
Do Children Need Lawyers in the Children's Courts?

by: Prof. F.N. Zaai

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Foreword

"Do Children need Lawyers in the Children's Courts?" Parliament recently passed an amendment to the Child Care Act which provides for the possibility of utilising the services of lawyers in children's courts, so this is the perfect time for bringing up the issue. This publication highlights various aspects of the topic, and the presentation and the discussion are just as interesting and important as the recommendations. It should be noted that the report is based on comprehensive field studies and is the first fieldwork on children's courts in the country although these courts have been in existence for nearly 60 years. The report does not only focus on the role of a lawyer but analyses the roles of the social worker and the commissioner as well.

As a representative of an international organisation working for children's rights, I find it to be of utmost importance that all proceedings, preparations and follow ups are carried out according to what is stated in the UN Convention of the Rights of the Child, which was ratified by South Africa in June 1995. The content and intentions as expressed in that document must guide all our actions as well as our attitudes. The best interest of the child must always be primarily considered when decisions are made about the child's future. I would like to generalise and say that normally we do not listen to the children themselves. Again from a Rädde Barnen perspective, "Let the child be heard!" in the courts, directly and indirectly. Not only on conditions established by adults but also from the perspective of the child. Therefore adults assisting children in children's courts do need special training and special skills.

"Do Children need Lawyers in the Children's Courts?" Children need to be heard and they need assistance to be heard. The amended Child Care Act gives the possibility of additional assistance. The publication is a significant contribution in the debate on how to best cater for our children and is of importance to all who are working with and for children.

Lennart Nilsson
Rädde Barnen (S.A.)
Swedish Save the Children

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Chapter 1

Introduction

The terminology, 'child care proceedings,' has been used rather broadly in this study to cover the types of matters currently being dealt with in the children's courts but which may in future be taken over as part of the workload of a new network of family courts. Child care proceedings are, in a sense, neglected terrain. In its *National Plan of Action for the Children of South Africa*, the Department of Justice recently noted that very little research has been done on the work of the children's courts. It was also accepted that the children's courts have 'an extremely low status in relation to other structures of the judiciary'.¹ It is hoped that the data and findings contained in this study will help to throw more light upon the functions of the children's courts, and thus contribute to measures that will result in greater recognition and standing for a vitally important institution. More especially, it is hoped that the many inadequacies revealed by the research upon which this study is based will result in the implementation of effective measures that will provide much greater assistance and protection for children who are subject to care proceedings.

It should be noted that the primary focus of this study has been the question of how to achieve effective representation for children in civil proceedings which arise in terms of the Child Care Act 74 of 1983.² Section 28(1)(h) of the South African Constitution of 1996 very helpfully gives a new prominence to the representation of children in all kinds of civil proceedings. But, by setting up the rather broad ground of "if substantial injustice would otherwise result," it obviously creates a need for the development of new guidelines concerning when, exactly, children should be entitled to a representative child advocate in court. Similarly, in Section 8A of the Child Care Amendment Act 1996, it has been proposed that

children may have representation when this is in their best interests.³ Again, new guidelines based upon research data are needed in order to implement this in an effective, cost-efficient manner. It is hoped that this study will provide the information which will be needed for the development of such guidelines. In the conclusion, chapter 13, specific recommendations are given in regard to who should represent children in care proceedings and when such representation should be available.

¹ Department of Justice: *National Plan of Action for the Children of South Africa and the Role of the Department* (File 8/6/Kind/1 of 19 April, 1996) at p14.

² These are usually adoption, foster care or child-removal cases. The latter involve a decision about whether the child should be removed from her present guardian or custodian (see, in particular, sections 13-15 of the Child Care Act 74 of 1983).

- ³ Section 8A. of the 1996 Amendment Act (adopted by the National Assembly on 30 October 1996 and by the Senate on 6 November 1996) provides:
- '8A. (1) A child may have legal representation at any stage of a proceeding under this Act.
- (2) a children's court shall inform a child who is capable of understanding, at the commencement of any proceeding, that he or she has the right to request legal representation at any stage of the proceeding.
- (3) a children's court may approve that a parent may appoint a legal practitioner for his or her child for any proceeding under this Act, should the children's court consider it to be in the best interest of such child.
- (4) a children's court may, at the commencement of a proceeding or at any stage of the proceeding, order that legal representation be provided for a child at the expense of the state, should the children's court consider it to be in the best interest of such child.
- (5) if a children's court makes an order referred to in subsection (4), the clerk of the children's court shall request the Legal Aid Board, established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), to appoint a legal practitioner to represent the child.
- (6)(a) after the appointment of a legal practitioner referred to in subsection (5), the children's court shall refer the matter to the Legal Aid Board for evaluation and a report thereon.
- (b) the Legal Aid Board shall, subject to the provisions of the Legal Aid Guide referred to in section 3A of the Legal Aid Act, 1969, evaluate the matter and compile a report thereon.
- (c) the report shall be in writing and shall include-
- (i) particulars relating to the financial circumstances of the child concerned;
- (ii) particulars relating to the financial circumstances of the parent or parents or guardian, as the case may be, of the child concerned;
- (iii) whether any other legal representation at the expense of the State is available or has been provided; and
- (iv) any other particulars which, in the opinion of the Legal Aid Board, have to be taken into account.
- (d) the report shall be submitted by the Legal Aid Board to the clerk of the children's court, who shall make a copy thereof available to the children's court
- (7) after the children's court has considered the report the children's court may order that the cost of the legal representation be recovered from-
- (a) the parties or any one of the parties to the proceeding in question
- (b) the parents or any one of the parents of the child concerned; or
- (c) the guardian of the child concerned'

Chapter 2

Aims and Methodology of the Study

This study is based primarily upon field rather than literature research. The intention was to draw original, up-to-date and validly-derived data that would be national in scope, but also capable of showing regional or urban-versus-rural differences. The focus of the data to be accumulated is the current needs of children who appear before the institution presently known as the children's court. More specifically, the intention of this study has been to discover and address, in a practical manner, the needs of such children in regard to representation, advocacy and related resources. These aspects were identified as significant in a more general study of the children's courts undertaken by the author and Dr. C.R. Matthias in 1995. Essentially, the aim of this second study has been to generate data that will assist in the appointment of effective court representatives for children who are the subject of care proceedings. Such representatives are needed for two reasons: firstly, in order to reduce the secondary, systemic trauma which many children presently suffer as they undergo children's court processes; and secondly, to help ensure a correct placement decision for each child who comes before the children's court.

Three different questionnaires were administered to three different groups of respondents. The main group of respondents was comprised of 42 commissioners of child welfare. These respondents provided a rich source of data and an internal impression of the little-known workings of the children's courts. In order to test the accuracy of this impression and cover additional aspects, it was deemed necessary also to obtain an external view; and this was provided by the second group of respondents, drawn from social workers with at least three years of experience in the children's courts. To this group of 'external observers' was added one private attorney with a specialist children's court practice. The third group of respondents were all family advocates. At the present time, family advocates very rarely appear in the children's courts. However, they were added as a group of respondents for two reasons. Firstly, in order to provide the benefit of their specialist expertise in civil proceedings child-advocacy, designed to secure an appropriate future placement for the child. And secondly, in order to evaluate their future eligibility to serve as

child representatives in the children's courts or in care proceedings in the envisaged family courts.

2.1 How the Samples were Derived

A list of the telephone numbers of all magisterial offices in South Africa was obtained from the Department of Justice. Three were then randomly selected from each of the nine provinces. None of the major urban centres was captured by this means. These were therefore purposively added to the sample, both to provide a comparative base, and so that the study could draw upon the relatively greater expertise of the big-city commissioners. Commissioners in the major urban centres are the only full time commissioners in South Africa, and their greater caseloads give them a depth of experience which means that they are usually well-placed to offer suggestions for reforms. It was also considered important to give extra attention to the needs of black children in deprived parts of the country, and so additional interviews were conducted with commissioners in former 'homeland' jurisdictions⁴ to bring the total up to the target of 40 interviews. Two questionnaires which appeared to have been lost in the post (and were therefore substituted for by other interviews) eventually were received and this brought the total up to 42. For a list of the names of the commissioners interviewed, together with the date of the interview and the jurisdiction served by the commissioner, see Appendix I, below. Appendix IV indicates the considerable variation in caseloads at different jurisdictions from which data was drawn.

It should be noted that most of the commissioners had served in several magisterial jurisdictions over the years, and so the geographic experience upon which the study draws is actually greater than that indicated by the list. All commissioners in the list were telephonically or personally contacted by the researcher, and all but eight elected to answer the questionnaire by means of direct conversation, with the researcher recording their responses. The other eight commissioners filled out the questionnaire themselves. The preponderance of *vive voce* responses

⁴ 'Homeland' jurisdictions refer to those areas which, under apartheid, were declared 'independent' in accordance with the ideology of separate development. They are under-resourced and are now consequently amongst the poorest areas in the country.



allowed for considerable discussion around the questions posed.

The second group of respondents was comprised as follows: the Department of Welfare and Population Development provided a list of names and contact numbers of nine regional representatives. Each of these were contacted and asked to provide the names of two social workers (not necessarily from the Department) who had at least three year's experience in the children's courts. The researcher then randomly chose one of the two names for completion of a questionnaire. The purposive component of this sample was provided by the addition of two black social workers who had considerable experience in strife-torn KwaZulu-Natal, and one of the few attorneys with a specialist children's court practice (in Pretoria). A list of the persons interviewed in this group can be found in Appendix II.

The final group of respondents, the family advocates, was drawn as follows: the acting chief family advocate was first approached for permission to administer a questionnaire at all offices of family advocates. He kindly provided a list of names and telephone numbers of all family advocates. At each office, the 'Head of Office' was interviewed plus one other family advocate chosen (on grounds of experience) at the suggestion of the Head of Office. Where a satellite office was also serviced, a third family advocate was randomly selected for completion of the questionnaire. A list of the family advocates interviewed can be found at Appendix III.



Chapter 3

Do Children need a Representative in the Children's Court?

One myth that perhaps needs to be dispelled at the outset is that children's court proceedings are necessarily always simple matters where merely administrative measures are implemented, so that there is no need for children to have representatives. At the time of the study, one commissioner informed me that his assistant-commissioner was in the middle of a matter in which there were lawyers on both sides and which had already taken five days. Twelve other commissioners cited hard-fought, complex matters as not unusual. Mr. B. Van der Westhuizen, a Pretoria attorney with a specialist children's court practice, cited a recent children's court matter which had involved two attorneys and two advocates, and had taken ten days of court time. For too long, the children's court has been treated as a quasi-court, and its resources and status have suffered accordingly. It is clear that complex or bitterly disputed matters with grave potential consequences for children are common in many jurisdictions. The argument that proceedings in the children's court are always too simple and unimportant for the child to require a representative therefore does not hold as a general contention.

A major problem in nearly all children's courts is the dual role which has been forced upon commissioners because of the absence of children's court assistants. Not only do commissioners serve as adjudicating officers, but also, they must carry out many of the vital functions which, in terms of the Child Care Act, were envisaged as those of the assistant or a privately-appointed representative of the parties. This not only overloads many commissioners, but also places them in an ethically difficult position. They are obliged to give pre-trial advice in regard to matters which are *sub judice*, decide what witnesses or exhibits should appear at the hearing, lead evidence and cross examine persons at the hearing, and then, give an impartial judgement!

A large majority (of 34 commissioners) found their dual role to be problematic. Six of them admitted that it often rendered it impossible to remain sufficiently objective. Mr. B.M. Mchunu, commissioner at

Emnambithi, mentioned that the dual role "forces upon us an active involvement in the proceedings which is not healthy because it can easily impair our neutrality". Mr. T.J. Mohohlo commissioner at Ditsobotla, stated that by performing the tasks of an assistant or representative, he lost the appearance of neutrality which is so crucial to an adjudicating officer. Also, in his view it reduced the court's credibility in the eyes of the community. According to Mr. M.N.P. Mtshali, commissioner at Pietermaritzburg, black commissioners have not just a dual, but a triple role at proceedings. This is because sometimes they must also act as an interpreter.

Furthermore, the absence of an assistant sometimes causes delays that may be prejudicial to the child. Mr. M.R. Mxesibe, commissioner at Alice, Eastern Cape, gave the example of the discovery, mid-way through a hearing, that the investigative social worker had not ascertained whether a would-be foster mother was financially eligible for a foster care grant. The case had therefore to be remanded to a future date. To guard against such possibilities, some commissioners also take on a pre-hearing role, in which they oversee the investigation of the case. Again, this simply overloads them even further and adds damage to their credibility as adjudicating officers.

