

CHAPTER FIVE

ASSISTING THE CHILD WITNESS DURING THE COURT EXPERIENCE

5.1 INTRODUCTION

In the previous chapters child development and the influence of trauma, stress and fear on the communication skills and problems the child can experience in court were discussed. The researcher is of the opinion that the plight of the child, with the correct support, can be alleviated when having to testify in court. It is therefore of great importance that the intermediary must be able to assist a child effectively during his court experience. In this chapter relevant aspects when assisting the child witness will be discussed.

Over the past decade there have been an increasing number of children giving evidence in court about crimes against them, most frequently sexual abuse crimes. Child abuse has reached a peak in South Africa. Crime statistics have shown that child abuse has escalated with 111, 9% since 1994 to 2004. Altogether 40 732 sexual abuse cases were investigated by the police unit for family violence, child protection and sexual crimes during 2003/4 in South Africa (Basson & La Grange, 2004:4).

As more and more children come before the courts as witnesses, the problems they face in an accusatorial, adult-orientated system have become increasingly evident (Westcott, Davies & Bull, 2002:203).

According to Westcott *et al.* (2002:203) 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. These changes in procedure try to accommodate the needs of the child witness while still protecting the rights of the accused. These changes fall into three categories and will be discussed accordingly.

In this chapter empowering children by preparing them for the court experience will firstly be discussed where after modification of the court environment will be looked at. Increasing skills of the professionals involved in the court process will also be

discussed. The compilation of a desirability report as well as the role of the parent/caregiver will be explored and finally the child with special needs will be discussed.

5.2 EMPOWERING THE CHILD WITNESS BY PREPARING HIM FOR THE COURT EXPERIENCE

Children who testify in court experience unrealistic, adult like expectations about their performances by the role players involved in the legal process. A criminal court hearing is usually the most challenging, demanding, confusing, and difficult environment for any child witness. If a child witness is properly prepared to enter and cope with the harshness of the criminal justice system, he will be empowered to deal with the situation. Children experience a great deal of stress if they have to testify in an open court. Research has shown that children give better and more accurate evidence when testifying in a separate courtroom, as discussed in 2.6.2.1 (Muller, 2002b:9).

Effective preparation of the child witness will enable him to acquire the necessary knowledge of the judicial system and what his role is within this process. The child will gain a greater level of confidence and will be empowered to testify to the best of his ability. The child should be physically and emotionally ready for the trial (Muller, 2004:103).

When the child witness has to testify, the ideal situation is to prepare the child for this beforehand. The researcher is aware that there are various court preparation programs being presented by a number of people at some of the sexual offences courts in South Africa. However, many courts do not have this service. There is no standardized court preparation program in South Africa at present. It must be stated that the focus of this research was on developing a training program for intermediaries and court preparation was not the main focus.

As the intermediary often has to do court preparation herself with the child witness as not all courts have court preparation officials, it is important that the intermediary has

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some training in court preparation. The researcher herself has done court preparation with the children when she acted as intermediary as there were no Afrikaans speaking court preparation officials in the courts where she acted as intermediary.

Plotnikoff and Woolfson (1998:3) are of the opinion that the court preparation official should be more than just an instructor. They argued that this person should become the child's support person who supports the child throughout the legal process. The researcher is of the opinion that the intermediary would therefore be the ideal person to do the court preparation. She must however not discuss the merits of the case with the child.

Special attention was paid to the effect of information overload on the child witness regarding court preparation. The least possible information needed to sufficiently prepare the child was concentrated on (see 5.2.4.1). Court preparation is incorporated in the rapport building phase as the researcher found this the most effective. The parents can attend this information giving session if the child indicates that he feels comfortable with his parents present. If not, separate time is spent with the parents to explain the court process.

5.2.1 Relieving the child's anxieties and fears by preparing the child for court

In order to minimize the child's distress, the person doing the court preparation (compare Lipovsky & Stern, 1997:9; Sas, et al., 1992:345; Katz-Levin, 2000:C3-23; Muller & Hollely, 2000:296) can make use of the following techniques. It is important to take the child's developmental phase into account when using the different techniques and making sure that the techniques are age appropriate.

- **Special courtroom:** The child should be given the opportunity to testify in a separate room, which has a closed circuit television connection to the court. This means the child does not have to enter the courtroom at all, nor see the accused, lawyer and any other court personnel. To further minimize the child's distress, his evidence can be given with the aid of an intermediary. This means that the child will only speak to the intermediary and will not hear any other person, as they will be

speaking to the intermediary who hears the people in court on the earphones. A child friendly atmosphere will also make the child feel more comfortable. (See 5.2.1)

- **Relaxation exercises:** The child can be taught to use relaxing breathing exercises to decrease his anxiety. Various exercises that stimulate body movement and exhilarate breathing can be done. The researcher is of the opinion that the intermediary can use these exercises during and after the trial or when debriefing the child.

- **Building rapport with the child:** If a certain level of rapport is established between the child and the court personnel, like the court preparation officials, prosecutor or intermediary, the child will be prepared to share his fears with them. Awareness and knowledge of the child's developmental stage and language development is important. The child's fears should be acknowledged and discussed even if they cannot be resolved.

- **Therapeutic intervention:** If the child is extremely anxious before or after testifying, he should be referred to a therapist. The therapist can counsel the child, addressing his fears on a professional basis and empower the child to testify. It is important to note that the intermediary is not a therapist and can therefore not do therapy with the child witness.

- **Separation from the perpetrator by a screen:** If permission to testify in a separate room is not granted and the child has to testify in the open court, it may be useful to separate him from the perpetrator by using a screen with a one-way glass (see 5.7.4) The accused will have a clear view of the witness, but the child witness will not be able to see the accused. The child will, however, have to face the defence lawyers, prosecutor and magistrate.

- **Social support:** It is recommended that the child's parents, caregivers or person whom he trusts, is included in the court preparation. This should, however, first be discussed with the child and the child's permission must be obtained for this (see 5.3).

It must be kept in mind that the parent/caregiver may also experience distress and uncertainty. It can be damaging to the child if he is exposed to this distress, as he may feel responsible for it. The researcher is of the opinion that the intermediary should be sensitive to this and make the parent aware of the effect that he/she has on the child.

5.2.2 Aims of Court Preparation

Dezwirek-Sas *et al.*, (1996:350) and Dent & Flin, (1992:185) postulate that, in order to help child witness cope with the legal system stressors, a court preparation program should:

- Demystify the courtroom through education;
- Reduce the fear and anxiety related to testifying through stress reduction, to minimize the likelihood that the child will suffer negative court-related harm;
- Empower the child through emotional support;
- Improve the child's ability to answer questions in court in the most accurate, complete and truthful manner;
- Help the child understand the nature and seriousness of the proceedings; and
- Maximize the child's ability to be perceived as a credible witness.

According to Muller & Hollely (2003:4) the court preparation program should further aim to:

- Increase the child's understanding of the serious nature of the legal process; and
- Increase the child's understanding of his role in the legal process and make his post-trial adjustment easier.

5.2.3 Components for a Court Preparation Program

The child witness, due to his inherent vulnerability caused by his young age, limited social awareness, lack of life experiences, and naïve understanding of the criminal justice system, is usually not prepared for the alien atmosphere of the court and the demands of a court of law. Moreover, the child is usually traumatized by the sexual abuse and is emotionally fragile. The child's lack of knowledge of the court process, anxiety, confusion and ignorance of legal terminology is further influenced by the

prospect of facing the accused (Dezwirek-Sas *et al.*, 1996:350). 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 the child witness's role therein.

