Expectations of presiding officers in the South African Criminal Justice System of the criminologist as an expert witness

by

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Dedication

I dedicate this dissertation to my late grandfather, Tladi Boleu, born in 1932 and passed on in 2010.

Robala ka kgotso Mmina noko

Acknowledgements

I want to express my sincere gratitude to:

God, the Father, Son, and Holy Spirit for life in abundance, opportunities, strength, and comfort. I now know that *“all things work together for good for those who love the Lord, to those who are called according to His purpose*.” Romans 8:28

My mother**, Bafeli Boleu**. Thank you for giving most of your adult life toward shaping my entire life. The list of sacrifices that you had to make is endless, yet none have gone unnoticed. None of this would have been possible without your love and support. I am because you are.

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Declaration

I, **Kelebogile Portia Boleu**, declare that this dissertation is my work. All citations, references, and borrowed ideas have been duly acknowledged. This dissertation is submitted following the requirements for the degree of Master of Arts with Specialisation in Criminology at the Department of Criminology, University of the Free State. I also hereby confirm that this research has not been previously submitted for any other Higher Education Institution qualification.

_________________________ 02/11/2022____

Student Signature Date

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Summary

A criminologist should not be considered a visitor, but rather a permanent resident of the criminal justice system. Among the role players in the legal system, Dumani (2005: 12) cites criminologists as having substantial potential. The view of criminologists in courtrooms has changed since Terblanche (2007: 23) called for the use of penology experts and criminologists in court. However, in his later edition, Terblanche (2016) discusses the role of criminologists as active role players within the criminal justice system. This study broadly aims to elucidate the role and function of Criminologists within the criminal justice system of South Africa, based on an exploration of the expectations of presiding officers. Criminologists are trained social scientists – who specifically focus on crime, offenders, victims, punishment and also the prevention and control of crime. Their expertise makes them one of the central role players in the criminal justice system, and their knowledge base makes them significant role players as well. The criminal justice system includes various actors who interact with one another to meet the need for equitable justice for all actors in society. Talcott Parsons' theory of structural functionalism maintains that a social system includes actors who interact with one another in their various roles and functions to support the structure of society. In order for a system to survive, it must engage in four sets of activities aimed at meeting its needs; namely, adaptation, goal attainment, integration, and latency. The four functional imperatives were applied to enable the researcher to explain the role of the forensic criminologist as an expert witness in meeting an important information goal of the criminal justice system. This study, therefore, theoretically explored and explicated the position of the forensic criminologist in South African law, as well as the legal identity of the forensic criminologist as an expert witness.

A qualitative approach was followed to collect, analyse, and interpret the empirical data. The methods used included collecting data through semi-structured interviews, selecting participants by purposive snowball sampling, and, finally, analysing data through thematic analysis to interpret and report the results. A sample size of 10 presiding officers was attainable from both the regional and high courts; most participants identified as African, followed by participants who identified as white and the minority who identified as coloured. Reflecting the broader judiciary, most

participants sampled for this study were male, while females represented the minority within the selected sample.

The findings obtained during this study indicated that presiding officers perceive criminologists as major role players in reporting the characteristics of the criminal event which include the crime, the offender (individualisation), the interests of society and the victim, and ultimately fulfilling the objectives of punishment, namely, retribution, deterrence, and rehabilitation. Furthermore, criminologists are expected to assist presiding officers in considering vulnerable groups in the criminal justice process, as expert witnesses. Participants in the study highlighted two groups as vulnerable, namely women and children. However, there is still a limited understanding of this complex phenomenon and several grey areas, indicative of a real need to define the various roles of criminologists throughout the criminal justice system and the need for a professional board to manage the participation and actions of criminologists in South Africa.

Using the recommendations of this study as a guideline for future research, it is envisioned that with a greater understanding of the role the criminologist plays in an integrated criminal justice system, forensic criminologists will be more accessible to the court and, ultimately, in various roles in the criminal justice system.

Key terms: Forensic criminologist, South African criminal justice system, Parsons' theory of structural functionalism.

CHAPTER 1
GENERAL ORIENTATION AND PROBLEM FORMULATION

1.1 Introduction

This chapter aims to provide an outline of the role of a criminologist as an expert witness concerning international as well as domestic criminal procedures and legislation. Furthermore, it highlights the key concepts and objectives of the study, with a brief reference to the historical overview of the criminologist as an expert witness and the law of evidence.

This study explores the expectations of presiding officers regarding the criminologists as expert witnesses. Generally, and in particular, in the United States, the role of an expert witness in the criminal justice system has been to provide legally relevant knowledge to the court based on their area of expertise, informing presiding officers on scientific data, conclusions, and opinions (Wechlser, Kehn, Wise & Cramer, 2015: 58). The role of the expert witness has, to a large extent, been limited to professions such as psychiatrists, physicians, and engineers. However, in more recent times, there has been a broader acceptance of professional expert witnesses in the court, including those in the field of social science (Faurie, 2000: 73; Tadei, Finnilä, Reite, Antfolk & Santtila, 2016: 209). It is therefore important to continue to explore the growing participation of the social scientist in the processes of the criminal justice system as experts; the focus of this study is on criminologists in the pre-trial, trial, and post-trial phases. In South African courts, the behaviour and fate of the defendants are determined by lawyers, prosecutors and magistrates or judges; therefore, any theory of human behaviour that is presented to explain the criminal event needs to make sense in line with the incident on trial or it will be disregarded (Boruchowitz, 2017: 35, Kissinger, 2001: 86).

The expert witness has an overriding duty to assist the court impartially on relevant matters within the scope of expertise, regardless of the party that has instructed them. Potential expert witnesses must demonstrate that they have acquired sufficient knowledge of the subject matter to render their opinion of value in resolving the issues before the court and the opinion must be founded on theory and scientific evidence. Therefore, expert witnesses are required to state the facts and assumptions on which

their opinions are based as well as state the reasons for the opinions given (Durney & Fitzpatrick, 2016, Seymour, Blackwell, Calvert & McLean, 2014:511-14). The role of an expert witness is not simply to articulate their client's position; it is to assist the court with information about the specialist area which is necessary before a decision can be made (Boccaccini, Murrie & Tuner, 2014: 485, Sutherland, 2009:1-2).

Social scientists play an increasingly important role as expert witnesses in cases involving the prosecution and defence of criminal matters before the courts (Kennedy, 2013: 233). Hence, criminologists are trained in the social sciences, with a specific focus on the offence, offender, victims, punishment and the management and reduction of crime (Maree, Joubert & Hesselink-Louw, 2003: 95, Terblanche, 2016: 24). In view of the duties of criminologists in South Africa, some graduates who majored in criminology are prepared to work in various areas of the criminal justice system. One of these areas is the courtroom, where they could provide expert evidence, pre-sentence reports and Victim Impact Statements, as well as conduct offender assessments (Naudé: 2008: 8).

Expert witnesses can be perceived as fundamental role players in the functioning of the court, as their opinions are relevant and can lead the court to make appropriate, informed decisions; however, the final verdict of each case lies solely in the hands of the magistrate or judge presiding over the matter (Sutherland, 2009: 1-2). Although a growing body of research is available on the use of expert testimony in courts, in South Africa little is known about what presiding officers expect in the presentation of a testimony by a criminologist as an expert witness (Wechsler, Cramer, Kehn, Wosje, Boccaccini & Varela, 2015:159).

In the United States there is no federal rule addressing the idea of bias directly; however, courts have dealt with this issue in their opinions. The ultimate touchstone in assessing expert witness credibility is the Daubert guidelines issued by the United States Supreme Court in 1993, which suggest, that "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence" (Pal, 2016:51). The impartiality of expert witnesses means that such experts operate within scientific principles and legal procedures (Du, 2017: 69).

Different legal jurisdictions have different requirements of expert witnesses and certain expert evidence may not be admissible in all legal systems. An expert witness differs from any other expert as they can state opinions rather than simply report facts. The opinions of criminologists will normally be supported by scientific evidence, and they will be required to establish their scientific credentials. Therefore, the expert witness should not offer evidence outside their field of expertise (Howitt, 2018:4).

As cited in Pal (2016:44), an American judge, Judge Foster, noted as early as 1897 that "bias or inclination in favour of a party by whom the witness is employed is probably the most frequent complaint of all against the expert witness; and the inclination or partiality is often characterised by terms indicating dishonesty and corruption." Deciding on whether what an expert is telling you can be trusted involves making a sound assessment of his truthfulness and competence on the matter in question; this becomes difficult to accomplish as the court's knowledge and experience on the matter at hand is limited (Haack, 2015: 42-43). As the presiding officers have little relevant knowledge or experience on specific matters, they must rely almost entirely on the experts' knowledge and experience.

1.2 Conceptualisation

In the following section, the definitions of the key concepts of the study will be provided and operationalised for this study.

1.2.1 Expert Witness

The term "expert", used as an adjective, can be defined in the following terms: "skilful, skilled, trained, knowledgeable, learned, experienced, and practised" (Mantle & Chenane, 2014: 1). An expert witness is a person acknowledged by a court to have expertise in a given field or on a topic. These experts provide their professional opinions as a testimony to a case to provide magistrates and judges with information an average person would not possess.

The term 'expert evidence' includes a range of opinion evidence. This evidence, in turn, can vary greatly in its probative value, weight and purpose. The term 'expert evidence' is used to denote certain kinds of specialised, systematised knowledge not usually possessed by non-specialised magistrates and judges or by legally trained or lay assessors (Lubaale, 2015: 17, Meintjes-Van der Walt, 2006: 276).

Therefore, an expert in the legal process must possess sufficient specialised knowledge, skill, training, or experience to enable him/her to supply information and opinions not generally available to members of the public. The expert witness is an individual who has specialised information on the matters involved in the specific case and therefore provides context to understand and manage the case better. The primary role of an expert witness is to "assist the trier of fact to understand the evidence" (Durney & Fitzpatrick, 2016: 18; Meintjes-Van der Walt, 2006: 59).

A forensic expert witness is a person who is an integral and essential part of the legal system and is called to testify in court to express clear, independent and objective opinion evidence on the subject in the person's field of expertise (Van Niekerk, 2021: 5).

For this study, an expert witness is therefore defined as a person with authority due to special knowledge, skill, experience, training, or education in criminology.

1.2.2 Criminologist

In the evolution of criminology, different approaches have been taken to explain the core concept of crime. Throughout history, theories of crime have focused on the offender, the criminal act, and environmental, sociological, and psychological explanations of crime and criminal behaviour (Singh, 2020: 45).

Simply put, criminology is the scientific study of crime. In broader terms, Edwin Sutherland identified criminology as the study of law-making, law-breaking, and the response to law-breaking. Sutherland's definition is subdivided into two related fields, where criminology focuses on law-breaking (i.e., the nature, extent, and causes of crime), and criminal behaviour (Vito & Maahs, 2015: 4).

Criminologists view criminal events or processes holistically. Among these are the factors that precede the event, such as the environmental and situational factors that bring people together. Interactions between participants and their influence on the outcome of the event are integral parts of the event itself. This includes the aftermath of the event, including the police's response, the harm caused to the victim, and correctional steps taken, as well as the public's reaction and laws being amended as a result of the event (Drakulich & Kirk, 2016: 171; Maree et. al. 2003: 73).

A criminologist is, therefore, a social science expert with a specialisation in the study of crime and criminal behaviour. As expert witnesses, criminologists assist the court in the criminal justice process by assessing the offender and the needs and impact of the victim as well as the interests of society to testify about the elements and dynamics of the offence and offender.

1.2.3 Forensic Criminologist

According to Petherick, Turvey and Ferguson (2009: 1), forensic criminology is the scientific study of crime and offenders for the purpose of addressing investigative and legal issues. As a discipline within criminology, it exists independently of any legal system that may employ its practitioners. It is a science; it is a behavioural science, and it is a forensic science. While forensic criminology can and does vary in its scope of practice and admissibility by different courts around the world, its core and best practices remain the same.

The forensic criminologist uses criminological theory to organise data collection and analysis toward the specific goal of understanding the causes of the criminal event. Forensic criminology refers to the actions of a criminologist in collecting, analysing, and presenting evidence in the interest of objective proceedings in the judicial process (Gotham & Kennedy, 2021: 209). Forensic criminology refers to the actions of a criminologist in collecting, analysing and presenting evidence in the interest of objective proceedings in the judicial process (Petherick & Turvey, 2010b:137).

According to Van Niekerk (2021: 5) the term ‘forensic criminologist’ refers to the contributions of a criminologist in collecting, analysing and presenting evidence in the interest of objective proceedings in the judicial process, based on culturally sound and contextually relevant theory, to explain crime and criminal behaviour within the South African context.

Thus, a forensic criminologist collects, analyses, and presents evidence in the interest of objective criminal justice proceedings based on culturally sound and contextually relevant theory, to explain offences and offending behaviour within the South African context.

1.2.4 Criminal Justice System

The criminal justice system is a set of agencies and processes established by governments to uphold social control, deter and mitigate crime, or sanction those who violate laws with criminal penalties or rehabilitation efforts. A system consists of several parts that function in mutual interaction with one another to achieve the same result, have the same goals and fulfil certain functions (Parsons & Shils, .2017:213).

According to Labuschagne (1992: 31), the characteristics of a criminal justice system are as follows: the system has identifiable components (the South African Police Service, the criminal courts that include all the actors involved there, as well as the Department of Correctional Services); each system has a recognisable whole (one system can be distinguished from another), and the components of the system are interdependent (one component cannot function without the other). Each system functions within a particular environment; for each system, there are two inputs, namely demands regarding expectations and supports, and outputs (that which this system produces).

The purpose of the criminal justice system is to instil law and order, and to do this in court; the state (prosecutor) is required to prove the guilt of an accused person beyond reasonable doubt, in a public trial as the pre-condition for the imposition of a sentence (Murray, 2022: 229, National Prosecuting Authority, 2008: 5).

The following definition will be adapted for this study:

The criminal justice system refers to the set of agencies identified and recognised in South Africa which include the South African Police Service, the National Prosecution Authority, the Judiciary, the Department of Justice and Constitutional Development as well as the Department of Correctional Services.

1.2.5 Presiding officer

Courts are presided over by judges or magistrates, to ensure that the law is upheld and to oversee the processes of trials and sentences. Ultimately, presiding officers decide on whether offenders are released, accept or deny plea agreements, oversee trials, and sentence convicted offenders (Monahan & Skeem, 2016: 493). In the South African context, a Judge is a presiding officer in a High Court and a Magistrate presides

over matters in the various Regional or District Magistrate's Courts or specialised courts of the same level (National Prosecuting Authority, 2008: 4; Tshehla & Marumoagae, 2021: 345).

Therefore, the definition adopted for this study is that a presiding officer is a magistrate or judge who chairs the case in any court (National Prosecuting Authority, 2008: 4).

1.2.6 Forensic evidence

The term forensic evidence describes the nature in which information is presented to the courts, and includes Verbal (such as witness testimony), Documentary (such as a pre-sentence report) and Physical evidence (real objects such as bullets) (Otto, DeMier & Boccaccini, 2014: 8, Sapse, 2009:70).

Trials are the first time forensic evidence is exposed to the public. The goal is to convert forensic laboratory results into legally meaningful evidence. This can be accomplished through legal storytelling, a method of presenting evidence, making it legally meaningful, and evaluating it all at the same time. Through legal stories, forensic evidence contributes towards answering the salient question- whether the prosecution has proved beyond reasonable doubt that the defendants are guilty of the crime(s) that they are accused of; typically - but not exclusively - through supportive evidence that helps strengthen or weaken accounts. (Kruse, 2015:16).

This study focuses on verbal as well as documentary evidence and when necessary, this evidence is presented in court by experts to assist the court in making a verdict.

1.2.7 Punishment

A sentence can be described as the order of the court that finalises the criminal case against the offender and which normally also constitutes punishment. According to Labuschagne (1992:33), punishment is the detrimental sanction imposed on the convicted person by a court of law after a trial and conviction for an offence, and which is enforced by the State without the offender being able to exercise control over it. According to Terblanche (2016: 5), punishment contains an element of discomfort, it is generally defined as the infliction of a penalty on an offender, the experience of unpleasantness, or the adverse sanction which leaves the offender in a position less

favourable than that in which he/she/they found themselves before the imposition of punishment.

For the purpose of this study, punishment is the imposed sanction on an offender convicted by the court of law through the process of sentencing.

1.2.8 Pre-sentence Report

Any authored report which has been compiled by an expert of some standing, with the aim of assisting the court in finding an appropriate sentence, can be described as a pre-sentencing report (Terblanche, 2016: 859).

There are a number of elements that make up a pre-sentencing report, such as sources of information including interviews conducted and official documentation; personal, work, and business relationships of the accused; his/her use of alcohol and drugs; the criminal event; a criminological explanation of the crime where two to three theories are used to explain the crime; mitigating or aggravating circumstances and different sentencing recommendations, looking at options, the advantages and disadvantages of these sentences or a combination of sentences if required. The recommendations must be balanced to address the type of crime committed by the offender and ensure the interests of society are protected (Kempen, 2017: 49).

Therefore, a pre-sentence report is a clear, concise and objective report compiled by an expert, intended to provide the court with comprehensive information about the offender, offence and interest of society in order to assist the court in making an objective sentencing decision.

1.2.9 Victim Impact Statement

The South African Law Commission defines the term Victim Impact Statement (VIS) as follows: A "Victim Impact Statement is a written statement written by the victim or by someone authorised by the Criminal Procedure Act 51 of 1977 to make a statement on behalf of the victim that reflects the impact of the offence, including the physical, emotional, financial and psychological impact caused by the offence (Van der Merwe & Mitchell, 2020: 12). A VIS is one of the structured ways in which evidence about how the crime has influenced the victim's life on different levels, is brought to court. A VIS

forms part of pre-sentencing reports, which are admissible in terms of section 274(1) of the Criminal Procedure Act 51 of 1977 (Kempen, 2018: 25).

Thus, for the purpose of this study, a VIS is a written or oral statement given by a forensic criminologist in court in order to illustrate how the offence affected the victim.

The following section will introduce the historical role of the criminologist as an expert witness within the South African context.

1.3 Historical Perspective

The first notable work in the field of forensic criminology in South Africa can be associated with the pilot study conducted by Dr Irma Labuschagne and Dr Charlene Lea under the supervision of Judge Richard Goldstone (Van der Hoven, 2006: 152). This project was organised to introduce the criminologist into the courtroom and the results of the study can be found in Dr Lea's doctoral dissertation, titled "The role of the criminologist, 1991".

Dr Irma Labuschagne has compiled and presented pre-sentence reports since the 1990s and can now be heralded as the first recognised forensic criminologist in South Africa. In the current century, the use of forensic criminologists in the Criminal Justice System, though still in its development, is picking up pace. This increasing role had been encouraged by Terblanche (2007: 22) where he called for the improved involvement of criminologists and penologists within the sentencing phase of the criminal justice process. According to Terblanche (2016: 24), valuable information about the accused is forthcoming from such experts as criminologists when they have gone to the trouble of properly assessing the accused person. A good example can be found in the *S v Kotze 1994 (2) SACR 214 (O)* case where a consultant criminologist gave evidence based on the report they had compiled. However, only a few criminologists work as forensic criminologists within the court system, and most have worked for the defence (Ovens, 2020:567, Haack, 2015: 45, Van der Hoven, 2006: 152).

Experts in the fields of penology and criminology have also played an important role in the sentencing process in South Africa. Their roles can be similar to that of probation officers in that they can assist the court in attempting to explain the criminal conduct,

to predict the likelihood of repeated offences as well as future danger (Terblanche, 2016: 25).

Criminology in South Africa has quickly progressed and become a well-established, recognised, and growing discipline. South African criminology has its distinctive history of political, ideological, and methodological internal strife regarding the origins and purposes of the discipline (Singh & Gopal, 2010: 13). The history and parameters of South African criminology are contested and have been a discipline troubled with its internal tensions and conflicts (Artz & Moult, 2012:2). The history of criminology in South Africa can also be placed within the existence of the Criminological and Victimological Society of Southern Africa (CRIMSA). Since the establishment of CRIMSA, its main objective has been the advancement of effective training in criminological sciences (Naudé, 2010: 1).

Criminologists work within a framework, and the authority they exercise through the recommendations and assessments they provide has the potential to cause harm to individuals and society. Therefore, a regulatory board for criminologists would bring them in line with professionals who work with vulnerable individuals (Naudé, 2008: 7). To achieve the objective mentioned earlier, CRIMSA has emphasised the necessity to establish a regulatory board for criminologists (Naudé, 2010: 1).

Criminology is multidisciplinary, a behavioural science with elements of the law. The debate regarding a regulatory board has henceforth been whether this will function within the context of social services or legal professions (Naudé, 2008: 9). This debate has been deferred as criminology is the study of offences/offending as a social phenomenon, and criminologists therefore work with vulnerable members of society (for example, victims).

A regulatory board will also lead to an enforced professional code of ethics which would improve the quality of services rendered by criminologists, as well as provide support to criminologists when acting as expert witnesses in court (Human, 2018: 53).

1.4 Legislative Framework

In both criminal and civil matters before the courts, social scientists play a growing role in prosecution and defence. Forensic criminology includes the study of crime predictability as a growing area of the field. Criminologists analyse prior crimes at a

location and consider the totality of circumstances to determine foreseeability. Although most forensic criminologists are not lawyers, it would behove them to know something about both civil and criminal law to maximise their contributions (Kennedy, 2013: 234-235).

Law cannot be properly understood without some knowledge of the framework in which it operates. Legislation is the written law created by the Parliament, implemented by the Executive Government, and enforced by the Judiciary (Allen, 2008). South African law is made up of many sources, which includes common law, legislation, case law, indigenous law, custom and legal academic writings. The rules of evidence are contained in the various Acts and a large part of the law of evidence is contained in case law built up over a long period (Schwikkard, 2008: 1). No court proceeding can be conducted in an orderly way in the absence of rules governing all stages of the procedure as well as the admissibility and criteria for the evaluation of the evidence. This section aims to discuss the international and domestic legislation pertaining to opinion evidence presented in a court of law.

1.4.1 International legislation

The focus of this section is on relevant international legislative frameworks on expert evidence, law of evidence and the admissibility of evidence. The Constitution of the Republic of South Africa, 1996 and the legal framework post-1994 have been largely influenced by international human rights and many other protocols established by the United Nations (UN), such as the Universal Declaration of Human Rights (1948). This section will briefly discuss international legislation on the evidence brought forth by experts in its different forms, from documents provided by the UN as well as procedures followed by the international courts.

1.4.1.1 International procedural criminal law

International procedural criminal law is a body of international rules to regulate and implement international substantive criminal law. It is also meant to set the rules according to which individuals may be prosecuted and tried for international crimes and subjected to the international penal system (Cryer, Robinson, & Vasiliev, 2019: 8, Knoops, 2006: 1). International courts are complex institutions, comprising different bodies amongst which are the registry (the permanent administrative secretariat of the

court), the trial chambers and the office of the prosecutor, who all act in varied ways. Judicial accounts of "what happened" emerge from this complex and changing space (Buss, 2014: 23). Knowledge of these accounts of "what happened" can be aided by experts relevant to each individual case.

International and internationalised criminal courts are not bound by national rules of evidence. None of the court proceedings can be conducted in an orderly manner in the absence of rules governing all stages of the procedure as well as the admissibility and criteria for the evaluation of evidence (Carter & Pocar, 2013: 25, Cryer, Robinson, & Vasiliev, 2019: 15). The rules of evidence in international law generally either consist of rules, which have been adopted byparties varying from case to case or, if such explicit agreements are absent, rules which have been adopted and applied in international tribunals. Examples can be seen in Rule 89(A) of the Special Court of Sierra Leone Rules of Procedural Evidence (SCSL RPE) as well as Rule 89(A) of both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda Rules of Procedural Evidence (ICTR RPE) where these courts are framed on different concepts, have different foundations and natures, and pursue distinct goals not comparable with domestic courts (Knoops, 200: 183). One standard of admissibility that is shared by all international criminal courts is that; they are not bound by the national rule of evidence.

Criminal courts differ from country to country, and their response to criminal behaviour is not always consistent. Over the years, the UN standards and norms in crime prevention and criminal justice have provided a collective vision of the structure of the international criminal justice system. These standards and norms have made a significant contribution toward promoting more efficient and fair criminal justice structures that can firstly be used at national levels by developing in-depth assessments leading to the adoption of necessary criminal justice reforms. Secondly, they can help countries to develop sub-regional and regional strategies and finally on an international level, the standards and norms represent "best practices" that can be adopted by states to meet national needs (United Nations, 2006: vii).

International criminal courts rely on expert evidence coming from the forensic sciences such as DNA testing, fingerprints, lie detectors and the like. A forensic anthropologist might provide testimony about the state of bodies recovered from a mass grave or an

expert on typewriters might reveal that a document was probably created by a particular typewriter system (and thus associated with a particular institution). Expert evidence can also come from the social sciences and humanities (Buss, 2014: 26).

The United Nations Convention on Justice and Support for Victims of Crime and Abuse of Power, Part 2: Article 5: subsection 2 (1985) states that “State parties shall ensure that the judicial, administrative and informal processes are responsive to the needs of victims” and this should be facilitated by:

a) Allowing victims to be presented and considered at appropriate stages of proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant domestic criminal justice system.
b) Allowing victims to present their views and concerns themselves or through legal or other representatives without prejudice to the discretion of the court, tribunal, or other appropriate authority, and in consonance with the relevant domestic criminal justice system.

This enables experts to present evidence regarding the personal circumstances of a victim on their behalf. In more recent times criminologists have done so using a Victim Impact Statement (VIS) which is usually submitted together with the pre-sentence report when requested by the court.

1.4.2 Domestic Legislation

International law reforms have played a major role in shaping the South African criminal justice system post-1994 because of the weight afforded by the Constitution and thus the Judiciary. South Africa is bound by the United Nations Convention on the Standards and Norms of Crime Prevention and Criminal Justice of 2006, amongst many others, including the convention on the Rights of the Child. In ratifying these documents, South Africa became bound by its provisions and had to refrain from acts which would defeat the purpose of the treaties (Sucker, 2013: 8).

South Africa has an uncodified legal system which means our law can be found in various sources rather than one single collection of law. (Badenhorst, 2020:15, Davies, 2019: 3). The law of evidence (consisting of common law and statutory law) are the rules that regulate the submission in a court of law. In accordance with these rules, police must collect evidence and ensure that it is admissible in court (Joubert, 2010:

9). Therefore, this law determines how the facts of a criminal or civil case must be proven. It is used to determine how witnesses in court must be treated, which evidence is accepted, and what counts as hearsay (Joubert & Wyk, 2014: 487). Common law is the major source of the law of evidence, yet a significant proportion of the law of evidence is codified in the Criminal Procedure Act 51 0f 1977 and the Civil Proceedings Evidence Act 25 of 1965 (Schwikkard, 2008: 13). These sources must be applied in determining the extent to which criminologists can gather and present evidence when called upon as expert witnesses.

Section 247 of the Criminal Procedure Act 51 of 1977 reads as follows:

1. A court may, before passing a sentence, receive as much evidence as it thinks fit, to inform itself as to the proper sentence to be passed.
2. The accused may address the court on any evidence received under subsection (1), as well as the matters of the sentence, and thereafter the prosecution may likewise address the court.

This makes provision for all judicial officers to solicit pre-sentence information from any source, including criminologists, and also allows the state and the accused to present evidence regarding any matter to place the court in a better position to arrive at a just and proper sentence.

