gained from extensive interviewing on the part of the social worker. It is vitally important that the social worker gain all the necessary facts and ensure that they are substantiated by credible references so as not to be discredited when it comes to testifying, as any inconsistencies can result in providing the opposing attorney with the opportunity to confuse the social

worker, and thus convince the court that the information is worthless and that it should be disregarded.

2.9 COURTROOM SKILLS

In order for a social worker to be confident and prepared for court testimony, the correct behaviour that is appropriate for presenting in court needs to be learned. According to Carson (1990: 29), if you are new to a court, you should examine its organisation and design before giving evidence. He likens the courtroom to the theatre, and goes on to say that the social worker should familiarise him or herself with the actors and the stage. Courtroom language needs to be understood, so as to know what is meant by certain terms.

The clothing that one wears also forms part of the impression that one creates in the courtroom. It is important to be neatly dressed and not distract the courtroom from the evidence you present. It is advisable to steer clear of loud colours and trinkets that could irritate the magistrate or judge.

The way that one stands while presenting evidence is also important. The social worker needs to remember to behave in an appropriately professional manner at all times. (Given that we have already argued that each sentencing decision creates a precedent it is worth considering that each presentation by a social worker sets the stage for the next person presenting.)

Carson (1990: 151) talks about creating a desired impression that goes along with presenting a court report. The social worker needs to avoid using specific social work jargon as well as vague terminology.

The credibility of the social worker providing testimony is also critically looked at by the legal fraternity, especially from the opposite side. It is important to include all information honestly and skilfully. In other words, the social worker needs to be forthright in stating their qualifications and their experience that gives them the authority to make such presentations in court.

Lawyers are known to use techniques intended to confuse or intimidate the witness under cross-questioning; these include:

- Interrupting
- Moving backwards and forwards through the evidence in the report
- Changing the words in the report to indicate other possible meanings

Ultimately, it is most important for the social worker to remain calm at all times and to respond in a controlled manner. Carson (1990: 151) mentions the term “reasonable” several times, as the law places great emphasis on remaining reasonable.

“Each of the requirements of the defence

is judged by the standard of the reasonable man (sic), the accused's beliefs being relevant only to the question of whether a reasonable man (sic) would have entertained them.”

(Visser, 1987: 176)

Barker & Branson (2000: 41) advise that when asked a question, the social worker should think through the answer and respond in a clear, well-modulated tone. It is also helpful to take a small pause after each question so as not to rush the answer and say something unintended.

Barker & Branson (2000: 50-51) provide ten guidelines for social workers to follow in presenting themselves as effective witnesses:

1. Always answer every question truthfully, even for those for which the correct answer is “I don't know”.
2. Answer the questions succinctly, clearly and confidently.
3. Avoid emotional responses or overreactions to hostile questions.
4. Do not answer anything other than the question asked; do not volunteer additional details or irrelevant facts.
5. Do not take personally the examiners questions, brusque manner, or hostile approaches. They are just doing their jobs.

6. Before answering any question, pause to deliberate around the answer; avoid getting caught up in the examiners rapid-fire questioning, which can lead to confusing or inaccurate responses.
7. Do not prolong the time before answering, undue delay will seem like uncertainty or dishonesty.
8. Pause briefly after each question to permit the attorney to object without revealing information that would not be admissible.
9. Stop immediately when an objection is made; proceed thereafter when the judge rules on the objection and/or provides instructions to continue.
10. Always remain calm and polite with both lawyers, judges and all others present; never argue with anyone about their questions, procedures or rulings.

From the aforementioned literature, it is evident that if social workers are going to make a worthwhile contribution in the legal field, they need to equip themselves with the necessary skills to enter a domain that is not particularly familiar to them.

2.10 THE RELATIONSHIP BETWEEN SOCIAL WORK VALUES AND THE LAW

Social work values remain constant irrespective of the field or setting in which social work is practiced. However, social work practitioners should be clear about

the values underlying their own practice, as well as those adhered to by other professionals; understanding is especially necessary when social work is practiced in a multi-professional context.

Tension between the two professions may be inevitable because of different priorities in their different tasks (Hoffman, 1986: 7). Although it is clear that social work has a place in the legal system, difficulties are often encountered due to the two professions being governed by separate professional bodies, as well as each having their own code of ethics. In addition, the defence attorney is clearly employed to ensure that the client gets the lightest possible sentence if conviction cannot be avoided while the social worker remains bound by the demands for a greater social good imposed by the profession.

In the article written by Ashford, Macht & Mylym (1981: 200), it is stated that advocacy in social work differs from that found in law in that the social worker is often involved in protecting people from the actions of their clients. Thus, the social worker does not become an advocate for the client in situations in which doing so could result in harm to others. The attorney stands for the client; the social worker stands between the client and the other social systems and must be concerned with the totality of the situation.

Levy (1993: 40) states that conduct that is valued in the legal fraternity may not always coincide with the ethics of the social work profession. Social workers are governed by strict rules of confidentiality, and so Levy goes on to say that the choice between justice for defendants and confidentiality for clients perhaps poses more of a dilemma for social workers, whose values incline them in both directions.

Although confidentiality is highly valued by social workers and seems to be one of the core ethics of the profession as a whole, there are times when public interest or the rights of one individual do sometimes require that confidentiality between a practitioner and an individual is not preserved (Braye & Preston-Shoot, 1997: 294).

Although it is desired that this be the exception rather than the rule, it does occur, specifically in the instance where another person's life could be in danger. The accused may have divulged their intention to murder someone, in which case it would not be prudent for the social worker to honour confidentiality and thereby become an accessory to the fact.

2.11 CONCLUSION

“For a combination of reasons a consensus has emerged concerning the importance of multi-disciplinary working in this rather poorly delineated field at the borders of legal, medical and social work practice.”

(McGuire, 2000: 7)

It is apparent that social work has a valuable contribution to make towards the legal process. The skill of the legal knowledge, as well as the ability to place the offender in a realistic position within society, equip him or her to be of assistance to the legal representative.

“The structural position of social work agencies in the criminal justice system should also enable them to take a broader view than other agencies of the range of problems associated with crime.”

(Smith, 1995: 107)

Although the two professions of social work and law are inherently different in orientation, they do complement one another. Social work endeavours to assist clients with varying social needs, attempting to empower the client with skills to be able to help him or herself. The legal profession, however, focuses on the administration of law through the legal representation of a client in the process of the restoration of justice.

Social work as a profession places its emphasis on assisting clients through acceptance, warmth, genuineness, trust and congruence to enhance their capacity. The emphasis in law is on justice, which involves punishing an offender and protecting society from the possible negative effects of people who transgress the law.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

When we use the scientific method, everything is open to question. This means that in our quest to understand things, we should keep an open mind about everything we think we know or that we want to believe.

(Rubin and Babbie, 2001:27).

This means that as researchers we are able to question any belief, no matter who holds that belief or what authority they may have. (Indeed, even the definition of what constitutes the “scientific method” is open to question!)

The researcher, therefore, did not intend to provide a specific solution but to gain a better understanding of how lawyers perceive the role of the social worker in criminal law. It was understood by the researcher that their perception may be very different to the social workers’ understanding of the social work profession.

The information that would be gained from such research could be well put to use in the social work field in assisting the development of services that could be

useful to the legal field. The findings could also be used to create greater inter-professional understanding.

3.2 RESEARCH DESIGN

An exploratory-descriptive design was used in this study. According to Mouton and Marais (1991 : 43), the goal, which is pursued in exploratory studies, is the exploration of relatively unknown research. The aims of such studies may vary considerably. They may be:

- To gain new insight into phenomena
- To undertake a preliminary investigation before a more structured study of the phenomena
- To explicate the central concepts and constructs
- To determine priorities for future research
- To develop new hypotheses about an existing phenomenon

In a descriptive design, there is no formal hypothesis (Bailey, 1982 : 38). Therefore, by using descriptive research one is able to begin to ascertain what the existing situation is (Behr, 1983 : 90). This means that this study would, therefore, begin to explore the perception of lawyers with regard to the role of the social worker in criminal law proceedings.

