

**A TRAINING PROGRAM FOR INTERMEDIARIES
FOR THE CHILD WITNESS
IN SOUTH AFRICAN COURTS**

by

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OPSOMMING

**‘N OPLEIDINGSPROGRAM VIR DIE TUSSENGANGER VIR DIE
KINDERGETUIE IN DIE SUID AFRIKAANSE HOF**

deur

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In hierdie studie word daar gekonsentreer op die ontwikkeling, implementering en evaluering van ‘n navorsings-gebaseerde opleidingsprogram vir die tussenganger in die Suid Afrikaanse hof met die doel om die tussenganger se kennis en begrip vir die rol en pligte van die tussenganger te verbeter. Die motivering vir die studie het sy oorsprong in die feit dat die adverseriële aard van hofverrigtinge ‘n struikelblok vir die kindergetuie is. Die navorsings probleem, naamlik dat daar geen nasionale navorsings-gebaseerde opleidingsprogram vir tussengangers in Suid Afrika is, word bespreek.

Daar is van intervensie navorsing as ‘n navorsingsmetodologie gebruik gemaak en ‘n twee fase navorsingsbenadering is gevolg. ‘n Kwantitatiewe opname navorsingsontwerp is tydens die eerste fase gebruik. Die navorsingsvraag wat vir die eerste fase geformuleer is, is: *Wat is die pligte en rol van ‘n tussenganger?* Selfontwerpte vraelyste is voltooi deur 54 landroste en 34 staatsaanklaers, wat vier verskillende werksinkels bygewoon het. Hierdie data het die literatuurstudie gekomplimenteer en beide is gebruik om ‘n opleidingsprogram vir tussengangers saam te stel.

Die kwantitatiewe benadering is ook vir die tweede fase van die navorsing gebruik. 'n Kwasi-eksperimentele een groep voortoets-natoets ontwerp, is gebruik. 'n Assesering deur middel van 'n vraelys is voor die aanvang van die opleidingsprogram onderneem. Dit assesering is weer herhaal na die aanbieding van die opleidingsprogram. Dit is gedoen om die effektiwiteit van die program te bepaal. Die navorsingshipotese was as volg geformuleer: *Indien 'n tussenganger volgens 'n navorsings-gebaseerde opleidingsprogram opgelei word, sal die tussenganger se kennis van die rol en pligte vir die hulpverlening aan die kindergetuie voor, tydens en na die verhoor, in die Suid Afrikaanse howe verbeter.*

'n Vyf-dag opleidingsprogram was geïmplementeer. Die hipotese is bevestig nadat die data geanaliseer en met die literatuur vergelyk is.

In hoofstuk twee is die impak van die Suid Afrikaanse regstelsel op die kind as getuie bespreek en in hoofstuk drie, vier en vyf is alle aspekte van kinderontwikkeling, met spesifieke klem op die kindergetuie wat in 'n aparte vertrek moet getuig, bespreek. Kognitiewe ontwikkeling en taal ontwikkeling is in die konteks van die kindergetuie bespreek. Hierdie inligting is gebruik vir die ontwikkeling van die opleidingsprogram. In hoofstuk ses is die ontwikkeling van die opleidingsprogram uiteengesit met die klem op uitkomsgebaseerde onderrig gegee. In hoofstuk sewe is al die data wat versamel is, gekwantifiseer, geanaliseer en geïnterpreteer. Hieruit kan die gevolgtrekking gemaak word dat die respondente 'n verbetering in hulle vaardighede en kennis sowel as hulle pligte en teoretiese kennis as 'n tussenganger getoon het. Hulle het ook getoon dat hulle praktiese vaardighede verbeter het as gevolg van die opleidingsprogram. Die gevolgtrekking kan dus gemaak word dat die opleidingsprogram vir tussengangers suksesvol geïmplementeer is en voldoen aan die vereistes van 'n uitkomsgebaseerde opleidingsprogram. Die bevindinge wat verkry is, dui aan dat opleiers van tussengangers oral in Suid Africa die ontwikkelde opleidingsprogram suksesvol kan toepas.

Gevolgtrekkings en aanbevelings in hierdie studie word gegee in ooreenstemming met die proses wat gevolg is in die ontwikkeling en implementering van die opleidingsprogram vir tussengangers wat die kindergetuie bystaan in die hof.

SUMMARY

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This study concentrates on the development, implementation and evaluation of a research based training program for intermediaries in South African courts in order to improve the intermediary's knowledge and understanding of the role and duties of an intermediary. The motivation for this study had its origin in the fact that the adversarial nature of court proceedings is a major stumbling block for the child witness. The research problem, namely that there is no national research based training program for intermediaries in South Africa, was discussed.

Intervention research was used as research methodology and a two phase research approach was undertaken. A quantitative survey research design was used during the phases. The research question formulated for the first phase was:
What are the duties and role of an intermediary? 54 magistrates and 34 prosecutors who attended four workshops, completed a self-structured questionnaire. This data complemented the literature study and both were used to compile a training program for intermediaries.

The quantitative approach was also used for phase two of the study. A quasi-experimental one-group pretest-posttest design was used. An assessment by means of a questionnaire was done before the training program started and was repeated again after the presentation of the training program to determine the effectiveness of the program. The research hypotheses that was formulated was: *If an intermediary is trained according to a research-based training program, the intermediary's knowledge of her role in assisting the child before and during the trial in a South African court will be improved.* A five-day training program was implemented. The hypothesis was confirmed after the data had been analyzed and compared to the literature.

In chapter two the legal system of South Africa, in respect to the child, was discussed and in chapters three, four and five all aspects of child development were discussed with specific emphasis on the child witness that needs to testify in a separate courtroom. Cognitive development and language development in the context of the child witness were discussed. This information was used to develop a training program. In chapter six the development of a training program was discussed with specific attention being given to outcomes based education. In chapter seven all the data that was collected was quantified, analyzed and interpreted. The conclusion could be drawn that the respondents did show improvement of their skills and knowledge of an intermediary, his/her duties and theoretical knowledge. They also showed that their practical skills had improved by attending the training program. The conclusion could therefore be made that the intermediary training program was successfully implemented and complied with the requirements of an outcomes based training program. The findings obtained indicate that trainers of intermediaries throughout South Africa can successfully apply the developed training program.

Conclusions and recommendations (chapter 8) of this study are put forward in accordance with the process that was followed in developing and implementing the training program for intermediaries who are to assist children when testifying in a court.

KEY WORDS:

Training program
Intermediary
Court preparation
Presiding Officer/magistrate
State prosecutor
Sexual Offences Court
South African legal system
Accusatorial system
Child witness
Child development
Cognitive development
Child communication
Child trauma
Intervention research

SLEUTELTERME:

Opleidingsprogram
Tussenganger
Hofvoorbereiding
Voorsittende beampte/landdros
Statsaanklaer
Seksuele Misdrywe Hof
Suid Afrikaanse regstelsel
Akkusatoriese stelsel
Kindergetuie
Kinderontwikkeling
Kinder kommunikasie
Kinder trauma
Intervensie navorsing

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-

DEDICATED TO:

MY TWO CHILDREN, CARIEN AND JURGENS

AND

MY FATHER, DR. GUNTER GARLIPP

THE SURVIVORS PSALM

I have been victimized.

I was in a fight that was not a fair fight.

I did not ask for the fight, I lost.

There is no shame in losing such fights,

Only in winning.

I have reached the stage of survivor and am no

Longer a slave of victim status.

I look back with sadness rather than hate.

I look forward with hope rather than despair.

I may never forget,

But I need not constantly remember.

I was a victim -

I am a survivor.

(Unknown)

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CHAPTER ONE
RESEARCH METHODOLOGY

1.1 INTRODUCTION

Appearing as a witness in a court of law is inherently a traumatic experience for any person, the more so when the witness is a young child who is a victim of physical, sexual, or mental abuse. The trauma is increased as it is a strange and formal environment in which the child has to tell strangers in detail about the abusive acts which were perpetrated on him in the accused's presence. This creates an environment for the intimidation of the child and his family by the perpetrator and his supporters. It is also very disempowering for the child and the parents/caregivers, especially if they do not have an understanding of the function of the court and the trial process.

The adversarial nature of court procedures has been regarded as another major stumbling block for the child witness. It allows aggressive cross-examination of the child. Many childcare workers and psychologists have described this as being secondary abuse (Muller & Hollely 2000:11).

When an intermediary is appointed, the presiding judicial officer may rule that the relevant child witness shall give his evidence at any place, which is informally arranged to set the witness at ease. The court can also order that any person, whose presence may upset the child witness, be out of sight and hearing of the child witness. This should be done in such a way that the court and any person whose presence is necessary at the relevant proceedings can see and hear the intermediary as well as the child witness during the latter's testimony, either directly or through an electronic medium or other device (Muller & Hollely, 2000:15). According to Wessels (2005), Pillay (2005), and Ferreira (2005), there is a scarcity of well-trained intermediaries, which hampers the use of child friendly facilities in court.

It is of great importance that skilled and well-trained intermediaries are available at all courts where child witnesses have to testify. Although there are a large number of intermediaries working at various courts, there is no standardised training program that is

used on national level. The researcher thus identified a need for a training program for all prospective intermediaries who are to assist a child in court cases.

In this chapter, the focus will be on the motivation of the choice of the study, the research question, the goal and objectives of the study, the hypothesis and research question, research approach, type of research, research design and research process, and the definitions of the key concepts.

1.2 MOTIVATION FOR THE CHOICE OF THE RESEARCH SUBJECT

The South African legal procedure is based on the accusatorial system. This entails the physical presence of the accused in the court whilst the witness testifies.

It is during the trial that the child's allegations of sexual abuse and the accused's defence to these allegations are tested. The quality of evidence gathered during the investigation and the cooperation of the role players (investigating officer, prosecutor and intermediary), often determines the outcome of the case. Furthermore, the child's preparedness will also determine the child's performance when called upon to testify.

No doubt with the above in mind, the legislator enacted section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977), which provides that when it appears to the presiding officer (magistrate or judge) in a criminal trial that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he testifies at such proceedings in the presence of the accused, a competent person may be appointed as an intermediary (Muller & Hollely, 2000:14).

The Criminal Procedure Act, 1977 (Act 51 of 1977) makes provision for procedures aimed at accommodating the special needs of a child witness. These include in-camera proceedings, prohibition against publication of a child's identity, and the use of an intermediary.

Section 170A (1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) states:

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“Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.”

From the above it can be seen that the child witness generally finds testifying in court to be an upsetting experience. It is of great importance that skilled and well-trained intermediaries be available at all courts where a child witness has to testify.

The researcher is a permanently appointed intermediary by the Department of Justice and Constitutional Development and has acted as an intermediary on a daily basis for the past four years. Although the law states the ideal situation for intermediaries in section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977), these facilities are only available at 58 sexual offences courts in South Africa at present. The vision of the Department of Justice and Constitutional Development is to have a sexual offences court available at every magistrate’s court in South Africa. It must be noted that although these courts are referred to as sexual offences courts, all abuse cases where a child under the age of 18 is to testify, are heard in these courts. In this study the term “sexual offences courts” will refer to all child abuse cases, not only sexual offences cases.

Although categories of classes of persons that can be appointed as intermediaries were published in *Government Gazette*, 15024 of July 1993, people from these categories often do not have suitable training or experience. The researcher felt that the main areas of concern were the lack of knowledge of how to make contact with the children, child development, sexual abuse, and trauma, language development of the child, court procedure, and family dynamics. As the researcher works as a full-time intermediary, she was in an ideal position to do this research study.

Section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) states that a competent person, meaning a skilled and well-trained person, should be appointed as intermediary. The researcher identified the need for a training program for intermediaries on national level. This was a strong motivation for researcher to develop such a program.

During the past eighteen months the researcher has been a guest lecturer at Justice College where prospective intermediaries attended a three-day orientation program. Justice College previously ran a course for intermediaries, but little attention was given to aspects such as child development, language development, court preparation, child and parent support, trauma, and court procedures. Prospective intermediaries attending orientation programs voiced the need in relation to the identified shortcomings. The logical step was to develop a more comprehensive, structured training program that conformed to minimum requirements and needs identified from literature and surveys.

Preliminary discussions with prosecutors, magistrates, and other legal personnel as well as literature reviews, confirmed the existence of serious concerns relating to the competence of intermediaries. It is, however, difficult to determine competence. Communicating with and facilitating the communication of a six year old child requires a vastly different set of skills and knowledge than those required for communication with a young teenager.

The above concerns are echoed by the resolutions and recommendations that were made by the South African Law Commission in Discussion Paper 102 (2001:426). The recommendations were that all intermediaries should be registered and accredited. They further recommended training in all relevant aspects required to act as an intermediary

1.3 PROBLEM FORMULATION

Every year, hundreds of cases of sexual and other abuse involving young child witnesses are referred to the courts. The number of these referrals has increased dramatically over the past ten years, and it is likely to increase in the years to come (South African Law Commission, 2001:409). According to Travers (2004/05/18), Captain Shiluvane Malunyane, a member of the Family Violence, Child Protection and Sexual Offences Unit of Pretoria, reported that more than 80 child abuse cases are reported in Pretoria each month.

Despite continuing negative media coverage in respect of the prosecution of these cases and the reliability of child witnesses, an increasing number of children are coming to court to testify.

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In the past it was practice in South African courts for a child witness to give evidence in an ordinary courtroom, in front of the accused, and be subjected to cross-examination by the defence. According to the rules of evidence, the accused has the right to be present and to cross-examine any witness giving evidence against him. The very person, who has allegedly committed the acts against the child, could subject the child to aggressive cross-examination and further trauma. With this in mind, the legislator enacted section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977). In 1993, Section 170A was inserted by section 3 of the Criminal Law Amendment Act, 1991 (Act 135 of 1991), and came into operation that year.

A child witness entering the criminal justice system now, no longer has to be confronted by the perpetrator, whilst testifying in front of a courtroom full of strangers. The child has the opportunity to testify in a separate room away from the accused, with the help of an intermediary, in such a way that the child can understand what is expected of him and at a pace he can handle. The intermediary is a facilitator through which a child witness can give evidence in criminal proceedings. The intermediary's role is to put the questions from the court, the prosecutor, and defence, to the child in language that the child will understand. The questions are then interpreted from the legalese of court to the child's developmental level (Muller & Hollely, 2000:81-82). Presently, in most courts, the child answers directly into a microphone and is heard in court. It is however found that the courts themselves differ about what they think the duties and tasks of an intermediary are. Presently there is no national consensus about the duties, responsibilities, functions or training of the intermediary.

Categories and classes of persons that can be appointed as intermediaries were published in *Government Gazette* no. 15042 (July 30, 1993) as amended by *Government Gazette* no. 17822 (February 28, 1997) as amended by *Government Gazette* no. 22435 (July 2, 2001). The Minister of Justice and Constitutional Development determines who can be appointed as intermediaries by regulation.

From the literature study, interviews and surveys with magistrates, prosecutors and existing intermediaries, it was clear that the person being appointed as an intermediary must have experience and be knowledgeable in dealing with children and court procedures. Training should be given to equip the intermediary with the necessary skills to help and support the

child witness and his parents/caregivers from the moment they appear at the court building, through the court case and afterwards refer the child witness and his parents/caregivers for further support and therapy if needed.

The research problem can thus be formulated as follows:

For a child to appear in court can be a very daunting and traumatic experience. Presently there is no national research based training program for intermediaries in South Africa. Researcher is of the opinion that if a well trained intermediary can help the child and his parents/caregivers to understand the court procedures, explain what is going to happen in a language the child can understand, take the child's developmental stage into account, help the child to understand his emotions, assist the child whilst testifying, and debriefing the child after testifying, appearing in court will be a much less traumatic experience for both child and parents/caregivers.

1.4 PURPOSE, GOAL AND OBJECTIVES OF THE RESEARCH STUDY

1.4.1 Purpose of the study

Exploratory research aims to make a preliminary study, gaining information about a topic and the implications thereof, where little is known (Collins, 1993:30). Durrheim (1999:39) described exploratory research as a preliminary investigation into relatively unknown areas of research.”

During this study exploratory research was used to explore the perceptions, experiences, concerns, problems, expectations, and needs of magistrates and prosecutors on the role and duties of the intermediary. This was done during phase 1 of the study and will be referred to as Section A to eliminate any confusion with the phases of intervention research.

Descriptive research presents a picture of the specific details of a situation, social setting or relationship, and focuses on the “how” and “why” questions (Neumann, 2000:22).

Descriptive research was used to describe the training program that was developed as well

as the results of the evaluation of the program. This was done during phase 2 of the study and will be referred to as section B of the study.

1.4.2 Goal of the study

Anderson (1989:488) is of the opinion that a goal is a general statement that refers to the consequences of an intervention as well as the long-term experiences, whilst Neumann (2000:23) states that a goal is an objective, which implies a broader, more abstract conception of “the end toward which effort or ambition is directed.” Objectives are more specific, concrete and measurable and can be attained in a short period.

The goal of this research was:

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

1.4.3 Objectives of the study

- To develop a theoretical framework by means of a literature study regarding child development, linguistic development, court preparation, child centred communication, criminal law, South African legal system, the intermediary, sexual and other abuse, trauma debriefing, court preparation, and anatomically detailed dolls;
- 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;
- To explore and gain information on existing training programs for intermediaries in South Africa
- To develop a research-based training program for intermediaries in South Africa.
- To implement the training program for intermediaries;
- To evaluate the impact of the training program for intermediaries; and
- To draw conclusions and make recommendations to the Department of Justice and Constitutional Development and other trainers of intermediaries for implementation of the training program.

1.5 THE RESEARCH QUESTION AND HYPOTHESIS FOR THE STUDY

A research question is posed when there is little or no literature available on the topic and exploratory research is done. A research question differs from a hypothesis in that a hypothesis indicates the relationship between two or more variables. (Compare Bless & Higson-Smith, 1995:37; De Vos, 2002:36.) The research question must be posed in a way that can be answered by observable evidence, and the data needed to answer the question should be feasible for the researcher to obtain (Rubin & Babbie, 1993:101).

The research question for section A of this study was:

What are the duties and roles of an intermediary?

A hypothesis can be a starting point in a quantitative research study (Mouton & Marais, 1990:121). It is also a conjectural statement of the relation between two or more measurable variables as well as the implications for testing the stated relationship (Kerlinger, 1986:17). According to Rubin and Babbie (1993:120) and Bless & Higson-Smith (1995:37-38) a hypothesis is a tentative, concrete and measurable answer to a question relating to the relationship between variables. It should have the following properties: Be clear and specific; have more than one possible outcome; be of value and should be testable.

The hypothesis for section B of this research is:

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

1.6 RESEARCH APPROACH

The research approach refers to the broader theoretical perspective of the research process (Creswell, 1994:4). For the purpose of this study, the quantitative approach was used. A quantitative study can be defined as:

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“An inquiry into a social or human problem, based on testing a theory consisting out of variables, measured with numbers and analysed with statistical procedures in order to determine whether the predictive generalisations of the theory hold true” (Creswell, 1994:1-2).

Quantitative research includes experiments, surveys and content analysis (Neuman, 2000:121-155). Quantitative researchers use deductive reasoning. The researcher observes objectively and does not give his own opinion and interpretation (Delpont & De Vos, 2002:52). The data collection focuses on scales and frequency tables (Delpont, 2002:165).

The approach in this study was a quantitative approach with measurements of variables done by means of questionnaires. For the purpose of this study the researcher used Creswell’s two phases model that indicates that the study was done in two phases. Creswell describes these phases as “a qualitative phase of study and a separate quantitative phase” (Creswell, 1994:173-190) . For the purpose of this study both phases were quantitative. For the sake of clarity and to prevent confusion the two phases will be referred to as section A and section B.

Fouché and De Vos (2002:142) held that the questionnaire as a data collection method is quantitative in nature and falls into the category of the quantitative-descriptive survey design.

The researcher used the quantitative approach as measurements of variables, which was done by means of questionnaires.

During section A the researcher used a quantitative approach, by means of self-structured questionnaires, to gain insight into the perceptions, experiences, needs, concerns, problems, and opinions of magistrates and prosecutors from various sexual offences courts. This information was needed to undertake section B of the research.

During section B of the research, the researcher also used a quantitative approach to collect data from prospective intermediaries attending the training program. Questionnaires, completed before and after the training program, were obtained to measure the impact of the training program.

1.7 TYPE OF RESEARCH

When research is based on the solving of practical problems relevant to the social work profession and is aimed at discovering how behaviour can be supported or changed, it can be described as applied research. Applied science is thus aimed at the practice and entails the use of existing knowledge from research or personal experience to develop and enhance service, processes and methods (Collins, 1993:28).

Applied science can also be described as a type of research where a specific program or theory is applied under a specific or given situation (Grinnell, 1988:36).

De Vos (2002:394) uses the term intervention research as a form of applied research. Intervention research entails the development of a program, presentation of a program (intervention) and the evaluation of the effectiveness of the intervention.

Rothman and Thomas (1994:3-4) were guided by methods in development research, evaluation research, behavioural assessment, technology transfer, and social science research to develop systematic procedures in intervention research for designing, testing, evaluating, and referring needed social technology, techniques, and programs for professionals (Barnes-September, 1998:135). No one particular research technique is employed in intervention research. It draws from different methods and techniques to develop a systematic and phased system of action that harnesses the potential of diverse methods (De Vos, 2002:394-396).

Rothman and Thomas (1994:9) and De Vos (2002:395) identified three main types of intervention research. These are:

- Intervention Knowledge Development (KD) – social research strategies to extend knowledge of human behaviour.
- Intervention Knowledge Utilization (KU) – findings limited to and utilized in practice by using procedures such as meta-analysis and marketing to package and disseminate knowledge about interventions.
- Intervention Design and Development (D&D) – research directed towards developing innovative interventions.

This research study used applied research with specific reference to intervention research. The three components (KD, KU, and D&D) of intervention research were used but the D&D phase was applied as the general framework for the research procedure (Rothman & Thomas, 1994:11; De Vos, 2002:396-418).

1.8 RESEARCH DESIGN AND METHODOLOGY

1.8.1 Research design

A research design is a detailed plan according to which the research is piloted. It indicates the unit of analysis, sampling procedures, the variables to be tested, the research, the research procedure to be followed, the type of information needed, the method of data collection and the type of measuring instruments to be used (Thyer, 1993:94).

Huysamen (1993:10:) adds to this by defining the research design as the overall plan, blueprint or strategy by which data is collected and analysed, questions are answered or hypothesis are tested. Terms like strategies, methods, traditions of inquiry, and approaches would be terms that are synonymous with the term design (Fouché, 2002: 271). A research design thus indicates which strategy the research project followed to answer the social questions. It will further supply a scheme or plan according to which the research will be conducted and will therefore lend structure to the research.

- Section A made use of a survey research design and more specific a randomised cross-sectional survey. According to Fouché and De Vos (2002:143) a researcher may use the randomised cross-sectional survey design for the needs assessment phase of research dealing with the development and evaluation of an intervention or training program. During this study, the researcher explored the perceptions, experiences, concerns, problems, expectations, and needs of magistrates and prosecutors with regards to intermediary training and existing programs (see 1.4). Open-ended questions, and ordinal scaling was used. The design is written as follows:

R O₁

- For section B the Quasi-experimental design and more specifically, the one-group pretest-posttest design was used (Fouché & De Vos, 2002:143-144).

$O_1 \times O_2$

In the one-group pretest-posttest design there is measurement of a dependant variable O_1 when no independent variable X is present, and subsequently an independent variable is introduced, followed by a repeated measurement of the dependant variable O_2 later. It is important that these measurements are reliable, valid and accurate and all units must be measured (Fouché & DeVos, 2002:144; Bless & Higson-Smith, 1995:140). The dependant variable is considered to be the problem that needs improvement. In this study the dependant variable was knowledge and skills of trainees attending the training program (O). These are the dimensions in which change is expected. The dependant variable is defined in operational terms. These specific measurable indicators will assist the researcher to evaluate the changes that have occurred during the study. The independent variable (X) was the training program. By using this design, it was possible to measure the level of improvement of the respondents' knowledge and skills about the role and duties of the intermediary. The pre-test of the dependant variable was used as a base of comparison with the post-test results

Questionnaires before and after presenting the training program to trainees training to be intermediaries regarding their knowledge of and skills as intermediaries, were obtained.

1.8.2 Research methodology

Intervention research was used during this study. Characteristics of the three types of interventions were divided into six phases. Each of these phases consists of a series of steps or operations (Rothman & Thomas, 1994: 9-11 and 28; De Vos, 2002:397-418). Rothman and Thomas (1994:9) stated that these steps or activities associated with each phase continue after the introduction of the next phase. Sometimes there is going back to earlier phases.

The phases of intervention research will now be described as of interest for this study.

1.8.2.1 PHASE ONE: Problem Analysis and Project Planning

Thomas (1981:594) indicated that analysis, the first phase of the model, assumes a prerequisite, a “material condition” that implies the existence of a “problematic human condition” such as child abuse, which can be addressed by developing the technology the researcher has in mind (De Vos, 1998:386).

Discussions with various people involved with the sexual offences courts as discussed under 1.1 and 1.2, highlighted the need for further inquiry. The focus was to engage participants and the population to ensure their participation in the knowledge development (KD) process. This involved the following five steps:

Identifying and involving clients

According to Fawcett, Suarez-Balcazar, Balcazar, White, Paine, Blanchard and Embree (1994:27) intervention researchers choose a population with whom to collaborate, whose issues are of interest to clients, research and society.

- The researcher identified the population for this research as the magistrates and prosecutors in South Africa’s sexual offences courts for section A of the research and intermediaries attending the training program presented by Justice College, Pretoria, as the population during section B of the research.

Gaining entry and co-operation from settings

De Vos (2002:399) held that conversation with key informants helps researchers understand what they have to offer and how to articulate the benefits for potential participants.

- Co-operation was gained from sexual offences courts in Pretoria, Justice College, magistrates and prosecutors. Their interest in the sexual offences courts was identified. The need as well as the contents of a training program for intermediaries was explored (appendix A and B). Researcher had worked as an intermediary for the past four years so no difficulty was experienced in conversing with the relevant role-players like magistrates and prosecutors.

Identifying concerns of the population

According to Fawcett *et al.*, (1994: 29) applied researchers, once they have access to the settings, must attempt to understand the important issues of the population.

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- Preliminary interviews were held with experts in the field (1.1 and 1.2) to identify concerns of the population and to develop a KD research question.
- The researcher determined the concerns and problems of the prosecutors and magistrates with relation to the roles and duties of an intermediary during the court process by means of self-structured questionnaires.

Analyzing concerns or problems identified

According to Fawcett *et al.* (1994: 30-31) a critical aspect of this phase is to analyze those conditions that people label as community problems by using key questions.

- The nature of the discrepancy between "ideal" and "actual" had to be analyzed.
- Questions were asked to determine for whom the situation is a problem, and what the negative consequences of the problem were (De Vos, 2002:403).
- The analysis was guided by questions the researcher compiled from her experience as an intermediary and day-to-day discussion with magistrates, prosecutors, and intermediaries.
- The answers to these questions lead to an understanding of what the problems were, what had previously been done to alleviate these problems and suggestions how to facilitate change to these problems.
- These included: What needs to happen to change these problems and how can these problems be changed?

Setting the goals and objectives

- Once the problem had been identified (see 1.3), the researcher could formulate goals and objectives (Fawcett *et al.*, 1994:31). A goal and objectives are formulated under 1.4.

1.8.2.2 PHASE TWO: Information gathering and synthesis

When planning an intervention research study, it is important to discover what other researchers have done to understand and address the existing problem (Fawcett *et al.*, 1994:31-32).

Using existing information source

DeVos (2002:405) explains that a literature review consists of an examination of selected empirical research reported practice and identified innovations related to the particular concern being studied.

- A KD study was conducted by doing a literature study to gain a theoretical framework (see 1.9.1). This literature study was also done so that questionnaires could be compiled for magistrates and prosecutors to assess their experiences, concerns, problems, expectations, and needs of the role and duties of the intermediary as and to develop the training program.

Studying natural examples

Fawcett *et al.* (1994:32-33) and De Vos (2002:406) held the opinion that a particularly useful source of information is to observe how community members faced with the problem being studied, or a similar problem, have attempted to address it. Interviews with people who have actually experienced the problem and have knowledge about the problem, can provide insights into which interventions might or might not succeed and the variables that may affect success.

- Two questionnaires for magistrates and prosecutors respectively, were drawn up by the researcher with the help and advice of the Department of Statistics of the University of Pretoria and pilot tested by two magistrates and two prosecutors (see 1.9.3). These questionnaires were distributed to magistrates and prosecutors working with sexual offences in South African courts to explore their experiences, concerns, problems, expectation, and needs of the role and duties of the intermediary. The data was analysed as described in chapter seven. This information as well as the literature study was taken into consideration when developing the training program.

Identifying functional elements of successful models

Once information is gathered, researchers analyse the critical features of the programmes and practices that have previously addressed the problem in question (De Vos, 2002:407).

- The information from the questionnaires was analysed and interpreted. Researcher also attempted to explored information on existing training programs for intermediaries in South Africa but was unsuccessful (see 1.12).

1.8.2.3 PHASE THREE: Design

Researchers must design a way of observing events related to the phenomenon naturalistically, a method system for discovering the extent of the problem and detecting effects following the intervention (De Vos, 2002:408).

Designing an observational system

- During this phase an observation system was designed and procedural elements of the intervention were specified (De Vos, 2002:408). Problems identified by means of questionnaires were defined in operational terms (see 1.8.1).

According to Fawcett *et al.* (1994:34) and (De Vos, 2002:408) the type of measurement system to be chosen depends on many factors, including how many individuals and behaviours must be observed, the length of the observation sessions, the duration of intervals and availability of trained observers. The reliability and validity of the observations are affected by observer's training and experience.

Specifying procedural elements of the intervention

- A draft of the training program and questionnaires for evaluating the program was drawn up. The process was enhanced. The procedural elements were discussed under paragraph 1.8.1.

1.8.2.4 PHASE FOUR: Early development and pilot testing

Development as defined by Thomas (1981:584-587) is the process by which an innovative intervention is implemented and used on a trial basis, developmentally tested and refined and redesigned as necessary.

During this phase the draft training program and questionnaires for evaluating the program by attendants was developed and pilot tested.

Developing a prototype or preliminary intervention

- During this phase the draft training program and questionnaires for evaluating the program by attendants was designed. It was used on a trial basis and was tested for

its adequacy. It was then refined and redesigned for the pilot test with the help of the Department of Statistics, University of Pretoria.

Conducting a pilot study

- The training program and questionnaires were produced and presented to six relevant role-players (two magistrates, two intermediaries and two lecturers) and were subsequently evaluated. All the questionnaires and schedules were pretested (see 1.9.3).

Applying design criteria

- Questions such as the effectiveness of the questionnaires, whether it is simple to use and understand and practical adaptability to various contexts, for example, different cultures, were taken into consideration (De Vos, 2002:411). All the material for applying the training course during the main investigation was finalised.

1.8.2.5 PHASE FIVE: Evaluation and advanced development

This phase of the D&D model comprises the following steps:

Selecting an experimental design

- This phase involved collecting and analysing data, replicating the intervention under field conditions, and refining the intervention.

Collecting and analysing data

- Section B: Self-constructed questionnaires with ordinal questions, open questions as well as numerical scaling were used to give the respondents the opportunity for a wide variety of answers before and after the training and the researcher could thus explore the variables better (Delpont, 2002:179) (See 1.8.1).
- The first questionnaire (pre-test) was distributed to the trainees attending the training program for intermediaries for completion before the training program started. The second questionnaire (Post-test) was distributed for completion directly after the training program had been presented. The researcher did the distribution and collection personally.

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- Data analysis brings order, structure, and meaning to the collected data (De Vos, 2002:339). Rubin and Babbie (1993:389) state that data analysis is a challenging and creative process. Data analysis entails the breaking down of data into constituent parts to obtain answers to the research hypothesis. Interpretation must then take place of the raw data. The data must be described and analysed and then interpreted for results (De Vos, Fouché & Venter, 2002:223). Quantification of the results took place by means of statistical methods such as graphs and tables..
- The collected data was analysed and is presented in Chapter 7 of this research report.

Replicating the intervention under field conditions

De Vos (2002:413) held that a primary goal of intervention research is to develop interventions that are effective in a variety of real-life contexts, with those who actually experience the problem. Replication under various field conditions helps to access the generality of the effects of the intervention.

- The adapted training program (as described in chapter 6) was presented to prospective intermediaries during the training program and evaluated for effectiveness after presentation by means of two questionnaires, one pretest and one posttest measuring the same information. As a result of the researchers work description, the training program has been applied to other trainee intermediaries but was not used for research purposes.

Refining the intervention

- The training program was finalised for distribution to Justice College, Pretoria. It is presently being used as the only training program for intermediaries at Justice College.

1.8.2.6 PHASE SIX: Dissemination

Potential markets have already been identified and a demand for the program already exists. Further dissemination will take place as the training program will be made available to the Department of Justice and Constitutional Development for the training of future intermediaries. Dissemination was not part of this research and will not be discussed.

1.9 PILOT STUDY

The pilot study is a way in which the researcher can orientate himself to the project he has in mind. Its function is the exact formulation of the research problem and tentative planning of the nature and range of the investigation. A pilot study involves testing the measuring instrument on a small number of respondents sharing the characteristics of the target group (Strydom, 2002b:211).

1.9.1 Literature Study

The main purpose of the literature study is to orientate the researcher and gather information regarding existing knowledge on the proposed topic (Strydom, 2002b:212).

The researcher gained information regarding different disciplines such as social work, psychology, law, education, child development, language development, child centred communication, legal aspects, court preparation, child trauma, sexual abuse, and intermediaries. The literature was utilized when the questionnaires and training program were compiled (see phase B).

A search of the libraries of the University of Pretoria, University of South Africa, the legal library at the Regional Court in Pretoria, and the library at Justice College, were conducted. An internet search was conducted to search data bases such as SACAF; ISAP - S A Journal articles; Dialog-international journal articles; Jutastat – legislation information; S A Law Commission for the Working Papers and historical information. The inter-library loan facility at the University of Pretoria was used to obtain pertinent theses or literature from other libraries around the country as well as internationally.

1.9.2 Feasibility of the study

The researcher has worked as an intermediary at Regional Courts as well as the High Courts on a permanent basis for the past four years. The research project had been discussed with various role-players and no problems regarding the research project were experienced. Written informed permission was obtained from adv. P.A. Du Rand, Directorate: Court Management, Department of Justice and Constitutional Development.

The Department of Justice and Constitutional Development requires a report of the findings of the study. This will be submitted after the research has been completed. A discussion forum took place before the empirical study and a seminar thereafter, which was attended by role-players from different disciplines.

All financial costs incurred were at the expense of the researcher. Submission of this proposal to the Ethics Proposal and Research Committee, Faculty of Humanities of the University of Pretoria, for the final approval before commencement of the empirical study, was done.

1.9.3 Pilot Test of data-gathering instrument

A pilot test of the questionnaire can highlight problems on aspects such as question formulation, interpretation, and confusing questions. Modifications can then be made if necessary (Strydom, 2002b:216).

A pilot test for all the questionnaires (measuring instruments) was conducted with six role-players (two magistrates, two prosecutors, and two intermediaries) to test the relevance of the topics and issues (see 1.8.2). They were excluded from the main study. In addition, the Department of Statistics, University of Pretoria, colleagues, prosecutors, magistrates, and intermediaries were consulted with regard to compiling the questionnaire. Factors like the inclusion of short, clear, crucial and relevant questions were taken into consideration.

The training program, once drawn up, was also pilot tested with four intermediaries who were excluded from the main study.

1.10 THE RESEARCH POPULATION, DELINEATION OF THE SAMPLE AND SAMPLING METHODS

According to Mark (1996:366) this part of the research answers the questions of: “How was the population defined and what sampling method was employed.

1.10.1 Universum

Mouton (1996:134) defined universum as: The complete set of elements and their characteristics about which conclusion is to be drawn on the basis of a sample.

The universe of this research is:

- Section A: All the magistrates and prosecutors of the sexual offences courts in South Africa.
- Section B: All the prospective intermediaries of South Africa.

1.10.2 Research Population

Population is the term referring to the individuals who possess the characteristics being studied and to whom the findings will be generated (Strydom & Venter, 2002:198).

- Section A: The population for phase one of this study consisted of all the magistrates, prosecutors, and senior prosecutors of sexual offences courts in South Africa attending courses and workshops at Justice College, Pretoria between August and October 2004.
- Section B: The population for phase two of this study consisted of all the prospective intermediaries who attended the training program for intermediaries at Justice College, Pretoria during November 2004 and February 2005.

1.10.3 Delimitation of the sample

According to Arkava and Lane (1983:27), a sample is a subset of measurements drawn from a population to be studied. A sample is studied to understand the population from which it is drawn. The larger the population, the smaller the percentage of that population is needed. Although, if the population itself is relatively small, the sample should be reasonably large (Bless & Higson-Smith, 2000:931; Strydom & Venter, 2002:200).

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- Section A: All 150 magistrates and 90 prosecutors of sexual offences courts attending two training courses and four child law workshops in South Africa and Justice College, Pretoria during August to October 2004, were involved in the research.
- Section B: As a result of the relatively small population size all 69 trainees attending the training program for prospective intermediaries during 2004 and 2005 at Justice College, Pretoria were involved in the research.

1.10.4 Sampling Method

According to Strydom and Venter (2002:207), purposive samples are based entirely on the judgement of the researcher. The sample contains the most characteristics representative of typical attributes of the population

In this research non-probability sampling, and more specifically purposeful sampling took place and the whole population were involved. No selection took place.

A list of names regarding the above population was collected from the Department of Justice and Constitutional Development and Justice College. The group of respondents comprised males and females of various ages, different occupations, geographical area, racial-, religious- and cultural backgrounds.

1.11 ETHICAL CONSIDERATIONS

Various authors discuss the concept of ethics when obtaining data for research studies.

Strydom (2002a: 63) offers the following definition of ethics:

“Ethics is a set of moral principles that are suggested by an individual or group, are subsequently widely accepted, and offer rules and behavioural expectations about the most correct conduct towards experimental subjects and respondents, employees, sponsors, other researchers, assistants and students.”

Ethical guidelines also serve as standards and the basis on which each researcher ought to evaluate his conduct. The researcher is a registered social worker at the South African Council for Social Service Professions and endorses its ethical code.

For this study the following ethical considerations were taken into account:

- ***The right to experimenter responsibility***

Every participant should be able to expect that the researcher will behave responsibly. (Vermeulen, 1999:170). The researcher was sensitive to human dignity of all respondents and her intentions in respect of the research were above question

- ***Informed consent:***

This implies that all possible or sufficient information concerning the aim and goal of the investigation, the procedures to be followed during the research, possible advantages and disadvantages and dangers to which respondents may be exposed, as well as the credibility of the research should be rendered to potential respondents (Strydom, 2002a: 65).

All respondents were informed by means of a letter of the nature of the research, how the measurement would take place and what they could expect. The aims and goal of the research was explained to them. All the respondents were provided the opportunity to refuse or participate in the study. Written informed consent was obtained from all respondents.

- ***Harm to experimental respondents:***

Harm can be emotional or physical (Strydom, 2002a: 64). The researcher is aware of the ethical responsibility to protect all respondents against physical and emotional discomfort. Precautions were taken in this respect by informing the respondents of any discomfort they may experience as a result of the questionnaire. All respondents were aware, that should they need debriefing as a result of completing the questionnaires, the researcher was available for debriefing or the respondent would have been referred to an experienced therapist.

▪ ***Violation of privacy/anonymity/confidentiality***

Over and above the rights to privacy, the right of the confidentiality of personal information should also be honoured (Vermeulen, 1999:17). It is imperative that the researcher be reminded of the importance of safeguarding the privacy and identity of respondents and that information be handled confidentially at all times. (Compare Strydom, 2002a:67; Bailey, 1987:413.)

All information was and is deemed as confidential and no identifying information was or will be given. A written explanation of the total investigation (Appendix 5) was given to each respondent as well as a written consent form (Appendix 6), which was signed by each respondent.

▪ ***Actions and competence of researcher***

The researcher is knowledgeable about both the research process and acting as intermediary. A M A (S W) Play Therapy as well as two preliminary doctoral exams have been completed. The researcher is a full time intermediary employed by the Department of Justice and Constitutional Development. All possible steps such as being professional, unbiased and non-judgemental were taken to be as objective, knowledgeable and professional as possible.

▪ ***Release of publication of the findings***

For research to be meaningful, it should be introduced to the reading public in written form (Strydom, 2002a:71). The research report was written as objectively and accurately as possible. All shortcomings and errors were admitted. All respondents have access to the final research results. The researcher was also aware that before the research report could be submitted, it had to comply with the requirements of the Academic Administration of the University of Pretoria.

1.12 PROBLEMS EXPERIENCED DURING THE STUDY

- Difficulty was experienced at gaining access to prosecutors for the completion of the questionnaire. The National Prosecuting Authority refused permission to distribute the

questionnaires amongst prosecutors as too much time would be wasted if the prosecutors had to fill in questionnaires.

The researcher then approached Justice College and other presenters of courses for magistrates and prosecutors. They were prepared to distribute the questionnaires to the various respondents.

- Because of the scope of this research, the theoretical knowledge base was drawn from various disciplines including social work, psychology, law, and education. The intermediary system is only used in South Africa, Japan, and Hong Kong and was only recently introduced to neighboring African countries. This made the gathering of the knowledge base very difficult and time consuming, as there is a limited number of literature available.
- The researcher attempted to consult with other presenters of intermediary courses regarding the contents of their program. Great reluctance on the side of the presenters was experienced and no information could be obtained. Twelve questionnaires were distributed and none were received back. A workshop was held in March 2004 at Justice College where all the main role players from South Africa who did training of intermediaries, were invited to participate in the drawing up of minimum standards for a training program. Of the trainers that were present are: The Teddy Bear Clinic in Johannesburg, RAPCAN from Cape Town and Omega Centre from Vereeniging. No input was received concerning these minimum standards and the researcher was asked by Justice College to draw up and distributed minimum standards for a training program.

1.13 DEFINITIONS OF THE KEY CONCEPTS

- **Training program:**

A training program is a program of instruction by book or teaching machine in any profession

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by means of paper or booklet, with relevant details and items and in which the subject matter is broken down into logical sequence of short items of information, and a student can check immediately the suitability of his response (Kirkpatrick, 1985:789).

From the above it is seen that a training program is a structured passing over of specific material relating to a certain topic to a specific audience.

▪ **Intermediary:**

An intermediary is a facilitator through which a child witness can give evidence in criminal proceedings. 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 then interpreted to a child's developmental level from the legalese of the court. This means that the child does not testify and is not directly cross-examined in an open court (South African Law Commission, 2001:402).

An intermediary conveys the content and meaning of a question to the child in a manner, which the child understands. The intermediary is thus mandated to convey the general purport of the question and is not limited to repeat the exact words that the question was originally framed in. She is able to remove all hostility and aggression from the question. The intermediary may not alter the meaning of the question (Muller & Tait, 1999a: 12-13).

For the purpose of this study, an intermediary is a person who conveys the questions put to the child witness in court in a language that is understood by the child so that the child can answer the question properly and to the best of his ability. The child and intermediary are alone in an adjacent room to the court where the trial is held.

▪ **Presiding Officer/Magistrate**

The presiding officer/magistrate listens to the evidence presented by both parties and ensures that the rules of evidence and procedure are adhered to. He must remain neutral and see that justice is done (Muller & Tait, 1999a:3).

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The magistrate is a person who plays a passive role, almost akin to that of an umpire in a cricket match. He hears both sides and sees to it that the rules of evidence and procedure are adhered to. At the end of the trial he must make a finding as to the facts found proved and he must apply the law and give judgment. He plays a neutral role (South African Law Commission, 1989:4).

From the above it can be seen that the role of the magistrate is mainly passive. He listens to the evidence that is presented to him and then makes a decision.

▪ **Prosecutor:**

The role of the prosecutor is primarily to ensure justice where there has been transgression of the law. He is described as the “people’s attorney” who represents the administration of justice in the prosecution of criminal offences. He is tasked with assisting the court to arrive at a just verdict by guiding the police through the investigation process, making the decision to prosecute, addressing the court on bail, presenting evidence in court, arguing cases and helping the court arrive at a just sentence in the event of conviction (South African Human Rights Commission, 2001:25).

The prosecutor leads the evidence for the State by tendering the evidence in chief of the witness for the state in order to place their evidence before the court (South African Law Commission, 1989:5).

The prosecutor receives the docket from the investigating officer. This docket contains statements and other relevant documentation. The prosecutor uses these statements in the court case. He then assists the child to testify in court by leading the child’s evidence.

▪ **Sexual Offences Court:**

A specialized sexual offences court is a court based at regional court level and dedicated to sexual offence cases. The objectives of the court are to improve inappropriate and insensitive treatment of victims of sexual offences in the criminal justice system, create an integrated approach to the management of sexual offences by various agencies and

ultimately, improve reporting, investigation, prosecution and conviction rate in sexual offences cases (South African Human Rights Commission, 2001:28).

Sexual offences courts give specialist treatment to these cases. The prosecutors assigned to these courts are selected on the basis of their personal make-up and ability to relate to such victims. Unnecessary delays are avoided, thorough preparation beforehand takes place, in-depth consultations with the victims take place, in camera proceedings and intermediaries are utilized (South African Law Commission, 2001:67).

For the purpose of this study the sexual offences court is a specialized court that is put in place to hear sexual offence cases as well as any other child abuse cases as soon as possible and with as little trauma as possible. The child testifies in such cases either in a separate room with an intermediary, alone in a separate room or with a screen between him and the perpetrator in the open court.

▪ **Child witness**

The Criminal Law (Sexual Offences) Amendment Bill, 2003 defines a child witness as a person below the age of 18 that has to testify in a court of law about an offence committed against him.

From the above it can be seen that a child who is under the age of 18 years and has to testify in a court about an offence perpetrated against him is considered a child witness. Such testimony can be given in an open court unless decided otherwise by the presiding officer. This can be done in terms of section 158 or section 170A of the Criminal Procedure Act of 1977 (Act 51 of 1977).

Throughout this study the child will be referred to as “he” (being male). The researcher however wants to make it clear that the child witness can be either male or female

1.14 CONTENTS OF THE RESEARCH REPORT

- Chapter 1:- General orientation to the study including motivation; problem formulation; goal and objectives of the study; research question and

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hypothesis; methodology; and definitions of the key concepts.

- Chapter 2:- South African Legal System, past and present and other relevant legal aspects.
- Chapter 3:- The developing child: different developmental stages, cognitive, emotional, linguistic, brain, perceptual, memory, moral, and social-emotional.
- Chapter 4:- Communication with the child witness.
- Chapter 5:- Assisting the child witness during the court experience.
- Chapter 6:- A training program for intermediaries.
- Chapter 7:- Empirical study and research findings.
- Chapter 8:- Summary, conclusions and recommendations.

CHAPTER TWO
THE SOUTH AFRICAN LEGAL SYSTEM

2.1 INTRODUCTION

Increasing numbers of children have given evidence about crimes against them, most frequently about child sexual abuse. This is as a result of increasing prosecution of child sexual assault cases. As more and younger children appear before the courts as witnesses, the problems they face in an accusatorial, adult-orientated system become increasingly evident (Louw, 2004a:3).

In this chapter, the historical background of the South African legal system will be discussed briefly. Thereafter the accusatorial system will be explored. Legal instruments such as the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Service Charter for Victims of Crime in South Africa, the United Nations Convention on the Rights of the Child as well as other statutory innovations will be examined. Rules of evidence and rules of procedure for cases being brought to trial will be discussed and finally attention will be given to specialized language used in court.

2.2 HISTORICAL BACKGROUND OF THE LEGAL SYSTEM IN SOUTH AFRICA

There are two major legal systems, namely the accusatorial or common law system, which is an Anglo-American system, and the inquisitorial system, which is a system that applied to pre-colonial Africa and presently applies to most European countries, especially France and Germany (Muller & Hollely, 2000:21). None of the systems however exist in a pure form but are hybrids of the above two systems (Dugard, 1977:117; South African Law Commission, 2001:187; Muller, 2002:2).

There are fundamental differences between the accusatorial and inquisitorial systems. The development of these opposing systems started in the 12th century. During this

time the organization of communities changed. The communities no longer consisted of small, self-supporting units. The law had to develop to keep up with these changes.

The accusatorial process originated from the first form of lawsuits in the post-primitive society. Private vengeance made place for verbal confrontation between two parties in public (Snyman, 1975:101; Muller & Hollely, 2000:2). This development was left up to the courts. The United Kingdom and France, for instance, differed greatly in the course of the development they adopted (South African Law Commission, 2002:188). Both the United Kingdom and France however adopted the inquisitorial model, which developed towards the end of the middle ages (Muller & Hollely, 2000:2).

In the early part of the 20th century most research on child witnesses had been conducted in Europe, especially in Germany and France. At this time children were rarely permitted to testify, as the general conclusion was that young children were suggestible and vulnerable to making serious errors in their court testimony (Ovens, Lambrecht & Prinsloo, 2001:25).

Entire legal systems developed, flowing from the differential treatment of the accused. The accusatorial system felt that the accused should not have to incriminate himself by either an oath or information extracted through torture, but should have the right to keep silent. In contrast, the inquisitorial system felt that confession was the essential component (South African Law Commission, 2001:189).

Schwikkard, Skeen and Van der Merwe (1996:6) are of the opinion that all procedural and evidential systems are honest attempts to discover and protect the truth. Therefore there is much common ground in spite of the particular historical origins and ideological preferences each system may have.

Presently, South Africa uses the Anglo-American accusatorial system together with a set of exclusionary rules of evidence. This means the South Africa's legal system does not have a jury and that the common law is Roman-Dutch. Imposed on that, there is the Constitution, 1996, African customary law, and tradition. English law influenced criminal procedure and law of evidence.

2.3 THE ACCUSATORIAL SYSTEM IN SOUTH AFRICA

South Africa is a common law country that follows the accusatorial system of justice (Don Wauchope, 2000:33). South African procedural and evidentiary rules are based upon the accusatorial principles and the (English) common law system of evidence. The opposing parties, and not the court, are in principle responsible for presenting evidence in support of their respective cases. This is done according to procedural principles and exclusionary rules, which promote “morality” and secure “confrontation” (Van der Merwe, 1995:195).

Cross-examination and face-to-face confrontation between the witness and the accused are central features of the accusatorial system. The criminal trial consists of two opposing parties placing evidence before a passive presiding officer who, after hearing the examination-in-chief and observed the cross-examination, makes a decision as to the guilt of the accused (Muller & Hollely, 2000:3). Meintjes-Van der Walt (2002:24) states: “The accusatorial system depends largely on the ability of lawyers to expose the weaknesses in witnesses and their testimony through cross-examination.”

The above creates the perception of a battle. Two opposing parties fighting a battle, with each side calling their own witnesses and attacking the witnesses of the other party throughout cross-examination (Jarman, 1998:34). The central determination or burden of proof is whether the state can, beyond reasonable doubt, prove that the accused is guilty. If the prosecutor cannot do this and there is reasonable doubt in the mind of the presiding officer, the accused must be acquitted (South African Law Commission, 2001:195; Bukau, 2003:165).

The accusatorial system has the following features:

2.3.1 Oral evidence in court

Evidence is normally given orally as little use is made of written evidence because the court values the cross-examination process. The child witness is brought in front of a court that operates in a formal atmosphere, which is intended to be imposing. The

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effect of this atmosphere on the child witness could reduce the child to a state of terrified silence. This fear can result in the child not being able to convey adequately what has happened to him in court. This results in evidentiary requirements not being met and that the offender goes free (Castle, 1997:31).

According to Kleyn and Viljoen (2002:182-183), oral evidence is the most common form of evidence. The weight the court attaches to such evidence depends on the child witness's credibility. In the accusatorial system all the evidence will be presented orally in one continuous presentation. The witness must physically attend court and give oral evidence in front of the presiding officer. The witness will first give evidence-in-chief, then be cross-examined, and then re-examined. The presiding officer may also ask questions to the witness (South African Law Commission, 2001:455). The fundamental assumption is that oral evidence is superior to all other evidence (Spencer & Flin, 1990:67; Muller & Hollely, 2000:7).

2.3.2 Two opposing parties (state prosecutor and defense attorney)

In the accusatorial system there are two parties which each present their case to the presiding officer. Goldstein (1974:1016) explains that both parties play an aggressive role in presenting and examining witnesses. Of the two parties, the prosecutor must prove his case beyond reasonable doubt and the defense only has to create doubt. The prosecutor need not obtain a conviction but must rather present all relevant evidence to the court so that justice can be done. The defense will fight for acquittal. This gives rise to the "contest" atmosphere in court.

2.3.3 Passive presiding officer

Several authors (compare Katz-Levin, 2000:C3, 22; Muller & Hollely, 2000:3) stated the following:

- The role of the presiding officer in the accusatorial system is a passive one;
- The presiding officer must not know the detail of the case beforehand;
- He must remain neutral and see that justice is done;

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- He must listen to the evidence that is presented by both parties present intervening only for clarity;
- He is under a common law duty to prevent irrelevant, repetitive, and intimidating questioning (South African Law Commission, 2001:195);
- The presiding officer must see that the rules of evidence and procedure are adhered to; and
- The presiding officer makes the decision whether the accused is guilty or not, based upon the evidence placed in front of him.

2.3.4 Confrontation

According to Van der Merwe (1995:203) the right to confront in the accusatorial system is a procedural right generally deemed essential for a fair trial.

Confrontation is one of the features of the accusatorial system, which creates the greatest difficulty for children. According to the South African Law Commission, (1989:4) the right that the accused has to confront the witness has the implication that the child, who has to testify against the accused, must do so in the presence of the accused. This creates immense difficulties for the child. Added to this, the child will also be required to relate his evidence in a formal courtroom, which will be alien to the child (Hammond & Hammond, 1987:13).

2.3.5 Cross-examination

The other feature that creates immeasurable difficulties for the child witness in the accusatorial system is cross-examination. Once a witness has given evidence in a trial, the defense or opposing party is allowed to cross-examine the witness. Myers and Perry (1987:181-182) postulate that cross-examining a child is a delicate and difficult process. They further state that the basic purpose of cross-examination is to:

- Elicit testimony which is favourable to the cross-examiner's theory; and
- To undermine the witness's direct testimony by challenging the witness's credibility or testimony.

2.3.6 Rules of evidence

Court proceedings are largely dictated by the rules of evidence, which are designed to ensure fair trials (Castle, 1997:28). According to Muller and Hollely (2000:6) the accusatorial system is characterized by a formal and rigid adherence to the rules of evidence. Emphasis is placed on the admissibility of evidence. Aspects like the competency of the child witness, the cautionary rule, hearsay, the oath, and expert witnesses are ruled by the rules of evidence.

2.4 LEGAL INSTRUMENTS CONCERNING THE CHILD IN SOUTH AFRICA

An increasing number of children are giving evidence, most frequently about sexual abuse against them, in the criminal courts. The child gives evidence both as a victim and as a witness. The problems these young children face in an accusatorial, adult-orientated system have become increasingly evident. These problems include being required to tell a number of strangers what happened to them, having to wait months and even years before the case gets to court, having to face the perpetrator and answering difficult questions asked by the prosecutor, magistrate and especially the attorney who are not used to speaking to children in an age-appropriate language in court (Morgan & Williams, 1993:113; Westcott, Davies & Bull, 2002:203).

In the late 1980's it was recognized that the child witness's immaturity required a more specialized approach than that used with adults in the criminal courts. A number of innovative procedures were introduced. The most radical was the attempt to protect the child from direct confrontation by the accused or his attorney by making use of an intermediary and a closed circuit television whilst the child would sit in another room than the courtroom. These changes accorded special status to child victims in criminal courts (Morgan & Williams, 1993:113).

An essential element of any effective justice system is the protection of the child victim and child witness of crime. Where provision is not made for separate and specialized services for this vulnerable group, they may be further exposed to the

negative effects of the criminal justice system or may even further be victimized by it (Ovens *et al.*, 2001:25).

Various initiatives to address the issues of the child witness have been instituted in South Africa. The Constitution of the Republic of South Africa, 1996, the United Nations Convention on the Rights of the Child, and the Victim's Charter serve as a guide for all South African citizens. These documents can be viewed as a solid foundation for the host of legislation that relates to the lives of all South African children, whether they come into contact with the criminal justice system or not (Child Law Manual for Prosecutors, 2000:A-1).

All the above measures are aimed at empowering and enabling the justice system to ensure the fulfillment of South Africa's international, constitutional and moral obligations to promote the best interest of the child (Ovens *et al.*, 2001:33).

2.4.1 The Constitution of the Republic of South Africa

The South African legal system was constitutionalised on the 27th April 1994 when the interim Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) came into operation. Parliamentary sovereignty was replaced by the interim Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). The Constitution, 1993 (Act 200 of 1993) included a justifiable Bill of Rights. Some of the common law and statutory trial rights of the accused have hardened into constitutional guarantees (Van der Merwe, 1995:195).

The final Constitution was drafted in terms of Chapter Five of the interim Constitution, 1993 (Act 200 of 1993) and was approved by the Constitutional Court on 4 December 1996 and took effect on 4th February 1997.

The Constitution of the Republic of South Africa, 1996, is built on an awareness of the injustice of South Africa's past and is widely regarded as the most progressive in the world, with a strong Bill of Rights (The Constitution of South Africa, 1996, 2005:1).

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All laws and conduct are subject to the Constitution, as the supreme law. No other law or government action can replace the provisions of the Constitution (Blumrick, 2004:19; Constitution of South Africa, 1996:1). The Constitution presents the collective wisdom of the South African people and was arrived at by general agreement. The Bill of Rights is regarded as the cornerstone of democracy in South Africa. It enshrines the rights of all people as well as children in South Africa and affirms the democratic values of human dignity, equality and freedom (The Constitution of the Republic of South Africa, Act 108 of 1996.).

2.4.2 The Constitutional rights of the child and the accused

All the rights in the Bill of Rights apply to all people, including children. All witnesses in a court, including children, have the right to be treated equally before the law, and to have their dignity and privacy respected (Conradie, 2004:5). Section 28 of the Constitution provides for further, very specific rights for children. The rights of the child that are of particular relevance to the child witness are the following:

▪ With respect to the child

Section 28 (1) Every child has the right to:

(d) be protected from maltreatment, neglect, abuse or degradation;

28 (2) A child's best interest are of paramount importance in every matter concerning the child;

28 (3) In this section "child" means a person under the age of 18 years.

Subsection 28(2) is not merely an approach to be considered, but a directive to the courts to treat the child as somebody with attributes, qualities, sensibilities, and vulnerabilities, which make them different from adults (Muller & Tait, 1997:2; King & Piper, 1995:189).

▪ With respect to the accused:

Section 35(3) Every accused person has the right to a fair trial, which includes the right to:

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- (c) a public trial before an ordinary court;
- (e) be present when being tried;
- (f) Choose, and be represented by a legal practitioner, and to be informed of his right promptly; and
- (g) adduce, and challenge evidence.

The above rights of the accused entrench and strengthen the accusatorial features of criminal procedure, for example, confrontation and cross-examination, although none are absolute rights (Muller & Hollely, 2000:8).

When a child is sexually abused, their right to physical and mental integrity, privacy, and human dignity is violated. They should be treated fairly during the criminal proceedings (Bukau, 2003:502).

2.4.3 The Service Charter for Victims of Crime in South Africa

The Victim's Charter together with the Minimum Standards (2005:4) is intended to provide the people of South Africa with information relating to the government's commitment to the improving of services delivery of the victims of crime.

The Minimum Standards of the Victim's Charter aim to explain the services provided for victims of crime. The minimum standards outline basic rights and principles, and supply detailed information for the victim to exercise his rights. It also enables service providers to uphold the victim's rights as explained in the Victim's Charter, by setting out the minimum standards that service providers must adhere to. These minimum standards hold everybody involved in the criminal justice system accountable to ensure that victims receive appropriate assistance and services (Service Charter for Victims of Crime in South Africa, 2005: ii; Victims Charter Approved, 2005:3).

2.4.3.1 Rights of the victim

According to the United Nations Declaration on the Basic Principles of Justice for

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Victims of Crime and Abuse of Power, to which South Africa is a signatory, a victim of crime is defined as a person who has suffered harm, including physical or mental injury, emotional suffering; economic loss; or substantial impairment of his fundamental rights. The term “victim” also includes the immediate family or direct dependants of the victim (Child Law Manual for Prosecutors, 2000:A1-1-21).

The following rights of the victim, including children, as explained in the Victim’s Charter and in accordance with the Constitution and other relevant legislation (Service Charter for Victims of Crime in South Africa, 2005:4) must be upheld:

- The right to be treated fairly, with dignity and with privacy;
- The right to offer information;
- The right to received information;
- The right to protection; and
- The right to assistance:
 - The person with disabilities will be given the necessary support.
 - Cases involving sexual offences will be heard in specialized courts, when available.
 - If under 18 years of age and testifying in an open court causing undue mental stress and suffering, the prosecutor can apply for an intermediary to be appointed and testify through a closed circuit television link.
 - The presiding officer will, if an intermediary is being used, ensure that all questions will be asked through an intermediary.
 - The intermediary will convey the general purport of the questions asked.
 - The case will be finalized without unnecessary delay.
 - Closed circuit television will be used (Service Charter for Victims of Crime in South Africa, 2005:16).

The researcher is of the opinion that the setting out of minimum standards that a child victim can expect from service providers, will contribute to a paradigm shift so that every one involved in the criminal justice system is co-operating to enable victims to access appropriate services.

2.4.4 United Nations Convention on the Rights of the Child

Before the United Nations Convention on the Rights of the Child (hereafter called the Convention), human rights standards applicable to all members of the human family as well as the child had been expressed in various legal instruments such as covenants, conventions and declarations. It was only on 2 September 1990, that the United Nations' General Assembly Resolution 44/25, in accordance with article 49, came into force (Child Law Manual for Prosecutors, 2000: A1-1; The Rights of the Child, 2005:1).

2.4.4.1 Contents of the Convention

The Convention incorporates the full range of human rights including civil and political rights, economic rights, social rights, and cultural rights. It outlines in 41 articles the human rights to be respected and protected for every child under the age of 18 years. The guiding principles of the Convention are:

- Non-discrimination (article 2);
- Best-interest of the child (article 3);
- Maximum survival and development (article 6); and
- Participation of children (article 12).

During the World Conference on Human Rights in 1993, 185 states, including South Africa, ratified the convention on the Rights of the Child. This makes it the most widely and rapidly ratified human rights treaty in history. By mid-2003 only two states had not ratified the Convention.

2.4.4.2 New vision of the child

The Convention on the Rights of Children (Child Law Manual for Prosecutors, 2000:A1-1) reflects a new vision of the child. The child is neither the property of the parent nor is he the helpless object of charity. The child is a human being and is subject to his own rights. The Convention offers a vision of the child as an individual

and as a member of a family and community, with rights and responsibilities appropriate to his age and stage of development.

The Convention has brought to the foreground for the first time the fundamental human dignity of all children and ensuring the emergence of their well-being and development.

2.4.4.3 Strengths of the Convention on the Rights of the Child

The Convention is considered one of the most powerful legal instruments for the recognition and protection of the child's human rights. The Convention (Child Law Manual for Prosecutors, 2000:A1-1-7) draws on the following strengths:

- **It highlights and defends the family's role in the child's life.** In article 5, article 10, and article 18, of the Convention on the Rights of the Child refers to the family as the fundamental group of society and it is the natural environment for the growth and well-being of the child.
- **Seeks respect for the child – but not at the expense of other's human rights or responsibilities.** A child has the right to express his views and have them taken seriously, but the child's views are not the only ones to be considered and a child has the responsibility to respect the right of others, especially those of his parents.
- **Endorse the principle of non-discrimination.** The Convention maintains that the state must identify the most vulnerable and disadvantaged children and ensure that the rights of these children are realized and protected. The child rights standards are nationally binding on states. Endorsement of the Convention makes states publicly and internationally accountable for their actions.

2.5 OTHER STATUTORY INNOVATIONS

Other statutes within the South African criminal justice system also facilitate the protection of the child witness. Section 158 of the Criminal Procedure Act, 1977 (Act 51 of 1977) provides that evidence can be given via closed-circuit television or similar

electronic equipment where such equipment is available and it would be in the interest of justice to do so or it would prevent the likelihood of prejudice or harm that may be experienced by any person testifying at such proceedings (Muller & Tait, 1999b:58).