Section 186 of the same Act continues to state that:

> *"The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such a witness appears to the court as essential to the just decision of the case".*

Though the presiding officer's decisions are final in the matter that is before it regarding the sentence imposed on an offender, the court must consider all evidence placed before the court. The said evidence can be collected through professionals by means of a pre-sentence report and Victim Impact Statement from which an expert may testify (Joubert & Van Wyk, 2014: 487). Criminologists' professional knowledge is used in criminal law procedures to assist the court by reporting on the client's circumstances, background, and intent in committing the crime. Criminologists are also trained to assess and evaluate aggravating and mitigating factors to make a recommendation to

the courts regarding sentencing. They are also trained to render assistance to victims, to help them overcome the emotional, physical and/or economic effects of a crime committed against them or their loved ones, by ensuring this information is presented in court (Human, 2018: 49, Van der Hoven, 2006: 166,).

In *Gouws 1967(4) SA 527 (C)* it is stated that the evidence of an expert witness can be divided into two categories:

- Factual evidence, that is, evidence regarding objective facts such as footprints, DNA, medical evidence, and ballistics.
- Opinion [Expert] evidence, that is, evidence given by an expert in his/her field, but based on the opinion of the witness.

It is important that criminologists understand the mandate of the court, and what information is required from them when called upon to provide evidence on a case as experts.

According to the Civil Proceedings Evidence Act 25 of 1965, in any civil proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall on the production of the original document be admissible as evidence of that fact. This Act later continues to define these documents as any book, map, plan, drawing or photograph; statement includes any representation of fact, whether made in words or otherwise. This therefore provides a rationale for why criminologist court reports can be submitted to the court as document evidence. The document will be admissible and therefore the criminologist does not have to testify in court on every written report. In instances where criminologists are called to testify, they will be examined and cross-examined to prove their expertise and to test the facts provided by them.

There is no explicit definition of what qualifies a person to be an expert in South African courts, but they must have both theoretical and practical knowledge on their specific field of expertise relevant to the case the court is dealing with (Van der Hoven, 2006: 165). The presiding officer must be convinced that the witness is qualified to testify as an expert witness on the subject concerned. To convince the court of his or her expertise, it is essential that the expert witness must provide the court with a curriculum vitae. Furthermore, the expert will also be requested to compile a pre-sentence report

of the offender and/or a Victim Impact Statement, which will be read out in court as evidence under oath by the expert who compiled the reports. In this report, the expert must state the facts or reasons upon which his or her expert opinion is based (Van der Hoven, 2006: 168).

Criminologists can therefore testify as expert witnesses if they can prove to the court that their evidence will promote the fairness of the case and the human rights of the client. This means that criminologists must be able to provide the court with knowledge the court would otherwise be unable to attain regarding the facts to form an opinion about the case concerned (Van der Hoven, 2006: 168, Gotham & Kennedy 2019: 6).

For criminologists to make worthwhile contributions, they must have scientific knowledge and experience in their discipline and be able to give their opinion in a logical and defensible manner. Presiding officers are sometimes dependent on the special knowledge and skills of experts. Without their evidence, presiding officers may be unable to draw appropriate inferences or reach fair conclusions (Lerm, 2015: 77).

In the case of Makhele 1994 (1) SACR 7 (O) it was found that:

> "*The general perception in South Africa is that sentencing is the sole responsibility of the presiding officer. Besides this, it is also generally accepted that most officials in the magistrates' courts pass sentence on an unscientific basis. Most magistrates have done what their more experienced colleagues did – sentenced on juridical "feeling*" [experience].

It is notable that most sentence-imposers argue that the expertise in sentencing is gained exclusively from experience. The main imperative of sentencing reforms has been that decision-making should be more implicit, that the rationality and information behind presiding officers' decisions should be specifiable and traceable. Presiding officers should explicitly state the reasoning behind their decisions. Decisions should consistently follow certain rational goals, and the information used to achieve these goals should be visible (Aas, 2004: 50, Phenyane, 2022: 24).

1.4.2.1 South African Case Law

One of the most publicised court cases, which highlighted the importance of expert evidence, was that of Oscar Pistorius who was found guilty in 2015 of murdering his girlfriend, Reeva Steenkamp in 2013. In the Oscar Pistorius trial, several expert

witnesses were called to testify on different topics ranging from medical, ballistic, and criminal issues, which made South African society more aware of the different role-players involved in court proceedings (Experts Direct, 2022).

Criminologists are trained in a holistic and multidimensional view of crime and should therefore be able to view crime from a societal, victim, and offender perspective. These skills are highly valuable and applicable when it comes to the guidelines emphasised in *S v Zinn* 1969 (2) SA 537 (A) where the presiding officer Rumpff, J.A. concluded, "*what is important is the balance between the offender, the crime and the interest of society*". A criminologist therefore must report on the needs of all involved in the crime as well as look at the gravity of the crime, which can be done by including a Victim Impact Statement (VIS) when submitting pre-sentence reports. By considering the objectives of punishment, namely, retribution, deterrence and rehabilitation the court concludes a sentence that is more inclusive and objective. The consideration of individuality in sentencing assists the court not only to treat each case on its own merits but also to see the offender away from the behaviour of criminality. This would bring the constitutional rights of all humans into the legal system and allow for concepts of dignity and humanity to be instilled in the inner dimension of the court procedures, thereby showing that a thorough job has been done in considering the offence, offender, victim, and interests of society holistically, and not focused on only one element of the criminal event. The Triad of Zinn has been considered in various other cases including, *S v BF (1) SACR 298 (SCA)*, *S v Mungati 1992 (1) SASV 550 (A)*, and *S v Engelbrecht 2005 (2) SACR 163 (W)*, where the court considered the balance between the crime committed, the individual factors surrounding the crime as well as the interests of the community.

Experts need to understand what the court expects from them before they can assist the court. In *Holtzhausen v Roodt (1997),* the presiding officer makes it clear that there are relevant principles applicable to the admissibility of opinion evidence by experts. The code of conduct developed by Creswell J in the case of National Justice Compania Naviera SA on the duties of an expert can provide guidelines that could assist the expert in providing the court with unbiased opinions.

1.5 Objectives of punishment

In order for criminologists to make a valuable contribution to the sentencing phase of the criminal justice process, they need to understand the legislative framework and the basic principles and objectives of punishment. This assists the criminologist in not only staying within their scope of expertise when testifying, but also in testifying only about matters related to the objectives of punishment. As each of these objectives of punishment are to a certain extent seen and linked to each of the factors of the Triad of Zinn, therefore in order to impose an appropriate sentence we also need to balance these objectives of punishment. Booyens (2020: 77) purports that the main objectives of punishment include deterrence, prevention, retribution, and rehabilitation. Restorative justice is included as a fifth objective which has traditionally been excluded. This is referred to as restoration as an objective of punishment and is to a large extent the application of restorative justice practices and the outcomes of those practices.

Retribution, deterrence, prevention, protection, and to a lesser extent rehabilitation are ancient concepts. Our courts were bound at some point to take note of the Roman-Dutch writers' frequent references to these notions. Although not for the first time, this occurred most clearly in *R v Swanepoel 1945 AD 444*. The court did not make a particular finding concerning the purposes of punishment but rather had a look into some earlier writings on sentencing. Apart from a few isolated cases, our appeal courts have found that punishment serves four main purposes, namely; deterrence, prevention, retribution, and rehabilitation, the most important of which is deterrence, and that the case of *R v Swanepoel* supports this conclusion, where the magistrate attempted to use the alleged deterrent value of a severe sentence to justify it (Snyman, 2014, Terblanche, 2016:171).

Courts in South Africa generally assume that their sentences will deter other potential offenders and that the heavier the sentence, the greater its deterrent value. However, not every sentence has to act as a deterrent to potential offenders. Terblanche (2016:175) maintains that the operation of general deterrence is based on two assumptions about human behaviour that are either no longer true or were never true. The first is that humans carefully consider all consequences of all their actions and act accordingly. This may be true for some people, but it is not necessarily true for the

majority. Terblanche (2016:175) is of the opinion that despite the apparent regard criminal law has for people, the average person is more intent on immediate gratification and is fatalistic. Unless these consequences are very immediate and very obvious, fewer people consider the effects and consequences of what they do. In South Africa, crimes are committed with little concern for getting caught. In addition, deterrence is based on the assumption that the average offender or would-be offender takes note of warnings given by the courts about sentences that are set to become more severe, or that offenders take note of sentences imposed by the courts. The fact is that most people are unaware of what happens in court (Terblanche, 2016:176).

Individual deterrence aims to prevent re-offending by an offender due to the unpleasant experience they have had or the fear of what will happen if they re-offend. Courts often view the imposition of a sentence more severe than the previous one as the only appropriate option. This is because it is often argued that repeat offenders have not learned their lesson. To discourage offenders from committing further crimes, increasingly severe sentences are often imposed on them, even if the crime itself was not particularly serious. There are constitutional limits to how far a sentence can be increased for its deterrent value. In addition, if the offender is unlikely to re-offend, then imposing a sentence to deter them is unnecessary (Terblanche, 2016: 177).

In addition to being generally grouped with the other three purposes of punishment, Terblanche (2016: 177) maintains that prevention is rarely mentioned in our sentences and can be interpreted broadly or narrowly. In the broad sense, it includes deterrence and rehabilitation. There are times when courts cite sentences to deter similar crimes, stating that they must "prevent" others from committing them. When used in combination with the other three purposes, it is used in the narrow sense and should mean the physical prevention of the accused from committing a crime in society.

Courts can use incarceration to further various objectives, including community protection, retribution, and specific and general deterrence. Those favouring the incapacitation model claim that people who have broken the law should be removed from society and placed in an environment where they will not commit further crimes (Bezuidenhout, 2020: 77). There are two basic functions of imprisonment: First, offenders are incapacitated, therefore they are prevented from committing further crimes. Second, the threat of being incarcerated, or the experience of incarceration,

should deter potential offenders from offending. While the incapacitating effect of imprisonment is due to the mechanical removal of offenders from society, its deterrent effect presumes that individuals change their offending behaviour in response to the severity of sentences (Du Preez & Muthaphuli, 2019: 41). The success of incarceration as a means of community protection is therefore principally determined by reference to the extent to which it prevents crime in the community. It is especially important to incarcerate an offender if that offender is a danger to the community, and the community can only be safeguarded through the incarceration of an offender; for example, in cases of offenders declared as dangerous. In other cases where the offender faces a sentence after which they may be released, the court should determine whether incarceration will result in the ultimate rehabilitation of the offender and readiness to transition back into society once the offender has received necessary interventions. Such incarceration is in the interests of society, and our courts often impose long incarceration terms for this purpose. Although the offender can be removed from society, the extent to which the punishment can be applied should be determined by the appropriateness of the sentence (Pathinayake, 2018: 335, Terblanche, 2016: 177-178). The sentence can be deemed appropriate when the Zinn "triad" (*S v Zinn 1969 (2) SA 537 (A)*) has been duly considered by the court and can be addressed by the sentence imposed. Incarceration may have a negative effect on community protection if it increases the likelihood that some offenders will recidivate upon release. According to Pathinayake, (2018:334) available data suggests that by placing offenders in the company of fellow offenders, imprisonment may influence future criminal activity by providing opportunities to develop skills and connections useful for committing certain offences. Therefore, the goal of any jurisdiction is to develop a system that reasonably predicts a given individual's chances of reoffending. There are different ways to calculate the likelihood of recidivism. Criminologists can assist the judicial system to differentiate between offenders who will reoffend and those who will not, and need to find the most scientific way to do so. Incarceration has the short-term advantage of protecting society while the offender is incarcerated, but incarceration might result in the accused becoming a greater danger to society over time. However, if the accused attends and cooperates with the treatment programmes, the likelihood of recidivism is reduced. A successful outcome can also be increased with family support and a job (Snyman, 2014, Terblanche, 2016: 180).

Theorists who subscribe to the retribution model advance the notion that offenders should be punished because they deserve punishment for the crime that they have committed. This is based on the *lex talionis* principle of "an eye for an eye and a tooth for a tooth" (Booyens, 2020: 77). In essence, retribution requires a sentencing court to impose an appropriate sentence on the offender. It does not matter if retribution is seen as an expression of the indignation of society, or that the punishment should fit the crime. The punitive sanction should be proportional in severity to the degree of blameworthiness or the seriousness of the crime. Whenever punishment is considered cruel, inhuman, or degrading, the principle of proportionality is key, especially when one examines almost exclusively how long the offender was sentenced. Retribution is most valuable in that it explains how the courts, as an instrument of the state, can subject their subjects to intentional punishment (Terblanche, 2016: 185). However, the basis of retribution as a contemporary concept includes three elements, including atonement, restoration of disturbed legal balance and formal disapproval and moral condemnation. These three elements allow for a greater view of retribution than that relating to purely punitive measures. According to Terblanche (2016:186), retribution cannot be a factor in sentencing unless it is given a different meaning, such as that the sentence should denounce the crime, or it amounts to the atonement of the offender. However, even then, it is submitted, the best atonement and denunciation is effected through and appropriate sentence, not one which is disproportionately lenient or severe. The notion of retribution, therefore, is not in the sense of vengeance, but in the sense of restoring disturbed legal balance (Badenhorst, 2020: 61).

Rehabilitation is not only considered one of the traditional justifications of punishment; it is often given quite a prominent place when an appropriate sentence is determined. Terblanche (2016:178) purports that rehabilitation has received more attention than prevention, although South African courts usually simply mention it as one of the four purposes of punishment. It is important to assess the influence rehabilitation has on sentences. According to the rehabilitation approach, offenders' behaviour must be changed to reduce the likelihood of recidivism. Once an offender is admitted to a correctional facility, they are offered the opportunity to change their lives through participating in various correctional and rehabilitation programmes (Bezuidenhout, 2020: 77). Examples can be found of judgements that specifically attend to whether,

based on the facts of the particular case, there is a likelihood of the offender being rehabilitated. Such examples include those of Harms JA in *S v Nkambule 1993 (1) SACR 136 (A)* and *S v Mhlakaza 1997 (1) SACR 515 (SCA)*, where the presiding officer noted that rehabilitation is an important consideration, but only if the sentence has the ability to achieve rehabilitation. A more recent example is *S v RO 2010 (2) SACR 248 (SCA)*, where the court stressed that rehabilitation through punishment cannot simply be assumed. In this case it was doubted whether rehabilitation was at all possible. However, court judgements express an almost ingrained belief that rehabilitation is possible, even in serious cases when imprisonment becomes the only real option (Muthaphuli &Terblanche, 2017: 18).

Despite many references in the past to rehabilitation in connection with long incarceration sentences, several important judgements have held that, especially in the case of really serious crimes where long terms of imprisonment are imposed, rehabilitation becomes a minor consideration. An important condition to rehabilitation was stressed in *S v Nkambule 1993 (1) SACR 136 (A)*, namely that rehabilitation can only be important as a sentencing consideration if the relevant sentence has the capacity to achieve rehabilitation (Terblanche, 2016: 180).

According to the White Paper on Corrections and Rehabilitation, rehabilitation and corrections are key strategic concepts for the Department of Correctional Services (Department of Correctional Services, 2005: 10). It also describes rehabilitation as the result that combines the correction of offending behaviour, human development, and promotion of social responsibility and values (Department of Correctional Services, 2005: 28). As part of the aspirational language, the White Paper declares that, within the Department of Correctional Services, rehabilitation has the best prospect of success “through a holistic sentence planning process that engages the offenders at all levels – social, moral, spiritual, physical, work, education/intellectual and mental” . This is based on the argument that every human being has the potential to succeed if given the right opportunity and resources (Muthaphuli & Terblanche, 2017: 21).

The rediscovery of restorative justice in the last century is that victims of crime were formerly completely excluded by the criminal justice system. With this realisation, many countries, such as Australia, the United Kingdom and South Africa, began adopting restorative approaches to justice alongside or within the formal criminal

justice system, especially in relation to child and youth justice (Hargovan, 2015: 57). Restorative justice aims to resolve the conflict and restore the imbalance between the victim and the offender. The aim of such processes is to orientate offenders toward restorative justice values: victim empathy, making amends and accepting responsibility for the harm they have caused. This may also include participation in restorative justice programmes, which may entail offenders being assisted to write letters of apology to their victims, or where they themselves request such assistance. Somewhat more idealistic are projects in which restorative justice principles are used as a guide to correctional reform, bringing about wider organisational and cultural changes in the correctional centres and the correctional services system in pursuit of the ultimate goal – restorative correctional centres (Bezuidenhout, 2020:77, Hargovan, 2015: 58).

Victims and offenders are deprived of agency when an offender commits a crime and is incarcerated, resulting in harmful consequences for both groups. Restorative approaches to justice have the potential to recognise the injustice caused not only by the crime itself, but also by the structural injustice experienced by the offender (Hargovan, 2015: 55). Restorative justice follows the notion that the injustice brought about by the offence should be restored, principally by the offender. In the process, both the offender and victim are directly involved. Restorative justice may be resorted to by the sentencing court after it has applied the basic objectives of punishment as they relate to the factors of the Triad of Zinn (*S v Zinn 1969 (2) SA 537 (A)*) if it is found that imprisonment is not required and that restorative justice conditions can be worked into the sentence by way of the conditions of correctional supervision, of a suspended sentence, or of postponed sentencing. Two constitutional considerations, in particular, must be balanced with the philosophies of restorative justice. The first is that the punishment should be proportional to the offence, offender, and interest of society equally. The second is the need for consistency, as dictated by the right to equality (Terblanche, 2016:193). The prominence of restorative justice in the Child Justice Act 75 of 2008 has had a positive influence on this approach to justice. Restorative approaches to justice in South Africa are largely informed by indigenous and customary responses to crime and include processes within and outside of the criminal justice system. Hence, the Restorative Justice National Policy Framework follows a broad approach; seeking to connect criminal justice, civil law, family law, and African

traditional justice. Furthermore, the framework favours the term ‘restorative approaches to justice’ as it embraces a broader definition of restorative justice, which includes non-custodial sentences, conflict resolution, victim support, and interventions that contain restorative elements such as Dialogue, Peace and Sentencing Circles (Hargovan, 2015: 57).

The rationale behind restorative justice is that the injustice brought about by the conflict should be restored, principally by the offender. In the process, both the offender and the victim are directly involved. This is achieved through what can be described as “occasions”, such as victim-offender mediation sessions and family group conferences, but also through imaginable and unimaginable means in which restoration could be affected can theoretically be utilised. Restoration is also not limited to the imposition of a sentence in court, it can be applied as an objective in conflict resolution in various circumstances within society.

The importance of considering these objectives of punishment in addition to the pre-sentence report and the Victim Impact Statement could be highlighted in the current study which is aimed at exploring the value of criminologists as experts in the court, as it is clear from the above discussion that courts would value criminologists as experts who understand these objectives over experts who would not have access to this knowledge as part of their training.

1.6 Motivation for the study

Section 274 of the Criminal Procedure Act 51 of 1977 states that “a court may, before passing a sentence, receive such evidence as it thinks fit to inform itself as to the proper sentence to be passed.” The knowledge and/or expertise of the expert on the specific subject qualifies him/her to form a better opinion of the facts concerned than the court. The presiding officer must then be convinced that the witness is qualified to testify as an expert witness on the subject concerned (Van der Hoven, 2006: 158). Not all social scientists seem equally effective in their presentation of testimony. Those who seem to be most effective have thoroughly prepared themselves in advance and have given considerable thought and care to the way they want to make their presentations (Barker & Branson, 2000: 37).

Expert witnesses can be perceived as important elements in the functioning of the court and the criminal justice system in its entirety, as their opinions are relevant and can lead the court to make appropriate, informed decisions. However, the final decision lies solely in the hands of the presiding officer whether it be in the high courts, regional courts, or district courts (Sutherland, 2009: 1-2). Although a growing body of research is available on the use of expert testimony in courts, little is known about what presiding officers expect to be encompassed in the presentation of testimony by an expert witness (Wechsler et al, 2015: 159).

The significance of the study, therefore, lies in an exploration of the expectations of presiding officers regarding the testimony of criminologists as expert witnesses.

1.7 The value of the forensic criminologist in the criminal justice system

Criminologists are viewed by the court as expert witnesses where the judges or magistrates would be unable to draw an inference or conclusion because they lack the specialised knowledge. According to Labuschagne (in Beukman, 2008: 14), the forensic criminologist in South Africa can serve in two capacities in the criminal courts, namely, to a lesser extent before a person is found guilty, and to a greater extent after conviction but before sentencing.

The criminologist can offer theoretical explanations for the accused's deviant behaviour. The recent trend is to apply integrated theoretical models to explain criminal behaviour. These models consider individual-oriented factors, background-oriented factors, motivation for committing the crime, facilitating factors, and instigating factors. In addition, the consequences or aftermath of the crime must be taken into consideration. Victim Impact Statements form a vital part of explaining to the court the harm or pain suffered by the victim. The effect of the crime on the community must also be addressed because the interests of the community are at stake as well (Terblanche, 2016: 87).

Criminologists also assist victims in putting forward their viewpoints, experiences, and the consequences thereof by compiling Victim Impact Statements. Furthermore, criminologists may be able to render an invaluable service to courts. However, it stands to reason that in making an informed and balanced contribution to a case in a

court of law, the criminologist must familiarise him- or herself totally with all aspects relevant to the case (Lambrechts & Prinsloo, 2002: 17).

Criminologists as expert witnesses in court offer testimony on a broad range of criminal justice practices and procedures and in criminal trials. Criminologists compile pre-sentence reports using a holistic approach by taking all relevant factors into consideration, which could have influenced the personality make-up of the individual and the development of violent tendencies. The very study field of criminology places the criminologist in a very suitable position to provide valuable information to the court regarding the causes, motives, prevention, and treatment of criminal behaviour.

1.8 Societal relevance of study

The criminal justice system is overwhelmed with problems that make it difficult for the functionaries in the system to deal with the number of offenders processed through the system. In the South African criminal justice system, a number of problems arise pertaining to the treatment of both victims and offenders, who often become victims of the overburdened system (Ovens, 2006: 127).

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and the Constitution of South Africa place specific emphasis on the just and fair treatment of all offenders. Henceforth, a triadic approach to justice that encompasses the interests of all players in the criminal justice system, namely the victim, the offender, and society in general, is necessary for ensuring that the South African criminal justice system is fair and just (Ovens, 2006: 127). In order to pass a sentence that is likely to protect the community, render the offender less violent or less deviant, deter offenders and potential offenders, and bring about positive changes in the offender’s attitude and behavioural patterns, judicial officers require knowledge of human dynamics. In particular, what is required is criminology that focuses on offender and victim issues, as well as aspects of crime and society's interest.

1.9 Dearth of research

Discussions about the expert witness have focused on establishing what experts should include in their reports, and ultimately, their testimonies, which are based on the witnesses' professional viewpoints. However, these discussions often ignore the role played by presiding officers, who are the ultimate decision-makers in court cases. The current study is ideally positioned to bridge this gap by focussing on the perceptions of presiding officers as the major role players in determining the value of criminologists as expert witnesses. A study by Wechsler et al. (2015: 58) focused solely on the beliefs held by attorneys concerning scientific evidence and expert witness credibility. The foregoing study contributes to courtroom research by examining demographics and perceptions of trial errors and scientific evidence associated with the requirements that an arrested person be brought before the court. This study explored the trial errors judges would typically highlight in their decision-making processes. The sample included 308 judges with an average of 13 years of experience respectively. Questionnaires were distributed to judges through SurveyMonkey, a survey-hosting website. The study revealed that, instead of relying on witnesses who possess expertise about social/psychological matters, attorneys preferred forensic scientific evidence and experts, and valued these witnesses' perceived expert trustworthiness, expert knowledge, communication skills, the contents of testimony/reports, and years and type of expert experience. The current study may therefore contribute to the existing body of knowledge generated in the aforementioned study of Welscher et al. (2015), as it is aimed at exploring the value of social science specialists, specifically the criminologist, as experts in the South African criminal justice system, thereby also contributing to the domestic knowledge of social scientists in the courtroom.

Labuschagne (1992) applied a qualitative approach in analysing expert evidence by forensic criminologists as a component in the criminal justice system according to Parsons' structural-functional theory. Literature study, participatory observation and case studies were the procedures used in the investigation. Talcott Parsons' paradigm of structural functionalism was used to give structure to the analysis of the role of the forensic criminologist as a component of the criminal justice system. The collected data was analysed on the basis of the stated objectives and hypotheses to determine whether the forensic criminologist has value as a participant component of the criminal

justice system. This study yielded the justification of the role of the forensic criminologist as well as the confirmation that the forensic expertise of criminologists will continue to be valuable in the sentencing process. Contrary to the current study, Labuschagne's focus was on the function of the criminologist in the structure, including sentencing and reaching the objectives thereof, and not on how presiding officers as major role players perceive forensic criminologists or their expectations of these criminologists as contributors to the criminal justice system. Recommendations from the study included the need for research to be instituted into the scope and composition of a service course on criminology for law students, numerous such studies (Beukman, 2005, Beukman, 2008, Prinsloo, 2001, Van Der Westhuizen, 1998) have been conducted since 1992 in an attempt to professionalise criminology in South Africa. Another recommendation was that the findings of these South African investigations are used by forensic criminologists, for example, to conduct their interviews with clients and to gain a deeper understanding of behavioural differences, values, norms, rehabilitation possibilities, and future risk assessments. Labuschagne and Pretorius (1993) highlight that to be part of the criminal justice system, the forensic criminologist should be properly trained to fulfil the expectations of the criminal justice system.

This study, however, does not highlight what these expectations are and how these criminologists relate to the presiding officers when they do act in the criminal justice setting. The current study could therefore make a valuable contribution in identifying how criminologists understand the process of the criminal justice system and enact that understanding well enough to achieve the goals set for them by the legal role players, most importantly, presiding officers.

Diko, Olofinbiyi, Steyn and Chan (2019) conducted a study to gain an understanding of how criminologists can contribute as active participants in the criminal court. A systematic research design (a critical assessment and evaluation of all research studies related to the topic) was adopted to examine the topic of the study and specify the one-on-one methodological approach of in-depth interviews employed in the process of data collection for the study. A total number of eleven (11) participants were purposively selected from among the identified groups at the Durban High Court and the Faculty of Criminal Law at the University of KwaZulu-Natal (UKZN). This sample included a criminologist, who had experience in compiling pre-sentence reports,

lawyers, judges, and prosecutors working at the Durban High Court, and lecturers in Criminal Law at UKZN, who had some experience of criminal cases in the Durban High Court. The findings suggested that criminologists who are functioning peripherally in the criminal justice system can be employed to exert greater influence in the compilation of pre-sentence reports. This study adequately demonstrated that the professionalisation of criminologists should not be restricted to research and scholastic ventures. However, the study revealed that some influential specialists in the criminal justice system had limited knowledge regarding the roles of criminologists in the sentencing phase of criminal trials, and some even believed that criminologists are only consulted in the case of very serious crimes involving dangerous offenders. Based on this, the current study could contribute to the body of knowledge by determining the perceptions of presiding officers of criminologists as expert witnesses, and ultimately providing a better understanding of the role a criminologist can play; not only in the sentencing phase of the criminal justice process, but also on the various levels of the criminal justice system.

Malatji (2012) conducted a study focusing on the role of social workers acting as expert witnesses in cases involving children who are victims of sexual offences. She included Probation Officers from the Mpumalanga Social Development Department, Forensic Social Workers from the SAPS, and Forensic Social Workers in private practice among the study participants. She used non-probability snowball sampling to select participants. Self-administered questionnaires were employed as a measuring instrument to obtain raw data from the respondents and to derive meaning from their responses. The problem she found was a lack of skilled, trained, and knowledgeable professionals in certain areas of the spectrum, for example, sexual abuse in a child case. Although this study was focused on social workers, there are many similarities to the field of criminology; what is important is that the legal role players were included, although to a limited extent, as presiding officers were excluded. A criminologist needs to interact with all the legal role players, and it is imperative that such relationships are built and that the roles of the criminologist in criminal justice matters are understood by the legal professions. This can be achieved by understanding the perceptions that exist within the criminal justice system of the possible role criminologists can play in the system’s processes.