Although exploratory and descriptive research differs in many respects, they do both rely on particular forms of data collection. These are: observation, questionnaires and interviews (Bless and Higson-Smith, 1995 : 4). Using an exploratory-descriptive design was, therefore, appropriate for this research.

3.3 RESEARCH METHODOLOGY

“Qualitative methods collect information in the form of words which give us an in-depth understanding of the nature of what people experience.”

(Louw and Edwards, 1997 : 35)

In that respect, it was appropriate to do this research using characteristics of both qualitative and quantitative methodology, which would allow the researcher to explore how lawyers make use of social work services in criminal cases.

According to Rubin and Babbie (2001 : 44-45), quantitative methods emphasise the production of precise and generalisable statistical findings. They also go on to say that, despite philosophical differences, quantitative and qualitative methods play an equally important and complimentary role in the building of knowledge throughout the history of social science. In fact, some of the best research has been done by combining features of both methods in the same study.

Quantitative researchers may study an attitude or experience by asking a set of defined questions from which a score can be derived, and normally, they work on the need to gain larger volumes of scores so as to demonstrate the generalisability of the patterns generated by the scores. Qualitative researchers use in-depth, open-ended interviews (Louw and Edwards, 1997 : 35) intended in many ways to seek much less certain information which is often argued to have more “meaning” or to at least be more meaningful as it is more respectful of individual differences and the “unmeasurability” of aspects of human experience.

In this study, which is small and very focused, some of the questions were designed to elicit quantitative as well as qualitative data, reflecting, therefore, characteristics of both quantitative and qualitative research. It is clearly understood that this study is small and very simple and that there are sophisticated aspects of both kinds of methodology that are simply not engaged with in this study. It is asserted that this is appropriate given the scope and nature of the research question and research task (mini-thesis).

3.4 SAMPLING

According to Lewins (1992 : 103), the selection of units for study in any research is a sampling process. The reason being that it is generally impossible to study every case in a particular frame of reference. Rubin and Babbie (2001 : 399) point



out that it is important to ask yourself what population you wish to make general assertions about when you have finished.

The researcher had to decide what, or whom, she wanted to study by way of observation or interviews. This stage of research is known as sampling. A sample is essentially a small portion of the total set of objects, events or persons that together comprise the subject of the specific research study (Seaberg and Grinell, 1998 : 240). The size of the sample is dependent on what the researcher is aiming to do. Statistical generalisability places the greatest constraints on sample size as there are clear mathematical rules about the portion of the total universe (those people representing your area of interest), you need to sample.

Purposive, also known as non-probability, sampling was used for the purposes of this research. As stated by Marlow (1998 : 142), the type of purposive sampling used in this study was typical case-type sampling, as people with “typical” characteristics are being selected. This type of sampling method is popular because it is easy to use and inexpensive. However, at times the study’s findings do not always represent any meaningful population (Rubin and Babbie, 2001: 254) and for this reason are not statistically generalisable even when data saturation is reached in the particular sample being studied.

For this study, however, it was appropriate as the researcher had decided to select ten registered attorneys from the East London area who practice criminal law. The aim of the study was not to generalise the findings, but to provide information regarding the link between social workers and criminal lawyers that could be used to improve the working relationship between the professions. The usefulness of the information was thus paramount and data saturation was thus a useful indication of when sufficient interviews had been done.

The sample was gained through a reference person who referred the researcher to lawyers in the East London area. These lawyers are registered attorneys and listed as practising criminal law. It was important in this study that the lawyers were practicing criminal law at the time of interview so as to gain an understanding of their present experiences of their use of social work services. It is because of this fact that purposive sampling is at times also referred to as a judgemental sample in which the judgement of the researcher is used in determining who to include and how big to make the sample.

The researcher in this instance chose to use attorneys who differ in the extent to which their practises are characterised by criminal law – in this way the sample size, although small, sought to extract the opinions of a range of attorneys with different priorities and experiences. The study thus included those who specialised

in criminal law and a few attorneys who practised some criminal law but would prefer not to do so.

3.5 THE INTERVIEW AS DATA COLLECTION TOOL

“An interview inquiry is a moral enterprise. The personal interaction in the interview affects the interviewee, and the knowledge produced by the interview affects our understanding of the human situation.”

(Kvale, 1996: 109)

It is for this reason that the researcher decided to use semi-structured interviews as the appropriate method of data collection, as this research seeks to gain insight into the relationship between social workers and criminal lawyers.

Kvale (1996: 84) states that the virtue of interviews is their openness. He goes on to say that it is this very openness and flexibility of the interview, with its many on-the-spot decisions such as deciding to follow up on new leads in an interview situation or to remain with the original interview guide, that puts strong demands on advance preparation and interviewer competence.

In a semi-structured interview, the interviewer has a basic set of questions to ask, but is free to ask additional questions or to improvise as needed. Interview

schedules (not questionnaires) are used, which have general questions listed (Marlow, 1998: 160).

According to Marlow (1998: 160-170), the advantages of the research interview are:

- They are natural and spontaneous
- They have a high rate of response
- There is flexibility
- Access to serendipitous information
- Non-verbal responses
- Observation and control of the environment

The researcher in this study found all of the above to be true – the respondents participated willingly and much of the most valuable information came out of the more conversational aspects of the interview rather than as a direct answer to any particular question.

He also highlights possible disadvantages, which could be experienced when conducting research interviews.

The disadvantages of the research interview are the:

- Time and expense

Due to the fact that each person had to be interviewed individually and that appointments had to be made well in advance, getting the interviews completed was a rather lengthy process. The lawyers were all situated within East London so there was not many transport costs involved. The cost of having the interviews transcribed was, however rather costly.

➤ Intensity

The intensity varied from interview to interview. A seemingly common thread was the intensity with which those that attended to a large number of criminal cases, as well as those that attended to very few, presented arguments for and against practising criminal law.

➤ Accessibility

All lawyers, barring one, were easily accessible. However, one attorney who represented “drop in” cases was situated near a large taxi rank, which made accessibility a little more difficult for the researcher than it was for the clients.

➤ Loss of anonymity

There was no risk of this for any of the attorneys, as their name and that of their firm was of no relevance to the study and, hence, not used.

Once the researcher had outlined the purpose of the study, no hesitation from any of the participants was encountered.

➤ Interviewer distortion

The researcher used an interview schedule, which is helpful in that all respondents are afforded the opportunity to answer the same questions.

There were times when certain respondents gave more detail than others in particular areas, but this did not have a negative effect on the results.

➤ Interviewer influence

When using an interview schedule, the respondent is not influenced regarding the content of their responses, but possibly in the direction that the interviewer shapes.

The interviews were also taped so as to facilitate the transcribing thereof. As stated by Kvale (1996: 95), a significant part of any interview should take place before the tape recorder is turned on for the first actual interview. He goes on to say that familiarity with the content of the investigation is not obtained only through literature and theoretical studies. He also suggests that “just hanging out” in the environment where the interviews are conducted will give an introduction to the local language, the daily routines and the power structure, and thereby provide a

sense of what the interviewees will be talking about. This had been successfully achieved through the exposure to giving expert testimony as part of the coursework requirements of the degree course being undertaken by the researcher.

It was important that the questions were phrased in language that is familiar to the legal fraternity and the ability to do this seems to have contributed to the ease of the interviews. The quantitative data was reduced into graphs and frequency tables.

Welman and Kruger (1992: 218) emphasise the point that after research has been conducted according to its planned design, the obtained results must be interpreted.

It is the analysis of data that gives meaning to the information that has been collected.

3.6 ANALYSIS OF DATA

In order to make use of data from interviews, it is critical that the interviewer record the answer exactly as it is given. The interviewer must not attempt to summarise, paraphrase or correct bad grammar at all (Rubin and Babbie, 2001: 373) as the judgements made in doing this may change the meaning of the words used by the respondent.

It was, therefore, important that all the interviews were recorded adequately to assist in the transcribing of the material. It was also necessary that the researcher recorded and noted the words of the respondent and did not interpret them subjectively. As stated in Jordan and Franklin (1995: 124), qualitative as well as quantitative assessment relies on multiple methods to ensure the credibility of its data.

