

CHAPTER EIGHT

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

8.1 INTRODUCTION

With this study the researcher sought to contribute towards the training of intermediaries. In chapter two, three, four, and five the literature study was described, chapter six discussed the training program and chapter seven described the empirical study. In the first phase (Section A) of the empirical study, research was done to compile a training program for intermediaries and in the second phase (Section B) the usefulness of this training program for intermediaries was explored. This training program enables the prospective intermediary to understand the roles and duties of the intermediary. It also enables the intermediary to understand various aspects of child development, trauma, the family as well as the practical aspects of being an intermediary.

In this chapter, summarized conclusions and recommendations will be made from the literature and empirical studies. The purpose of the study, the testing of the goals, the objectives as well as the research question and hypothesis will be evaluated, tested and discussed in this chapter. This chapter will refer to the objective for this study stated in chapter one, namely to evaluate the effectiveness of the training program for intermediaries with a view to recommend further utilization in practice and to draw conclusions and make recommendations to the Department of Justice and Constitutional Development. Together with the recommendations, themes will be highlighted for further research and intervention (phase six of intervention research). The chapter will conclude with a final remark.

8.2 EVALUATION OF THE PURPOSE, GOAL, AND OBJECTIVES OF THE STUDY.

8.2.1 Purpose of the study

For the purpose of this study, the exploratory as well as descriptive designs were used.

Section A: The Researcher explored the perceptions, concerns, problems, expectations, and needs of magistrates, prosecutors concerning training programs for intermediaries (as described in 7.3.1).

Section B: The training program and results of the pretest and posttest of the prospective intermediaries receiving the training program was described.

8.2.2 Goal of study

The goal of this study was:

To develop, implement and evaluate the effectiveness of a research-based training program for intermediaries for the child witness in South African courts.

The researcher succeeded in developing a training program for intermediaries which aimed to train trainees to act as intermediaries to assist child witnesses in the courts in South Africa. The training program was implemented by presenting it to 69 prospective intermediaries. The effect of the training program was evaluated by means of questionnaires (appendix three and four) before and after the intervention. In chapter seven, the data that was collected during the empirical study, was interpreted. From the analysis of the data it was clear that the training program for the training of prospective intermediaries was successful and presented valuable information. All the trainees indicated that they had all benefited from the training program (figure 7.56). The researcher therefore succeeded in reaching the goal of the research study.

8.2.3 Objectives of the study

The various objectives that were set for the research will be discussed individually.

8.2.3.1 Objective 1

To develop a theoretical framework by means of a literature study regarding child development, linguistic development, court preparation, child centred communication, criminal law, the South African legal system, the intermediary, sexual and other abuse, trauma debriefing and anatomical detailed dolls

Objective one was connected to phase two of intervention research. Existing literature was consulted to discuss topics regarding child development, linguistic development, court preparation, child centered communication, criminal law, the South African legal system, the intermediary, sexual and other abuse, trauma debriefing, court preparation, the parent, and anatomically detailed dolls. Based on the above it can be said that the researcher did succeed in reaching the first objective.

To reach this objective, a literature study and phase one of the empirical study, namely information gathering and synthesis, was done to develop a training program for prospective intermediaries.

In chapters one, two, three, four, and five, the literature study done during this research was discussed and a theoretical framework for the compilation of a training program (intervention model) was created. Objective one was reached.

8.2.3.2 Objective 2

To explore the perceptions, experiences, concerns, problems, expectations, and needs of magistrates and prosecutors from various sexual offences courts in South Africa on the role and duties of the intermediary.

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In chapter seven, the results of section A of the empirical research, namely the survey done by means of questionnaires distributed to magistrates and prosecutors (Appendix one and two) were interpreted by means of graphics and tables.

The information gathered as well as the researcher's practical experience of acting as intermediary, were used to compile a training program for intermediaries. During the discussion of the empirical findings, attention was paid to the perceptions, concerns, problems, expectations, needs and opinions of the magistrates and the prosecutors.

Information was explored and interpretation of the data collected from the two questionnaires of section A took place.

8.2.3.3 Objective 3

To explore and gain information on existing training programs for intermediaries in South Africa

In March 2004 a workshop was held at Justice College - the official training organ of Department of Justice and Constitutional Development. The aim of the workshop was to draw up minimum standards for a uniform training program for intermediaries in South Africa. Fifteen questionnaires were distributed to trainers of intermediaries presenting their own programs, to determine the contents of these programs. Great reluctance was experienced during this workshop. The trainers were not prepared to divulge any information on their training programs. Of the 15 questionnaires, none were received back. No data analysis could take place and no interpretation could be made. The researcher was, at that time, lecturing for the intermediary training course of Justice College.

Objective three could therefore not be reached.

8.2.3.4 Objective 4

To develop a research-based training program for intermediaries in South Africa

Although the *Government Gazette* no. 15024 of 30 July 1993 sets out who may act as intermediary, it does not specify any additional training or skills development before being appointed as an intermediary.

This leads to people who have no training or experience, being appointed to carry out the functions required by an intermediary. The different categories of people who can act as intermediaries are usually not trained or experienced in communicating with children unless they have specialized in that specific field.

In chapter six a description of the process of developing a training program for intermediaries is given. A schematic presentation of the training program is given (see 6.8).

The planning and design of a learning program can only be done after a thorough needs assessment exercise (see 6.6). This needs assessment was done during phase one and two of intervention research, namely, the problem analysis and project planning phase and the information gathering and synthesis phase.

