

PROFESSIONALISING CRIMINOLOGY IN SOUTH AFRICA

by

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Submitted in accordance with the requirements for the degree of

DOCTOR OF LITERATURE AND PHILOSOPHY

in the subject

CRIMINOLOGY

at the

UNIVERSITY OF SOUTH AFRICA

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November 2005

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I declare that PROFESSIONALISING CRIMINOLOGY IN SOUTH AFRICA is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Signature

(Ms B A Beukman)

Date

Acknowledgements

My sincere gratitude and appreciation goes to:

Professor Conradie to whom I dedicate this thesis. Thank you for the opportunity for allowing me to stand on your “shoulders”.

Toon Theron for his enthusiasm and support

My parents who never doubted in my ability

The Architect of the Universe that allowed me once again to learn not only about others but also about myself.

Title of thesis: Professionalising Criminology in South Africa

By: Brenda Ann Beukman

Degree: Doctor of Literature and Philosophy

Subject: Criminology

Promoter: Prof. Herman Conradie

Summary

This study explores and describes the professional role of the Criminologist in South Africa. National and international research and personal practice are used to demonstrate the role of the South African Criminologist. A qualitative research design supports the exploratory nature of this study. The areas of focus are veracity assessing, criminogenesis, assessment of juveniles, assisting victims of crime through debriefing and compiling victim impact statements and compiling pre-sentence reports. Each of these areas rely on the expert knowledge of the Criminologist and is accompanied by real life case study which is preceded by theoretical explanations and research findings.

The research also highlights the quest for professionalising Criminology in South Africa by presenting and analysing the formal application for recognition.

Professionalising; Professions; Professionals; Criminology; Criminologist; Expert witness; Victim; Debriefing; Victim Impact Statement; Lie detector; Juvenile; Criminal capacity; Diversion.

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CHAPTER ONE

ORIENTATION AND RESEARCH METHODOLOGY

1 INTRODUCTION

The demand for public recognition of skill and workmanship in South Africa can be traced back to the black trade union that demanded a living wage in the early 1970s. These demands were repeatedly rejected by employers who claimed that workers were unskilled and that their demands were not justified. By 1980 the entire education system had been discredited and rejected. The Department of Education also launched a policy discussion resulting in the Educational Renewal Strategy, which advocated three streams: Academic, vocational and vocationally oriented reform. The National Union of Metalworkers of South Africa established a research group comprising of workers and union officials to make recommendations on basic education, training and skills development, which should be nationally recognized. The Congress of South African Trade Unions formally adopted this proposal in 1991 (The National Qualifications Framework: An Overview 2000:4).

A representative task team was formed in 1992 which established eight working groups with representatives from trade unions, employers, the State, providers of education and training, the African National Congress Education Department and the Democratic Alliance with the task of developing a new national training strategy. The report emanating from these working groups resulted in the establishment of an Inter-ministerial Working Group charged with drafting the National Qualifications Framework Bill (NQF) which was passed into law as the South African Qualifications Authority Act 58 of 1995 (SAQA) on 4 October 1995 (The National Qualifications Framework 2000:5).

1.1 FUNCTION OF SAQA AND NQF

In terms of section 5 (1) of the South African Qualifications Authority Act, SAQA must (Isaacs 2000:4):

- oversee the development of the NQF
- formulate and publish policies and criteria for:
 - registering bodies responsible for establishing education and training qualifications and standards (National Standards Bodies)
 - accrediting bodies responsible for monitoring and auditing achievements in terms of such qualifications and standards (Standard Generating Bodies).
- oversee the implementation of the NQF, including:
 - registering and accrediting the above mentioned bodies and assigning their functions
 - registering national qualifications and standards
 - ensuring compliance with provisions for accreditation
 - benchmarking standards and registered qualifications internationally
- advise the Minister on the registration of qualifications and standards
- be responsible for the control of the finances of SAQA.

SAQA has adopted an eight-level framework, grouped into three bands, with Level 1 as the least complex- compulsory schooling, or the General Certificate of education, followed by Level 2-4, the Higher National Certificates and Level 5-8, named Tertiary and Research. The NQF has further divided all education and training into 12 organising fields, with various sub-fields with a National Standards Body. SAQA classified Criminology in NSB field 08: Law, Military Sciences and Security in the sub-field Safety in Society (Naudé 2001:3).

The SAQA Act of 1995 heralded many changes with regard to learning and traditional teaching practices. For these changes to occur, Van den Berg and De Boer (2000:107) postulates that the education system needs a paradigm shift, where formal learning occurs

in a once-off situation to a society in which one has to re-orientate and re-school oneself repeatedly.

According to the SAQA's requirements, an indication of the practical outcomes and possible career opportunities are required before a qualification can be registered.

The formal teaching of Criminology at university level started in 1949 at the University of Pretoria, followed by the University of South Africa in 1958. Against the background of the quest of the trade unions of South Africa as explained above, the quest for recognizing Criminologists as professionals, started during the 80's. This process has come to full fruition when the Criminological Association of Southern Africa (CRIMSA) launched a formal application for professionalisation in 2004. This thesis serves to factually document the main areas in which some Criminologists have been applying their knowledge and skills in the field of crime and Victimology, to assert their professional status.

The objectives of the NQF are as follows (Isaacs 2000:4):

- create an integrated national framework for learning achievements
- facilitate access to and mobility and progression within education, training and career paths
- enhance the quality of education and training
- accelerate the redress of past unfair discrimination in education, training and employment opportunities and thereby
- contribute to the full personal development of each learner and the social and economic development of the nation at large.

The inauguration of SAQA and the NQF and other similar structures, facilitated the rise of professions in South Africa.

1.2 THE RISE OF PROFESSIONS IN SOUTH AFRICA

Since the birth of democracy in 1994 the New South Africa became part of the increasingly competitive economic and global environment. Furthermore, the rapid technological advances of the 20th century have placed education systems under pressure, emphasizing the need for the system to adapt and incorporate these changes. In an effort to produce more creative, effective and adaptable people, South Africa constructed a National Education and Training system, which focused on competence and outcome. The emphasis of the NQF, on the ability to put into practice in the relevant context, the learning outcomes acquired in obtaining a qualification, provides the opportunity for outcomes based education and the professionalisation of Criminology. Meanwhile, crime in South Africa has been increasing; or at best, only stabilized.

The time seems to be right for Criminologists to strive towards professionalisation.

Tertiary institutions in South Africa had the opportunity to revise academic programmes and modules from 1998-2000. These revised programmes and modules were submitted to SAQA. Taking the objectives of the NQF into account, the researcher is convinced that Criminology students, from level one to level three, as well as post graduate level, have the ability to put into practice, in the relevant context, the learning outcomes acquired in obtaining qualifications as professional Criminologists (with differing fields of specialization or registration).

The researcher plans to demonstrate, based on the characteristics of professions, that Criminology can be viewed as a profession.

Furthermore, the ability of the study field of Criminology to adapt and change to keep abreast of current trends can be deduced by various Departments changing and broadening course content. For example, the focus in the 80's was mainly on the incidence of different forms of crime, the criminal in general and the role of the criminal justice process. The socio- and psychocriminological approaches were used as the two main approaches in explaining crime. In the eighties, course content and modules were

updated to accommodate in-depth studies such as Victimology, Economic Crimes, crime prevention, Political Crime and Penology. Female Offences are currently the latest addition in two Departments, which are the University of Pretoria and the Walter Sisulu University of Technology. During 1999 and 2000 various new specialized BA degrees in the field of Criminology were established at Unisa (e.g. BA Crime Profiling, BA Crime Vulnerability and others) and at the Walter Sisulu University of Technology (BA Administration of Criminal Justice).

The interest in Criminology as a discipline is evident in the number of students at various Universities who study Criminology. In spite of this interest there is currently a limited number of academics, some who has started practicing Criminology part-time outside academic circles and an even lesser number of full-time practicing Criminologists in South Africa. These limited numbers of Criminologists who practice Criminology may be due to the fact that formal statutory recognition and registration with an applicable board is not yet in place.

1.4 DEFINITIONS

Luyt (1999:14) claims that it is necessary to clarify concepts that appear within the continuum of investigation. This ensures that the same meaning is continually attached to the same concepts central to this study, the following key concepts will be defined: Professionalising, Criminology, Criminologist, victim, veracity, juvenile delinquency and profession.

It should be noted that throughout this work, the researcher will use the male pronoun, namely his, he and him for convenience with the presumption that some of the content of this study may also be applicable to females.

1.4.1 Professionalising

According to Houle (1980:35-73) there are three groups of characteristics which reflect the professionalisation of an occupation:

- conceptual characteristics
- performance characteristics
- collective identity.

1.4.1.1 Conceptual Characteristics

A profession must state and define the mission and foundations of its practice. This definition may not be congruent with the realities of practice, due to the fact that a professional actually may not be consistent with the stated mission of the profession. This may be due to organizational dynamics or a response to changing societal needs.

Evolving societal needs also affect the mission of a profession due to professional knowledge, which is pluralistic, socially constructed, contextually defined and constantly altering (Houle 1980:37).

1.4.1.2 Performance Characteristics

There are four characteristics in this group which refer to the knowledge and skills base of professional practice. They are the mastery of theoretical knowledge, capacity to solve problems and self-enhancement.

- Mastery of theoretical knowledge

Theory and philosophy provide a guide to describe and understand the problems and circumstances of the world as applicable to the particular occupational area. A profession need not have its own unique theoretical foundation. Newer professions in particular draw upon existing theoretical fields in order to understand the unique features of practice.

- Capacity to solve problems

Houle (1980:43) proposes that the ultimate test of the success of a professional is the ability to solve problems and those problems usually involve vital and deeply significant outcomes. How a problem is framed and the range of solutions available, is what differentiates an expert from a novice.

- Use of practical knowledge

Practical knowledge consists of techniques and strategies which are based in theoretical inquiry and that have been found useful in experience.

- Self-enhancement

Self-enhancement refers to the continued pursuit of knowledge and understanding in those areas of study and interest not directly related to the occupation.

1.4.1.3 Collective Identity

The professionalisation of an occupation depends on the establishment of a collective identity, through structures and systems that foster and maintain the conceptual and competency characteristics. Houle identified the following collective identity characteristics:

- Formal training

This characteristic refers to the formal processes for the transmission of the explanatory theories, doctrines, applied theories and practice theories (Houle 1980:55).

- Creation of a sub-culture

A profession should nurture a subculture of attributes which distinguishes it from other occupations. This sub-culture promotes a professional identity that enhances the field's uniqueness. The formal institutions of the universities, professional associations and work organizations serve as venues for the socialization of the professional sub-culture.

Continued professional education also enhances the sense of professional affiliation and identity (Houle 1980:57).

- Legal reinforcement

Professions should seek legislative, judicial and administrative support or ruling to protect the rights of practice, such as the right to practice the profession and the right to maintain confidentiality (Houle 1980:61).

- Public acceptance

The general public should be made aware of a profession's value to society. Houle (1980:62) states that the inception of a new occupation implies that certain specific work activities are valued enough such that those activities become distinctively differentiated from others and publicly recognized.

- Ethical practice

Professions should develop guidelines or codes for ethical practice. A professional code of ethics is part informal and part formal and essentially describes the terms of relations to the client, other professionals and society.

- Penalties

Professional members who are incompetent or who act in an unethical manner may face penalties that include financial sanctions, exclusion or expulsion from special privileges and the ultimate sanction, termination of the right to practice. Professional associations may serve as formal disciplinary bodies.

- Relationship to other vocations

There is a need to define and maintain role relationships among the allied occupations. As occupations become professionalised, a complex and usually ambivalent relationship grows between them and each of the occupational groups with which they work, particularly those which are more highly professionalised than they are. As the technical and social complexity of professional practice evolves, professions may split off into specializations or they may sub-professionalise.

- Relations to the users of service

The final characteristic is the formal relationship between practitioners and the people who use their professional services.

Based on the above explanation of what a profession is, the researcher views professionalism as a process that does not occur in isolation. The process starts with defining conceptually the mission and foundation of the practice and then it evolves into characteristics of performance which culminates into a collective identity which forms a specific profession.

1.4.2 Profession

According to Underwood and Edmunds (2003:241) the status and role of a profession can be considered as two related but distinctly different social constructs. The social status of a profession refers to the structural attributes of the traits and features which indicate an occupation as a profession. The structural attributes of a profession include creation of a formal education, formation of a professional association, the support of law and information of a code of ethics (Underwood & Edmunds 2003:242).

According to Altbach (1995:114) the following are common elements of a profession:

- prolonged and specialised training based upon a systematized intellectual tradition and can rarely be acquired through mere apprenticeship
- rigorous standards of licensure, fulfillment of which often confers upon the functionary a degree or title signifying specialized competence
- application of techniques of such intricacy that competency tests cannot be deduced upon any simple continuum scale
- absence of precise contractual terms of work, which might otherwise imply a calculated limitation of output and an explorative attitude towards productivity
- a limitation upon the self-interest of the practitioner, and careful insulation of professional considerations from extraneous matters, such as private opinions, economic interests and class position and

- certain positive obligations to the profession and its clientele.

Not every profession embodies all of these common elements, yet taken together they form a whole that enables one to differentiate the profession from other generic types of occupation. The development of a profession takes place within in a specific context and is governed by an education system.

For the purposes of this study the researcher views Criminology as a profession. This profession functions in the area of crime and crime related issues. In this thesis, the researcher will demonstrate that, by using practical empirical examples, that Criminologists can function according to the requirements set for a profession.

1.4.3 Professionals

The term is often used to identify all workers who operate at an advanced performance level, who have had rigorous training, or who take pay for their work (Houle 1980:50). There is thus a sense of collective identity.

For the purposes of this study a professional Criminologist refers to a person who has obtained a certain level of education, which is a Masters degree in Criminology (based on the outcomes set by SAQA) and receives remuneration for their work.

1.4.4 Professionalism

Professionalism refers to a process during which education takes place before and during practice (Houle 1980:50). Professions and professionalisation are a historic throwback to the medieval culture, but professions as we know them today are only one hundred years old (Morn 1980:14). Historically society was served by relatively few professions- i.e. medicine, law and religion, most noted. In the early study of professions, scholars identified a set of specific criteria which could be applied to occupations in order to determine their status. From the 1870's onward professionalisation occurred rapidly and

Morn (1980:14) refers to this development as giving origin to a “culture of professionalism.”

Through industrialization, urbanization and bureaucratization, society became more economically and socially complexed. The study of professions shifted from a ridged, static concept of essential components, towards recognizing professionalisation as a dynamic process in which an occupation could strive towards the ideal of a profession. Professionalism became a means of upward mobility and a status symbol in and of itself. It became an expression of middle-class values in the work world. Through the professionalisation process skills, techniques and knowledge were detached from the public. According to Morn (1980:15) the only difference between traditional professions and traditional crafts is the impact of the university and/or special schools. Higher education has served at least three functions in the rise of professions (Morn 1980:14):

- universities establish authority
- it is at the university where an occupation, subculture, or body of knowledge achieve status
- the university is where usable knowledge is to be discovered and developed.

Through the use of case studies the researcher will indicate identifiable attributes that when they are present contributes to the professionalism of the Criminologist.

According to Du Preez (1995:11) professionalism is determined by the following:

- Recognized professional status-roles

This means the professional has attained a distinguished position which is recognized and respected by the community, employees and colleagues.

- Power

The ability, authority and or competence to perform a professional task and to gain the desired results, regardless of the stumbling blocks, is indicative of the power of the profession.

- Skill

Skill refers to the capacity to perform difficult and or complicated tasks. For the purposes of a Masters degree the registration with SAQA states the following as exit level outcomes (Government Gazette 2004):

- 1 illustrate comprehensive knowledge of crime and victimisation in a specialised area of enquiry
- 2 demonstrate the ability to critically appraise knowledge of crime and victimisation in a specialised area of enquiry
- 3 indicate the ability to conduct independent research in the selected specialised area of crime and victimisation
- 4 illustrate the ability to contribute to knowledge in the selected specialised area of crime and victimisation
- 5 report and communicate research findings in a scientific manner. Apply knowledge to create entrepreneurial possibilities.

For the purposes of a Doctorate the following is listed as outcomes (Government Gazette 2004):

- 1 illustrate expert and advanced knowledge in the field of crime and victimization
- 2 produce original knowledge in the field of crime and victimisation and deal creatively with complexities and contradictions in the knowledge base
- 3 indicate in-depth understanding of specialised areas of concern in the field at a local, national, regional and international level and develop original solutions for these areas of concern
- 4 design and execute a research project demonstrating the ability to identify, analyse and address specific area(s) of concern
- 5 demonstrate expertise and leadership in a specific area of the field
- 6 develop knowledge to create entrepreneurial possibilities.

- Responsibility

The responsibility of action recognizes the accountability of the person concerned.

- Objectivity

Objectivity demonstrates a certain attitude projected by a member of a profession who executes this task correctly, calmly, purposefully and in an unbiased way, and who does not allow outside factors to affect him.

- Regulation

Regulation refers to the control of employees from outside the organization, whereby their actions are monitored and subjected to punishment or reward. Membership of council is necessary. According to Underwood and Edmunds (2003:245) self-regulation refers to the profession itself, with its unique body of knowledge which is best suited to judge the work of others in the field.

The researcher is of the opinion that the following individual attributes as identified by Underwood and Edmunds (2003:244-246) can contribute to the professionalism of Criminology:

- Belief in service to the public

Professional service should be based on an ideal of public service, over the self-interests of the practitioner and that the work is essential to community interest.

- Sense in calling to the field

This reflects the commitment to the profession and that the profession is viewed not as a means to an end but as an end in itself.

- Autonomy

Autonomy involves independent decision-making in the best interest of the client based on professional standards. These decisions should not be influenced by other professions or the bureaucratic organizations.

- Belief in continuing competence

This refers to the personal commitment and responsibility to professional learning in order to maintain competence.

Next, the concept Criminology will be defined and briefly explained.

1.4.5 Criminology

According to Reid (2003:20) the study of crime, criminals, and criminal law is of ancient origin, although the development of Criminology as a discipline took place in the 1900's, with the first textbooks in the field published in the 1920's. Siegel (2004:474) defines Criminology as: "The scientific study of the nature, extent, cause and control of criminal behaviour." Schmalleger (2003:745) views Criminology as a science which incorporates the causes and prevention of crime as well as rehabilitation and punishment of offenders.

Bartol (1999:3) perceives Criminology as an inter-related science. This author states that Criminology was traditionally housed in sociology, but disciplines such as psychology, biology, anthropology, neurology, political science, economics, psychiatry, social work, public administration, law and police science have also made valuable contributions to this subject. In addition, Hollin (2001:8-9) postulates that Criminology has its roots in early psychiatric research in prisons and that the first studies in Criminology determined the differences between criminals and non-criminals. Later on, by the 1950s, sociological Criminology (the Chicago school) emerged as a field of study (Hollin 2001:9).

Maree, Joubert and Ladikos (2003:73) argue that Criminology is a science with a long and varied history. Criminology gained prominence as an academic area of study because of the constant threat of crime and the social problems it highlights. Consequently, criminological sources are a combination of theory and empirical research, enfolded in a body of knowledge on crime as a social phenomenon. Modern Criminology has moved away from historically primarily focusing on explaining the

behaviour of criminals. The causes of crime are explored through discussions of biological, psychological, economic and sociological theories (Reid 2003:21). A definition by Brown, Esbensen and Geis (2001:11) is more specific, as they define Criminology as a scientific endeavor to explain crime, while acknowledging the importance of making law and reacting to law violation.

For the purpose of this study the term Criminology refers to an inter-disciplinary scientific study that includes, but is not limited to, the causes and explanations of specific types of crimes and victims, the criminals, the adjudication of crimes, and crime prevention.

1.4.6 Criminologist

According to Van der Hoven (2001:v) a Criminologist is a person with at least an honours degree in Criminology.

Karmen (2004:21-22) and Sumner (2004:211-212) argue that Criminologists:

- ask why certain individuals become involved in law-breaking behaviour
- recognise that most people occasionally break certain laws (especially during adolescence) but are otherwise law-abiding
- acknowledge that only some who engage in delinquent acts graduate to become hard-core offenders and career criminals
- explore how social, economic and political conditions generate criminal activity;
- place emphasis on administering proper methods of gathering and interpreting data
- apply research findings to develop crime prevention strategies and to test risk-reduction tactics
- study how the criminal justice system works and how suspects, defendants, and convicts are treated by the criminal justice system
- assess the needs of offenders for counseling, psychotherapy, additional education, job training and drug treatment
- evaluate the effectiveness of various rehabilitation programmes

- calculate the social and economic costs of criminal activity to society and
- agree among themselves that they should limit their studies to illegal activities and criminal behaviour.

Therefore - for the purposes of this study - a Criminologist is one who has studied the following up to the honors level:

- specific crimes with the purpose of crime prevention
- victims for the purpose of assisting victims through preparing victim impact statements and offering debriefing
- the assessment of offenders for purpose of determining criminal capacity, rehabilitation and suitable sentencing options which include assessment for the purpose of diversion.

Due to the broad spectrum of the specialization fields of Criminology and the involvement of the Criminologist in the Criminal Justice System, the term Forensic Criminologist needs to be clarified.

1.4.7 Forensic Criminologist

For the purposes of this study the researcher is in agreement with the definition of Van der Hoven (2003:v): The concept 'Forensic Criminologist' refers to the action of a Criminologist in collecting, analyzing and presenting evidence in the interest of objective proceedings in the judicial process.

To achieve this, he has specific tasks. These are as follows:

They have to explain to the court the offender's personality make-up, motivation for committing the crime, and the context in which the crime took place. Due to the thoroughness of the investigation to obtain the required information the Forensic Criminologist may make a recommendation on the type of punishment suitable for a specific offender.

As the role of the Forensic Criminologist within the judicial process is based on expert testimony, the concept expert witness needs defining.

1.4.8 Expert witness

The testimony of an expert witness differs from general testimony in court in that witnesses may not give their opinion in court. A witness is only allowed to convey to the court the facts he/she personally observes. The opinion of the witness is irrelevant, as it may constitute undue interference with the function of the court. Expert witness testimony is submitted to the court as opinion evidence. An expert may give his/her opinion on a matter which falls within his/her subject (Schmidt 1993:42).

Criminology is also much involved with the study of victims and therefore the term victim needs clarifying.

1.4.9 Victim

It is a concept that may be considered in a very broad and inclusive context or, to the other extreme, it may be narrowly defined with conditions which limit its applicability. In the daily language of the public, the term has a common meaning as referring to those individuals who:

- suffers from some form of hardship as a result of more worldly causes (Kennedy & Sacco 1998:4)
- experience injuries, losses or hardships due to any cause (Karmen 1996:2).

Another approach to defining the concept is offered by Bayley (Underwood & Edmunds 2003:2). People are victims if and only if:

- they have suffered a loss or some significant decrease in well-being, unfairly or undeservedly and in such a manner that they are helpless to prevent the loss
- the loss has an identifiable cause and
- the legal or moral context of the loss entitles the sufferers of the loss to social concern.

These definitions and perceptions reflect a general use of the term and, while the focus of this study is the victims of crime, a distinction should be made between victims of nature and crime victims. According to Bard and Sangrey (Underwood & Edmunds 2003:4) the following is unique characteristics of crime victims:

- human agency versus act of God - central in the victim's perception is that another person was responsible for the harm caused and future interactions with other humans may be significantly impaired
- chaotic versus intact environment- a victim's immediate world becomes totally disorientated while the outside world remains intact
- isolation versus togetherness – most crime occurs outside the view of others. There is no collective support or empathy present.
- stigma versus acceptance- in an effort to understand crime, society looks for reasons for the tragedy and often blames victims for their victimization.

For the purposes of this study then, the term victim refers to a person who has suffered physical, financial and or emotional loss due to crime, regardless whether or not the victim facilitated, precipitated or provoked the incident.

The Criminologist offers two options of support to victims of crime, that is in compiling victim impact statements (VIS) and offering debriefing to traumatized victims. The use of these terms also need to be clarified for the purposes of this study.

1.4.10 Debriefing

Debriefing is a “grassroots” intervention. Manuel (2000:11) identified two different understandings of debriefing. Firstly it is a process that is part of ongoing counselling, whereas the second understanding is that it is a single intervention session that is not necessarily part of ongoing sessions.

For the purpose of this study debriefing refers to the process whereby the reactions of victims of crime are normalized and individual and group coping resources are mobilized. Debriefing is therefore not a form of therapy *per se*, nor a substitute for treatment, but a form of crisis intervention.

1.4.11 Victim Impact Statements

A Victim Impact Statement (hereafter called VIS) is a document that is intended to provide information to the court about the physical, financial, emotional and psychological effects suffered by the victim, and where relevant, his family as a result of a crime. VIS differ from the general testimony in court in the sense that it allows victims to personalize the crime and to articulate the pain, anguish and financial devastation the crime has caused (Clarke, Davis & Booyens 2003:4). The objective of VIS is to allow the court to take into account the subjective experience of the harm suffered by the victim. The purpose of the VIS is to place before the court information which is considered relevant in determining an appropriate sentence for the offender (Van der Hoven 2003:200).

Because the Criminologist can also work in the field of truth verification as it is illustrated in Chapter three of this thesis, the concept “lies” and what is attached to it, also needs clarification.

1.4.12 Lies

People all over the world usually refer to a lie as any untruth, but too often this is not the case. People may utter a lot of untruths in everyday circumstances, such as: “I’ll be there in 15 minutes,” or “I earn R5000 a month” or even a simple compliment like “The dress looks wonderful on you.” All of the above sentences are not as much untrue as they are inaccurate or exaggerated (Anon 2002:5).

Those interested in truth verification and lie detection use a more specific definition. In this case, a lie is something that is not only not the truth, but was said for the purpose of deceiving. The person who said it really wants you to believe what he said.

Different types of lies include (Anon 2002:6):

- jokes - The purpose of a joke is to entertain. It is usually said, and received, in fun and is not associated with any type of stress or deception.
- white lies - a white lie is something you say to another person, not so much with the intent to deceive as with the intent to avoid upsetting or hurting someone. While this is still a deception, the intention behind the lie and therefore the physical reactions when someone tells a white lie, differ from other lies.
- defensive lies- defensive lies are perhaps the most commonly used form of lying. Often someone will say something that is not truth in order to protect themselves or someone close to them from getting hurt.
- offensive lies- offensive lies are told for the purpose of deception but are much less personal and are not used as a means of defense against possible or perceived hurt to oneself or someone close. These deceptions are widely used in business and told with the expectation that they will cause the gain of something extra. Even if their lies are revealed, the speakers feel that little or no harm can befall them.

1.4.13 Lie Detector

A lie detector is a tool designed for the purpose of determining one's level of truthfulness (Anon 2002:1.) The basic idea in all of the existing machines today is to monitor involuntary body reactions, to determine and analyse the subject's state of fear, stress and arousal. It is therefore misleading to refer to these machines as lie detectors as they don't detect lies, but only the arousal which may be a result of telling lies (Vrij 2000:170).

For the purposes of this study the researcher is of the opinion that the term veracity assessment is a more accurate term when used in the context of determining the truth.

The term originates from medieval Latin word *veracitas* which refers to the accuracy of a statement (Oxford Dictionary 2000:925).

1.4.14 Juvenile

According to Rule 2(2) (a) of the Beijing Rules, "... a juvenile is a child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult." This definition allows a national system to define who should be considered to be a juvenile. Section 28 of the Constitution of South Africa defines a child as a person below the age of 18 years. Section 28 also enshrines certain rights relevant to juvenile justice, which then apply to those below the age of 18. Specifically the right to be detained only as a matter of last resort, and the right when detained to be treated in a manner consistent with the child's age. The present Correctional Services Act 8 of 1959 defines a juvenile as a person under the age of 21 years. Within the departmental practice, however the category child has now been recognized as distinct from juvenile and children are those under the age of 18 years. No definition of juvenile or youth other than this has been included (South African Law Commission 1997:8).

The next concept that needs clarification is assessment.

1.4.15 Assessment

Assessment in the child justice field refers to a process of gathering information about the child offender, the circumstances of that child, the behaviour of the child, and the circumstances and facts surrounding the child's (alleged) criminal activity (Van Niekerk 2003:B2-1).

For the purpose of this study assessment performed by a Criminologist pertains to the following (and needs not only be limited to juveniles):

- establishing the age of the alleged juvenile offender
- establishing his criminal capacity and
- assessing the suitability of children and juveniles for diversion
- assessment of juvenile delinquency for the purposes of a pre-sentencing reports.

The above mentioned concepts will be discussed in an attempt to give the reader a clear orientation of these concepts and their functions within the Criminal Justice system.

1.4.16 Criminal Capacity

Criminal capacity as discussed by Snyman (2003:158) is as follows:

X's capacity is determined with the aid of two psychological factors, namely first his ability to distinguish between right and wrong and secondly, his ability to conduct himself in accordance with his insight into right and wrong. Burchell and Hunt (In Van Niekerk, 2003: B3-2) the following is stated about criminal capacity:

“The cognitive function relates to the individual's capacity to think, perceive and reason- the capacity by which humans learn, solve problems, make plans; the conative function relates to the capacity for self-control and the ability to exercise free will...”

Criminal capacity is thus concerned with a person's cognitive and conative functions or, in other words, his capacity for insight and self-control.

For the purposes of this research, the researcher decided to measure criminal capacity by the juveniles understanding of :

- a lie
- the truth
- right and
- wrong.

The age of a juvenile and his culpability needs to be assessed to enable prosecutors and the courts to make a decision regarding diversion.

1.4.17 Diversion

Diversion can be defined as the channeling of *prima facie* cases away from the criminal Justice system with or without conditions. Diversion can take place prior to arrest, charge, plea, trial or sentencing. Diversion is inappropriate where the charge is one of murder, robbery with aggravating circumstances, rape or a similarly serious offence. Offenders with a criminal record and persons to whom the opportunity has been granted previously should only be included in exceptional circumstances (South African Law Commission 2000:87).

By definition diversion usually implies the provisional withdrawal of the charges against the accused, on condition that the accused participates in particular programmes and or compensates the complainant. Diversion is preferable to the mere withdrawal of cases as the offender is charged with taking responsibility of his or her actions. The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and Lawyers for Human Rights established diversion in South Africa on a fairly informal basis in the early 1990 (Muntingh 1999:8).

Diversion in the context of this study refers to a process which can take place at different stages of the criminal justice process. Juvenile cases can be diverted in order to keep the juvenile away from the criminal justice process or diversion can be imposed as part of sentencing.

Next the research methodology employed for data capturing during this research will be highlighted briefly.

1.5 METHODOLOGY

Briefly, this research was conducted by starting with a literature research. All the research that could be found relating to the professionalisation of Criminology, was unearthed and documented. This was then supplemented with the practical applications of criminological insights in the practice of the researcher in the fields of criminogenesis (causes and explanations of crime with a special focus on juvenile issues), veracity assessment (investigative Criminology), assessment of age, criminal capacity and diversion (of juveniles), victim empowerment, debriefing of victims of crime, and the role of the Criminologist in the assessing of offenders (expert witness), as well as the quest of the discipline of Criminology towards official statutory recognition as a profession. To document these findings according to recognized methodological methods and techniques, the following were considered and applied:

1.5.1 Research Design

The research design answers questions regarding the “how” of the research. According to Huysamen (1993:12) a research design is a plan of procedure for data collection and analysis.

For the purpose of this research the researcher has decided (based on the goals of the research) that the various specialization fields within Criminology can be studied most effectively by using case studies. The cases represented in this research are selected from the practice of the researcher. In this research real case studies from real court cases as they occurred are used to demonstrate how the Criminologist in private practice can use the existing research of the discipline to deliver a professional service. The case studies demonstrates the Criminologists professional contribution to the following: (1) investigative work (2) explaining criminogenesis (3) assessing age, criminal capacity and suitability for diversion (4) empowering crime victims (5) debriefing crime victims and (6) assessing offenders [pre-sentence reports]. Assessing of incarcerated offenders for parole is not included in this thesis because Dr. Hesselink-Louw (2004) demonstrated

convincingly in her theses that this can and should be done by Criminologists and no repetition of that is needed here.

Except for the research of Dr. Hesselink-Louw, no South African research currently exists on the professionalising of Criminology. Therefore this study draws on applicable literature research and case studies.

1.5.2 Research Goals

The void in South African research regarding the professionalising of Criminology in South Africa motivates the researcher to explore, describe, explain and demonstrate by means of case studies the contribution of Criminologists pertaining to:

- the explaining of juvenile delinquency and criminal behavior
- veracity assessment
- assessing age, criminal capacity and suitability of diversion of children and juveniles
- crime victim empowerment
- debriefing of victims of crime
- assessing offenders.

Finally, the goal of the research is to assess the quest of Criminologists to get official statutory recognition as professionals in the helping professions.

1.5.3 Delimitation

The case studies represented in the empirical findings, are limited to the services rendered by the researcher in the municipal district of Umtata, during the period 2003 to 2005.

1.5.4 Demarcation of the study field

The research population of this study is confined to offenders and victims of crime. The offenders are from various stages of the Criminal Justice system:

- pre-trial assessment – juvenile offenders
- pre-sentence assessment of offenders – juvenile and adult offenders
- assessment of sentenced offenders.

For the purpose of this study the focus on the victims of crime pertains to the compilation of victim impact statements- direct and indirect victims of crime - and the debriefing of crime victims.

1.5.5 Sampling Technique

The study was directed by the non-probability sampling technique (Champion 2000:192-193). Available subjects and purposive sampling was implemented to determine the subjects of this research project. Due to volume constraints, only one case study for each field of expertise referred to earlier, will be utilized to demonstrate the applicability of the Criminologist's professional capabilities.

1.5.6 Measuring Instruments

Semi- structure interviews were use in the assessment of offenders. The format of the assessment was formulated by the research as indicated in the UNISA tutorial letter for Forensic Criminology (HCRFOR-8) 501/2003. During these interviews the researcher also relied on personal observations of the offender.

The Victim impact statements were constructed after in-depth interviews with the victims.

1.5.7 Data Collection

An extensive literature study regarding relevant research findings on the role of Criminologist in various scientific journals, books and the World Wide Web were explored to guide this research project. Data was also furnished from various case studies.

1.5.8 Data Interpretation

The analysis and interpretation of the data was guided by induction and deduction, logical reasoning, systematization, in-depth analysis and case-orientated analysis.

1.5.9 Hypotheses and leading questions

According to Huysamen (1993:10) a hypothesis postulates a relation between two or more variables in a population. A hypothesis can be deduced from theory, but in certain explorative research types like this one, the hypotheses can be replaced by a leading question or underlying guidelines regarding the relation between variables. Due to the explorative nature of this study the following underlying guidelines will replace the research hypothesis:

The Criminologist can play a professional role in an investigative capacity, assessing juvenile delinquents, offering assistance to victims of crime, compiling victim impact statements, debrief crime victims, compiling pre-sentence reports and post-sentence reports.

A further guiding principle is based on the underlying assumption for this study, namely that:

The Criminological field of study centers on the concept of crime that is approached in a multi-faceted way. The concept of crime can thus be studied from a single angle of incidence and these could be integrated to obtain a holistic overview of the phenomenon under scrutiny.

According to Cloete and Stevens (1990:26-27) Criminology studies the following components:

- crime: policing, courts and correctional services
- specific crimes: causation, explanation, prediction and control
- criminal: prevention, rehabilitation, punishment and restitution
- victim: theoretical explanation models, victimization and counselling.

This multi-faceted model can therefore be approached simultaneously from different angles and different levels of abstraction (Sonnekus 1992:58). For example:

- crime in general and particular crimes are on the same level of abstraction since both contain the same concepts and serve as point of departure of the criminological field of study
- the criminal, the victim and the administrators of justice study man as the central subject
- causation and prevention are on a level of their own since they represent social and psychological perspectives of the phenomenon of crime
- theoretical explanation models function on a level of their own, and mainly explain crime from specific theoretical perspectives (structural, process etcetera.)

These different levels of abstraction equips the student of Criminology with specific skills. In accordance with the requirements of the NQF and SAQA, these specialization areas within the broader field of Criminology should enable the graduating student to have mastered specific skills, enabling the student to follow a professional vocations as a professional Criminologist.

1.6 LAY-OUT OF THE RESEARCH REPORT

Chapter one focuses on an introduction and orientation regarding the professionalising of Criminology in South Africa. Concepts central to this study are defined and the rationale of this study discussed. The methodology that supports this research is explained in the last section of the chapter.

Chapter two describes and explains the origin of criminal behaviour. Theory as well as research findings are used as guidelines for this chapter.

Chapter three explores three different techniques for detecting deception. The researcher acquired additional training in the voice stress analysis technique and performed hundreds of veracity assessments over a period of two years. One case study illustrates the point this chapter makes regarding the professionalisation of Criminology.

Chapter four uses the law as guideline in exploring and describing the role of the professional Criminologist in juvenile delinquent cases. This role is threefold as the professional Criminologist can assist in assessing the age, culpability and diversion options of the juvenile in conflict with the law. Two case studies are utilized. The one illustrates the role the Criminologist can play in determining the age of a child and the other one his role in diversion.

Chapter five and chapter six describe the role of the Criminologist in offering assistance to victims of crime. Chapter five focuses on empowerment through debriefing. This aids the victim's recovery and ultimately assists the victim to evolve into a survivor. Chapter six contains two real life victim impact statements to illustrate the contribution of the Criminologist as expert in compiling these statements.

Chapter seven illustrates the use of pre-sentence reports with a real life example. The role of the Criminologist in other forms of report writing is supported by literature studies.

In Chapter eight the quest of Criminologists to attain official statutory recognition as a profession, is highlighted. The researcher evaluates the current draft proposal compiled by the Criminology and Victimology society of South Africa.

The final Chapter contains a summary of the findings, the conclusions of the research and the recommendations.

Next follows Chapter two under the heading criminogenesis exploring and explaining factors that contribute and or influences criminal behaviour.