Van Niekerk (2021) conducted a study in order to identify the minimum requirements for the compilation of a criminological pre-sentencing report. She used a qualitative research method to guide the study. Interviews were conducted with criminologists in the field of forensic work and criminal justice professionals with expert knowledge and extensive experience of forensic report writing. From her research findings, a standard guideline for pre-sentence reports was compiled based on the perspectives, perceptions and expectations of the participants. The findings of this study further indicated that the criminological pre-sentence report could contribute to correctional criminologists' assessment for adequate rehabilitation and treatment of offenders.

Although forensic criminologists are welcomed role players in the criminal justice system, various studies have investigated the numerous roles that such experts play on several levels of the criminal justice process. Forensic criminology is often misunderstood by role players in the criminal justice system. The dearth of research, therefore, lies in understanding the perception of role players, particularly presiding officers, of the roles of the forensic criminologist. This study aims to be a valuable extension of the pioneering study by Labuschagne (1992) in an attempt to position the criminologist as a significant actor of the criminal justice system.

1.10 Objectives of the study

This research will explore the expectations of presiding officers regarding expert witness testimony. To address the main objective of the study, the following aims were formulated:

1) To explore the role of the criminologist as an expert witness in collecting, presenting, and interpreting evidence for the court;
2) To identify the characteristics of the criminal event that criminologists as expert witnesses are expected to report on; and
3) To formulate recommendations for further research of the criminologist as an expert witness in the criminal justice system.

1.11 Conclusion

This chapter outlined the purpose of this research. The aims and objectives of the study have been presented, as well as the conceptualisation of concepts linked to the study. It also highlighted the legislative framework as well as the societal relevance of the study. The following chapter focuses on the theoretical framework that focuses on the roles and functions of a criminologist in the criminal justice system.

CHAPTER 2
THEORETICAL PERSPECTIVE

2.1 Introduction

The previous chapter discussed the aims and objectives of the study. It also highlighted the various legislative frameworks as well as the societal relevance of the study. This section aims to elucidate the roles and functions of a criminologist in a social system.

Talcott Parsons' theory of structural functionalism maintains that a social system includes actors who interact with one another in their various roles and functions to support the structure of society. For a system to survive, it must engage in four sets of activities aimed at meeting its needs; namely, adaptation, goal attainment, integration, and latency. The four functional imperatives will enable the researcher to explain the role of the criminologist as an expert witness in meeting an important information goal of the judicial system. The section will, therefore, theoretically explore and clarify the position of the forensic criminologist in South African law, as well as the legal identity of the criminologist as an expert witness.

2.2 Parsons' structural functionalist perspective: An overview

Talcott Parsons developed a general theory of society called 'action theory' to lay the groundwork for the modern functionalist perspective. His undergraduate studies at Amherst College included biology, sociology, and philosophy. He studied economics and sociology at the London School of Economics, and later at the University of Heidelberg, Germany, where he obtained his PhD (Crossman, 2019: 1).

In 1927, Parsons taught at Amherst College for one year before becoming an instructor at Harvard University's Department of Economics. Harvard did not have a sociology department at the time. In 1931, Harvard's first sociology department was formed, and Parsons worked as one of the department's two instructors. He later became a full professor. Parsons played an instrumental role in the establishment of Harvard University's Department of Social Relations, which was an interdisciplinary department combining sociology, anthropology, and psychology. Parsons served as

the chairman of that new department. He retired from Harvard in 1973. However, he continued writing and teaching at universities across the United States.

He conveyed a reflective account of the great European heritage of Max Webber and Emile Durkheim, and he fashioned the only modern synthesis of social theory having a grand scope of Marxism (Gouldner, 1979: 299, , Inglis & Thorpe, 2012: 42). Parsons was influenced by Emile Durkheim and Max Webber, who argued that moral values were the source of motivation that shaped individual conduct. When shared, these values promote social solidarity and stability. Influenced by Vilfredo Pareto and L.J. Henderson, Parsons viewed society as an interdependent system that, when functioning normally, maintains equilibrium without disruption. In his study of motivation, Parsons drew on Freudian theories to demonstrate how culture, personality, and group influence individuals. The foundation of Parsons' sociology was his unwavering faith in American society (Gouldner, 2003: 299,). For the purposes of this investigation, only part of Parsons' general theory of action is of direct importance, namely his structural-functional theory of social systems.

The Structure of Social Action (1937) was Parsons' first major work, which was later re-edited several times. Parsons insists on an important characteristic: the rationality of action. As a result, Parsons stresses the importance of choosing the means best suited to the goal. The rationality of action is defined as pursuing goals within the limitations of the situation, by means that are intrinsically best suited to those goals, for reasons that can be accounted for and verified by positive empirical science. (Netedu, 2010: 60).

Actions consist of a person, with goals, choosing certain means of achieving them, and these choices are made within conditions, both material and cultural, that constrain the choices and means. The system can exist over time because individuals are constantly motivated to choose the sorts of actions that result in patterns that reproduce the system. It is the cultural values guiding, but not wholly determining, which make possible social order (Inglis & Thorpe, 2012: 44).

Parsons regarded all social units, whether groups, institutions or whole societies, as self-contained systems or social actions systems, each to be studied and analysed. He is regarded as a structural functionalist because his core focus was the analysis of the structure of the social system (society), its subsystems (social institutions and

structures), and their consequences or functional relevance in maintaining society, social order and system equilibrium.

Regarding the nature and future of modern societies, Parsons appeared optimistic, which seemed to put him at odds with radical critics. Rather than the neutral social scientist he claimed to be, he was viewed as a conservative servant of the status quo. Functionalism, by its very nature, is perceived as a conservative movement seeking social stability and cultural consensus where none exists (Inglis & Thorpe, 2012: 54).

The intellectual trajectory of Parsons has been described in many accounts and his thought has been contextualised using intellectual trends of the era. It is impossible to fully comprehend Parsons' place in twentieth-century intellectual history without understanding the early critical responses that shaped his image so strongly. In the 1950s and 1960s, Parsons was seen by some, both supporters and detractors, as the star of contemporary sociology, but the breadth of his critics suggests that his influence has been exaggerated (Owens, 2010: 166).

In the late 1950s and 1960s, sociologists and historians sympathetic to Parsons observed that the sociological community largely dismissed his theories without giving them a fair evaluation or supporting analysis. Parsons' critics were unfair for some time, but now the theory is so widely known that sociologists often refer to it with resignation. This is perhaps wishing to be remembered as part of history, but weary of arguing over it. Parsons' initial rough treatment by his colleagues was not founded on a fair appraisal of his work. However, a detailed historical account of how he came to be demonised has yet to be written (Dillon, 2014, 169).

The critique of functionalism has been voiced by numerous researchers from various perspectives. The first problem is whether the theory corresponds to events in the 'real' world. It is difficult, without any outward link between abstract concepts and concrete empirical events, to determine whether functional concepts would be useful in the analysis of social phenomena. Second, when the functionalists make the statement that certain items contribute to the maintenance of a social system, the same assertion can also lead to a reverse argument, namely that the item arose precisely because of its functional irreplaceability. The existence of social stratification serves as an example: the unequal distribution of wealth arose because it is functional to the survival of society by encouraging people to work harder and better. The third point of

criticism is directed at the functional assumption of system integration. It is considered too conservative by critics. The functional emphasis of value consensus, the integration of components within the system and the mechanisms that must maintain equilibrium, leaves no room for explaining social phenomena such as change, deviation, and conflict. As this investigation does not involve behavioural disorders or societal changes in general, these points of criticism do not apply to this project (Wenzel, 2001: 5850).

This section will provide an overview of the four functional imperatives, which will enable the researcher to explain the role of the criminologist as an expert witness in meeting an important information goal of the judicial system. It will explore and clarify the position of the forensic criminologist in the South African criminal justice system, as well as the legal identity of the criminologist as an expert witness.

2.3 The structure of social action

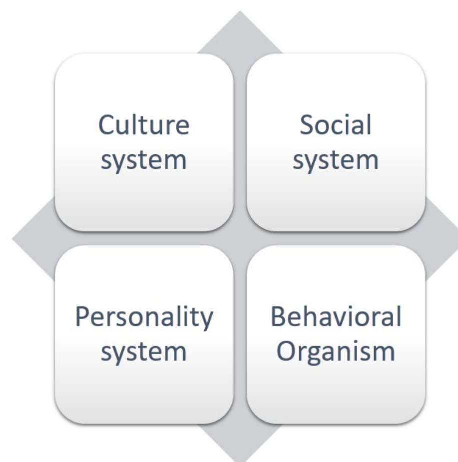


Figure 2.1: Parsonian Action system (adapted from Wenzel, 2001)

As it is proposed in Figure 2.1 Parsons treats social entities such as groups as empirical systems of the social action systems. The analysis of the structure of the general social action system attempts to outline types of acts and types of relationships among them (Fararo, 2001:156). Actions consist of choosing means to achieve goals, and these choices are made within conditions, both material and cultural, that limit the means. For the system to exist over time, individuals are

constantly motivated to take actions that result in patterns that reproduce the system. In order for there to be social order, cultural values guide, but are not wholly determinative (Inglis & Thorpe, 2012: 44).

Parsons regarded all social units, whether groups, institutions or whole societies, as self-contained systems or social actions systems, each to be studied and analysed.

A social system is divided into different subsystems. Each subsystem maintains its integration and is interconnected. Within a society, for example, subsystems such as the political order, the economy, the family, and the legal system can be distinguished. Each of these subsystems can be further subdivided into smaller units. A broad approach to the legal system, for example, can identify subunits such as the criminologist as an expert witness, and the relationship between the criminologist and the official of the court. The boundaries of subsystems can overlap. Although some of the characteristics of subsystems (the criminologists) may be the same as those of the overarching system (some aspects of the legal system that are directly tuned to sentencing), a subsystem is not necessarily identical to the system to which it belongs.

The smallest subsystem of the system involving criminologists as expert witnesses will contain two people, namely the relationship that arises between the criminologist and the sentencing officer. Seen from the functionalist perspective, this subsystem is based on shared values, namely that an individualised sentence is functional and that an erroneous decision regarding punishment is dysfunctional. Unfair sentences are counterproductive and negative; therefore the offender will be in a negative position in relation to the criminologist, who performs a positive function in society. An asymmetric balance of power therefore exists between the criminologist and the offender in the criminologist-offender system.

The South African Police Services, the Department of Justice and Constitutional Development and the Department of Correctional Services have different goals and objectives with regard to certain aspects. The one aspect they have in common, however, is the fact that they all deal with crime and criminals.

To give structure to this study, the Parsonian model of subsystems is used as a framework. This will serve to give an indication of the dynamic nature of the role of the criminologist in the South African legal system. The four functional imperatives will be

discussed and applied to the forensic criminologist in the criminal justice system in the next section.

2.4 The functional imperatives

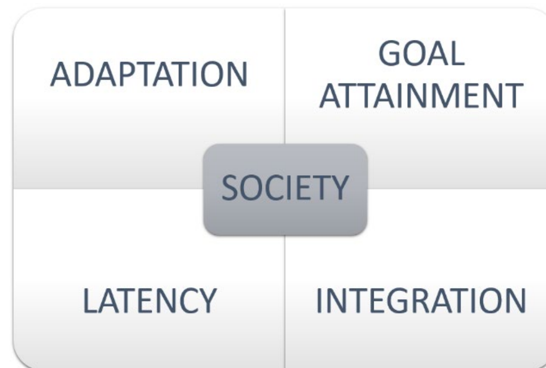


Figure 2.2: Parsonian societal structure (adapted from Inglis & Thorpe, 2012)

As demonstrated in Figure 2.2, a society, according to Parsons, is an action system "analytically divisible into four primary subsystems", of actions - economy, politics, law, and culture. These four subsystems comprise the core institutional structure of modern societies established to accomplish the economic, political, societal integration, and cultural socialisation functions necessary for societies to maintain themselves and adapt to change (Inglis & Thorpe, 2012: 50). In examining functions, Parsons focused on the sets of activities aimed at meeting a need or the multiple needs of a system. He argued that the four functions are imperative, that is, they are necessary for (characteristic of) all systems. If they are to survive, all systems must engage in four sets of activities aimed at meeting their needs. These four core functions are (1) adaptation to the environment, (2) goal attainment, (3) integration into the societal community by articulating and enforcing society's collective norms (Legal systems), and (4) latency or pattern maintenance (Dillon, 2014: 157, Inglis &Thorpe, 2012: 50, Ritzer, 2007:68). This theory claims to be able to explain the change of action systems in terms of a model of a moving or even a dynamic equilibrium. Parsons makes the temporal process a constituent of his functional variables (Wenzel, 2001: 58479).

Any action, like that of the forensic criminologist, operates within the boundaries of a broader system - the criminal justice system - which places restrictions on the

components. The components of the criminal justice system are, for example, the South African Police Service, the criminal courts, the Department of Correctional Services, and other correctional institutions such as industrial schools - all integral to the criminal justice system. To pursue the same goal or to achieve the same goals, these components are constantly interacting with each other (Labuschagne, 1992: 126). These structural functions will be applied to the criminal justice system in the next section.

2.4.1 Goal Attainment

Goal attainment is both external and consummatory, it is the process whereby the goals of the system are formulated, and resources - gained in Adaptation - are deployed to meet those goals. This is the system's decision-making apparatus, it decides what should be done to meet the system's needs (Dillon, 2014: 158, Inglis & Thorpe, 2012:50). Goal attainment, consequently, involves the need for a system to define and achieve its primary goals. The goal of any system is that it not only survives into the future but that it also grows and expands (Ritzer, 2007:69). The 'G' sub-system involves the goal attainment of the social system. This involves the ways in which the goals of the system are formulated, and how people in the system are mobilised to carry out these goals. This sub-system is the 'brain' of the system, therefore the social structure that carries out the decision-making body.

The criminal justice system is a complex part of our society and is recognised for the important role it plays in enforcing the rule of law. The individuals responsible for enforcing that rule of law are the dedicated members of that system. The South African criminal justice system is overseen by the Department of Justice and Constitutional Development , which is the umbrella department for all justice-related bodies in South Africa (Bezuidenhout, 2020:586). At the core are the three main parts, each with specific objectives at different stages of the criminal justice process.

The South African Police Service is responsible for the prevention of crime, the investigation of crime, and the apprehension of suspected offenders. A person suspected of committing a crime is prosecuted by the National Prosecuting Authority (NPA). Hearing the evidence, the presiding officer, who is the magistrate or judge, and the judiciary (the courts) decide whether the accused is innocent or guilty, as well as what punishment should be given in the case of a conviction. South Africa's

Department of Justice and Constitutional Development is responsible for ensuring all citizens have access to quality justice. The correctional system, run by the Department of Correctional Services, makes sure that sentences are carried out and aims to rehabilitate the convicted criminals in their care. Probation officers/social workers provide social services to poor and vulnerable people and support and assistance to victims of crime, their families, and communities. Probation officers are appointed by the Minister of Social Development and are officers of every magistrate's court (National Prosecuting Authority, 2008:4).

With a vision to bring about a seamless link between the police, courts and corrections, the Justice, Crime Prevention and Security (JCPS) cluster was established. In 1996 the National Crime Prevention Strategy (NCPS) was approved by the government with two elements arising as a result; these include the National Crime Combatting Strategy (NCCS) and the Integrated Justice System. The integrated justice system was established in 1997 to integrate the activities of the departments in the justice, crime prevention and security cluster (Bezuidenhout, 2020: 58). Integrated justice systems are designed to enhance the efficiency and effectiveness of the criminal justice process. This is done by improving the chances of successful investigations, prosecutions, punishments for priority crimes, and, ultimately, rehabilitation. Other issues that should receive attention include prison overcrowding, detainee problems, as well as bail, sentencing, and plea bargaining. Through the establishment of the integrated justice system, Government wants to eliminate duplication of services and programmes at all levels of the criminal justice system (South African Government, 2020). An integrated criminal justice system is able to have goals that build upon each other and agents/agencies that work toward ensuring that those goals are met, with clear expectations from the different role players.

Criminologists, as experts in criminal behaviour, collect, analyse, and interpret information to assist the court in the appropriate sentencing of offenders. In gaining resources, the criminologist must work with the police to investigate the crime and collect information regarding the victim and the offender. This information then assists the court in deciding on the best sentencing option based on the needs of the offender, the victim, as well as those of the community that has been affected by the crime (Ovens, 2006: 113). This knowledge is used in the court as evidence promoting the individualisation of the offender as well as enforcing the consideration of basic human

rights. Criminologists also conduct victim profiles to determine the actual risk of the victim, or the victim's needs and rights, as well as the emotional, psychological, physical, social, and medical functioning of the victim (Hesselink, Joubert & Maree, 2003). This increases the value and relevance of the expert opinion, as it is not offender-focused due to it taking into consideration the principles of the triad.

The South African contemporary criminological focus is rapidly evolving in response to societal needs, that is, a more practicable and civic participatory criminology and practice. Criminologists, therefore, provide a practically oriented role that enhances an inter-related service delivery within the criminal justice, corporate and private sectors (Hesselink-Louw, 2004; Herbig & Hesselink, 2009: 446). This allows for a broader understanding of the criminal justice procedures and well as an understanding of the evidence analysed and discussed.

The ever-developing fields in which expert evidence can be used, challenge both lawyers and judicial officers. Specifically, in the case of criminal courts where guilt must be proved beyond reasonable doubt, prosecutors need to have the wherewithal with which to present, cross-examine and argue on matters that require the introduction of an expert to the dispute (Meintjes-van der Walt, 2006). Magistrates and judges in South Africa receive very limited training in sentencing. In addition, they receive scant or no training in the social sciences. Since sentencing is a human process, with implicit expectations about outcomes (in terms of punishment objectives), it requires a thorough knowledge of human dynamics. That is, to pass a sentence that is likely to protect the community, render the offender less violent or less deviant, deter offenders and potential offenders and bring about positive changes in the offender's attitude and behavioural patterns, judicial officers must have knowledge of human dynamics. As a result, they also need knowledge of certain social sciences, particularly criminology.

2.4.2 Adaptation

Adaptation refers to the system's instrumental relationship to its external environment. This is the process by which the system responds to the constraints and opportunities offered by its environment. Additionally, it refers to the process by which the system tries to control the environment to gain resources that are desirable to it (Inglis &

Thorpe, 2012: 50). Therefore, a system must adjust to its environment and adjust the environment to its needs (Ritzer, 2007:68).

Adaptation refers to the social system's relationship with its environment and with other social systems insofar as it has to pay attention to the acquisition of materials and facilities for the fulfilment of its objectives and for achieving its objectives. Furthermore, the adjustment also has to do with division of labour and role differentiation within and outside the social system and with the control that the social system exercises over its environment and how it adapts to it. Adaptation only takes place where tense situations between people are present in some form and need to be resolved. When adapting, it must be further borne in mind that, when the system is cut off from external sources, it must be able to find new ones and if existing techniques become ineffective for its purpose, it must be able to invent new ones. Adaptation as a functional problem area therefore refers to the ability of the social system adapt to its environment with its structuredness (Inglis & Thorpe, 2012: 51, Ritzer, 2007:70). The criminal justice system consists of various professions/professionals that are involved in the field of justice, such as criminologists, probation officers, social workers, and psychologists. These professions/professionals have a unique and specialised skill set that can be applied collaboratively in the best interest of individuals in conflict with the law, as mandated by the criminal justice system. These various role players can assist in maintaining the goals of the integrated criminal justice system on all levels.

According to the structural-functionalist perspective, for this criminal justice system to survive and fulfil its purpose, there need to be constant interactions between the functionaries and society. This interaction is achieved through the collection of evidence that considers not only the crime but the victim as well as the society affected by the crime. The adversarial system, as far as the right of proof is concerned, was characterised by this passive role of the right play as regards the calling and questioning of witnesses. Yet, the Criminal Procedure Act 51 of 1977 gives a judge the power to summon or cause someone to be summoned as a witness at any stage in the trial. This inquisitorial turn in South African evidentiary law is apparently intended to free the judge, with a view to justice, from an undesirable constraint placed on him/her by the accusatory system. For this reason, the court may call upon social scientists from various disciplines to give testimony in court, such as social workers, psychiatrists, clinical psychologists, and criminologists. Pre-sentence reports compiled

by all the aforementioned experts can help give a complete and comprehensive picture of the offender as a person and can help determine the most appropriate sentence and rehabilitation programme for the offender (Van der Hoven, 2006:166).

Criminologists view crime from a multidimensional perspective, using theory to analyse and interpret crime. Criminologists are trained to present a more comprehensive picture of the accused before the court, to enable the judge to come to a just conclusion regarding individualised punishment. By providing a comprehensive picture of the offender as a person, an explanation of the offending behaviour, and a recommendation regarding individualised sentencing guidelines, criminal pre-sentence evaluations assist the courts in determining what sentence is appropriate (Hesselink & Booyens, 2017:54). In addition to the pre-sentence report, the criminologist can compile a Victim Impact Statement for the State or include a Victim Impact Statement as part of a pre-sentence report for the Defence. A Victim Impact Statement is a report prepared by a criminologist to present an individualised, objective view of the victim to the court. The report is presented to the court during the trial and allows the presiding officer to gain a better understanding of the victim and the victim's experience. By incorporating a Victim Impact Statement into the pre-sentence report the criminologist ensures that the evaluation report is objective, which increases the value and relevance of the expert opinion as it is not offender-focused but considers all the principles of the triad and ultimately the objectives of punishment. (Hesselink-louw, Joubert & Maree, 2003; Van der Hoven, 2006; Ovens, 2006; Terblanche, 2016).

Criminologists with knowledge of cultural customs, professional standards, and professional guidelines can testify about their reality in court as well as what their obligations are in relation to the presented report (Petherick, Turvey, & Ferguson, 2009: 24). Criminologists act as members of multidisciplinary teams within the correctional environment. These teams should always be sensitive to the individuals who are part of the correctional programme. According to Booyens (2020:395), a multidisciplinary team should always be sensitive and differences in factors such as ethnicity, religious domination and political stance should be considered. Moreover, interventions and assessments should be guided by applying methodologies based on African experiences. Since South Africa is a multicultural heterogeneous society, the same diversity is relevant in corrections (Bezuidenhout, 2020: 396). These

principles are not limited to corrections but are applicable to the functioning of the criminal justice system in its entirety. The forensic criminologist, who as a component of the criminal court plays a role in the individualisation in sentencing, must therefore pursue the same objectives as the other components in the criminal justice system. If the forensic criminologist does not adapt to the same goals, the equilibrium will be disturbed, and this role may be counterproductive.

To be effective, forensic criminologists must adapt through the objective consideration of the needs of their clients, the sentencing judge, the state prosecutor, and other legal representatives. The collaboration of different professions, such as physicians, officials, psychologists, and social workers, encourages a more just punishment. Adaptations should also be made for cultural differences.

2.4.3 Integration

Integration is consummatory and internal, it coordinates the various components of the system in the direction of their operating together to meet the goals set by Goal Attainment. This function tries to resolve any internal problems that may occur in the system as a result of friction or conflict between its parts (Dillon, 2014:158, Inglis & Thorpe, 2012:50). Through integration, a system seeks to regulate the interrelationship of its component parts (Ritzer, 2007:69). The social system has an integrative function as it coordinates all the actions of individuals into pattern interactions. As a functional imperative, integration has to do with gaining control over members of the system.

This is the most important sub-system, as its purpose is to secure cooperation among the members of the group in the social system and to give them a sense of collective solidarity and community. It consists of networks of groups, organised in specific ways based on existing societies or societal structures, and it reflects and maintains the common culture and values. Integration refers to the analytical aspect of action that coordinates the elements of the involvement action system. As far as the court system is concerned, the Criminal Procedure Act 51 of 1977, fulfils that coordinating function in South Africa by carefully determining the rights and obligations of every actor in the system.

In accordance with the Constitution, the laws are enacted to ensure the effective administration of the Criminal Law, to punish offenders, to protect the public, to safeguard state and public security, and to maintain socialist public order. The law of South Africa is governed by the Constitution, which acts as an agency under which the criminal justice system operates. The Constitution considers the wellbeing of all its functionaries and role players, therefore allowing interaction between society and the Justice System. This allows for communication and instructiveness between the criminal justice system and society. Bearing in mind the fundamental rights system within which the South African criminal justice system functions, the rectitude of decisions in criminal cases should be a high priority (Meintjes-Van der Walt, 2006).

Magistrates must consider various factors before passing a sentence. A court's understanding of certain types of evidence is greatly enhanced by expert testimony. Reports written by these experts make a difference especially where the case is so complex that judges and magistrates are not always able to grasp the evidence with certainty (Lerm, 2015:79). Criminologists, therefore, do not have to testify in person on all forensic court reports they have compiled, and are only called when the courts find it necessary for clarity to be given on matters in the report.

Kruger (2008:287) also indicates that an expert can be called when the court report written by that expert contains something to the detriment of the accused or when additional information is needed. The primary motivation behind the pre-sentence report in the justice system is to give direction to the sentencing procedure (Terblanche, 2016). It aims to help a presiding officer in gaining a better understanding of the offender and the explanations for the crime that was committed. This is one of the triad of factors the court must consider in constructing a sentence (Herbig & Hesselink, 2009; Terblanche, 2016). For the court to assess the value of the opinion it must know the facts upon which the opinion is based. Furthermore, the facts upon which the opinion is based must be admissible evidence and should not be founded upon hearsay. Criminologists can therefore testify as expert witnesses if they can prove to the court that their evidence will promote the fairness of the case and the human rights of the client. This means that criminologists must be better qualified than the court regarding the facts and information at the court’s disposal to form an opinion about the case concerned.

Consequently, criminologists must have theoretical knowledge and practical experience in the field in which they are testifying. Criminologists must be able to account for the resources used and the conclusions made. Courts frequently turn to persons with expertise and skill for assistance. The relevant principles applicable to the admissibility of opinion evidence by experts (Fouche & Fouche, 2015:107) include: the criminologist will firstly have to prove his/her expertise to the court; the criminologist should be an expert on the matter he/she is called for, and should only testify on matters concerning his/her specific field of knowledge.

South Africa's Department of Justice and Constitutional Development is committed to transforming the judicial system. A growing proportion of the population in South Africa has access to fair and equal judicial services due to the commitment to ensure that everyone feels safe in the country (Ferreira, 2013). The Department of Justice and Constitutional Development is committed to constitutional values and a culture of human rights, the promotion of the rule of law, promotion of the *Batho Pele* principles, good governance, ubuntu and transparency on all levels of the criminal justice system. In order for a criminologist to guide any part of the criminal justice system, careful consideration has to be made of the value system and cultural needs of the society in which the criminal justice agency exists.

The integration imperative is applied through the compliance of forensic criminologists with the requirements of evidence on punishment, the nature of expertise, as well as where the principles, aim and functions of pre-sentence evaluation reports are indicated.

2.4.4 Latency

Parsons refers to the fourth functional imperative as latency, or pattern maintenance. Latency refers to the need for a system to furnish, maintain and renew the motivation of individuals, while pattern maintenance refers more to the need to furnish, maintain, and renew the cultural patterns that create and sustain individual motivation (Dillon, 2014: 158, Inglis & Thorpe, 2012:50, Ritzer, 2007:70).