It must be concluded that the multi-dimensional functions that have been thrust upon commissioners in the absence of properly-qualified assistants are most unfortunate. By providing children with proper representation, it would be possible to free commissioners of many of these functions. This would improve the credibility of the children's courts and allow commissioners to concentrate upon their proper task -that of an adjudicating officer who requires complete neutrality in order to make the best possible decision for the child.

It might be argued that, because there is in any event an investigative social worker to represent the child's best interests to the court, it is not necessary to have an additional person to act as a representative for the child. It must be understood, however, that the investigative social worker does not appear with the standing of a representative. She is merely present to answer questions and defend her report if called upon to do so. She is not trained to lead evidence or cross-examine witnesses - and nor are these her functions. Furthermore, as Mr. B. Van der Westhuizen



pointed out, it is dangerous to rely only upon the views of the social worker. Mr. Van der Westhuizen, a Pretoria attorney with a specialist children's court practice, stated that many social workers lose their objectivity because of their deep involvement during the pre-trial investigation. They become removal (as opposed to reconstruction) oriented. Sometimes, they underestimate the dangers of even temporary removal of a child from her parents. When asked to substantiate this, he cited what he referred to as the frequent occurrence of cases where a social worker recommended a temporary foster-care placement. The foster parent then bonded to the child, and strenuously opposed the return of the child to his parents at a subsequent hearing. At that hearing, the investigative social worker would tend to be unnecessarily adversarial in regard to the natural parents, in order to defend her foster placement recommendation. Mr. Van der Westhuizen also mentioned instances of social workers wishing to remove children from parents whose only shortcoming was poverty.⁵ In short, social workers, who are often overloaded with cases and work mainly alone in their investigation, need to be subjected to the additional check and balance provided by a separate child representative at the hearing.

In the study, the 42 commissioner-respondents were asked whether, on the basis of their experience, a child representative or child advocate is needed in children's court matters. TABLE I below shows the results of this survey.

TABLE I:

COMMISSIONERS' OPINIONS ON WHETHER A CHILD REPRESENTATIVE IS NEEDED

Not needed	9	21%
Needed in complex cases	12	29%
Needed in all cases	21	50%

As can be seen from TABLE I, nine (21%) of the commissioners surveyed stated that such a representative is not needed. Further analysis of the

⁵ This was corroborated by four social workers interviewed in Durban on 13 July, 1995.

negative answers provided by this minority group revealed the following: two of the group indicated that, in the rural jurisdictions served by them, "disputed cases never occur" in the children's court and thus they felt that a child representative would be a waste of time and resources. Two others justified their opinion by stating that the child is never on trial in the children's court and that, specifically, s14 of the Child Care Act focuses upon inadequacies of a parent or guardian, and not those of the child. However, it is submitted that the present parent-centred grounds are wrongly directed, and need to be made more child-centred. When this reform is achieved, the case for child representatives will be strengthened.⁶

Three other members of the minority group of negative respondents were clearly used to working on their own, and felt quite confident of their ability to protect the child without what they felt might be misguided interference from someone purporting to represent the child in a highly specialized court environment. Mr. H.F. Fritz, commissioner at Bloemfontein, made the point that the fewest possible number of adults should be present in order to keep matters informal and encourage the child. Several commissioners made the related point that the concept of an 'Inquiry' (as opposed to 'Trial') allows commissioners considerable space to 'enter the arena' as much as may seem necessary to protect the child.

With respect, one needs to treat with caution the view (held by a few commissioners) that informality and procedural space are sufficient to provide proper protection for the child. The role of adjudicating officer inevitably places distance between the commissioner and the child - especially where a matter is hotly contested. The commissioner can never be as close to the fears and hopes of a child as someone who has worked with the child before the hearing and is there specifically to represent the child.

Five of the nine commissioners who felt negatively about representation were strongly influenced by uniformly bad experiences which they had had

⁶ The Child Care Amendment Act 1996, passed after completion of this study, achieves this by inserting the child-centred removal criterion of a child being 'a child in need of care' into s14 of the Child Care Act.



of prosecutors or private lawyers who were ignorant of the provisions of the Child Care Act and who were also destructively formal and adversarial in their work style. These problems will be fully discussed in chapters 5 and 7 of this study, below. However, at this point it should be noted that past bad experiences do not really amount to a cogent reason for rejecting representation *per se*. Rather, the objection of these commissioners goes to the question of the quality of representation to be provided.

As TABLE 1 indicates, 29% of the commissioners who were interviewed felt that a child representative is required, but only in more complex cases. TABLE 2 below focuses upon this second group, and lists more specifically the indicators which they recommended as factors which, if present, would render a case sufficiently complex or problematic to require the presence of a representative for the child.

TABLE 2:

SUMMARY OF CRITERIA PROVIDED BY COMMISSIONERS WHO RECOMMEND REPRESENTATION ONLY IN MORE COMPLEX CASES

Criterion	No. of Commissioners
Child abuse cases	1
Child removal cases	1
Parent has representative	1
Case is disputed	4
Difficult Legal Issues	5

TABLE 2 indicates the responses of the 12 commissioners who considered that the child should have a representative only in certain more complex types of case. These commissioners were asked what their recommended criterion would be - or in what kinds of case, generally speaking, child representatives ought to be employed. As can be seen, one third of these commissioners recommended the relatively wide ground of having a child representative present whenever it is a disputed matter (meaning whenever there is any difference of opinion, whether expressed by the child, parent, other adult party) about the social worker's intended plan for the

child. The appointment of a private legal representative by an adult party would also almost always be an indicator of a disputed matter. It is also interesting to see that a large proportion of the commissioners in TABLE 2 saw the child representative in a traditional lawyers' mould as someone arguing difficult points of law such as, for example, questions of jurisdiction.

Ms. M. Reddy, full-time commissioner for Verulam, listed five situations which, in her submission, would usually be likely to render the need for representation particularly urgent:

- a) where a parent or other previous caregiver opposes the plan of the social worker involved,
- b) where serious child abuse is alleged,
- c) where further background investigation is needed (for example, in order to obtain key witnesses),
- d) where it is envisaged that it will be necessary to undertake intensive cross-examination of adult parties or in witnesses in order to elicit the truth,
- e) In 'tug-of-war' situations where two or more adult parties\couples contend for custody of the child.

Mr. M.N.P. Mtshali, commissioner at Pietermaritzburg (with a current caseload of about 500 children's court matters per annum), agreed that 'tug-of-war' cases require extra investigation, and gave the example of a recent case where he had had to decide between placing a black child with her mother (a prostitute) or her grandmother, with both parties in fierce competition for the child. It is thus possible to take the approach that, whilst more complex matters may not be the only ones requiring a child representative, it is possible to isolate the factors that will be likely to render that need particularly urgent.

However, the third and largest group of commissioner-respondents (21, or 50% - see TABLE 1) were of the view that a child-representative should be present in the children's court at all types of hearing. TABLE 3 gives a breakdown of the reasons put forward by this group.



TABLE 3:

COMMISSIONERS WHO RECOMMEND REPRESENTATION FOR THE CHILD IN ALL TYPES OF CASE: BREAKDOWN OF REASONS PUT FORWARD

Ground	No. of Commissioners
Creates additional safeguard	6
Can't predict complexity	4
Outcome is serious for child	5
Provides investigative assistance	7
Helps child to understand\relate to the proceedings	4
Reassures\supports child	6

The right-hand column in TABLE 3 gives the total number of commissioners who put forward each ground listed in the left-hand column. The right-hand column totals more than 21 because most commissioners in this group provided more than one of the listed grounds.

The reasoning put forward by the majority group indicated in TABLE 3, when taken cumulatively as a whole, provided a strong case for providing child representatives in all children's court matters. The first ground mentioned, that of an additional safeguard, generally conveyed the respondents' sense of the inadequacies and risks of the current procedures that may result in a wrong placement decision being taken by the court. The second ground listed as: 'Can't predict complexity' in TABLE 3 provided a telling response to those commissioners (in TABLE 2) who felt that child representatives should only be appointed in complex matters. The point was made that, in practice, it is often impossible for commissioners to tell from the pre-hearing documentation whether a case will turn out to have complex aspects or not. Examples were given of apparently simple matters which ended up taking days of court time because of complex developments which manifested themselves only during the course of the hearing. One commissioner made the further point that, in matters which may seem to be undisputed, the lack of overt opposition - for example, from a parent whose child is to be removed or

adopted - may simply be the product of language barriers, bribery or other pressures which may have been brought to bear upon the parent. Such problems are illustrative of those which may come to light if a child representative is available to investigate properly.

The third ground listed in TABLE 3 was to the effect that, even if a matter is relatively simple and quite undisputed, the decision taken (since it has come before the children's court) will inevitably be of great importance to the child's future. On the basis of the seriousness of the outcome for the child, therefore, five commissioner-respondents felt that there should be a representative in every case. As can be seen, the strongest support in TABLE 3 went to the fourth listed ground, which stressed the extra investigative powers and resources which can be brought to bear when the child has a representative. A range of considerations surfaced here, including concerns about the inadequacy of investigations by inexperienced or overworked social workers and even by commissioners themselves because of their essentially adjudicative (rather than inquisitorial) function. Sixteen commissioners were particularly concerned about language barriers as serving to alienate unrepresented children. It was felt that child representatives would have both pre-hearing investigative functions - for example, discerning and preparing key witnesses - and be properly trained in cross-examination (and gentler techniques) so as to maximise the quantity of relevant information that could be drawn from the hearing itself.

The last two grounds listed in TABLE 3 above relate directly to the feelings and input of the child who is the subject of proceedings in the children's court. It was argued by several commissioners that the presence of a child representative will serve to shelter and protect the child during those proceedings - for example, from adversarial cross-examination from an adult party who has previously abused the child, or from the legal representative of such a party. It was also suggested that the child-representative could serve as a link between the court and the child to ensure that the child (where old enough) understood the basis of the proceedings and viewed them as constructive. It is submitted that this could be particularly important where (as so often occurs in South Africa) cultural, racial and/or linguistic differences obtrude between the child and the commissioner.

The responses of the sample of external observers of the children's court

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(11 social workers and 1 attorney) were very strongly weighted in favour of a child representative. Eight members of this sample felt that a child representative was needed in all children's court cases. Three considered that the representative is needed only in more complex or disputed cases. Only one respondent in this group felt that an additional child representative is not needed.

Ms. F. Williams, a social worker based in Durban, revealed convincingly how investigative social workers are unable to fill the role of child-representative effectively:

'The investigative social worker is aware of the fact that she or her agency will need to do reconstruction work with the parents after the children's court hearing. She therefore does not want to say unpleasant or damaging things about the parents that will reduce the chances of working constructively with them later on. She is compromised by a need to keep her relationship with the parents as positive as possible. This is why we need a different person, from a different organisation, to be the child advocate at a children's court hearing. The advocate will then be completely free to speak out on behalf of the child and tell the commissioner, in no uncertain terms, what problems the parents have.'

It should be noted that Ms. Williams bases her view on considerable experience. She has been appearing in the children's courts for ten years and is currently part of a child care unit of the Department of Welfare and Population Development. Two other social workers made a further point that in some cases children need the protection of their own personal representative because they have been put under pressure to participate in fraud. It is apparently not uncommon for unscrupulous adults to try to persuade the children's court to award them a foster care grant which is not needed. A death certificate of another relative will be falsely presented as that of the parent of the child, and the applicant will offer to become a foster parent when she has no intention of carrying out this role. The child will be instructed by the parent and applicant to lie to the court in furtherance of the scheme, and only a close, trusting relationship built up with the child representative is likely to uncover the plot.

It may be concluded that professional opinions and data gathered for the study were thus overwhelmingly in support of the urgent need for children to receive representation in children's court proceedings. And the largest group of commissioner respondents (50%) and external observers (67%) provided cogent reasons for such representation in all children's court matters. The next question which logically arises, therefore, is who should provide such representation? This will be considered in the following chapters of the study.

Chapter 4

Eligibility of the Court Clerks to serve as the Representative

The purpose of this section is to evaluate the study data in regard to the appropriateness of using court clerks to represent children in children's court proceedings. The withdrawal of social workers from service as children's court assistants in 1992,⁷ left only clerks available for use as children's court assistants. In s7(2) of the Child Care Act, the role of the children's court assistant is broadly described as to 'generally assist the said court in performing its functions'. In regulation 2 of the Act it is specifically indicated that the functions of the assistant include examining or cross-examining parties or witnesses at hearings, and (with consent of the commissioner) addressing the court. So, in terms of the Act, assistants were apparently envisaged as working, *inter alia*, to represent the interests of the child at hearings; but, after 1992, only clerks were left to fulfil this function.