It was important, therefore, for the researcher to do the analysis of the data by hand, as the transcripts had to be very thoroughly examined in order to look for themes and categories (Reid and Smith, 1981: 286).

Tesch (1996: 142-145) looks at a process of eight steps, which needs to be considered by the researcher in the analysis of data:

- The researcher must read through the whole interview, putting together the whole picture as well as beginning to look for particular themes.
- Once major themes have been selected, they can be classified as separate topics. Topics which are similar can be linked together.
- The next step is to abbreviate the topics into codes, which the researcher then writes next to the relevant pieces of the text.
- The descriptive data then becomes different categories of data, which can be separated by drawing lines between them.

- The relevant data is then placed in each category from whence it can be analysed.

Once all the information has been grouped into categories or themes, the researcher is able to make comparisons and highlight the relevant data. It is this process that gives meaning to what has been collected.

3.7 LIMITATIONS OF THE STUDY

The findings are not generalisable as the sample size was small (10) even given the number of attorneys in East London; the method of sampling was purposive and the geographical location of the study not representative of the country or profession in any way. Kvale (1996: 102) states that one of the common critiques of the interview is that the findings are not generalisable because there are too few subjects. However, he answers this by saying that it does provide the opportunity of working out consistent and recurrent patterns through intensive case studies. While these interviews were clearly not case studies part of the same argument still holds – for a topic of this nature a small concentrated study will generate the information needed to identify consistent and recurrent patterns.

There is very little South African literature dealing with this particular subject. Although it is not a representative sample of the population of criminal lawyers, the findings most certainly contribute to the knowledge base.

The fact that only one lawyer per firm could be interviewed is another limitation, as different lawyers within the same firm may have differing experiences.

The non-probability method of sampling that was used can also reduce the reliability of the sample and the possibility of generalisations being made.

3.8 ETHICAL CONSIDERATIONS

The research subjects were informed of the nature of the research both before the interviews and at the actual interviews before the tape recorder was switched on. The lawyers were assured of confidentiality for both themselves and their law firm. In arranging the interviews the researcher spoke either to the lawyer directly or their secretary. At this stage, they were given clear details of what was to be expected. This process was repeated again at the actual interview. Openness and honesty with respondents is important as it would be unethical to coerce people into taking part in the research (Grinell, 1997: 133) even if the risks associated with participating in this study are relatively small.

It was important that the respondents were trusting of the confidentiality, as there were questions that evoked criticism of another profession and the respondents did not want to be exposed in a manner which could be potentially damaging to their own reputation or to their future working relationships with social workers in this small town.

Hysamen (1994: 185) suggests that in order to express one's indebtedness to research participants and to maintain good relations with them, it may be desirable to make the results of the project in which they have participated available to them and this has been arranged for this particular study. Further discharge of the indebtedness will occur through the use of this material in the teaching done by the researcher for undergraduate social work students and in seminars for existing professionals of both professions.

3.9 CONCLUSION

This research project was based on an exploratory-descriptive design as it aims to explore the perception of lawyers of the role of the social worker in criminal law proceedings. It is a qualitative study, which has quantitative characteristics inherent in the design. In this study, in-depth interviews were conducted with ten respondents in attempting to clarify the relationship between social workers and attorneys. It is clear that the findings that resulted from the study could be used in assisting greater understanding and co-operation between the legal and social work professions.

CHAPTER 4

DATA ANALYSIS

4.1 INTRODUCTION

The purpose of this study was to look at the use of social work services by criminal lawyers. Essentially, the research has studied the professional relationship between lawyers who practice criminal law and social workers.

The data was gathered through personal interviews, with the use of an interview schedule:

“The most structured way of getting information directly from respondents is by means of a structured interview schedule. This method is based on an established set of questions with fixed wording and sequence of presentation, as well as more or less precise indications of how to answer each question.”

(Bless & Higson-Smith, 1995: 107)

The disadvantage is that one is not able to follow the themes that emerge in the discussion and thus a semi-structured schedule was used.

This allowed the researcher to gain information and ensure that the respondents understood the question. It was also possible, using this method, to ask respondents for explanations concerning some of the answers.

In this chapter, the researcher will present the results according to the framework of the interview schedule, using the depicted questions as headings. The results of the data analysis will be presented in comparison with the reviewed literature.

4.2 ANALYSIS

TABLE 1 : What portion of work is criminal work?

| Number of respondents | Percentage of work that is criminal law |
|------------------------------|--|
| 1 | <15% |
| 1 | 15% |
| 1 | 20% |
| 1 | 40% |
| 2 | 45% |
| 1 | 50% |
| 1 | 60% |
| 2 | 80% |

This table shows what proportion of the total workload of each respondent was specifically criminal law. As can be seen, there was a large range from 80% to less than 15%.

The respondents had differing reasons for why they either focussed specifically on criminal law or why they preferred to not spend too much time in that area.

One of the reasons reflected by six of the respondents is that it is costly in terms of the time that one has to spend physically at the court. This is also often hampered by cases having to be postponed due to Probation Officers having not completed probation reports, the docket being lost and a variety of other reasons that prevent the case going ahead. The frustration that was experienced when dealing with the criminal court process often influenced individual lawyers and law firms to focus on other matters.

Another common theme was the fact that Legal Aid payment is not commensurate with the work that is being done by an attorney on a criminal case. A number of firms, therefore, felt that it was not cost-effective to focus on criminal law.

The fact that there are now a large number of attorneys in and around East London has also influenced how much criminal work certain firms will do. One attorney mentioned that many of these lawyers charge very low rates, which has made it no

longer profitable to take on criminal cases from the general public. Of interest here is that many of the arguments given are those related to the practicalities of the work involved and the cost-benefit ratio in terms of profitability. Social workers in private practise may understand this better than other social workers but the profit motive is still a new one for most of the profession and is of interest in ensuring the expert witnesses render value for money services (effective and efficient).

What is the nature of the criminal cases most commonly dealt with?

With the exception of two, all respondents would take on any case that approached their firm for assistance. The most common crimes being dealt with by criminal attorneys were:

- Eight out of ten dealing with rape, paedophilia, molestation.
- Seven out of ten dealing with housebreaking with intent to steal.
- Seven out of ten dealing with fraud.
- Seven out of ten dealing with murder.
- Seven out of ten dealing with grievous bodily harm.
- Six out of ten dealing with drunken driving.
- Six out of ten dealing with armed robbery.
- Five out of ten dealing with public assault.
- Four out of ten dealing with indecent assault.
- Four out of ten dealing with drug dealing.

Two specific respondents preferred to take on issues of “white collar crime”, such as issues relating to tax laws and fraud. They preferred to stay away from cases such as petty theft and housebreaking.

It also seemed that many of the responses contained hopelessness with regards to a large numbers of cases that were mainly due to the “economic situation”. One respondent said:

“I’ve got to substantiate fees and I can’t risk it on criminal law, it’s due to the economic situation in East London. Your criminals here, 99% of them steal out of necessity, they don’t steal out of a want, they steal because they have to survive, and to survive, they haven’t got money to pay you to fix their mistakes.”

Another respondent said that the majority of the cases that she dealt with were assault, grievous bodily harm, rape and theft, but mostly cases of grievous bodily harm. She said:

“I think it is a social issue. Basically boredom...alcohol plays a big part in grievous bodily harm.”

These references were specifically with regard to the effects of unemployment and poverty. Some of the respondents felt that this leads to crime and, furthermore, that these people did not have the money to pay for sophisticated legal services, the lack of which prejudiced them in court.

Robertson (1991: 83) substantiates this by saying:

“Apart from the laws made by the legislature, the socio-economic situation in South Africa often results in a miscarriage of justice. Because of poverty and a lack of education, many people do not have access to legal procedures. Inadequate communication, often through interpreters or inexperienced pro deo counsel, can directly or indirectly result in decisions which amount to a disregard or violation of the rights contained in Article 11 (1).”

If the responses of these attorneys are anything to go by, it is being suggested that the ability to access quality legal services remains linked to the ability to pay for them. In the realm of the expert witness the services of the most highly skilled would then also be accessible only to those able to pay the attorneys who would instruct them.

Which part of the legal process demands the most attention?