CHAPTER TWO

CRIMINOGENESIS

2.1 INTRODUCTION

Former President Nelson Mandela addressed parliament in 1994 with the following: “The basic principal from which we will proceed from now onwards is that we must rescue the children of the nation to ensure that the system of Criminal Justice must be the very last resort in the case of juvenile offenders.” In his address he asks for a change of attitudes towards juveniles in conflict with the law and actual practice. The understanding of the origin and manifestation of delinquents can facilitate this change. This understanding is of paramount importance in the prevention of delinquency. Therefore this chapter explores the factors contributing to juvenile delinquency and explanations of criminal behaviour. Because the next chapter follows with a practical example of the role of the Criminologist in assessing juvenile delinquents with specific reference to the juvenile sex offender, the foundation for doing so is laid in this chapter.

Because Asquith (1996:2) postulates correctly that the best and most appropriate means of dealing with and preventing delinquency, is to determine how delinquency is conceived, the socio-psychological developmental phases of the juvenile will now be highlighted.

2.2 THE DEVELOPMENTAL PHASES AND DELINQUENCY

The developmental phases of life are of paramount importance to the Criminologist. It lays the foundation for insight and understanding of juvenile delinquency and provides the foundation for insight and understanding of crimes committed by adults. Because juvenile delinquency lays the foundation for adult crime, the emphasis will be on juvenile delinquency in this chapter. Literature studies (Bruckner 1961:24), Sodermann and O’Connell (1952:34) and Krishnan, (1978:40-43) and Sonnekus (1990:26) registered a strong emphases on the importance of the developmental stages of the child through to

adulthood. The value of studying these phases is found in the characteristics that can be associated with juvenile delinquency (Sonnekus 1990:26).

Therefore the different developmental phases and some aspects relating to legal accountability will be highlighted next. The factors that will be highlighted during the various phases, should not be viewed as deterministic but as possible predisposing factors. These phases include the pre-natal phase, the infant period, and the toddler years (Sonnekus 1990:26). It also refers to the so called middle years and is finalised with the adolescent phase (Sonnekus 1990:28-30).

2.2.1 The Pre-natal Phase

This phase is 40 weeks long and starts with conception of the baby until it is born. Louw, Broekman and Gouws (1982:188) emphasises the importance of this pre-birth phase due to the fact that unfavourable conditions may contribute to abnormal development that can limit the child reaching his full potential. Examples of unfavourable conditions are German measles, diabetes, syphilis, malnutrition and drug use. These illnesses may result in serious birth defects that can manifest itself in the child. Due to physical and psychological limitation in this phase, the child can experience feelings of inadequacy and frustration which may, according to Cronjé, (1982:34) contribute to a delinquent career later in life.

2.2.2 The Infant Phase

This phase covers the age period of birth to two years (Sonnekus 1990:27). From a Criminologist point of view, this period is of great importance as psychopathological characteristics can develop during this phase. Sensor- and motor skills develop at a rapid pace, as well as the infant's cognitive, language, emotional and social skills. The development of emotional instability may be evident in this early phase. Depression and anxiety has already been identified below the age of one year (Despert 1970: 161). According to Cronjé, van der Walt, Retief and Naudé (1982: 36) children who show

aggressive behaviour at the age of two, will continue to exhibit this trait into their adult life. The implications of such an 'aggressive developmental flaw' can obviously be related to juvenile delinquency.

2.2.3 The Toddler Phase

This phase usually continues from the ages three to six years of age. This developmental stage is characterized by the continued cognitive, social and language development. Aggression, jealousy and heightened emotions can also be part of this stage. Kanner (1957:45) and Despert (1970:177-178) indicate that the anxiety of the previous stage can contribute to the development of neurosis and phobia. Neurotic behaviour can be a trailblazer for obsessive-compulsive disorders which may appear in the adolescent years. The criminogenic implications of such obsessive-compulsive disorders are also important for the Criminologist as it can be linked to criminal behaviour.

2.2.4 The Middle Years

The age for the Middle years start from the age of seven to eleven. Developmental changes occur less rapidly. This phase does seem to contain problem behaviour but only in the form of neurosis (Buhler 1945:142). The desire to explore and to enjoy adventure and excitement is a common characteristic of boys during this phase. Sonnekus (1990:28) ascribes this thrill seeking behaviour to an excess of energy.

According to Sonnekus (1990:28) the child in the middle years may have the potential to become involved in criminal activity as they have the ability to deal with complex cognitive and social choices. If delinquency was detected in earlier stages, the delinquent behaviour can now become a chronic behaviour pattern. Kessler identifies characteristics which juvenile delinquents exhibit (Sonnekus 1990:30):

- a heightened aggressive response in respect of personal or social problems
- an inability to identify the weak victim
- defective conscience

- inability to handle personal conflict.

According to South African Law a child between the ages of 7 and 11 years (middle years) is not criminally accountable *per se* but the law states that the accountability is now refutable (Snyman 1981:141-142). This implies that the state can try to provide proof to indicate that the child can be held accountable for his criminal actions.

2.2.5 The Adolescent Years

The adolescent phase occurs between the ages of 11 to 18 years (Louw, Gerdes & Meyer 1985:339). This period is mostly associated with deviance and its significance cannot be overlooked in the study of crime (Mqadi 1996:78). Sonnekus (1990:29) distinguishes between physical and psychological puberty. Physical puberty refers to the physical changes of the young adult and psychological changes refers to physical changes that the young adult must integrate into his personality. Many developmental problems that are of value to the Criminologist can be identified in the physical puberty stage. Two of the most common problems with physical development are a stunted development or accelerated physical development. According to Sonnekus (1990:29) retarded physical development is mostly responsible for criminal involvement.

During the psychological puberty the young adult starts to discover himself as a person and also criticizes his actions and beliefs. In the words of Erikson (Louw, Gerdes & Meyer 1985:117) he is now developing an ego-identity. This ego identity is of criminological importance due to the fact that the young adult has to identify with other young adults. It is possible that exposure to criminal activity can lead to the identification with criminal behaviour. Ausubel (1960:149) postulates that the juvenile might feel excluded from the group and try to prove himself through criminal activity. Haskell and Yablonsky (1974:63) found that delinquent behaviour peaks at age 16 or 17 years and that cultural roles that youth play at different ages influence the type of delinquent behaviour they exhibit.

Adolescence denotes a specific legal status, one that includes legal protections and rights, as well as disabilities (Mqadi 1996:79). In addition the adolescent is also governed by economic prescriptions. Adolescents are firstly dependant on their parental economic status; secondly are marginalised from the labour force; and thirdly are socialised as consumers of goods and services (Mqadi 1996:79). A research study conducted by Mqadi (1996:83) concluded that the significance of age in juvenile delinquency lies with its socio-cultural, socio-psychological and econo-legal impact on adolescents. The socio-psychological needs brought about by adolescence put teenagers in a vulnerable position towards delinquency.

It is therefore clear that when attempting to explain juvenile delinquency the above mentioned facts should be taken into consideration. These developmental stages can guide the Criminologist to an understanding and prevention of delinquency.

In the next section, the focus is on the theoretical explaining of delinquent behaviour.

2.3 THEORETICAL EXPLANATIONS OF CRIMINAL BEHAVIOUR

2.3.1 Eclectic

All responses to crime by legal and social institutions are based on some assumptions about the causes or risk factors. No single theory can adequately explain all the reasons behind deviant behaviour and delinquent youth or adult crime. Most of the major explanations of delinquency and crime offer accurate descriptions of the reasons youth and adults become involved in delinquency under different circumstances. Sonnekus (1992:63) postulates that owing to the unique situation of the juvenile, theoretical explanation models for adults cannot summarily be applied to the juvenile delinquent. According to Lawrence, (1996:36) explanations of crime and delinquency fall into one of two broad categories i.e. Rational and Positivist theories.

To attain the goals for this research, this distinction will be highlighted eclectically in more detail.

2.3.2. Rational Choice Theories

Rational theories of crime are as follows:

- Drift Theory of David Matza (Williams & McShane 1994:221)
- Routine activity theory of Cohen and Felson (Brown, Esbensen & Geis 2001:220)
- Lifestyle Theory of Hindelang, Godfredson and Garofalo (Williams & McShane 1994:223).

These theories are build on the premise that people commit crime simply because they have made a voluntary, rational decision to do so after considering both personal factors and situational factors (Bezuidenhout & Joubert 2003:102). Rational choice theories originated as the Classical School of Criminology in the eighteenth-century Europe and England with Cesare Beccaria and Jeremy Bentham. Their primary concern was to develop a legal system by which the punishment would fit the crime. Punishment was justified because of its usefulness in preventing re-offending (Brown *et al.* 2001:181-188).

Rational Choice theories assumes that crime results from a rational process in which offenders make decisions and choices, which lead to the planning of their criminal activity as to maximize the benefits and avoid the risks (Brown *et al.* 2001:177).

Theory in point would be the Routine Activity theory developed by Lawrence Cohen and Marcus Felson. They concluded that crime is closely related to the interaction of three variables associated with the routine activities of everyday life (Williams & McShane 1994:222- 223):

- the availability of suitable targets of crime
- the absence of capable guardians and
- the presence of motivated offenders.

The Routine Activity theory links delinquency and crime to social changes in large and small cities and the increasing number of large schools have increased the likelihood that crime will occur. Social change increases the opportunities for crime and emphasizes the role the victim's lifestyle and behaviour play in the crime process.

Lawrence (1996:37) reports that much juvenile crime reflects rational choices, especially when youth perceive that their punishment for juvenile crime is often much less than for comparable crimes committed by adults.

Punishment as a deterrent is a key element in rational behaviour. Punishment or the perceived threat there of has a general effect of discouragement of criminal activity on the public. When the deterrence is specific offenders are discouraged from repeating their criminal behaviour, by threatening to punish them more harshly the next time. The effectiveness of punishment as a deterrent to crime depends on three factors (Lawrence 1996:38):

- certainty
- speed and
- severity.

Offenders will only be deterred if they believe they are to be caught, convicted and punished. Punishment is more effective if it is administered soon after the violation and if it is sufficiently severe (Lawrence 1996:38).

Whereas the starting point of the Rational Choice theories is logical reasoning, the positivists have another foundation.

2.3.3 Positivist Theories

It was dramatic scientific developments in the late nineteenth century that provided fertile ground for the emergence of positive Criminology (Brown *et al.* 2001:237). The focus of positivism is on systematic observation and the accumulation of evidence and objective facts within a deductive framework (Williams & McShane 1994:32). Positivists argue that external conditions compels the person to engage in criminal behaviour. Thus the offenders behaviour is determined by something other than his free-willed choice (Brown *et al.* 2001:238). These explanations originated with the nineteenth-century Criminologist Cesare Lombroso. He was the first person to study crime scientifically and believed that criminals in prison could be identified by distinguishing physical characteristics such as irregular head shape or face, a large jaw, protruding ears and receding chin. Lombroso linked the characteristics to atavism, which is a lower stage of biological development, and believed these to be related to criminal tendencies (Brown, *et al.* 2001:241-244).

Positivists (Brown *et al.* 2001:238) argue that much criminal behaviour is not the result of rational choice but stems from a variety of individual and social factors that influences delinquent behaviour.

These theorists are critical of over-reliance on punishment to deter crime due to the belief that crime is not a rational choice but rather a result of conditions the individual has no control over. They believe that individual and social factors which cause crime must be addressed.

2.4 ONE DIMENSIONAL THEORETICAL EXPLANATIONS

2.4.1 Physical Appearance

Although the findings of Lombroso have since been discounted, his work influenced other scientists to conduct research in a scientific manner. Earnest Hooten (Brown *et al.* 2001:248) compared physical measurements of 10000 male prisoners with those of non-criminals and discovered some distinctive differences. Although there was only a statistical correlation between physical differences, such as ear shapes, eye –colour, hair distributions and crime, no clear connection could be established.

In the 1940 William Sheldon (Brown *et al.* 2001:249) a physician, developed a system for classifying human physique types which tend to correspond with personality and temperament, namely:

- endomorphy
- mesomorphy
- ectomorphy.

Mesomorphs were common amongst female and male criminals. They tend to be characterized by high activity levels, restlessness and aggressiveness. They also tend to seek adventure and danger (Lawrence 1996:39).

Possible links between genetic influences and delinquency have been explored through studies with twin and adopted children. As studies are designed better, less support for the gene-crime hypothesis is gained. Walters (1992:608) advises that genetic factors can only be viewed as contributing to certain individual differences which in turn, interact with specific sociological and environmental conditions which influence behaviour.

Individual explanations of delinquency and school crime have focused primarily on the subjects of intelligence, learning problems, psychological characteristics and biochemical factors.

2.4.2 Intelligence

The relationship between IQ and delinquency received much attention in the early part of this century. Research done by Henry Goddard (Williams & McShane 1994:35) tested the intelligence of delinquents and concluded that at least 25 percent of them, and perhaps as much as 70 percent, were of inferior intelligence, using the mental age of 12 years or under as a standard for feeble-mindedness. Goddard (Williams and McShane 1994:36) created much debate when he concluded that half of all juvenile delinquents were mentally defective.

In 1973 West and Farrington (Lawrence 1996:39) conducted a longitudinal study of 411 English boys and found that those who later became criminals had lower IQ scores than those who did not become criminals. Hirschi and Hindelang (Bezuidenhout & Joubert 2003:86) compared various findings of studies on the involvement in crime and IQ. They concluded that IQ is more important than race or social class for predicting delinquency. The IQ-delinquency relationship is likely explained in the past by the lower verbal ability of children with low verbal IQ scores, who experience frustration and failure in school. The frustrating school experience may contribute to delinquency by creating a negative attitude toward authority, by leading the failing student to seek rewards in less socially desirable settings, or by making the student more vulnerable to delinquency peer pressure when peers provide a source of self esteem.

2.4.3 Learning Disabilities

The term refers not to lower intelligence but to difficulties in the use of spoken and written language and in the ability to focus and attend to verbal tasks. According to Lawrence (1996:42) there appears to be a relationship among learning disabilities, learning problems in school and juvenile delinquency. Research conducted by Podboy and Williams Mallory (1978:33) found that 13 percent of those who enter the juvenile justice system might be below average in IQ and close to 50 percent of the juvenile delinquent population may be learning disabled. One type of learning disability is

attention deficit and hyperactivity disorder.

There are two theories for the link between learning disabilities (LD) and juvenile delinquency. Proponents of the first theory, the susceptibility rationale (Lawrence 1996:44) argue that the impulsiveness and poor learning ability are receptive to social cues. Their learning disability leads to uncontrollable antisocial behaviour and they develop negative self-images because they are then grouped with children who perceive delinquent behaviour as part of their expected roles. The second theory, the school failure rationale (Lawrence 1996:45) is based on the labelling process. The LD child is labelled as a problem, which results in a negative self-image and is reinforced by the adults and peers around him. Repeated failure and frustration leads the child to withdraw and not to participate in class-work. They may attempt to gain recognition by acting out in the classroom or in the community, many through truancy and other status offences, some through more serious and aggressive actions.

2.4.4 Psychological Explanations

Psychological learning theories include behaviourism, social learning and moral development. According to Skinner (1971:16) behaviour is conditioned by the reinforcement and punishments that it produces. Reinforcement increases the likelihood that the behaviour will be repeated and punishments decrease the probability of the behaviour being repeated.

Social Learning theory attempts to explain why some adolescents engage in delinquent behaviour while others, in similar environments, do not. According to this theory behaviour is a reflection of people observing and imitating other people (Bezuidenhout & Joubert 2003:91). The focus of this theory is on personality characteristics and individual differences in learning. Evidence suggests that some delinquent behaviour is a result of observing the actions of others; and many believe that television and movie viewing may affect aggressive and violent behaviour (Bandura 1969:118-203).

Theories of Sigmund Freud seem to be the bases on which these explanations are built, more specifically Freud's use of the term superego. Freud (Brown *et al.* 2001:269) explains the behaviour of delinquents as a result of the superego that has not developed adequately yet therefore juveniles tend to follow the impulses and drives of the Id.

Moral development theories focus on how children learn social rules and make judgements on the basis of those rules. In terms of Kohlberg's theory delinquents are at a lower level of moral development than non-delinquents (Louw, Gerdes & Meyer 1985:369). They are more likely to define right and wrong in absolute terms, they focus more on external consequences, act to avoid punishment, and show little concern for the feeling of others. Non-delinquents, in contrast have internalised societal rules and expectations which contribute to the adherence to societal norms and values.

2.4.5 Structural-Strain Theories

Social structure and strain explanations of delinquency focus on the social and cultural environment in which theorists, relying on official statistics as the primary measure of crime claim that such forces as cultural deviance, social disorganization and status frustration lead lower-class youths to become involved in delinquent behaviour. Clifford Shaw and Henry McKay of the Chicago School (Williams & McShane 1994:54) assumed that delinquency could be caused, primarily by disruption and instability in the structure and institution of society. This disruption that leads to social disorganization often produces a state of anomie or normlessness and leads the individual to be vulnerable and susceptible to delinquent behaviour.

Albert Cohen developed a theory of delinquency that specifically emphasizes the role of the school. He formulated four assumptions (Williams & McShane 1994:108-109):

- many lower-class youths do poorly in school
- school performance is related to delinquency
- school performance is a result of a conflict between the dominant middle-class value of the school system and the youths' lower-class values

- lower-class male delinquency is largely gang delinquency and a means of gaining positive self-concept and maintaining antisocial values.

In a study by Elloitt and Voss (Lawrence 1996:46) evidence was found to support Cohens' assumption that delinquency could be linked to poor school performance but the rate of delinquency was higher before dropping out and declined after leaving school. Their conclusion was that dropping out might reduce rather than cause delinquency. The results of Elliott and Voss failed to be replicated by other researchers.

Polk, Frease and Richmond, (1974:92) examined the relationship among social class, school experience and delinquency and found that school failure, but not social class is directly related to delinquency. Both white-and blue-collar adolescents who have low grade point averages show relatively high rates of delinquency.

Social structure and strain theories claim that delinquent acts are often an expression of frustration resulting from limited educational and employment opportunities, particularly for lower-income and disadvantaged youth. Delinquent acts are viewed as reactions to the frustration caused by blocked opportunity. Because school presents barriers and the source of frustration to many youth, they are easy targets for youthful aggression. Vandalism, theft, and assaults at schools are thus seen as resulting from the frustration of restricted opportunities (Lawrence 1996:46).

2.5 SOCIAL PROCESS THEORIES

Social process explanations of delinquency focus not on societal structures but on social interactions between individuals and environmental influences that may lead to delinquent behaviour. Criminal behaviour may be acquired in the same way as any other behaviour (Reid 2003:162).

2.5.1 Differential Association Theory

The theory was developed by Edwin Sutherland who believed that delinquency is learned behaviour as youths interact with each other. The theory is founded on a number of propositions (Reid 2003:163):

- criminal behaviour, like other behaviour is learned
- criminal behaviour is learned as youths are involved and communicate with others primarily through intimate groups
- the learning process includes methods of committing crimes, the motives, drives, rationalizations and attitudes to support criminal behaviour
- a youth becomes delinquent because of excess definitions favourable to violation of law over definitions unfavourable to violation of the law
- the differential association process varies in frequency, duration, priority and intensity.

2.5.2 Control Theory

The basic idea of control theories is that human beings must be held in check, or controlled, if delinquent behaviour is to be prevented. The means of control vary from internal sources, such as the self-concept to external sources, such as family and the school. An assumption of control theories is that deviance and delinquency are to be expected. According to Walter Reckless (Williams & McShane 1994:185) internal factors such as self-control and external factors such as parental supervision, discipline, and social institutions help to insulate or contain persons from crime. While there are problems in operationalising and measuring self-concept, studies have confirmed that the greater the self-esteem the less likely a youth is to become involved in delinquent behaviour.

Another Control theorist Travis Hirschi (Williams & McShane 1994:189) postulates that four elements of social bonding can prevent delinquency:

- attachment: the bond the youth has with their peers, parents and teachers. These ties help youth avoid the temptation to commit delinquent acts
- commitment: to uphold socially acceptable activities and values, such as educational and employment goals. This increases the cost and risks involved
- involvement: conventional activity keep youth occupied and reduces their opportunities to commit deviant acts
- belief : refers to respect for the law and societal norms and derives from close relations with other positive role models, especially parents.

Hirschi (1969:131-132) tested and supported his control theory by giving a self-report survey to more than 4000 junior and senior high school youth in California. He found that students who perform poorly in school reduce their interest in school and related activities and increase the likelihood of committing delinquent acts. Those with weak attachments to parents tend to show less respect for teachers and to dislike school.

According to Liska and Reed (1985:557-558) parents, and not schools, are the major institutional sources of delinquency control- for lower class more than for middle-class youth. According to Hirshi's control theory, delinquents are less dependent on peers than are non-delinquents.

2.5.3 Labelling Theory

The primary assumption of the Labelling perspective is that repeated delinquent behaviour is caused by society's reaction to minor deviant behaviour (Lawrence 1996:51). Frank Tannenbaum (Williams & McShane 1994:133) first suggested, in 1938, that the very process of identifying and segregating deviant persons as criminals increased the likelihood that the behaviour would continue.

Lemert (1951) a major proponent of the labelling theory differentiated between primary deviance referring to behaviour of the individual and secondary deviance resulting from

society's response to that behaviour, which resulted in a status, role or individual identity. Another proponent of the theory is Becker (1963) who hypothesized that those in society who make and enforce the rules create deviants by labelling persons, who in turn tend to act out the deviant behaviours consistent with their new identity.

2.5.4 Differential Oppression Theory

A more recent theory developed by Robert Regoli and John Hewitt in 1994 (Regoli & Hewitt 1994:211) suggests that juvenile delinquency often results as children react to oppressive relationships with parents and other authority figures. Oppressive adult child relationships are said to take place when adults' perceptions of children establish them as inferior, subordinate and troublemakers and when disciplinary efforts to establish order in the home and in school become extreme to the point of oppression. Children who are raised in an atmosphere of lovelessness and emotional and verbal abuse often retaliate through rebellion against the people and the social institutions that they blame for causing their oppression.

School vandalism often occurs because a student was angry with a teacher or principal and some youth retaliate against oppressive parents by assaulting them. Juvenile delinquency can therefore be prevented when adults respect children and treat them as valued persons.

Save for the above, some individual contributing factors have also been highlighted by the research of Criminologists and other social scientists as risk factors in the causation and understanding of juvenile delinquency and crime by adults.

2.6 INDIVIDUAL CONTRIBUTING FACTORS

2.6.1 The Role of the Family

The family or parent is usually the first institution an individual interacts with. The family is responsible for socialising young people, teaching them rules of behaviour and taking the appropriate steps to keep them within these rules (Bezuidenhout & Joubert 2003:58). There is little question that family problems contribute to school problems, absenteeism, failure as well as to deviant and delinquent behaviour. Youths who feel rejected by their parents often turn to peers for support. The emergence of juvenile gangs is a manifestation of youth's need for acceptance and a sense of belonging (Bezuidenhout & Joubert 2003:58-61).

Differential explanations have been offered to explain the association between family problems and delinquency. The structure of the family- two parents or single parent homes- is believed by some to explain delinquency. Others argue that functional factors or quality of life in families such as family relationships; parent-child interactions and the quality of supervision and discipline explain whether children become delinquent.

Aspects that will be focused on in the following section are:

- broken homes
- family size
- family relationships
- child abuse and neglect.

2.6.2 The Broken Home

The broken home refers to a family structure that has been disrupted by separation, divorce or death of a parent. There is evidence that a broken home increases the probability that some types of youth will participate in delinquency (Lawrence 1996:61).

In a longitudinal study of men who had been involved in delinquency prevention programmes McCord and Laub (1982:123) found the following:

- more than half of the fathers of boys reared in broken homes were known to be alcoholics or criminals
- close to half of the sons of alcoholics or criminal men had been convicted for serious crimes
- the lack of supervision in these broken homes and children raised only by one parent, accounted for much of the criminal behaviour
- absence of the father was not found to be important in explaining the boys' criminal behaviour
- the quality of home life rather than the number of parents is most important in explaining youths' criminal behaviour.

Marital status has little effect on girls but the quality of the parent-child- interaction and parental control is more strongly related to misbehaviour among girls. Boys in single-parent homes are more likely to be delinquent. Delinquent boys from intact families were strongly related to marital interaction, and physical punishment was strongly related to delinquency (Crutchfield 1982:316).

The exact connection between broken homes and delinquency remains unclear, however, and involves more than simply the dichotomous description of broken versus intact homes.

2.6.3 Family Size

A number of children in a family are also related to delinquency. Loeber and Stouthamer-Loeber (1986:100-101) suggest three reasons for this apparent relationship:

- it is hard for a parent to discipline and supervise a larger number of children
- parents often delegate the authority to supervise younger children to their older siblings and

- larger families are often associated with other social problems such as illegitimacy, poverty and crowding in the home.

Broken homes, larger families and working mothers seem to be associated with delinquency. Research fails to show much support for this belief. However, it directs the researcher to examine the quality of family relationships.

2.6.4 Family Relationships

Loeber and Stouthamer-Loeber (1985:55) found that twelve of fifteen studies measuring parent child relations reported a significant relation between rejection and delinquency and aggression. This research supports Hirschi's belief that the quality of family life and the degree to parental attachment are more important predictors of delinquency than family structure. Children who feel loved, who respect their parents and identify with them are less likely to get into trouble (Lawrence 1996:63).

2.6.5 Discipline and Supervision

Inconsistent parental discipline and limited supervision are strong predictors of delinquent behaviour. A Lack of parental supervision correlates with criminal activity and misbehaviour (Bezuidenhout & Joubert 2003:60). Poor parental supervision and family availability will affect adolescents' behaviour as youths may choose to associate with peers who may display problematic behaviour.

All of the above also impacts on the role of the school in the causation of delinquency.

2.6.6 The Role of the School

The school provides the first location of socialization away from the family unit, where choices of behaviour and comparisons must be made without dependence on parents. The school provides a much more complex socialization setting for the following

reasons:

- more varied forces that interact and pull against each other for a youth's loyalty and attention
- schools are the focal point of interaction for the peer culture, which has goals different from or at least not in total accord with, the goals set by school.

According to Bezuidenhout and Joubert (2003:77) research findings support the conclusion that no single cause or risk factor accounts for juvenile offending. Although there are different theories to explain delinquent behaviour, these theories do not necessarily compete with each other as each theory speaks to varied levels of explanation. Due to this fact certain aspects of various theories can be organized into a coherent whole (Williams & McShane 1994:258).

These are also underscored by multi-factor explanations.

2.7 MULTI-FACTOR THEORETICAL EXPLANATION

According to Bezuidenhout and Joubert (2003:104) one of the major developments of recent decades involves attempts to integrate two or more theories to produce better explanations for the misconduct of youths. Early theories were usually limited to the examination of relationships between two variables (Brown, Esbensen & Geis 2001:413). Integration of theories includes the total spectrum of traditional theoretical developments which underline their value as the foundation of the explanation of criminal behaviour creating a multifactor approach.

Theories can be integrated in various ways. It is possible to put theories in a sequential, straight-line fashion, or an end-to-end model (Williams & McShane 1994:258). The most common approach is to combine the theories in a sequential model so that one theoretical perspective is temporally more proximate to the actual behaviour than the other perspectives in the model.

This approach is referred to as the end-to-end model and suggests that one of the theories

better explain early or prior causes of delinquency, while another is more proximate to actual precipitating factors in criminal activity (Brown *et al.* 2001:411).

Concepts can also be borrowed from several theories without regard to either the assumption or the general trust of the theories. These concepts are then put together in a new fashion (Williams & McShane 1994:259). Examples are social disorganisation, attachment to the family and differential association. Social disorganisation contribute to members not being attached to their families or the greater society and members beginning to associate with separate and conflicting groups, which can contribute to the development of a sub-culture.

The most common attempts at integration have involved social control and social learning theories. The integration of social control theories with strain theories are not very common and even less common have been attempts to integrate all three of the major perspectives (Brown *et al.* 2001:411)

The following discussion will indicate the use of integrating two or more theories to explain crime.

2.7.1 Integrated Classical Theories

Integrated classical theories merge classical and positivist approaches to crime prevention based on the individual's rationality and freedom of choice as expressed within classical theory. This ability to choose is merged with positive theory's use of empiricism to understand how choices are influenced by situational factors. For example crime prevention can be accomplished by focusing on these situational aspects which influence the commission of particular types of crime. Offenders do not randomly select their targets, instead they rationally choose both the crime that they will commit and the target of that crime (Hunter & Dantzker 2002:135). Before applying this integrated theory to youth misconduct, the question of whether youth misconduct is rational behaviour needs to be addressed. According to Bartollas (2000:91) the antisocial behaviour of young people often appears purposeful and rational. Juvenile offenders clearly engage in crime

because such behaviour has a low cost, since age is regarded as a mitigating factor. Offenders may also decide that the risk of continued criminal behaviour are not justified by the reward. Involvement in crime is therefore based on the cost-benefit analysis of Rational theory.

There are other juvenile offenders who break the law within their environment, for example experiencing an intense emotional reaction to a situation or deep involvement in a peer group seems to lead them to bypass any rational process (Bezuidenhout & Joubert 2003:106).

2.7.2 Integrated Biological Theories

According to the human nature of Wilson & Herrnstein (In Hunter & Dantzker 2002:131) decision making is a product of the interactions of biological psychological and sociological influences. This theory contains a strong element of rationality since crime is regarded as a function of rational choice. Both biological and psychological traits influence the choice to commit crime, with rewards such as material gain, sexual gratification, revenge and peer approval (Bezuidenhout & Joubert 2003:107).

2.7.3 Integrated Psychological Theories

These theories explain how social factors can influence self-perceptions. Examples of an integrated psychological theory is David Farrington's delinquency development theory. Farrington found that there is a continuity in criminal behaviour that reaches from early childhood into the adult years. Social and economic conditions are seen as influencing children and their parents and the actions of parents and older siblings in response to these conditions serve as models of the children. Children raised in poverty who have role models who are criminal are likely to adopt criminogenic tendencies (Hunter & Dantzker 2002:139).

Thus the development of a deviant personality is the likely product of poor child rearing, economic deprivation and resentment of social responses to peer deviance (Bezuidenhout & Joubert 2003:107). These conditions can further contribute to the cycle of criminality as the children of these deviant personality adults are subjected to the same bonding and social learning influences that shaped their parents' personalities (Hunter & Dantzker 2002:139).

Elliot, Huizinga and Ageton developed an integrated strain theory in 1985. This theory explains how the bonds within the family and school are weakened by strain from various social factors. Strain occurs which then causes deviant groups and activities to appear as acceptable substitutes (Hunter & Dantzker 2002:144).

2.7.4 Integrated Learning Theories

The social learning theory forms the foundation of this theory. The interactional theory of Thornberry incorporates the social learning, social bonding, cognitive and social structure theories (Siegel & Senna 2000:194). He suggests that the onset of crime can be traced to a deterioration of the social bond during adolescence, which may be marked by a weakened attachment to parents, reduced commitment to school and diminished belief in conventional values (Siegel & Senna 2000:194).

2.7.5 Integrated Control Theories

The social control perspectives is used as the foundation. The Social Development theory of Weis, Hawkins, Catalano and their associates is based on the social control theory, complemented by Social Learning and Structural Modelling. According to their theory a number of personal, psychological and community-level risk factors make some children susceptible to the development of antisocial behaviour over the course of their lives (Siegel & Senna 2000:191). Interaction with antisocial peers and adults promotes criminal behaviour (Hunter & Dantzker 2002:142).

2.7.6 Integrated Conflict Theories

Colvin and Pauly's Marxist theory developed in 1983 is an example of an integrated conflict theory (Bezuidenhout & Joubert, 2003:110). The theorists explore domestic relations wherein the coercive workplace environment of capitalism contributes to coercive family environments. Negative relations in the workplace are said to create strain and alienation in the domestic setting. This is carried over to the family and to compensate for their powerlessness at work in capitalistic society.

Table 6: Summary of the Integrated theories of Criminal behaviour.

Integrated theory	Combination	Element(s) involved in criminal behaviour
Integrated Classical Theories	Classical + Positivist theories	Freedom of choice + situational factors
Integrated biological theories	Physiological factors + influences by psychological and/or sociological factors	Rational choice + human nature
Integrated Psychological theories	Social factors + Self-concept	Deviant personality + cycle of criminality
Integrated strain theories	Social learning + control	Bonds weakened by strain of various social factors
Integrated learning theories	Social learning + bonding, cognitive theory and social structure theories	Events and relationships
Integrated control theories	Social control theory + social learning and structural modelling	Interaction with antisocial peers
Integrated conflict theories	Marxist theory	Capitalistic society

When trying to explain youth misconduct in South Africa, the following theoretical requirements need to be adhered to. It should (Bezuidenhout & Joubert 2003:113):

- provide an integrated explanation incorporating psychological and social variables
- accommodate specific crime risk factors applicable to the South African situation to enhance its predictive potential
- take into account the behavioural development of young people and the varying influences they are subjected to
- present policy implications as constructive crime control measures.

2.8 CONCLUSION

This chapter has indicated that the bases for the causes and explanations for juvenile delinquency – from a Criminological point of view – are the socio-psychological phases of development.

The consulted research clearly indicate that the toddler phase (three to six years) may lay the foundation for problem behavior because during this phase obsessive-compulsive behavior patterns can be integrated in the personality. It also indicated that it is actually only during the middle years (seven to eleven years of age) that juveniles develop the capacity to commit crimes, because only then do they have the potential to execute complex cognitive and social behavioral choices. The biggest potential for prolonged juvenile delinquency comes to the fore during adolescence (12 to 18 years of age) when peer pressure to conform to alternative sub-cultural norms are very strong.

Furthermore, the consulted literature has clearly indicated the complexities involved in the explanation of this phenomenon from a Criminological point of view. The explanations vary between in deterministic rational choice to deterministic positivistic, from body and personality types to lack of IQ and learning disabilities. The explanations also include structural sociological theories (strain) and process sociological theories (interaction), internal and external controlling mechanisms, labeling, and oppressive parental authority that occur in families and are reflected in schools also.

In chapter three the history of detecting deception is discussed with specific reference to the role of the Criminologist in this growing field.

CHAPTER THREE

3 VERACITY ASSESSMENT

3.1 INTRODUCTION

Establishing the truth of a statement made by a witness or alleged offender is not only a time consuming process but also entails manpower in the form of police officers and or private investigators. The Criminologists knowledge of crime and the criminal makes them ideally suited to make use of a unique scientific elimination technique to access the truth by means of voice stress analysis.

In the following chapter a historical overview will indicate the developments that took place from ancient times to the modern approach in assessing veracity. Polygraph testing followed by a discussion on voice stress analysis will indicate the necessity of the use of a Criminologist for the purpose of determining the truth. A case study will indicate the practical relevance of determining the truth as well as the function of the Voice Stress Analysis.

A brief historical overview will be discussed in an attempt to highlight and evaluate the use of technology in detecting untruths.

3.2 HISTORICAL OVERVIEW

The physiological reaction as means of determining guilt has a history that dates back to ancient times. Ancient Hindus devised a method for lie detection based upon a physiological principal. Guilt and innocence were determined with a bowl of rice which the subject was required to chew and spit out on demand. A guilty individual would suffer from a dry mouth and he would be unable to spit out the rice because it should stick to his tongue and mouth – a test predicted on the fact that fear and tenseness usually inhibit the creation of saliva (Gordon & Fleischer 2002:2). A variation of this test was used in Western Europe during the Inquisition. The Roman Catholic Church tested

clergy for supposed transgression by forcing the person to eat bread and cheese to see whether he could swallow it. The saliva test was also used by the Arab Bedouins in Middle Eastern and North African deserts. A hot iron had to be licked by the conflicting witnesses; the one whose tongue was burned was thought to be lying. In English medieval courts truth was tested by ordeals of fire and water, on the basis that a truthful person would be protected by God (Gordon & Fleischer 2002:2). Suspects were forced to walk across, or carry, red-hot iron bars. If the suspect was burned it was proof that he was lying and so could be promptly hanged. The trial- by-water-method entailed that the accused was put into a sack and thrown in a pond. If the accused sank, he was innocent, but he might well drown. Such practices were ended in 1215 by the edict of the Lantern Council.

By the 1600's the idea arose that the truth of any statement could be arrived at by the means of detailed questioning and logical reasoning (Gordon & Fleischer 2002:2)

3.2.1 Trickery

Not all means of lie-detecting used the physiological reaction to fear and tenseness as the underlying principal. Trickery also proved to be useful in seeking the truth. One ancient legend mentions a method employing the tail of a donkey. The donkey was placed in a darkened tent and its tail was then coated with lampblack. All possible suspects were then asked, one after the other, to enter the tent and pull the donkey's tail. They were told that the donkey would only bray if a liar pulled his tail. The innocent men, having nothing to fear, indeed pulled the donkey's tail and came out of the tent with their hand blackened with lampblack. The liar however, afraid of the fact that the donkey would bray, did not pull the tail and re-appeared from the tent with clean hands (Van Damme 2001:1).

3.2.2 Wisdom

People of wisdom have also been consulted when truth was elusive. King Solomon was once called upon to determine, by his wisdom, which one of two women was speaking the truth in claiming a small child as her own. He ordered the child to be cut in two. The ruler reasoned that the truthful mother would willingly relinquish her claim in order to save a life and that the liar would not challenge his edict (Block 1977:12).

3.2.3 Science

The earliest record of the utilization of the medical science for the purposes of lie-detecting can be found in the 1730 essay by Daniel Defoe called *An Effectual Scheme for the Immediate Preventing of Street Robberies and Suppressing all other Disorders in the Night*. Defoe postulated that the pulse rate of a suspect is a practical, effective and more human method of determining deception (Van Damme 2001:1).

Next a discussion on the development of the polygraph will follow, as well as a review of the latest technology in lie detecting. The discussion will emphasize the important role played by Criminologist in designing and implementing the polygraph.

3.3 THE POLYGRAPH AS INSTRUMENT OF VERACITY ASSESSMENT

3.3.1 The Beginning

In the end of the 19th century (1893) the well known “father of Criminology” Cesare Lombroso started experimenting with pulse and blood pressure changes in order to establish verification of truth during investigation of criminal suspects. Lombroso and his student Mosso were the first to use a physical device to demonstrate the changes in pulse and blood volume and to scientifically document the findings. Mosso used a “plethysmograph”, developed by Francis Franke, for his research on emotion and fear

during questioning their influence on cardio activity and respiration. Mosso documented the following (Gordon & Fleischer 2002:4):

- under certain stimuli, breathing patterns will change
- variations in blood pressure and the circulation of blood during fear are greater than those resulting from noise and sound.

