

THE COURT EXPERIENCES OF
SURVIVORS OF
CHILD SEXUAL ABUSE

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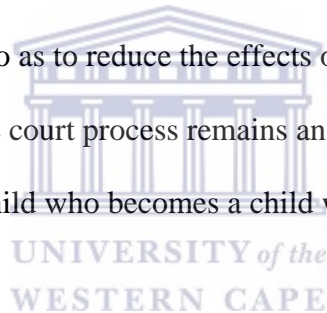
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To my family and friends for their constant support and understanding.

ABSTRACT

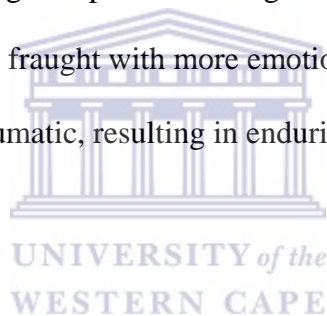
This study was aimed at understanding the particular experiences of children who have been sexually abused, with regards to their experiences in court. With the high prevalence of sexual abuse in South Africa, many children are forced to testify against the alleged perpetrators of these crimes in public courts. However, the legal process is often a form of secondary traumatisation for these children. Several reforms have been introduced into the child justice system, in order to make the process of child testimony more child-friendly. These reforms are the introduction of Special Sexual Offences Courts, with the use of closed-circuit camera systems, where the child is allowed to testify in a different room from the abuser and the use of intermediaries, who convey the questioning so as to reduce the effects of face-to-face cross-examination. Nevertheless the court process remains an intimidating and challenging one for the sexually abused child who becomes a child witness.



The present study explored the experiences of children given these new courtroom procedures. Semi-structured interviews were conducted with six child witnesses in sexual abuse cases and the data was content analysed for themes. The research explicated the children's experiences of the new courtroom procedures and it was found that some aspects of the legal process were indeed experienced as a form of secondary traumatisation, namely the cross-examination techniques advocated by the accusatorial system and the impact of repeated postponements and delays. However, it was also found that testifying behind camera and the use of intermediaries, as allowed by the afore-mentioned reforms, served as protective factors and assisted in ameliorating the effects of the judicial system upon the child witnesses.

CHAPTER ONE
INTRODUCTION

The incidence of child sexual abuse in South Africa has reached alarming proportions in recent times. According to Childline, one of the few organisations dealing exclusively with child sexual abuse in the Western Cape, one in four children are sexually abused in this country. The media conveys some of these children's stories to the public, at times to the point where we have become desensitized to the traumatic nature of the child's experience. What we are perhaps less exposed to, is the path that these children travel after the sexual abuse has occurred. In those cases where the abuse has been reported and legal steps are taken against the alleged perpetrator, the process that follows is usually fraught with more emotional upheaval for the child and is potentially significantly traumatic, resulting in enduring psychological distress and maladjustment.



Child sexual abuse constitutes any type of sexual mistreatment of a child under the age of 18 of years old. The abuse is mostly perpetrated by an adult, although there has been a significant increase in young people sexually abusing children. Child sexual abuse is a violent crime perpetrated against children. Irrespective of whether physical harm was inflicted, any transgression of this nature violates the child emotionally and infringes on the basic rights of the child (Blankenberg, 1997). The sexual abuse of young children causes high levels of distress and often significant disturbance of the child's physical, emotional, social, moral and intellectual development (Richter et al, 2004). Typical emotional consequences of sexual abuse are posttraumatic stress, depression and anxiety, to name but a few (Berliner, 2003).

Childline statistics state that worldwide, only 5% of the offenders of sexual abuse are convicted. In cases of rape (of adolescent girls) that go to court, only one in 7 are convicted. Two cases profiled recently in local newspapers illustrate how the legal process is failing to ensure optimal safety for children, from serial sex offenders.

In one case, a Cape High Court Acting Judge imposed a six year prison sentence on a 71-year-old repeat sex offender (Cape Argus, 20 July 2005). He had been convicted of raping and sodomising a 7-year-old girl and sodomising two young boys. In addition, he had been convicted of indecently assaulting children in 1993 and 1983. He received a suspended sentence for the first offence and 18 months' jail for the second. The perpetrator had repeatedly threatened to harm the children or their families should they disclose the abuse. The judge ruled that the age of the perpetrator and his frail condition provided compelling reasons for him not to impose the prescribed sentence of life imprisonment. In addition, "the judge said the child had suffered no obvious physical injuries and the fact that he had not used a weapon when he abused his victims should also count in his favour" (Cape Argus, 20 July 2005). This clearly reflects an absence of awareness of the emotional and psychological impact of sexual abuse. The sentencing "prompted outrage from leading child and anti-rape activists who say the decision demonstrates the justice system's failure to properly understand rape and the impact it has on its victims...the system has clearly failed children...reinforcing the idea that rape is a risk-free crime" (Cape Argus, 21 July 2005).

In another high profile case, a six-year-old Johannesburg boy was sexually assaulted and then murdered on Christmas Eve, while on holiday with his family in Plettenberg Bay (Cape Argus, 28 December 2005). A 47-year-old handyman working in the neighbourhood confessed to murdering the child. It emerged that he had previously been charged with sexually assaulting five young boys at a shelter in KwaZulu-Natal, where he had worked as a caretaker. After being arrested in 2004, his case was withdrawn and then reopened but the new investigation was stalled when the accused could not be found and re-arrested. He had apparently been evading bail conditions and living under false names. According to Lisa Vetten of the Centre for the Study of Violence and Reconciliation, “there are a disturbingly high number of cases withdrawn by both the police and the courts for purely administrative reasons...reasons that are basically unacceptable” (Cape Argus, 4 January 2006). According to Joan van Niekerk of Childline, “the case showed the lack of understanding the court had concerning the issue of paedophilia...if there is no apparent physical injury to the child, the case is not taken very seriously and bail is easily granted” (Cape Argus, 4 January, 2006).

The above-mentioned cases highlight several problematic difficulties within the judicial system. In looking at how the legal process unfolds for survivors of child sexual abuse, I have chosen to examine the impact of this experience on the children who have to testify in court. Having worked as a counsellor with child survivors of sexual abuse at Childline, I found that the manner in which these cases are dealt with in court often constitutes secondary traumatisation for the child. To this end, I felt that it was important to document the subjective experiences of some of these child witnesses.

Blankenberg (1997) defines secondary traumatisation as the manner in which professionals intervene in child sexual abuse matters. These professionals may be police, legal professionals, child welfare personnel or district surgeons. The intervention is often “depersonalised, punitive and collusive, leaving the child to feel victimised further” (Blankenberg, 1997, p.21). Zieff (1991) maintains that the psychological damage inflicted by child sexual abuse is often perpetuated when these cases are brought to trial.

According to Hollely (2002), the reaction to and support for young trauma victims has a long-term effect on both their recovery and their perception of the criminal justice system. The way adults treat these children affects their understanding of right and wrong in society. The initial reaction of adults to the child’s disclosure will have an effect on their sense of well-being. Adults would include those known to the child, as well as professionals. Where the initial reaction is a negative one, it will be further exacerbated by the child’s experience in court (Hollely, 2002). There are several factors that may lead to secondary traumatisation for the child witness in sexual abuse cases, some of which will be discussed briefly here and then expanded on in the following section.

Much research has been written on the adversarial nature of the court process.

According to Muller (2000), testifying in an accusatorial environment is a stressful experience for the child witness. In this type of system, the judge plays an impartial role and is unable to interfere with the cross-questioning, which may be aggressive and consist of leading questions that cause confusion to the child (Blankenberg, 1997).

According to Blankenberg (1997), the lengthy breaks between court appearances and delays in bringing matters to trial can also impact adversely on the child. In so doing, the traumatic experience may be prolonged for the child and thus hinder the recovery process. Also, the child's memory may not be as clear so long after the abuse and they may be unable to recall crucial details (Zieff, 1991). In addition, bail applications are often granted without taking into account the immense influence that the perpetrator can have over the victim (Blankenberg, 1997). This scenario is particularly applicable when the perpetrator is a family member or someone they would usually interact with frequently, which is most often the case with child sexual abuse.

It is concerning to note that one of the major factors which may impact negatively on the experience of child witnesses is misunderstanding on their part of what the court process entails. Muller and Tait (1997) explore some of the misperceptions children have of what happens in court and how this often escalates their anxiety around testifying. To address this issue, court preparation is vital in order to inform and educate the child about the legal process that they will be going through.

In South Africa, the issues of secondary traumatisation and protection of child witnesses were first addressed in 1988, when the then Minister of Justice requested the South African Law Commission to investigate the process of child witnesses in court. This investigation resulted in amendments to the Criminal Procedure Act in 1993. The Special Sexual Offences Courts at Wynberg Magistrates Court and the Cape Town Regional Court came into operation in this year. These courts were the first to specifically uphold the new reforms for child witnesses, such as the use of an intermediary during testimony and the permissibility of testimony via closed-circuit

television. Since then, other courts have followed suit with the implementation of these reforms. The experiences of the child abuse survivors in this research are thus examined in the light of these improved court procedures. However, despite the reform initiatives, the potential still exists for the criminal law system to cause harm to the child witness, since many intervention programmes are not implemented in the manner originally intended (Blankenberg, 1997).

The aim of this research was thus to understand the subjective experiences of child witnesses in sexual abuse cases, who testified in camera. Four of the six participants in this research testified at the Special Sexual Offences in Wynberg. Semi-structured interviews were conducted with the six participants and the research was based on a qualitative paradigm. Key areas that were explored include looking at the strengths and weaknesses of the legal system for these children and how these factors impacted on them. Measures to address court preparation were also explored with the subjects of this study. To conclude, an attempt was made to ascertain whether the court process was indeed experienced as a secondary trauma by these child witnesses and if so, to what extent.