The development of learning objectives was developed from the intended result of the training program. Study units were identified and objectives were set. Procedures and activities were developed so that the program can lead to an effective learning experience. Outcomes were derived from these objectives by determining what action had to take place and what indicated the successful achievement of the outcome. This was integrated in the course on a continuous basis as well as in a final questionnaire that was completed at the end of the course.

The content of the training program was developed to consist of 12 study units (6.5.2.4), which are discussed on the basis of specific outcomes, assessment criteria, practical component and handouts/material provided. The training program was presented over a period of 5 days. A certain amount of flexibility regarding the time spent on each theme was provided for (see 6.5.2.4). The time for the course was divided into the following:

- (a) 20% of time was dedicated to theory.
- (b) 30% of time was dedicated for sharing practical experiences, mainly by trainer but also by trainees.
- (c) 50% of time was dedicated to group discussion, videos, role-plays, practising skills and court attendance.

The implementation of objective four is connected to phase four of intervention research, namely developing a prototype or preliminary intervention. From the information above it seems clear that the researcher succeeded in drawing up a preliminary training program for intermediaries for the child witness in South African courts. This part of the research is known as the operationalizing of the intervention program.

From objectives two to four it was shown that a research-based training program can be drawn up. In chapter six and seven the compilation and application of the training program were discussed.

8.2.3.5 Objective 5

To implement the training program for intermediaries

Section B of the empirical research was aimed at evaluation and advanced development (phase five of intervention research). Step one: selecting an

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experimental design, namely a one-group pretest-posttest, was used to demonstrate the causal relationship between the training program and the increase in the intermediary's knowledge of the roles and duties of an intermediary. A training program for intermediaries was developed. The program was pilot tested by two magistrates, two intermediaries and two lecturers in October 2004. They were not part of the respondents for the final training program. After the necessary adjustments were made to the training program, it was implemented during three training programs held at Justice College, Pretoria during October and November 2004.

Step 2, namely the replication of the intervention under field conditions, was then undertaken. The training program was presented to the trainees. To reach this objective, the following was undertaken:

An overall goal was set for the training program. The goal was to develop, implement and evaluate a research based training program for intermediaries for the child witness in South African courts.

It can be concluded that, after necessary and final changes were made to the training program and it was successfully implemented, that objective five was reached.

8.2.3.6 Objective 6

To evaluate the impact of the training program for intermediaries with a view to recommend further utilization in practice.

In chapter seven, the results of section B of the research study were obtained from a one-group pretest-posttest.

In chapter seven, a short review was given of the quantitative data collected, analyzed and interpreted during phase two of the research study. This review orientated the reader of this study with the view to discuss the empirical findings. The data was

collected by means of 2 self-constructed questionnaires (Appendix three and four), which were distributed before the beginning of the training program and again after the training program was completed. The results were analyzed, compared and interpreted by means of tables and graphs.

The information gathered was used to determine whether change had taken place in the knowledge of the respondents. During the discussion of the empirical findings, attention was paid to the impact of the training program on the trainees who attended the program

8.2.3.7 Objective 7

To draw conclusions and make recommendations to the Department of Justice and Constitutional Development and other trainers of intermediaries for the implementation of the training program

In chapter seven the results of the empirical study as well as the interpretation thereof were presented. The success of the intervention program was measured by the change that took place in the respondents between the first questionnaire that was completed before the training program and the second questionnaire that was completed after the training program. The finding of the researcher was that the program can successfully be presented to prospective intermediaries.

In April, 2005, the researcher presented a seminar that was attended by various officials from the Directorate: Court Services, from the Department of Justice and Constitutional Development, as well as Justice College, where the results of the training program were presented. Once the final research report has been compiled, the Department of Justice and Constitutional Development will evaluate the training program for distribution amongst other trainers who train intermediaries for the department.

From the above it can be seen that objective seven has been reached.

8.3 Testing the Research question and Hypothesis

8.3.1 Research question:

What are the duties and roles of an intermediary?

According to the problem formulation in chapter one, there is no national research-based training program for intermediaries in South Africa at the moment. A person being appointed as an intermediary must have experience and be knowledgeable in dealing with children. Training should be given to equip the intermediary with the necessary skills to help and support the child witness.

During phase one of section A of the research study, magistrates and prosecutors were asked to complete a questionnaire exploring their perceptions, experiences, concerns, problems, expectations, and needs concerning the intermediary. From the results of this survey, the researcher could determine that:

- One hundred percent of both magistrates and prosecutors felt that intermediaries should be trained before acting as intermediaries;
- What both magistrates and prosecutor felt the roles and duties of the intermediaries are;
- There was consensus between the magistrates and prosecutors on which topics should be presented at a training program; and
- Both magistrates and prosecutors felt that a large percentage of intermediaries were not trained and were delivering a poor service.

As a result of section A of the research an answer could be obtained for the research question. The duties and role of the intermediary, as indicated by magistrates and prosecutors, were included in the training program.

8.3.2 Research Hypothesis

If an intermediary is trained according to a research-based training program, the intermediary's knowledge and understanding of her/his role in assisting the child before and during trial in a South African court will be improved.

In chapter seven the training program (intervention) was also evaluated. The results relating to the growth in knowledge of the trainees is indicated. The conclusion was made that the training program resulted in sufficient growth in the intermediary's knowledge. Only one (1%) trainee indicated that she did not feel sure about being an intermediary. It must however be taken into account that her academic background did not qualify her to be an intermediary.