In the second edition of Lombroso's *L'Homme Criminel* (1895) he described his experimental use of the plethysmograph during interrogation of actual criminal suspects. Van Damme (2001:3) is of the opinion that this was the start of truth verification as an academic discipline.

In 1951 William Marston an American scientist built and used a systolic blood pressure deception test. He claimed to have discovered a specific lie response. The American Secretary of War used Dr. Marston's helped in counterintelligence investigations. Marston fell into disrepute when he made extravagant claims accusing Bruno Hauptman, of kidnapping the Lindbergh baby (Saxe, Dougherty & Cross 1985:355).

In 1932 John Larson of the Berkley California Police Department built a portable polygraphic device which continuously recorded cardiovascular responses as well as respiration. The underlying assumption of the test was that the device measured emotional responses, assumed to reflect lying. Four basic measures were registered during questioning:

- blood pressure
- heart rate
- breathing rate and
- galvanic skin response.

To attain these measurements, different instruments are linked to the body of the suspect as indicated in Figure I below (Polygraph 2005: 1).

Figure 1: Instruments used during polygraph testing.



The polygraph was used extensively in criminal investigations with much success (Saxe *et al.* 1985:356). It was reported in 1936 that Father Walters G Summers of the Department of Psychology at Fordham University conducted more than 6000 laboratory experiments and about 50 actual cases involving guilt or innocence of criminal suspects. He obtained an accuracy rate of between 98 and 100 percent. In 1930 Leonard Keeler, a Criminologist at Northwestern University of Law School developed the Keeler polygraph, which is similar to the current instrument. Keeler together with Fred Inbau and John Reid established schools to train people in administering and interpreting polygraph techniques. According to Saxe *et al.* (1985:365) almost all schools are now an outgrowth of these original schools. The United States of America emerged as experts in the field of polygraph testing and proceeded to train in China, Korea, Israel and Canada.

3.3.2 The Underlying Principles of the Polygraph

A polygraph measures physical changes brought on by the perception of threat in which the body prepares either for a fight or flight reaction (Lieberman 2005:4) The word has its origin in the Greek language. The term literally means multiple writing (Van Damme 2001:4). The name was derived from the fact that the polygraph looks at various selected physiological activities.

As most living things, human beings are endowed with a sophisticated survival mechanism which depends on the maintenance of homeostasis. This inner balance of fluids and chemicals is obtained by the working of the hypothalamus, a gland situated in the brain. All human activities such as sleep, breathing, digestion, pulse, blood volume, and respiration are regulated by the autonomic nervous system which the hypothalamus controls (Van Damme 2001:4).

In a situation where a person is threatened either physically or psychologically, one of the sensors - hearing, seeing, feeling or even instinct - will send an alarm signal to the autonomic nervous system which will activate its sympathetic department and take action. For example, during a polygraph test, the ear of the person receives a potentially threatening message in the form of a question (stimulus): Did you take the money? The question is experienced as threatening and this stimulus is transferred via sensory neurons to the frontal lobe of the brain, which is responsible for the thought process, through the hypothalamus to the sympathetic system. The sympathetic nervous system causes flight or fight responses such as increased heart rate, saliva flow and perspiration. Other effects that will take place are as follows (Van Damme 2001:5):

- the mouth becomes dry, due to the salivary glands producing much thicker saliva
- the heart pumps faster and harder, thereby increasing blood volume and pulse
- stimulation of the respiratory muscles leads to breathing changes
- the sweat glands are stimulated and release perspiration
- the iris of the eye dilates, permitting more light into the eye

- the anal and urinary sphincters contract and the bladder relaxes and
- involuntary muscles contract.

The parasympathetic nervous system is responsible for conserving and restoring energy in the body, following a sympathetic response to stress (Louw 1986:58). During the polygraph examination the polygraph measures and records breathing patterns, heartbeat, pulse rate and strength, changes in blood pressure and electrodermal responses, in order to obtain physiological evidence of hypothalamic activity, including the sympathetic and the parasympathetic subdivisions of the autonomic nervous system (Matte 1996:10).

The polygraph collects physiological data from at least three systems of the human body (Van Damme 2001:7):

- the respiratory system

Convuluted rubber tubes are placed over the chest and the abdomen to record thoracic breathing and abdominal breathing.

- electrodermal (galvanic) skin response

Two small metal plates are connected to the middle section of the index finger and ring finger of the left hand. These plates record the filling up of sweat glands. The sweat glands are empty during homeostatic conditions.

- the cardiac system

The polygraph will record blood volume and pulse rate. A medical bloodpressure cuff containing a rubber bladder is wrapped around the upper arm, against the brachial artery. The cuff is connected to a hand pump with a pressure indicating gauge (cardiophymograph).

Certain polygraph systems also offer an option where the examiner can measure minor movements induced by the contraction of involuntary muscles. These five or six responses will be recorded on charts from which the examiner will do his calculation.

3.2.3 The Polygraph Examination

The typical polygraph examination consist of three parts (Van Damme 2001:7):

- the pre-test interview
- the actual examination or chart collection phase
- the test data analysis phase.

3.2.3.1 The Pre-Test Phase

The purpose of the pre-test interview is to form the basis of the actual polygraph examination. The examiner will explain to the subject what is going to happen during the actual testing phase. Certain questions regarding the health of the test subject need to be asked. The questions which are going to be used in the test need to be discussed and explained. The examiner will then connect the different components to the subject asking him to sit absolutely still during the test period, which normally takes four to five minutes.

3.2.3.2 Types of questions

Three different types of question can be used with a polygraph. The first ones are the irrelevant questions. The irrelevant questions are questions which the examiner will know the subject is answering truthfully. For example: Is today Friday? Is your name Samantha? Are you sitting on a chair?

The purpose of the irrelevant question is to indicate the parameters for the physiological reaction of the subject to answers which are truthful. It also allows the parasympathetic system to bring back homeostasis.

The next type is the control questions. These are questions on which all subjects will be potentially untruthful. Reaction to the control question will be compared to reaction of

the irrelevant questions in order to give a result. An example is: Before this year, have you ever stolen anything in your life?

Finally, there is the relevant questions. These are the questions which only the subjects know the truth about and is the reason for undergoing the test. The examiner is to expect “No” answers to these questions. The relevant questions are split up in four categories which form the four legs of crime:

- primary involvement: Did you steal the car?
- secondary involvement: Did you help anybody to steal the car?
- guilty knowledge: Do you know who stole the car?
- evidence connecting: Did you receive any reward for the theft of the car?

The types of questions that can and should be asked during a polygraph test, is listed in Table 1 below.

Table 1: Questions used during polygraph examination

MGOT order of questions	ZCT order of questions	Ranking questions
1. Irrelevant 2. Irrelevant 3. Relevant: Secondary Involvement 4. Irrelevant 5. Relevant: Primary Involvement 6. Control 7. Irrelevant 8. Relevant: Guilty knowledge 9. Relevant: Evidence connecting 10. Control	1. Irrelevant 2. Irrelevant 3. Irrelevant 4. Control 5. Irrelevant 6. Control 7. Relevant 8. Irrelevant 9. Control 10. Relevant	1. Is Mr X involved in the crime? 2. Is Mr Y involved in the crime? 3. Is Mr Z involved in the crime?

3.2.3.3 Types of Tests

There are various types of test used for the purpose of polygraph testing. The type is determined by the order in which the questions are asked (see table 1). According to Van Damme (2001:11) the modified general question technique (MGQT), the Zone comparison Technique (ZCT) and Ranking are the three most used tests. Ranking is useful in investigations where one subject has been directly linked to the crime and to find out who the accomplices can be (Van Damme 2001:12).

3.2.4 Validity of the Polygraph

The use of the polygraph in South Africa has a much debated history which focuses on the discipline to which the polygraphic lie detection examination belongs. In 1986 Mr. Higgins was on trial for administering a polygraph test without being registered as a psychiatrist. Dr. Gordon, the former executive director of the National Institute of Personnel research and vice chairman of the professional Board of Psychology of the South African medical and dental Council, was of the opinion that polygraph testing was the domain of the Psychologist, in that it measures responses and that the act of assessing segments of behaviour is a psychological act. During the court case the validity of the polygraph was also questioned. South African legal history was made when the Johannesburg Regional court acquitted Mr. Higgins. In a report written by Professor T. Holdstock of the University of Witwatersrand's school of Psychology postulated that the polygraph was developed in virtual isolation from the original parent discipline of Psychophysiology (Lieberum 1986). Holdstock acknowledges the debate regarding the validity of the polygraph test, but indicates in his report that the skill required to administer the test is of paramount importance. He emphasized the lack in research that could compare the difference in findings of polygraphers and law enforcement professions. He further stresses that the expertise of the examiner can also be an important factor in determining the outcome of polygraphic examinations.

More recently the use of the polygraph came to public attention with the murder of Marika de Klerk (Anon 2002). The alleged accused was subjected to polygraphic testing twice in which he failed both times. The accuracy was once again questioned when the Sunday Tribune News reported on a high profile American report that slated the polygraph industry. Ben Lombart of the South African Polygraphing Association confirmed that there were examiners who did not have the proper certification but there was sufficient proof that the equipment in the correct hands was accurate and effective. He also indicated the need to standardize the qualifications and skills of interns.

Although polygraph testing is not accepted as *prima facie* evidence in court, it is used extensively in South Africa by parastatals, big business, banks and state security agencies. This is also a very useful tool in the hands of a skilled Criminologist.

3.3 OTHER VERACITY ASSESSING DEVICES

3.3.1 Written Statements

The Scientific content analysis (SCAN) technique is a scientific analysis of written statements and is used worldwide. It is a technique developed by Avinoam Sapir, and Israeli psychologist and Criminologist. After training as a polygraphist, Sapir conducted extensive research into verbal communication, looking into linguistic behaviour used by people in communication (Van Damme 2001:16). There are two components to SCAN: obtaining a pure statement, and analyzing the quality of the structure and content of the statement (Gordon & Fleisher 2002:42).

The first step in this process is to obtain an uncontaminated segment of events. Sapir considers an interrogation successful if the subject speaks about 95 percent of the time, and the investigators only about 5 percent. Interrogators are not to introduce any topic into the conversation unless the subject first mentions it (Gordon & Fleisher 2002:43).

3.3.1.1 Analyzing structure

Speech patterns help distinguish between statements originating in memory or imagination. Frequent pronoun use shows deception, such as an alleged kidnap victim using “we” in describing where the kidnapper and victim went and what they did. The “we” is inappropriate in this context, because the relationship should be “he took me” or “he forced me.” Gaps in the narrative also betray deception. Minor contradictions often conceal major omissions. A Change in tense indicates a strong emotional response. For example, relating the story of a rape can begin with the subject telling it in the past tense. When the actual act of rape commences, some subjects change to the present tense because recalling the memory is painful (Lesce 1990:3).

3.3.1.2 Analysing Content

Sapir (Gordon & Fleisher 2002:42) stresses the need to examine the circumstances of the alleged incident, as well as the incident itself. If the subject tries to be deceptive, he not only has to conceal or change the crucial details he is safeguarding, but he has to alter detail and facts of the case to fit his version. Indications of deception will be inconsistencies between allegations or gaps in the narrative. Deceptive people work from imagination and the truthful person works from memory. Truthful narrative contain unimportant details that coexist with critical facts where as the deceptive statement will be a “stripped down” version. Another difference between truthful and deceptive statements is that most deceptive stories do not mention emotion, and those that do , locate the emotions logically, near the most threatening point. Often the most severe emotional reaction is an aftershock, which takes place after the most threatening moment has passed. Another feature of most deceptive stories is that they are governed by logic, while true stories are not necessarily logical.

3.3.1.3 Advantages and Disadvantages of SCAN

The following can be listed as advantages of the SCAN technique. It:

- does not require high-tech equipment, only a pencil and paper
- does not require the subjects presence during analysis, once the statement has been obtained on paper, the analysis can proceed when convenient
- is a reasonable reliable method of probing for leads
- is cross-cultural in the sense that an interrogator can conduct an analysis in any language he understands, and
- the test subject can respond in his own time and it is a
- useful tool in hands of trained Criminologists.

A major disadvantage of this technique is that it has no scientific grounding to date. A technique which has a scientific underlying is the Forensic Assessment Interview Technique developed by Nathan Gordon (2004:3) and will subsequently be discussed.

3.3.2 Forensic Assessment Interview Technique (FAINT)

The Faint technique encompasses the evaluation of non-verbal behaviour, projective analysis of unwitting verbal cues and statement analysis in conjunction with a three-point scale scoring system (Gordon 2004:4).

The fundamental hypothesis of FAINT is that truthful and deceptive criminal suspects differ noticeably in their non-verbal, verbal and written communication, when asked to respond to a structured format of interview questions (Gordon 2004:3).

The FAINT classifies non-verbal behaviour into the following three categories (Gordon 2004:18): emblems, illustrators and adaptors:

- emblems

They are defined as non-verbal behaviours that speak for themselves and has a basis in culture. Gordon (2004:18) gives the following example:

“In South Africa someone showing both thumbs up is accurately communicating his approval of someone or something, no words are necessary.”

- illustrators

Illustrators consist of non-verbal behaviours that help the listener understand the speaker’s verbal communications. If a person is telling the truth verbally, it seems consistent that their non-verbal behaviour would assist the listener in understanding the verbal message. For example, one verbally states, “I didn’t do it” while touching his chest illustrating “look at me, I have nothing to hide.”

- adaptors

They are non-verbal gesticulations which do not help the listener understand the speaker’s verbal message. Someone covering their mouth as they speak is a prime example of an adaptor. FAINT teaches that as the use of adaptors increases, chances of deception also increases.

According to Gordon (2004:19) non-verbal behaviour physically undermines attempts of verbal deception because non-verbal behaviour consists of a body of natural, subconscious and instinctual responses to certain stimuli. This assumption can be illustrated by the following example (Gordon 2004:21):

“when a brain perceives a threat, it prepares the body to survive by enervation of the sympathetic nervous system. Sympathetic arousal also known as the “fight or flight” reaction, causes many physiological changes in the body due to neural and chemical stimulation.”

FAINT uses the following four areas to determine truthfulness as these areas provide illustrators and adaptors (see table 2) which can be used during observation (Gordon 2004:21):

- posture and demeanor
- head and face
- arms and hands
- feet and legs.

Gordon (2004:22) reports that research conducted in 1969 supported the belief that body alignment indicated feelings of liking, while misalignment indicated disliking or disagreement. FAINTE maintains truthful people will usually use body position as an illustration and have an open, settled, upright position. Faint maintains (Gordon 2004:23) deceptive people will often show closed and defensive positions, such as crossed arms or legs. Many times they assume a position of defeat, with their shoulders forward and their chin on their chest. FAINTE interviews also found support for the writings of Darwin (1872) who considered the shoulder shrug as an indication of a man attempting to prevent something from being done or indicating that he cannot do something. Gordon (2004:23) postulates that during a FAINTE interview, a shoulder shrug before answering assumes the non-verbal response cancels his verbal response since non-verbally he says that he does not know the answer. The illustrators and adaptors of truthfulness are tabulated in table 2.

According to Gordon (2004:24) if an interviewee's posture appears to be frozen, it may be indicative of fear, a state, which prepares the person to fight or run. This may be due to excessive muscle tension caused by the threat. This is in contrast to what is expected of a truthful interviewee who should be somewhat friendly, co-operative and settled in their seated body and foot positions (Gordon 2004:24).

Table 2: Illustrators and adaptors of truthfulness

Posture and demeanor	<ul style="list-style-type: none"> • Forward leaning indicates attentiveness • Backward leaning or turning away indicates refusal or negativity • Chest expansion indicates pride, conceit or arrogance • Exaggerated forward leaning with head and shoulders down indicates dejection or depression
The head and face	<ul style="list-style-type: none"> • Tilting head to the side illustrates interest and belief • Affirmative head nods more likely in truthful suspect • Low head nodding correlated with deceptive communication • Facial expression: length, frequently, no eyebrow movement, inappropriate • Eye contact: length, blinking, squinting • dry mouth • Hand to face gestures • Nose • Eyes • Lips pursing
The arms and hands	<ul style="list-style-type: none"> • Defensive barriers • Palms down • Elbows • Rubbing neck
The legs and feet	<ul style="list-style-type: none"> • Position of feet • Outstretched legs • Grooming and courting gestures

Between the head and facial gestures, the facial expressions are the most difficult part of the body to analyse. According to Gordon (2004:26) the face expresses six basic emotions:

- surprise
- happiness
- fear
- anger
- disgust and
- sadness.

While masking may be attempted to disguise any or all of the five innate, basic emotions that the human face can display the interviewer can usually identify the underlying emotion. This is possible because masking frequently occurs out of context, is often held too long, or repeated too often. Masks therefore are usually distorted; exaggerated or incomplete (Gordon & Fleisher 2002:67). Sudden breaks in eye contact or exaggerated eye contact are highly predicative of deception when occurring consistently and specifically to the relevant questions (Gordon 2004:27). For example, sudden closing of the eyes can indicate an attempt to mentally escape the situation. Pupil dilation is a good indicator of emotional change as the eyes dilate whenever an individual is aroused or excited (Gordon 2004:28). The dry mouth syndrome, which may be the result of increased swallowing and licking of the lips, is a classic sign of lying (Gordon 2004:30). Other facial features which are indicative of lying is the protection of the mouth, touching of the nose, rubbing of the eyes, and lip pursing (Gordon 2004:33-34).

Arms and hands provide the best source of non-verbal behaviour since they are used frequently as illustrators and adaptors (Gordon 2004:34). Very few people pay attention to what their hands are doing and therefore do not attempt to mask them. Increased illustrators are signs of truthfulness and adaptors are signs of deception (Gordon & Fleischer 2002:70). Elbows close to the body may indicate severe tension. If someone sits with his elbows away from the body, it shows he is relaxed, less defensive and more likely to be truthful (Gordon & Fleischer 2002:71). For example palms that are turned down signifies the speaker is confident and asserting control (Gordon 2004:35). The rubbing of the neck is viewed by Gordon (2004:36) as a stressful gesture that may reflect deception.

Feet and legs are the slowest moving of the observable areas of non-verbal behaviour and are the least self-monitored areas (Gordon 2004:36). Unsettled foot and leg positions are signs of stress and indicative of displacement activity (Gordon 2004:36). Sudden crossing, uncrossing or criss-crossing of the arms or legs, are good signs of stress (Gordon & Fleischer 2002:78). Gordon and Fleischer (2002:83) also identified paralinguistic behaviour such as sudden delays in answers, higher-pitched answers and an increase in the rate of speech at the point of the lie.

Open gestures that suggest truthfulness can be summarized as follows (Gordon & Fleischer 2002:84): A suspect maintains normal eye contact with the interviewer, sits with his arms open throughout the interview, palms up and legs apart, is probably truthful.

Non-verbal behaviour may occur in clusters which consists of a host of non-verbal symptoms occurring at the same time, for example (Gordon & Fleischer 2002:84): The person touches his nose, crosses his legs, and shifts his chair.

If the same questioning is repeated later and the same cluster occurs, then the chances of deception are very high.

For the discussion on the FAINT application to lying, the researcher concludes that in order to detect the truthfulness of a person's verbal communication, an analysis of the person and his spoken word is of paramount importance. Human error in applying this technique cannot be excluded.

A veracity assessment technique that combines technology and non-verbal communication is the computer voice stress analyser Truster Pro.

3.3.3 Voice Stress Analysis

The US Army desired to obtain an alternative instrument to the polygraph with no need for direct connection to the subject's body. In 1964 Charles McQuiston designed a "remote lie detector" which was based on the concept that emotional stress induces measurable changes into the human voice. Voice stress Analysers (VSA) rely on measuring stress-induced changes to the muscle micro-tremor. These changes can be found in a tremor associated with contraction of muscles, effecting minute oscillations at a frequency of about ten to twelve hertz. The amplitude of the oscillations is a fifteenth or less of that of the total contraction.

According to Liberman (2005:1) the term is misleading as it is not only the voice that is used to determine veracity as the voice analysis expert uses the subject's voice which reflects the brain activity through speech flow. Voice analysis deals with detecting the emotional changes occurring with the intention to deceive a logical action of lying.

When a person speaks, air is pushed from the lungs upward to the vocal cords. As a result the vocal cords vibrate. The air keeps flowing upward to the mouth and goes over the tongue, teeth and lips thereby creating the speech flow. When a person lies, the amount of blood in the vocal cords drops as a result of stress, resulting in a lack of tremor. VSA searches for the disappearance of the normal tremor in a voice due to stress. This lack of tremor indicates a lie.

Various adaptations and modernizations lead to various VSA being available for lie detecting are as follows:

- diogenes Voice Stress Analysis System developed in 1996
- Truster developed in 1997
- Truster Pro system developed towards the end of 1998.

For the purposes of this study the researcher will discuss the Truster Pro system

3.3.3.1 Veracity assessment by Truster pro

The feelings detected in the voice analysis reveal a psychological pattern that can indicate various situations in the subject's mind, including, stress, confusion, hesitation, and deception. Because there are many types of lies, there is no set voice pattern or frequency for deceptive speech. However, there is a uniform appearance for truthful situations, where the mainstream thought process is fluent and uninterrupted. This pattern of truth is unique to each person, at any given time, and might change if the circumstances change. For example, if someone were sitting in front of you and waiting for the beginning of the test, he may not feel he is being tested and so is more relaxed.

Once the actual testing begins, the speaker's brain will register a whole new set of values. He might be more alert, more excited, more confused and so on (Anon 2000:11).

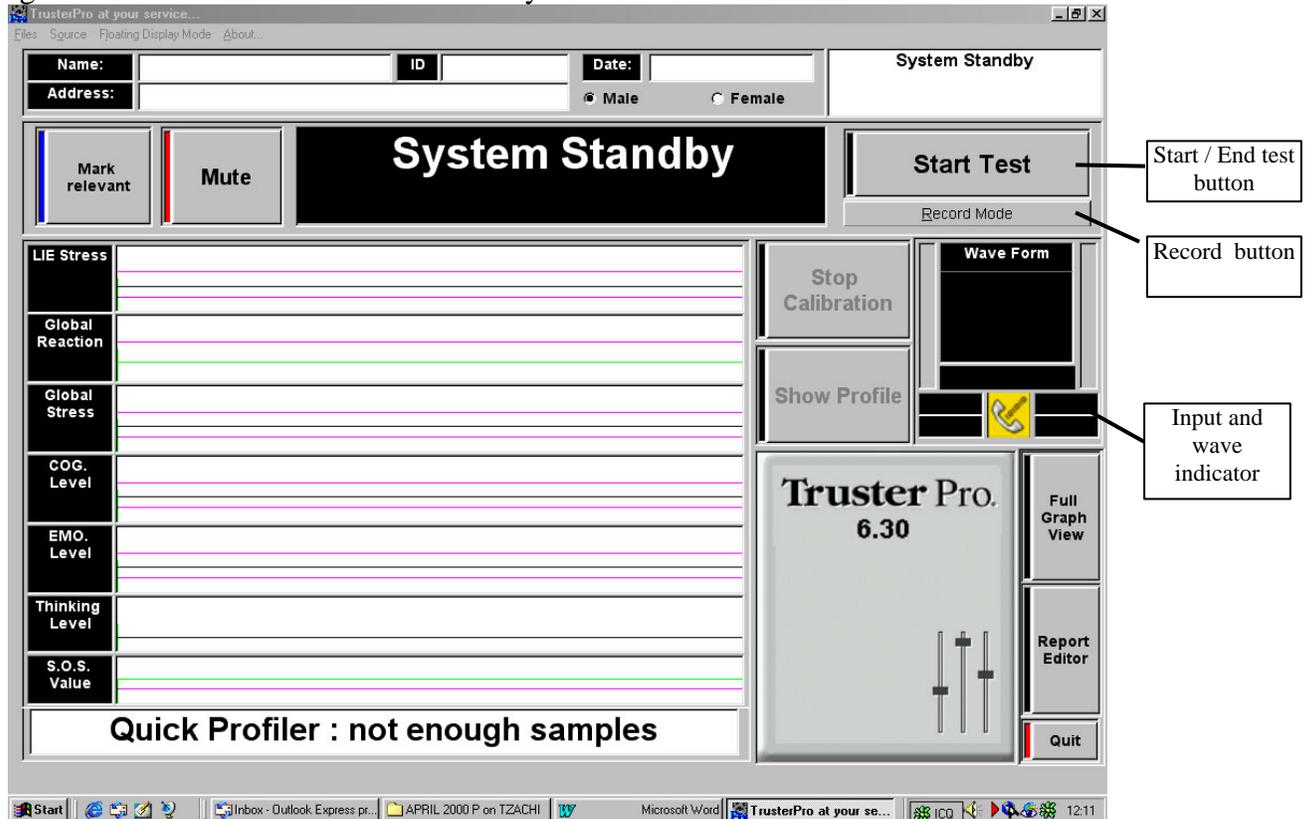
Truster Pro system analyzes any deviation from that truthful pattern and will present it graphically and textually. Therefore, it is the deviations of this pattern, more than the regular and fluent brain pattern that indicates the person is responding to his stress, confusion, excitement, etcetera.

The Truster Pro system is based on the concept of voice stress analysis but has an added type of technology. It is based on the following concepts (Anon 2000:10):

- the vocal cord's vibrations generate a leading frequency
- the frequency range differs according to gender and is very sensitive to stress
- the human brain plays a very big part in the generation of speech flow, and monitors the whole process of thought and speech very closely
- any event that occurs in the brain is automatically reflected in the voice
- a psychological pattern revealed by the voice analysis can indicate various situations in the subject's mind, for example stress, confusion, hesitation and deception. Because there are many types of lies, there is no set voice pattern of frequency for deceptive speech.
- there is a uniform appearance for truthful situations where the mainstream thought process is fluent and uninterrupted.

Truster Pro system analyses any deviation from that truthful pattern and will present it graphically and textually. It is the deviation of this pattern more than the regular and fluent brain pattern that indicated the person is responding to his stress and confusion. The result of the use of this kind of technology is that the Truster Pro system can be used during a telephone conversation as well.

Figure 2: Main menu of the Truster Pro system.



The Truster Pro System is a combination of three different vocal lie detectors namely (Anon 2000a:11):

- the online mode: during the telephone call or interrogation the examiner can focus on suspected section of the conversation and ask additional questions
- the interrogation mode : this is equivalent to the traditional polygraph system, providing computerized summaries and reports using polygraph techniques of interrogation
- the offline mode: this can be used to analyse pre-recorded material to produce an in-depth psychological structured analysis.

Table 3: System messages of the Truster Pro system.

Message	Explanation
Truth	Indicates that no kind of stress was detected.
Excitement High Excitement and Extreme emotion	Indicates a high level of emotional stress. When you get this system message, you should consider if the question or discussion warranted this emotional reaction. If not, you should consider pursuing the discussion further, perhaps raising peripheral issues to try to discover the cause of the emotional stress.
Subject is not sure	Indicates some cognitive stress, most of the time due to the subject lacking information. If you feel that the subject genuinely could be unsure or unaware of some facts, then you should continue with the discussion. Otherwise, talk to the subject some more about this issue to see if you can clarify it further.
Voice manipulation/ Avoiding	Indicates the subject is intentionally trying to manipulate or force the way he does sound. Usually, it indicates that the subject is either emphasizing some details or trying to sound convincing, but it may also indicate high cognitive stress, and an attempt at avoiding a direct answer.
High Stress	The subject is probably being truthful, unless high stress is not expected in the answer. If a subject responds with high stress when you don't expect it, this could indicate that you touched a soft point in your subject and he or she is feeling stressed that you might continue to probe further. In this case, you should definitely continue to question the subject further to try to reveal the cause of stress. When this message appears on a stress-free related issue, it can also indicate deception.

The system does not only indicate deception or truth but can also provide information regarding the emotional state of the person being interviewed. An output of the subject that is not sure - can indicate that the subject is not clear about his understanding of the question or the facts surrounding the issue at hand. If the test subject changes his voice in an attempt to over ride the system, the programme will indicate that the subject is trying to manipulate or change his voice, which could indicate that he is avoiding the question. An output of high stress- can indicate probable deception if it is incorporated in an answer which should have indicated no emotional response.

3.3.3.2 Validity of the Truster Pro System

Prof. Guy van Damme, former Associate Professor University of Durban Westville, conducted research on the Truster Pro on request of the designer Trustech Israel. The primary goal was the testing of the efficiency of the Truster Pro system as a truth verification instrument. Van Damme (2001:15) found that the Truster Pro system is a user friendly, versatile and feasible truth verification instrument with an accuracy rate of 94 to 98 percent.

3.3.3.3 Advantages of the VSA

The VSA can also be used as a remote truth verification tool. This technique allows for conversations to be recorded and then analysed or analysed during a telephone conversation. No direct connection to the subject's body or any testing equipment is needed. This makes the process less invasive than the polygraph.

3.3.3.4 VSA versus Polygraph

Table 4 illustrates the use of the polygraph and the VSA and the difference between the responses of each technique to the question:

“Did you plant the bomb?”

Response: “No”

The differences in responses of polygraph and VSA can be illustrated as follows (Lieberman 2005):

Table 4: Differences in response of polygraph and VSA

Subjects thoughts	Polygraph reading	Voice analysis
I'm lying	High reaction	False
Will It catch me	High reaction	Excitement
Is this where I need to lie	High reaction	Uncertainty
I wonder what it will say	High reaction	High anticipation
I wish this was over with	No reaction	No reaction

According to Lieberman (2005:2) our bodies react to threat, excitement, conflict or even pleasure in the same way – preparing for flight or fight. Measuring these reactions with a polygraph makes it a perfect tool for some serious applications, however its greatest disadvantage can be found in real life use as it cannot clarify the situation beyond a yes/no response to a specific question (see table 5). Polygraphs can only function with an already pre-prepared questionnaire and therefore is not as flexible as the VSA. The emotional readings enable a skilled operator to direct their questions at the core of the problem thereby obtaining a solution rather than just indicating a “problem”.

Table 5: Differences between the Polygraph and VSA.

Polygraph	Measures various selected physiological activities	Only allows yes or no responses	Pre-prepared Questionnaire	Invasive procedure
VSA	Measures voice and brain activity	Analyses a narrative conversation.	Direct questions formulated according to response	Non invasive, can be conducted with or without knowledge of the subject

3.4 VSA Case study 1

The case study indicates the value of the VSA in determining the veracity of an employee's denial of guilt. The particular employee was under suspicion of theft. The test results indicate that the veracity of the test subject was high and that no signs of deception were detected.

The VSA proved to be particularly helpful in determining if the test subject understands the questions. In situations where the test subject might not be fluent in the language of the assessor, a translator can be used. Any confusion on the part of the test subject can be picked up by the system.

TEST TO BE INSERTED IN FINAL DOCUMENT

Test to be inserted in final document

Test to be inserted in final document

3.5 CONCLUSION

This chapter explored the various instruments available to conduct veracity assessment. The scope of the field seems to be increasing as the use of these methods are determined by need, for example: Previously the need to determine the accuracy of a person's statement was only to determine criminal involvement. Currently the VSA and polygraph is also used in the following areas:

- pre-employment: the objective is to determine the accuracy of the information supplied by the applicant
- insurance claims: the flexibility if the VSA makes it possible to conduct interviews via telephone
- stock shrinkage: the VSA and polygraph can be used for investigating stock shrinkage in a business.

The VSA proved to be of particular value as it could be conducted without the knowledge of the subject. The threat that it posed to employees also contributed to considerable reduction in stock loss.

Although the accuracy of the methods used for assessing veracity seems to consist of a debate focusing on a 70 to 98 percent accuracy rate. The widespread use of these methods as discussed indicate that the user found the accuracy rate acceptable. Users of the polygraph in South Africa include Pick n Pay, Kentucky Fried Chicken, De Beers, First National Bank and ABSA to mention a few.

The researcher is of the opinion that the accuracy of the method used not only pertains to the instrument, but also the quality of training of the person conducting the test. Polygraph and VSA examiners have a general guideline which states that the applicant should have a B-degree or equivalent qualification which makes a BA degree with Criminology as major a suitable qualification. The field of Criminology adds expertise to the assessment of veracity due to the focus of the study field on the criminal, victim and the crime.

From these findings it can also be concluded that professional Criminologists can also be trained to apply FAINT to their field of expertise in a practical way. Thus they will have access to polygraph testing, VSA testing and FAINT testing in the assessment of guilt of suspects.

The next chapter's focus is on determining age, criminal capacity and suitability for diversion.

CHAPTER 4

ASSESSING AGE, CRIMINAL CAPACITY AND DIVERSION SUITABILITY

4.1 INTRODUCTION

While links between crime levels and age have been shown around the world, South Africa faces a more serious challenge given the high proportion of young people in the population. Almost 45 percent of the country's population is younger than 19 years (Bezuidenhout & Joubert, 2003:118). There are wide differences internationally in relation to when criminal capacity is deemed to commence. Within Europe, for example the lowest is Ireland (seven years) while Sweden it is 15 years. In the USA, different states have adopted different ages, with the lowest reportedly being 10 years.

In Africa a recent legislative reform has indicated a trend towards raising the age of criminal capacity. In the 1996 Uganda Children's Statute, the age of criminal capacity has been fixed at 12 years. It had previously been seven years. In Ghana the proposal for a Children's Code recommend that the minimum age of criminal capacity will be 14 years. South Africa has one of the lowest threshold ages of criminal capacity in the world. The South African Law Reform Commission (1997:10) suggests that the age should be raised from seven years to 12 years and advocates the use of expert testimony on an accused child's development.

Traditionally within the criminal justice system a probation officer, who is a qualified professional and who provides probation services to the court in which the child may appear, is appointed to process the assessment. However many geographical areas may not have the services of a trained and qualified probation officer available to them and it may be necessary to consider alternative means of providing the service to the justice system.

It is exactly at these points in the adjudication of juvenile delinquents where the influence of the Criminologist can be executed in juvenile offence cases. When they participate – on invitation of the court – in the preparation of pre-sentencing reports, in assisting the court with determining the age and the criminal capacity of juveniles and to advise the court regarding issues of diversion. The focus of this chapter is to highlight the contributions the Criminologist can make to these issues.

4.2 ESTABLISHING AGE

According to the South African Law Reform Commission (1997:11) it is not uncommon for South African children to be unaware of their age and dates of birth. In some cases even the parents of such children are unable to give particulars in this regards.

The age of the accused must be established and a finding in this regard must be made on the court's record. The reasons for this are two-fold:

- different types of punishment are often related to specific ages
- age is a factor that determines the length of the term of detention that one must undergo in certain instances.

Regarding the establishing of age, Section 337 of the Criminal procedures Act, 1977 (Act 51 of 1977) reads as follows:

“estimating age of person”- If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available at the proceedings, the presiding judge or judicial officer may estimate the age of such person by his appearance or from any information which may be available, and the age so estimated shall be deemed to be the correct age of such a person, unless;

- (a) It is subsequently proved that the said estimate was incorrect; and
- (b) the accused at such proceedings could not lawfully have been convicted of the offence with which he was charged if the correct age had been proven.

Age would be relevant from a Criminological point of view due to the fact that certain expectations are linked to age as well as age appropriate behaviour (Gerdes 1990:11). Mqadi (1996:78) suggests that age is an important determinant of crime and there are factors such as lifestyle, economic situation and peer group influences, which are directly associated with age.

Section 29 of the Correctional Services Act, no 8 of 1959 as amended states as follows:

(1) Notwithstanding anything to the contrary in any law contained-

- (a) but subject to subsection (2) an unconvicted person under the age of 14 years;
- (b) but subject to subsection (2) and (5) an unconvicted person who is 14 years or older but under the age of 18 years, shall not be detained in a prison or a police cell or lock-up.

(2) A person referred to in paragraph (a) or (b) subsection (1) may be detained in a police cell or lock-up after his or her arrest until he or she is brought before a court within a period not exceeding 24 hours in respect of a person referred to in paragraph (a) of that subsection and not exceeding 48 hours in respect of a person referred to in paragraph

(b) of that subsection, if-

- (c) such detention is necessary and in the interests of justice; and
- (d) the person concerned cannot be placed in the care of his or her parent or guardian, or any other suitable person or any institution or place of safety as defined in section 1 of the Child Care Act, 1983 (Act 74 of 1983), for the period in question.

[Sub-s (2) amended by s. 1(a) of Act 14 of 1996] reads as follows in this connection:

(3) where a person is detained in a police cell or lock-up as contemplated in subsection (2) the member of the South African Police Service or the peace officer responsible for ordering such detention shall-

- (e) provide the court before which the person first appears with a written report setting out the reasons for the detention and an explanation as to why it was necessary to detain the person concerned in a police cell or

lock-up and to keep him or her there until his or her first appearance before the court; or

- (f) if the person is released before he or she appears in a court, provided the magistrate of the magisterial district in which the detention took place with a written report setting out the reasons for the detention and an explanation as to why it was necessary to detain the person concerned in a police cell or lock-up.

Evidence by a person of his own age is considered hearsay, therefore the following can be used as general rules to determine a juveniles' age:

- a birth certificate
- evidence of the parents
- evidence of family or other persons knowing of the birth of the accused
- expert evidence (medical evidence regarding the physical development and even X-rays).

4.3 ESTABLISHING CRIMINAL CAPACITY

The provision of Section 77 (1) of the Criminal Procedures Act pertains to the capability of the accused person to understand proceedings so as to make a proper defence. The accused person must be capable of “appreciating the wrongfulness” of their act and to “act in accordance” with such appreciation. According to the South African Law Reform Commission (1997:41) this presumption was designed to protect children, but practitioners have noted that it is all too easily rebutted, and that it does not in fact present an impediment to the prosecution and conviction of young people. For instance, mothers of children are asked to indicate whether their children understand the difference between right and wrong. An answer in the affirmative is often considered sufficient grounds to rebut the presumption of *doli incapax*. The courts have noted that caution should be exercised where accused are illiterate, unsophisticated, and moreover are children “with limited grasp of the proceedings.”