CHAPTER TWO

LITERATURE REVIEW

Much literature has been written about the legal procedures and system affecting child witnesses. There is less information regarding the court experience from the children's own perspectives and it is hoped that this research project will address this subject matter, albeit on a small scale. Children have numerous difficulties with the court process, including oral evidence, court delays, multiple interviews, cross-examination and the child's knowledge and perceptions (Muller, 2004).

When young children come to court as witnesses, they face unique stressors from the legal proceedings and from the adverse social circumstances that resulted in the court action (Wolraich, 1999). The court setting is a formalized adult environment, where a unique language and highly structured process is used. Certain reforms have been introduced in some South African courts to make them more child-friendly. However, Muller (2003) maintains that children are still perceived by the courts to be miniature adults and their evidence is evaluated on this basis, often resulting in an injustice to the child. It is very difficult to then get a conviction when the child is the sole witness with no supporting forensic or other evidence and with the burden of proof as heavy as it is, i.e. "beyond reasonable doubt" (Swart, as cited in Barnes-September et al, 1999).

The biological lack of maturation on emotional, social and cognitive levels results in a different quality of children's communications and their way of behaving, relating and thinking (Furniss, 1991). Cognisance needs to be taken of the fact that children differ dramatically from adults with respect to cognitive development, language

development and the perceptions they hold (Muller, 2003; Wolraich, 1999). Legal interventions in child sexual abuse are not related to psychological damage in the child. The process thus proceeds whether the child is psychologically affected by the abuse or not. Secondary psychological damage may then be easily inflicted because developmental psychological concepts are not genuinely part of the legal domain (Furniss, 1991).

The Psychological Impact of Child Sexual Abuse

Potgieter (2000) notes how important it is for the court to take into account certain typical beliefs and behavioural patterns displayed by children who have been sexually abused, so as not to reinforce these. Firstly, children who are sexually abused usually feel that they are damaged or powerless. This belief may lead to behaviour that reflects helplessness or aggressiveness. Secondly, these children may believe that they are guilty or bad, due to a mistaken sense of responsibility that they have been participants in the abuse (Potgieter, 2000). Cross-questioning which aims to place the blame for the abuse with the child may exacerbate this internalization of guilt and badness. The persistent psychological experience of guilt leads to low self-esteem and later victim behaviour (Furniss, 1991). Thirdly, the sexually abused child has experienced lack of protection, and possibly betrayal, by significant people in their life. This may lead to them feeling anger, fear, sadness and being unsafe. (Potgieter, 2000)

Another important belief that Potgieter (2000) mentions, relates to the child's feeling of being responsible for what happens as a result of the abuse. This is often linked to threats made by the perpetrator to ensure secrecy. Abused children thus become

accustomed to meeting the needs of the perpetrators, who are mostly adults (Potgieter, 2001). They may be led to believe that they determine what will happen to the abuser, other people and themselves. This belief has implications for the child's disclosure of the abuse, which is an area that is often misunderstood by legal professionals (Muller, 2003).

Disclosure

The assumption is that, when a child has been abused, the very first thing he/ she will do is disclose the abuse (Muller, 2003). However, disclosure is a gradual process and is influenced by factors like the dependency of the child on the perpetrator (usually orchestrated by the latter), threats by the perpetrator, the element of privacy that characterizes sexual matters and familial patterns of relationships if the abuser is a relative (Potgieter, 2001). The situation is thus a complex one: If the child discloses, they have to take responsibility for the effect of the disclosure on themselves, their family and the perpetrator (Potgieter, 2001). If the child does not disclose, they take the responsibility for being abused further. The latter decision is then often used against the child in cross-questioning.

It is thus important for all concerned parties to expect that delays in disclosure are the norm and to understand how heavy the burden of disclosure is for the child. Some children may experience secondary traumatisation with disclosure, when adults accuse them of lying, manipulation or imagining the event. The child then struggles to reconcile their private experiences with others' disbelief, blame and rejection. This same process can be re-evoked once the child is subject to examination in court (Sadan, as cited in Richter et al, 2004). Research has shown that children who receive

strong support from a parental figure after disclosure, are able to cope much better with the process of testifying, as well as with their post-trial adjustment (Muller, 2004).

Perceptions and Fears of the Legal Process

Having addressed the beliefs that sexually abused children have of themselves in the above discussion, it is interesting to note the perceptions that child witnesses have of court and the legal process itself. Muller and Tait (1997) review several articles that evaluate these perceptions. Most of the research points to a lack of understanding by the children of the process and the people involved. Most of the children interviewed in one study believed that court was a bad place for bad people (Muller and Tait, 1997). There seemed to be an underlying apprehension with several of the children because they thought that the witness is the person on trial, rather than the accused. For example, these children believed that they were being asked questions to determine whether they were lying or whether they had done something wrong (Muller and Tait, 1997). This misperception may reinforce the view that sexually abused children already have of their guilt in the abuse.

In a study by Cashmore and Bussey (as cited in Muller and Tait, 1997, p.596), many children between the ages of 6 and 14 viewed defense lawyers as “people who shouted at you, asked you questions you didn’t understand and tried to make you say something you did not mean to say.” In another study by Saywitz (as cited in Muller and Tait, 1997), many children aged 4-14 believed that the judge knew everything and would know if they told a lie.

According to Plotnikoff and Woolfson (as cited in Muller, 2004, p.214), some of the fears that children have about going to court include: “that they will have to see the accused, that the accused may hurt them, that their family may be angry with them for having told what happened, that they will be sent away from home, that they may go to prison, that they won’t know what to do in court or how to answer the questions, that they won’t be believed, that they will have to speak in front of strangers, that they may cry in court, that they may need to use the bathroom, that people will know what happened to them, that the accused may go to prison and what will happen if the accused is found not guilty”. As can be gauged from this list, some of the fears are realistic, while others are not and court preparation is essential in this regard.

Another area that leads to misunderstandings and fear is that in allegations of sexual abuse, children are asked to describe to the court what happened (Muller, 2003). This goes against societal norms, which disapproves of children discussing sexual encounters of any nature. These topics are usually viewed as “bad or naughty” (Muller, 2003, p.7). Then suddenly they are asked to talk about these very matters in an environment that they believe functions to punish bad people. According to Muller (2003), the most natural reaction would be for the child to deny the allegations, minimize them as much as possible or not want to talk.

Memory, Suggestibility and Credibility

Legal cautionary rules exist regarding child witnesses, as their evidence is felt to hold great danger of falsehood and untrustworthiness (South African Law Commission, 1991). Muller (2003) maintains that according to case law, the evidence of children has always been viewed with suspicion. The author cites a case where the court

highlighted that “children’s memories are unreliable; that children are egocentric and highly suggestible; that they have difficulty distinguishing fact from fantasy; make false allegations (particularly of sexual assault) and they do not understand the duty to tell the truth” (Muller, 2003, p.4). The author attributes these perceptions to a misunderstanding of children and child development.

According to Wolraich (1999), lack of accuracy in child witness testimony may be due to poor recall of an event or sequences in an event, misinterpretation or confusion about an event, suggestibility, intellectual/ mental disabilities and intentional deception, mostly resulting from adult coercion. Child witnesses are often repeatedly challenged for placing events out of sequence and for not being able to remember important details regarding timing of events. Questions such as these may be inappropriate as younger children have not yet developed a sense of time (D Jones, as cited in South African Law Commission, 1991). Suggestibility concerns questions that introduce new (and possibly untrue) information, leading to children sometimes agreeing with these erroneous suggestions (Zieff, 1991). It is acknowledged that children may make concessions or change their testimony merely because they think this is expected of them or because they want to end the unpleasant experience of cross-examination (South African Law Commission, 1991).

Perry and Wrightsman (1991) identify four major issues and their respective dilemmas in young children giving testimony. Firstly, the child’s competence, allows for the child to communicate what they know but also to protect the defendant’s rights at the same time. Secondly, the child’s credibility, involves apprehending and convicting criminals but also detecting false accusations. Thirdly, the child’s rights

aims to protect all children from further traumatisation but also to protect specific children from further harm. Finally, the defendant's rights, which also concerns the need to apprehend and convict criminals, while protecting the alleged perpetrator's legal rights.

THE LEGAL SYSTEM AND THE CHILD WITNESS

The Statement

The legal process starts at the outset when a charge is laid against the alleged perpetrator and a docket opened. A statement is taken by an investigating officer, which will at a later stage be available to the defense and is often introduced in the course of the child's evidence at the trial (Muller, 2004). The introduction of the statement at the trial often causes problems for the child witnesses. The following are some of the problems children encounter in court with regard to the statement they made to the police: Difficulty remembering the statement (especially when a long period of time elapses before the trial); incomplete, vague or inaccurate statements taken before the child has fully disclosed and paraphrasing of the child's words using adult vocabulary, which the child is then confronted with at court (Muller, 2004).

The Competency Requirement

Before being allowed to testify, young South African children need to pass the competency requirement, which means that, in the opinion of the court, they can understand what it means to tell the truth (Zieff, 1991). There is no fixed age at which children become competent witnesses and the merits of each case are decided based on the child's understanding of the difference between telling the truth and telling a

lie, their ability to receive and relay information correctly and adequate memory (Zieff, 1991). One of the factors influencing the court process is that prosecutors are less sceptical of children's competence as witnesses than defense attorneys (Perry and Wrightsman, 1991).