In the study, commissioners were asked about the use of clerks to adduce evidence and represent children at hearings of the children's court. Only two of the commissioners interviewed were still actually using a clerk in this way. One was clearly in an exceptional situation in that he was a part-time commissioner in a very small jurisdiction who had a clerk who had worked full-time in the Pretoria children's court, one of the busiest and most reputable in South Africa. As the commissioner put it: 'This clerk knows far more about children's court proceedings than I do'. The other commissioner who uses clerks to run proceedings was clear that he did not feel that this was satisfactory, and did so only because he had no one else available to serve as an assistant.

The remaining 40 commissioners were unanimous that they did not use clerks as assistants because clerks are simply not qualified to represent parties or adduce evidence at hearings. One of these commissioners who was stationed at a small rural jurisdiction made the additional point that clerks at such jurisdictions (the vast majority in the country) spend most of

⁷ See the Department of Health and Welfare circular 1\2\2\3\5 of 1992.

their time on criminal or civil case administrative work, as opposed to that generated by the children's court. These 'clerks of everything' (as he described them) thus don't have the time to appear as child advocates at children's court hearings because of the range and intensity of their administrative duties, upon which the whole functioning of a rural seat of the magistrates court depends. And even a commissioner at a full-time children's court with specialist clerks (at a busy urban centre) stated that there is too much clerical work for his clerks to have the time to engage in advocacy work at hearings.⁸ Commissioners at two other major urban centres complained that, even if such time could be found, the rotation of clerks to different magisterial sections and duties (apparently a long-standing policy of the Department of Justice) would mean that one would lose an assistant as soon as one had managed to train her.

The fact that 40 out of 42 commissioner-respondents had discovered that it is not possible to use clerks as assistants at hearings is most significant. It must be concluded that the decision in 1992 to leave commissioners with only administratively trained clerks to serve as assistants struck a severe blow to the capabilities of children's courts. The data collected for this study shows overwhelmingly that clerks have not generally proved to be at all appropriate for service as assistants. In particular, they have not proved to be capable of serving as child advocates, even at uncontested hearings. Accordingly, they should be discarded from further consideration in this regard, and confined to the administrative work for which they are trained and qualified.

⁸ Interview with Mr. D. Rothman, Children's Court Commissioner at Durban.



Chapter 5

Eligibility of Prosecutors to serve as the Representative

The results of the study showed that prosecutors were being used as children's court assistants at hearings in 23 of the jurisdictions studied. Such a high percentage might, at first glance, suggest that prosecutors are particularly appropriate for such work. However, data in regard to the actual number of cases in which prosecutors are used (see TABLE 4 below) shows a relatively low dependence on them:

TABLE 4:

PERCENTAGE OF ALL CASES IN WHICH PROSECUTORS ARE USED

Did not use prosecutors	19
Always use prosecutors	6
1-2% of all cases	5
4-5%	3
8-10%	3
15-20%	4
40-50%	2
Total	42

It can be seen from TABLE 4 above that only six (14%) of the jurisdictions sampled use prosecutors in all children's court matters. The commissioners at two of these jurisdictions were under the impression that they had to have a prosecutor present (serving as assistant) in order to be properly constituted. Their reason for using prosecutors was therefore purely a formal one, not based on merit.

The 17 commissioners (40% of the sample) who used prosecutors in only some cases provided the following criteria for requiring the presence of one:

TABLE 5:

COMMISSIONERS USING PROSECUTORS ONLY IN SOME CASES:
CRITERIA FOR USE

REASONS	NO
If dispute in case	8
Serious child abuse case	2
Complex, difficult case	6
Parents have a lawyer	8
Used only in cases of removal	1
In the case of a juvenile transfer*	2
If recommended by a social worker	1
If available	1

[Note that the number of REASONS given total more than 17 because some commissioners listed more than one reason.]

*Refers to cases switched from the criminal court to children's court.

What seems striking about the results in TABLE 5 is that none of the reasons provided (except possibly the last) necessarily indicates that the commissioners in this group use prosecutors by choice because they find them to be effective as child representatives. Rather, it is the exigencies of the case or recommendation\presence of another professional person that tends to lead to the appointment of a prosecutor.

When all commissioners were asked to comment specifically about the effectiveness of prosecutors (either in their past or present experience) the results received were as indicated in TABLE 6 below:

TABLE 6

EFFECTIVENESS OF PROSECUTORS AT CHILDREN'S COURT
HEARINGS: PERCEPTIONS OF COMMISSIONERS

Effective	6
Not very effective	18
Depends on prosecutor	4
Bad Influence	4
No experience of prosecutors	10
Total	42

It can be seen that only six (14%) of the commissioners regarded prosecutors generally as effective. Of this group, two had comfortable standing arrangements whereby they could have the presence of a senior prosecutor whenever they wished.

Two others from this group and two more from the group who stated 'depends on prosecutor' in TABLE 6 above described very positive experiences of specifically female prosecutors who had volunteered for children's court work and/or proved to be highly effective because they were child-oriented and could adopt a gentler approach where this was appropriate. On the other hand, one of the social work respondents interviewed described a prosecutrix in a children's court case who was so uninterested in the proceedings that she spent the entire period filing her nails! So, it would seem that individual motivation and orientation, as opposed merely to the gender of the prosecutor, is perhaps the more significant factor.

The social worker respondents who were interviewed either had had no experience of prosecutors in the children's court or, where they had such experience, had formed an extremely negative impression. Their responses are indicated in TABLE 7 below:



TABLE 7:

SOCIAL WORKERS' PERCEPTIONS OF THE EFFECTIVENESS OF PROSECUTORS IN THE CHILDREN'S COURT:

Impression of Prosecutors	No. of Social Workers
Had never encountered prosecutors in the children's court	2
Prosecutors ignorant of provisions of the Child Care Act	3
Prosecutors unaware: fail to shield the child	2
Prosecutors antagonistic: regard social worker as interfering in 'their' case	1
Inappropriately adversarial: seek to establish 'guilt' as if it is a criminal trial	3

One of the three social workers in TABLE 7 who stated that prosecutors are ignorant of the provisions of the Child Care Act explained that she had previously been a children's court assistant. At that time, she and the commissioner attempted to sustain a policy of using prosecutors whenever the parents employed a lawyer. However, the lack of knowledge of the provisions of the relevant legislation rendered prosecutors so ineffective that the commissioner eventually abandoned their use and preferred his social worker-assistant in their stead, even though she had no legal training!

The social worker who stated in TABLE 7 that prosecutors are not aware of the need to shield the child gave the example of a recent case in which the child had been severely traumatised by lengthy and aggressive cross-examination from a lawyer representing the parents. Throughout the process of cross-examination, the prosecutor (who was supposed to be representing the child) made absolutely no attempt to have the court contain and curtail the punishing psychological abuse to which the child was being exposed. It is striking to note from TABLE 7 above that all social workers who had had experience of prosecutors in the children's court

.....

regarded them as ineffective. The various reasons for this ineffectiveness combine to form a strong case against the use of prosecutors, and may usefully be compared with the commissioners' reasons as discussed in the following paragraph below.

In tabular form, the breakdown of commissioners' reasons for adjudging the effectiveness or ineffectiveness of prosecutors is as shown in TABLE 8 below. This was obviously drawn only from the responses of the 32 commissioners who had had experience of prosecutors serving in the children's courts. However, the total of responses is higher than 32 since, again, some commissioners provided more than one reason.

TABLE 8:

BREAKDOWN OF COMMISSIONERS' CRITERIA FOR ASSESSING EFFECTIVENESS OR INEFFECTIVENESS OF PROSECUTORS:

Unsympathetic to the child	3
Wrong training	7
Lack of appropriate knowledge\experience	5
Prosecutors not interested	6
Prosecutors not available	7
Gives children's court a bad image	3
Interpret the Child Care Act too rigidly	1
Well prepared and objective	2
Useful to counter 'aggressive' social workers	1
Helps neutrality of commissioner	2
Prosecutors bring more facts to light	2
Female prosecutors better - more child-oriented	4

Three of the commissioners interviewed gave the strongly positive views that prosecutors are 'well prepared and objective' and/or they 'bring more facts to light'. It is submitted that the rest of the positive responses listed in TABLE 8 above don't really make out a case for the use of prosecutors

per se, as opposed to other representatives. And further, there is clearly a preponderance of negative (rather than positive) assessments in the reasons listed in TABLE 8.

Two of the three commissioners who made the claim that the use of prosecutors gives the children's court a bad public image were commissioners serving predominantly black rural jurisdictions. They explained that the presence of a prosecutor at a children's court hearing left the indelible impression in the minds of uneducated parties that (despite any averments to the contrary) the proceedings were essentially criminal in nature. Insofar as there is a desire to improve the stature of children's courts in the eyes of the general public, the utilisation of prosecutors must therefore be seen as a negative factor, simply because they are inevitably associated with their more predominant criminal court role. That role also accounts for some of the other negative factors listed by commissioners in TABLE 8.

Four commissioners made the point that prosecutors are at their most destructive when they attempt to cross-examine the child in the adversarial manner which is common in criminal proceedings. Such inappropriate behaviour, as well as the unavailability of prosecutors, their lack of interest and ignorance of the provisions of the Child Care Act mentioned by many commissioners, are all attributable to the fact that prosecutors usually (and quite understandably) tend to see children's court work as merely an occasional distraction from the criminal court duties which they view as their real calling. Not surprisingly, prosecutors often have difficulty in mastering the provisions and requirements of the Child Care Act. As Mr. K.G.T. Kutshwa, commissioner at Idutywa, noted, the heavy criminal and maintenance court caseloads of many prosecutors leave them with little time to study the Act and develop the specialist expertise required for children's court work.

According to Mr. T.P. Mabeba, senior social worker and canalising officer at Pietersburg, many prosecutors in former 'homeland' jurisdictions have not been trained to interact effectively with social workers. He gave examples of instances where a prosecutor resented the opinion of the investigative social worker, and so ordered her to leave the office in which a children's court inquiry was being held. Having no *locus standi*, the social workers in these instances were forced to obey, and the children were thus left



without their supportive presence.

Although it is clear that a few exceptional prosecutors have been able to overcome their training and regular work loads in order to adapt themselves to become useful in the unique environment of the children's court, the preponderance of data gathered for this study indicates that prosecutors are usually not equipped to serve effectively as representatives for the child (or anyone else) in the children's court. It is therefore not possible to support the original proposal, made in clause 2(a) of the Child Care Draft Amendment Bill of 1995,⁹ that all prosecutors should become, *ex officio*, children's court assistants. Rather, it is recommended that they should not be used in this role and, specifically, should not be required to represent parties at children's court proceedings.

⁹ See GN582 of 1995 as contained in Government Gazette vol.360, No. 16509 (30 June, 1995). This proposal does not appear in the latest 1996 Amendment Act.

Chapter 6

Eligibility of Social Workers to serve as the Representative

The Pretoria children's court was unique in the study sample, in that one of the full-time clerks had (through part-time study) qualified as a social worker and was currently in the process of completing social work Honours-level studies. This staff member was being utilised as a full-time assistant at the time of the study, rather than as a clerk. She therefore provided a useful example of the possibilities for using social workers as children's court assistants. The commissioner stated that she found her to be highly successful and noted that 'she greatly improves our ability to communicate effectively with the child and with other parties'. The commissioner also mentioned specifically that her social worker-assistant was effective (and was therefore always involved) when any party to a hearing had engaged a private lawyer. This is high praise indeed, and suggests, at least *in limine*, that social workers are one of the groups that should be assessed as possibly being appropriate for posts as child representatives in the children's court. However, given the track record of the Pretoria assistant, this may simply be an example of an exceptionally hard-working and gifted individual - a single unusual instance from which it might be dangerous to generalise.

However, high praise for the competence of social workers as children's court assistants also came from a commissioner in Bloemfontein who (prior to 1992 under the old system) had had a social worker as a children's court assistant. He reported that she had proved capable of receiving on-the-job training in court advocacy skills and thereafter proved to be very competent.

Given the strong recommendations from the Pretoria and Bloemfontein courts, it seemed appropriate to obtain data on social workers from the commissioner sample as a whole. However, only 15 of the commissioners had had experience of social workers serving under them as children's court assistants. This is what one would expect, given that social workers were officially removed from employment as children's court assistants in 1992. So, the 15 commissioners were (with the exception of Pretoria)

'old timers' (as one of them put it) who constituted a valuable sub-group who could provide data in regard to the effectiveness of social workers as child advocates based upon their remembrance of the old system of social workers as children's court assistants.