From the aforementioned it can be said that the research hypothesis can be supported.

8.4 CONCLUSIONS

From this study, the following conclusions can be draw:

In chapter two the South African legal system was discussed. It was stated that an increasing number of children are giving evidence in court about crimes perpetrated against them.

Classifications of crimes according to the interest that the law seeks to protect by punishing those particular crimes like assault, rape, and indecent assault were described (see 2.6). Knowledge and understanding of the historical background of the South African legal system is of importance to professionals like intermediaries working in court so that an overall understanding of the accusatorial system can be obtained (see 2.2).

In the accusatorial system the opposing parties are responsible for presenting evidence in support of their respective cases. Cross-examination and face-to-face confrontation between the witness and the accused are central features of the accusatorial system (see 2.3). The researcher is of the opinion that these specific features cause the child witness the most problems. Having to testify in front of the accused and having to face aggressive cross-examination in a language that is strange to the child is a daunting prospect for any child, so much more for a traumatized and abused child. From the survey done, both magistrates as well as prosecutors described this problem as being the biggest problem children experience and that these are features the intermediary must be able to assist the child with. The conclusion can be drawn that this is important so that further retraumatisation can be prevented.

Oral evidence that has to be given in court by the child witness was addressed. The weight the court is going to attach to the child's evidence will depend on the child's credibility. The child will have to give evidence-in-chief, be cross-examined and re-examined (see 2.3.1). From the literature study and own experience, the researcher came to the conclusion that if the child does not testify with the help of an intermediary, it can be very problematic and traumatic for the child witness. The intermediary must know what she is allowed to do and how she is allowed to assist the child. Without the above information the intermediary cannot adequately assist the child before, during and after the trial. The conclusion can be drawn that the child, because of the developmental stage he is in, will need the assistance of the intermediary to understand what is expected of him in court.

The intermediary must have knowledge of the roles of the two opposing parties, the "contest atmosphere" and the role and duties of the magistrate to be able to explain this to the child whilst doing court preparation. The magistrate's role and duties must form part of the training program. The magistrate's impartiality was emphasized as well as his neutrality (see 2.3.2 & 2.3.3).

The aspect of confrontation and cross-examination, which causes the most problems for the child, were included in the training program for intermediaries (see 2.3.4 & 2.3.5). The fact that the child may have to testify in an open court in front of strangers causes fear and stress. From the aforementioned it is clear how important it is for the

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child to testify with an intermediary in a separate room. The fact that 41% of the prosecutors felt that the child could testify without an intermediary is, according to the researcher, a reason for great concern (see figure 7.38). The conclusion can be drawn that the prosecutors are not always aware of the influence of trauma on the child and the retraumatisation of testifying in court. This can lead to children experiencing the legal system as unfriendly towards children.

The rules of evidence, which dictate the court proceedings, were discussed. Aspects such as the competency of the child witness, the cautionary rule, hearsay, and the oath were explored (see 2.3.6). The researcher concludes that the intermediary has a very important role to play concerning these aspects, as she must explain the meaning thereof to the child. These aspects form part of the training program.

The conclusion can be drawn that the rules of evidence are strange and unfamiliar to children as they are not part of a child's normal developmental world.

The legal instruments concerning the child in South Africa were described (see 2.4). The researcher is of the opinion that if no provision is made for specialized services for the child witness, they will further be exposed to the negative effects of the criminal justice system. The various initiatives that address the issues of the child witness were discussed in this chapter. These were the Constitution of the Republic of South Africa, the United Nations Convention on the Rights of the Child, and the Victim's Charter. These are all aimed at empowering and enabling the justice system to ensure the fulfillment of international, constitutional and moral obligations to promote the best interest of the child.

The Bill of Rights included all the rights of all the people, including children. All people in court, including children, have the right to be treated equally. Section 28(1), 28(2) and 28(3) refer to the child's rights, and section 35(3) refer to the accused's rights. All decisions taken must be in the best interest of the child. The Victim's Charter intended to provide the people of South Africa with information of services provided for victims of crime. These rights – also of the child victim - are:

- The right to be treated fairly.

- The right to offer information.
- The right to be protected, and
- The right to assistance.

The intermediary must have knowledge of these rights as they must be respected in court when the child witness has to testify.

The United Nations Convention on the Rights of the Child states that the child is not the property of the parent, he is not a helpless object, but is a human being with rights of his own. The Convention highlights and defends the family's role in the child's life. It seeks to respect the child, but not at others expense and endorses the principle of non-discrimination.

Other statutes in South Africa also protect the child witness. Section 170A of the Criminal Procedure Act, 1997(Act 51 of 1977) provides that evidence can be given via an intermediary. This is of relevance if an intermediary is used. The child can then testify through an intermediary. It is important that the intermediary has knowledge of all aspects and requirements for the granting of section 170A so that it can be explained to the child or his parents. The intermediary must also see to it that these rights of the child are carried into effect.

From the literature study done, the researcher came to the conclusion that an intermediary must know the following:

- The rules of evidence, namely:
 - The competency requirements;
 - The oath, oath-taking competency;
 - Oral evidence;
 - The cautionary rule; and
 - Credibility.
- The rules of the trial, namely examination-in-chief, and the role of the prosecutor; the effect of leading questions on the child, cross-examination and the purpose of

cross-examination must be explained to the prospective intermediary in the training program so that the intermediary can understand the court procedure..

- Attention must be given to questioning techniques during cross-examination, such as leading questions, repeating questions, using negatives; multifaceted questions and specialised language because these are the most difficult aspects for the intermediary to handle during the trial.