The Accusatorial System

The literature regarding the legal system focuses largely on the effect of the accusatorial system on child witnesses of sexual abuse in South Africa and several other countries. This model manifests the following features: "Oral evidence in court, two opposing parties, a passive presiding officer, confrontation, cross-examination and strict rules of admissibility of evidence" (Muller, 2000, p.13). At the root of the system is the assumption that the oral testimony of a witness at the trial is superior to any other kind of evidence (Muller, 2000). However, the adversarial nature of this model is regarded as a major hurdle for child witnesses, as it condones aggressive cross-examination of the child. (Muller and Tait, 1999)

According to Muller (2000), several imbalances are apparent in the accusatorial system. For example, the prosecution must prove their case beyond a reasonable doubt, while the defence only has to raise doubts. Also, the purpose of cross-examination is to elicit information that is favourable to the defence, while casting doubt on the accuracy of the witness's evidence. In the cross-examination, the child may be portrayed as "unchildlike", for example in their exposure to sexual experiences or in their sexual knowledge (Westcott and Page, 2002). They may also be portrayed as instigators rather than victims, because they seduced the adult. In addition, children are easily accused of being poor witnesses, confused, untruthful and

having false memories (Westcott and Page, 2002). According to Martin (1992), insensitive and repetitious cross-examination of abused children can be misperceived by them as further abuse.

Prosecution vs. Defense

According to the South African Law Commission (1991), there is in practice a great difference between the preparation done by the prosecutor and that of the accused who is legally represented. Usually the prosecutor rarely consults with the witnesses before their court appearance, does not prepare them for the trial and does not go over the evidence/ statement with them for clarification. On the other hand, the defense and its witnesses are usually well-prepared for the trial. “The energetic and active role played by the defense... stands in sharp contrast to the often passive and disinterested role played by prosecutors” (S.A. Law Commission, 1991, p.10). The Commission (1991) cites reasons for this as the volume of the prosecution’s work, an extremely heavy court programme with no time for consultations and minimal interaction with the investigating officer on the case. According to Superintendent Swart of the Child Protection Unit however, prosecutors at the Sexual Offenses Courts are dedicated to their work and go beyond what is expected of them (as cited in Barnes-September et al, 1999).

Waiting and Postponements

On the day of the trial, child witnesses usually have to wait long hours, sometimes even longer than a day, before being called to testify. This is frustrating and tiring for them and they may become bored and un-operative. During this waiting period, children often see the alleged perpetrator in passages and at entrances, especially

when the court does not have a separate waiting area (Muller, 2004). All of this may contribute to increasing anxiety and agitation.

The trial itself can take anything from a few weeks to even a few years.

Postponements can occur at any stage of the trial, if witnesses are not available or if the court role is full (Muller, 2004). Postponements impact psychologically, by leading to prolonged and repeatedly heightened anxiety and also affect the child's memory. According to D Jones (as cited in South African Law Commission, 1991), loss of detail over time is consistently reported with child witnesses. It has been suggested by J C and E J Hammond (as cited in South African Law Commission, 1991) that one important change in the judicial system should be to set a short maximum time limit for the trial of child sexual abuse cases. Ideally, no more than a three month delay should ensue after a charge is laid. This would lead to less disruption to the child and family members and memories of the events would still be relatively fresh in the child's mind for the purposes of giving evidence

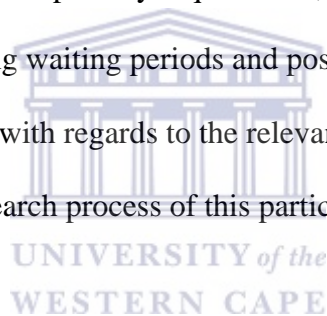
Legal Reforms for Child Witnesses

The incompatible legal position of the child as a subject before the law without being able to fully realize this role is increasingly leading to changes in legal procedures which have to take the structural dependence of children into account (Furniss, 1991). There are two major reforms that have been introduced in some South African courts in an attempt to address the difficulties faced by child witnesses. The one is the closed-circuit camera system, while the other is the presence of an intermediary for the child.

The child is allowed to testify outside the courtroom in a separate room and the child's image is projected into the courtroom via a television monitor (Goodman, 1993). The intermediary is provided with earphones that enable her to relay the questions to the child. The intermediary thus provides a limited support role for the child (Hollely, 2002) and has two distinct functions: Firstly, he/she is able to remove all hostility and aggression from the questions. Secondly, the intermediary has the power to change the question in such a way that the child understands what is being required (Muller, 2004). The child thus does not see the courtroom or any person in the courtroom.

In various centres, non-governmental organizations have made an effort to paint and furnish the room in a child-friendly manner that would set the child at ease (Muller, 2004). Such facilities exist at the Special Sexual Offenses Courts in Wynberg and Cape Town, where attempts have been made to create a child-friendly space for child witnesses (Blankenberg, 1997). The special courtroom is not automatically available to children but application usually has to be made for a child to testify in camera, on the grounds that the child will be exposed to undue mental suffering if forced to testify in the presence of the accused (Muller and Tait, 1999). Evidence has to be led in this regard, usually from a psychologist or a social worker, especially in the cases of children above the age of 12. If the court decides that the child will experience undue stress, then it will appoint an intermediary, through whom the child will testify (Muller, 2004). When testifying behind camera in the special courtroom, child witnesses appear to be more confident and fluent, giving testimony that is more reliable and competent (Goodman, 1993; Muller, 2000).

The literature that was reviewed for this research thus centred mostly around the experiences of children undergoing testimony in the South African judicial system. To this end, a brief synopsis of the psychological impact of child sexual abuse and disclosure has been provided. The effects of child sexual abuse were not delved into in greater depth, due to the space constraints of the thesis, as well as the fact that the nature of the research focused largely on the effects of the subsequent court process. Other topics covered in the literature review included the importance of heeding children's perceptions and fears of the legal process and some authors' comments on how memory, suggestibility and credibility may be misconstrued in children. Literature regarding the legal system highlighted how child witnesses are adversely affected by the statement, the competency requirement, the accusatorial system, the role of the defense and the long waiting periods and postponements. Having thus established some background with regards to the relevant literature, the following two chapters will focus on the research process of this particular study.



CHAPTER THREE
RESEARCH DESIGN AND METHODOLOGY

Research Design

A qualitative research design was considered most suitable for the topic at hand, as the study is based on interviews with witnesses in the juvenile justice system. These witnesses shared their experiences of the process of testifying behind camera in court. The information gained during the interviews was of a qualitative, rather than quantitative nature. The underlying belief of qualitative research is that reality is subjective and cannot be measured (De Vos, 1998). According to Denzin and Lincoln (2000, p.3), "Qualitative research involves the studied use and collection of empirical material [in this case, interviews] that describe problematic moments and meanings in people's lives". The research question here addressed the subjective reality of child sexual abuse survivors' experiences of testifying in court. Bearing this broad question in mind, further depth was added by exploring whether the court process was experienced as a form of secondary traumatisation.

The qualitative research approach that was used is broadly phenomenological, as this approach aims to understand the human experience in context (Terre Blanche and Durrheim, 2002). Understanding the "lived experience marks phenomenology as a philosophy and a method" (Cresswell, 2003). The core aspect of this approach centres around understanding the phenomenon from the individuals' own perspectives, describing the world as experienced by those individuals and bearing in mind that reality is defined by peoples' perceptions thereof. However, this study was situationally defined and bound by a specific experience, which differs slightly from

the definition of phenomenology as described by Kvale (1996). In this case, the broad phenomenological approach was complemented by thematic analysis and analysis of situational narratives. The aim of eliciting psychological themes from a situation-bound experience is what renders it phenomenological.

One aspect of phenomenology is the attempt at a direct description of an experience, without any considerations about the origin or cause of that experience (Kvale, 1996). This aspect was very important in this particular study, as the sexual abuse that the children had experienced was not a focal point of the research. However, despite assuring the participants that the sexual abuse would not be delved into, some evocation of the abusive experience was inevitable, since clearly the reason for court was the abuse.



During the interviews, some memories and affect attached to the sexual abuse were elicited and this inherent tension in the research needed to be carefully managed. It was important to conduct the interviews in a manner that would make the children feel safe and not threatened. The research focus provided a means of containing the material about the sexual abuse and it was therefore imperative to adhere to the semi-structured questionnaire, which was able to bring the focus back to the court experience. The challenge was doing so without completely negating the children's experience of sexual abuse. To this end, it proved helpful to the children to have their feelings normalised and to know that follow-up counselling would be available for them if necessary. The aim of the research was thus to understand how children experience one specific aspect of the phenomenon of sexual abuse; namely the courtroom exposure of child witnesses in such cases.

Sampling

Six children participated in the interviews. All of them had previously received, or were currently receiving counselling at Childline to deal with the sexual abuse they had experienced. For purposes of consistency and taking into account children's varying levels of development, it had initially been proposed that the participants would all be aged between 12 and 14 years. They were all required to have testified in camera sometime in the past two years (children under the age of 14 are usually granted permission to testify in this manner). However, it became problematic to find participants who met the age criteria, as well as the other criteria. As a result, the age requirement was adjusted from 12-14, to 11-15 years. All the participants were female, which is a representative gender sample of testimony in child sexual abuse cases. Four participants were interviewed at the Childline Counselling Centre in Wynberg, while one was interviewed at her home, as this was felt to be more suitable for her and her family. The remaining participant was interviewed at the researcher's current place of employment, as the child resided in the same area and travelling was more convenient.

Childline served as the referral source, as the researcher was previously employed as a counsellor there, which facilitated accessibility. The researcher approached the manager of Childline with the research proposal and a meeting was held to gain clarity and discuss practical arrangements. Permission was freely given by the organisation, including the use of their premises for interviews. All the children gave free assent to participate, and their parents gave consent as well. Using the criteria mentioned above (i.e. children aged 11-15, who had testified in camera in the past two years), the counsellors were requested to recommend clients who could give a verbal

account and who could be interviewed. Convenient sampling was thus used in the selection of the sample and subjects were enlisted who were available, accessible and who had information and experiences pertinent to the research topic. The counsellors provided details of suitable candidates and contact details for the children's parents/guardians.