Preparing the child for court does not mean that the child should memorize a script or be told what to say in court. To prepare a child for court means helping the child to be ready for the experience of testifying in court. The child must be familiarized with what will happen during court proceedings. This will help the child to be ready for the experience emotionally, physically, and mentally. Court preparation does not include telling the child what to say (Lipovsky & Stern, 1997:1). The researcher is of the opinion that court preparation equips a child with knowledge regarding the court structure, the procedure and what it means to testify.

Preparing the child for court includes all issues involved in enhancing the child's performance so that he can provide accurate information in court. It further means providing the child with knowledge and comfort. Court preparation addresses areas of the child's experience of the court process and is based on a range of information (Lipovsky & Stern, 1997:1).

An effective court preparation program can be divided into the following components, namely:

- An educational component;
- A stress reduction component; and
- A practical component.

5.2.3.1 Educational Component

By educating the child witness about the court procedures and etiquette, legal terminology, the oath, and the processes of the criminal justice system, some of the child's fears may be delayed, misconceptions can be alleviated and the child can be empowered to feel more equipped to give evidence (Katz-Levin, 2000:C3-24; Dezwirek-Sas *et al.*, 1996:351).

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Educational efforts to guide children's expectations and beliefs about what will happen and why, may also reduce stress and improve the child's memory (Goodman & Bottoms, 1993:124).

The researcher is of the opinion that educational efforts will also relieve and reduce the child's stress as he will know what to expect when testifying in court.

Areas of education to be discussed during the court preparation program are:

- The functioning of the judicial system;
- The trial procedure;
- The role of the legal professional involved in court proceedings, namely: The magistrate, prosecutor, defence attorney, the intermediary, court orderly, interpreter and stenographer;
- The child's role as witness;
- Role of other witnesses; and
- Function of the special courtroom, the video camera and the sound system.

The whole preparation should be done in age appropriate language and legal terminology, for example, oath, truth or lies, guilty, proof beyond reasonable doubt, conviction, and acquittal should also be explained to the child. The child should be encouraged to ask if there is anything he does not understand (Katz-Levin, 2000:C3, 24-25; Dezwirek-Sas *et al.*, 1996:350; Gersch, Gersch, Lockhart, & Moyse, 1999:45).

When preparing the child to testify in court, the person involved should explain the following to the child, but care must be taken not to overload the child with information as this may lead to confusion (Muller & Hollely, 2001:339):

- That he should give his testimony, if possible, in a chronological order;
- That he must listen carefully to the questions asked, and then answer as honestly as possible;
- That he can ask for a question to be repeated or explained to him if he does not understand the question;

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- That whilst he is testifying, the legal professionals in court write down everything he is saying and that there might be silences in between the questions because of this;
- The same questions may be asked on more than one occasion during the court case in order to clarify what the child is saying. The child must be told that it does not matter if he is unable to remember aspects of anything he is asked. He should inform the court personnel if this happens;
- Inform the child that he is allowed to request a short break if he needs to go to the toilet whilst giving testimony; and
- Reassure the child that it is acceptable for him to cry (Katz-Levin, 2000:C3-26).

The person preparing the child for court should be very careful not to coach the child about the content of his testimony in court nor discuss the merits of the case with the child or anybody else as contamination of the evidence can take place.

5.2.3.2 Stress reduction component

For the majority of child witnesses stress increases as their court date approaches, especially concerning their participation as witness in the trial. These fears manifest themselves in the child having difficulty relaxing, falling asleep, or concentrating at school.

The stress reduction component before and during the trial can involve the following:

- Deep breathing exercises;
- Deep muscle relaxation;
- Cognitive restructuring and empowerment; and
- Systematic desensitization.

According to the researcher, the above techniques can be used even before the child starts to testify so that when the child goes to court, he will feel more relaxed. Whilst the child is testifying and the court or intermediary notices that the child is feeling very anxious, a short adjournment can be asked for and the intermediary can use some

of the above techniques, which have been adapted to be child friendly, to debrief the child.

Signs that indicate that the child is feeling stressed whilst testifying are:

- Shallow breathing;
- Muscle tension;
- Fidgeting with hands;
- Finding it difficult to concentrate;
- Hyperactive behaviour; and
- Crying.

The researcher is of the opinion that, after the child has finished testifying and the child feels so inclined, the intermediary should spend some time with the child to debrief him and empower him by praising him for having testified.

5.2.3.3 Practical Component

At best, the child views the courtroom as an unfamiliar place and at worst as a sinister environment. The child witness needs to be familiarized with the courtroom itself (Perry & Wrightsman, 1991:156; Juvenile services..., 2004:5). The following can be done to alleviate the child's fears and tensions concerning the courtroom:

- Show the child the courtroom and point out the magistrate's bench, the prosecutor's place, the attorney's table, the witness stand, the accused's seat, and the seats for the audience;
- Let the child physically explore the courtroom;
- Explain the clothing the court personnel wear;
- Show the child where the waiting room is where he will be waiting on the day of the trial;
- Show him where the toilet is;
- If the child is required to testify in the main courtroom, the court itself should be shown to him;

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- If the child is to testify in a special courtroom with an intermediary, he should be shown around and should meet the intermediary to build a rapport with him;
- Show the closed circuit television system to the child and how it works;
- If a screen is to be used, show it to the child;
- If any equipment is to be used, the child should be familiarized with it; and
- Explain to the child who will be present in court while he is testifying and the roles of each of these persons.

5.2.4 Functions of Court Preparation

▪ Empowering the child to testify can only be done by providing him with skills to enable him to testify effectively in court. Empowerment takes place through education and skill development. By telling the child why he has to go to court and the importance of his evidence, the child will understand why he must testify. It is also important to tell the child about his rights and those of the accused so that the child will feel less intimidated by the trial itself and therefore more in control of the situation when testifying (Muller & Hollely, 2001:336).

▪ According to the Victims Charter and the Sexual Offences Amendment Bill (see Chapter 2), the following list of children's rights must be kept in mind when the child has to come to court to testify:

- To be given notice of the date of the trial;
- To meet the prosecutor;
- To ask the magistrate for help or a break;
- To meet the intermediary before the time of the trial if testifying via closed circuit television through the intermediary; and
- To be protected from harassment or badgering;

▪ The accused likewise has rights when having to appear in court. These rights should also be explained to the child, if necessary. These rights are:

- To be in court and hear all the evidence;
- To testify or remain silent;

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- To have a defence lawyer or defend himself; and
 - The right to cross-examine the witnesses.
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- The child should be equipped with skills that will enable him to answer the questions put to him during the trial (Muller & Hollely, 2001:340)..
 - The child should be informed about what he can do if he cannot answer a question (Muller & Hollely, 2001:340).
 - Expectations of testifying in court should be explained to the child witness. He must know that he:
 - Must tell the truth;
 - Must listen to the question carefully;
 - Not answer questions he does not understand and to say if he does not understand a question;
 - Answer loudly and clearly;
 - Ask for the question to be repeated or explained if he is not sure of the question; and
 - Answer verbally, and not just shake head.
 - Teach the rules and language of the court to the child and the parent. Copen (2000:8) is of the opinion that the child and his parents should be informed about what will be expected of them. According to the researcher this is in line with the Victims' Charter.
 - Identify, discuss and attempt to remedy fears concerning court-related procedures (see chapter 4.2.10)
 - The parent is probably the most important factor in determining how well the child will cope with the court procedures. Usually parents are willing to help and will do whatever they can to ensure the welfare of their child (Copen, 2000:11).