The aim of this specific question was to try and determine where the respondents focus most of their time and energy in criminal cases. In respect of the process, this meant from pre-trial through to post-sentencing.

Of the ten respondents, seven immediately responded by saying that time wastage at the courts was what took up most of their time. They said that many postponements, failure of the witnesses to arrive and ill-prepared probationers reports all resulted in “a lot of time” being wasted. This point evoked strong feelings from these respondents as they felt that if these unnecessary issues were dealt with, they would be able to take on more cases. It would also assist in eliminating the backlog of cases at the courts and, in turn, address the issue of overcrowding in prisons as many people in prison are awaiting-trial prisoners and many of these remain in prison for extended periods before being sentenced.

Apart from the time wasted in court, the respondents all said that preparation that needed to be done is where most of their time was spent. It is this phase that is crucial in laying down the merits of the case. Case-law that needs to be researched, witnesses that need to be found, the docket that needs to be discussed with the client are just some of the stages of the preparation phase.

Terblanche (1999: 3) emphasises the seriousness of this stage by stating:

“Imposing sentence is an action because

it requires the court to purposefully work at finding the most appropriate sentence and to ensure that the sentence is imposed clearly and unambiguously, and will be executed to the extent which this is legally within the courts' powers. Sentencing should also be preceded by an active determination of all the facts and factors which may have a bearing on what the most appropriate sentence will be."

The respondents also referred to the fact that the preparation is timeous, as the majority of the work relies on the co-operation of other people, who in turn may be otherwise occupied. In order to access a witness it may take time just finding them and then even more time with the actual interview.

TABLE 2 : Do you make use of other professionals in preparing these cases?

| Professionals | Number of respondents |
|--|-----------------------|
| Social workers | 5 |
| None | 2 |
| Psychologists | 1 |
| Advocates, psychiatrists, psychologists and social workers | 3 |

The above table indicates the immediate responses given to the question. Five of the respondents only mentioned using social services. Two stated that they never made use of other professionals. One respondent said he had used a psychologist “once or twice”. The other three respondents made mention of a number of professionals that they made use of in preparing for a criminal case.

The respondents all backed up their statements. Those that said that they did not draw on other professions acknowledged that there is scope to do so, but felt that often they were too rushed or that it was too expensive. These responses are consistent with the profit motive evident in earlier responses and with the reality

that the time taken to instruct additional professionals would further squeeze the profitability of engaging in this kind of legal practise.

The other respondents also all stated that they did make use of other professionals, either for pre-sentencing reports, assessment or expert evidence. This was done in order to provide extra information to substantiate the case and influence sentencing. It was stressed that this is objective information, so it does not necessarily mean a “lighter” sentence but rather an “appropriate” sentence.

Much has been written about the supposed function of expert evidence. A typical statement is to be found on page fifteen of the Freckleton report:

(Expert witnesses are) “suppliers of informed opinions beyond the ken of lay finders of fact... Their role is to shed light on areas that would otherwise not be adequately appreciated or understood.”

(<http://www.lawlink.nsw.gov.au/sc/sc.nsf>)

It is, therefore, clear that the role of other professionals is to provide further objective information which is of relevance to the case and that this is recognized by the respondents in this study. However, it is equally clear that there are

practical constraints on the extent to which this additional information can or will be gathered.

Do you ever make use of Social Welfare services?

The responses were varied to this question. One respondent was adamant that she only made use of social welfare in matrimonial cases. This respondent felt empathy towards social workers, believing that they are “snowed under” and that there are too many matters and not enough people to deal with them:

“I think that they just get depressed and they also just try and do the best they can. So, ja, without criticising them, I just also think that they don’t get into their interviews and reports, whatever, as you would want them to, but they are doing the best they can.”

All of the other respondents said that they had made use of social services, referring to pre-sentence reports, specifically in cases where children were concerned and in cases of drunken driving.

In looking at how often the respondents made use of services, the results were as follows:

TABLE 3 : Frequency Of Use Of Services

| Number of respondents | Percentage use of social services |
|-----------------------|-----------------------------------|
| 1 | 0% |
| 1 | 80% |
| 1 | 15% |
| 7 | Less than 10% |

From the above table, it is evident that almost three quarters of the respondents make use of these reports in less than ten percent of their cases. The researcher went on to question this. There appeared to be a generalised opinion that the reports written by state probation officers were not that useful. One respondent felt that it was perhaps because the state social workers are salaried staff and they therefore did not approach each case with the same vigour as someone who is specifically being paid to do the job. One of the respondents questioned whether the probation officers are skilled enough to do the work.

Another respondent pointed out that they often make use of the state social workers' report as it is done for free, as the client can often not afford to pay for a private social worker to do the report. The theme of profitability of engaging in this kind of investigation is reflected again in these responses.

Another negative factor that was raised, which deterred certain respondents from using state social workers' reports was that these reports are frequently not ready on time, which can cause a delay in and waste a lot of time for all concerned.

One of the respondents said that:

“In the end, you sit with a piece of paper and it is a subjective view of a person who has to put a report together and you have to make do with what you've got.”

There were other respondents, however, who felt that it was helpful to have the background of the person presented and to have some insight into why the crime was committed.

This is emphasised by Terblanche (1999: 21) who says that two factors in particular have resulted in the courts not making use of the services that probation officers can provide as often as the case should be. The first factor being that there is a continual shortage of probation officers, the second being that many judicial officers have little faith in probation officer's reports. These respondents appear to be supporting this position and it represents a challenge to the probation officers and those parts of the legal system that employ them.

Although there were a number of negative comments relating to state social workers, there did seem to be a genuine understanding of the workload that these people are expected to take on. Again Terblanche (1999: 21) shares this empathy by stating that the problem is exacerbated by the fact that it is often the most difficult cases that are referred to probation officers. Given that these respondents quite clearly indicate that they cannot afford to take on certain cases the case in the legal system (as in health and education) is that those who have limited financial resources are dependent on generally under resourced state provision which further enhances the inequities of the system they are having to deal with.

As has been already mentioned, there is a lot of pressure in getting the relevant information together for a particular case. Often, when time is of essence, a report may be written that lacks the depth required for it to be of any value in a court of law. Clearly, state social workers are most under this pressure.

What functions could a social worker perform in the criminal justice system?

All of the respondents acknowledged that the skills of assessment and the writing of pre-sentencing reports were most helpful when it came to presenting cases in court. They also, however, expressed concern about the long-term follow-up of prisoners. They shared examples of prisoners who had started with some or

another petty crime and years later were on trial for murder. (This calls into question the effectiveness of earlier sentencing as much as it does the effectiveness of follow up services if the argument that sentencing has the four functions referred to earlier is upheld).

The respondents felt that counselling and therapeutic work for prisoners was essential and, in addition to this, that on their release they are placed under very strict parole conditions. They stressed that they felt home visits and follow-ups would contribute in an immense way to limiting re-offending, particularly in cases of drunken driving. This was mentioned as an example as most respondents had mentioned dealing with such a case, where the person was basically responsible and held down a good job.

One of the respondents mentioned that mediation was certainly a function that could be taken on by a social worker, as this forms part of their professional training.

Two of the respondents felt that there needed to be more programmes on offer in the community. They felt that more needed to be done in terms of preventative work.

Specific areas that were highlighted were:

- The diversion of youth out of the criminal justice system.

- The application of the principles of restorative justice, restoring the offender to their rightful place in the community.
- Victim empowerment and services to victims.

During this stage of the interview, one of the respondents was extremely adamant that there was plenty of work for social workers to do within the criminal justice system. The question that remained, however, was how this would be funded.

One of the respondents also felt that if social workers were given some kind of paralegal training, they would be able to fill the gap for people who cannot afford to go to an attorney, that social workers could provide support structures, especially in civil matters, where there is no recourse to legal aid. The social worker could enter into settlement negotiations on the person's behalf.

In what ways could social workers and lawyers co-operate in the field of criminal law?

In answering this question, it was evident that they were not sure due to the fact that all respondents, except one, admitted to not really knowing what social workers do. There was also confusion about the role of social workers, psychologists and psychiatrists. There was very little recognition of social work as a profession.