The following case study will illustrate the use of these requirements. Due to the fact that the child referred to the researcher is underage, his identity will be protected by referring to him as Mr. P. The report was requested by the State. The researcher applied skills obtained during completion of a certificate course in assessment of the traumatised child through the Commonwealth Open University (UK). According to Snyman (2003:159) there are two psychological factors that are of importance when criminal capacity is disputed. They are the capacity to distinguish between right and wrong and to act in accordance with the understanding of these two concepts. The child was presented with four pictures each illustrating a lie, a truth, right and wrong. The child was requested to indicate each of these concepts in the pictures presented to him. The case study is presented below in the very same format as it was prepared for the State Prosecutor. The purpose was to establish the criminal capacity of the juvenile as this would indicate whether the prosecutor would proceed with the matter.

4.3.1 Case study 2: Assessment of Mr. P

Date: 8/09/04
Place: Child Protection Unit Mthatha
Charges: Rape

The purpose of the assessment of Mr. P was to establish criminal capacity with specific reference to his ability to distinguish between right and wrong (As per instruction of Advocate Landsberg). The interview was conducted at the offices of the CPU at Metropolitan place in Mthatha. His mother accompanied Mr. P.

4.3.1.1 Background information

Due to the language barrier an interpreter was used. Mr. P was neatly dressed and appeared to be reserved at first. Initial attempts to communicate with him were not successful. It was explained to Mr. P that he could be comfortable and that our role does not co-inside with that of the Police. The mother decided to leave the room in an attempt

to make Mr. P more comfortable. His confidence was regained by the interpreter asking him various questions about where he lives, how old he is etc.

4.3.1.2 The Assessment

The assessment was conducted by using 4 drawings to establish Mr. P's concept of:

- right vs. wrong
- wrong vs. right
- truth vs. a lie and
- a lie vs. truth

I was trained in the assessment technique during a training course relating to the assessment of traumatised children offered by the Commonwealth Open University.

This type of assessment can only be conducted by taking the following into account:

- developmental stage
- cognitive development and
- moral development.

4.3.1.3 Developmental stage

At the time of the assessment Mr. P was 10 years old, thus entering middle childhood. He appeared to be under the average height of 1,37 as well as the average weight of 31,75 kg (Clarke-Steward & Friedman 1987:414).

4.3.1.4 Cognitive development

Louw, Gerdes and Meyer (1985:283) are of the opinion that this is a critical period with regard to the child's cognitive, social and personality development. Kohlberg postulates that the sexual identity is related to cognitive development. A child in this stage also has the ability to realise that communication can change other people's behaviour. This enables the child to learn to initiate certain behaviour and to avoid other behaviour.

Thought processes are more concrete and operational (logical thinking). The child also moves away from being egocentric to a stage where he can view a problem or an issue from both sides, and to relate it to similarities in different situations.

4.3.1.5 Moral development

In the middle childhood, children's ideas about right and wrong are also concrete. Piaget implies that the child's experience of rules is that they are cast in stone and handed down by authority. Internal morality is only reached at the end of middle childhood (Gerdes, Louw & Meyer 1985:326). At the age of 10 years Kohlberg identified that children think moral action is making fair deals and trades. Kohlberg called this pre-conventional moral reasoning as the child's concept of morals is determined by personal interest, not social conventions (Clarke-Steward & Friedman 1987:439).

4.3.1.6 Findings

In each of the four drawings Mr. P identified the correct answer, indicating that he has the ability to distinguish between what is right, what is wrong, what is a lie and what is a truth.

4.3.1.7 Conclusion

Although the purpose of this assessment was to determine Mr. P's concept of right versus wrong, a thorough pre-sentence criminological assessment needs to be conducted should he be found guilty. Such an assessment should include the family circumstances, the community and factors relating to the criminal act for which the child has been brought into the criminal justice system.

This is the end of the assessment to establish this child's criminal capacity.

The prosecutor in this case recommended that the State proceeds with prosecution in this matter.

Based on the determining of *doli incapax*, the Criminologist can also advise the court whether or not juvenile delinquents can benefit from any of the different diversion programmes that are available to the court.

4.4 ASSESSING SUITABILITY FOR DIVERSION

The South African Law Commission (1997:5) makes the following recommendations based on the Constitution of South Africa and international instruments on juvenile justice:

2.5...that the overall approach should aim to promote the well being of the child and to deal with the child in an individualised way. A key aspect should be diversion of cases in defined circumstances away from the criminal justice system as early as possible either to the welfare system, or to suitable diversion programmes run by competent staff.

2.6 ...in deciding on the outcome of any matter involving a young offender, the presiding officer should be guided by the principal of proportionality between the best interest of the child, the least possible restriction of the child's liberty and the right of the community to live safely.

According to the Muttingh (2001:B6-1-B6-19)the following selection criteria are not hard-and fast rules and serve as a guide to the prosecutor. The accused should:

- (a) have a fixed address
- (b) acknowledge liability for the offence
- (c) be prepared to participate in the diversion programme and
- (d) in the case of juvenile offenders-
 - (i) be between the ages of 12-18 years and
 - (ii) have a parent or guardian who is prepared to take responsibility for his or her attendance and to be present at court.

4.4.1 The Aims and Purposes of Diversion

The following embodies the primary aims of diversion (Muttingh, 2001:B6-1)):

- to encourage the child to be accountable for the harm caused by his or her acts
- to promote an individualised response to the harm caused, which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused
- to promote the re-integration of the child into the family and the community;
- to provide an opportunity for reparation
- to provide an opportunity to the person or persons or community affected by the harm caused
- to express their views regarding the impact of such crime
- to identify underlying problems motivating offending behaviour
- to prevent less serious offenders from receiving a criminal record and being labelled as criminals as this may become a self-fulfilling prophecy
- to provide educational and rehabilitative programmes to the benefit of all parties concerned
- to lessen the case load of the formal justice system and
- to prevent the stigmatisation of a child which may occur through exposure to the rigours of the Criminal Justice System.

These aims and purposes are the foundation for the guidelines for the implementation of diversion.

4.4.2 Guidelines for Diversion

The guidelines for diversion are as follows:

- in making a decision, whether to divert a case or not, consideration must be given to what will be in the best interest of the child
- no child should be unfairly discriminated against on the basis of race, gender, ethnic or social origin, sexual orientation, disability, religion, conscience, belief, culture language, birth or socio-economic status i.e. all children must have equal access to diversion
- corporal punishment and public humiliation may not be elements of diversion
- a child under the age of 13 may not be required or permitted to perform community service or any other work as a diversion or as a condition of diversion.

Diagram 1: The usual route that a diverted case can follow

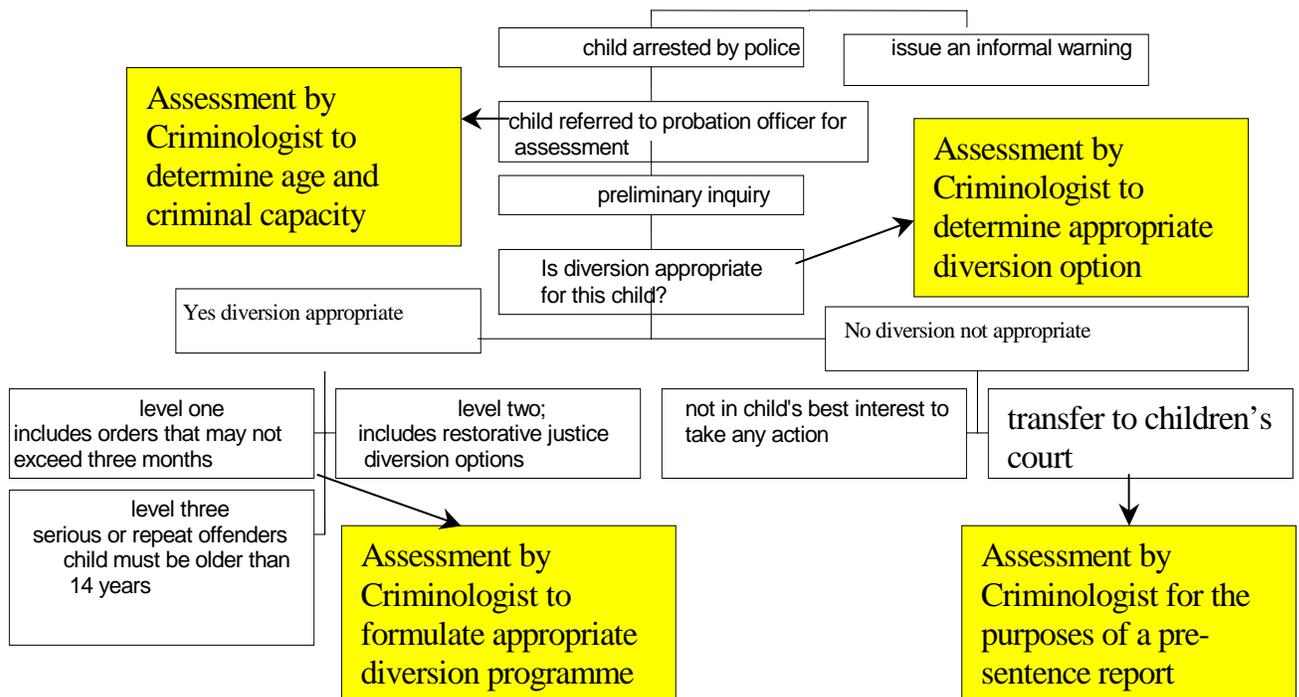


Diagram 1 indicates that the decision to divert a juvenile is not taken lightly and has to adhere to strict procedure. The services of the Criminologist in this process takes the form of a supporting role as part of a multi-disciplinary team. Assessment as to divert or not can be performed by a Criminologist by firstly establishing the age appropriate understanding of the juvenile concerning his alleged criminal behaviour.

The assessment can include the evaluation of the juvenile's criminal capacity. Once a decision has been made to divert the Criminologist can assess the juvenile again to determine a suitable diversion programme or to design an appropriate diversion programme. At present the cases referred for diversion, are forwarded to NICRO or any other service provider. Should the participants not comply with the conditions of the diversion, i.e. attendance of the programme and compliance with its requirements, this will be reported to the prosecutor who will then proceed with the prosecution as usual.

In most of the larger metropolitan areas, diversion runs as smoothly as indicated in diagram 1. This is however, not to say that diversion does not occur in the smaller towns or rural areas, but rather that the process is often severely hampered by infra-structural and systemic shortcomings.

Criminologically speaking, diversion makes much sense. It ensures at the least that the juvenile does not enter adult life with the burden of a criminal record. However, the effectiveness of this procedure also needs discussion.

4.4.3 The Effectiveness of Diversion

In 1998 NICRO (Muntingh 1999: 4) undertook a follow-up study of diversion programme participants who were referred to the organisation at least 12 months prior to the study. A total of 428 children from areas where NICRO provides services were interviewed. The study collected information on the following:

- the child's biography
- reason for attending programme
- expectations of programme

- retention of programme content
- best and worst impression of the programme
- what was learned from the programme.

The typical diversion programme participant is male, aged 15-17 years, a first offender charged with a property crime, resides with his parents and is in his second to third year of secondary schooling.

The compliance rates are very high at 75 percent. The majority of participants were pre-trial referrals, meaning that there has not been any conviction and there will thus not be a criminal record against the child.

Feedback from programme participants regarding programme content was strongly positive. Most respondents were able to remember a fair amount of detail of the programme content, which is indicative of impact. Avoiding re-arrest and conviction was identified as the single most important reason for complying with the conditions of the diversion. The majority of participants said that they experienced a positive personal change. However, 67 percent of participants re-offended in the first 12 months after participating. The average time lapse from completing the programme to re-offend was 7.2 months. At more than two-thirds re-offending rate within less than one year, this is cause for concern.

Next, some formal diversion programmes and their basic content will be briefly analysed.

4.4.4 Formal Diversion Programmes

- Youth Empowerment Scheme (YES)

This is an eight-part life skills programme spread over eight weeks, one afternoon per week. The programme normally involves 15 to 25 participants. The parents or guardians participate in the first and last sessions. A number of issues are addressed such as conflict resolution, crime and the law, parent-child relationship and responsible decision-making. The programme can be used as a pre-trial diversion or as part of a postponed or

deferred sentence (Badenhorst & Conradie 2004:119).

- Pre-trial Community Service (PTCS)

In lieu of prosecution, the offender has to perform a number of hours of community service at a non-profit organisation. The number of hours is determined by NICRO in consultation with the public prosecutor. NICRO also monitors the performance of the client and reports to the prosecutor. On average, these clients have to perform between 20 and 120 hours of community service (Badenhorst & Conradie 2004:119).

- Victim Offender Mediation (VOM)

This programme creates the opportunity for the victim and offender to meet and work out a mutually acceptable agreement with the assistance of a mediator with the aim of restoring the balance. Once an agreement is reached this is reported to the prosecutor and the contact is often monitored by NICRO (Badenhorst & Conradie 2004:119).

- Family Group Conference (FGC)

FGC's are in certain regards very similar to VOM except that they involve the families of the victim and the offender in the mediation process. The aim is also to work out an agreement with the assistance of a mediator or facilitator. Preventing recidivism is an important component FGC and all FGC's have to put in place plans that will prevent further offending. The offender, his family, the victim and his family discuss the offence, why it was committed and what can be done to restore the situation (Badenhorst & Conradie 2004:119).

- The Journey

The journey programme is aimed at high-risk child offenders. The programme can last between 3-12 months, depending on the needs of the client group. The programme is usually structured around a group of 10-15 participants. The participants are usually school drop-outs with one or more previous convictions. The programme involves life-skills training, adventure education and vocational-skills training (Badenhorst & Conradie 2004:119).

Informal diversion programmes are also available.

4.4.5 Informal Diversion Programmes

The Child Justice Bill (Child Law Manual for Prosecutors 2004:B6-1) proposes a number of informal diversion options and these may also be used when and where applicable.

These are not legislated but can be used in creative ways. These are:

- an oral or written apology to the victim or victims
- a warning by the prosecutor
- symbolic restitution in respect of a specific object to the victim, specified person or persons of the alleged offence and
- restitution of a specified object to a specified victim or victims of the offence.

According to the SALRC, when developing a new diversion service, the following guidelines must be followed (Muttingh 2001:B6-7):

- promote the dignity and well-being of the child and the development of his or her sense of self-worth and ability to contribute to society
- not be exploitative, harmful or hazardous to a child's physical or mental health
- be appropriate to the age and maturity of the child
- no interference with a child's schooling
- where possible and appropriate, impart useful skills
- where possible and appropriate, include a restorative justice component that aims to heal relationships, including the relationship with the victim
- where possible and appropriate, include an element that seeks to ensure that the child understands the impact of his/her behaviour on others, including the impact on the victims of the offence. This element may also include compensation or restitution, and
- where possible and appropriate be presented in a location reasonably accessible to the child concerned.

When diversion is not possible or the court did not consider it, the pre-sentence report becomes of paramount importance in the adjudication of juveniles.

Based on the aforementioned aspects of diversion, case study 3 is a practical real example of a report prepared by the researcher that was presented in the High Court of Mthatha. The juvenile's identity is protected by referring to the accused as Mr. X and the victim as Ms. A. This report was delivered in the High court of Umtata during 2004. Judge Miller accepted the report as it was presented to the court.

4.5. Case study 3. Criminological evaluation of Mr. X

4.5.1 Introduction

Mr. X (hereafter referred to as X) was referred to me by the State for a Criminological evaluation report. Criminological reports are compiled to assist the Court by presenting a picture of who the offender is as a human being. The more complete the picture of the person before the Court, the better the Court is able to come to a just conclusion regarding individualized punishment. The purpose of the individualization process is to determine a suitable sentence for the specific individual and entails the necessary steps to furnish the Court with a comprehensive picture of:

- the social personal history of the offender
- mental and physical anomalies and other relevant matters
- future criminal potential.

The evaluation of the offender in this case was based on interviews with X and his mother. This information enables the Criminologist to obtain intellectual and emotional insight into behaviour of X. In this report verbatim passages will also be used to reflect X way of thinking, his background and his personality.

4.5.2 Observation during interview

The interview took place at Encgobo Police Station on 16 August 2004. X and his mother were present. Due to the language barrier it was difficult to establish rapport with X, however, it stood to Inspector Nogemane's credit that he acted as interpreter during the interview.

X appeared to be reserved and nervous. He made no eye contact and his hands were shaking throughout the interview. Contradictions were picked up with regard to X attending school or not. In the interview with him and his mother they indicated that he was attending school. The probation officer identified him as a school drop out and his Aunt Nophelo stated that he was not at present attending school because he is staying with faith healers. There also seemed to be contradictions pertaining to his use of alcohol.

4.5.3 Biographical information

Date of Birth	28 July 1987
Current AdDr.ess	Ngqokoto Locality
Education	Std V
State of Health	Suffers from epilepsy- not on any treatment
Previous offence(s)	None

4.5.4 Family background

The Criminologist studies the family of origin of each particular offender in depth for the following reasons:

- to ascertain whether his family has any crime causative factors
- to predict possible further criminality
- to evaluate rehabilitation possibilities.

X's mother Nofirst was born in 1960 and his father Schumbuso in 1955. They got married in 1985 in the Magistrate's court. Neither of the parents had a formal school education. X's father is a casual worker in Gauteng and earns between R200- R400 per month. The family budget is further subsidized by a state grant of R340 that the mother received for Atenkosi and Emihle. Nofirst describes that family as being poor.

X is the second eldest of eight children. It appears that X comes from a traditional Xhosa family in which he shares in traditional duties such as attending to the cattle. He is currently repeating standard six. According to his mother his failure could be ascribed to the stress of the court case. X would like to become a teacher after completing his schooling.

Name	Date of birth	Education
Nikelwa	1983	St 8
Pumeza	1989	St 5
Luyanda	1991	St 1
Avuyile	1993	St 3
Lindisipho	1997	Sub B
Atenkosi	1999	Sub A
Sangolwethu	2001	3 years of age
Emihle	2002	2 years of age

In 2001 X fell from his horse and sustained an injury to his head. Since this incident he suffered from epilepsy. According to his mother he is not receiving any medical treatment for this condition. She has however taken him to faith- healers (Nthandazeli) in an attempt to treat this condition. X suffers on average of one epileptic episode per month.

His mother described him as a good boy with whom she has no discipline problems. He admitted to using alcohol but stated that this would only happen during December holiday with the initiates.

4.5.5 The event

The facts of the matter are all ready before the court. However it might be of assistance to court to know X's perception of what happened. On my question as to whether he thought that his behaviour was wrong he replied in the affirmative. When I asked him to explain why he thought that he's behaviour was wrong he said:

“ It is wrong because I did not love her.”

X's mother is of the opinion that his judgment was clouded by his epilepsy.

According to X he had never experienced a sexual relationship but since that day he has been having a sexual relationship with his girlfriend.

4.5.6 Explanation of the Crime

Research and theory are the two basic tools of social behavioural science. They are the principal means by which Criminologists seek answers to questions pertaining to crime, the criminal, the victim and the Criminal Justice System. Theories explain the social behaviour in general and the specific context in which the crime was committed. An important aspect of this evaluation is to explore possible explanations for X's behaviour in order to evaluate suitable sentencing options.

Multiple criminogenises is the obvious approach in respect of the criminogenic factors, since no single factor can be regarded as being responsible for causing juvenile delinquency. One of the reasons this evaluation was requested is X's age, more specific his age at the time when the crime was committed. The Police report indicates that he was 14 years old at the time.

Developmental phases hold a special importance for Juvenile Criminology especially when the various age distinctions are related to the child or youth's accountability. According to developmental stages X was in his pubescent years (beginning of adolescence). Sonnekus (1990:29) postulates that males enter puberty between the ages 13 to 14 years and he distinguishes between physical puberty and psychological puberty.

Physical puberty takes place due to biological growth and hormonal changes, whilst psychological puberty entails integrating the physical changes into his personality. This growth does not take place simultaneously in males, which creates emotional instability and frustration. This could explain why males can become involved in sexual misconduct during this phase.

Another key issue in the study of delinquency and criminal behaviour is how people acquire, internalise and develop personal value. Social Scientists argue that we develop our morality and belief system, in other words our concept of right and wrong, through a series of cognitive stages. Swiss psychologist Jean Piaget was a pioneer in studying how we symbolize and organize social rules and make judgements based on that organization. Piaget Kohlberg postulates that moral development evolves in stages. The individual must develop the features and skills of lower moral stages before attaining a higher one. The judgement of a large majority of juvenile delinquents is at stage I and III of Kohlberg's theory, which pertains to the adolescent years, the developmental stage X finds himself. During stage II the individual conforms to social order and his own expectations because there are rules and the child comes to respect the authorities that enforce the rules. During the third stage an individuals moral values and ideas become independent from the authority of a group. According to Kohlberg's theory X did not internalise moral values, which can explain his criminal behaviour. According to Kohlberg people progress through the stages at different rates and thus reaches them at different stages, if at all, in their lives. The development of moral judgement depends on the person's intellectual capacity and life experience. Therefore efforts to understand criminality should include attention to individual cognitive development as well as learning and external environmental factors (Bartol 1999:136-138).

Environmental factors associated with juvenile delinquency include poverty and single parent households. The fact that poverty is self-perpetuating is documented fact. Criminal and delinquent activity may also be an accepted part of the total picture for deprived children (Kratcoski and Kratcoski 1990:121). These two factors are present in X's life.

The acceptability of X's behaviour may be derived from his mother insistence that he suffered from epilepsy on the said day as well as his aunt's opinion that he is mentally not stable.

4.5.7 Evaluation of the Victim

Consultation with the victim A took place on 23/08/04 at the CPU offices in Mthatha. Insp. Namfu arranged the meeting. Serg. Maseti acted as interpreter. A appeared to be a happy 5 years old. Although she refused to talk, her Aunt, Nophelo assured me that she usually is a very talkative child. Nophelo has been taking care of A and her twin brother Sandisele since their mother went to work in Cape Town. The twins were in her care when the rape took place.

Nophelo stated that there was no change in the behaviour of A after the incident and that she was troubled only for a week due to her injuries. She had been to consult with social workers twice immediately after the rape and now appears to be happy and friendly. According to Nophelo A shows no signs of being adversely effected by the rape.

Research indicates that children as victims of sexual violence only exhibit behavioural changes as a result of the rape if they have the cognitive ability to remember. A was three years old at the time and this could be a possible explanation for the absence of any behavioural problems as a result of trauma. This, however, does not exclude the possibilities of A experiencing trauma as a result of the rape later in life.

The assessment of the victim was complicated by the following facts:

- 1 No trust could be established between myself and A due to the language barrier
- 2 Mr X is the son of Nophelo's brother in law.
- 3 Nophelo was the only source of information
- 4 The time lapse.

4.5.8 Sentencing Options

Our courts have repeatedly emphasized the importance of pre-sentencing evaluation in the process of sentencing young offenders. Terblanche (1999:378) states the following: “Pre-sentence reports can provide the necessary background to the juvenile offender and attempt to explain commission of the crime, enabling the court to find the most appropriate sentence for that offender. The purpose is therefore to individualise the sentence, not with the idea that a light sentence should be imposed, but to find a sentence which is fair both to the offender and society.”

It is the exclusive prerogative of the Honourable Court to make the final decision on sentencing. After gathering and verifying the information given to me by X, his mother and his Aunt, I would like to debate the influence of different sentencing alternatives. This is done in an accompanying capacity, respecting the Court’s position as expert in this matter.

In the case of S V Jansen and another 1975(1) SA 425(A) it was emphasized that the interest of society cannot be served by disregarding the interests of the juvenile, for a mistaken form of punishment might easily result in a person with a distorted or more distorted personality being returned to society.

Criminological research also emphasizes the consequences of attaching a label of criminal to individual. This label identifies the individual as a delinquent and makes changes to his/her self-image and cause people to react to the label. This makes it difficult for a person once labelled a criminal to be perceived as someone who may be trustworthy, even though the criminal act may have been an isolated one in the person’s life.

Tannenbaum wrote that a “tag” or label becomes attached to an individual. This label identifies the individual as a delinquent and many changes his/her self-image and cause people to react to the label. This makes it difficult for a person once labelled a criminal to be perceived as someone who may be trustworthy, even though the criminal act may

have been an isolated one in the person's life. The labelled individual begins to be excluded from conventional interactions and is engulfed by the criminal role.

Thorsell and Klemke (1972:400) discuss the potentialities of differential outcomes of the labelling process:

1 They suggest that labelling appears to have different effects depending upon the stage at which it is applied in the person's deviant career. Individuals who undergo labelling at a point when they are first experimenting with crime and delinquency are more likely to end their deviance than to be propelled into a deviant career, being labelled and apprehended resulting in rejection of that role.

2 When the label is ascribed in a confidential or public manner makes a difference with respect to the individual's tendency to continue engaging in deviant behaviour. Thorsell and Klemke maintain the labelling which is carried out in a confidential and limited fashion differs considerably in impact from that which takes place before a public audience.

3 Labelling is more likely to be positive than negative when the deviant is concerned about, and therefore more sensitive to, the way he is viewed by the person doing the labelling.

4 Whether the label can be easily removed is likely to be an important factor in the stigmatised person's ability to resume conventional roles. Schwarts and Skolnick (1964) concluded that knowledge of an arrest record, regardless of whether the individual was convicted or acquitted, markedly limited the number of job opportunities for individuals.

5 The nature of the social reaction, which follows or accompanies the application of a label, is of central importance in determining whether the outcome of the process will be positive or negative.

In the case the *Staat versus Z en vier ander sake* 1999(1) SACR 427 (E) the learnerd

judge set out detailed guidelines for sentencing youthful offenders, one of the guidelines being that firstly an appropriate form of sentence should be determined, followed by applying the punishment to serve the needs of the accused.

In the explanation of X's behaviour his moral development is questioned. A child of his age should have been able to make a choice between what is right and what is wrong. Mr. X should have been equipped to realize the consequences of his actions. Rape is an act of violence in any community. At the developmental stage of puberty values and norms are integrated into the personality of the adolescent. The community as well as the family of the individual form these values and norms. During a conversation with the station commander of Encgobo, Insp. Nogemane (16 August 2004) I was informed that the number of rape cases against children in the area averaged 3 cases per month.

I question the moral upbringing of Mr. X, due to the fact that his mother, and Aunt, who is now the caretaker of A, chose to believe that the rape was due to X's mental state that was altered (due to his accident). They continued to believe this in spite of the fact that he had received no conventional treatment for the said epilepsy. His epilepsy was also not entered as part of his defence. The responsibility for his actions was being directed towards external factors, leading the two family members to be of the opinion that he should not serve a prison sentence. A view, which is also shared by X.

Contributing factors that could lead to juvenile delinquency was identified as being present in the up bringing of X. I am therefore of the opinion that Mr X has become a function of his circumstances. He has been found guilty of a crime that when committed by an adult has very limited possibilities of rehabilitation.

The law pertaining to juveniles clearly state that under no circumstances should the juvenile be viewed as an adult. Therefore serious consideration needs to be given to the objectives of punishment.

4.5.9 Objectives of Punishment and Other Considerations

The specific sentence options being considered must be evaluated in terms of the objectives of punishment, namely:

- retribution
- deterrence (individual and general)
- prevention and rehabilitation

Apart from the objectives of punishment, another criterion for a balanced sentence is the triad of Zinn. To achieve a balanced sentence, the nature and seriousness of the crime, the characteristics and circumstances of the offender, and the interests of society should be considered (Terreblanche 1999:157). Programme of management and counselling particularly of juvenile offenders does have some prospect of bringing about reform. Due to the fact that his rapport indicated. Mr X is in need of rehabilitation, alternatives options need to be considered.

In terms of the Criminal procedure Act no 51 of 1977 Sec 297 provision is made for conditional or unconditional postponement or suspension of sentence as well as for caution or reprimand. Section 297 b makes specific provision for sentence to be passed and then the whole or any part thereof to be suspended, on any condition referred to in paragraph (a)(i) which the court may specify in the order.

Diversion programmes is an attempt to protect the young offender from the negative impact of incarceration and can be effective as part of a suspended sentence as provision is made for it under subsection 297 (i) (ff). The South African Young Sexual Offences Programme (SAYSTOP) is a nation wide programme aimed at rehabilitating the young sexual offender. According to Mr. Lizo Cagwe, Diversion Manager of NICRO (tel 041 5822555) probation officers have been trained in this programme through out the whole of the former Transkei deviation. Ms Mboyi, probation officer of Encgobo

(cell 0833366262) has been trained in this programme but indicated difficulty in not having a group of offenders which is a vital element of the programme. Mr. Mankaya, probation officer Mthatha (Cell 0731530868) indicated that he could conduct this programme as a one-on-one programme but the distance of Encgobo from Mthatha would be problematic, as he needs ten contact sessions. He did, however, indicate that he could include the whole family as part of the programme.

Postponing the passing of sentence which will have the effect of an acquittal is, with respect, not advisable in Siyabonga's case. To be rehabilitated Mr X needs to acknowledge his guilt which can be contradicted if passing of sentence is postponed. Due to the serious nature of the crime, X's need for rehabilitation and the time lapsed since the crime was committed, caution or reprimand would serve no rehabilitation objectives.

4.5.10 Mitigating Factors

- Mr X comes from a single, female parent home
- Mr X was 14 years of age at the time of the offence
- Poverty
- Time lapse between the offence being committed and sentencing

4.5.11 Aggravating Factors

- The age of the victim
- The misconduct of Mr X during the interview
- Failure to attend school, which could result in more deviant behaviour.

4.5.12 Conclusion

The immorality of rape is undisputed whether the perpetrator is an adult or a juvenile, regardless whether the victim is an adult or child. In an offender as young as X the development of his morality, or the lack thereof, needs to be dealt with in an attempt to prevent future criminal activities. Two factors that contribute to the deterrent effect of

punishment are that it should be swift and certain.

Due to the time lapse that occurred in the sentencing of X one of the factors is already lost. Assigning punishment in the form of a sentence would in the least teach X that one of the certain consequences of violating the law is punishment.

Signed: Brenda Beukman

This is the end of the report

4.6 CONCLUSION

Determining the age of a child who has been accused of a crime, is guided by the laws of the land – as is the criteria to establish criminal capacity. The latter is, however, not always easy. The Criminologist can assist the court in this regard. If the court also activates the Criminologist to assist with a pre-sentence report and informed advice on diversion, the court can have even better assurance that the community's feeling that justice has been served, can be addressed more amicably.

In Chapter 5 the role of the Criminologist in victim empowerment will be discussed.

CHAPTER 5

VICTIM EMPOWERMENT

5.1. INTRODUCTION

The involvement of victims of crime in the criminal justice system in South Africa has been the focus of various academics and researchers (Khosimore 1999 ; Clarke, Davis & Booyens 2003). Erez and Tontodonato (1990:451) ascribe this renewed world-wide interest to heightened public concern over increasing crime rates and the emergence of victim support groups which demanded more effective protection and restitution for victims of crime. Currently the focus is on the reintegration of the victim into the criminal justice process as several studies found that victims were frustrated with and alienated from the criminal justice process (Erez & Tontodonato 1990:452).

In this chapter the focus is on the assistance that can be offered by a Criminologist to victims of crime.

5.2 RIGHTS OF OFFENDERS AND VICTIMS

The United Nations was previously far more concerned with the rights of offenders than the rights of victims. Only in 1985 at the seventh Congress on the Prevention of Crime and the Treatment of Offenders in Milan did victims become a focal point. In 1985, the United Nations Declaration of Basic principles of Justice for victims of crime and abuse of power, sets out a number of victims' rights (United Nations 1992:211). These changes are also accommodated in South Africa, through Chapter 2 of The Constitution of the Republic of South Africa (Act 108 of 1996) as it contains the Bill of Rights.

All the laws of the country of South Africa are drafted within the framework of the Constitution. Section 35 of the Constitution pertains to the rights of the arrested accused and detained persons, which has bearing on the Criminal Procedure Act. Chapter 2 of this Constitution contains the Bill of Rights, which provides everyone the right to equal

benefit of the law. This right pertains to criminals as well as victims of crime (Naudé 2002:191). Kgosimore (1999:21) is in disagreement with Naudé and states that the Constitution only benefits the offender due to the fact that The Criminal Procedure Act addresses the rights of victims within the Criminal Justice system only as witnesses and not as victims in their own right (Kgosimore 1999:22). Structures which contain the rights of criminals also contain the rights of victims although this distinction is not clearly defined, which leads to a situation where the victim has to compete with the rights of the criminal (Kgosimore 1999:23). The victim is therefore not a primary goal of South Africa's Criminal Justice Policy.

Various attempts on a government level and the formulation of documents (National Crime Prevention Strategy) and programmes (The Victim Empowerment Program) indicated a willingness to acknowledge the imbalance which has existed between the rights of the victim and the rights of the offender.

The Universal Declaration of Human Rights by the United Nations in 1948 inspired Constitutional framers throughout the world to entrench articles of human rights in the Constitutions of their respective countries (Conklin 1979:1). The World Society of Victimology formed the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. This Declaration was adopted by the United Nations General Assembly Resolution on 29 November 1985.

In 2004 South Africa adopted a charter for victims that could assist with victim empowerment. Criminologically speaking this charter is a huge step forward.

5.3 VICTIMS' CHARTER

South Africa's new Victims' Charter (Anon 2004a:1) approved in 2004 consolidates the legal framework on the rights of victims of crime and the services to be provided to them. The aim of the Charter is to ensure the following:

- victims remain central to the criminal justice process
- to eliminate “secondary victimization” from the criminal justice process
- to clarify the standards of service to be accorded to victims by the criminal justice system. Recourse should be provided when these standards are not met.

This Victims’ Charter will assist in the implementation of the applicable laws in such a way that it serves its purpose- making justice a reality for all (Mabandla 2004:1). The victims’ Charter also contains the complementary Minimum Standards on Service for Victims of Crime. These rights are as follows (Anon 2004a:1):

- the right to be treated with fairness and respect for dignity and privacy
- the right to offer information during the criminal investigation and trial
- the right to receive information
- the right to protection
- the right to assistance
- the right to compensation
- the right to restitution.

Victim empowerment can only be successfully achieved if victims’ needs are properly met. Several types of needs are found in literature and include emotional, financial, practical and informational needs. State compensation for and protection of the victim has been developed in many countries since the late 1970’s. According to Camerer (1996:6) England and Wales have the most generous scheme in Europe with the Criminal Justice compensation scheme compensating the victims of violent crime from public funds.

The South African Law Reform Commission is a statutory advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis. The primary objects are to do research with reference to all branches of the law in order to make recommendations for the development, improvement, modernization or reform thereof. In order to protect victims rights, the Commission put five option on Discussion Paper 102 pertaining to sexual offenses. These options were:

- amend the Constitution to include a section on victims rights. It is proposed that these rights be included not in order merely to balance the rights given to the offender but rather in order to enshrine an uncompromising commitment to the empowerment of victims
- adopt specific legislation on the rights of victims of crime as done in Canada. By providing for victims rights in a separate Act, the same objective as including rights in the Constitution would hopefully be achieved by fostering an inherent respect for victims rights
- similarly rights of victims of sexual offences could be incorporated into specific sexual offence legislation. Sanctions for non-compliance in the same fashion as the Domestic Violence Act would give uncooperative officials the necessary motivation to comply. One of the benefits of this option is that as needs and circumstances change, amendments could be made to the Act without the complicated procedures which precipitate a constitutional amendment
- review all aspects of criminal procedure regarding victims so that legislation appropriate to victims rights can be incorporated in general criminal procedure. This option would weave victims rights into the heart of criminal procedure.

In addition, the Commission make various other recommendations ranging from informing the victim of bail applications by the accused to the mandatory consideration of victim impact statements at sentencing (VIS). The inclusion of the VIS in the Criminal Justice process creates an opportunity for Criminologists to offer a specialized service to the courts and ultimately to victims of crime.

5.4 THE VICTIM IN CRIMINOLOGICAL CONTEXT

5.4.1 The Victim and Sentencing

The victim's right to input into sentencing can be traced to the efforts of two major movements. In Criminology, the 1970s were marked by a strong movement to replace the individualized treatment or rehabilitation model, with a "just desert" or justice model of sentencing. Enshrined in the principle of proportionality, the justice model was expected to reduce sentence disparity that characterized the individualized treatment model. In the justice model, two factors determine the penalty (Erez & Rogers 1999:216):

- crime seriousness, measured by the harm suffered by the victim and offender culpability, determined by the type of *mens rea* and
- the degree of moral turpitude in the commission of the offence.

The "just desert" philosophy and principles have been adopted in sentencing legislation in Britain, the USA and Australia (Erez & Rogers 1999:217). The rise of a vocal victims' movement seeking to improve the plight of victims in the Criminal Justice System and to rectify their traditional lack of voice in proceedings developed at the same time as the "just deserts". Activities on behalf of victims resulted in legislation which mandated rights of compensation from the state, restitution from the offender, support and counseling services and victim participation or input into sentencing. The right of input is commonly known as a Victim Impact Statement.

5.8.2 International Perspective on Victim Impact Statements

The United States of America is the leading country in upholding the rights of crime victims and states such as California and Maryland have been using VIS since 1970's. VIS are used for all federal crimes where there is a human victim. Originally the statement was prepared by a probation officer. At present most jurisdictions permit the statement to be prepared by the victim. At present 49 American states have legislation

allowing input by victims at sentencing through victim impact Statement (Meintjies-Van der Walt 1998:42). The preparation and submission of VIS differs among the states and federal courts. Some require a VIS as part of the presentence report. Other allows VIS if ordered by the court and some allow the victim to speak at the sentencing phase (Naudé 2002:192).

Canadian legislation concerning VIS was proclaimed in force in October 1988. The VIS allows victims to describe in writing the harm done to them or the loss suffered as a result of the crime. In Alberta victims are provided the opportunity to have input into sentencing by police services and victim assistance programs. VIS is to be completed on a form prepared by Alberta Justice (2004).