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- The court preparation official can serve as liaison between the child, parents, prosecutor, and therapist, as needed. The parents and child can turn to the court preparation official if they have any questions, concerns or problems (Copen, 2000:15).
- The court preparation official could serve as a support person for the child witness. He can be with the child while he is waiting in the waiting room. When the child witness is called to testify, the court preparation official can, if authorised by the court, sit with the child before, during and after the hearing, (Copen, 2000:16).

5.2.5 Problems experienced by the Court preparation official

There are usually a number of problems the court preparation official may experience during the trial (Copen, 2000:16). The following are a few of the most common problems:

- **Coaching the witness:** The court preparation official must determine what coaching is and how to avoid being accused of it;
- **Proper and improper activities to discuss with the parents:** The court preparation official must know what information can be discussed with the parents and what not.
- **Delayed disclosure:** The child may disclose more information to the court preparation official than what is in his statement. This must be reported to the prosecutor.
- **Family relationships:** Where the child knows the accused or were the accused is a family member or family friend, the family may pressure the child or parents not to proceed with the case or blame the child/parents.

The researcher is of opinion that the court preparation official will sometimes have to face parents/primary caregivers who are difficult for reasons such as having to wait at court all day for the trial to start, aggression of what has happened to the child, and lack of knowledge of the court process. It is therefore important that the court preparation official explains the legal process to the parent as well (see 5.2).

5.2.6 Benefits of court preparation

A court preparation protocol should be tailored to the individual needs of the child. Hurley (2004:38) identified four benefits of court preparation:

- Increased knowledge about court procedures so that the child will learn to understand the process and be familiar with it;
- Reduction in the child's anxiety levels on having to testify;
- Strategic assistance on how to be an effective witness and how to give credible evidence; and
- Support on behalf of the child witness.

From the above it can be seen that the child who has to testify in court can benefit from court preparation and so doing diminish the child's stress.

5.2.7 Tools and materials for court preparation

Court preparation officials will need to use tools to do the court education with the child. Visual aids are vital when explaining court procedures to the child witness. Drawings or photos of the courtroom and court personnel are useful to explain court roles. These drawings can be in poster form for older children or as touchable cutout figures for younger children (Finnegan, 2000:2).

Other tools suggested by Copen (2000:23) that can be used for court preparation are:

- Hand puppets to use when greeting the child;
- Drawing easel and paper;
- Crayons, scissors and building blocks;
- Court related coloring books; and
- Miniature model of the courtroom and court personnel.

It is imperative that court preparation must be distinguished from coaching. Care should be taken to protect the rights of the accused. The possibility of contaminating the child witness should be avoided at all times. Although preparation may require

some cautious discussion of the facts of the case, it is advised that no discussion should take place concerning the merits of the case and the child should rather be prepared for the court process itself (Goodman & Bottoms, 1993:124).

5.3 MODIFICATION OF THE COURT ENVIRONMENT

5.3.1 A special courtroom for the child witness

The position at present is that the child witness will testify in an ordinary court unless it appears to the magistrate that the child will suffer undue mental stress and suffering should he testify in an open court. According to section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) an application can then be brought in front of the magistrate by the prosecutor, for the child to testify with an intermediary. According to this section the child is entitled to give evidence in a place other than the courtroom. This room is usually, but not always, attached to the courtroom. The room will have either a one-way glass or will be connected to the main courtroom by closed circuit television (Muller & Tait, 1999a: 243; Watney, 1998:432).

The room is usually informally arranged and suitably equipped. If there is no one way mirror, a video camera will be mounted on the wall of the room. The images of both the child and the intermediary will be relayed to a television screen that is mounted in the courtroom when the evidence is being led. All people involved in the court case can see and hear both the child and the intermediary clearly. It is important that the court can at all times see and hear the child witness and the intermediary. Only the child and the intermediary are allowed in the intermediary room.

The intermediary wears earphones so that she can follow everything that is said in court. She then relays the question to the child in a development appropriate language he can understand. The child only hears the intermediary. The video link is live and the child's response will then be relayed directly back to the court where everybody can hear and see the child and intermediary as they speak. The answers of the child witness are not relayed via the intermediary but are heard directly by the court and the defence (Blumrick, 2004:20).

The court and the defence are able to see the child and the intermediary on the television screen at all times, but neither the child nor the intermediary can see the courtroom or anybody in the courtroom when giving evidence. No videotape is made of the testimony, but the evidence is recorded using the audio-electronic system usually used in the courts.

5.3.2 Anatomically detailed dolls

The young child often lacks the vocabulary, the experience, or both, necessary to understand physical and sexual acts, and it is hard for them to explain abusive acts. Young children are often better at showing than at talking about their experiences (Hewitt, 1999:220).

An anatomically detailed doll is an etiquette that is used for dolls that are equipped with parts that resemble external genitalia, such as the vagina or penis. Some of the dolls have penetrable orifices, for example, vagina, anus and mouth, breasts, fingers and a tongue. Further additions to some dolls are body hair, moustaches on male dolls, and detachable, interchangeable circumcised and uncircumcised penises (DeLoache, 1995:161).

Anatomically detailed dolls are used to assist the child witness to demonstrate any sexual abuse they have suffered. (South African Law Commission, 2001:429). 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 (Boat & Everson, 1988:338; Bourg *et al.*, 1999:121).

Studies by DeLoache (1995:178) have shown that groups of children who were presumably abused and who were referred to professionals, showed more sexualised play with anatomically detailed dolls than a group of non-referred children. It is however, important to remember that not all abused children play in a suspicious manner with the dolls.

5.3.2.1 Use of anatomically detailed dolls by the intermediary during the trial

South African law does not make special provision for the use of the anatomically detailed dolls in court as an evidentiary tool, but the use of the anatomical dolls is permitted in terms of section 161 of the Criminal Procedures Act (Act 51 of 1977).

Sections 161(1) and (2) provide:

Witness to testify *viva voce*

(1) A witness at criminal proceedings shall, except where this Act or any other law expressly provides otherwise, give his evidence *viva voce*.

(2) In this section the expression "viva voce" shall, in the case of a deaf and dumb witness, be deemed to include gesture language and, in the case of a witness under the age of eighteen years, be deemed to include demonstrations, gestures or any other form of non-verbal expression.

As a result of the above, the anatomically detailed dolls are used regularly in courts by the child witness to assist him when relating his sexual abuse allegations (South African Law Commission, 2001:429).

The basic motivation for using such dolls is that it is believed that these dolls encourage the child to tell the truth. It is hoped that the child will give better, more accurate and more complete information when using the dolls during the testimony than without them (De Loache, 1995:160).

The use of dolls has grown 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/assessment 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 (Jarman, 1998:27). Many people have, however, received no training for using the

dolls. Consensus of how to use the dolls so as not to lead the child has not yet been reached (Boat & Everson, 1988:338).