From the results of the empirical study and from the literature study, the above problem areas for the intermediary were identified. These were identified as specific topics to be addressed in a training program (see figure 7.1).

Chapter three comprehensively outlined the developing child. It is important that an intermediary has knowledge of this. The legal system demands a range of cognitive, social and emotional skills from the child witness. The researcher concludes that the intermediary can only assist the child effectively if she has a thorough working knowledge and clear understanding of all aspects of child development. As the importance of child development became clear from the literature study, special emphasis was placed on the child between the age of four and eight years, as during this phase, major changes take place. Knowledge of child developmental stages in all age groups must however be part of the knowledge base of an intermediary. This was indicated by magistrates, prosecutors, and intermediaries themselves during the empirical study (see table 7.3).

The brain and its functions and the role of myelination and its importance in the ability of the child to be a competent witness must be incorporated as part of the training of the prospective intermediary. Neurons are myelinated carrying the impulse more rapidly (see 3.3). This again influences the transfer of information from the right hemisphere to the left hemisphere. For the child to be an effective witness, he must be able to perceive an event accurately and then convey the information.

The development of perceptual skills relating to the five senses was described as a part of the index of the training program. The young child's perceptions grow as he/she matures. If the young child pays attention at the time that the event occurs, the

child is capable of observing what is happening. These are the occurrences the young child must testify about in court. Children at the age of four years can already possess the perceptual skills needed to give accurate testimony (see 3.4).

The child views the world from his own perspective and assumes everybody else knows what he knows. This will have a large influence when the child testifies, as he will not understand why he has to tell the whole story. He thinks that the magistrate knows what happened to him.

The development of attention and memory are still debatable topics. For the child to testify in court, he must be able to pay attention so that he can recall memory. For the child to remember people and events he has to store the information in his memory. He must also be able to recall this memory. Intermediaries must have knowledge of different representations, namely enactive representations, imaginal representations, linguistic representations, categorical representations, and operative representations as these will influence the child's memory recall process when testifying.

Language development is an important topic to explore as the success of the intermediary depends on her ability to communicate with the child in a manner the child can understand. It is necessary for the intermediary to assess the child's language developmental level, oral language components, namely phonology, semantics, syntax and pragmatics and language milestones so that she can assure herself at what level she can converse with the child. The intermediary must be able to translate the complicated court language to the age appropriate level of the child so that the child can understand the question.

Developmental difficulties of the child were discussed. These difficulties were divided into different age categories namely, pre-schoolers, early middle childhood (seven to nine years) and teenagers (13 to 17 years). The researcher found that children testifying in court often suffered from developmental difficulties. Knowledge of these difficulties and how to treat such a child witness will enable the intermediary to assist the child competently when testifying.

For the child to testify in court, he must understand the difference between telling lies and telling the truth (see 2.7.1). The intermediary must have knowledge of the moral development of the child from early childhood and middle childhood as this influences the child's understanding of why he must tell the truth in court. This includes:

- Moral reasoning versus moral action (Piaget and Kohlberg's moral reasoning theory); and
- Difference between reality and fantasy.

The intermediary must understand the child's social-emotional developmental. Social development can be divided into different age groups, namely early childhood and middle childhood. Love, the development of self-conscious emotions and understanding emotions of others were discussed as part of social-emotional development. Emotional self-regulation, recognising emotions, rules when displaying emotions, temperaments, attachment, empathy, and self-concept were briefly described (see 3.9.3). Finally, Erikson's first five phases of social and emotional development were explored (see 3.9.11). As a child is often traumatised when testifying in court, the intermediary will be empowered if she understands the child's emotional reactions to testifying in court.

The legal system requires reliable and trustworthy, detailed, oral evidence from the child witness. Questions asked in court call for sophisticated reasoning skills. The researcher succeed in showing in this chapter that the incidents that bring the child into contact with the legal system are very stressful and traumatic and require emotional maturity and advanced coping strategies. Without an understanding of the child's developmental phase and underpinnings, even a simple question can confuse the child and lead to a misunderstanding, which will effect the trial negatively.

It can be concluded that a training program must be able to familiarise the prospective intermediary with knowledge of the following child developmental aspects:

- Cognitive development as the development of the thinking and organizing systems of the brain that involves language, mental imagery, thinking, reasoning, problem

solving, memory development, changes in the child's intellectual abilities, and knowledge of the world throughout development;

- Piaget's principles and key concepts;
- The three cognitive developmental phases, namely pre-operational (two-six years), concrete operational (six-12 years) and formal operational (12-19 years);
- Cognitive development and the effect and influence thereof on the child in the courtroom;
- Child development and the child witness in different age groups namely, three-five years, five-seven years, and eight-12 years;
- The cognitive limitations of the young child in court; and
- Terminology like egocentricity and concrete thinking.

In chapter four trauma and all aspects relating to trauma were discussed (see 4.2). A definition of trauma was given. The impact of childhood trauma on the brain was discussed. The impact of sexual abuse on the child was also investigated. Children's experience of loss and the symptoms of this loss were also explored. Kubler-Ross identified five phases of coming to terms with loss. These are denial, anger, bargaining, depression, and acceptance. The intermediary must have knowledge of these phases so that she can support the child appropriately when showing any signs of the above. If necessary, the intermediary can refer the child to a therapist before or after the child has testified.