The 'L' sub-system ensures pattern maintenance within the sub-system. Essentially, the fundamental values and norms of the system are preserved. The process of socialisation enables this to happen. To carry out its functions, this sub-system does

not have a specific social structure. Instead, the maintenance of cultural values is carried out in a more diffuse and hidden fashion (Inglis & Thorpe, 2012: 52).

The family and education system are the main mechanisms for socialisation, but they are parts of the societal community, not a separate social structure. In essence, the 'L' sub-system involves the common culture, and it both reproduces and is reproduced by the institutions of the societal community in which it is embedded (Inglis & Thorpe, 2012:52).

Latency refers to the analytical aspect of action that is aimed at, or consists of, the maintenance of the general system pattern, and as such it forms the fundamental source of tension that gives rise to action. In terms of the axes of differentiation, it means actions or aspects of actions that are both internal and instrumental. Parsons himself often refers to this facet of action as pattern maintenance and stress control (Labuschagne, 1992: 139).

The definition of "expert" refers to traits such as specialised knowledge, skills, a widely recognised body of learning, education, and training at a high level. This is recognised by the public. However, in the absence of a statutory board that regulates criminologists, even if they meet the conditions of the above definitions, they may not be considered professionals (Human, 2018:53). A Professional Board can provide the structure and guidance that criminologists need to perform their roles in an effective manner (Beukman, 2008:22). The absence of a regulating body for criminologists to govern the profession and protect the rights of those who use the services of criminologists limits career opportunities for criminologists, Human (2018: 235) identified and confirmed as one of the primary reasons for the exclusion of criminologists in the child justice sector.

A key objective of CRIMSA since its founding in 1986 has been to establish a regulatory board for criminologists (Bezuidenhout & Minnaar, 2010:1). A regulatory board is vital to protect the discipline's name and reputation from being misused by other disciplines, as well as unscrupulous individuals (Naudé, 2010: vii). The process of establishing a regulatory board for criminologists is currently in progress. The South African Council for Social Service Professions (SACSSP) and the National Qualifications Framework (NQF) have drafted and standardised the competency benchmark for eligibility into the field of criminology (Emeritus, 2010: i).

Criminologists have a solid understanding of the criminology discipline, but in order to function effectively in court, criminology students should be trained in court strategies as well as procedures. According to the South African Qualifications Authority, to qualify as a criminologist one needs to earn a Bachelor of Criminology, Master of Criminology, or Doctor of Criminology degree, all of which are NQF levels 7 and 8. The academic standard is utilised to address the criminological needs of South Africa and to participate in criminology as a global discipline (Emeritus, 2010: i).

In addition, criminologists do not have a code of conduct that specifies their work ethics and provides guidelines for their conduct (Bezuidenhout, 2020). Israel (2014:4) contends that if individuals behaved professionally, better outcomes could be achieved, and trust relationships could be built. To ensure that knowledge acquired is authentic, the authors define ethics as a form of professional accountability. The professionalisation of criminologists will enhance and elevate their role as experts in the criminal justice system.

Latency is attained when forensic criminologists act as a component in the criminal justice system and when pre-sentence evaluation by experts is provided by the training of students at universities. The delivery of such service is a profession, though an academic one.

2.5 Moving equilibrium

Functionalism is based on the idea of feedback; it is the process by which any system can automatically regulate itself (Labuschagne, 1992: 129). A system of action comprises motivations pursued over a period of time to achieve specific goals (G) with coordinated action from each part of the system. To achieve this, it will be necessary to have balanced interactions between all four processes (Dillon, 2014: 159, Inglis & Thorpe, 2012: 53).

Paradoxically, Parsons does not argue that there should be a perfect equilibrium between the functions and their respective structures; rather, he suggests that there should be a level of moving equilibrium over time between the parts, keeping the social system together and preventing it from disintegrating (Inglis & Thorpe, 2012: 53). A moving equilibrium will have to be maintained as the system's structures change, and

the relations between them must change as well. A system can have friction between its parts, but if there is too much friction, it can collapse.

In the case of forensic criminologists, training is an important process in achieving the theoretical state of equilibrium. All actors must be taught about the expectation of their roles. The criminal justice system is a function of various actors who interact with each other for the success of the action system. To ascertain the existence of the vital role of the forensic elements in the system, the forensic criminologist needs to prepare for his/her role and take care to ensure that the information shared in their called purpose is objective and concise. They need not only to know what is expected of them, but must also be equipped to meet those expectations.

In criminal courts, rules and regulations are observed and applied. The violation of the legal system, as a formal social control mechanism, is unacceptable, as its rules have immediate consequences for the offender - unlike some other forms of social control. There is an equally strict approach to functionaries of the court and formal legal rules that govern the processes. From this subculture of the courts, unprofessional conduct from legal professionals, including forensic criminologists, cannot be tolerated.

2.6 Evaluation

The Structural Functionalism theory is formulated on the assumption of system integration, and is considered too conservative by critics. The functional emphasis on value consensus, the integration of components within the system, and the mechanisms that must maintain equilibrium, leave no room for explaining social phenomena such as change, deviation, and conflict. Therefore, challenges occur in applying this theory to the criminal justice system based on the perceptions related to how the system functions, whether integrated or procedural.

Some researchers believe that criminal justice is not a system, but a process, and in their discussion of the possibility that it cannot be mentioned as a legal system, make use of the concept ‘non-system’ (Labuschagne, 1992: 147). One of the main reasons why problems are centred around the term ‘legal system’ is the fact that the system is considered imperfect. The argument is that it has not yet succeeded in developing a perfect system, in which all the components consciously and harmoniously work together towards a common goal. Based on observations and experience in practice,

however, the criminal justice system has characteristics that meet the Parsonian system requirements. It is assumed that the system is imperfect, and one of the key aims of this investigation is to determine whether the forensic criminologist as a component of the system, which is not static but dynamic, contributes to a better defined system, and can deliver improved outcomes.

The reason why some writers view the administration of justice as a process, and not a system, is due to so-called system disintegration. Disintegration takes place on two levels, namely horizontal and vertical. To prove horizontal fragmentation, the Police, the courts and the Department of Correctional Services are referred to as the main components. Disintegration occurs when the administration of justice is applied by institutions such as Nature Conservation, Fisheries, Traffic Divisions, Customs and Excise, the Departments of Income Tax and Forestry. Vertical disintegration is used in relation to the various courts, such as the Supreme Court, the regional courts, the district courts and traffic courts. Disintegration and inefficiency are proven by the fact that crime does not decrease, and offenders continue to transgress (Labuschagne 1992: 147). Therefore, if it is accepted that inefficiency is the result of disintegration, it can be assumed that the South African criminal justice system does not function completely effectively - the continued rise in crime rates indicate disintegration. For the scope of this investigation, however, suggestions and changes to reduce disintegration in the overall system are not relevant. The point, however, is that if any component of the system functions in isolation from the other components, disintegration, which affects the efficiency of the whole system, is caused. In this sense, effectiveness means the degree of success of the community's approach to crime in general.

The criminal justice system is in fact a system, even if it is not perceived to be fully integrated and not perceived to function in unity. However, a system is a grouping of constituent parts that maintain common mutual relations; characteristics that the criminal justice system indeed withholds.

2.7 Conclusion

This chapter theoretically explored the relevance of the evidence placed forth by criminologists. Using the structural functionalist theory, this chapter explored the roles and functions of a criminologist in the criminal justice system. The following chapter will discuss a review of literature on the international, national, and local perspectives of the criminologist as an expert witness in criminal justice.

CHAPTER 3
LITERATURE REVIEW

3.1 Introduction

"*There can be no problem with legal science benefiting from the developments in other disciplines* (Cassim, 1999:20)."

Experts have played a vital role in settling several legal disputes. When issues arise in our law that concern other sciences or faculties, we commonly request help from those sciences or faculties (Kumari, 2007:1). To provide information and opinions that are not generally available to the public, an expert must possess sufficient specialised knowledge, skill, training, or experience. Increasingly, forensic science is being used and relied on to provide the necessary evidence in fighting crime (Dumani, 2007: 12).

Criminologists as expert witnesses are an integral part of the legal system, as they function as an asset in aiding the decision-maker in concluding both civil and criminal cases (Wechlser et. al, 2015). The South African law makes provision for expert witnesses to function within the criminal justice system as an aid to the presiding officer; it is, therefore, imperative to discuss the role of a criminologist in /the criminal justice system as well as to highlight the duties and responsibilities as determined by the laws that govern expert evidence.

It is important to understand the inter-relationship between the law and criminology as well as South African law and the location of the expert testimony therein. These elements will be discussed in this chapter. Therefore, brief references will be made to the different kinds of evidence, including the expert testimony in criminal proceedings and the requirements for the content of the testimony. Having set out the four functional imperatives of Parsons, it is necessary to pay brief attention to the structure of the South African criminal justice process so that the role and place of the forensic criminologist in the system can be explored.

It is unnecessary for the purposes of this research report to fully describe all the components of each level in the system. The investigation is limited to the role of the forensic criminologist in a criminal court. Therefore, the criminal justice system is schematically indicated so that the place of components involved becomes clearer.

This chapter will also highlight the international perspective of the criminologist as an expert witness to provide context to the current study. It will discuss the international perspectives of criminologists as expert witnesses and will account for the expertise criminologists have in assisting the court in reaching a decision regarding a case. In addition to international experience, this chapter will also highlight the South African perspective, describing what is hoped to be achieved by bringing in a criminologist as an expert witness in helping the presiding officer reach a sound decision on a criminal case, as well as the role of this expert evidence in the criminal justice system.

3.2 Criminologists as expert witnesses in the global context

There is substantial variation in the definition of criminal justice systems, so it is pertinent to appreciate that a given system is just one of many possibilities. In addition, criminologists must be aware that every criminal justice system has many components (Howitt, 2018: 24). Evidence law refers to the procedures by which facts are proved. The words "proof" and "evidence" feature prominently in the Law of Evidence. Having evidence is merely the means, but proving or disproving the fact is the goal. Facts are subject to proof or disproof. Facts are things that exist, an aspect of reality, an actual or alleged event or circumstance, in distinction from their legal effects, consequences, or interpretations. On the other hand, opinion evidence is a testimony founded on the author's theoretical knowledge, skills as well as professional expertise. This opinion also takes into consideration the facts of the case and therefore the opinion is constructed from the application of the expertise to the facts of the case (Hand, 2017: 15).

No court proceeding can be conducted in an orderly way in the absence of rules governing all stages of the procedure as well as the admissibility and criteria for the evaluation of the evidence. Compliance with procedural rules with fundamental principles of fair and due process is also a must in contemporary criminal law. Such principles are enshrined in Article 14 of the International Covenant on Court and Political Rights (ICCPR), which is ratified overall by members including the United States, Egypt, Germany, Uganda, and South Africa (Carter & Pocar, 2013:60). In determining whether any evidence is relevant or admissible, the Court may consider, inter alia, its probative value and any prejudice that such evidence may cause to a fair trial or a fair evaluation of a witness's testimony, in accordance with the Rules of

Procedure and Evidence. Evidence is deemed relevant if it is logically probative of some matter that must be proved (Allen, 2008: 49).

International procedural criminal law regulates and implements international substantive criminal law. In addition, it establishes the rules by which individuals may be prosecuted and tried for international crimes and subjected to the international penal system (Knoops, 2006:1). The legal system in France is an inquisitorial one, where judges or magistrates seek out information about a specific case from a variety of sources. In other words, they are the ones who determine what evidence and advice are needed. In numerous countries, including England and Wales, Canada, the United States, Australia, as well as South Africa, the adversarial system is adopted. According to this system, the prosecution and the defendants compete to convince the judge or jury that theirs is the winning argument and then their success is judged. Various systems differ with regard to the types of evidence that may be admitted as valid and the requirement that a person be fit to stand trial. Japan, for instance, has basically moved from one system to the other; it was influenced historically by France and Germany, but has become more adversarial in recent times (Howitt, 2018: 25).

In an adversarial legal system, evidence is often presented to the court in a "battle of the experts" situation. Therefore, legal decision-makers are often faced with the task of deciding which expert is the most credible to determine which evidence to accept at face value. What is important in deciding what a person tells you can be trusted includes making a sound assessment of his/her truthfulness or veracity and competence on the matter in question (Haack, 2015: 42, Wechsler et al., 2015: 59). Law of evidence has been regarded as part of what is known as 'adjective law' or 'procedural law', at least one of the purposes of which is to enforce 'substantive' rights and duties. The purpose of the law of evidence, sometimes referred to as 'rectitude of decision,' will be to assist courts in making accurate findings of fact to which substantive law will apply. In adversarial trials, several evidence rules were aimed at safeguarding the accuracy of decision-making (Allen, 2008:51).

Ghana is regarded to have the best-administered democracy in sub-Saharan Africa (Ebbe, 2011:390). It can therefore not be ignored that Section 67 of its Evidence Act - 1975 (NRCD 323) states that the requirements of qualification as an Expert are:

1) A person is qualified to testify as an expert if he satisfies the court that he is an expert on the subject to which his/her testimony relates by reason of his/her special skill, experience, or training.
2) Evidence to prove expertise may, but need not, consist of the testimony of the witness himself.

As a preliminary point, it should be emphasised that, in principle, international and internationalised criminal courts and tribunals are not bound by national rules of evidence. This, for instance, is expressed by Rule 89(A) of the Special Court of Sierra Leone Rules of Procedural Evidence (SCSL RPE) and Rule 89(A) of both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda Rules of Procedural Evidence (ICTR RPE). Essentially, these courts are structured differently, have different foundations, and pursue entirely different objectives to domestic courts (Knoops, 2006: 183; Schuetze-Reymann, 2016: 65)

The following restrictions on the admissibility of expert evidence can be formulated based on the present case law of the ICTY (Knoops, 2006:212):

1) In principle, expert evidence should not violate the ultimate issue rule, i.e., the expert is not permitted to give an opinion on the very issue (ultimate issue) the court must determine.
2) An expert witness is in principle not permitted to usurp the role of an international tribunal in determining the credibility of witnesses. Yet, in some areas, an expert witness may assist in the international tribunals, for instance, the matter of 'unconscious transference' regarding the impact of trauma on witnesses' memory.
3) An expert opinion is relevant only if the facts upon which it is based are tested to be true.

Regarding expert evidence in Ghana, however, Section 112 of the Evidence Act - 1975 (NRCD 323) states that "if the subject of the testimony is sufficiently beyond common experience, the opinion or inference of an expert will assist the court or tribunal of fact in understanding evidence in the action or in determining any issue. This witness may give testimony in the form of an opinion or inference concerning any subject on which

the witness is qualified to give expert testimony". Section 113 continues to discuss the basis of expert opinion, stating that:

1) A witness testifying as an expert may base his/her opinions or inferences on matters perceived by him/her or known to him/her because of his/her expertise or on matters assumed by him/her to be true for the purpose of giving his/her opinion or inference.
2) The matters on which a witness testifying as an expert bases his/her opinion or inference need not be admissible in evidence.
3) The matters on which a witness testifying as an expert bases his/her opinion or inference need not be disclosed before the witness states his/her opinion or inference unless the court in its discretion determines otherwise, but he/she may be examined by any party concerning the basis for his/her opinion or inference and he/she shall then disclose that basis.

In the United States, conversely, expert testimony is governed by the Federal Rule of Evidence (FRE) which states that an expert, qualified by specialised knowledge, skill, education, or training, may testify in the form of an opinion if his/her testimony would be helpful to the factfinder, and was not otherwise legally excluded (Haack, 2015: 48). The Daubert decision currently influences which experts may be allowed to give evidence in the court. The Daubert case was about a child, Jason Daubert, who was born with missing fingers and bones. His mother had taken an anti-morning-sickness drug during her pregnancy and subsequently sued the manufacturers. 'Rules' designed to exclude 'junk' science were formulated. The Daubert criteria include:

- Whether the technique or theory is verifiable.
- Whether the technique or theory is generally accepted within the scientific community.
- What the likelihood of error in the research study is (Choo, 2006: 270).

A standard for the admissibility of expert testimony at trial was established in *Frye v. the United States (1923)* when a federal district court ruled that polygraph evidence was inadmissible at trial because its scientific integrity had not yet been established. Instead, the court made it clear that expert testimony would be allowed only if conclusions were based on well-recognised scientific principles: "The thing from which the deduction is made must be sufficiently established to have gained general

acceptance in the particular field in which it belongs" (*Frye v. United States 1923*). In other words, after Frye, judges had to determine whether an expert's testimony would pass a "general acceptance test". The Frye standard, however, did not provide specific guidance for judges required to make such a determination. A later ruling in *Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993)* provided greater direction for judges. More specifically, the Supreme Court of the United States stated that judges must consider whether the expert's scientific procedure could be replicated by others. Replication allows not only for conclusions to be validated but also for inferences to be refuted by others. In addition, judges must ask whether the method has been published and subjected to professional review. Moreover, a judge must also assess the potential for expert error for any given method under consideration. Testimony should not be allowed if it is based on "science that is junky" (*Daubert v. Merrell Dow Pharmaceuticals, Inc. 1993*). Overall, an expert's testimony will be admissible if it is rooted in standards that are generally accepted by a scientific community, may be replicated, and have a small likelihood of error.

In New Zealand, on the other hand, the admissibility of expert evidence is governed by the "substantial helpfulness test" as embodied in Section 25(1) of the Evidence Act 2006: "Expert evidence is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding" (Freckelton & Selby, 2013: 53, Seymour, Blackwell, Calvert & McLean, 2014:511). Therefore, in different legal jurisdictions, expert witnesses are employed differently. In an adversarial system, this is normally the decision of the prosecution or the defence. When retaining an expert to provide an expert report or to provide expert testimony, the party must first give the expert any practice note dealing with guidelines for expert witnesses in court proceedings (Choo, 2006: 270, Howitt, 2018: 4). This is also applicable in South Africa.

Expert witnesses should understand their role in criminal proceedings, whether they are on the witness stand or seated in the witness chair. The primary objective of an expert is to provide the court with opinions on subject matters which are thought to be beyond the scope of common knowledge. This is in order to assist the judges in deciding the issues of a case. In addition to explaining their client's position, the expert witness must provide the decision-maker (a court, tribunal, or other similar body) with

information about their specialised field which is necessary to make a decision (Sutherland, 2009:1). At trial, criminologists do not argue their case as advocates, but rather provide an explanation of their position. Criminologists ought to familiarise themselves with the technical and legal responsibilities associated with their role as forensic experts before accepting the position. Experts are expected to provide relevant and reliable testimony to the court, and to demonstrate the same prudence which they would apply in the laboratory, classroom, or at a presentation to their peers (Kennedy, 2013: 241-242).

Most expert evidence is given, at least initially, by the production of written reports by the expert. The production of joint reports - the requirement that experts from both sides answer a series of Court-generated questions, and give their evidence concurrently - may also be considered. Prior to any documents being prepared for a possible court hearing, experts will complete an independent report. These reports will have opinions drawn from experience and will reference other evidence such as test reports, photographs, and measurements, to help the reader understand the background of the issues (Chawynski, 2017: 365). Most jurisdictions have very flexible rules, and one of the things the court is increasingly concerned with is controlling how evidence is presented to it. This is in contrast to allowing the parties to present their evidence in the manner that they consider to be most appropriate. Such judicial activism may be a response to perceived shortcomings, deliberate or accidental, in the presentation of expert evidence by the parties. Expert testimony presented clearly and innovatively may avoid court intervention and give experts the opportunity to educate and inform the court as the council deems appropriate.

An interesting feature of (contemporary) international criminal proceedings is the admission of documentary evidence instead of live and direct testimony. An identifiable shift is visible in the practice of international proceedings regarding such written testimony. This commenced with Rule 89(F) of the International Criminal Tribunal for the Former Yugoslavia Rules of Procedure and Evidence, which states that “a Chamber may receive the evidence of a witness orally or, where the interest of justice allows, in written form,” and was pursued by amendments to Rule 71 (allowing dispositions) and Rule 92 *bis* (on the admissibility of written statements) (Knoops, 2006: 213).

Article 35 of the Criminal Procedure Law of the People's Republic of China also states that physical, documentary, and other evidence collected by the investigating organ using special investigative measures in accordance with relevant regulations may serve as a basis for conviction if the court has verified it to be true. According to Hon. Justice P.A. Onamade of Nigeria, documentary evidence is of tremendous importance in a court proceeding. To him, documentary evidence forms part of the entire gamut of the Law of Evidence. “It is the yardstick by which the veracity of oral testimony is tested. The importance of documentary evidence is well enunciated in the dictum of Lord Mcnaghten when he asserted in Hennessy v. Keating (1908) 421 L.T.R. 169 that the eye is no doubt the best test”. This, therefore, implies that what the eyes of the court see via documents tendered in trial helps the formation of a better opinion on the matter. This is true also as is stated in Section 30 (1) of the Criminal Justice Act 1988 that an expert report which is a written report by a person dealing wholly or mainly with matters on which he/she is qualified to give evidence, shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence (Allen, 2008: 100).

In the United Kingdom, the criminal cases reported by expert witnesses are admissible evidence in accordance with section 30 of the Criminal Justice Act 1988, which states:

1) An expert report shall be admissible as evidence in criminal proceedings, whether the person is making it attends to give oral evidence in those proceedings.
2) If it is proposed that the person making the reports shall not give oral evidence, the report shall only be admissible with the leave of the court.
3) For determining whether to give leave the court shall have regard-
    a. To the contents of the report.
4) An expert report when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence (Choo, 2006: 278).

For England and Wales, the court of appeal has summarised the principles governing the admissibility of expert opinion evidence as follows:

> *"For expert evidence to be admissible, two conditions must be satisfied: firstly, that the study or experience will give a witness's opinion authority which the opinion of one not so qualified will lack; and secondly the witness must be so qualified to express the opinion" (*Choo, 2006: 232).

If the two conditions mentioned in the above quote are met, the evidence of the witness is deemed admissible, although the weight to be attached to his or her opinion must be assessed by the tribunal of fact (Allen, 2008:113; Choo, 2006: 232,).

Additionally, experts may testify about the authenticity of documents; these documents may include photographs, letters, contracts, or audio and video recordings that may establish a connection between the defendant and the crime. In general, the "best evidence rule" requires that originals be used because other documentation may be altered too easily. A judge must also determine that an expert will provide relevant and trustworthy (i.e., reliable) information in the case that expert testimony will be used. During a trial, evidence is relevant if it helps one evaluate whether a contested fact is valid or not. It is relatively easy to learn and apply the rigorous procedural requirements of preparing and presenting expert evidence once they have been taught. However, the most difficult task remains and always will be analysing a case comprehensively and identifying relevant facts and opinions.

When expert testimony will be used at a trial, any reports, opinions, or findings produced by a given expert must be shared prior to the trial. This is accomplished through a legal process called discovery; both prosecutors and defence attorneys are required to disclose whether they plan to use expert testimony. An attorney will use an expert only when he or she believes their testimony is crucial to the success of the case. To help make that determination, a lawyer will call upon a potential expert witness and ask for his or her opinion on case materials. Attorneys or individuals who run social justice coalitions may provide counsel about possible experts (Engstrom & McDonald 2011: 287).

Experts must be credible and intelligent, able to withstand the rigours of cross-examination, and capable of explaining complex concepts to average people. The person who provides expert testimony should provide an objective opinion and not allow personal prejudices or biases to affect the opinions offered. Although ethical standards of conduct are essential, some may question the integrity of some expert

witnesses. The concern over an expert's credibility is closely connected to the "hired gun" argument. If used, experts are hired to help a prosecutor or a defence attorney win a case (Poynter, 2007: 73). Given that experts are hired by one side, some may question whether they truly provide neutral and objective testimony.

In general, the role of an expert witness in the criminal justice system has been defined as a person who has some special training or experience and ideally can help the judge, lawyers, and jury arrive at the truth in the judicial process. In the past, the role has been mainly limited to such professionals as psychiatrists, physicians, and engineers. In the last decade, however, there has been a broader acceptance of professional expert witnesses in the courts. More criminologists can and should participate in the process from their special area of expertise in human behaviour. In the courts, where the behaviour and responsibility of a defendant is determined by lawyers, judges, and juries, any theory of human behaviour concept that is presented to explain the event needs to make sense in relationship to the incident on trial, otherwise it will be eliminated by the adversarial system (Allen, 2014: 213).

An average of a quarter of the expert witnesses in a criminal appeal hearing are from the social and behavioural sciences. There are different requirements for expert witnesses in different legal jurisdictions and certain expert evidence may not be admissible in all legal systems. Expert witnesses differ from other experts in that they are able to provide opinions rather than simply report facts. Normally, criminologists' opinions will be backed up by scientific evidence, and their credentials will be verified. The expert witness should not offer evidence outside their area of expertise (Howitt, 2018: 4).

The similarities present in the way the testimony of the expert is regarded and tested within the various international criminal justice systems can be seen in the South African context, such as the consideration of the admissibility of the evidence presented, the testing mechanisms such as cross-examinations, and the defining characteristics of an expert, including that they should be skilled, knowledgeable professionals in the field of expertise. The differences can be seen in how the South African legislative frameworks have shaped the role of an expert and guide the courts in in determining the necessity of an expert. The following discussion will focus on the

criminologist as an expert witness in South Africa, the judicial system and the various legislative frameworks that speak to the use of experts in criminal proceedings.

3.3 The criminologist as an expert witness in the South African criminal justice system

Criminology contributes to the discipline of criminal justice, emphasising the application of criminal law, and includes the study of components of the criminal justice system. Practical levels of functioning include victim support initiatives, debriefing of victims of crime, and assisting functionaries in the criminal justice system such as the police, the judiciary, and the Department of Correctional Services. Partnerships are formed with the police, courts, and corrections. Criminologists also have a vital function in the criminal justice system as they can facilitate the processing of offenders from one system to the next. The criminologist can also facilitate the transfer of the offender from one criminal justice agency to next, from arrest to detention, detention to trial, and trial to the correctional centre (Ovens, 2006:134). As discussed in chapter 2, criminologists play a substantial role in the various structures of the criminal justice system toward ensuring that the goals and function of the said system are achieved.

The following discussion will focus on the different courts and role players in the criminal justice system.

3.3.1. The judicial system and process

The judicial authority in South Africa is vested in the courts, which are independent and subject only to the Constitution and the law. No person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of the State and people to whom it applies (South African Constitution, chapter 8, section 165-166). The Constitution provides for the following courts: the Constitutional Court, the Supreme Court of Appeal, High Courts, Regional and Magistrate’s Courts and any other court established or recognised in terms of the parliament, including any court of a status like either the High Courts or Magistrate’s courts. The jurisdiction of the court determines the extent and nature of the sentences that courts may impose. Table 3.1 shows a summary of the various levels of criminal courts and their respective maximum sentencing authority under normal circumstances (Terblanche, 2016:16).

Table 3.1: The nature and extent of jurisdiction of the various court levels

Court levels	District court	Regional court	High court
Presiding officer	Magistrate	Regional court magistrate	Judge
Crimes excluded from jurisdiction	Murder, rape, high treason	High treason	None
Maximum imprisonment	3 years	25 years	Unlimited
Maximum fine	R120 000	R600 000	Unlimited

(Terblanche, 2016: 18).

The Magistrate's Courts, also called District Courts, form the foundation of day-to-day criminal justice in South Africa. Regional Courts, on the other hand, are a level above District Courts and their jurisdiction is considerably wider than that of the District Courts. They are also defined as Magistrate's Courts for the purpose of the Magistrate Court's Act 32 of 1944 and as lower courts for the purpose of the Criminal Procedure Act 51 of 1977. As a result of their higher sentencing jurisdiction, regional courts typically hear matters of greater seriousness than district courts. In criminal matters, Regional Courts are strictly courts of first instance, without appellant authority (Terblanche, 2016: 16).