Procedure

The parents/ guardians were contacted telephonically and briefed about the aim of the research. It was clearly stated by the researcher that the interview questions would be focussed on the children's experience of court and not the facts of their own evidence. The need for the child's free, informed assent to be interviewed was also emphasised, bearing in mind the necessity for subjects' voluntary participation, "without physical or psychological coercion" (Denzin and Lincoln, 2000). Where the children themselves were available, the researcher spoke directly to them as well. Where necessary, a short period of time was provided for the children to consider participating, or for the parents/ guardians to inform their children of the research. The participants were assured that the choice to take part was solely theirs and they could withdraw at any time without penalty. This proved imperative, given the psychological gravity of the issue being addressed in the study. One of the children cancelled the day before her scheduled interview, saying that she did not want to relive any part of the abuse experience and wanted to put it all behind her. Her choice and feelings needed to be treated with empathic understanding, due to the sensitive nature of the subject matter.

On the whole there was no other resistance to talking about the court experience and participants were willing to participate when approached. The researcher believes that being an ex-Childline counsellor lent credibility to her role as interviewer. An element of safety and trust was presented by introducing herself as an ex-counsellor at the outset, due to the generally positive nature of interaction between counsellors and clients. According to Kvale (1996), informed consent involves informing the research subjects about the overall purpose of the investigation and the main features of the research design. Parents/ guardians were requested to sign a consent form, which very briefly outlined the study and assured the confidentiality of the research through anonymity of participants (See Appendix 2). In one case, it was a practical difficulty for the parent to sign the consent form and verbal consent was accepted as sufficient.

Data Collection

Semi-structured qualitative interviews were conducted with each participant. The process of data collecting and processing was based on Kvale's "seven stages of an interview investigation" (1996, p.88):

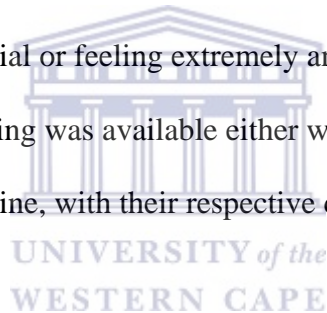
- Stage 1: Thematising - Clarifying the purpose of the research and describing the concept of the topic before starting the interviews. This was covered in the research proposal and involved exploring the subjective experiences of child witnesses in sexual abuse court cases, with a view to establishing whether the court process was experienced as secondary traumatisation.
- Stage 2: Designing - Planning the design of the study, with regard to obtaining the intended knowledge and taking into account the moral implications of the study. Also addressed in the research proposal.
- Stage 3: Interviewing - In this case using a semi-structured interview

schedule and taking into account the interpersonal interaction during the interview situation.

- Stage 4: Transcribing - In this case transcribing from oral speech to written text, using tape-recorded interview material.
- Stage 5: Analysing - Deciding which method of analysis is appropriate, based on the purpose and topic of investigation, as well as on the nature of the interview material
- Stage 6: Verifying - Evaluating the interview findings with regards to generalisability, reliability (how consistent the results are) and validity (whether the study investigates what is intended to be investigated).
- Stage 7: Reporting - Communicating the findings of the study in an ethical and coherent manner (Kvale, 1996).

According to Kvale (1996), qualitative interviews are theme-orientated and are neither strictly structured nor entirely non-directive. During the individual interviews, open-ended questions were asked around certain themes related to the literature discussed in the previous section. An interview guide was used to standardize the interview (See Appendix 1). Key question areas addressed: What the children expected before entering court (their perceptions of the process), how prepared they felt beforehand and how they experienced the nature of the questions. Denzin and Lincoln (2000) maintain that because the goal of semi-structured interviewing is understanding, it is important that the researcher establish rapport with the subjects. At the beginning of the interview, the researcher spoke informally to the participants for a few minutes to help put them at ease. Issues such as anonymity were also raised and the researcher stated clearly that participants should feel free to express if/ when they felt unwilling or unable to answer a question.

The interviews lasted for about 40-50 minutes. A creative exercise was introduced towards the end of the session, in the form of a mind-map, writing down or drawing all associations with the word court. Where participants did not feel willing to do this exercise, their wish was respected. The interviews were tape-recorded, with the permission of the participants. While all the participants claimed to be fine at the conclusion of the interview, some debriefing was deemed necessary (Breakwell, Hammond and Fife-Schaw, 1995). Debriefing addresses any possible anxiety or tension that may exist at the end of the interview, due to the subjects' openness about personal and emotional experiences (Kvale, 1996). This included reassuring the child that talking in the interview had not put them in any danger, affirming them for their bravery and highlighting possible effects of talking about their experiences; for example, thinking about the trial or feeling extremely anxious again. They were made aware that follow-up counselling was available either with myself or, if they were still receiving counseling at Childline, with their respective counsellors.



Data Analysis

This phase of the research process is described in Stage 5 of Kvale's (1996) overall framework of data processing, as described above. Data analysis involves "breaking up" the data into manageable themes, patterns and trends. The aim of analysis is thus to determine whether any patterns or trends can be identified or isolated, or to establish themes in the data (Mouton, 2001). Themes can be widely sourced from literature reviews, researchers' own experience of the subject matter and from the text itself (Denzin and Lincoln, 2000). The first step in the process of analysis was procuring a transcription service to transcribe the tape-recorded interviews, which ensured that the richness of the text was not lost. According to Cresswell (2003),

qualitative research is by nature interpretive and it is important to analyse the data with empathic understanding (Terre Blanche and Durrheim, 2002). The raw data used in this research (i.e. transcribed interview material) has not been included as an appendix in this document, due to its length. However, the material is readily available, should it be required.

The steps for the method followed are those outlined by Terre Blanche and Durrheim (2002, p.140): “Familiarisation and immersion in the data, inferring themes that arise naturally from the data but also relate to the research question, coding (breaking up the data in analytically relevant ways), exploring themes in greater detail and checking, before the final written interpretation”.

According to Denzin and Lincoln (2000), coding is “the heart and soul of whole-text analysis”. The importance placed on this process stems from the meaning that is derived by analyzing the material. Tesch’s 8 step approach to coding was followed (Cresswell, 2003) and is summarised as follows:

- 1) Careful reading of all the transcripts. Jot down thoughts and ideas while reading.
- 2) Careful reading of one particular interview transcript. Attempt to understand the underlying meanings of the data.
- 3) A list of emerging topics is made. Similar topics are grouped together under sub-headings, like main topics.
- 4) Each topic is given a code. The researcher then returns to the data and assigns codes to relevant parts of the text. See if new codes emerge.
- 5) Topics are given descriptive wording and changed into categories. Each category consists of groups of related topics. Relationships between categories are identified.

- 6) Each category is abbreviated and then these are then alphabetized.
- 7) All data pertaining to one category is gathered and then analysed.
- 8) Existing data is recoded if necessary.

According to Terre Blanche and Durrheim (2002), thematising and coding are interrelated because the central themes evolve during coding, as one develops a better understanding of them and how they relate to other themes. Finding similarities between themes is considered to be an integral part of the analytic process.

Ethical Considerations

The entire research process necessitates making decisions related to ethical issues (Kvale, 1996). In this study, it was imperative to carefully consider such issues, due to the sensitive and personal nature of any exploration within the field of child sexual abuse.



The first ethical consideration is informed consent. Parental consent was verbally attained from the parent/guardian when contact was initially made telephonically. In addition, they were required to sign letters of consent (See Appendix 2). The child's willingness was also of paramount importance and they needed to assent to participating in the study. Their agreement must be based on comprehensive and open information about the research (Denzin and Lincoln, 2000). The parents/ guardians and children were informed about the purposes of the study, as both a requirement for a postgraduate qualification, as well as to shed light on the difficulties experienced by child witnesses who testify in sexual abuse cases.

The main features of the research were explained to them telephonically and a very brief outline was provided in the letter, to facilitate informed consent. The interview process was explained in basic detail and it was impressed on the participants and their parents/ guardians that no disclosure of the sexual abuse would be involved in the process. According to Kvale (1996), providing such information about the purpose and design of the research prevents deception. Informed consent thus upholds the social science code of ethics that opposes deception (Denzin and Lincoln, 2000).

The privacy of the participants was considered carefully, especially due to their past experiences of sexual abuse and court testimony, which by nature violates personal privacy. Anonymity of the participants was assured, so as to protect confidentiality.

This was emphasised to both child and parent/ guardian telephonically, in the letter of consent and during the interview process. Kvale (1996) advises protecting subjects' privacy by changing their names and identifying details. The participants' permission was first attained before tape-recording the interviews.

Since the interviews involved talking about experiences that were very difficult for the participants, arrangements for further support were made available if necessary. Debriefing was provided, as explained under the Data Collection section of this document. It was made clear to the children that further support would be available for those who might experience difficulty after the interview, for example, recurring memories of court or of the abuse itself. This could be provided either by their current counsellors or by the researcher.

With regards to possible fear of the abuser that may have arisen again after the interview, in some cases the children needed to be re-assured of the protection that was available to them. When the court action has been unsuccessful, children often still encounter perpetrators in their family or neighbourhood. A discussion would be important to address ways in which protection against retaliation would be possible; for example, telling someone they trust if the perpetrator is harassing them.

Limitations

According to Cresswell (2003), all statistical procedures and research strategies have limitations. For example, a constraint with interviews may be that participants are not equally articulate or perceptive. This was found to be the case in this study, where some of the children were able to express themselves very well verbally, while others did not offer much spontaneous detail. This may have compromised the quality of the interviews, which is affected by the extent of spontaneous and rich answers from interviewees (Kvale, 1996). The discrepancies may have been related to differing personality styles, anxiety or confidence levels. The age differences in the participants did not appear to impact markedly on varying responses.

Where participants offered minimal verbal responses, some prompting was necessary on the part of the researcher. This may have led to more directive questions than had originally been envisaged. According to Kvale (1996), however, more directive questions can be used to determine the reliability of the interviewees' answers, as well as to verify the interviewer's interpretations. Therefore this type of questioning, if used appropriately, may enhance the reliability of interviews, rather than reduce it.