The responses of the 15 Commissioners who had had experience of social workers serving as children's court assistants are indicated in TABLE 9 below:

TABLE 9:

SOCIAL WORKERS AS CHILDREN'S COURT ASSISTANTS - RATING OF COMMISSIONERS

Assessment of Commissioner	No. of Commissioners
Excellent	4
Satisfactory	3
Inadequate: not legally trained	3
Dual function created work overload	1
Dual function was unethical	4

The first group of commissioners in TABLE 9 above were those who unequivocally recommended social workers for the post of children's court assistant. They had had very positive experiences of social workers in these positions, and had generally encountered multi-talented social workers whom they had successfully trained to serve as court advocates. One might interject here, on a cautionary note, that the very low levels of appearance of opposing lawyers in the children's court (see section 7.1 of the study) may have meant that the advocacy skills of these social workers were rarely tested to any serious degree.

The second group of respondents in TABLE 9 who described the social-worker assistants as 'satisfactory,' were generally making comparison with the present most unfortunate situation of mere clerks as 'assistants' (see chapter 4 of the study). They were thus of the view that social workers, whilst not having proved ideal in the past, had nevertheless been far more effective as court assistants than the present clerical staff.



The remaining commissioners whose responses are indicated in TABLE 9 above gave wholly negative assessments of the pre-1992 system. Those who, understandably, complained of the lack of legal training in social worker-assistants drew attention to the problems which arose from an inability to understand the rules of evidence, court procedure and technical application of child care legislation. An inability to remain sufficiently objective was also cited as a defect in assistants who did not have the benefit of a formal legal training and qualifications. The commissioners who drew attention to what they called the 'dual role' of social worker-assistants under the pre-1992 system pointed out that it often happened (particularly in small-town or rural jurisdictions) that the social worker who investigated the case and the social worker who subsequently appeared to act as the children's court assistant at the hearing were one and the same person. This raised the ethical problem of possible bias in an officer of court who had already been involved in the case at the investigative stage. And, as can be seen, one commissioner recalled that the dual role of investigative officer and court officer sometimes loaded too much work on to social workers and so reduced their efficiency in both of these tasks.

The rest of the sample of commissioner respondents had not had experience of social workers as children's court assistants. Therefore, their responses are not noted in TABLE 9. However, these 26 commissioners had nevertheless mostly had experience of social workers as investigative case workers who appeared at hearings to give evidence and substantiate their reports and recommendations. These commissioners provided ratings of the effectiveness of social workers in those important functions. The ratings are worth noting, since they provide further data which can assist in the task of deciding whether social workers should in future be given a more extensive role as child advocates in the children's court. The ratings are as indicated in TABLE 10 below:



TABLE 10:

COMMISSIONERS' RATING OF SOCIAL WORKERS AS INVESTIGATIVE CASE-WORKERS.

Rating	No. of Commissioners
Social workers are generally effective	6
Mixed effectiveness	6
Generally ineffective because of insufficient training\experience	4
Generally ineffective because not objective enough	2
Generally ineffective because too slow in completing investigations	2
Collapse\absence of welfare services\ facilities means we get very few cases	6

It can be seen from TABLE 10 above that a high proportion of the commissioners had serious reservations about the work of social workers in their jurisdictions. Whilst one may discount the absence\collapse of welfare services in six jurisdictions (a disturbingly high proportion) as presumably beyond the control of local social workers, the remaining difficulties expressed should, it is submitted, engender doubts about using social workers as child representatives in child care proceedings in future. A return to the pre-1992 system does not seem to be justified.

One of the social worker respondents who was interviewed, Ms. K. Bursey of the Department of Health and Welfare, East London, had actually previously served as a children's court assistant under the old pre-1992 system. She stated:

'I was thrown into the deep end with no legal training whatsoever, and it was therefore particularly difficult to face the lawyers who occasionally appeared for a parent.'

Ms. J. Van Rensburg, of the Department of Developmental Social Welfare, North West Province, had also served as a children's court assistant. She noted that the lack of a legal training caused her difficulty whenever she had to cross-examine a witness, and she mentioned that she particularly struggled when there was an intensely disputed case or a lawyer present who raised technical objections over, for example, hearsay evidence. It is submitted that these comments confirm the view that persons who have had a purely social work training should not be required to serve in an advocacy role in the children's courts. It is unfair to expect social workers to carry out tasks for which they have not been properly trained and this is also not in the best interests of children who appear before the children's court.



Chapter 7

The Eligibility of Private Lawyers

The purpose of this part of the study is to present the data in regard to the role that private lawyers (attorneys and advocates) have been playing in the children's courts. The main assessment in this part will specifically relate to the appropriateness of using such lawyers (either privately appointed or through legal aid) in the future as the primary or only source to supply the need for child representatives.

7.1 Current Levels of Child Representation

The current extremely low levels of representation by private lawyers in the children's court were well illustrated by the commissioner sample. No fewer than 18 of the commissioner-respondents had never had the experience of an advocate or attorney ever appearing in any children's court matter over which they had presided. This is a particularly striking result which gives some impression of the number of jurisdictions in which representation by private lawyers never occurs: These were all rural jurisdictions (including, particularly, those in the former 'homeland' regions). The complete absence of lawyers appearing in the children's courts in these jurisdictions was described by the commissioners as resulting from both an inability of clients to pay lawyers' costs and the lack of interest of the sparse population of country lawyers in what they generally regarded as an unimportant and not very lucrative form of work.

The remaining fourteen rural jurisdictions which did experience the presence of lawyers all reported very low levels of representation of between 0.5%-1% of their children's court matters per annum. Of the ten larger urban centres which provided figures, nine provided estimates of lawyers appearing in only 4-6% of all children's court cases. The exception proved to be Pretoria, with lawyers reported by the commissioner as appearing in approximately 25% of all matters. With a total case roll of about 400 per annum, lawyers are therefore appearing in approximately 100 children's court cases per year in Pretoria. As the commissioner stated: 'In Pretoria people use lawyers even for children's court matters'. With the exception of Pretoria, it is clear that there is at present a very low incidence of private lawyers appearing in the children's courts.

7.2 Types of Case in Which Lawyers Appear

In terms of the types of children's court matters in which lawyers tend to appear, findings across both urban and rural jurisdictions were to the effect that they tend to be employed for removal cases by parents. Appearance on behalf of a child in a removal case is rare, and appearance on behalf of an adult in an adoption matter is also rare. TABLE 11 below indicates the overall situation for representation by advocates or attorneys, according to type of situation.

TABLE 11:

CASE AND CLIENT REPRESENTATION WHERE PRIVATE LAWYERS DO APPEAR IN THE CHILDREN'S COURT.

Type of Representation	Percentage of all cases in which private lawyers appear
For parent in removals	90%
For child in removals	1%
For adult in adoptions	9%

What is of course significant about the data in TABLE 11 is that it indicates that representation for children occurs only in 1% of those relatively few cases (as indicated by the data presented earlier) in which private lawyers appear. The vulnerable situation of children thus emerges clearly. There currently seem to be three rare situations in which children (as opposed to adults) receive representation. Occasionally, commissioners or the investigative social worker are in a position to arrange a legal aid, privately funded, or *de bono* representative because they feel that special circumstances warrant it. This seems to be possible only in a few jurisdictions. In other instances, concerned relatives who are not the present custodians (such as grandparents) will arrange for the child to have a lawyer in a removal hearing.

7.3 Rating the Effectiveness of Lawyers

Of the group of 24 commissioner-respondents who had had experience of



attorneys and advocates appearing, TABLE 12 below gives their rating, generally speaking, of the overall effectiveness of these lawyers in children's court work.

TABLE 12:

COMMISSIONERS' RATING OF THE CURRENT EFFECTIVENESS OF ADVOCATES AND ATTORNEYS IN CHILDREN'S COURT WORK

Rating of Effectiveness	No. of Commissioners
Lawyers are effective	5
Some lawyers are effective	2
Lawyers are ineffective	17

What seems significant about the findings in TABLE 12 is the very high proportion of commissioners who rated those lawyers who appear in the children's court as ineffective. Of the five who were prepared to give an unqualified rating of 'effective,' only one was a full-time commissioner. Of the two commissioners who gave a mixed rating, one distinguished between a small group of lawyers 'who specialise in children's court work and are very good,' and the majority, whom he complained are inexperienced in children's court work, and also fail to prepare properly for the hearing. The other commissioner also noted that the majority of lawyers are inexperienced, but declared that the presence of a lawyer nevertheless tended to ensure that more pertinent information came to light (as a result of cross-examination) and allowed the commissioner to preserve a more neutral role.

The breakdown of reasons for the current ineffectiveness of lawyers by the 17 commissioners who made an entirely negative assessment is indicated in TABLE 13 below. Note that several commissioners in this group provided more than one reason, and these are all included in the table.

TABLE 13:

LACK OF EFFECTIVENESS OF ADVOCATES AND ATTORNEYS IN THE CHILDREN'S COURT

Reason for ineffectiveness	No. of commissioners
Not interested	3
Lack of appropriate knowledge	10
Unprepared & don't investigate	3
Too adversarial & technical an approach	2
Biased, mercenary approach	4
Increase secondary abuse of child	1
No reason provided	1

In considering the findings contained in TABLE 13, the first problem, referred to as 'lack of interest' by lawyers, as well as the tendencies not to investigate the case sufficiently or learn relevant aspects of the law beforehand are all, in part, attributable to the low status which the children's court has traditionally had to endure, and which was referred to in the introduction to this study. It is submitted that any measures which serve to boost the standing of the children's court encourage lawyers to take their work before the court more seriously.

The problem of bias referred to by four commissioners usually arises where a lawyer, having been employed by a parent to prevent removal of a child, ignores the best interests of the child (and perhaps traumatises the child further) by using a technical, adversarial and formalistic approach. Such lawyers attempt to terminate the removal situation at all costs. It is appropriate to regard removal of a child from her parent as a last-resort situation, only to be utilized in drastic circumstances. However, the normal (for other courts) lawyer's approach of 'making sure that my client wins the case' can often be problematic when applied to the sensitive, highly specialized proceedings that occur in the children's court.

From the data in TABLE 13, the most widespread problem that hampers



the effectiveness of lawyers in the children's court is clearly their lack of appropriate knowledge. Many commissioners spoke of a complete absence of even basic familiarity with the provisions of the Child Care Act. Harsh comments such as 'clueless,' 'utterly ignorant' and 'they ask us what to do,' characterised many of the responses received. One commissioner (not in a former homeland area) described an advocate who referred only to the Children's Act at a hearing, although this Act had been repealed six years before! Another commissioner ascribed the problem of ignorance by private lawyers to the fact that 'law students are not usually exposed to the Child Care Act at university and then rarely have occasion to refer to it in practice'.

It is not merely that lawyers generally lack appropriate experience and knowledge of the provisions of the Child Care Act, however. As has been noted, work in the children's court is highly specialized; and therefore what is sometimes required is an approach which is contrary to what lawyers are accustomed in the other courts. As Mr. M.N.P. Mtshali, commissioner at Pietermaritzburg, pointed out:

'The report of the investigative social worker will almost always contain hearsay statements. This is how social workers operate in these matters [removal investigations]. Lawyers will often seize with great vigour upon small points of hearsay in regard to fringe issues, and demand that the relevant witnesses all be brought before the court to be cross-examined. In this way, they hope to intimidate or discredit the social worker. All that they usually achieve by such tactics is to complicate the matter and make it harder for us to decide where the child should be placed.'

Of course, a strongly adversarial approach by lawyers, whilst occasionally appropriate in the children's court, more often runs the risk of inflicting further damage upon intra-familial relationships that may need to be repaired if the child is ever to be safely returned to his/her family. Lawyers who wish to operate meaningfully in the children's court need a fine sense of judgement in order, for example, to choose correctly between different approaches to cross-examination. And they will need to learn to keep a constantly perceptive eye open for the best interests of the child as the ultimate and paramount consideration, regardless of whom they have been paid to represent. Ms. V. De Villiers, commissioner at Porterville, drew

attention to the basic factor of court discourse:

'I try to develop an informal atmosphere. This is vital in the attempt to set the child at ease. I find that the presence of a lawyer works against this atmosphere. The manner and language of the lawyer is always formal, and this results in great pressure on the commissioner also to become very formal and technical in discourse. If I succumb to this pressure, I help to create an environment in which the child feels nervous and alienated.'

In order to test the commissioners' rather negative assessment of the performance of private lawyers in the children's court, the eleven experienced social workers in the 'external observers' group of respondents were also asked to give an assessment. All of the social workers gave predominantly negative assessments. The explanations for poor performance provided by the social workers strongly corroborate those of the commissioners, and are provided in chapter 7.6 of the study.

It must be concluded that private lawyers have, on the whole, tended to be largely ineffective and even actually destructive in their representation (predominantly of parents) in the children's courts. This has serious implications once the 1996 Constitution (with its support for representation for children in civil proceedings) comes into effect in 1997.