The highest court in which sentences are regularly imposed is the High Court, known as Supreme Courts prior to the promulgation of the Constitution. The High Court is normally the first court of appeal for the cases dealt with at the Magistrate's Court level. Conversely, the Supreme Court of Appeal is the highest court of appeal in the country, except for constitutional matters. It is not a trial court, but it does impose a sentence if the trial court's sentence is, for some reason, invalidated, even though it can remit such cases to the trial court for imposition of punishment. The Constitutional Court, however, deals with constitutional matters only and is rarely involved in the imposition of any sentence. However, it has the final say on the constitutionality of any form of sentence and related issues or procedures and its decisions are potentially influential on sentencing practices (Terblanche, 2016:17). Criminal procedure, as it is adhered to in the various levels of the courts, can be divided into three phases that are dependent on each other. The pre-trial stage leads to the trial, which in turn results in the sentencing phase, and ultimately leads to the review phase. Criminologists can contribute to the pre-trial phase, in areas such as diversion and restorative justice, on

a trial level conducting pre-sentence investigations and writing pre-sentence reports and Victim Impact Statements, and finally, in the post-trial phase through offender management and risk assessments (Bezuidenhout, 2020: 385, Ovens, 2006:132).

Criminology, as a study, has evolved, many interdisciplinary synergies have been established and the contribution of criminology is acknowledged not only within the discipline, but also in government and non-governmental policymaking circles. Criminology as a science studies crime; its causes, legal definitions and attempts to control crime, criminal behaviour, and community reaction to it as a social phenomenon in its entirety. Criminology has always been a field of interdisciplinary study aligning itself to related disciplines, i.e., sociology, psychology, law, and anthropology, and provides a broad perspective on crime, guiding its theory, knowledge, and inspiration for policymaking (Singh, 2020:39).

In addition to viewing the criminal justice system as a collection of agencies, it is necessary to see it as a series of decision points. At any point of the process, at any point of the proceeding, a decision may be made to drop any further proceedings and allow the accused back into society without any additional penalties (Siegel, 2015 560). Figure 3.1 illustrates the phases in the criminal justice process and how the various agencies fit into the criminal justice system.

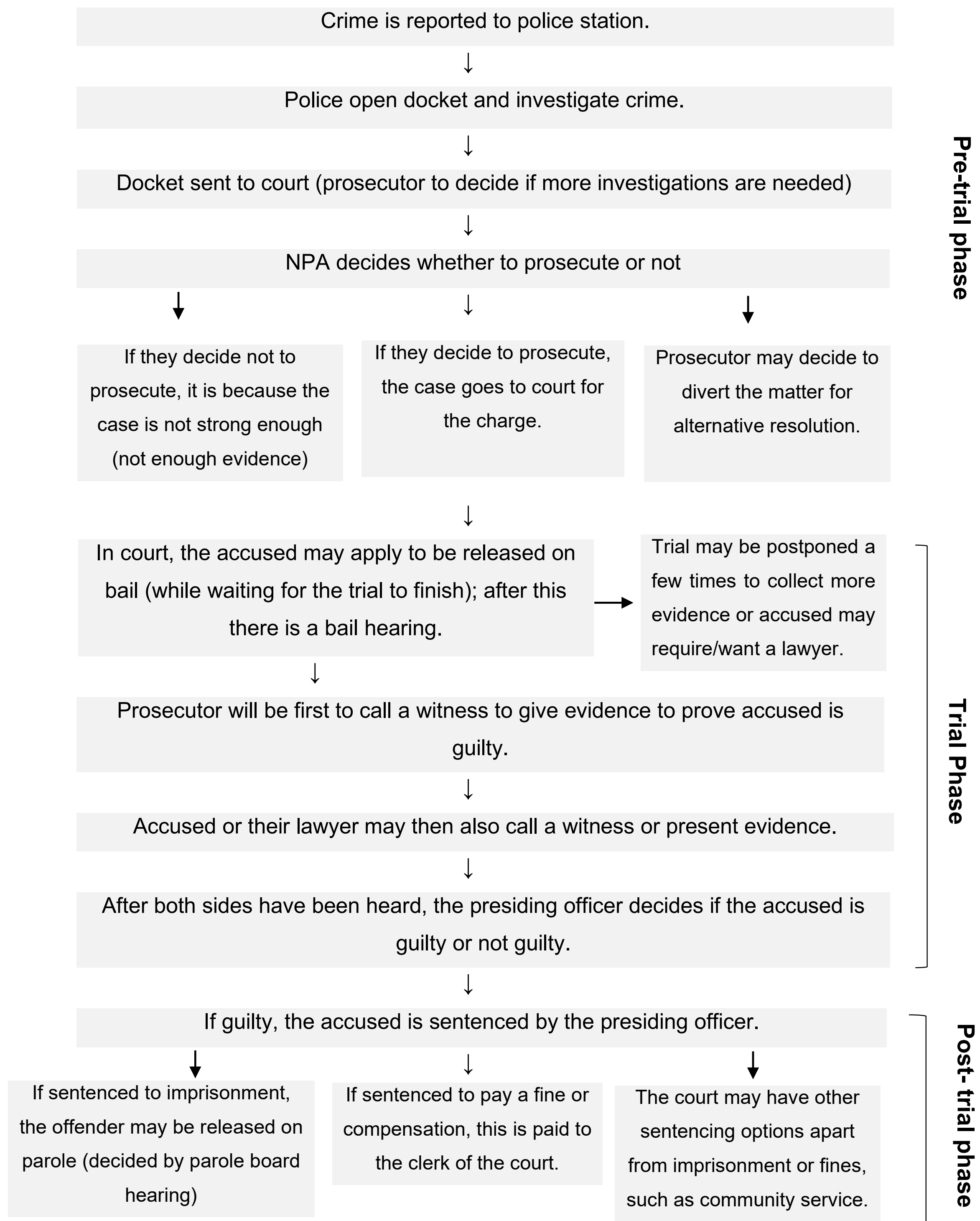


Figure 3.1: The criminal justice process (Bezuidenhout, 2020:61, National Prosecuting Authority, 2008: 6)

3.3.1.1. *Pre-trial phase*

The pre-trial phase is the first stage of the criminal justice system and is also referred to as the discovery phase. This phase is initiated by the reporting of a crime to the SAPS, followed by a case docket being opened by a SAPS official. This case docket consists of statements by witnesses, documentary evidence and the progression of the investigation. Once all necessary information has been gathered by the SAPS, this case docket is handed over to the Director of Public Prosecutions from the National Prosecuting Authority (NPA) in the High Courts or the Senior Public Prosecutor in the lower courts, to decide whether the accused should be prosecuted or not. If the Director of Public Prosecutions / Senior Public Prosecutor decides to prosecute, the accused will have to appear in court. The accused may be contacted through a written order, that is an indictment, a summons or notice. Alternatively, the accused may be arrested for a maximum period of 48 hours before he/she appears in court for a bail hearing.

The most noticeable role of a criminologist acting in the capacity of a probation officer in the pre-trial phase lies in the assessing of children in conflict with the law with the aim of preparing for a preliminary inquiry (Human, 2018:123). In terms of section 34 of the Child Justice Act 75 of 2008, every child alleged to have committed an offence, including those under the age of criminal capacity, must be assessed, unless the assessment is dispensed in the best interest of the child. Regulation 27(b) of the Child Justice Act 75 of 2008 requires that the report contains information about the child's development and competencies, the child's history, family circumstances, and whether the child poses a danger to him or herself. Regulation 27(c) requires that probation officers must express an opinion as to the possible reasons the child committed the offence. In this regard Maree et al. (2003:77) argue that anyone can determine the criminal history of a child offender; however, criminologists are best suited to understand and explain the offending behaviour by applying criminological theories.

Criminologists could contribute to the diversion process in terms of determining suitable diversion options. Badenhorst (2020: 30) concurs and argues that determining diversion suitability is an area where the expertise of criminologists can be applied. Criminologists can also contribute to the restorative justice process by facilitating

restorative justice programmes such as victim offender mediations and family group conferences.

3.3.1.2. Trial phase

The trial phase is the stage that has typically gained the most attention, as it begins with the plea. An indictment (in the high courts) or a charge sheet (in the lower courts) is drawn up and contains an accused's personal particulars and a description of the charge against him/her. The accused appears in court and has an option of pleading guilty or not guilty, already having been found guilty or already having been found not guilty. He/she may also plead that the court does not have jurisdiction, that he/she has been granted an indemnity against prosecution by the Truth and Reconciliation Commission (TRC) or that he/she has been granted free pardon by the state president, or that the prosecutor is not competent. Once the plea has been recorded, the defence briefly explains the plea to establish what exactly is in dispute between the state and the accused (Johnson, 2019:855, Schuetze-Reymann, 2016: 65).

The adversarial system depends largely on the ability of lawyers to expose the weaknesses in witnesses and their testimony through cross-examination. Evidence that is not interrogated is evidence readily accepted (Edmond, Cunliffe, Martire & San Roque, 2018: 858, Meintjies-Van der Walt, 2003: 61). Schwikkard and Van der Merwe (2002:341) explain that the questioning of an opponent's witness is called cross-examination. They also see the purpose of cross-examination as challenging the witness's version to determine the truth or accuracy of the testimony.

The plea, therefore, is followed by the accusatorial process, where the state and the defence oppose each other and the judicial officer acts as an umpire, to see that the parties obey the rules. This part of the process is characterised by the presentation of evidence, which begins with the examination-in-chief led by the state. The purpose of this examination-in-chief is for the state to give an account of the relevant events through the testimony of witnesses. The defence follows with cross-examination to test the credibility of the state witness by asking questions. The state then ends with a re-examination to clear up ambiguities or wrong impressions.

After the state has presented its evidence, the state closes the case and the legal representative / accused may apply for the discharge of the accused, conclude the

accused's case without leading any evidence, or call on the accused and/or witnesses to give evidence on behalf of the accused. The defence starts with examination-in-chief, the state follows with cross-examination and the defence ends with re-examination. After the presentation of evidence on behalf of the accused, the case for the defence is closed. In the closing argument, the prosecutor will summarise and argue the case. He or she gives reasons why the accused should be found guilty. The accused or their lawyer is also given the same opportunity to persuade the court that the accused should not be found guilty (Miller, 2013: 4, National Prosecuting Authority, 2008: 16).

The accusatorial process is followed by a judgement on merits, where the judicial officer analyses the evidence and the credibility of the witnesses and provides a judgement of guilty or not guilty. If the accused is found guilty, the prosecutor has proved their guilt "beyond reasonable doubt". If the accused is found not guilty, it is because the presiding officer has doubts. If there is doubt, the court must acquit the accused. This means he or she goes free (National Prosecuting Authority, 2008:16). The court provides reasons for its decision. When the accused is found not guilty, he/she is discharged, and when he/she is found guilty, the sentencing process starts.

The final step in the criminal trial phase is the imposition of a sentence. At this point the trial court needs to determine the most appropriate sentence for the convicted offender. The trial court is therefore obligated to consider sentencing guidelines. The origins of sentencing guidelines lie in attempts by liberal reformers and human rights activists in the late 1900s to design more just and equitable penal systems. These guidelines are meant to satisfy the requirements for greater transparency and rationality of penal decisions and to address the demands for equal treatment of offenders (Aas, 2005: 15). The most considered objectives of punishment to implement sentencing guidelines are retribution, prevention, and protection. When the court considers the Triad of Zinn, by looking at the crime, the court applies retributive factors. In considering the criminal, the court applies deterrence and rehabilitation, which lead to prevention and protection. When considering the interest of society, the court aims to prevent further crime from occurring, which leads to the protection of society.

According to Booyens (2020: 73), the types of sentence options that may be imposed on a person in South African criminal courts include:

1. A fine, with or without imprisonment as an alternative, correctional supervision, or a suspended sentence.
2. Imprisonment.
3. Periodic imprisonment.
4. Declaration as a habitual criminal (Regional and High courts).
5. Committal to an institution such as a psychiatric ward for observation.
6. Declaration as a dangerous criminal (Regional and High courts) and,
7. A warning or caution (Probation).

There are various alternative sentencing options, including non-custodial sentences and diversion, among many others. However, to determine the most appropriate sentence, criminologists may be called to give testimony in court. Pre-sentence reports compiled by forensic criminologists can contribute to a complete and clearer picture of the offender as a person and the most appropriate sentence and treatment programme for rehabilitation purposes (Van der Hoven, 2006:165, Van Niekerk, 2021: 56). Both the prosecutor and the defence may call witnesses at this stage to argue mitigating as well as aggravating factors.

Cross-examination plays an important role in determining the credibility and expertise of a witness; it is also significant and effective control of the bias of experts in an adversarial legal system (Du Rand, 2015: 76). The National Prosecuting Authority of South Africa (2008: 244) describes the aim of cross-examining a witness as follows:

1. To test the reliability of the evidence which the witness gave;
2. To obtain additional information from the witness which is relevant to the case;
3. To weaken or destroy the opponent's case; and
4. To substantiate or strengthen the cross-examiner's case.

Criminologists can firstly be cross-examined to determine the extent of their expertise in their career field (credentials), and secondly on the information given in their testimony. It is therefore crucial that the criminologist be knowledgeable about the theory explaining crime and criminal behaviour, the issue/phenomenon at hand and be familiar with the facts of the case and contents of the written report. Criminologists

must also be familiar with the law of evidence and criminal procedure so that they can, for example, account for why literature may be used during a testimony and not be dismissed as hearsay evidence.

Conversely, the role of the criminologist should not be restricted to report writing during the sentencing phase, but should be further utilised to provide recommendations regarding interventions that could be considered for inclusion in the development of the treatment plan of sentenced offenders (Human, 2018:136).

3.3.1.3. Post-trial phase

The post-trial phase is characterised by the functions of the Department of Correctional Services and the various programmes they manage. Criminologists are involved with risk and management assessments, offender management programmes, treatment plans, restoration, rehabilitation, conversion of sentences and parole preparation, including writing parole reports (Bezuidenhout, 2020:396).

Criminologists can assist correctional management in day-to-day management decisions of inmates, based on the information gathered during the induction assessment. The criminologist can assist with decisions regarding offender employment within the custodial facility, cell-mate choices, likelihood for involvement in further crime (while incarcerated), attitudes to authority, and involvement in group and/or individual rehabilitation efforts. Through the analysis of offence patterns, the induction profile and security intelligence, inmates posing certain risks are separated within correctional centres to prevent them accumulating in excessive numbers within confined areas – this is especially important in the management of prison gangs and hostage-taking situations. Here, the criminologist can identify trends in the inmate's behaviour and provide valuable operational advice to senior management for the prevention of institutional stability and safety (Cornwell, 2003: 87, Herbig & Hesselink, 2009:443).

Louw and Luyt (2009: 3) describe parole as a technique of conditional release, targeted at successfully reintegrating offenders into the community under certain, prescribed, and controlled circumstances. Therefore, the decision to allow parole is generally in view of the offender's case file, including the pre-sentence report and an interview with the inmate. A pre-sentence report is also compiled to assist in effective

community supervision after the release of a parolee or when an offender has been released on probation (Diko et al., 2019: 5). Community sentences (probation) are generally seen as an alternative option to imprisonment, and are appropriate for many offenders (Hughes & Henkel, 2015: 51). Probation offers a safe and inexpensive method for conveying punishment that fits less serious crimes while avoiding the detrimental effects of incarceration (Hughes & Henkel, 2015). The motivation behind community supervision is to help offenders in their reintegration into the community (Diko et al., 2019: 12).

The Department of Correctional Services does not have enough professional staff to deal with the scientific and thorough assessment of all cases. Criminologists are therefore effective members in multidisciplinary teams within the correctional environment (Bezuidenhout, 2020: 396). Cornwell (2003: 88) mentions that “by virtue of their academic training, augmented by the experience of working in custodial corrections, criminologists are uniquely well placed to provide valuable assessments for parole consideration purposes.” (Herbig & Hesselink, 2009: 443).

3.4 Pre-sentence report

Terblanche (2016:116) describes a pre-sentence report as any report authored by an expert that seeks to guide a court in finding an appropriate sentence. Although most of these reports are probation reports prepared by probation officers working for the state, many other reports also qualify. These include reports by private social welfare experts, criminologists, psychiatrists, and clinical psychologists.

Maguire and Carr (2017:8) assert that pre-sentence reports represent a key point of exchange between two distinct professional groups within the criminal justice system, with each having significantly different professional backgrounds and training, as well as having profoundly different views and perspectives. In the decision-making process, the courts require guidance regarding how to deal with an offender in order to provide protection to the public against the possibility of reoffending, which would re-victimise members of the community. In other words, pre-sentencing reports must provide courts with some answers to address the behaviour and needs of each individual.

One objective of a pre-sentence report is to guide the exercise of sentence discretion. It helps the presiding officer gain a better understanding of the offender and the reasons for the criminal act. This caters to the triad factors (*S v Zinn 1969 (2) SA 537 (A)*) the court has to consider in constructing a sentence (Terblanche, 2016:117). All relevant factors, which could have played a role in the criminal event, such as the person's history, biopsychosocial factors, mental state when the crime was committed, motivation, and modus operandi are taken into account. Both aggravating and mitigating factors are considered; keeping in mind the triadic approach, the types of offences committed, and the best interests of the offender, community, and victim should be considered in a pre-sentence report. The pre-sentence report usually concludes with the consideration of several possible sentence options, which serve as a guideline for the court (Ovens, 2020:579, Van Niekerk, 2021: 351).

As discussed in chapter 1.8, Diko et al. (2019: 3) contend that the role of criminologists in the criminal justice system has not been adequately explored or described; thus, the full extent of the role and functions of criminologists in preparing pre-sentence reports is uncertain. In the criminal justice system, the pre-sentence report is primarily intended to direct the sentencing process and help the presiding officer gain a better understanding of the offender and the reasons for the crimes committed. Pre-sentence reports are statutorily required in certain cases, for instance, correctional supervision cannot be imposed without a pre-sentence report, and no person can be committed to a treatment centre according to Section 296 of the Criminal Procedure Act 51 of 1977 without one. Sentencing of youth in conflict with the law must also be preceded by pre-sentence reports (Terblanche, 2016: 116). In cases other than these, it is at the discretion of the presiding officer to obtain a pre-sentence report. A pre-sentence report has become a requirement whenever the presiding officer wants to gain a deeper understanding of the character and the likely future of the offender. However, the pre-sentence report is not submitted to the presiding officer to change his or her mind, but rather to provide supporting evidence regarding the character of the offender. Most judges agree that a good pre-sentence report includes comprehensive, insightful, and coherent information, as well as details of the defendant's background, including previous convictions and current health conditions. It should also provide an understanding of both the person and of the crime they have committed. Moreover, a good report should provide insight into how the expert views the client's motivation to

change (Maguire & Carr, 201798). The content of a criminological pre-sentence report typically includes factors such as the character of the accused, level of intelligence, health, and physical appearance, mental health, habits such as alcohol consumption, motivation leading to the criminal event, possible provocation, trigger factors, the possibility of intimidation, remorse, cultural factors, the degree of participation in the criminal act, the prospects of rehabilitation and other personal factors. Ideally, a pre-sentence report should also be accompanied by Victim Impact Statements when criminologists make recommendations to the courts (Ovens, 2020: 579, Van der Hoven, 2006:160). This comprehensive picture of the accused is evidence-based and grounded in theories that consider individual-oriented factors, social-oriented factors, the motivation for committing the crime, mitigating factors, and aggravating factors. Criminological pre-sentencing reports should be comprehensive and are vital to assist presiding officers during the sentencing phase. They also assist the Department of Correctional Services in recommending the rehabilitation path that should accommodate offenders while in correctional centres. A pre-sentence report for an inmate should be presented to the Department of Correctional Services with recommendations on what treatment programmes should be utilised to rehabilitate the offender (Hesselink & Booyens, 2017: 64).

Due to several factors, such as a lack of experts to prepare pre-sentence reports and the costs of hiring private experts, which most offenders cannot afford, pre-sentence reports are rarely used. Pre-sentence reports can be time-consuming as they require information to be gathered from various sources, to be collated, and to be conceptualised by the writer. In addition, if a pre-sentence report is not properly researched, objective, and well-motivated, the presiding officer loses faith in it (Terblanche, 2016: 117). It is important, therefore, that criminologists who do testify in court about these matters can prove that they indeed followed an objective and rigorous process in an attempt to validate the information contained in their reports and prove to the court that their testimony is indeed reliable.

3.5 Victim Impact Statements

Over the past several decades, discussions about victims' rights and victim empowerment have led to the conclusion that victims remain the "forgotten actors" of the criminal justice system. Therefore, these discussions and the consistent outcome of this conclusion have led to steps being taken around the world to ensure that victims now have a legislative platform from which to start their journey through a variety of criminal justice systems (James & Cronje, 2019: 129). The concern is often expressed that the criminal justice system is all about the offender and not about the victims. In response, there have been several different developments. The South African Constitution (Act 108 of 1996) and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34) contain several rights that are aimed at preventing victimisation.

Despite the differences in the methods by which Victim Impact Statements are granted to participants in criminal justice proceedings, how victim impact statements are implemented tends to be similar. A Victim Impact Statement is a written or oral statement given by the victim during the sentencing phase to express how the crime affected them psychologically, physically, and financially (James & Cronje, 2019: 132). A Victim Impact Statement prepared by a criminologist to present an individualised, objective view of the victim to the court should include information about both the acute and long-term effects of the offence, including the physical, psychological, social, and financial outcomes (Bezuidenhout, 2020:581). According to Van der Merwe (in Terblanche, 2016:123), "courts have become increasingly aware of the importance of gathering victim information for sentencing purposes". Terblanche mentions *S v Matyityi* as an example where the court observed that victim-centred approaches are part of an enlightened and just penal policy. A court emphasised the importance of an impact statement prepared by the deceased's family about him or her as a person and the impact of his or her death on the family, employer, and community. In *S v Olivier 2010 (2) SACR 178 (SCA)*, the court emphasised the importance of gathering information about the victim and the impact of the offence on the victim.

Criminologists, preferably those who specialise in victimology, conduct several interviews with victims and those who may have been affected indirectly by the crime to create a comprehensive report about the victimisation. In court, the report enables

the presiding officer to gain a better understanding of the victim and the victim's experience (Bezuidenhout, 2020:581). There is often a resistance to Victim Impact Statements, which is often the result of the belief that the victim will dictate to the court what sentence to impose. It is hard to imagine how there could be a legitimate objection to the use of these statements as a measure of relaying the impact the crime has had on the victim. Victim Impact Statements are now expressly provided for in the Child Justice Act 75 of 2008 and should become more widely used for adult offenders as well, and in the case of rape victims, for which they have been recommended in recent times (Terblanche, 2016:123-124). Additionally, James and Cronje (2019: 143) contend that the most notable argument against the Victim Impact Statement is their potential influence on making sentencing more punitive. On the other hand, those supporting Victim Impact Statements argue that by providing such statements, an accurate picture of both offender and victim will be presented to the court when determining the most appropriate sentence for the offender. In addition to these arguments, Victim Impact Statements allow victims to inform the court of the harm they have suffered as well as their stake in the outcome of the case (James & Cronje, 2019: 133).

3.6 Conclusion

Criminologists can contribute in the pre-trial phase, in areas such as diversion and restorative justice, during the trial phase by conducting pre-sentence investigations and writing pre-sentence reports and Victim Impact Statements, and finally, in the post-trial phase through offender management and risk assessments (Ovens, 2006:135). It is important to highlight that a criminologist is regarded as an expert witness only during the trial phase of the criminal justice process, although they add valuable expertise in each phase.

As it currently stands, the admissibility of expert evidence pivots on simple rules of evidence that afford the presiding judge broad discretionary powers. The international case law and legislative frameworks largely require that the expert testimony is helpful to the trier of fact, and that the court should judge the expert's qualifications based on the factors of the case and related experience of the expert.

In this chapter an explanation was given of the South African criminal justice system and the law, especially criminal law, and the law of evidence as well as the law of

criminal procedure were discussed to determine the location of the forensic criminologist’s testimony therein and the important aspects which need to be addressed in said testimonies so that they may be relevant and of value to the court.

Clarification was also given regarding what an expert witness is and why they are sometimes summoned to testify in court. Both international and national legal systems were discussed to establish the role of a criminologist within these systems, as well as to support the significance of expert opinion as admissible evidence in court.

The next chapter will delve into the methodological discussions related to the study.

CHAPTER 4
RESEARCH DESIGN

4.1 Introduction

The aim of the study was to explore the expectations of presiding officers regarding criminologists who serve as expert witnesses in court. To achieve the aim of the study, a qualitative approach was followed to collect, analyse, and interpret the empirical data.

Research methods are the tools which researchers use to collect data (Maree, 2016:51). Appropriate tools enabled the researcher to gather data on the expectations of presiding officers regarding criminologists as expert witnesses. The methods used included collecting data through semi-structured interviews, selecting participants through purposive sampling and, finally, analysing data through thematic analysis to interpret and report the results.

This chapter elaborates on the research procedures and techniques employed to explain the expectations of presiding officers regarding criminologists as expert witnesses. The chapter includes a discussion on the process of gaining permission from gatekeepers, gaining ethical clearance from the Research Ethics Committee: Faculty of the Humanities (see Appendix 4), the location of the study, the sample population, as well as the sampling techniques applied and data analysis.

4.2 Research Methodology

Research approaches are sets of procedures, which detail the steps or phrases in the process of conducting research, ranging from general assumptions to the methods which are applied to collect, analyse, and interpret data. The research methods which can be used to conduct studies in the domain of the social sciences can be quantitative, qualitative or a combination of both, which is known as a mixed method approach (Creswell, 2013:31). The present study followed qualitative methods to explore the expectations of presiding officers regarding the testimony of criminologists as expert witnesses.

Qualitative research is an approach for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research

involves emerging questions and procedures, data typically collected in the participant's setting, data analysis as a process of building from particulars to general themes, and the researcher making interpretations of the meaning of the data (Creswell, 2013:32). Qualitative research entails researchers obtaining an understanding of specific phenomena, occurrences, or events through the subjective perspectives and experiences of individual participants (Creswell, 2013:18). Participants were interviewed concerning their understanding and expectation of a criminologist acting as an expert witness. The study explored the insights of magistrates and judges regarding the role of the criminologist in the criminal justice system, and how they assist the court in making a better, more informed judgement. The researcher further explored what the magistrates and judges expected from criminologists as role players in the criminal justice system; an approach that had not previously been used.

Explorative research design is used when little is known about a topic, the research context is poorly understood, the boundaries of a domain are ill-defined, the phenomena under investigation are not quantifiable, the nature of the problem is not clear, or the researcher suspects that the phenomena need to be re-examined (Maree, 2016: 54). An exploratory research approach was deemed relevant as the current study looked to explore the role of a criminologist as an expert witness, an area in which little research has been conducted; specifically, none from the approach of interviewing magistrates.

4.3 Data Collection Method

To explore and understand the research expectations of presiding officers regarding criminologists as expert witnesses, the researcher developed and made use of a semi-structured interview schedule, which aided in the collection of data.

Much of the data collected and used in qualitative studies is generated from interviewing. An interview is a two-way conversation and a purposive interaction in which the interviewer asks the participant questions to collect data about the ideas, experiences, beliefs, views, and opinions of participants. An interview is a valuable source of information if it is used correctly. The aim is to obtain rich, descriptive data that will help others to see the world through the eyes of the participant (Babbie & Mouton, 2010: 288, Wagner, Kawulich & Garner, 2012: 133).