Section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) provides that witnesses under the age of eighteen, which will include victims of child abuse, to give evidence through an intermediary if approved by the presiding officer. Section 153(3) provides for in camera testimony of a person under 18 years of age (Kriegler & Kruger, 2002:396).

2.5.1 Section 158 of the Criminal Procedures Act 51, 1977 (Act 51 of 1977)

Section 158 of the Criminal Procedure Act, 1977 (Act 51 of 1977) states that:

- (1) Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused.
- (2) (a) A court may, subject to section 153, on its own initiative or on application by the public prosecutor, order that a witness or an accused, if the witness or accused consents thereto, may give evidence by means of a closed circuit television or similar electronic media.
(b) A court may make a similar order on the application of an accused or a witness.
- (3) A court may make an order contemplated in subsection (2) only if facilities therefore are readily available or obtainable and if it appears to the court that to do so would:
 - (a) Prevent unreasonable delay;
 - (b) Save costs;
 - (c) Be convenient;
 - (d) Be in the interest of the security of the State or of public safety or in the interest of justice or the public; or
 - (e) Prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings.
- (4) The court may, in order to ensure a fair and just trial, make a giving of evidence in terms of subsection (2) subject to such conditions as it may deem necessary:

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Provided that the prosecutor and the accused have the right, by means of the procedure, to question a witness and to observe the reaction of that witness.”

The above section gives a court the discretion to allow a witness or an accused to give evidence by means of closed circuit television or similar electronic media. The court can only make such an order if these facilities are readily available or obtainable and subject to section 158 (3) (Muller & Tait, 1999b:58-59).

In addition, subsection (4) has given a wide discretion to impose conditions on the giving of evidence in these circumstances provided that the prosecution and the defense are not deprived of their right to question a witness nor to observe a witness’s demeanor. This discretion must be exercised to ensure a fair and just trial (Muller & Tait, 1999b:59).

A child, especially an older child, can be allowed to give evidence in terms of the above section 158. It can be used to prevent the child, who is a victim of sexual abuse, from testifying in the presence of the accused. This section is ideal for the older child who does not need the assistance of an intermediary, but is afraid to confront the accused in court. The advantage of section 158 is that the application to give evidence via closed-circuit television can be made by the witness himself should he wish to make use of these provisions (Muller & Tait, 1999b:60-61).

In *S v Staggie and Another* 2003 (1) SACR 232 (CPD) the judge held that:

“There would be prejudice to the complainant if she had to testify directly before the court before the court has determined whether or not the case should be heard in camera.”

The researcher, in her experience as intermediary, found that the older witness’s from the age of 15 could testify in this manner if the court did not approve a section 170A application and the child was not too severely traumatized.

2.5.2 Section 170A of the Criminal Procedures Act 51, 1977 (Act 51 of 1977)

Section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) states that:

- “(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of 18 years to undue mental stress and suffering if he testifies at such proceedings, the court may, subject to ss (4) appoint a competent person as an intermediary in order to enable such witness to give his evidence through that intermediary.
- (2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under ss (1), except examination by the court, shall take place in any manner other than through that intermediary.
- (b) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.
- (3) If a court appoints an intermediary under ss (1) the court may direct that the relevant witness shall give his evidence at any place:
- (a) Which is informally arranged to set that witness at ease;
- (b) Which is so situated that any person whose presence might upset that witness is outside the sight and hearing of that witness; and
- (c) Which enables the court and any person whose presence is necessary at the necessary proceedings to see and hear, either directly or through the medium of an electronic or other device, that the intermediary as well as the witness during the testimony.”

2.5.2.1 Section 170A and the child witness

The traditional rules of evidence and procedure of the accusatorial legal system causes problems for the child witness. The result is that children who are victims of sexual abuse are not always capable of testifying effectively about what has happened to them. If the child should testify, he will not be able to give evidence in a coherent and trustworthy manner as required by courts, due to his fear, alienation and anxiety. Parents are also reluctant to put their children through the harshness of the confrontation and interrogation in the court (Schwikkard, 1991:44; Davel, 2000:347).

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In April 1989 the South African Law Commission found that the ordinary accusatorial legal system with its intimidating, aggressive, tormenting and humiliating trial procedure and strong emphasis on cross-examination was insensitive and unfair to the child witness (South African Law Commission, 1989:28).

Section 170A was introduced with the purpose of easing the plight of the child witness by removing him from the courtroom and the presence of the accused (Muller & Tait, 1999b:59; Davel, 2000:347).

In terms of section 170A(1) the court has the discretion to allow the appointment of an intermediary. The appointment is therefore not automatic. In practice the state prosecutor will normally apply for a section 170A order. The presiding officer may order that the child witness testifies through an intermediary if the court is satisfied that the witness is under the age of eighteen years and that the child witness will suffer undue mental stress and suffering should he testify in an open court without an intermediary (Schwikkard & Jagwanth, 1996:217).

If the defense objects to this application, evidence must be put before the court, which often will have to be expert testimony. The expert would have to consult with the child and any other person who could supply information relevant to the application. In *S v Stefaans* 1999 (1) SACR 182 (E), Mitchell AJ held that the use of the word “undue” connotes an degree of stress that is greater than ordinary stress to which a witness, including witnesses in complaints of offences of a sexual nature, are subjected (*S v Stefaans* 1999(1) SACR 182(E)).

In terms of section 170A (2)(a) of the Criminal Procedure Act, 1977 (Act 51 of 1977) no examination, cross-examination or re-examination of any witness in respect of which the court has appointed an intermediary shall take place in any other manner than through an intermediary. This means that the parties involved in the trial may not question the witness directly. Section 170A(2)(b) provides that the intermediary may convey the general purport of any question to the child witness, unless the court directs otherwise. The court may therefore direct the intermediary to put the question to the witness in its original form. In *Klink v Regional Court Magistrate NO and*

Others 1996 (3) BCLR 402 (SE) it was argued that it was in the interest of justice that the child comprehend the question that was being put to him:

“There are sound reasons why the conveyance of the general purport of the question might enable a child witness to participate properly in the system. Questions should always be put in a form understandable to the witness so that he or she may answer them properly. Where the witness is a child, there is the possibility that he may not fully comprehend or appreciate the content of a question formulated by counsel. The danger of this happening is more real in the case of a very young child. By conveying the general purport of the question, the intermediary is not permitted to alter the question. He must convey the content and meaning of what was asked in a language and form understandable to the witness.”

South Africa, Namibia, Hong Kong, and Japan, are presently the only countries in the world that make use of the intermediary system (Muller, 2005; Pretorius, 2005).

2.5.2.2 Section 153(3) and the child witness

The court has discretion in terms of section 153(3) (a) and (b) of the Criminal Procedure Act, 1977 (Act 51 of 1977) to allow a complainant to give evidence behind closed doors where the charge relates to a sexual act and the child is under 18 years of age. Nobody is allowed at such trial so that the child’s privacy can be protected. The child will then give evidence in camera. According section 153(4) the accused, his legal representative, the court personnel and the child’s parents or guardian are permitted to be present (South African Law Commission, 1989:7).

2.5.2.3 Criminal Law (Sexual Offences) Amendment Bill, 2003

The Criminal Law (Sexual Offences) Amendment Bill, 2003, emanating from the South African Law Reform Commission’s report on sexual offences, aims to widen the scope of the crime of rape and to create numerous new offences related to sexual

misconduct. It also addresses aspects of sentencing for sexual offenders and certain evidentiary matters.

Clause 15 of the abovementioned bill deals specifically with the vulnerable witness and is specifically aimed at improving the quality of the evidence given by witnesses, improving witnesses' experience of testifying in court and encouraging witnesses to come forward. A court may determine the protective measures should be applied in respect of a vulnerable witness

2.5.3 Statutory innovations and the child witness: in conclusion

In applying section 170A, the presiding officer must take cognizance of the constitutional provisions of the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), not only regarding the rights of the accused, but also of the rights of children. The Bill of Rights applies to all law and binds the judiciary in terms of section 8(1). In terms of section 39 of the Constitution, the court must, when interpreting the Bill of Rights, promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and when interpreting any legislation, the court must promote the spirit, purport and objects of the Bill of Rights.

Section 28(2) of the Constitution states that a child's best interest is of paramount importance in every matter concerning the child. The court must have regard to the right to human dignity as stated in section 10 of the Constitution. Everyone, including the child witness, has inherent dignity and the right to have their dignity respected and protected. The court must further be mindful that proceedings do not unfairly discriminate against either the accused or any witness, and with regards to the child witness, that the child be treated in a manner that ensures that his dignity is protected and respected.

Article 3(1) of the Convention on the Rights of the Child states that in actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be paramount. Article 12(1) provides that a child who is

capable of forming his own views has the right to express those views freely in all matters affecting the child. These views must be given due weight in accordance with the age and maturity of the child. Article 12(2) provides that for this purpose, the child, being a person under the age of 18 years, should be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (Wessels, 2005).

2.5.4 Guidelines for drawing up the desirability report/170A application

It is a cornerstone of the judicial system of South Africa that a criminal trial (with certain exceptions) takes place in the presence of the accused. This entails the physical presence of the accused in court whilst the witness testifies. The appointment of an intermediary to assist the child witness is not automatically so. If a defence attorney objects to the use of an intermediary, the child witness has to be assessed and it must be determined whether the child will experience undue mental stress and suffering should he/she testify in court. A social worker, probation officer, or psychologist does this assessment, as well as the report on the assessment.

At present no literature exists concerning the assessment and compilation of a desirability report. Existing case law was studied and used to compile guidelines on how to assess the child witness for an application to use an intermediary. During the empirical study the magistrates were requested to state what they considered necessary to be included in the assessment report (figure 7.9).

In *K v The Regional Court Magistrate & others* 1996 (1) SA 434 (E) a full bench of the Eastern Cape Division of the High Court held that the physical separation of the complainant from the courtroom did not violate the right to a public trial. The court further held that section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) does not violate the constitutional right of the accused to cross-examine and that the section is not unconstitutional. The court further held that the use of an intermediary does not, in itself, affect the fundamental fairness of the judicial process, as the witness may still be questioned on all aspects of his evidence and the right to

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challenge the evidence is not impaired. On the other hand the intermediary may be able to play a part in balancing the interests of the accused with those of the child witness, by allowing the latter to be integrated into the criminal justice system without disturbing the fundamental fairness of the process.

The court further pointed out that the giving of evidence, particularly in cases involving sexual complaints, exposed complainants to further trauma possibly as severe as the trauma caused by the crime. The court, however, held that it is necessary to balance the rights of the accused on the one hand with the rights of witnesses not to be subject to further traumatizing events in the pursuance of justice on the other. These competing rights must be balanced in such a way as to ensure fairness to both sides.

In *S v Mathebula* 1996 (2) SACR 231 (T) it was stated that the age of the witness in itself would not alone justify the appointment of an intermediary. Stafford R held that the purpose of section 170A must also be considered.

According to Wessels (2005), in deciding whether an intermediary should be appointed, the youthfulness of the witness is therefore not the only factor the court needs to look at. Other factors such as the age and sex of the witness, the intelligence and personality of the witness, as well as the nature of the alleged offence and the nature of the evidence by the witness must also be taken into account. The ability of especially young children to communicate and their language proficiency should also play a roll in deciding whether an intermediary should be appointed, as well as other factors relating to their development.

Wessels (2005) further states that when deciding whether an intermediary should be appointed, the court must be mindful of the purpose of section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977). The decision the court makes, in balancing the different rights, taking into account the different factors and specific facts of each case, must be a decision that will ensure fairness to both the witness and the accused. The decision must further be both in the interest of justice as well as in the best interest of the child, and as such must ensure that the child witness will be able to meaningfully participate and testify in the proceedings before the court.

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It should also be borne in mind what was stated in *S v S* 1995(1) SACR 50 (ZS) by Ebrahim JA regarding the embarrassment likely to be suffered by a little girl (which will also be true for adolescents) on having to relate details regarding the penetration of a rape as required by a court of law, which will be exacerbated particularly in an all male environment, because of the following:

- The discussion of intimate sexual matters in the presence of members of the opposite sex is normally taboo;
- The absence of a female listener means that a female witness who has been sexually abused lacks any substantial sympathetic support. No male person can possibly understand the feelings of a female victim. It is thought probable that even very young complainants feel this almost instinctively; and
- It is likely that a woman or girl who has recently been badly abused will associate, if only subconsciously, all males with her assailant.

In *S v Stefaans* 1999 (1) SACR 182 (CPD) Mitchell AJ laid down some general principals as to how and in what circumstances section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) should be invoked. These guidelines were given in broad terms as it was stated that each case must be dealt with on its own merits. According to Wessels (2005), it is important for the person assessing the child witness and compiling the report to take these guidelines into account.

Some of these guidelines that are relevant are:

- In facing an application the court must be mindful of the dangers inherent in the use of an intermediary that might prejudice the accused's right to a fair trial. These include the fact that cross-examination might be less effective, that an accused has the right to confront his accusers and be confronted by them, as well as the fact that human experience shows that it is easier to lie about someone when not in his presence than to do so when facing him;
- The provisions of section 170A will find application more readily in cases involving a physical or mental trauma or insult to the witness than in other cases.
- The giving of evidence in court is inevitably a stressful experience. In order to find application, section 170A requires the court to be satisfied that such stress will be 'undue', that is, something in excess of ordinary stress. The younger and

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emotionally more immature the witness is, the greater the likelihood that such stress will be 'undue'.

- A witness who is known to the accused and who knows the accused and is still prepared to testify, is less likely to be unduly stressed by the need to testify before the accused than one who is unknown to the accused and may fear intimidation. *S v Abrahams* 2002 (1) SACR 116 (SCA) on 125 a – b, however stated that a family victim may for reasons of loyalty or necessity feel that she must conceal the crime, and may internalise the guilt or blame associated with the crime, with lingeringly injurious effects. It is often more difficult for a witness to testify in the presence of the accused where the accused was someone close and trusted, because of ambivalent feelings. (Compare Mayne & Levett 1997:163.) The researcher, in her experience as an intermediary found that when the accused was a close family member or well known to the child, the child witness was more stressed than when the accused was less well known.
- If the application to invoke the section is not opposed, it may be more readily granted.
- If the application is opposed, the presiding judicial officer should require that appropriate evidence be adduced to enable him to exercise a proper discretion as to whether the section should be invoked or not. Such evidence may, in the case of a younger witness in a matter clearly involving mental or physical trauma, consist of nothing more than evidence of the nature of the charge and the age of the witness. In other matters, evidence of a suitably qualified expert, whether that be a social worker, psychologist or psychiatrist, may be necessary.
- If the section is invoked, the presiding judicial officer should be aware of the risk that the efficacy of cross-examination may be reduced by the intervention of the intermediary. The judicial officer should be alert to this and should be prepared to intervene and insist that the exact question rather than the import thereof, be conveyed to the witness.

In *S v F* 1999 (1) SACR 571 (C) it was held on 583 that the words "it appears to such court" mean nothing less than proof on a balance of probabilities. It must therefore be shown in the facts before the court, on a balance of probabilities, that were the child to testify before the court in the normal course, that is in the presence of the accused, he/she would be exposed to undue mental stress or suffering. The crucial question, as

was stated on 583 - 584, is not whether the child was mentally and emotionally fragile after the alleged rape, but what impact, if any, the testimony by him/her in the presence of the accused is likely to have upon him/her.

The researcher is of the opinion that the above should be kept in mind and used when an application for an intermediary is drawn up and is brought before the court.

2.6 CLASSIFICATIONS OF CRIME

Specific crimes may be classified in different ways, namely according to their degree of seriousness and/or the type of punishment which may be imposed for each. According to Snyman (2002:303) the most popular method is to classify crimes according to the interest, which the law seeks to protect by punishing the particular crime. This is the method that will be adopted for this research.

For the purpose of this research assault, rape, indecent assault and incest will be discussed as these crimes are classified as such according to the interest that the law seeks to protect by punishing the particular crime. Snyman (2002:430) classified these crimes as crimes against bodily integrity and crimes against morality and defined them as follows:

2.6.1 Assault

Assault is the unlawful and intentional applying of force, directly or indirectly; to the person of another or inspiring a belief in another person that force is immediately to be applied to such person.

The elements of the crime (Snyman, 2002:430) are:

- The application of force (or the inspiring of a belief that force is to be applied);
- Unlawfulness; and
- Intention.

2.6.2 Indecent Assault

Indecent assault is the unlawful and intentional assaulting; touching or handling of another in circumstances in which either the act itself or the intent with which it is committed is indecent.

The elements of the crime (Snyman, 2002:436) are:

- An act of either assaulting, touching or otherwise handling another;
- Either the act or X's intention must be indecent;
- Unlawfulness; and
- Intention.

2.6.3 Rape

Rape is when a male has unlawful and intentional sexual intercourse with a female without her consent.

Elements of the crime (Snyman, 2002:445).are:

- Sexual intercourse, meaning the penetration of the female's sexual organ by that of the male. The slightest penetration is sufficient;
- Between a male and a female;
- Without the female's consent;
- Unlawfulness; and
- Intention.

2.6.4 Incest

Incest is the unlawful and intentional intercourse between male and female who are prohibited from marrying each other because they are related within the prohibited degree of consanguinity, affinity or adoptive relationship.

Elements of the crime (Snyman, 2002:355) are:

- Sexual intercourse between;
- Male and female person;

- Who are prohibited from marrying each other;
- Unlawfulness; and
- Intention.

2.7 RULES OF EVIDENCE

An area that causes difficulty for the child witness is that of the outdated and detrimental rules of evidence that apply in the cases brought to trial. Emphasis is placed on the admissibility of evidence (Zieff, 1991:21). There are strict rules, which exclude certain types of evidence. For a child to give evidence, he must be found to be a competent witness. The cautionary rule warns against the dangers of convicting on the evidence a child, and the rule against hearsay requires that evidence that cannot be tested by cross-examination must be excluded. The details of these rules vary from one accusatorial system to another, but are all based on a system which emphasizes admissibility (Muller & Hollely, 2000:7).

Zieff (1991:21) states that the features in South Africa's current law, specifically the cautionary rule, reduce the value of evidence one gets from children. Due weight is not given to the fact that the child, in general, is a competent and credible witness, but is more vulnerable than an adult (Hammond & Hammond, 1987:11; Oates, 2001:64).

Rules of evidence that will be discussed in this chapter are competency, credibility, cautionary rule, hearsay evidence, truth and lies, the oath, and expert evidence.

2.7.1 The competency requirement

The competency of a child to give evidence in a criminal case is governed exclusively by the common law. There is no law that states that a child may not give evidence, even if the child is still very young. Section 192 of the Criminal Procedure Act, 1977 (Act 51 of 1977) provides that everyone is presumed to be a competent and compellable witness. The child must, however, show sufficient intelligence and be capable of understanding the importance of having to tell the truth during the court case in order to be regarded as a competent witness (Davel, 2000:345).

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In South African law a young child is found to be a competent witness if, in the opinion of the court (presiding officer), the child understands what it means to tell the truth. The child may give his evidence sworn or unsworn, depending upon whether, according to the court, the child can understand the nature and religious sanction of the oath (Zeffert, Paizes & Skeen, 2003:671). The sections currently in force are section 164 of the Criminal Procedure Act, 1977 (Act 51 of 1977) and section 41 of the Civil Proceedings Evidence, 1965 (Act 25 of 1965), which reads as follows:

“Any person who, from ignorance arising from youth, defective education, or other cause, is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation; provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding officer or judicial officer to speak the truth, the whole truth and nothing but the truth.”

The above makes provision for a child who does not understand the nature of the oath, to be admitted to give evidence without taking the oath or making an affirmation (Zieff, 1991:22; Zeffert *et al.*, 2003:671). The presiding officer must go on to inquire whether the child is competent to give unsworn evidence. The basis of giving unsworn evidence is the ability to understand what it means to speak the truth. The child must have the ability to distinguish between truth and lies and must be able to understand that it is wrong to lie (Muller, 2002b:144; Schwikkard, 2004:1).

The way this is determined is by the presiding officers asking the child witness questions that are often totally inappropriate. Prosecutors, too, tend to leave this issue in the hands of the court. Little effort is made to convince the magistrate or even to attempt to call the witness when the witness appears not to be able to convey the incident verbally (Meintjes, 2000c:C4-14).

The researcher is of the opinion that great care should be taken when the presiding officer has to determine whether the child is competent to testify. The tests for competency involves an inquiry into the understanding of the difference between telling the truth and lying, and that there are consequences to lying. As “lying” and

“truth” are abstract concepts, the young child will find it difficult to explain what they mean. Practical examples that take the child’s developmental stage into account should be used to determine whether the child understands these concepts and is competent to testify.

2.7.2 The oath

In all criminal courts in South Africa, evidence must be given under oath. However, no child is permitted to take the oath unless he understands the nature and the meaning thereof. Section 162 of the Criminal Procedure Act, 1977 (Act 51 of 1977) states the general rule that every witness must give evidence under oath or admonition. The oath in a criminal case has to be in the following form, also for the child witness: “ I swear that the evidence I shall give shall be the truth, the whole truth and nothing but the truth, so help me God” (Zeffert *et al.*, 2003:736).

Section 163 and section 164 of the Criminal Procedure Act, 1977 (Act 51 of 1977) requires that the oath, affirmation or admonishment to tell the truth, be administered by the presiding officer and no one else (*S v Jurgens*, RC653/90, 23 November 1990 (unreported)).

Once competency has been determined, the next inquiry is whether the child possesses sufficient intelligence to understand the nature of the oath (Davel, 2000:346). The usual procedure is for the presiding officer to first determine whether the child has knowledge of religion and knows what it means to take the oath. The presiding officer will question the child to determine whether he understands the nature of the oath.

The emphasis is on the religious belief and the child must solemnly promise to tell the truth with reference to God and his religious belief (Muller, 2002b: 138-139). The child must know that the nature of the oath involves understanding the seriousness of the court case and of his duty to speak the truth (Lyon, 2002a:2).

If the child does not understand the oath, it is important that the child must know that negative consequences will emanate from lying. It is sufficient that the child believes

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in punishment. A child will be considered a competent witness, if, in the opinion of the court, he/she understands what it means to tell the truth (Zieff, 1991:22). If the child can understand the nature and religious sanction of the oath, the child may be sworn in.

If the presiding officer is satisfied that the child knows and understands the meaning and the nature of the oath, has no objections to taking the oath, and considers the oath binding on his conscience, the oath will be administered. If the presiding officer is not satisfied that the child understands the nature of the oath, he must go on to inquire whether the child is competent to give unsworn evidence.

While the child does not have to understand the nature or obligation of the oath, in order to testify, he must know the difference between truth and lies and seem honest, intelligent and observant enough to understand the seriousness of testifying in court (Zieff, 1991:22). The child can give evidence provided that the presiding officer is sure that the child knows the difference between truth and lies and knows that there are consequences when lying. The presiding officer admonished the child to speak the truth, the whole truth and nothing but the truth (Don Wauchope, 2000:20).

It is the duty of the presiding officer to determine whether the child knows the difference between truth and lies. If the presiding officer is not convinced that the child can distinguish between truth and lies, the child is not competent to give evidence in a court of law. It is therefore the presiding officer's duty to establish the child's intelligence to determine whether he knows the difference between truth and lies and whether he understands the implications and the danger of telling lies (Davel, 2000:345). In the case *S v L* 1973 (1) SA 344 (C) at 348G-H Van Winsen J said the following:

“Sy getuienis is slegs toelaatbaar waar die regterlike amptenaar hom tevrede gestel het dat die gehalte van die jeugdige se intelligensie sodanig is dat sy getuienis aangehoor kan word en dat hy ‘n besef het van die plig om die waarheid te praat.”

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Age does not determine competency to give evidence. Competency depends on the sense and reason of the young child and whether he understands the danger of falsehood. There are no hard and fast rules on how to determine the above and each case must depend on its own circumstances. The child's answers during the examination will lay the foundation for a finding of his competency and if the court is satisfied that the child is capable of giving a truthful and intelligible account of the incident/s, the court will allow the child to testify (Davel, 2000:345-346).

There is no fixed age at which a child is considered a competent witness. In *S v T* 1973 (3) SA 794 (A) the court found a five year old to be incompetent, whereas in *R v Manda* 1951(3) SA 158 (A) a three year old was found to be competent. In each case the presiding officer must satisfy himself that the child understands what it means to speak the truth. If a child does not have the intelligence to distinguish between what is true and what is not true, and to recognize the danger and wickedness of telling a lie, he cannot be admonished to tell the truth. The child is then deemed to be an incompetent witness (Zieff, 1991:23; Castle, 1997:29). The researcher is of the opinion that the level of the child's moral development plays an important role in being able to understand the importance of telling the truth and not to lie.

The competency examination has given rise to many difficulties. Neither legislatures nor the courts have specified the questions that must be asked in order to ascertain oath-taking competence. Some presiding officers ask questions that appear too difficult, whereas others effectively lead the child through the competency evaluation (Lyon, 2002b:246; Walker, 1999:36; Muller, 2002b:135).

Professionals in child and language development ought to provide guidance to courts seeking the most appropriate means by which young children's competency can be assessed. Research has been done concerning the above but virtually all research examined non-maltreated children from middle class homes. The result of this research may overestimate the competence of the child who appears in court (compare Louw, 2004:3-15; Lyon, 2002b:246.) The researcher is of the opinion that the effect of trauma and emotional regression of the child that takes place, were not taken into account either.

2.7.3 Oral evidence

Oral evidence is the most common form of evidence. It comprises a witness's oral or verbal statements about the incident. Oral evidence in court entails the following:

- Taking the oath;
- Examination-in-chief;
- Cross-examination; and
- Re-examination.

The weight that the court attaches to such evidence depends on:

- The cautionary rule; and
- The credibility of the child witness.

2.7.3.1 Cautionary rule

The cautionary rules have developed in South Africa's criminal practice in the course of decades. The effect of these rules is that the court must, in certain cases where falsehood or untrustworthiness is, according to general human experience, extremely great, be careful in evaluating such evidence (Zieff, 1991:28).

The purpose of the cautionary rule is to assist the court in deciding whether or not guilt has been proven beyond reasonable doubt. The rules exist only to guide the answering of the above question. These rules were developed to remind the court to view the evidence with care as practice has shown that in certain circumstances evidence could be unreliable (Castle, 1997:30; Schwikkard, 2004:3).

The evidence of the child witness is as a rule viewed with caution. This was stated in *S v Manda* 1951 (3) SA 158 (A): "The imaginativeness and suggestibility of children are only two of a number of reasons why the evidence of children should be scrutinized with care, amounting perhaps to suspicion."

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The above is a general rule and applies to civil cases as well. The South African Law Commission (2001:472) is of the opinion that the underlying need for the cautionary approach is based on the court's fear that the child can make up the story or fabricate details in an act of abuse which the child could not remember.

According to Zieff (1991:28) no statutory requirements exist in South Africa currently whereby the child's evidence must be corroborated. Yet it is accepted that the child's evidence must be treated with caution, especially in cases of sexual abuse. Generally, the incidence and degree of caution applied depends on the circumstances of the case. Until recently it was believed that the child had a poor memory, was untrustworthy and was incapable of distinguishing fact from fantasy (Zieff, 1991:29).

Zeffert *et al.* (2003:806) state that children are competent witnesses if the presiding officer considers that they are old enough to know what it means to tell the truth. The child's evidence should however be scrutinized with great care. In *Woji v Santam Insurance Company Co Ltd* 1981 (1) SA 1020 (A) at 1028A-E, Diemont J A states:

“The question which the trial court must ask itself is whether the young witness's evidence is trustworthy. Trustworthiness depends on factors such as the child's power of observation, his power of recollection and his power of narration on the specific matter to be testified...”

Myers and Perry (1987:459) state that the child must be able to demonstrate retention of material by recognition, reconstruction and recall from his memory (see 3.6.3). Research has shown that children have relatively little difficulty distinguishing memories of something they have actually said from something someone else said, or memories of one actual event from memories of another actual event. The researcher is thus of the opinion that the child can therefore be a reliable witness.

2.7.4 Credibility

Credibility is determined after the court has evaluated all the evidence that was admitted during the course of the trial. The court must further draw inferences and

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consider probabilities and improbabilities from the said evidence. Credibility is one of the factors, which will determine the outcome of the case (Struwig, 2001:599).

Schwikkard, Skeen and Van der Merwe (1996:370) quoted extensively from *Onassis v Vergottis* where Lord Pearce said the following with regard to credibility:

“Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the story as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by overmuch discussion of it with others?”

Keeping the above in mind, it must be said that children who combine lies, jokes, and mistakes can nevertheless appreciate the importance of truthfulness when testifying (Lyon, in Westcott *et al.*, 2002:246). Lyon, (in Westcott *et al.*, 2002:247) compared different meanings of assessing children’s understanding of the basic differences between the truth and lies with 96 four to seven year old children awaiting a court appearance. The children were given three tasks:

- An identification task;
- A difference task; and
- A definition task.

The children performed best on the identification task, 60% failed on the difference task and 70% failed the definition task. The above experiment indicates that most five-year old, maltreated children had a good understanding of the meaning of the truth and lies, despite serious delays in vocabulary. It can thus be said that a large number of children who do in fact have a good understanding of the distinction between truth and lies and untruthful statements, will fail the task of defining the concepts (Lyon, in Westcott *et al.*, 2002:248).

The researcher is of the opinion that the child's testimony should be evaluated, taking into account the child's cognitive and language development. From this, as well as all the other evidence placed in front of the presiding officer, he/she can make an informed decision about the child's credibility after considering the shortcomings, defects, contradictions, merits and demerits of the case.

2.8 RULES OF THE TRIAL

This section is concerned with the mechanics of presenting evidence to the court. It deals with the rules governing the order in which parties present their evidence. Examination-in-chief, cross-examination, re-examination, the calling of the expert witness by the state and *in camera* trials will be discussed.

2.8.1 The order of evidence

In a criminal trial the prosecution is required by section 150(2) of the Criminal Procedure Act, 1977 (Act 51 of 1977), to lead its evidence first. There will usually be at least one issue on which the burden is upon the prosecution. The Act does not make any exceptions for the possible situation in which the burden on all issues is on the defense (Zeffert *et al.*, 2003:736).

2.8.2 Examination-in-chief

In the majority of sexual abuse cases which come to trial, the child victim is the crucial witness for the state prosecution. The state is often faced with the difficult task of obtaining a conviction (Davel, 2000:350).

The purpose of examination-in-chief is to enable the party who has called a witness, to put his evidence before the court. The method used is that of oral question-and-answer. This method gives the prosecutor control of what the witness says, which makes for order and relevance, but places the prosecutor under pressure as he has to present evidence in a fair and complete manner (Zeffert *et al.*, 2003:738).

Appearing in court as a witness is a traumatic experience for a young child. The external appearance of the court results in the child being afraid, uncertain and confused (Davel, 2000:350). Zieff (1991:34) expresses the following opinion:

“In any sexual abuse case which comes to trial, the child victim, if he or she can be induced to speak, will be taken through the evidence by the prosecutor. The prosecution may not ask leading questions, which suggest the answer, which he/she expects the child to, give. The questioning of a child witness is a very skilled task and not many prosecutors are trained for this. It must be accepted as fact that the public prosecutors did not prepare the child witness for trial to the same extent as the defense witness. Many children do not understand what the roles of the various professionals involved in the trial are. The prosecutor’s heavy court programme is usually the reason for inadequate consultation with the witness and the inevitable result is that there are contradictions, lacunae and uncertainties in the child’s testimony which create the impression of untrustworthiness.”

There are three aspects, which call for special mention in connection with examination-in-chief:

2.8.2.1 Preparing the child for trial by the prosecutor

Prior consultation by the prosecutor with the child is essential in order to reassure the child and to establish the level of communication that will allow the prosecutor to get the best evidence from the child. Preparing the child for the trial does, however, not mean that the truth should be threatened. The main object should be to win the confidence of the child witness. The different role players and the sequence of the trial should be explained to the child witness. Where an intermediary is to be used, this should also be explained to the child witness.

The child’s memory can also be refreshed as to what the child had previously said or what the child said in his statement to the police, provided that it is done objectively. Additional facts that were gathered from other evidential material in possession of the

prosecutor to those contained in the statements made by the child witness should not be given to the child (Davel, 2000:351).

2.8.2.2 Avoiding leading questions during examination-in-chief

The general rule is that the child witness may not be asked leading questions by the prosecution during testimony-in-chief (Zieff, 1991:34). Questions framed in such a way that they suggest the answer, are improper and should be avoided. The reason for this rule arises out of the risk that the witness may think that such questions are an invitation, suggestion, or instruction to him to answer the question. The child might feel he has to answer the question causing him to possibly be biased and untruthful because it is a question favoring the party that has called him.

The test whether a question is leading or not is whether it can be answered by a simple yes or no. This is often true, but not always. A question like, “Did you notice anything unusual?” is not a leading question, but the answer must be yes or no (Zeffert *et al.*, 2003:740).

There are exceptions to the rule during examination-in-chief. Leading questions may be asked to elicit introductory or undisputed matters. The presiding officer has the right to question a witness at any stage of the proceedings and the rule against leading questions does not apply (South African Law Commission, 2001:612).

2.8.2.3 Leading the child witness’ evidence in chief

When leading the child witness, care should be taken at how the questions are asked. Attention should be paid to the following:

- Leading questions on matters that are crucial to proving the case should be avoided as not much reliance can be placed on such evidence;
- The prosecutor should try and stay with the way the preliminary interview with the child witness was conducted. The child might feel more comfortable;

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- The prosecutor should not ask multifaceted questions that leave too many options as the child might simply choose the easiest way out and answer only the last part of the questions. Questions should be short and simple; and
- The child witness's demeanor should be watched in case he becomes tired and needs a break (Meintjes, 2000c:C4-18).

2.8.3 Cross-examination

At the conclusion of a witness's evidence-in-chief he or she may be cross-examined by all other parties to the trial. This cross-examination is conducted either by the accused or by his legal representative. When the witness is questioned by a party who did not call him as a witness, it is known as cross-examination. Cross-examination is seen as the cornerstone of the right to challenge the accuser. The underlying assumption of the accusatorial system is that cross-examination of a witness in the presence of the accused is the best way to arrive at the truth. It is argued that this assumption is however incorrect when it involves a child witness (Zieff, 1991:34).

In South African law, the conduct of cross-examination is governed by a combination of legislation, ethical rules and case law. Section 166 of the Criminal Procedure Act, 1977 (Act 51 of 1977) sets out the rights of the accused and the State in relation to examination of witnesses. It provides that both the accused and the State may cross-examine any party called by the other side, including witnesses called by the court. Subsection (3) empowers the court to limit cross-examination if it is being unreasonably prolonged (South African Law Commission, 2001:612).

2.8.3.1 The Purpose of cross-examination

The purpose of cross-examination is to elicit favorable evidence which supports the party cross-examining the witness or to challenge the truth or accuracy of the evidence and to undermine the witness's direct testimony by casting a shadow of doubt upon the evidence given for the opposing party and therefore challenging the witness's credibility or his testimony (Myers & Perry, 1987:182; South African Law Commission, 2001:611; Zeffert *et al.*, 2003:752; Davies, 1993:3). Cross-examination may be directed either to the facts relevant to the issue, or facts relevant to the

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witness's credibility. Brennan and Brennan (1988:3) postulate that cross-examination is aimed at upsetting the child's credibility. This is done primarily through questions that are aimed at causing confusion and obtaining contradictory responses to questions.

This purpose of cross-examination was accepted by the courts in *S v Gidi and Another* 1984(4) S A 537 (C) where Judge Rose-Innes said the following:

“In the case of many a witness it calls for no skills to intimidate or confuse or distress a witness who does not have the resources of intellect, language or personality to defend himself against a bullying prosecutor.”

Questions, which are not relevant, whether to the issue or to credibility are not allowed (Zeffert *et al.*, 2003:752).

The state, the accused and the court have the right to cross-examine witnesses they have not called, that is witnesses testifying for the other party. The presiding officer has a limited role and may ask questions of a witness, but may not compromise his impartiality and descend into the arena (South African Law Commission, 2001:611).

The specific goals of cross-examination vary from child to child. There are however basic objectives underpinning most cross-examinations:

- The defense attorney may commit the child to a specific version of the facts so that the child can be accused of prior inconsistent statements or contradictions (Myers & Perry, 1987:182);
- The attorney may highlight inconsistencies in the child's testimony. Such inconsistencies may indicate that the testimony is mistaken or deliberately falsified, or that the child is confused, uncertain, highly suggestive, or lacking in personal knowledge of the facts (Myers & Perry, 1987:183);
- The defense may try to show that the child is coached or that the testimony was memorized; and

- To demonstrate that the child lacks the capacity to observe, remember, or communicate (Myers & Perry, 1987:183).

Researchers such as Key and Hammond (Zieff, 1991:34) described cross-examination of a child as “nothing short of brutal”.

2.8.3.2 Questioning techniques during cross-examination

Normal conversation consists of questions, explanations, descriptions and narratives. During cross-examination in the accusatorial system only one of these forms is used, namely questions are asked and the child must answer. These questions are controlled by a established procedure and the child cannot negotiate these boundaries (Brennan & Brennan 1988:59).

▪ Leading questions

Leading questions are avoided by other professions but adopted by the defense attorney for the same reason, namely for its suggestive potential. Leading questions are used both to elicit specific information and to avoid other unfavorable disclosures (Henderson in Westcott *et al.*, 2002:284).

Leading questions that are asked during cross-examination create difficulties as the child struggles to comprehend them (Muller & Tait, 1997:523). A leading question will suggest a reply to the child. Leading questions can distort the evidence. The inconsistency that is created is that leading questions are not allowed during testimony-in-chief as they may imply the answer but can be used when the child is under cross-examination (Spencer & Flin, 1990:223).

Research on suggestibility and the child witness has shown that a child is more likely to produce unreliable information during the trial than the adult, when suggestive or leading questions are asked (Dent & Flin, 1992:8). Leading questions are further particularly effective with people who are unassertive. This will therefore affect the child witness when being cross-examined in an accusatorial environment (Carson, 1995:6).

▪ **Repeating questions**

Non-legal interviewers regard repeating questions as bad practice. Several studies have shown that by repeating questions to the child witness, inaccurate reports can be generated because the child witness will think that the repeating of the questions means that the first answer he has given is not correct (Henderson, in Westcott et al., 2002:284; Spencer & Flin, 1990:37). This technique is not aimed at eliciting accurate information but to induce agreement. The researcher is of the opinion that the child witness should be informed of this technique to prepare him to understand why the question is being repeated and not feel compelled to give a different answer because he thinks the first answer was incorrect.

▪ **Avoiding disclosures**

Leading questions are used by attorneys to control or avoid certain disclosures as evidence. If forcefully led from one point to another by asking specific leading questions, the attorney is keeping maximum control over the child and what he testifies, with the view of excluding unwanted and harmful statements for the defense. The witness should not be given a chance to qualify or retract what he has said (Henderson in Westcott, 2002:285).

▪ **Use of negatives**

According to Brennan and Brennan (1988:64), negatives are often placed in unusual positions to fragment questions during cross-examination. Children have difficulty comprehending questions, which contain negatives (see 4.5.1.1). Difficulties that children experience are:

- A negative phrase is placed between two pieces of information;
- The negative is used as a rhetorical device in the courtroom; and
- Multiple negatives are features of language the attorney uses. Negative words like “deny” and “dispute” are particular to court dialogue and pose problems for children (Brennan & Brennan, 1988:64).

- **Multifaceted questions**

Multifaceted questions are long and complicated questions that offer certain options. The child may be confused by the choice available, especially if the selection does not include what really happened. The child can also only answer 'yes' or 'no' which causes problems if the child does not agree or disagree with the options (Brennan & Brennan, 1988:67).

- **Specialized language**

The cross-examiner is a skilled language user and during cross-examination he will be able to move rapidly from one style of questioning to another (Muller, 2002b:174). Brennan and Brennan (1988:55) found that the examiner will repeat words the child has used during cross-examination and then contrast these terms with long, complicated questions. The child finds it difficult to keep up with these rapid changes.

Children do not understand that, during cross-examination, their answers to questions will be analyzed in detail and their choice of words criticised. The questions are asked so that their responses can be manipulated for the benefit of the opposing party (Brennan & Brennan, 1988:56).

As regards to the witness, there are no specific rights in regard to cross-examination (South African Law Commission, 2001:613) except:

- The right to privacy, as long as it is in the interest of justice;
- The right to have their inherent dignity respected;
- The right not to be treated in a cruel, inhuman or degrading way; and
- The right to bodily and psychological integrity.

2.8.3.3 Constitutionality of section 170 A of the Criminal Procedure Act, 1977 (Act 51 of 1977) and the intermediary

The use of an intermediary to convey the general purport of questions raised the issue as to the constitutionality of section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977). In *K v The Regional Court Magistrate NO, and Others* 1996 (1) SACR 434 (E) (Schwikkard & Jagwanth, 1996: 215-220) it was held that nothing in this section (section 170A) hinders an accused from representing himself or from having the right to legal counsel. Nor is an accused person, either personally or where represented through counsel, prevented from asking questions in cross-examination. When section 170A is applied, the intermediary puts the cross-examiner's questions to the witness. The court held that this does not appear to be a limitation of the right to cross-examine. The intermediary acts, in a sense, as an interpreter, and interpreters are widely used in all of the trial courts in this country. For the sake of completeness and seeing that this judgement has bearing on many aspects concerning the intermediary, large parts of the judgment will be quoted. The court stated as follows:

“It is true that it is not only the content of the questions that forms part of the armoury of the cross-examiner. The successful cross-examiner may employ intonations of voice and nuances of expression to drive his point home and, perhaps, to cause discomfort to the witness. It is therefore possible that the forcefulness and effect of cross-examination may, to some extent, be blunted when an intermediary is interposed between the questioner and the witness. But this does not mean that the accused is denied the right to a fair trial, for in deciding whether his rights have been violated it is also necessary to take into account the interest of the child witness.”

The Judge added at 251 that:

“In my view the use of an intermediary does not, in itself, affect the fundamental fairness of the judicial process. For the witness may still be questioned on all aspects of his evidence and the right to challenge the evidence is not impaired. On the other hand the intermediary may be able to play a part in balancing the interests of the accused with those of a child

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witness, by allowing the latter to be integrated into the criminal justice system without disturbing the fundamental fairness of the process.”

There is also the question of whether an intermediary's right to convey the 'general purport' of any question may result in such unfairness to an accused person that it impinges on his fundamental rights. Mr Buchanan submitted that s (2)(b) of s 170A, in particular, constituted an unreasonable restriction on the part of an accused to cross-examine a witness and that its application results in a gross interference with the right to a fair trial. He argued that the cross-examiner has the right to decide how he wishes to phrase his questions and that if an intermediary is permitted to 'filter' the questions it may completely frustrate and derail a planned line of cross-examination. These submissions require serious consideration.

There are sound reasons why the conveyance of the general purport of the question might enable a child witness to participate properly in the system. Questions should always be put in a form understandable to the witness so that he may answer them properly (see *S v Gidi* (supra at 540E)). Where the witness is a child, there is the possibility that he may not fully comprehend or appreciate the content of a question formulated by counsel. The danger of this happening is more real in the case of a very young child. By conveying 'the general purport' of the question, the intermediary is not permitted to alter the question. He must convey the content and meaning of what was asked in a language and form understandable to the witness. From the articles and the evidence put before us it is quite apparent that it is in the interests of justice for questions to be posed to children in a way that is appropriate to their development. This furthers the truth-seeking function of the trial court without depriving the accused of his right to cross-examine. Moreover the Judge or magistrate who presides at the trial controls the proceedings and is able to see to it that the intermediary carries out his function properly and without prejudice to the accused.

Furthermore the court has the power to direct that the intermediary should convey the actual question and not merely its general purport.

'The impact of s 170A(2)(b) will be at its greatest in respect of the cross-examiner. And it is submitted that a court should be very careful not to allow an intermediary to frustrate the fundamental purpose of cross-examination, namely, to give an accused an opportunity to present his defence and to do so through pertinent and probing questions of those who testify against him. At the same time it is equally true that the Legislature has sanctioned the use of intermediaries and certain latitude must be allowed in order to give effect to s 170A(2)(b). In the final analysis, however, the right to a fair trial should be the controlling factor.

2.9 Re-examination

The main purpose of re-examination is to enable the witness to explain matters of which his answers in cross-examination are thought to have left a misleading impression. When re-examining the questions have to be confined to matters arising from the cross-examination. The witness can be re-examined on any part of his testimony already made but not on any other parts that are unconnected to his previous testimony (Zeffert *et al.*, 2003:763).

2.10 SUMMARY

There are two major legal systems, namely the accusatorial and the inquisitorial system. The accusatorial system is applied in South Africa. In this chapter the aspects of the accusatorial system were explored. From these aspects it can be seen that the system causes difficulties for the child witness.

The magistrate, who is impartial, two opposing parties, oral evidence in court, face-to-face confrontation, and cross-examination are the central features of the accusatorial system. The face-to-face confrontation and cross-examination are the features causing the most problems for the child witness.

The courtroom is a foreboding place for many children. Increasing attention is being directed to practices and procedures, which make the courtroom less intimidating.

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Proof of this is the Victim's Charter, the Constitution of the Republic of South Africa, and the United Nations Conventions on the Rights of Children. The implementation of section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) 14 years ago is also proof of attempts to accommodate the child victim in the justice system. Notice must also be taken of the rights of the accused and care must be taken not to violate these rights.

Specific crimes, such as assault, indecent assault, rape, and incest are classified in different ways according to the seriousness of the crimes and the type of punishment, which may be imposed. As South Africa has an accusatorial legal system, certain rules and procedures have to be adhered to. Competency requirements must be met, the oath must be understood and taken, oral evidence must be given, the cautionary rule must be adhered to, a credibility finding must be made, and the order of evidence must be followed. These are not always child friendly and can therefore cause secondary trauma for the child. Cross-examination takes place during which the defense lawyer can ask leading questions which lead to confusion in the child. Other questioning techniques used during cross-examination such as repeating questions, using negatives, using multifaceted questions and special legalese also contributes to the traumatic court experience of the child. After cross-examination, re-examination can take place to clarify misleading evidence of the witness.

It is clear that the legal system has high expectations of a child witness without taking the child's developmental and communicative shortcomings into account. The intermediary can play an important role in this process. To be able to do this, she must be properly trained in all areas of child development and well as the legal system of South Africa.

CHAPTER THREE
THE DEVELOPING CHILD

3.1 INTRODUCTION

As discussed in chapter two, it is clear that the legal system demands a wide range of cognitive, social and emotional skills from its participants. Child witnesses are expected to encode, store, and retrieve memories, then communicate memories through the spoken word in a strange or foreign context. The system requires reliable and trustworthy, detailed, oral evidence, that is not tainted by the suggestions of others. Questions call for sophisticated reasoning skills and a fairly well developed knowledge base. The events that bring the child into contact with the legal system are stressful and traumatic. They require an emotional maturity and advanced coping skills. Without an understanding of developmental underpinnings of the child's testimony, even a simple question can create confusion and misunderstanding by all concerned (Westcott, Davies & Bull, 2002:3).

This chapter will provide an overview on the following areas of development of the child: brain, cognitive, language, social-emotional, and moral development of the child. Special emphasis will be placed on the child between the age of four and eight years as, during this age, major changes take place. However, development in other age groups will also be discussed, where necessary, for the purpose of this study as section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977) makes provision for a child up to the age of 18 years to testify with the assistance of an intermediary, as described in Chapter 2.

3.2 DEVELOPMENTAL PHASES OF THE CHILD

Development is the pattern of change that human beings undergo during their lifetime, beginning at conception and continuing through the life cycle until the person's death. For the purpose of organization and understanding, development is frequently described in terms of phases (Berk, 2003:5). These phases are: the toddler phase (birth to two years), early childhood (two to six years), middle childhood (six to

12 year, and adolescence (12 to 18 years). Each of these phases is described in terms of physical, emotional, cognitive, moral, and social development.

From the above it is clear that the intermediary should have a working knowledge and clear understanding of the phases and issues of the child's development in a number of areas.

3.3 THE BRAIN OF THE DEVELOPING CHILD

One of the most important aspects of physical development during childhood is the development of the brain. By the age of 5 years, the brain has reached 90% of its adult weight (Santrock, 1995:235).

The brain is divided into two hemispheres that develop at different rates. The right hemisphere plays a more dominant role in functions such as visual recognition, musical ability and emotional expression, whilst the left hemisphere plays a more dominant role in verbal functions such as speech, reading, and writing. The left and right hemispheres, however, have to function together in an integral, coordinated and interdependent way (Louw, D.A., Van Ede, D.M., & Louw, A.E., 2004:236).

3.3.1 Functions of the brain

One of the core functions of the brain and nervous tissues is to store information. All areas of the brain store information related to the functions they intercede. The outer area, called the neocortex, is the seat of language, attention, working memory, and motor skills. This area stores cognitive information like names, faces, events, and facts. This area of the brain comprises 99% of the two cerebral hemispheres and regulates most of the functions that are important for the child when he testifies in court (Myers & Perry, 1987:463). The limbic system stores emotional information such as fear, pleasure, sadness, taste and memory. The midbrain or cerebellum stores motoric information, for example, the skill to type, play the piano, or ride a bicycle. The basic life sustaining functions such as breathing, digestion, and metabolism

regulation are also found in the cerebellum (Myers & Perry, 1987:462; Mader, 2004:700).

The anxiety or arousal states associated with a traumatic event can be stored in the brain stem (The Amazing Human Brain..., 2002:1).

3.3.2 Brain development

At birth, the baby's brain has all his nerve cells (neurons). The rapid growth of the baby's brain over the next few years is reached through the production of two cerebral components, namely, synaptic connections between neurons and glial cells. The glial cells are responsible for nourishing the working neurons. They are further responsible for the development of the myelin sheaths that protect the neural fibres. According to Perry and Wrightsman (1991:60), myelin begins to coat and protect the neural fibres as the child's brain develops. These have the function of reducing the random spread of impulses from one fibre to another. The last structure to myelinate (at about ten years) is the corpus callosum, which consists of a band of fibres connecting the right and left hemisphere of the brain. One of the major functions of the corpus callosum is to transfer information from the one hemisphere of the brain to the other. This enables the child to make inferences. Although most of the myelin sheaths are completed by the age of two years, some, like the corpus callosum, continues to develop into adulthood (Myers & Perry, 1987:463; Kalat, 2004:109; Mader, 2004:701).

Because myelination plays such an important role in the ability of the child to serve as a competent witness in court, it is important to understand the process of myelination and how it affects the child's behaviour. As neurons become myelinated, the impulse is passed more rapidly and efficiently. During the early childhood phase the process of myelination of the sheaths that are responsible for integrating and interpreting the stimuli, lag behind, thereby limiting the communication amongst various parts of the brain (Myers & Perry, 1987:464).

This is particularly important when witnessing an event. The right hemisphere of the brain specialises in the perception and analysis of visual patterns, melodies, hearing

non-speech sounds, recognising faces, spatial locations, and emotions. The left hemisphere, on the other hand, specialises in the production and understanding of language. For the child to be an effective witness, it is desirable for the child to be able to:

- Perceive the event accurately (right hemisphere function); and
- Convey information about perceptions (left hemisphere function).

From the above it can be seen that communication between the hemispheres of the brain is desirable for a child to give effective testimony (Myers & Perry, 1987:464). The child should however not be withheld from testifying only because he is less than ten years old.

3.4 DEVELOPMENT OF PERCEPTUAL SKILLS

According to Myers & Perry (1987:465) the most basic perceptual processes are those involving the five senses. These perceptual processes function on an adult level even though the child is still an infant. Some aspects of perception however do change with age. These changes are:

- As the child grows older, his perceptions become more purposeful and selective
- As the child learns to identify subtle aspects of stimuli, his perception becomes more sensitive;
- The child becomes increasingly able to distinguish between critical and non-critical information from a stimuli;
- The child becomes more aware of what his perceptions mean; and
- The child becomes more skilful at generalising perceived meanings from one situation to another.

The developmental changes in perceptual skills were demonstrated by an experiment done by Zinshensko and Ruzskaya (Myers & Perry, 1987:466). Children from the age of three years were presented with abstract shapes. The children were allowed to

touch objects but not to see them. The children's visual recognition of the objects they had explored with their fingers was tested. Whilst the child under the age of five years struggled with this exercise, the older children showed markable increased accuracy. This can be attributed to maturing of brain structures and functions (Myers & Perry, 1987:466; Louw, 2004:3).

From the above it can be seen that the young children's perceptions grow as they mature. If the young child pays attention at the time that the event occurs, the child is capable of observing what is happening, especially in a straightforward occurrence. These are the occurrences the young child must testify about in court. Most young children, at the age of four years, already possess the perceptual skills needed to give accurate testimony (Myers & Perry, 1987:468; Louw, 2004:3). The way the child perceives the events at the time they occur is how he will relay them, even years later.

3.4.1 Ordering and interpreting of perceptions

According to Myers & Perry (1987:468), young children under six years have basic perceptual skills, which enable them to give accurate testimony about simple, factual events. They may however experience difficulty when they have to:

- Testify about complex situations;
- Recognize relationships;
- Testify about emotions; and
- Identify intentions.

During the aforementioned, the child has to be able to arrange and interpret his perceptions. The ability to do this only reaches the standard of adult reliability at the age of 12 years (Myers & Perry, 1987:468).

For the child to be able to arrange and interpret what he has perceived, the child must understand the concept of time. It is generally acknowledged that a child's understanding of the concept of time only develops at the age of seven to eight years (Myers & Perry, 1987:469).

3.5 COGNITIVE DEVELOPMENT

Cognitive development refers to the changes in the inner processes of the mind that leads to “knowing”. It includes all mental activities and behaviours – attending, remembering, symbolizing, categorizing, planning, reasoning, problem solving, creating, and fantasizing, through which knowledge of the world is attained and processed. The intellectual capacities of the child that change in the cognitive structure and functioning that takes place, will be discussed (Berk, 2003:217; Myers & Perry, 1987:472).

One of the major tasks a child has to master is that of understanding the world in which he lives. The maturation of the brain and the development of skills in the area of perception and paying attention, paves the way for his understanding of the world (Myers & Perry, 1987:471).

Cognitive development is therefore the development of the thinking and organizing systems of the brain. It involves language, mental imagery, thinking, reasoning, problem solving, memory development, changes in the child’s intellectual abilities, and knowledge of the world throughout the child’s development (Myers & Perry, 1987:472).

Jean Piaget, a developmental biologist, studied the development of the child’s understanding, emphasising developmental changes in the organisation of intelligence. He contributed largely to the understanding of the cognitive development of the child and is known for constructing a highly influential model of child development and learning. His theory is based on the idea that the developing child builds cognitive structures, which he called mental “maps” or “schemes”. (Myers & Perry, 1987:472).

Piaget outlined several principles for building cognitive structures. Influenced by his biological background, Piaget saw cognitive development as an adaptive process in which thinking gradually adapts to the child’s external world (Berk, 2003:218). During all the developmental phases, the child experiences his environment, using whatever mental maps he has constructed so far. If the experience is a repeated one, it

is assimilated into the child's cognitive structure so that he maintains mental "equilibrium", and changes his cognitive structure to accommodate the new conditions. By doing this the child can erect increasingly adequate cognitive structures (Piaget, 2001:2).

Piaget's particular insight was the role of maturation in the child's increasing capacity to understand his world. Piaget was further of the opinion that the child cannot undertake certain tasks until he is psychologically mature enough to do so. He also proposed that the child's thinking does not develop smoothly. There are certain points at which the child moves to completely new areas and capabilities. Piaget saw these transitions taking place at the age of about 18 months, seven years, and 11 to 12 years (Atherton, 2003:1).

Piaget's key concepts consist of the following:

- **Adaptation:** This is the adaptation of the child to the world around him through assimilation and accommodation and the internalising of his world (Atherton, 2003:1). Adaptation involves building schemes through direct interaction with the environment (Berk, 2003:219).
- **Assimilation:** Assimilation refers to the taking in of new experiences through one's own system of knowledge (Atherton, 2003b:1; Child Development, 2004:1). During assimilation the child uses his current schemes to interpret the external world, for example, the child who is continuously dropping his toy, is assimilating this in his sensorimotor dropping scheme (Berk, 2003:219).
- **Accommodation:** Accommodation refers to the adjustment of the knowledge base according to environmental demands. Assimilation and accommodation are the processes in which the child learns to cognitively adapt to the environment. Piaget spoke of schema or schemata that were defined as specific cognitive structures with a behavioural pattern. Sucking and grasping are examples of early schemata, which are later referred to as operations (Atherton, 2003b:2; Child Development, 2004:1). During accommodation the child creates new schemes or adjusts old ones after noticing that his current thinking does not capture the environment completely (Berk, 2003:219).

- **Mental representations:** Mental representations are internal visual representation of information that the mind can manipulate. Mental representations consist of:
 - Images: mental pictures of objects, people, and spaces; and
 - Concepts: categories that group together similar objects or events (Berk, 2003:219).

Piaget identified and described four major cognitive developmental phases and the processes by which children progress through them. For the purpose of this study the pre-operational and concrete-operational phases will be discussed.

3.5.1 The pre-operational phase

From ages two through seven, the child understands the world in a pre-logic and intuitive manner. The child moves from information to conclusions. This is called the “pre-operational large leaps”. The child uses concepts like “here” and “now” as well as mental operations that are reality based to understand his world. By the age of six years the child uses logical systems to organise his experiences (Myers & Perry, 1987:472). The pre-operational phase is divided into two phases, namely the phase of pre-conceptual thought (two to four years) and the phase of intuitive thought (four to seven years). The most obvious change is a remarkable increase in mental representations including language, make-believe play, and drawing. In this phase intelligence is demonstrated through the use of symbols. Language matures and memory and imagination develop. Thinking is done in a non-logical, non-reversible manner.

- **Piaget’s key concepts of the pre-operational phase**

Piaget described the child’s development during the pre-operational phase by using the following terminology:

- **Egocentrism:** Egocentrism is the inability of a child to see matters from anybody else’s viewpoint. The child believes that he is the centre of the universe and that everything revolves around himself. He is “I” and “myself” orientated. The child can also not see the world as somebody else

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sees it and can therefore not adapt to it. Egocentrism is not a moral selfishness but is an early phase of psychological development (Atherton, 2003:2). Piaget referred to egocentricity as a tendency to “centre oneself”.

The egocentric child focuses on his own viewpoint and is unable to distinguish it from other people’s perspectives. Egocentric thinking still predominates. Egocentrism prevents the child from accommodation. It contributes to animistic thinking, centration, a focus on superficial perceptual appearances, and irreversibility. As a result of this the child in the early childhood phase fails in tasks like conservation and hierarchical classification (Huitt & Hummel, 2003:2; Berk, 2003:229-230). The child believes that the inanimate objects have lifelike qualities like thoughts, wishes, feelings, and intentions, just like he himself (Berk, 2003:234; Cole & Cole, 2001:339). The child, when testifying, will not be able to answer questions relating to other people’s motives, other people’s opinions or what other people think or feel. The child will primarily be concerned with his own actions and will not be able to answer questions about what other people around them are doing (Muller & Hollely, 2000:178).

- **Classification:** This is the ability to group objects together on the basis of common features (Atherton, 2003b:2; Louw, Van Ede & Louw, 2004:79). By the age of four years the child will have experienced different situations in his environment and will have more analytical powers. For some time the child will have been observing and mentally sorting objects according to their physical properties. He will be able to understand concepts like grouping and matching and will be able to organize material on his own, for example:
 - Stacking blocks and rings in order of size;
 - Identifying parts of a whole like a slice of cake,
 - Actively seeking information through “why” and “how” questions;
 - Telling his name and age;
 - Attending to an activity for a longer period of time (between five to 15 minutes);

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- Learning about observing and listening to adult's explanations; and
- Showing awareness of past and present (Thinking Skills, 2004:2).

At the end of the pre-operational phase, the child can classify an object according to one dimension, for example, colour or shape. Charlesworth (2000:327) explains classification as the skill to classify and categorize items in the environment.

- **Class Inclusion:** This is a more advanced skill than simple classification. Some classes or sets of objects are also sub-sets of a larger class. In the pre-operational phase the child is not yet capable of multiple classification, for example, both colour and shape. The child also does not understand hierarchical classification, for example, furniture has sub classes namely tables, chairs, beds (Louw *et al.*, 2004:327; Atherton, 2003b:2).
- **Animism:** Animism is the tendency of the child to see inanimate objects as being alive and having consciousness and emotions like people. The child will assume that non-living objects such as the sun or the wind have the properties of living things like motives, feelings and intentions that affect behaviour (Berndt, 1997:299). The child will say that clouds are alive because they can make rain (Louw, *et al.*, 2004:78).
- **Intuitive Thought:** Intuitive thought refers to the phenomenon that the child's thinking is not based on logic but on the perception from which conclusions are drawn. Intuitive thought is demonstrated in the inability of the child to understand conservation.
- **Conservation:** Conservation is the realization that objects or sets of objects stay the same even when they are changed about or made to look different, for example, length, quantity, volume or mass (Atherton, 2003b:2; Louw *et al.*, 2004:77).

▪ **Characteristics of the pre-operational phase**

Language is the most flexible means of mental representation. By detaching thought from action, it permits more advanced thinking. When the child thinks with words, he overcomes the limits of his experience (Berk 2003:230). During the pre-conceptual thought phase the use of verbal representation increases but speech is still egocentric. The child learns to use language and to represent objects by images and words. By the age of four years symbolic rather than simple motor play begins (Language development in Children, 2004:2).

During the intuitive phase the child's speech becomes more social and less egocentric. The child has an intuitive grasp of logic concepts in some areas. However, the child still tends to focus his attention on one aspect of an object whilst ignoring others. Concepts formed are elementary and irreversible. The child's belief in magic first increases then decreases and disappears completely at the end of this phase (Berk, 2003:233).

During the pre-operational cognitive phase, children develop the ability to use symbols and language extensively. Cognitively, the child has not yet developed the ability to use deductive reasoning. The child is not yet able to conceptualise abstractly and thinking is based on concrete physical situations.

They display magical thinking described as phenomenalistic causality, believing that events occurring together are causally linked. For example, the child in the pre-operational phase may believe that umbrellas cause rain as they always see umbrellas when it is raining. The pre-operational phase child uses symbols to represent things like objects or events. Symbolic play can be seen in the play of the child who will for example, use objects like an empty box to represent a house or piece of clothing to represent an animal (Child Development, 2004:2; Piaget, 2001:2).

Between four and six years of age the child will recognize basic colours, sort by shape and colour and count up to five objects. He will also understand taking turns and will want to know what will happen next, will be able to follow three instructions given at one time, will be able to distinguish between real and imaginary, and identify

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situations that would lead to happiness, sadness or anger (Powel, 1997:2). Therefore, once the child has mastered the above skills, he will be able to testify competently in a court.

Having developed sufficient independence and understanding to enable the child to cope away from home for a length of time, he begins preschool or even school at the age of five.

Five-year-old children understand more about concepts like space and time, but most of them are not yet able to tell the time. They can draw a person with a head, body, arms, legs and features such as eyes, nose and mouth; they can draw a house with doors, windows and a roof. They can recognize letters but do not necessarily start to read yet (Oesterreich, 2004a:1).

At the age of six years the child starts to understand the sameness and difference in various aspects of life. They understand that differences can exist side by side. The child will be able to arrange objects from smallest to largest, shortest to longest and lightest to heaviest. A six-year-old child will also understand that the quantity of things remains the same when arranged differently, for example, that a ball of clay is the same amount when flattened out and that water poured from a fat jug to a tall thin one is still the same amount of water. He will see the different perspectives on the same subject (Health Topics, 2004:2).

Make-believe play provides another excellent example of the development of representations during the pre-operational phase. Piaget believed that through pretending, children practice and strengthen newly acquired representational schemes. By using make-believe play the child will re-experience anxiety-provoking events, but with the roles reversed so that the child is in command and compensates for the unpleasant experience (Berk, 2003:231).

▪ **Learning during the pre-operational phase**

During the pre-operational phase the child is busy gathering information, learning, and trying to figure out ways in which he can use what he has learnt to begin solving

problems. The child will now start thinking specific thoughts but will find it difficult to generalize (egocentric thought). During the pre-operational phase the child will start asking questions. The “why” question gets asked very frequently. The child judges everything on the “me” basis. He is only concerned about how it will affect him. The child has no ability to go back in time and reason (Tipton, 2002:2). At this age the child has deficiencies in conservation.