7.4 Technical Problems

An obvious mechanism for the provision of representation for children in the children's court is legal aid coverage of the fees of private lawyers. However, an experienced urban commissioner expressed a concern in regard to the provision of legal aid to enable all children (in future) to have a lawyer represent them at children's court hearings: 'If it is done through the method of legal aid, it will not be possible to confine the work to the lawyers who are actually effective in representing children - we will have to give a turn to every lawyer who wants to earn fees in this way'. It may be submitted that the problem of finding effective lawyers for children goes much further than utilizing only those who have proper knowledge of relevant substantive and procedural law. It will also be necessary to ensure that the representative chosen is appropriate to represent the particular child concerned. If it is accepted that children have a right to have

proceedings conducted in the language with which they are most familiar, then special care will have to be taken to select linguistically appropriate lawyers. When I interviewed the Germiston commissioner, he informed me that he had just been compelled to remand a matter for a week because a lawyer who appeared (under the auspices of legal aid) was unable to speak Afrikaans, and fluency in this language was needed in order to conduct the case. Effective child representatives will need to be familiar with both the mother tongue and the cultural background of the particular child concerned.

The commissioner for Harding pointed out that in his jurisdiction there were only three local lawyers, of whom only one appeared regularly in the civil or criminal courts, and none found it worthwhile to appear in children's court matters. He offered this information in order to highlight a difficulty that will confront any future initiative in regard to using local private lawyers to increase the degree of representation in the children's court. For many small-town or rural jurisdictions, it may prove to be extremely difficult to find sufficient lawyers who are willing to develop the degree of specialist expertise that will render them suitable for children's court work. So, a practical problem will be how to render such work sufficiently attractive to draw lawyers away from other kinds of work that they are more used to and find financially more viable. Of course, finding lawyers who are culturally and linguistically appropriate for a particular child may often be even more difficult in predominantly rural jurisdictions.

7.5 Positive Aspects - the Potential of Private Lawyers:

Despite the negative or problematic aspects that have been mentioned so far, the majority of the commissioners were convinced that properly selected, knowledgeable and well motivated lawyers could be a tremendous asset in the children's court. As pointed out by a commissioner at Cape Town on the basis of his own experience, a great advantage that arises from the appearance of private lawyers in the children's court is that the court is then perceived to be a fairer forum, because such a lawyer is clearly an independent representative of his or her client, and not merely someone who is a court employee, and thus seemingly subject to the



authority and wishes of the commissioner.

The view of the Cape Town commissioner, as referred to in the previous paragraph, was supported by comments offered by the commissioner at Pretoria, Ms. Snyman. Ms. Snyman (as can be seen from the data supplied in chapter 7.1 of the study) had considerably greater experience of private lawyers than any other commissioner in the sample. She referred to the role of lawyers representing parents in removal cases as follows:

'When a competent lawyer appears before the children's court, more pertinent information usually comes to light. The parents tend to be more positive about the proceedings because they feel that they have had their views properly communicated and taken into account. This more positive attitude of the parents is extremely important because it increases the chance of returning the child to his family. Furthermore, a good lawyer is able to adopt a healthy, mediating role between the children's court and the parents which, again, increases the chances of a positive outcome for the child.'

It is important to take careful note of Ms. Snyman's experience to the effect that properly trained and skilled lawyers can and do have precisely the opposite effect to that reported by so many commissioners and all the social worker respondents for untrained, adversarial lawyers. Far from inflicting further damage upon dysfunctional parent-child relationships, the properly functioning lawyer actually contributes to the crucial process of rebuilding the parent-child relationship.

The commissioner for Amersfoort expressed the view that if private lawyers could be brought into children's court hearings in small rural jurisdictions, this would help to ensure that commissioners in such jurisdictions gave proper time, care and attention to such matters. Part-time commissioners would thus have to make the effort to develop greater expertise, and the presence of the lawyer would serve as a valuable check and balance.

The responses of the social worker respondents were also supportive of the view that properly trained lawyers have great potential to improve the quality of children's court proceedings and to protect the child from an incorrect placement decision. It is clear, therefore, that attention will have



to be given to the proper training and orientation of lawyers who wish to appear in the children's court. Ways to attract more such lawyers will also have to be found.

7.6 Reasons Why Lawyers have had a Negative Influence

The potential for private lawyers to have a dynamic and positive impact was indicated by at least some of the responses of the commissioners to the question: 'How does the presence of a lawyer usually tend to affect the outcome?'. As would be expected from the largely negative experiences already referred to above, most respondents gave critical replies. Of the 24 commissioners who had had experience of private lawyers in the children's court, 11 gave negative responses on the question of their influencing the outcome, 6 felt that lawyers usually have no influence, and 7 gave positive responses. The information in regard to the ways in which commissioners believe that private lawyers affect the outcome of a hearing is set out in TABLE 14 below (note that several commissioners listed more than one factor, and all are included):

TABLE 14:

HOW LAWYERS EFFECT THE OUTCOME OF A HEARING NEGATIVELY : PROBLEMS NOTES BY COMMISSIONERS

Why the outcome is adversely affected	No. of commissioner reporting this problem as affecting the outcome
Mercenary 'win at all costs' approach	3
Delay in achieving outcome because lawyers are late/fail to appear on date of hearing	1
Delay the outcome with clumsy, inappropriate questioning	3
Delay the outcome by crushing witnesses with adversarial techniques	3

It is interesting and instructive to see how similar were the responses of the 'external observer' respondents to the question of how and why

lawyers have tended to have a negative influence in the children's courts. TABLE 15 below sets out their views.

TABLE 15:

WHY LAWYERS HAVE HAD A PREDOMINANTLY NEGATIVE IMPACT IN THE CHILDREN'S COURTS - PERCEPTIONS OF THE EXTERNAL OBSERVER RESPONDENTS

Cause of Negative Influence	No. of Respondents
Confrontational behaviour which forces the child to take sides	5
Adversarial workstyle deepens existing family divisions	1
Ignorant of Child Care Act	4
Aggressive cross-examination results in secondary abuse of the child	3
Overly technical and formalistic approach which is inappropriate	2
Not trained to work with children	4
Partisan, mercenary orientation	1
Intimidate the commissioner in order to 'win' the case	5

As can be seen, these responses add up to a telling indictment which corroborates the views of many commissioners about precisely why the performance of private lawyers in the children's court has, on the whole, tended to be far from supportive of the best interests of the child. It must be remembered that this was a group of social workers with considerable experience of children's court work (an average of 9 years of experience each). On the other hand, as indicated in the previous section of this study above, there was considerable recognition amongst the external observers of the potential for properly trained and motivated lawyers to assist in protecting children.



7.7 How Lawyers can have a Positive Influence

The seven commissioners who had had generally positive experiences with private lawyers provided the following reasons for their appropriateness as representatives in the children's court:

TABLE 16:

ADVANTAGES OF LAWYERS AS REPRESENTATIVES IN THE CHILDREN'S COURT - PERCEPTIONS OF COMMISSIONERS WHO HAD POSITIVE EXPERIENCES:

Advantage gained	No. of commissioners
They expose any bias in the social worker	1
More evidence comes to light	5
They balance the presence of a prosecutor	1
Parents will feel that the hearing was fair	2
Parental respect for the court improves	1

It can be seen that the last three categories apply only to the relatively more common situation of private lawyers appearing on behalf of a parent/guardian and not on behalf of the child. The 'balancing' of the presence of a prosecutor was noted by a commissioner in a former homeland jurisdiction where prosecutors are regularly used as children's representatives. In this situation, parents feel that the hearing is loaded against them unless they also have a legal representative to put forward their case. This ties in closely with the last two advantages listed in TABLE 16, namely, that parents/guardians will more readily respect the court and the placement decision taken if they have had a representative to put forward their case. These factors are significant. Aside from the importance of building credibility for the children's courts, an accepting and cooperative attitude in the parents will make it easier for social workers to carry out post-hearing familial services resulting (in some cases) in the return of the child to his/her family.

7.8 Conclusion

It can be seen from the data provided above that most lawyers who have appeared in the children's court were of little real assistance at the proceedings. And some have actually had a negative influence which was damaging to the prospects of the child. However, it is surely equally clear that there is tremendous scope for properly trained, skilled and motivated private lawyers to have an extremely dynamic and valuable impact upon children's court hearings. In the light of these two disparate considerations, the questions of whether, and under what circumstances private lawyers should be used in future will be addressed in the final conclusion of the study.



Chapter 8

Eligibility of Family Advocates to serve as the Representative

One of the purposes of interviewing family advocates was to assess their eligibility to serve as child-representatives in the children's court. The family advocates are a specialist group whose work, in some important respects, is not dissimilar from that required of a child-representative in the children's courts. The family advocate also represents children in civil matters (divorce) and has a duty to recommend to the court the most appropriate custodial placement for the child. In the children's court also, the aim is often to decide upon the best available custodial placement for the child. A further point of similarity is that family advocates are used to working closely with a social worker (the family counsellor). They thus develop a good understanding of and appreciation for social work methodologies. This inter-disciplinary knowledge would stand them in good stead in the children's court where child-representatives would need to have a proper appreciation and understanding of the work and recommendations of the investigative social worker whose report is usually of great importance.

Given these broad points of similarity, it is not surprising that all of the family advocates interviewed except one felt that they could usefully apply their specialist skills as representatives in the children's court. There are, however, some practical difficulties which arise with regard to using family advocates as children's court representatives. The first is the question of workload. With the planned abolition of the black divorce courts, the divorce work caseload of family advocates is likely to be increased at a time when all offices in the country have already indicated to the researcher that they are working to maximum capacity. Therefore, a much greater staff complement of family advocates would be needed if they were to take on yet a further additional caseload by serving as representatives in the children's court.

There are also some fundamental differences in the work which family advocates currently carry out in the Supreme court and that which they would undertake if they were to become representatives in the children's

court. In terms of the relationship between the family advocate and family counsellor in divorce matters, it was stressed by all family advocates interviewed that decisions involve a joint or team approach. The family advocate and family counsellor work very closely together in order to arrive at a single plan for the child which is then presented to the Supreme court. However, in the children's court as presently structured, a child representative will often need to take a critical - or at any rate a carefully assessing - response to the investigative social worker's report in order to carry out her function properly. A child-representative who simply agreed with everything that the social worker suggested would fail to serve as an additional check and balance for the protection of the child. Sometimes the child's wishes may be at odds with the custodial placement which the social worker intends to recommend. In this situation it is submitted that the child-representative must retain the trust of the child by presenting the child's wishes for due consideration by the court.¹⁰ It must be concluded that the relationship between the child-representative and investigative social worker in the children's court is, in some important respects, different from that between the family advocate and family counsellor in the Supreme court.

The role and powers of the child representative in relation to the children's court commissioner also differs in some significant respects from the interaction between the family advocate and Supreme court judges in divorce matters. It was stated by all family advocates interviewed that children whose parents are divorcing almost never appear in court to be questioned during divorce proceedings. It has become rare for children of divorcing parents even to appear in chambers to be questioned by the judge. In other words, in divorce matters the judges have, by and large, been happy to surrender a great deal of the real responsibility concerning children to the family advocate. This has had the significant effect of removing children from involvement in divorce hearings and thus saving them from the additional stresses which would often be inflicted on them. A major point of difference in the children's court is that, in most cases, the child actually appears before the court and (if old enough and capable) gives evidence and is questioned at the hearing. The commissioner thus

¹⁰ See chapter 12 of the study for some further comments on the situation of divergence between child and the social worker.



takes on a greater load of responsibility (by comparison with a divorce judge) for actually assessing the child. A consequence of this is that the role (and thus the status) of the child-representative in the children's court is less in scope than that of the family advocate.

It must be concluded that, if family advocates were in future required also to work as child-representatives in the children's court, then they would have to make adjustments in their workstyle. As pointed out above, their relationship with both the social worker and the adjudicating officer would alter. And, most significantly they would have to take on a new directly-protective role where they would be required to shield traumatised children exposed to questioning (sometimes even from hostile lawyers or parental abusers) at the hearing. Having the child physically present - and therefore having to interact effectively and protectively with the child at the hearing - would make their role in some ways more demanding than that in the Supreme court.

Despite the constraints and challenges revealed by field research involving family advocates, it is submitted that, as a group, they form one of the best resources currently available from which to draw child-representatives for the children's court. Obviously, in the light of the problems and differing requirements noted above, they would have to make (and perhaps engender) adaptations. But, if a way could be found to free them from other duties, their largely-appropriate experience would render them a most valuable resource on behalf of children who appear in the children's court. Aside from the suitability of their experience, their status and their present location within an independent organisational structure would be further valuable attributes.