Since 1987 New Zealand VIS can only be submitted in the case of violent and sexual crimes. Information contained in the VIS is to be conveyed to the judge either by the prosecutor orally or by the means of a written statement about the victim.

Not all Australian states make provision for VIS. The Criminal Law Sentencing Act of 1988 in South Australia and the Crimes Sentencing Amendment Act of 1987 in New South Wales makes provision for a written impact statement to be placed before the court for sentencing purposes. In South Australia the VIS is prepared by the probation officer and is only submitted if a pre-sentence report is requested.

No provision is made for VIS in European Countries. In the United Kingdom Standards for the Supervision of offenders in the community guidelines are given to the effect that pre-sentence reports can give an assessment of the consequences of the offence including the impact on the victim.

5.4.3 Content of a VIS

Victims in Canada and America usually receive an introductory or informal sheet that provides general information on the use of VIS. Although an unrestricted narrative way of reporting the negative consequences of the crime is what a victim impact statement consist of the following should be included (Naudé 2003:201):

- The emotional and physical impact of the crime

In this section victims are allowed to write about the emotional and physical impact the crime had on them. Aspects that should be highlighted include:

- the temporary or permanent physical injuries incurred
- emotional and psychological injuries suffered
- lost of ability to work and loss of wages
- change in lifestyle
- impact on other members of the family
- past accomplishments and hope for the future
- effect of sudden death on the remaining family members.

- Financial loss

The financial statement usually includes:

- a list of personal belongings or personal property lost, destroyed or damaged as a result of this crime
- medical expenses incurred as a result of this crime
- future medical or counseling expenses
- funeral expenses
- loss of income
- general aspects such as money spent on child care during court appearances, transportation costs for medical treatment, court appearances and installing new locks and security devices.

- Victim's opinion on sentence

VIS usually provide space for the victim to give his/her opinion on the sentencing of the defendant.

5.4.3 Victim Impact Statements in South African Context.

The Truth and Reconciliation Commission in 1996 created a climate in which the knowledge of the suffering of victims was considered worthy to be factored into decisions regarding the course of criminal prosecution. South African law does not, at present, contain any express provision on the use of victim impact statements. Although there are no legal rules precluding the acceptance of a statement by the victim on the impact of sexual assault, there are also no measures which require the preparation and submission to the court of such statements as a matter of course as the court may hear, in terms of section 274(1) of the Criminal procedure Act 51 of 1977, such evidence as it deems appropriate in order to inform itself as to the proper sentence to be passed.

The South African Law Reform Commission (1997:88) states the following concerning the victim impact statement:

- victim impact statements ought to be generally admissible at sentencing hearings. The purpose of such statements should be to provide a measure of the seriousness of the offence and it should be spelled out in legislation
- victim impact statements should only be admissible in respect of cases where they furnish the court with particulars that are not already before the court in evidence or in pre-sentence report
- for the purpose of such a statement “victim” should be defined as the person against whom the offence was committed or who was a witness to the act of actual or threatened violence and who suffers injury as a result of the offence
- victims should have the option to tender a statement and the right to request the prosecutor to refrain from pressing the court with details of injury
- victim impact statements should be signed, or otherwise acknowledged as accurate by victims before they are received by the sentencing court
- such statements in sworn form ought to be tendered by the prosecution at the sentencing process
- the statements ought to address the actual physical psychological, social and financial consequences of the offence on the victim and not the question of an appropriate sentence which ought to be imposed.

- the court have the discretion to disallow a statement and the author should always be subject to cross-examination on the contents of the statement.

5.4.4 Victim Impact Statements and Children

Ovens (2003:88) sites the use of victim impact statements as an important aspect in cases involving children. Clark, Davis and Booyens (2003:52) indicates that individuals working with children should receive in-depth training on the impact victimization and witnessing violence has on children. Child victims should not be forced to make a VIS nor be made uncomfortable or fearful while making one. Very young children can be encouraged to draw a picture, tell a story or write a poem on how they feel about the crime, themselves and the defendant (Clarke, Davis & Booyens 2003:53).

Information such as a changed relationship between the child and his or her friends, both at school or in the neighbourhood, or his or her parents as well as changes in the child's behaviour or schoolwork, should also be included in the statement.

5.4.5 Critical View on the Effectiveness of Victim Impact Statement

The information on VIS is beneficial in determining:

- fair restitution orders
- the duration of sentence, or parole
- the need for special release conditions such as restraining orders

VIS is viewed as a sensible and useful way of ensuring that prosecutors and judges have all the relevant information. VIS makes the shift from individualization of the offender to individualization of the victim (Erez & Rogers 1999:217)

Dugger (1996:403) questions the use of VIS as part of the Criminal Justice System at sentencing, as the purpose of punishment is to deter, rehabilitate and retribution and VIS does not contribute to any of these goals. Erez (Erez & Rogers 1999:218) disagrees and

postulates that the information on the harm will enhance proportionality and accuracy in sentencing and advance the various aims of punishment.

Victim impact statements are believed to be of therapeutic value to victims. Research findings vary from victims finding that an overwhelming majority of the victims found the experience of completing the statement to be positive. Researcher's like Finn-Deluca (1994:424) found research regarding VIS impact on victim satisfaction with the justice process inconclusive.

The expectations of the victim completing the VIS may influence their satisfaction. Corns (1994:1055) points out that completing a statement does not make a victim feel better about the handling of his case by the system. Research conducted in the USA found that dissatisfaction with the courts and prosecution stems from the failure of the authorities to show any interest in the victim as an individual (Clarke, Davis Booyens 2003:50). VIS may not address the true needs of victims. Many victims choose not to complete VIS. In Alberta less than 15 percent of informed victims choose to complete a VIS. In the USA less than 18 percent of victims of families attended sentencing and only 15 percent submitted written statements (Howard 1997:2).

The debate surrounding the reform for the implementation of the victim input rights suggests three major tension arenas:

First, a tension between the preservation of traditional conceptions of the adversary legal system and the provision of victims participatory rights. Defining a role for the victim would meet great resistance from the prosecutor, the defense counsel and the judge (Goldstein 1984:242).

A second tension is created by attempts to accommodate victim input rights within an emerging ideology of managerial justice which places a high premium on speed and efficiency (Erez & Rogers 1999:219).

Thirdly, a tension emerges between the demands to provide victim input rights and attempts to increase sentence uniformity and reduce its severity. The two movements pull in different directions: uniformity and predictability in sentencing vs. specificity or individualization of the penalty according to victim harm (Erez & Rogers 1999:219).

In the course of routine adjudication cases with victims who suffer various types of harm, prosecutors and judges become acquainted with the typical features of cases and their associated impact. This could lead to the typification or the “normal” victim. As a class of a case becomes typified, it is treated in more routine ways. Consequently serious harm becomes routinised, institutionalised and built into the typification rather than standing as a feature of the case for the professional (Emerson 1983:43). The focus is not on a particular individual but on the offence. Erez and Rogers (1999:225) found that Judges and Magistrates responded differently to VIS and ascribed the difference not to the use of the VIS but to other factors for example the experience of the judge. This differential response emerges as there are no familiar categories of harm. It is also more difficult to reduce the individuals who submitted VIS to the typical victim of a specific offence category.

The “normal” victim constitutes an important measure against which judges and other legal professionals evaluate victims and the veracity of their impact statement (Erez & Rogers 1999:225).

McGowan and Myers (2004:370) conducted research on the impact of a VIS, during a trial scenario. The scenario concerned the murder trial of an employee accused of bombing his former workplace. Participants read either no victim impact evidence or one of three victim impact statement. For the VIS the identity of the witness varied. The VIS was given either by the wife of the victim, co-worker of the victim or a firefighter called to the crime scene. Results revealed that only the victim impact evidence given by the co-worker had harsher sentencing judgments. However, participants rated the suffering of the victim’s wife as most severe, indicating that perceptions of suffering may not predict sentencing judgments in a straight forward manner. Research by Erez and Rogers (1999:223) found that the professionals in South Australia reported no increased sentence severity in cases where VIS were submitted. Examination of their responses

reveals the way organizational forces, legal occupational culture, and work group dynamics operating in the court militate against individualization of victims.

These arguments center around giving the victim not only a voice but a place within the criminal justice system. The criticism has bearing mostly on the compilation and on the effect of the statement on the perception of the judge. Although research of Erez and Rogers (1999) dispelled most of the reservation regarding the input of the victim in the form of a VIS, these statements are continuously seen as under-utilized. The researcher is of the opinion that the extent of the criticism negatively effects the substantiality of the statement. Therefore she proposes the compilation of a VIS by a trained Criminologist whereby most of the criticism could be eradicated. To substantiate this point of departure the role of the Criminologist in compiling VIS is discussed.

5.4 THE ROLE OF THE CRIMINOLOGIST IN COMPILING VIS

5.4.1 The Criminologist as Expert Witness

Opponents of VIS argue that when the victim is required to return to court for the purposes of the VIS it could lead to secondary victimization (Clarke, Davis & Booyens 2003:51). Compilation of a VIS by a Criminologist could reduce secondary victimization as the Criminologist can testify on behalf of the victim and be cross-examined as to verify the veracity of the impact of the crime on the victim.

It is often argued that VIS is self-serving and that it only inflames the judge or magistrate to impose stiffer sentences (Clarke, Davis & Booyens 2003:53). The victims view on sentencing could also be explained by the Criminologist in context of the harm suffered, thereby providing a credible report of the harm suffered not only to the court but also to the offender to enable the offender to take cognizance of the harm suffered by through his actions. In certain cases the victims desire for reconciliation could be expressed by the VIS.

The “normal” victim (crime specific) impact can be highlighted as well as the case specific impact (individual impact). The impact on the victim can be supported by research findings and theories.

Due to the relationship that the Criminologist will build with the victim, any misconceptions or reservations on the part of the victim with regard to the VIS could be dismissed.

5.5.1 Training of Criminologist for the Purpose of VIS

The Department of Criminology at the University of South Africa is currently offering a Honours degree that includes a substantial section on victim impact statements. The tutorial letter 501/2003 educate students in the writing of a victim impact statement although this section includes notes on advantages and disadvantages, the researcher is of the opinion that specific attention could be paid to the following pitfalls of compilation of a VIS by a Criminologist.

5.5.2 Pitfalls in Compiling of VIS

Although the guidelines for compiling a VIS is clear, the format in which this information is presented by a Criminologist is of utmost importance. The following need to be considered with care:

- Objectivity vs. subjectivity

The retelling of the victims suffering and loss (impact) by a Criminologist may “sterilize” the event. A clinical approach to victims harm, flattens the report and decreases the power of the victim’s story (Erez & Roberts 1999:228). The task is further complicated by the requirement that the statement should be written in a factual manner by avoiding a emotional or sensational style of writing (Naudé 2003:203). This pitfall can be overcome by combining the verbatim quotes of the victim with the expert opinion of the Criminologist which will consist of research findings and theoretical explanations.

- Establishing rapport

The way the Criminologist projects himself during the interview with the victim is most important. The victim should be approached with an interested and empathic attitude. Explaining the purpose of the VIS and possible misconceptions regarding the purpose and outcome should be dealt with at the beginning of the interview.

- Content of statement

In certain countries (USA and Canada) a specific form is provided for the purpose of completing a VIS. This limits the statement to between 3-5 pages. In South Africa such a strict format is not provided, and the compilation of a VIS by a Criminologist could deviate from this international norm. Specific caution should be taken in presenting the court only with information that has not been heard during the proceedings of the trial but at the same time representing the impact of the crime accurately. Special consideration should be given to information that the victim might reveal to the Criminologist that might be inconsistent with information given during witness testimony. The victim can not contradict any evidence he/she gave during testimony within the VIS. The Criminologist therefore needs to study the judgment.

The following is a case study (case study 4) containing a victim impact statement that was completed by the researcher for a 12 year old boy who witness the murder of his sister (State vs. Mbotshane case number 173/2003/09/07). The victim's identity is being protected by referring to him as Mr. M. This VIS was presented to the High Court in Mthatha by the researcher in July 2004 and accepted by Judge Peko.

5.6 VICTIM IMPACT STATEMENT CASE STUDY 4

5.6.1 Introduction

A Victim Impact Statement is a statement made by the crime victims expressing the impact the crime has had on them and/or their families. It is a summary of the harm or trauma suffered by the victim as a result of the crime and it provides the court with information on how the victim's life was before the crime and how it has changed.

Victim Impact Statements differ from the general victim testimony in court in the sense that it allows victims to personalize the crime and to articulate the pain, anguish and devastation the crime has caused.

Very young children can be encouraged to draw pictures, tell a story or write a poem of how they feel about the crime themselves or the defendant. It should be emphasized that the child can write or draw as much or as little as they wish. If a severely traumatized or injured child cannot provide a statement or drawing, the parent, caretaker, physician, or social worker can prepare the primary statement and present it as part of an information package. Copies of research articles that document the short- and long term impact of victimization of children can be attached (Clarke, Davis & Booyens 2003:1).

A victim or survivor of violence is often mistakenly presumed to be the only person who was directly affected by a traumatic or violent incident. In reality the traumatic experience of a direct victim may also adversely affect many other individuals with whom the victim may have had contact.

Due to the nature of the trauma of this case, Mr. M can be regarded as an indirect victim.

5.6.2 Emotional impact of the crime

Reaction to victimization and the impact of the crime varies from individual to individual. The extent to which a victim is emotionally harmed by crime, and the possibilities of recovery often depends on certain factors that are present before during and after victimization. According to Robertson and Donaldson (2003:3) the age of the child and their developmental stage will have an effect on the nature of their reactions. Mr. M is currently 12 years old and in the middle years of his developmental stage. During this particular stage gender base rolls are acquired (Louw, Gerdes & Meyer 1985: 17). Research has indicated that in families where violence occurs, male survivors appear to display more aggressive behaviour due to their identification with the violent role model of the father. In violent families, children also learn that violence is an

acceptable way of resolving problems. These children grow up with fundamental problems in basic trust, autonomy and initiatives.

Horrific childhood experiences have serious long term impact on children. In majority of the cases, murder within the family was preceded by previous violent incidences within the family. Facts before the court will indicate that Mr. M has been repeatedly traumatised. Baldwin (1996) postulated that multiple or chronic trauma experiences are likely to be more difficult to overcome than most single instances.

During interviews with Mr. M he reported that he becomes very sad when he thinks about his sister and sometimes cries. He has fond memories of a particular game he played with his sister. He also had nightmares about the incident. During the initial interview Mr. M was very quiet and appeared to be scared. During the second interview he was accompanied by his mother and became emotional when he was requested to draw a picture. The purpose of the picture was to provide Mr. M with the opportunity to express his feelings about what happened. He was asked to draw any picture relating to the incident (the picture has been attached). He repeatedly drew the incident across the page as my instruction were that he should use the whole page for his picture.

Children who have had a parent murder another family member are placed in an extremely difficult dilemma of loyalty. The fact that one parent has killed is very hard for the child to make sense of especially as the child may have loved both people. This turmoil was evident during the initial conversation with Mr. M. He explained his father murdered his sister because he was overcome by witches. He does not want his father to go to prison.

5.6.3 Conclusion

Children who are victims of domestic violence and in particular those who have witnessed murder, are children who are severely emotionally wounded by their experience. These children are at risk for longer term difficulties and may themselves become victims or perpetrators of further violence.

This is the end of the VIS.

This VIS was published as part of an article on The Effectiveness of Victim Impact Reports which was published in the Sexual offences Bulletin (2004:30). In the article the State Advocate describes the VIS as having a definite influence on sentencing. The accused was sentenced to 23 years imprisonment. Judge Peko expressed his satisfaction with the evidence on the impact on Mr. M (Neveling 2004:30). The Editor of the Sexual Offences Bulletin made the following comments (Neveling 2004:33):

- is the victim and or witness being called back solely for the purpose of the impact of the offence has on him
- if so is this solely for sentence purposes or to regard this as new evidence to discredit the witness
- if solely for the purpose of discrediting the witness then it can be argued that this amounts to collateral facts
- it could also be argued that victims themselves, especially younger witnesses, do not appreciate the true extent of the trauma they undergo. That is the reason why we rely on expert testimony.

The researcher responds to the above mention comments as follows:

- the victim was not called back to testify as the Criminologist testified on the content of the statement
- the objective is not to discredit the witness, but to inform the court of the impact of the crime on the victim. Because the statement is made after conviction and before sentencing, the complainant is viewed by the court as a victim for the first time. The victim is in a position of a complainant during the trial and only viewed as a victim after conviction. Information contained in a VIS is therefore new to the court because it is of a different nature compared to information which was used during the trial.

The next case study (case study 5) illustrates the value of a Criminologist compiling a VIS for a rape victim. The charge was statutory rape (case number: RCUZMB 241/04).

The court wanted information regarding the victims' behaviour following the rape. The complainant in this matter was the indirect victim. Her identity will be protected by referring to her as Dr.. B. She is the mother of the 13 year old victim Ms L. This report was presented to the Magistrates court in Umtata on 28 July 2005.

5.7 VICTIM IMPACT STATEMENT CASE STUDY 5

The South African Law Commission (2002:68) defines the term Victim Impact Statement as follows:

“Victim impact statement means a written statement by the victim or someone authorized by the Criminal Procedure Act to make a statement on behalf of the victim which reflects the impact of the offence, including the physical, psychological, social and financial consequences of the offence on the victim.”

The explicit original objective of Victim Impact Statements is to allow the court to take account of the subjective experience of the harm suffered by individual victims.

A victim impact statement supplies the court with information on the following aspects:

- the circumstances surrounding the crime and the manner in which it was carried out
- the identity and character of the victim and
- the effect of the crime upon the victim and her family.

The purpose of victim impact statements is to acknowledge the victim as the disadvantaged party in the crime process and to recognize and acknowledge his individual dignity. It enhances the affectivity and credibility of the justice system and makes the process more democratic. Without a victim impact statement, the trauma which is especially severe in the case of rape victims, cannot properly be described to the court.

The use and professionalism of Criminologists as expert witnesses compiling victim impact statements is reinforced by the University of South Africa as the Department of

Criminology is offering a module in Forensic Criminology (HCRFOR-8) which includes the compilation of Victim Impact Statements (Tutorial letter 501/2003).

5.7.1 Sources of Information

I was approached by the State to compile a Victim Impact Statement for Ludwe Matanzima hereafter referred to as Ms L (hereafter referred to as L) and Dr. B (hereafter referred to as B). Consultation regarding the matter took place at the office of the magistrate on Monday 11 July 2005 with Prosecutor Masichana and the Magistrate in the case. I was briefed on the following:

The accused Dr. Mgweshe was found guilty of statutory rape of L who was 13 years of age at the time. During the court case a considerable amount of evidence was given regarding the effect of the rape on L's subsequent behaviour. The court requested a Victim Impact Statement that would include information regarding this aspect. The Magistrate wanted to know if the effect of the rape could be the cause of L engaging in sexual relationships.

Consultations were held with L (direct victim) and B (indirect victim) as follows:

Wednesday	13 July	1 hour
Monday	18 July	1 hour and 30 minutes

The purpose of a Victim Impact Statement was explained to them and each was requested to write about the case from a personal point of view. Emphasis was placed on the fact that the information should be new to the court in order to portray the impact accurately. This information was used in the second consultation during which L clarified specific points.

5.7.2 Sources of references

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5.7.3 The experience of rape victims in general

For the purposes of this case, specific attention will be paid to information pertaining to teenage rape victims. According to Nedbank ISS Crime Index (1999:1) research on abuse usually focuses on adults or children with little attention on young women between the ages of 12 to 15 years. This group is particularly vulnerable to violence, perpetrated largely by people they know and trust. Young women are vulnerable not only because they are women, but also because of their age. Compared to older women, girls are much less mobile and financially independent and are less able to escape abusive situations. These factors become real obstacles when considering that most of their abusers are people they trust. The 12 to 25 age group is also characterized by uncertainty, as it is an age when peer pressure, wanting to be popular and other insecurities associated with adolescence coincides. These factors increase the vulnerability of young women to violence and to its consequences.

According to a Medical Research Council study on relationship dynamics and adolescent pregnancy in South Africa, young women are subject to assault and sexual coercion by partners and others. The study also indicated that teenage girls were most likely to have been persuaded to have sex. This challenges the notion that rape is something committed in dark alleys by strangers who are “sick” people. Perpetrators are often part of a young woman’s everyday environment. They are people that young women trust and rely on and therefore young women are less likely to report the incident than are older women. Child rape victim’s fear of disclosure may indicate a culture where repressive attitudes about sexuality are present as well as a more authoritarian style of parenting.

Another reason for not reporting the rape can be found in the cognitive ability of the teenager. By law the age of consent is 16 years of age. The consequences of early sexual intercourse are viewed in such a way that various political parties have tried to change the law to state that sexual intercourse with consent can only take place at 18 years of age. This is partly due to the increase in HIV and teenage pregnancy. Doctors for Life gave evidence of how teenagers do not always make choices on a rational basis, as their cognitive development is not sufficient to enable them to understand the likely negative consequences of their actions (Swart 2003). According to developmental psychologists a teenagers cognitive limitations can even influences their moral development (Louw, Gerdes & Meyer 1986:367.)

Vetten reports that research indicates a high degree of sexual coercion in many teenage girls’ dating relationships. Young women continue to comply with male demands, partly out of the belief that everybody does it and fear of losing their partner’s company. The latter reason is very similar to why abused women withdraw charges against their abusive partner. School-age children may experience many of the cognitive difficulties described in adult rape victims, including general numbness, non-responsiveness, concentration problems and a lowering of intellectual function. These cognitive disruptions are most apparent in a decline in school performance. Child victims of trauma are also at risk for developing trauma-specific and other fears and changes in attitudes about people, life and the future. For the child victim the trauma may constitute an intense perceptual experience, where all sensory modalities are involved and the child is strongly aware of

autonomic arousal and other bodily sensations. The act of rape could therefore activate the child sexually, which can contribute to involvement in other sexual relationships (Lewis 1997).

5.7.4 Evaluation of L

The physical and emotional changes that occur during the teenage years are evident in L's description of herself: "These are the years you start buying your own clothes, start worrying about your appearance, weight and looks."

Examples of sexual coercion that took place between Dr. Mgweshe and L are as follows: "He used to tell me how beautiful and sexy I was, he said all the things I wanted to hear...he used to warn me against boys saying they'll take advantage of me and hurt me... he said what I needed was a mature man, someone who would take care of me and my needs."

During the consultation with L I could not find evidence of the typical rape victim's traumatic reaction. The absence could be due to the time lapse, however I am of the opinion that the coercion contributed to L believing that she loved Dr. Mgweshe and that he would leave her if she did not have a sexual relationship with him. She also felt guilty about the things that he bought her.

The cognitive distortion due to L's age is evident in her explanation of other relationships: "...(I) dated someone with the same status as he, trying to prove to him I won't be a stand still because he used me." The fact that L was a virgin up until her relationship with Dr. Mgweshe and then became involved with other sexual relationships can be ascribed to the fact that Dr. Mgweshe activated her sexually. L stated during our consultation that she always believed that she would be a virgin until she married. Her subsequent sexual relationships can therefore be ascribed to the rape as the sexual activation lead to L realizing that she had sexual needs. L also reports a drop in school performance. She became involved in lesbian relationships (although they were not of a sexual nature), as she wanted nothing to do with men. This indicates her cognitive

limitations, which she tried to overcome by making certain that she would not be available to men. L's struggle to come to terms with the proceedings of the court case is evident in the following: "This has just become too much for me both emotionally and mentally. I know I can't run away from it now but having to re-live it everyday, I don't think I'll be able to pull through."

Secondary victimization often occurs during the court proceedings of a rape case. It occurs due to the victim being required to re-live her experience when she testifies. Rape is a crime, which places the largest burden of proof on the victim not the accused. This can result in experiencing the court process as traumatic. Secondary victimization has been acknowledged by the Justice Department as the National Policy Guidelines for handling Victims/Survivors of Sexual Abuse were produced under the direction of the Deputy Minister for Justice and launched in September 1998. The purpose of the guidelines is to reduce secondary victimization, facilitate the healing process of victims and to improve victim cooperation in the Criminal Justice process. The guidelines include the requirements of the use of technical aids such as one-way mirrors and closed circuit television to insulate children from secondary traumatisation through contact with the alleged perpetrator. The Criminal Justice System has clearly victimized L. The proceedings did not take place in camera. "The fact that I had to look L in the eyes was enough for me to break down... people were staring at me, many questions pounded in my mind about what people are thinking of me.....Sitting there being intimidated and treated like a criminal by Mr. Zilwa made me feel so cheap and dirty, I hated myself and my body...I had to explain every detail of what happened in front of my elders." Secondary victimization does not necessarily end when the court case is over. L is currently struggling with the prospect of dealing with the attitudes and perceptions of the public. "...I am known as the person who claimed to have been raped by a successful Doctor Mgweshe, some say I asked for it, because he is too much of a successful man to do that....my future is shattered."

In spite of her traumatic experience in court, L is still of the opinion that Justice can bring hope: "I pray he gets what he deserves even if it means being locked away for life, that way he'll never take advantage of anyone again."

5.7.5 Impact of the crime on the indirect victims

Indirect victims can be considered as family or friends who are in close contact with the direct victim and whose lives are likewise influenced by the traumatic event. B is therefore viewed as an indirect victim.

With reference to sexual abuse, it has been argued that the family's reaction to the discovery of the abuse strongly affects the impact of the abuse on the child. Research indicates that the family is likely to be the most powerful potential source of support available to the sexually abused child. McFarlane (1994) also indicates that family members are likely to experience secondary traumatization as a result of the child's trauma, and that this reaction impacts on the child's recovery process. Burgess and Holmstrom (1974) found that family members of rape victims often experienced somatic reactions such as sleep and eating disturbances, tension headaches or fatigue.

Psychological reactions such as guilt, anger, feelings of loss of control and intrusive thoughts and generalized fears were also present. Thus parents themselves may manifest a post-traumatic stress response, and consequently be emotionally unavailable to their child as a result of their own distress. Research also found that child rape survivors' feeling of being damaged physically and emotionally echoed parental concerns about their sexual development.

As a medical doctor B is in a position to accurately label her own and her daughter's experience as traumatic. She states the following:

“Arguments and emotionally charged meetings between myself and my family members regarding whether to lay charges or not, were another trauma. I had to endure a lot of criticism both from some of the family members and some of my friends.”

There was also financial implications for B, as she had to take time off from work during the duration of the trial. B also had to transport family members as well as to prepare meals for them during the trial.

The relationship between mother (B) and daughter (L) has also suffered damage. B struggles to trust her daughter and is concerned about the effect this matter will have on her future. B's feelings of helplessness and vulnerability is evident in her description regarding the attitude of the Police and of the way that they handled the case. B felt so strong about this treatment that she wrote a letter to the Director of Public Prosecution.

Her close relationship with Dr. Mgweshe has come to an end "..... I trusted this man with my life and he kicked me in the teeth....I would like to protect my two and a half year old from him and others who are like him, give him a jail sentence with no option of a fine....."

5.7.6 Conclusion

In my consultation with L and B it was clear that although the incident occurred 3 years ago, they are still struggling to put back the pieces. L has become friends with girls who are younger than her in an attempt to reclaim her childhood. Previously she felt pressure to behave like a lady, after the incident, she now realizes that there is a part of her childhood that was taken away from her. She now enjoys to play games with her friends and laugh.

B becomes very agitated and nervous when she speaks about her daughter and Dr. Mgweshe in spite of the fact that 3 years have past (this is not unusual). During our brief talks it was evident that B herself was going through the stages of the trauma cycle which incorporated feelings of despair and anger.

L's future is a source of concern for both parties, she is afraid that the detail and outcome of the case may come back to haunt her as she has high expectations of herself. There is a need for both parties to keep this a secret to the extent that B tries her best to not involve the press.

Both L and B have been referred by myself for further counseling as both still appears to be traumatized. L's thoughts on suicide are of particular concern.

Brenda Beukman

This is the end of the victim impact statement

5.8 CONCLUSION

The expertise knowledge of the Criminologist in compiling victim impact statements contributes to the quality of a report of this nature. A balanced VIS will consist of facts pertaining to the victim's life before and after the crime. The victim's reaction and experience of the impact of the crime is supported with scientific research and theory.

The VIS has a significant contribution to make in a stage of the judicial process where acknowledgement of a victim takes place after judgment and a guilty conviction. During the trial process the victim in legal terms does not exist. It is only at this final stage before sentencing that the court will refer to the complainant as the victim. It is imperative that the complainants voice is heard as one of a victim - one who has suffered loss regardless of its shape and form.

Chapter 6 continues to focus on the role of the Criminologist in assisting the victim of crime. The emphasis is on trauma debriefing of victims of crime.

CHAPTER 6

TRAUMA DEBRIEFING OF VICTIMS OF CRIME

6.1 INTRODUCTION

Crime victimization is a multidimensional occurrence and the services and interventions draw from a wide array of disciplines and service systems (Underwood & Edmunds 2003:5). Services are offered by a diversity of organizations, ranging from community-based to systems-based from large to small from international to local. The various disciplines and systems use jargon that describes the clientele of that area. The term victim and the term survivor are both utilized in the multidiscipline /multisystem field and is often used interchangeably (Underwood & Edmunds 2003:5). In the context of crime victims the term survivor is used to imply positive growth which occurred due to internal strength and an empowerment to cope with life's crises. According to Figley (1985:399) the victim is immobilized and discouraged by the event, while the survivor has overcome the traumatic memories and becomes mobile. What separates the survivor from the victim is a conception about life, an attitude about the safety, joy, and mastery of being a human being. This is a process that can be aided by a professional.

According to Underwood and Edmunds (2003:248) the victim assistance field has made tremendous strides towards professionalisation. The following addresses the role Criminologist play in the professionalisation of victim assistance (VA) by exploring the function of practice and the role of the Criminologist.

6.2 FUNCTION OF PRACTICE

The nature of services to victims of crime in South Africa can be traced back to the 1918's when victims of child abuse and sexual molestation were offered assistance by the Child and Family Welfare Organisation. No other help was available to the victims of crime. It is only since 1980 that a network of support for victims has been developed by the public and private sector (Snyman 1991:56). In spite of these attempts Lutshaba

and Semenchuk (2002:4) describes the support for victims of crime and violence in South Africa as limited, fragmented, uncoordinated, reactive in nature and therefore also largely ineffective due to the following reasons:

- the planning and establishment of services are often not community driven
- certain services are over utilized, while others tend to be inaccessible with regard to their location and/or service fees
- others are poorly marketed and therefore not often used
- certain categories of victims are highlighted while others are underplayed.

According to Snyman (1991:55) much has been said about and written on the need and necessity for and value of support services for victims of crime. The need to support the victims of crime springs from the experience of crime as a crisis period and the period immediately following a crime as traumatic.

The crisis may be acute or superficial, prolonged or brief, and even crimes that are not accompanied by physical violence or injury have an emotional impact on the victim. This victimization results in trauma and the victim develops certain needs which if not successfully fulfilled, can have negative effects in the long term on both the victims of crime and the society at large. Reeves (1985:679-686) identified these needs as follows:

- emotional and practical needs
- demands for knowledge
- understanding and
- information on crime prevention and aid in the contact with the criminal justice system.

According to Snyman (1991:56) a victim of crime does not always need long-term or professional assistance, but all victims need to be assured that help is available, if needed.

A knowledge of crisis responding and the potential resulting trauma experienced by a victim of crime is considered by many to be central to the provision of victim services (Underwood & Edmunds 2003:95). The purpose of this section is to highlight the role of the Criminologist by identifying basic guidelines for interacting with crime victims in

the immediate and protracted period of time following victimization. To enable the Criminologist to do this a clear understanding of the manifestation of trauma is necessary.

6.3 TRAUMA

In the DSM4 it is said that a person is traumatized when exposed to a traumatic event in which both of the following have been present:

- the person has experienced, witnessed or been confronted with an event or events that involved actual or threatened death or injury or a threat to the physical integrity of oneself or others
- the person's response involved helplessness or horror.

According to Jones, Schultz and van Wijk (2001:64) the following is examples of typical traumatic incidents in South African:

- shooting incidents where an individual has been shot or has shot another person
- any other shooting incident where an individual is directly or indirectly involved
- a suicide or suicide attempt
- any physical attack on a person or a family member, friend or colleague
- gruesome scene for example motor vehicle accidents
- hostage taking
- extreme forms of provocation for example racially motivated assaults and murder of farmers
- any other critical incident that a person reports, for example domestic violence, divorce or intra family murder.

The traumatic event may be either situational or it may develop over a period of time. For the purposes of this study attention will be given to the situation as traumatic events generally involve threats to life or bodily integrity, or a close personal encounter with death or violence.

The reactions to trauma are as universal as the exposure to it. The following is a list of signs and symptoms sometimes associated with individuals who are experiencing trauma (Underwood & Edmund 2003:106):

- re-experiencing the event through vivid memories or flash backs
- feeling emotionally numb
- feeling overwhelmed by what would normally be considered everyday situations and diminished interest in performing normal tasks or pursuing usual interests
- crying uncontrollably
- isolating oneself from family and friends and avoiding social situations
- relying increasingly on alcohol or drugs to get through the day
- feeling extremely moody, irritable, angry, suspicious or frightened
- having difficulty falling or staying asleep, sleeping too much, and experiencing nightmares.
- feeling guilty about surviving the event or being unable to solve the problem, change the event or prevent the disaster and
- feeling fears and sense of doom about the future.

It is a complex reaction that affect every aspect of human existence to a certain degree. The response to stress may be immediate and incident specific; it may be delayed for a period of time after an incident; it may be cumulative, building up over a long period of time; and it may relate to more than one and even many incidents.

The DSM-IV lists traumatic events that if experienced directly could lead to Post Traumatic Stress Disorder (PTSD). These include but are not limited to military combat, violent personal assault, sexual assault, robbery, mugging, being kidnapped, being taken hostage, terrorist attack, torture, natural or manmade disaster and others. The list also includes a series of witnessed events that can lead to PTSD. These include but are not limited to observing the serious injury or death of another person due to violent assault, accident or disaster. It is also stated that learning about an event experienced by another can lead to PTSD. The DSM-IV also goes on to state that the disorder may be especially severe or long lasting when the stressor is of human design such as rape or torture. As a

Criminologist who is offering assistance, it is critical to recognize that others besides the primary victim is also at risk (Underwood & Edmunds 2003:100).

Symptoms of PTSD include the following:

- the traumatic event is re-experienced
- there is persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness
- there are persistent symptoms of increased arousal.

According to Underwood and Edmunds, (2003:101) other disorders can result from the trauma of violent crime besides that of PTSD. The literature had suggested that anxiety disorders (i.e. panic disorder, general anxiety disorder, phobias, obsessive compulsive disorder) mood disorders (i.e. major depressive disorder, dysthymic disorder) eating disorder (i.e. anorexia and bulimia.) dissociative disorder, and other are related to trauma. Trauma can cause a worsening of existing symptoms in most disorders if the person has a mental disorder preexistent to the traumatic event. Trauma can in some individuals be the precipitating event that triggers the development of many of these disorders.

When a person is victimized, three basic assumptions or beliefs about the self and the world are challenged. They are the belief in personal vulnerability, the view of oneself in apposite light, and the belief in a meaningful and orderly world (Fay 2000:5). Trauma challenges previously held assumptions, beliefs and understandings about the world and oneself in the world.

The Criminologist therefore has to be aware of the relationship between traumatic events and the development of psychiatric disorders. They should also be aware that individuals may develop some of the symptoms of these disorders or milder versions of the symptoms related to these disorders. According to Underwood and Edmunds (2003:101) crisis intervention is designed to prevent or reduce the harm that traumatic events have the potential to cause. At the same time, if the victim assistant is aware of

psychological consequences and resenting behaviors, they may be able to recognize and refer victims to professionals trained to provide therapeutic interventions.

6.4 CRISIS INTERVENTION IN CRIMINOLOGICAL CONTEXT

6.4.1 The Role of the Criminologist

According to Underwood and Edmunds (2003:103) there are three elements to a crisis. There must be a stressor, a response to the stressor and changes in either adaptive or maladaptive functioning as result of the crisis. While the stressor must be present, it is the individual's perception and reaction to that stressor that is critical. Depending upon the crisis and the individual's response to it, changes will occur in the individual which are negative or positive. The individual's perception of these changes and other's perceptions of these changes lead us to label these changes as positive or negative. Crisis intervention should include assessment, monitoring , intervention aimed at prevention and where necessary referral for therapy to a trained therapist.

The purpose of crisis intervention is to intervene at any of the three elements of a crisis described above. Intervention should be aimed to eliminate stressors or alter them in some manner to reduce their potential to negatively affect the individual (Underwood & Edmund 2003:111). Intervention should be aimed at assisting the individual in their ability or perception of the stressor(s) and any protracted basic crisis intervention should be focused on altering the individual's reactions to the crisis so as to enhance his or her coping skills and cognitive reappraisal and reduce the development of harmful or negative patterns of responding brought on by the stressor(s) associated with the crisis.

The Criminologist offering victim assistance through crisis intervention therefore needs a specific counseling method that could assist in the intervention. The Criminologist would by no means attempt any therapeutic relationship with the client. Intervention would be specific and direct and founded within the realms of the expertise of a Criminologist. During counseling sessions with victims and family members of victims of crime the researcher intervened by way of debriefing.

6.4.1 Debriefing in Criminological Context

According to Everly and Mitchell (2000:220) crisis intervention is designed to compliment more traditional psychotherapeutic services. Debriefing is presented in the form of counselling on an individual or group basis.

Narrative therapy utilizes an approach often referred to as externalizing conversations. This approach allows a person to view the problem as separate from herself making it easier to recognize, understand and protest its influence. Externalizing helps people avoid becoming overwhelmed by a problem (Fay 2000:2). Narrative theory emerged from the milieu of post-modern thought (Fay 2000:10). According to Freedman and Combs (1996:43) post-modern ideology has four essential beliefs. They are:

- realities are socially constructed
- realities are constituted through language
- realities are organized and maintained through narrative
- there are no essentials truths.