The fundamental idea for using these dolls is that they will encourage the child to give information he is unable or unwilling to give. There are three groups of children who have limited verbal abilities and thus make them ideal candidates for the use of dolls (DeLoache, 1995:162), namely:

- A young child between the age of two and four with limited vocabulary and language skills;
- Mentally challenged children; and
- Children who do not speak the same language as the interviewer. The interviewer can then confirm that he correctly understood the child's vocabulary and meaning for various terms (Myers *et al.*, 1996:30).

Very young children generally have very limited verbal skills. This can compromise their ability to describe their experiences completely and coherently. They often do not have the specific vocabulary to name body parts or describe sexual actions. It is therefore assumed that the child might be able to demonstrate with the dolls what he is unable to say in words. By itself, sexual positioning using an anatomically detailed dolls is not diagnostic of sexual abuse (Bourg *et al.*, 1999: 192). Alternatively, the dolls can be used to elicit the child's personal names for body parts that the interviewer can then use (De Loache, 1995:162).

The dolls are also useful when interviewing children who have the verbal skills, but who are unwilling or unable to describe what happened to them during the abuse. The child may be too embarrassed and shy to talk about the painful, frightening and humiliating experience. The child can be allowed to demonstrate on the dolls what he has difficulty putting into words, as the child may feel more comfortable enacting the abusive event. It is assumed that the child will reveal information by showing what happened to him with the dolls which have genitalia, giving the child implicit permission to explore sexual topics (Richardson, 2003:9; DeLoache in Zaragoza *et al.*, 1995:162; Hewitt, 1999:221; Boat and Everson,1990:737).

The dolls may also serve a mnemonic function in that they help to stimulate the child's memory. The sight of the anatomically detailed doll and the manipulating thereof may prompt the child's memories associated with the abusive experience (Westcott *et al.*, 1989:12; Richardson, 2003:9; Hewitt, 1999:220; Ceci & Bruck, 1995:161).

5.3.2.2 Characteristics of the anatomically detailed doll

Although there is no empirical data to suggest that one design of a doll is more helpful than another, studies suggest that a child's interaction with the dolls will be more spontaneous where the dolls closely match the physical characteristics of the offender and the child (Boats & Everson, 1988:338; Aldridge & Wood, 1998:2).

Anatomically detailed dolls come in a variety of colors, shapes and sizes. The dolls must meet a minimum standard of quality, possess all essential features, and be free of body parts, like genitalia, being out of proportion to body size (Boats & Everson, 1988:339).

The following are characteristics the anatomically detailed doll must have (South African Law Commission, 2001:429):

- Genitalia and body openings:
 - Accurate and appropriate body openings;
 - Penis and pubis hair;
 - Breasts;
 - Mouth, tongue and teeth; and
 - Fingers for demonstration of digital penetration.
- Appearance
 - Non threatening and generally attractive;
 - Skin tone – not too bright white or too dark; and
 - Facial expression must be neutral – not smiling or frowning.
- Number of dolls
 - Set of four dolls – male, female, girl and boy; and
 - Ethnic groups

- Doll size
 - Not overpowering: 30cm to 50cm.
- Clothing
 - Loose fitting clothing; and
 - Underwear and additional clothes.

5.3.2.3 Dangers on the use of anatomically detailed dolls

It must be stressed that anatomically detailed dolls are not magical. Using them does not ensure disclosure or provide a foolproof method of obtaining the truth from the child. These dolls cannot be used to diagnose or test for sexual abuse. Dolls are only a tool to facilitate the exchange of important information with the child about his knowledge of his sexual abuse experience in court (Richardson, 2003:8; Boat & Everson, 1990:738).

The effective use of the anatomically detailed dolls is critical because of the serious legal, psychological, and social consequences of decisions made based on the interview. The user of the anatomically detailed dolls must therefore be adequately trained in early childhood development, the child's understanding of basic concepts, and his ability to remember and report events accurately (Boat & Everson, 1988:339).

Richardson (2003:9) stressed that the dolls should not be used under the following circumstances:

- If the child cannot make the representational shift and does not understand that the doll represents them or another person. Using the doll can then lead to misinformation and misinterpretation (Hewitt, 1999:221);
- It is advised to use the dolls sparingly and rather not use them if possible; and
- The use of dolls is less likely to be criticized when the child has expressed that he has been abuse, but is having difficulty describing the abuse. The dolls are used to aid the child in describing what he has already articulated and to avoid the possibility that the interviewer has misunderstood the child.

5.3.2.4 Difficulties when using the anatomically detailed dolls

Perry and Wrightsman (1991:188) found the following difficulties that can arise during the use of the anatomically detailed dolls:

- There is a wide variation on the dolls that are referred to as anatomically detailed dolls. Minimum standards that the dolls must comply with should be implemented;
- There is an absence for standardized instructions for the use of the dolls. The dolls are used for various reasons, for example, forensic assessment and aid to help the child to explain in court what happened;
- Lack of adequate training in the use of the dolls. Contamination of the evidence can easily take place if the user of the dolls is not sufficiently trained in their use; and
- There is a risk that evidence provided via use of the dolls may be tainted as a result of leading questions and suggestibility.

The researcher is of the opinion that great care should be taken when using the anatomically detailed dolls as coaching and contamination can easily occur if the person introducing the dolls to the child is not skilled at using the dolls. It is also important that the child should not be allowed to play with the dolls before hand, as the child may think it is a toy and starts playing make believe games, causing the child not to give the information of what really happened during the abusive incident.

5.3.3 Anatomical Drawings

Anatomical drawings consist of outline diagrams of nude people who are at various stages of development. These drawings include facial and age-appropriate body features and are of both male and female. These drawings can be used with a child of any age as well as adults. They are ideal to obtain names of body parts of sexual touch (Holmes & Finnegan, 2002:32).

The child can show the parts of the body that he is referring to if he uses his own words for the genitalia. These drawing are not used frequently in court as the child cannot demonstrate any sexual abuse or rape on these drawings.

5.4 PROFESSIONALS INVOLVED WITH THE CHILD WITNESS

The court may, if it appears that a child witness will be exposed to undue mental stress and suffering, rule that the child witness gives evidence in a place separate from the courtroom with the assistance of an intermediary.

5.4.1 The intermediary

In July 1993, an intermediary was appointed for the first time in a court in South Africa. The intermediary assisted the child to testify in a room separate from the court. This was as a result of extensive research done by the South African Law Commission (1989:28) to alleviate the plight of the child witness. In the past the child witness was subjected to testifying in a formal courtroom in front of the perpetrator and strangers involved in the legal process.

The traumatic effect of such courtroom confrontation on the child was described by Key (1988:54), where she referred to a twelve-year-old boy who had been indecently assaulted by his father over a lengthy period of time. Key stated the following:

“Throughout the hearing the boy demonstrated signs of severe anxiety. He held his hand against his face to blinker out the sight of his father. When asked why he was so upset, he said that his father had, on numerous occasions, produced a knife and threatened to kill him if he ever told anyone about what his father had done to him.”

When a child’s rights have been violated as a result of sexual abuse, it is important that when the child gives evidence of such sexual abuse in a criminal court, he is protected from further harm. The intermediary system for the child witness is one such effort (Coughlan & Jarman, 2002:541). This system was introduced through section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) 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 (see 2.6.2.1).