The characteristics of trauma as well as the symptoms in a traumatised child can be summarised as follows (see 4.2.2):

- Re-experiencing the event;
- Numbing of response;
- Hyper arousal;
- Developmental change;
- Generalised fears;
- Psychological consequences;
- Blurring of distinction between friend and enemy;
- Emotional regression; and
- Co-morbidity.

Finkelhor and Brown's four-factor traumagenic model conceptualised four trauma-causing factors, namely sexualization, stigmatisation, betrayal, and powerlessness. It indicates how the child's cognitive and emotional orientation towards the world changes because of distortion in the child's self concept, outlook on life, and affective capabilities. This model can, however, be generalised and the above factors can occur in other kinds of trauma.

From the literature study it was clear that going to court can cause additional trauma to the child. Not only can the trial cause secondary trauma as the child has to relive the experience, but new trauma, as a result of harsh and unfriendly court circumstances, can be induced. Fears most frequently experienced by children testifying in court were discussed, namely:

- The accused may lie in court;
- Seeing the accused;
- Accused being acquitted;
- The court not believing the child;
- Talking about embarrassing incidents;
- Being in witness stand; and
- Fear of retaliation.

Other stressors for the child witness are a lack of legal knowledge of court processes, insensitive interviewing techniques, inadequate protection during cross-examination, lack of social support for the child giving evidence, and crying whilst giving testimony (see 4.2.10). The intermediary must be aware of the aforementioned so that she can understand any reaction the child can show whilst testifying. These fears must also be addressed during court preparation with the child.

From the literature study and the researcher's own experience the conclusion can be drawn that all children coming to the court experience a varying degree of trauma. It is therefore important that the intermediary must have a thorough knowledge of the trauma the child experiences so that he/she can intervene and debrief the child before,

during and after the trial. The intermediary must however not discuss the merits of the case with the child.

The intermediary must also know that the child can be afraid of having to go to the toilet, being punished or being sent to jail, delays in the court case, and being removed from his/her home or alternatively breaking up the family and depriving the family of a bread winner. The child is also afraid of alienating his family. Fears that the child experiences when incriminating his own parent, occurs in cases of intra-family abuse. Nearer to the trial, the child may experience nightmares and sleep problems, he may experience mood swings, anxiety attacks, and feel angry and depressed.

The intermediary must understand the following stressors caused by the criminal justice system:

- Delays;
- Public exposure;
- Facing accused;
- Understanding of complex procedures;
- Cross-examination;
- Exclusions of witness;
- Being removed from home; and
- Lack of preparation as witness.

The researcher came to the conclusion that, if the intermediary has knowledge of all the stressors, they can be address appropriately to alleviate a larger amount of the child's stress by acting with empathy.

The dynamics of child abuse were described. Specific emphasis was placed on sexual abuse, as most children testifying in court are sexually abused children. The researcher came to the conclusion that the most important advantages of testifying are:

- The child is the victim who has been wronged;
- The child receives legal and psychological assistance;
- The child has the opportunity to explain to the court what happened;

- Competent adult deals with accused;
- A ritual is provided so that child can return to childhood; and
- Family can show their disapproval.

The disadvantages are:

- The child must personally appear in court;
- Long delays;
- The child must undergo multiple interviews; and
- Has to confront the accused

From this, the researcher could indicate the importance of an intermediary understanding the trauma the child will once again experience when having to testify in court. For this reason it is important to include this aspect in the training program.

The legal system uses a specialised language that children and even adults sometimes find difficult to understand (see 4.4). Words that do not fall within a child's normal language use, legal vocabulary and technical terms, and the length and complexity of the sentences cause great difficulty for the child. The role of the lawyers and public prosecutors relating to language used in court was briefly discussed in this chapter. If the intermediary does not have knowledge or understand this specialised language, she cannot act as an intermediary.

Cross-examination and the child was discussed in chapter two and four with specific reference to the objective and the effect that this cross-examination has on the child witness (see 4.5). This is the most difficult part of the child's testimony and can be difficult for the intermediary as well as the child who can become very emotional and upset when being cross-examined. The intermediary must however control her emotions whilst assisting the child in court. The emotional stress that this causes was also highlighted. The researcher came to the conclusion that of the difficulties a child witness can experience when being cross-examined are the following:

- Insisting on a yes or no reply;
- Purpose of asking the question; and

- The way the questions are asked.

Communication and the child witness were discussed in detail (see 4.6). Attention was given to miscommunication and the child witness. Examples of miscommunication that can confuse the child are:

- Literal interpretation of questions;
- Moving from general to particular;
- Distortions;
- Complex or poorly phrased questions;
- Metaphorical communication;
- Abstract definitions;
- Negative questions; and
- Communicative incompetence.

The child's communicative competence depends on his ability to translate memories into language, to deal with non-comprehension, and to distinguish between fact and fantasy (see 4.6.3). To give evidence in court the child needs to communicate a past event and create an image in somebody else's mind. For a child this ability is limited as a result of insufficient vocabulary, the ability to use words, and his understanding of symbolic meanings. The intermediary must have knowledge of child communication and an understanding of how to communicate with the child, taking all the above factors into consideration. A theme on child communication was included in the training program, addressing all the above issues.

The effects of emotions on the child's communicative competence as well as aspects such as regression of development were discussed. The influence of the child's temperament on his court performance was explored (see 4.6.4).

Researcher is of the opinion that if an intermediary has knowledge of the aforementioned, she will understand the child reactions in the trial situation and will then be sufficiently prepared to handle the child appropriately. She will also understand why it is important to assess the child's language development and not only take the child's age into consideration.