This was reflected in the following statements:

“A lot of attorneys don’t really know what social workers do. They just think: ‘Oh, yes, it is one of those things that, sort of lower income people go to when they have got problems’”

“I might know, like, one or two social workers, clinical psychologists, whatever they might be.”

“What weight does the magistrate give your report? Yes, the magistrate will say: ‘I have considered the report’, but what really is the weight of the report? Or is it just regarded as a necessary step in the process?”

“It seemed as if they had a template and, you know, just change the name here and there and give you a blank report which really didn’t say anything.”

“I think most lawyers think social workers are...that they do not necessarily contribute.”

“There is no legal certainty, it is mumbo jumbo (the report) about feelings and about emotions,

about a person and it is not necessarily a constructive contribution.”

“What it could be (the lack of communication between social work and law), could be because social workers are originally state employees, they’re government officials. An attorney is a professional person, so there is a disparity of balance between these two areas. An attorney will mix with a doctor, an accountant, something like that. A social worker, and please don’t get me wrong, I’m just using examples, will mix with the policeman, the fireman and the receiver of revenue, OK, or work for the state.”

“Psychiatrists, psychologists: what is it that a psychiatrist or psychologist deals with? It’s a high paid social worker really.”

Many of the negative comments really highlighted the basic problem that the role of the social worker is not clear in the legal field. Some respondents suggested that getting together through the help of the Law Society could be one way of facilitating co-operation between the two professions. This would allow for each party to discuss their needs and expectations, for example to allow the social worker to talk about the time needed to write a pre-sentence report and for the lawyers to discuss why they are always so rushed.

A number of respondents were surprised to hear that there were private social workers in East London, as they did not know about them or what services exist. Many of the respondents felt that if they had this type of information, they would more readily approach these social workers, not only for pre-sentence reports but also to refer people to for counselling in both criminal as well as family matters.

It was highlighted during the study that the Law Society is putting pressure on attorneys to do community service. One of the respondents felt that this was a good idea in providing attorneys with the opportunity of coming face to face with some of the problems being experienced by their clients.

One of the respondents said:

“I think that the relationship has got a lot of room for improvement; I think that the disciplines are operating fairly independently of each other, and only really interfacing weekly in court, when pre-sentence reports are being read and mitigating and aggravating factors are being assessed by the court. So there is a large area where there should be greater co-operation between the two professions.”

The same respondent went on to highlight the fact that the social work profession needs to market its services to the legal profession so that the full scope of its potential contribution will be better understood by the legal profession; which will in turn lead to a more intelligent utilisation of social work services.

It has also become apparent during the interviews that nowhere during the training of a lawyer do they learn what the role of the social worker is within the legal context. One of the respondents pointed out that during law school training, they are only made aware of the fact that the Act requires that in certain circumstances a social worker's or probation officer's report needs to be submitted prior to sentencing, but that this training does not define a probation officer or the probation officer's report:

“As a student, you are never made aware of whether you should actually, as a representative of your client, be in contact with the probation officer.”

4.3 CONCLUSION

The findings that emerged from this study highlighted the fact that there certainly is a place for social workers in criminal matters. It has, however, also highlighted some major areas of concern, which have a negative impact on the development of a co-operative relationship between the two professions.

All of the respondents indicated that they had made use of social services in their practice. Some, however, made far more use of these services than others. The majority of the respondents felt that these services were beneficial, providing that the social worker produced a well-researched report that was relevant to the case at hand. The fact that the report needs to be submitted timeously was also stressed.

The study also highlighted a large amount of negativity towards social workers and, in particular, towards state-employed probation officers. A number of the respondents have had negative experiences when working with these social workers. Some of the problems that were mentioned were:

- The late submission of reports.
- Inadequate research, which resulted in a report that lacks depth.
- Poor assessment and evaluation skills.
- State social workers with unreasonably large caseloads.
- The lack of commitment/ motivation of state social workers, possibly due to poor salaries: therefore no incentive.

Although there was criticism of the social work profession, the majority of respondents either personally acknowledged, or made it evident in their answer, that there is confusion regarding the role of the social worker. There is also a lack of understanding of the differences between psychiatrists, psychologists and social workers. This was evident in the following type of response:

“I might know like one or two social workers, clinical psychologists, whatever they might be.”

The respondents recognised that social workers did, however, have a valuable contribution to make in the field of criminal law. They indicated that they would like to know more about the profession and what skills and resources they could make use of. There was a positive response towards establishing a more co-operative relationship between law and social work. There also seemed to be a commitment towards doing this once they had a clearer understanding of how social workers could assist in their work.

The Law Society was mentioned as a possible vehicle to assist in facilitating communication between the two professions.

The issue of the costs lawyers have to incur for the skills of a private social worker was raised by two of the respondents who had made use of these services. The concern was raised that the client has to pay for this and very often they are unable to afford the expense.

The findings of this research correlated with the position argued in the literature that there is an important role and place for social work in the domain of criminal

law. This study would suggest that actualizing this place is rendered almost impossible by the vast amount of misunderstanding existing between the two professions at least from the perspective of the lawyers. It is likely (but would need to be established) that social workers have a clearer understanding of what lawyers do as they are required by the nature of their work to develop this understanding. Perhaps increased compulsory community service (as referred to) will assist in closing the knowledge gap. However, even if the knowledge gap is closed the nature of the working relationship will only change if social workers are able to deliver what is required at the standard it is required. This in turn is only possible if what is required is understood, communicated and professionally attainable.

This was illustrated in the findings and evident in the way that some of the respondents group all human science professionals into one category, using terminology such as psychiatrist and social worker interchangeably.

It was also clear that those attorneys who practised mostly criminal law were more informed about the role that social workers could play. One lawyer who does 80% criminal work said:

“In some cases I have to rely on their view, and I always tell them: ‘listen, I need an objective report’, but I know

which line to take, that's very important. I will also have consultations with them to decide, especially as ... before you plead guilty, I know what I am in for, and from there we basically decide what route to follow."

It would, therefore, appear that in order to promote and facilitate a professional working relationship there needs to be communication to promote a basic understanding of the two professions.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 RECOMMENDATIONS

The results of this research indicate that although criminal lawyers do make use of social work services, the use is rather limited and that it seems that it is often not satisfactory. The relationship between the two professions is also somewhat fraught with tension due to several misunderstandings about their various roles within the criminal justice system.. During the research however, many constructive solutions were offered by the respondents (sometimes directly), with regards to how the complementary services that social workers offer, can be used and these are reflected below in the recommendations made by the author.

The following recommendations are based on the findings of the study:

- Communication emerged as one of the most important recommendations. This related to communication between the social work profession and the legal profession on various levels.

1. It is very clear that during their university education the lawyers are not introduced to the social work professional, the result of which is that they are unaware of the skills which they could make use of.

It seems that all the other recommendations rely and depend on this.

It is only through constructive communication that misunderstandings can be clarified. To quote Martin Luther King, one can only emphasize the importance of communication:

“People don’t get along because they fear each other. People fear each other because they don’t know each other. They don’t know each other because they have not properly communicated with each other.”

2. Many of the lawyers used these terms intermittently as if they are one and the same, and when asked how they understood the differences, admitted that they did not know.
3. From the responses it was evident that the legal profession needs to be educated as to what the role of the social worker is, and, more specifically, the nature of the work in which they involve themselves. In practical terms this would mean drawing a clear distinction between probation officers, state social workers, social

workers involved in non governmental organizations and social workers in private practice, so that when social work services are needed, those who use them would be able to draw on the most appropriate resource. The profession of social work has to take some responsibility for the lack of understanding of it's rules and form, and needs to become proactive in using innovative and practical ways in educating other professions.

4. Both the lawyers and the social workers need to explain to each other what their respective needs and expectations are of each other within the criminal justice system. An example of this would be with regards to the pre-sentence report where both parties need to know the length of time it takes and the level of urgency involved, along with a clear discussion of the more technical aspects of the reports needed.
- It is important for the legal profession to become more aware of the social service resources available to them as well as to their clients so that they are able to refer clients to the most effective, cost efficient resource available. Community service may be a good educative mechanism to achieve this.