A possible source of error related to the above difficulties may be that some data could have been outweighed due to some participants being more verbal or articulate. The experiences of less vocal participants may thus have been underestimated in the analysis.

Another possible source of error relates to the researcher's role. As a result of her previous experiences of working at Childline and her exposure to the court process as a counsellor, potential bias must be considered. According to Cresswell (2003), despite every effort to ensure objectivity, biases may shape the way researchers view and understand the data collected and the way experiences are interpreted.

Several practical limitations also emerged during the course of the research. Many of the participants' families experience financial constraints and could not afford the travelling costs to the Childline office in Wynberg. The organisation usually provides travel fare for certain clients to attend counselling sessions. The researcher was willing to provide travel fare for the participants and an accompanying adult, which became a considerable personal expense.

Another problem encountered was non-attendance. Several participants did not arrive for scheduled appointments. They then had to be contacted and appointments rescheduled. Time constraints were also a difficulty, as the researcher only had one afternoon every week available for interviews, due to full-time work commitments. As a result, the time period, which had been planned to complete the interview process, had to be extended.

The process of transcribing proved to be a challenging one. Unfortunately the quality of the tape recordings was not optimal, due to several participants speaking very softly and background noise during the interviews. A professional transcriber was used but her equipment proved less effective than the researcher's tape recorder. Subsequently the researcher needed to review all the tapes and transcriptions again, in order to verify the accuracy of the transcripts. This process impacted adversely on the researcher's time and resources.



CHAPTER FOUR
RESEARCH RESULTS AND DISCUSSION

Tesch's 8-step thematic analytic approach was used in the data analysis of this research (Cresswell, 2003). Several themes emerged that correlated with the information discussed in the literature review, particularly around the psychological impact of the court experience and perceptions of the legal process. Some themes also overlapped and at times it was a challenge to compartmentalise the data into separate thematic strands or categories. For example, the children's experiences of fear and anxiety were linked with the nature of the accusatorial system and cross-questioning, as well as their expectations of court and the level of support they had during the process. Inevitably, a measured degree of flexibility was necessary in analysing the data in this manner and rigid separation of themes was not always possible, resulting in overlapping thematic strands. According to Terre Blanche and Durrheim (2002), interrelated themes are an entrenched and inevitable part of the data analysis process and highlight the contiguity and continuity of psychological experiencing.

Sample Profile: *Table 1*

Participant 1	Female	15 yrs-old
Participant 2	Female	13 yrs-old
Participant 3	Female	11 yrs-old
Participant 4	Female	11 yrs-old
Participant 5	Female	12 yrs-old
Participant 6	Female	14 yrs-old

The participants had collectively testified at three different courts in the Western Cape. Four had appeared at the Sexual Offences Court in Wynberg, while the other two had testified in the Mitchell's Plain and Paarl Courts respectively. As previously mentioned, all six children testified behind camera in a room separate from the main courtroom.

Theme 1. The Psychological Impact of the Court Process

During interviews it clearly emerged that going to court was fraught with intense emotions for all the participants. Each child dealt with these emotions in varying ways, depending on several factors, including their own inner ego resources.

1.1. Fear and anxiety

Without exception, each participant described experiencing overwhelming fear of going to court. This was linked to misperceptions of the court process but also legitimate worries about seeing the accused and having to disclose personal information publicly. The anxiety centred largely around the newness of the experience and not knowing what to expect. As Saywitz states (as cited in Muller and Tait, 1997), generalised anxiety is most often linked to fear of the unknown and could result in avoidance. Subsequently the child's motivation and effort to remember details may be significantly reduced.

The nervousness and anxiety were familiar and recurrent to all the participants, as they experienced these emotions repeatedly whenever a court appearance was forthcoming. Some of them reported classic anxiety symptoms in children like nightmares, headaches and stomachaches and described sleepless nights and constant

worrying about going to court. Muller (2000) recognises that many of these psychological symptoms, including psychosomatic complaints, are commonly exacerbated when sexually abused children testify in court. One participant stated: *“Sometimes I dream that man is free...what I said wasn’t right and they are sending me away.”* Upon entering the court, the participants described feeling intensely nervous and scared to talk. One also said she had felt scared and shy to say when she didn’t understand some of the questions put to her. The fear that the children experienced thus appeared to be twofold; a great fear of seeing the alleged perpetrator again but also an intense fear of having to go to court and appearing in such a highly charged public arena, resulting in an exceptionally anxiety-provoking experience.

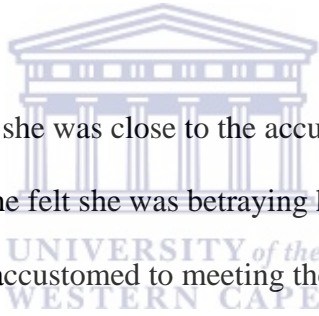
One participant had endured a great deal of trauma, as she was sexually abused by three different men and hence testified in three separate cases. She expressed a marked fear of men in general, which manifested in her anxiety about men involved in the court process. For example, in one of the cases she was assigned a male intermediary. She declined and chose to hear the questions alone, wearing the headphones herself. She said that she had felt embarrassed and ashamed that a man would hear the detailed questions and answers of her case and rather chose to sit alone, despite the fact that this was more difficult for her.

1.2. Guilt and feeling responsible

The feelings that many sexually abused children have of being partly to blame for what happened and feeling guilty about the abuse seem to be markedly exacerbated by the court process. Most of the participants described the cross-examination as placing blame on them for the abuse and for not disclosing the abuse sooner. Westcott

and Page (2002) speak of how the child's court process often perpetuates their experience of stigmatisation, where guilt is induced by labelling and blaming the child witness. This will be discussed later under the section Cross-questioning.

According to Berliner (2003), most sexually abused children are victimised by a relative or by someone they know. In the cases at hand, most of the accused were family members and several of the participants had already been made to feel responsible for causing divisions within their families. As Potgieter (2000) states, self-blame can be intensified by the disturbance caused in the family when sexual abuse is disclosed. This was further worsened when the children encountered the accused's families at court.



One participant described that she was close to the accused and had even lived with his family and felt "pain" as she felt she was betraying him. Her feelings illustrate how abused children become accustomed to meeting the needs of adult perpetrators (Potgieter, 2001). Her guilt was exacerbated when she saw family members of the accused at court, particularly some who sent apologetic messages to her and her family. Another participant described how the accused's mother scorned her and treated her derisively as she entered the court.

Many participants also felt solely responsible for securing a conviction for the accused. Several of them had decided to go through with the testimony so that the abuse would not be repeated. Many of them thought of this during their testimony, placing greater pressure on them for the accused to be found guilty and to protect themselves and other children. As one participant put it: "*I was constantly thinking*

during the questioning this man must go behind bars...if he doesn't, he'll do it to other children, maybe even his own daughter." Potgieter (2000) speaks of how sexually abused children are manipulated by perpetrators, and even the legal system, to carry the responsibility for the abuse and its continuation.

Another child said that she had been unable to answer all the questions during cross-examination and felt responsible for the accused being freed. Her guilt stemmed from a sense of having 'failed' both herself and the court process due to being overwhelmed by anxiety.

1.3. Lack of protection and betrayal

The theme of safety emerged whilst discussing the participants' court experiences. At times this feeling of being unsafe was related to misperceptions of being the accused themselves. However, many of them also expressed feeling unsafe and scared as a result of seeing the accused at court. All the participants saw the accused, either while sitting in waiting rooms or at entrances. These are open areas in courts where child witnesses often encounter alleged perpetrators. Muller (2004) suggests preparing child witnesses for seeing the accused in open areas in court, as this is a common occurrence.

The importance that the participants placed on feeling safe confirms Potgieter's (2001) point that the establishment and maintenance of safety is integral, not only to disclosure, but in the recovery process of the abused child. In one case, the participant was asked to point out the accused, whilst standing in the doorway of the courtroom. She reported feeling unprotected and fearful while doing so. Some of the children

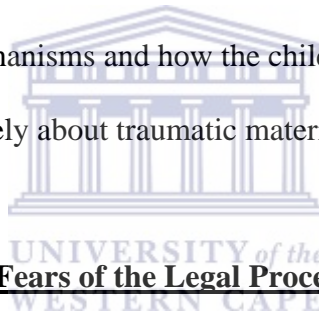
experienced the security presence at the courts as reassuring, while others found it unsettling.

Feelings of being betrayed were particularly felt where the alleged perpetrator was a family member. One participant said that she had felt extremely angered and upset when told that the accused denied the abuse and said it was not him, as she knew he was lying. Clearly the ability to trust others is adversely affected by the abuse experience, particularly when other relatives support the accused and side against the child witness. Potgieter (2001) names trust in people, as opposed to betrayal, as one of the crucial factors affecting a child's sense of safety.

In one particularly difficult case, the child was first sexually abused by her stepfather and then her biological father. Her own father had initially supported her in the case against her stepfather. When he too abused her, the child's mother turned against her and reconciled with her ex-husband. The child would then see her biological parents together in court, a betrayal that caused further trauma for her. As she put it, "*The people (family) that were on my side gave me strength but only my mother was not on my side, my mother was on my father's side...that was very hard for me.*" The betrayal this participant felt from her mother may impede her recovery process, as maternal support is particularly important to child witnesses and can contribute to improvement in the child's mental health (Berliner, 2003; Goodman, 1993; Wolraich, 1999).

1.4. Defense mechanisms

Most of the participants appear to have used certain psychological defenses in order to cope with the trauma of being sexually abused. In particular, the defenses of denial and avoidance seem pervasive, helping the children to deal with the abuse by symbolically “removing” themselves from it. The participants spoke of trying to put the experience out of their heads and not think about it. As some said: “*I just ignore it...it was like a bad dream*”, “*I have buried it deep down and I don’t even want to think about it*” and “*I don’t want to speak about it ever again.*” Since defenses may serve a protective function against emotional conflict or internal or external stressors, it may be threatening to have them directly challenged (DSM-IV, 2000). The manner in which most of the participants were cross-examined showed no cognisance of the fragility of these defense mechanisms and how the children may be affected when they are confronted aggressively about traumatic material.