The quality of information given by the child and the influence it has on the court was discussed. Aspects like the following must be explained to the intermediaries in the training program:

- The vocabulary of the child;
- Leading questions;
- Linguistic complexity;
- Homonyms;
- Yes/No questions;
- Pragmatics of questions;
- “Why” questions;
- Comments that link discussions;
- Content of questions;
- Measurements;
- Kinship;
- Abstract reasoning;
- Mental concepts;
- Logic;
- Questioning strategies;
- Short sentences;
- Unnecessary clauses complicate questions; and
- Context for question.

Intermediaries must have knowledge of the mistakes that occur most frequently when questioning children, namely:

- Long words
- Multi-word verbs;
- Categorical terms;
- Uncommon vocabulary;
- Using pronoun;
- Using passive voice;
- Words who’s meaning varies with time;
- Multipart questions;
- No concept of numbers;
- Difficult vocabulary;

- Measurement;
- Complex terminology;
- Deductive questions;
- Evaluative questions;
- Repeating a question;
- “Why” questions;
- Tag questions;
- Making statements;
- Asking the child to pretend;
- Abrupt topic changes;
- Overextensions
- Underextensions;
- Syntactical errors; and
- Abstract concepts.

The positive effects of testifying in court on the child witness were discussed. Minimising stress and trauma in the courtroom was explored and means of diminishing the impact of stressors was discussed. These are:

- Eliminating multiple interviews;
- Court preparation;
- Reducing need to testify in open court; and
- Lessening shame and stigma.

The role of memory on the accuracy of the child’s testimony was discussed. Metacognitive development and the impact of trauma on memory were explored (see 4.7). Finally, the child’s psychosocial needs were investigated. Erikson’s four phases of psych-social development, namely trust versus mistrust, autonomy versus shame, initiative versus guilt, and industry versus inferiority can be linked to the influence they will have on the child witness (see 4.8).

The conclusion can be drawn that if the intermediary has knowledge of the above she will understand certain behaviour the child presents with and will be able to react with the necessary understanding and empathy.

The researcher succeeded in stressing the importance of a support system within the legal context for the child witness to minimise anxiety and trauma experience. Because of the importance of preparing the child for court, a theme on court preparation as well as trauma was included in the training program.

In chapter five assisting the child witness during his court experience was described. As more and more children come before the courts as witnesses, the problems the children face in an accusatorial, adult-orientated system have become increasingly evident. Concerns about the stressful and potentially harmful effects on children, and the possible detrimental effects on the reliability and completeness of the child's evidence, have led to a number of changes in court procedures to try to accommodate the needs of the child witness while still protecting the rights of the accused. These changes fall into three categories: modification to the court environment, empowering children by preparing them for the court experience and increasing skills of the professionals involved in the court process.

The researcher addressed the preparation of children for court. As not all courts have court preparation officials, and it is often the duty of the intermediary to prepare the child and his parents for the trial (see 5.2.1), it is important that the intermediary is trained how she can prepare a child for court.

The causes of the child's anxiety were identified. A trained intermediary will be able to identify these fears of the child and help him to contain his fears by explaining the legal process, what is expected, and ways of relieving these fears. Knowledge about various techniques, like a special courtroom (see above), breathing exercises, communication of children, therapeutic intervention, separation from perpetrator and social support, must be part of the training program so that the intermediary can assist the child to overcome his fears.

Court preparation was investigated extensively, including the eight goals of court preparation and the components that a court preparation program should consist of. When preparing the child for court he must be familiarized with what will happen during court proceedings to help him to be ready for the experience emotionally,

physically, and mentally. The different components, namely the educational component, the stress reduction component, and the practical component must be included in the training program for intermediaries.

The conclusion can be drawn that effective preparation of the child witness as well as significant others in the child's life, will enable him to gain the required knowledge to understand the judicial process and his role therein. This in turn will minimize uncertainty and fear.

The problems a court preparation official/intermediary may encounter were looked at as well as the four benefits of court preparation. Materials and toys that can be used to do court preparation were also explored and explained in the training program.

The literature states how the child can benefit from court preparation and it is thus essential that the intermediary must know how to attain this. The researcher utilised the literature study to compile the unit on court preparation in the training program.

The researcher, from her experience and the literature study, came to the conclusion that the less people the child has to encounter when coming to court, the less stress the child will experience. If the intermediary does the court preparation and does not discuss the merits of the case with the child, the intermediary can do court preparation as part of building a rapport with the child.

An intermediary is a facilitator through which a child witness can give evidence in criminal proceedings (see 5.4). The intermediary's role is to put the questions from the court, prosecutor, and defense, to the child in language that the child will understand. The questions are then simplified and put to the child on his developmental level. This means that the child gives evidence in his own words but is not directly cross-examined. The intermediary must know how to formulate the questions as she is not allowed to turn open-ended questions into leading questions, ask her own questions or omit to ask a question. This system was introduced following the recognition that the ordinary adversarial trial procedure is at times insensitive to the needs of the child victim, this is especially so in cases involving child abuse. During the empirical study it was found that the trainees had very little

knowledge of all aspects of an intermediary before the training program. It is important to discuss all aspects pertaining to the intermediary during a training program.

The role of the parent/caregiver was discussed (see 5.5). Over time abused children show a wide variety of serious adjustment problems. To support abused children, the parents, friends and community need to jointly combine resources through the supporting. This can be done by supporting the parents, educating the public about how to provide help.