- Interdisciplinary training needs to begin at university level so that both professions can embark on their careers already having the knowledge that they need about each other. It seems as though this would also prevent the negative perceptions of each other from forming – this is based on the assumption that both professions render their services appropriately as some of the negative perceptions appear to be grounded in real negative experiences.

- Social workers need to take up the challenge and market themselves as well as their skills within the legal domain. It would appear that social workers do not advertise their services through the use of one-on-one meetings and business cards.

- The Law Society, the regulatory body for legal professionals, was referred to by most respondents. It is, therefore, recommended that social workers work through the society when seeking to network or set up a referral system in a particular area. Individual relationships with individual attorneys will always form the core of the work of those in private practise but addressing the inter-professional relationship is perhaps best done through the Law Society and the Social Work Professional Board (as part of the SA Council for Social Service Professions).

5.2 SUGGESTIONS FOR FURTHER RESEARCH

There is a need to do similar research with state probation officers as well as private social workers. This would provide valuable information in planning co-operative work between the professions.

Research carried out with legal clients, where social workers and lawyers have worked together, would be valuable in understanding how they experienced the social workers contribution.

Further research with other professional groups, such as advocates, would also reveal information that would be of assistance in promoting communication and co-operation between social work and the law.

Due to the fact that this study was carried out in East London and made use of ten respondents, the research findings may not be generalisable. Much of the literature contained in the literature review does, however, support the findings. If the research is carried out on a wider scale across a greater area, the findings would be more generalizable.

Researchers are, therefore, encouraged to explore this topic further. With future research, it may well be possible to ease some of the tension associated with the difficulties experienced by the two professions in working together.

5.3 CONCLUSION

The purpose of this study was to explore the use of social work services in criminal matters by attorneys in East London.

The findings indicated that all of the respondents had made use of social work services at one time or another. Some had made use of their services far more often than others. It becomes evident, in looking at the data, that the attorneys experienced the contribution of the social workers in different ways. There were many negative comments, but these were balanced by the positive acknowledgement of the value of social work services.

There was some concern expressed by a respondent as to whether pre-sentence reports are actually objective or not. This concern is not isolated, as can be evidenced in Du Bois & Miley (1996: 327):

“Because of their value orientation about people, criminal justice personnel often regarded social workers as unwelcome professionals, considering them to be soft

to work in corrections. Some residual bias about the role of social workers in law enforcement and criminal justice persists today.”

The research did, however, highlight that there is an acknowledgement that there is a place for social work in criminal law. It is not only in the role of probation officer and in the writing of the pre-sentencing report that a social worker could contribute.

Du Bois and Miley 1996: 327 refers to the “residual bias” that exists around the role of social work in the legal arena is best addressed by social workers extending their services and by doing so competently and reliably. Some of the ways in which this is achieved include: community based rehabilitation services, diversionary programmes, support for convicts’ re-integration into their communities, counselling for prison inmates, social services for the families of criminals, and advocacy for the victims of crime. In all of these ways the profession is able to demonstrate what it can do and how well it can do it. This credibility will have a positive impact on the clients and on those other professions which represent the clients.

It is evident that the two parties need to communicate with each other in order to begin working together in a constructive way. The reality of the situation,

however, is that the courts belong to the legal profession and if social workers, or any other professionals, want to make a contribution and be respected, they will have to take the responsibility for marketing their skills and selling their product.

According to the regulations, as laid down by the department of Welfare (1998: 14):

“A social worker is regarded as a competent person who can form an authoritative opinion in his particular field of knowledge. It is inferred that his expertise lies in social welfare as opposed to legal training although having both will be an advantage.”

Zastrow (1993: 2) postulates that the goal of the social worker is:

“To fulfil the social, financial, health and recreational requirements for all individuals in a society. When other institutions in the society fail meet the basic needs of individuals or groups of people, then social services are needed and demanded.”

In conclusion, the social work and legal professions are different in orientation. They do, however, compliment each other. As law is the more dominant and

powerful profession in this arena the extent of the complementarity has to be demonstrated by social work. In this way, the power of a positive relationship can only be fostered by the competent efforts of the social worker – this should be achievable as relationships are both the tools and the arena of the social worker.

APPENDICES

APPENDIX ONE

INTERVIEW SCHEDULE

QUESTIONNAIRE.

SECTION ONE

1. What proportion of your work is criminal work?
2. What is the nature of these cases?
3. What parts of the criminal process demand the most of your attention:
 - a. Pre-trial?
 - b. Prior to conviction?
 - c. Sentencing?
 - d. Post sentence?
 - e. Other (state)?

SECTION TWO

1. In preparation for these cases, which other professionals do you draw on?
2. Do you ever use social welfare?
 - If yes, how often?
 - If no, why not?
3. If yes, what functions do they fulfil?

4. Which social work services have you utilised:
 - a. State probation officers?
 - b. Correctional services?
 - c. Private social workers?
5. How did you experience their contribution?
6. If you have not utilised social work services before, would you consider using them?

SECTION THREE

1. In your opinion, which of the following functions could a social worker perform in the criminal justice system:
 - a. Report writing?
 - b. Counselling?
 - c. Other?
2. In what ways could social workers and lawyers co-operate in the field of criminal law?
3. Any other comments?

APPENDIX TWO

INTERVIEW WITH "TONY"I= InterviewerR= Respondent

I: Ok , Andre just firstly with criminal work, how... what percentage of your work do you do that is criminal work?

R: Um

I: Ja

R: If you go with percentage of court work, of court work, my court practice I would say it's 90% of my practice is criminal in terms of my practice as a whole I would say its now down to about 10% -15%, no 15%-20%

I: Ok but 90% of your court work...

R: Court work... uhm over the years its gone from 90% criminal and over the years it's slowly gone done to about 15%-20% of my practice is criminal.

I: Any specific reason?

R: Ja... criminal work is actually not that financially rewarding unless you practice only in criminal law; and you will notice around town there's very few of those firms, there's attorneys who will practice only in criminal law but I'm in a big firm, I've got to substantiate fees and I can't risk it on criminal law; its due to the economic situation in East London, your criminals here 99% of them steal out of necessity they don't steal out of a want, they steal...

I: ...because they have to...

R: ...they have to...

I: ...to survive...

R: ... and if they have to, to survive they haven't got money to pay you to fix their mistakes

I: ...Ja...

R: There's very little white-collar crime or blue-collar crime

I: So, I've noticed that in phoning around in getting people to do this, there's normally like, one guy who they say "Oh, no, we must give it to him..."

R: We're a firm of 6, 8 professionals I'm not the only one that does criminal law.

I: S'Joe, and of that 90% that goes to court, what is kind of like the nature, is it theft or what...?

R: It's everything, it is absolutely everything, uhm, theft, rape, murder, it is across the board, I can't say what I do the most.

I: There isn't one that you ...

R: There will be a couple of months when drunken driving is permanent, well but that's not to do with people being drinking it's, it's to do with the way the

policemen are doing their, their roadblocks; but you do you do go through spates of housebreaking spates and that, but it really is across the board. Because my practice is now more generated to high court and regional court, I don't do much petty theft so I don't see much, you know the shoplifters with the lipstick or the chicken pieces, I don't see much of that anymore. I see more of the serious crimes.

I: Timewise that you spend on the whole process, right from, you know, pre-sentencing through to trial, whatever, that whole process, where is the most amount of time spent?

R: Most of the time is spent in the court.

I: In the courtroom?

R: That's where most of your time is spent. If you take away your courtroom, your consultation preparation for trial, takes up more time than you preparation for sentencing. Uhm, the reason being, that is why I said to you, you are using one of the wrong people here, is I don't spend much time on sentence work, if, if, if it's an involved sentence, I immediately go for a probation officers report of a correctional officers report. Uhm, (unclear)... they are there, they are qualified and they do it for me.

I: Because that was going to be my next question, is: in that preparation, which are the other professionals that you would draw on?

R: I definitely, uhm, well the state provides it free of charge all the time so probation officers and correctional services supervision. I do make use of professionals as well, you know, Peter, ja, I use Peter quite a lot, I've used him; you know at the moment (unclear) instructions that I do use

I: You would actually employ somebody like a private social worker, not just using the probation officers?