Semi-structured interviews make use of an interview guide that defines the line of inquiry; an approach which was employed by the researcher. The approach was useful because the researcher could probe and explore the matters which magistrates and judges raised in more detail. The semi-structured interview was short, and the researcher was attentive to the responses of magistrates and judges, and emerging lines of inquiry into criminologists as expert witnesses were identified effortlessly and explored (Wagner et al., 2012: 135).

Semi-structured interviews were particularly applicable to this study, as the researcher was interested in the complexity of the research problem, which lies in the expectations of magistrates and judges regarding criminologists as expert witnesses. Semi-structured interviews provided a unique opportunity for the researcher to attain in-depth information regarding the research problem; this was valuable in permitting the participants in expanding on their expectations of the criminologist as an expert witness. The researcher prepared a list of questions that served as guidelines to prompt participants to speak on matters relevant to the research (Roestenburg, Strydom & Fouche, 2021: 296). The interview guide was constructed based on the literature review, the theoretical framework, as well as the research objectives.

The questions that were asked required more than simple “yes” or “no” answers, meaning the participants needed to engage in an in-depth discussion on the subject matter. The interviews were audio-recorded, which allowed for information to be analysed and interpreted correctly. The interviews lasted for approximately 1 hour each.

It is important to note that interviews have their limitations. They involve personal interaction, and cooperation is therefore essential. Participants may be unwilling to share information, and the researcher may ask questions that do not evoke the desired responses from participants. Moreover, the responses could be misconstrued or even, at times, untruthful (Roestenburg, et al.2021: 299). Furthermore, interviews are time-consuming and are a financially costly process. There are limitations to the anonymity of the respondents given the personal contact between the parties (Wagner et al., 2012:103).

Permission to record interviews was pursued and obtained from the interviewees. A tape recorder was used to record the interviews, to allow the researcher to concentrate

solely on the topics discussed. The researcher conducted the interviews with each magistrate and judges in their own offices; these interviews were recorded, and the recordings were transcribed by the researcher. Semi-structured interviews were the most relevant instrument to this study as they aided the researcher in obtaining detailed descriptions of what the expectations of magistrates and judges are regarding criminologists as expert witnesses.

4.4 Interview schedule

To meet the objectives of this study, an interview schedule was developed and used to conduct interviews with designated participants (See Appendix 1). The interview centred on assessing the role of criminologists in presenting their findings to the court by:

1. Exploring the role of the criminologist as an expert witness in collecting, presenting, and interpreting evidence for the court;
2. Identifying the characteristics of the criminal event that criminologists as expert witnesses are expected to report on; and
3. Formulating recommendations for further research of the criminologist as an expert witness in the criminal justice system.

The interview schedule (Appendix 1), therefore, consisted of five (5) main categories, as discussed below.

a) Biographic Characteristics

In this section, questions which served to capture data essential to describe the sample included chronological age, ethnicity, and gender. Additional questions included the participants' employment or professional position, and the number of years they have served in the position.

b) Role of Criminologist in the criminal justice system

This section included questions about what the presiding officers know about the skills and knowledge criminologists have to offer the court. It included a discussion on whether there is a space in the criminal justice process for a criminologist as an expert witness, and whether these spaces have been adequately filled by other professions such as social workers and psychologists. This section explored the role of criminologists in presenting evidence that is relevant, and evidence which the court would not be able to gain without the assistance of a criminologist.

c) Role of criminologist in achieving the objectives of punishment

This section included a discussion on the expectations that presiding officers have of a criminologist as an expert witness in the criminal justice system, particularly in considering the Triad of Zinn in the court and subsequently achieving the objectives of punishment; namely, retribution, deterrence, rehabilitation and restorative justice. Discussions led toward whether a criminologist can testify on all three components of the triad objectively, and whether a criminologist possesses the skills and knowledge to assist the court in achieving the objectives of punishment. The section included an exploration of what a criminologist needs to understand regarding criminal procedure, law of evidence and the limitations placed on the evidence brought forward by the criminologist by the various legislative frameworks.

d) **Role of criminologist in assisting the court to achieve fairness and justice**

The questions in this section included a brief overview of the concepts of fairness and justice within the criminal justice system. This included a discussion on whether justice and fairness are achievable within the South African criminal justice system. The role of a criminologist in achieving fairness and justice was also discussed in this section.

e) **Conclusion of the interview**

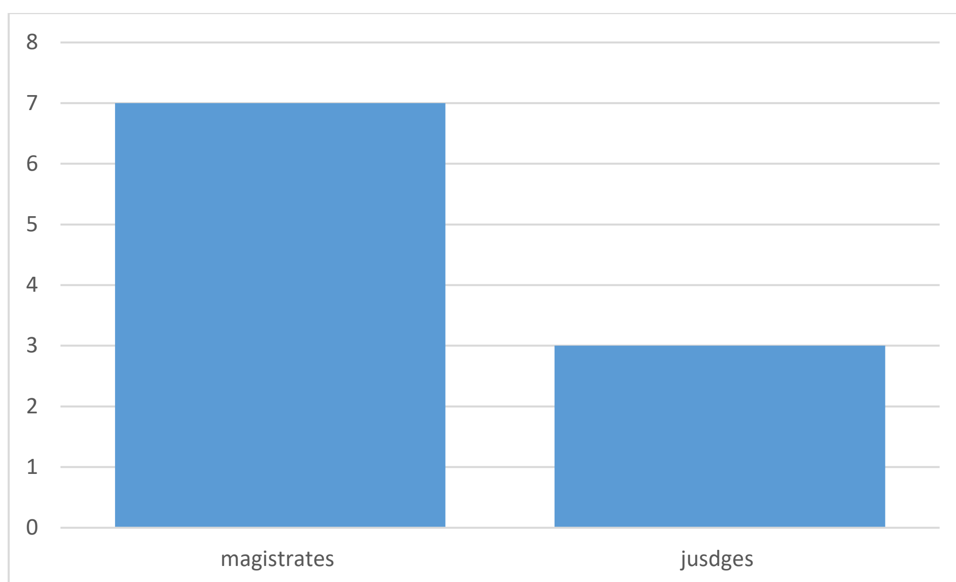
This section entailed the conclusion of the interview and provided the participants with an opportunity to reflect on and review previous questions. Participants were given an opportunity to ask questions about the study as well as add any information they felt was necessary to benefit the study.

4.5 Research Population and Sampling method

Sampling can be defined as the process of selecting units, which could be either people or objects, from a population, which possess characteristics in which a particular researcher is interested (Sharma, 2017: 749). This study applied non-probability sampling techniques, specifically snowball sampling. Snowball sampling is generally used when members of a special population are difficult to locate, but is not exclusively used this way. In the first phase of this sampling method, the first group of participants were approached as recommended by the gatekeeper; these were magistrates and judges who have worked in various courts and have experience with experts in their courts. These individuals were then asked to approach other individuals who in turn were asked to approach more individuals (Maree, 2016:198, Wagner, Kawulich & Garner, 2012: 92). A key informant linked the researcher to participants who have particular experience and knowledge with experts in their court. Subsequently, these participants recommended others who may be of value to the study as participants. Due to the isolated nature of the judiciary and the workload of presiding officers, a sample size of 10 presiding officers was attainable from both the regional and high courts.

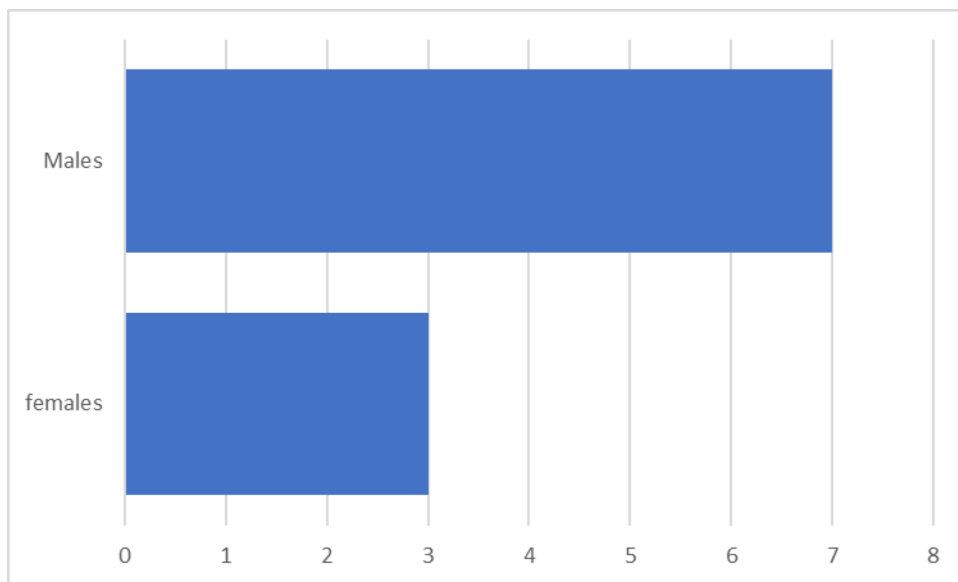
The participants selected included males, females, and members of various ethnic groups. A precise discussion of the attributes of the participants is illustrated in graphs 4.2 and 4.3 and in Figure 3.2.

Graph 4.1: Professional position



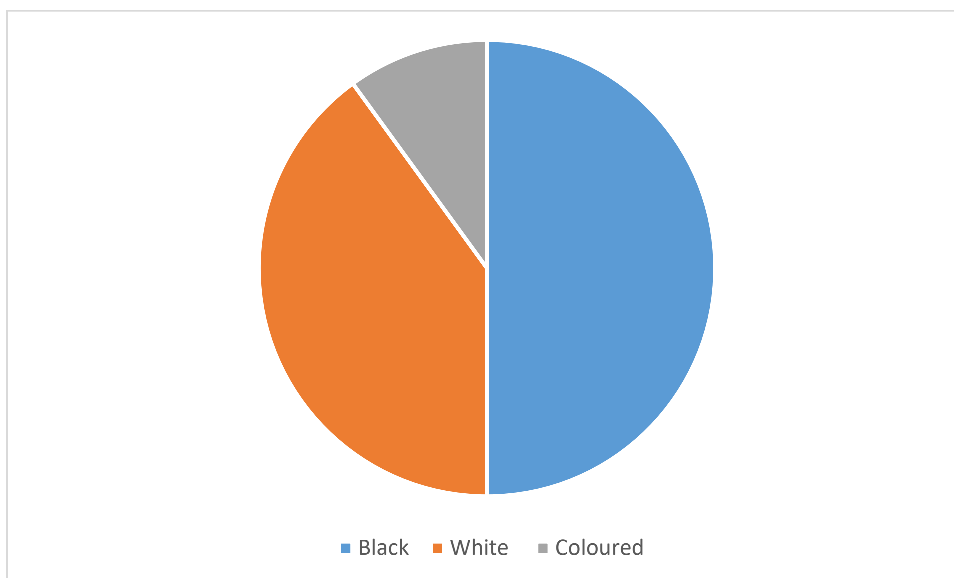
All the participants have at some point or another served as magistrates in the District Courts and in the Regional Courts. The majority of the magistrates of the Regional court have acted or are acting as Judges of the High Court. The bulk of the participants serve as Magistrates of the Regional Court, while the minority serve as Judges of the High Court.

Graph 4.2: Gender distribution of participants



Most of the participants sampled for this study were male, while females represented the minority within the selected sample.

Graph 4.3: Ethnic group distribution of participants



Most participants identified as black, followed by participants who identified as white and the minority which identified as coloured.

The final sample therefore consisted of magistrates and judges with extensive experience in the Judiciary.

4.6 Data Analysis

Data analysis in qualitative research consists of preparing and organising the data for analysis, and finally representing the data into a discussion (Creswell, 2013:180). Analysis of qualitative research follows from the purpose and theoretical framework of the study. Understanding the meaning of data by identifying and analysing themes is a technique shared across qualitative analysis approaches. Thematic analysis is a general approach to analysing qualitative data that involves identifying themes or patterns in the data (Wagner, Kawulich & Garner, 2012: 231). Qualitative researchers identify themes in the data through what we call inductive coding procedures, that is, to first approach the data without preconceived ideas, pay attention to emerging themes and gradually classify them into a handful of recurring concepts to generate a theoretical narrative by linking these themes. This is the bottom-up approach. Qualitative data can also be themed in a top-down fashion as well. The themes are initially derived deductively from existing theories and the corresponding contents are extracted from raw data. However, even in deductive analysis, researchers should be open to the possibility of new themes emerging from the data itself, and it is advised that these emerging themes are included in your analyses as new themes (Wang & Park 2016:215-216).

The researcher used thematic analysis to synthesise and summarise all the data and interpret the findings by establishing categories, patterns, and themes (Bloomberg & Volpe, 2016:188-189). The thematic analyses applied in this study is inductive thematic analysis, meaning that recognised themes were strongly made related to the data an then linked or discussed in relation to the broader body of knowledge (Javadi & Zarea, 2016: 35). The six steps prescribed by Braun and Clarke (2006) to carry out a thematic analysis are guidelines; however, these steps should not be used as prescriptive, linear, and inflexible rules when analysing data. The researcher familiarised herself with the data, identifying preliminary codes, and searched for patterns and indicators to discuss the data accordingly. This process was guided by the objectives as well as the theoretical framework of the study.

By following this process, the researcher allowed the interpretation process to be better structured to gain a better understanding of presiding officers' expectations of the criminologist as an expert witness.

4.7 Measures to enhance credibility and trustworthiness

Although qualitative research has become increasingly recognised and valued for its unique place in the social sciences, there continues to be concern as to how to assess the quality of qualitative findings (Kornbluh, 2015:297). In qualitative research, data quality is strengthened by trustworthiness procedures, which include credibility, transferability, dependability, and confirmability. These are the same procedures applied in enhancing the trustworthiness of this study.

Member checks are widely used in qualitative research for imploring participant insight on research findings and are appraised as the gold standard for establishing credibility and trustworthiness. It consists of the researcher following up with participants to verify that the findings reflect the participants' intended meaning (Creswell, 2014: 251, Kornbluh, 2015:397). The participants were able to share additional information they felt might have been significant to the study, in relation to the topic and themes explored throughout the interview. The flexibility of the qualitative research methods in the form of semi-structured interviews gave the researcher an opportunity to adapt the interview as it commenced, to gain appropriately valuable data. When the magistrates shared added information which was relevant to the study, the flexibility of the data collection method allowed the researcher to follow the thought pattern and extract as much information regarding the new and unexpected information from the participant.

The trustworthiness of this study was aided by methods such as observation, audio recording, note-taking and verbatim transcriptions of interviews. Each interview was recorded, which allowed the researcher to make notes and observations of the reactions of participants. As an additional measure of reliability, the researcher constantly compared data against the objectives of the study and the theoretical framework. To make sure that there were no obvious mistakes made during the transcribing process, the researcher spent time transcribing the recorded interviews herself. Trustworthiness was further enhanced through the checks between the notes made during the interviews which helped the researcher to fill in the parts that were not clear in the audio recordings.

The use of a pilot study also enhanced the credibility and trustworthiness of the study. A pilot or feasibility study was performed on a small number of individuals from the

sample population. The purpose of conducting a pilot study was to test the feasibility of the research methodology and interview schedule in practice to allow for any unforeseen downfalls or problems to be identified and dealt with (Dikko, 2016: 522). The pilot to address the concept of dependability of the interview schedule was conducted with two (2) of the participants to detect and manage any potential ambiguities in the line of questioning (Bryman, 2012; 247, Dikko, 2016: 524). The pilot revealed no challenges in the interview schedule and was used as is for the remainder of the project. Responses by the participants from the pilot study were thus included in the main study.

4.8 Ethical Considerations

To attain access to the participants, permission was sought and obtained from the gatekeeper (See Appendix 5). Participants also filled in a third-party release form to allow the researcher to gain their contact details from the key informant (See Appendix 6). Participants' rights, such as the rights to self-determination, privacy, autonomy and confidentiality, fair treatment and protection from discomfort and harm, were protected (Cohen, Manion & Morrison, 2017: 134, Klopper, 2008: 71).

The researcher ensured that participants knew and understood that participation is voluntary and there would be no penalty or loss of benefit for non-participation. None of the participants were obliged to consent to participation. Once participants decided to take part, they were given an information sheet to keep and asked to sign a written consent form. Participants were made aware that they were free to withdraw at any time, without needing to give a reason.

4.8.1 Permission to conduct the study

Qualitative research involves the study of a research site(s) and gaining permission for the study in a way that will enable easy collection of data. This entails obtaining approval from the academic institution's ethics committee as well as individuals at the research site (Creswell, 2013:151). The University of the Free States expects students to go through an ethical clearance process before they can embark on any empirical study. This study received ethical clearance from the Research Ethics Committee: Faculty of the Humanities (see Appendix 4; Ref. no. UFS-HSD2017/1501).

Gatekeepers are those people who enable researchers to enter an organisation or community to conduct research. They may be community or organisation leaders, elected officials, or heads of households (Wagner, Kawulich & Garner, 2012: 64). The President of the Regional court granted gatekeeper's permission before the study commenced (See Appendix 5). Once the researcher started, there was a need to interview judges and therefore the researcher gained verbal permission from the Judge President of the High Court to do so.

Entering the research setting via community leaders is one of the initial steps taken before conducting research. Once the researcher has the gatekeeper's permission, the researcher may proceed to individual participants to gain consent to participate. Sometimes gatekeepers will direct the researcher to the appropriate people who may be willing to participate in the study, but participants are never to feel that they were coerced to participate (Wagner, Kawulich & Garner, 2012: 65). The Judge President of the High Court as well as the Regional Court President of the Free State region both gave the researcher access to the names and contact details of a few staff members that they believed would be ideal participants for the study. Permission from participants was gained through an informed consent form (See Appendix 3).

Gaining access to sites and individuals involves several steps. Regardless of the approach to inquiry, permissions need to be sought from a human subjects review board, a process in which campus committees review research studies for their potential harm and risk to participants (Creswell, 2013:152). These were the steps followed to gain access and rapport for this study. This study was subject to gain clearance from the ethical committee of the university (see Appendix 4) as well as gain gatekeeper's permission from the court (see Appendix 5).

4.8.2 Informed Consent

Informed consent is a vital part of the research process and, whilst most researchers agree that written consent forms are necessary and empower the informant, consent involves much more than just a signature on a form. The guiding principle of informed consent is an individual's personal right to agree (or not) to participate in a research study after fully understanding the total research process and consequences (Wagner, Kawulich & Garner, 2012:68). Ethical norms of voluntary participation and no harm to participants have become formalised in the concept of informed consent. This norm

means that subjects must base their voluntary participation in research projects on a full understanding of the possible risk factors (Babbie, 2020:64).

A formal consent form highlighting the nature and objectives of the study was discussed with the participants before the interview began. Their signatures were required once they showed an understanding of their role in the study as a participant. At any point, before, during or after the interview, should participants have felt uncomfortable continuing with the study, they were granted an opportunity to exit. This option was discussed prior to the interview as part of the consent form, but none of the participants took this up.

4.8.3 Respect for the dignity and rights of participants

The researcher commits to always respecting the dignity of participants and to ensuring that the rights of participants are not infringed upon. The participants were advised accordingly regarding the nature of the study, permission to receive the details of participants was sought out from their superior. Participants were able to exit the study at any time, including after the interviews. Names and other identifying details of participants have been kept safe and the researcher has taken extra precaution to write up the findings in such a way that it is not obvious to the reader who the participants might be.

4.8.4 Confidentiality

Ethics in research includes safeguards in protecting the identities of participants. Anonymity means that the researcher does not know the identities of the participants; confidentiality means that the researcher knows, but will not tell (Wagner, Kawulich & Garner, 2012: 70).

To prevent community recognition of participants in the written results, the researcher must be careful to omit personal identifying information about participants (Wagner, Kawulich & Garner, 2012: 70). As soon as it was possible, all names and addresses were removed from interview schedules and replaced by identification numbers. A master identification file was created that links numbers to names to permit the later correction of missing or contradictory information, but this file is not available except for legitimate purposes (Babbie & Mouton, 20010 524).

Confidentiality was aimed for by using pseudonyms; these pseudonyms were used in the write-up of the research therefore protecting the participants' personal information. While pseudonyms assist in hiding the participants' identities, quotes from individual participants are sometimes shared and may serve as a source of identification. Thus, the researcher was cautious of how participants are described and quoted to ensure that their confidentiality remained protected (Wagner, Kawulich & Garner, 2012: 70). Therefore, the descriptions of the community and of individual participants has been left vague and ambiguous.

Information collected was used only for research purposes and the researcher maximised confidentiality ensuring that the individuals were not identifiable from the way in which the findings are presented. Effort was made to prevent anyone outside of the project from connecting individual subjects with their responses.

This effort includes the researcher ensuring that the identifying details of the key informant are kept confidential. The details of where the magistrates work have also been kept confidential to protect the participants from anyone who might identify them. Complete confidentiality poses problems and may prove impossible; however, the researcher is still obliged to strive for it (Wagner, Kawulich & Garner, 2012: 70).

Identifying data was kept secure in password-protected files. Due to the nature of recruitment, confidentiality can only be partial.

4.8.5 Release or Publication of findings

Academic publishing describes the subfield of publishing which distributes academic research and scholarship. Most academic work is published in a journal article, book, or thesis form. This project will be presented in a form of a dissertation and both hard and electronic copies will be kept within the University of the Free State's libraries, in the form of a finished dissertation and/or oral presentations in public. Assurance was provided to participants that information collected would be used only for research/academic purposes, which may include conference presentations.

4.9 Conclusion

This chapter discussed the research methodology used in conducting the study. It demonstrated the research design, the location of the study, the sampling population, the sampling methodology, the research procedures, and the strategies used to analyse the data obtained from the participants of this research.

CHAPTER 5
DISCUSSION OF FINDINGS

5.1 Introduction

This chapter presents the results of the study derived from the thematic analysis strategy which was used to explore the expectations of presiding officers in the South African Criminal Justice System of the criminologist as an expert witness. The interview schedule was used to determine themes; subsequently, sub-themes and categories emerged. The empirical data is discussed with supporting literature and the theoretical framework found in Chapters 2 and 3.

5.2 Theme 1: The potential role of criminologists in the criminal justice system

As discussed in previously (See 3.3), Dumani (2005: 12) emphasised that criminologists are vital players in the legal system, while Terblanche (2007: 23) advocated their use in courtrooms. According to Parsons' theory, every action, including the actions of forensic criminologists, occur within the framework of a broader system - the criminal justice system. It is, therefore, not surprising that participants identified the need for criminologists to be involved in the criminal justice system. P6 noted that

> "… *there is a whole vacuum in the criminal justice system where you [as* criminologists] *are supposed to be because we as presiding officers are expected to stand in the stead of a criminologist, and we must be the adjudicator. So we almost go down into the arena just to find out what is the background after the crime we are adjudicating for. There is a huge, huge, and I am going to reiterate, vacuum for criminologists in the court*".

P9 felt that, although criminologists are used seldom, it is not to say that "*they cannot make a meaningful contribution*" to the administration of justice.

Labuschagne (1992), Beukman (2008) and Ovens (2016) are of the opinion that criminologists are indeed valuable actors in the criminal justice system on all levels. They go on to explore and define the various ways criminologists contribute to the criminal justice system. The participants' responses coincide with various literature sources in the field that support the role of forensic criminologists.

Table 5.1 below presents the four sub-themes and six categories of Theme 1.

Table 5.1: Sub-themes and categories of Theme 1

Sub-themes	**Categories**
5.1.1 Sub-theme 1: The criminologist as a source of information	5.1.1.1 Category 1: Profiling
	5.1.1.2 Category 2: Crime typologies
	5.1.1.3 Category 3: Data and statistical information
	5.1.1.4 Rehabilitation prospects
5.1.2 Sub-theme 2: Limited resources	5.1.2.1 Category 1: Role distribution/specifications
5.1.3. Sub-theme 3: Decision-making	5.1.3.1. Category 1: Reports
5.1.4. Sub-theme 4: Voice of the community in the criminal justice system.	

5.2.1 Sub-theme 1: The criminologist as a source of information

The task of an expert witness is not to merely present a client's position, but to assist the presiding officer with information that is necessary before a decision can be made (Ingram, 2021; 154, Sutherland, 2009: 1). As discussed in 2.3.1, forensic criminologists play a meaningful role in the functional imperative of goal attainment, especially as a source of information in the courtroom. Seen broadly, participants emphasised the role of criminologists as a critical source of information for presiding officers. P2 believed

> "*The advantages of an expert in criminology and psychology is that you can get a detailed and expert analysis of the offender which otherwise would not be available to you.*"

P5 added

> *"… amongst others and they would obviously be able to help you with regard to the personal circumstances of an accused person, the psychological impact the offence may have had on the victim, and so forth."*

P7 stated

> *"Each and every case that I have done now … I would have wished for a criminologist to have just come and testify sometimes before completion, sometimes during sentencing. We need you. So, in almost every case there should be a criminologist report before a sentence."*

The view is supported by Van der Hoven and Ovens (2004: 19), who stated that the criminologist should be considered as a valuable and objective aid to the presiding officer because the latter might not have the scientific knowledge which a criminologist can offer. Similarly, Herbig and Hesselink (2009: 442) noted that a criminologist could provide the court with insights into the offender's circumstances, background, and motive in committing the offences. Criminologists are further trained to advocate the impact of the crime on the victim, present aggravating and mitigating factors to the court, and to make a recommendation regarding sentencing. It is therefore important for the court to see a continued increase in Victim Impact Statements and pre-sentence reports submitted by criminologists.

Four categories emanated from sub-theme 1 and will be presented below.

5.2.1.1 Category 1: Profiling

Building on the above, criminologists can provide presiding officers with a scientific explanation, specialised analysis, evaluation, and assessment of criminal conduct. Participants identified profiling as an important function of criminologists.

P2 stated that

> *"There are often psychological conditions that we are not aware of. During ordinary proceedings, we are given the personal circumstances of the offender, but that is limited … what would be nice is to have the profile of the offender as well".*

When talking about her experience with a criminologist in her court, P1 stated

> *“I would love to have him [criminologist] in every case. He is so good with profiling, [and] explaining all those things. I learned so much that I am able to quote him…”.*

A discussion of the offender’s character, level of intelligence, health, physical appearance, triggering factors, and other relevant information can assist the presiding officer at various stages of the legal process. It is recommended that further research into the role of criminologists in profiling be conducted, which can also assist in determining the information that can be included in standardised assessment reports presented by criminologists.

Diko et al. (2019), reveal that criminologists help the presiding officer gain a better understanding of the offender and the reasons for the crimes committed; however, they also express that the full extent of the role and functions of criminologists in preparing pre-sentence reports is uncertain. There is therefore a concordance between the findings and existing literature.

5.2.1.2 Category 2: Crime typologies

While some criminologists specialise in some form of crime, most generally focus on the core subject of Criminology, which includes studying various types of crime, the causes, and the impact thereof. Crime typologies form an integral part of any criminologist’s training in fundamental Criminology. Participants noted that criminologists could inform presiding officers with information about different and specific types of crime.

P2 stated that

> *“Sometimes the evidence will point out that it was a crime of passion or it was a crime for enrichment … Correctional services … do not specialise in the drawing of certain patterns [of crime] for certain areas”. P6 felt that “shoplifting is an epidemic in South Africa; it’s an epidemic in Bloemfontein … so if we had a criminologist that would come and testify in one case, we can make an example case”.*

Therefore, criminologists are in a good position to orientate presiding officers about the nature and dynamics of different types of crime. The researcher further identified a gap in research on the need for specialisation in a particular crime, as a necessity for criminologists to act as experts in court. However, criminologists are typically trained to theoretically analyse, assess and interpret various crimes, and these skills

can be applied toward defining and categorising crimes for the benefit of the enhancement of knowledge in the broader criminal justice system.