The child in the pre-operational phase is unable to conserve, highlights several related aspects of his thinking. His understanding is highlighted by centration and will focus on one aspect of the situation and neglect the other important features. The child at this phase cannot mentally go through a series of steps and then reverse direction, returning to the starting point (Muller, 2002b:42). The above is of great importance when the young child has to testify. He will be able to remember the central detail of an incident but will not be able to relate peripheral information.

3.5.2 Concrete-operational phase – six to twelve years

As physical experiences accumulate, the child starts to conceptualise, creating logical structures that explain his physical experiences. Organised logical thought now becomes evident. Abstract problem solving is now possible. The child’s ability to conserve indicates that the child can decentre and reverse his thinking. Mathematic equations can be solved with numbers, not just objects. The child develops the ability to perform multiple classification tasks, order objects in a logical sequence, and comprehend the principals of conservation. The child’s thinking becomes less transductive and egocentric. The child now also becomes capable of concrete problem solving (Oesterreich, 2004c:2; Piaget, 2001:1). Operational thinking develops and egocentric thought diminishes (Huitt & Hummel, 2003:2). In the concrete-operational phase that is characterized by seven types of conservation (namely number, length, liquid, mass, weight, area, volume), intelligence is demonstrated through logical and systematic manipulation of symbols related to concrete objects.

▪ **Piaget's key concepts of the concrete-operational phase**

- **Seriation:** Seriation refers to the child's ability to arrange objects systematically in a series from small to large or from large to small. The child in the middle childhood phase will, for example, be able to indicate that his father is taller than his mother and that his baby sister is smaller than himself (Louw *et al.*, 2004:329).
- **Spatial reasoning:** Objects exist in space and their placement is often meaningful. Objects also exist in time. Changes in the relations amongst objects, over time, define events (Berndt, 1997:343). The concrete-operational child has a more accurate understanding of distance, direction and cognitive maps than the child in the pre-operational phase (Berk, 2003:242).
- **Logical operations and transformation:** These are internal actions that are reversible and that are connected with other operations in logical structures. These operations are the mental equivalent of actions in the world and are internalised actions because they take place in the mind rather than in the physical world. The child at the end of the concrete-operational phase starts thinking analytically and abstractly and searches for true facts (Berndt, 1997:306).
- **Concrete operations:** These are the first logical operations that the child constructs. This happens around the age of seven years. The operations can be applied only to concrete objects and current events. The child is thinking about things rather than simply acting in the world, but his thoughts stay on the concrete level (Berndt, 1997:307). Therefore, when the court asks the child what the difference between truth and lies is, questioning must still be done in a concrete way.
- **Centration and decentration:** This is the ability of the child to move from one system of classification to another one, when necessary. The pre-operational child centres his attention on one aspect of a task or one dimension of an object. During a numerical task the child will pay attention only to the length of a line. This is called centration. The concrete-operational child will broaden his focus which allows him to pay attention to more than one element of a task or more than one dimension of an object.

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The child will now, for example, pay equal attention to the length and the density of the row. This broadening is called decentration (Berndt, 1997:308).

- **Number concept:** During the concrete-operational phase the child masters number concept. The child now understands the following:
 - ❖ Ordinal characteristics of numbers, for example, that two is smaller than three and three is smaller than four;
 - ❖ Cardinal characteristic of numbers, for example, that the number is an absolute numerical size and that it represents all the classes it consists of;
 - ❖ Numbers can be combined into different whole numbers by adding and multiplying; and
 - ❖ The conservation of numbers, for example, if you have three cookies and you don't add or take any away the number of cookies stays the same (Louw *et al.*, 2004:71; Berndt, 1997:312).
- **Transitivity:** This is the development of understanding transitive inference. This is the understanding that if one object is taller than a second and the second is taller than the third, then the first is also taller than the third (Berndt, 1997:306).
- **Operation:** Operation is the process of working something out mentally. The young child (in the sensorimotor and pre-operational phases) has to act, and try things out in the real world. He also has to work things out, for example, count on his fingers. Older children in the concrete-operational phase and adults can perform these tasks mentally (Atherton, 2003b:3).

▪ Characteristics of the concrete-operational phase

During the concrete-operational phase, egocentric thoughts are replaced by operational thoughts and the child can see the world from the perspective of others. Concrete-operational thought are still limited in that the child can only reason logically about concrete information that he can perceive directly. The child still has difficulty with abstractions (Berndt, 2003:266). He reasons, follows rules, and develops a set of values and norms. He can now think logically about objects and events. Conservation develops during the concrete-operational phase and allows the

child to recognize that objects stay the same regardless whether they change shape or form. He achieves conservation of numbers (age six), mass (age seven), and weight (age nine) (Atherton, 2003b:4). Piaget used many examples to demonstrate conservation with children. One example is pouring the same amount of water into two glasses that were the same size. Children who had mastered concrete operations stated that the two glasses had the same amount of water. Piaget then poured the water from one of the glasses into a tall thin glass. Children who had mastered concrete operations knew that they were still equal (Child Development, 2004:2).

Between the ages nine to twelve years the child's thinking process is influenced by his emotions and self-esteem. If he is worried or unhappy, he will not be able to concentrate and will not have the strength to overcome this until his problems are solved (Huitt & Hummel, 2003:3).

▪ **Learning during the concrete-operational phase**

The child now begins to manipulate data mentally. He takes the information at hand and begins to define, compare, and contrast this information. The child in the concrete-operational phase still thinks concretely. He is now also capable of logical thinking and still learns through his senses. He however no longer relies on learning through his senses only, but thinks about what is happening as well. The seven to ten year old is still very literal in his thinking and will take everything that he is taught at face value. He still has not mastered symbols and figurative language (Tipton, 2002:3). The child's thinking is more organized and logical in terms of concrete information. This is indicated by gradual mastery of conservation, class inclusion and seriation problems, including transitive inference. The child displays effective spatial reasoning, which is indicated by conservation of distance, the ability to give clear directions, and well organized cognitive maps.

Children in the middle childhood phase are often very excited by and genuinely interested in the outside world. They can absorb information with enthusiasm and they frequently remember remarkable detail about subjects that interest them. During this phase the child enjoys planning and building, and increases his problem solving ability. He is able to distinguish between left and right and begins to understand time

and the days of the week. The child is also able to plan ahead and evaluate what he is doing (Oesterreich, 2004c:2; Nuttall, 2002:2; DeBord, 1996:3). He has a longer attention span, but can rarely sit still for longer than 15-20 minutes for an activity. The researcher is therefore of opinion that the child should be given frequent breaks whilst testifying as his attention span is still limited.

By the age of seven to eight the child will be able to distinguish between fact and fantasy, for example, that Father Christmas is not real, understand money, read to himself, start to plan ahead, and tell the time (Oesterreich, 2004b:2).

By nine years of age the child develops preferences for certain subjects at school or particular areas of interest. He has basic skills in reading, writing and maths and the capacity to express relatively complex ideas.

The child increasingly becomes interested in reading fictional stories, magazines and how-to project books. The child still fantasizes and daydreams about the future. The child is now also capable of understanding concepts without having direct hands-on experience (Oesterreich, 2004c:1).

3.5.3 Cognitive development and the child in the courtroom

According to Mitnick (1998:3-5) the child's cognitive development influences his ability to testify in a court in the following ways:

- **Ages three to five years:**

- The child's thinking is egocentric and is not able to think about what he wants and needs. He is also not able to understand the viewpoint of anybody else. The child will therefore not be able to explain how somebody else thinks about or views the same situation or what other people think and feel.
- The child sees himself as the centre of the universe. The child will therefore blame himself for everything that happens, including abuse. Since the child views the world from his own perspective, he assumes that everybody knows what he knows. This will cause the child to omit details and explanations

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because he assumes that everybody in the courtroom knows what happened. It therefore has to be explained to the child that the magistrate was not present when the incident occurred and that the child must tell him everything so that he knows what happened. This will have to be repeated.

- During this phase the child's thinking is pre-logical. Children give explanations that are not logical to adults. The child will use the answer "because" to questions thinking that his explanation is adequate. Since the child cannot think logical, he does not realize that his answer makes no sense.
- The child's thinking during this phase involves juxtaposition. This means that the child will think that events occur one after the other and not realize that the one event is being caused by the other. This happens because the child does not understand cause and effect.
- The child's thinking is syncretic. The child will tend to fuse separate events into one event. This will result in the child incorporating various aspects of different incidents of abuse into one incident. This will happen if the abuse took place over a length of time with multiple incidents.
- The child's communication is egocentric. The child will not take the listeners needs into account. The child will assume that the listener knows what the child is thinking and will, for example, use the names of people, and places without explaining who they are.
- The child uses language that is personal, unstable and confused. The child confuses pronouns like "me", "he", "her", or "him".
- The child's communications appears disorganised and fanciful. The child will not tell the story from beginning to end. He may begin the story anywhere and go back and forth in time. In order to get the child to follow some kind of sequence, prompts like "and, what did he do then?" or "What happened before that?" will have to be used.
- The child uses transductive reasoning. The child will reason from one particular idea to another without logically connecting them (compare De Young, 1986:552).
- The child will define an object in relation to its perceived function.
- During this phase the child does not understand that objects remain the same despite a change in physical appearance (compare De Young, 1986:552).

▪ **Age five to seven years:**

- During this phase the child's reasoning is still egocentric. He thinks that the listener knows what transpires in his mind and knows what has happened to him. The child is, however, now able to distinguish between what he is thinking and what he has experienced, but he still thinks that the listener knows the difference. It is important that the person listening to the child ask the child questions in order to clarify what the child means.
- The child's thinking is still pre-logical and concrete, so questions that are put to him should be specific in order to obtain specific information. This implies that the child has difficulty explaining his own thinking and will find it difficult to answer "why" questions, for example: "Why did you not scream when John hit you?"
- Children in this age group will not be able to give proof of their statements or to explain how they came to a certain conclusion, for example: "How do you know?" The child will simply answer, "I don't know."
- The child's thinking is irreversible during this phase. The child will not be able to reverse actions in his mind. The child will, for example, take the questions "Who do you stay with?" and "Who stays with you?" as separate topics.
- The child's thinking cannot accommodate multiple topics during this phase. If a number of questions are combined, separate answers may not be forthcoming, for example: "What were you and he doing?"
- The child's thinking involves centration. The child will focus on certain aspects of a situation and ignore others, for example, the child may explain in great detail what somebody looked like but will not remember what clothes he was wearing. The child cannot think hypothetically. He has limited thinking about the future and is unable to reason from the present to the future or the past.
- The child's communication is still egocentric; meaning that the child will assume that the listener already knows what and whom he is talking about.

▪ **Ages eight to 12 years**

- Thinking now starts to become logical: “Hurting somebody is bad, therefore if somebody hurts me, he is bad.” The ability to think logically only develops towards the age of 12, so periods of illogical thinking may still occur.
- Thinking now involves forethought and planning. The child starts to understand that there are consequences to actions, for example, “If I tell the court what happened, uncle John will go to jail.”
- The child can now reverse actions, so thought becomes reversible.
- The child begins to develop a sense of time. The child begins to understand what a minute, hour, week, or year is. The child cannot, however, estimate time.
- Thinking now involves seriation. Towards the age of 12 the child can give lists of places where, for example, the various events of abuse took place.
- The child’s communication becomes more organised. The child starts to understand that a story has a beginning, middle, and an end. The child is now more likely to tell the story in sequence as it happened.

3.5.4 Cognitive limitations of young children in the court

Children develop skills that help them perceive, attend to, mentally represent, and understand the world around them. If the child is questioned on a developmental appropriate level and care is taken to alleviate the child’s stress, a child as young as three to four years can be a competent witness (Myers & Perry, 1987:480; Muller, 2005). The cognitive abilities of the young child are however limited and any person asking the young child questions should be aware of the following limitations:

- **Egocentricity:** The young child is incapable of adopting another person’s physical or mental viewpoint. Therefore, the child should be asked to tell what happened from his own perspective (Myers & Perry, 1987:480).
- **Seriation:** The young child can arrange objects in series, but cannot draw inferences about nonadjacent factors. This means that while a young child may be able to call up a mental image of the perpetrator, he may not be able to

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compare that person's features to those of familiar individuals, for example, "Was he taller than your daddy?" It is best to ask for simple descriptions without asking for comparisons (Myers & Perry, 1987:480).

- **Underextensions:** The young child will be able to see that objects are alike in one aspect and differ in another. A likely explanation for this limitation is that young children tend to focus on the global image and not notice finer features or details. When questioning the young child, it may be helpful to ask him to form an image of the desired object, person, or scene, and then to direct the child to inspect specified parts of the image (Myers & Perry, 1987:481).
- **Transductive reasoning:** Young children reason from one specific circumstance to the next, rather than from the specific to the general or from the general to the specific. It is thus best not to ask the young child to provide interpretations of his images as he sometimes ignores relevant factors. It would be better to focus on detailed factual descriptions of the child's mental images and let the person questioning the child draw the relevant conclusions (Myers & Perry, 1987:481).
- **Animism:** Children believe that all things are living and have intentions, consciousness, and feelings. If a young child is asked to speculate on *why* an event occurred, it is difficult to determine whether the child's response is a valid interpretation or whether he is engaging in animism. This is in part, due to the immaturity of the corpus callosum.

The researcher is of the opinion that, from the above, it can be seen that the developmental immaturity of the younger child requires careful evaluation of testimonial competence. However, even with the above limitations, the child can testify competently about simple factual incidents.

3.5.5 Development of attention

As stated by Raubenheimer, Louw, van Ede and Louw (2004:602) when the child is bombarded with stimuli, he can only pay attention to and process a limited number of these stimuli at one time due to his limited cognitive resources. When the child pays attention, he:

- Uses his cognitive resources to perform a cognitive task;

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- Only focuses on a limited number of stimuli;
- Concentrates on performing a cognitive task by eliminating all other interfering stimuli; and
- Uses his information processing skills to perform mental tasks.

Myers and Perry (1987:472) postulate that in order to perceive events, the child must first pay attention to these events. As the child matures, his attention giving skills improve. As a result of increased myelination of neural fibres, the child's ability to absorb required information is enhanced.

▪ **Mental representations**

For the child to remember people and events he has to store the information in his memory. The child must then be able to recall this memory when necessary, for example, when testifying in court. Once the stimulus has disappeared, the child can use different methods to retrieve this memory (Myers & Perry, 1987:473; Hall, Lamb & Perlmutter, 1986:247-254).

There are several types of representations, namely enactive, imaginal, linguistic, categorical, and operative representations. The very young child is only able to use a few of these representations, but as he grows older, his use of these mental representations changes and matures (Myers & Perry, 1987:473).

- **Enactive representations:** Although the enactive representations are the first form of representation found in the infant, it must be remembered that the older child, when testifying, may regress to this sensation-bound level after he has been traumatised. During this phase the child experiences his world through his five senses and therefore tries to prolong experiences so that he can interact with his environment (Myers & Perry, 1987:473). By interacting with his environment, the child manipulates objects and then records them to his existing memory so that he can remember them when they are no longer visible. If the child makes use of the above representations it would be helpful to allow the child to give evidence by making use of concrete objects, example, anatomically detailed dolls, drawings or other articles (Myers & Perry, 1987:474).

- **Imaginal representations:** By the age of two years the child uses his memory to store mental pictures as he explores his world. It now becomes technically possible for the child to be a witness assuming that the child has witnessed an event and retained it in his memory. The child between two and three years of age has difficulty in recalling memory freely. The best way to elicit memory from a very young child would be to ask simple, direct, nonleading questions that tap into detail of the stored memory of the child (Myers & Perry, 1987). Unfortunately, in the accusatorial legal system in South Africa, this seldom happens as the accused is allowed aggressive cross-examination of the witness testifying against him.

- **Linguistic representations:** Words and symbols are a powerful form of representation as they allow the child to represent experiences in memory and also to transform them. As the child starts to think about images, he also starts to draw inferences. Since words form symbolic representations, these words can also distort the memory. The linguistic representations of the young child are very elementary and he is less susceptible to distortions than the older child. However, the child's immaturity may cause problems. As a result of the above, it is important that an attorney should communicate with the child witness on the child's developmental level (Myers & Perry, 1987:475; Goldstein, 2000:2).

- **Categorical representations:** This form of representations enables the child to divide the world into manageable concepts. Seeing similar objects as a single concept is efficient and economical. Initially categorical representations are non-linguistic but later become complex and sophisticated (Myers & Perry, 1987:476).

- **Operative representations:** When the child is ready to go to school at the age of six years, his cognitive processes change and he starts using increasingly logical mental systems to organise his experiences in his memory. Piaget called this the concrete-operational phase during which the child can now use specific mental operations to organize memory that he has already stored (Myers & Perry, 1987:477).

At the age of six years the child's memory is no longer passive, but changes as a result of the child's thinking about what has happened in the past. The child becomes more skilful in making inferences and drawing conclusions but at the same time becomes more susceptible to suggestion and coaching (Myers & Perry, 1987:477).

It must be kept in mind that, although the school-age child may be able to use complex reasoning, the assumptions underlying this reasoning must be from his own experiential world. This child is not capable of abstract thinking and therefore cannot reply to an abstract question like "What if?" (Myers & Perry, 1987:478).

According to Myers & Perry (1987:479), child witnesses between the age of six and twelve years are better witnesses than younger children because of better logic reasoning, better memory encoding and better communicative skills. But it is only at Piaget's formal operational phase (12 years and older) that the child can effectively cope with abstractions. The child will now be able to:

- Reason hypothetico-deductively;
- Analyse if/then statements;
- Reach solutions by mentally deducing all the possible outcomes; and
- Test the alternatives and select the best answer.

3.6 MEMORY AND COMMUNICATION

3.6.1 Memory and the child

According to Perry and Wrightsman (1991:106) memory involves the acquisition, storage and retrieval of information. Ashcraft (1989:10) states that memory refers to the: "mental processes of retaining such information for later use and retrieving such information, and the mental storage system that allows the retention and retrieval."

The registration of information takes place on a conscious as well as unconscious level so that it is possible to recall memory of people, places, and events as well as sensorimotor and perceptual information. Memory also plays an important role when acquiring new skills and facts (Louw *et al.*, 2004:331).

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The three main stages of memory strategies are encoding, storage, and retrieval. This is the process that is used to enhance memory (Louw *et al.*, 2004:334; Muller & Hollely, 2000:192).

The first strategy namely encoding strategy, include rehearsal and organization. A trace of experience becomes registered in the memory. Selection of what is to be encoded in the storage system takes place. Attention is given only to certain aspects of an event. According to Ceci and Bruck (1995:41-42) some factors influencing this selection are:

- Prior knowledge of the event;
- Interest value of event;
- Duration and repetition of event; and
- Stress level at the time of the encoding.

Encoding strategies are equally effective in children as in adults, but further processing to store the information in the short-term memory is not as effective in the child as in the adult (Louw *et al.*, 2004:334).

During the storage phase the information enters the short-term memory. Not all memories are placed into the long-term memory. Information is now either strengthened or lost (Louw *et al.*, 2004: 335).

The final phase of memory is the retrieval phase and this entails retrieving information from the memory. Some memories can, however, not be retrieved. As the child grows older his retrieval strategies improve because he uses memory cues more effectively (Louw *et al.*, 2004:336; Muller & Hollely, 2000:193).

Though storage capacity always remains the same, the memory problems that the young child experiences lie with the encoding and retrieval process (Muller & Hollely, 2000:194).

3.6.2 Models of memory

Piaget stated that memory cannot be separated from intelligence. He was of the

opinion that, to understand memory, one has to become familiar with cognitive development (Muller & Hollely, 2000:192; Myers & Perry, 1987:487).

The information-processing approach is mainly concerned with the transfer of information within the child's cognitive system (Myers & Perry, 1987:487). According to this approach, memory is composed of

- The sensory register;
- Short-term memory, that is a temporary working memory that allows one to remember active, conscious matter; and
- Long-term memory, where information is held permanently.

Various strategies are used to remember information. Developmental differences in memory result from age related changes in the ability to use memory strategies (Myers & Perry, 1987:487). The following memory strategies are used:

- **Recognition memory:** Recognition is the simplest form of memory because it only requires that the object be perceived and recognised as an object that has previously been perceived or experienced (Myers & Perry, 1987:489; Muller & Hollely, 2000:195; Louw *et al.*, 2004:244). An example of recognition is when a child recognises a toy or place that he has previously seen or been at. Because recognition memory is based on perceptions and simple motor response, very young children are capable of remembering events. This memory capability increases rapidly as the child grows and matures cognitively (Muller, 2002b:58).

Research has shown that recognition memory is better during the early school years than at any other time during the child's development. Experiments showed that the child's memory of faces increases the most during six to ten years of age, then declines from 11 to 12 years and then again improves from the age of 13 (Carey, 1978:269). The conclusion was drawn that the six-year-old child's recognition memory is very good for simple stimuli, but not so good with more complex stimuli that required scanning and registration of information. As the child is often asked to testify about complex situations and events when in court, the above must be kept in mind.

- **Reconstruction memory:** Reconstruction memory entails the retrieving of information from the memory, which involves having to reproduce the form of such information that was seen or experienced in the past. An example of this is when the child witness has to reconstruct the incident that took place by demonstrating what happened on concrete articles like anatomically detailed dolls or drawings. However, when the task becomes complex, such as reconstructing the incident from a photograph that requires abstract thinking, the young child's performance declines (Myers & Perry, 1987:490; Muller & Hollely, 2000:195).
- **Recall memory:** According to Louw *et al.*, (2004:244); Myers and Perry, (1987:491) and Muller & Hollely (2000:196) recall memory is the retrieving of information that was acquired previously. This information has to be retrieved from the memory with few or no prompts and be verbally communicated, for example, when the child tells somebody what happened at school yesterday. Recall memory, unlike recognition and reconstruction memory, is age related. The young preschooler has a better recognition memory than recall memory, which at this age, is still poorly developed. By the age of six years when the child enters school, his recall improves and he can recall memory much as an adult does (Myers & Perry, 1987:492; Muller & Hollely, 2000:197; Louw *et al.*, 2004:244).

Research done by Myers and Perry (1987:491) has shown that all children are as capable as adults in answering simple direct questions related to an incident. They further postulated:

“In the context of a legal interview or examination, this research suggests that when children are simply asked to tell what they can remember about an event, the quality of the narrative of older children will be better than that of the younger ones, but neither will give as full a narrative as an adult. It also suggests, however, that even young children (kindergarten-first grade) have sufficient developed ability to remember past events and that simple, direct (non-leading) questions or recognition recall appear to be viable means of finding out factual information from them. Using those methods, their answers apparently are no less credible than those of an adult, absent other influences.”

From the above it can be seen that very young children have a poor recall memory, but once they reach school going age their recall memory develops to the point where they have the similar ability as an adult to recall events. There are, however, still gaps in the child's recall.

3.6.3 Retention and retrieval of memory

It has been established through research that the capacity to retain and retrieve information increases with age until adulthood. According to McGough (1994:54) there appears to be a physiological reason for this diminished capability of the young child. The source of recall is thought to lie in the brain's corpus callosum, a bundle of fibres that connect the perceptual right hemisphere to the verbal left hemisphere of the brain and carries information between the two (see 3.3.2). The development of this connection and integration of the brain's unequal functions do not reach maturity before the age of ten years (McGough, 1994:54). Therefore, although a younger child may accurately encode or store sensory perceptions of an incident that the child witnessed, he will lack the critical linkage necessary to "translate perceptions into accurate verbal representations". (Compare McGough, 1994:54; Ceci & Bruck, 1995:41-43.)

3.6.4 Strategies for remembering

When a child under the age of six is asked to remember an event, he possesses limited memory strategies and without these strategies he experiences problems with recalling events. The child will therefore only be able to testify in court if he does not need these advanced memory strategies (Myers, 1987:493).

According to Myers & Perry, (1987:493) the most common memory strategies are:

- **Rehearsal:** This strategy refers to the repeating of information that has to be remembered mentally and verbally. Young children under six years of age have not mastered this technique, so they do not make use of it spontaneously, but the older child does. As the child matures, his capability to use rehearsal techniques improves. Very young children can, however, be taught to use rehearsal

strategies, for example, using nursery rhymes and computer games. (Oyen & Bebko 1996:184; Myers & Perry, 1987:493).

- **Imagery:** Imagery is a memory strategy where the child uses his imagination to help him remember information (Louw *et al.*, 2004:245). Imagery involves mentally picturing a person, place or object, or visually associating two or more objects that must be remembered, for example, when a person wants to remember a date of an event, he can link it to another important date like Christmas or a birthday. Children usually discover this strategy much later than they do the other strategies of remembering. Some people however never learn this technique (Myers & Perry, 1987:494).
- **Organisation:** Organisation as memory strategy means that items are grouped around meaningful units or common themes. Very young children do not organise material as effectively as the older child, but as they grow older and learn to categorise, they become aware of relationships between items of information (Louw *et al.*, 2004: 245). When items are therefore presented to the young child, one category at a time, they will be able to remember the categories, for example, toys, colours, shapes. But when items are presented randomly, most young children will not recognize the information well (Myers & Perry, 1987:494).
- **External cues:** Aids, for example string around a finger to remind the child to call her friend that afternoon, can be used to help the child to recall an event (Myers & Perry, 1987:495; Louw *et al.*, 2004:246).

3.6.5 Maximizing the child's memory

According to Myers and Perry (1987:504-506) there are several steps that can be taken to maximize a child's memory recall after experiencing an abusive event like:

- The interview should take place as soon as possible following the event. Memory is the strongest at the time of the first interview;
- The child should be allowed to freely relay what happened during the incident. Although unstructured statements tend to be incomplete, the account usually draws out accurate information; and
- The child should be helped by the prosecutor during consultation to organise the information, for example, when the abuse happened over a period of time. The

child can organize it according to what happened during a specific event, such as Christmas, birthday, and school holidays.

The researcher is of the opinion that stress at the time of the event, influences the child's ability to store information and therefore decreases the quantity and quality of information the child can recall. When interviewing the child, care should be taken not to influence the child's memory by asking leading questions or making statements.

3.7 LANGUAGE DEVELOPMENT

3.7.1 Oral language components

Speech and language are tools that humans use to communicate or share thoughts, ideas, and emotions. Language is the set of rules, shared by the individuals who are communicating and that allows them to exchange thoughts, ideas, or emotions. Communication starts long before speech is established. According to McCaul (2000:1) communication is the synthesis of three different components, namely:

1. Receptive language, which is the comprehension of information based on what one sees and hears or what one understands;
2. Expressive language, which refers to how information, namely thoughts and feelings, are expressed; and
3. Non-verbal skills, which consist of facial gestures and expressions. Gestures and facial expressions as well as body language influence how others perceive a message. Children learn to use nonverbal language skills long before they are able to verbally produce words that convey meaning to their listener.

The researcher is of the opinion that the intermediary must be aware of nonverbal communication and convey any gestures or facial expressions made by the child to the court whilst the child is testifying.

There are many languages in South Africa. Each includes its own set of rules. Oral language, the complex system that relates sound to meanings, is made up of four

subsystems or components, namely phonology, semantics, grammar, and pragmatics. These subsystems occur in all languages spoken in South Africa. The researcher is of the opinion that it is important that the intermediary should have a thorough knowledge of the language the child will use when testifying so that he can convey the general purport of the question in a manner the child can understand.

The four subsystems in a language are:

- **Phonology:** Phonology is the speech sounds. This component involves the rules for combining sounds and governing the structure and sequence of speech sound (Genishi, 2004:2; Language development in children, 2004:1; Berk, 2003:354).
- **Semantics:** This component is made up of morphemes, the smallest unit of meaning that is used for word formation that may be combined with each other to make up word, for example, dog + s are the two morphemes that make up dogs. A dictionary contains the semantic component of a language, as well as these words that are important to the speakers of the language (Genishi, 2004, 2; Language development in children, 2004:1). Semantics is the component of language concerned with understanding the meaning of words and word combinations (Berk, 2003:354).
- **Syntacs:** In language, syntax is a traditional term for the study of the rules governing the combination of words and how they are placed together in sequence to form an acceptable sentence or phrase (Bowen, 2004:1; Charlesworth, 2000:344). This component consists of the rules that enable us to combine morphemes and form sentences. As soon as a child uses two morphemes together, as in “more cookies”, the child is using a syntactic rule about how morphemes are combined to convey meaning. Like rules making up the other components, syntactic rules become increasingly complex as the child develops. From combining two morphemes, the child goes on to combine words with suffixes and inflections, for example, -s or -ing, as in houses and sleeping and eventually creates questions, statements, and commands (Genishi, 2004:2; Mussen, Conger, Kagan & Huston, 1990:230-231).
- **Pragmatics:** Pragmatics deals with the rule of appropriate language use. The rules are part of the child’s communicative competence, his ability to speak

appropriately in different situations, for example, in a conversational way at home or in a more formal way at a court case (Genishi, 2004:3; Charlesworth, 2000:345).

The researcher is of the opinion that children may appear to be relatively articulate, but in fact may have poor comprehension of spoken language. Limited listening comprehension may imply that the child cannot understand and make use of information presented to him when being questioned. The intermediary should assess the child's language development so that she will know on what level to communicate with the child. This information can be given to the prosecutor so that he knows how to formulate the questions put to the child.

3.7.2 Language development milestones

The development of oral language is a child's most natural and impressive accomplishment. It must, however, be kept in mind that each child is unique and has an individual rate of development (Genishi, 2004:1).

Almost all children learn the rules of their language at an early age through use and without formal instruction. One component of learning language must therefore be genetic. The environment is, however, also a significant factor. Children do not, however, learn only by imitating those around them. As the child grows older, he moves through linguistic rules. The child eventually learns the conventional forms of language as he becomes aware of the exceptions to the rules of syntax (Genishi, 2004:1).

The child is not only born to speak, but also to interact socially. Even before they use words, he uses cries and gestures to convey meaning and they often understand the meanings that other people convey. Language skills involve speaking, using body language and gestures, communicating, and understanding what others say (Boyse, 2004:1). It can therefore be said that language occurs through an interaction among genes, environment, and the child's own thinking abilities.

Children usually say their first words between 12 and 18 months of age. They begin to use complex sentences by the age of four to four and a half years of age. By five years the child knows most of the fundamentals of his language (Genishi, 2004:2).

The most intensive phase of speech and language development for humans is during the first three years of life, a phase when the brain is developing and maturing. These skills appear to develop best in a world that is rich in sound, sights, and consistent exposure to the speech and language of others (Speech and Language..., 2001:1).

Children of virtually all cultures progress through the phases of language development in the same basic order. Even newborn babies are capable of communicating with their caregivers by means of the first phase of language development, namely crying (Perry & Wrightsman, 1991:124).

Every child develops at a different pace. It is important to remember that while a child may chronologically fit within a certain age category, additional factors like the nature of the abuse, socio-economic status, cultural issues and mental and emotional delays must be kept in mind when assessing the child's language development level. Most children are however capable of uttering simple sentences by the time they are three years old (Perry & Wrightsman, 1991:125; General information..., 2004:1).

There is increasing evidence suggesting that there are "critical phases" of speech and language development in infants and young children. This means that the developing brain is best able to absorb any language during these phases (Berk, 2003:363).

- **Language development: Four to eight years**

By the age of four years the child has a word for almost everything and starts talking about activities at school. People outside the family can now understand him. He uses sentences that have four or more words and usually talks easily without repeating syllables or words. The child makes comments and requests, and tells others what to do. He can talk about things that have happened and can make up stories. The child should have an active vocabulary of 300 or more words. He is still learning to use pronouns like "I", "me", "mine", and "you". These are difficult concepts to grasp

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because they indicate where the child's body, possessions or authority ends and someone else's begins (American Speech-language-hearing association, 2004:2; Newman & Newman, 1997:353; Berk, 2003:391).

The child will be able to pronounce most of the sounds in the English language, with the following exceptions: "f, v, s and z". These will probably remain difficult for him until midway through the age of five, and he may not fully master "sh, l, th and r" until the age of six or later (Communication, 2004:2). By the age of five years he can speak clearly. He uses sentences that give a lot of detail, communicates easily with other children and uses the same grammar as the rest of the family (American Speech-Language-Hearing Association, 2004:1-3; Age 4-5..., 2000:1). The child knows the names and sex of family members and other identifying detail. He will play with words and make up silly words and stories (What many children do, 2004:2; Berndt, 1997:243).

Between the ages of four to six years the child can use adult speech sounds, has mastered the basic grammar, and relates a story (Child Development Institute, 2004:1). The child now adds a variety of complex constructions to his language. Certain forms, like passive voice and subtle pronouns however, continue to be refined into middle childhood (Berk, 2003:391).

According to Powell (1997:3) the child will start to:

- Talk about actions in conversation;
- Enjoy nonsense and rhyming words;
- Use regular past tense and verbs, for example, "pulled, walked";
- Use "a", "an", and "the" when speaking;
- Ask direct questions, for example: "May I?" or "Would you?";
- Want explanations of "why" and "how";
- Relate a simple experience he has recently had;
- Understand "next to"; and
- Know his age and town where he lives.

Most five year olds have a good command of their native language although they still

have difficulty explaining complicated events or ideas and may omit important bits. They misunderstand complicated directions. The child can also say his name, address, age and birthday (Age 4-5: Language... 2000:2).

It is, however, important to remember that the pre-school child's thinking is still pre-operational, whereas his speech will be very adult like. His speech might be quite articulate, but his reasoning will still be pre-operational. Pre-school children take language in its most literal sense and during this phase do not have the more abstract concepts that they will acquire as they approach adulthood, for example, the child will not see living in a flat as the same as living in a house. Children make up their own interpretations (Charlesworth, 2000:351). This literal interpretation by young children must be kept in mind when communicating with them. The adult and the child may be using the same words, but with different meanings. This is especially important to keep in mind when a child is testifying in court.

The vocabulary of a child in the early childhood phase may be lacking behind his ability to understand and his reasoning may be more advanced than his ability to communicate clearly. The younger child is often oblivious to the finer nuances of the language. The child may not comprehend what he has seen, heard, or read and yet be totally unaware of this fact. This implies that adults who work with children must be very careful in providing instructions to them and be tolerant of their lack of recognition of their own lack of understanding (Charlesworth, 2000:352).

As the child progresses in school, both his comprehension and use of language will become more sophisticated. Usually, he will understand more vocabulary and concepts than he can express. Vocabulary growth in middle childhood exceeds that of the preschool years. The child learns figurative meanings of idioms and other literary devices. The school-age child can grasp word meanings from definitions, and comprehension of metaphor and humour expands (Berk, 2003:91). The child can now engage in narrative discussions and share ideas and opinions in clear speech with others (Berndt, 1997:243).

By the age of seven years the child should be speaking fluently and easily in his mother tongue. He will be able to express various ideas and complicated happenings.

The child will also know past, present and future tenses (Health Topics, 2004:2).

At this phase most children are competent witnesses but their developmental limitations must still be taken into account.

Table 3.1 provides an overview of the development of special lexical skills during early to middle childhood.

Table 3.1: Specific Lexical Skills during early to middle childhood

Feature	Age
Adjectives <ul style="list-style-type: none"> • Comparatives (for example, more, bigger, earlier, later, deeper, and wider) • Superlatives (for example, most, biggest) • Ability to make complex comparisons in response to question (for example, “Which tree is taller than it is thick?”) 	4-5 years 3-6 6-8
Articles <ul style="list-style-type: none"> • Full mastery of contrast between “the” and “a” 	About 8
Adverbs <ul style="list-style-type: none"> • Reliable distinction between before/after • Frontward, sideward, backwards 	7+ about 7
Prepositions <ul style="list-style-type: none"> • In, on (first to be acquired) • Off, out (of), away (from) • Toward, up • In front of, next to, around • Beside • Down • Ahead of, behind 	1½ - 2½ 2 to 3 3 - 3½ 3½ - 4 4- 4½ 4 - 4½ 4½ - 5 4½ - 5½
Pronouns <ul style="list-style-type: none"> • Possessive: <ul style="list-style-type: none"> - My, your, mine, his - Their, her(s), his, its, our(s) • Deictic (pointing) pronouns “this” vs. “that” • Reliable matching of a pronoun to a following noun, (for example, he John) • Verb contrasts between come-go; bring-take • Tell-ask 	By age 3½ 3 – 5 7+ About 10 7 - 8+ 7 - 8

	7 - 8
WH questions (What, Where, Why, How, When) <ul style="list-style-type: none"> • Appear in child’s speech • Appropriate grammatical response to “WH” questions • Appropriate cognitive response to “Why”, “How”, “When” 	2½ - 4½ by age 5½ about age 10
Syntactic Skills <ul style="list-style-type: none"> • Passive: with action (for example, Hit, push: “Were you hit?”) • With all verbs, including non-action (for example, “Were you liked by?”) • “Tag” questions (for example, “..., isn’t it?”) • Combined with negatives in the assertion (for example, “That is not what I said”: “is that no so?”; “isn’t that true?”) 	5+ 7 - 13+ 4+ Confusing into adulthood
Conversational Skills <ul style="list-style-type: none"> • Taking turns: first to be mastered • Asking contingent questions (questions that indicate that something just said is not fully understood, such as “What did you say?”) • Ability to report basic elements of typical events (for example, “What happens at church?”) • Ability to describe, relate, and inform in adult satisfactory way 	2 – 6+ 3 3 May still be developing in adolescence

Adapted from Copen (2000:45-46).

3.7.3 Developmental difficulties children experience when testifying in court

Some types of grammatical constructions are not mastered by young children, but are commonly used in the courtroom. It is through the spoken word that children are required to express their memories. Even when a child’s memory is accurate and strong, efforts to elicit reliable reports from the child can be hampered by developmental limitations on communication (Myers, Berliner, Briere, Hendrix, Jenny & Reid., 2003:356).

Developmental limitations can be categorized into the following age groups:

- **The pre-schooler (Three to six years)**

In court the child witness is often asked questions like: “How many times did he abuse you?” or “How long did it take?” It must be remembered that the very young

child (two to four years) has a limited vocabulary of between 300 and 3 000 words. He can form a three to four word sentence. He has no understanding of pronouns (he, she) and only a basic grasp of prepositions (in, on, off, out, away). Most toddlers can count, but they do so from memory and cannot use numbers as estimates of quantities in a rational sense without an understanding of numerical concepts (Bourg, Broderick, Flagor, Kelly, Ervin & Butler, 1999:106; Muller 2002b:92). As a result of the above, the young child who is a victim or witness to an event, may have a clear picture of what occurred, as experienced by him, but may have difficulty expressing thoughts or providing detail, and is unable to draw conclusions or inferences based on what was witnessed. Young children are however able to relate their experiences in detail if they have the vocabulary and are specifically and appropriately questioned (Massengale, 2001a:2; Muller, 2002b:56).

By pre-school age (five years), the child has a vocabulary of 13 000 to 21 000 words. This may appear equivalent to an adult level. It must however be kept in mind that pre-scholars often use words without fully understanding their meaning. It has been found that most abused children showed a good understanding of truth and lies by five years of age, despite serious delays in receptive vocabulary (Lyon and Saywitz, 1999:22; Muller, 2002b:138). Some children had mastered this by the age of three years if the testing was done in a very concrete manner (Muller, 2005). By the age of five the child has also started to learn to use most prepositions (up/down, ahead/behind, next to) and has started to master adjectives (Bourg *et al.*, 1999:106). Perry and Wrightsman (1991:180) caution that many children will use these concepts in sentences before they are capable of responding to questions containing these words.

The child has not yet mastered the use of pronouns, object nouns (this, that, he, she) and locatives (here, there), as these parts of speech require the child to simultaneously process the question and figure out what the pronoun is referring to. Pronouns are words that are used to refer to something or someone without repeating its name. Most often they are used to refer back to something already mentioned (Perry & Wrightsman, 1991:176; Muller, 2002b:92). It is therefore better to repeat names of people, places and objects rather than to use pronouns, for example, “her”, “she”, or “him”, when questioning the child witness (Bourg *et al.*, 1999:110).

Although the pre-schooler may understand both intellectually and linguistically that an adult is bigger than a child, or that a tree is far away from the house, that same child will probably not yet have developed the abstract thinking required to measure and quantify how much bigger or how far away a person or object is or was.

The pre-schooler continues to be egocentric and concrete in his thinking. He can still not see things from somebody else's point of view. He reasons, based on specifics he can visualize and has importance to him as opposed to generalities and abstract concepts, for example, "gun" instead of "weapon". When questioned, pre-schoolers can generally express "who", "what", "where", and sometimes "how", but not "when" or "how many". For example, forensic questions often require witnesses to pinpoint time or location and estimate height or weight by using conventional systems of measurement (minutes, hours, days, centimeters, kilograms). Studies suggest that these skills are learned gradually over the course of middle childhood (Myers *et al.*, 2003:357). The child is also able to provide a fair amount of detail about a situation, though the child in this age range continues to have trouble with temporal order, and may appear inconsistent when relating a story because he rarely follows a beginning-middle-end approach when testifying (Massengale, 2001b:2; Muller, 2002b:86).

▪ **Middle childhood (six to twelve years)**

By the early middle childhood phase, the child starts to think logically. This means that rather than accepting what he sees as true, he begins to apply his personal knowledge and experience to a particular situation to determine whether it makes sense or not. Understanding of temporal concepts also improves and the child starts to understand time and date as a concept as opposed to a number. This is however only fully developed during adolescence. The child will practice using concepts before the usage is fully mastered (Bourg *et al.*, 1999:106).

The child now masters adverbs, for example, "before/after", "frontwards/backwards" during this age. He starts to understand the difference in articles, for example, "the" opposed to "a" and differentiates between contrast verbs, for example, "tell and ask", "bring and take", "come and go".

Most children in the early middle childhood phase (six to eight years) have acquired the basic cognitive and linguistic concepts necessary to sufficiently communicate an abusive event and can imitate adult speech patterns. It is therefore easy to forget that the child in the early middle childhood years is still not fully cognitively, emotionally and linguistically developed (Massengale, 2001a:3; Muller, 2002b:86).

The beginning of abstract thinking takes place when the child is about nine years old. The child now learns to extend his reasoning beyond his personal experience and knowledge and starts to view the world outside of an absolute black/white, right/wrong perspective. Interpretive abilities, as well as cause and effect sequences, develop.

The child in the late middle childhood phase (nine to 12 years) has a full comprehension of pronouns, including the ability to identify a pronoun placed before a noun. He is able to answer “who”, “what”, “where”, and “when” questions, but may still have problems with “why” questions. The child in this age group now has a basic understanding of the purpose and methodology of the legal system.

Even though abstract thinking generally starts between the age of eight and 12 years, the child is still developing this method of reasoning and is still not able to infer a motive or reason hypothetically (Massengale, 2001a:4; Muller, 2002b:48).

▪ **Adolescents (13 – 17 years)**

By the time the child reaches his teens, his cognitive developmental level is fairly close to that of an adult, though the ability to describe, relate, and inform about a past event in an adult-satisfactory way is still developing through the late teens. Most adolescents are able to reason hypothetically and can make inferences based on behavior and situations. They can also answer “why” questions (Muller, 2002b:44).

The adolescent has a full comprehension of passive voice, and starts to use tag questions, but can still have problems with negatives or long, complex questions (Muller, 2002b:44).

Table 3.2 provides an overview of the language acquisition for the age groupings pre-school, early primary, late primary, and early adolescence.

Table 3.2: Guidelines on language acquisition for the four age groupings: pre-school, early primary, late primary and early adolescence.

Receptive and Expressive Language Acquisition in Children of Different Ages				
Language skill	Preschool (3-5)	Early Primary (6-9)	Late Primary (10-12)	Early Adolescence (13-14)
Conversational skills	Minimal	Yes	Yes	Yes
Understanding of grammatical rules of language	No	Unsophisticated	Yes	Yes
Total lexicon of words	Limited	Adequate	Yes	Yes
Understanding of higher order referents	Minimal	Developing	Yes	Yes
Understanding of complex sentences	No	With difficulty	Yes	Yes
Proper use of prepositions	Minimal	Developing	Yes	Yes
Availability of adjectives and adverbs	Limited	Developing	Yes	Yes
Familiarity with different tenses	Limited	Yes	Yes	Yes
Fluidity of speech, proper pronunciation	Varies greatly	Yes	Yes	Yes

Adapted from Dezwirek-Sas (2004:2)

3.8 MORAL DEVELOPMENT

3.8.1 Moral development in the child

Moral development entails a person's conduct and attitude towards other people in society. It is the following of societal norms, rules and laws. In terms of children, it describes the child's ability to distinguish between what they perceive as what is right and what is wrong, good or bad, as well as changes in the way he makes moral judgements. The child learns the principles whereby he judges the society's behaviour

(Huxely, 2004:1; Louw, 2004:12). The qualitative changes that take place in moral development are almost parallel to the changes in cognitive development (Myers & Perry, 1987:483).

In contrast, DeBord (1996:3) postulates that moral development is more difficult to discuss in terms of development milestones as it occurs through experience, over time. Due to the rapid mental growth of the child, many positive as well as negative interactions take place between adults and children during middle childhood influencing the child's moral development (DeBord, 1996:4). Even as adults, there are often grey areas when it comes to making decisions about right and wrong.

The older child's moral development coincides with the beginning of formal operations that can continue to develop up to the age of 16 years of age (see 3.4). The older child's view is more relativistic. He understands that it is permissible to change rules if everyone agrees and that rules are not sacred and absolute, but are devices that humans use to *get along* together with each other. Older children also base their moral judgement on intentions. The child will judge wrongness in terms of the motives underlying the act (Crain, 1985:119).

Piaget and Kohlberg, the two most prominent pioneers in the field of moral development, suggest that individual's progress through several phases of moral development, with each successive phase establishing a more complex and balanced approach to the moral-social world. They postulated that the child's reasoning about moral issues depends on his level of development. During moral development the child passes through the developmental phases in a sequence. Children of different cultures show similarities as they pass through these phases (Myers & Perry, 1987:483; Muller & Hollely, 2000:181; Bukatko & Daehler, 1992:540).

The first signs of moral development in early childhood are prosocial behaviours such as empathy, altruism, caring, helping, comforting, and sympathising (Louw *et al.*, 2004:372).

3.8.2 Moral development during early and middle childhood

According to Myers and Perry (1987:485) the child in the early childhood phase uses

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egocentric judgement where he judges good or bad on the basis of what he likes, wants or what helps him. He decides to do what is right according to what he wants to do or can do without getting into trouble. The child's concept of good and bad is not yet well defined and he may be persuaded to stray from the truth. Bad is therefore judged on the basis of what he does not like or what hurts him. He has no concept of rules or of obligations to obey or conform independent of his wish (Kenyon, 2004:3).

By the age of five years the child becomes more interested in other children and is more aware of himself as an individual. He shows some understanding of moral reasoning (see 3.6) and starts to compare himself with others. He now experiences the feelings of responsibility and guilt (Age 4-5: Social... , 2000:1).

The child further develops a feeling of pride. He models morally relevant behaviours and will show empathy-based guilt reactions to breaking of rules. The child will show sensitivity to the intentions of the other person when making moral judgements. The child can now also distinguish between different moral rules and what is expected socially.

At the end of the early childhood phase (\pm 8 years), the child shows differentiated understanding of the authority figure's legitimacy and bases distributive justice on equality (Berk, 2003:503).

By middle childhood the child will start exploring ideas about fairness and good or bad behaviour, but it must still be borne in mind that the child has a simplified sense of morality. When obeying rules it is not necessarily because he understands and agrees, but because he wants to avoid punishment (Social skills milestones, 2004:2).

The child will start choosing his own friends, start playing simple table games, for example, snakes and ladder, start playing competitive games and engage in cooperative games, role assignments and fair play (Social skills milestones, 2004:2).

Norms of good behaviour, including prosocial standards are internalised by the child. He now takes more variables into account when distinguishing between moral rules, social conventions and matters of personal choice. The child also includes merit and

eventually kindness in distributive justice reasoning. He adapts the concept of fairness to each situation and has understanding of moral reasoning and explores ideas about fairness and good or bad behaviour. They also start comparing themselves to others (The Whole Child, 2004:3; Berk, 2003:486).

3.8.3 Moral reasoning versus moral action

According to Myers & Perry (1987:482) moral reasoning is concerned with what a person thinks about a situation in which some wrongdoing has occurred. The problem however is that the child often says the right thing when tested, but acts wrongly in practice. Another problem is that a child will display immoral behaviour in some circumstances and not in another. Over time children learn to be either consistent or inconsistent in their honesty. This means that the child witness may not always act in an ethical way and his morality depends on the expectations placed on him, his history of honesty and level of moral development.

3.8.4 Piaget's view on moral reasoning of the child

In Piaget's studies and writings on morality (Murray, [sa]:1), he focused and applied rules on the moral lives of children, studying the way children play games in order to learn more about the child's beliefs about right and wrong. He considered morality as a developmental process.

Piaget studied aspects of moral judgement, but most of his findings fit into a two-phase theory. He firstly regarded the child less than five years of age as premoral, meaning that the child does not yet understand the rules, for example, of a game. The child engages in games, either for the pleasure of performing them or out of habit (Muller, 2002b:49). This explains why young children are more concerned about the outcomes of actions rather than about the intentions of the person doing the acts (Murray, [sa]:2).

Between the ages of five and ten years, the child begins to understand the rules of games, and therefore moves into the phase that Piaget called the heteronomous morality phase or moral realism. Rules are now seen as "sacred" and "inviolable"

(Muller, 2002b:49). The child begins to take notice of the wrongdoer's intentions and motives (Muller & Hollely, 2000:182). He is less egocentric and is morally more flexible. He no longer believes in imminent justice, because he has learnt through experience that the infringement of social rules often pass unpunished or unseen (Louw *et al.*, 2004:375). The implications of this for the child witness is that he may be tempted to lie about a situation, hoping that it will not be detected.

By about ten years of age the child reaches the next phase of moral development, namely the autonomous morality phase or the phase of moral relativism. The movement from the heteronomous phase to the autonomous phase is related to the child's cognitive ability and social experience. There is also a reduction in egocentrism and improvement in the ability to understand other people's views. This enables him to understand another person's intentions and distinguish between right and wrong (Louw *et al.*, 2004:375; Muller & Hollely, 2000:182).

The researcher is of the opinion that the intermediary must remember that child sexual abuse is a potent source of damage to moral development. The perpetrator may convince the child that there is nothing wrong with such abuse (O'Hagan, 1993:33).

3.8.5 Kohlberg's three level moral development

Kohlberg modified and elaborated on Piaget's work. Consistent with Piaget, Kohlberg proposed that children develop ways of thinking through their experiences that include moral concepts such as justice, rights, equality and human welfare (Murray, [sa]:3). Kohlberg followed the development of moral judgement beyond Piaget's two phases and determined that moral maturity took longer than Piaget proposed (Murray, [sa]:3; Muller & Hollely, 2000:182). As the age limit of a child to test with the assistance of an intermediary is 18 years, Kohlberg's three levels and five phases will be discussed for the purpose of this chapter. Level three reasoning is usually observed during adolescence (Louw *et al.*, 2004:379).

Huxley (2004:2) states that character and moral development is based on an interaction between nature and nurture. It develops as a result of parental interaction, balanced disciplinary styles, and a child's own choices. Children learn about right

and wrong from their earliest experiences if their parents nurture them without excessive indulgence. The child develops a character that allows him to accept rules and tolerate frustrations later in life. Murray ([Sa]:2) further explains the two sides of discipline and the need for balance between them: On the one hand too much love leads to the child becoming spoilt. This also causes children to get stuck in those early phases of moral development based on selfish individualism. On the other hand, too many limits can lead to a low sense of worth and lack of self-control in the child. This usually results in an overly rebellious child or an unhealthily submissive one.

- **Level One: Pre-conventional morality**

This first level of moral thinking is generally found at elementary school level (Barger, 2000:1). At this level, the child is responsive to cultural rules and labels of good and bad, right or wrong, but interprets the labels in terms of physical or hedonistic consequences of action (punishment, reward, exchange or favours). The child assumes that powerful authorities hand down a fixed set of rules, which he must obey. He must also obey the physical power of those who make the rules and labels and must therefore behave according to socially acceptable norms because he is told to do so by some authority figure. He therefore sees morality as something external to himself (Crain, 1986:120; Murray, [sa]:2; Muller, 2002b:51).

- **Stage 0: Egocentric judgement**

The child makes judgements of what is good on the basis of what he likes and wants or what helps him, and bad on the basis of what he does not like or what hurts him. He has no concept of rules or of obligations to obey or conform independent of his wish (Crain, 1985:120; Murray, [sa]:2).

- **Stage one: Punishment-obedience orientation**

During this level the child is concerned with avoiding punishment. Five-year-olds are beginning to get enough of a sufficient view of the world to be able to understand that differences can exist side by side. They begin to understand values and they can understand that different families value different things (Crain, 1985:120).

Phase one in Kohlberg's theory is similar to Piaget's first phase of moral thought. The child assumes that powerful authorities hand down a fixed set of rules, which he must unquestioningly obey. When the child is then asked to elaborate on his answer, he will respond in terms of the consequences, for example, stealing is bad because one will be punished. The child is concerned with what authorities permit and punish (Muller, 2000:184).

Kohlberg refers to phase one as the pre-conventional phase because children do not yet speak as members of society, but see morality as something external to themselves and what adults tell them to do (Crain, 1985:120). They think what the authority says is right. Doing the right thing equals obeying authority and so doing avoids being punishment (Crain, 1985:124; Kenyon 2004:1-2). When the child testifies it is important that he is encouraged to tell about the events as they really happened. Questions should seek answers that contain simple descriptions or describe specific actions, not conclusions or inferences (Myers & Perry, 1987:485; Muller & Hollely, 2000:184).

- **Stage two: Individualism and exchange**

During this level the child concentrates on getting his own needs met. He tends to be self-serving. He lacks respect for the rights of others. The child may give to others with the assumption that they will get as much or more in return (Louw *et al.*, 2004:379; Muller, 2002b:51).

Five-year-olds will often ask permission before they do something as they are starting to learn about rules and what is right and what is wrong. "Am I allowed" can often be heard in their conversation (Age 4-5 years; Social..., 2000:2). They are keen to fit in and learn the rules.

Although children in phases one and two talk about punishment, they perceive this punish differently. In phase one the child sees punishment as a proof of having done something wrong, whilst in phase two, punishments is simply a risk that one naturally wants to avoid (Crain, 1985:121). Phase two might sometimes seem amoral; children do have some sense of right action. Their philosophy is one of returning a favour.

Children in phase two still reason at the pre-conventional level because they speak for themselves and not for society. They still do not identify with the values of the family or community (Crain, 1985:121). When a child in this phase testifies, he should be encouraged to simply report his observations rather than to evaluate them in moralistic terms (Myers & Perry, 1987:484).

▪ **Level two: Conventional morality**

At this level the child has a basic understanding of conventional morality and reason with an understanding that norms and conventions are necessary to uphold society (Murray, [sa]:3). In this phase the child's attitude is not one of conforming to his own expectations and social order, but rather of loyalty to it, of actively maintaining, supporting and justifying the order and identifying with the people involved in this social order (Kenyon, 2004:1; Muller, 2002b:51; Louw *et al.*, 2004:460).

- **Stage 3: Good interpersonal relationship**

This phase usually takes place between the ages of eight and 16. The child has now shifted from pleasing themselves to pleasing significant others, for example, parents, teachers or friends. Good behaviour is regarded as what pleases or helps others and is approved by them. The child tends to identify with these rules and upholds them consistently and acts according to what society deems to be right. The child seeks approval and conforms to someone else's expectations. Should the child be accused of doing something wrong, he will most likely justify his behaviour by saying that everybody else is also doing it (Murray, [sa]:3; Louw *et al.*, 2004:461).

In this phase children recognize that there is not just one right view that is handed down by authority. Different people can have different views (Crain, 1985:212). Any single authority no longer impresses children; they see that there are different sides to an issue and that people have different interests and viewpoints (Crain, 1985:124). They are aware that they share feelings, agreements and expectations with others (Murray, [sa]:3).

The child sees morality as being more than simple deals. They believe that people

live up to the expectations of the family and community and behave in an acceptable way. Good behaviour means having good motives and interpersonal feelings such as love, empathy, trust, and concern for others. This level is further characterized by an attitude that seeks to do what will gain the approval of others (Barger, 2000:1).

There are similarities between Kohlberg's first three phases and Piaget's two phases. In both there is a shift from unquestioning obedience to a relativistic outlook and to a concern for good motives (Crain, 1986:5). When children testify at this level, they might be quite willing to help the court if they see that something can be gained by doing so. The advantage of telling the truth should be explained to the child according to his developmental stage (Myers & Perry, 1987:484).

- **Stage four: Maintaining the social order**

This phase marks the shift from defining what is right in terms of local norms and role and role expectations to defining right in terms of the laws and norms established by the larger social system. This is the "member of society" perspective where one must obey the law and respond to duty, except in extreme cases in which the law comes into conflict with other prescribed social duties (Murray, [sa]:3; Barger, 2000:1).

In this phase the child becomes more broadly concerned with society as a whole and has learned to conform, not only to family rules, but also to society's law and customs. The child becomes more orientated toward authority, fixed rules, and the maintenance of the social order. Correct behaviour consists of doing one's duty, showing respect for authority, and maintaining the given social order for its own sake. The emphasis is now on obeying the law, respecting authority, and performing one's duties so that the social order is maintained (Kenyon, 2004:1). Morality is now synonymous with niceness and living up to the expectations of significant adults. The child wants to be seen as nice and worthy of approval. The court can appeal to the child's need for approval and so doing gaining the cooperation of the child (Myers, 1987:484).

▪ **Level three: Post-conventional morality**

At this level the individual makes a clear effort to define moral values and principles that have validity and application for himself, apart from authority of the groups of persons holding them and apart from the individual's own identification with the group (Kenyon, 2004:2).

- **Stage five: Social contract and individual rights**

During stage five the child begins to ask: "What makes a good society?" The child begins to think about society in a theoretical way, stepping back from his own society and considering the rights and values that a society ought to uphold. The existing society is evaluated in terms of these considerations (Crain, 1985:122-123).

The right action tends to be defined in terms of general individual rights and standards that have been agreed upon by the whole society. The individual defines and internalises moral values and principles independent from the groups of people who uphold these principles (Louw *et al.*, 2004:461). According to Louw *et al.* (2004:460) few children and adults reach this level of morality.

During stage one children regard correct behaviour as that which authority says is correct. The correct behaviour is to obey authority and avoid punishment. Behaviour is only wrong if the child is caught doing wrong. At stage two any single authority no longer impresses the child. They see that there are different sides to an issue. Since everything is relative, one is free to pursue one's own interests, although it is often useful to make deals and exchange favours with others. During stage three and four, young people think as members of conventional society with its values, norms, and expectation. During stage three they emphasise being a good person, which basically means having helpful motives toward people close to one. During stage four the concerns shift towards obeying laws to maintain society as a whole.

Stages five and six are less concerned with maintaining society for its own sake, and more concerned with the principles and values that make for a good society. During

stage five basic rights and the democratic processes that give everyone a say, are emphasised (Crain, 1985:118).

3.9 SOCIAL-EMOTIONAL DEVELOPMENT

Emotional development is closely related to social development and refers to the young child's feelings about himself and others and the environment in which he plays and lives. Emotions colour the experience of the young child, whether the emotions consist of delight, fury, or distress. Emotions offer a window into the social and emotional development of the young child (Social-emotional..., 2003: 12).

The infant's emotions are evoked by physical conditions like hunger, discomfort, temperature or fatigue. An infant's emotional repertoire is basic; emotional expressions ranges from cooing to crying, and is shaped by temperament (Social-emotional ..., 2003:12).

The pre-schoolers' emotions are linked to their psychological condition. The latter entails how they interpret their experiences, what they think others are doing or thinking, and their expectations about future events. The child in the early childhood phase is capable of anticipating and talking about his emotions and those of others. He can be given strategies to manage his feelings (Social-emotional..., 2003:12).

3.9.1 Early childhood

Early childhood is a crucial phase in emotional development. Young children learn to feel for themselves and recognize in others emotions such as fear, anxiety, sadness, anger, happiness and love. The attachments he makes with others serves as a foundation for taking initiative and moving towards independence. The child experiences many emotions, one of which is fear. Coping with imaginary fears helps him to gain skills needed to cope with fears that are based in reality. The young child has to learn how to handle his emotions in socially acceptable ways. During early childhood, the child gradually learns how to label, define and understand his own and other peoples emotional behaviour (Charlesworth, 2000:449).

The young child's emotions are tied to his psychological condition, how he interprets his experiences, what he thinks others are doing or thinking, and expectations about his future. The young child is capable of talking about his emotions and those of other people, and begins to use strategies to manage his feelings. At the age of four to five years, the child has become capable of experiencing emotions like pride, shame, guilt and embarrassment. He also feels empathy for other people. At this age the child is emotionally more mature than during infancy (Social-emotional..., 2003:9).

At the age of four the child will develop imaginary fears of the dark and injury (Child Development Institute, 2004:3). Working through these fears enables the child to strengthen his feelings of power in relation to the world. His vivid fantasy life will help him explore and come to terms with a wide range of emotions, from love and dependency to anger, protest and fear. The child will move back and forth between fantasy and reality and will sometimes become so involved in the make believe situation, that he will not be able to tell where fantasy ends and reality starts (4-5 years: Emotional..., 2000:1). The child becomes more aware of himself and his ability to make things happen. The child will now express a wider range of emotions and is more likely to interact with other people (Social and..., 2004:1).

Between the ages of three to five years, the child becomes interested in fantasy play and imaginary friends (see point 5). Fantasy play allows children to safely act out different roles and strong feelings in acceptable ways. Fantasy play also helps the child grow socially. He learns to resolve conflict with parents or other children in ways that will help him vent frustration and maintain self-esteem. At this time fears of unknown monsters and beasts starts to emerge.

3.9.2 Middle childhood

Children entering school with well-developed social or cognitive skills are most likely to succeed and least likely to need intervention services in later life. Children are more likely to succeed in the transition to school if they can accurately identify emotions in themselves and others, relate to teachers and peers in positive ways, and

manage feelings of anger, frustration and distress (Social-emotional..., 2003:12; Stages of social –emotional....., 2004:2).

Between seven to 12 years of age the child works through numerous issues, for example, self-concept, the foundation for which is laid by competency in the classroom, and relationships with peers, which are determined by the ability to socialize. The peer group becomes very important to the child (Schoeman, 2000:30; Louw *et al.*, 2004:345).

3.9.3 Development of basic emotions

▪ Development of love

Love is an abstract concept and children find it difficult to understand it fully. However, as the child matures cognitively, his understanding of love also increases.

The child learns about love from birth and this is shown by his attachment to his caregiver. In early childhood the child will usually show his love physically, for example, through hugs and kisses. This continues when he moves to the middle childhood phase. He then learns that there are other ways of showing his love, for example, by communication (Louw *et al.*, 2004:348).

▪ Fear and anxiety

Fear develops through a combination of genetic and learned factors. Fears have been shown to be acquired through conditioning and observational learning. Other factors to be considered are culture, experience and environment (Charlesworth, 2000:444). All children develop fears and anxieties as they proceed through the early childhood phase. The young child will, for example, be concerned about monsters and dragons under their bed. Anxiety in children is expected and normal at specific times in development. From approximately age eight months through to early childhood, it is normal for healthy children to show intense anxiety at times of separation from their parents or other significant persons (American Academy of Child and Adolescent Psychiatry, No. 47, 2000:1; Charlesworth, 2000:443). It must be kept in mind that

some children are more fearful than others. This may be due to genetic disposition, parents who are anxious, overprotective parents or a stressful event, like testifying in a court in front of strangers (Better Health, 2001:2).

▪ **Anger and sadness**

Hostility and anger are the emotions that underlie aggressive behaviour. Feelings like these seem to appear shortly after birth (Charlesworth, 2000:447).

As the child grows older and his cognitive and motor skills develop, he acquires the capacity for intentional behaviour. The older child can also better identify the cause of a painful stimulus or blocked goal. His anger then is particularly intense when a caregiver, whom he associates with warmth and love, suddenly causes him discomfort (Berk, 2003:399).

Expression of sadness also occurs in response to pain, removing an object and short separations. The emotion of sadness is less frequent than anger. The child learns through socialization that angry behaviour is unacceptable, especially in public. From the age of four this type of behaviour starts to diminish because the child has better control over his emotions. It is of utmost importance for the child to acquire emotional control (Berndt, 1997:348).