Narrative theory would postulate that victims develop a story about themselves and their reactions to a critical incident. Victims may see themselves as heroes or cowards depending on the meaning they attribute to their experience of a critical incident. Constructing a self-story illustrates an attempt at making sense of all experiences, including those that do not make sense (Fay 2000:10). White (1989:32) states the following:

“...in striving to make sense of our lives, we face the task of arranging our experiences of events in sequences across time in such a way as to arrive at a coherent account of ourselves. Specific experiences of events of the past and the present, and those that are predicted to occur in the future, are connected to develop this account, which has been referred to as a story or self-narrative.”

Externalizing helps a person avoid becoming overwhelmed by a problem. Separating the problem from the individual does not relieve the person of the responsibility for the ways in which they participate in the maintenance or resolution of the problem (Fay 2000:11). When narrative therapy is used in a Critical Incident Stress Debriefing (CISD) context, the problematic behaviour and the meanings attributed to those behaviours are identified as belonging to the critical incident and not the victim.

Mitchell (1983:37) used the term Critical Incident Stress Debriefing (CISD) to refer to one form or model of group crisis intervention, sometimes generically referred to as group psychological debriefing (Everly & Mitchell 2000:212). The CISD was originally formulated to use with emergency services personnel who were potential victims of traumas and critical incident. It has however been use in a wide variety of settings including schools, businesses, industrial settings, the airline industry and mass disaster (Everly & Mitchell 2000:213). The CISD is one form of group crisis interventions which represents one component within a larger crisis intervention program referred to as Critical Incident Stress Management (CSIM).

CISD represents a highly structured form of group crises intervention and represents a discussion of the traumatic or critical incident in seven distinct stages. The CISD typically takes 1,5to 3 hours to conduct. It is most commonly conducted 2 to 14 days after a critical incident. The expressed intention of the CISD is to provide some facilitation of the process of psychological closure upon the traumatic or critical event (Everly & Mitchell 2000:212).

The core components of the programme are as follows (Table 7):

- 1 Pre-incident preparation

This is best described as a form of psychological immunization. The goal is to strengthen potential vulnerabilities and enhance psychological resiliency in individuals who may be at risk for psychological crises and/or psychological traumatisation (Everly & Mitchell 2000:213).

2 Demobilization

The demobilization is an opportunity for temporary psychological decompression immediately after exposure to a critical incident. The CISD is ideal for school crises, business and industrial crises, community violence and mass disaster (Everly & Mitchell 2000:213)

3 Defusing

This is a 3-phase, 45 minute, structured small group discussion provided within hours of a crisis for purpose of assessment and acute symptom mitigation.

4 Critical incident stress debriefing (CSID)

This refers to the 7-phase, structured group discussion, usually provided 1 to 14 days post crisis and designed to mitigate acute symptoms, assess the need for follow-up, and if possible provide a sense of post-crisis psychological closure.

5 One-on-one crisis intervention/counseling or psychological support

This can take place throughout the full range of the crisis spectrum. Typically this form of intervention consists of 1 to 3 contacts with an individual who is in crisis.

6 Pastoral crisis intervention

This entails more than just ministerial or chaplaincy services, represents the integration of traditional crisis intervention with pastoral-based support services. In addition to traditional crisis intervention tools, pastoral crisis intervention may employ scriptural education, prayer, rituals and sacraments, and the unique ethos of the pastoral crisis interventionist.

7 Family crisis intervention

Both family and organizational crisis intervention, when done cost effectively will possess proactive and reactive elements.

8 Follow up and referral mechanisms for assessment and treatment

Crisis intervention system has to recognize that some critical incidents are so toxic by their very nature, that they will require a more intense and formalized intervention.

This process can be depicted in table 7 (Evelyn & Mitchell 2000:214). Different ways of counseling individuals who have been traumatized varies according to the need of the individual(s) involved as well as the availability of resources. Traumatic events like the Gulf War necessitated varied implementation of the CISD for soldiers and more recently it was used after the attack of 9/11 on America to aid the recovery of survivors. In South Africa the use of the Truth and Reconciliation Commission (TRC) to aid reconciliation with the past, gave victims the opportunity to narrate their experiences.

A process which proved to be cathartic to some, also proved to be traumatic to the individuals who re-told their experiences, but also traumatic to the panel who had to listen to similar events on a daily basis. As a result pre-testimony briefing was rendered to those giving testimony before the TRC. This was followed by debriefing to aid the individual in dealing with feelings about how the testimony was received by the TRC (Hamber 1995:8).

Traumatic events occur in a social context which can influence the victims level of trauma. The expert understanding of crime and its victim makes it possible for the Criminologist to offer debriefing through counseling based on the understanding of the social context in which the crime was committed. Criminologists are therefore in a unique position to normalize the reaction of the victim and offer preparation for future experiences in the form of crime preventative information.

Table 7: CISM system (Evelyn and Mitchell 2000:214)

Intervention	Timing	Activation	Goal	Format
1 Pre-crisis preparation	Pre-crisis phase	Crisis anticipation	Set expectations Improve coping Stress management	Groups/Organizations
2 Demobilizations and staff Consultations	Shift disengagement	Event driven	To inform and consult. Allow psychological decompression Stress management	Large groups/Organizations
3 Crisis management Briefing (Schools, civilians , business)	Anytime post-crisis	Event driven	Symptom mitigation Possible closure	Small groups
4 Critical incident Stress debriefing	Post-crisis (1 to 10 days;3-4 weeks mass disaster)	Usually symptom driven; can be event driven	Facilitate psychological closure. Mitigation	Small groups
5 Individual crisis intervention (1:1)	Anytime, anywhere	Whenever needed	Symptom mitigation. Return to function, if possible Referral, if needed	Individuals/groups
6 Pastoral Crisis intervention	Anytime, Anywhere	Whenever needed	Provide spiritual, faith-based support	Individual/groups
7 Family CISM	Anytime	Either symptom driven or event driven	Foster support and communications. Symptom mitigation Closure if possible Referral is needed	Families/organisations
8 Organizational consultation	Anytime	Either symptom driven or event driven	Foster support and communications Symptom mitigation Closure, if possible Referral if needed	Families/organizations
9 Follow-up/referral	Anytime	Usually symptom driven	Assess mental status Access higher level of care if needed	Individual/family

For the purpose of this study the researcher made use of the Debriefing Model as well as elements from the CISM model and narrative approach to offer debriefing to victims of crime.

6.4.2 Proposed Model for Debriefing Conducted by Criminologists

The Debriefing model as proposed by Barry Fowler (1996) consists of six stages:

- the introduction stage
- the story stage
- the background stage
- the retelling stage
- the “going beyond” stage and
- the termination stage.

6.4.2.1 The Introduction Stage

According to Fowler using the term debriefing does not have the threatening connotations to the person’s self concept that the words “counseling” or therapy might have. The process is explained to the person and any doubts or reservations which the person might have may be addressed. Dyregrov (1997) asserts that trust, authority and structure are needed to conduct a debriefing session and achieve results. Providing trust and a safe atmosphere of non-possessive warmth is essential for the purposes of debriefing. This introduction phase provides structure, defines boundaries, builds trust and decreases the victims anxiety. The researcher found it useful to explain the study field of Criminology in an attempt to foster a trusting relationship with the victim. Fowler postulates that some comfort might be derived for the traumatized person from knowing that the debriefing technique has been used with people who have been similarly traumatized previously. Thereby indicating that either people have suffered what they are presently experiencing and thus that their suffering is not unique or abnormal.

It is also useful to inform the victim that there is no time limit to the time that the session may last and that confidentiality is ensured.

6.4.2.2 The Story Stage

During this stage the victim is invited to describe the traumatic event. Initially a traumatized person is likely to produce a very short and factual account of the traumatic event, devoid of any emotions. According to Rose and Bisson intense re-exposure involved in debriefing can re-traumatise some individuals without allowing adequate time for habituation, resulting in a negative outcome. Of particular importance is working at the pace of the victim and not to attempt to hurry them along (Fowler 1996:2).

6.4.2.3 The Background Stage

The victim is requested to try to describe his/her situation or context before the traumatic event. Focus on feelings, mood and expectations of the immediate future during which the traumatic event took place. This may help the victim to realize how unexpected the trauma was for him, and might help him to accept their lack of preparation in dealing with the trauma, or his initial disorientation during the traumatic event.

6.4.2.4 The Retelling Stage

Take the person through the story he has already provided, but ask him to describe his thoughts and feelings during the time of the trauma. The normality of theory actions and feelings would be pointed out. Sometimes the traumatized person will, realizing what is expected of him, provide a more detailed account of the traumatic event than the one originally presented, but most people are likely to remain factual in their retelling. This person can be asked specific questions about the thoughts and feelings at what he or she might consider to be traumatic highlights.

During debriefing sessions the researcher found that the most common emotions which were expressed were anger and guilt. According to Fowler (1996:2) anger can either be expressed at others- people who should have helped but failed and themselves- at their lack of preparation, knowledge or skills which might have improved the situation. Guilt

may be expressed often about actions carried out which might have proved to have been incorrect, and which therefore exacerbated the problem. There also may be guilt about actions which the person failed to perform.

6.4.2.5 The Going Beyond Stage

Ask the victim to continue to narrate the sequence of events which followed the point at which they ended their initial account of the story. The victim can be encouraged to describe what happened when they went home, family reaction to the person's traumatic experience and the manner in which they spent the day or days that followed the traumatic event. Ask how they resumed their usual way of life including their return to work.

6.4.2.6 The Termination Stage

With the purpose of normalizing the victims' reactions to the traumatic event, the victim can be asked what they would have liked to do differently. It might help them to realize that they would not actually have done much differently, which can be used to point out the appropriateness of their actions, even though they might have felt inadequate at the time.

In the termination stage the researcher found it useful to allow the victim to ask any questions regarding the event. Information surrounding the type of crime committed can give insight into the construction of the crime by the criminal. For example in the event of armed robbery, the victim experiencing guilt regarding the large amount that was stolen can be informed that armed robberies are very often calculated and that the premises could have been watched and therefore robbed at the particular time when a substantial amount of cash was on hand.

The researcher also found that this stage could be appropriate to explore the possibility that the traumatized victim might be suffering from PTSS. This was determined by using

a questionnaire. The outcome was then discussed with the victim as well as the manifestation of PTSS.

The initial debriefing session can be followed up by another session in which the victim could report back on progress. If the victim returned for a third session, the researcher had to discuss the possibility that the victim might have to consider long term therapy due to the complex nature of the incident and a referral to a psychologist would then be indicated.

According to Underwood and Edmunds (2003:107) it is important to recognize that any pre-existing condition either psychological, or physiological can be worsened by a traumatic event. The researcher found it useful to use the following as guidelines to determine the necessity to refer the victim to a psychologist:

- previous exposure to trauma
- increased use of alcohol consumption, depressive symptoms and depersonalization
- childhood sexual abuse and neglect as this means greater risk of developing PTSS
- suicide tendencies.

Past coping skills and problematic responses to stressors is highly predictive of how the victim will respond in the current situation. The use of poor coping skills in the past is an indicator that the victim is at risk (Underwood & Edmunds 2003:107). Kenardy (1998:1033) postulates that factors such as perception that a trauma is life threatening, the person's pre-morbid psychiatric state and the presence of serious ongoing stressors have an impact on the recovery process.

6.5 Reflection

The process of debriefing is surrounded by criticism. Cochrane reviewed eight randomized trials and found no evidence that debriefing had any impact on psychological morbidity. The Cochrane review acknowledges that the quality of the debriefing was not

on standard and therefore the research findings questionable. Much of the controversy seems to be founded in terminology. Moran (1998:3) correctly states that formal debriefing has been modified over the years to be more flexible in the emergency environment or to match the requirements of particular emergency organizations. The variability in the aim of debriefing makes it difficult to assess its effectiveness. For those who believe it provides social support and emotional assistance, debriefing seems to work. If the aim is to reduce post trauma symptomatology, particularly related to PTSS the beneficial effects are more debatable. The variability of its aim makes it easy either to overstate or understate the value of debriefing.

Dyregrov stated that the debate on debriefing is not only a scientific but also a political debate. It entails power and positions in the therapeutic world and as a technique represents a threat to the psychiatric elite (Everly & Mitchell 2000:220).

6.5 CONCLUSION

The researcher is of the opinion that when the aims of debriefing is taken into consideration and combined with the expertise of the Criminologist, it acquires a structure that culminates into a technique that is very specific and that does not exclude any other additional assistance from professions like psychology. Through debriefing the Criminologist can aid the process whereby a victim becomes a survivor.

Next the role of the Criminologist in the assessment of offenders will be discussed.

CHAPTER 7

THE ROLE OF THE CRIMINOLOGIST IN ASSESSING OFFENDERS

7.1 INTRODUCTION

The use of the term forensic Criminologist has become a bone of contention in academic as well as public circles. Lambrechts and Prinsloo (2002:11) states that it has become fashionable for Criminologists, who refer to themselves as Forensic Criminologists to enter the legal arena and to testify on behalf of their “client” as expert defense witness. Dr. Irma Labuschagne has also been cited for using the term Forensic Criminologist to classify her field of expertise. The criticism mostly comes from related social science studies of psychology. The response of Prof. Charl Vorster (2003:12) focuses on the shortcomings of the clinical training that according to him, needs too be utilized in evaluation and diagnosing – skills which are owned by Psychology. However it may be, profiling of offenders has become an every day occurrence a task that Dr. Mark Welman (2000) explains any behavioural scientist with solid training ought to be able to do.

The debate regarding the use of Criminologists as expert witnesses in court also continues amongst fellow academics. The main concern is that Criminologists can (seemingly) only testify for the defense (Lambrechts & Prinsloo 2002:11). Cloete (2003:23) states the following:

“...the current evaluation role of the Criminologist is mainly concerned with rendering a service to the defence by furnishing an evaluation report to the attorney/advocate about his/her client. A Similar service to the state is not envisaged at present.”

Cassim (1999:19) states that the students studying Criminology should not have a false impression that an honours degree with a course in Forensic Criminology will immediately qualify them to be Forensic Criminologists.

The following discussion will attempt to clear up the misconception of Forensic Criminologist in assessing offenders by identifying and explaining the field of expertise within the realms of Criminology.

In order to describe and outline the depth of professional expertise made available by the discipline of Criminology it is essential to define the scope of the field of study of Criminology.

7.2 THE SCOPE OF THE FIELD

According to Morgan (2000:106) Criminologists study the sociological and psychological factors involved in the cause and prevention of crime, as well as in criminal punishment and rehabilitation. Maree, Joubert and Hesselink-Louw (2003:77) identify two approaches to what Criminologists actually do as follows:

The vocational or professional approach to Criminology and the critical or analytical approach. The vocational approach tries to improve some aspects of the Criminal Justice System, while its critical counter part examines the deeper philosophical issues.

The social nature and scientific foundation of Criminology is evident in the areas of importance to Criminologist's as identified by Sutherland and Cressey (Siegel 2003:4) which are:

- the development of criminal law and its use to define crime
- the cause of law violation and
- the methods used to control criminal behaviour.

Williams (2001:10) describes the aim of Criminology as ascertaining the causes of crime to pre-empt or prevent crime by treating its perceived causes, to study the effects of crime on society and to analyse societal reaction to crime.

The role of the Criminologist in South Africa has been the focus of academics and students (Lea, 1991; Cassim, 1999; Labuschagne 2003; Hesselink-Louw, 2005). In 2001

Unisa devised a course in Forensic Criminology at honors level to equip students with specialized training to appear as an expert witness in court.

What seems to be an emerging function of the Criminologist is the criminological assessment of offenders, be it for sentencing purposes or with the aim of promoting rehabilitation or to assist the court in determining culpability as discussed in Chapter 3. All these activities rely on the expert knowledge of the Criminologist.

7.3 THE CRIMINOLOGIST AS EXPERT WITNESS

Du Toit, De Jager, Paizes, Skeen and van der Merwe (2003:24-17) states that it would be incorrect to draw up a closed list of matters on which expert testimony may be adduced. The opinion of an expert is admissible if it is relevant. It is relevant if the expert by reason of his special knowledge or skill is better qualified to draw an inference than the judicial officer (Du Toit *et al.* 2003:24-17). The function of expert witnesses is to guide the court through an unknown area by providing the court with information that they don't have. The role of an expert witness is not to replace the function of the court as the court must debate and decide on each fact. Expert evidence may place the court in a better position to do so.

The requirements on the basis of which opinion evidence can be introduced to a court are the following (Schmidt 1993:294):

- the court must be convinced that the witness is competent to speak as an expert on the relevant subject- the witness's qualifications and experience is what is weighed
- the court must be informed regarding the information and sometimes the reasoning process on which the opinion is based. The court shall not subject itself to the opinion of the witness- the expert may give his or her opinion, but eventually the court itself must decide whether it is a correct opinion.

The court must debate and decide on each fact that the expert witness places before the court. The court has the final decision regarding the use and acceptance of the opinion

and can debate the opinion as the following example indicates. In *Holtshauzen v Roodt* 1997 (4) SA 766 (W) the expert testimony of a psychologist was challenged when a clinical psychologist testified that the defendant had:

- consulted him on a number of occasions and told him that she had been raped by the plaintiff
- that she had said so twice under hypnosis during therapy sessions, and that it was his opinion that she was telling the truth.

A second psychologist, social worker and counselor would testify that women who had been raped would not often reveal the incident to third parties immediately after it had occurred and that it was common for such victims to exhibit radical changes in behaviour. The first challenge was successful, the court holding that evidence of that kind was irrelevant.

The use of expert witness can take place during any stage of a criminal trial (see diagram 1). The use of expert testimony with regard to technical topics such as fingerprints, handwriting, ballistics and foreign law lend themselves more readily to elucidation at the hands of an expert. Expert testimony then occurs during the trial stage. It is also at this stage that expert testimony of social workers and psychologist can be called upon.

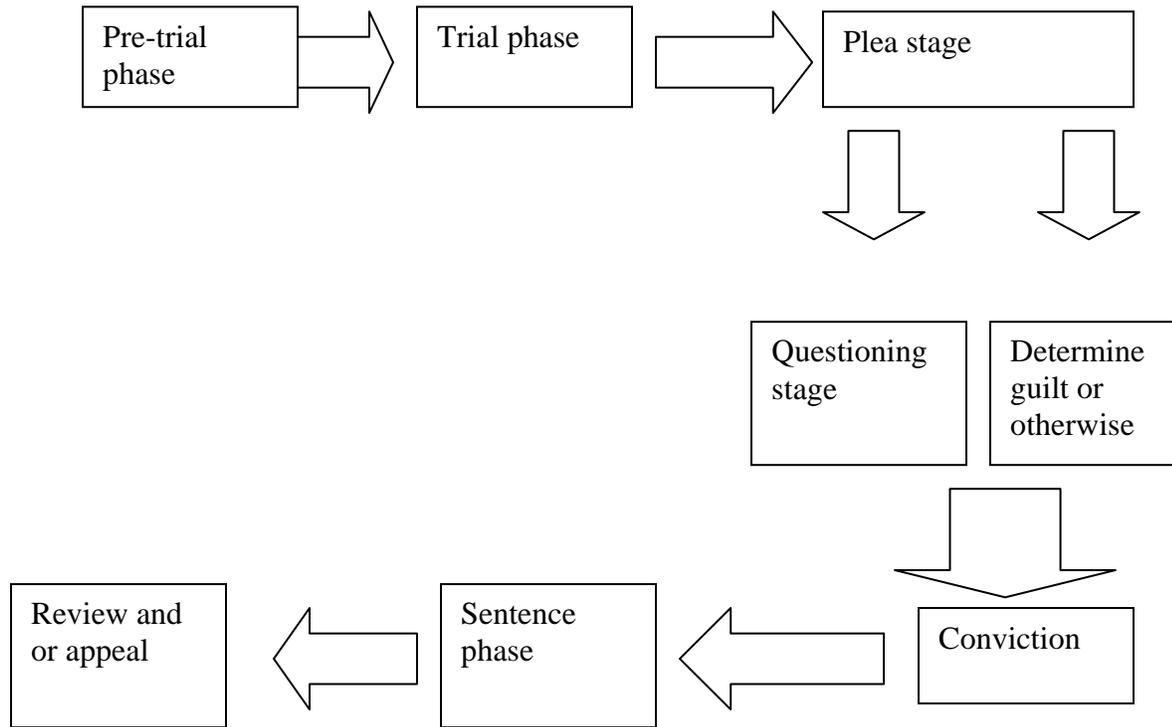
7.3.1 The Role of the Forensic Criminologist

It is clear that some professionals still lack a clear understanding of what exactly is meant by the term “Forensic Criminology”. The term “forensic” is not owned by any science, as it merely describes the type of work done by any expert who appears in a court of law (Labuschagne, 2003:2).

Criminology, because of its scientific nature has two essential components which are its theoretical and its methodological branches. Theory represents an effort to explain the “why” of crime. Methodology refers to the techniques or methods that Criminologists use to learn facts as they attempt to answer why (Brown, *et al.* 2001:11). It is the use of theories and research to enable the Criminologist to study crime, criminals, victims,

adjudication and crime prevention. The scope of the study field therefore equips Criminologists with scientific knowledge that can be applied to the writing of forensic report for the purposes of individualized sentencing.

Diagram 2: Criminal trial procedure



The Forensic Criminologist is viewed by the court as an expert witness where the judges or magistrates would be unable to draw an inference or conclusion, because they lack the specialized knowledge.

According to Labuschagne (2003:1) the South African Forensic Criminologist can operate in two capacities in the criminal courts, namely to a lesser extent before judgment whether a person is guilty or not, but to a much greater extent after conviction but before sentencing. Section 274 (1) of the Criminal procedure Act 51 of 1977 makes provision for all judicial officers to solicit presentence information from any source, including a psychologist, a social worker in private practice or a Criminologist in private practice.

7.4 CRIMINOLOGISTS VERSUS PSYCHOLOGISTS AND SOCIAL WORKERS

Psychologists, social workers and Criminologists have much in common: all are human scientists and therefore share a special interest, namely human behaviour. According to the Oxford Dictionary (2001: 659) Psychology is the scientific study of the human mind, where as social work (2001: 788) benefits those in need of help or welfare. Criminology also studies human behaviour and mental processes but for the purpose of expert testimony in courts the focus would be on the criminal and or the victim or crime. This refers to all the biological traits, psychological traits and cognitive features of the human being that have been identified as important in the mediation and control of behaviour. Criminology not only focuses on individual criminal behaviour but also on all environmental circumstances, as well as the context, in which the criminal was functioning at the time of the commission of the crime (Labuschagne 2003:5).

The difference between the psychologist and the Forensic Criminologist can be summarized as follows (Labuschagne 2003:5):

- the Psychologist focuses on the psychological aspects of a person whereas the forensic Criminologist takes a holistic view and sees the human being in his totality, as the explanation of criminal behaviour is multifaceted
- the psychologist diagnoses mental aberration and deficiencies whereas the forensic Criminologist takes these diagnoses into account in his analysis of the causes of crime and recommendations regarding punishment. The Forensic Criminologist never diagnoses or treats individuals
- Psychologists usually play a great role in the determination of the criminal capacity of the accused before judgment whereas the forensic Criminologist considers the criminal's moral blameworthiness after conviction but before sentencing.

In *S v Lister* 1993 (2) SACR 228 (A) the following was said:

“The approach of a sentencing officer is not the same as that of a psychiatrist. The sentencing officer takes account of all the recognized aims of sentencing including retribution; the psychiatrist is concerned with diagnosing and rehabilitation”

Table 8 illustrates the main differences between the role and function of a Psychologist, Criminologist and Social Worker for the purposes of giving expert evidence in court.

The information was obtained from the reports compiled by:

- Gloudina Spies- Social worker
- Kobus Redelinghuys- Clinical Psychologist
- Prof Herman Conradie- Criminologist

The case in point is the *State v David Lumley*. Mr. Lumley was found guilty of possession of pornographic material and indecent assault of his daughter. The report by the Clinical Psychologist was requested by Mr. Lumley’s lawyer, and the Criminological report was requested by the State. All three the expert witnesses were aware of the reports constructed by each other and the information was not disputed. It is the opinion of the researcher that the information contained in all three reports would have furnished the court with detailed information regarding the origin and explanation of the accuser’s behaviour. The criminological report, however, makes a distinguishing contribution by discussing the various sentencing options. The researcher finds the two other reports wanting in this regard.

Labuschagne (2003:4) cautions against the use of Psychological testing as she states that they are all projective techniques and the conclusion made will depend on which school of thought the psychologist adheres to. It is therefore possible that two psychologists may come to complete different conclusion. The Social Worker focuses on the social functioning of individuals, both as an individual and in a group, and gives particular attention to social relationships, which consist of the interchange between people and

between people and their environments. These aspects are also of importance to the Forensic Criminologist but the Criminologist limits it to the crime situation.

Table 8: Comparison of expert witness reports by a Psychologist, Social Worker and Criminologist.

	Psychology	Social work	Criminology
Focus	Identification and classification of the behaviour of the accused	Identifying and construction of events that contributed to the behaviour of the accused (social problems)	Explaining criminal behaviour by focusing on the accused and his social environment
Tools	Psychological testing- 16 PF, Rorschach test and TAT. Clinical observation and impressions	Consultation with the accused, his lawyer, his attorney and his mother. The police report was consulted as well as other existing reports	Consultation with the accuse, his wife and his daughter. Reports pertaining to the victim, existing reports of psychologist and social worker, police docket and pornographic material found in possession of the accused Research findings and explanatory theories
Role in court	To construct a personality profile of the accused	Identify contributing factors	Explanation of criminal behaviour. Identified mitigating and aggravating factors for sentencing

The contribution of the Forensic Criminologist also differs in respect of the explanation of the etiology of crime, an aspect in which Social Workers are not trained specialists (Labuschagne, 2003:6). In certain disciplines principles within the study field could also be prescriptive for example in the State vs. Mr. X (chapter 4) the Social Worker was asked to give her opinion on sentencing and she said that as a social worker she has to act in the best interest of the child and had to suggest a suspended sentence.

Criminologists should be fully aware of the fact that the theories used and the way they are applied to the criminal or the crime can be and is often questioned in the same way the psychologist's choice of test and findings are (Labuschagne 2003:4).

The following discussion will focus on what a Forensic Criminological report consists of followed by a case study.

7.5 CONTENT OF A FORENSIC CRIMINOLOGICAL REPORT

As expert witnesses in the criminal court, it is the role of the Criminologist to assist the court in gaining a more complete picture of the offender as a person, including their developmental history, social environment and social functioning, the social and psychological dynamics of the crime, their motivation for and attitude towards the crime, their potential for positive change and appropriate resources in the community (Van der Hoven 2003:11). According to advocate J Engelbrecht (2003:1) a sound knowledge of Criminology alone does not suffice. Having experience in the criminal courts in South Africa, both lower and high Courts he suggests that suitable academic and specialized qualifications in Psycho-Criminology, Victimology, Penology as well as Psychology are essential.

The function of a Forensic Criminologist and the purpose of the pre-sentence report was described in evidence in *S vs. Kgafela* 2001(2) SACR 207(B):

When reports of this nature are compiled, this is not done to find excuses for the offender or to try and bring about the lightest possible sentence. These reports are compiled to

assist the Court. An important aim is to present the Court with a picture of whom the offender is as a human being. The more complete the picture of the person before the Court, the better the Court is able to come to a just conclusion regarding individualized punishment.

The requirement of the structure of the report is discussed in detail in Tutorial Letter 501/2003 of Unisa for Forensic Criminology. The purpose of this chapter is not to explain the structure as forensic reports have been compiled for South African courts by Criminologists since 1980's. However, the researcher is of the opinion that a discussion of a few structural points deems necessary due to the researcher's own experience in court.

7.5.1 The First Meeting

During the first meeting with the interviewee the purpose of the forensic report should be stated clearly. The Forensic Criminologist should obtain and study all the relevant information and court documents before the first meeting takes place. If specific instructions were received from the Judge these instructions should be made clear to the interviewee as well as the fact that the purpose of the report is not to change the findings of the court, but is only for the purpose of assisting the court to impose an individualized sentence. In the case study 3 a forensic report was requested by the Judge due to evidence that was given during the trial in which the accused said that her actions were influenced by the trauma suffered due to her forced abortion. Instructions from the Judge were to consider this aspect in the pre-sentencing report.

7.5.2 Biographical data

At the sentencing stage of a criminal trial, the Forensic Criminologist may be requested to furnish the court with a pre-sentence report. At this stage the court may be in possession of the biographical information of the accused, despite this, it is advisable for forensic Criminologists to obtain this information directly from the individual. According to Theron (Van der Hoven 2003:3) the focus of other professionals may be

slightly different to that of the Forensic Criminologist and criminogenic factors that are taken into consideration when preparing a pre-sentencing report may be disregarded by other disciplines. It is also a sound way of confirming information and correcting any misrepresentation that might have occurred. Case in point is the State v Vumile Jackson Mbotshane 173/2003/09/07 (case study 6). A pre-sentencing report was requested by the State from the researcher. The accused was found guilty of murdering his daughter. During interviews with the accused it became clear that the victim was in fact his grand daughter not his daughter. The researcher is of the opinion that this information must be presented in a concise manner and found presenting the information in a table form as useful.

7.5.2.1 Case study 5:

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSKEI DIVISION)

In the matter between:

THE STATE

And

VUMILE JACKSON MBOTSHANE

The Director of Public Prosecution of Transkei who prosecutes for and on behalf of the State, presents and gives the Court to be informed that:

VUMILE JACKSON MBOTSHANE, a 60 year old male of Ntwashini locality Engcobo. (Hereinafter called the accused) is guilty of the crimes of:

- 1 MURDER in contravention of section 84 of Act 9 of 1983.
- 2 ASSAULT WITH INTENT TO CAUSE GRIEVOUS BODILY HARM in contravention of section 92 of Act 9 of 1983

COUNT 1: MURDER

In that upon or about 27 February 2003 and at a near Ntwashini Locality in the district of Engcobo the accused did wrongfully and intentionally kill his **daughter** (researcher's own emphasis) Tabisa Mahlikihla a 5 year old female.

This is the end of the charge sheet.

7.5.3 Criminological Crime Explanation

Labuschagne (2003:6) postulates that the use of criminological theory is the best way of making sense of factors contributing to the committing of a crime. Macro theories deal mainly with large-scale social patterns such as social change or the social, economic and political organization of society. Other theories focus on the way individuals interact with others and with the groups to which they belong. They emphasize the social processes by which people and events become criminal. The three main groups of theories the Forensic Criminologist takes into account when compiling a pre-sentencing reports should be:

- the individual human aspects, including a comprehensive picture of the personal history of the offender
- all environmental aspects regarding the specific offender and
- the context in which the crime was committed.

There has been a growing acceptance amongst Criminologists of the limitation of existing theories. This give rise to the integration of theories which provides a more comprehensive understanding of criminal behaviour (Brown *et al.* 2001:408). Table 9 indicates some of the theories and their limitations. Attempts to integrate different theoretical orientations has a history dating back to the 1940s (Brown *et al.* 2001:409). Early attempts to integrating theory is evident in the writings of Clifford Shaw and Henry MacKay. Shaw and MacKay integrated the social disorganization and social learning theories. The organization and physical structure of the community was of major

importance in terms of affecting behaviour and interaction patterns (Brown *et al.* 2001:408). Cloward and Ohlin's differential opportunity theory combines the strain theory with social learning theory (Brown *et al.* 2001:409):

- a person deviates because of some external stress (strain theory)
- delinquency is group behaviour requiring social support and confirmation (social learning theory).

Table 9: Theoretical crime explanations and limitations

Theory	Explanation of crime	Limitation
Social structure theories	Disproportionate representation of minorities and members of the lower class	Fail to explain adequately why middle- and upper-class people break the law
Social control theory	Accounts for individuals variations in criminal activity	Does not explain why certain groups have fewer bonds to society
Conflict perspective	Laws are enacted by the rich and powerful to their benefit	No consistent evidence to suggest that these structures cause people to violate the law

It was not until the 1970s that the movement to integrate competing theoretical models took place. Brown *et al.*(2001:411) postulates that most attempts to integrate theories have sought to explain individual levels of behaviour through combination of social psychological theories. The most common attempts have involved social control and social learning theories. Less common have been the integration of social control and strain theories.

The most common approach to combine the theories is in a sequential model. This model is referred to as the end-to-end model and suggests that one of the theories better explains early or prior causes of delinquency while another is more proximate to actual precipitating factors in criminal activity (Brown *et al.* 2001:411).

7.5.4 Sentencing Recommendations

In recommending sentence the forensic Criminologist should take note of two possible views (Van der Hoven 2003:219):

- deterministic view – this view is mostly shared by social scientists who feel that criminals were shaped by their circumstances, that society is as much to blame for their misdeeds as the miscreants themselves and should not be stigmatized by “punishing” them
- indeterminists view- this view is shared by lawyers and sentencing officers. They believe that since criminals have had the benefit of free choice, they should be held responsible for their wrong choice and should be punished, not treated as if they were suffering from some kind of disorder.

The pre-sentencing report must only express thoughts on a possible sentence because it is the exclusive prerogative of the court to assess a fit and proper sentence (Engelbrecht 2003:6). The Forensic Criminologist needs to take cognizance of the prescribed minimum sentence for specific crimes. The rationale for the imposing a minimum sentences can be summarized as follows (South African Law Commission 1997:21-22):

- a simple message must be conveyed to potential offenders, such as a people who is found guilty of rape are sentenced to a minimum of 15 years imprisonment
- one way of circumventing leniency in courts is to prescribe mandatory minimum sentences for crimes of violence
- appropriate mandatory minimum sentences give the community a feeling that justice is being done
- mandatory minimum sentences for crimes of violence communicate a clear message regarding the implications of people’s involvement in any form of violence.

The Criminal Law Amendment Act 105 of 1997 makes provision for the imposition of mandatory minimum sentences. The amendment act lists certain crimes such as murder,

robbery and rape and describes actual situations in which mandatory sentences, including life imprisonment for murder and rape must be imposed except where courts find compelling and substantial circumstances, which justify a lesser sentence. Substantial refers to consideration of all the mitigating factors to see whether they are of substantial weight. When these factors are taken together they must compel a Court to exercise discretion to impose a lesser sentence than that prescribed (South African Criminal Law Reports 2001:307). In S V Homareda 1999 (2) SACR 319 (W) Judge Cloete stated the following with regard to section 51 of the Act:

- (1) The starting-point is that the prescribed minimum sentence must be imposed.
- (2) It is only if a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, that it may do so.
- (3) In deciding whether substantial and compelling circumstances exist, each case must be decided on its own facts. The Court is required to look at all factors- mitigating and aggravating- and consider them cumulatively.
- (4) If the Court concludes in a particular case that the minimum prescribed sentence is so disproportionate to the sentence which would have been appropriate- bearing in mind that the Legislature perceives the necessity for sentences emphasizing the deterrent component, but equally bearing in mind that this does not necessarily lead to an automatic increase of sentences previously imposed- it is entitled to impose a lesser sentence. If the Court is of the view that application of this test would result in the imposition of a sentence less than the prescribed minimum in most cases, it should set in train the process necessary for the Constitutional Court to adjudicate upon the constitutionality of the legislation in question.

Although mandatory minimum sentences have been criticized by various structures, it is not the role of the Forensic Criminologist to debate this issue in court. The Forensic Criminologists needs to understand the minimum sentences and the conditions under which they are applicable. In Case study six, sentencing options are not discussed as the instruction of the Judge was to determine aggravating and mitigating factors as the crime committed called for consideration of the mandatory minimum sentence of 18 years. The accused received a prison sentence of 10 years for the crime.

In the following case study the researcher will indicate the information contained in a pre-sentence report (Case number 191/06/2001). The report was presented and accepted in the High court of Mthatha to Judge Schoeman.

7.6 PRE-SENTENCE REPORT CASE STUDY 7

7.6.1 Introduction

Ms Dyantyi (hereafter called Nophelo) was referred to me by the State for a pre-sentencing report. Criminological reports are compiled to assist the Court by presenting a picture of who the offender is as a human being. The more complete the picture of the person before the Court, the better the Court is able to come to a just conclusion regarding a suitable sentence of the specific individual and entails the necessary steps to furnish the Court with a comprehensive picture of:

- the social and personal history of the offender
- future criminal potential
- mental and physical anomalies and other relevant matters.

The evaluation of the offender in this case was based on the writing of essays under specific headings as well as in-depth interviews. This information enables the Criminologist to obtain intellectual and emotional insight into behaviour of Nophelo. In this report verbatim passages will also be used to reflect Nophelo's way of thinking, her background and her personality.

7.6.2 Observation during interview

Nophelo was brought to my office by inspector Mzimvubu and Serg. P Mfeya. The meetings were as follows:

Wednesday	06/08/03	1 hour
Thursday	07/08/05	2 hours
Friday	08/08/03	1 hour
Monday	11/08/03	1 hour.

During the first interview Nophelo appeared reserved. It stands to reason that due to cultural differences, it was a difficult process for both me and Nophelo to understand each other and it took time to build trust and make rapport. I had to rely on the translation of the conversation by the two members of the SAPS.

Nophelo became emotional during the second interview when she had to recall events of her childhood and the abortion that took place in August 2001. During the final interview Nophelo changed some of the detail of her statement of the first interview. When this was brought to her attention she reverted back to the original detail.

7.6.3 Biographical information

Name	Nophelo Dyantyi
Date of birth	1978-09-05
Age of the accused at time when the offence was committed	22 years
Gender	Female
Marital status	Married to the deceased
Educational level	Grade 11
Occupation	Representative employed by Nodada funeral parlor
Dependant	One
State of Health	During the first interview she stated that she is receiving treatment for high blood pressure, but during the final interview she stated that she now had problems with her blood sugar and not blood pressure
Previous offence(s)	None
Religion	Assembly of God
Monthly income	R1500 + commission

7.6.4 Family background

The Criminologist studies the family of origin of each particular offender in depth for the following reasons:

- to ascertain whether this family has any crime causative factors
- to predict possible further criminality
- to evaluate rehabilitation possibilities.