R: Ja, you know, no disrespect to the people trying to do their job, but, but quality of the courts, if you hit the wrong one, you are in trouble because number 1, they won't do the report for the first two postponements; (no number 2) number three they'll have the report done at the third postponement but it won't be typed yet, then they get to the fourth one they will turn around and say "Oh but we did it on the wrong first one, sorry I've got the wrong report here". So, you're going 6,7 plus 5 for a probation officers report. And it's like anything at the moment, is people with very little knowledge are getting thrown into extremely powerful positions. Because a social worker says your client goes to jail or doesn't go to jail and if they rush a report and they haven't got an interest in it your client goes to jail, which everybody will think: "Oh, well, not quite the place for him."

Obviously I am biased, I don't want any of my clients to go to jail, but sometimes there is no option and they do, but then it's fine, but I find that some of the social workers in the government services, and you've got to feel pity for them they're not trained, and maybe a year they're out of varsity and they are dealing with a persons life, and the strain on them is difficult and I think, my personal opinion is, it's easier for a probation officer to send a guy to jail because they are not going to get questioned.

I: That's just from experience of watching them or...?

R: Ja, watching them and dealing with them in courts when I've requested them and (unclear) of people who are not that well trained.

I: It just sounded like you were saying something just now that they get anxious, that they'd rather, they're anxious about being questioned about the report?

R: Ja, they take the easy way out. The easiest way is just to put the guy in jail. Because they only gonna have me moaning at them being the defence, they're not gonna have the state, prosecutor, moaning at them or the magistrate moaning at them.

I: And what do they find difficult about that?

R: I, I just think it's not nice being cross-examined in the witness box.

I: Is it anything to do with their lack of preparation or they're not prepared or they don't know how to deal with it?

R: I think it could well be, ja, I think it probably is I don't beat about the bush it probably is in the sense that, like me, I got myself two degrees and I walked into practice, I didn't know what the hell to do, but because of articles there for us as an articled clerk you've got your principal you can rely on or you've got other members of your firm to show you how to go about what you're doing, uhm, which is why attorneys have 2 years articles: so they can learn; whereas some of these probation officers come out of varsity, they've got their degrees, but a degree doesn't make the person, the persons got to make the degree.

I: They're not adequately qualified with the practical skills...

R: Ja, dealing with people and dealing with an arrogant defence attorney or an arrogant prosecutor or magistrate who's not going to take no for an answer, who's going to say to him "But we don't believe your report is right" I've seen Peter

being cross-examined to the hilt; but there's a highly qualified person with 15 years practical experience and he fielded that; they accused us of coercing (unclear)

I: I remember that, ja...

R: Peter was man enough and competent enough to stand his ground and just explain it away. But that comes with years of experience and I think with the probation officer now is that a lot of them are new because, you might think differently but probation reports and that are taking off, they're being used more and more and more so they need more and more people to fill these posts, and they're 21, 22 some of them.

I: You say they are using them more and more?

R: Are they? I just, the perception I've got, because why there are so many young people in? Where are all the old guys? Where's the Eddie Spiltzers? And, you know those guys have been around for years. Uhm, who is that other little, uhm, other lady, she's also moved to correctional services supervision

I: Claudette van Zyl.

R: Claudette! Ja , I mean there's a wonderful example of how it should be done. But, uhm, I think the varsity's are being used as well, the students are being used to draft these things, unless they're properly supervised it's a waste of time.

I: Let's look at hiring of somebody like Peter, hiring a private social worker. What exactly would you give them to do for you?

R: What I try and do, and I've done it successfully in the past, I try and distance myself a hell of a lot away from them. Uhm, but I say to myself: "Listen, here's a client, here are the problems, uhm, hopefully, you can use this but just don't, if a name does slip just don't use the name.

I: OK

R: We've got a guy at the moment, he's been caught for drunken driving for the 5th time, he's 29 years old, you're going to jail. Unless I do something out of the ordinary, he's going to go to jail. So, I'll get hold of Peter, I'll say: "Peter, there's a young guy he's 28 years old, his wife's got a kid, I can do mitigation of sentence, but I want something better. I don't want my guy to go to jail. That's first priority. See what you can do. Then I tee up, I give Peter the persons number he contacts them, he arranges his consultation times, he arranges his fee's, he drafts his report and the report comes to me. If the report says jail, the report says jail. But I am prepared to accept that from an expert. Uhm, and, you know I generally use Peter, or an expert when I think that a mere summation or mitigation from myself when putting a client in the box is not sufficient, but I need a report to bolster that.

I: Ok, it's in a supportive fashion really?

R: Actually, yes... no it's not. Uhm, I would say that the main thrust of my mitigation is his report and I, uhm, I would try and support the report rather than the report support me, ja.

I: If a report in a situation like that came in and said: no, jail definitely, would you still use the report?

R: I have to, because his jail time might equate to 5 years and if I did not use the report it might equate to 10 years.

I: Oh, Ok.

R: But then, you know we can put the person in the box and try and explain why he needs jail time. Maybe the jail time is: "Well we've tried everything else and it's not working, we've given suspended sentences, we've given probation, we've given correctional supervision, we've given fines and we've..." – all we've got is jail and then perhaps the expert in the box can say in the box: "send him to jail, but just put him in there for a month; to see what it is like." You know, don't post him 10 years or something like that, ja.

I: Ok, you've answered the next question already about which sector are you using of social workers, you are using them all, from probatory services to correctional and private...

R: Yes, all of them.

I: Uhm, and your experience, I think you have spoken about that as well, your experience of hiring a private social worker and your experience of using a probation officer has been quite (unclear)?

R: To be honest, I didn't know these private people existed. I didn't know they existed, until Peter articulated with me. I mean you get to know the guy, he comes around to your house, you have a couple of drinks, what do you actually do? You have a chat and a braai with the kids, and I found out more about him and then I started using him. It's not well known that there are these people around.

I: On that note, is it from the social workers not marketing themselves adequately?

R: Definitely!

I: Is it taught in your courses in the common law side...?

R: No!

I: ...that the two professions are actually not working together in any way?

R: No! You learn about probation officers sitting in the court and watching the senior attorney who talks about probation officers you put him on the (unclear) and say "what's this? What's going on here?" and he tells you. Uhm, but definitely, social workers are not marketing themselves...Peter McLeod is the only person I've known to do it.

I: Nobody else has ever approached you or said I do this kind of thing in court?

R: Well, who do you know in East London that does it? I only know one person.

I: Well most qualified social workers should be able to do this type of work because it is part of their training.

R: But, do they do it?

I: That's what I am trying to find out, ja.

R: The only people who do this that I know is Peter, or there could be but I don't know about them and it's strange because I rate myself one of the top 3 legal

criminal practitioners in town. I only know about Peter McLeod. Uhm, and the state one's, we use the state one's because they are there and they are available.

I: And you know about them, you have access to them.

R: Mmm, ja, relatively easy access.

I: So, people who are doing the work are not letting it be known that they are available to do it?

R: Ja, if there are people out there.

I: I think that part of my motivation for this study was that social workers kind of sit and say: "Well, lawyers don't use us or don't value what we do." and the lawyers have often said: "Well, the reports that come in aren't of any value anyway." It's kind of like social workers are negative about working with lawyers because of what you say goes on in court. They get slated, etc.

R: But those are the... actually you've got class in everything you've got bad workmanship in anything. It's like, a person comes to my practice and says: "I want you to sue so and so." And I say, but you haven't got a case. Is that my fault? If the gut hasn't got a case, he hasn't got a basis. And also, so if an attorney instructs a social worker to draft a report and it comes back negative, it can't be the social workers fault if it is negative, *if* they are doing their job properly. As I say, if it's a negative report, it's a negative report, can't change the facts.

I: Talking about doing the job properly, what do you look for, if you are going to use an expert, hire an expert to put a report together, what are you looking for?