Theme 2. Perceptions and Fears of the Legal Process

As discussed in the literature review, children often have ideas about the court process, realistic or unrealistic, that perpetuate fear about going to court. While court preparation alleviated some of the anxiety in this regard, it emerged in the interviews that many of the participants still held misunderstandings of what the legal process involves and also of what was required of them. We also explored their expectations before going to court and their worst fears, some of which were unfortunately realised.

2.1. Expectations of going to court

At times, the participants' expectations of court tied in with misperceptions thereof and according to Muller and Tait (1997), a child's perceptions of court will affect their performance as a witness. One participant said that she had thought the magistrate would read through her statement beforehand and did not expect that she would be required to repeat in detail the information in the statement. Several participants had expected that they would appear in open court, which caused great fear of testifying. They all reported immense relief when they were briefed on the camera room, which usually occurred shortly before their first appearance. Some of the children said that they expected the questioning to be unpleasant and embarrassing, one feared that the lawyers would be rude to her and another thought that the accused would be jailed after their first time in court.

2.2. Misperceptions about court

Some of the participants held misunderstandings about court that warrant grave concern. This reinforces a study by Muller and Tait (1997), that children have dangerous misconceptions about court, which could have serious implications regarding fear and stress during court appearances. Two of the participants were under the impression that testifying in camera meant they were going to appear on public television. One described thinking of adults and children who knew her, witnessing her full disclosure on screen. Despite feeling ashamed, she felt she had no choice but to have her privacy invaded in this manner and both only discovered after testifying that footage was only relayed to the courtroom.

A few of the participants also voiced the fear that they would find themselves in trouble for saying the wrong thing. One child had thought she would go to jail if she made a mistake in her testimony and said an incorrect detail about what had happened. Muller and Tait (1997) address this perception of many children that they will be guilty and will be punished if they do something wrong or are not believed. The afore-mentioned participant had also envisaged that the court would look like a jail, with many cells and prisoners around. Those participants who realised that there were holding cells in the court feared that the prisoners might escape and endanger their own and others' lives. The overall impression held by these children was of court as a threatening and scary place, where they felt neither safe nor protected. Several researchers have documented similar findings about the adverse manner in which children perceive court (Hollely, 2002; Muller, 2000; Muller and Tait, 1997).

Many of the participants did not understand the terms and roles of important figures in the court process, such as magistrate and even lawyer. This emphasises numerous research findings that children have minimal understanding of legal terminology and the roles of different professionals in court (Muller and Tait, 1997). Most of the participants thought that a family member or friend would be able to support them during testimony and found it difficult that a loved one could not sit in the camera room with them, which lends strength to Hollely's (2002) recommendation that a support person of the witness's choice be allowed to sit with them during testimony (in addition to the intermediary). There also seemed to be the perception that while the accused could have his family and friends in the courtroom, the children's family were not allowed inside. In all these cases, the latter sat in a specific waiting room and

did not hear the child's testimony. Those child witnesses who took breaks were able to briefly see their families if they chose.

2.3. Worst fear of going to court

The participants voiced concerns that were most anxiety-provoking for them and the most common of these were seeing the accused again (sometimes for the first time after disclosing the abuse) and that the accused would be freed, rather than imprisoned. The subsequent fear of being sexually abused by the accused again was evident, as well as of someone else then becoming a victim of the alleged perpetrator. Another fear was having to go through the same procedure over and over again, particularly when participants had already had postponements in their cases. These children spoke of anticipating the court date but being aware of the high possibility of a postponement. As previously mentioned, many of the participants also feared testifying in front of an open court, *"like they do on television."* This links with Muller and Tait's (1997) argument that television misrepresents the nature of crime and the role of personnel in the legal system. They maintain that since television is a source of knowledge for children, it has important implications on children's perceptions of court and their role as witnesses.

Theme 3. The Subjective Experiences of Testifying

The process of testifying in court proved to be a challenging, even gruelling, experience for the participants. Bearing in mind the nature of the accusatorial system as discussed in the Literature Review, the children described a process that felt like the accused held a position of dominance, while the witness was relegated a relatively

powerless position. This further perpetuates the dynamic of power and control inherent in child sexual abuse.

3.1. The witness on trial

Without exception, all the children felt that they were the ones on trial, rather than the accused. All of the participants felt that their credibility was doubted and that they were not believed. This is a common feeling amongst child witnesses, as a result of the nature of the accusatorial system (Muller, 2000). Referring to the defense lawyer, one of the participants said: "*Lawyers just confuse small children, they don't believe them.*" Several participants reported being asked if they had dreamt about the molestation/rape or being told that they had. Allegations like these may be misleading, as according to Avery (as cited in Zieff, 1991), children are unlikely to fantasise about sexual activity because it is not within their realm of experience.

Apparent attempts to discredit the child witnesses ranged from being asked if they got into trouble at school to being told they watch too much television and hence made up stories or lied. In response to the latter accusation, the participant became angry: "I told them, *I am not watching too much t.v.! What happened has happened. He can't say he didn't do it...sometimes children are wrong but sometimes grown-ups are wrong too.*" Another participant, whose sister testified in the same case, was accused of saying she was raped just because her sister had been. These accusations towards the child witnesses are concerning, as they play on already vulnerable psyches, which may be characterised by feelings of worthlessness, guilt, self-doubt and shame (Westcott and Page, 2002).

3.2. The nature of cross-examination

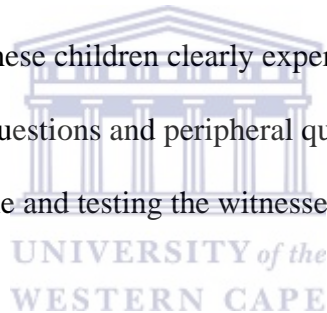
The bulk of the interview material on the testimony experience comprised the participants' views on the defense lawyers' manner of cross-questioning. Whilst the intermediary was probably able to alleviate the acrimonious nature of the questions somewhat, the participants still found the questions to be invasive and aggressive. This process was found to be the most difficult aspect of the court experience for all the participants. The participants' experiences corroborate Westcott and Page's (2002) suggestion that transgressions of acceptable adult-child interaction are socially sanctioned by the court and by the adults present in court.

The participants all mentioned the manner in which questions were repeatedly asked, either in the same or different ways. Several of them were briefed during court preparation and had expected to be confused by repetitive questioning. *"They are going to keep asking me 'when was it'...then you think you are wrong, then you say a different date...they want me to lie like that."* One participant reported becoming angry and moody after being asked the same question numerous times, while others said they felt nervous and uncertain. Despite being forewarned, the technique was experienced as unsettling and rattled their confidence, which in essence is the aim of such questioning (Muller, 2000).

Many participants spoke of how the cross-questioning elicited strong self-doubt within themselves, particularly when told they were lying. In this way, the child's powerlessness is reinforced by accusations of lying and their inability to control the narrative (Westcott and Page, 2002). *"Where did it happen; how did it happen; are you sure it happened; aren't you making it up...I felt like I was lying about it. They*

made me feel as if I really was making it up and it was just a dream. I felt that I must just say whatever happened in my dream...”

One participant said she was asked questions that sought to confuse her as to who the perpetrator was, such as how she knew it was her uncle and not another relative that molested her. Another was asked how she knew she was raped and what rape was. Some of the children felt that in the process of being discredited, they were being blamed for the abuse. *“She turned the whole story around and told me all the wrong things...I told her it’s not true and she is lying.”* This experience illustrates a common practice in cross-examination, whereby child witnesses are depicted as instigators rather than victims, seducing the adult or seeking revenge through sexual allegations (Westcott and Page, 2002). These children clearly experienced the method of suggestion that uses leading questions and peripheral questions, which are aimed at making the evidence unreliable and testing the witnesses’ credibility (Muller, 2000).



Several participants spoke of being interrogated on their reasons for not disclosing sooner. One said she became nervous when she was repeatedly questioned on this issue. *“I told them me and my mummy don’t talk about those type of things...and I was too scared and shy to tell anybody else.”* Questioning like this indicates that there is little sensitivity or consciousness about the shame and gravity of disclosing sexual abuse, especially for children. The reality is that children are more likely to remain silent, especially when the abuse occurs within the familial environment and the child is attached to the abusive person (Muller, 2003). This can be attributed to Summit’s child sexual abuse accommodation syndrome, which is an attempt by the child to cope with the abuse by distorting perceptions of what has happened through secrecy and

delayed disclosure (Muller, 2003). The South African Law Commission (1991) takes cognisance of this model by recognising that the credibility of the child's case is enhanced, rather than diminished, with regards to delayed disclosure.

3.3. The sexual nature of testimony

Participants all spoke about their difficulties in disclosing intimate details of the sexual abuse in a public setting. Each one described this section of the testimony as the worst part of their court experience. They clearly found it difficult to express the exact detail required of the sexual acts that were performed on them. As Muller (2003) states, socialisation discourages the discussion of sexual matters in public, yet children are expected to overcome these barriers instantaneously during testimony. The information that was asked of the participants was naturally found to be of an intensely personal and intimate nature and they often felt uncomfortable with the type of questions that were asked, for example, how they were undressed and what position they were in at the time. The manner in which details like these is procured should be handled sensitively. According to Goodman (2003), children know from an early age that genital touch, nudity, and the like are taboo and as a result, emotions like embarrassment, surprise and fear can affect children's willingness to provide information.