Nophelo's mother Nompumelelo Maphapu was born in 1956 and her father Gilbert Maphapu was born in 1945. Her parents were married by customary law in Ngxabangu location. Neither of her parents had permanent employment. Her mother worked in kitchens at times and her father had to go to Johannesburg to work in the mines. Nophelo is the second eldest of two brothers and one sister:

- Sibusiso Maphaphy born in 1983. He passed grade 10 and is currently unemployed
- Abogile Maphopu born in 1985. Presently in grade 10 at Ngagelizwe Senior Secondary School
- Nomthandazo Maphophu born in 1976 is running a small tavern.

7.6.5 School background

Primary school	Ngxabangu Junior Secondary School
High School	Gobado Senior Secondary School
Highest level completed	Grade 11

Nophelo studied commercial subjects. They were as follows:

- Economics
- Business economics
- Mathematics
- Xhosa
- English
- Accounting.

Nophelo describes her early childhood years as a time of suffering. Her father worked in Gauteng and the family did not see him often. The family relied on his income as her mother did not always have work. She describes times when there was no money for food and neighbours had to help.

She recalled an incident of domestic violence when she was 10 years old. Her mother together with Nophelo and her sister had to spend the night at an aunt's house to escape from her father. Due to the financial restraint of Nophelo's family she was sent to an aunt in Umtata who supported her financially so that she could continue her education. This was a very unhappy time for Nophelo. She recalled how she was responsible for cooking and cleaning and had no time to play with friends. During this part of the interview Nophelo became visibly distressed as she recalled a specific incident that led to her aunt beating her with a chair and a desk in front of her friends. The aunt had found a letter from a boyfriend and accused Nophelo that she was sleeping with her husband. Nophelo told her parents of the incident and she returned home for the following year.

Nophelo continued her high school education in Cofimvaba for two years and then decided to continue with commercial subjects which lead her to Gobada Senior Secondary School in Umtata. She stayed in Nqeleni with a relative. It is during this time that she met Mzukisi Clifford Dyantyi (the deceased) and became pregnant at the age of seventeen years.

Employment record is as follows

1998-1999	Chitibungo Funeral Parlor
2001-	Nodada Funeral Parlor

7.6.6 The Offence

The facts of the matter are already in front of the Court and I will therefore not repeat them. It may assist the Court however to explain Nophelo's perception with regard to the situation surrounding the tragedy.

Nophelo's alleged relationship with Mr. Nodada changed after she had the abortion. She ascribed this change to the fact that her husband became suspicious of her "miscarriage." She felt increasing pressure from Mr. Nodada to kill her husband and she was also afraid of her husband whom on previous occasions threatened to kill her.

She often thinks about the future of her child, her parents and family who relied on her income. Nobody in her family is presently employed.

On my question as to whether she could have done things differently she replied that she had no other option but to kill her husband.

7.6.7 Crime explanation

According to van der Hoven (2001:77) the criminal event includes the following:

- the precursor
- the area and situational factors that bring people together in time and space
- the event itself.

In this section of the rapport attention will be paid to the above aspects by combining theory and research – two basic tools of social and behaviour science. They are the principal means by which Criminologists seek answers to questions about crime, criminals and the operations of the Criminal Justice System. Theories explain the social behaviour in general and the specific context in which the crime was committed. In other words theories are explanations which provide answers to the questions why. A good theory is one that is:

- logical and sound- the theory does not propose illogical relationships and it is internally consistent
- the theory must have the ability to make sense out of several conflicting positions
- sensitizing ability- to sensitize people to things they otherwise would not see.

7.6.8 The precursor

Nophelo fell pregnant at the age of seventeen years. She married her husband in the magistrate's court at Kwalihuli location in Tsomo district in 1996. According to Nophelo they were initially happy as her husband took care of all the responsibilities. She did not work during this time. Things changed according to her when her husband started having affairs. They regularly fought over money and on the 07/06/2001 her husband assaulted her. She reported the case to Central Police Station Umtata (CAS 191/06/2001) but she withdrew the charges a week later explaining the reasons as follows:

“... but because I loved him as he was my husband I decided to scratch off the case. I thought that this case would not be good for his job.”

Another incident of domestic violence ended in her husband pointing his firearm at her.

On this occasion she requested the police to take his firearm:

“I told them that they must take the firearm because I was afraid one day he will kill me.”

There is growing evidence (in Criminological text books of amongst others, Brown, Esbensen, & Geis; Bartol and Conklin) that many murder victims precipitate their own deaths. In other words, killer are often driven to murder as much by their victims activities as by their own inclinations. This has been found most likely to occur when those involved know each other well. Tension and mutual aggravations can develop over a long period of time.

In a rapport of this nature this aspect is of importance as a possible explanation of Nophelo’s behaviour. She was abused and threatened by her husband. This threat could have been reinforced by Mr. Nodada’s view that her husband would kill them if he found out about the abortion and their affair.

No murder is exactly like another. All social situations possess unique characteristics and dynamics that contribute to the area and situational factors.

7.6.9 Area and situational factors

Situations are rarely static. Our behaviour influences them to some extent and they in turn influence our behaviour. Most contemporary theories and research support the view that the human behaviour results from a mutual interaction between personality and situational variables. Gibbons (1977:229) comments that in many cases criminality may be a response to nothing more temporal then provocation and attraction bound up in the immediate circumstances out of which deviant acts arise.

The fact that Nophelo was in an abusive marriage needs to be investigated as a possible contributing factor.

The concept “Battered Women Syndrome” was formed to explain women who kill their partners where a history of abuse existed. This syndrome is described as a cycle of violence which incorporated three phases (Quenet 2002:2):

- phase one- tension
- phase two- an explosion (acute battering)
- phase three- contribution.

According to Marsh (1999:26) in the majority of cases where a woman does kill, she acts desperately usually in self-defense to escape a long and abusive relationship.

During the second interview with Nophelo she explains her fear of her husband and also her fear of Mr. Nodada. She explained that if Mr. Nodada could think of killing her husband then he might kill her if she does not listen to him. On my questions of which she feared the most, she answered Mr. Nodada. This question was repeated during the final interview and her answer corresponded. I therefore make the assumption that the murder of her husband is not to be found in her attempt to escape an abusive relationship.

A further situational factor that needs to be considered is Nophelo’s abortion.

Criminological studies have been done on the relations between postnatal depression and murder; a clear distinction however needs to be made with regard to post abortion syndrome. According to Reproductive Choice Clinic (2003:01) Post Abortion Syndrome is a recognized stress problem and can significantly interfere in a women’s life. The following symptoms can surface even years after the abortion may include:

- depression
- recurrent dreams of the abortion or the unborn child
- feelings of guilt and remorse
- a sense of emptiness and loss
- relationship difficulties
- anger and rage at husband, partner, family, friends or even other children
- feelings of helplessness and isolation
- low-self-worth
- emotional numbness.

Hadley (1996:52) postulates that women who:

- had mixed feelings about the pregnancy
- were in conflict about abortion itself
- blamed themselves or felt ashamed of their need for abortion or
- had no one to turn to for support were all more likely to have difficulties

Nophelo described three attempts to have an abortion but she did not comply with Mr. Nodada's request. They had arguments about the abortion which resulted in Nophelo having the abortion being five and a half months pregnant. She described feeling depressed and having nightmares about the fetus.

7.6.10 The event itself

An important aspect of this report is to explore possible explanations for Nophelo's behaviour. I am of the opinion that the Containment theory of Walter Reckless (1960) is an appropriate theory that could explain why a person with similar background factors as Nophelo does not commit crime.

Crime and delinquency results from a series of external and internal pushes and pulls. On the one hand the individual is subjected to adverse environmental pressures, which include such conditions as (Vetter & Silverman 1986:351):

- poverty
- economic insecurity, unemployment
- family conflict
- lack of opportunities.

And pulls, which include factors such as:

- bad companions
- illegitimate opportunity.

Nophelo describes her hardship as a result of poverty. She had to leave home on two occasions to stay with relatives that could afford to support her financially. Her economic insecurity was one of the reason Mr. Nodada had an influence on her life. When questioned about the reasons for her involvement with Mr. Nodada she explained: “Mr. Nodada had been financially supporting me, he even paid for my flat at no 19 fifth avenue at a rate of R350 per monthI loved him.....”

The “pull” factor can also be identified as part of Nophelo’s environmental pressures. Nophelo’s relationship with Mr. Nodada seems to be founded in the fact that he was an authoritative figure in her life. The arguments regarding her unwillingness to undergo the abortion and then surrendering to the pressure illustrates this point. The fact that she socialized with known criminals and approached two individuals to murder her husband is also motivated by Mr. Nodada’s view that her husband might murder them if he found out about the abortion.

On the other hand an individual is also affected by a variety of internal organic and psychological “pushes” which include such factors as extreme inner tensions, strong feelings of aggressiveness and hostility, strong feelings of inadequacy and inferiority and

mental conflicts (Williams & McShane, 1994:185). These factors can be identified in Nophelo's history as being her abusive marriage and her abortion. The abortion took place without counseling before and after the fact. Her indecision regarding the abortion illustrates mental conflict.

Reckless identified two reinforcing structures that act as buffers or insulators against deviancy. These consist of an inner control system (inner containment) which consists of the individuals' self-concept and outer control system (outer containment) which refers to the ability of the social environment to hold the behaviour of the individual within bounds of accepted norms, rules, regulations, laws and values. Nophelo's childhood would have been the time in which the formation of a healthy self-concept could have been formed. The financial difficulties due to the unemployment of her parents, resulted in her having to leave the community and stay with in at least one case, an aunt that abused and humiliated her. This did not contribute to a healthy self-concept. The social environment that Nophelo found herself in was not strong enough to act as a buffer. According to Reckless (Vetter & Silverman, 1986:353) when a person has a weak inner containment as well as weak outer containment, the chances of being involved in crime and delinquency are maximized.

7.6.11 Sentencing

In determining an appropriate sentence there are certain aggravating and mitigating factors that should be taken into consideration.

- Aggravating factors
 - The serious nature of the crime committed
 - The murder of a Police Official
 - The murder of a Police Official with his own firearm in his place of residence
 - The pre-meditation of the crime. Nophelo approached two people to kill her husband. When questioned about the use of her husband's firearm she said that

- she could not obtain a firearm illegally as the area where she resides was often searched by Police for illegal firearms
- The motive for the crime. Although Nophelo was in an abusive marriage no evidence was obtained during the interview that she murdered her husband in an attempt to escape the abuse in the marriage.
 - Mitigating factors
 - The sex of the offender

Women who kill their partners often receive prison sentences of 18 years and upward. Dr. Irma Labuschagne postulated that sentences for murder between male and female offenders indicate biased sentences. She says (Marsh 1999:32): “People think that women get off lighter, but in fact they often get far stiffer sentences than men.”

Vetten states that a maximum of 10 years is the average sentence for men who kill their partners (The Star 8 July 2000).

A typical example of the bias against females occurred in June 1997 during the bail application of Johanna Poppie Smook who was accused of hiring assassins to murder her husband. She was denied bail because, according to the judge, society needed to be protected from this “cunning woman” who lacked the motherly instinct.

- The abortion

Due to the lack of research concerning a possible link between Post Abortion Syndrome and crime, no assumption could be made regarding the effect of Nophelo’s abortion and her involvement in the murder. However, the symptoms of Post Abortion Syndrome were identified during the interview with Nophelo and the assumption can be made that she was experiencing mental conflict before and after the abortion.

- The age of the accused at the time of the crime

Nophelo had only been over the age of 21 years by 3 months when this crime was committed.

- The dependent of the accused

Nophelo's daughter is currently seven years old and is staying with Nophelo's mother. She is concerned about the upbringing of the child.

7.6.12 Conclusion

It is respectfully the Courts prerogative to pass the most appropriate and just sentence. Therefore the following considerations are only suggested to the Court to serve as guideline, respecting the Courts position as expert in these matters.

In terms of section 51 of the Criminal Law Amendment Act 1997, minimum sentences are prescribed for certain serious offences. For premeditated murder a person must be sentenced to imprisonment for life, unless substantial and compelling circumstances exist. However, in this case there are specific mitigating factors that need to be taken into consideration such as her age and unstable and poor circumstances under which she was brought up. This could have contributed to her being pressurized by other parties and suffering mental conflict as a result thereof.

Submitted with respect for the Court's consideration and decision.

MS B A Beukman

Date

This is the end of the report

7.7 THE ROLE OF THE CRIMINOLOGIST POST-SENTENCE

Criminological assessment of criminal behaviour is a new approach to offender rehabilitation worldwide. According to Maree, Joubert and Hesselink-Louw (2003:77) it is mainly the Criminologist who has gained insight into and expertise in the study of crime who is successful in assessing offenders for the purpose of placement in rehabilitation programmes. They base their assumption on features, which are indicative of interventions that are “likely-to-succeed”. These features identified by Wexler (Hesselink-Louw 2004:88) are as follows:

- the most effective programmes are based on an explicit and well-articulated model of the causes of crime and criminal act
- the importance of assessing risk of re-offending based on criminal history and other variables, and of allocating offenders to different levels of supervision or service in accordance with this information is recognized
- it is vital to conduct an assessment of criminogenic needs of dynamic risk factors
- the most effective interventions involve the application of methods that correspond to the active, focused and participatory learning and change style encountered in many offenders
- effective methods are characterized by clear objectives and require skilled and structured engagement by staff in tasks, which are readily accepted as relevant to individual offender’s needs
- the most consistent positive effects are obtained through applications of cognitive-behavioural models, comprising a collection of theoretically interrelated methods, which focus on the dynamic interactions between individuals’ thoughts, feelings and behaviour at the time of an offence
- service should be delivered by personnel who have appropriate training and adequate resources, adhere to their appointed objectives, adopt suitable methods and undertake systematic evaluation of individual’s progress and of the overall outcome of their services.

Criminologists can amongst other things, evaluate and identify the following assessment targets for treatment purposes (Maree, Joubert & Hesselink-Louw 2003:77-78):

- crime causation falls into the study field of Criminology and the Criminologist should therefore have a sound knowledge of the different causes of crime
- although anyone can determine the criminal history of an offender, the Criminologist is best able to understand and explain this type of behaviour by applying criminological theories
- the Criminologist together with the psychologist and social worker can contribute to the assessment of criminogenic needs or dynamic risk factors
- the Criminologist's study of the criminal event focuses not only on the motivation of offenders or the response of victims but also the precursors to the event, the way in which the interaction between the participants took place and determines the outcome of their actions and the aftermath of the event.

In spite of the valuable contribution the Criminologist can make in the penal system their role continues to be under- utilized. According to Maree, Joubert, Hesselink-Louw (2003:80) the principal reason for this may lie in a general lack of understanding of what the discipline of Criminology actually has to offer. The role of the Criminologist within the criminal justice and penal system could be improved by creating awareness as to the limitations that exist within this specialization field.

7.8 LIMITATIONS

By overcoming the limitations the Criminologists can increase the quality of their expertise. Limitations that have been identified are as follows:

- Criminologists occasionally make errors in theoretical interpretations, methodological design or statistical analysis, but most research is scientifically accurate

- Criminologists disagree on an ideological level. For example not all Criminologists agree on the definition of crime. Some regard crime as unlawful behaviour, while others are of the opinion that crime is socially harmful behaviour
- questions are raised regarding the effectiveness of the prison institution when it comes to rehabilitation. This leads to some Criminologist to view prison sentences as destructive. According to Lambrechts and Prinsloo (2002:17) regard must be had not only to the interests of the respondents but to the serious nature of the crime in the present case, its effect on others and the interests of the community at large
- it is argued that by benefiting only certain clients who can afford the service of a Criminologist, the rights of other materialistic deprived persons may be infringed upon if they do not offer their services to them on an equitable basis (Lambrechts & Prinsloo 2002:18). The Criminologist has to take care of the fact that they might construct knowledge that corresponds with the social world and by disregarding all other considerations, they will create knowledge that sells and respond primarily to market demands for particular varieties of knowledge.

7.9 CONCLUSION

Criminologists can fulfill an important role in changing sentencing from an intuitive and largely subjective act into a more rational and objective act. The holistic study field of Criminology makes it possible for Criminologists to assist the criminal justice and penal systems through scientifically based expertise.

In chapter 8 some relevant issues relating to the quest for Criminologist's towards official statutory recognition as a profession will be highlighted. The issues are based on the completed form for such an application.

CHAPTER 8

THE QUEST FOR OFFICIAL STATUTORY RECOGNITION AS A PROFESSION

8.1 INTRODUCTION

Although Criminologists are delivering professional services as indicated in the preceding chapters, they are not yet recognized as professionals like psychologists, social workers, clinical psychologists, etc.

In the discussion that follows the historical background will illustrate the development of Criminology as a profession as well as the attempts made to obtain statutory recognition. Attention will be given to the function and development of the South African Council for Social Service Professions. This is followed by an evaluation of the Draft application for the establishment of a professional board for Criminologist.

8.2 HISTORICAL BACKGROUND

The Criminological and Victimological Society of Southern Africa (CRIMSA) was established on 14 March 1986. Its constitution set out a number of goals (Naudé, 2005:i):

- publication of a scientific professional journal and newsletter
- strive for advanced effective training in criminological sciences.

The last objective was amended in 2003 to advancing accountability training in education within the interactional array of the criminological sciences at institutions aligning themselves with the ethos of higher learning.

During the 1990s CRIMSA's first priority was the publication of a scientific journal and newsletter. The first newsletter and ACTA Criminologica were launched in 1988. The journal was accredited by the Department of National Education in 1990 (Naudé 2005:i). It was also during the 1990's that CRIMSA made a first attempt to obtain registration for

Criminologists with one of the existing regulatory professional councils. This ideal was not realized for the following reasons (Naudé 2005:i):

- the Criminology degree lacked a career focus
- Criminology was not sufficiently standardised across universities and
- that a general code of ethics was not in place for Criminologists.

This resulted in CRIMSA incorporated a code of ethics which is contained in the 2003 amended Constitution. CRIMSA's focus shifted to curriculum development and the first workshop with the theme Curriculum Development for Criminology in South Africa was held on 6 and 7 October 1997. The following were the objectives of the workshop (Naudé 2005:i):

- an analysis of present curricula
- the development of an outcomes based programme
- standardization
- interdisciplinary co-operations, integration and coordination.

In August 2001 a second workshop was organized and the following five objectives were debated in the light of the recently passed South African Qualifications Authority Act (58 of 1995) and regulations (Naudé 2005:ii):

- should CRIMSA participate in the two National Standards Bodies (NSB) under which Criminology can be grouped?
- should CRIMSA establish a Standards Generating Body (SGB) for Criminology?
- the development of broad uniform curriculum guidelines
- the pooling of resources to compile uniform or standardized basic study material
- the broadening of representative participation.

The Criminology and Criminal Justice SGB was registered in March 2002 as per Government Gazette No 23221 Vol. 441 for a term of three years. Naudé (2005:ii)

emphasizes that the SGB is an independent body accredited by SAQA functioning under the auspices of CRIMSA. The brief of the SGB was to (Government Gazette 2002:1):

- identify transformation, development, access and equity issues relevant to Criminology and criminal justice and develop mechanisms to include these issues with in the standards and qualifications as envisaged in (3) below [(Regulation 24(1)(e)]
- develop learning and career pathways for potential standards and qualifications in Criminology and criminal justice [(Regulation 24(1)(e)]
- generate qualifications and unit standards in accordance with SAQA requirements [(Regulation 24 (1)(a)]
- recommend the qualifications and standards generated in paragraph 3 above, to the NSB08 [(Regulation 24(1)(d)]
- review these qualifications and unit standards and effect the necessary changes [(Regulations 24(1)(b)] and
- perform such other functions as may from time to time be delegated by NSB08 [(Law, Military Science and Security)(Regulations 24(1)(e)].

The majority of the SGB members consisted of academics from South African Universities, but also included members of the Police service and affiliated centers (Government Gazette 2002:1-3).

To date six qualifications and thirty one unit standards have been developed, four of which have been registered on the SAQA National Qualifications Framework (NQF), while the Masters of Victimology and the National Certificate in Criminology and nine unit standards have been recommended for registration by NSB 08. It is envisaged that the registration process will be completed in August 2005 (Naudé 2005:iii).

SAQA further more approved the Bachelor of Criminology as a four year specialized qualification which is a career focus qualification (Naudé 2005:ii).

Qualifications pertaining to Criminology are as follows:

- Further Education and Training Certificate in Criminology, level 4 -NQF ID48856
- Bachelor of Criminology, level 7- NQF ID 49108
- Master of Criminology, level 8- NQF ID49065
- Doctor of Criminology, level 8 -NQF ID49064
- Master of Victimology, level 8 and
- National Certificate in Criminology, level 5

Due to the changes of the Bachelor of Arts Criminology Qualification developed by the SGB Criminology has become a career focused degree and the stage was set to explore establishing a Professional Board for Criminology once again (Pillay 2004:iii).

Representatives of CRIMSA, Proff. Beaty Naudé, Van der Hoven and Davis started discussions with the South African Council for Social Service Professions.

8.3 SOUTH AFRICAN COUNCIL FOR SOCIAL SERVICE PROFESSIONS (SACSSP)

8.3.1 Structure and Function of SACSSP

The Council is guided by the Social Service ACT 1978(Act 110 of 1978) as amended. The Council consists of six social workers plus 13 members appointed by the Minister of Social Development from the Department of Education. Objectives highlighted by Setlaltoea (2004:2) are as follows:

- strive for social justice through the promotion and enhancement of developmental social welfare
- determine strategic policy with regard to the professions under the auspices of the Council for matters such as finance, education, registration, ethics and professional conduct, disciplinary procedures, acts to be performed by the

- professions, inter-professional matters and maintenance of professional competence
- coordinate the activities of the social service professional boards and act as an advisory and communicatory body for such professional board
 - exercise authority and control regarding finances
 - promote and regulate inter-professional liaison between social service professions in the interest of the public
 - assist in promotion of social services
 - protect and promote the interests of the social service professions
 - consult and liaise with relevant authorities on matters affecting the professional board in general
 - control and exercise general authority in respect of matters affecting social service education and training
 - promote liaison in social service education and training, promote and quality assure the standards of such education and training and
 - advise the Minister on any matter falling within the scope of the Act in order to support the universal norms and values of the social service professions, with the emphasis on professional practise, democracy, transparency, equity, accessibility and community involvement.

8.3.2 The Role of the Council for SACSSP

The main function of the Council is to promote the social service profession and to ensure the standards of education, training and service delivery remain of a high quality. The Council furthermore, has the role to act as protector of the interest of the client system of social service professions by leading the members of the professions in maintaining the ethical standards practice (Anon 2004:1).

The SACSSP started to deal with the establishment of the professional boards for the various social service professions in terms of section 14A of the Social Service professions ACT, 1978(Act 110 of 1978). Two sets of draft regulations respectively providing for the procedure in which members of a professional board should be elected

and for the functioning of professional boards, were prepared and furnished to the Department of Social Development on 24 April 2001, for submission to the Minister of Social Development. These draft regulations were still under consideration during 2004. Applications were received to establish a professional board for Child and Youth Care Workers and one for counselors. Council resolved that a professional board for child and youth care workers be established and the necessary technical matters are presently being attended to. The application by the Counselors is still under investigation.

Representatives from the following sectors are also discussing their intention to submit their application with the Council (Anon 2004:2):

- probation officers
- development workers
- social security officials
- mediators
- pastoral counselors and
- child and youth care workers.

Pillay (2004:iv) indicates that this registration process for Criminologists can take up to two years.

8.4 A PROFESSIONAL BOARD FOR CRIMINOLOGISTS

The components of the draft application to establish a professional board for Criminologists include the names of the applicants, the requirements for registration with such a board, the description, definition and purpose of the profession, etc. Each of these will be highlighted as they were presented by the applicants in the draft. Where it seemed necessary, some comments are made regarding the content of the application.

The Criminological and Victimological Society of Southern Africa (CRIMSA), has been exploring the possibility of establishing a professional board for Criminologists since 1997. The recent change of the Bachelor of Arts Criminology Qualification developed by the SGB (Standard Generating Body) for Criminology and Criminal Justice, to a career

focussed Bachelor of Criminology (a four year degree), set the stage for exploring this matter further.

The possibility of establishing a professional board for Criminologists was discussed on various occasions by representatives of CRIMSA (Proff. Beaty Naudé, Linda Davis and Anna van der Hoven) and representatives of SACSSP (the South African Council for Social Service Professions), Dr. Berto Lombaard and Mr. Coenie du Toit. It was these discussion that led to the formal draft application.

8.4.1 The Applicants

The particulars of the applicants representing the profession of Criminologists are:

- Prof. Chris Pillay- President of CRIMSA (Criminological and Victimological Society of Southern Africa) & head of department: Security Risk Management
University of South Africa (Florida Campus)
Private Bag X6
1710
Tel: 27 11 471-2598
Fax: 27 11 471-2016
Mobile: 082 883 7334
E-mail: cpillay@tsa.ac.za
Internet: www.tsa.ac.za
- Prof CMB (Beaty) Naudé
Emeritus Professor: Department of Criminology
University of South Africa
PO Box 392
Pretoria
0003

Tel: 27 12 346 1457

Fax: 27 12 346 1457

Mobile: 082 574 3225

E-mail: naudecmb@netactive.co.za

8.4.2 Requirements for Appointment as Criminologist

According to the draft application the requirements for appointment as a Criminologist are as follows:

Professional Criminologist:

- a person who holds a doctoral or masters degree in Criminology
- persons who hold doctoral or masters degrees in related fields and have specialised in the study and control of crime and victimisation

Associated Criminologist:

- a person who holds a bachelor or honours degree in Criminology

Technician and Tactician:

- a person who holds a bachelor degree in a related field, employed in the field of crime control (policing, corrections, security and related support services).

8.4.3 Description, Definition and Purpose of the Profession

- Name of the profession: Criminologist
- Proposed name for professional board: Criminology Board

Criminology is an empirical social-behavioural science. Inherent to Criminology are the two essential components of a science, namely its theoretical and methodological branches:

- theory represents an effort to explain the reasons (why's) of crime
- methodology refers to the techniques or methods that Criminologists use to learn facts as they attempt to answer the why's of crime.

Therefore, the definition of Criminology as the “scientific study of crime as a social phenomenon” emphasises its social nature and scientific foundation.

On a more practical level, it is the aim of the Criminologist to ascertain the causes of crime, to pre-empt or reduce crime by “treating” its perceived causes, study the effects of crime on society, and to analyse societal reactions to crime. A synthesis of the professional functions (objectives) of the Criminologist comprises of the examination of the following:

- associations (causes) of crime and criminality with an attempt to identify crime risk factors; distinctive types of criminal careers and their development, including the formulation of crime prevention and reduction strategies.
- crime causation (theories of), sometimes referred to as criminogenesis and theoretical construction in order to predict individual behaviour by understanding the causes of crime rates and trends.
- patterns of crime for societies or communities with the focus on crime, the impact of crime on societies and the way criminal behaviour is distributed amongst gender, age and race.
- the creation and use of laws with the focus on development of laws, roles of law in a society, law as an instrument of social change and the functions of legislation and law enforcement for various societal groups (sociology of law).

- societal reaction to crime such as the defining of certain behaviour, ways in which society responds to individuals and their activities, the process by which individuals come to be called criminals and individuals' reaction to society's definition of them.
- criminal justice administration such as the processes, police and legal profession as occupational categories and the criminal justice system as the primary shaper of a community's criminal population and crime rates.
- evaluation of the criminal justice system and correctional programmes from the public's and individual offender's point of view.
- the correction and control of criminal behaviour and the study of the nature and causes of victimisation.

The purpose of CRIMSA's quest for the professionalisation of Criminologists is thus twofold:

- (1) To generate expert knowledge on crime, victimisation and the reaction to crime within the framework of the criminal justice system to deal effectively with crime, conflict and victimisation to sustain a just and democratic society with a human rights perspective as set out in the South African Constitution and Bill of Rights.
- (2) To equip persons with an interest in crime and victimisation and communities in general, with the knowledge required for creating and maintaining a safe society.

The emphasis is primarily on the need of offenders and their rehabilitation and creating career possibilities for Criminologists in the criminal justice system.

The major focus is the assessment of criminal behaviour, social control and official criminal justice responses, inclusive of presenting expert evidence in court.

8.4.4 Functions Performed by Practitioners of the Profession

Although the major focus is the assessment of criminal behaviour, social control and official criminal justice responses, inclusive of presenting expert evidence in court, the main functions currently performed by practitioners of the profession are:

- teaching (as many Criminologists are employed by universities and colleges as lecturers)
- research (basic and applied research at universities, colleges and institutions such as the Institute for Security Studies, Council for Scientific and Industrial Research and the Human Sciences Research Council to address crime and victimisation and contribute to crime reduction in general)
- community service (assisting victims of domestic violence, rape and other types of violent crimes on a voluntary basis or as part of victim support organisations).

Within the Criminal Justice System, Criminologists make valuable inputs with regard to legislation, for instance legislation dealing with the family (e.g. *Domestic Violence Act*, 116 of 1998), acts such as the *Firearms Control Act* (Act 60 of 2000) as well as victimisation related policies and legislation such as the *Service Charter for Victims of Crime in South Africa (Charter for Victim Rights)*. They are also appointed by the SAPS as members of the Directorate of Special Investigations, the Scorpions. In their private capacity Criminologists also assist the police in identifying certain crime patterns or problem areas that need special security measures. Other settings/contexts in which Criminologists practice, are discussed in detail in Question 10.

Criminologists also act as expert witnesses in court. Pre-sentence reports compiled by the Criminologist is aimed at explaining the personality make-up and individual circumstances of the accused, as well as the accused's motivation for committing the crime. Certain sentence recommendations are also made. Various factors are taken into account during the sentencing process with regard to the nature and seriousness of the

crime, the type of offender, the interest of the community and harm suffered by the victim. The aims of punishment are carefully considered, namely retribution, deterrence, prevention and rehabilitation. Other factors are also considered, such as remorse, blameworthiness (mitigating and aggravating factors), balance and mercy. In cases where minimum sentences apply, the Criminologist also make the court aware of substantial and compelling factors that are present, should circumstances exist to justify a lesser sentence. The Forensic Criminologist is able to present a more complete picture of the accused to the court, which enables the court to come to a just conclusion regarding individualised punishment.

In serious and complicated criminal court cases, it is the ideal to request evaluation reports compiled by a Criminologist, a social worker and a clinical psychologist or psychiatrist. Each of these specialists have their own unique perspective on the specific case. Reports from all these specialists complement each other, although they may slightly overlap regarding the accused's biographic details and personal history.

Apart from biographic details, analysis of the personality make-up of the accused, their motivation for committing the crime, harm done to the victim and individual as well as social factors contributing to the criminal event, the Criminologist applies criminological theories to explain the criminal event.

Criminologists are also appointed by the Department of Correctional Services and many play a prominent role with regard to the National Council of Correctional Services; the Parole Boards and Parole Review Boards. Negotiations are on the way to determine how Criminologists can assist the Directorate of Risk Profile Management in the classification, analysis, assessment, and profiling of offenders. Crime and criminal behaviour is the core focus of Criminology as a social science. The Criminologist is uniquely equipped to assist with the following matters in corrections and correctional institutions:

- admission risk and need assessment of offenders within 24 hours of admission
- classification of risks that offenders pose to fellow inmates (bullying, violent behaviour)
- in-depth assessment for intervention purposes
- profiling of offenders to determine participation in programmes and service in order to compile unique offender sentence plans
- in-depth assessment for intervention purposes within 21 days after admission
- recommendations and referrals for therapy and intervention
- re-assessment of offenders at least every six months to monitor and evaluate their progress, the effectiveness of the assessment tools and intervention programmes
- pre-parole assessment of offenders before they are placed under community supervision and/or parole.

8.4.5 Criminology and other Social Service Professions

Furthermore, the application indicated, based on the prescribed format, how this profession relates to and compliments the activities of the other social science professions. To this aspect of the application, the applicants responded as follows:

Criminologists function as part of a multi-disciplinary team on various levels. Considering the levels of crime and victimisation, the need for the services of Criminologists have emerged to a great extent and the involvement of Criminologists in the field of social development is becoming more prominent by the day. Social service practitioners in general are continuously confronted with crime related problems and Criminologists are the only individuals that are educated and trained to deal with crime and victimisation related problems. As part of multi-disciplinary teams, Criminology practitioners work closely with social workers (probation officers and child and youth care workers), psychologists, other role-players such as representatives of the criminal justice system and other associated government departments; members of the community and community-based structures; victims; perpetrators and their representatives; witnesses as well as other service providers. In addressing social problems and any criminological and or victimological phenomena that threaten safety and justice in

society at a local, national, regional and international level, Criminologists can make an invaluable contribution in terms of youth care (diversion), dealing with victims, explaining crime, drafting pre-sentencing reports, doing risk assessment and reducing and preventing crime and victimisation. Since dealing with social problems is the core business of social service professionals and are interlinked with the work done by various social disciplines, it is evident that Criminologists can compliment the services rendered by all those in the helping professions.

8.4.6 Criminology as Part of a Multi- Professional Team

It is also a requirement of the application that it must be pointed out whether the practitioners of the profession apply the profession in the context of a multi-professional team. If so, the other professions must be mentioned, as well as what the common goals should be. To this requirement, the applicants formulated the application as follows:

Since Criminologists are actively involved in crime and victimisation reduction, restorative justice and early intervention, they relate and compliment the activities of psychiatrists, social workers and clinical psychologists. In many countries such as Canada and England (e.g. the *Institut Philippe Pinel*, near Montreal in Canada, and Broadmoor in England), Criminologists form an integral part of multi-disciplinary teams. Based on the valuable and often underestimated input that could be provided by Criminologists, private organisations such as BOSASA Youth Development Centres are continuously requesting and exploring the input of Criminologists, while many non-governmental organisations such as the Restorative Justice Centre, NICRO (The National Institute for Crime Prevention and the Reintegration of Offenders) and Inter Trauma Nexus employ individuals with a Criminology background.

Many Criminologists practice within the context of a multi-disciplinary team at various government departments (e.g. Department of Social Development, Justice and Corrections) and form part of research teams consisting of social workers, sociologists, psychologists and various role players of the criminal justice system (e.g. at the Human

Sciences Research Council, Institute for Security Studies, Council for Scientific and Industrial Research).

8.4.7 Specific Body of Knowledge

To enhance the application further, it must indicate whether a specific body of knowledge exists for the profession. The history of this body of knowledge needs to be described briefly and the prominent researchers as well as their work must be listed in the application. At least three standard references that are used by all working in the profession, must be indicated. The applicants furnished the application with the following in this regard:

Criminology developed from four theoretical approaches into the interactive and integrated disciplinary focus of contemporary Criminology. It can best be summarised as follows:

CLASSICAL THEORY

- Origin
About 1764
- Founders
Cesare Beccaria; Jeremy Bentham
- Most important works
Beccaria: *On crimes and punishment*, 1764
Bentham: *Moral calculus*, 1789
- Core ideas
People choose to commit crime after weighing the benefits and costs of their actions. Crime can be deterred by certain, severe, and swift punishment.
- Modern outgrowths
 - Rational choice theory
 - Routine activities theory
 - General deterrence theory

- Specific deterrence
- Incapacitation

POSITIVIST THEORY

- Origin
 - About 1810
- Founders
 - Franz Gall; Johann Spurzheim; J.K. Lavater; Cesare Lombroso; Enrico Ferri; Raffaele Garofalo; Earnest Hooton; Charles Goring.
- Most important works
 - Lombroso: *Criminal man*, 1863
 - Garofalo: *Criminology*, 1885
 - Ferri: *Criminal sociology*, 1884
 - Goring: *The English convict*, 1913
 - Sheldon: *Varieties of delinquent youth*, 1949
 - Gleuck and Gleuck: *Unraveling juvenile delinquency*, 1950
- Core ideas
 - Some people have biological and mental traits that make them crime prone.
 - These traits are inherited and are present at birth.
 - Mental and physical degeneration as the cause of crime.
- Modern outgrowths
 - Bio-social and psychological theory
 - Cognitive theory
 - Behavioural theory
 - Evolutionary theory
 - Arousal theory
 - Life course theory
 - Latent trait theory

MARXIST/CONFLICT THEORY

- Origin
 - About 1848
- Founders
 - Karl Marx; Willem Bonger; Ralf Dahrendorf; George Vold.
- Most important works
 - Marx en Engels: *The Communist Manifesto*, 1848
 - Bonger: *Criminality and economic conditions*, 1916
 - Rusche & Kirchheimer: *Punishment and social structure*, 1939
 - Dahrendorf: *Class and class conflict in industrial society*, 1959
- Core ideas
 - Crime is a function of class struggle.
 - The capitalist system's emphasis on competition and wealth produces an economic and social environment in which crime is inevitable.
- Modern outgrowths
 - Conflict theory
 - Radical theory
 - Radical feminism theory
 - Left realism
 - Peacemaking
 - Power-control theory
 - Postmodern theory
 - Reintegrative shaming
 - Restorative justice

SOCIOLOGICAL THEORY

- Origin
About 1897
- Founders
Émile Durkheim; Robert Park; Ernest Burgess; Clifford Shaw; Walter Reckless;
Frederic Thrasher.
- Most important works
Durkheim: *The division of labor in society*, 1893
Durkheim: *Suicide: A study in sociology*, 1897
Park, Burgess & McKenzie: *The city*, 1925
Thrasher: *The gang*, 1926
Shaw and others: *Delinquency areas*, 1925
Sutherland: *Criminology*, 1924.
- Core ideas
A person's place in the social structure determines his or her behaviour.
Disorganised urban areas are the breeding ground of crime.
A lack of legitimate opportunities produces criminal subcultures.
Socialisation within the family, the school, and the peer group controls behaviour.
- Modern outgrowths
 - Strain theory
 - Cultural deviance theory
 - Social learning theory
 - Social control theory
 - Social reaction theory
 - Labeling

Standard references used by Criminologists

Brown, SE, Esbensen, F-A & Geis, G. 2004. *Criminology. Explaining crime and its context* (5th ed.). Cincinnati, OH: Anderson.

Siegel, LJ. 2004. Theories, patterns and typologies (8th ed.). Belmont, CA: Wadsworth/Thomson.