3.9.4 Development of self-conscious emotions and emotional self-regulation

At the end of the child's second year, self-awareness and the instructions of the child's caregiver or other significant adult will provide a foundation of self-conscious emotions like shame, embarrassment, guilt, envy, and pride. By the age of two, the child frequently talks about his feelings and actively tries to control them and by three to four years of age he will talk about self-regulatory strategies (Berk, 2003:401; Louw *et al.*, 2004:212).

As the child grows older, self-conscious emotions increasingly become internally governed. Rapid development in emotional self-regulation takes place during middle childhood. By the age of ten, the child will have a set of adaptive techniques for

managing emotions (Fabes, Eisenberg, Nyman, Michealieu, 1991:865; Berk, 2003:402).

The child will now make use of internal strategies to manage his emotions. This is due to the ability to reflect on his thoughts and feelings. Where guilt is often related to good, adjustment and intense shame is associated with feelings of personal inadequacy (Berk, 2003:401- 403).

The child learns to recognise his own emotions before he learns to recognise other's emotions. The child also recognise positive emotions before negative emotions. Emotional self-regulation emerges as caregivers assist the child in adjusting his emotional reactions. As motor, cognitive, and language development proceeds, children gradually acquire better self-regulation strategies. Emotional self-regulation is challenged by adult modelling and conversations with the child. The child, who feels intense negative emotions, will find it hard to inhibit his own feelings (Berk, 2003:404).

Once self-regulation is well established, the child will experience a sense of emotional self-efficacy.

3.9.5 Understanding emotions of others

As the infant develops the capacity to interpret emotional expression, he actively seeks emotional information from trusted caregivers. He will now learn that a certain emotional expression not only has meaning but invites a meaningful reaction as well. Social referencing (relying on somebody else's reactions to appraise an uncertain situation) appears at the end of the first year. Parents scan the use of social referencing to teach their child how to react to events that take place (Berk, 2003: 404-405). By the middle of the second year, the child begins to appreciate that the other person's emotional reactions may differ from his own.

In early childhood the child can understand the causes, consequences and behavioural signals of emotions. The ability to take into consideration the conflicting cues when

explaining others' feelings develops during the ages of seven to 12 years (Berk, 2003:404).

Both cognitive development and social experience will contribute to the child's understanding of emotions. A warm, relaxed parent-child relationship, conversations with family members and friends, and make-believe play are excellent contexts for learning about emotions (Berk, 2003:406). By the age of eight however, the child starts to understand that a person can experience two emotions at once.

3.9.6 Recognising emotions

Cognitive development helps the child to understand emotions. Social experiences also contribute to this. The more the mother labels emotions, for example, the more the child will use words that reflect emotion. The child in early childhood who's family talk a lot about emotions, will also be better at judging other people's emotions.

Emotional knowledge helps the child *get along* better with others. The child who has a good knowledge is inclined to be friendlier, show considerate behaviour, is willing to make amends after harming others, and is more readily accepted by his peer group (Berk, 2003:406).

3.9.7 Rules when displaying emotions

In early childhood the child has an impressive understanding of the causes, consequences and behavioural signs of displaying emotions. By the age of four to five years, the child will be able to correctly judge the causes of many basic emotional reactions. The child will deny that two emotions can exist at the same time. This is typical of Piaget's finding that the child at this age has not yet developed the concept of conservation and cannot integrate two variables. Older children recognize that people can experience more than one emotion at a time (Berk, 2003:403).

3.9.8 Temperament

Temperament refers to a relatively consistent, basic, disposition inherent in the person that underlies and modulates the expression of activity, reactivity, emotionality, and sociability (Berndt, 1997:211).

Emotions and behaviour are based on the child's developmental phase and on his temperament. Every child has an individual temperament, or mood. Some children may be cheerful and adaptable and easily develop a regular routine of sleeping, eating, and other daily activities. The child tends to respond positively to new situations. Other children are not so adaptable (Louw *et al.*, 2004:211).

3.9.9 Attachment

Attachment is a term used to describe the strong emotional relationship that develops between an infant and his primary caregiver, during the infant's first year of life. It is a relationship that develops over time and is the result of many interactions and care giving experiences; particularly those in response to the infant's needs and bids for attention, comfort and protection (Social-emotional... , 2003:6).

In early infancy, a set of built-in behaviour patterns encourages the parent to remain close to the baby. Around six to eight months, separation anxiety starts to manifest itself. Use of the parent as the safe base indicates that a true attachment has formed. As language develops, the child can better understand the parent's intentions and separation anxiety declines (Berk, 2003:433).

Virtually all young children develop deep emotional attachments to those who care for them. Secure attachment arises from the warmth and sensitivity of an adult's care. It is within the security of this relationship that a child feels safe and confident. An insecure relationship places the child at risk of social, emotional or cognitive delays (Berk, 2003:433).

When testifying in the intermediary room alone with the intermediary, the child can find it difficult to separate from his parents/caregivers to be alone with the

intermediary. It is therefore important for the intermediary to have knowledge of separation anxiety and be able to build a rapport with the child so that the child will feel comfortable with him. It is important for the child to know where his parents/caregivers are and that they will be waiting for him.

3.9.10 Self concept

Although the young child can recognise himself in a mirror and tell his name, age and sex, he does not know much about himself. He has little knowledge about his physical skills, mental abilities or personality traits and other characteristics. By five years of age the child's self esteem is typically high and consists of several separate self-evaluations. Achievement related attributions appear, but are undifferentiated, for example, "If I try hard I am smart and will succeed". By the age of six to seven years, the child has formed at least four self-esteems, namely academic, social, physical/athletic competence and physical appearance. These self-esteems become more refined as the child grows older (Berk, 2003:448; Louw *et al.*, 2004:286).

By ten years of age the child's self-esteem becomes hierarchically organised, and separate self-evaluations are integrated into one, overall self-image. The child's self-concept changes from a focus on characteristics and emotions that can be perceived to an emphasis on personality traits as well as positive and negative characteristics and social comparisons (Berk, 2003:472). The child's self-esteem will rise and fall as he makes social comparisons. By the age of 12 the child's self-esteem will continue to rise or fall and achievement related attributions reflect the differentiation of ability and effort (Berk, 2003:455). The child's self-concept, that is his ideas about himself, continues to develop and becomes more complex (Berndt, 1997:525).

According to Charlesworth (2000:459) early childhood is a critical phase for the development of the self-concept. The young child is still openly shows his feelings. As the child gets older, he starts masking his feelings. The way the child handles development in the emotional and personality areas, will determine how he add bits and pieces to his concept of himself. Charlesworth (2000:533) divides the self-concept into several dimensions:

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- Body image: How the child evaluates himself, his looks and how his body reacts.
- Social self: Racial, ethnic and religious self.
- Cognitive Self: Child's self in mental development and aptitudes.
- Self-esteem: How the child evaluates his self-concept and how much respect he has for himself. Self-esteem can be divided into 4 components, namely competence, power, acceptance and virtuousness.

The child is seen as actively involved in constructing his sense of self. The child's view of himself causes him to behave in a certain way. This behaviour then evokes a response from the environment, which the child interprets and incorporates into his self-concept. The child in the early childhood phase has incorporated a sense of self during infancy and toddlerhood. He is in a period where he is testing and evaluating his self as he strives for acceptance, power and control, moral worth, and competence (Charlesworth, 2000:469).

During the middle childhood phase, the child enters the concrete-operational phase of cognitive development. He ventures out into a new social world that contributes to his identity and feeling of competence. The child starts comparing himself to others and feelings of inferiority can develop.

3.9.11 Erikson's first five phases of social and emotional development

According to Erikson (Louw *et al.*, 2004:49-50), a psychologist in the 20th century, each individual passes through eight social developmental phases. These eight phases were formulated through wide ranging experiences in psychotherapy, including extensive experiences with children and adolescents from lower-, as well as upper-, and middle-social classes. Each phase is characterized by a different psychological "crisis" which arise and must be resolved by the individual before the individual can move on to the next phase. Satisfactory learning and resolution of each crisis is necessary if the child is to manage the next and subsequent ones satisfactorily (Child Development Institute, 2004:1-3).

Erikson further maintained that children develop according to the epigenetic principle meaning development takes place in a predetermined order. He focused on how the child socializes and how this affects the child's sense of self (Erikson's Eight Stages..., 2004:1; Erikson's stages..., 2003:1). If the person fails to successfully complete a phase it can result in a reduced ability to complete further phases and result in a more unhealthy personality and sense of self. These stages can however be successfully be resolved at a later stage. To Erikson, the sequence of the stages is set in nature (Erikson's Eight Stages..., 2004:1; Newman & Newman, 1997:61-63; Erikson's stages..., 2003:1). For the purpose of this study only the first five stages will be discussed as these stages have reference to the childhood years. The other stages are found during adulthood.

- **Phase One:**

INFANCY – AGE 0 - 1 year

Crisis: Basic Trust versus Basic Mistrust

Develop: HOPE

Description: In the first year of life, the infant depends on others for food, warmth, and affection, and therefore must be able to blindly trust the parent or caregiver to provide those.

Positive outcome: If the infant's needs are met consistently and responsively by the parents, the infant will not only develop a secure attachment with parents, but will learn to trust his environment in general as well.

Negative outcome: If the needs are not met, the infant will develop mistrust towards people and things in his environment, even towards himself (Erikson's stages..., 2003:1; Child Development Institute, 2004:1; Erikson's Eight Stages..., 2004:).

From the above it can be seen that the infant, when well handled, nurtured, and loved, develops trust and security and a basic optimism. He feels secure to bond with other important people and trust them. When badly handled, he becomes insecure and mistrustful.

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When a child is abused, this trust is broken and the child will find it difficult to trust anybody. The intermediary must be aware of this fact and not tell or expect the child to trust her (Muller, 2005).

- **Phase 2:**

TODDLER – AGE 1 – 2 years

Crisis: Autonomy versus Shame

Develop: WILL

Description: From age one to two the toddler learns to walk, talk, master bowel and urinary control, and do things for himself. His self-control and self-confidence begins to develop at this phase.

Positive outcome: If parents encourage the child's use of initiative and reassure him when he makes mistakes, the child will develop the confidence needed to cope with future situations that require choice, control, and independence.

Negative outcome: If parents are overprotective, or disapproving of the child's acts of independence, he may begin to feel ashamed of his behaviour, or have doubt of his abilities (Erikson's stages..., 2003:1; Child Development Institute, 2004:1; Erikson's Eight Stages..., 2004:1).

The "well-parented" child emerges from this phase sure of himself, elated with his newfound control, and proud rather than ashamed. Autonomy is not, however, entirely synonymous with assured self-possession, initiative, and independence but can also include a stormy self-will, tantrums, stubbornness, and negativism.

- **Phase 3**

EARLY CHILDHOOD – AGE 2 – 6 years

Crisis: Initiative versus Guilt

Develop: PURPOSE

Description: The child has newfound power during this phase as he has developed more refined motor skills and becomes increasingly engaged in social interaction with people around him. He now has to learn to achieve a balance

between eagerness for more adventure and more responsibility, and learning to control impulses and childish fantasies.

Positive outcome: If parents are encouraging, but consistent in discipline, the child will learn to accept without guilt that certain things are not allowed, but at the same time will not feel ashamed when using the imagination and engaging in make-believe role plays.

Negative outcome: If the parents are not encouraging, the child may develop a sense of guilt and may come to believe that it is wrong to be independent (Child Development Institute, 2004:1; Erikson's Eight Stages..., 2004:1).

This psychosocial crisis occurs during what Erikson calls the “play age” or late preschool years (3½ to 6 years). During this phase the child learns:

- To imagine, to broaden his skills through active play of all sorts, including fantasy;
- To cooperate with others; and
- To lead as well as to follow.

Immobilized by guilt, he:

- Is fearful;
- Hangs on the fringes of groups;
- Continues to depend unduly on adults; and
- Is restricted both in the development of play skills and in imagination (Child Development Institute, 2004:3).

If the child is sexually abused during this phase, a feeling of guilt and believing that it is his fault can originate and cause negative results (Muller, 2005).

▪ Phase 4

MIDDLE CHILDHOOD – AGE 6 – 12 years

Crisis: Industry versus Inferiority

Develop: COMPETENCE

Description: School is the important event at this phase. The child learns to make things, use tools, and acquire the skills to be a worker and a potential

provider. He does all this while making a transition from the world of home into the world of peers.

Positive outcome: If the child can discover pleasure in intellectual stimulation, being productive, and seeking success, he will develop a sense of competence.

Negative outcome: If the child does not discover pleasure in intellectual stimulation, he will develop a sense of inferiority (Child Development Institute, 2004:1; Erikson's Eight Stages..., 2004:1; Erikson's stages..., 2003:2).

Erikson believes that the fourth psychosocial crisis is handled, during what he calls the "school age", up to about and including 12 years of age. Here the child learns to master the more formal skills of life, for example:

- Relating with peers according to rules.
- Progressing from free play to play that may be elaborately structured by rules and may demand formal teamwork, such as rugby.
- Mastering social studies, reading, writing, and mathematics.
- Regarding homework as a necessity, and an increased need for self-discipline with each passing year.

The child who, because of his successive and successful solving of earlier psychosocial crisis, is trusting, autonomous, and full of initiative will learn readily to be industrious. However, the mistrusting child will doubt the future. The shame- and guilt-filled child will doubt the future and will experience feelings of defeat and inferiority.

▪ **Phase 5**

ADOLESCENCE – AGE 12 – 18 years

Crisis: Identity versus Role Confusion

Develop: FIDELITY

Description: This is the time when the child asks, "Who am I?" Erikson feels that to truthfully answer this question the adolescent must integrate the healthy resolution of all earlier conflicts. Has the adolescent developed the basic sense of trust? Has he got a strong sense of independence, competence, and does he feel in

control of his life? Adolescents who have successfully dealt with earlier conflicts are ready for the “identity crisis”, which is considered to be the single most significant conflict a person may face.

Positive outcome: If the adolescent solves this conflict successfully, he will emerge from this stage with a strong identity, and ready to plan for the future.

Negative outcome: If the adolescent does not solve this conflict, he will sink into confusion, unable to make decisions and choices, especially about vocation, sexual orientation, and his role in life in general.

During the fifth psychosocial crisis the child, now an adolescent learns how to answer the question of “Who am I?” successfully. This is a time for testing limits, for breaking dependency ties, and for establishing a new identity. Major conflicts centre on clarification of self-identity life goals, and life’s meaning (Gattis, 1995:2).

In late adolescence, clear sexual identity is established. He seeks leadership and gradually develops a set of ideals.

3.10 SUMMARY

In chapter three the developmental aspects of the child were explored. The events that bring the child into contact with the legal system are very stressful and traumatic, which require emotional maturity and advanced coping strategies. Without an understanding of the developmental underpinnings of the child’s testimony, even a simple question can create confusion and misunderstanding by all concerned.

Child development is explained in relation to the different developmental phases children go through. As the child develops, skills in the complex development of cognition, attention, communication, language, morality, memory of the child witness, increase.

The development of the brain plays a role in the development of the child. One of the core functions of the brain is to store information. In the brain stem, the arousal state

caused by a traumatic event can be stored. This is of vital importance, as the child needs to recall above events when testifying in court.

The development of perceptual skills involves the five senses. These are necessary to perceive the events taking place around the child. These perceptual skills enable the child to give accurate testimony about factual events.

Cognitive development refers to the mental activities occurring. These include attending, remembering, symbolising, categorising, planning, reasoning, problem solving, creating, and fantasizing.

The maturity of the brain, perceptual skills development, and paying attention leads to the child understanding his world. Piaget's particular insight in the role of maturation in the child's increasing capacity to understand his world made him a leading authority in his field. He identified four major cognitive developmental phases, namely the sensorimotor, pre-operational, concrete-operational, and the formal-operational phase that children progress through.

The child's cognitive development influences his ability to testify in court. The way he pays attention, stores and recalls these events plays a crucial role in court. How the child encodes, stores and retrieves memory will further determine the child's ability to testify.

Language and speech are tools that humans use to communicate or share thoughts, ideas and emotions. Language is a set of rules shared by individuals who are communicating, which allows them to exchange thoughts, ideas, emotions, and memories. Language is what the child will use to convey what happened to him to the court. Language develops as the child grows into adulthood, with the result that the child and even the adolescent experiences many linguistic difficulties when testifying in court.

Moral development enables the child to distinguish between right and wrong. This is the basic requirement of a child to be able to testify in court. He must also know that there are negative consequences to lying. If the child cannot distinguish between right

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and wrong and does not understand the consequences to lying, the child cannot testify in court.

Social-emotional development contributes to the moral development of the child, as well as how he feels about himself and others. Erikson identifies eight phases of social-emotional development, which an individual must pass through in his lifetime. Satisfactory learning and resolution of each phase must take place, if the child is to manage the next and subsequent phases satisfactorily.

The above aspects of child development have a direct influence on the child's ability to give meaningful testimony in court. Cognisance must be taken of these aspects by the intermediary and the prosecutor to effectively guide the child through testifying in court.

CHAPTER FOUR

COMMUNICATING WITH THE CHILD WITNESS

4.1 INTRODUCTION

As discussed in chapter three, knowledge of the developmental aspects regarding cognition, language, memory, communication, morality, and attention of the child witness is important. Fear and trauma can influence the child's ability to testify meaningfully. Children are frequently direct victims of crime and violence or witnesses of these crimes. Civilized society attempts to resolve such crime, conflicts, disputes, or criminal conduct in courts of law. Children are unrealistically expected to behave and respond on an adult level in court. This is something most children are not always capable of doing as a result of restraints in their cognitive and language development. Criminal court hearings are a challenging, demanding, confusing, and difficult environment for the child (Copen, 2000:2).

The child who testifies in court continues to experience unrealistic, adult like expectations about his performance as witness. His testimony is usually found to be less reliable when he fails to satisfy the expectations of the adults who have little understanding for his developmental limitations and the impact of the trauma of his victimization.

This chapter will discuss trauma and all facets of trauma as well as the child's memory and problems that can arise during the court case. Further, the dynamics of child abuse with specific emphasis on sexual abuse, as most children who testify in court have been physically and sexually abused, will be discussed. The effect of the court, the advantages for the child, and the difficulties the child experiences will also be discussed. The child's language skills and problems the child experiences in court with relation to his skills, as well as cognitive shortcomings affecting the child's ability to testify, will be discussed.

4.2 TRAUMA

Having to testify in court after a traumatic abuse incident can be upsetting and the child suffers fear and anxiety before he has to testify in court. The child experiences emotional trauma as a result of repeated questioning about the abuse by police and attorneys and of repeated court appearances (Perry & Wrightsman, 1991:135).

In a comprehensive study of the emotional reactions of the child sexual abuse victim, Perry and Wrightsman (1991:136) found that the emotional trauma experienced by the child who is involved in giving legal evidence takes many forms. Fear is a common symptom.

Berliner and Barbieri (1984:128) note:

“One major barrier to prosecution of child sexual-assault cases is the fear that the child will be further traumatized by involvement in the legal process.... [T]he victims and their families may be reluctant to report the crime to authorities because of the fear that the child will be subjected to further trauma by the criminal-justice process. It can be lengthy and requires the child to repeatedly face traumatic memories: the victims and their families can have no guarantee that the child will not encounter untrained or insensitive personnel.”

Testifying in court is difficult for children who have been sexually abused and can lead to traumatization. The trauma the child experiences when having to testify in court is also known as secondary traumatization.

From the above it can be seen that the accusatorial judicial system that we have in South Africa is an unfamiliar and unfriendly world for both the child as well as the adult. The child finds it very frightening and embarrassing to testify in a sexual abuse case. The courtroom is also a somber place that makes the testifying of the child a frightening experience (Don Wauchope, 2000:46).

4.2.1 Definition of trauma

According to Lewis (1999:6) a traumatic experience differs from stress or a crisis. Trauma is “an experience that is sudden, horrifying and unexpected. The person feels fear and is helpless and out of control.” Lewis further states that trauma is not part of a child’s normal experience. The event is so extreme and frightening that it overwhelms the child’s ability to cope. A trauma is always negative and damaging to the mental health of the child.

Brohl (1996:12) describes trauma as “a disordered physic or behavioral state resulting from mental or physical stress or physical injury.... an agent, force or mechanism that causes trauma.”

Thus, trauma for the child is an event or experience of an event that is more than merely stressful, it is shocking, terrifying and overwhelming to the child who experiences it. This results in feelings of helplessness and usually causes a range of reactions.

4.2.2 Characteristics of child trauma

Because of developmental immaturity and age- and stage-specific abilities to integrate the information of traumatic events, children understand and respond to trauma in a different way than adults. The child processes the information and reacts according to his developmental level and capacity.

Terr (1991:40) documented four characteristics that affect almost all children subjected to trauma, namely:

- Repeated visualization or perceptions, even in children who were infants or toddlers at the time of the traumatization.
- Repeated behavior or physical responses, even in children with no verbal memory and who were exposed to a traumatic event before the age of 12 months.
- Trauma-specific fears above and beyond the normal fears of childhood.

- Revised ideas about people, life and the future. Traumatized children have limited sense of the future and are aware of negative life events.

The research on the biological responses to traumatization has been extended to children and indicates developmental and maturational aspects to the response. The presence of trauma during childhood can lead to changes in brain and hormonal functioning in ways that appear to affect all aspects of normative developmental processes (Alpert, Brown & Courtois, 1998:54).

4.2.3 Impact of childhood trauma on the brain

Post (2004:1) found that early exposure of a child to traumatic experience exposes the developing neurophysiological system of the child to “arrested emotional development”. An environment of normal, calm interaction between the primary caregiver and the child is necessary for successful development of the brain so that emotional regulation can develop. When this is absent, Post (2004:1) found that normal and healthy developmental experiences do not take place. The absence of this calm interaction causes a chronic stress when a child should be experiencing calm interaction. The result will be a child who is poorly equipped to tolerate and manage a stressful situation.

Bremner (1995:1) calls the trauma caused by psychological trauma the “invisible epidemic” of childhood abuse. He further postulates that childhood abuse and other extreme stressors can have lasting effects on brain areas involved in memory and emotions. The hippocampus is a brain area involved in learning and memory that is particularly sensitive to stress. The hippocampus and the medial prefrontal cortex play an important role in memory and emotional regulation. Dysfunctions in this area can cause memory deficits (Bremner, 1995:4).

High levels of the cortisol hormone are secreted during trauma and stress. This is associated with the damage of neurons in the hippocampus of the brain. Symptoms of increased heart rate and blood flow, increased agitation, narrowed attention, and poor organizational skills are experienced. A further result is that new learning is negatively influenced by damage to the hippocampus that was caused by trauma.

From research done it was found that the hippocampus is involved in verbal declarative memory and is very sensitive to stress. The abused child has shown to have a smaller hippocampus volume and that there are deficits in the hippocampal-based verbal declaration memory functions (Bremner, 2005:6; Naude, Du Preez & Pretorius, 2003:16).

Taking the aforementioned in account, the researcher is of the opinion that the traumatized child will show similar symptoms as the attention deficit hyperactive disorder child (see 5.7). The same skills used when those children testify should also be applied when the traumatized child testifies.

4.2.4 Symptoms in children who are traumatized by abuse

The following are symptoms that the child who has been abused can experience:

- **Re-experiencing the event:** The children can engage in post-traumatic play or re-enact their trauma in play. Repetition of the traumatic themes in children's play is an indication that they are re-experiencing thoughts about disturbing events (Van Niekerk *et al.*, 2000b:C3-3; Terr, 2004:43).
- **Numbing of responsiveness:** The child avoids both conscious and unconscious thoughts, activities and symbols of the traumatic event. This avoids the child from being overwhelmed with powerful feelings and thoughts of the trauma. This is a powerful survival strategy, but can lead to a general numbing of the feelings and adversely affect the child's social, emotional, and cognitive development (Terr, 2004:43; Van Niekerk, 2000b:C3-4).
- **Symptoms of hyper arousal:** According to Lewis (1999:14) research has shown that if a child is traumatized, the chemical function within the brain becomes impaired. This creates a heightened sensitivity and can cause hyper arousal or hyperactivity. The child will experience sleep problems, irritability, inability to concentrate, anger outbursts, hyper vigilance, and exaggerated startle responses. The child will also have trouble concentrating or remembering information. This can cause

problems for the child when having to testify, as he must be able to concentrate for some length of time (Terr, 2004:43; Van Niekerk, 2000b:C3-4; Lewis, 1999:14).

- **Developmental changes:** Pynoos and Eth (1984:105) noted developmental differences in children's behavior after experiencing severe trauma.
- **Generalized fears:** Victims of trauma have difficulty regulating anxiety as well as aggression. When the traumatized child is confronted with reminders of the event, for example, when having to testify, he exhibits increased anxiety and generalized fears (Terr, 2004:43).
- **Spiritual/Psychological consequences:** Danger replaces the feeling of safety for the child in the community. The trauma indicates a loss in the belief that there is order in life. The child will experience a loss of people, freedom, protection, and control (Terr, 2004:43).
- **Blurring of distinction between friend and enemy:** For children living in a safe environment it is difficult to distinguish between friend and enemy. If a friend or family member committed the abuse, the child who should feel loved and protected now is scared of the person (Terr, 2004:43).
- **Emotional regression:** Many children who are called upon to testify have been traumatized to some degree. Such children have usually experienced personal harm – physically, psychologically, and/or sexually. Severely or chronically traumatized pre-school children are likely to regress emotionally and therefore function at a less mature psychosocial level than is normally expected of a child of that specific age. The child will show anxious attachment behavior, which indicates a regression to Erikson's first psychosocial stage, trust vs. mistrust (see 3.9.11) (Pynoos & Eth, 1984:107).

School-age children are more aware of internal body sensation but can find it hard to control their behavior, suggestive of the difficult-to-control autonomy versus shame-and-doubt stage as described by Erikson (see 3.9.11) (Myers and Perry, 1987:512).

- **Co-morbidity:** There are a number of psychiatric disorders that are also commonly found in traumatized children and adolescents, for example, major depression, substance abuse, attention deficit/hyperactivity disorder, oppositional defiant disorder, and conduct disorder (Terr, 2004:44; Van Niekerk, 2000b:C3-6).

4.2.5 Traumagenic model of child sexual abuse symptoms

Finkelhor and Brown (1985:530) proposed the need for the symptoms of sexual abuse to be arranged in a model and subsequently developed the four-factor traumagenic model. They conceptualized the impact of sexual abuse on the child in terms of four trauma causing factors, namely, sexualization, stigmatization, betrayal, and powerlessness. They further postulated that the combination of these four factors make sexual abuse unique and distinguish it from other trauma. These dynamics are, however, generalized and can occur in other kinds of trauma. These symptoms are therefore not unique to sexual abuse.

Finkelhor and Brown (1985:531) categorized the characteristics and perceptions associated with sexual abuse. This model shows 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.

Table 4.1 provides an overview of Finkelhor and Brown’s key factors and impact of traumagenics.

Table 4.1: Key features and impact of Traumagenics

Trauma causing factors	Characteristics	Psychological Impact
Sexualization	<ul style="list-style-type: none"> • Associates sexual activity with gaining affection • Associates sexual activity with negative emotions and memories 	<ul style="list-style-type: none"> • Confusion about sexual identity • Negative towards sexual activities and intimacy
Stigmatization	<ul style="list-style-type: none"> • Blame and belittling of 	<ul style="list-style-type: none"> • Guilt and shame

	<ul style="list-style-type: none"> • victim • Pressure on child to maintain secrecy • Other people’s reaction to the discovery of abuse • Labeling the child responsible for abuse 	<ul style="list-style-type: none"> • Lowered self esteem • Sense of being different
Betrayal	<ul style="list-style-type: none"> ▪ Trust and vulnerability is manipulated ▪ Pressure/force to involve child ▪ Child cannot control situation ▪ Lack of support/protection from caregiver 	<ul style="list-style-type: none"> ▪ Grief and depression ▪ Cannot judge trustworthiness of other ▪ Anger, hostility
Powerlessness	<ul style="list-style-type: none"> • Invasion of the child’s body territory • Pressure/force on child to be involved • Child cannot control situation • Repeated experience of fear by child • Others will not believe child 	<ul style="list-style-type: none"> • Anxiety, fear • Lowered sense of efficiency • Sees himself as victim

Adapted from Finkelhor et al., (1986:187).

4.2.6 Impact of sexual abuse on the child

Literature on childhood trauma is very extensive. As the majority of children that testify with an intermediary are sexually abused, the researcher decided to focus primarily on trauma caused by sexual abuse and trauma experienced by the child witness when having to testify. Sexual abuse is the trauma that is most complex and all encompassing in terms of the impact it has on a child’s life (Lewis, 1999:98).

Muller (2002b:99) postulates that the very core of the child is damaged when an adult enters into a sexual relationship with a child. Current research has shown that the child is likely to suffer more intensely when the trauma was caused by a person the child knows and/or trusts. Trauma also results from the nature of the incident (Hendricks, Black and Kaplan, 1993:20:20). According to Lewis (1999:98) sexual abuse of a child is an expression of power and authority, so the abuser chooses a vulnerable victim.

4.2.6.1 Loss the sexually abused, traumatized child can experience

- **Loss:** The most intense loss the sexual abused child will experience is that of loss of childhood itself. The normal process of developing trust and secure attachments with adults as described by Erikson in 3.9.11, is damaged and leaves the child with fear and distrust (Walker, 1999:41).

- **Symptoms of Loss:** The child who has experienced the trauma of sexual abuse goes through a phase of bereavement with regards to the loss of his childhood and innocence. Doing so gives closure to the traumatic event in his life. The child experiencing loss will move through the following phases described by Kubler-Ross (1981:58) and Myers and Perry (1987:514):

- Denial and isolation – disbelief that the incident happened.
- Anger, rage and resentment - usually evident in relationships with others.
- Bargaining – child will promise good behavior to restore the status quo.
- Depression – the apathetic phase, the feeling of loss is now overwhelming.
- Acceptance – acceptance of the abuse and the ability to resume a normal life. The child detaches him from the incidents.

Thus, the child's recovery may be a long, painful and difficult process. The parents and other caregivers should be made aware of this and support the child were necessary.

4.2.7 Impact of the trauma on the child's memory

Research by Ovens, Lambrechts & Prinsloo (2001:30) shows that trauma has an impact on a child's memory process and eyewitness testimony. Important information like the experience of the actual sexual abuse is remembered more readily than other peripheral details. Developmentally appropriate, open-ended questions elicit the most accurate reports from the child. Repeating questions can improve children's memories while misleading questions can increase mistakes in recall (compare Williams and Banyard (1999:57). The researcher is of the opinion that it must be kept

in mind that there are individual differences in how the child's memory is affected by trauma and stress.

Ovens et al. (2001:30) postulate that it is possible for the victim to trauma to further develop symptoms of Post Traumatic Stress Disorder. Characteristics like intrusive thoughts about the event, nightmares and flashbacks, as well as dissociate amnesia may influence the recall process.

When a child experiences trauma, the memory that is stored has less sensory detail and is less consistent than memories about positive events. According to Fivush (2002:234; Hyman, Thomas, & Fitzgerald, 2003:234) this could be because the child pays more attention to the negative internal state than to what is actually happening. Another possibility is that the child is dissociating from the incident and is pretending that the incident is not happening or concentrating on something other than what is happening to him.

Koss, Tromp & Tharon (1995:119) states that the child's memory of trauma has less sensory detail. This is as a result of inadequate retrieval processes or cognitive avoidance strategies that are employed to decrease the anxiety that is associated with disturbing emotional memories. The child does not think about his experiences and over time this coping strategy may lead to less vivid memories (compare Dent, 1977:339).

Research by Williams and Banyards (1999:56) led to the formulation of a model that explains the impact of trauma on the child's memory process and eyewitness testimony. The literature indicates that the information that is central to the incident is remembered more readily than the peripheral information.

Ovens, Lambrechts, & Prinsloo (2001:30) found that children as well as adults are able to remember traumatic events. However, it was found that there is a possibility that the event or incident was misunderstood or inaccurately recalled. The child may have processed the incident differently, misunderstand it or store it less clearly.

Given young children's ability to provide accounts in response to open-ended questions, many experts argue that focusing on the questioning strategy is a more useful indicator of the reliability of the child's memory recall than brief tests which require the child to prove his competency to accurately recall (Powell, 2004:5).

Although children have less sophisticated techniques than adults for recalling information, on some tasks children perform as well as adults or older children. Child witnesses may be able to show adequate memories if they are questioned about something of which they have a reasonably extensive knowledge base. Age related changes influence the ability to use memory strategies, as described in 3.4.1, 3.5.5 and 3.6.

4.2.8 The child witness and the court experience

During the court case, the child re-experiences intrusion, helplessness, aggression, threats, feelings of guilt, being bad, and lack of faith in his testimony as well as feelings that he has no protection. The child is further put under aggressive cross-examination regarding the effect of the internalization of love/want and hate/fear resulting in more feelings of chaos (Potgieter, 2000:39).

The trauma experienced by the child who has to testify in court is often described as secondary trauma or reabuse of the child. Most children will re-experience the trauma incident repeatedly in their minds, even after the event has ended. The thoughts, emotions, and feelings of being out of control and threatened will be re-experienced, as will the fear, anxiety, and pain associated with the event. The emotional and affective memory of the incident has to be called to mind when the child testifies in court (childtraumaacademy, 2005:1).

In a study undertaken by Saywitz and Nathanson (1993:619) it was found that certain characteristics did interfere with the child's optimal testimony and increased the child's perception of stress of testifying. Children being questioned in simulated courtroom environments produced less complete descriptions of past events in free recall, made errors in response to direct questions and often agreed to misleading questions. The physical and social setting of the courtroom is complex and can

therefore distract the child and draw his attention away from the memory task. It was also found that stress influenced the completeness of the child's free recall. This demonstrates a need to take into account the influence stress will have on the context and emotions of testifying (Saywitz & Nathanson, 1993:620-621).

The researcher is of the opinion that with the necessary empathy from the intermediary, a lot of the above can be eliminated and thereby preventing as much secondary trauma as possible. A safe atmosphere can be created by the intermediary who lets the child understand that she is there for the child, will listen to the child, will understand the child's stress and cares for the child.

4.2.9 The child's perceptions of stress

At a given moment of deliberate remembering, a child is involved in a variety of tasks at multiple levels of processing. The child appraises the task metacognitively and analyses consequences of error and the amount of effort required. Together with this the memory is searched for answers, retrieval strategies are generated and the results are evaluated. Simultaneously, the child experiences certain emotions that have the potential to influence his attention, effort, motivation and efficiency of his cognitive activity. Fast changing emotions, such as anxiety or fear, can be triggered by the child's perception of the situation as frightening or threatening in contrast to his perception of his own ability to succeed in the task and to overcome his fears.

It becomes clear that the above factors suggest that self-image plays a powerful role in causing anxiety that interferes with information processing by minimizing motivation, ability, and effort needed to generate and use retrieval strategies (Saywitz & Nathanson, 1993:620).

The victim often feels lost in the impersonal legal system and the trauma of the court case and the cross-examination can sometimes be worse than the sexual abuse itself (Swanepoel, 1991:59). The researcher is of the opinion that it is the intermediary's task to help the child experience as little stress as possible within the difficult circumstances of having to testify.

4.2.10 Fears and stressors experienced by the child witness

4 2.10.1 Causes of child witness's anxiety

Katz-Levin (2000:C3-22), Dezwirek-Sas, Wolfe & Gowdey, (1996:350) and Saywitz, (1989:150) identified the following possible sources of the child witness's anxiety and stress that he has to cope with during the criminal justice process:

- The child may experience fear about the unknown aspects of the court environment and the processes that occur in the court;
- The child may experience anxiety about having to testify in front of the public or community in court;
- The child's fear can be intensified by the fact that he has to face the accused in an unfamiliar environment;
- The child may associate the court with punishment and may feel that he has to prove his innocence;
- The child fears that he may give the wrong answer and be sent to jail;
- The child experiences fear, ambivalence and guilt regarding possible negative repercussions the trial may have for the perpetrator;
- The child may experience additional anxiety because of threats by the perpetrator to harm him if he discloses the abuse;
- Lengthy delays of cases that are postponed;
- The child is afraid that he will not understand the complex court procedure;
- The child fears that the perpetrator might hurt his family members because he disclosed the abuse;
- The child has a fear for difficult cross-examination by the defence lawyer; and
- The child may be concerned about the social stigma and long term consequences he and his family may suffer because of the abuse.

The court appearance is usually an accumulation of repeated interviews with the child by various people (Blumrick, 2004:40; Oates, 2001:245). Ghetti, Alexander and Goodman (2002:2) cite that testifying is associated with several potential stressors for the child involved in the legal system. The child may need to go multiple times to testify. According to the above authors, the most salient fears for the sexually abused child that has to testify are:

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- The accused may lie in court;
- Seeing the accused in court or waiting area;
- Accused being found not guilty;
- That the court will not believe him;
- Describing embarrassing incidents that happened in front of strangers;
- Being in the witness stand; and
- Fear of retaliation.
- Facing and accusing the defendant.
- Cross-examination by the defense attorney.
- Answering questions in front of a lot of people.
- Having the accused lie in court.
- The accused not being found guilty.
- Having people scream at him in court.

Stressors identified by Don Wauchope (2000:44); Oates (2001:245); Swanepoel, (1991:5) and Perry & Wrightsman, 1991:136) include:

- Lack of legal knowledge of court processes;
- Insensitive interviewing techniques;
- Inadequate protection during cross-examination;
- Lack of social support for the child giving evidence;
- Crying whilst giving testimony;
- Fear of having to go to the toilet;
- Being punished or being sent to jail;
- Delays in the court case;
- Being removed from his home;
- Breaking up the family and depriving the family of a bread winner; and
- 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 (Sas, 1992:184).

Table 4.2 provides an overview of the stressors that the child experiences when involved in the criminal justice system

Table 4.2: Criminal Justice System Stressors the child witness can experience

Delays	Numerous unforeseen adjournments, lengthy delays.
Public exposure	Having to tell embarrassing and frightening incidents in a public courtroom
Facing the accused	Despite fear for personal safety still having to face the accused
Understanding complex procedures	Being exposed to court procedures that are foreign and easily misunderstood by children who do not know legal terminology.
Cross-examination	Being cross-examined by a defense attorney who can be very aggressive and who exploits the child's sensitivity and vulnerability.
Exclusion of witnesses	Being alone in court because other witnesses are removed.
Apprehension and placement outside the home	Children are often removed from home and the accused can stay. The child is stripped of his family support.
Lack of preparation for the role of witness	Not being aware of what is expected of him because he is a child witness.

Adapted from Dent & Flin, (1992:184)

Trauma impacts on the thoughts, feelings and behaviors of victims and therefore influences how they respond to the process of investigation and prosecution of a court case. Children who have been traumatized will most likely experience heightened traumatic reactions before, during, and after testifying in court. This is a real dilemma for the child. The fear and trauma associated with testifying in front of the defendant may traumatize the child and undermine the truth finding function of the trial by inhibiting effective testimony. The completeness and accuracy of the child's testimony can be seriously hampered by intimidation and heightened emotions. When confronted by the accused, the child may show signs of anxiety, refuse to testify, be unable to verbalize answers, and have difficulty identifying the perpetrator. However, it must be kept in mind that not all children are traumatized by what they have experienced or seen. Some children are more resilient than others or have a stronger support system (Blumrick, 2004:40; Goodman, Jones, Pyle, Prado-Estradea, Port, England, Mason & Rudy, 1998:167).

The researcher is of the opinion that this discussion would not be complete if no mention is made of the opposite effect of testifying on the child witness. Don-Wauchope (2000:44) states that there are child witnesses who perceive the court process as empowering and therapeutic. These children draw from their own resilience. It is very important that the child should have support from significant other people in his life as well as the court personnel. This is especially important regarding the child in his middle childhood years as these children are very aware of fairness during this developmental phase.

4.2.11 Diminishing the impact of stressors before the child testifies

To reduce those aspects of the judicial procedures that could place negative stress on the child's testimony, the following can be done:

- **Eliminating multiple interviewing:** Because repeated interviewing may cause distress in children who has to repeat the abuse over and over, decreasing the number of interviews may lessen negative psychological outcomes of legal involvement (Ghetti, Alexander & Goodman, 2002:9).

The researcher is of the opinion that the availability of a one-stop center where professionals are available to assist the child from when the abuse is reported until after the trial, will alleviate the child's trauma and limit secondary abuse.

- **Court Preparation:** Some courts have implemented programs to help the child whilst participating in sexual abuse court proceedings. One of the goals of a preparation program is to help the child to gain confidence and to familiarize him with the legal aspects of testifying (Ghetti *et al*, 2002:9). There are various ways of doing the above, as described in 4.6.

- **Lessening shame and stigma:** Reducing the shame and stigma that is attached to being a victim of sexual abuse and being involved in legal proceedings is a complex task. The question: "When does the child start perceiving himself as a victim, and when does he start thinking that others may blame him and hold him responsible for what happened" must be asked. It is important that the child is made to understand

that he is not on trial. Asserting himself and acquiring self-confidence and emotional strength will help him reverse negative feelings. Teaching the child relaxation techniques to reduce stress will also help him deal with anxiety (Ghetti *et al*, 2002:11).

4.2.12 Minimizing stress, fears, and trauma of the child witness in the courtroom

The child victim is likely to suffer moderate to severe anxiety when testifying in the presence of the perpetrator. Providing a supportive system for the child witness within the legal context is a way of minimizing anxiety and trauma experienced. This reduced trauma increases the witness's credibility and assists the process of psychological adjustment (Don-Wauchope, 2000:47).

Taking the stand is a very difficult step for most children so it is important to minimize the negative impact of this experience so that the child will experience less stress when testifying (Ghetti *et al.*, 2002:10).

To alleviate the child's fears and feeling of helplessness when having to testify in court, special courtroom facilities have been erected and courtroom preparation programs have been developed (See 6.4). A support person, for example, a family member or caregiver can be asked to accompany the child when he testifies to reduce his anxiety and increase the accuracy of his testimony. An application can also be brought for the use of an intermediary to assist the child witness. The child will then testify via a closed circuit television in a separate room where the intermediary will assist him (Don Wauchope, 2000:47; Muller & Hollely, 2000:45; Ghetti *et al.*, 2002:10).

4.3 THE CHILD WITNESS TESTIFYING IN COURT

4.3.1 Advantages of testifying in Court

Giles (1989:5) summarized the advantages for the child testifying in court as follows:

- The child is seen as the complainant, the person who has been wronged;
- The child is given skilled assistance of a legal or psychological nature;
- The child has an opportunity to explain to the court how he feels about what has happened to him;
- The child can see that a powerful and competent adult is responsible for dealing with the accused;
- The court appearance provides a ritual whereby the child ceases to be a victim and a pseudo-adult and returns once more to childhood;
- The family has an opportunity to show their disapproval of what the offender has done.
- The child experiences satisfaction if the accused is found guilty and is punished.

From the above it can be seen that for the child to testify can have positive results.

4.3.2 Disadvantages of testifying in Court

An array of disadvantages can face the child that has to testify in court. These disadvantages include:

- **Oral evidence**

Oral evidence in the adversarial system has to be given in the presence of the accused as described in 2.3.1. The implications of this are:

- The child must personally give evidence in the courtroom itself; and
- There are often long delays between the incident of abuse or the witnessing thereof and giving testimony at the trial.

- **Court delays**

Because the witness has to give oral evidence in court it can lead to long delays between the event and the trial, for example, the case *Woji v Santam Insurance Co Ltd 1980(2) SA 971 (SE)*, where two boys gave evidence five years after the incident

happened. The researcher, in her experience as intermediary, has found that the average lapse of time between the incident and the child's testimony is one to two years. Some trials were even held up to six years later.

As a result of the long delays of trials, the question arises whether the child should receive therapy in the intervening period, and whether the child's memory can be affected by such a long period between the incident and the trial.

The danger associated with the court delays is the effect that it may have on the child's memory. When working with a child, it must be kept in mind that his memory is not static and can be influenced by thinking about the past. This means that the child can become more susceptible to suggestions being planted in his memory by coaching, either deliberately or unknowingly (Muller, 2002b:12).

▪ **Multiple interviews**

The child witness has to undergo multiple interviews before finally testifying in court. According to Muller (2005), the child undergoes between ten and 15 interviews before testifying. Saywitz (1995:134) postulated that undergoing multiple interviews has the following effects:

- Increased stress is experienced because embarrassing detail has to be repeated several times;
- Multiple interviewing has an effect on the child's memory, which is not static;
- Suggestion (unwitting incorporation of information in memory) can take place through subtle suggestions, expectations, bribes, threats, stereotyping and leading questions (Ceci & Bruck, 1995:45).
- After repeating what has happened several times, the child's story starts sounding as if it has been rehearsed. He may also adopt the interviewer's terminology. The court will get the impression that the child was told what to say; and
- After having repeated his story in multiple interviews, the child may not want to repeat his story again when testifying (Spencer & Flin, 1993:365). Keeping the child's egocentricity in mind, he will believe that the magistrate already

knows all the detail, especially as he has repeated the details so many times before.

- **Confronting the accused**

Hill and Hill (1987:820) through empirical research showed that physical confrontation with the accused damages the existence, reliability, and quality of the child's evidence. Unfortunately, the adversarial process, which is part of the South African legal system, requires that evidence be given in the presence of the accused. To prevent this, the courtroom can be rearranged by using a screen so that the child does not see the accused. The accused can however see the child. The child can alternatively be allowed to testify in another room via closed circuit television, with or without an intermediary.

4.4 LANGUAGE SKILLS OF THE CHILD WITNESS

Conversational speech involves a give and take of questions and answers. The question and answer format that is used in court is not how a young child usually communicates. The child likes to speak about his own topics, ask his own questions and express how he feels which is inappropriate in court. The child has difficulty just answering the questions put to him, and he does not like to wait for his turn to speak. This is unacceptable behavior for a witness in court and thus the child is often cut off in mid-sentence when he testifies. A particular kind of language is fundamental to the legal process and the court appearance is seen as a verbal contest between parties (Viljoen, 1992:65-66; Dezwirek-Sas, 2004:1).

It is this specialized language that causes difficulties for the child during the course of giving evidence in court. Words are used which don't fall within the child's normal language use. In the legal profession vocabulary and technical terms, known as legalese, are used. The child who is relatively inexperienced will find this language difficult to understand (Muller, 2002b:21).

Although children show an increase in the vocabulary they can produce by the time they go to school, they still need to have simple sentences put to them. Dezwirek-Sas (2004:1) claims that the number of words used in a question should match that of the age of the child. Unfortunately the length and complexity of questions put to the child by legal professionals in court have more words. These questions can confuse the child.

Language used in the courtroom is not normal everyday language. The exchange of information follows unique and unfamiliar rules of socio-linguistic interaction, unique to the legal system in an unfamiliar and formal setting. The child is usually expected to respond to age-inappropriate-questions in a language that is difficult to understand and contains multiple parts, which even adults often find difficult to grasp (Dezwirek-Sas, 2004:2).

4.4.1 Role of language and the lawyers and public prosecutors

The language of the law sounds foreign to the child. Lawyers and public prosecutors commonly make two mistakes with young witnesses:

- They use words and more specific, legal terms that the child cannot understand; and
- They use linguistic complex sentences that are too complex for the child to understand (Myers, Goodman & Saywitz, 1996:2).

According to Perry, McAuliff, Tam, Laycomb, Dostal & Flanagan (1995:609):

“Lawyers are students of language by profession, and they exercise their power in court by manipulating the thoughts and opinions of others through the skillful use of language.”

According to Perry *et al.* (1995:625) research has shown that developmentally inappropriate questioning reduces both the child witness' comprehension and the accuracy of his responses. When questions are difficult and/or complex, the child's, adolescent's, and young adult's comprehension suffers. Difficulties between the

language capacity of the child witness and the courtroom language used by legal professionals, does impede communication. Some form of legal terminology seems to be more harmful than others. Perry *et al.* (1995:627) recommends that presiding officers should therefore insist that legal professionals ask witnesses questions that are phrased simply and that are developmentally appropriate to the child witness' age.

4.5 CROSS EXAMINATION OF THE CHILD WITNESS

Cross-examination was partly discussed from a legal view in chapter 2. In this chapter the effect of cross-examination on the child witness will be discussed.

The child witness can experience difficulty in dealing with the adversarial procedures used in court. One of the main attributes of the adversarial process is the accused's right to cross-examine any witness who gives evidence against him. Children, however, are not prepared for interaction on an adversarial basis and they do not understand the purpose of these questions being asked in court. The child finds leading questions particularly difficult to understand as well as the language that is used in court (Muller, 1997:595).

4.5.1 Objectives of cross-examination:

The following are objectives of cross-examination of the child witness:

- The primary objective of the attorney's method in cross-examination within an adversarial system of justice is to maintain control of the communication. The child is at a greater disadvantage than the adult in resisting such control. This is as a result of the child's cognitive and social development stage and his inherent belief that the adult knows better (Westcott & Page, 2002:142).
- The content of cross-examination in sexual abuse cases frequently relies on the restating of myths surrounding sexual abuse and the accusations that the child is lying.
- Cross-examination comprises of a mixture of intimidation and legal language. The characteristics of this legal language, or legalese as it is known, includes complex,

multipart questions, use of double negatives, rhetoric questions, repetition and difficult vocabulary (Westcott & Page, 2002:143; Muller, 2002b:21).

- Accusations of lying against the child witness are one of the main features of cross-examination of sexual abuse victims. This emphasizes that it is frequently the accused's word against that of the child. This is a very important aspect in the courtroom as the young child is often accused under cross-examination of remembering only the things he wants to remember (Mitnick, 1998:4). This is reported as being the most distressing feature experienced by the child witness with negative outcomes for the child's well being (Westcott & Page, 2002:148).

In view of the above, the researcher is of the opinion that the child's thinking involves centration, during which the child focuses on certain aspects during an incident and ignores the others. This then leads to the child not being aware of peripheral information and can therefore not answer the question.

4.5.2 The effect of cross-examination on the child

Language use in court is a particular form of language, so rich in legal tradition that it falls outside the normal language used by adults and children. Added to this is the emotional stress and fears which the child experiences when being questioned about a traumatic event in an adversarial environment (Muller & Tait, 1997:521).

4.5.3 Difficulties the child witness experiences when being cross-examined

Language used by the defence is sometimes very compact and a lot of information is asked in one question. Consequently legal language contains a large number of embeddings. This occurs when a question contains a series of qualifying clauses (Muller, 2002b:21).

During normal conversation, language forms such as questions, description, and narratives take place. In the courtroom only one form, namely people asking the child questions and making statements and the child answering questions, occurs. The

child cannot negotiate over what he wants to answer and what not (Muller & Tait, 1997:522).

4.6 THE CHILD WITNESS IN COURT

Although the child's memory abilities influences his ability to provide accurate testimony, the child must also be able to monitor his ability to understand what is being asked and to ask questions when he is confused. There is considerable evidence that the child often experiences confusion in the courtroom environment, even if he has previous courtroom experience (Saywitz, 1989:155; Saywitz, 1995:135; Peters & Nunez, 1999:662). The child's communication of the abuse may be affected by the child's emotional state, attention and attending abilities, language abilities, and the abilities of other court players to understand what the child is saying. If a child is upset or distressed by the courtroom setting and/or the conduct or mere presence of other legal professionals, the child may become confused, and in extreme cases, unable to testify. Depending on a child's age and developmental level, he may have a limited attention span and become confused or distressed after a prolonged time on the witness stand or after repeated questioning (Scudds, 1988:81).

The researcher is of the opinion that the intermediary has an important role to play when the aforementioned happens. This can be conveyed to the magistrate in court and an adjournment can be requested.

4.6.1 Purpose of asking the witness questions.

Children are used to being asked questions because people are interested in their replies and not for questions being aimed at manipulating their replies (Brennan & Brennan, 1988:60). Cross-examination tests the child witness' credibility and finds further detail, which will assist the defence's own case. Often these questions antagonize the child witness causing him to become angry or distressed. Once distressed, the witness becomes confused and may even contradict himself. The two

purposes of cross-examination conflict with each other because, whilst testing the child's credibility, he becomes angry and confused and he will not be able to provide further accurate details (Muller & Tait, 1997:523).

4.6.2 Miscommunication and the child witness

Many young children have difficulty monitoring their comprehension of questions in the unfamiliar courtroom context (Saywitz, 1995:150). The child's ability to monitor his comprehension and identify misunderstandings is important in the courtroom. The child will try to answer a question he does not fully understand. In lengthy sentences the child will respond to the part of the question that he understands, usually the beginning or the end. This difficulty may be particularly problematic because legal professionals often use complex language in framing their questions and statements (Peters & Nunez, 1999:662; Myers et al., 2003:358).

Miscommunication may occur at any age, but is more likely to occur with pre-school and young school-aged children. Children will sometimes not inform an interviewer when there is a misunderstanding because they may not realize that they misunderstood the question (Walker, 1993:66). This can happen because of the difference in power between child and adult and the child's ability to monitor his language. Comprehension develops in late childhood and early adulthood (Bourg *et al.*, 1999:108).

4.6.2.1 Common miscommunications of the child witness

The following are of the most frequent miscommunications that can take place when the child testifies in court:

- **Children may interpret questions literally:** The child may think that the word "touch" does not include "washing, poking, or rubbing"; "clothes" are different from "pajamas, dress or pants"; "apartments, flats and caravans" are not houses. The interviewer can ask separate questions regarding different kinds of touch/locations/objects and/or can pay attention to the words the child used initially (Bourg et al., 1999:108).

- **Children do not move well from general to particular:** The reason for this is:
 - The child's ability to search his memory is limited; and
 - The child does not categorize objects in the same way as adults do, for example: "Did someone touch you in a way you did not like?"
 - Touch is a higher order word. The child might think it means some type of contact with the hand and not realize that the word can include poking and rubbing.
 - "Way you like it" is a prompt for a global memory search. The child may not be able to search the memory for all the touches that he doesn't like.

- **Distortions may occur:** If a distortion occurs, it is usually due to an unconscious error rather than deliberately lying from the part of the child. This does not necessarily mean that the rest of the testimony is unreliable. The defence, the prosecutor and the magistrate should be aware of the tendency of a young child to be prone to distortions and should avoid statements and conclusions being put to the child that are beyond his cognitive abilities (Myers & Perry, 1987:499; Muller, 2002b:180).

- **Question may have been too complex or poorly phrased:** Many types of grammatical constructions are common in the courtroom but have not yet been mastered by young children. Studies show that children misunderstand many common courtroom question types. Lengthy compound sentences containing independent and embedded clauses, grammatical constructions and other linguistic complexities are beyond the comprehension and memory of many children under the age of eight years. Such lengthy questions need to be broken up into shorter questions requiring short answers to make the child's response credible (Myers, Goodman & Saywitz, 1996:1; Muller, 2002b:91; Myers & Perry, 1987:508).

For example: A multiple clause like "Can you tell me (1) where you were (2) the first time (3) you got touched (4)?"

The child may respond "no" to a complex question due to lack of comprehension. He may respond, "yes" to please the interviewer but be unable to elaborate. The child

may also only remember the last part of the question (4) and not take the first part into consideration when answering (Saywitz et al., 1990:523).

- **The child may describe what something felt like and not what actually happened:** Penetration by an erect penis may be described as: “he stabbed me with a knife.” This metaphorical communication can happen when the tactile senses were not prominent during the incident and/or the child did not see what happened. Follow-up questions about the actual experience are crucial in a case like the one above (Bourg et al., 1999:109).

- **Definitions of abstract concepts are asked:** Most five-year-olds can correctly identify truthful statements and lies when given examples, but may not be able to provide definitions of “truth” and “lies”. Most seven-year-old children can give a definition of at least one of these concepts but do not perform well when asked to articulate the difference between truth and lies. Concrete examples should be used when asking the child to distinguish between truth and lies. The oath can also be made child friendly, as the child may not know what it means to swear (Bourg et al., 1999:110; Myers et al., 2003:357).

- **Negative questions are asked:** The child under six years of age has limited comprehension of negatives, and even for adults, a negative question is more difficult to understand than a positive one. Perry *et al.* (1995:613) reported that the child can use both negative and positive sentences, but negative questions are much more difficult to understand. Negative questions are only fully comprehended by the age of eight years. Questions with more than one negative are more confusing than single negatives. Many common legal terms are unfamiliar to, or misunderstood by children under the age of ten years. Lengthy or complex compound sentences with embedded clauses typically are beyond the comprehension of the child younger than eight years of age (Perry *et al.*, 1995:613).

- **Lack of communicative competence:** Communicative competence can be defined as “a speaker’s knowledge of how to use language appropriately in a given culture.” This knowledge includes the ability to use different types of speech acts, such as commands, complaints, requests, and promises in their direct as well as

indirect forms. The child's communicative competence is influenced by the intelligibility of his speech, as well as his level of comprehension, cognition, memory and emotional functioning. The child's potential to successfully communicate in a court depends on his comprehension, logic, memory, fantasy-reality distinction and knowledge of the legal system development (Brennan & Brennan, 1988:60; Perry *et al.*, 1995:252; Walker, 1993:66).

Direct speech acts are clear-cut and the intention of the speaker is revealed grammatically. It is through the spoken word that the child is expected to express his memories (Walker, 1993:64).

The adult's communicative competence depends on his ability to communicate in a non-biased manner at the child's level of understanding. The child's age, vocabulary, and linguistic skills must be taken into account. Sexual knowledge, suggestibility, temperament and emotional adjustment also play a role. There is also evidence that opposing attorneys frequently use developmentally inappropriate and often confusing language in court (Brennan & Brennan, 1988:60; Perry *et al.*, 1995:252; Walker, 1993:66). Even when a child's memory is accurate and strong, developmental and communication limitations can upset the testimony. The five most frequently used confusing questions that cause confusion are found to include negatives, double negatives, multipart, complex syntaxes and difficult vocabulary.

4.6.3 Communicative competence of the child witness:

The child's communicative competence depends on skills that include the ability to:

- Translate memories into language;
- Deal with non-comprehension;
- Reason; and
- Distinguish fact from fantasy.

Giving evidence in court is about communicating one's perception of a past event to create an image in another person's mind about that event. For children, this ability is

limited by age-related factors such as vocabulary, their ability to use words, and their understanding of the word's symbolic meanings (Scudds, 1988:81).

Also relevant is the child's knowledge of the legal system and his ability to cope with the stress of testifying. To communicate successfully involves all the above skills. All these difficulties that the child experiences in court can be as a result of the child's misunderstanding of the adult's adult questions and/or the adult's misinterpretation of the child's answer (Butler, 1993:60; Myers, Berliner, Brier, Hendrix, Jenny & Reid, 2003:356).

Young children are capable of recognizing difficulties in comprehension and how to solve them. This is done in a naturalistic setting when task and stimuli are simple and familiar. As soon as the task becomes complex and verbal, for example, in a court situation, the young child has difficulty detecting the message adequately (Butler 1993:66). A recent study by Saywitz and Snyder (1996:135) showed that even if children do not understand the lengthy complex sentences, they still try to answer the question. The children's responses varied from repetition of the question to answering a part of the question (usually the beginning or the end of the question).

4.6.4 The role of emotions on the child's communicative competence

A child's communicative competence can be affected by various aspects of emotional functioning. The child under stress frequently regresses to more immature levels of behavior, which may compromise his ability to testify. The child may have difficulty using advanced grammatical constructions that he has already mastered and used in familiar non-stressful situations. He may also have difficulty in comprehending constructions that he has already mastered in other contexts (Butler, 1993:72).

4.6.5 The role of the child's temperament on his communicative competence

The child's temperament determines how he will react in the court. A shy, insecure and withdrawn five-year-old may refuse to testify or may burst into tears whilst an outgoing, confident, five-year-old may have little difficulties. This will in turn affect

the competence with which he tells his story and the adult's perception of his credibility (Butler, 1993:73).

The researcher is of the opinion that the communication demands of the legal system are problematic to the child's stage of language development. Even older children may not communicate at their optimal level of communication under such stressful conditions.

4.6.6 Form of Questions

Research has shown that the quality of information received from the child as a result of option-posing and suggestive questions, is likely to be less accurate than information that is obtained from open-ended prompts. Eliciting poor quality information from the child in court makes it harder to prove that the abuse took place, especially because witnesses and corroborative evidence is usually absent (Cederborg, Orbach, Sternberg, & Lamb, 2000:1340).

Aspects of the different forms of questions asked in court that can influence a child's testimony are:

- **Vocabulary:** Many common terms used in court are unfamiliar to or misinterpreted by children under the age of ten years. In a study by Saywitz, Jaenicke and Camparo (1990:35) it was found that young children tended to make auditory discriminating errors, mistaking the unfamiliar legal terms for a similar sounding familiar word, for example, "a court is were we play ball games" (Zaragoza, Graham, Hall, Hirschman & Ben-Porath, 1995:116).
- **Leading questions:** A leading question indicates to a witness how he should answer the question or it puts words into the witness's mouth (Greenstock & Pipe, 1996:77). This most common tactic is used by the defense to attempt to show that the previous interviewer "led, coached, or played upon the suggestibility of the child", contaminated the child's evidence and gave rise to a false disclosure of abuse (McFarlane, 1989:154).

- **Linguistic complexity:** Another problem is questions that allow multiple interpretations and options but restrict the answers to “yes” or “no” without qualification (Butler, 1993:61; Myers *et al.*, 2003:356).

- **Homonyms:** The young child can make homonym errors by assuming that a familiar, non-legal definition is the only definition, even in a courtroom; for example, a hearing is what you do with your ears. The young child will insist that the term does not have a different meaning in a court of law. An older child, who has moved out of the concrete developmental phase, would recognize that the word could mean something else in a court situation (Saywitz *et al.*, 1990:529). Young children’s tendency to make the same types of mistakes demonstrates that children think they understand the meaning, when they have a different meaning in mind (Peters & Nunez, 1999:662; Myers *et al.*, 2003:357). Such miscommunication damages children’s credibility. Age appropriate word choice is an important factor in eliciting reliable, credible testimony from children (Butler, 1993:61; Poole & Lamb, 1998: 160).

- **Yes/No Questions:** The yes/no question is introduced in order to obtain a affirmation or negation to the information put to the child. Often the child will simply answer “yes” or “no” just to move the conversation along to another area of investigation (Muller, 2001:13). Studies of children’s perspective-taking and listening skills suggest that children may only respond to a part of the question and not realize that their response may be interpreted as applying to other parts of the question as well. Because of egocentric thinking, children less than seven or eight years of age may have difficulty putting themselves in the role of the listener. Young children rely heavily on context to gather meaning. They do not usually ask for clarification when adults’ questions confuse them. Word choice and grammatical construction are critical factors in eliciting accurate, credible testimony from children (Butler, 1993:62).

- **Pragmatics of questions:** The child’s pragmatic skill, for example, his functional use of language in social interaction, is another important factor in his ability to testify. Language and procedures in the courtroom resemble a foreign language or culture. The rules of interaction are governed by rules of evidence, case precedent,

and judicial discretion. Children under the age of nine years may expect a degree of sincerity from an adult who is not present in the adversarial process. Not understanding the speaker's intent will influence how readily children succumb to misleading questions (Butler, 1993:62; Zaragoza *et al.*, 1995:118).

- **“Why” questions:** When the “why” question asked is about the child's motivations or intentions, the question is likely to be perceived as critically. The child could feel defensive when asked this type of question. These defensive feelings may interfere with the child's ability to answer the question, or the child may become focused on justifying his actions. “Why” questions require a number of advanced cognitive skills, including self-reflection, recapturing past causal reasoning processes and using language to describe these processes (Bourg *et al.*, 1999:104).
- **Comments that link a discussion:** Comments that link a discussion with a next topic of conversation are common in ordinary conversations, but are often omitted in the formal courtroom questioning (Brennan & Brennan, 1988:99). The cumulative effect of rapid switching from one topic to another without proper introduction leaves the child disorientated with little understanding of how and why questions are being asked (Butler, 1993:63). When this happens, the intermediary can draw the child's attention to the fact that another topic has been raised.
- **Content of question:** It is crucial that the questioner should have knowledge of the cognitive development of children. Questions must be related to the child's knowledge base and reasoning ability, and answers should be interpreted according to the child's cognitive development stage, for example, if the child has not learnt to count, he should not be asked how many times something has happened (Saywitz & Camparo, 1998:5). Questions become problematic when they require skills the child has not yet developed. The child may try to answer a question when he does not have the necessary skills, and the adults may misinterpret his answers as a sign of incompetence (Butler, 1993:63; Zaragoza *et al.*, 1995:120). The intermediary can draw the prosecutor's attention to the above before the child testifies but during testimony no input from the intermediary regarding the above is allowed.