An intermediary is a facilitator through which a child witness can give evidence in criminal proceedings. All examination, cross-examination and re-examination of the child takes place through the intermediary. The intermediary cannot ask her own questions, alter the meaning of the questions, or change questions to leading questions (Blumrick, 2004:20; Van der Merwe, 1995:197). Section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) provides that the intermediary must convey the general purport of the question to the child witness. The intermediary's role is to put the questions from the court, prosecutor, and defence to the child in language that the child will understand. The questions are put to the child from the legalese of the court to the language on his developmental level. This means that the child does not give direct evidence and is not directly cross-examined.

5.4.2 Background to the introduction of the intermediary system in South Africa

The general practice in South African courts used to be for a child witness to give evidence in an ordinary courtroom in the accused's presence. South Africa follows the adversarial procedure where the accused is entitled to be present at his trial and listen to all the evidence against him by the witnesses and then to cross-examine such witnesses (see 2.5.2 & 2.6.1).

There is a growing concern about the negative effects on the child witness when having to testify in an open court. Legal and mental health professionals are convinced that court involvement traumatizes the child witness, as giving evidence in a court is stressful. If the child is the complainant, he has to give evidence about embarrassing and intimate details in front of the accused as well as a group of people until then unknown to him. After giving evidence in court, the child has to face hostile cross-examination by the defence lawyer, or even worse, by the accused himself if he is unrepresented (Muller & Hollely, 2000:69-70).

The setting of the courtroom is in itself alien with the legal professionals wearing long black gowns. A formal procedure is followed in court and the child does not always understand the proceedings. The language used is formal, specialized and at times outdated (Muller & Hollely, 2000:69). Dziech & Schudson (1989:170) states that:

“Courtrooms were designed for the large number of adults who become participants and spectators in trials. Their furniture, lighting, acoustic and uniformed personnel assure a serious and, in some ways, intimidating atmosphere. The theory is that in such an environment, witnesses and jurors will be more likely to take their responsibilities seriously. For children, however, the courtroom can do more than encourage civic responsibility, it can terrify and silence.”

In 1989 the South African Law Commission embarked on a project to investigate the plight of the child and came to the conclusion that the child witness was being traumatized by the criminal procedures followed in South African courts. The South African Law Commission proposed the intermediary system as a possible solution. They recommended that the child witness under the age of 18 years should be allowed to testify in a special courtroom where a competent person would assist the child and the evidence would be given from behind a one-way mirror in a separate room, protecting the child from having to face the accused. Cross-examination of the child would take place through the person assisting the child, enabling the questions to be conveyed to the child in an objective and non-threatening manner. This proposal resulted in the Criminal Law Amendment Act, 1991 (Act 135 of 1991) which inserted section 170A into the Criminal Procedure Act, 1977 (Act 51 of 1977) (Muller & Tait, 1999a:242; Watney, 1998:429).

The Constitution of South Africa, 1996 (Act 108 of 1996) contains the Bill of Rights, which includes section 28, which emphasizes children’s rights. Section 28 relates directly to this research, and provides that the child has the right to be protected from maltreatment, neglect, abuse, and degradation. Emphasis is placed on the fact that the best interest of the child is of paramount importance in all matters concerning the child (Jarman, 1998: 12; Wessels, 2005).

The duties and functions of an intermediary are not described in detail in section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977). It appears that courts

differ on how they employ the intermediary and the procedures in the court depend on the judicial officer (Jarman, 1998:18; Wessels, 2005).

5.4.3 Categories of persons who can be an intermediary

Section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) introduced the persona of the intermediary. Section 170A (4) (a) provides that the Minister may, by notice in the Government Gazette, determine the persons or the classes of persons that can be appointed as intermediaries. The list of people who can be appointed was set out in a Proclamation in *Government Gazette* no.15024 of 30 July 1993, as amended by *Government Gazette* no. 17822 of 28 February 1997, and amended by *Government Gazette* no. 22435 of 2 July 2001.

The following people qualify as being competent to be appointed as intermediaries:

- Registered practitioners also registered as paediatricians;
- Registered medical practitioners also registered as psychiatrist;
- Family councillors who are appointed in terms of section 3 of the Mediation in terms of Certain Divorce Matters Act, 1987 (Act of 1987) and who are or were registered as social workers, or who have four years experience as educators, or who are or were registered as clinical, educational, or counselling psychologists;
- Childcare workers who have successfully completed a two-year course in child and youth care work and who have two years experience;
- Registered Social Worker who has two years experience in social work;
- Persons who hold a masters degree in social work with two years experience in social work;
- Persons with four years experience as educators and have not been dismissed or suspended from teaching; and
- Clinical, educational, or counselling psychologists.

5.4.4 Prerequisites of an Intermediary

A person wanting to act as an intermediary needs specific skills and knowledge to perform this function. According to Le Roux (2000:C4), Stander (2001:61) Jarman (1998:21) and Blumerick (2004:20) an intermediary should:

- Have a basic knowledge of criminal law, court procedure and rules of evidence;
- Know what a leading question is, and how and when to avoid one;
- Have court experience;
- Spend some time in court to see how court proceedings work;
- Be independent, objective and impartial; without prejudicing the trust that the child witness has placed in him. He is regarded as a court official (Blumrick, 2004:20);
- Interview with the child before the child testifies in court. During this interview the intermediary should be able to quickly build a rapport with the child witness without discussing the merits of the case with him. During the interview the intermediary can try to assess the developmental stage of the child, whether the developmental stage is age appropriate, what terminology the child uses, and how well his language skills are developed. The intermediary must also assess the child regarding his behaviour and understand it in the court situation. This will facilitate the child's evidence. Furthermore, the intermediary should determine whether the child has any disabilities, for example: Attention Deficit Hyperactive Disorder, autism, mental retardation, diabetes, blindness, and deafness;
- Be able to simplify and convey complicated phrases and aggressive questions simply and safely to the child so that the child can understand them and not feel threatened. The intermediary usually only has a few seconds to understand the questions and to interpret and relay it to the child in a non-threatening way. The intermediary has some leeway in interpreting the original questions as well as in changing the original sentence, but must not change the meaning of the question;
- Not show any emotions during the trial as this will have a negative effect on the child's testimony. The intermediary must control her own emotions while remaining supportive of the child. Aggressive cross-examination from the

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attorney can upset the intermediary. This should, however, not be displayed openly to the court or the child;

- Have knowledge of child development and acquisition language and be able to communicate with the child in simple, understandable, age appropriate language;
- Have knowledge of the effect that testifying has on the child. The child might experience stress and trauma when testifying at court. The intermediary should also be able to distress and debrief the child;
- Have knowledge on how to use the anatomical detailed dolls.
- Be able to concentrate for a considerable length of time as evidence might be finalized only after a few days;
- Be patient with the child witness; and
- Be able to work in a team. When the child comes to court to testify, a group of professional and other people will be involved with the child, for example, prosecutor, court preparation officials, intermediary, social worker, psychologist, parent, and caretaker.

The researcher is of the opinion that the intermediary must serve and respect the court in such a way so that neither the child nor the court is prejudiced. He must be objective and impartial.

5.4.5 Role of the intermediary

The intermediary's role included the following:

- Unless otherwise instructed by the presiding officer (magistrate), the intermediary should convey the general purport of the question asked by the prosecutor, defence or magistrate, to the child witness. She is not forced to repeat the exact words that the question was framed in; it is sufficient that the intermediary convey the general meaning. She must put the questions to the child as simply and understandably as possible. It must, however, be kept in mind that the court can insist that the intermediary repeat the question exactly as it was phrased (Muller & Hollely, 2000:44-45; Jarman, 1998:25).