Certain questions, besides being invasive, also required detail that the witnesses could not possibly know, as one participant describes: *"The lawyer asked me how long did it take to put his private part in mine and how long did it take to come out...I got so angry, I said I don't know! I did backchat then but it was his own fault because he was so rude."* Most participants also reported struggling with questions about specific

dates and times. In these instances, not only was memory a hindrance but also the fact that the children did not know the exact times the abuse occurred, particularly when it occurred more than once.

3.4. Prosecution vs. defence

Most of the participants met the prosecutors briefly, the day before or immediately prior to testifying. Some participants felt that they had insufficient contact with their prosecutor, who “*was always busy with other work.*” One child regularly saw the accused talking to his lawyers in court and felt that theirs was a much more familiar relationship than that between her family and the prosecutor. Several felt that they and their families were not informed of case proceedings sufficiently beforehand, for example, some family members wanted to be notified of the date of the accused’s and other witnesses’ testimony. It seems that some concerned parents had to make repeated efforts to initiate contact if they wanted to know about the progression of the case. Where they expected the prosecutor to be their link with the legal process, many found that this expectation was not fulfilled. These experiences are possibly supported by the observations of the South African Law Commission (1991), that prosecutors are overworked, time-pressured and interact minimally with the child witness and investigating officer.

Most of the participants found that the brief time they spent with the prosecutor was helpful, as they received preparation for the type of questioning to expect during testimony. One participant did not know who was legally representing her and said she recognised who the defence lawyer was through the nature of his cross-questioning. Some participants mentioned the difference between the questioning of

the defence lawyer and prosecutor: *“My lawyer’s questions seemed softer, as if she could be speaking to her own children but his lawyer, I felt that she had something personal against me...it was like somebody ganging up on you for something you didn’t do.”* Westcott and Page (2002, p. 146) quote a defence lawyer’s cross-examination technique with children: *“You want them to sweat a bit...tactically you want to put them under as much pressure as possible. I want them to crack”*. The hostile and overtly aggressive style adopted by the defence in their cross examination was thus still evident to the participants, despite being ameliorated by the intermediary.

3.5. Language

“The language of court is very different to the language at home.” Language proved to be a difficulty for the two participants who chose to hear the questioning without an intermediary. They said they did not fully understand the questions and one felt embarrassed to repeatedly say she didn’t understand the questions. The difficulty that child witnesses experience with the language used in court is discussed in much related literature, including Muller (2000), who mentions that the ordinary lay person often does not understand the court procedure and language. Several participants mentioned that the questioning was done in Afrikaans, which was not necessarily the language they felt more comfortable with. They would then inform the court through the intermediary that they did not understand particular words. It subsequently appears that in some cases, the language preferred by the court was given precedence over the language choice of the witness. Should the first language of the witness not be prioritised, the possible language barrier gives rise to an important issue that needs consideration i.e. the possible dual role of the intermediary as a translator.

3.6. Memory

Remembering details of the abuse appeared to be a problem some of the witnesses struggled with. Factors that may influence this difficulty include the time period that had often lapsed between the time of the sexual abuse and the court testimony. In addition, the defense mechanisms described previously may hinder the retrieval of traumatic material, as the child consciously or unconsciously suppresses the memories thereof.

Participants particularly had difficulty remembering specific times and dates, since in most cases, years had passed before the case was brought to court. According to Zieff (1991), memory during testimony can be facilitated by using anatomical dolls, asking questions about the events in the sequence in which they occurred or recreating the physical or cognitive context in which the event transpired. One participant, however, said she did not have any trouble remembering the abuse, "*from the beginning to the end.*" She described what sounded like flashbacks, where she was clearly able to recollect in detail, despite a considerable time period having lapsed since the abuse. Flashbacks may be symptomatic of Post-Traumatic Stress Disorder, a condition that up to half of sexually abused children will develop (Berliner, 2003).

Theme 4. The Interminable Nature of the Court Process

4.2. Waiting periods

Waiting for hours to be called to testify naturally increased nervousness and anxiety. Many of the participants felt that the anxiety was somewhat alleviated by distracting themselves with the activities that were available for them, such as puzzles and television. However, most reported becoming bored and tense as they waited to be

called. Muller (2004) discusses at length this kind of impact on children, due to waiting in court. All of the participants felt that the process of being in court was too long and tiring. The children and their families would be told to arrive at court early in the morning but the procedures would only start several hours later.

4.1. Postponements

Many of the participants' trials were extended over a period of years, due to postponements. Such prolonged delays still occur regularly in trials, despite recommendations made over a decade ago that courts and court personnel should avoid delays at all costs (South African Law Commission, 1991). One participant said that she had laid a charge in 2002, yet in 2004 the case was still ongoing. Apparently, for about two years, her family was told that only the accused needed to appear in court. Her mother was then repeatedly told the case was postponed and given several different dates. Often no reasons are given for the postponements. The children cited reasons such as the accused repeatedly not appearing at court and the lawyers not having appropriate documents.

Often the children and their families would arrive at court early in the morning, expecting to testify on that day. After waiting for several hours, sometimes until the afternoon, they would then be told that the case had been postponed and their testimony was not required at that time. Long periods of time would follow before the next given date. As one participant stated: *"I think it too long because they should get done with their work! For me it makes me nervous to go to court every time...It has been a year now."* The repercussions of these types of delays are of serious concern.

One concern that emerged amongst all the children was the amount of time they had missed from school throughout their court experiences. They had to make up the work afterwards, which resulted in further academic deterioration for some. As one participant stated, she had already missed about 40 days of school at the time of the abuse, due to emotional difficulties. She failed her grade in that particular year. Then when the court process began a year later, she would again have to stay out of school to be at court, resulting in continuing struggles to achieve academic results.

In addition to the impact on schooling, the emotional build-up before a court appearance is extremely stressful for the witnesses. According to Zieff (1991) and Muller (2004), research evidence strongly suggests that postponements or continuation of a trial can prolong anxiety and memory loss. When the case is repeatedly postponed, the stress and fear is continuous and the child is hindered in dealing with the sexual abuse on an emotional level. There is no closure for the child and their family and they are incapable of moving past the abusive experience. On a practical level, some of the participants also noted the monetary strain that repeated trips to court placed on their families, many of whom were already struggling financially.

Theme 5. Resilience-Promoting Factors

5.1. Testifying in camera

All the participants felt that they were relieved to have testified in a separate room behind camera, rather than appearing in a courtroom with the accused. They found that it helped not to have to sit face-to-face with the accused or the defense lawyer during the cross-examination, which was already experienced as hostile and

threatening behind camera. Research findings support the fact that children find testifying behind camera less threatening and in fact provide more reliable and competent evidence in this manner (Martin, 1992; Muller, 2000; Muller and Tait, 1999; Zieff, 1991).

5.2. The intermediary

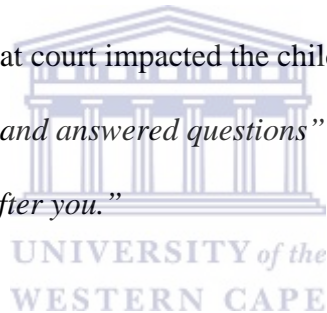
Most of the participants found the intermediary to be helpful, as they felt they were talked through the process. The presence of the third person was mostly experienced as “*safer*” and assisted in preparing the child witness for the process of questioning. In most related literature, the use of an intermediary during testimony is advocated as a protective factor for child witnesses (Hollely, 2002; Muller and Tait, 1999; South African Law Commission, 1991; Zieff, 1991). When they testified more than once, most of the participants had the same intermediary each time. They found a familiar face to be reassuring and were able to feel somewhat more at ease during the testimony with the same person next to them.

5.3. Court preparation

All the participants who received court preparation felt less stressed about appearing in court and said they would have felt more nervous and scared otherwise. This reinforces the comments of Muller and Tait (1997) that a basic knowledge of court proceedings will assist child witnesses by reducing the fear and stress they may experience as a result of unrealistic expectations. Some of the participants did not receive preparation before their first court appearance or else were briefed immediately prior to testifying (sometimes by the prosecutor), which was felt to be too late to contain anxiety. Court preparation was usually done either by their

counsellor (at Childline) or by the victim support service volunteer at court. The children were shown the camera room and prepared about the types of questions they would be asked and the procedures they would need to follow.

Some participants said that it had particularly helped them to see the room beforehand, as they could focus on the testimony rather than their surroundings. The attempts to make their court space child-friendly, like pictures on the walls, were appreciated by the participants. Books about the court process were also found to be useful, as they helped participants to know what to expect through words and pictures. Muller (2004) outlines a thorough process of court preparation, including the use of such literature, to assist in alleviating anxiety for the child witness. Volunteers of the victim support services based at court impacted the children in a positive way: *“They made me feel helped and safe and answered questions”* and *“the people working there are very nice and look after you.”*



5.4. Family and other support

All the participants said that it helped them when their family came to court with them, even though they could not sit together during the testimony. Family support included immediate family like parents and stepparents, to extended family like aunts and cousins. Berliner (2003) and Hollely (2002) explore the positive implications for child witnesses when they receive support, particularly from family members, during the court process. One participant said that it had helped her to write down her experience. She did this by herself, at home and revisited her journal so that she would remember the details.

Theme 6. Psychological Repercussions After the Case

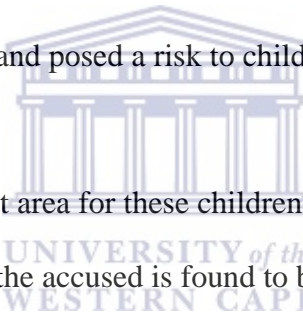
Most of the participants who had completed their testimony in court said that they still thought about it but were trying to put the entire experience behind them. Intense relief was expressed that “*the pressure, questions and confusion are over.*” Several participants were still attending counselling sessions at Childline, which they felt helped them work through the feelings underlying the abuse and court experiences. Most of them were having difficulty in dealing with these feelings and moving on with their lives. One participant reported thinking of court often and feared having to return there, which sometimes kept her awake at night. Several of the participants said they had nightmares about the sexual abuse and of court.