- **Measurement:** Until the age of eight or nine years of age, children can still be confused by a question asking whether something happened before or after something else. When asked what time something occurred, a child may try to answer even though he has not yet mastered telling the time. Children under the age of ten may often have difficulty telling events in exact chronological order, as described in 3.3.2 (Butler *et al.*, 1993:64; Myers *et al.*, 1996:4). When testifying, the child should rather report the event in relation to some routine aspect of his daily life, for example, “Just before I go to bed” or “During the Telly Tubby Show on television.” These concrete anchors help the child so that his testimony is not overstated, lessened or distorted (Myers & Perry, 1987:469).

The young child learns conventional systems of measuring time, distance or weight over the course of his early school years. These are abstract concepts with which the child has difficulty. Before the age of ten the child has difficulty with weight, height, length, and speed. To a young child all adults are big or old and all distances are far. Time like 7.00 pm. will mean nothing to a child unless linked with something like: “it happened when Scooby Doo was on television,” or “it was dark” (Massengale, 2001b: 4). This skill is not fully mastered until preadolescence. It is important that, should the child be questioned about above aspects, it be done in a developmentally sensitive manner.

- **Kinship:** Inquiries about kinship with children younger than ten years of age must be carefully monitored to avoid creating unnecessary confusion that threatens credibility. The younger child does not yet have mental operations of reversibility and can therefore not change direction of thought, for example, the child will know she has a sister but will not necessarily realize that she is a sister to her sister (Butler, 1993:65).

- **Abstract reasoning:** Questions that require complex or abstract reasoning often hamper the fact-finding process. The child is not aware of his own limitations and may try to use trial and error to reason out something that can only be solved with more complex reasoning skills. The child under six years of age reasons on the basis of what he sees. Hypothetical reasoning leads the child to try to answer questions they are incapable of answering (Butler, 1993:66).

- **Mental concepts:** The attorney must be very careful when asking a child a mental concept question, for example, “Is your father kind to you?” The child must give an opinion on the concepts “kind” and “unkind”. Children are inclined to generalize from one or two incidents. Some children will experience this as unkind whilst other children will overlook these incidents and experience their father as a “kind” father. The child has no frame of reference of what is normal in a family (Myers & Perry, 1987:476). He should rather be asked to describe a specific incident and the presiding officer should be left to categorize the father’s actions. Alternatively, the attorney must determine how elaborated the child’s categorical representations are, as the child may see somebody as good or bad or right or wrong and not see the nuances of real life. This can be done by either asking a child psychologist or social worker to assess or skilfully question the child about unrelated matters (Myers & Perry, 1987:477).
- **Logic:** Forensic questions often require advanced hypothetical deductive thinking of the child. The child’s response can be because of limited logical thinking rather than dishonesty. Inconsistencies and misunderstandings result when the child is obliged to answer questions requiring skills beyond his stage of cognitive development (Zaragoza *et al.*, 1995:123). When the child testifies, it is a better approach to ask the child to tell what happened from his own perspective (Myers & Perry, 1987:480).

The intermediary, whilst build a rapport and assessing the child before he testifies, can indicate the above to the prosecutor. She must however refrain from conveying any knowledge or opinion to the court whilst the child is testifying.

4.6.7 Questioning strategies

When questioning the child witness he should be asked questions in the following ways so that he can understand the questions and be in a position to answer them:

- **Short sentences with easy words improve comprehension:** No matter how old the child is, questions should contain only one idea. Longer questions should be broken down into shorter questions with a single focus. Even high school and college students are less accurate with complex sentences and difficult vocabulary (Walker,

1993:68). With the pre-school and young schoolchild, the interviewer should strive for three-five word sentences, for example, “Tell me what George did”, “Show me where George has touched you.” Children cannot process multipart and lengthy questions (Bourg *et al.*, 1999:100).

▪ **Avoid asking the child witness unnecessary clauses that complicate the question:** Examples of unnecessary clauses are: “Do you remember?” or “Can you tell me” at the beginning of a question and tags such as “Didn’t he?” or “Don’t you?” One of the problems with these types of questions is that they require a “yes” or “no” answer from the child. If the child fails to elaborate on his answer, the interviewer will not know whether the child understood him (Bourg *et al.*, 1999:102).

▪ **Avoid repeating a question or part of a question to the child witness:** When a question or part of a question is repeated to a child within the same interview, the child may interpret the repeated question as an indication that his initial response was not correct and that new information needs to be given (Powell & Thomson, 1994:204).

▪ **Provide context for questions:** Children depend on adults for providing context when asking questions. For young children, context reminders are always important. They are particularly important with the older child when there are multiple incidents and/or multiple perpetrators. The child will literally have to be told when the interviewer changes from one topic to another. The child must then shift mentally from one incident to another. By providing this type of context, the questioner (intermediary) enables the child to understand what is being asked of him and to focus his attention to that incident (Massengale, 2001b: 4; Bourg *et al.*, 1999:103).

4.6.8 Common errors made in child communication in court

Questions asked in court are often in a language too advanced for children to understand. Interviewers and legal professionals must be able to communicate effectively with children. Those who question children must be knowledgeable about the stages of language development and about common errors made by children in their language usage.

The following are mistakes most frequently made when questioning children in court, followed by the correct way of asking the child witness the question in court (Saywitz *et al.*, 1993:61-70; Saywitz *et al.*, 1998:827-839; Saywitz, 2002:355-370; DeVoe & Faller, 2002:5; Schoeman, 2005:38-41).

Most common errors followed by correct procedure:

- Long, three to four syllable words, for example: identify.
Use one-to-two syllable words, for example: point to.
- Multi-word verbs, for example: “might have been”, “ might it have been the case that...?”
Use simple tenses, for example; -ed, was, did, and has, “What happened?”
- Hierarchical, categorical terms, for example: Weapon, anything, clothes.
Use more concrete, visual terms, for example: gun, shirt.
- Use of uncommon vocabulary found in legalese, when words can have two meanings, for example: parties, minor.
Use the nonlegal meaning of the word, for example: “hearing” which means “to hear” not “a meeting”.
- Using pronouns such as him, her, she or unclear references, for example: those things, this, it, that, for example: “Did you talk to him about it?”
Use proper names: repeat antecedents, for example: “Did you talk to Peter about what you saw?”
- Use of passive voice, for example: “Was Mary taken to the room by her uncle?”
Avoid passive voice and use active voice, for example: “Did Mary’s uncle take her to the room?”
- Use of words whose meaning varies with time, or place, for example, here, there, yesterday.
Use of relational terms, for example: more or less, approximately.
Use stable and definite terms, for example, in front of the house, next to the bed.
- Multipart questions where one single long question lists several facts and can have different answers (yes and no), for example: “Did you not see a man and did he not have black hair?”

Use several short questions to replace one overloaded question, for example: “Did you see the man?” and “Did he have black hair?” It is unclear to which question the child will answer yes/no: Follow the question up with clarification, for example, “Can you tell me more about it?” and ask “what, who, where” type of questions.

- Asking how many times something happened before the child has learnt the concept of numbers.

Many young children can “count” but do not understand the underlying number concept. They will be able to count but it will be like reciting the word of a song.

- Words that are not in the child’s vocabulary, for example: “Did Peter abuse you?”

Rather use a word the child will understand, for example: “Did Peter hurt you?”

- Asking measurements, for example, “How old was Uncle Sam?”

Children only learn conventional systems for measuring of time, distance, weight, i.e. minutes, hours, months, years, centimetres, meters, gradually over a period of time. This is only mastered by adolescence. If time is asked, link it to mealtimes or a television program. If age is asked, after the child has answered ask the child, “What makes you think he was old?”

- Complex terminology and sentence forms, for example:
 - Negatives: These are questions involving “not”, for example, “Did Sam not hurt you?”

Rather ask: “Did Sam hurt you?”

- Double Negatives: These are questions using the word “not” two times, for example: “Did Sam not say that he was not going to take you to the park?”

Rather ask: “Did Sam say that he was going to take you to the park?”

- Complex syntax: Sentence structure that is difficult to process, for example: “At any time before or after Sam pushed you onto the bed, did he show any sign of affection towards you?”

Rather ask: “Did Sam ever hug you?”

- Asking questions where the child has to make a deduction and viewing the world from someone else’s perspective and inferring what somebody else saw, for example: “Did the police man see blue marks on your buttocks?”

Young children are still in the pre-operational development phase and their thinking is concrete. They will base their judgement on what they saw at that moment. If the child cannot see the blue marks on his buttocks, he presumes that they were not there and nobody else would have seen the marks.

- Asking evaluative questions, for example: “Did you and your stepfather get on well?”

The specific memory of the stepfather at that moment (pleasant or unpleasant) will determine the child’s answer.

- Repeating a question.

The child will think that the previous answer was wrong and will give another answer in the hope that the new answer will satisfy the person questioning him.

- Asking “why” questions, for example, “Why did you not call for help?”

Children will often find the “Why” question judgemental and evaluative and will probably not answer it.

- Asking “tag” questions, for example, “He touched you, didn’t he?” or “So you weren’t afraid then, were you?”

Make the question less leading, for example, “Did he touch you?” or “Were you afraid?”

- Making statements.

Because it is an adult making the statement, the child will be afraid to disagree with him. The child could perceive it as being disrespectful.

- Saying to the child, “Let’s pretend”.

Children pretend when they play and also know when they are pretending. This can lead to the child using fantasy when testifying.

- Abrupt topic changes.

This will only confuse the child.

Cues can be given, for example, “We spoke about the incident in the garden; we are now going to speak about the incident in the car.”

- Overextension.

Children sometimes extend the meaning of a word in their small vocabularies to include actions or objects for which they have no word. Overextension occurs in between one fifth and one third of the communication of young children. Although overextension violates adult language rules, from the child’s

perspective it makes good sense to apply just one word to objects that resemble each other, for example, all four legged furry animals may be “kitties”. The courts must be very careful to decipher the specific meanings of words used by young children (Perry & Wrightsman, 1991:126).

- Underextensions.

Children also tend to underextend the meanings of words. They attribute part of the meaning to a word that it has for an adult. Underextension occurs when children come upon a term that is far removed from the central meaning they have for the word, for example, the young child may not categorize pants, dresses, and shoes as “clothes”. This type of error might have serious implications in litigation as misunderstanding can take place (Perry and Wrightsman, 1991:127).

- Syntactical error.

In the English language sentences, the order of the words partially determines their meaning. The sentence follows a subject-verb-object sequence. Legal language makes use of syntactical structures, which include complex linguistic features that create difficulties for children. Legal language is challenged with the use of negative expressions. The grammatical structures of these negatives, and their position in a question, conform to a set of rules to which children have no access (Muller, 2002b:21).

To avoid syntactical miscommunication the child should be asked to show the adults what he means instead of asking him to explain himself (Perry and Wrightsman, 1991:127).

- Abstract concepts.

Children have difficulty with abstract concepts and these should be avoided as much as possible. Legal terminology should be avoided completely. Terms like “defendant”, “perpetrator”, “allegations”, “penetration”, and “intent”, have little or no meaning to even older children (Massengale, 2001b:3).

Because words do not always mean the same thing to the child as they do to an adult, it is necessary for the adult to explain or define the term to the child. It would be useless for an adult to use words like abuse, negligence, verdict, magistrate, presumption, or compensate. The word has to be translated to the child, for example,

the word “abuse” could be defined as “someone hitting/hurting/burning or touching you where it does not feel good” (Perry and Wrightsman, 1991:128).

4.7 MEMORY OF THE CHILD WITNESS

The increasing number of children who testify in legal proceedings has led to research into the dynamics of the child’s memory and the accuracy of their testimony, as described in 3.4.1, 3.5.5, 3.6 and 4.2.7.

4.7.1 Metacognitive development

Perry, McAuliff, Tam, Laycomb, Dostal and Flanagan (2001:309) state that the ability to monitor one’s mental processes, for example, memory and knowledge, is known as metacognition. Even pre-school children display some sensitivity in memory-monitoring activities. Their skills only improve, as they grow older.

Young children do not usually ask for clarification of a question because they do not recognize a confusing adult question (Saywitz, 2002:309). When children do not understand questions about past events, they are likely to try and answer them. Even if they are told to ask if they do not understand a question, they seldom do so. This skill to know when one does not understand a question and how to cope with it develops gradually. Recent research suggests that the child’s ability to detect and cope with not understanding a question may be improved through teaching and preparing the child for court, as described in 5.2 (Saywitz & Nathanson, 1993:621).

The legal implications of metacognitive and language development and the influence on the child’s testimony is clear. The young child is likely to have communication and metacognitive difficulties when he is a witness during legal proceedings because the typical language and questioning of attorneys is not on the same level as the child’s abilities (Perry *et al.*, 2001:310).

4.8 PSYCHO-SOCIAL NEEDS

Every human needs love, nurturance, and stimulation. These are all known as psychosocial needs. Children who are deprived of love, nurturance and stimulation may suffer brain damage, failure to thrive, emotional disturbances, or even death (Myers & Perry, 1987:509). Even though the child's psychosocial needs are met, they may suffer problematic effects if they experience traumatizing events.

4.8.1 Effects of unsuccessful resolution of psycho-social needs of the child witness

During the first phase of psychosocial development of trust versus mistrust, infants who are securely attached to their primary caregiver show signs of anxiety and fear if they are separated from them. If the child has not successfully resolved this issue, he may have difficulty in trusting anyone – prosecutors, magistrates, social workers, and intermediaries. They may therefore be reluctant witnesses (Myers and Perry, 1987:510).

In the second phase of psychosocial development the issue of autonomy versus shame and doubt is resolved. Children who are unsuccessful in resolving this issue may not be very good witnesses because they may be uncertain and experience doubt (Myers & Perry, 1987:510).

During third phase of psychosocial development the issue of initiative versus guilt is resolved. An older child who is stuck at this psychosocial level may be difficult to work within the legal system because he may have an overactive sense of guilt that may make them reluctant to talk. Some children may feel responsible for the incident/s, many of which they could not possibly have influenced (Myers & Perry, 1987:510-511).

The fourth phase of psychosocial development deals with the issue of industry versus inferiority. The child with a strong feeling of inadequacy may make a poor witnesses. They may be unwilling to take a public stance. If such a child is to testify, care must be taken to build his confidence before he testifies (Myers & Perry, 1987:511).

During adolescence, the solving of a previous crisis is questioned as the adolescent attempts to create a unique personal identity. In his search for his new identity, the adolescent will question his parents' ideas and values. This search can sometimes end in role confusion. Adolescents who experience this confusion may be reluctant to testify because they feel inferior or exceptionally anxious (Myers & Perry, 1987:511).

4.9 SUMMARY

Having to testify in court after a traumatic incident can be upsetting and the child will suffer fear and anxiety before he testifies in court. Sexual abuse itself is the trauma has the most complex and all-encompassing impact on the child's life. The impact on the brain of the child is far reaching. The child can experience loss or symptoms of loss, as well as symptoms of trauma in relation to the event as well as additional trauma of having to appear in court. The intermediary must be aware of techniques to alleviate these symptoms at court and also be aware of the effect trauma has on the child's memory.

When a child has to testify in court he is subjected to unrealistic, adult like expectations on his performance in court. Unfortunately, the child's testimony is found to be less reliable when he fails to satisfy the court's and other adults' expectations. The adults show little understanding of the child's developmental limitations and what the impact of the trauma is on the child.

There are advantages and disadvantages for a child to testify in court. These must be taken into consideration and should be explained to the child and his/her parents/caregivers. Aspects such as giving evidence in a court, court delays, multiple interviews, and confronting the accused are aspects that need to be discussed.

Other factors that have to be taken into consideration when the child testifies in court are his level of language and speech development. Language that is used during cross-examination, the effect of cross-examination on the child, and the difficulties the child will experience when being cross-examined will have a definite influence on

his understanding and handling of the trial. These factors will all add to the emotional stress and fears the child will experience when having to go to court.

One of the main difficulties a child can experience when testifying is his communication competence as well as miscommunication. Communication includes translating memory into language, dealing with non-comprehension, reasoning and distinguishing fact from fantasy. The most frequently used questions that confuse children are negatives, double negatives, multifaceted questions, complex syntax and difficult vocabulary. Emotions, temperament, the form of questions, and question strategies will play a role when the child testifies.

The psycho-social needs of the child and the successful resolution thereof is important, otherwise the child will show signs of mistrust, uncertainty, doubt, guilt, feeling responsible for the incident, inadequacy and inferiority.

When communicating and speaking with a child, it is of extreme importance that the court as well as the intermediary understands that the child's language and cognitive abilities have to be taken into account so that the child will be able to participate and understand the court process meaningfully.

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;

- 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.
-
- 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.

CHAPTER SIX

A TRAINING PROGRAM FOR INTERMEDIARIES

6.1 INTRODUCTION

In the previous chapters a theoretical basis for the development of a training program for intermediaries was investigated as part of the first two phases of the intervention research, namely problem analysis, project planning and information gathering. In chapters two to five topics regarding the South African legal system, child developmental phases concerning the child's cognitive, linguistic, socio-emotional, and moral development, as well as communicating with the child were discussed. Aspects like court preparation, the intermediary, the parent, and the child as witness were investigated. In this chapter the knowledge gained from the literature study as well as from the magistrates and prosecutors (Section A of the research) was utilized for the development of the training program for intermediaries.

As described in chapters two and five, testifying in court is traumatic for a child. The working paper by the South African Law Commission, titled *Protecting the Child Witness*, was produced in 1989. As a result of its recommendations and the subsequent insertion of section 170A into the Criminal Procedure Act, 1997 (Act No. 51 of 1977) and described in 2.6.2, an intermediary can be appointed at the discretion of the presiding officer adjutting the case (Muller & Hollely, 2000:42). In this chapter the qualifications, training and the development of skills of the intermediary will be described. The old and new paradigm of training in South Africa, including specific aspects of outcomes-based education and training, will be discussed. The characteristics, advantages and disadvantages of outcomes-based education and training will be investigated. Finally, factors that were taken into account when compiling the training program, as well as the main aspects of the training program itself, as developed by the researcher, will be described.

Chapter six and seven focus on phase three to five of the intervention research model, namely: design, early development, pilot testing, evaluation and advanced development of the training program.

6.2 QUALIFICATIONS AND TRAINING OF THE INTERMEDIARY

In the proclamation in the *Government Gazette* no. 15024 of 30 July 1993, as amended by *Government Gazette* no. 17822 of 28 February 1997, it is clearly stated which categories of people qualify to act as intermediaries (see chapter 5.3.4). From this list of people who can be appointed as possible intermediaries, the emphasis appears to be on people who are presumed to be skilled at communicating with children such as social workers, educators, and child care workers (Muller & Hollely, 2000:43).

Although the *Government Gazette* no.17822 of 28 February 1997 sets out who may act as an intermediary (see 5.3.3), it does not specify any additional training or skills development that the categories of persons must undergo before being appointed as an intermediary.

This leads to the appointment of people to carry out the functions required by an intermediary who have had no training as an intermediary. The different categories of people who can act as intermediaries are often not trained or experienced in communicating with children, unless they have specialized in that specific field (Muller & Hollely, 2000:53). The researcher agrees with the above. In her experience as intermediary it was found that it is important that the intermediary must have knowledge of all aspects involving child development. A basic knowledge of court procedures and trauma are also needed.

As intermediaries do not receive any specialized training in acting as an intermediary, they have difficulty in performing the duties expected of them. Muller & Hollely (2000:53) is of the opinion that a uniform qualification should be introduced for intermediaries. The researcher agrees with this, as this will improve the quality of intermediaries assisting children at court, as the task of the intermediary is to help the court perform its duty. She must be well informed to do so properly. A court is not the arena of the social worker, psychologist, educationalist, or the childcare worker. Extra training is therefore needed to work in this specialized field.

The researcher compiled a training program based on some principles of outcome

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based education training, actively involvement learning and experiential learning as described in Fedler and Olckers (2001:180-186). As the course was presented at Justice College in Pretoria, certain guidelines set by the college had to be adhered to. This created certain limitations like:

- No contact was made with trainees before the start of the course as they come from all over South Africa. The department where they are employed nominates the trainees. Therefore no training material can be distributed beforehand.
- Justice College has a policy of not writing exams and they award the trainees with an attendance certificate only.
- The trainees' academic qualifications and working experience differ greatly. Each trainee therefore moves at his/her own pace.
- Time is limited. It influences the amount of information that can to be addressed. This makes the assessment of the trainees difficult.

6.3 TEACHING-LEARNING ENVIRONMENT CONDUCTIVE TO LEARNING

To achieve effective learning, a teaching-learning environment must be created (Law Society of South Africa, 2004:8). This can be achieved by providing trainees with the opportunity to participate in the components discussed hereafter. Modern learning theory recognises that methodology is critical to successful learning. How the trainee learns is fundamental to the impact of the learning experience (Fedler & Olckers, 2001:178).

6.3.1 Actively involved learning

According to the Law Society of South Africa (2004:8) (hereafter referred to as LSSA,) and Fedler and Olckers (2001:180), key characteristics that must be present in a training program for trainees to engage positively are:

- The activities should be challenging to promote and encourage trainees to actively participate in the tasks presented during the course;
- The activities can start by focussing on the trainees' experience and perspectives of the topic, for example, the trainees can initially focus and share

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their own experiences within a group about sexual abuse and children and then moving on to the child witness in court. The trainees can review their own experiences and apply their newly acquired knowledge. This will take the training full circle; and

- During the course, analytical problem solving, discussion making and communication skills should be promoted by analysing case studies, finding solutions to problems which children can experience in court, and participating in group work.

According to Swart (2004:2) flexibility should be achieved by providing the following:

- Individual work;
- Group work;
- Written work;
- Oral presentations;
- Trainees participation;
- Mock trial;
- Role plays;
- Meaningful discussions; and
- Self study.

Activity involved learning was developed by learning specialists to demonstrate the relationship between the success in learning, the different activities used in the learning process, and the different levels of involvement of the student. Passive listening is one of the least successful ways of learning. By contrast, the most successful learning experiences correspond with the highest degree of learner involvement. Activities that demand something from the student, such as group discussions, learner presentation, role-plays, moot debates or fieldwork, including actual intervention in the real setting, result in the optimum learning experience (Fedler & Olkers, 2001:180-181).

6.3.2 Trainees must apply what they have learnt

The emphasis is on achieving personal relevance in the work place (LSSA, 2004:8).

The trainee must make sense of what he has learnt and the training should also have relevance in the work environment of the intermediary. To achieve this, activities during the training should provide the opportunity to apply what the trainee has learned. To help with this, applicable case studies can be used. Theory and practice should be integrated and trainees must be given opportunities to utilize their knowledge (Wessels, 2005).

6.3.3 Experiential Learning

This is the preferred method of training and encourages participation, sharing reactions of the activity, and discussion of the dynamics (Miller, 2005:45; Fedler & Olckers, 2001:182).

Components of experiential learning, where applicable, were built into the program. Real life experiences were shared and interpreted in the light of the newly acquired knowledge of the roles of the intermediary. According to the LSSA (2004:9) the following activities can provide the opportunity for experiential learning:

- Sharing real life experiences in group work;
- Trainees participating in court cases as observers;
- Mock trials;
- Role plays;
- Meaningful discussions; and
- Self and peer group assessment.

6.3.4 Teaching objectives

Fedler and Olckers (2001:179) are of the opinion that teaching objectives should be included in a course. They listed these objectives as knowledge and skills outcomes. They further postulate that the goals of the course should be clear, direct and empowering.

6.3.5 Reflecting on learning

An important skill for the trainee to acquire is the ability to reflect on his learning. By making formative assessment methods part of the learning process, trainees will be able to get feedback on their process. To attain this, trainees can be asked to perform real world tasks during a mock trial that demonstrates meaningful application of essential knowledge, skills and values.

Trainees participating in structured group discussions with feedback sessions at the end can use formative assessment methods. The trainer can use oral work; role plays and mock trials to determine a trainee's progress. Feedback can then be given in order for the trainee to improve his future performances. At the end of the learning experience summative assessment in the form of formal written exams can be used (LSSA, 2004:9).

For the purpose of the training program developed by the researcher the aforementioned method of assessment was used. No assessment in the form of a written exam was used because of a time constraint.

6.4 DEVELOPMENT OF A TRAINING PROGRAM IN THE SOUTH AFRICAN CONTEXT

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 (Van Niekerk, 2004:2).

For decades the method of teaching was characterised by the trainer delivering a speech whilst the trainee was a passive listener (LSSA, 2004:8; Fedler & Olckers, 2001:178). A problem that often arose from this method of training was confusion amongst the trainees due to large amounts of strange terminology used during such lecture sessions. Arguments against this method of training includes the following:

- Trainees lost interest as passive listeners;

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- Trainees were forced into surface learning instead of reflecting on the application to discuss personal experience (LSSA, 2004:8); and
- The one-way delivery of content did not allow sufficient opportunities to discuss personal experience (LSSA, 2004:8).

Education and training can be divided into two paradigms in the South African context; namely the old paradigm from before 1994 and the new paradigm after 1994, namely outcomes based education and training.

6.4.1 Old paradigm

According to Van Niekerk (2004:2), the old paradigm teaching was based on three dimensions, namely:

- Objectives, which include knowledge skills and attitude. Concepts like list, define, discuss, name, and write an essay, were used. Concepts like apply and problem solving were only occasionally used;
- Training included attainment of knowledge for the sake of knowledge. Transfer of knowledge was neglected. Achievement of skills was not the focus; and
- Assessment, which included norm references, such as measuring trainees against each other, grading and ranking of trainees and a standard of 100%, examinations, tests, assignments, and oral exams as methods of testing knowledge.

The disadvantages of the above method are:

- This method does not necessarily provide for a comprehensive, in-depth assessment of knowledge and skills that are indicative of mastery of a given subject's content; and
- Institutions often used the test scores to determine the fate of a trainee, assess the quality of a lecturer and quality of educational institution.

The above method of teaching came under attack from educational researchers and practitioners for decades. An alternative that would move towards competency and

skills training was sought (LSSA, 2004:8; van Niekerk, 2004:2; Fedler & Olckers, 2001:182).

6.4.2 The new paradigm

According to the Law Society of South Africa (2004:8) effective learning is determined by three crucial factors:

- Motivation and commitment to learning;
- Learning by practise, mistakes, and trial and error; and
- Making sense of what is being learned.

One of the key concepts in this learning environment is that of “whole person learning.” Heron (1999:4) postulated that:

“A learner is a whole person, and the whole person needs to be involved in learning. Learning is extended from it’s traditional restriction to the theoretical and applied intellect, into the domains of body awareness, emotions, and attitudes, interpersonal relations, social and political processes, psychic and spiritual awareness.”

The teaching-learning environment that is conducive to learning is aimed at developing the trainees’ mind set, knowledge, and skills. What has to be learned must be defined clearly, learning outcomes must be stated in detail and made known throughout the training, and focus must be on personal understanding of the development of the subject (Law Society of South Africa, 2004:9; Miller, 2005:45; Fedler & Olckers, 2001:180).

6.5 IMPLEMENTING OUTCOMES BASED TRAINING AND EDUCATION

6.5.1 What is outcomes-based education and training (OBET)

According to Wilson (1999:1-2) OBET focuses on student learning by:

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- Using learning outcome statements to make explicit what the student is expected to be able to know, understand, or do;
- Providing learning activities that will help the student to reach these outcomes; and
- Assessing the extent to which the student meets these outcomes through the use of assessment criteria.

According to Van der Horst and Mc Donald (1997:7) OBET is: “A learner-centred, results-orientated, and activity-based approach to teaching and learning.”

Van der Horst and Mc Donald (1997:8) further postulate that OBET is based on the following underlying principles:

- All individual trainees must be allowed to learn to their full potential. The trainee as well as the trainer must have high expectations for successful learning, regardless of background, age, sex, learning style, or other factors;
- Every success that a trainee experiences, builds his self-esteem and the motivation and willingness to strive for further success. Positive and constructive ongoing assessment is necessary to attain this success. All trainees may not achieve the same outcomes, but they must be granted opportunities to reach their full potential;
- Facilitators and trainers must create a learning environment, which is inviting, challenging, and motivating so that the trainee can achieve success. The atmosphere must be positive to encourage active learning; and
- It is important not only to build concrete experience into the learning process, but also to acknowledge the importance of extramural experience. This is particularly true in relation to adult learning (Fedler & Olckers, 2001:182).

Whilst developing the training program, the researcher kept two objectives in mind, namely a new level of knowledge, and skills and attitudinal change resulting in a commitment to apply the new skills. Some of the guidelines that had been developed by the Law, Race and Gender Research Unit, University of Cape Town (Fedler & Olckers, 2001:184) were used, namely:

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- Using a multi-disciplinary approach;
- Using both cognitive and experiential training techniques;
- Use of participatory training techniques such as small groups, role plays, scenarios and problem-solving techniques;
- A sympathetic and relaxed atmosphere with time for social exchange; and
- Diversity of race, gender and culture amongst the trainees.

Coetzee (2002:93) states that understanding and flexibility are as important as the content of the course when training trainees. Outcomes do not depend on the content, outcomes are the results of learning and can be measured and assessed.

They further state that OBET is:

- A trainee-centred process;
- Developmental and encompasses what the trainee has learnt and his abilities at the end of the training; and
- Designed to promote problem-solving and critical thinking.

In summary, outcomes are the end results, the goals to attainment, and the ideals to be demonstrated for mastery at the end of a specific unit, course, or program (Alexander, 2004:1).

According to Shipley (1995:18) most trainers have specific results in mind when they begin a course. The content of the course will therefore be structured around these outcomes.

6.5.2 Characteristics of OBET

According to Coetzee (2002:90) OBET requires learning facilitation and assessment opportunities. The following characteristics need to be discussed:

- **What a trainee needs to learn is stated clearly.**

The learning outcomes must be:

- Future-orientated;

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- Learner centred;
- Focussed on knowledge, skills and attitudes/values of learning; and
- Characterised by high expectations of all trainees.

The trainee is facilitated towards the achievement of the outcomes. He is an active and interested participant in the learning process.

▪ **The trainee's progress is based on demonstrated achievement.**

- The focus is on being able to use and apply learnt knowledge, skills and attitudes rather than just absorbing content; and
- The trainees must be able to demonstrate significant skills and be assessed during the learning program time.

▪ **Each trainee's needs are catered for by means of a variety of facilitation strategies and assessment tools.**

This includes that:

- The trainee's needs, such as foreknowledge, level of proficiency, and interest, must be assessed;
- Assessment is an ongoing process of observation, reflection, and analysis; and
- Continuous assessment is necessary for further facilitation decisions.

▪ **Each trainee is provided with the necessary time and assistance to fulfil his potential.**

To achieve this:

- All trainees have to be hard workers;
- All trainees have to be responsible for their own learning;
- All learners have to work to become more independent in their learning and thinking; and
- All learners are required to assess their own progress.

The researcher found that, as a result of the time constraints of the five-day program, it was not possible to attain the above as not all trainees work at the same pace.

6.5.3 Advantages of OBET

According to Coetzee (2002:91) there are many advantages in developing or using a program that clearly states outcomes. These are:

- Careful planning is vital for a successful training course. The learning outcomes guides the trainer's content selection, facilitation strategies, and assessment planning;
- Trainees know what is expected of them and can measure their own achievement. The trainee will learn to take ownership and control of his own learning; and
- Trainers can monitor the trainee's progress in terms of specific learning achievements.

6.6 COMPILATION OF THE TRAINING PROGRAM FOR INTERMEDIARIES UNDERTAKEN BY THE RESEARCHER

When compiling the training program, the researcher followed an approach based on a combination of OBET principles as well as actively involved learning and experiential learning approaches. Aspects of these approaches, as discussed in this chapter, were followed when presenting the course.

A skills program was compiled, consisting of smaller units that are occupational based and that render a trainee employable as an intermediary. It was done as follows:

6.6.1 Planning and designing

According to Coetzee (2002:107), a learning program can only be planned and designed after a thorough needs assessment exercise. 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 as described in 1.8.2.

6.6.2 Learning objectives

According to Coetzee (2002:108) learning objectives explain the overall intention or purpose of the learning program and its modules or courses. These learning objectives are closely related to the education and training itself.

The development of learning objectives was compiled from the intended result of the training. Phase 2 of the research process provided information regarding these objectives as stated under 1.8.2. Themes were identified and objectives were set. Procedures and activities were developed so that the program could lead to an effective learning experience. Outcomes were derived from these objectives by determining what action had to take place and what indicated the achieving of the outcome successfully. This was integrated in the course on a continuous basis as well as in a final questionnaire at the end of the course.

According to Coetzee (2002:108) learning outcomes are characterised by a knowledge component, observable actions, and a measurable assessment criteria. Case studies, role-plays, practical exercises, mock trial, video viewing, structured group discussions and observing a real court trial are used to achieve the above.

6.7 INTERMEDIARY TRAINING PROGRAM

From the literature study and other information gather from phase one, the following training program was developed. As a result of spatial constraints, only a summary of the course, as it is presented, will be described in this chapter.

The curriculum of the training program was compiled to consist of 12 units, which are presented over a period of five days. A certain amount of flexibility regarding the time spent on each unit was provided for. The time for the course is divided into the following:

- 30% of time is dedicated to theory;

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- 20% of time is dedicated for sharing practical experiences, mainly by trainer but also by trainees; and
- 50% of time is dedicated to group discussion, videos, role plays, practicing skills and court attendance.

Learning outcomes are characterised by a knowledge component, a measurable assessment criteria and observable actions. Case studies, role-plays, practical exercises, mock trials, video viewing, structured group discussions, lectures and observation of a real court case were used to achieve outcome-based training.

The 12 units, the overall outcomes, the assessment criteria of each unit, the practical component as well as handouts/material provided will be discussed hereafter.

6.7.1 Competence outcomes of the training program

To complete the training program all trainees will be able to demonstrate knowledge and understanding of the theory and practice of being an intermediary and within this framework demonstrate applied and integrated knowledge and skills of the duties of an intermediary.

After the training program the following outcomes will be achieved and the trainees will be able to:

- Identify and explain the concept and meaning of child abuse;
- Demonstrate a basic knowledge of the South African legal system;
- Analyse and discuss the role, requirements, duties and functions of the intermediary;
- Describe how to prepare a child witness for court;
- Analyse and describe the role of the parents of the witness;
- Demonstrate and discuss how to build rapport with the child witness
- Demonstrate and discuss a working understanding of child and linguistic development;
- Explain and demonstrate how to introduce and use the anatomically detailed dolls to the child witness;

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- Define and discuss trauma and secondary trauma and how to support and debrief the traumatised child;
- Compile and formulate a desirability report for an section 170A application;
- Practise and contribute to questions asked in court and participated in role play;
and
- Participate and attend a practical session either in a moot trial or a real trial.

6.8 CONTENTS OF THE INTERMEDIARY TRAINING PROGRAM

STUDY UNIT ONE: ORIENTATION

SPECIFIC OUTCOME:

To develop and demonstrate a basic knowledge of what child abuse is, and be able to define different concepts of child abuse.

ASSESSMENT CRITERIA:

The trainee will be competent to demonstrate an understanding if he can:

- Define and describe what child abuse is. This includes defining the following concepts.
 - Child abuse.
 - Physical abuse.
 - Sexual abuse.
 - Rape.
 - Sodomy.
 - Indecent assault.

PRACTICAL COMPONENT:

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Introduction of trainees;
- Big group discussion on expectations of the program;
- Practical example of discomfort when having to speak about sexual abuse;
- Group discussion on child abuse;
- Group discussion on the advantages and disadvantages of taking the child to court;

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- Use of flipchart during group feedback; and
- Questions from trainees were discussed.

HANDOUTS/MATERIAL PROVIDED

- Handout with the theory required for this theme; and
- Case study.

STUDY UNIT TWO: SOUTH AFRICAN LEGAL SYSTEM

SPECIFIC OUTCOME

To develop and demonstrate a basic knowledge of the South African accusatorial system.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding of the South African legal system if he can:

- Define and discuss the accusatorial system, Criminal Procedure Act, the role of the magistrate, and the involvement of two parties is explained;
- Identify and discuss the role players in court, the different roles players and their functions;
- Analyse and discuss the legal process of sexual abuse, from reporting the crime up to the finalisation of trial;
- Identify and discuss the methods of testifying, Section 170A, section 158, and the screen; and
- Analyse and discuss aspects of the child taking of an oath.

PRACTICAL COMPONENT:

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation of aspects of the South African legal system;
- Visual material by means of a self compiled video of different role players;
- Small group discussions of problems trainees have experienced with the legal system as well as when reporting child abuse to police;
- Plenary feedback;
- Practical examples from experience;

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- Use of flipchart; and
- Questions from trainees are discussed.

HANDOUTS/MATERIAL PROVIDED:

:

- Theory in the form of a handout.

STUDY UNIT THREE: THE INTERMEDIARY

SPECIFIC OUTCOME

To develop and demonstrate a thorough knowledge of all aspects concerning the intermediary, including duties and functions of the intermediary

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding of the functions and duties of an intermediary if he can:

- Identify and discuss what an intermediary is;
- Analyse and discuss who can be appointed as an intermediary according to the *Government Gazette*;
- Identify and explain when an intermediary is appointed according to the Criminal Procedure Act, 1977;
- Identify and discuss the prerequisites and duties of an intermediary;
- Understand and discuss the use of the intermediary room and equipment; and
- Analyse and discuss the role of the intermediary before, during and after the child has to testify.

PRACTICAL COMPONENT

The following method and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Video presentation compiled by the intermediary;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;

STUDY UNIT SIX: BUILDING RAPPORT WITH THE CHILD

SPECIFIC OUTCOME

To develop and demonstrate a basic knowledge of how to approach the child and know how to build a rapport with the child.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding if he can:

- Identify and explain the basic principle of a child centred approach;
- Analyse and explain how to make contact with the child witness;
- Analyse and discuss how to approach the child in a child friendly manner;
- Analyse and demonstrate effective communication with the child on his developmental level;
- Analyse and demonstrate practical examples of building rapport;
- Analyse and explain how to become the child's friend; and
- Analyse and practically demonstrate how to build rapport with the child.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;
- Questions from trainees are discussed;

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- Questions from trainees are discussed;
- Use of flip chart;
- Role-play; and
- Discussion of solutions to problems concerning intermediaries.

HANDOUTS/MATERIAL PROVIDED:

- Theory in the form of a handout;
- Copy of section 107A of Criminal Procedure Act, 1977; and
- Copy of the relevant *Government Gazette*.

STUDY UNIT FOUR: COURT PREPARATION

SPECIFIC OUTCOME

To develop and demonstrate a sound knowledge of aspects of court preparation and the ability to do court preparation with the child witness as well as his parents/caregivers.

ASSESSMENT CRITERIA

The trainee will be able to demonstrate an understanding of what court preparation is if he can:

- Analyse and describe the functions of court preparation;
- Identify and explain who can do court preparation;
- Analyse and discuss how to prepare the child for court;
- Identify and discuss what the court looks like;
- Identify and discuss what the intermediary room looks like;
- Analyse and explain what happens in court;
- Identify and discuss the court role players and their functions;
- Analyse and discuss what an oath is;
- Analyse and discuss testifying, examination in chief and cross-examination;
- Identify and discuss the types of questions that can be asked;
- Identify and discuss behaviour during the trial;
- Analyse and explain reasons for possible delays;
- Analyse and discuss what happens after court;
- Identify and explain feelings regarding going to court; and
- Analyse and explore different cultures and beliefs – seeing the child in that context;
- Analyse and demonstrate stress reduction techniques.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

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- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;
- Questions from trainees are discussed;
- Use of flip chart during feedback from group discussions;
- Role-plays; and
- Discussion of solutions to problems concerning court preparation.

HANDOUT/MATERIAL PROVIDED

- Theory in the form of a handout.

STUDY UNIT FIVE: THE ROLE OF THE PARENT

To develop and demonstrate an understanding of the supporting role of the parent during the court case.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding of what the role of the parent is if he can:

- Analyse and describe ways to empower the intermediary to:
 - Make the parent aware of the importance of his/her positive support of the child;
 - Familiarise the parent with the court procedures;
 - Provide parents with basic knowledge of the legal process before the child testifies by involving them in the court preparation that is done by the intermediary;
 - Explain to the parent not to discuss the child's testimony with him/her until the case is over;
 - Provide support for the parent before, during and after the trial; and
 - Empower the parents to support their child before, during and after the court process.

PRACTICAL COMPONENT:

The following methods and tools are used to achieve the outcomes:

- Powerpoint presentation of theory regarding the parents role;
- Oral presentation;
- Analysing of case studies;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;

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- Questions from trainees are discussed;
- Use of flip chart during the group feedback;
- Role-plays; and
- Discussion of solutions to problems concerning the parents/caregivers.

HANDOUTS/MATERIAL PROVIDED:

- Theory in the form of a handout.

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- Practical demonstration of play techniques;
- Use of flip chart during the group feedback;
- Role-plays; and
- Discussion of solutions to problems concerning building rapport with child.

HANDOUTS/MATERIAL PROVIDED:

- Theory in the form of a handout.

STUDY UNIT SEVEN: CHILD DEVELOPMENT

SPECIFIC OUTCOME

To develop and demonstrate a basic knowledge of the developmental stages of the child and to determine at what level the questions must be asked in court.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding if he can:

- Identify and discuss the characteristics of the three developmental phases of a child, namely, early childhood, middle childhood and adolescence;
- Identify describe the three cognitive developmental phases, namely pre-operational, operational and concrete operational;
- Analyse and explain language development;
- Identify and explore problems children have with communication, especially in court;
- Identify and discuss language mistakes children make in the different developmental stages pertaining to the court situation; and
- Analyse and explain emotional development.

PRACTICAL COMPONENT:

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Video presentation of self compiled video;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;

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- Questions from trainees are discussed;
- Use of flip chart during group feedback;
- Role-plays; and
- Discussion of solutions to problems concerning child development aspects.

HANDOUTS/MATERIAL PROVIDED:

- Theory in the form of a handout;
- Practical notes; and
- Exercise examples

STUDY UNIT EIGHT: ANATOMICALLY DETAILED DOLLS

SPECIFIC OUTCOME

To develop and demonstrate a basic knowledge of anatomically detailed dolls and how to be comfortable with the dolls and be able to use them in a court situation when the child testifies.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding if he can:

- Explore and discuss the anatomically detailed dolls;
- Analyse and explain the requirements of the dolls;
- Analyse and discuss the use of the dolls;
- Analyse and demonstrate how to use the dolls;
- Demonstrate how the child witness should identify the body parts;
- Analysing and explaining that the dolls are not ordinary toys;
- Exploring and demonstrate how to use the dolls; and
- Analyse and explain the use of other aids to testifying.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Anatomically detailed dolls;
- Interaction with anatomically detailed dolls;
- Other aids: Anatomical drawings;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;

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- Discussions of practical experiences of trainees;
- Questions from trainees concerning the dolls;
- Use of flip chart;
- Role-plays with the dolls; and
- Discussion of solutions to problems experienced when using the dolls and other aids.

HANDOUTS/MATERIAL PROVIDED:

- Article on anatomical dolls;
- Theory in the form of a handout

STUDY UNIT NINE: SUPPORTING AND DEBRIEFING

SPECIFIC OUTCOME

To develop and demonstrate a basic knowledge of the trauma and stress of the child witness and the ability to debrief the child.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding if he can:

- Identify and discuss questions most frequently asked by the child witness;
- Identify and demonstrate supporting techniques;
- Classify and discuss what trauma is;
- Understand and explain preventing secondary trauma;
- Analyse and describe possible source of anxiety; and
- Motivate and discuss suggestions to help witnesses cope with anxiety.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Oral presentation;
- Analysing of case studies;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;
- Questions from trainees;
- Use of flip chart during group feedback;
- Role-plays; and

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- Discussion of solutions to problems concerning trauma, supporting and debriefing.

HANDOUTS/MATERIAL PROVIDED:

- Case studies;
- Theory in the form of a handout; and
- Exercise for examples.

STUDY UNIT TEN: THE DESIRABILITY/ s170A APPLICATION REPORT

SPECIFIC OUTCOME

To develop and demonstrate applied knowledge and understanding of the assessment of the child witness and the compilation of the desirability report for court.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding of compiling a desirability report if he can:

- Define and discuss undue mental stress and suffering;
- Classify and discuss factors that have to be considered when assessing the child;
- Identify and discuss the factors to be kept in mind when drawing up the desirability report before the trial;
- Explore and discuss who should be interviewed for the report;
- Identify and discuss various interviewing skills with children and adults.
- Analyse and discuss what the desirability report should consist of;
- Analyse and discuss the recommendations for the use of an intermediary (s170A application);
- Explore and discuss the recommendations for using the closed circuit television system (section 158 application);
- Analyse and discuss using the screen in court;
- Discuss and identify guidelines for compiling the desirability report;
- Understand and utilise the pro forma for the desirability report; and
- Demonstrate writing a desirability report.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- Powerpoint presentation of theory;
- Practicing of interviewing skill;
- Analysing of case study;
- Pro forma form;
- Small group discussions;
- Plenary feedback and discussions;
- Discussions of practical experiences of trainer and trainees;
- Questions from trainees are discussed;
- Use of flip chart;
- Role-plays of interviewing skills;
- Discussion of solutions to problems concerning the drawing up of desirability reports; and
- Practical draughting exercise.

HANDOUT/MATERIAL PROVIDED:

- Case study;
- Theory in form of handout;
- Group discussion questions;
- Pro forma form;
- Example of a desirability report used in court

STUDY UNIT ELEVEN: EXAMPLES OF QUESTIONS ASKED IN COURT

SPECIFIC OUTCOMES

To develop and demonstrate integrated knowledge and understanding of the types of question that could be asked during the trial and the ability to relay the questions to the child witness on his level of understanding.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate an understanding if he can:

- Identify and change possible questions asked by the court, prosecutor, and the defence lawyer to the level of the child witness;
- Identify and formulate the “general purport” of the question; and
- Explore and discuss the difference between adult and child language use.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- A list of difficult questions frequently asked in court is distributed;
- Individual trainees will answer the above questions on their own;
- Answers are role-played in the big group;
- Oral presentation;
- Practicing of language and vocabulary skills;
- Analysing of case studies;
- Discussions of practical experiences of trainer;
- Discussions of practical experiences of trainees;
- Questions from trainees;
- Use of flip chart during the feedback of the group; and
- Discussion of solutions to problems concerning child friendly language.

HANDOUTS/MATERIAL PROVIDED:

- List of questions;
- Case studies for group discussions; and
- Moot court transcript.

STUDY UNIT TWELVE: EXPERIENCING LIVE COURT PROCEEDINGS

SPECIFIC OUTCOMES

To develop and demonstrate the integrated knowledge and understanding of all aspects needed to fulfil the tasks that are expected of an intermediary before, during and after the trial.

ASSESSMENT CRITERIA

The trainee will be competent to demonstrate and understanding if he can;

- Put knowledge into practice by attending a live court case with a child witness testifying with an intermediary in a separate room;
- Take a tour through the unit for sexual offences;
- Observing of court proceedings and court etiquette;
- Observe the competency test of a child;
- To observe how a child takes the oath or is admonished to tell the truth;
- To observe how the intermediary is sworn in;
- To observe a child being led to testify by the prosecutor;
- To observe how the child is being cross-examined by the lawyer;
- To observe how the intermediary assists the child in and out of court;
and
- Explore and practice skills in a mock trial situation.

PRACTICAL COMPONENT

The following methods and tools are used to master the outcomes:

- Attending and observing a live court trial with a child witness being assisted by an intermediary;
- Viewing the waiting room, intermediary room and the court with the closed circuit television system;
- Questions about the trial are discussed in the big group after the trial;

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- Practical participation in the mock trial; and
- Discussion of the feelings of trainees about the trial and experiences of mock trial.

HANDOUTS/MATERIAL PROVIDED:

- Notes taken by the trainees during the trial/ mock trial.

6.9 SUMMARY

In chapter 6 the historical background, origin of the intermediary and the provision of section 170A of the Criminal Procedure Act, 1977 (Act 51 of 1977), was discussed. The qualifications of the intermediary and the lack of guidance concerning the training of intermediaries were explored. Principles of the teaching-learning experience environment and more specifically actively involving learning, applying what the trainee has learnt, experiential learning, and reflecting on his/her learning were explored.

The development of a training course in the South African context with the emphasis on the difference between the old and the new paradigm was discussed. The advantages and disadvantages of each paradigm were also investigated. The outcomes-based education and training program was explored.

The implementation of such a program was described and the characteristic, advantages, and disadvantages of such a program were examined. The compilation of such an outcomes-based program, with specific mention of the planning, the design, and learning objectives that have to be taken into account, were discussed. Finally the training program that was compiled by the researcher was described. The overall outcomes were discussed. The course consists of 12 units, which were examined on the basis of specific outcome, assessment criteria, practical components and material provided.

It was concluded that a successful training program for intermediaries must include legal aspects, aspects relating to child development, linguistic and communicative abilities. The program must have a strong practical component with the relevant theoretical background.

CHAPTER SEVEN
EMPIRICAL STUDY

7.1 INTRODUCTION

Chapter two of this study discussed the South African legal system and the role of the intermediary in this system (see also 5.3). From this chapter it was clear that the accusatorial system in South Africa and the court procedure are not child friendly. No specific guidelines on training for intermediaries are given, only the categories of people who are allowed to act as intermediaries. Case law was also discussed, highlighting problems children experience when testifying in court and the influence this has on the outcome of the case.

In chapter three the normal development of the child regarding cognitive, emotional, and linguistic aspects were discussed. Aspects highlighted by the literature indicating the primary prerequisites and characteristics of the developing child, were incorporated in the research study, to a lesser extent the first phase, namely the survey study (section A) and to a greater extent in the second phase namely the one-group pretest -posttest study (section B).

In chapters four and five communication and assisting the child witness in a court situation were discussed. Aspects that the literature highlighted were those of children with disabilities, the use of anatomically detailed dolls, the role of the parent, the intermediary, court preparation, and the dynamics of trauma. The influence of child development on the above topics was also explored. The literature study, discussions with experts, and the needs assessment of the first phase of the study were used to compile the questionnaires and relevant themes for the intermediary training program. Chapter six discussed the theoretical background of the development of a training program. The development and contents of the program was also described in this chapter.

The literature study and the needs assessment (section A of the research) forms phase two of the intervention research process, namely information gathering.

In this chapter the results of the data that was collected and analysed during the empirical study are presented graphically together with the interpretation thereof.

7.2 RESEARCH PROCESS

The research process has already been discussed in detail in chapter 1. A summary will be given here to orientate the reader towards the information and findings.

7.2.1 Goal

The goal of this study was:

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

7.2.2 Objectives

The objectives of this research study are:

- To develop a theoretical framework regarding: Child development, linguistic development, court preparation, child centred communication, South African legal system, the intermediary, child abuse, anatomically detailed dolls, and trauma.
- To explore the perceptions, experiences, concerns, problems, expectations, and needs of magistrates (Appendix one) and prosecutors (Appendix two) from various sexual offences courts in South Africa, about the role and duties of the intermediary.
- To explore and gain information on existing training programs for intermediaries in South Africa.
- To develop a research-based training program for intermediaries in South Africa.
- To implement the training program for intermediaries.

- To evaluate the training program for intermediaries with the view to recommend further utilization in practice (Appendix three and four).
- To draw conclusions and make recommendations to the Department of Justice and Constitutional Development and other trainers of intermediaries for implementation of the training program.

7.2.3 Research approach and type of research

As discussed in chapter 1, the approach used in this study was the quantitative approach that was undertaken in two sections. The type of research used was applied research. The form of research was intervention research. The six phases of intervention research, as described in Rothman and Thomas (1994:28; De Vos 2002:397-399), determined and guided the procedures of this research.

7.2.4 Research design

The study was divided into two phases, namely:

- Section A: This first section used the survey design to explore present experiences and gain information on the role and duties of an intermediary to be used in a training program.
- Section B: This second section used a quasi-experimental pretest-posttest design to evaluate the impact of the training program on prospective intermediaries attending the program.

Data collection, analysis and interpretation form part of this chapter.

7.2.5 Selection of respondents

- Section A: In this study non-probability sampling, and more specifically purposeful sampling took place. The whole population was involved. All magistrates

and prosecutors attending refresher courses and child law workshops at Justice College in Pretoria during August to October 2004 were included in the study.

- Section B: In this study non-probability sampling, and more specifically purposive sampling took place. All trainees attending the training program at Justice College during November 2004 and February 2005 were included in the study.

7.2.6 Ethical aspects

- ***Informed consent:***

All respondents were informed of the nature of the research, how the measurement will take place and what can be expected by means of a letter. The goal and objectives of the study were also explained to them. All the respondents were provided the opportunity to refuse or participate in the study. Written consent was obtained from all respondents.

- ***Harm to experimental respondents:***

The researcher is aware of the ethical responsibility and protected all respondents against physical and emotional discomfort. No physical or emotional risks were taken by respondents as they:

- Section A: Filled in questionnaires.
- Section B. Attended a training course and filled in two questionnaires.

No therapy was done and no sensitive information that could cause any emotional distress was gathered.

- ***Violation of privacy/anonymity/confidentiality***

Confidentiality and privacy was at all times maintained. All information in the questionnaires was obtained anonymously and identification of respondents will not be revealed. A written explanation of the total investigation was given to each respondent as well as a written consent form that was signed by each respondent.

▪ ***Release of publication of the findings***

The research report was written as objective and accurate as possible. All shortcomings and errors were admitted. All respondents have access to the final research results. The researcher was also aware that before the research report can be submitted, it had to comply with the requirements of the Academic Administration of the University of Pretoria.

7.2.7 Validity and reliability of measuring instruments

Fouché (2002:120) held that when original measuring instruments are to be constructed, the researcher must give a detailed account of the procedures to be employed in constructing them. The researcher must give a detailed account of the procedures to be employed in constructing them. He must also discuss the validity and reliability of the instruments.

▪ **Validity:**

According to Bostwick and Kyte (1981:104) and Hudson (1981:104) a valid measuring instrument does what it is intended to do, namely measure what it is supposed to measure. Yielding scores whose differences reflect the true differences of the variable being measured – thus measure accurately.

Hudson (1981:109) suggests that a researcher take content; face-; construct and criterion validity into consideration while developing and pilot testing a quantitative measuring instrument.

With the help of the Department of Statistics of the University of Pretoria the researcher took the following into consideration whilst developing the questionnaires:

- Is the instrument really measuring the content;
- Does the instrument provide n adequate sample of items that represent that concept;
- Are the items by a scale and the indicators claiming to measure what it is meant to measure;
- Multiple measurement; and

- How well this instruments measures.

- **Reliability:**

Hudson (1981:113-120) and Delport (2002:168) held that reliability generally refers to the extent to which independent administration of the same instrument consistently yields the same results under comparable conditions. Reliability is therefore concerned with how well what is being measured, is measured (Bless & Higson-Smith, 1995:130-134). The researcher took the following into consideration:

- Can the same instrument be used on the same group of people on two or more occasions;
- Can a equivalent form of the instrument be used;
- Internal consistency of the instrument; and
- Item response analysis.

7.2.8 Questionnaires

The New Dictionary of Social Work (1995:51) defines a questionnaire as “a set of questions on a form which is completed by the respondent in respect of a research project.”

7.2.8.1 Type of questionnaire

According to Delport (2002:172) there are different types of questionnaires that can be identified, namely: Mailed questionnaires, telephonic questionnaires, personal questionnaires, questionnaires delivered by hand and group administered questionnaires. The researcher made use of group administered questionnaires that were personally distributed (delivered by hand) amongst the respondents.

7.2.8.2 Constructing a questionnaire

Delport (2002:175-176) held that the researcher must have clarity on what information is to be obtained. The questionnaire must be brief but long enough to

incorporate all relevant information. The format of the questionnaire will be influenced by what type of questionnaire it is as well as where, under what circumstances and by whom it will be completed. All questionnaires should be accompanied by a covering letter.

The researcher, with the help of the Department of Statistics of the University of Pretoria, took the aforementioned into consideration whilst constructing the questionnaire.

7.3 DATA COLLECTION AND ANALYSIS: SECTION A OF THE EMPIRICAL RESEARCH

7.3.1 Data collection

- Data collection formed part of phase two of the intervention research process and of objective two. The research question, namely: *What are the roles and duties of an intermediary?* applies to this phase and objective.

During the above phase information was collected from magistrates and prosecutors with regards to compiling a training program for the utilization of intermediaries in courts. This information was used as part of the knowledge base to develop the training program.

Data was collected by means of two self-constructed questionnaires (Appendix one and two). The questionnaires sought to gain information with regards to work and work experience of the magistrates and prosecutors, concerns and problems experienced by magistrates and prosecutors with relation to the performance of intermediaries during the court process when acting as intermediaries, and input from the magistrates and prosecutors relating to topics and issues they felt that needed to be addressed in a training program for intermediaries.

Both questionnaires were pilot tested by two magistrates and two prosecutors respectively before distribution and who did not form part of the main investigation.

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After the pilot testing, the questionnaires were implemented by using the random cross-section survey method. The questionnaires were distributed to 150 magistrates and 90 prosecutors attending various child law workshops and training programs throughout South Africa during August and September 2004. Fifty-four questionnaires from magistrates and 34 questionnaires from prosecutors were received back. Data in terms of 54 magistrates, (N=54), 34 prosecutors, (N=34) was collected.

One hundred and twenty questionnaires (Appendix one) were distributed to magistrates at two different child law workshops and two training programs for magistrates at Justice College in Pretoria. The magistrates came from all over South Africa. The facilitators of the workshops and programs distributed the questionnaires at the beginning of the workshops/programs and collected the questionnaires at the end of the workshops/programs. Fifty-four questionnaires were received back.

Eighty questionnaires (Appendix two) were distributed to prosecutors from all over South Africa, attending two child law workshops. The facilitators distributed the questionnaires at the beginning of the workshops and collected them at the completion of the workshops. Thirty-four questionnaires were returned. The completion of these questionnaires was completely voluntary.

7.3.2 Data analysis

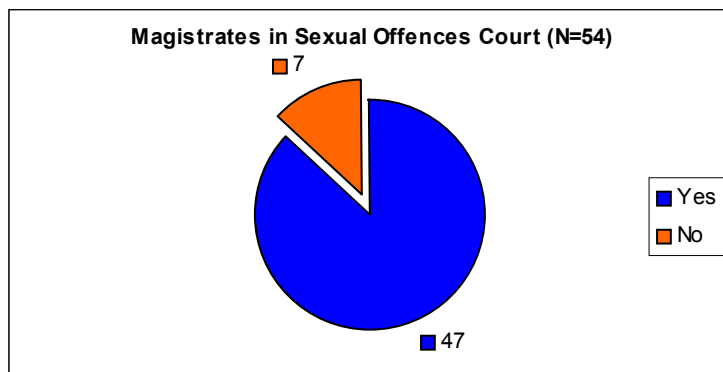
The results that were obtained from magistrates and prosecutors will now be discussed. Results obtained are presented graphically or in table format.

7.3.3 QUESTIONNAIRE 1 (Appendix 1): Questionnaire for Magistrates with reference to Intermediary

SECTION A: Experience and background of magistrates and intermediaries and perceptions of reports

- Sexual offences court magistrates

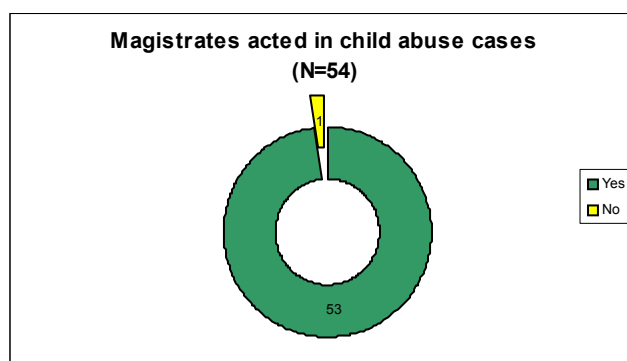
Figure 7.1: Magistrates acting in sexual offences courts



As seen in figure 7.1, 47 (87%) of the 54 magistrates that completed the questionnaire presided in a sexual offences court that has an intermediary system. Seven (13%) of the magistrates did not preside in a sexual offences court.

- Magistrates acted in child abuse cases

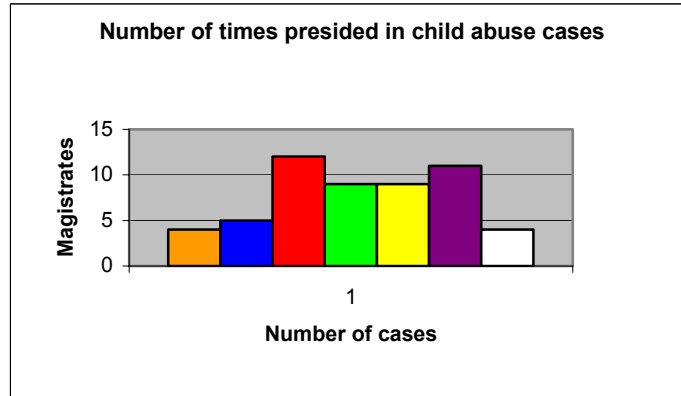
Figure 7.2: Magistrates having acted in child abuse cases



As seen in figure 7.2 of the 54 questionnaires that were received from the magistrates, 53 magistrates (98%) had acted as magistrates in child abuse cases. Only 1 (2%) had never presided in a child abuse matter before.

- Magistrate presiding in child abuse cases

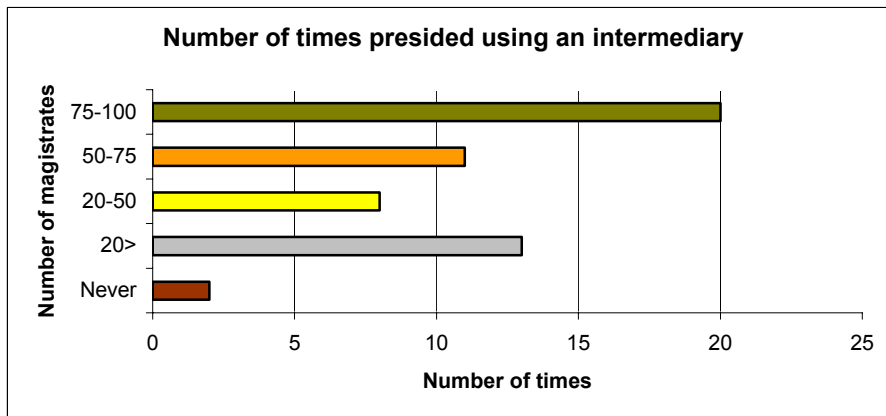
Figure 7.3: Number of cases in which acted as magistrate



As seen in figure 7.3, of the 54 magistrates, 4 (7%) had acted as presiding officers in less than 10 cases, 5 (9%) magistrates had acted in between 10 and 20 cases, 12 (22%) magistrates had acted in between 20 – 50 cases, 9 (17%) magistrates acted in between 50 – 100 cases, 9 magistrates in 100 – 200 cases, 11 (20%) magistrates acted in 200 – 1000 cases and 4 (7%) had acted in more than 1000 cases. Thus 24 (44%) of the magistrates acted in more than 100 cases.

- Number of cases where an intermediary was used

Figure 7.4: Number of times an intermediary was used when

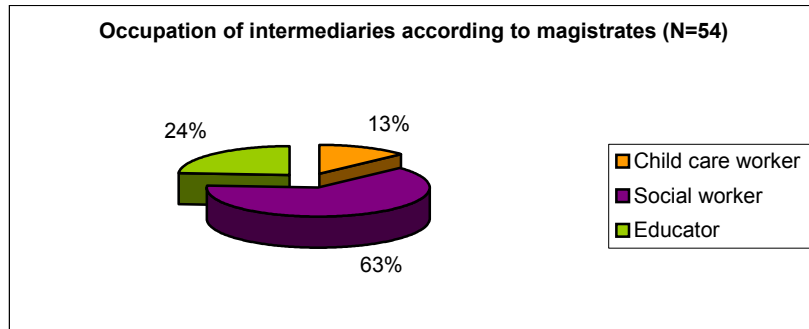


From figure 7.4, it can be seen that 2 (4%) of magistrates had never heard a case where an intermediary was used. 13 (24%) of magistrates had used intermediaries in 20% or less cases, 8 (15%) magistrates had used an intermediary in 20 to 50% of their cases, 11 (20%) magistrates had used intermediaries in 50 to 75% of their cases and 20 magistrates (37%) had used intermediaries in 75 to 100% of their cases. From the above it can be seen that

57% of magistrates used intermediaries in more than 50% of the cases and 37% in more than 75% of the cases.