R: First thing I look for is the comment by my client. When they come back and say that was not easy, that was the most difficult afternoon of my life. That's what I've got to look for now, because if a client has been grilled by a social worker and has been in-depth interviewed live and has been probed and ... then you know that that guy has gone deep and that he's hurt them, he's grudged up some ugly things, uhm. The other thing is, I look at ... you know, because I can draft a social workers report just from dealing with them. I go to the school, I go to the minister and I go to the family. What more do I want? Where a social worker has gone to the mother, which is... you've got to work from the family from the basis, and the mother has said... it's given him the lead about someone and he goes to that person and gets an overall picture, not just: at school, failed std 7 also std 8 also std 9 kicked out of school, teachers disliked him, he was an idiot at school. We all know he was an idiot, he wouldn't be in jail if he wasn't an idiot. Now he goes and makes a mess of his previous lifetime, or of his life. Uhm, but then perhaps the headmaster says: "Well you know he did get along very well with Mrs X who was a teacher here but she's now moved to some town", and the social worker takes the trouble to find out, well he had a good rapport why was there a good rapport. A little bit further than just a slap-dash report.

I: So, assessment and evaluation and that kind of thing?

R: Ja, you know, that gives me a good assessment that I can see that time and effort has been taken. If a report is negative, but the time and effort has been taken, and that social worker is a knowledgeable person, and if they have studied it and they have gone in-depth into it, and their knowledge says something that I don't want to hear, it's a fact that I have to live with. But if there is not that rapport and they've just made an easy finding, you know, it gets upsetting. Also what I like is, what I dislike to see on reports, and they've all got it nowadays, is: "I leave it in the hands of the court." It's not a good comment, we don't want that. The

court is happy to listen to him. Now I don't know whether social workers just put it there just to be polite to the court, uhm, ok when we litigate, when we say thing in the court we also say: "Well those are my submissions, but I leave it squarely in the hands of the court. I don't know whether it is a little catch-phrase they've got, but it tends to be: there's a door open there. It's not definitive. "Well. If you don't like this, do what you want to do.

I: Just in the way it's put together.

R: Ja, the aspect, I wish I had a report here, but they don't quite get to that definitive... "My opinion is that and I stick by it." Because the courts value them, they wouldn't have them, they wouldn't tolerate them if they didn't value them at all.

I: Other than report writing, are there any other roles that social workers can play in the whole, kind of like, criminal process?

R: There's room for a hell of a lot of counselling. Uhm, I've got, my favourite, not my... it's a very... my saddest client I would say, my first trial happened that I had a little boy and he was breaking into motor cars, and I've watched that guys career go now, he was one of the...he was a black boy but a pretty little guy, really, nice looking youngster, and I saw him about a year ago. His whole face is disfigured, full of scars, he's now awaiting trial for one of the most violent and despicable rapes in East London. Over the past 6, 7 years he started with car theft, I did a car theft, I did housebreaking, we did the whole toot and he slowly... but he's now in for a despicable rape, and murder. If that guy could have been caught up in the system early, who knows, you don't know. I think there could be a lot more counselling. What I find sad as well is when juveniles are allowed, and the court is prepared to let them go out, are left in the custody of their guardians,

because the guardians don't want them, man. They say, no, hell, these kids are too much to handle. Some of these children are too much to handle. Let's face it, hey, they're terrorists, they're hell out there. Uhm, and I think if social workers could go into those families and try and assist them. It would cut down on crime and cut down on, on I mean (unclear).

I: Actively, I mean, how would that happen?

R: Ooh, don't... I've got no answer, I've got the questions, I haven't got the answers.

I: I mean from a practical point of view?

R: Financially it's impossible. Our little poep-arse province has got no money to do that. Uhm, I see it, I'm on community chest, I see what these people are trying to do, there's no money for you. Without money you haven't got it.

I: But the place is there for the work, hey?

R: Oh, Jesus, jaaa. No, there's a desperate need for social workers.

I: I think something that we've established already just talking, that there doesn't seem to be adequate communication between social workers and lawyers on a professional basis?

R: From professionals, no. Mm-mm, no I don't think so.

(Deleted, laughing)

R: What we, what it could be, social workers are originally state employees, they're government officials. An attorney is a professional person, so there is a disparity of balance between these two areas. An attorney will mix with a doctor, an accountant, something like that. A social worker, and please, don't get me wrong, I'm just using examples, will mix with the policeman, the fireman and the receiver of revenue, ok, or work for the state, you see what I am trying to get at. No matter how many degrees they've got or whatever they are, it's the same as you will very, very seldom find magistrates and prosecutors and attorneys mixing. Because of the perception... it is my perception, I could be wrong. I could end up being sued by the state...

I: no, but it is it's what you're talking about is the perception that people have of the role...

R: ...of a social worker.

I: ...ja.

R: I mean, let's be honest, you guys are not working in a nice environment. You're working with the dregs of humanity. Which, are only dregs of humanity because a lot of people shy away, they don't want to know about those problems. And they certainly don't want to mix with people who deal with that type of person.

I: How do you see that gap being closed? I mean can it ever be?

R: Ja, get the social workers out of the state.

I: But there are a lot in private practice.

R: I know of one person who is in private practice. Psychiatrists, Psychologists: what is a Psychiatrist or Psychologist that deals with? It's a high-paid social worker, really.

I: Do you work with Psychologists and Psychiatrists?

R: Divorce law, yes. A lot of, I call them my kids, a lot the kids in divorces, a lot of my divorce clients, I've got a list here, in my phone book, I phone I book them in, I say: "You need help here, chaps. I've got one now, he's sitting in St Marks.

I: How did form that contact with the Psychologists? Did they market themselves better...

R: No, it's a fact that a person came to me, wants a divorce, her child is seeing a Psychiatrist. Ok, so I phone this Psychiatrist, so we chat, find out how she's helped this little child. Next divorce case I get in, I see there's similar aspects, I said: "Listen, here's this Psychiatrist, I think your child needs a Psychiatrist or a Psychologist, off you go". A parent comes in, sitting here shaking, bawling, can't control herself, drinking pills: send them to St Marks, go and sort that person out. I don't say to them: "You guys need to go to a social worker." What is the real difference? To me I don't see much of a difference.

I: There is quite a big difference in the training; that Psychologists kind of work more with the individual and the way back when this happened, and they look back into your childhood, there are a lot of different techniques... social workers are very much here and now we use some different kinds of theories, we look at different dynamics that are taking place, you know, family therapy, that kind of thing.

R: Well, for arguments sake, I use Peter McLeod for marriage counselling. Now I get people in here they sit and I say: "Do you want a divorce?" "Well, not really" I pick up the phone, I book them in. that's all. I'm the end of the line. I'm the guy that makes money out of your misery. I'm not, here to, I mean I've got problems with my own marriage I'm not going to sit and help you with yours.

I: But I mean in a firm like this, if a social worker wrote a letter and said : "This is who I am, This is what I am qualified to do, this is how you get hold of me.

R: You must pick the right person. If it goes to the conveyancing department, they're gonna go: "What is a social worker?" All right? But, ja, you must get hold of the right people and market yourselves. And come across as professional people. Uhm you've got...it's my own opinion that a social worker is a person who sits in a house with 30 000 kids who haven't got homes, and works for the state and gets a government cheque at the end of the month. They're not dynamic, professional, outgoing, subsequently knowing Peter, I've met you I've met a lot of his students, my perspective is changing, but it's taken me two or three years to get down the line. I wouldn't be conducting this interview with a social worker from court.

I: The reason for that?

R: I haven't got time to waste on them, I perceive her as totally different way to the way I perceive you, that's my perception.

I: Is there any merit in getting hold of lecturers, you know like the lecturers that are lecturing law, for example, at Rhodes and discussing sharing stuff in the curriculum there, because it sounds like through your training, you were never really introduced to what social workers...

R: Unfortunately, my training stopped quite a number of years ago but the curricula in law have changed a lot; they're learning about a lot of the things that I didn't learn about, and I'm not going back (unclear), so curricula has changed drastically since then. But, ja, and I think social workers in particular, there are only two places I think they will find a place, is criminal law and family law. Uhm, but you've got to make use of, Laura, and Peter and other people (unclear)...if you want to stay morally sane, it's very easy for me to divorce people who don't actually want to get divorced, they come in here and I say, right, this is what it costs for them to divorce, sign the papers and they go. But, I'll question them, if they're not really gonna get...if they're not sure of it, send them to someone. Rather save the marriage than break the marriage.

I: (LEE LAUGHS): Andre, thank you very much.

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