These experiences illustrate the children’s emotional and cognitive difficulties in processing what they have been through. The abusive experience and the court process do not necessarily end for them when the legalities are over. This highlights the essential need for debriefing with child witnesses because of the stressful events before and surrounding a court appearance (Wolraich, 1999). It also emphasises the importance of therapeutic intervention for sexually abused children, in order to come to terms with their experiences. An advantage in this regard is that there are no official rules in South Africa preventing a child from receiving counselling before the trial (Muller, 2000). Providing debriefing and therapeutic services to the child before and after court can assist in reducing uncertainty and anxiety, which facilitates the child’s self-efficacy and well-being (Westcott and Page, 2002).

Some of the participants had already taken a step towards enhanced self-confidence, as they were able to verbalise that they felt proud of themselves for having testified

and were brave to have endured the entire process. This reinforces Muller's (2000) observation that some children report feeling empowered by their participation in the court process.

One of the participants said that her experience had strengthened her previously-held ambition to become a lawyer. *"Now I know what its like to be in court...unlike other lawyers who don't consider people's feelings...because of my own experience I'll know how to speak to a witness and treat that person."* Another participant had received a verdict in her case and expressed her shock and anger that the accused had been found not guilty. She felt that the tumult she had experienced had been in vain and was struggling to accept the outcome of the case. Her worst fear had been realised; the accused was free and posed a risk to children once again.



This addresses another relevant area for these children and their families about the difficulties encountered when the accused is found to be innocent by the courts. With the conviction rate for child sexual offenders being so poor in South Africa, this is a reality for most child witnesses in sexual abuse cases (South African Law Commission, 1991). In this study, most of the participants' court cases were ongoing but some had experienced not guilty verdicts. The ensuing effects ranged from fear of retribution to depression and behavioural problems. This brings into consideration how the outcome of the court case influences the future emotional and psychological adjustment of the child. These continuous emotional difficulties highlight not only the ongoing need for containment and supportive intervention for these children but also the necessity of analysing a judicial system that often returns child sex offenders to the community, without measures for reintegration or rehabilitation.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The importance of assessing the psychological impact of the court system on children who have already endured significant emotional upheaval cannot be underestimated. Protecting and safeguarding the rights of child witnesses is imperative to ensure that there will never be a legalised sanctioning of further trauma in the courtroom. While measures have been put in place to alleviate their situation, it is clear that more is needed in order to fully meet the needs of children who encounter the legal system.

The findings of this study reveal that certain aspects of the court process may indeed be experienced as secondary traumatisation for survivors of child sexual abuse.

However, the legal reforms that have been introduced do appear to have a protective effect on them and indicate an emerging awareness of the trauma and impact that the judicial system may have on child witnesses.

As regards the reform initiatives, all the participants in this study found that testifying in a separate room, via closed circuit television, assisted them through the process of testimony. They indicated that the prospect of testifying in an open courtroom would have elicited extreme anxiety and fear. In a similar vein, the use of an intermediary proved to be reassuring and helpful, particularly in understanding formalised legal language. The efforts made by victims support services in assisting the child witnesses at court and creating a child-friendly atmosphere were also received with appreciation. Court preparation provided by these volunteers and Childline counsellors emerged as an essential component of the children's court experience.

The necessity of preparing the children for court was highlighted by the many misconceptions some of the participants shared about the legal process. This indicates the value of ascertaining what the child witness knows and expects of court, even before sharing information on the technical aspects of court preparation. Important issues that emerged in this regard include those of privacy (e.g. the perception of being broadcast on public television), punishment and safety during testimony.

Of particular interest were the findings about the nature of cross-examination and the impact of delays on the child witness and their families. In relation to the latter, the fact that many researchers and child activists have previously recommended shorter time periods for child sexual abuse cases, demonstrates a lack of urgency and concern about the impact of repeated postponements on the children and their families. In this research, the findings about the effect on schooling, emotional state and the lack of closure clearly warrant the introduction of official time constraints from the time of laying a charge until the conclusion of the case. Failing this, the judicial system will continue to perpetuate the ongoing and secondary trauma inflicted by court cases which proceed over several years of the children's lives.

The nature of cross-examination, as advocated by the accusatorial court system in South Africa, also proved to be emotionally challenging for the participants of this research, despite being somewhat ameliorated by the intermediary. The primary concern here is how some of the psychological dynamics inherent in child sexual abuse appear to be replayed in the cross-examination. The research findings illustrate that often blame, guilt, helplessness and powerlessness are reinforced by the confrontational nature of cross-examination techniques. It appears that the safety and

security of the child witness lacks prioritising in this regard. “The basis of any criminal system is the discovery of truth. If this is not being achieved, then it is the system which must change” (Muller, 2000, p. 22). In this light, the accusatorial system appears to hold many shortcomings in attaining the best outcome for child witnesses and children on the whole. What is important is creating a societal and judicial culture that condemns the sexual abuse of children and refrains from adopting a punitive position towards the children. Ultimately the child needs to be affirmed that remaining silent was more detrimental than disclosing the abuse and seeking justice.

Limitations of this Study and Suggestions for Future Research

The participants in this research had only testified in camera. However, many survivors of child sexual abuse over the age of 12 and under the age of 18 are forced to testify in open court. It would be important to explore and document the experiences of such child witnesses, as it can be surmised from this research that children testifying in open court, before the accused, would most likely experience severe secondary traumatisation.

In this study, the child witnesses were solely interviewed and not their families. On a few occasions, parents and other immediate family members took the opportunity to informally discuss their experiences of the court process. This provided relevant insight into the emotional impact of the court process on the children and their families but was not explored further in this study and would prove an interesting future research topic.

This research has not sought to delve in great depth into the legal domain surrounding children witnesses. It would thus be useful for further research to be conducted, from a legal perspective, on the suitability of the adversarial system and cross-examination on the child witness.

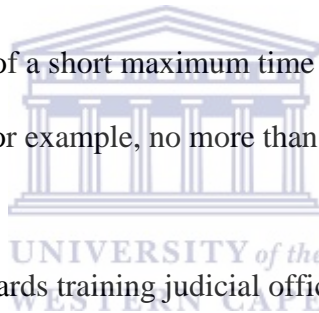
This research has briefly raised the manner in which survivors of child sexual abuse cope with their experiences prior to, and after, the legal process. It would be interesting to examine more about how these children deal with their experiences, taking into account coping mechanisms, defense styles and internal and external support structures.

The aim of this research study was to explore the subjective experiences of child witnesses during the process of appearing in court and testifying. An area of interest that emerged would be following up such cases by exploring how the outcome of the case affects the child psychologically. The implications of a guilty or not guilty verdict may have far-reaching implications for the child witness on a personal and emotional level.

Finally, the area of intermediaries was mentioned in this research only in relation to the children's experiences thereof. What may be of value is research around the subjective experiences of these intermediaries during the court process. Useful information could include their perspectives on training, their challenges and their personal views on serving as an intermediary to child witnesses.

Recommendations emerging from the research

- All children under the age of 18 should have the right to testify in camera, in a separate room from the accused. Currently the law dictates that the court must first ascertain whether the child will suffer undue mental stress or suffering as a result of testifying in open court, before granting permission to testify in camera. The findings of this research allude to the fact that all children will endure such stress if forced to testify in open court.
- With respect to gender, the choice of intermediaries in each case should be considered with care and sensitivity. As mentioned in this research, one of the participants chose to compromise her testimony, rather than have a male intermediary, as she found this to be shameful and embarrassing.
- The implementation of a short maximum time limit for the trial of child sexual abuse cases; for example, no more than a three month delay after a charge is laid.
- Priority be given towards training judicial officers about child development, child language and child behaviour. The dynamics of child sexual abuse are also integral to this type of training.



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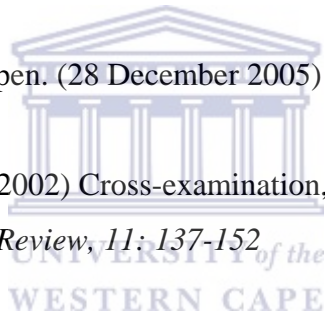
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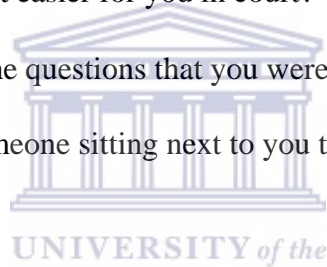
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APPENDIX 1

Semi-Structured Interview Schedule

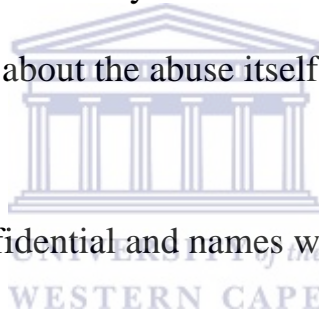
- What did you expect to happen when you went to court for the first time?
- Did you speak to anyone about what happens in court before you went? If yes, what did it entail and was it useful or not?
- How did you feel when you entered the court?
- What were you most scared of when you went to court/ greatest fear?
- What was the most difficult thing that happened in court for you?
- What helped to make it easier for you in court?
- Did you understand the questions that you were asked in court? Elaborate...
- Did it help to have someone sitting next to you telling you the questions?
Elaborate
- Who went with you to court?...Where were they when you testified?
- Do you still think about what happened in court? Elaborate



APPENDIX 2

Letter of consent to parents

I..... (parent/ guardian) give
permission that my son/daughter.....
.....may participate in an interview about their
experience in court. The interview is part of a research study which looks
at the court experiences of children who have been sexually abused.
Questions in the interview will only be about the court process and will
not include any questions about the abuse itself.



The research study is confidential and names will not be disclosed during
the process.

(Thank you for your co-operation).

.....

(Signature)

May 2005