- Occupational background of intermediaries according to magistrates

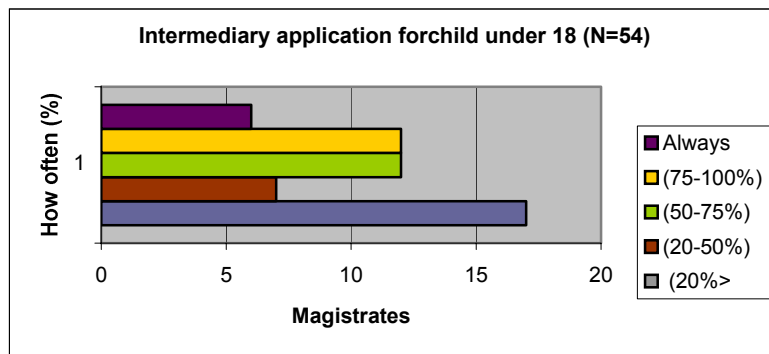
Figure 7.5: Occupational background of the intermediaries according to magistrates



From figure 7.5 it can be seen that of the intermediaries acting in their courts, 34 (63%) the magistrates said the intermediaries were mainly social workers, 13 (24%) said they were mainly educators and 7 (13%) said they were mainly child care workers. It thus seems as if the social worker is the person that most frequently acts as an intermediary.

- Application for an intermediary

Figure 7.6: Frequency of application of intermediary for children under 18 years



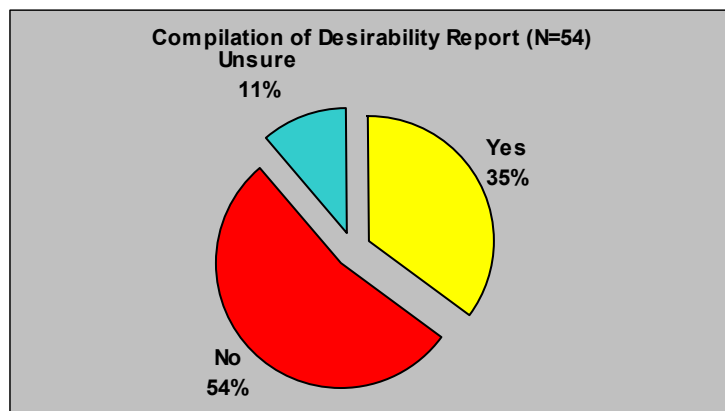
When an intermediary is to be used, an application must be brought before the presiding officer for the use of an intermediary. From figure 7.6 it can be seen 17 magistrates (32%) said that in less than 20% of the cases applications were made for intermediaries, 7 (13%) magistrates said that applications were made between 20 and 50% of cases, 12 (22%) magistrates said that applications were made in 50 – 75% of

cases, 12 (22%) magistrates said that applications were made in 75-100% of cases and 6 (11%) magistrates said that applications were made in all of the cases.

From the above it can be seen that 24 (44%) of magistrates said that applications for intermediaries were made in less than 50% and only 6 (11%) magistrates said that applications were made in all (100%) cases coming to trial.

- Desirability Report

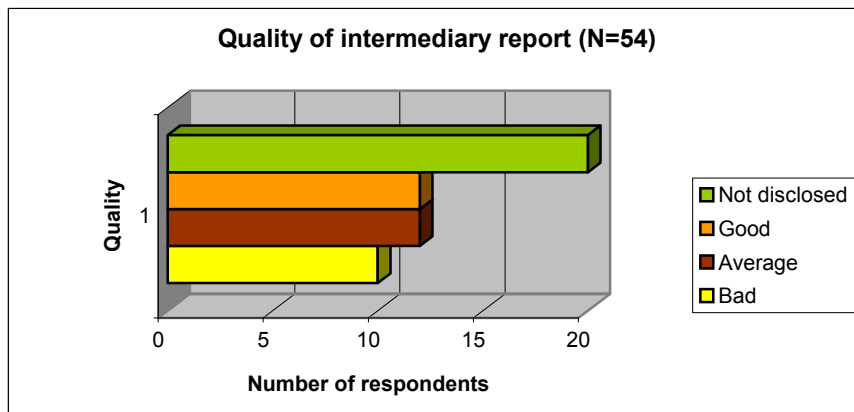
Figure 7.7: Drawing up of desirability reports when applying for an intermediary?



From figure 7.7 it can be seen that 19 (35%) of the magistrates said that reports are drawn up, 29 (54%) said no report had been drawn up and 6 (11%) magistrates did not know whether reports had been drawn up. It must be noted that the magistrate will only know that a report has been drawn up unless the prosecutor hands in the report or calls the witness in support of the report.

- Quality of intermediary reports

Figure 7.8: Quality of the intermediary report



From figure 7.8 it can be seen that of the 54 magistrates, 10 (19%) felt that most of the reports were poor, 12 (22%) felt most of the reports were average, 12 (22%) felt most of the reports were good and 20 (44%) did not disclose the quality of the report.

- Contents of the intermediary report

Figure 7.9: Contents of intermediary report

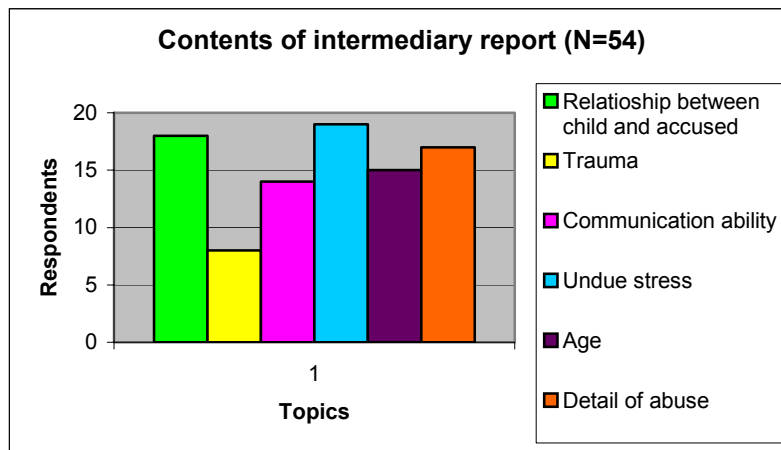
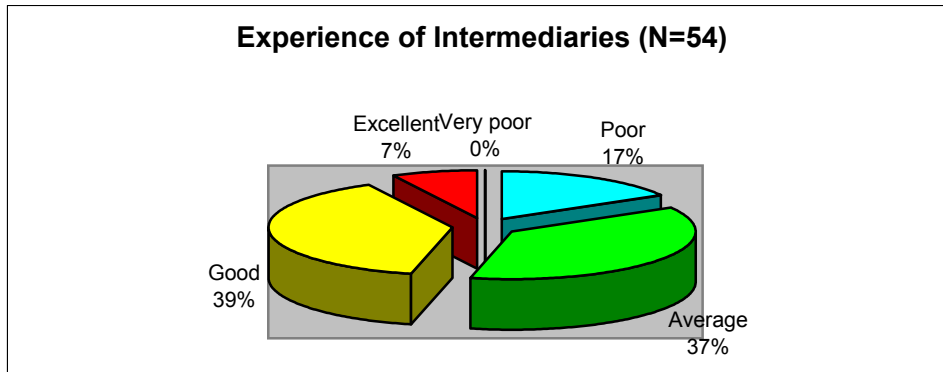


Figure 7.9 indicates that 18 magistrates felt that the report should include the relationship between the child and the accused, 8 felt the trauma of the child should be included, 14 felt that information and the communication ability should be included, 19 felt that it should include whether the child would suffer undue stress, 15 felt the age of the child should be included, and 17 felt it should include the details of the abuse. Percentages cannot be given here as some magistrates indicated more than one topic for inclusion in report.

▪ **SECTION B: Magistrates perceptions of the experience and training of intermediaries**

- Intermediaries' level of experience according to magistrates

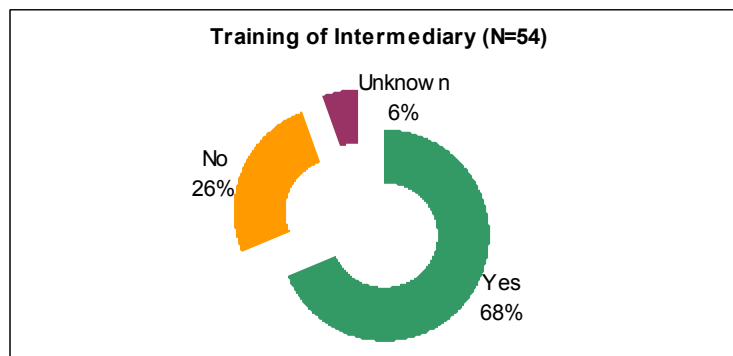
Figure 7.10: Level of experience of the intermediary



From figure 7.10 it can be seen that 4 (7%) of the magistrates felt that intermediaries performed excellently, 21 (39%) felt the intermediary was good, 20 (37%) felt they were average, and 9 (17%) felt they were poor.

- Previous training of the intermediaries according to magistrates

Figure 7.11: Previous training of intermediaries

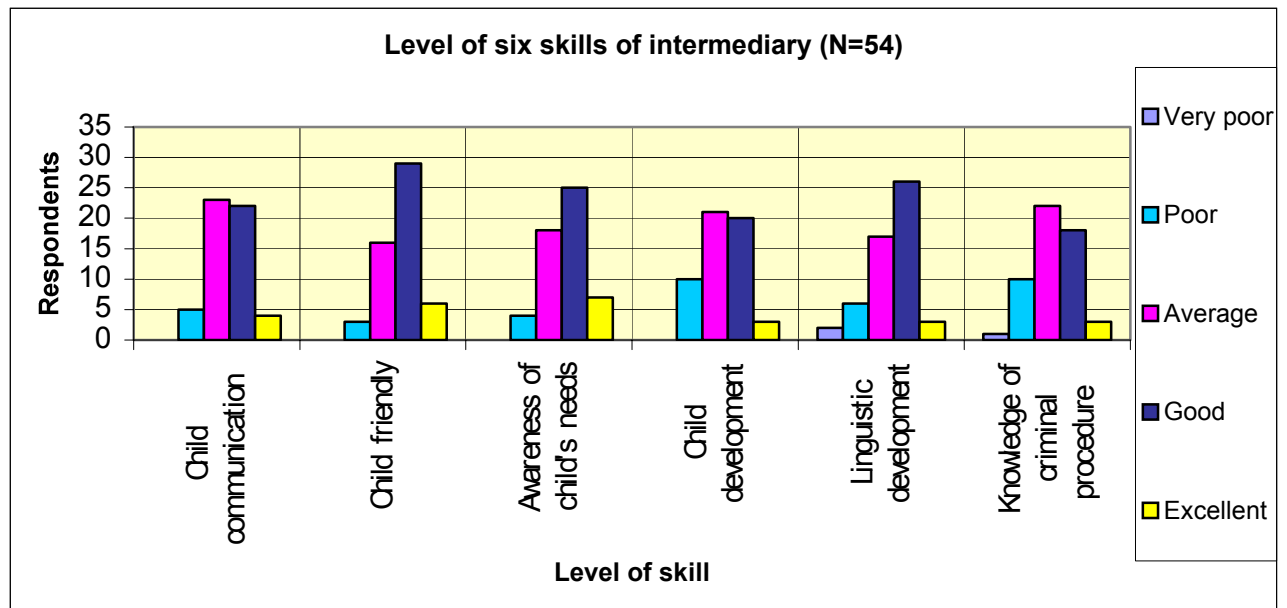


From figure 7.11 it can be seen that, according to the 54 magistrates, 37 (68%) said the intermediaries had had training, 14 (26%) said they did not have training and 3 (6%) magistrates did not know whether the intermediary had had training.

The magistrates were asked to assess the intermediaries who had acted in their courts according to six skills:

- Skills of the intermediary according to magistrates:

Figure 7.12: Knowledge of six skills an intermediary needs according to the magistrate



From figure 7.12 the following can be seen:

- **Child communication**

4 (7%) magistrates judged the intermediaries as excellent, 22 (41%) judged the intermediaries as good, 23 (43%) judged them as average and 5 (9%) magistrates judged the intermediaries as poor.

- **Child friendly and empathic**

6 (11%) magistrates judged the intermediaries as excellent, 29 (54%) judged the intermediaries as good, 16 (30%) judged them as average and 3 (6%) judged the intermediary as poor.

- **Awareness of child's needs**

7 (13%) magistrates judged the intermediaries as excellent, 25 (46%) judged them as good, 18 (33%) judged them as average and 4 (7%) magistrates judged the intermediaries as poor.

▪ **Child development level**

3 (6%) magistrates judged the intermediaries as excellent, 20 (37%) magistrates judged them as good, 21 (39%) magistrates judged them as average, and 10 (19%) magistrates judged the intermediaries as poor.

▪ **Child linguistic development**

3 (6%) magistrates judged the intermediaries as being excellent, 26 (48%) judged them as good, 17 (31%) judged them as average, 6(11%) judged them as poor, and 2 (4%) magistrate judged the intermediaries as very poor.

▪ **Criminal proceedings and etiquette**

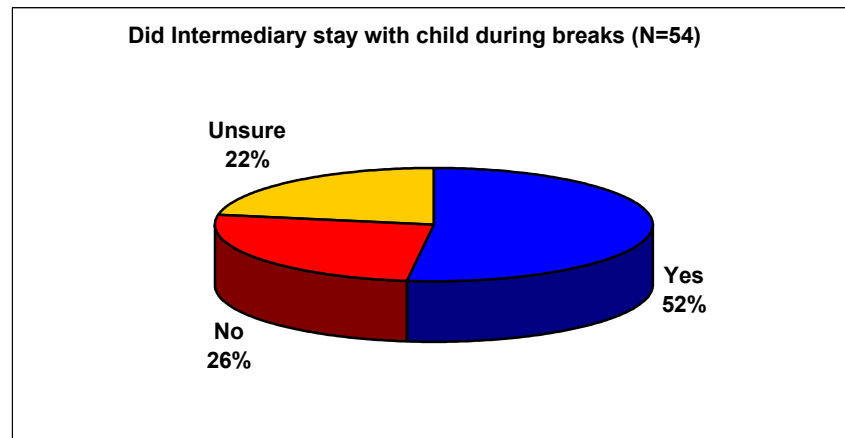
3 (6%) magistrates judged the intermediaries as excellent, 18 (33%) magistrate judged them as good, 22 (41%) judged them as average, 10 (19%) judged them as poor and 1 (2%) magistrate judged the intermediaries as very poor.

From the above data it can be seen that:

- The intermediaries faired best in being child friendly.
- The biggest problem is found in the intermediaries' lack of knowledge of child development.
- Although 37 (68%) of the magistrates indicated that most if the intermediaries had had training (figure 7.11), it would seem that this training was not sufficient and that there is a need for further training. The researcher can therefore make the finding that the problems the magistrates are experiencing with the services of the intermediaries are as a result of insufficient training. The lack of knowledge will influence the court proceedings negatively (as described in 7.19). Therefore these topics should be included in the training program.

- Duties of the intermediary

Figure 7.13: Should intermediary stay with the child during break

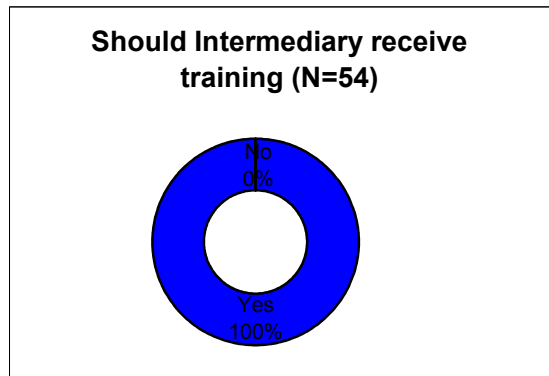


Magistrates were asked whether the intermediaries had stayed with the child during breaks and lunch. From figure 7.13 it can be seen that 28 (52%) magistrates indicated that intermediaries had stayed with the child witness, 14 (26%) magistrates indicated that the intermediary had not stayed with the child and 12 (22%) magistrates did not know.

It is important that the child is not left alone during these breaks as it causes unnecessary stress for the child (see 5.2.5). Furthermore contamination of the child's testimony can occur when the child and his parent/caretaker discuss the testimony of the child with him during breaks.

- Magistrates opinion on the training of intermediary

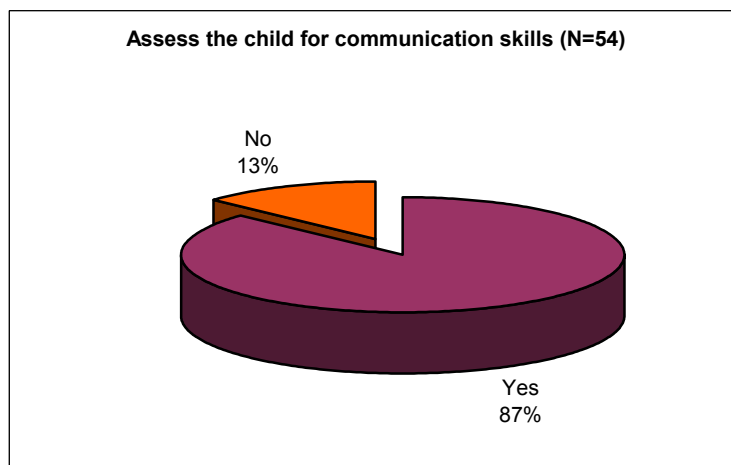
Figure 7.14: Should intermediary receive training



From figure 7.14 it can be seen that all the magistrates (100%) were of the opinion that the intermediary should receive training before acting as such.

- Assessment of child

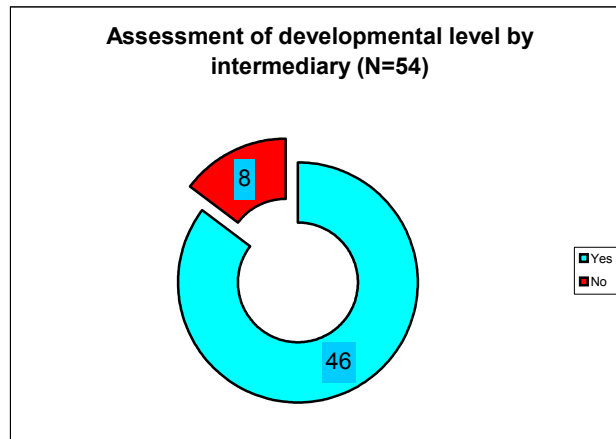
Figure 7.15: Assessment of communication skills



From figure 7.15 it can be seen that 47 (87%) of magistrates indicated that the intermediary should assess the child concerning his communication skills and 7 (13%) of magistrates indicated it was not necessary.

- Assessment of developmental level

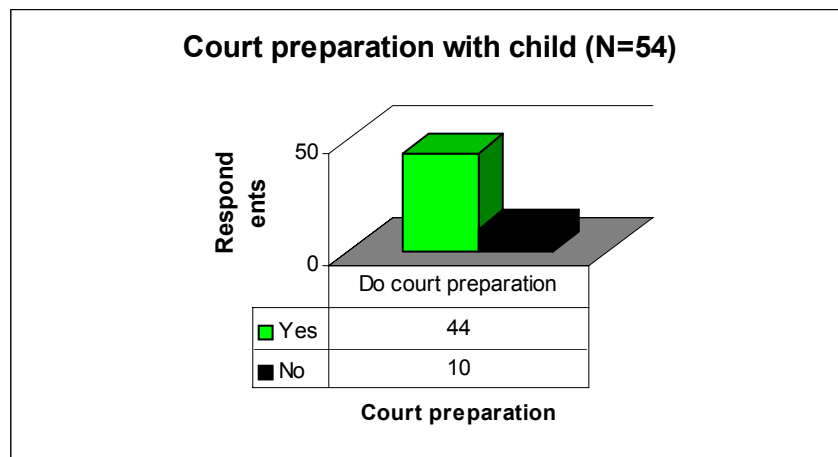
Figure 7.16: Assessment of developmental level



From figure 7.16 it can be seen that 46 (85%) magistrates said that the intermediary should assess the child’s development level whereas 8 (15%) said it was not necessary.

- Should the intermediary, according to the magistrates, do court preparation with the child witness?

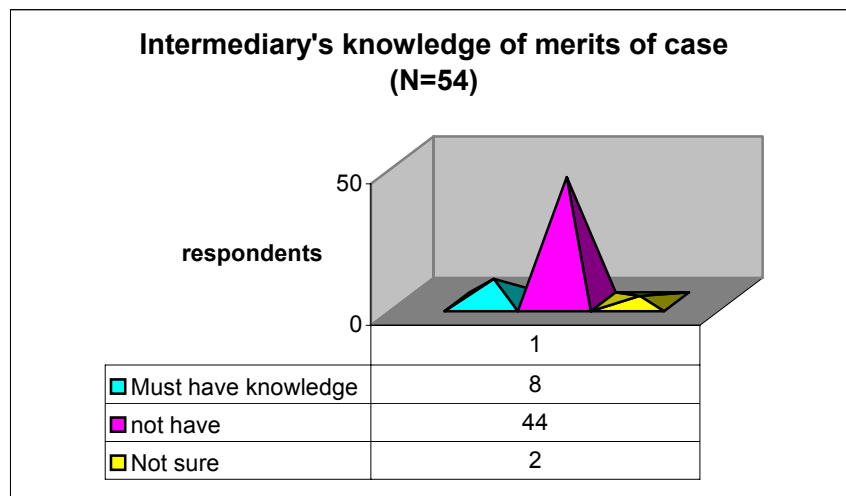
Figure 7.17: Court preparation by intermediary with the child witness



From figure 7.17 it can be seen that 44 (82 %) magistrates indicated that the intermediary should do court preparation with the child whilst 10 (18%) indicated somebody else should do the preparation.

- Merits of the case

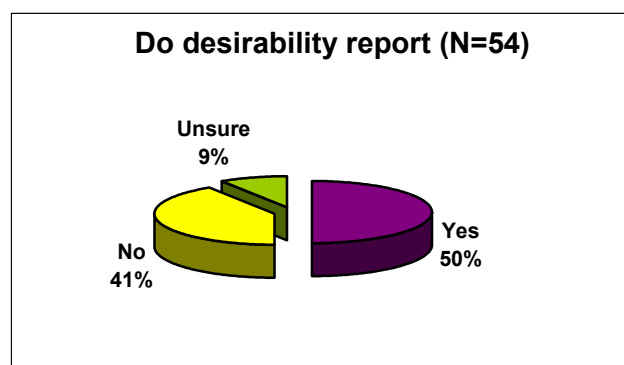
Figure 7.18: Intermediary’s knowledge of the case



From figure 7.18 it can be seen that 8 (15%) magistrates indicated that the intermediary should have knowledge of the merits of the case, 2 (4%) were not sure and 44 (81%) indicated that the intermediary should not know the merits of the case.

- Should the intermediary, according to the magistrates, do the intermediary report

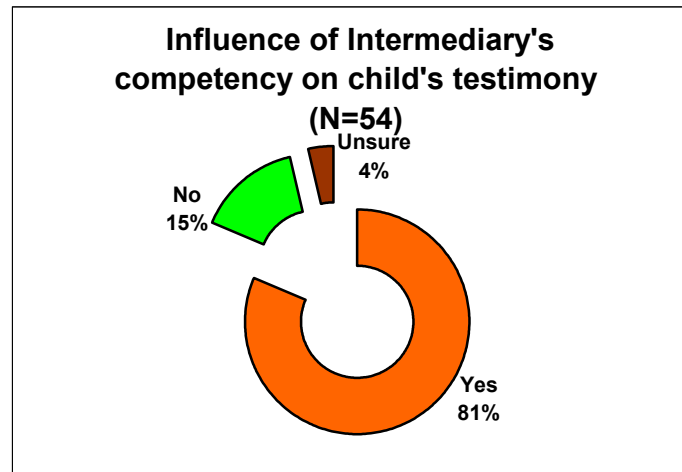
Figure 7.19: Intermediary and the intermediary application/desirability report



From figure 7.19 it can be seen that 27 (50%) magistrates indicated that the intermediary can also do the assessment/desirability reports, 22 (41%) indicated that the intermediary should not do the report and 5 (9%) were not sure.

- Influence of intermediary’s competency on child witness

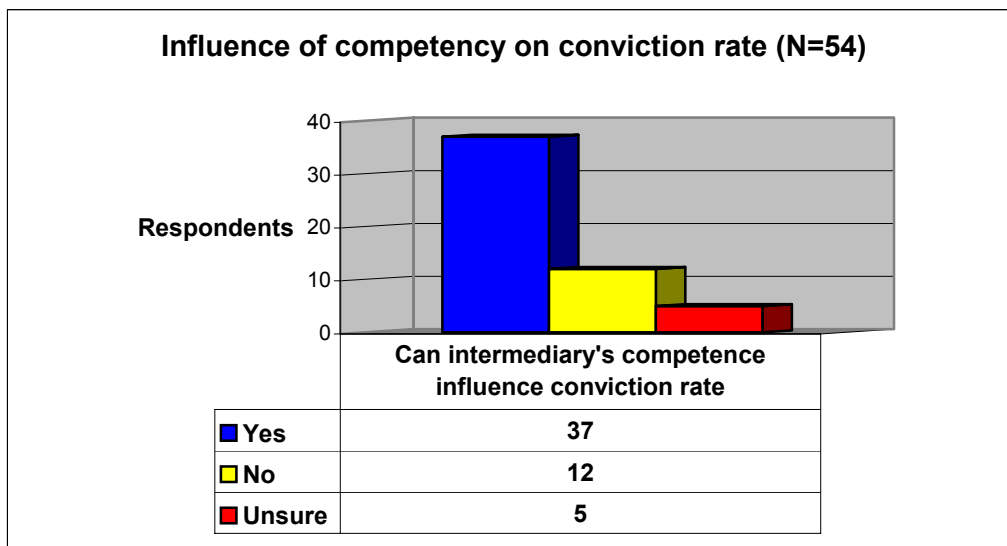
Figure 7.20: Influence of intermediary’s competency on child’s testimony



From figure 7.20 it can be seen that 44 (81%) magistrates indicated that the intermediary’s competency would influence the child’s testimony whilst 8 (15%) indicated it would not make a difference, and 2 (4%) were unsure (see 7.12).

- Influence of competency on rate of convictions

Figure 7.21: Influence of intermediary’s competency on the rate of convictions



From figure 7.21 it can be seen that 37 (69%) magistrates indicated that the intermediary’s competency would have an influence on convictions, 5 (10%) were unsure and 12 (22%) indicated that it would have no influence.

- Themes and aspects that were important when compiling the training program:

The magistrates said that when intermediaries are being trained, the following aspects and topics should be included in the training program.

Figure7.22: Topics for training program according to magistrates – graphic representation

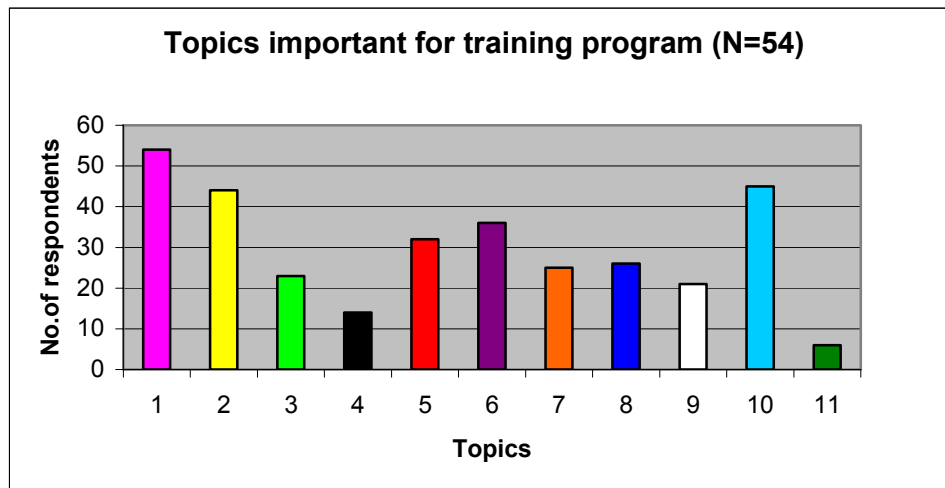


Table 7.1: Topics for training program (N=54)

Number	Topics	How many magistrates	Percentage
1	Communication skills	54	100%
2	Court preparation	44	81%
3	Court procedures	23	43%
4	Culture	14	26%
5	Child friendly performance	32	60%
6	Rapport building	36	67%
7	Trauma	25	46%
8	Listening	26	48%
9	Impartial	21	39%
10	Child development	45	83%
11	Other	6	11%

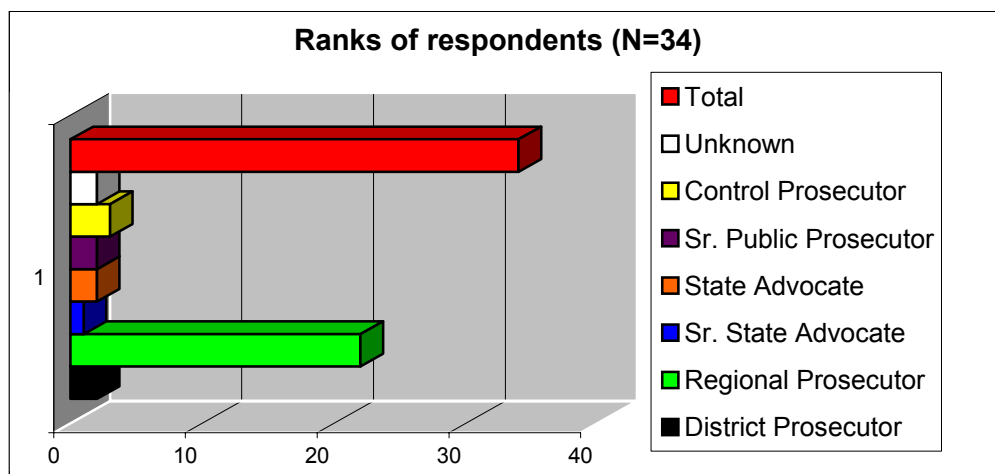
From figure 7.22 and Table 7.1 it can be seen that of the 54 magistrates, all 54 (100%) magistrates said that the training program should include communication skills, 44 (81%) said that court preparation should be included. 23 (43%) said that court procedures should be discussed and 14(26%) said that aspects of different cultures should be included. 32 (60%) of magistrates said that intermediaries should be taught how to be child friendly and 36 (67%) said that rapport building should be included in the program. 25 (46%) said that aspects of trauma should be included, whilst 26 (48%) said that listening skills should receive attention. 21 (39%) said that intermediaries should be taught to be impartial whilst 45 (83%) said that child development should be included. 6 (11%) said that other topics like practical experience and child linguistic should be included.

Question 18 and 19 were not answered or the answers given were not relevant to the research.

7.3.4 QUESTIONNAIRE 2 (Appendix 2): Questionnaire for Prosecutors with reference to the intermediary

- **SECTION A: Experience and background of magistrates and intermediaries**
- Position of prosecutors

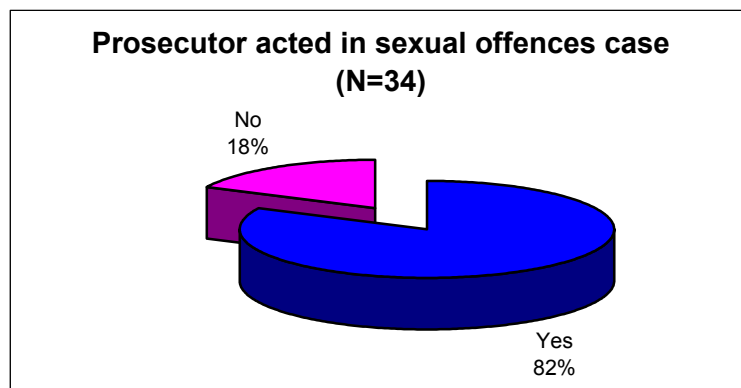
Figure 7.23: Various ranks of the prosecutors responding to questionnaire



From figure 7.23 it can be seen that of the prosecutors participating in this survey, 2 (6%) were district court prosecutors, 22 (65%) were prosecutors in the regional court, 1 (3%) was a senior state advocate, 2 (6%) were state advocates, 2 (6%) were senior public prosecutors, 3 (9%) were control prosecutors and 2 (6%) were unknown.

- Acted as prosecutor in sexual offences court

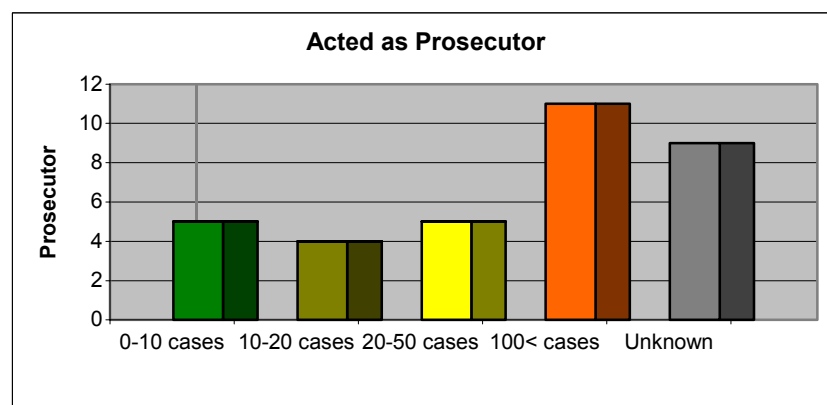
Figure 7.24: Prosecutors acted in sexual offences courts



From figure 7.24 it can be seen that 28 (82%) prosecutors had acted in sexual offences courts before and 6 (18%) had never acted as prosecutors in sexual offences courts.

- In how many cases acted as prosecutor in sexual offences

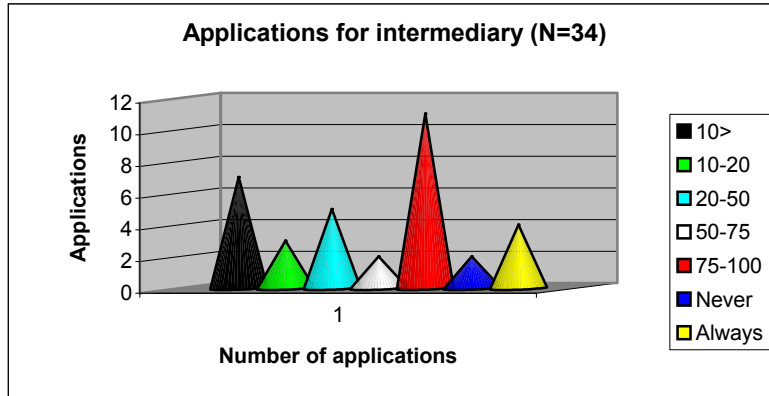
Figure 7.25: Amount of times prosecutor acted in sexual offences cases.



From figure 7.25 it can be seen that 5 (15%) had acted as prosecutor in under 10 cases, 4 (12%) in 10-20 cases. 5 (15%) in between 20-50 cases, 11 (32%) acted in more than a hundred cases and 9 (26%) said they did not know in how many cases.

- Application for intermediary

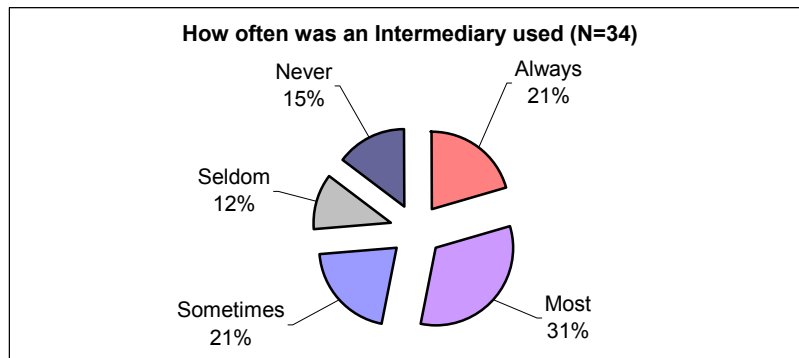
Figure 7.26: How often were applications for intermediaries made



From figure 7.26 it can be seen that 7 (21%) prosecutors said that less than 10 applications had been made, 3(6%) prosecutors had between 10 and 20 applications, 5(15%) had between 20 to 50 applications, 2 (6%) between 50 to 75 applications, 11 (33%) had between 75 and 100 application, 2 (6%) never applied and 4 (13%) said that applications were made in all the cases.

- Use of intermediary

Figure 7.27: How often was an intermediary used?

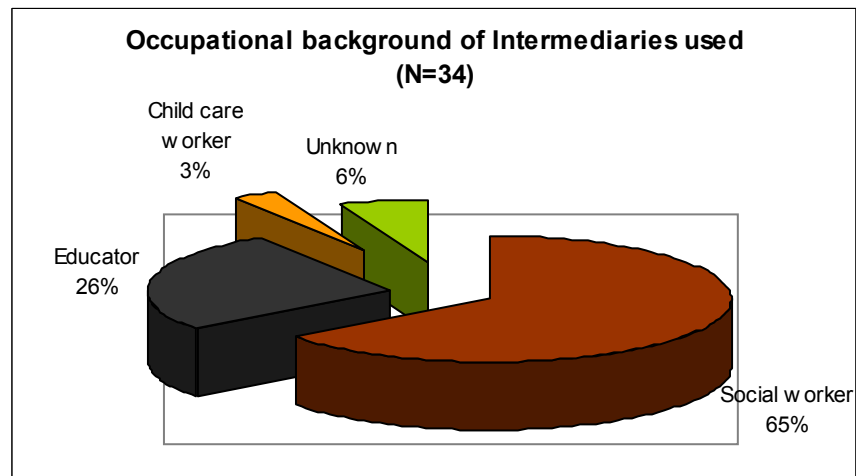


From figure 7.27 it can be seen that 7 (21%) prosecutors said that an intermediary was always used in sexual offences cases with child witnesses, 11 (31%) said that an intermediary was used most of the times, 7 (21%) said they used an intermediary sometimes, 4 (12%) said they seldom used an intermediary and 5 (15%) said that they did not use an intermediary as they prosecuted in a district court.

From the above it can be seen that only 52% of prosecutors used intermediaries frequently. The researcher is concerned with these statistics as this means that 48% prosecutors would let children testify in the open court.

- Occupational background of intermediaries used.

Figure 7.28: Occupations of intermediaries according to prosecutors



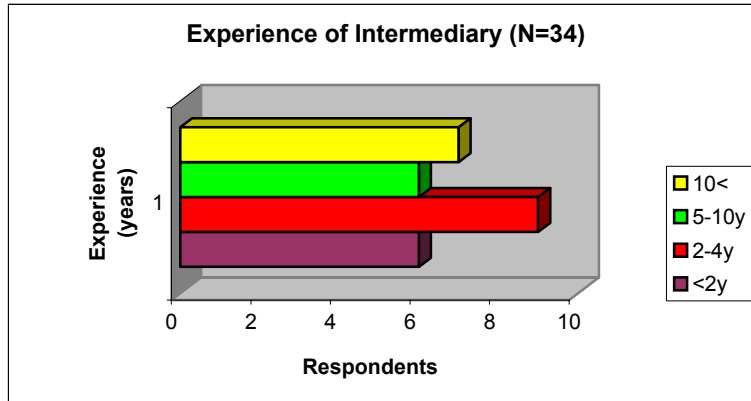
From figure 7.28 it can be seen that of the intermediaries acting in their courts, 22 (65%) prosecutors said the intermediaries were mainly social workers, 9 (26%) prosecutors said they were mainly educators, 1 (3%) said the intermediaries were mainly childcare workers and 2 (6%) prosecutors did not know. During the time of this research, South Africa only had 4 full time intermediaries employed on contract by the Department of Justice and Constitutional Development. All other intermediaries were requested to act when necessary. When intermediaries are used they have to comply with the categories of people who can act as intermediaries (see 5.3.3).

The above statistics correlate with those of the magistrates. Sixty three percent of magistrates used intermediaries that were mainly social workers whilst 65% prosecutors stated that intermediaries were usually from the social work profession (See figure 7.5).

SECTION B: Experiences and training of intermediaries

- Experience of intermediaries

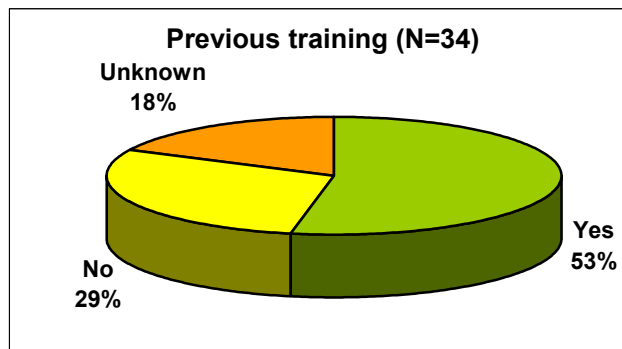
Figure 7.29: Years of experience as intermediaries



From figure 7.29 it can be seen that, according to 6 (18%) prosecutors, the intermediaries had less than 2 years experience, 9 (27%) prosecutors said the intermediaries had between 2 - 4 years experience, 6 (18%) prosecutors said the intermediaries had between 5 and 10 years experience and 7 (21%) prosecutors said the intermediaries 6 (18%) had more than 10 years experience.

- Previous training

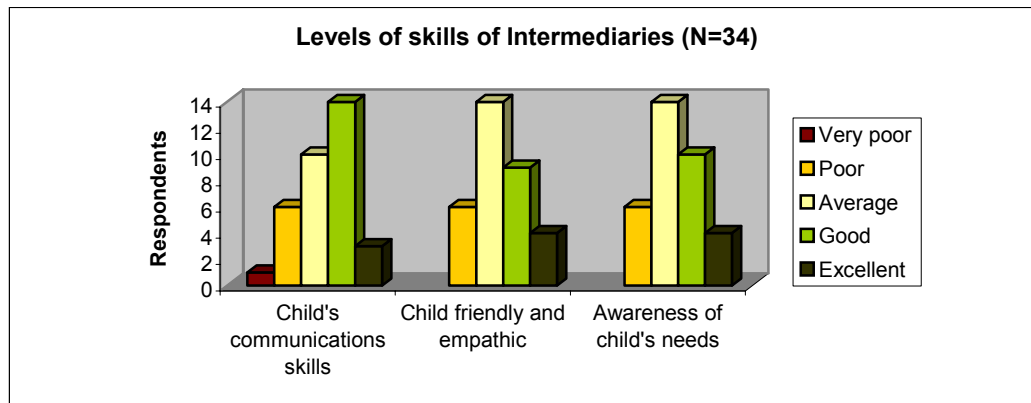
Figure 7.30: Previous training of intermediaries



From figure 7.30 it can be seen that, according to the prosecutors, 18 intermediaries (53%) had some previous training, 10 (29%) did not have any previous training and 6 (18%) were unknown to prosecutor. This correlates with the statistics gathered from the magistrates. 26% of magistrates said that the intermediaries had no training (figure 7.11) whilst 29% prosecutors found that the intermediaries had no training.

- Skills of intermediaries with reference to child communication, child friendliness and awareness of child's needs

Figure 7.31: Skills of intermediaries relating to child communication, child friendly and empathic and awareness of child's needs

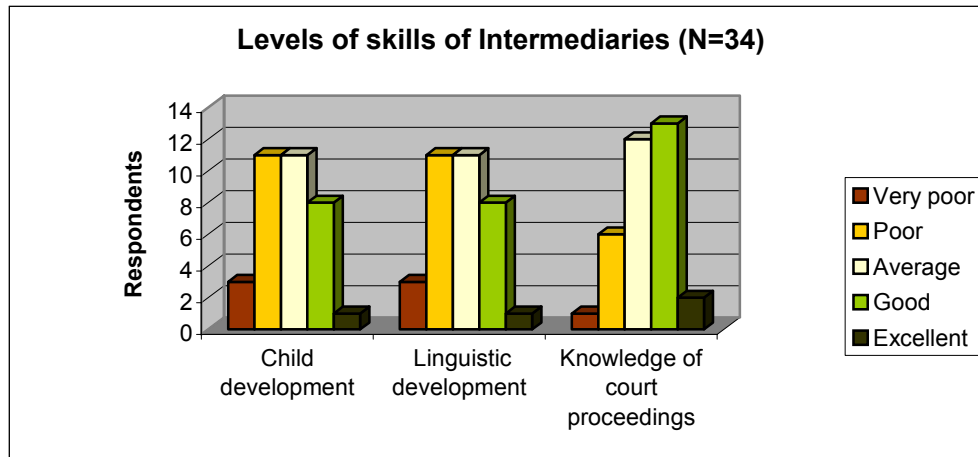


From figure 7.31 it can be seen that, according to the prosecutors, the level of the following skills of the intermediaries were:

- **Communication skills:** 3 (9%) prosecutors said the intermediaries were excellent, 14 (41%) said the intermediaries were good, 10 (29%) said they were average, 6 (18%) said they were poor and 1 (3%) said the intermediaries were very poor.
- **Child friendly and empathic:** 4 (12%) prosecutors said the intermediaries were excellent, 19(29%) said they were good, 14 (41%) prosecutors said they were average, and 6 (18%) prosecutors said the intermediaries were poor.
- **Awareness of child's needs:** 4 (14%) prosecutors said the intermediaries were excellent, 10 (29%) said they were good, 14 (41%) prosecutors said they were average and 6 (18%) prosecutors said the intermediaries were poor.

- Skills relating to Developmental level, linguistic development and criminal proceedings.

Figure 7.32: Skills relating to Developmental level, linguistic development and criminal proceedings



From figure 7.32 it can be seen that, according to the prosecutors, the level of the following skills of the intermediaries were:

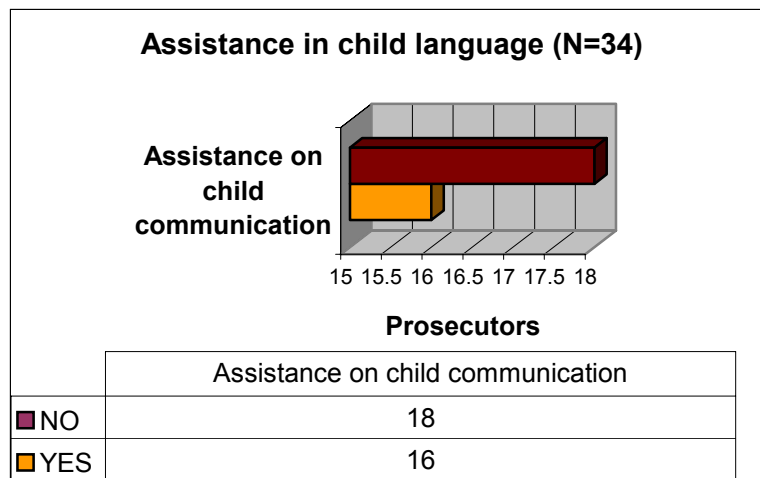
- **Child's developmental level:** 1 (3%) prosecutors said the intermediary was excellent, 8 (24%) said they were good, 11 (32%) said they were average, 11 (32%) prosecutors said they were poor and 3 (9%) prosecutors said the intermediary were very poor.
- **Child linguistic development:** 1 (3%) prosecutors said the intermediary was excellent, 8 (24%) said they were good, 11 (32%) prosecutors said they were average, 11 (32%) prosecutors said the intermediaries were poor and 3 (9%) prosecutors said the intermediary was very poor.
- **Knowledge of legal proceedings:** 2 (6%) prosecutors said the intermediaries were excellent, 13 (38%) said they were good, 12 (35%) said they were average, 6 (18%) prosecutors said they were poor and 1 (3%) prosecutor said the intermediary was very poor.

The results that were obtained from the prosecutors coincide with that of the magistrates as explained in 7.12. Child development and linguistic development are the areas where the intermediaries' knowledge lacks the most. This will have the same implications as with the magistrates, namely that the quality of the service of the intermediary will not be satisfactory. It also confirms, that, although at least 18 (53%)

intermediaries had previous training, this seemed inadequate as their competence was lacking. The researcher can once again make the deduction that, although intermediaries had been trained, they needed further training to be competent intermediaries. The above topics should therefore be included in the training program.

- Advice by intermediary giving to prosecutor

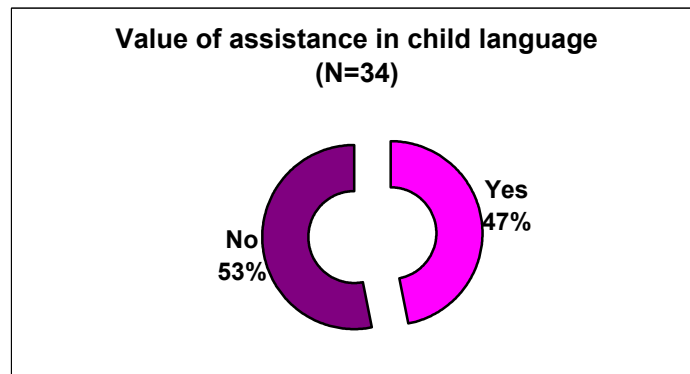
Figure 7.33: Advice to prosecutor on child language



From figure 7.33 it can be seen that 16 (47%) of the prosecutors had previously used intermediaries to assist them with child language, 18 (53%) had not.

- Level of advice by intermediary to prosecutor

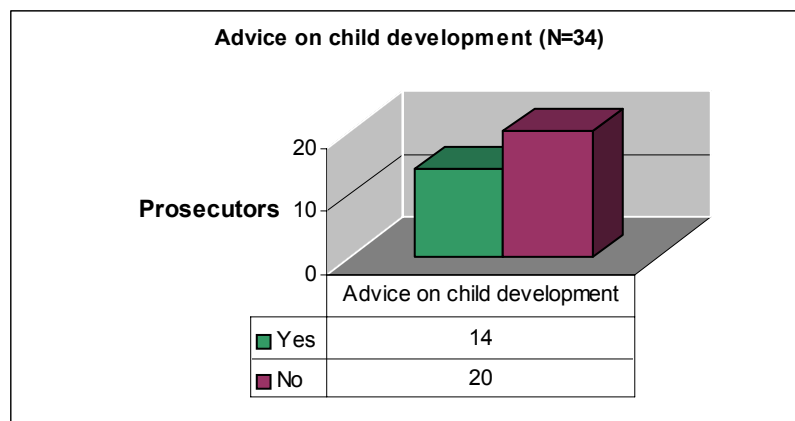
Figure 7.34: Value of advice of intermediaries



From figure 7.34 it can be seen that 16 (47%) prosecutors said the advice was of value and 18 (53%) said it was of no value. Looking at the results of figures 7.31 and 7.32, the deduction can be made that the knowledge of the intermediaries was not sufficient to assist the prosecutors. This supports the previous deduction of the researcher that the intermediaries need more training in this field.

- Developmental phase of child

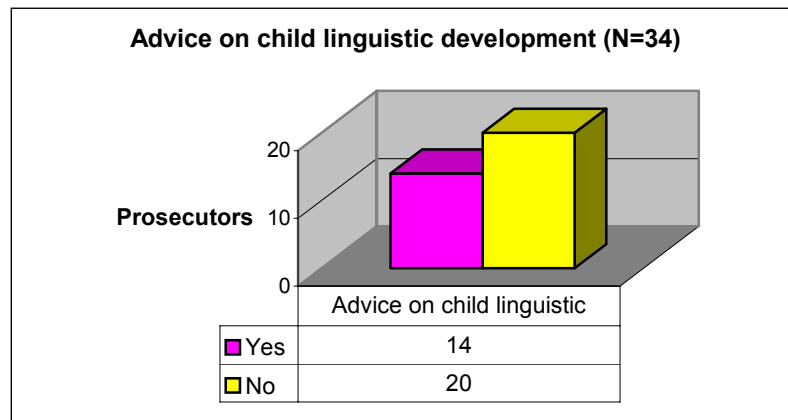
Figure 7.35: Advice to prosecutor on developmental phase



From figure 7.35 it can be seen that 14 (41%) prosecutors asked for advice on child developmental phases and 20 (59%) did not ask.

- Linguistic development of child

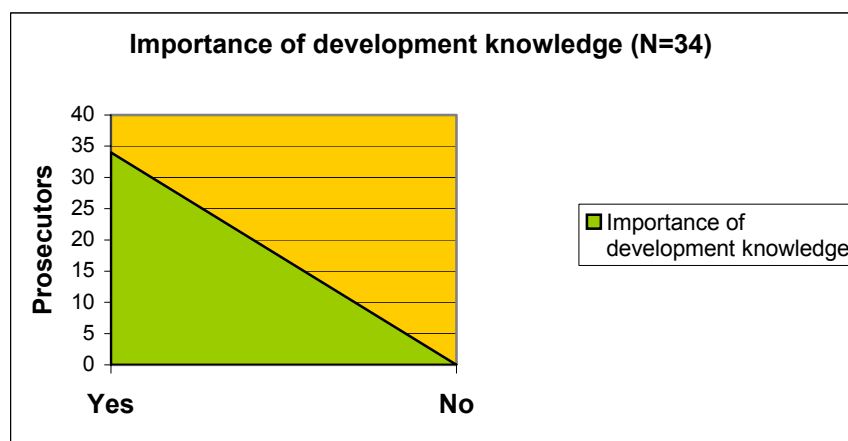
Figure 7.36: Advice to prosecutor on linguistic development



From figure 7.36 it can be seen that 14 (41%) prosecutors asked for advice on linguistic development and 20 (59%) did not ask.

- Importance of knowledge of the above.

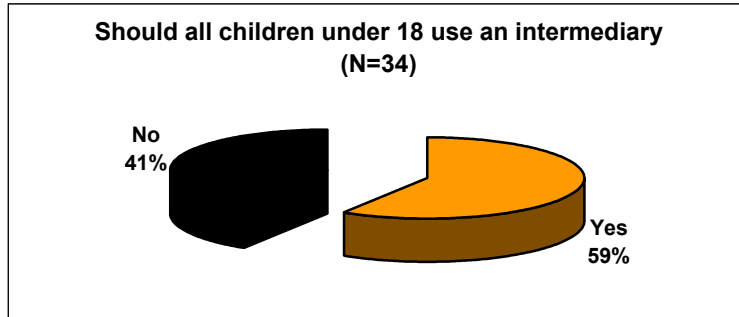
Figure 7.37: Importance of knowledge on child development



From figure 7.37 it can be seen that according to all (100%) prosecutors, intermediaries should have knowledge of the development of the child. It is therefore necessary to include this topic in the training program.

- Children under 18 to testify with an intermediary?

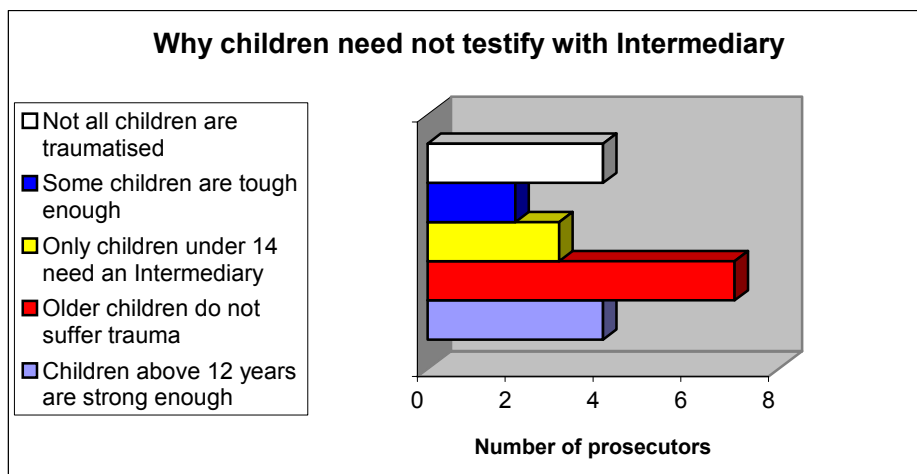
Figure 7.38: Should all children under 18 years testify with an intermediary?



From figure 7.38 it can be seen that 20 (59%) prosecutors agreed and 14 (41%) disagreed. This statistic was of concern to the researcher as this meant that 41% of prosecutors said that a child under the age of 18 could testify in the open court.

- Reasons for children not testifying with an intermediary

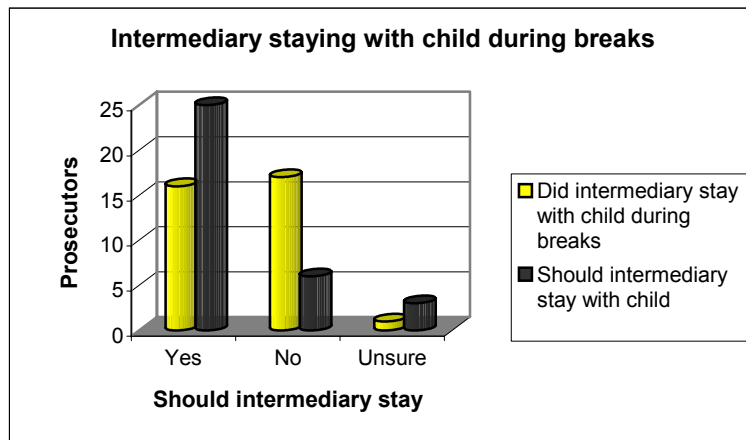
Figure 7.39: Prosecutor’s reasons for children not needing an intermediary



From figure 7.39 it can be seen that 4 prosecutors said that not all children are traumatised, 2 said that an intermediary should only be used for a child younger than 14 years, 7 said that many of the older children did not suffer trauma, and 4 said that children above 12 years were strong enough to testify in an open court. No percentages can be given as not all prosecutors answered this question. It is necessary for this topic to be included in the training program. Intermediaries should know how to conduct themselves with respect to this issue.

- Assistance to child by intermediary outside court

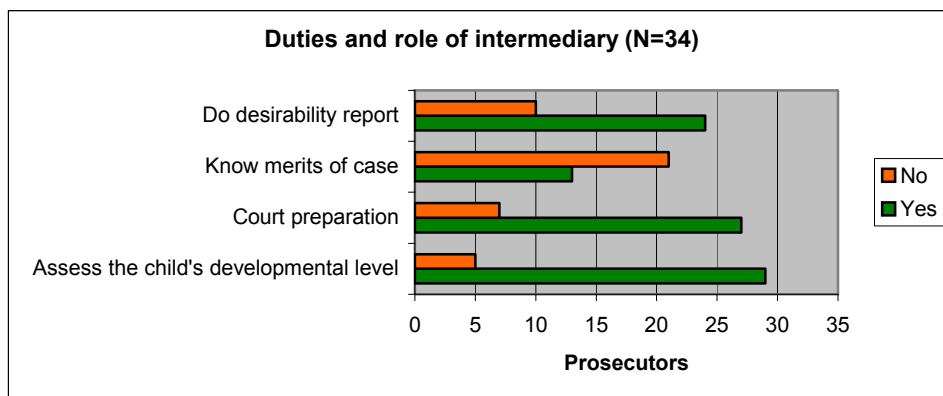
Figure 7.40: Did and should intermediary stay with child during lunch and tea breaks



From figure 7.40 it can be seen that 16 (47%) of the prosecutors said that the intermediaries stayed with the child during breaks, 17 (50%) said they did not stay with the child, and 1 (3%) of prosecutors did not know whether the intermediary stayed with the child. 25 (74%) prosecutors said that the intermediary should stay with the child, 6 (18%) said it was not necessary and 3 (9%) said unsure.

- Involvement of intermediary

Figure 7.41: Role and duties of intermediary

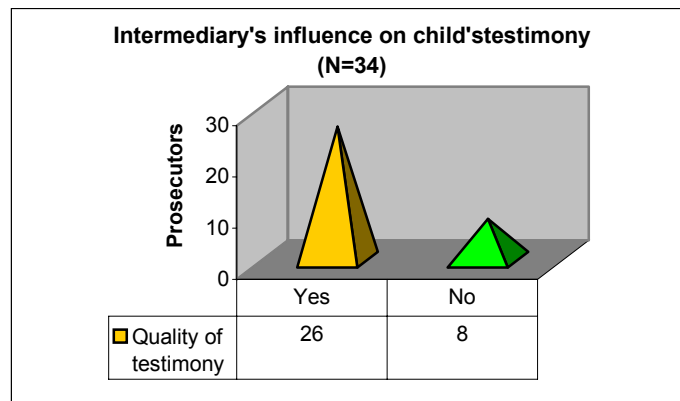


From figure 7.41 it can be seen that:

- **Developmental level:** 29 (85%) prosecutors said that the intermediary should assess the child to establish the child's developmental level before testifying, and 5 (15%) said it was not necessary.

- **Court Preparation:** 7 (21%) prosecutors said that it was not necessary. This can possibly be ascribed to that fact that some courts have separate people doing court preparation or that some prosecutors do the court preparation themselves. 27 (79%) said that court preparation should be done before the child testifies. This high percentage correlates with the literature discussed in chapter 5.
- **Merits of the case:** 13 (38%) prosecutors said that the intermediary should know the merits of the case whilst 21 (62%) said the intermediary should have no knowledge of the merits of the case. It is very important for the intermediary to know that she must not question the child or any other person about the merits of the case as this is not allowed.
- **Desirability Report:** 24 (71%) prosecutors said that the intermediary should do a desirability report on the need to use an intermediary whilst 10 (29%) said the intermediary should not do the desirability report. The intermediary should not do the desirability report as she may not know the merits of the case.
- Quality of child witness's testimony

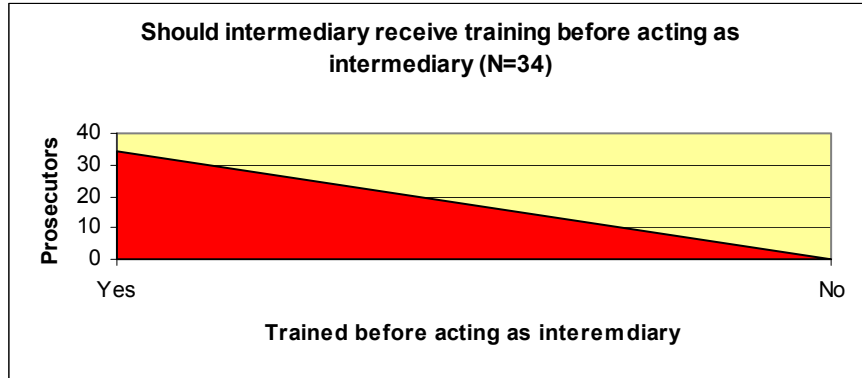
Figure 7.42: Influence of intermediary on child witness's testimony



From figure 7.42 it can be seen that 26 (76%) of the prosecutors said that the intermediary's competence would influence the child's testimony, whilst 8 (24%) said that it did not influence the child's competence. It is therefore important that the intermediary should be competent so that the child can benefit from her competence when testifying. The training of the intermediary can attain this.

- Training for intermediaries

Figure 7.43: Should an intermediary receive training?



From figure 7.43 it can be seen that all 34 (100%) of the prosecutors said that the intermediary should receive training before acting as an intermediary.

- Aspects that are important and should be included in a training program

Table 7.2: Training topics – tabular presentation

Number	Topic	How many prosecutors (N=34)	Percentage
1	Child development	28	82%
2	Communication skills	27	79%
3	Conveying questions	25	74%
4	Child friendly	24	71%
5	Court preparation	18	53%
6	Legal system	12	35%

From table 7.2 it can be seen that 28 (82%) prosecutors said that training should entail child development, 18 (53%) said that intermediaries should be trained to do court preparation, 12 (35%) said that intermediaries should have some legal training, 25 (74%) said that intermediaries should be trained how to convey questions if a child friendly language, 24 (71%) that the intermediary should be sensitised to being child friendly, and 27 (79%) said that communications skills should be in the training program. These topics were included in the training program.

Question 16 and 17 were not answered or answers were not relevant to this study.

7.3.5 Evaluation

▪ In table 7.3 a comparison of the topics suggested by the magistrates and the prosecutors will be given according to the importance that was attached to these topics.

Table 7.3: Table of comparison on topics recommended by magistrates and prosecutors

Topics	Magistrates		Prosecutors	
	Number	%	Number	%
Communication skills	54	100%	27	79%
Court preparation	44	81%	18	53%
Court procedures	23	43%	12	35%
Child development	45	83%	28	82%
Child friendly	32	60%	24	71%
Conveying questions			25	74%
Culture	14	26%		
Rapport building	36	67%		
Trauma	25	46%		
Listening	26	48%		
Impartiality	21	39%		
Other	6	11%		

From the above table it can be seen that both magistrates and prosecutors feel that it was most important for the intermediary to have knowledge of child development and communication skills. Both also said that the intermediary had to be child friendly. The magistrates also said that court preparation was very important as well as rapport building. This is also supported by the literature discussed in chapter four and five. The blank blocks coloured grey represent topics not mentioned by the magistrates or prosecutors.