Chapter 9

Representational needs of Other Parties

besides the Child

The grounds for removal of children as set out in s14(4) of the Child Care Act were at the time of this study to a large degree parent-, rather than child-centred, in that they focused upon the absence, inability or unfitness of the parent/guardian, rather than upon the needs of the child, as a threshold criterion. This orientation of removal grounds gave particular prominence to the question of the representational needs of the parent/guardian. There will now be a return to more child-centred removal grounds in the future,¹¹ but the issue of representation for adult parties at children's court hearings (not merely in child removal cases, but also adoption) will remain a live one because of the drastic interference necessarily suffered by any parent/guardian from whom a child is removed. Also, once children begin to receive representation in any substantial proportion of cases, parents will often find that they need their own representative in order to counterbalance the child's representative. Section 28(1)(h) of the final Constitution and Section 8A. of the 1996 Child Care Amendment Act, by (very appropriately) making greater allowance for legal representation for children, has concurrently increased the potential for parents to feel 'outgunned' and hence denuded of a fair trial, unless similar legal representation is accorded them. Therefore, the question of representation in the children's court definitely goes further than merely the issue of whether only the child should have a representative.

When we turn from the child (as main party) to adult parties, it is also necessary to note that the latter are not necessarily confined merely to the child's current parents or guardians. Adoption is an obvious instance of a situation when an adult (the would-be adoptive parent) becomes an important party to the proceedings although she is usually not a previous parent or guardian of the child. Further than this, regulation 4(2) of the Child Care Act gives an extremely broad definition to potential parties as

¹¹ As has already been mentioned, the Child Care Amendment Act 1996 reintroduces the ground of being 'a child in need of care' as a fundamental criterion for considering the removal of children by the state.



being any persons who, in the opinion of the commissioner, have 'a substantial interest in the proceedings'.

Although the main focus of the present study was upon the more basic and crucial question of representation for the child as main party in children's court proceedings, some data was collected in regard to the desirability of representation for other parties. At Verulam (with a particularly busy full-time children's court) it was reported that a common form of more complex case in the area tended to occur after such a happenstance as the death of the child's parent/s. Different groupings of aunts, uncles or grandparents on both the deceased mother's and father's side may then appear to contend for custody of the bereaved child. In these extended family situations (reported as typical of the Indian community in Verulam) there is potential for three or more groups of contending adult parties.

The commissioner at Pietermaritzburg, Mr. M.N.P Mtshali, gave an example of a case in which the father of a child urgently needed representation. After the birth of this child, the parents had divorced, with the mother receiving custody of the child. Later, the mother had succeeded in having the child adopted by a third party - which the father attempted to prevent because he wanted custody of the child. According to Mr. Mtshali, it is clear in retrospect that the father's attempt to regain control of his child was ineffective purely because he did not have representation and did not know what steps needed to be taken. However, the father has since persisted in his efforts and has now approached the children's court to rescind the adoption as having been wrongfully carried through under the false supposition that he had deserted the child. Now, more than ever, the father stands in urgent need of legal representation if he is to have any hope of regaining a child from whom he was never willingly separated.

Mr. D.C. Van Greuning, commissioner for Roodepoort, gave an example of a case where the parents needed a lawyer for an urgent application to the children's court. Whilst these parents had been away from home for a few hours, their child had been found in the street and then accommodated at a place of safety by a local social worker. When the parents discovered what had happened, they demanded the immediate return of the child. The social worker refused, stating that, although the child had been removed due to a misunderstanding regarding her circumstances, she would now have to remain at the place of safety for six weeks, which was

the normal delay before a matter could be investigated and set down for a hearing in the children's court. Having officially removed the child, the social worker now lacked the authority to return it without permission from the children's court. With the help of a lawyer, the parents were able to arrange an immediate appearance in the children's court and the child was returned to them the same day. Clearly then, mistakes are made in regard to removals, and once official procedures have been set in train, it may sometimes require the help of a legal representative to reverse them.

It is not merely in removal cases (s13-14 of the Child Care Act) that an adult party may need a legal representative. Mr. D.J. Postma, commissioner at Ventersdorp, cited an adoption application where the biological father had been sentenced to long-term imprisonment, but refused to consent to the adoption. In this case, the adoptive parents obtained a legal representative whose involvement and submissions turned out to be of great assistance to the court in taking the difficult decision about whether to dispense with the biological father's consent to the proposed adoption.

The commissioner at Cape Town, where there is a very busy children's court, favoured the appointment of representatives to parents on the basis that the stature of the children's court and the credibility of its decisions will improve if parents have representation that is clearly independent. His suggestion in this regard was prompted by the present situation where commissioners (as noted in chapter 3 of the study) are often compelled to "enter the arena" and adopt an inquisitorial role at hearings because of the dearth of representatives for the parties. When they do this, it is often very difficult for them to avoid giving the impression that they are unfairly biased against an unrepresented adult party.

The concern as expressed by the Cape Town commissioner was supported by the commissioner at Ditsobotla, who stated that in rural black communities uneducated mothers often have the greatest difficulty in understanding and accepting why a commissioner is ordering the removal of their children. Also, when commissioners were questioned about fearfulness and intimidation of children, three of them raised *mero motu* the issue of parents also feeling intimidated by the court and proceedings. One went so far as to state that in some cases over which he had presided, a parent



would appear to be more intimidated by the proceedings than the child - and this can well be believed where serious allegations of abuse have been made against the parent.¹² One of the purposes of our child care proceedings should be to encourage parents to feel that those proceedings are fair, necessary and meaningful. Such an approach indirectly supports the rebuilding of the child-parent relationship, and this is surely a strong indicator in favour of providing lawyers (at state expense if necessary) for parental representation in the children's court.

However, it also emerged from the study that representing parents in the children's court may well be as challenging and specialized a task as that of representing children. No fewer than five commissioners mentioned that lawyers are often in great difficulty where they have been appointed to represent a parent who has abused or neglected her or his child. Because of widespread social and community disapproval of maltreatment of one's own child, such parents often cannot face up to the truth and (in their attempts to palliate their misconduct) fail, in pre-trial briefings, to alert the lawyer to the full facts and all aspects of the evidence that has been gathered against them. According to the commissioner-respondents, this sometimes results in embarrassment and confusion for the lawyer - suddenly confronted with facts about which he was misled by the parent - at the hearing.

In terms of the statistics obtained, a majority of 25 of the commissioner-respondents felt that there were situations in which adult parties ought to be provided with representation. Significantly, all of the much more experienced full-time commissioners were included in this majority group. Fourteen other commissioners felt that such representation was not necessary, and three did not express an opinion either way.

Amongst the 25 commissioners in favour of representation for adult parties, the grounds and criteria for such representation for a parent of the

¹² The parent may realise that a finding by the commissioner in regard to abuse of the child may lead to criminal prosecution of the parent in the future. For a parent accused of such abuse, the stakes at a children's court hearing (and hence the need for legal representation) may be very high indeed.

child given by them are indicated in TABLE 17 below:

TABLE 17:

CASES IN WHICH PARENTS OUGHT TO RECEIVE REPRESENTATION
- INCLUDING THE GROUNDS, TYPES OF CASE OR CRITERIA

Case type\Criterion	No. of Commissioners
Complex cases only	3
Removal cases only	4
Opposed adoptions only	1
All cases: guards against pressure on parents	5
All cases: assists parental understanding and acceptance	8
All cases: improves the investigation	1
Only where serious allegations against parents	1
Reason not provided	2

The commissioners who warned that parents can be subjected to wrongful pressures to give up their children explained that such pressures can emanate from social workers who are removal oriented in their approach or else from someone who wants to take over custody of the child. There is always the danger of an impoverished parent being subjected to clandestine financial inducements. Two commissioners gave actual examples of such cases, one of which had led to an appeal to the Supreme court in order to rescind an adoption granted in the children's court. Again, these are cases which, on the documentation, do not necessarily look complex or problematic in any way.

It can be seen from TABLE 17 that the commissioners in favour of parental representation were divided into two groups: firstly, those who favoured representation only in specific types of cases; and secondly, those who favoured representation for parents in all matters, either because of the danger of wrongful pressures which are often brought to bear on parents



or because, generally in their jurisdictions, there is a widespread problem of a lack of acceptance and understanding of children's court procedures. This latter concern was especially notable amongst black commissioners or those serving predominantly black communities. It would seem that the credibility and standing of the children's court in the eyes of the general public could, in many jurisdictions, be considerably advanced by increasing the degree of demonstrably independent representation for parents. The issue of whether that representation should be provided to all parents (and perhaps to other adult parties) will no doubt have to depend upon available resources and should perhaps be the subject of further research that focuses specifically upon this area. Some recommendations are made in chapter 13 of the study.

Chapter 10

Should the Representative be a Full-time Officer attached to the Court?

The previous chapters of this study indicate, *inter alia*, that there is indeed a critical need for proper and effective child-representation - in the sense of child advocacy - in many children's court matters. The question which then arises is how best to apply s28(1)(h) of the 1996 Constitution, allowing for such representation at state expense 'where substantial injustice would otherwise result'. It is also necessary to keep in mind the latest amendments to the Child Care Act. The new section 8A. of the 1996 Amendment Act. of sets up a much broader ground than s28(1)(h) of the Constitution, namely, that of the best interests of the child. The point which needs to be kept in mind is that it is not merely the circumstances of the case that affect the child's best interests standard, but also the type of representation afforded to the child. It has already been shown that appointment of a representative who is not properly qualified, skilled and motivated can be directly adverse to the child's best interests. The basic question which is addressed in the last four chapters of this study is, therefore, what kind of representation would be most appropriate for children in the children's courts.

One fundamental issue in regard to achieving effective child representation in the children's courts (or at care proceedings in future family courts) is whether this representation should be provided by full-time specialists organised similarly to the family advocates who serve as child representatives in the divorce courts. The commissioner sample were therefore asked whether it would be a better use of state resources to pay for private lawyers to appear on an *ad hoc* basis or, alternatively, rather to upgrade the training and qualifications of children's court assistants so that they could represent children on a full-time basis. TABLE 18 below represents the responses received.



TABLE 18:

REPRESENTATION BY PRIVATE LAWYERS OR BY PROPERLY TRAINED CHILDREN'S COURT ASSISTANTS: OPINIONS OF COMMISSIONERS.

Best Form of Representation	No. of Commissioners
Private lawyers are best	5
Upgraded assistants are best	34
Undecided	3

It can be seen from TABLE 18 that a very strong majority of 34 commissioners considered that a full-time representative in the form of a properly qualified and trained children's court assistant would be more cost-effective (in terms of state funding) than hiring private lawyers on a case-by-case basis. Obviously, the majority responses as indicated in TABLE 18 were influenced by the generally unimpressive performance of private lawyers in the children's courts which was noted earlier in this study.

Nevertheless, there was still some appreciation for the potential of properly-trained and skilled private lawyers. Five of the 34 commissioners who preferred an upgraded assistant stated that they would still like to see private lawyers with appropriate skills available to supplement or replace such assistants in particularly complex cases. Three commissioners also felt that there should be a role for private lawyers to represent an adult party, and so counterbalance the upgraded assistant who would advocate for the child. Mr. T.J. Mohohlo, commissioner at Ditsobotla, felt that a private lawyer appointed for a single case at a time would have more time to prepare properly than an upgraded assistant who acted as a child representative in all cases on the daily roll.

One major problem with a full-time specialist serving as a child representative is that of the very low incidence of children's court cases in many non-urban jurisdictions (for statistics see APPENDIX IV). At such jurisdictions, there would be insufficient work to justify the presence of a full-time child advocate. A solution to this problem would be to have the representative serve, for example, eight neighbouring jurisdictions. In other words, the representative would go on circuit and appear at each of her jurisdictions

as the need arose or on specific days of the month. This possibility was put to ten commissioners in non-urban jurisdictions. They all endorsed it strongly as an excellent and workable concept for their localities.

Also, it might not be necessary to operate children's courts at all magisterial jurisdictions. Operation at fewer jurisdictions would mean that cases would have to be forwarded from other neighbouring jurisdictions, but would allow for a greater concentration of specialist personnel. Yet another way to make full-time child representatives cost-effective would be to train them in other tasks such as representation in maintenance and juvenile court cases.

In conclusion, it would appear that both full-time specialists and properly trained and motivated private lawyers could greatly improve the quality of work done in care proceedings. A recommendation on how to integrate these two resources will therefore be offered in chapter 13.



Chapter 11

Personal Orientation, Qualifications and Training of the Representative

The purpose of this section is to present data and commentary in regard to appropriate personal characteristics, orientation, qualifications and training for persons to serve effectively as child representatives in the children's courts.