The following journals are also considered important sources of reference:

- British Journal of Criminology
- Crime and Delinquency
- Criminologist
- Violence and Victims
- Journal of Criminal Law and Criminology.

8.4.8 Governmental Act Regulating the Profession

The application requires an indication of the fact that an act made by parliament regulates the profession in question, or if there are acts referring to the activities of such professionals. The applicants responded as follows:

Although the role played and functions of Criminologists are not explicitly stipulated by any act, all learners in Criminology (and those practicing as Criminologists) are schooled in various Acts promulgated by parliament.

The following legislative framework, determines the activities of all practicing Criminologists:

- The Constitution (Act 108 of 1996)
- The Criminal Procedure Act (Act 51 of 1977)
- Criminal Law Amendment Act (Act 105 of 1997)
- Domestic Violence Act (Act 116 of 1998)
- The Probation Service Act (Act 116 of 1991), Probation Services Amendment Act (Act 35 of 2002)
- Correctional Services Act (Act 111 of 1998)

- South African Schools Act (Act 84 of 1996)
- Private Security Industry Regulations Act (Act 56 of 2001)
- Service Charter for Victims of Crime (Victims' Charter)
- Child Justice Bill (B49 of 2002)
- Childrens' Bill of 2003
- Sexual Offences Amendment Bill of 2002
- White Paper for Social Welfare (August 1997)
- Draft White Paper on Corrections (2004)
- National Crime Prevention Strategy (Victim Empowerment Policy)
- Discussion Paper 82 on A New Sentencing Framework
- Discussion Paper 108 on stalking
- Discussion Paper 94 on Community Dispute Resolution Structures
- Discussion Paper 73 on The Simplification of Criminal Procedure: Out of Court Settlements
- Issue paper 25 on Trafficking in Persons

International instruments

- United Nations General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)¹
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- United Nations Convention on the Rights of the Child

8.4.9 The Number of Persons Practicing

Responding to the question about how many persons practices this profession, the applicants said the following:

Due to the lack of a professional council, it is difficult to determine the number of persons practising the profession in South Africa. Based on the number of students graduating each year majoring in Criminology and pursuing a post-graduate degree in Criminology, it is estimated that more than 300 Criminologists are working in crime and victimisation related fields. Many of these individuals are currently involved in teaching at tertiary institutions, while others are involved in victim support, crime and victimisation related research, forensic Criminology (working in courts) and the assessment of offenders.

8.4.10 Code of Ethics

The profession is required to point out the code of ethics that guides the profession.

CRIMSA (The CRIMINOLOGICAL AND VICTIMOLOGICAL SOCIETY OF SOUTHERN AFRICA), a regional non-profit corporate academic organisation devoted to facilitating a multidisciplinary scholarly, scientific and professional forum promoting criminological study, research and practice in the Southern African region, acknowledges and accepts the following CODE OF CONDUCT as the basis of its existence and functioning:

Preamble

- (i) The Code of Conduct of the CRIMINOLOGICAL AND VICTIMOLOGICAL SOCIETY OF SOUTHERN AFRICA (CRIMSA) is intended to sensitise Criminologists, Victimologists and other scholars or practitioners aligning themselves with the criminological sciences (hereafter referred to as Criminologists) to ethical issues that may arise in their work, and to encourage them to behave ethically. This Code of Conduct sets forth the General Principles and Ethical Standards that underlie Criminologists, professional responsibilities and conduct, along with Policies and Procedures for enforcing those principles and standards. The Code of Conduct should be used by Criminologists as a

- guideline for determining ethical behaviour in the context of their everyday professional activities.
- (ii) Membership in the CRIMINOLOGICAL AND VICTIMOLOGICAL SOCIETY OF SOUTHERN AFRICA (CRIMSA) obliges members to adhere to this Code of Conduct when exercising functions which are related to their professional activities as Criminologists.
 - (iii) Violation of the Code of Ethics may lead to sanction resulting from membership in CRIMSA, including restrictions on, or termination of that membership.

General Principles

- (i) In their professional activities, Criminologists are committed to enhancing the general well-being of society and the individuals and groups within society. Criminology operates in the larger context of social justice. Thus Criminologists have an obligation not to recreate forms of social injustice such as discrimination, oppression, or harassment in their own work. Criminologists must be careful to avoid incompetent, unethical or unscrupulous use of criminological knowledge.
- (ii) Criminologists strive to maintain high levels of competence in their work. Such competence includes ongoing familiarity with current ideas, literature and research in the subject area.
- (iii) Criminologists recognise the limits of their expertise and undertake those tasks for which they are qualified through education, training and experience.
- (iv) Criminologists should respect the rights, dignity and value of all people. Such intrinsic value and worth of people entitles them to insist that information about them remains confidential. In their work, Criminologists must be particularly careful to respect the rights and dignity of crime victims and those accused or

convicted of committing crimes, as well as of students and research subjects. They should not discriminate on the basis of age, gender, race, ethnicity, national origin, religion, sexual orientation, health or physical condition, or domestic status. They must also be sensitive to individual, cultural, and role differences among people. They acknowledge the rights of other people and groups to have values, attitudes and opinions that are different from their own.

Ethical Standards

- (i) Criminologists should adhere to the highest possible ethical standards and conduct criminological research with integrity.
- (ii) Criminologists should adhere to the highest possible technical standards in their research.
- (iii) Since individual Criminologists vary in their research modes, skills and experience, they should always declare at the outset, the limits of their knowledge and the disciplinary and personal limitations that may affect the validity of their findings.
- (iv) In presenting their work, Criminologists are obliged to fully report their findings. They must not misrepresent the findings of their research or omit significant data. Details of their theories, methods and research designs that might have bearing upon interpretations of research findings should be reported.
- (v) Criminologists should not make any commitments to respondents, individuals, groups or organisations unless there is full intention and ability to honour them.
- (vi) Criminologists should provide adequate information, documentation and citations, as well as conserving scales and other measures used in their research.
- (vii) Criminologists must not accept grants, contracts or research assignments that appear

likely to violate the principles enunciated in this Code, and should dissociate themselves from any research when they discover a violation of any principle and are unable to correct it.

(viii) Criminologists must fully report and acknowledge all sources of financial support and other sponsorship received for the purposes of undertaking research.

(ix) When financial support for a project has been accepted, Criminologists must make every reasonable effort to complete the proposed work on schedule.

(x) Criminologists have the right to disseminate research findings, except those likely to cause harm to consumers, collaborators or participants, those which violate formal or implied promises of confidentiality, or those which are proprietary under a formal or informal agreement.

(xi) The demands of science, public trust and public policy demand that Criminologists share data and documentation as a regular practice.

Disclosure and Respect of the Rights of Research Population by Criminologists

- (i) Criminologists should not misuse their positions as professionals for fraudulent purposes or as a pre-text for gathering information from or on behalf of any organisation.
- (ii) Criminologists should not mislead respondents involved in a research project as to the purpose of their research.
- (iii) The process of conducting criminological research must not expose respondents to substantial risk of personal harm. Investigators must make every effort to ensure the safety and security of research participants and project staff.

- (iv) Informed consent must be obtained when embarking on research projects involving human subjects. The principles of ethical propriety, namely fairness, honesty and openness of intent should be endorsed at all times.

Professional Conduct

- (i) Criminologists have a responsibility to devote their professional knowledge and skills in a scientific manner for the benefit of each individual, group, community and mankind with due consideration of their personal and professional limitations.
- (ii) In situations in which Criminologists are requested to render a professional judgement, they should honestly, accurately and fairly represent their areas and levels of expertise.
- (iii) In their roles as practitioners, researchers, educators and administrators, Criminologists have an important social responsibility because their recommendations, decisions and actions may have an impact on the lives of others. They should be aware of the situations and pressures that might lead to the misuse of their influence and authority.
- (iv) In fulfilling these various roles, Criminologists should also recognise that professional problems and conflicts might interfere with professional effectiveness. Criminologists should take steps to ensure that these conflicts do not produce deleterious results for members of society, research participants, colleagues, learners and employees. The Criminologist should therefore avoid performing multiple and conflicting roles, for example, being a witness and a consultant for a legal defence team only. It is crucial that Criminologists should clarify their role as expert from the outset.

- (v) All sources from which information were obtained must be acknowledged by indicating the original author(s) as well as the specific location of the facts, arguments and quotations – whether or not the words of the author are quoted verbatim. Criminologists must make it possible for the readers to determine the extent of their own original contribution to the work.

Policies and Procedures

- (i) The Executive Committee (EXCO) of CRIMSA shall have the responsibility for interpreting and publicising this Code, promoting ethical conduct among Criminologists, receiving inquiries about violations of the Code, investigating complaints concerning the ethical conduct of members of CRIMSA, mediating disputes to assist the parties in resolving grievances, holding hearings on charges of misconduct and recommending actions to the Council of CRIMSA.

8.4.11 The Setting of Practices

The settings in which the practitioners generally function also needed to be indicated by the applicants. This is their answer on the application form:

Since crime and victimisation permeates at various levels, the settings/context in which Criminologists practice, are wide and varied:

- The Criminal Justice System
 - South African Police Service: Forensic Science Laboratory, Ballistics Unit and Disputed Document unit, Criminal investigation, Crime analysis (at national, regional and local level e.g. Crime Information Analysis Centre)
 - In court: pre-sentencing reports, victim impact statements, offender assessment.

- The Department of Correctional Services (assessment: pre-sentencing (diversion, correctional supervision), placement in prisons, sentencing, pre-parole).
- The National Prosecuting Authority.
- The Directorate of Special Investigations (Scorpions) as analysts and special investigators.
- The National Defense Force (Crime Prevention Unit)
- The National Intelligence Agency (training officers and special agents).
- Non-Governmental Organisations (The National institute for Crime Prevention and the Reintegration of Offenders (NICRO), Centre for Scientific and Industrial Research (CSIR) Crime Prevention Centre, Centre for the Prevention of Violence and Reconciliation (CSVR), Restorative Justice Centre, Themba Lesiswe, Inter Trauma Nexus, Bee courtwise etc.).
- The private security industry.
- The private sector (Gambling Board, Private auditing firms, Banking industry in forensic units).
- In private practice (court work, court support and preparation).

8.4.12 The Distribution of Practitioners in South Africa

Concerning the distribution of practitioners in South Africa, e.g. the areas and types of communities to which services are rendered, the respondents reacted as follows:

Criminologists teach and practice in all nine provinces in South Africa and those practicing Forensic Criminology provide services to individuals from both urban and rural areas.

8.4.13 International Recognition and Practice.

To demonstrate the international recognition and practice of the profession, the applicants furnished the following response with examples:

The study of Criminology as a scientific discipline is currently taught at universities in over 64 countries across the globe. There are also 34 societies throughout the world that have constituted and organised themselves as cohorts representing the broad field of Criminology.

The international study of the Criminology as an acceptable social science has re-affirmed the demand and popularity of the discipline. During the latest International Criminology Conference hosted in Philadelphia, which was attended by 1028 participants from 65 countries, the Swedish Minister of Justice, Mr. Thomas Badstrom announced the Criminology Researcher of the Year to be awarded for the first time in 2006.

The legislative frameworks of the different countries have provided opportunities for universities and other institutions to train competent practice oriented Criminologists. Practising Criminologists have diversified their services into a number of specialised fields such as forensic Criminology (giving evidence in court), offender profiling and assessment , probationary services (e.g. involvement of Criminologists in restorative justice processes) as well as other Criminology and Victimology related fields.

In Africa, the growth, popularity and practise of Criminology has gained momentum the last three decades. This momentum provides Criminologists in South Africa with a unique opportunity to contribute an African perspective to the international debates on Criminology. In addition, the training and recognition of professional African Criminologists will go a long way in developing a homegrown understanding of the crime and victimisation related problems facing Africa.

8.4.14 The Present Educational Requirement

As stated before, all associated Criminologists should hold a bachelor or honours degree in Criminology. The Standard Generating Body (SGB) for Criminology and Criminal Justice has registered a professional four-year B-qualification in Criminology on the National Qualifications Framework (NQF) and it is envisaged that all associated Criminologists should complete this degree. Learners can further their education and

training by completing a Research Masters, a Masters in Victimology (Endorsement Criminology) and a Doctor in Criminology. All these qualifications have been registered at the South African Qualifications Authority (SAGA) on the NQF.

8.4.15 Educational Institutions in South Africa

The following tertiary institutions offer Criminology at undergraduate and post-graduate level:

- University of Pretoria
- University of South Africa
- University of Zululand
- University of Venda
- University of the North-West
- University of Limpopo
- University of Fort Hare
- University of the Free State
- University of Kwazulu Natal
- University of Transkei
- Tswane University of Technology
- University of Cape Town (only post graduate level)
- University of the Witwatersrand (only post graduate level).

All Universities that offer Criminology on under graduate level are in favour of the establishment of such a board.

8.4.16 Outcome Levels of Education and Training

The outcome levels of education and training of practitioners include the following:

B-Criminology (Associated Criminologists)

On achieving this qualification, learners will be able to:

- Conduct research in the field of crime and victimisation
- Assess crime and victimisation risk
- Assess the impact of crime and victimisation
- Identify offender and victim vulnerability profiles
- Plan and develop programmes relating to crime and victimisation
- Evaluate programmes relating to crime and victimisation
- Inform crime and victimisation policy
- Disseminate crime and victimisation information
- Provide victim care and support services
- Implement restorative justice processes with victims, offenders and the community
- Provide expert evidence in court relating to victims and offenders
- Identify criminological victim and offender profiles.

The qualification consists of unit standards that describe the knowledge, skills and competence required of the learner.

Master of Criminology (Professional Criminologists)

On achieving this qualification, learners will be able to:

- Illustrate comprehensive knowledge of crime and victimisation in a specialised area of enquiry
- Demonstrate the ability to critically appraise knowledge of crime and victimisation in a specialised area of enquiry
- Indicate the ability to conduct independent research in the selected specialised area of crime and victimisation

- Illustrate the ability to contribute to knowledge in the selected specialised area of crime and victimisation
- Report and communicate research findings in a scientific manner
- Apply knowledge to create entrepreneurial possibilities.

Masters in Victimology: With endorsement Criminology (Professional Criminologists)

On achieving this qualification, learners will be able to:

- Describe the study field of Victimology
- Illustrate expert and advanced knowledge of criminal victimisation perspectives/approaches
- Demonstrate the ability to critically assess victimisation risk and vulnerability profiles
- Critically appraise the impact of criminal victimisation on individuals, society and the economy
- Demonstrate in-depth knowledge and understanding of support services to victims of crime
- Demonstrate expertise in the field of criminal victimisation to guide victimisation policy and measures to prevent/reduce victimisation
- Design and execute a research project demonstrating the ability to identify, analyse and address a specific area of concern in the field of criminal victimisation
- Report and communicate research findings in a scientific manner.

Doctor of Criminology (Professional Criminologists)

On achieving this qualification, learners will be able to:

- Illustrate expert and advanced knowledge in the field of crime and victimisation
- Produce original knowledge in the field of crime and victimisation and deal creatively with complexities and contradictions in the knowledge base
- Indicate in-depth understanding of specialised areas of concern in the field at a local, national, regional and international level and develop original solutions for these areas of concern
- Design and execute a research project demonstrating the ability to identify, analyse and address specific area(s) of concern
- Demonstrate expertise and leadership in a specific area of the field
- Develop knowledge to create entrepreneurial possibilities

8.4.17 Accreditation of Education and Training

The ETQA band for higher education (the HEQC) currently has primary responsibility for all higher education qualification functions. The HEQC programme accreditation framework is still in a developmental phase and is expected to make provision for ongoing accreditation through a process of programme evaluation. The BA Criminology qualification will have to comply with the HEQC framework and regulations. Moderation of learners' achievements and the overall award of the qualification at the exit level must be based on the well established procedures of using accredited/registered external examiners (external to the provider) who should be recognised experts in their field with qualifications in the relevant discipline of at least Masters level or equivalent.

8.4.18 Registration of Practitioners

Most practising Criminologists are registered with the **CRIMINOLOGICAL AND VICTIMOLOGICAL SOCIETY OF SOUTHERN AFRICA (CRIMSA)**.

The Society more specifically aims to:

1. promote, coordinate and apply the criminological sciences (Criminology, victimology and criminal justice in particular, but also any academic discipline focusing on phenomena related to crime and victimisation) through study and academic interaction, research and community service
2. co-operate with interested local, regional and international institutions
3. create mediums in which research results can be published about crime related phenomena, criminal victimisation and reaction to crime
4. promote and stimulate the academic interests of its members
5. contribute to the broader transformation of society through equity and to endorse those values enshrined in the South African Constitution and the Bill of Rights.

8.4.19 Statutory body or non- statutory body

CRIMSA is a non-statutory body.

8.4.20 Cost of registration

Registration costs are as follows:

Student members: R100.00 (US\$25.00) for the financial year if the e-journal and newsletter are received (electronically) *via* Sabinet Online. However, should hard copies be required a fee of R200.00 (US\$115.00) will be charged inclusive of postage and handling.

Active individual members: R250.00 (US\$40.00) for the financial year if the e-journal and newsletter are received (electronically) *via* Sabinet Online. Should hard copies be required a fee of R450.00 or US\$115.00 will be charged inclusive of postage and handling.

Institutional (group) members: R800.00 (US\$115.00) inclusive of postage and handling. If institutional members are willing to receive the e-journal electronically, a reduced fee of R650.00 (US\$90.00) will be charged.

International Active Individual members: All foreign members will pay the same membership fees as the other members in the respective categories for which they qualify provided that they receive the e-journal and newsletters (electronically) *via Sabinet Online*. In other words, a student living in France will qualify for student membership (R100.00 or US\$25.00) provided that such a student receive the journal and newsletters electronically. However, should hard copies be required, a fee of R800.00 (US\$115.00) inclusive of postage and handling will be charged.

8.4.21 The Range of Salaries being earned by Practitioners

- Tariffs for Forensic Criminologists

Legal Aid pays a maximum of R3 000 for an evaluation report prepared for the court. There are no fixed general tariffs at this stage.

- Salary scales

At Universities and Colleges, salary scales differ according to the rank of the Criminologist, for instance as a Junior Lecturer, Lecturer, Senior Lecturer, Associate Professor or Full professor. The salary scales differ at the various universities and colleges.

- Government and private sector

Salaries vary according to individual expertise and the type of organisation at stake.

8.4.22 Financial implications for the SACSSP

As the establishment of a professional board will have financial implications for SACSSP and the financial support of each professional board will have to be made available to set up the board as well as the funding, the applicants had to respond to this aspect as well. Here is their answer:

CRIMSA has an investment of approximately R87 000 which is basically the only financial resources at its disposal for the exclusive purposes of its professionalisation endeavour.

A registration and renewal fee commensurate to a (professional) member's annual CRIMSA membership fee (R450,00) (approximately 50 X 450) would probably generate

an annual amount of R22 500 for this purpose. If persons with other relevant qualifications working in the field are selected and 100 additional members recruited, it will amount to R45 000.

PLEASE NOTE

- Letters of support from groups/organisations institutions and practicing Criminologists that support the establishment of a professional board for Criminologists are attached. (These letters were attached to the original proposal)
- The following empirical research that has been done with regard to the need for the professionalisation of Criminologists can also be consulted:

Beukman, B. forthcoming. The professionalisation of Criminology in South Africa. University of South Africa, Pretoria.

End of draft proposal

In chapter one (1.3) of this study the researcher discussed the three characteristics that reflects the professionalisation of an occupation as identified by Houle (1980-35-73). The researcher will attempt to evaluate the proposal according to these characteristics.

8.5 EVALUATION OF PROPOSAL

8.5.1 Conceptual Characteristics

The objectives of Criminologists (8.4.3) lists the various focus areas of Criminology. According to this research the assistance offered to victims of crime can be added to the list. The researcher is of the opinion that the exhaustive nature of the list can be limiting as Criminology serves a profession that is socially constructed and constantly changing. In order for these objectives not to become outdated, the objective to change according to new legislation and emerging specialisation areas need to be considered.

8.5.2 Performance Characteristics

- Mastery of theoretical knowledge

The proposal indicates that the theoretical branches of Criminology is one of two essential components. According to Cassim (1999:22) criminological explanations of an offender's behaviour to the Court is definitely one of the major contributions Criminologist could render. The formulation of theories is an on going process in Criminology with emerging trends. This study indicated the use of integrating theories in Chapter 3 (3.7) which is a trend that occurred during the second half of the 1980's.

- Capacity to solve problems

Criminology is a science of which the study of crime, in its totality, is its main focus.

Criminology therefore attempts to solve problems related to crime by explanation and description, this is done in an attempt to control and prevent crime (Neser 1989:2).

The Draft proposal does not emphasise this problem solving capacity of Criminology. This is exasperated by the listing of the current main functions of practitioners of the profession as lecturers, teachers and community service professions. This research, however, has also documented the problem solving capacity of Criminology through the use of Criminologists as veracity assessors, assessment of juveniles for the purposes of determining criminal capacity and or suitable diversion programmes, assessing offenders and offering assistance to victims of crime in two ways i.e. counselling and victim impact statements.

- Use of practical knowledge

Research including both South African students (N=345) and lecturers (N=50) indicated that Criminology can release useful practical knowledge on each of the following nine aspects (Ladikos & Stevens 1993:75):

- the detection of criminals
- reforms in the criminal justice system
- rehabilitation of criminals
- sentencing
- dealing with minor offenders in society
- pre-sentence evaluation of offenders
- early detection of potential juvenile offenders
- dealing with victims of crime and
- the prevention of crime.

The increase of Criminological literature, including academic books, journals and newsletters and Websites is evidence of the applied literature and resources that help to expand practitioners' knowledge.

The draft proposal indicates the use of practical knowledge under point 8.4.3 and 8.4.4. A detailed discussion under point 8.4.5 describes the specific body of knowledge as part of theoretical developments.

- Self-enhancement

Criminology at third year level is currently the subject listed as a requirement to obtain a 3 year degree from universities in South Africa. Other subjects that can be combined with Criminology in order to obtain a degree are for example, Psychology, Sociology and Law. Criminology can therefore be combined with subjects within the faculty of Humanities but also with intra-faculty subjects, e.g. from Law faculties.

The Dr.aft proposal indicates the multi-disciplinary nature of Criminology (8.4.3) which lends itself to opportunity of Criminologist to practice in the context of a multi-professional team (8.4.6).

8.5.3 Collective Identity

The basis of the collective identity amongst Criminologists can be found in the NQF. According to the NQF a qualification is obtained when the learner achieves the required number of credits. The National Standards Generating Body regulations describe qualifications as:

- 1 Representing a planned combination of learning outcomes with a defined purpose or purposes including applied competence and a basis for further learning
- 2 Enriching the qualifying learner by providing status-recognition, credentials and licensing; it improves marketability and employability and opens up routes to additional education and training
- 3 Benefiting society and the economy by enhancing citizenship, increasing social and economic productivity, providing specifically skills and/ of professional people and transforming and redressing pas inequities
- 4 Complying with the objectives of the NQF contained in section 2 of the Act
- 5 Having both specific and critical cross-field outcomes that promote life-long learning
- 6 Where applicable being internationally comparable
- 7 Incorporating integrated assessment to ensure that the purpose of the qualification is achieves: a range of formative and summative assessment methods appropriate to the competence being assessed are used.

Providing for the recognition of prior learning including learning outcomes achieved through formal, informal and non-formal learning and work experience. Conradie (1980:10) highlights the fact that professionalising Criminology will require Universities to upgrade their training facilities to incorporate practical skills.

The draft proposal should consider categorizing the requirements for appointment as Criminologist (8.4.2) according to NQF levels and credits:

Professional Criminologist – NQF level 7 with 720 credits

Associated Criminologist- NQF level 6 with 360 credits.

- Creation of a subculture

The rationale for the purpose of a Masters degree and Doctors degrees in Criminology (see Table 10) illustrates the uniqueness of the field which contributes to its professional identity (Government Gazette, 2004:5-7). The rationale for the Masters degree, illustrates the value and relevancy of Criminology due to the ability of the student on completion of a masters qualification to conduct research. The rationale for the Doctors degree illustrates the diverse field Criminology can be applied to and that it is an ever growing field of scientific knowledge.

Criminology comprises of seven specializations which are part of the under graduate courses as well as post graduate courses:

- research
- victimology
- psychopathology
- criminological theory
- juvenile delinquency
- crime prevention and
- penology.

The latest addition to the specialization field of Criminology is the Masters degree in Forensic Criminology that is currently under development by prof. S.J. Joubert and A.E. van der Hoven and M. Ovens, of the University of South Africa. The four year Bachelors degree in Criminology is also now under construction at the University of Pretoria.

Table 10: Rationale for a Masters degree and Doctors degree in Criminology

Rationale for a Masters degree	Rational for a Doctors degree
<p>This qualification equips learners with the necessary research skills and expertise to undertake independent scientific research in a specialised area of inquiry with the aim of creating and maintaining safety in society. Research in the field of crime and victimisation is important for the sustained development of society, the economy and the environment and criminological research can play an important role in the development of effective measures to deal with crime, conflict and victimisation within a human rights framework as set out in the South African Constitution and Bill of Rights. Learners completing this qualification will be able to apply their expertise in a diverse manner in the social, corporate and environmental sphere and in the criminal justice system.</p>	<p>The aim of this qualification is to equip learners with expertise and research skills, which will enable them to make an original contribution to creating and maintaining safety in society. Criminological research can play a major role in the development of society, the economy and the ecology by producing new knowledge to deal effectively and creatively with crime, conflict and victimisation in terms of the principles of human rights as set out in the South African Constitution and Bill of Rights. Learners completing this qualification will be able to apply their expertise in a diverse manner in the social, corporate and environmental sphere and in the criminal justice system.</p>

The three categories of registration proposed by the draft application is viewed by the researcher as problematic for the following reasons:

- due to the wide specialization field within Criminology the researcher finds the use of the terms Professional Criminologist and Associated Criminologist as contradictory. If the purpose of registration is to register Criminology as a profession an Hons degree in Criminology should suffice for registering as a professional Criminologist. The latest four year Bachelors degree in Criminology emphasized the career focused nature of the qualification. The term Associated Criminologist diminishes the value of this qualification.

- the use of the term technician or tactician (8.4.2) is vague and non-descriptive and could be detrimental to the professional status of individuals who fall within this category.
- there is also no provision made for the admission of individuals at a scholarly level. The researcher would like to propose a category pertaining to students as Aspiring Criminologists.

Due to technical and social complexity of professional practice, professions may sub-professionalise (see chapter one 1.3.4 collective identity-relations to other vocations). Therefore the researcher suggests that more categories should be provided as to incorporate the expertise of the Criminologist. For example, Forensic Criminologist (functioning in the judicial process), Victimologist (assisting and studying victims), Research Criminologist (lecturers), Penologist (functioning within the correctional services environment), Consulting Criminologist (crime prevention) and Aspiring Criminologist (students).

The aspect of continuous professional development (CPD) will need to be considered once the applications has been accepted.

- Relationship to the users of service

Research by Du Preez, Naser and Stevens (1993:135) indicates that lecturers who are involved in community service, service the community in the following ways:

- membership of NICRO
- pre-sentencing reports
- crime prevention and
- reintegration of offenders.

According to Cornwell (2003:9) the particular areas of professional expertise would lie in the areas of offender profiling, risk assessment, intelligence collation, statistical analysis and submission of expert evidence. Steyn and Foster (2003:87) postulates that

Criminology both as a scientific and academic discipline has a primary role to play in the training of probation officers working with young offenders.

These areas that compliments the activities of the other social service professions are highlighted in the draft proposal.

- Legal reinforcement

Conradie (1980:10) states that one of the consequences of professionalising Criminology will be to obtain statutory status. The draft proposal correctly points out that there is no Act that governs the role and functions of Criminologists at present. A list of legislative frameworks that determines the activities of all practicing Criminologists, indicates the willingness of Criminologists to be governed by legislature on a national and international level.

Naudé (2005:iii) states that if the application is successful the following will inter-alia come into effect:

- compulsory annual registration for all Criminologists/victimologists including all learners
- regulation of training
- adherence to the rules and regulations of the regulatory board and the SACSSP
- disciplinary inquiries in cases of misconduct
- a selection process and
- some form of internship.

- Public acceptance

The pre- sentencing reports of Forensic Criminologist Dr. Irma Labuschagne often receives media attention.

- Ethical practice and Penalties

The ethical code of CRIMSA only pertains to its members. The code is so structured that it focuses only on ethics pertaining to research. This has problematic implications which is identified by Naudé (2005:iii) as follows:

“... complaint have in the past been lodged with CRIMSA about unethical conduct by Criminologists providing services in the field of crime and victimization which CRIMSA is unable to deal with as it is not a statutory body.”

Should the application be successful a code of ethics will have to be constructed pertaining to the functions of the practicing Criminologist.

8.6 CONCLUSION

Criminology has developed from a academic subject to a profession that has performance characteristic, conceptual characteristic and a collective identity. The structuring of the professionalism is currently underway. This will be a process whereby the services that are already offered by Criminologist, can have professional status. The level of professionalism can be standardized by a Board and increase the application field of the Criminologist. The formal structure of a Board will not only be beneficial to the Criminologist but also to his client.

Finally, in chapter 9 the findings of this research is listed, as well as the conclusions that can be Dr.aws form it, and the recommendations that are based on it.

CHAPTER 9

FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

9.1 INTRODUCTION

This study examines the Professionalising of Criminology in South Africa. The researcher was guided in performing her function as a Criminologist by South African Law, the needs of the Criminal Justice System, the private sector and the needs of victims.

9.2 FINDINGS

- Crime causation and crime explanation

Chapter two contains theory and research to illustrate how delinquency can develop. This chapter focuses specific on the juvenile years and factors causing crime pertaining to individuals under the age of 18 years. The chapter further emphasizes the importance of these factors as it can influence adult behaviour and contribute to delinquency in the adult years. It clearly indicates the fact that the Criminologist can contribute to many social sciences pertaining to determining the risk factors for crime and the explanations of crime.

- Veracity assessment

Chapter three describes three of the latest techniques in veracity assessing. The researcher was trained in using a computer voice stress analysis and conducted over 400 tests for various businesses in and around Mthatha, Eastern Cape.

This chapter indicates the use of the expertise knowledge of the Criminologist pertaining to crime and the *modus operandi*, to construct questions in an attempt to determine deception.

In this field additional qualifications are necessary in order to operate the VSA system. The researcher obtained admission to the training course based on her qualifications in Criminology.

This chapter demonstrates that the Criminologist – albeit with added training – can make a professional contribution in assessing the truthfulness of statements by suspected criminals. The special knowledge of the Criminologist with regards to the causes and explanations of crime, the characteristics of criminals, the characteristics of victims and Victimimology, the adjudication process (policing, courts and sentencing) as well as of crime prevention, equips the Criminologist ideally for this task.

- Assessment of juveniles

Chapter four focuses on the practical contribution a Criminologist can make in juvenile delinquency cases. The researcher acquired additional training in the assessment of children to be able to determine criminal capacity. Currently, there are five formal diversion programmes for juveniles that are in trouble with the law in South Africa. The researcher is of the opinion that these programmes are not sufficient as they do not take the demographics of the juvenile offender into account. The motive from committing a crime as a juvenile in a rural setting differs vastly from the motive of a juvenile in an urban setting. Determining diversion suitability is an area where the expertise of the Criminologist can be applied not only for determining suitability but also to design juvenile specific diversion programmes. This will aid the rehabilitation process as a Criminologist has the expertise to design a such a programme. The Criminologist has the knowledge and insight to incorporate all the identified circumstances that could have been contributing factors, into a diversion programme with the purpose to rehabilitate the juvenile with regard to these specific factors.

- Debriefing of victims of crime and VIS

Chapter five and six indicate the practical value of the Criminologist in rendering a service to victims of crime. Debriefing is a form of first contact support. The researcher applied her knowledge of not only the victims reaction to the crime but also the crime itself to offer support to victims. As explained in the chapter debriefing differs from therapy in that it entails a specific structure that aids the traumatised victims with the purpose of preventing long term trauma. Once again the Criminologist has a unique contribution to offer in that the expertise knowledge of the crime committed, the type of criminal and the victim contributes to the Criminologist being a listener with empathy. The Criminologist does not encroach on the territory of the Psychologist as the debriefing entails three to four sessions after which a decision has to be made whether or not therapy would assist the victim further. The Criminologist can therefore offer assistance to victims of crime as part of a multi-disciplinary approach.

The use of VIS in South African courts is a fairly new phenomenon and the researcher made use of seminars and workshops to familiarize prosecutors with the procedure and purpose. Legislation pertaining to the submission of VIS in South Africa provides for VIS to be submitted regardless of the crime. This put South Africa in a unique position in the world as VIS in other countries are only permitted in cases of violent crime. It is the opinion of the researcher that this area is still under utilized in South Africa, although the value of a VIS is evident in the two case studies presented in the thesis.

- Pre-sentence reports

Chapter seven contains practical examples of the contribution pre-sentence reports have to offer. The report writing of the Criminologist is not restricted to the Court but also has value in the rehabilitation process. Chapter eight illustrates the important and unique role Criminologists fulfill as part of a multi-disciplinary team, rendering services to the Criminal Justice System. The uniqueness of the Criminological report with regard to sentencing can be found in the explanation of criminal behaviour that focuses on individual and social factors. Reports of this nature contribute to the effective sentencing

of an individual not only his crime. The use of the post-sentencing report aids in the rehabilitation process as rehabilitation can now focus on the inmate as an individual.

- Quest for recognition as a profession

Chapter 8 deals with the construction of a Professional Board for Criminologists. This is a process that has started recently and another two years is envisaged before the Board could be finalised. The researcher is of the opinion that due to the delay in the process, CRIMSA should go head and establish a board and seek statutory status when the opportunity arises. At present the focus is on obtaining statutory status, this is delaying the process. An interim board could assist in the motivation for a statutory body, as it will create a profile of the individuals and their various fields of specialisation.

9.3 Recommendations

- Veracity assessment

Veracity assessment training should be considered to be added to the training of Criminologists. The SCAN and FAINT techniques could be a good starting point. Assessing the costly polygraph and Truster-Pro techniques could pose a problem. Nevertheless, assessing the truth in cases where persons are suspected of criminal activity, could open a door for gainful employment for Criminologists and it should be considered in the quest for formal statutory recognition.

- Assessment of juveniles (age, diversion)

This area of expertise needs more development. One particular area is the one of the determining of criminal capacity. Criminologists can assist Psychologists with the developing of a scale that measures criminal capacity. The techniques of developing scales can be considered to be added to the curricula of Criminologists in their honors training.

The involvement of Criminologists at school level needs further exploring. Research indicates that norm violating behaviour of juveniles often precedes criminal behaviour. Assessing juveniles, by a Criminologists, whom teachers experience as problem scholars can contribute to crime prevention.

- Debriefing of victims of crime

The capacity to debrief victims of crime by Criminologists can be further enhanced by considering to add training in the techniques of narrative counselling, due to the fact that this techniques offers the counselee an alternative story (to replace the trauma of being a victim). Universities offering modules in Victimology need to consider adding a counselling component. Endeavors of this nature could incorporate a registration from the Council of Counselors of South Africa.

- Victim Impact Statements

In the cases where VIS were requested the courts found their contribution as helpful. The victims in the second case study said that they appreciated the fact that they had the opportunity to provide the court with information that they felt was necessary.

The Criminal Justice System and related role players need to be made aware of the value of a VIS that has been prepared by a Criminologist. In spite of the fact that legislation provides for the use of the VIS, it is the experience of the researcher that this field still remains underutilized. The courses currently offered at Universities needs to focus an the practical application of the VIS by offering a practical element to their courses. By arranging “internships” the use and relevancy of the VIS will reach the relevant role players and thereby increase the use of Criminologists compiling VIS.

- Pre-sentence reports

The Criminologist remains at a disadvantage as pre-sentence reports are mostly requested from Psychologists and Social Workers. The Criminologist is not viewed as part of a multi-disciplinary team. A practical component needs to be added to the courses currently focusing on Forensic Criminology. Students at the end of their honours year will then not only have the academic knowledge but also the practical knowledge with which they can approach the relevant role players. Students need to be made aware of their unique contribution they can make with regard to pre-sentencing reports when compared to the contributions of a Psychologist and Social worker.

- Assessment of offenders for parole

Dr.. Anni Hesselink-Louw (2005) convincingly demonstrated that this is the work of the professional Criminologist, therefore it was not attended to in this thesis.

- Quest for recognition as a profession

It is clear that the next step should be the development of a constitution for the board of Criminologists as eg. the Council for Counsellors in South Africa has. Such a constitution will spell out the exact professional behavior of Criminologists and act as the body of oversight with more teeth than is the present case with CRIMSA as the only body that guarantees oversight. Such a constitution should be drafted by democratically elected officials from the academics and Criminologists in private practice. They should be assisted by lawyers familiar with constitutions.

With the compilation of a board of Criminologist, the role and function of CRIMSA will need to be reviewed as some of the functions could be duplicated by the a Board. Due consideration needs to be given to registration of Criminologists based only on academic qualifications and whether there are areas that need an academic qualification combined with an examination set by the Board. Hesselink-Louw (2004) for example recommends

that Criminologist who are interested in working in prisons needs to complete an examination in order to determine their suitability to work with prison inmates.

9.3 CONCLUSION

The first published ideas about the professionalisation of Criminology in South Africa were during the 80's (Conradie 1980:10). Since then the idea has surfaced now and again and moved into the background again. The recent application by CRIMSA for formal statutory recognition of the profession of the Criminologist, clearly indicates that the time for the professionalisation of the discipline of Criminology has arrived.

The personal experience of the researcher in this field by delivering the services rendered as indicated in this thesis, underscores their application.

9.4 FINAL REMARK

If and when Criminologists are recognized officially and statutorily, their contribution to the prevention of the biggest problem of South Africa – crime - could only be enhanced and expanded to a level unknown before. The function and role of the Criminologist can benefit by the structure and guidance that a professional Board can offer.

With the professionalising of Criminology underway and the implementation of new legislation pertaining to victims of crime, the function and services of Criminologists in South Africa needs to be marketed aggressively. This will not only be the function of a Board but also that of Universities offering Criminology as a subject.

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