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- The intermediary must convey the content and the meaning of the question. She is hereby able to remove all aggression and hostility from the question. This can be done by repeating or rephrasing the question so that it would be more understandable to the child. It is important as the defence's questions often are phrased in such a manner as to intimidate and confuse the witness (Muller & Tait, 1997:526). The intermediary can therefore protect the child witness from hostile cross-examination by the defence (Muller & Hollely, 2000:45-47).

- The intermediary may not change a question into a leading question (Le Roux, 2000:C4-11).

- The intermediary can change the question in such a way that it is put to the child at the level that he can understand. There is a possibility that the child witness cannot understand the language used in court, especially if the child is very young. The intermediary, however, is not allowed to change the meaning of the question nor comment on whether a child will understand a particular question or not. The intermediary acts, in a sense, like an interpreter and assists the child to understand the question put to him (Muller & Hollely, 2000:45).

- The intermediary is not allowed to refuse to ask a question. The intermediary can, however, wait a few seconds before relaying the question to the child in anticipation that the magistrate might not allow the question (Le Roux, 2000:C4-11).

- Even if the intermediary thinks that she knows what the next logical question is, she should never pose this question to the child. When the child gives a wrong answer or misunderstands the question, the intermediary should refrain from giving comment or explaining the question to the child. The question should be repeated by the person asking the question or by the magistrate (Le Roux, 2000:C4-11).

- Any non-verbal behaviour or gestures of the child must be placed on record by the intermediary if the magistrate does not do it, for example, shakes his head in disagreement, nods to say yes, or shrugs his shoulders. If anatomically detailed dolls are used, anything the child demonstrates must be put on record. The intermediary can tell the court what the child is demonstrating

- When anatomically detailed dolls are being used, it must be kept in mind that it is not always possible for the people in court to see what is happening. The intermediary must then explain to the court what the child is demonstrating.
- It is not always possible for the presiding officer to see when the witness starts crying or gets tired. The intermediary should explain what the child is doing so that it can be placed on record immediately. When a witness answers a question by nodding his head or shrugging his shoulders, these gestures must also be placed on record, as this cannot always be seen on the television screen, nor recorded on the audio-mechanical recording system.

5.4.6 Problems the intermediary might experience when performing her duties

- The scope to rephrase a question is very limited and this can cause problems for the child witness. For a young child to understand a question, it might be necessary to make drastic changes to that question. The original question may have to be rephrased into two or three questions. The intermediary may, however, not do her own examination.
- When an intermediary sees that a child witness starts to cry, becomes tired, starts to fidget or lets the intermediary know in any way that he needs to go to the bathroom, she is allowed to inform the court that the child needs a break, but cannot insist on the court to give the child a break as it is the court who has to make such a decision (Le Roux, 2000:C4-11).

The particular intermediary system implemented in South Africa in 1991 was a first in the world and literature, as well as research on this topic, is still very limited. Although section 170A has achieved its aim to remove any direct confrontation between the child and the accused in court and thereby reducing the trauma that a child experiences when testifying, it does not address the aggressive nature of the adversarial system. Section 170A has not dealt with that aspect which causes the child the most difficulty, namely the traumatic effect of aggressive cross-examination of the child witness.

5.4.7 Compiling the assessment/ desirability report

After thoroughly studying section 158 and 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977), consultation with regional magistrate Wessels (2005) and the researcher's personal experience, it was determined that attention must be paid to the following aspects when compiling the assessment report. This report is requested by the prosecutor involved in the trial and is compiled by a professional person, for example, a social worker or a probation officer.

5.4.7.1 Factors to be considered during assessment of the child and questions to be asked and considered when compiling the assessment report:

- Age and sex of the child witness;
- Level of education;
- Level of maturity:
 - Emotionally;
 - Mentally;
- Language abilities and proficiency of the child witness;
- Personality of child witness;
- Developmental factors (embarrassment talking about sexual matters young; child or adolescent, and lack of knowledge of sexual matters);
- Mental and intellectual ability of child;
- Nature of alleged offence;
- Nature of evidence to be given;
- Trauma as a result of alleged offence;
- Mental development of child;
- Physical development of child;
- Was the child victim insulted, intimidated, or threatened;
- Impact of alleged offence on child;
- What impact will the testifying in the presence of accused be likely to have on child (give reasons why);
- Vulnerability of witness;
- Is the accused known to child or not (family member or not);
- What are the feelings of child about testifying about a trusted person/unknown

person;

- Ability of the child to participate meaningful in court proceedings (open court versus intermediary versus using screen or closed circuit TV system only);
- Normal stress of child to testify versus undue mental stress or suffering;
- Feelings and perceptions of the child witness regarding courts and court personnel including magistrate, court orderly, prosecutor, legal representative, and the courtroom itself. Does the child perceive it as a hostile environment; and
- What is the best interest of the child?

Motivated reasons must be given to conclude which process, in terms of a specific provision, should allow the child to participate meaningful in proceedings and will be in the best interest of the child.

5.4.8 Recommendation for the use of an intermediary

Section 170A of the Criminal Procedure Act, 1977 (Act 51 Of 1977) will:

- Eliminate exposure of the child to undue mental stress or suffering;
- Best serve the needs of the child with regards to language, mental and intellectual ability, developmental factors, and child communication. Questions will be asked by one person, the intermediary, who will be of the same sex (preferably) (see 5.6.1);
- Eliminate trauma and fear to testify in the presence of the accused;
- Will be in the best interest of child and enable child to participate meaningful in the court process if questions are conveyed by one person who child feels he can trust; and
- Eliminate direct confrontation of accused or attorney.

5.4.9 Recommending the use of closed circuit TV system:

If a person is older than 18 years of age or when a child is old enough (15 years and up) and prefers not to testify without an intermediary, a requests to testify in a room separate from the court can be made to the court.

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The use of section 158 of the Criminal Procedure Act, 1977 (Act 51 of 1977) will:

- Prevent unreasonable delay of trial;
- Reduce the possible need for counselling first before the child is able to testify in an open court;
- Eliminate fear and trauma of having to testify in presence of the accused;
- Lessen emotional stress that might lead to adjournments during testimony;
- Save costs because of the above;
- Be convenient;
- The witness can still be observe;
- No interference regarding cross-examination will take place. The witness is just not in court;
- Be less stressful for witness emotionally;
- Eliminate fear and trauma factor in seeing accused and being in his presence;
- Lessen the likelihood of prejudice or harm to the witness if he testifies through the closed circuit television system;
- The witness will be able to participate in proceedings in a meaningful way; and
- It will be in the best interest of the child.

5.4.10 Recommendation for the use of the screen

Using the screen whilst the child is testifying in an open court will have the following advantages:

- The witness will be testifying in the courtroom and in presence of accused;
- The Accused will be able to observe witness through the screen, but the witness will not have to face the accused directly, thereby eliminating the trauma of having to see the accused face to-face; and
- The witness will see the legal representative, the court and the court personnel.