The family advocate sample used in the study were asked to describe the most important personal qualities and skills needed for the effective representation of children. Family advocates are obviously well-placed to describe the qualities needed in child representatives. Their opinions in this regard are set out in TABLE 19 below.

TABLE 19:

MOST IMPORTANT PERSONAL CHARACTERISTICS REQUIRED IN A CHILD REPRESENTATIVE: PERCEPTIONS OF FAMILY ADVOCATES

Most Important Capabilities	No. of Family Advocates
Child orientated - able to work well with children	6
Able to remain objective	3
Sensitive, empathetic to familial considerations	3
Patient & good listener	2

As several family advocates noted, these are not necessarily the capabilities regarded as most important to the successful work of ordinary advocates. So, yet again the unique, specialised nature of the work of children's representatives is emphasized. As can be seen in TABLE 19, the importance of being able to work well with children was particularly stressed. Ms. S.U. Marais, family advocate, Bloemfontein, described this as 'an ability to come down to the child's level, and definitely not a display of the sophistication and adversarial discourse of the traditional advocate'.

It may be submitted that the conclusion that needs to be drawn from the responses as indicated in TABLE 19 is that there are specific personality and interpersonal capabilities and orientation which are vital for effectiveness as a child advocate. These may only be partly amenable to development through qualifications and experience. To at least some extent, they will depend upon the basic personality of the individual. This was stressed by all family advocates interviewed, and therefore needs to be borne in mind when selecting persons (or any category of persons) to serve as representatives in the children's court.

Regarding training and experience, the most basic requirement of all is that the representative be able to communicate directly with the child. The damaging effects of language barriers between the children's courts and children otherwise capable of appreciating the significance of the proceedings are an important factor. It is therefore submitted that fluency in the languages predominant amongst children in the jurisdiction to be served is vital for effective representation. Representatives may need the necessary training in language courses required to achieve such fluency. An understanding of the child's cultural background may also be needed in order to work effectively, especially in the case of older children.

Appropriate cultural empathy may result from the background and experience of the representative and, perhaps to a lesser extent, from training.

It is clear from the views of the family advocate sample used in the study that at least one University-level course in child psychology and one in familial relationships are essential basic training to equip a representative for children's court work. There was also significant support amongst all three groups of respondents for mediation as an important capability for child representatives. With many children's court matters, an important underlying consideration is when or if it will be possible to reunite the child with her biological family. It is therefore submitted that an ability to mediate between child and parent, between social worker and parent, or between two parents may often be crucial. Child representatives definitely need training in mediation.

Beyond the basic requirements mentioned in the previous paragraphs, a central debate is whether the predominance of training and the qualifica-



tion received should be in law or social work. The commissioner-sample were asked to comment upon the relative merits of training in the two disciplines for children's court assistants, and their responses are as indicated in TABLE 20.

TABLE 20:

SOCIAL WORK OR LAW QUALIFICATIONS OR TRAINING FOR CHILDREN'S COURT ASSISTANTS: OPINIONS OF COMMISSIONERS

Opinion of Commissioner	No. of Commissioners
Entirely legal training	8
Predominantly legal training	5
Entirely social work training	5
Predominantly social work	5
An equal mix of law & social work	16
Undecided/Answer not supplied	3

It can be seen from TABLE 20 that the opinion which received the strongest support from amongst commissioners was to the effect that, if children's court assistants were to operate effectively in the children's court, they would need a relatively equal mix of social work and law qualifications and training. This opinion of 16 commissioners seems to be correct. It should be noted that some commissioners in the rest of the sample put forward strong arguments on behalf of either the one or the other discipline. Taken as a whole, these arguments also seem to build a case for training in both disciplines. For example, one commissioner pointed out that a social work qualification or training gives a representative the great advantage of being able to properly assess the report and work of the investigating social worker's.

The results of the interviews with family advocates also indicated a strong degree of support for mixed training of child representatives. This seems particularly significant in view of the fact that family advocates are themselves the product of legal training. Of the ten family advocates who expressed a view on this question, six favoured the mixed model for

training and four considered that an entirely or predominantly legal training is required for a child representative. Of the six who favoured the mixed model, one had previously been a children's court commissioner and another had qualified as a social worker before becoming a family advocate.

From the interviews with social workers, it is clear that their training encourages the crucial ability to work effectively with children in the context of dysfunctional familial relationships. It should be remembered that, unlike the family advocate using a purely legal training in the divorce courts, a child advocate in the children's court may be involved in the more difficult task of trying to reunite those whom dysfunctional familial relationships have split asunder. In attempting wherever possible to rebuild familial groups, the children's court faces a greater challenge than the divorce courts. The children's court does not merely oversee the official termination of family unity - it often faces the far more difficult task of trying to reverse this, and so those who work in it need more than merely legal qualifications and skills.

On the other hand, six commissioners stressed that legal training provided the important quality of objectivity which, in their view, is often lacking in social workers. And, as Mr. P.S. Steenkamp, commissioner at Johannesburg, stated:

'A legal training will better enable a representative to understand and apply provisions of the Child Care Act, to stand up firmly in court and cope with court procedures.'

If one considers the social worker respondents, the weight of opinion was overwhelmingly in favour of a relatively even mix of social work and legal training for children's court representatives. Ten out of eleven of these respondents recommended the mixed training approach (the last social worker did not express an opinion either way). In arguing for a substantial concentration of social work training, Ms. J. Van Rensburg, Department of Developmental Social Welfare, North-West Province, stated: 'A purely legal training does not allow for sufficient understanding of the family context of children who appear before the children's court'. She based this statement upon her own previous experience as a children's court assistant.



It would seem, then, that the data derived for the study indicates strongly that a new 'hybrid' professional is required for the unique task of representing children (and other parties) in the extremely challenging environment of the children's court. This person will need to have appropriate language fluency for the area of posting. She will need to be good at relating to children and have completed at least one University-level course in child psychology, in mediation, and one in familial relations. The remainder of her courses, which complete a University degree, should be in both social work and law. Specifically, she must be qualified to work therapeutically and perceptively with abused and neglected children and with their current or would-be future adoptive/foster/institutional guardians. She will also need the 'hard' legal skills required of a child advocate in a specialist legal forum. She will need a thorough mastery of the Child Care Act and its regulations, and also the rules of civil procedure and evidence. Some broader training in family law would help to prepare her for additional tasks once family courts are set up. There is no reason why Universities, in consultation with the Departments of Justice and Welfare and Population Development, should not set up an appropriate mix of courses leading to a Degree.

Beyond the Degree training as referred to in the previous paragraph, it would obviously be useful for applicants for the post of child-representative first to have had work experience which exposed them to family law proceedings. However, given the unusual interdisciplinary nature of the training required, it would probably be impractical to add further hurdles in the form of prior work experience. It is suggested that applicants who successfully meet the personal-orientation and training requirements outlined above could immediately be employed as child-representatives and, after five years, become eligible to apply for positions as commissioners of child welfare.

Chapter 12

What are the tasks of the Child-representative?

The purpose of this study has been to collect relevant data and offer recommendations in regard to both the need for representatives in child care proceedings and the question of who should be selected to undertake this task. A detailed delineation of all the duties required of such representatives is not part of the scope of the study. However, some basic notes on some of the main tasks of the representatives may be of assistance in deciding who should serve as the representatives. This chapter of the study therefore offers some brief observations aimed primarily at providing additional context for the recommendations which follow in the final chapter.

As soon as a representative has been assigned to a case, she should review the appropriateness of the child's current position. Is it really in the child's best interests to have been left with\already removed from his previous caregiver? Has sufficient\too much time been set aside for the social worker's investigation of the child's circumstances pending the hearing? The child's representative must see to it that undue delays do not occur before the date of the children's court hearing.¹³ Another important pre-hearing task is to ensure that the social worker undertakes adequate investigation. The child representative must be prepared, if necessary, to supplement that investigation. Probably the most important pre-hearing task in many cases is to build up a relationship of trust and free communication with the child to be represented (if she is old enough and otherwise capable). The child must if possible be convinced that she/he has her/his very own representative who will see that her/his views and hopes gain priority at the hearing. Such a constructive professional relationship with the child may help to make care proceedings seem more meaningful to many children and help, for example, with the major problem of children absconding.

Prior to the hearing, the child-representative may need to engage in mediation with the present or would-be future caregivers of the child. Mr. B. Van der Westhuizen, one of the very few attorneys with considerable

¹³ Previous research by the author has indicated that this is a common problem in some jurisdictions.



experience of appearing as a child representative in the children's court, stressed the crucial importance of the representative's ability to engage in mediation.¹⁴ Mr. Van der Westhuizen contrasted the role of the representative in care proceedings, where attempts should be made to reunite crumbling family units if possible, with the role of the family advocate in overseeing the child's placement in a separating family at divorce. As has already been noted in chapter 8, the family advocate and family counsellor use a team approach in order to present the divorce court with a joint plan for the placement of the child. But, in Mr. Van der Westhuizen's view, the children's court child representative is there to provide an extra check and balance by critically testing and querying the social worker's placement plan, especially if she wishes to recommend removal of the child from her parents. Mr. Van der Westhuizen considered that

'Sometimes social workers become too emotionally involved, despite their training, or are too removal-oriented. They forget that a third-rate parent is often better for a child than any institution. They have heavy caseloads, sometimes work mainly alone on a case, and do make mistakes. The care proceedings representative must serve as an additional safeguard.'¹⁵

He also considered that the sceptical querying and testing role of the representative must be applied as much to child psychologists and other experts as to the investigative social worker. The representative must be especially on her guard where an expert is receiving payment from a particular party since, unfortunately, this can and sometimes does affect the slant of expert testimony given to the court.

Mr. Van der Westhuizen listed two crucial tasks of the child-representative as follows:

- 1) To direct mediation towards healing the child-parent relationship where possible, and to convincing the parent's that he needs help and can improve as a parent.
- 2) To see that the social worker and commissioner treat removal of the

¹⁴ Interview with the researcher on 27 May, 1996.

¹⁵ That social workers make mistakes was confirmed by four of the social work respondents. Ms J. Van Rensburg, of the Department of Developmental Social Welfare, warned that 'investigative social workers sometimes do very poor work'.

child from her family as a drastic last measure, usually to be resorted to only where there is actual evidence of harm to the child.

He also echoed the sentiments of commissioners quoted earlier in this study that, in the children's court, one is concerned with assessment of the quality and durability of relationships, what he referred to as 'the shades of grey of family law, that not all lawyers are comfortable in dealing with'. Ms. A. Marks of the Cape Town Child and Family Welfare Society also stated that she had occasionally had experience of lawyers doing extremely valuable work in mediating between child and parent and thus serving as a link between the investigative social worker and the parent. This would appear to confirm Mr Van der Westhuizen's view that mediation between parent, child and social worker will often be one of the important functions carried out by the specialist child-representative.

Mr. T.P. Mabela, a social worker with 29 year's experience of children's court proceedings, stated that a legal representative can perform a valuable function at a children's court hearing by challenging and testing the investigative social worker's report, but this must be done from the perspective of the best interests of the child, and not in a partisan manner that is destructive of the parent-child relationship.

A situation which may test the ability of the child representative to gain the trust of the child is that of divergence between the wishes of the child and the intentions of the social worker. It often happens that what the child wants by way of a future placement is not what the investigative social worker considers to be in the child's best interests. In this situation of a divergence between the wishes of the child and the intended recommendation of the social worker, it would surely be the duty of the representative (as the child's advocate) to assert the child's point of view and wishes at the hearing. This is so that the child's hopes and feelings about her or his future will receive proper consideration at the hearing and not automatically be rated as secondary to the recommendations of the investigative social worker. The child advocate must act firmly and independently on behalf of the child and must not merely slavishly follow the lead of the social worker if the child is in disagreement with the latter. Only then can it be said that children have really been given a voice in care proceedings.



Chapter 13

Conclusion and recommendations

The purpose of this chapter of the study is to offer final recommendations in regard to who should serve as representatives in care proceedings as defined in the introduction to the study. It is necessary to balance what may be ideal with what (in terms of state expense) may be reasonable to suggest in the light of the needs of children and other parties.

The data drawn for chapter 3 of the study makes it clear that children who are the subject of care proceedings certainly need representatives as a matter of urgency. The data drawn for chapters 4 and 5 makes it equally clear that the current practice in some jurisdictions of using either clerks or prosecutors to 'fill the gap' is, in most instances, undesirable, and can even be disadvantageous to children. It is recommended that clerks and prosecutors should not be used to represent children in care proceedings.