5.2.1.3 Category 3: Data and statistical information

There are numerous sources of crime information, including official reports, i.e., the annual crime statistics, and unofficial reports, for example, victimisation studies (Singh, 2011: 96). In terms of Parsons' functional imperative, goal achievement is the process of achieving what the social system should and has planned to accomplish. This is the apparatus where the needs of the members of the system are addressed (Dillon, 2014: 158; Inglis & Thorpe, 2012:50). Participants indicated that criminologists could provide presiding officers with valuable information in the form of existing evidence and statistical information. P2 expressed that

> *"At this moment, I don't know what the rate of rehabilitation is; I don't know what the rate of recidivism is, and I don't know how effective certain sentences are. So insofar as the effectiveness of sentencing and the effectiveness of diversion, I think there, the criminologist will play important input".*

P1 stated that

> *"I learned from him [criminologist] so much; fortunately, he knows the accused in my case, I was shocked that the accused has so many convictions…".*

A criminologist can thus assist the presiding officer by providing a summary of data and statistical information relevant to individual cases. In providing such information, and conducting research in this regard, criminologists respond to presiding officers' needs as they arise, thereby working continuously towards achieving the goals of the criminal justice system.

5.2.1.4 Category 4: Rehabilitation prospects

As explained in 1.2.6.1 and 3.4., criminologists have the knowledge to inform different aspects of rehabilitation, including induction assessment, case and tactical management, and risk and parole assessment. The criminologist can assist with developing treatment plans for offenders, facilitate release preparation, and advise parole boards regarding the early release of inmates and conditions of release (Bezuidenhout, 2011: 385; Ovens, 2006: 129). In this regard, participants noted that criminologists could inform presiding officers about the rehabilitation prospects of offenders. P4 felt that "*Because I don't know if he can be rehabilitated because I don't know what his psyche is*".

P7 similarly noted that

> *"Is there any likelihood of rehabilitation, to me that is very important. I think what is equally important, I would like to have a motivation, why does this criminologist say that there is a reasonable possibility that the perpetrator can be rehabilitated and if so, what are the most appropriate measures that we can take with this perpetrator, this offender given his unique circumstances and his unique background."*

Therefore, relevant assessments conducted by criminologists can provide presiding officers and correctional officials with advice about the rehabilitation prospects of offenders. The functional imperative of goal attainment is therefore obtained by the role of a criminologist in the action system, by assisting in accomplishing the vision of a seamlessly integrated system. In this regard, the criminologist acts as the goal attainment apparatus deployed as a resource to meet the decision-making function of the system.

Ovens (2006) argues that as part of the criminal justice process, criminologists can also assist in the transfer of offenders from one agency to another. Terblanche (2016) alludes that when criminologists assess offenders for the purpose of a pre-sentence report, they assist the court in determining if the relevant sentence has the capacity to achieve rehabilitation. In light of this, the findings of this study are in concordance with existing literature.

5.2.2 Sub-theme 2: Limited resources

According to Bezuidenhout (2011:383) as well as Singh and Gopal (2010: 13), few criminologists work in the criminal justice system, which can be attributed to forensic criminology as a discipline being in its infancy in South Africa. Participants emphasised that there are limited resources in the criminal justice system to assist presiding officers.

P2 stated

> *"Absolutely there is a need, and if ever there are resources to be applied, that would be it. There are too little social workers, and there are too little correctional officers that specialise in that aspect".*

P1 expressed,

> *"I remember it was a long postponement because he was very busy. I think it was a three-month postponement waiting for the report".*

Integration is imperative in Parsons' theory responsible for the coordination of the various parts of the system; this is achieved in the South African criminal justice system through the guide of the Criminal Procedure Act 51 of 1977. The integration function includes formal and informal control of individuals to ensure their cooperation in the process of goal achievement, by defining the role of a criminologist in the above Criminal Procedure Act 51 of 1977, attaining integration by reducing the conflict of limited resources in the system. With social work being considered a scarce skill (Pullen-Sansfaçon, Spolander & Engelbrecht, 2012: 1032), criminologists can fill the resource void in assisting presiding officers in their tasks. The researcher has identified the need to examine the role of a criminologist in this regard, and the need for the Criminal Procedure Act 51 of 1977 to recognise a criminologist as a probation officer, among others.

5.2.2.1 Category 1: Role distribution/specifications

Based on the limited resources in the criminal justice system, a category that emerged from sub-theme 2 was the possible distribution or specification of roles between criminologists and social workers. P7 explained that

> *"I think that the criminologists focus and highlight things that are more relevant to the criminal justice system. Your social worker is of more value when you are dealing with family violence situations or family-related situations. When you go to the criminal law, I think that a criminologist, in general, would be better equipped to deal with the criminal side of things and social workers more in respect to family matters".*

Experts should endeavour to work within their professional limits and to identify factors that restrict their limits (Hesselink-Louw, 2003:105). Specialised knowledge of the criminal justice system and its workings is required to be able to work as an expert witness. Without a thorough understanding of the court system, criminal and procedural law, and basic law of evidence, the forensic criminologist will find it difficult to give evidence in a court of law (Bezuidenhout, 2011: 385). Criminologists have specific knowledge and skills, including training on crime, criminality, and victimology, which differs from that of social workers. Accordingly, differentiation in what the two professions offer presiding officers should be considered. However, further research needs to be conducted regarding the basic skills that all criminologists must acquire, as this will also assist in the professionalisation of criminology in South Africa.

5.2.3 Sub-theme 3: Decision-making

The main imperative of sentencing reforms has been that decision-making should be more explicit and that the rationality and information behind judges' decisions should be specifiable and traceable (Allen, 2008: 52). In sentencing an offender, the presiding officer needs to consider all the evidence placed before the court in order to make an appropriate, rational decision and to fully motivate the sentence (Aas, 2005: 54, Terblanche, 2016: 104). Criminologists, as expert witnesses, are an integral part of the legal system, as they function as an asset in aiding the decision-maker in concluding both civil and criminal cases. Integration is attained in the value of criminologists coordinating the various components of the criminal justice process to meet the immediate goal, case by case, when called as an expert witness. South African law makes provision for expert witnesses to function within the criminal justice system as an aid to the presiding officer (Dumani, 2015: 637).

In this regard, P3 mentioned,

> *"Yes, we do take their [criminologist] recommendations and conclusions very seriously; in fact, it helps in corroborating the evidence of the victims in our courts".*

P6 similarly stated, *“so in almost every case there should be a criminologist report”* while P1 lamented

> *“I still have to give my legal decision about the whole matter, but at least having had input from this expert, I am able to make a much better evaluation of the evidence and, therefore, a better outcome of the case”.*

Criminologists play a meaningful role in assisting presiding officers in making decisions throughout the criminal justice process.

5.2.3.1 Category 1: Reports

Delving deeper into the above, participants noted that in making decisions, presiding officers would benefit from reports put together by a criminologist. As emphasised by participants, these include pre-trial, pre-sentence as well as victim reports.

P2 stated that

> *“During pre-trial proceedings, in what cases do you keep the offender out of the system and let him* [for example] *do a diversion process”.*

P3 similarly mentioned that “*especially in pre-sentence reports. Before you sentence someone”* and P10 noted that “*usually what would happen is that they* [criminologist] *include the victim in that report*”.

Criminologists contribute to the pre-trial phase, through the assessment of juvenile offenders, during the trial phase by conducting pre-sentence investigations and writing pre-sentence reports, and in compiling Victim Impact Statements. In compiling their reports, criminologists report on the needs of all involved in the crime as well as look at the gravity of the crime, thereby showing that one has done a thorough job in considering the crime holistically and that not only one element of the criminal event has been focused on (Lambrechts & Prinsloo, 2002: 17). Therefore, criminologists have the distinctive potential to assist presiding officers in all stages of the criminal justice process through the provision of various reports. Van Niekerk (2021) has conducted research into the minimum requirements for the compilation of the criminological pre-sentence report. Her findings can be used as guidelines for criminologists who act as experts in court in compiling these reports. This can be used in ensuring the expectations of presiding officers for such reports by criminologists in

South Africa are met, and that policy documents such as the Criminal Procedure Act 51 of 1977 as well as the Child Justice Act 75 of 2008 are amended to include these expectations and guidelines as highlighted in Van Niekerk's (2021) research.

5.2.4 Sub-theme 4: Voice of the community in the criminal justice system

To ensure collaboration between the criminal justice system and the community, the criminologist can play a pivotal role by bringing to light the story of not just the crime, but of the individual who committed the crime, the one who was victimised in the process of the crime, and the community that has been affected by these actions (Van der Merwe, 2015: 101).

P6 emphasised that

> *"As a criminologist, you can go into the community for me, you can go ascertain from the mother of the rape victim, from the mother of the murder victim, you can bring me the whole story of the community needs. You can be the community's voice".*

The criminologist could, therefore, act as the liaison between the community and the criminal justice system by being the voice of the community. Further research into the role of a criminologist in bridging the information gap between the community and the criminal justice system is a field that needs to be studied. It will be beneficial to understand the perceptions communities have towards the criminal justice system and how this affects their trust and involvement in criminal procedures. It is also recommended that research is undertaken into the knowledge of communities regarding criminal justice processes, especially the court, and the knowledge of the role players in the courts of the communities they are serving.

In summary, Theme 1 explored the potential role criminologists can play in the criminal justice system. It was found, and largely supported by literature, that criminologists can serve as a source of information to presiding officers. In addition to compiling profiles of offenders, criminologists can orientate presiding officers on crime typologies, and they can collate existing data and statistical information to provide presiding officers with a holistic understanding of each case individually, ultimately assisting the presiding officer in the determination of rehabilitation prospects of offenders. Furthermore, in the context of constrained resources, a criminologist fills the void of skills and knowledge; this assists the presiding officers in having clear

expectations of criminology and social work as distinctive disciplines. Moreover, criminologists play a meaningful role in assisting presiding officers in making decisions by providing reports on the different stages of the criminal justice process. As a final point, it was found that criminologists have the potential to play a vital role in presenting the interests of the community in the criminal justice system; however, more research is essential in this area.

Theme 1 also addresses the role of the criminologist in a system. The function of adaptation and goal attainment is covered and supported in the evidence. The ability that a forensic criminologist has to adhere to the changing objectives of the criminal justice system, communicated through the information shared on the various sub-themes discussed allows him/her to give a holistic picture of the offender, and thereby assist the court to attain structural goals related to the criminal justice system (e.g. apprehension of offenders, sentencing and correctional intervention).

The following section explores the empirical results that emanated from Theme 2, including the sub-themes and categories.

5.3 Theme 2: Characteristics of the criminal event on which criminologists are expected to report

Forensic criminologists are not lawyers, yet it is advisable that they are knowledgeable about both civil and criminal law to maximise their contributions (Kennedy, 2013: 234-235). Without thorough knowledge of the court system, criminal and procedural law and basic law of evidence, the forensic criminologist will find it difficult to give evidence in a court of law (Bezuidenhout, 2011: 385). P3 supports this notion by stating

> *"In terms of, let's say its correctional supervision in terms of Section 2761H or 276I of whether the person is a danger to society she will be sent to time of imprisonment. It is very important for them [criminologists] to understand that legal legislative framework".*

In his experience P4 shares that

> *"I can say the experts that I have had, have a fairly good understanding of how the court system or the justice system works".*

A criminologist is pivotal to establishing collaboration between the criminal justice system and the external environment in that they bring an account of not just the crime, but of the person who committed it, the person who was victimised, and the community affected by it. According to Van der Merwe (2015), the purpose of expert evidence is to highlight potentially influential facts and details that require specialist interpretation or understanding within the context of an investigation. Similarly, P10 expressed his expectations of a criminologist by stating "*their views give a great insight because they point towards specifics of what needs to be considered for balanced sentence*" whereas P7 purports "*Well I would like a criminologist to include a brief discussion of the crime and the circumstances under which this was committed*". P5 identified that

> *"This individualisation and all that, yes we know there are cases that refer to this, you have to individualise this guy and I'm telling you that there are guys that I sentenced that I think back and I take stock of what happened. I wonder if it was really necessary. Very important [Individualisation] but these are things that we wish for but that may not necessarily be possible".*

A criminologist has to report on the needs of all involved in the crime as well as look at the gravity of the crime; this can be done by including a Victim Impact Statement (VIS) when submitting pre-sentence reports. Such a report shows that one has done a thorough job in considering the crime holistically (Lambrechts & Prinsloo, 2002: 17).

Retribution, deterrence, prevention, and protection are among the most commonly considered objectives of punishment in courts today. In a criminal justice system that aims to be restorative, the role of the Triad of Zinn is unavoidable since it greatly affects the outcome of the sentencing process.

As criminologists report on objectives of punishment, they aid the court in considering punishment objectives such as retribution, deterrence, prevention, protection, and restoration. By balancing the three legs of the Triad of Zinn, criminologists ultimately fulfil the aims of sentencing.

The following table, Table 5.2, presents the three sub-themes and categories which stemmed from Theme 2.

Table 5.2: Sub-themes and categories of Theme 2

Sub-themes	Categories
5.2.1. Sub-theme 2.1: Crime	
5.2.2. Sub-theme 2.2: Offender	5.2.2.1. Category 1: Individualisation
5.2.3. Sub-theme 2.3: Interest of society	5.2.3.1. Category 1: Victim

5.3.1 Sub-theme 2.1: Crime

The aims and objectives of punishment have evolved from court case to court case, yet the nature of the crime has always been a prominent factor in the consideration of a sentence. The issue with crime as a sentencing guideline is that any crime can be defined as a serious crime, as it is left to the interpretation of the court (Terblanche, 2016: 163). In considering the crime, retributive (retribution as atonement and restoration of disturbed legal balance) guidelines are applied. A criminologist view on crime stems from a multidimensional perspective, by analysing and interpreting crime theoretically (Van der Hoven, 2006: 159). This view of crime is valued by the criminal justice system as is stated by P7:

> *"I would like a criminologist to include a brief discussion of the crime and the circumstances under which this was committed. In other words, let us say for instance it was rape, was the perpetrator known to the victim or if he was known to the victim, did they have a relationship. If not, what were the circumstances, did he overwhelm her at night when she was walking alone or whatever the case might be. So, I would favour a bit of information although evidence was produced, I would favour a bit of information. A factual background that at that time led to the crime."*

The relationship between the seriousness of the crime and the sentence is expressed by the proportionality requirement, meaning that punishment should be in proportion to the crime. In addition, in many criminal justice systems, it is a requirement that the sentence should reflect the severity of the crime (Terblanche, 2016:163). However, punishment should in fact never be too lenient or too severe, both are considered to be wrong when considering the crime as an objective of punishment. When emphasising the importance of crime as a factor in sentencing, P10 contributes

> *"…I'm into the seriousness of the crime. And we know still, the seriousness of the crime in my view is mostly a very important factor because you know all the aspects that goes with the seriousness of the crime and the aims of punishment".*

In instances where crime is considered as a factor in sentencing, retributive guidelines will always apply. In contemporary South Africa, retribution is focused on atonement and restoration of the disturbed legal balance and not as a punitive measure focused on formal disapproval and moral condemnation. No factor has the same influence on the nature and extent of the sentence as the nature of the crime (Terblanche, 2016:163). The importance of criminologists in ensuring that the court considers the nature of the crime in relation to other factors related to the crime, including the offender and victim, cannot be overstated.

5.3.2 Sub-theme 2.2: Offender

The guidelines of the relative theories, that is; deterrence and rehabilitation, apply when considering the offender as a factor in sentencing; with this in mind the court therefore considers factors such as the age and mental status of the offender, the presence of dependants, and level of education, employment, and health of the offender, amongst a greater scope of other factors (Terblanche, 2016:165). Criminologists are used in criminal law procedures to assist the court by reporting on the client's circumstances, background, and intent in committing the crime, they are trained to assess and evaluate aggravating and mitigating factors and causes of crime in order to make a recommendation to the courts regarding sentencing (Bezuidenhout, 2020:386). According to P2:

> *"The advantage of an expert in criminology is that you [the presiding officer] are able to get a detailed and expert analysis of the offender which otherwise would not be available to you [presiding officers]. We [presiding officers] do not get objective information about why he [offender] committed the crime".*

P3 supports by stating that

> *"Before you sentence someone, in some instances it involves a woman, child. A juvenile accused or youth who were not diverted. Pre-sentencing report is required to give the court a background of such an offender, personal background, family background and all these relevant aspects."*

Courts, although they do not always have the capacity to do so, aim to understand and know the character and motives of the offender through pre-sentence reports written and presented by experts in court. It is essential that the presiding officer know as much about the accused as possible, this includes knowing the personality of the offender as it is also an important factor in determining an appropriate sentence. According to Terblanche (2016: 166), it is imperative that the court attempts to understand the offender's motives for committing the crime. P4 states that

> *"I had a lady come and testify in the behaviour of a particular accused. I brought her to testify for the court to make a conclusion that all crime were committed by him because he acts in a particular way and does things in a particular way and his conduct towards his wife and children was indicative of a person that has the serial killer behaviour. Then it was helpful."*

To get to know the offender is almost impossible as the presiding officer sees the accused for a short period, therefore aids such as the pre-sentence report are valuable in the development of a better understanding of the accused. P6 expresses this by saying

> *"Introduce me to the person, introduce me to the accused. I must sentence that man to life imprisonment, I know him for how long? Two days or three days."*

The criminologist as an expert could assist the court by considering all relevant facts, factors, and circumstances with respect to the criminal case. Terblanche (2016), Bezuidenhout (2020) and Diko et al. (2019), as well as the responses discussed above, demonstrate this.

5.3.2.1 Category 1: Individualisation

When considering the offender in a sentencing process, one brings in the individualisation component, which means bringing a focus on the offender when imposing a sentence. P5 is of the opinion that

> *"…. This individualisation and all that [objectives of punishment], yes we know there are cases that refer to this, you have to individualise this guy and I'm telling you that there are guys that I sentenced that I think back and I take stock of what happened. I wonder if it was really necessary but you've got your case law and you've got your*

guidelines that we use and go through but I can guarantee you that we are not doing enough when it comes to sentencing."

According to Terblanche (2016: 135), individualisation enables presiding officers to compose a sentence that fits the offender and the particulars of the crime committed. P6 supports this with the opinion that "*… it's different human beings that are involved, and it's so unique each time.*" Criminologists assist the court to apply individualisation by presenting information specific to the offender. P8 expressed that

> *"They [experts] are supposed to bring the matter more to life, the human element is what I mean if I say bring it alive. Bring the human element, at the end of the day the people outside must see okay at least he was not a robot."*

In order to attain adequate information for the purpose of individualisation, pre-sentence reports are used, which provide the necessary background of the offender and attempt to explain the commission of the crime. P2 highlights the importance of the pre-sentence report by stating that

> *"It [pre-sentence report] shows the psychological profile and make-up and the probabilities or the possibilities for rehabilitation or if whether this person is just a bad apple that you… You know, that you need to take him out of society for an extended period."*

The purpose of the pre-sentence report is to individualise the sentence, not so that a light sentence is imposed, but to ensure that a sentence is found which is fair to both the offender and society.

P3 is of the opinion that

> *"…it is imperative for the court to have a pre-sentence report before imposing a sentence because, remember, when imposing a sentence, the court considers the objectives and purpose of criminal punishment. That is, your deterrent, preventative and rehabilitative."*

The court is expected to consider all relevant facts, factors and circumstances evenly, and strive for the attainment of all purposes of punishment. Criminologists are able to inform the court on the relevant factors that need to be considered to meet the standards of individualised sentencing objectives.

5.3.3 Sub-theme 2.3: Interest of society

Criminal trials have a wider objective that must be reflected in the law of evidence and procedure. Two of the most obvious objectives are the satisfaction of victims and the protection of society. Behind both objectives lies the need for a system of criminal justice to be able to justify its verdicts so as to have the confidence of society. The way to achieve this will be to show that verdicts are reached by means that inspire confidence (Allen, 2008: 52). In line with this P2 states that

> *"We [magistrates] take the interest of the community. Magistrates, we have the burden of where we come from and if we come from societies that is not similar or the same as the offenders' then we do not have an idea of what's really going on in those communities".*

Punishment should be fair not only to the offender but to society as well. The retributive guidelines and the guidelines of the relative theories are considered as factors in sentences that reflect the interests of society. The objective is to prevent further crime and to protect the community.

According to Terblanche, (2016:170), the interest of society should be understood as "serving the interests of society" and not simply as revisiting of the crime component. Society is served by compliance with one or more of the purposes of punishment. P6 elaborates

> *"As a criminologist, you can go into the community for me, you can go ascertain from the mother of the rape victim, from the mother of the murder victim, you can bring me the whole story of the community needs. You can be the community's voice".*

As a result, it is always important to consider the impact of the crime and the need to protect society holistically. However, as in the case of minimum sentences, it is yet to be proven that retributive methods reduce the rate of recidivism. Research in this area is required for the improvement of current criminal justice practices.

5.3.3.1 Category 1: Victim

A criminologist with the necessary training may assist victims in specified circumstances at various stages of the criminal justice system, as it is ideal to offer continued support to victims of crime (Bezuidenhout, 2011:391). To allow the court to

gain a better understanding of the victim and the victim's experience, a criminologist performs numerous interviews with the victim and others affected by the crime indirectly to write a comprehensive report on the impact of the victimisation (Bezuidenhout, 2011: 392).

According to P6:

> *"You know that the Triad in Zinn has been squared by the judgement of Judge Davis a few years ago when he acted in the High court. His view is that the victim must have its own place in sentencing; the victim mustn't fall under the interest of the community like in the Triad in Zinn and I agree with that. I agree completely with that, I do not refer to the Triad in Zinn anymore; I refer to the Square of Zinn. Because the victim gets lost in the community's interest and this question is very important because it is so difficult to balance the Triad in Zinn and the premises of sentencing, and for that, you must be sure of the facts of the case".*

P10 supports this sentiment by stating

> *"… the triad initially did not consist of the interest of the victim, so that came into play, which is very important, and also you know the victim the broader aspect of the victim not only society but the family of the victim".*

Furthermore, P6 explains that

> *"The view is that the victim must have his own place in sentencing, and I agree with that because the victim gets lost in the interest of community."*

Victim participation in the criminal justice system is outlined under the right to offer information, this permits for courts to call for Victim Impact Statements (VIS). According to James and Cronje (2019: 132, these Victim Impact Statements are currently seen merely as instruments of Restorative Justice practices and are not mandatory in practice. As a result, these statements are only used when requested, not as a rule.

It is important for the court to view the victim with consideration of the facts, factors and circumstances particular to each case. P5 is of the opinion that

> *"When it comes to sexual offences, an accused or attorney would come and say but the conduct that the complainant, her conduct was not consistent with that of a rape victim. That's where we always falter in a sense that we think one shoe fits all new, we*

think human beings behave in a specific way, irrespective of the circumstances, they behave the same."

A Victim Impact Statement can be written on behalf of a victim by a criminologist trained in victimology, this will assist the court in understanding the direct impact of the crime on the victim, psychologically, financially, socially, etc. However, it is imperative for courts to ensure that victim issues are not over-emphasised at the cost of the offender, promoting the false victim-offender dichotomy (Peacock, 2019:7).

To put it succinctly, Theme 2 explored the characteristics of the criminal event that criminologists as expert witnesses are expected to report on. It was established in this theme that the criminologists are valuable in reporting on the weight of crime on the outcome of the sentence. Furthermore, criminologists are expected to assist the court by reporting all relevant facts, factors and circumstances pertaining to the offender. In addition to the offender as a factor in sentencing, the criminologist is expected to assist the court in considering an individualised sentence, using a detailed pre-sentence report which includes the background of the offender, factors, and circumstances particular to the case. Moreover, a criminologist is expected to report on the interests of society with an emphasis on the prevention of crime and the need for protection of society. Additionally, criminologists are expected to report on the impact of the crime on the victim, emphasising the need for the victim to be a role player in the criminal justice system and not necessarily be under the umbrella of the "interests of society". In essence, it was found that criminologists may play a major role on reporting of the characteristics of the criminal event, which include the crime, the offender, individualisation, the interests of society and the victim. In the consideration of the aforementioned categories of the criminal event it can be accepted that the objectives of punishment as discussed in Chapter 1.6.2.1. will be met, therefore knowledge and understanding of these objectives cannot be emphasised enough. It is the opinion of the researcher that such skills should be part of the training of criminologists in their undergraduate degrees. It is therefore recommended that these skills be considered as part of the minimum requirements in the establishment of professional standards for criminologists in South Africa.

Sub-theme 2 refers to the functional imperatives of adaptation, integration and latency. The criminal justice system is no longer a stagnant system as the matters taken into

consideration on all trial phases change based on societal needs. The various changes in terms of consideration of the various role players has caused a need for experts such as criminologists. As explored in Chapter 3 (3.3 and 3.4), both the pre-sentence report and the Victim Impact Statement are regarded as vital documents to be applied in the various phases of the criminal justice process. The functional imperative of latency is addressed in this theme by the clearly stated objective of the knowledge needed from criminologists. Knowing what these presiding officers expect can assist in the future laying out of the curriculum needs of future criminology students once a professional board has been established in South Africa.

As stated in chapter 2.4, in the case of forensic criminologists, training is an important process in achieving the theoretical state of equilibrium. All actors must be taught what the expectation of their roles entails. Theme 3 has given guidelines towards the needs in skills and knowledge expected from the forensic criminologist if they are to be actors in the criminal justice system. The next section explores the empirical results that emerged from Theme 3, including sub-themes and categories.

5.4 Theme 3: Cases involving the vulnerable

International norms surrounding women's and children's rights have shaped and have been consciously embedded in the national laws and policies of South Africa (Artz & Smythe, 2019: 63). A substantial focus of legal reforms has been aimed at assisting victims of violence, particularly, young victims and offenders. These laws are often ambiguous, leaving their interpretation and implementation to the justice personnel and the judiciary (Artz & Smythe, 2019:60). This is maintained by P3 in saying

> *"I can give you a case where defence requested a social worker report, a case that I worked with. She was convicted of murdering her husband and defence requested that we obtain both pre-sentence report primarily because she has a minor child and this child is dependent on her as a breadwinner. Defence filed; it is imperative for the court to have a report before imposing a sentence."*

However, this is not the procedure in all cases; unless this request is made, the case may continue without consideration of such a report even when noted as an imperative document in cases involving minors.

The seriousness of the offence is affected by the extent to which the offender can be blamed or held accountable for harm caused by the crime. It is important to determine how blameworthy an offender is in determining an appropriate sentence (Terblanche, 2016:166). In his judgement, Corbett, J.A. referring to Mohlobane 1969 (1) SA 561 (A) stated: "… the younger an accused is the more relevant evidence concerning his background, education, level of intelligence and mental capacity in general becomes…". Therefore, the sentence should reflect the blameworthiness of the offender (less blameworthy should mean a less severe sentence). P3 adds that a pre-sentence report is imperative "*Before you sentence someone, especially if it involves a woman, child, a juvenile accused*" and P10 supports this by stating that "… *it's always important especially when you know it's violence against women and children*".

Table 5.3 below presents the four sub-themes of Theme 3. No categories emerged from these sub-themes.