5.4.11 Appropriate evidence

In order to enable the court to find that a professional person compiled the rapport or

that a person with appropriate experience and expertise gives evidence, the following should be included in the report:

- Qualifications and when and where obtained;
- Current employer and job;
- Experience generally (for example, as social worker);
- Specific experience and expertise regarding children (type of experience and number of years);
- Specific experience and expertise in assessing children (type of experience and expertise, including specific reference to assessing ability to testify in open court, number of years, number of children assessed); and
- Date, time and duration of assessment, number of sessions or contacts needed for the assessment, and any other people contacted.

All findings and opinions must be motivated by reasons that take into account the factors mentioned above.

The researcher is of the opinion that the above factors are not an exhaustive list, but the minimum list of factors that need to be considered when assessing whether a child will suffer undue mental stress and suffering if he has to testify in an open court.

The factors should be used as a checklist and would enable both the person doing the assessment and the court to fully motivate the opinion why a specific procedure should be used for a specific witness.

5.5 THE ROLE OF THE PARENTS/CAREGIVER OF THE CHILD WITNESS

The task of the family is a life long commitment between a father and a mother. They should feed, shelter and nurture their children until they reach maturity, because this behavior enhances survival (Berk, 2003:558).

In the family the child builds his first and longest relationship during which the child will learn to become independent. During this time a complete set of interacting relationships will be formed which will be affected by the larger social context.

Reciprocating influences exist in a family in which the behavior of each family member will affect the other. Interaction with the community and other informal social networks will provide the parents and child with support (Berk 2003:593).

Warm, loving and involved parents, who are secure in the standards they hold for their children provide strong guidelines of caring, concern as well as confident, self-controlled behavior. Parents who combine warmth with rational and reasonable control are likely to be more effective parents who praise children for striving to meet their expectations (Berk, 2003:593).

Abused children experience impairment of emotional self-regulation (see 4.3.2), empathy, self-concept, social skills, and learning in school. The trauma of abuse is also associated with abnormal brain activity and heightened stress response. Over time children show a wide variety of serious adjustment problems. To prevent abuse of children, the parents, friends and community need to jointly combine resources through supporting each other. This can be done by supporting of parents, educating the public about how to seek help, and efforts to address violence in society (Berk, 2003:594).

5.5.1 Parent – child interaction

Characteristic of parent-child interaction are defined in terms of three dimensions of parenting, namely warmth, control and involvement (Goodman *et al.*, 1998:189).

- **Warmth:** This dimension of parenting focuses on the emotional aspect of the parent-child interactions. Aspects of parental warmth include responsiveness to children's needs, praise for good behavior and expressions of positive emotions toward and around children. Warm parents help and comfort their child when he has problems rather than saying they are too busy (Berndt, 1997:428).

- **Control:** This is the dimension of parenting that focuses on parent's expectations of their children's behavior; their training of children to meet these expectations, their enforcement of rules, the openness of their communication with their children, their

situational management, and their reliance on physical punishment or power assertive discipline (Berndt, 1997:430).

- **Involvement:** This is the dimension of parenting that focuses on the amount of time that parents spend in interaction with their children and the degree to which their attitudes are child centered. Involvement is defined in terms of the parent's attitudes and behavior. The parent is interested in his children's life and will not put his own needs and desires before those of his children. Highly involved parents take time to interact with their children. They are responsive to their child's needs and support them when necessary (Berndt, 1997:435).

The most successful parents have both warmth and control. In contrast, the authoritative or authoritarian parent may make his child feel compelled to testify despite the child's own feelings (Goodman *et al.*, 1998:168).

Research showed that children who had less authoritarian parents and who were asked to testify in regular courts, were more likely to refuse to take the stand (Goodman *et al.*, 1998:189).

The researcher, in her experience, found that the children who were supported positively by their parents, experienced less fear and stress during the court case. It was found that if the parents attended the court preparation session with their child, the parents were less anxious and provided better emotional support.

5.5.2 Child – parent attachment and memory

Attachment is the strong, affectional, and emotional ties the child has with his caregiver and special people in his life. By the second half (six to eight months) of his first year, the infant becomes attached to familiar people who respond to his needs (Berk, 2003:417; Berndt, 1997:219). Bowlby, the formulator of the ethological theory of attachment views the infant's emotional tie to the familiar caregiver as an "evolved response that promotes survival through ensuring both safety and competence" (Berk, 2003:417; Berndt, 1997:217). The theory views babies as

biologically prepared to contribute to ties established with their caregiver (Berk, 2003:417).

In the context of the child's memory for emotional events, it reflects the role of this attachment. 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 (Bull, 2001:130).

These interaction patterns may then lead to decreased distress and suggestibility about events that cause stress for the child who has secure parents. Bull (2001:130) claims that secure mothers were more likely to talk to their children after the medical examinations after sexual abuse, to have explained the procedure to the child, to have physically comforted the child, and spoken to the child about his emotional reactions. He further postulated that parental attachment interjected relationships between the child's distress and his memory performance. Children of the avoidant parent and the anxious-ambivalent parent's showed heightened stress initially when their parents had to leave them. During interviews when the child has to recall an incident, the child with avoidant parents, was inclined to be prone to suggestibility and make errors (Bull, 2001:131; Hewitt, 1999:91).

5.5.3 Parent's reaction after disclosure

When a child discloses sexual abuse his parents may react in a variety of ways, from overprotection to blaming the child for what has happened and consequently rejecting the child (Muller, 2000:160).

It is important that the parents and family receive support during this period to help them work through the stress, negative feelings, and trauma experienced. Davies (1995:406) however, found that in spite of intervention by helping professionals, little change in the stress was experienced by parents. The parents often felt the support was mainly aimed at the child and that help did not focus on their feelings and experience of the abusive incident (Davies, 1995:407).

5.5.4 Impact of sexual abuse on the parent

Disclosure or discovery of extra familial sexual abuse has the potential to traumatize the entire family system (Manion, McIntyre, Firestone, Ligezinska, Ensom & Wells, 1996:1095). Research provides evidence of negative short- and long-term effects of sexual abuse of children. However, sexual abuse not only impacts the primary victim, the child, but other members of the family as well (Hiebert-Murphy, 1999:427).

Another type of parental response that can occur is that a long repressed abuse experienced by the parent is triggered. Some parents reject their child after abuse, feeling that he is damaged in some way. The child feels rejected when he needs support and approval the most (Hiebert-Murphy, 1999:428).

A number of additional stressful events often follow the child's report of sexual abuse, like questioning of the child by the police, medical examination, the court proceedings, the verdict, and the possible media attention. According to Dyb, Holen, Steinberg, Rodriguez & Pynoos (2003:940), researchers have reported that parents may feel powerless and revictimized by the criminal justice system. It was also found that parents of children testifying in court showed more symptoms of distress than parents of children not testifying in court. Many families undergo unfavorable life changes, including mothers withdrawing from the work role until safe childcare is secured and families who moved from the area to avoid further attention in the media and community (Dyb *et al.*, 2003:941). These changes may also affect the family's effort at recovery from the abuse and could change the family's whole being.

The child's disclosure of sexual abuse is especially stressful for the child's mother and causes emotional distress, poorer family functioning and lower satisfaction in her parenting role (Carter, 1993:78). It is important to note that not all mothers experience clinically significant levels of distress following a disclosure of sexual abuse. According to (Carter, 1993:83) the mother's distress is related to a variety of abuse-related variables, for example:

- The gender of the child abused;
- The severity of the abuse;

- The use of force; and
- The amount of treatment received.