The parent-child interaction was investigated with regards to warmth, control, and involvement. Child-parent attachment and memory were explored. Secure parents are more willing than insecure parents to discuss experiences that cause negative emotions with their children. They provide greater comfort and sympathy and help the child work through his emotions. These interaction patterns may then lead to decreased distress and suggestibility about events that cause stress for the child who has secure parents (see 5.5.2). Parent's distress after disclosure was discussed as well as the impact of the abuse on the non-abusing parent.

It is necessary for the intermediary to have knowledge of the above as the child will shown certain behaviour patterns when coming to court. The intermediary must encourage the parent to support the child as well as to keep the parents informed of what is happening at court to reduce the parent's own stress.

From the literature review it was determined that anatomically detailed dolls are used to assist the child witness to demonstrate any sexual abuse they have suffered (see 5.3.2). Using anatomically detailed dolls can benefit the child linguistically, emotionally, and cognitively when having to relay the sexual abuse incidents. Many young children, because of their developmental level, limited coping skills, or fear of retaliation, are either unable or unwilling to verbally describe the sexual abuse experience.

The use of dolls has flourished amongst a wide variety of professional people like social workers, psychologists, police and other legal professionals responsible for

investigating and prosecuting child abuse cases. Some of the dolls are used purely for therapeutic purposes in a recovery program, while the dolls are also used as a diagnostic tool to prove sexual abuse. In court, the dolls are mainly used as an aid to help the child to tell the court what happened during the sexual abuse. How to use the dolls in a court situation were described and the dangers of using the dolls were emphasized. The characteristics and how the dolls should look were discussed and finally, the difficulty that may be experienced during the use of the dolls was discussed. From the literature study and questionnaires completed by the magistrates and prosecutors it was found that intermediaries must be trained on how to use the anatomically detailed dolls. This coincides with the prosecutors and magistrates who felt that the intermediary needed training in using the dolls when the child witness testifies (see table 7.5). The information from this topic was integrated into the training program so intermediaries could be taught how to use the dolls correctly. The intermediaries often find the dolls threatening and feel unsure how to use the dolls, as many intermediaries have never seen or used the dolls before.

The exceptional child was discussed (see 5.6). The researcher, from her own experience, knows how difficult it is to work with an attention deficit hyperactive disorder or learning disabled child in the intermediary room when the child has to testify. Attention Deficit Hyperactive Disorder was discussed and specific characteristics were identified and included as part of the training program. Problems of Attention Deficit Hyperactive Disorder cause problems for the child in court (see 5.6.1).

From the literature study it was found that learning disabilities are essentially cognitive of nature and will therefore have an impact on the child's ability to understand (see 5.6.2). It must, however, be remembered that the learning disabled child has an average or above average intelligence, but that their brains process information differently.

The term "learning disabilities" covers a wide range of difficulties. When the learning disabled child has to testify, it is essential that the questions are asked at a linguistic level appropriate for a younger child, who has no learning disability. The learning

disabled child will have particular difficulties with certain aspects of testimony as he finds it difficult to focus on the questions and cannot sit still for any length of time.

Because intermediaries do not receive any specialized training, they have difficulty in performing the duties expected of an intermediary. In chapter six all aspects of compiling the training program are discussed. To achieve effective learning a teaching-learning environment must be created (see 6.3). This can be achieved by providing trainees with the opportunity to participate in actively involved learning, for trainees to apply what they have learnt, experiential learning, and reflecting on learning (see 6.3.1).

During the literature study the following aspects were explored: How the intermediary system uses a special courtroom, what it looks like, how it functions and when can the child testify there, were described. Who can be an intermediary was investigated with specific reference to the *Government Gazette* no.15024, as amended by *Government Gazette* no. 22435 of 2001. Fifteen prerequisites of an intermediary were described (chapter 5.4.4). The role of the intermediary, namely conveying the general purport of the question, conveying the content of the question and removing all hostility, not changing questions into leading questions, putting questions at the child's level, not refusing to ask a questions, never posing her own questions to child, placing all non-verbal behaviour on record, know how to use the anatomical dolls, and tell the presiding officer when the child cries, was looked at. Problems the intermediary might experience were also explored. These topics were all included in the training program.

From the literature study the conclusion can be drawn that a person wanting to act as an intermediary needs specific skills and knowledge to perform this function. This opinion supports the magistrates and prosecutors who completed the questionnaires in phase 1 of the research. These topics were included in the training program.

The researcher, when compiling the training course, followed an approach based on OBET principles (see 6.5). A skills program was compiled, consisting of smaller study units that are occupational based and that render a trainee employable as an intermediary.

Any training program must equip the trainee with knowledge, skills, and values. The course compiler and trainer must explore the most creative and efficient way of helping learners gain knowledge. To obtain this an OBET program should be followed.

The researcher came to the conclusion that the training program that was compiled, was easily understood by the respondents and can be used by other trainers who have enough experience to present a program.