Table 5.3: Sub-themes emerging from Theme 3

Sub-themes
5.3.1 Sub-theme 3.1: Cases involving the Youth (children)
5.3.2. Sub-theme 3.2: Cases involving Women

5.4.1 Sub-theme 3.1: Cases involving the Youth (children)

Before punishment is imposed on a convicted juvenile offender, the court or the defence may call for a pre-sentence report in order to assist them in passing a sentence. According to Bezuidenhout (2013:210), the report should be based on a thorough assessment of important issues such as the juvenile's family circumstances, childhood development, behavioural patterns, and maturity.

P3 expressed that

> *"In case of children, we want to understand their upbringing, their family fabric. Were there other factors that contributed to the commission of the offence, upbringing of the child, was the child exposed to any outward influence, characteristics and all those sort of stuff? Any aspects that would be relevant for the court to be able to have a better picture of whether when imposing sentence".*

Criminologists working with juveniles need to be able to understand and apply the legislation (and Children's Act 38 of 2005) and child development factors, which need to be taken into consideration in a preliminary inquiry or pre-sentence report.

The participants expressed the need for experts, especially in cases involving children. P9 stated "*for instance most of the time in matters affecting children*" and P4 supported by saying "*As far as I am concerned, because especially if you deal with children*".

The Child Justice Act 75 of 2008 aims to set up a system for children who are in conflict with the law. Therefore, children below 18 years of age who are suspected of committing a crime, will not be dealt with in terms of the normal criminal procedure, which is used for adults, but the child justice process will be followed. Criminologists can use their knowledge of the legislative framework to assist the criminal justice system in the implementation of child justice procedures, which are considered from the preliminary inquiry to the post-sentencing phase of a child in conflict with the law.

5.4.2 Sub-theme 3.2: Cases involving Women

South African law reforms have ensured women's rights to dignity, safety, and security by adopting these principles in several laws relating to equality and freedom from violence.

P3 lamented

> *"In some cases you will find your woman accused has children, and might be a breadwinner. Defence filed; it is imperative for the court to have a report before imposing a sentence."*

If the sentence prevents a primary caregiver from providing the necessary care to their children, they are likely to suffer harm (Lauwereys, 2020: 167.). P10 confirms by stating

> *"You cannot sentence a primary caregiver. Now 99.9% of primary caregivers are the mothers. You know the mother figure."*

In summary, Theme 3 explored the role of criminologists in considering vulnerable groups in the criminal justice process, as expert witnesses. It was found, and largely supported by literature, that criminologists can highlight the needs of women and children in the criminal justice process. In order for criminologists to contribute to the

total acknowledgment of these vulnerable groups in the broader action system, the functional imperative of integration has to be applied in assisting in implementing policy to enable the protection and advocacy of these groups in the current criminal justice system. It is, however, the opinion of the researcher that all marginalised groups can be advocated for by criminologists as experts in court.

5.5 Theme 4: Discussion of serendipitous findings

Due to the qualitative nature of this study, the following section is a presentation of the additional findings which emerged during the data collection phase**.**

5.5.1 Challenges in attaining criminologists as experts in court

According to the judicial norms and standards, judges are expected to deliver judgements within three months of the first hearing. P5 expressed

> *"The Chief Justice expects matters in the regional court to be disposed of within nine (9) months from the date of first appearance, that includes your investigation stage, the trial stage and the sentencing stage. Now if I had to get a criminologist for every case that I dealt with, it would be chaos."*

According to Tiley (cited in GroundUp, 2019: 1), there is a lot of pressure on presiding officers to hand down decisions quickly without wanting to compromise on the quality of the decisions.

P7 is of the opinion that

> *"I personally promote efficient and speedy finalisation of phases" and P10 extends this by stating, "Court time is expensive time, lots of matters to deal with, it is in the interest of everyone that matters be dealt with swiftly."*

This is in line with the sentencing objective, namely deterrence, as it is effective only when there is certainty, severity, and celerity; celerity being the speed at which punishment follows a crime (Pratt & Turanovic, 2018: 192.).

A well-functioning judiciary is a central element of civil society. It is the sole adjudicator over political, social and economic spheres. In South Africa, despite the many programmes and projects in place designed to solve the problem, a delay in the administration of justice still remains a problem (Obiokoye, 2005:3).

P2 is of the opinion that

> *"Absolutely, there is a need [for criminologists] and if ever there are resources [time and finances] to be applied, that would be it."*

P5 believes that the major challenge lies in the State budget:

> *"I think it is costs, the State just doesn't have enough resources to ensure that such experts are available in each and every case, especially where the conduct of a person is in question."*

According to P2

> *"[The] State does not have the money and the only people that could afford him [expert] are rich people. If I could have him [the expert] for every case, I would..."*

According to P4 the reason why social science experts do not frequent his court is

> *"Cost, behavioural scientists are expensive to have, I don't know why. You should work for the State, you shouldn't be expensive."*

P10 agrees with this as he says,

> *"It's expensive to employ them [experts], it's an extra cost on the State and the whole budget of the judiciary."*

Attaining qualified experts in the field of forensic criminology is challenging also because they are not yet hired as entities of the state as with social workers. The Criminal Procedure Act 51 of 1977 and other such policies need to redefine the job descriptions and qualifications of those experts currently working in the criminal justice system as probation workers. Such a change will lead to more criminologists with the correct skills to partake in more cases as employees of government departments. However, this will require that the professional board be established and functional to manage ethics related to these forensic experts.

As discussed in Chapter 2.4, in the case of forensic criminologists, training is an important process in achieving the theoretical state of equilibrium. All actors must be taught what the expectation of their roles is. In order to achieve success, the criminal justice system is dependent on various actors interacting with each other. Ascertaining the forensics' role in the system requires preparation and care on behalf of the forensic

criminologist so that the information shared is objective and concise. It is not enough for them to know what is expected of them; they must also be equipped to fulfil those expectations.

5.5.2 Means by which criminologists can be more accessible to the court

In trying to understand why participants experience an active lack of criminologists in court, the researcher asked the participants to explain how criminologists could be more accessible to the court. Below are a few of their responses:

P2:

> *"I'll have to call you as a witness, that's the only way, or by inviting them to our seminars, the colloquium, human rights and stuff and we can invite criminologists."*

P3:

> *"I think awareness. The prosecution or our courts to be made aware of the availability of these services. I believe, in my opinion lack of awareness, besides of lack of awareness, what role criminologist can play. I think it boils down to awareness, what role you folks can play in assisting the court, whether during the trial itself, that is pre-conviction or after conviction."*

P4:

> *"Experts are more the exception than the rule in our courts and I would think that we should've progressed far enough to make it the rule rather than the exception. I would like to see the guidelines being implemented, where we have a social scientist in court everyday so that they can attend to cases."*

P5:

> *"For the past 17-18 years that I have been on the bench, I've never called for an expert, I have never called for a criminologist. That has always been the parties down there that would seek the evidence of such. I know that is wrong, we should be more proactive and get the assistance from outside. Otherwise we are not doing justice".*

P6:

> *"Each and every criminal court should have a criminologist, there should be a permanent appointment. I don't know under which department you will fall under as*

> *you need to remain objective, I would say that you are safest at the University, in academics. Like they did with the legal clinic, maybe create a clinic there for criminologist. We will make history in South Africa if we could have a criminology clinic to assist the courts."*

P7:

> *"Alright, there is only one thing and that is awareness. If I am not aware of a criminologist that can contribute to a specific case, I won't have the knowledge to contact that person. Awareness through social networking and by advocating for the use of criminologists and by virtue of mere introduction like you have come this morning."*

P9:

> *"Well what's wrong in saying to the police but why don't you [SAPS] guys say we [criminologists] must also go and testify in your [SAPS] matters either in mitigation or aggravation of sentence."*

The responses indicate that these are the various avenues for criminologists to gain access to the criminal justice system and for the court to interact with them. The researcher is of the opinion that further research into the appointment of criminologists in the criminal justice system is necessary. This research could include questions regarding which department would appoint criminologists where the various entities of the criminal justice system may gain access to their expertise. Research could include questions regarding objectivity and whether it is best for the criminologist to remain independent and not be hired by the criminal justice system in order to maintain objectivity.

Goal attainment is the functional imperative that refers to the need of all systems to formulate long-term goals that guide social activities (Ritzer, 2007:69). In this regard, the policies that govern criminal justice practices need in be adapted in order to include the regular participation of criminologists in the criminal justice procedure on all levels.

5.6 Conclusion

This chapter was a discussion of the empirical findings on presiding officers' expectations of the criminologist as an expert witness. It included quotes from participants as well as literature in support of the data. Themes, sub-themes, and

categories developed in line with the objectives of the study and in coinciding with the questionnaire. The various roles identified by participants pertaining to the role of criminologists as experts in the criminal justice system relate to the integration imperative of Parsons' structural-functionalist theory, and were also described in Labuschagne (1992). In ensuring that the sentencing objectives are met, as discussed in the findings, the functional imperative of goal attainment could be met by the criminologist as an actor in the system. The findings also indicate that criminologists should be able to interact and work with other professionals in the legal arena; in doing so, the functional imperative of adaptation could be met. Latency can only be met once a professional board that regulates the actions and academic training of criminologists is indeed established; the findings indicate that this will be beneficial in building a trusting relationship with the criminal justice system.

CHAPTER 6
RECOMMENDATIONS AND CONCLUSIONS

6.1 Introduction

Based on the findings presented in the previous chapter, it is now possible to ascertain the extent to which the objectives of this study (see chapter 1.8) have been realised. In concurrence with the findings presented in Chapter 5 and grounded on the shortcomings identified as gaps in the body of knowledge, recommendations for further research can be formulated.

6.2 Conclusions pertaining to the fulfilment of the objectives of this study

The focus of the subsequent discussion is on the evaluation of the fulfilment of the objectives of the study, followed by recommendations for further research in order to expand on the current body of knowledge.

6.2.1 Conclusions pertaining to the role of the criminologist as an expert witness in collecting, presenting, and interpreting evidence for the court

The first aim of the study entailed an exploration of the role of criminologists as expert witnesses in court. Emphasis was placed on the findings which demonstrate that the potential role of criminologists in collecting, presenting, and interpreting evidence is largely placed in their ability to serve as a source of information to presiding officers. The findings reveal that in addition to compiling profiles of offenders, criminologists can orientate presiding officers on crime typologies, they can collate existing data and statistical information to provide presiding officers with a holistic understanding of each case individually, and ultimately assist presiding officers in the assessment of rehabilitation prospects of offenders. Furthermore, criminologists can play a crucial role in assisting presiding officers in making decisions by providing them with reports at various stages of the criminal justice process. Also, the potential role of criminologists in providing vital community information about criminal justice is explored. As indicated by the theoretical framework, forensic criminologists will need to adapt to the needs of the social system (the criminal justice system) across all levels of the criminal justice process, including those of presiding officers. Therefore, in exploring the potential roles of forensic criminologists, Parsons' structural-functional

imperatives of adaptation and goal attainment were met. Herewith the first aim of the study was realised.

6.2.2 Conclusions pertaining to the characteristics of the criminal event that criminologists as expert witnesses are expected to report on

The second aim of the study required the identification of the characteristics pertaining to the criminal event that criminologists as expert witnesses were expected to report on. The focus was placed on the fulfilment of the objectives of punishment, namely; deterrence, prevention, retribution (as atonement and the restoration of the disturbed legal balance), rehabilitation and restorative justice. The findings reveal that when considering the objectives of punishment, the court needs to strike a balance between the legs of the Zinn Triad, with close consideration of the needs of the victim, not merely as a factor under the umbrella of the interest of society.

The findings also indicate that the role of the criminologist is to assist the court to consider all relevant facts, factors and circumstances pertaining to the criminal event, to reflect on the holistic impact of the offence and the need for the protection of society, to help the court understand the offender's motives for committing the offence through providing a pre-sentence report, and to assist the court in understanding the direct impact of the offence on the victim by providing a Victim Impact Statement.

Parsons' structural-functional imperative of latency is an analytical aspect of action that aims at maintaining the general system pattern; as such, it is the fundamental source of tension that generates action. Latency was realised in this aim through the findings which express the expectation related to the skills and knowledge presiding officers expect from a forensic criminologist. This can assist in laying out a blueprint for the educational needs of scholars in the field, and these guidelines can be beneficial in the ongoing efforts toward the establishment of the professional board for criminologists in South Africa. According to Naudé (2008), despite the fact that most professional qualifications are based on a first degree (typically a four-year programme), some criminologists maintain that a master's degree is needed for criminologists to provide expert knowledge to the court. However, perceptions of participants (magistrates and judges) indicate that a master's qualification is not a pre-requisite for an expert witness and emphasise primarily the need for experience in the issue related to the case at hand.

Maintaining equilibrium is addressed via the necessary changes that will need to occur in including and defining the roles of forensic criminologists in the Criminal Procedure Act 51 of 1977. In order to incorporate the employment of forensic criminologists on the various levels of the criminal justice processes, it is important also to advocate for the use of criminologists as experts by educating other role players in the system about the various functions of forensic criminologists.

Therefore, it is the opinion of the researcher that the visibility of criminologists in the criminal justice system needs to be enhanced. The second aim of the study was thus realised.

6.3 Limitations of the study

The sample size can be viewed as a limitation of the study; however, due to the qualitative nature of the study, generalisation is not a related requirement. (Vasileiou, Barnett, Thorpe & Young, 2018: 9). Arguably, the rich and in-depth data gathered from the few participants has the potential to inform further research into presiding officers' expectations of the criminologist as an expert witness in South Africa. Another limitation of this study is that the research was conducted with magistrates and judges from only the Free State province and was thus not inclusive of all the perceptions of magistrates and judges across the country.

An exposition of recommendations for future research will be discussed in the following section.

6.4 Recommendations for future research based on findings

The current study has led to an identification of gaps in research in the current body of knowledge. This section will outline the recommendations for future research.

6.4.1 Expectation for all criminologists to have acquired certain skills

Findings support the standardised fundamental skills training from undergraduate studies in criminology throughout South Africa. As stated by Naudé (2008), the Bachelor of Criminology is a qualification that has included a strong general formative component in the humanities/social sciences. This training must include a general orientation on crime typologies, an introduction to legislative frameworks, and an outline of the criminal justice system, as revealed as important skills in the findings.

In order to professionalise criminology, a standardised curriculum throughout South African universities will assist in ensuring that all criminologists will be trained equally, and therefore the creation of professional ethics may emerge. An enforced professional code of ethics would improve the quality of service rendered by criminologists. Professionalisation would allow criminologists to play a larger, more structured role in the pre-trial, trial, and post-trial phase. However, the role of a criminologist is not only valuable in the criminal justice system but in the corporate sector as well, and it is recommended that research on the potential roles of a criminologist in the corporate and NGO space be conducted.

Criminologists need to be trained in the justice principles which are applied during court proceedings so that these principles can be used correctly in court reports and when delivering testimony as an expert witness. In the same way that criminologists need training in the legal aspects, court personnel also need training in criminological principles in order to accurately determine when to request the expertise of a criminologist and what value such expertise can add to their case. The researcher, therefore, recommends undergraduate studies include training in elements of the law such as criminal law and the law of evidence, and it is also recommended that criminologists make an effort to be part of the training workshops for presiding officers in their immediate locations. This can be achieved by the constant engagement between criminology networks and judiciary networks. Each court has a training liaison through the NPA who is responsible for ensuring that presiding officers and prosecutors participate in workshops to learn about factors that influence decision-making in court and interpretation of evidence.

6.4.2 Integration of criminologists on all levels of the criminal justice system

Although criminologists work in the various factors of the criminal justice system, the majority are still in the academic profession (Human, 2018: 310). It is important that more research is focused on the role of the criminologist throughout the criminal justice system. In order to have a truly integrated criminal justice system, there needs to be more professionals that can comfortably navigate through the various phases and entities of the criminal justice system in order to provide a valuable service in the sharing of information and tracking of victims and offenders, as well as the tracking of the success of services rendered by the criminal justice agencies. In all social systems, role players must be able to work together in order for the system to attain its goals.

The criminologist is an ideal role player to ensure the integration between the various components that make up the South African criminal justice system. From the SAPS to Corrections, criminologists play an important role in emphasising the role of victims, society, and offenders in the processes of this system. Therefore, it is important to ensure that future research continues to acknowledge the role of a criminologist as an integral part of the criminal justice system and their integration of legal and criminological principles as expert witnesses.

Further research may also be conducted in the other provinces of South Africa to determine whether the presiding officers' expectations and requirements of criminologists as expert witnesses are similar in the different provinces. Moreover, research needs to be conducted to identify further how the relevant professions and criminology can be integrated so that the clients (offender and victim) receive the best possible services.

6.4.3 Retaining criminologists in the courtroom

Experts are perceived to be expensive and with the backlogs in the courts, reports from experts are not recommended for all criminal cases as they are time-consuming. The exploratory findings show that presiding officers are not confident that the prosecutors know which experts to consult, these findings also reveal that people who can afford experts are scarce and would rather not add to the cost of their legal representatives. These findings also focus on the extent to which the criminal justice system is financially constrained and would rather opt for the experts already available

to them, such as probation officers from correctional services or social workers from the Department of Social Development.

It is therefore recommended that further research be conducted towards the permanent employment of criminologists in the South African criminal justice system. It is also recommended that research is conducted into which government department will be best suited to house forensic experts in such a manner that their professional integrity and ethical conduct are not compromised when called to provide both Victim Impact Statements and pre-sentence reports.

6.5 General recommendations

The following recommendations are put forth:

1. Research into the various roles of the criminologist beyond the criminal justice system needs to be explored, in both the corporate and non-governmental organisation spaces.
2. The visibility of criminologists in the criminal justice system needs to be enhanced.
3. The Criminal Procedure Act 51 of 1977 needs to be more extensively inclusive of the skilful contributions the criminologist can make on the various levels of criminal procedure.
4. All criminal justice agencies (South African Police Services, Department of Justice and Constitutional Development, and Department of Corrections Services) should have a clear purpose including the employment of criminologists with definitive role expectations.
5. Role players within the criminal justice system, e.g. presiding officers, need training on the skills available to them when they consult criminologists and when they can be called to assist in cases.
6. It would be beneficial that future research focus on what criminologists in South Africa believe they can contribute towards the various stages of the criminal justice system and to lay out the limitations related to their contributions.

6.6 Concluding Remarks

In closing, the current study has provided a better understanding of the need for criminologists in court and at various levels of the criminal justice system. The presiding officers have numerous requirements and expectations which reveal guidelines for forensic criminologists. Based on the review of existing literature and prior research, as well as the findings obtained in the current study, it became apparent that forensic criminologists are viewed as valuable members of the criminal justice system. The definitive identity of the criminologist lies in the various roles they play, depending on which part of the criminal justice procedure they are operating within. However, it is clear that more criminologists are needed as active role players in the court; many of the participants not only called for the inclusion of their expertise in criminal cases, but in civil cases as well. It is important to highlight the participants' responses relating to being more aware of criminologists and how to retain them as expert witnesses in cases.

Although this study cannot be generalised, it is envisioned that forensic criminologists will be more accessible to the court and ultimately will play various roles in criminal justice as a result of a better understanding of their role in an integrated criminal justice system. The ultimate aim is to encourage the continued effort to professionalise criminology in South Africa.

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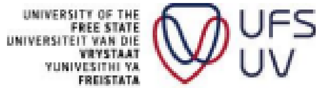
APPENDICES

Appendix 1: Interview Schedule



Appendix 1

Interview schedule: **Expectations of presiding officers in the South African criminal justice system of the criminologist as an expert witness.**

Time of interview:
Date:
Time:
Place:
Interviewer:
Position of Interviewee:
Summary of work experience:

Questions:
We are interested in finding out your opinion on the criminologist as an expert witness.

1. What role can a criminologist play in the CJS?
2. Name and explain the kind of cases that criminologists could be useful in assisting the court in making an informed decision?
3. In your opinion what makes the information presented by experts relevant?
4. Do criminologists paint a holistic picture of the criminal event? The consideration of the aims and objectives of punishment.
5. Holistic interpretation of evidence, can experts assist court? Please explain why?
6. How does the court use the information presented by experts to assist in decision-making?
7. In what way can a criminologist assist the court to promote fairness and justice for all offenders? (what is fairness and justice?)
8. From your experience, what can you recommend that the Government can do to assist the CJS in attaining its goal more efficiently, with the assistance of expert witnesses?
9. In your opinion is there any significant information that you would like to discuss further.

205 Nelson Mandela Drive/Rylaan, Park West/Parkwes, Bloemfontein 9301, South Africa/Suid-Afrika
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Appendix 2: Information Sheet

UNIVERSITY OF THE FREE STATE
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YUNIVESITHI YA FREISTATA
UFS UV

APPENDIX 2

RESEARCH STUDY INFORMATION SHEET

DATE

August 2018

TITLE OF THE RESEARCH PROJECT

EXPECTATIONS OF PRESIDING OFFICERS IN THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM OF THE CRIMINOLOGIST AS AN EXPERT WITNESS.

PRINCIPLE INVESTIGATOR NAME(S) AND CONTACT NUMBER(S):

Kelebogile Boleu *2007107366* *0726557297/051 401 3679*

FACULTY AND DEPARTMENT:

The Humanities Faculty
Department of Criminology

STUDYLEADER(S) NAME AND CONTACT NUMBER:

Soomaya Khan (0881902)
0766922981/ 0514012726

WHAT IS THE AIM / PURPOSE OF THE STUDY?

The study aims to explore the expectations of presiding officers with regard to the testimony of criminologists as expert witnesses.

WHO IS DOING THE RESEARCH?

My name is Kelebogile Boleu, a Criminology Masters student studying at the University of the Free State, Bloemfontein Campus. I am interested in learning about expectations of presiding officers with regard to the testimony of criminologists as expert witnesses. I am interested in asking you some questions in light of your experience in making a decision on criminal cases with the assistance of experts.

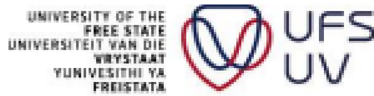
HAS THE STUDY RECEIVED ETHICAL APPROVAL?

This study obtained approval from the Research Ethics Committee of University of the Free State.

Approval number: *UFS-HSD2017/1501*

5 Nelson Mandela Drive/Rylaan, Park West/Parkwes, Bloemfontein 9301, South Africa/Suid-Afrika
). Box/Posbus 339, Bloemfontein 9300, South Africa/Suid-Afrika, T: +27(0)51 401 9111, www.ufs.ac.za

Appendix 3: Certificate of Consent



APPENDIX 3

CONSENT TO PARTICIPATE IN THIS STUDY

I, ____ (participant name), confirm that the person asking my consent to take part in this research has told me about the nature, procedure, potential benefits and anticipated inconvenience of participation.

I have read (or had explained to me) and understood the study as explained in the information sheet. I have had sufficient opportunity to ask questions and am prepared to participate in the study. I understand that my participation is voluntary and that I am free to withdraw at any time without penalty (if applicable). I am aware that the findings of this study will be anonymously processed into a research report, journal publications and/or conference proceedings.

I agree to the recording of the *insert specific data collection method*.

I have received a signed copy of the informed consent agreement.

Full Name of Participant: ____

Signature of Participant: ______________________________________ Date: _____________________

Full Name(s) of Researcher(s): ____

Signature of Researcher: ______________________________________ Date: _____________________

05 Nelson Mandela Drive/Rylaan, Park West/Parkwes, Bloemfontein 9301, South Africa/Suid-Afrika
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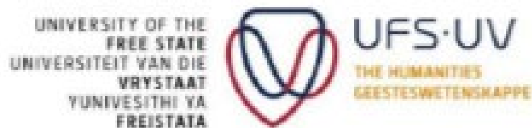
Appendix 4: Ethical Clearance Approval Letter



Faculty of the Humanites

08-Jun-2018

Dear **Ms Boleu**

Ethics Clearance: **Expectations of presiding officers in the South African Criminal Justice System of the criminologist as an expert witness.**

Principal Investigator: **Ms Kelebogile Boleu**

Department: **Criminology (Bloemfontein Campus)**

APPLICATION APPROVED

With reference to your application for ethical clearance with the Faculty of the Humanities. I am pleased to inform you on behalf of the Research Ethics Committee of the faculty that you have been granted ethical clearance for your research.

Your ethical clearance number, to be used in all correspondence is: **UFS-HSD2017/1501**

This ethical clearance number is valid for research conducted from 08-Jun-2018 to 08-Jun-2019. Should you require more time to complete this research, please apply for an extension.

We request that any changes that may take place during the course of your research project be submitted to the ethics office to ensure we are kept up to date with your progress and any ethical implications that may arise.

Thank you for submitting this proposal for ethical clearance and we wish you every success with your research.

Yours Sincerely

Dr. Asta Rau
Chair: Research Ethics Committee
Faculty of the Humanities

Dekaanskantoor: Fakulteit Geesteswetenskappe
Office of the Dean: Faculty of the Humanities
T: +27(0)51 401 2240, E: humanities@ufs.ac.za
Flippiegroenewoud Building / Gebou, FGG106
205 Nelson Mandela Drive/Rylaan | Park West/Parkwes, Bloemfontein 9301 | South Africa/Suid-Afrika
P.O. Box/Posbus 339 | Bloemfontein 9300 | South Africa/Suid-Afrika | www.ufs.ac.za

Appendix 5: Gatekeeper's Permission

OFFICE OF THE REGIONAL COURT PRESIDENT
FREE STATE DIVISION

Private Bag X20583, Cnr President Brand & St Georges street, Bloemfontein 9300
Tel: (051) 506 1381/83 Fax: (051) 447 3762 Fax2Email: 0866294295 Email: ZMbalo@justice.gov.za

15 June 2017

TO WHOM IT MAY CONCERN

Dear Sir/ Madam

This is to confirm that Ms. Kelebogile Olivier has been granted approval to conduct a research with Bloemfontein Regional Magistrate.

Yours Sincerely

Ms Z MBALO
REGIONAL COURT PRESIDENT
FREE STATE: DIVISION

Appendix 6: Third-party release of information form

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UFS UV

APPENDIX 6

THIRD PARTY RELEASE OF INFORMATION FORM

TITLE OF THE RESEARCH PROJECT:

Expectations of presiding officers in the South African criminal justice system of the criminologist as an expert witness.

I ____, hereby authorize the Regional Court President, Free State Division, to release my contact information for the purpose of the research study.

This information may be released to the following individual(s):

PRINCIPLE INVESTIGATOR NAME AND CONTACT NUMBER(S):

Kelebogile Boleu *2007107366* *0726557297/0514013697*

FACULTY AND DEPARTMENT:

The Humanities Faculty
Department of Criminology

STUDYLEADER(S) NAME AND CONTACT NUMBER:

Soomaya Khan (0881902)
0766922981/ 0514012726

Research Co-ordinator: Office of the Dean: Humanities:
Chane Vercuile
051 4017083
VercueilCC@ufs.ac.za

Signature of Participant________________________ Date: ____________________

205 Nelson Mandela Drive/Rylaan, Park West/Parkwes, Bloemfontein 9301, South Africa/Suid-Afrika
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Appendix 7: Turn-it-in Originality Report

Test

ORIGINALITY REPORT

9%	8%	4%	5%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

#	Source	Type	%
1	Submitted to University of the Free State	Student Paper	2%
2	scholar.ufs.ac.za	Internet Source	1%
3	hdl.handle.net	Internet Source	1%
4	uir.unisa.ac.za	Internet Source	1%
5	repository.up.ac.za	Internet Source	1%
6	silo.pub	Internet Source	<1%
7	www.unodc.org	Internet Source	<1%
8	unafei.or.jp	Internet Source	<1%
9	Submitted to University of South Africa	Student Paper	<1%