Maternal history of sexual abuse is related to greater distress amongst mothers. Mothers of sexually abused children often have a history of sexual abuse themselves (Faller, 1993:4). This history interferes with their ability to deal with the present abuse of their own child. The mother will then re-experience her own sexual child abuse, and become overwhelmed by having to deal with what she has tried to forget. When this happens together with the child's increased needs for contact, the child may experience the parent as emotionally unavailable. This is an indication of the long-term effect of child sexual abuse (Hiebert-Murphy, 1999:432; Hewitt, 1999:89).

Social support is related to emotional distress amongst mothers following the disclosure of the abuse of their children. Women who have a good support network may be better equipped to deal with the distress that results from a disclosure of sexual abuse. Efforts to strengthen support for the mothers of the abuse child, for example, group support, may be beneficial (Hiebert-Murphy, 1999:433).

Fathers of sexually abused children also experience greater overall emotional distress. Manion *et al.*, (1996:1096) found in their research that the father's stress level was however lower than that of the mothers.

Social support is a potential resource for coping with stress and trauma caused by sexual abuse. Friends and family may however express anger on behalf of the child or otherwise they may deny the abuse and neglect or ignore the family's difficulties. The passive parent, who may often be the only adult witness who can help the court clarify the child's testimony, is unwilling to testify against the perpetrator. Motives for this could be loyalty towards the accused, emotional dependence of the accused, fear for the accused, and fear of losing work and income (Swanepoel, 1991:58). Lack of perceived social support may then increase the isolation of the family. This in turn can then lead to post traumatic stress syndrome (Dyb *et al.*, 2003:941). Murray (1997:9) states that the legal professionals must take a family approach in any assistance given to a child witness. The effects of the legal process on children are largely a function of the effect of the procession significant others in their life.

Social support, and more specific the support of a parent, contributes to the way in which the child copes with stressful situations, like sexual abuse. The presence of a supportive parent is associated with better adjustment both in the short and the long term. The support of the parents can act as a shield against the negative effects of stress in general and of the sexual abuse stress in particular (Don-Wauchope, 2000:53). Saywitz and Camparo (1998:61) and Dent and Flin (1992:35) noted that social support often has a beneficial effect on the child's cognitive function. With regards to the courtroom context, the presence of a parent may facilitate the child's performance during testimony.

5.6 EXCEPTIONAL CHILDREN

5.6.1 Attention Deficit Hyperactive Disorder

According to the DMS IV (Carson & Butcher, 1992:538) the Attention Deficit Hyperactive Disorder (ADHD) child shows symptoms of poor attention, concentration and/or poor impulse control. If the child is inattentive, he has a hard time keeping his mind on any one thing at a time and may become bored with a task after just a few minutes. The hyperactive child is constantly restless, cannot sit still, and is always moving (Hallahan, Daniel & Kauffman, 2004:2). These symptoms are caused by a neurological dysfunction within the brain. The underlying physiological mechanism, which causes ADHD, is still not thoroughly understood. It is however presumed that the brain chemistry is out of balance and chemicals called neurotransmitters may be missing in the ADHD child. (About attention Deficit..., 2004:3-4).

The intermediary cannot diagnose a child as ADHD. A professional person, for example, a medical doctor or psychologist, must diagnose the child witness as ADHD.

5.6.1.1 Problems the ADHD child witness can experience in court

If the ADHD child is on medication it is important to advise the parent to maintain the

normal medication on the day of the trial. It is further important that the prosecutor determines the best time of the day for the child to testify (Bourg *et al.*, 1999; 201).

The ADHD child experiences significant problems when socializing with people. This is because the child has difficulty maintaining attention during an interaction with an adult and they may therefore miss parts of the conversation. This will result in the child not being able to follow questions being asked and will experience memory problems because he found it difficult to listen in the first place. This can often be interpreted in court as the child being reluctant to answer the questions or that the child does not want to tell the truth. It may even cause the impression that the child is lying. When asking the child a question in court it is important to make sure that the child has heard and understood the question. The questions asked should be very short with only one fact ask at a time (About Attention deficit..., 2004:8).

As a result of their impulsive nature, the children will often answer the question without thinking what they are saying, as they are not able to control their immediate actions. 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 ten 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 also be remembered that the ADHD child performs the best in an one-on-one situation (Bourg *et.al.*, 1999:2000; Schoeman, 2000:32).

The researcher, whilst working with the ADHD child in the intermediary room, had found it helpful to draw the child's attention to her by touching his arm and asking the child to look at her before she posed the question. The question would then be asked when the child was paying attention.

Whenever the child is testifying, and it is at all possible, a quick moving process should be maintained to keep the child's attention. Props such as dolls and drawings are sometimes helpful, but great care must be taken not to over stimulate the child. No toys should be present if the child is testifying in an intermediary room, as this will

over stimulate the child and he will find it difficult to concentrate of testifying (Bourg *et al.*, 1999:202).

5.6.2 Learning Disability

The term “learning disability” covers a wide spectrum of difficulties. It is a disorder that affects the child’s ability to either interpret what he sees and hears or links information from different parts of the brain. These limitations can show up in many ways, for example, specific difficulties with spoken and written language, coordination, self-control, or attention (Learning matter, 2004:1).

Learning disabilities can be divided into three broad categories, namely developmental speech and language disorder, academic skills disorder and coordination disorders. For the child witness the developmental speech and language disorder is of relevance (Hallahan *et al.*, 2004:1).

Learning disabilities are essentially cognitive of nature and will therefore have an impact on the child’s ability to understand (Aldridge & Wood, 1999:24). It must however, be remembered that the learning disabled child has an average or above average intelligence, but that their brains process information differently (Learning disabilities, 2004:4).

5.6.2.1 Problems for the learning disabled child witness in court.

Learning disability covers a wide range of difficulties and only the most frequently found problems can be discussed here.

When the learning disabled child has to testify, it is essential that the question be asked at a linguistic level appropriate for a child younger than the witness, who has no learning disability. The learning disabled child will have particular difficulties with certain aspects of testimony. Details such as times and dates may be beyond his understanding (Aldridge & Wood, 101:1999).

5.7 SUMMARY

In chapter five communication with the child in a legal system was looked at. Helping young witnesses understand legal proceedings and the roles played by different people in the system can increase the accuracy and credibility of children's testimony. The child witness has to be properly prepared to enter and cope with the strange and harsh justice system. This can be done by presenting the child with a court preparation program that explains the court procedure as well as the roles of the role-players to the child.

Changing the court environment to make it more child friendly was discussed. The special room where the child and the intermediary sit during the trial was looked at. The various aids used to help the child explain what has happened to him were investigated. The most frequently used aid is the anatomical detailed dolls. Great care should be taken when using them, as contamination of the evidence can take place. Training should be given to the legal professionals who use these dolls, as they are not merely toys. The children must not be allowed to use the dolls as toys. Another tool that is being used is the anatomical drawings.

When an intermediary is being used she will play a vital role in the child's encounter with the court. She is there to assist the child through the whole process of testifying in court, by changing questions that are difficult to understand to more child friendly and developmentally appropriate questions.

The parents/primary caregiver also plays an important role when a child has to testify. The way they react and their support is of vital importance to the child.

Finally, exceptional children were discussed. The intermediary often has to help a child testify who is ADHD or may have a learning problem. These children find it difficult to concentrate for any period of time. They need special care and attention when testifying in court.