Culture and legal knowledge were the topics that the magistrates and prosecutors felt the least attention should be paid to.

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The fact that the prosecutors mentioned fewer topics could be attributed to the fact that they are not fully aware of what the duties and role of an intermediary is.

- Data obtained from section A was utilised with the literature study and knowledge from experts to develop the training program (objective 4 of the research).

In the following part of this chapter, section B of the empirical study will be discussed.

7.4 SECTION B OF EMPIRICAL RESEARCH

The hypothesis for the research applies to this section of the research. The hypothesis for this research is:

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

7.4.1 Data Collection

During section B of the research a training program was presented to 69 respondents (intermediaries). Both questionnaires were divided into 2 sections. The first sections differed from each other in that the pretest questionnaire (Appendix 3) gathered information like work and work experience of the trainees (prospective intermediaries) and previous training. In the posttest questionnaire (Appendix 4), the first section consisted of questions relating to experiences of the trainees regarding the program. Questions in the second section of the questionnaires (Appendix 3 and 4) were identical and were aimed at comparing the respondents knowledge of the duties and role of the intermediary before and after the training program. The change in understanding and knowledge of the duties and responsibilities were measured to evaluate the program.

The questionnaires were distributed to all trainees attending three intermediary training programs at Justice College during August and October 2004. Trainees came from all over South Africa. 69 questionnaires were distributed and 69 (100%) questionnaires were received back from both the pretest and posttest study. The researcher personally handed out the self-constructed questionnaires before and after presenting the program. Data in terms of 69 respondents (N=69) was collected.

A one hundred percent return was obtained. Each trainee's two questionnaires had the same coded respondent number allocated, ensuring precise comparison of data. In this manner it could be determined whether the training program did address all aspects needed to train a prospective intermediary. It could also be established

whether the contents of the program was easily understandable and whether it covered all the necessary aspects and information needed by prospective intermediaries.

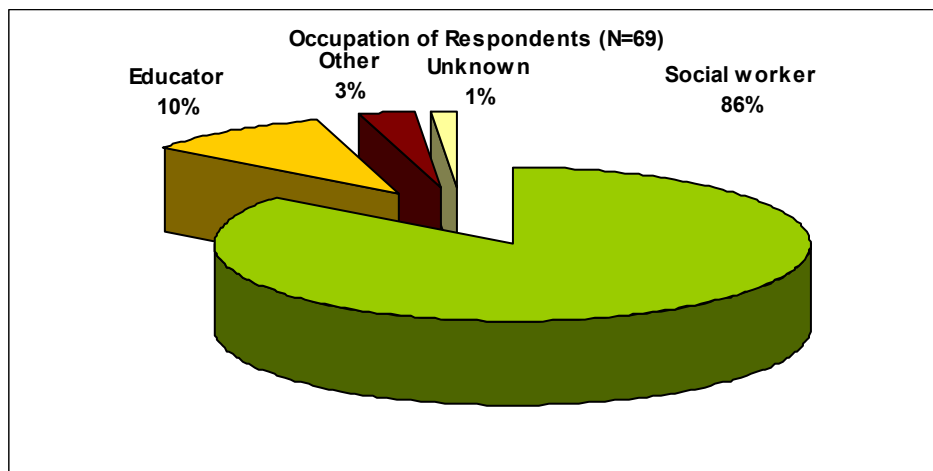
The measurements of the pretest and posttest were compared with each other to measure the influence of the training program on the trainees attending the program. The results of the above two research sections will be presented by means of graphs, tables and discussions in this chapter.

7.4.1 QUESTIONNAIRE 3 (Appendix 3)

7.4.1.1 Questionnaire for the evaluation of the intermediary training program (Pre-test)

- **SECTION A: Background information of trainees before the training program**
 - Current Occupation of trainees

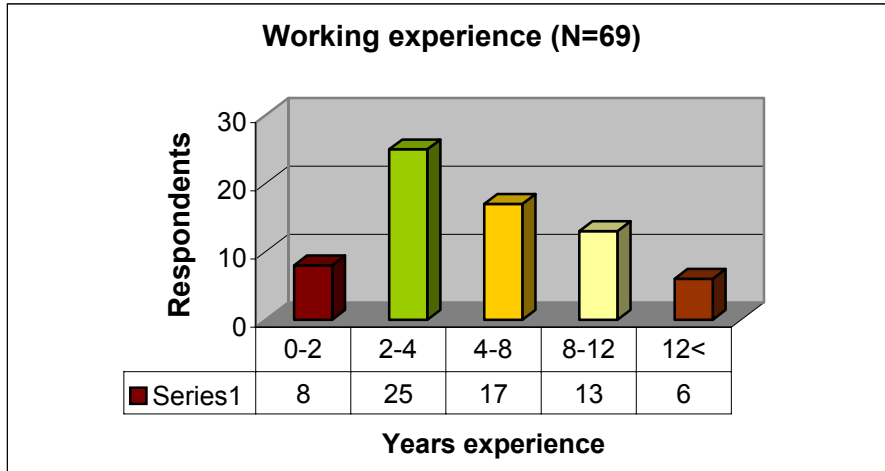
Figure 7.45: Occupations of trainees



The intermediaries can come from different occupational backgrounds such as social worker, educators, childcare workers, medical practitioners and psychologists. From figure 7.45 it can be seen that of the respondents participating, 58 (86%) were social workers, 7 (10%) were educators, 3 (4%) were from other occupations, and 1 (1%) was unknown. This data correlates with the data given by magistrates and prosecutors that most intermediaries that are used are social workers.

- Years of experience in their current occupations

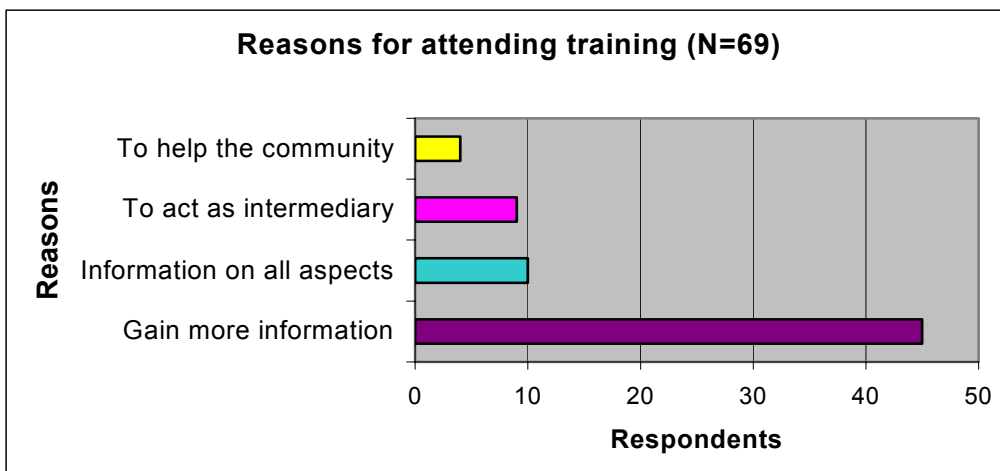
Figure 7.46: Working experience of respondents



From figure 7.46 it can be seen that of the 69 (100%) respondents, 8 (12%) had 2 years or less experience, 25 (36%) had between 2 and 4 years experience, 17 (25%) had between 4 and 8 years of experience, 13 (19%) had between 8 and 12 years experience and 6 (9%) had 12 years and more of experience. From the above it can be seen that 36 (52%) had more than five years experience. 8 (12%) of the respondents did not qualify to act as intermediary. (See chapter 5).

- Reasons for attending training program

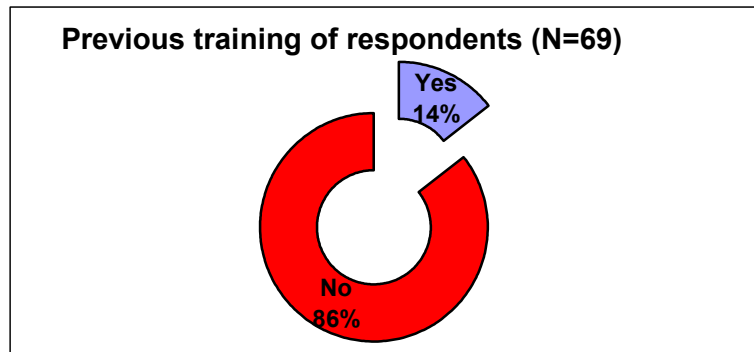
Figure 7.47: Reasons why respondents attend the training program



From figure 7.47 it can be seen that 45 (65%) respondents wanted to gain more information on being an intermediary, 10 (14%) wanted more information on all aspects of being an intermediary, 9 (14%) wanted to know how to act as an intermediary, and 4 (7%) wanted to help the community.

- **Previous training as intermediaries**

Figure 7.48: Previous training as intermediaries



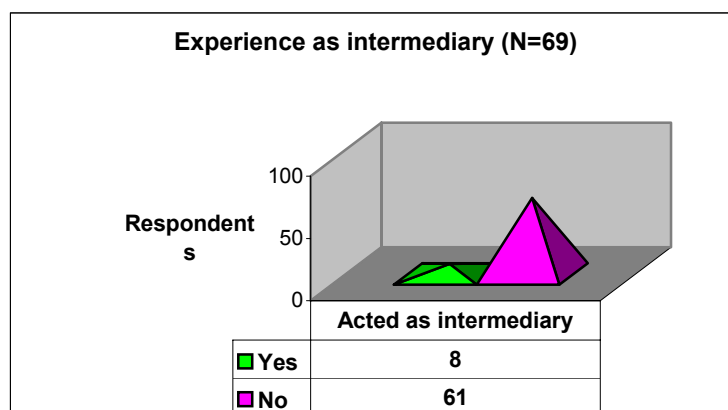
From figure 7.48 it can be seen that 10 (14%) intermediaries had previous training whilst 59 (86%) had never had any training. This correlates with the opinion of the prosecutors and magistrates that intermediaries should definitely be trained before acting as intermediary.

- **Information of training course/s attended**

Information gained from this question was not relevant and could not be used for the purpose of this study.

- **Experience of respondents as intermediaries**

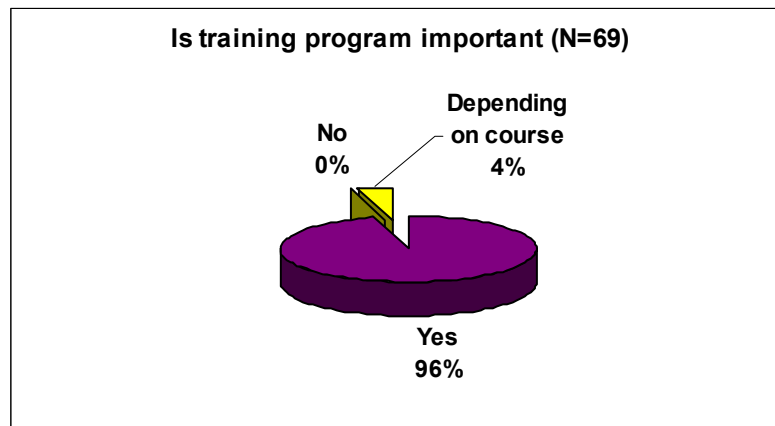
Figure 7.49: Previous experience intermediary



From figure 7.49 it can be seen that 8 (12%) respondents had acted as an intermediary before whilst 61 (88%) had never acted as intermediary before.

- Importance of training program

Figure 7.50: Should intermediary attend a training program?



From figure 7.50 it can be seen that 66 (96%) respondents agreed that an intermediary should attend a training program and 3 (4%) said it depended on the program.

- Reasons for attending training program

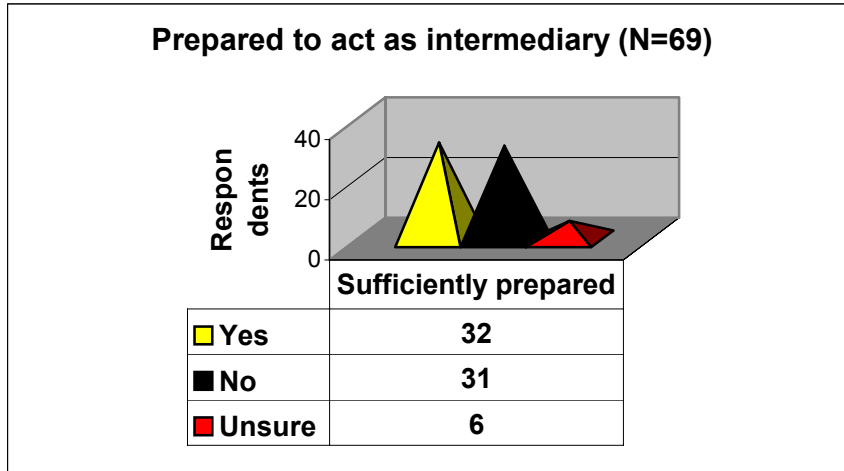
Figure 7.51: Why should intermediaries attend a training program?



From figure 7.51 it can be seen that 18 (26%) respondents felt that it was important to gain skills from the training program, while 17 (25%) felt that they wanted to know what was expected of them. 12 (17%) felt that they wanted to gain knowledge on the field of the intermediary, 8 (12%) wanted to help the child, 8 (12%) wanted to help the community and 6 (9%) wanted to understand the language of the child.

- Acting as intermediary:

Figure 7.52: Is the respondent sufficiently prepared to act as intermediary?



From figure 7.52 it can be seen that 32 (47%) respondents felt sufficiently prepared whilst 31 (44%) felt they could not act as intermediary. 6 (9%) felt unsure about acting as intermediary.

- Topics the respondents felt unsure of before the training

Table 7.4: Topics respondents felt unsure about

TOPICS UNSURE OF BEFORE PROGRAM	Respondents	Percentage
Court procedure	37	54%
Child development	23	33%
All aspects	23	33%
Role of Intermediary	23	33%
Disabilities	23	33%
Desirability Report	20	29%
Court preparation	19	27%
Practical experience	19	27%
Language in court	18	26%
Anatomical dolls	17	25%
Play therapy techniques	17	25%
Trauma	17	25%
Family dynamics	16	23%
Assessment of child	15	22%
Communicating with child	15	22%
Child centred approach	13	19%
In camera testimony	13	19%
How to protect the child	13	19%
Sexual abuse	12	17%

From table 7.4 it can be seen that the respondents felt unsure about the following topics before they started the training 19 (27%) felt unsure about the practical aspects of being an intermediary, 13 (4%) felt unsure about protecting the child in the legal system, 16 (23%) felt unsure about the role of the family, 17 (25%) felt unsure about play therapy techniques, 17 (25%) felt unsure about the use of anatomically detailed dolls, 17 (25%) felt unsure about trauma in the child coming to court, 20 (29%) felt unsure about the desirability report, 23 (33%) felt unsure about child development, 23 (33%) felt unsure about disabilities in children, 37 (54%) felt unsure about court procedures , 18 (26%) felt unsure about language in court, 5 (7%) felt unsure about communication skills, 12 (17%) felt unsure about abuse and 23 (33%) felt unsure about the duties and role of the intermediary, 19 (27%) felt unsure about court preparation, 13 (19%) felt unsure about both the child centred approach and in-camera testimony, and 15 (22%) felt unsure of assessing the child.

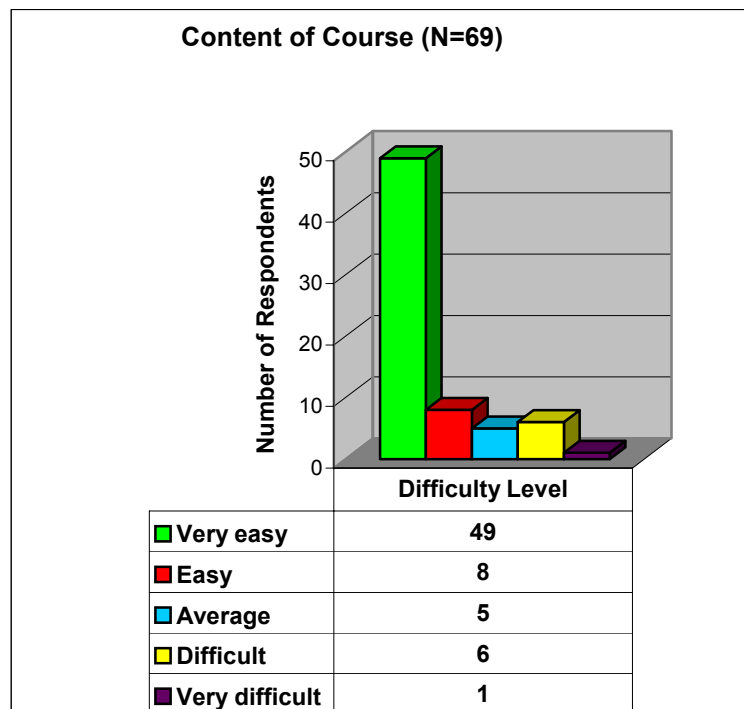
7.4.2 QUESTIONNAIRE 4 (Appendix 4)

7.4.2.1. Questionnaire for the evaluation of the intermediary training program - Post-Test

- **SECTION A: Experience of the training program**

- Understandability of the program

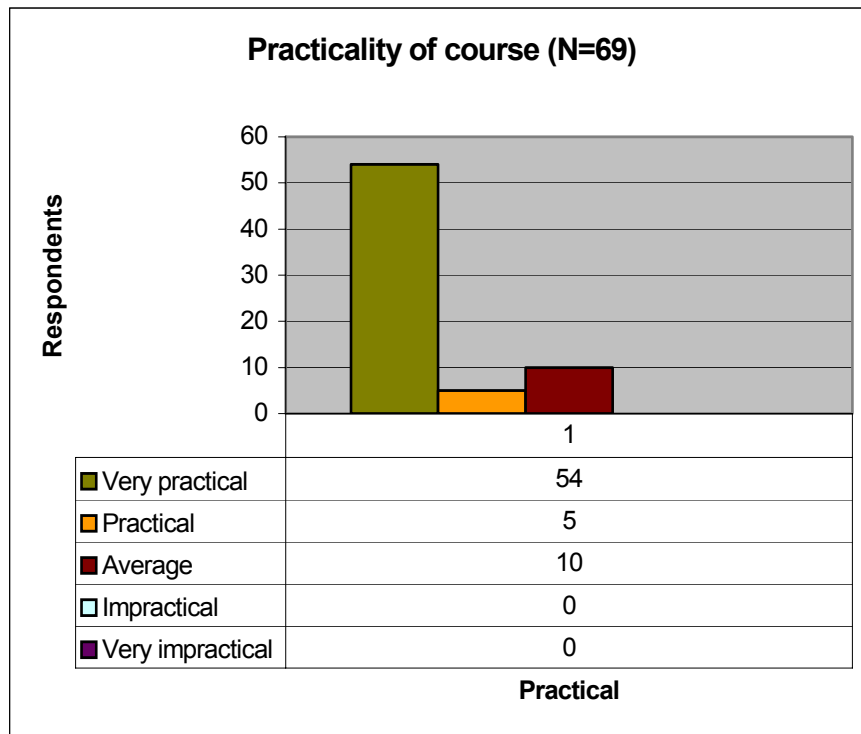
Figure 7.53: Level of understandability of program



From figure 7.53 it can be seen that 49 (71%) respondents found the program very easy to understand, 8 (12%) found the program easy, 5 (7%) found the program average, 6 (9%) found the program difficult and 1 (1%) found the program very difficult to understand. The respondent who found the training program very difficult to understand had a B.A. degree with no social work or educational background and no working experience with children.

- Practicality of the program

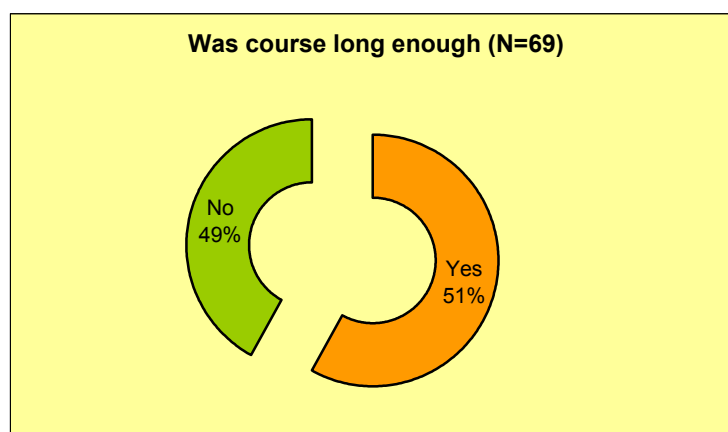
Figure 7.54: Practicality of the program



From figure 7.54 it can be seen that 54 (78%) found the program very practical, 5 (7%) found it practical, and 10 (15%) found the program average. Nobody found the program impractical.

- Duration of the program

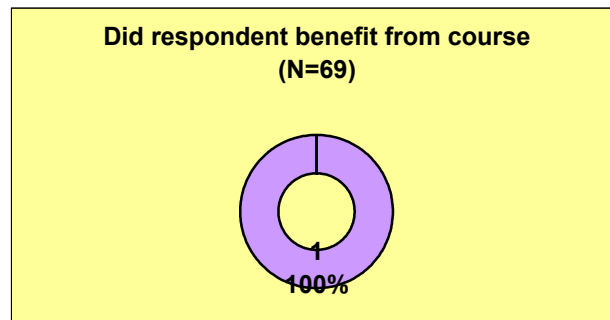
Figure 7.55: Was program long enough?



From figure 7.55 it can be seen that 35 (51%) respondents found the program long enough and 34 (49%) found the program too short and wanted more time. 20 (29%) respondents commented that they want a follow-up program (not indicated on graph).

- Degree of benefits of the program

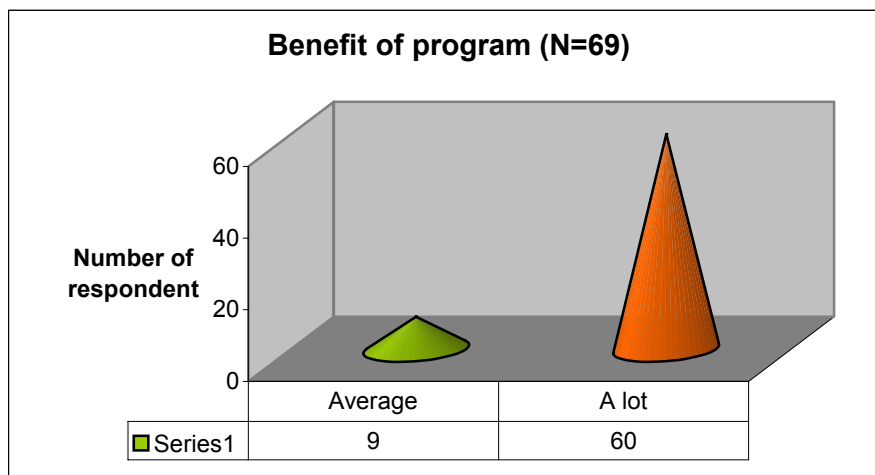
Figure 7.56: Did respondents benefit from the program?



From figure 7.56 it can be seen that 69 (100%) said that they had benefited from the program. This acknowledges what the prosecutors and magistrates indicated in that an intermediary should be trained according to a research-based program.

- Degree of benefit

Figure 7.57: To what degree did respondents benefit from the program?



From figure 7.57 it can be seen that 60 (90%) respondents indicated that they had benefited a lot from the program, 9 (10%) said that the benefit had been average.

- Which topics should less time be devoted to

Table 7.5: The topics the respondents indicated less time should be allocated to:

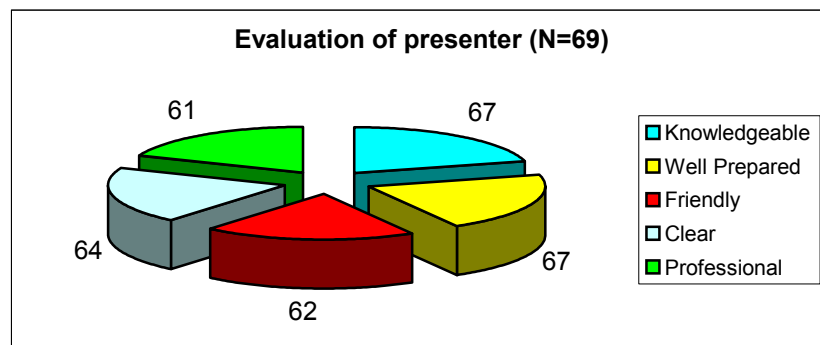
Topic	Respondents (N=69)	Percentage
S A Legal system	9	13%
Child development	6	9%
Trauma debriefing	5	7%
The trial	4	6%
Role of the parent	3	4%
Court preparation	3	4%
Anatomically detailed dolls	3	4%
Relaying questions	2	3%
Questions in court	2	3%
Child communication	2	3%
The intermediary	1	1%
Desirability report	1	1%

From table 7.5 it can be seen that 9 (13%) respondents indicated that less time should be spent on the S A legal system. 1 (1%) indicated that less time should be spent on the intermediary, 4 (6%) indicated that less time should be spent on the trial, 2 (3%) indicated less time should be spent on the relaying of questions, 2 (3%) indicated less time should be spent on child communication, 3 (4%) indicated that less time should be spent on court preparation, 5 (7%) indicated that less time should be spent on aspects of trauma, 3 (4%) indicated less time should be spent on the role of the parent, 2 (3%) indicated less time should be spent on questions asked in court, 6 (9%) indicated that less time could be spent on child development, 3 (4%) indicated that less time should be spent on the anatomically detailed dolls, and 1 (1%) indicated that less times should be spent on the desirability report.

This information will be taken into account with the finalisation of the training program before it is made available to the Department of Justice and Constitutional Development.

- Evaluation of the presenter:

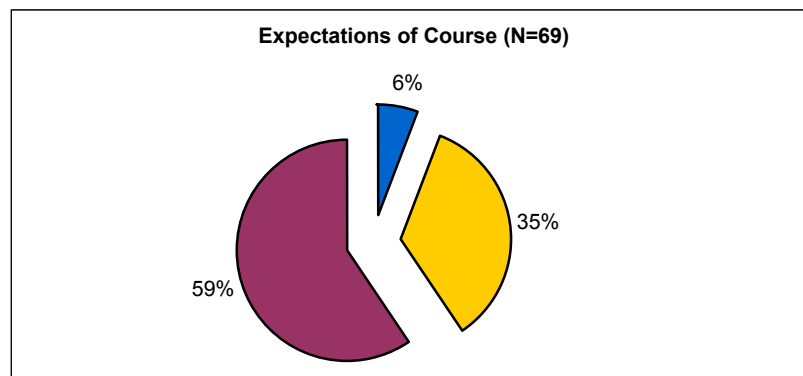
Figure 7.58: The respondents' evaluation of presenter



From figure 7.58 it can be seen that 67 (97%) respondents felt that the presenter was knowledgeable, 67 (97%) felt that she was well prepared, 62 (90%) felt that she was friendly, 64 (93%) felt that she was clear, and 61 (88%) felt that she was professional.

- Expectations of program

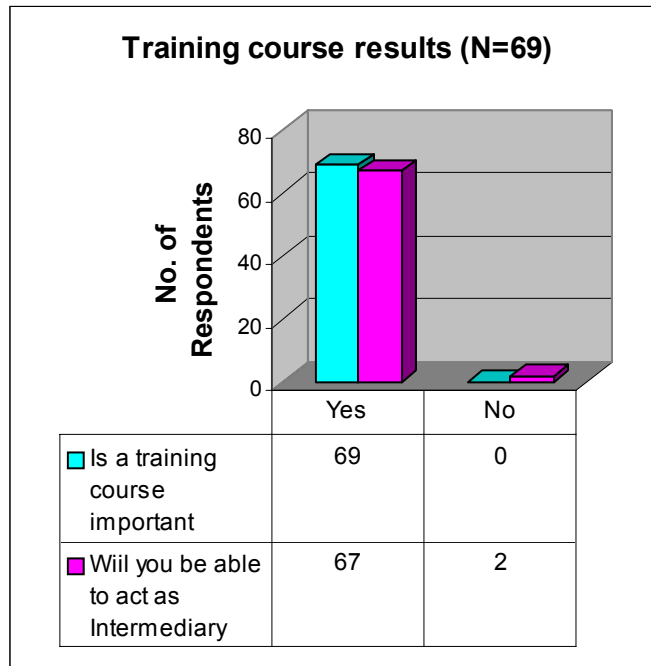
Figure 7.59: Were expectations met?



From figure 7.59 it can be seen that 41 (59%) respondents felt that their expectations had definitely been met, 24 (35%) felt that their expectations had been met and 4 (6%) felt unsure.

- Is it important to attend a training program?

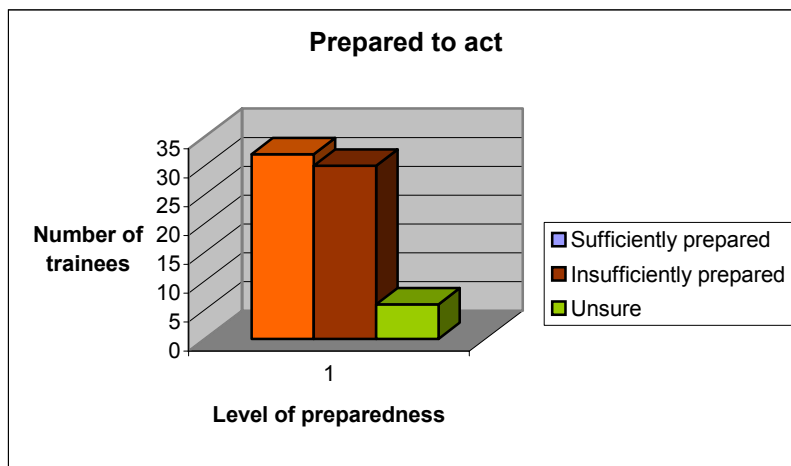
Figure 7.60: Importance of training program



From figure 7.60 it can be seen that 69 (100%) respondents felt that it was important to attend a training program. 67 (98%) respondents felt sufficiently prepared to act as intermediaries and 2 (2%) felt she was not sufficiently prepared.

- Did respondents feel sufficiently prepared to act as intermediaries?

Figure 7.61: Preparedness to act as intermediary



From figure 7.61 it can be seen that 32 (46%) trainees felt that they were sufficiently prepared to act as intermediaries, 30 (44%) felt insufficiently prepared to act as intermediaries, and 6 (9%) felt unsure.

- Topics respondents still feel unsure about

Table 7.6: Topics respondents felt unsure about

Topic	Respondents (N=69)	Percentage
Desirability report	13	19%
SA Legal system	12	17%
Trauma debriefing	8	12%
Practical questions	8	12%
Relaying questions	7	10%
The trial	7	10%
Practical court experiences	5	7%
Role of the parent	3	4%
Anatomical detailed dolls	2	3%
Child development	2	3%
Child communication skills	2	3%
The Intermediary	1	1%
Building rapport with the child	1	1%
Abuse	1	1%
Court preparation	1	1%

From figure 7.6 it can be seen that 1 (1%) respondent felt unsure of abuse, 12 (17%) felt unsure about the legal system, 1 (1%) felt unsure of the intermediary 7 (10%) felt unsure of aspects of the trial, 7 (10%) felt unsure about the relaying of the question, 1 (1%) felt unsure of how build a rapport with the child, 2 (3%) felt unsure of communications skills, 1 (1%) felt unsure of court preparation, 2 (3%) felt unsure of the anatomically detailed dolls, 3 (4%) felt unsure of the role of the parent, 8 (12%) felt unsure of trauma debriefing, 2 (3%) felt unsure of child development, 13 (19%) felt unsure of the desirability report, 8 (12%) felt unsure of the practical questions, and 5 (7%) felt unsure of the practical court situation.

7.5 COMPARISON BETWEEN PRE-TEST AND POST-TEST BEFORE AND AFTER THE PROGRAM

The data collected from the pretest and posttest were compared to determine the change that had taken place in the knowledge base as well as practical knowledge of the trainees.

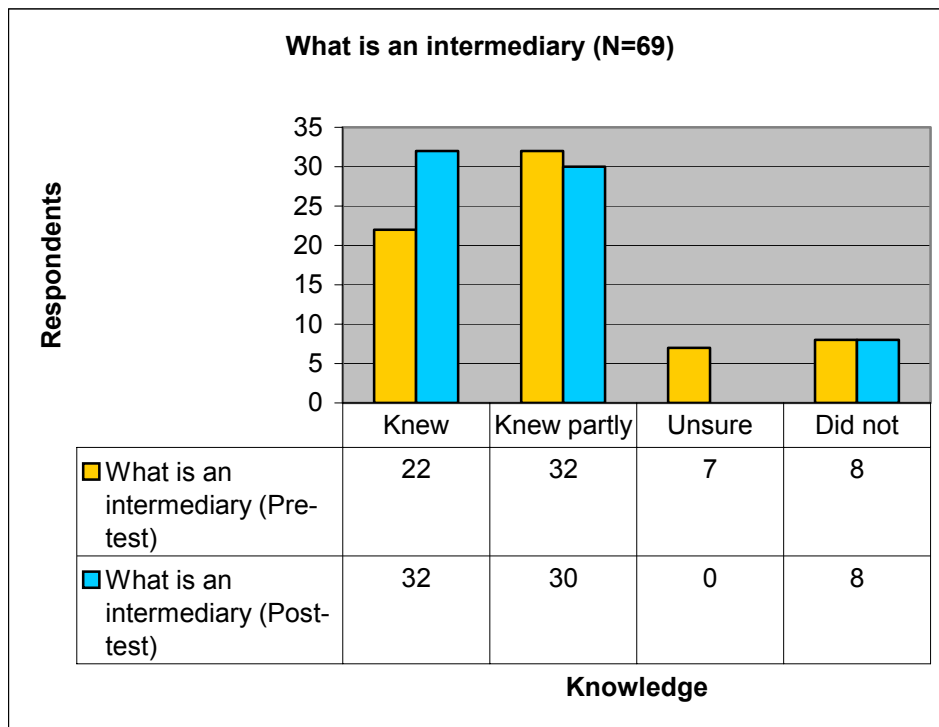
Data gathering during phase five of the intervention research process was done by means of self-constructed questionnaires, which contained open and closed questions. Each trainee's two questionnaires had the same coded respondent number allocated, ensuring precise comparison of data. In this manner it could be determined whether the training program did address all aspects needed to train an intermediary. It could also be established whether the contents of the program was easily understandable and whether it covered all the necessary aspects and information needed by prospective intermediaries.

The data gathered from Section B of both the questionnaires distributed before and after the training program will be discussed and compared with each other to see whether a change in knowledge of intermediaries has taken place. The comparison of the two results will be presented graphically.

Of the 69 respondents the following was determined before and after presenting the training program:

- What is an Intermediary?

Figure 7.62: What is an intermediary



From figure 7.62 it can be seen that:

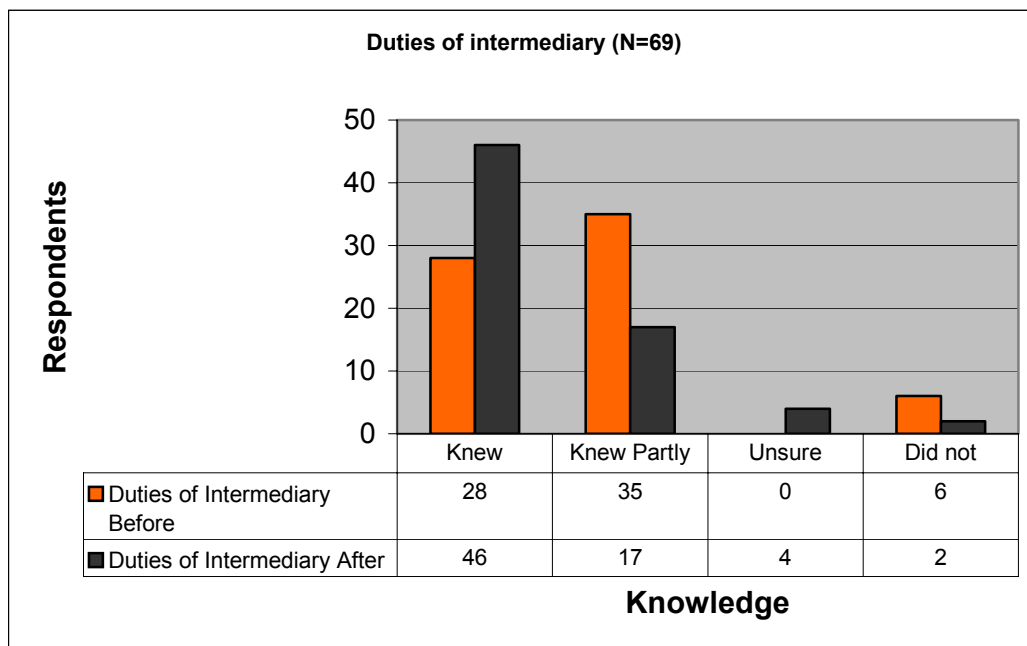
Pre-test: 22 (32%) respondents knew what an intermediary was, 32 (46%) partly knew, 7 (10%) were not sure and 8 (12%) did not know.

Post-test: 32 (46%) respondents knew what an intermediary was, 30 (57%) partly knew what an intermediary was and 7 (12%) did not know.

From the above it can be seen that the trainees knowledge of what an intermediary is increased from 32% to 46%, those that partly knew increased from 10% to 57% and 12% still did not know what an intermediary is. This lack of knowledge could possibly be because of time restraints during the training program.

- What are the duties of an Intermediary?

Figure 7.63: Duties of an intermediary



From figure 7.63 it can be seen that:

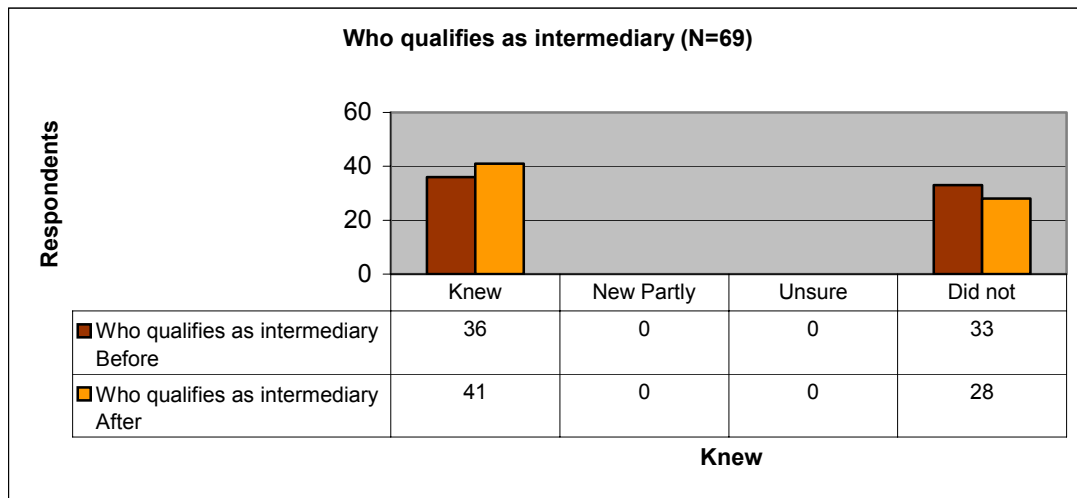
Pre-test: 28 (41%) respondents knew what an intermediary duties were, 35 (51%) partly knew what an intermediary duties were, 6 (9%) did not know.

Post-test: 46 (67%) respondents knew what an intermediary's duties were, 2 (3%) did not know and 17 (25%) partly new what an intermediary does, and 4 (6 %) was unsure.

From the above it can be seen that the trainees' knowledge of the duties of an intermediary increased from 41% to 67%, those that partly knew decreased from 51% to 25% and 9% still did not know what an intermediary is. This lack of knowledge could possibly be because of time restraints during the training program as well as a result of a lack of background knowledge of an intermediary.

Who qualifies to be an intermediary?

Figure 7.64: Qualifications of intermediary



From figure 7.64 it can be seen that:

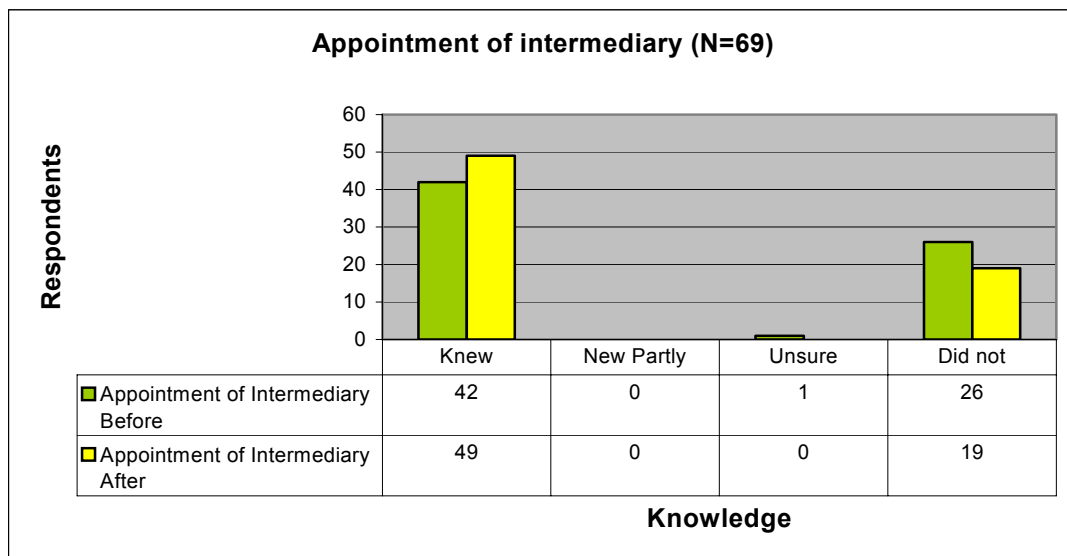
Pre-test: 36 (52%) respondents knew who qualified to be an intermediary, 33 (48%) did not know

Post-test: 41 (59%) respondents knew who qualified as intermediary and 28 (41%) did not know.

From the above it can be seen that the trainees’ knowledge of who qualifies to be an intermediary is increased from 36 to 41%, those who did not know decreased 33 to 28. This lack of knowledge could possibly be because of time restraints during the training program as well as a result of a lack of background knowledge of an intermediary

- When is an intermediary appointed:

Figure 7.65: Appointment of an intermediary



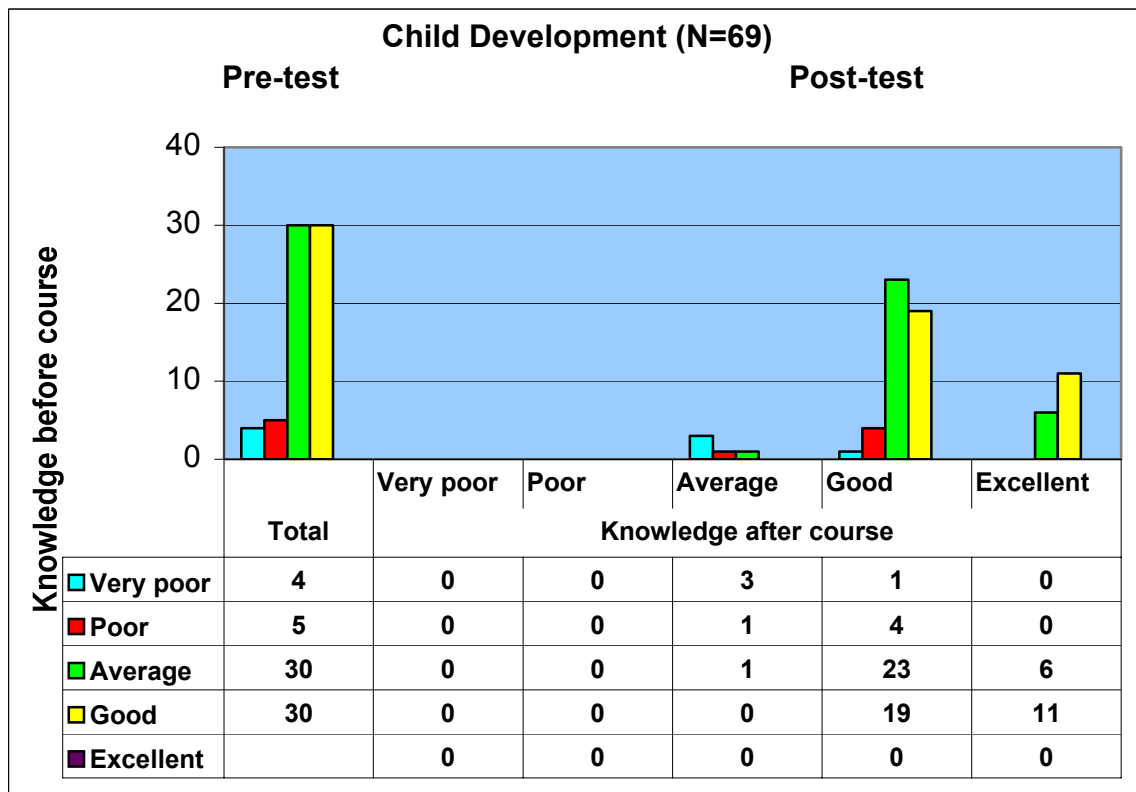
From figure 7.65 it can be seen that:

Pre-test: 42 (61%) respondents knew when an intermediary was appointed, 26 (38%) did not know, and 1 (1%) was unsure.

Post-test: 49 (71%) respondents knew and 19 (28%) did not know.

The above statistics show an improvement of 145. The Failure on behalf of the 28 trainees who did not know who qualified to be an intermediary can possibly be improved by spending more time on the relevant theme during training. This will however only be possible if the training program is extended to at least a three-week program.

Figure 7.66: Knowledge of child development



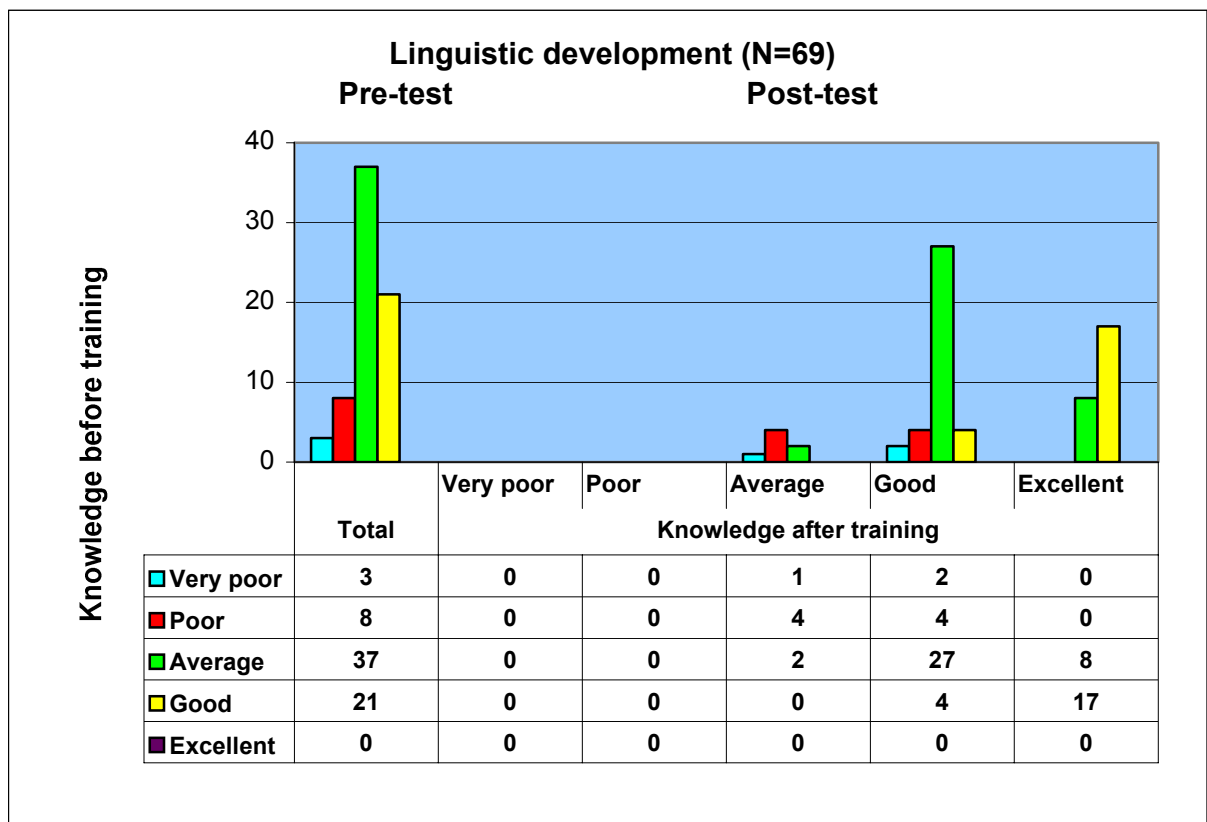
From figure 7.66 it can be seen that:

Pre-test: Before the program, 4 (6%) respondents felt their knowledge was very poor, 5 (7%) felt their knowledge was poor, 30 (43%) felt their knowledge was average, 30 (43%) felt their knowledge was good and nobody felt their knowledge was excellent.

Post-test: Of the 4 (100%) respondents that felt their knowledge was poor, after the program 3 (75%) improved to average, 1 (25%) improved to good. Of the 5 (100%) who felt their knowledge was poor, 1 (20%) improved to average, and 4 (80%) improved to good. Of the 30 (100%) who felt their knowledge was average, 1 (3%) felt their knowledge was still average, 23 (77%) felt their knowledge was good and 6 (20%) felt their knowledge had improved to excellent. Of the 30 (100%) respondents who felt that their knowledge was good, 19 (63%) remained good and 11 (37%) said their improved to excellent.

- Knowledge of Language development

Figure 7.67: Knowledge of language development



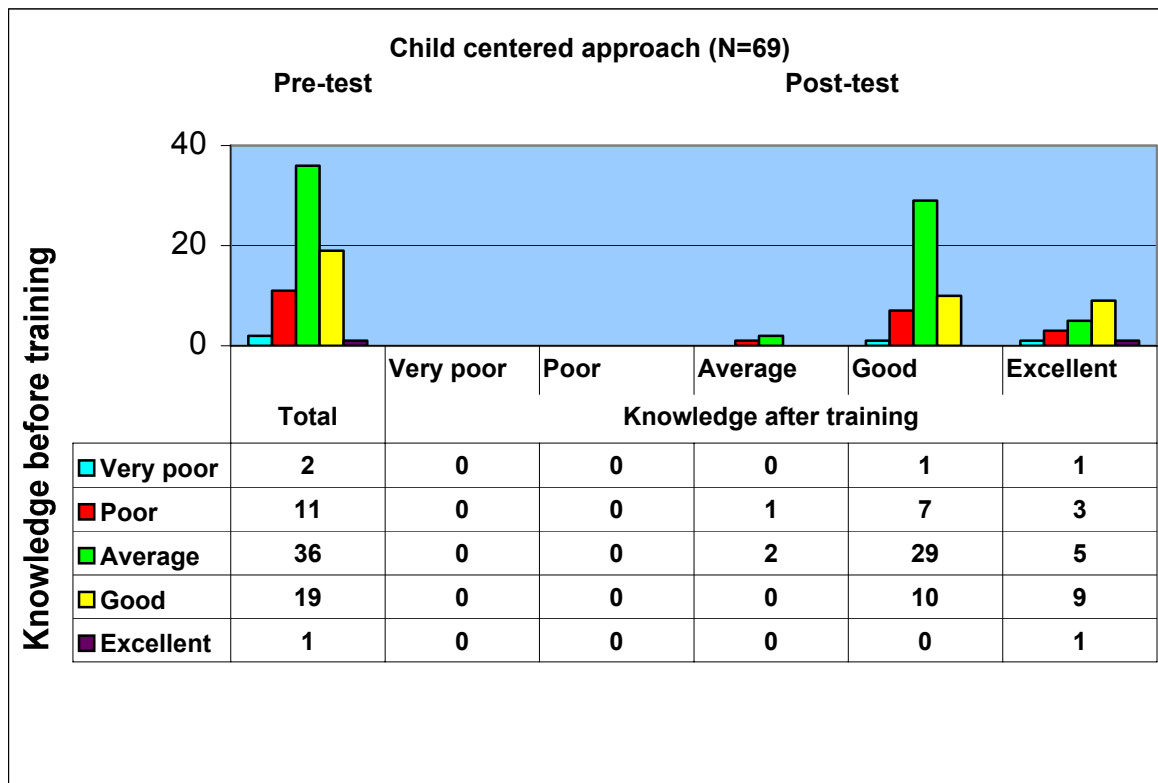
From figure 7.67 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 3 (4%) respondents said that their knowledge was very poor, 8 (12%) felt their knowledge was poor, 37 (54%) felt their knowledge was average, 21 (30%) felt their knowledge was very good, and nobody felt that their knowledge was excellent.

Post-test: After the program 3 (100%) of the respondents who felt that their knowledge was very poor, 1 (33%) improved to average, and 2 (67%) to good. Of the 8 (100%) respondents who felt their knowledge poor, 4 (50%) improved to average, and 4 (50%) improved to good. Of the 37 (100%) that felt their knowledge was average, 2 (5%) remained average, 27 (73%) improved to good, and 8 (22%) improved to excellent. Of the 21 (100%) respondents who felt their knowledge was good, 4 (19%) remained good and 17 (81%) improved to excellent.

- Child centred Approach

Figure 7.68: Child centred approach



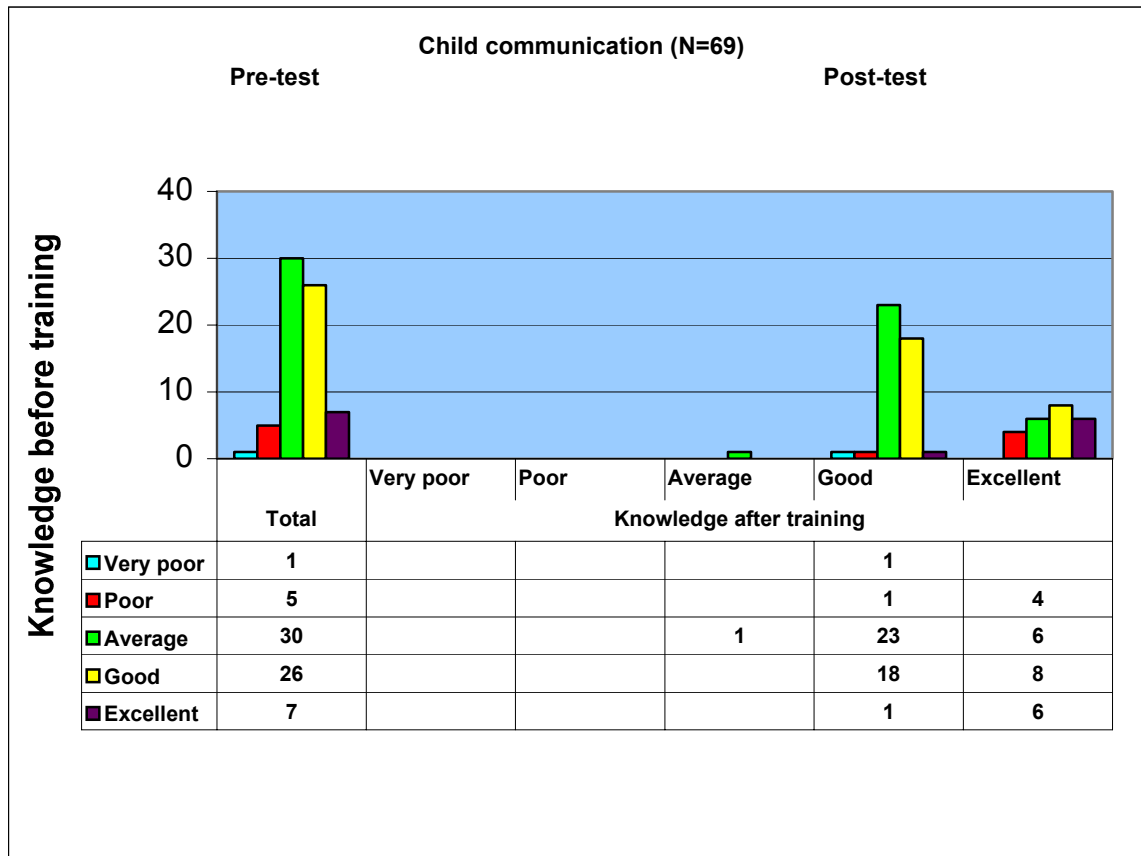
From figure 7.68 it can be seen that:

Pre-test: Of the 69 respondents, 2 (3%) felt their knowledge was very poor, 11 (17%) felt it was poor, 36 (52%) felt it was average, 19 (27%) felt it was good, and 1 (2%) felt it was excellent.

Post-test: Of the 2 (100%) respondents who felt their knowledge was very poor, 1 (50%) improved to good and 1 (50%) to excellent. Of the 11 (100%) that felt their knowledge was poor, 1 (9%) improved to average, 7 (64%) to good and 3 (27%) to excellent. Of the 36 (100%) that felt their knowledge average, 2 (6%) remained average, 29 (81) improved to good, and 5 (14%) improved to excellent. Of the 19 (100%) that felt their knowledge was good, 10 (53%) felt that it remained good and 9 (47%) improved to excellent. Of the 1 (100%) who felt her knowledge was excellent, it remained excellent.

- Child communication

Figure 7.69: Knowledge of Child communication



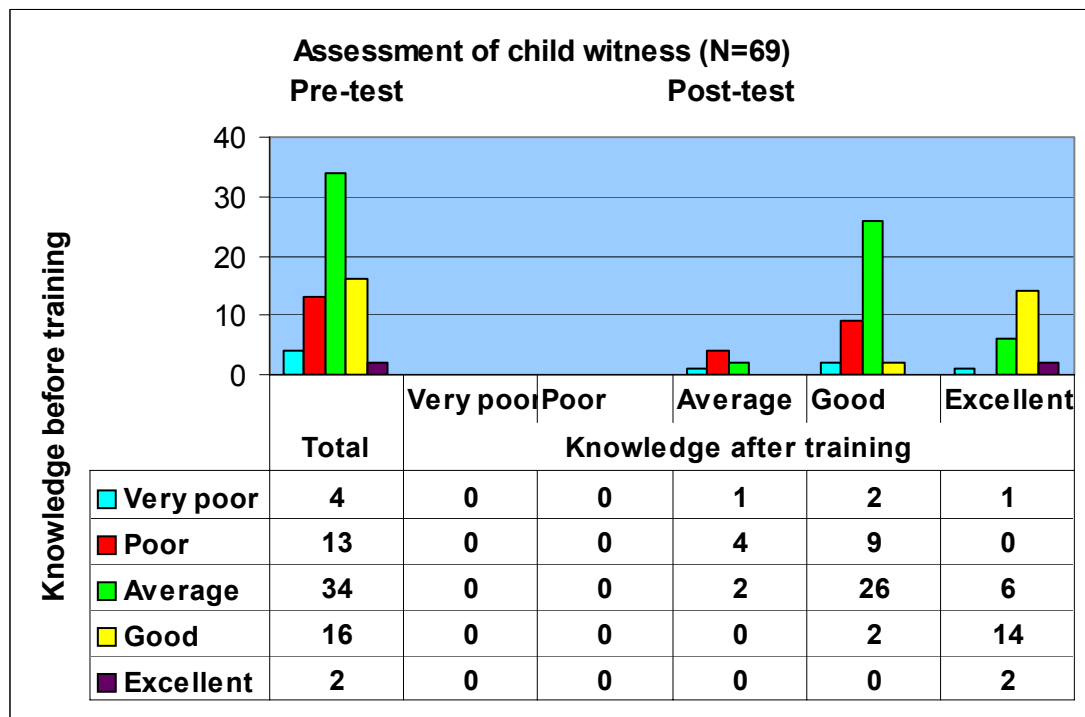
From figure 7.69 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 1 (1%) felt that her knowledge was very poor, 5 (7%) felt their knowledge was poor, 30 (43%) felt their knowledge was average, 26 (38%) felt their knowledge was good and 7 (10%) felt their knowledge excellent.

Post-test: After the program 1 (100%) respondent who felt her knowledge was very poor improved to good, of the 5 (100%) who felt their knowledge was poor, 1 (20%) improved to good and, 4 (80%) improved to excellent, of the 30 (100%) that felt their knowledge was average, 1 (3%) remained average, 23 (77%) improved to good and 6 (20%) improved to excellent. Of the 26 (100%) who felt their knowledge was good, 18(69%) improved to very good and 8 (31%) improved to excellent. Of the 7 (100%) who felt their knowledge was excellent, 1 (14%) felt she had regressed to good and 6 (86%) felt their knowledge had remained excellent.

- Assessment of developmental level

Figure 7.70: Knowledge of assessing the developmental level of child



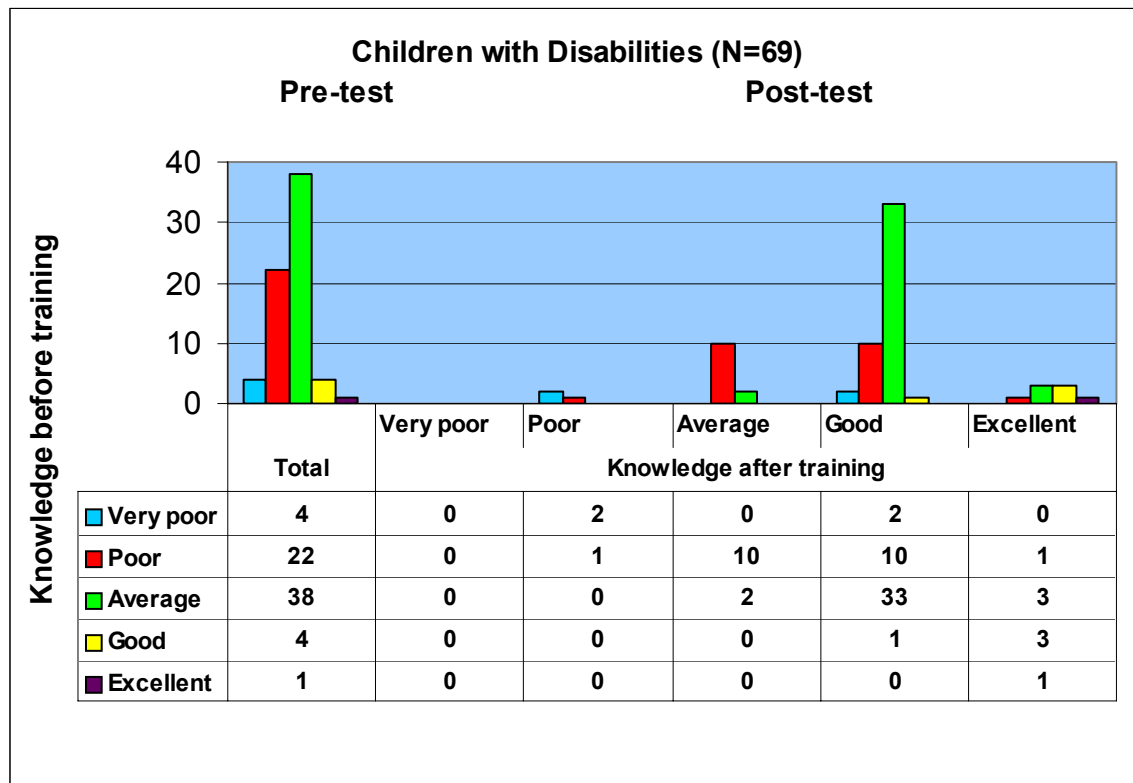
From figure 7.70 it can be seen that:

Pre-test: Before the program 4 (6%) respondents felt that their knowledge was very poor, 13 (23%) felt their knowledge was poor, 34 (40%) felt their knowledge was average, 16 (23%) felt their knowledge was good and 2 (3%) felt their knowledge was excellent.

Post-test: Of the 4 (100%) respondents who felt their knowledge was very poor, 1 (25%) improved to average, 2 (50%) improved to good, and 1 (25%) improved to excellent. Of the 13 (100%) who felt their knowledge was poor, 4 (31%) improved to average and 9 (69%) improved to good. Of the 34 (100%) that felt their knowledge was average, 2 (6%) remained average, 26 (76%) improved to good and 6 (18%) improved to excellent. Of the 16 (100%) respondents who felt their knowledge was good, 2 (13%) remained good and 14 (87%) improved to excellent. The 2 (100%) who felt their knowledge was excellent, knowledge remained that way.