Other conclusions that could be drawn were:

- From objective one the conclusion can be drawn that literature study is absolutely essential when compiling a questionnaire and developing a training program.
- From the data analysis it can be deduced that all trainees benefited from the training program.
- The legal system in South Africa, namely the accusatorial system is not child friendly, as the child is compelled to give evidence in court and be subjected to harsh cross-examination.
- From the data analysis it was found that the intermediary is not always used for a child under 18 years of age. Magistrates and prosecutors both felt that it was not always necessary.
- The importance of the intermediary having knowledge of areas like child development, child communication, linguistic development, moral development, social-emotional development, trauma, family, anatomically detailed dolls, legal system, court procedures, practical knowledge and experience, the intermediary, and court preparation was highlighted by the magistrates and prosecutors. The researcher is of the opinion that this is an area that needs a lot of attention.
- A training program for intermediaries, based on the outcomes based education training principles, was successful drawn up by the researcher.
- During the child's testimony it is essential for the intermediary to keep eye contact with the child and to keep the child focused on the task of testifying;

- The sessions of testifying should be broken up into short periods of time, approximately 10 to 15 minute sessions;
- During the breaks care should be taken not to hyper stimulate the child by letting the child run around or playing boisterously;
- It must be remembered that the ADHD child performs the best in a one-on-one situation; and
- As a result of his impulsive nature the children will often answer the question without thinking what he is saying, as he is not able to control his immediate actions.

8.5 RECOMMENDATIONS

Recommendations will now be made and themes for further research will be discussed. Recommendations will be made on the macro, meso and micro level.

8.5.1 Macro Level

- Legislation should be introduced so that a minimum standard of training is made compulsory for all intermediaries working in courts. Presently training is done on a very uncontrolled level and there is no uniformity.
- Legislation should be past stating clearly the roles and duties of intermediaries. Presently there is no duty sheet for intermediaries and there are often unreasonable expectations of intermediaries.
- The training program compiled by the researcher should be adopted by the Department of Justice and Constitutional Development and all intermediaries should be required to attend the training course. Minimum standards and regulations should be drawn up for training purposes and these do not exist at present.
- A professional body for intermediaries should be formed so that a guideline for the profession of intermediaries can be set.
- A code of ethics, protecting the child witness and other role-players as well as the intermediary, should be drawn up.
- Engagement with other governmental sections should take place to make the research widely known.

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- Liaise with the National Prosecuting Authority to draft a training programme and schedules for prosecutors similar to this one.
- Categories of intermediaries should be revised. Not all persons fitting the categories have sufficient background knowledge of children to effectively act as intermediary.
- This training program should be presented at postgraduate level at a university, either as a master's degree or a postgraduate diploma so that tests or exams can be written. This will give a better idea of what the level of competency of the intermediary must be.
- Proclamation to be changed to qualifications approved intermediary training in order to qualify as a competent intermediary.

8.5.2 Meso Level

- Modification of court environment – Testifying in a separate courtroom will protect the child from direct face-to-face confrontation with the accused. The child will also be protected from other stressors.
- Increasing the skills of the professionals that correlate with the opinions of the magistrates and prosecutors that intermediaries should be trained before acting as intermediaries. Once the intermediary has been trained by the training program developed during this research, she will be able to assist the child on various levels.
- This training program should be presented at postgraduate level at a university where SAQA requirements of assessment are required, either as a masters degree or a post graduate diploma so that tests and exams can be written. This will give a better idea of the competency of the intermediary attending the training.
- Regular follow-up workshops should be held where emphasis is on continued and practical experience training.
- The period of the training program should be longer. A lot of information is given and intermediaries have to be specialists in their field.
- Further studies should be undertaken with regards to culture, gender, and race and the effect on the intermediary.

8.5.3 Micro Level

- Preparing children for court by explaining the whole process as well as all the role-players to the child will alleviate the child's fear of appearing in court. It is important that the intermediary is involved in the process, builds a rapport with the child and makes the child feel comfortable in her presence (see chapter 5.2). By training the intermediary to do court preparation this can be achieved.
- It is important that the intermediary must be part of the court preparation of the child and is involved in the process, builds a rapport with the child and makes the child feel comfortable in her presence. By training the intermediary to do court preparation this can be achieved.
- This study on a training program for intermediaries in South African courts, being the first ever conducted in South Africa, should serve as basis for other researchers regarding all aspects of the intermediary.
- With longer programs attention must be given to the practical aspects of acting as intermediary.
- Research should be done with the lawyers as focus point, for example, what are their feelings, expectations, needs, experiences and perceptions of the intermediary system.
- Intermediaries should be given more rights when acting as intermediary, e.g. she should be able to inform the magistrate when the question is not developmentally appropriate.
- All children under the age of 18 years should automatically be allowed to testify with an intermediary, unless the child states otherwise.
- The vulnerable witness who is older than 18 years should also be allowed to testify with an intermediary to protect him from the harsh cross-examination and the presence of the perpetrator.

8.5.4 Recommendations for further research

- The influence of culture on the child witness as well as the intermediary.
- The influence of vicarious traumatising on the intermediary, prosecutors, and magistrates.

8.6 CONCLUDING REMARK

To testify in the harsh environment of a court, is a very frightening and traumatic experience for any child. Just because a child shows no outward signs of trauma and stress, it does not mean that he is not experiencing trauma and stress.

All children, unless they state otherwise themselves, should be allowed to testify in a separate room from the perpetrator and with the help of an intermediary.

To protect the child witness from this harsh, formal and unfriendly atmosphere of the court, an intermediary should be knowledgeable on how to perform this task. Being an intermediary is a very specialised area and requires a great number of skills amongst which are being child friendly, understanding all facets of child development and the functioning of the child as well as court proceedings. The intermediary needs to be knowledgeable of a variety of subjects ranging from legal, psychological and social work interventions.

For the intermediary to really support the child in all these fields, she needs to be well trained and experienced with children.

The researcher is of the opinion that through this research study a program was developed that can assist the intermediary in reaching skills that will benefit the child.