The data collected for chapter 6 of the study (and elsewhere) revealed the great value of social work training and experience for persons who would wish to work effectively in the children's courts. The advantages of such training and experience have been fully canvassed, and it might have been tempting to suggest that training for care proceedings representatives be built around a social work degree with a strong law component. However, there are a number of counter-considerations which lead the researcher rather to recommend that children's court representatives be required to obtain a law degree with a strong social sciences (including social work) component. Firstly, it is necessary to keep the wider picture in mind. The concept of a new network of Family Courts is now favourably regarded in South Africa, and so it is not unlikely that the present children's courts will eventually be subsumed into these. It is therefore important to recommend training for care-proceedings representatives that will render them suitable for subsequently undertaking a wider range of duties - such as maintenance officers and even adjudicative officers - in a possible future family court network. It seems clear that family court staff who would undertake such duties would need a law degree, albeit one with a strong and appropriate social sciences component as discussed previously in chapter 11 of the study.

A second consideration which favours a law degree for child representatives is that, in the children's court, children already tend to have fairly extensive direct contact with a social worker in the form of the investigative social worker. If the child representative was also to be a social worker there would be more danger, because of similarity of status and background, of the representative feeling inclined to support the investigative social worker rather than critically appraise her work and recommendations. The most crucial aspect of the child representative's work is her ability to serve as an additional check and balance in a process where a very important decision is going to be made about the child's future. Indeed, if the representative were a social worker, it might justifiably be asked what additional dimension she was really adding? Doubts about the cost-effectiveness of having two social workers present at care proceedings would arise.

The child representative must not only work independently of the investigative social worker; she must also possess the 'hard' court advocacy skills required to shield the child against the excesses of adversarial lawyers representing adult parties. And she must have the stature and capability to gain the respect and the ear of the commissioner: for example on such issues as when to remove the child from the presence of an abusing adult who is in court. And, of course, she will need to be effective at both firm cross-examination and gentler information-gathering techniques. It would thus appear that many of the essential tasks of the child representative require that she be in possession of a law degree. It is also necessary to keep in mind the importance of the objectivity conferred by a legal training as stressed by so many of the commissioners interviewed.

There is yet one further consideration which points in the direction of a legal, rather than social work, degree for representatives in the children's court. As has been noted earlier in the study, s28(1)(h) of the Constitution and the Child Care Amendment Act 1996 have a combined effect of extending children's rights to receive what is specifically referred to as 'legal' representation. It is submitted that this could only be provided by a person who is legally qualified. Hence, any recommendation that social workers be permitted to serve as child representatives in care proceedings runs the risk of a failure to meet the specific requirement of s28(1)(h) of



the Constitution and Section 8A. of the Child Care Amendment Act.

For the reasons set out in the previous paragraphs, it is therefore recommended that, whilst an interdisciplinary training is required as explained in chapter 11 of the study, the University degree awarded must be one which can legitimately be called a law degree.

In line with the suggestions advanced in chapter 10, it is suggested that offices of full-time child representatives be set up at children's courts. In order to preserve the necessary independence, these should not be part of the children's court in a manner that would render the representative subservient to the authority of the commissioner - except, of course, when the final decision is made at the end of a hearing. The operational set-up would thus not be dissimilar to that of family advocates, but the representatives could take on many of the non-clerical functions of the present so-called children's court assistants. A cost-saving could be incurred by phasing out the posts of these assistants. In rural or small-town jurisdictions where the children's court caseload is small, not all magistrates' jurisdictions should continue to serve as children's courts. In addition, in order to concentrate and rationalise the use of specially-trained personnel, the child representatives must go on circuit in order to serve several neighbouring children's courts in a cost-effective manner.

In addition to the full-time child representatives as discussed in the previous paragraph, complementary roles in care proceedings are recommended for certain private attorneys and advocates. The data collected for the study has shown that private lawyers have usually been ineffective, and sometimes even had a negative influence, in care proceedings in South Africa.¹⁶ However, it has also been shown that lawyers with the proper skills and orientation can play a very significant part in improving the quality of care proceedings. It is therefore recommended that lawyers must obtain a special additional qualification before being permitted to appear in the children's court. This qualification should require certification by commissioners of having sat in (as an observer) for at least 50 hours of

¹⁶ See chapter 7 of the study.

children's court hearings.¹⁷ It should also require the passing of an examination which covers relevant aspects of the Child Care Act, social work methodologies in regard to child care, and child and familial psychology.

Private lawyers who qualify as recommended in the previous paragraph can be placed on a roll available at all children's courts and offices of child representatives. It is recommended that such qualified lawyers be permitted to appear before the children's court for fees or without charge when privately appointed by any party in a case. In addition, such qualified lawyers should be eligible to be appointed, at state expense (under legal aid) to appear in either of two situations. Firstly, for a current parent or guardian of a child who is the subject of any proceedings in the children's court where there are allegations of abuse against such parent\guardian and/or where such parent\guardian disputes removal of the child from her current placement or disputes a proposed adoption of the child.

Secondly, it must be borne in mind that not all full-time child representatives will necessarily be qualified attorneys or advocates. Therefore, the head of the local child representatives' office should have the discretion to appoint a qualified private lawyer to represent a child at state expense if necessary (instead of a full-time child representative) whenever he considers that this is in the best interests of the child or when substantial injustice would otherwise result. Should a commissioner come to the conclusion (at any stage in proceedings) that either of the same two tests apply, then an attorney or advocate should also be provided.¹⁸ It is necessary that the child have the benefit of an attorney or advocate in such situations in order to comply with s28(1)(h) of the Constitution and the new section 8A. of the Child Care Amendment Act. Specifically, it is recommended that the child must have an attorney or advocate if there are allegations of child abuse or if any adult party has an attorney or advocate. A head of a child-representative's office should also be empowered to appoint a qualified private lawyer whenever a full-time representa-

¹⁷ It should be noted that s8(2) of the Child Care Act is already appropriate for this purpose in that it provides commissioners with a very broad power to allow the presence of persons besides those actually needed for the conduct of a hearing. See, particularly, the phrase, 'or unless the commissioner presiding at that sitting has granted him permission to be present.'

¹⁸ At the discretion of the local head of office of child representatives, the private lawyer would supplement or replace any full-time child representative already appointed.



tive is not available or cannot devote sufficient time to do justice to a case - perhaps, for example, for reasons of complexity.

It is submitted that the recommendations contained in the previous two paragraphs strike a reasonable balance. They should result in the provision of proper, competent representation that is so badly needed for both children and adults in care proceedings. It should be noted that the intention is to provide for children in all children's court cases and for adults where needed. By using only full-time child representatives for a substantial proportion of cases, we achieve both the training of a corps of child advocacy specialists (with future family courts in mind) and save on the crippling costs that would be incurred by relying only upon private lawyers employed through the mechanism of legal aid.

Appendix I:

List of Children's Court Commissioners Interviewed

(In alphabetical order by jurisdiction.)

- ALICE: Mr. M.R. Mxesibe (22 May, 1996)
- AMERSFOORT: Mr. P.B. Haasbroek (8 May, 1996)
- BIZANA: Mr. M.C. Bashe (15 May, 1996)
- BLOEMFONTEIN: Mr. H.F. Fritz (8 May, 1996)
- BUTTERWORTH: Mr. M. Lieiee (30 May, 1996)
- BUTTERWORTH: Mr. E.V. Qwaqwa (29 July, 1996)
- CALEDON: Mr. P. Leriche (6 May, 1996)
- CAPE TOWN: Mr. J. Venter (13 May, 1996)
- CHATSWORTH: Mr. T.J. Schoombie (2 May, 1996)
- CHRISTIANA: Mr. J.L. Erasmus (13 May, 1996)
- DITSOBOTLA: Mr. T.J. Mohohlo (9 May, 1996)
- DURBAN: Mr. D.S. Rothman (7 May, 1996)
- ERMELO: Mr. P. Van Wyk (8 May, 1996)
- EVANDER: Mr. P.J. Venter (13 May, 1996)
- EMNAMBITHI: Mr. B.M. Mchunu (7 May, 1996)
- ENZIBELENI: Ms. A. Gela (30 May, 1996)
- FAURESBURG: Mr. N.J. Smith (10 May, 1996)
- FRASERBURG: Mr. D. Mienie (17 May, 1996)
- GERMISTON: Mr. H.P. Strydom (2 May, 1996)
- HARDING: Mr. C. Labuschagne (3 May, 1996)
- HERTZOGVILLE: Mr. A. Forster (7 May, 1996)
- IDUTYWA: Mr.K.G.T. Kutshwa (15 May, 1996)
- INZINGOLWENI: Mr. D.S. Mnguni (3 May, 1996)

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- JAN KEMP DORP: Mr. H.H. Strauss (17 May, 1996)
- JOHANNESBURG: Mr. P.S. Steenkamp (3 May, 1996)
- LAAIPLEK: Mr. H.X.V.Z. Cillier (7 May, 1996)
- MAHLABATINI: Mr. B.E. Mbuyisa (3 May, 1996)
- MOUNT CURRIE: Mr. H.W. Lessing (8 May, 1996)
- MUTALE: Mr. M.C. Mudau (16 May, 1996)
- NAMAGALI: Ms. M. Masipa (22 May, 1996)
- PRETORIA: Ms. Snyman (3 May, 1996)
- PIETERMARITZBURG: Mr.M.N.P. Mtshali (6 May, 1996)
- PORTERVILLE: Ms. V. De Villiers (7 May, 1996)
- RANDBURG: Mr. A. Ferreira (3 May, 1996)
- ROODEPOORT: Mr. D.C. Van Greuning (10 May, 1996)
- SOSHANGUVE: Mr. De Bruyn (30 April, 1996)
- STANDERTON: Mr. T.C. Nel (7 June, 1996)
- THOHOYANDOU: Mr. T.P. Mudau (16 May, 1996)
- UPINGTON: Mr. M.J. Nel (May 1996: day not recorded)
- VENTERSDORP: Mr. D.J. Postma (22 May, 1996)
- VERULAM: Ms. M. Reddy (3 May, 1996)
- WELLINGTON: Mr. J.C. Ras (7 May, 1996)

APPENDIX II

A List of the "External Observers" interviewed

(In alphabetical order, by name)

- Ms. K. Burse: Dept. of Health & Welfare -East London (27 May, 1996)
- Ms. N.S. Chiluvane: Dept. of Social Welfare and Population Development - Durban (31 May, 1996 -interviewed by Dr. C.R. Matthias)
- Ms. D. Havenga: Provincial Administration -Bloemfontein (28 May, 1996)
- Mr. T.P. Mabela: Dept. of Health & Welfare -Pietersburg (30 May, 1996)
- Ms. S.M. Mtetwa: Dept. of Social Welfare & Population Development - Durban (31 May, 1996 -interviewed by Dr. C.R. Matthias)
- Ms. E. Swart: Dept. of Social Welfare & Population Development - Kimberley (28 May, 1996)
- Ms. A. Marks: Cape Town Child & Family Welfare Society (31 May, 1996)
- Mr. B. Van der Westhuizen: private attorney -Pretoria (27 May, 1996)
- Ms. J. Van Rensburg: Dept. of Developmental Social Welfare - Rustenburg (27 May, 1996)
- Ms. L. Van Rensburg: Dept. of Welfare & Population Development - Krugersdorp (29 May, 1996)
- Ms. F. Williams: Dept. of Social Welfare & Population Development - Durban (27 May, 1996)
- Ms. A. Wright: Dept. of Health & Welfare -Witbank (28 May, 1996)



Appendix III:

List of Family Advocates interviewed

(In alphabetical order, by name.)

- Mr. A.P. Du Plooy: Bloemfontein\Kimberley (17 May, 1996)
- Ms. H. Fouche: Cape Town (4 June, 1996)
- Ms. R. Govender: Durban\Pietermaritzburg (5 June, 1996)
- Mr. Hattingh: Cape Town (questionnaire still awaited)
- Ms. B. Hechter: Johannesburg (17 May, 1996)
- Ms. R. Heimes: Port Elizabeth (21 May, 1996)
- Ms. Y. Kellerman: Pretoria (15 May, 1996)
- Ms. S.U. Marais: Bloemfontein (15 May, 1996)
- Ms. M. O'Gorman: Durban\Pietermaritzburg (17 May, 1996)
- Ms. P.I. Seabi: Johannesburg (22 May, 1996)
- Ms. D. Singh: Durban\Pietermaritzburg (23 May, 1996)
- Mr. G. J. Van Zyl: Pretoria -acting chief family advocate (14 May, 1996)

Appendix IV:

Caseloads of the Jurisdictions sampled

Total annual number of cases in the children's courts sampled for the study. Each commissioner was asked to estimate the current annual total by making reference to previous years for which exact figures were available.

CASES	NUMBER
0-5	11
6-10	7
11-15	4
20-25	3
50	1
110-120	2
200	2
300	2
400-600	6
No data	3
Total	41



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