- Disabilities in child witnesses

Figure 7.71: Knowledge on disabilities in children



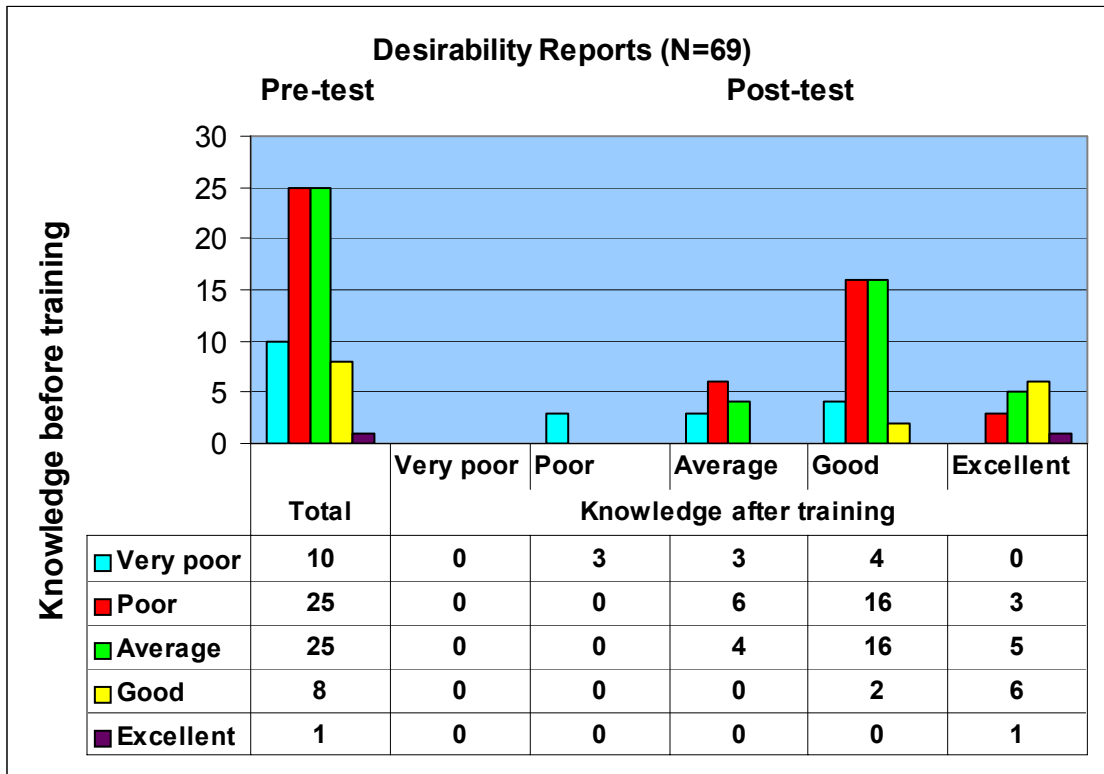
From figure 7.71 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 4 felt their knowledge was very poor, 22 (31%) felt their knowledge was poor, 38 (62%) felt their knowledge was average, 4 (6%) felt their knowledge was good and 1 (1%) felt her knowledge was excellent.

Post-test: Of the 4 (100%) respondents who felt their knowledge was very poor, 2 (50%) felt their knowledge had improved to poor and 2 (50%) felt their knowledge had improved to good. Of the 22 (100%) who felt their knowledge was poor, 1 (4%) felt her knowledge had remained poor, 10 (46%) felt their knowledge had improved to average, 10 (46%) felt their knowledge had improved to good, and 1 (4%) felt her knowledge had improved to excellent. Of the 38 (100%) who felt their knowledge was average, 2 (5%) remained average, 33 (87%) improved to good, and 3 (8%) improved to excellent. Of the 4 (100%) respondents who felt their knowledge was good, 1 (25%) remained good and 3 (75%) improved to excellent. The 1 (100%) that felt her knowledge was excellent, remained excellent.

- Writing of Desirability report

Figure 7.72: Knowledge of writing the desirability report



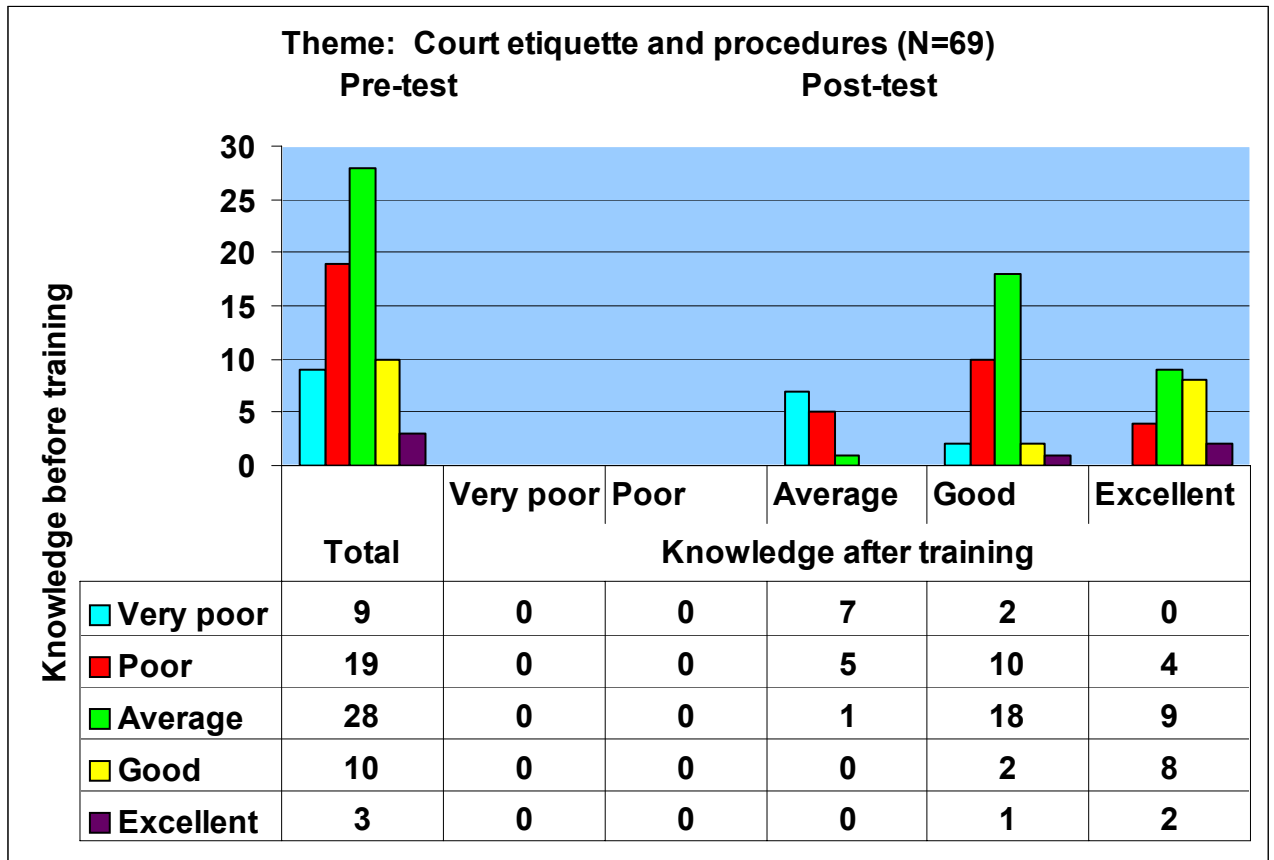
From figure 7.72 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 10 (14%) felt their knowledge was very poor, 25 (36%) felt their knowledge was poor, 25(36%) felt their knowledge was average, 8 (12%) felt their knowledge was good, and 1 (1%) felt her knowledge was excellent.

Post-test: Of the 10 (100%) respondents who felt their knowledge was very poor, 3 (30%) had improved to poor, 3 (30%) to average, and 4 (40%) to good. Of the 25 (100%) respondents who felt their knowledge was poor, 6 (24%) had improved to average, 16 (64%) to good, and 3 (12%) to excellent. Of the 25 (100%) respondents who felt their knowledge was average, 4 (16%) felt their knowledge had remained average, 16 (64%) had improved to good and 5 (20%) had improved to excellent. Of the 8 (100%) that felt their knowledge was good, 2 (25%) remained good and 6 (75%) improved to excellent. The 1 (100%) respondent who felt that her knowledge was excellent remained excellent.

- Court proceedings

Figure 7.73: Knowledge of court proceedings



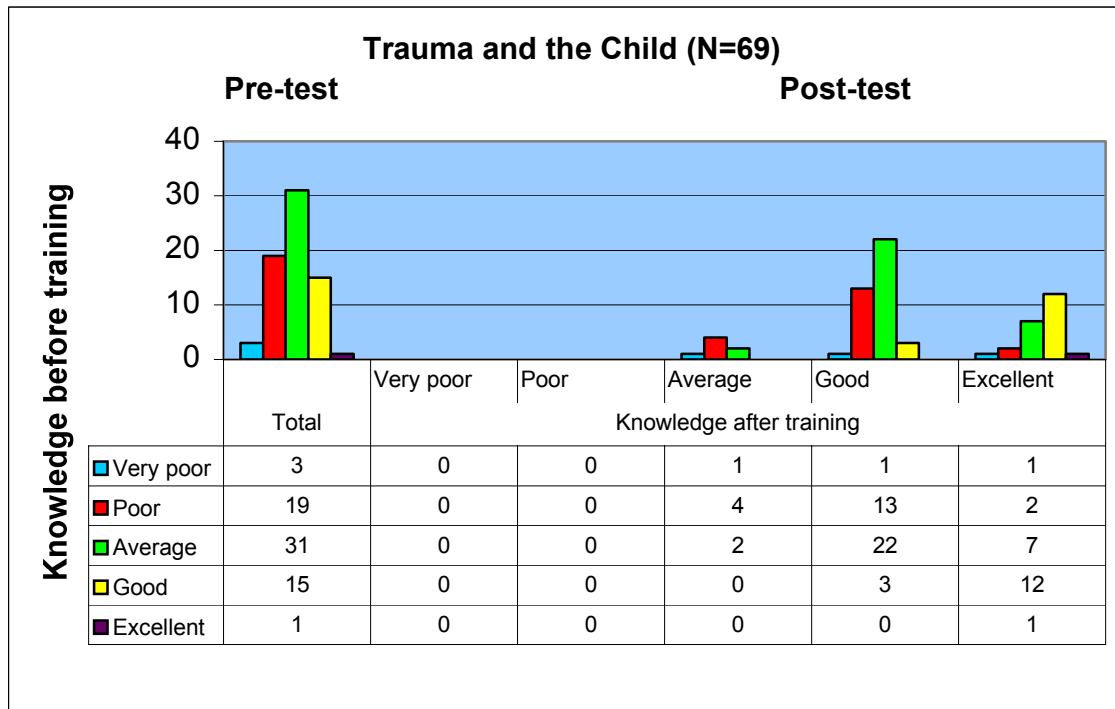
From figure 7.73 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 9 (13%) felt their knowledge was very poor, 19 (28%) felt their knowledge was poor, 28 (41%) felt their knowledge was average, 10 (14%) felt their knowledge was good, and 3 (4%) felt their knowledge was excellent.

Post-test: Of the 9 (100%) respondents who felt their knowledge was very poor, 7 (78%) improved to average, and 2 (22%) to good. Of the 19 (100%) who felt their knowledge was poor, 5 (26%) felt their knowledge had improved to average, 10 (52%) to good and 4 (21%) to excellent. Of the 28 (100%) who felt their knowledge was average, 1 (3%) remained average, 18 (64%) improved to good, and 9 (31%) to excellent. Of the 10 (100%) who felt their knowledge was good, 2 (20%) remained good and 8 (80%) improved to excellent. Of the 3 (100%) respondents who felt their knowledge was excellent, 1 (33%) regressed to good and 2 (67%) remained excellent.

- Trauma Debriefing

Figure 7.74: Knowledge of trauma debriefing



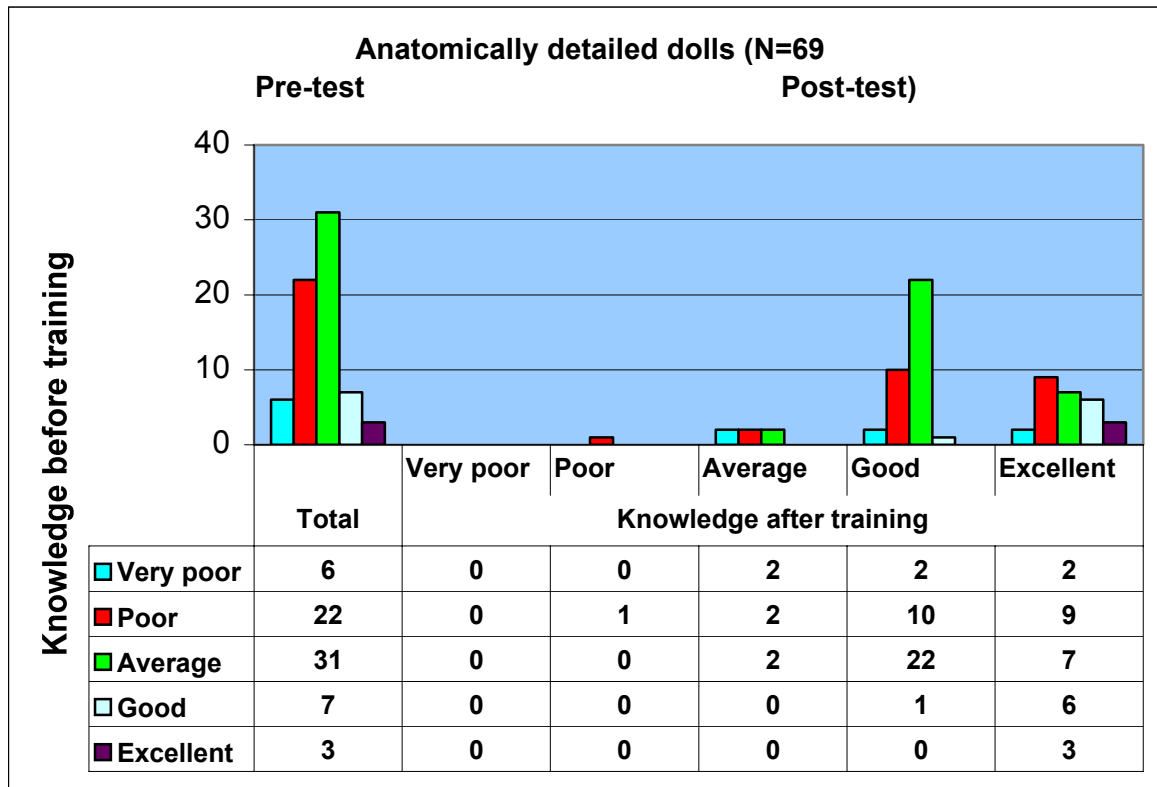
From figure 7.74 it can be seen that:

Pre-test: Of the 69 (100%) of the respondents, 3 (4%) felt their knowledge was very poor, 19 (28%) felt their knowledge was poor, 31 (45%) felt their knowledge was average. 15 (22%) felt their knowledge was good, and 1 (1%) felt her knowledge was excellent.

Post-test: Of the 3 (100%) respondents who felt their knowledge was very poor, 1 (33%) felt it had improved to average, 1 (33%) felt it had improved to good, and 1 (33%) felt it had improved to excellent. Of the 19 (100%) who felt their knowledge was poor, 4 (21%) improved to average, 13 (68%) to good, and 2 (11%) to excellent. Of the 31 (100%) respondents who felt their knowledge was average, 2 (6%) remained average, 22 (71%) improved to good and 7 (23%) improved to excellent. Of the 15 (100%) respondents who felt their knowledge was good, 3 (20%) remained good and 12 (80%) improved to excellent. 1 (100%) respondent felt her knowledge was still excellent.

- Anatomically detailed dolls

Figure 7.75: Knowledge of anatomically detailed dolls



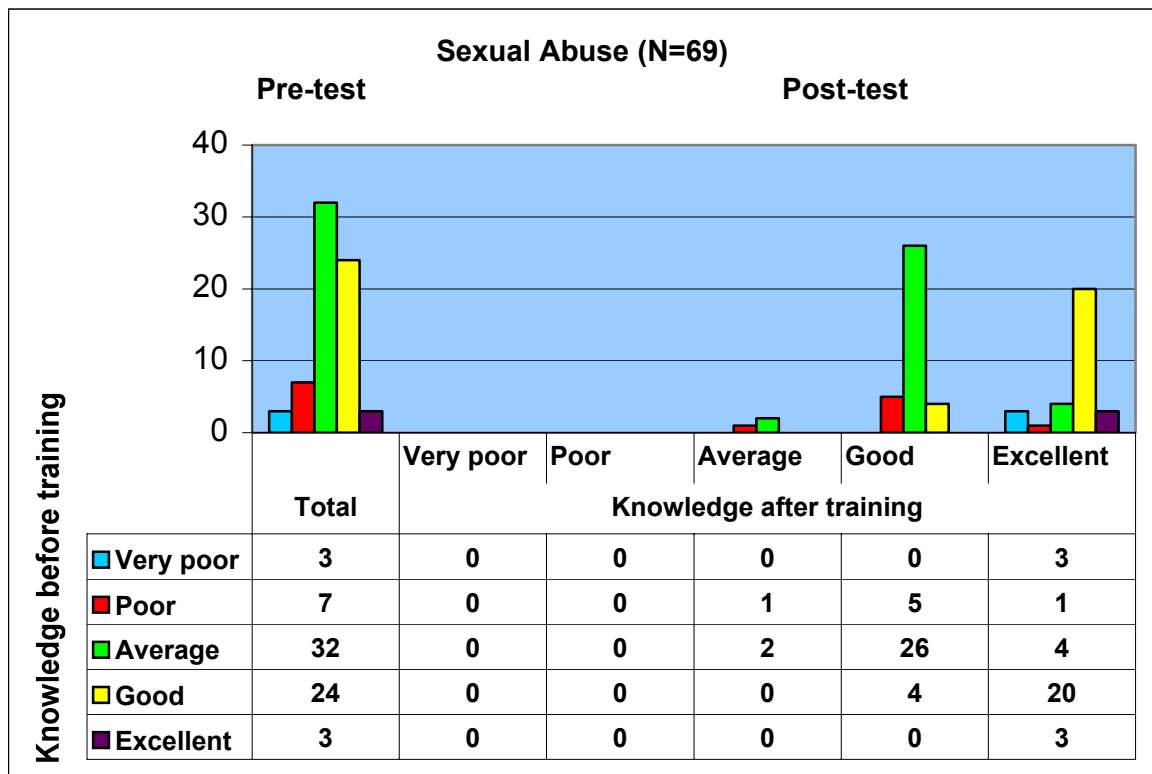
From figure 7.75 it can be seen that:

Pre-test: Of the 69 (100%) of respondents, 6 (9%) felt their knowledge was very poor, 22 (32%) felt their knowledge was poor, 31 (45%) felt their knowledge was average, 7 (10%) felt their knowledge was good, and 3 (4%) felt their knowledge was excellent.

Post-test: of the 6 (100%) respondents who felt their knowledge is very poor, 2 (33%) improved to average, 2 (33%) improved to good, and 2 (33%) improved to excellent. Of the 22 (100%) respondents who felt their knowledge was poor, 1 (5%) remained poor, 2 (9%) improved to average, 10 (45%) improved to good and 9 (41%) improved to excellent. Of the 31 (100%) who felt their knowledge is average, 2 (6%) remained average, 22 (71%) improved to good, and 7 (23%) improved to excellent. The 7 (100%) who felt their knowledge is good, 1 (14%) remained good and 6 (86%) improved to excellent. Of the 3 (100%) that felt their knowledge is excellent, all 3 (100%) remained excellent.

- Sexual abuse

Figure 7.76: Knowledge of sexual abuse



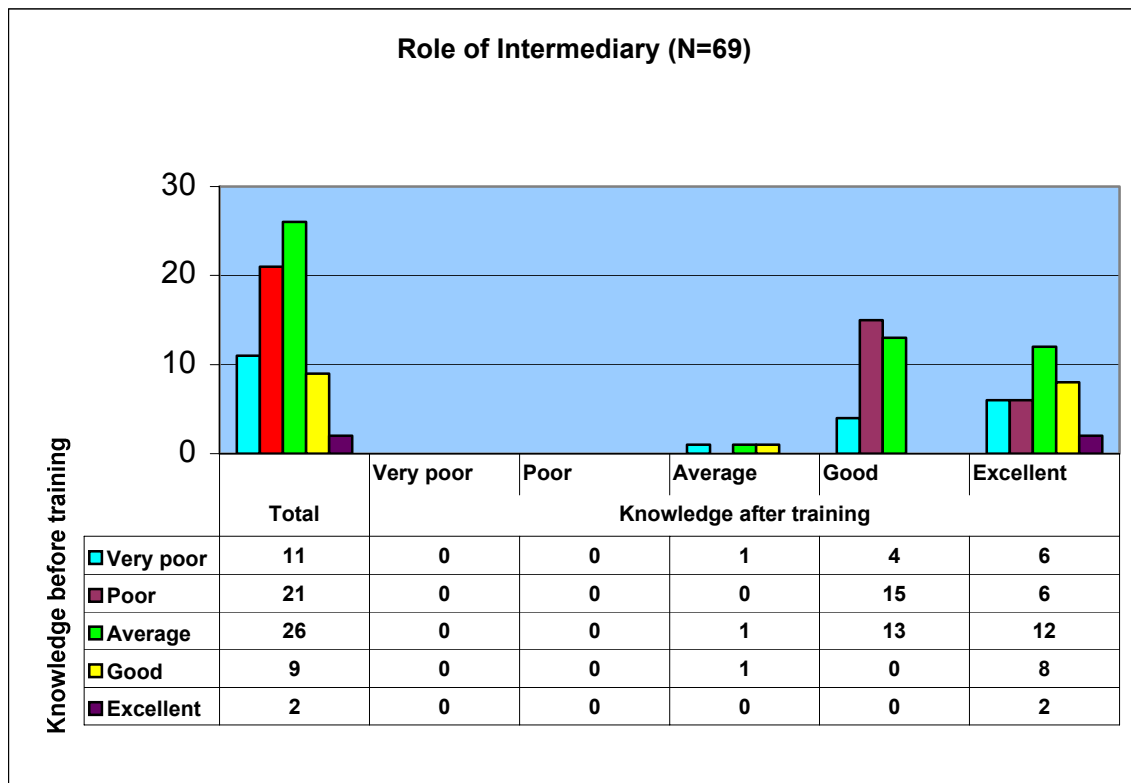
From figure 7.76 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 3 (4%) felt their knowledge of sexual abuse was very poor, 7 (10%) felt their knowledge was poor, 32 (46%) felt their knowledge was average, 24 (35%) felt their knowledge was good and 3 (4%) felt their knowledge was excellent.

Post-test: Of the 3 (100%) respondents who felt their knowledge was very poor, 3 (100%) felt their knowledge had improved to excellent. Of the 7 (100%) who felt their knowledge was poor, 1 (14%) improved to average, 5 (72%) improved to good, and 1 (14%) improved to excellent. Of the 32 (100%) who felt the knowledge was average, 2 (6%) remained average, 26 (81%) improved to good, and 4 (13%) improved to excellent. Of the 24 (100%) who felt their knowledge was good, 4 (17%) remained good and 20 (83%) improved to excellent, and all 3 (100%) respondents who felt their knowledge is excellent, felt their knowledge remained excellent.

- Role of the Intermediary

Figure 7.77: Knowledge on the intermediary



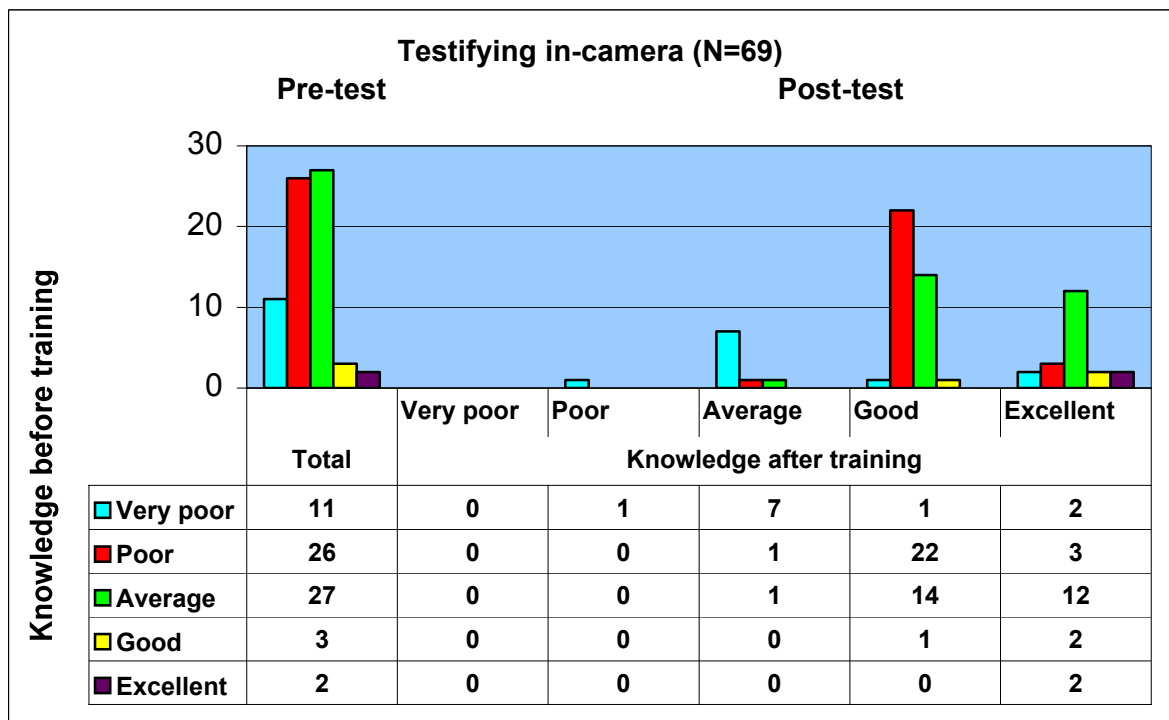
From figure 7.77 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 11 (16%) felt their knowledge was very poor, 21 (30%) felt their knowledge was poor, 26 (38%) felt their knowledge was average, 9 (13%) felt their knowledge was good, and 2 (3%) felt their knowledge was excellent.

Post-test: Of the 11 (100%) respondents that felt their knowledge was very poor, 1(6%) improved to average, 4 (36%) improved to good, and 6 (60%) improved to excellent. Of the 21 (100%) respondents who felt their knowledge was poor, 15 (68%) improved to good, and 6 (32%) improved to excellent. Of the 26 (100%) who felt their knowledge was average, 1 (4%) remained average, 13 (50%) improved to good, and 12 (45%) improved to excellent. Of the 9 (100%) respondents who felt their knowledge was good, 1 (11%) improved to average and 8 (89%) improved to excellent. The 2 (100%) that felt their knowledge is excellent, said it remained excellent.

- Testifying in-camera

Figure 7.78: Knowledge of in-camera testimony



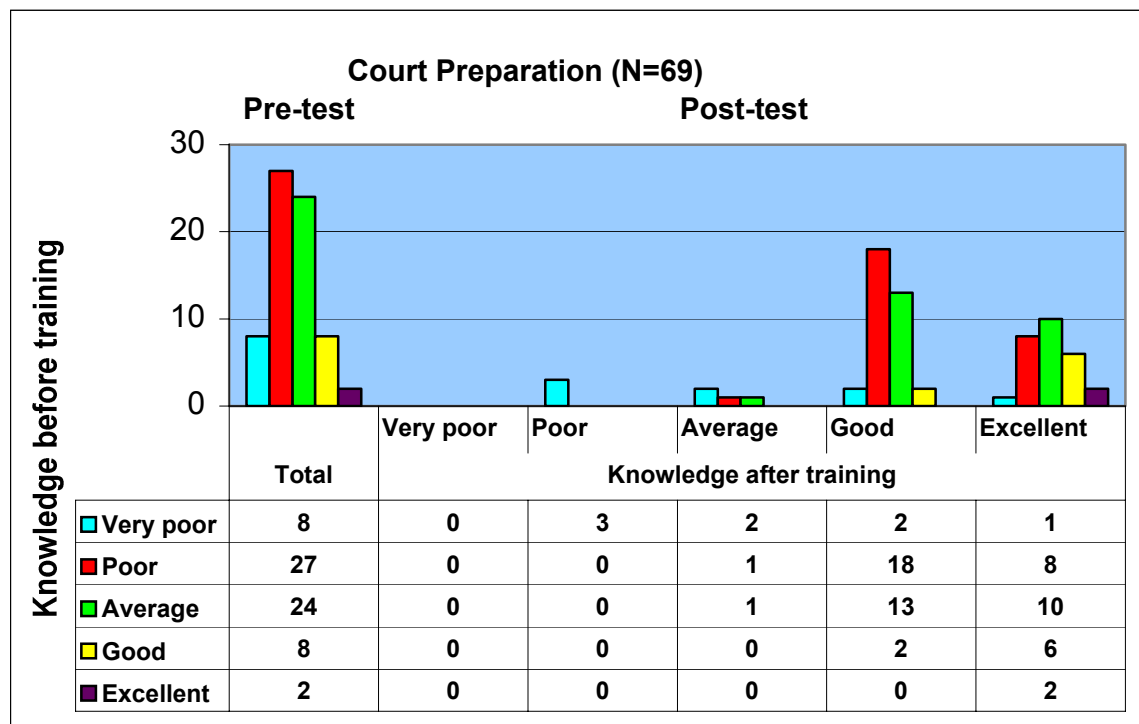
From figure 7.78 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 11 (16%) felt their knowledge was very poor, 26 (38%) felt their knowledge was poor, 27 (39%) felt their knowledge was average, 3 (4%) felt their knowledge was good, and 2 (3%) felt their knowledge was excellent.

Post-test: Of the 11 (100%) respondents who felt their knowledge was very poor, 1 (9%) felt her knowledge had improved to poor, 7 (64%) had improved to average, 1 (9%) to good and 2 (18%) to excellent. Of the 26 (100%) respondents that felt their knowledge was poor, 1 (4%) improved to average, 22 (85%) improved to good, and 3 (11%) improved to excellent. Of the 27 (100%) who felt their knowledge was average, 1 ((%) felt it remained average, 14 (52%) improved to good, and 12 (44%) improved to excellent. Of the 3 (100%) who felt their knowledge was good, 1 (33%) remained good and 2 (66%) improved to excellent, and the 2 (100%) who felt their knowledge was excellent, remained excellent

- Court Preparation

Figure 7.79: Knowledge of court preparation



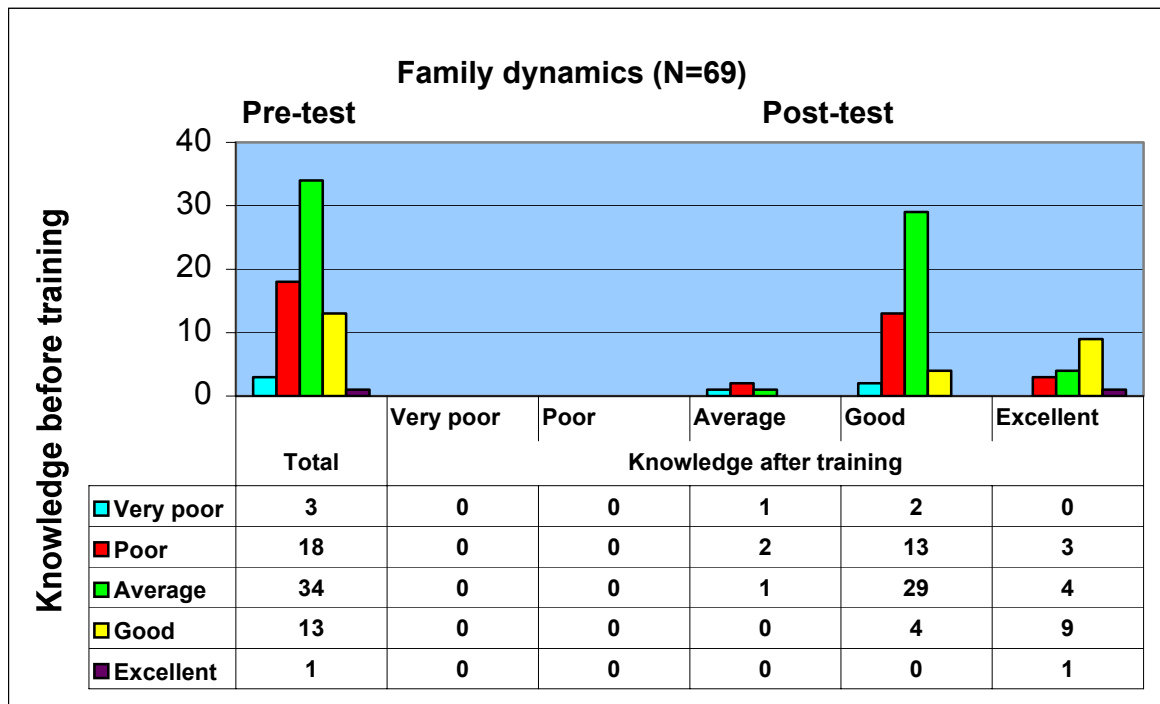
From figure 7.79 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 8 (12%) felt their knowledge was very poor, 27 (39%) felt their knowledge was poor, 24 (35%) felt their knowledge was average, 8 (12%) felt their knowledge was good, and 2 (3%) felt their knowledge was excellent.

Post-test: Of the 8 (100%) percent of respondents who felt their knowledge was very poor, 3 (37%) improved to poor, 2 (25%) to average, 2 (25%) to good, and 1 (13%) to excellent. Of the 27 (100%) who felt their knowledge was poor, 1 (4%) improved to average, 18 (67%) to good, and 8 (30%) to excellent. Of the 24 (100%) who felt their knowledge was average, 1 (4%) remained average, 13 (54%) improved to good, and 10 (42%) improved to excellent. Of the 8 (100%) who felt their knowledge was good, 2 (25%) remained good and 6 (75%) improved to excellent. The 2 (100%) respondents who felt their knowledge is excellent, remained so.

- The role of the parents

Figure 7.80: Knowledge of the role of the parent



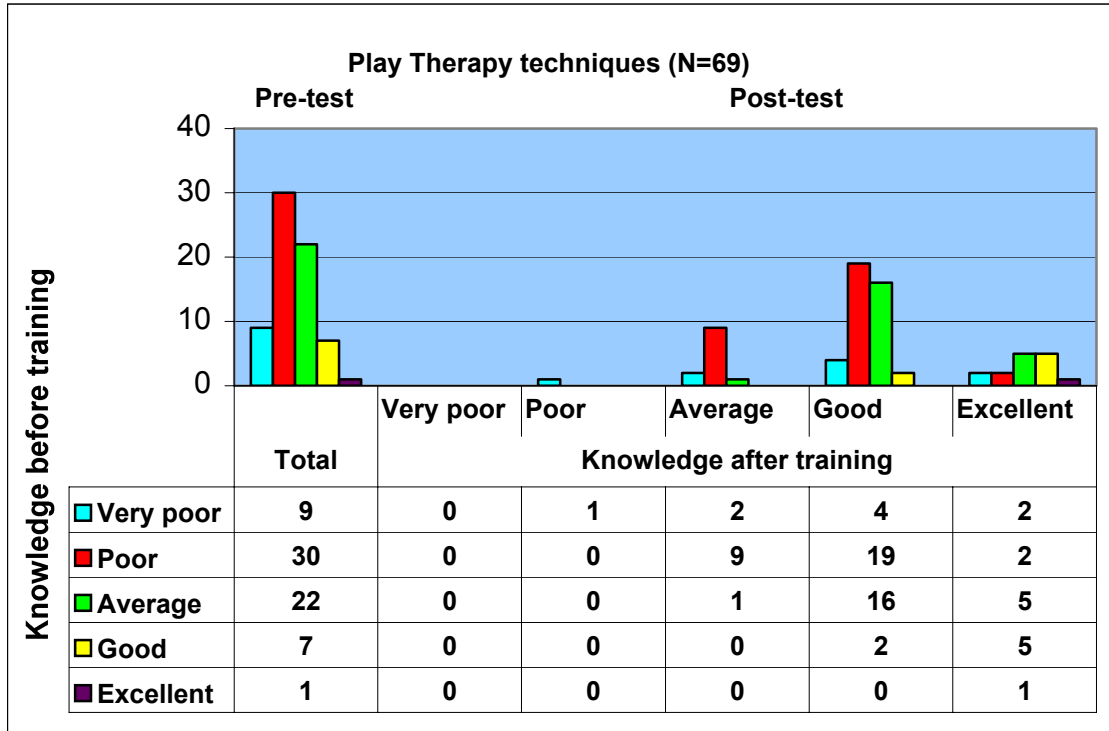
From figure 7.80 it can be seen that:

Pre-test: Of the 69 respondents, 3 (4%) felt their knowledge was very poor, 18 (26%) felt their knowledge was poor, 34 (49%) felt their knowledge was average, 13 (19%) felt their knowledge was good, and 1 (1%) felt her knowledge was excellent.

Post-test: Of the 43(100%) respondents who felt their knowledge was very poor, 1 (33%) improved to average, 2 (67%) improved to good. Of the 18 (100%) respondents who felt their knowledge was poor, 2 (11%) improved to average, 13 (72%) improved to good, and 3 (17%) to excellent. Of the 34 (100%) of respondents who felt their knowledge is average, 1 (3%) remained average, 29 (85%)improved to good, and 4 (12%) improved to excellent. Of the 13 (100%) respondents who felt their knowledge was good, 4 (31%) remained good and 9 (69%) improved to excellent. The 1 (100%) who felt she was excellent remained excellent.

- Play Therapy

Figure 7.81: Knowledge of play therapy



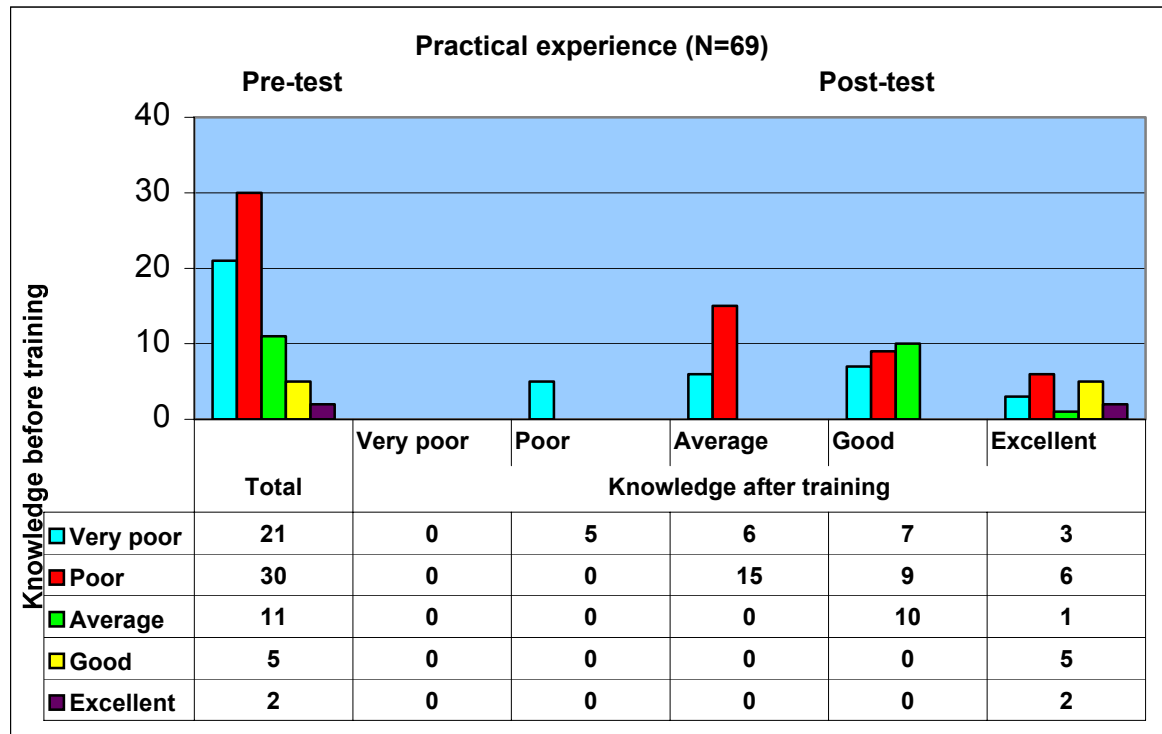
From figure 7.81 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 9 (13%) felt their knowledge was very poor, 30 (43%) felt their knowledge was poor, 22 (32%) felt their knowledge was average, 7 (10%) felt their knowledge was good, and 1 (2%) felt her knowledge was excellent.

Post-test: Of the 9 (100%) respondents who felt their knowledge was very poor, 1 (11%) felt her knowledge had improved to poor, 2 (22%) felt their knowledge had improved to average, 4 (44%) felt it had improved to good, and 2 (22%) felt it had improved to excellent. Of the 30 (100%) who felt their knowledge was poor, 9 (30%) improved to average, 19 (63%) improved to good, and 2 (7%) improved to excellent. Of the 22 (100%) who felt their knowledge was average, 1 (5%) felt her knowledge had remained average, 16 (73%) felt their knowledge had improved to good, and 5 (23%) felt their knowledge had improved to excellent. Of the 7 (100%) who felt their knowledge was good, 2 (29%) remained good and 5 (71%) improved to excellent. The 1 (100%) who felt her knowledge was excellent, said it remained excellent.

- Practical experience of respondents

Figure 7.82: Practical experience as intermediary



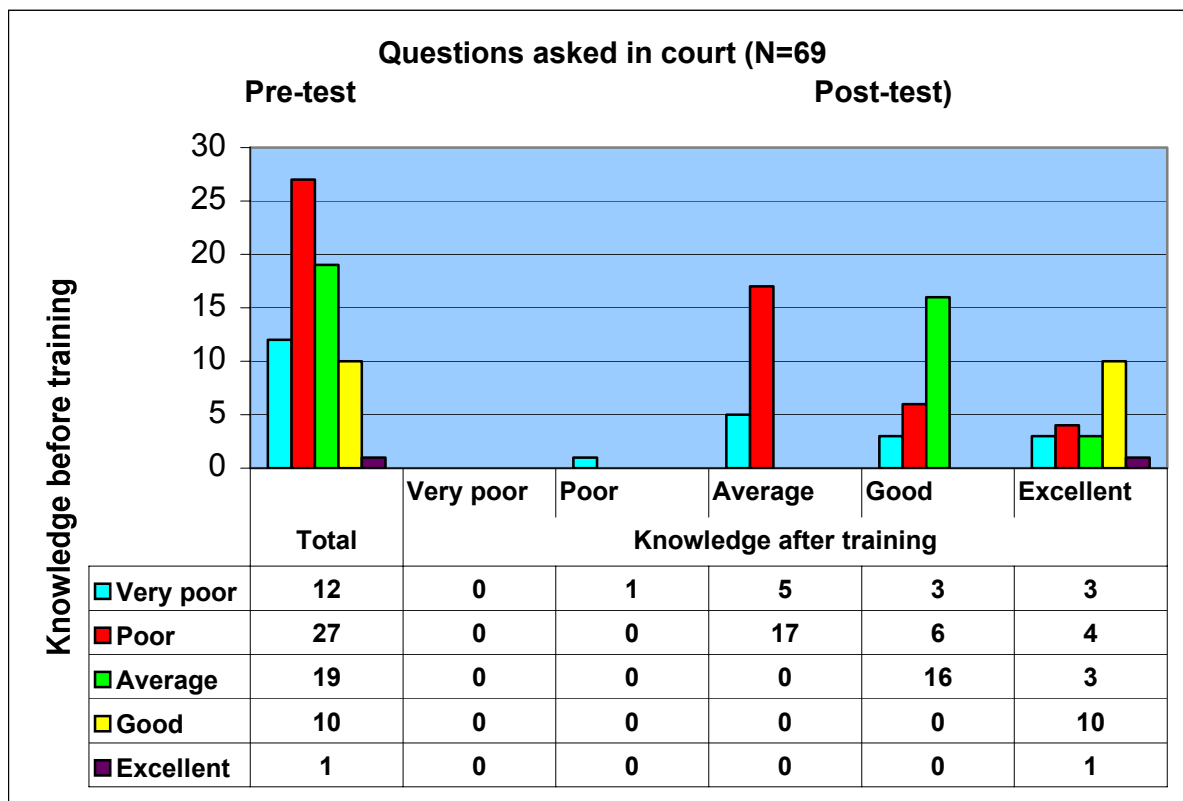
From figure 7.82 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 21 (30%) felt their knowledge is very poor, 30 (43%) felt their knowledge is very poor, 11 (16%) felt it was average, 5 (7%) felt their knowledge was good and 2 (3%) felt their knowledge was excellent.

Post-test: Of the 21 (100%) respondents who felt the knowledge was very poor, 5 (24%) felt it had improved to poor, 6 (29%) felt it improved to average, 7 (33%) felt it improved to good, and 3 (14%) felt it improved to excellent. Of the 30 (100%) respondents who felt their knowledge was poor, 15 (50%) said it improved to average, 9 (30%) felt it improved to good and 6 (20%) felt it improved to excellent. Of the 11 (100%) who felt their knowledge was average, 10 (91%) felt it improved to good and 1 (9%) to excellent. Of the 5 (100%) who felt their knowledge was good, 5 (100%) improved to excellent and of the 2 (100%) who felt their knowledge is excellent, all (100%) felt it remained excellent.

- Practical questions asked in court

Figure 7.83: Practical questions and experience



From figure 7.83 it can be seen that:

Pre-test: Of the 69 (100%) respondents, 12 (17%) felt their knowledge was very poor, 27 (39%) felt their knowledge was poor, 19 (28%) felt their knowledge was average, 10 (14%) felt their knowledge was good and 1(1%) felt it was excellent.

Post-test: Of the 12 (10%) respondents who felt their knowledge was very poor, 1 (6%) said it improved to poor, 5 (42%) said it improved to average, 3 (33%) to good, and 3 (33%) to excellent. Of the 19 respondents (100%), who said their knowledge was average, 16 (90%) felt it improved to good and 3 (10%) to excellent. The 10 (100%) respondents, who felt their knowledge was good, all felt it improved to excellent. The one who though her knowledge was excellent, said it remained excellent.

SUMMARY

- The findings that were obtained from the quantitative research approach were discussed in this chapter.
- The data was collected with the help of four self-constructed questionnaires divided into two research designs. Section A was a survey questionnaire, and sections B was a pre-test and post-test questionnaire.
- The findings, after discussion, were illustrated by means of tables and graphs. Where possible, it was compared and integrated with the literature study.
- After an introduction, a short outline was given of the data collection, with specific reference to the measuring instruments and analysis of the data as comprehensively discussed in chapter 1.
- In section A of the research, two questionnaires were distributed to magistrates and prosecutors respectively. In section A of the questionnaire, the magistrates' and prosecutors' relating background and experience in court as well as with the child witness, was determined. Further, their perceptions on the intermediaries' occupational and experiential background were determined. The section B of the questionnaires, the intermediary's skills as intermediary, as seen by the magistrates and prosecutors, was explored, and information was gathered from the magistrates and prosecutors regarding the contents of a training program for intermediaries.
- In section B of the research, two questionnaires, a pre-test and post-test were used. The pre-test was firstly used to determine occupational and intermediary experience of the respondents. In the second part, which was identical in both questionnaires, the respondents evaluation of his/her knowledge of various aspects concerning the intermediary were measured before the program and then again after the program. In the post-test the first section explore the respondents opinion about the program
- After analysis of the data, the deduction can be made that the respondents did show improvement of their skills and knowledge of the intermediary, her/his duties, theoretical knowledge, and improvement of their practical skills.

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.

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APPENDIX 1: QUESTIONNAIRE FOR MAGISTRATES WITH REFERENCE TO THE INTERMEDIARY

RESPONDENT NUMBER:

Number.....

Questionnaire: **1**

DATE.....

NAME OF MAGISTRATE COURT.....

SECTION A: WORKING EXPERIENCE

1. Does the Magistrate court named above have a Sexual Offences Unit?

Yes	No
-----	----

2. Have you ever acted as Presiding Officer in a sexual offences case?

Yes	No
-----	----

3. If yes, in approximately how many cases?

.....

4. How often or in how many of the cases that you have heard, was an intermediary used to assist the child witness during testimony (Article 170A)?

.....

5. What was the occupational background of the intermediaries? Mainly:

Social worker	Educator	Child Care worker	Other (Stipulate)
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6. How often is an application for Article 170A for children under 18 years made?

.....

7. Was a desirability report for an intermediary usually drawn up?

Yes	No
-----	----

8. What was the quality of most of the reports?

.....

9. What should be in this report?

.....
.....

SECTION B: EXPERIENCE AND TRAINING OF INTERMEDIARIES

10. What level of experience did the intermediaries used mainly have?

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

11. Did most of the intermediaries used have previous training as an intermediary?

Yes	No
-----	----

SECTION C: SKILLS ASSESSMENT OF INTERMEDIARIES

12. In cases where intermediaries were used, how would you rate them according to:

a) Child communication skills

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

b) Child friendly

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

c) Awareness of the child's needs, example when child was tired, sad or needed to go to toilet

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

d) Awareness of the child’s developmental level

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

e) Awareness of the child’s linguistic level

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

f) Knowledge of criminal court proceedings and etiquette

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

13. Did the intermediary usually stay with the child during breaks and lunch?

Yes	No
-----	----

14. In your opinion should the intermediary:

a. Receive training before acting as an intermediary?

Yes	No
-----	----

b. Assess the child concerning communications skills?

Yes	No
-----	----

c. Assess the child concerning developmental level?

Yes	No
-----	----

d. Do court preparation with the child witness before the court case?

Yes	No
-----	----

e. Have knowledge of the details of the case before the trial?

Yes	No
-----	----

f. Should the intermediary also do Article 170A assessments/desirability reports or should somebody else do the report?

.....
.....

15. In your opinion, is the quality of the child witness's testimony dependant on/influenced by the competence/lack of competence of the intermediary?

Yes	No
-----	----

16. In your opinion, can the competence of the intermediary influence the rate of convictions?

Yes	No
-----	----

17. When intermediaries are being trained, what aspects do you consider important and feel should be included in the training program?

.....
.....
.....
.....

18. Do you have any other needs or expectations concerning the intermediary?

.....
.....
.....

19. Other perceptions of the roles and duties of an intermediary?

.....
.....
.....
.....
.....

THANK YOU FOR YOUR TIME AND ASSISTANCE

**APPENDIX 2: QUESTIONNAIRE FOR PROSECUTORS WITH
REFERENCE TO INTERMEDIARIES**

RESPONDENT NUMBER:

Number.....

Questionnaire version **2**

DATE:.....

SECTION A: WORKING EXPERIENCE

**POSITION (EG. PROSECUTOR, SENIOR PROSECUTOR, CHIEF
PROSECUTOR):**

.....

1. Have you ever acted as a prosecutor in a sexual offences case?

Yes	No
-----	----

2. If yes, in approximately how many cases?

.....

3. How often is an application for Sect. 170A for children under 18 years made?

.....

.....

4. How often or in how many cases that you have acted as prosecutor, was an intermediary used to assist the child witness when testifying?

.....

5. What was the occupational background of the intermediaries? Mainly:

Social worker	Educator	Child care workers	Other
---------------	----------	--------------------	-------

SECTION B: EXPERIENCE AND TRAINING OF INTERMEDIARIES

6. What level of experience did the intermediaries have?

.....

7. Did the intermediary have previous training as an intermediary?

Yes	No
-----	----

SECTION C: SKILLS ASSESSMENT OF INTERMEDIARIES

8. In cases where intermediaries were used, how would you rate them according to:

a) Child communication skills?

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

b) Child friendly and empathic?

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

c) Awareness of the child’s needs, example when child is tired, sad, or needed to go to the toilet?

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

d) Awareness of the child’s developmental level?

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

e) Awareness of the child’s linguistic development?

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

f) **Knowledge of criminal proceedings and court etiquette?**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

9. Have you ever used an intermediary to assist you with the following:

- a) Advice on how to ask questions in a language that the child can understand?

Yes	No
-----	----

- If yes, was it of any value to you?

Yes	No
-----	----

- b) Advice on the developmental phase of a child?

Yes	No
-----	----

- c) Advice on the linguistic development phase of the child

Yes	No
-----	----

10. In your opinion, is it important for the intermediary to have knowledge of the above?

Yes	No
-----	----

11. In your opinion, should all children under the age of 18 years testify with an intermediary?

Yes	No
-----	----

12. If no, why?

.....
.....
.....

13. Did the intermediary stay with the child during lunch and tea breaks?

Yes	No
-----	----

14. Do you think that that the intermediary should remain with the child during breaks and lunch?

Yes	No
-----	----

15. In your opinion, should the intermediary:

a) Receive training before acting as an intermediary?

Yes	No
-----	----

If yes, what should the training consist of?

.....
.....
.....
.....
.....

b) Assess the child to establish his/her developmental level?

Yes	No
-----	----

c) Do court preparation with the child witness before the court case?

Yes	No
-----	----

d) Have knowledge of the details/merits of the case before the trial?

Yes	No
-----	----

e) Should the intermediary do Desirability reports for a Sect. 170A application?

Yes	No
-----	----

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16. In your opinion, does the quality of the child witness's testimony depend on/is influenced by the competence of the intermediary?

Yes	No
-----	----

17. When intermediaries are being trained, what aspects do you consider important and feel should be included in the training program?

.....
.....
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.....

18. Any other comments

.....
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.....
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THANK YOU FOR YOUR TIME AND ASSISTANCE

RESPONDENT NUMBER

**APPENDIX 3: QUESTIONNAIRE FOR THE INTERMEDIARY TRAINING
COURSE *BEFORE* TRAINING COMMENCES**

QUESTIONNAIRE: 3

NAME OF TRAINEE (OPTIONAL)

.....
.....

HIGHEST ACADEMIC QUALIFICATION

.....
.....

CURRENT OCCUPATION

.....
.....

YEARS OF EXPERIENCE

.....
.....

DATE OF THIS COURSE

.....
.....

SECTION A: PREVIOUS EXPERIENCE

1. Main reason for attending this course?

.....
.....
.....
.....

2. Have you previously received training as an intermediary?

Yes	No
-----	----

3. INFORMATION ON TRAINING COURSE/S ATTENDED

COURSE TYPE	PRESENTED BY:	DATE (Month/year)	DURATION	MAIN TOPICS
ATTENDANCE COURSE				
IN DUTY TRAINING				
OTHER (SPECIFY)				

4. Have you ever acted as an intermediary in a sexual offences court?

Yes	No
-----	----

If yes, in how many cases?

.....

5. What are your expectations of this course?

.....
.....
.....
.....

SECTION B: KNOWLEDGE ABOUT BEING AN INTERMEDIARY

1. What is an intermediary?

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.....

2. What are the duties of an Intermediary?

.....
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3. Who qualifies to be an Intermediary?

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4. When is an Intermediary appointed?

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.....
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.....

5. In your opinion, is it important to attend a training course?

Yes	No	Depending on course
-----	----	------------------------

6. Give a reason for your answer to Question 5.

.....

.....

.....

7. Do you feel sufficiently prepared to act as an intermediary at present?

Yes	No
-----	----

8. How would you rate your knowledge of the following:

SECTION C: SKILL SASSESMENT

a. CHILD DEVELOPMENTAL PHASES

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

b. CHILD LINGUISTIC DEVELOPMENT

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

c. CHILD CENTERED APPROACH

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

d. CHILD COMMUNICATION SKILLS

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

e. CHILD ASSESSMENT TECHNIQUES

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

**f. DISABILITIES IN CHILDREN e.g. ADHD, VISUAL
IMPAIRMENT, ETC.**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

g. DRAWING UP A DESIRIBILITY REPORT

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

h. COURT PROCEEDINGS AND COURT ETIQUETTE

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

i. TRAUMA COUNCELLING AND DEBRIEFING

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

j. ANATOMICAL DOLLS

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

k. SEXUAL ABUSE

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

l. DUTIES AND ROLE OF INTERMEDIARY

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

m. TESTIFYING IN-CAMERA

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

n. COURT PREPARATION

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

o. FAMILY DYNAMICS

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

p. PLAY THERAPY TECHNIQUES

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

q. PRACTICAL EXPERIENCE AS INTERMEDIARY

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

**r. LANGUAGE USED DURING EXAMINATION
AND CROSS EXAMINATION**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

9. What topics do you feel unsure about?

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10. Any other comments?

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THANK YOU FOR YOUR TIME AND ASSISTANCE

RESPONDENT NUMBER

**APPENDIX 4: QUESTIONNAIRE FOR THE INTERMEDIARY
TRAINING COURSE AFTER TRAINING COURSE WAS
COMPLETED**

QUESTIONNAIRE: 4

NAME OF TRAINEE (OPTIONAL)

.....

HIGHEST ACADEMIC QUALIFICATION

.....

PRESENT OCCUPATION

.....

YEARS OF EXPERIENCE

.....

DATE OF THIS COURSE

.....

SECTION A: HOW WAS COURSE EXPERIENCED?

1. Was the course easily understood?

Very easy	Easy	Average	Difficult	Very difficult
-----------	------	---------	-----------	----------------

2. Was the course practical?

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Very practical	Practical	Average	Impractical	Very impractical
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3. Was the duration of the course long enough?

Yes	No
-----	----

4. Did you benefit from this course?

Yes	No
-----	----

5. If yes, how much?

A little	Average	A lot
----------	---------	-------

6. Which topics (if any) could less time be devoted to?

SA LEGAL SYSTEM	THE INTERMEDIARY	THE TRIAL	RELAYING QUESTIONS	CHILD COMMUNICATION	COURT PREPARATION
TRAUMA DEBRIEFING	ROLE OF PARENT	QUESTIONS IN COURT	CHILD DEVELOPMENT	ANATOMICAL DOLLS	DESIRIBILITY REPORT

7. According to your opinion, which topic not dealt with in this course, should be included?

.....

.....

.....

8. Evaluate the course presenter:

Knowledgeable	Well prepared	Friendly	Clear	Professional
---------------	---------------	----------	-------	--------------

9. Were your expectations met?

Totally disagree	Disagree	Impartial	Agree	Definitely agree
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SECTION B: KNOWLEDGE ON BEING AN INTERMEDIARY

1. What is an Intermediary?

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2. What are the duties of an Intermediary?

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3. Who qualifies to be an Intermediary?

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.....
.....
.....

4. When is an Intermediary appointed?

.....
.....
.....
.....
.....

5. In your opinion, is it important to attend a training course for intermediaries?

Yes	No
-----	----

6. Give a reason for your answer to Question 5.

.....
.....
.....

7. Do you feel sufficiently prepared to act as Intermediary at present?

Yes	No
-----	----

SECTION C: SKILLS ASSESSMENT

8..How would you rate your knowledge of the following:

a. CHILD DEVELOPMENTAL PHASES

Very Poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

b. CHILD LINGUISTIC DEVELOPMENT

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

c. CHILD CENTERED APPROACH

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

d. CHILD COMMUNICATION SKILLS

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

e. CHILD ASSESSMENT TECHNIQUES

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

**f. DISABILITIES IN CHILDREN, E.G. ADHD,
VISUAL, IMPAIRMENT, ETC.**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

g. DRAWING UP A DESIRIBLITY REPORT

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

**h. COURT PROCEEDINGS AND COURT
ETIQUETTE**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

**i. TRAUMA COUNCELLING AND
DEBRIEFING**

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

j. ANATOMICAL DOLLS

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

k. SEXUAL ABUSE

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

l. DUTIES AND ROLE OF INTERMEDIARY

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

m. TESTIFYING IN-CAMERA

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

n. COURT PREPARATION

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

o. FAMILY DYNAMICS

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

p. PLAY THERAPY TECHNIQUES

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

q. PRACTICAL EXPERIENCE AS INTERMEDIARY

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

r. LANGUAGE USED DURING EXAMINATION AND CROSS EXAMINATION

Very poor	Poor	Average	Good	Excellent
-----------	------	---------	------	-----------

What topics presented in this course do you feel unsure about?

ABUSE	SA LEGAL SYSTEM	THE INTERMEDIARY	THE TRIAL	RELAYING QUESTIONS
BUILDING RAPPORT WITH CHILD	CHILD COMMUNICATION SKILLS	COURT PREPARATION	ANATOMICAL DOLLS	ROLE OF PARENT
TRAUMA DEBRIEFING	CHILD CEVELOPMENT	DESIRIBILITY REPORT	PRACTICAL QUESTIONS	PRACTICAL COURT EXPERIENCE

9. Any other comments:

.....

.....

.....

.....

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.....
.....
.....

THANK YOU FOR YOUR TIME AND ASSISTANCE

APPENDIX 5

INFORMED CONSENT FORM

DATE:

PARTICIPANT NAME:

RESEARCHER: Riekie Schoeman, D. Phil (Social Work) student at the University of Pretoria.

PROMOTOR: Dr. J.M.C. Joubert, Department of Social Work, University of Pretoria, 0002.

INFORMED CONSENT:

1. **TITLE OF STUDY:** A Training Program for Intermediaries for the Child Witness in South African Courts.
2. **PURPOSE OF THE STUDY:** The purpose of this study is to develop, implement and evaluate a standardized training program for prospective and existing intermediaries in South African Courts.
3. **PRODEDURES:** I will be asked to complete a questionnaire on my experiences feelings, knowledge, and needs with reference to an intermediary training program before I start the training program and another questionnaire after I have completed the training program. The duration of the training program will be five days.
4. **RISKS AND DISCOMFORTS:** There are no known risks or discomforts associated with this study.
5. **BENEFITS:** I understand that there are no benefits to me for participating in this study. However, the results may help the researcher to produce a standardized training program for intermediaries in South Africa.
6. **PARTICIPANTS RIGHTS:** I may withdraw from participating at any time.

7. **CONFIDENTIALITY:** I understand that the answers to the questions will be kept confidential and will only be used to analyze all the findings, without names being mentioned. The results of the entire questionnaire may be published in the dissertation of the study and in professional journals but my records or identity will not be revealed unless required by law.

I can obtain any further information by phoning 012-3194175, Cell No. 0828826688 or
e-mail: uschoeman@justice.gov.za.

I understand my rights as research subject , and I voluntarily consent to participation in this study. I understand what the study is about and how and why it is being done. I will receive a signed copy of this consent form.

.....
.....

Subject's signature

Date

.....
Researcher's signature

INFORMED CONSENT FORM

DATE:

PARTICIPANT NAME:

RESEARCHER: Riekie Schoeman, D. Phil (Social Work) student at the University of Pretoria.

PROMOTOR: Dr. J.M.C. Joubert, Department of Social Work, University of Pretoria, 0002.

INFORMED CONSENT:

1. **TITLE OF STUDY:** A Training Program for Intermediaries for the Child
Witness in South African Courts.
2. **PURPOSE OF THE STUDY:** The purpose of this study is to develop, implement and evaluate a standardized training program for prospective and existing intermediaries in South African Courts.
3. **PRODEDURES:** I will be asked to complete a questionnaire on my experiences, feelings, knowledge, and needs with reference to intermediaries.
4. **RISKS AND DISCOMFORTS:** There are no known risks or discomforts associated with this study.
5. **BENEFITS:** I understand that there are no benefits to me for participating in this study. However, the results may help the researcher to produce a standardized training program for intermediaries in South Africa.
6. **PARTICIPANTS RIGHTS:** I may withdraw from participating at any time.

7. **CONFIDENTIALITY:** I understand that the answers to the questions will be kept confidential and will only be used to analyze all the findings in this study, without names being mentioned. The results of the entire questionnaire may be published in the dissertation of the study and in professional journals but my records or identity will not be revealed unless required by law.

I can obtain any further information by phoning 012-3194175, Cell No. 0828826688 or
e-mail: uschoeman@justice.gov.za.

I understand my rights as research subject, and I voluntarily consent to participation in this study. I understand what the study is about and how and why it is being done. I will receive a signed copy of this consent form.

.....

.....

Subject's signature

Date

.....

Researcher's signature